

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 922

[Docket No. 970404078-0176-02]

RIN 0648-AE41

## Thunder Bay National Marine Sanctuary and Underwater Preserve Regulations

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

**ACTION:** Final rule and summary of final management plan.

**SUMMARY:** NOAA issues final regulations to implement the designation of the Thunder Bay National Marine Sanctuary and Underwater Preserve, which encompasses an area of State of Michigan waters over and surrounding Thunder Bay, and the submerged lands thereunder including the Bay, in western Lake Huron, by regulating activities affecting Sanctuary resources, as defined by and consistent with the provisions of the Designation Document. In addition, this document publishes the Designation Document and summarizes the final management plan for the Sanctuary, detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement activities for the area. The National Marine Sanctuaries Act requires the Secretary of Commerce to issue final regulations to implement the designation of a National Marine Sanctuary. The intended effect of these regulations is to protect the Sanctuary's resources, which are limited to underwater cultural resources.

**EFFECTIVE DATE:** Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which this document is published unless, the Governor of the State of Michigan certifies to the Secretary of Commerce that the designation or any of its terms is unacceptable, in which case the designation or any unacceptable term shall not take effect. Announcement of the effective date of

the final regulations will be published in the **Federal Register**.

**ADDRESSES:** Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared for the designation are available upon request to the Marine Sanctuaries Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910 (301) 713-3125. Comments regarding the collection-of-information requirements contained in this rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Desk Officer for NOAA) and to Richard Roberts, NOAA, Work Station 8118, 1305 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ellen Brody, (734) 741-2270.

**SUPPLEMENTARY INFORMATION:****I. Background**

On June 23, 1997, NOAA published a notice in the **Federal Register** proposing the designation of an approximately 808 square-mile (2093 square-kilometer) area of waters encompassing and surrounding Thunder Bay, Lake Huron, Michigan, and the submerged lands thereunder as a National Marine Sanctuary (62 FR 33768), based upon the national significance of the area's collection of underwater cultural resources (primarily shipwrecks). The Thunder Bay region contains more than 160 shipwrecks that span more than a century of Great Lakes maritime history. Following publication of the **Federal Register** notice and in response to the State of Michigan, NOAA agreed to reduce the size of the Sanctuary to approximately 448 square miles (1169 square kilometers). This smaller area contains approximately known and suspected 116 shipwrecks. Collectively, Thunder Bay's shipwrecks present a microcosm of the Great Lakes commercial shipping industry. Based on studies undertaken to date, there is strong evidence of Thunder Bay's national historical significance, as the sunken vessels reflect transitions in ship architecture and construction methods, from wooden sailboats to early iron-hulled steamers. Additional significance is attached to the collection (or number) of shipwrecks in the Thunder Bay region, if not to individual vessel characteristics. A large array of shipwrecks exists in the Thunder Bay region, including virtually all types of vessels used on the open Great Lakes.

These vessels were engaged in nearly every type of trade, thereby linking Thunder Bay inextricably to Great Lakes commerce. Encompassing an extensive array of historical themes, Thunder Bay's collection of shipwrecks presents a broad history of Great Lakes culture and commerce, and from even the most general of observations, may be considered nationally significant historically. A recent study also has investigated the potential of Thunder Bay for possible National Historic Landmark status (Preliminary Comparative and Theme Study of National Historic Landmark Potential for Thunder Bay, Michigan, Martin, 1996).

The designation of this Sanctuary establishes a partnership between NOAA and the State of Michigan to jointly provide long-term protective management to Thunder Bay's underwater cultural resources. The June 23, 1997 notice also announced the availability of the Draft Environmental Impact Statement/Draft Management Plan (DEIS/DMP) prepared for the proposed designation, and provided a public comment period on the DEIS/DMP of approximately three months. Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/DMP were conducted in Harrisville; Alpena; and Rogers City, MI during September 8-10, 1997. All comments received by NOAA in response to the **Federal Register** notice, and to the public hearings were considered and, where appropriate, were incorporated. A summary of significant comments on the DEIS/DMP and proposed regulations and NOAA's responses to them follow.

Following publication of the FEIS/MP, the State of Michigan and NOAA engaged in detailed discussions about the terms of designation. These discussions focused on the name and boundary of the sanctuary, staffing arrangements, funding commitments, and formal agreements between NOAA and the State. NOAA and the State agreed to reduce the boundary, change the name of the sanctuary, and create the Joint Management Committee. NOAA and the State also agreed to enter into a formal agreement, referred to in this document as a draft Memorandum of Understanding (MOU). This agreement, which will be an interlocal agreement as described in Michigan's Urban Cooperation Act, will detail the relationship between the two parties, and will be based on the draft MOU described in the FEIS/MP.

*Federal Presence in State Waters; State Sovereignty*

1. *Comment:* The Thunder Bay Underwater Preserve provides adequate protection to the Bay's underwater cultural resources; there is no need to duplicate efforts.

*Response:* State of Michigan law protecting the State's underwater preserves (Part 761, Aboriginal Records and Antiquities of Public Act 451, as amended), provides a basic level of protection for abandoned property (the State's term for underwater cultural resources). However, the Sanctuary encompasses an area of approximately 158 square miles (409 square kilometers) outside the Preserve as well as provides additional protection and resources for the Preserve.

Although the Thunder Bay Underwater Preserve has existed since 1981, the State has been unable to provide the necessary financial resources or staff to comprehensively manage it. Thus, while the Thunder Bay Underwater Preserve provides for the protection of underwater cultural resources therein, designation as a National Marine Sanctuary will provide increased resources to carry out the research, education and enforcement activities necessary to more fully know, understand and protect these resources. With the designation of a National Marine Sanctuary, NOAA and the State will become partners in managing the Sanctuary area (which almost fully encompasses the existing Preserve and protects an additional area) by providing, with Sanctuary Program and collaborative partnership funding, support for these types of activities. NOAA, as a partner, will supplement and complement State and/or local efforts to provide protection to, and education and research on, Thunder Bay's underwater cultural resources.

The Sanctuary regulations provide additional protection for the existing Preserve's underwater cultural resources. The State only protects abandoned property, while Sanctuary designation protects all underwater cultural resources. This additional protection applies to non-abandoned shipwrecks, as well as historical remnants of docks and piers (see Section 5, Regulatory Alternatives, of the Final Environmental Impact Statement/Management Plan, for a more complete discussion of the differences between State law and Sanctuary regulations).

Designation of the Sanctuary is intended to build on and strengthen the Thunder Bay Underwater Preserve. Because the Thunder Bay National

Marine Sanctuary and Underwater Preserve is an equal partnership with the State of Michigan, NOAA and the State will work together to ensure that they do not duplicate each other's efforts. Given the additional financial resources and legal authorities NOAA has to offer, joint management between the State of Michigan and NOAA will provide opportunities that neither could offer on its own. There are numerous benefits associated with a National Marine Sanctuary, including enhanced opportunities for research and long-term monitoring, additional development of educational materials, and increased support for enforcement. The designation of an area as a Sanctuary draws attention to the fact that the area is nationally significant and worth protecting on a national level.

2. *Comment:* Any Federal government program or involvement in Alpena or surrounding communities is an intrusion into sovereign State waters. Designation of the Sanctuary will result in the loss of State control of Lake Huron, and a takeover of both management and regulation of the Thunder Bay area by the Federal government.

*Response:* As has been discussed and demonstrated throughout the Sanctuary feasibility process, the Thunder Bay National Marine Sanctuary and Underwater Preserve will not change the ownership or control of State lands or waters; that is, no loss of State sovereignty will occur as a result of designation of a National Marine Sanctuary. NOAA and the State agree that the State's jurisdiction and rights will be maintained and will not be relinquished. NOAA will not intrude upon or change existing State or local authorities. All existing State laws, regulations, and authorities will remain in effect. An MOU for the joint management of the Thunder Bay National Marine Sanctuary and Underwater Preserve between the State of Michigan and NOAA will contain several provisions to address this concern. A key provision will state: "The State of Michigan has not conveyed title to or relinquished its sovereign authority over any State-owned submerged lands or other State-owned resources, by agreeing to include those submerged lands and resources within the Sanctuary boundary."

3. *Comment:* The Sanctuary should have a provision requiring a review after five years to determine whether the State of Michigan still supports Sanctuary designation.

*Response:* Section 304(e) of NMSA requires the Secretary of Commerce to review the sanctuary management plan

and implementing regulations every five years and revise the management plan as necessary. The MOU between NOAA and the State of Michigan will contain a provision requiring the Secretary to re-designate the Sanctuary and re-propose the management plan and regulations in their entirety as part of the first five-year review. The Governor of the State of Michigan will have the opportunity to review the designation, management plan and regulations in their entirety and indicate if any or all of the terms are unacceptable, in which case, the unacceptable terms will not take effect. In subsequent reviews, NOAA is not required to re-propose the entire Sanctuary but only those changes to the management plan and regulations that are subject to the Governor's approval.

*Regulations**Introduction*

There were a number of comments related to the breadth and nature of the proposed Sanctuary regulations. In response to public comments, NOAA made several changes to the regulations. The first change is the definition of "underwater cultural resources." Several comments noted that the definition was vague and too broad. NOAA, therefore, revised the definition to make it more consistent with the State definition of "abandoned property" and provide more predictability to Sanctuary users as to what resources the Sanctuary is managing and protecting. The second change is the wording of one of the prohibitions in the Sanctuary regulations. To clarify what activities are prohibited, NOAA included language in the final regulations that is similar to language in Part 761, Aboriginal Records and Antiquities of Public Act 451, as amended. The prohibition now reads, "recovering, altering, destroying, possessing, or attempting to recover, alter, destroy, or possess an underwater cultural resource." The third change was to add a prohibition on the use of grappling hooks and other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy.

The Sanctuary regulations are limited to regulating only four categories of activities: (1) Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy or possess, an underwater cultural resource; (2) drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on

the lakebottom associated with underwater cultural resources (except as an incidental result of anchoring vessels; traditional fishing operations; or minor projects that do not adversely affect underwater cultural resources); (3) using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy; and (4) interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the NMSA or any regulations issued under the NMSA. The regulations prohibit these four categories of activities.

The Designation Document, which is in essence the constitution for the Sanctuary, contains a section limiting the scope of activities which the Sanctuary can regulate, on other than a temporary emergency basis, to these four categories. In order for an activity outside the scope of the activities listed for possible regulation in the Designation Document to be regulated other than on a temporary emergency basis, the Designation Document would have to be revised following the designation process set forth in Section 304 of the NMSA. This process includes extensive public involvement and review, as well as input and opportunity to veto by the Governor. In order for a temporary emergency regulation to be imposed, the Governor must approve. In order for an activity within the scope of activities listed for possible regulation in the Designation Document to be regulated or for an existing regulation affecting such an activity to be revised, the procedures of the Administrative Procedure Act would have to be followed, and under the terms of the MOU that NOAA and the State will enter into the Governor would have the opportunity to veto the regulation.

The Sanctuary regulations are different from the State law governing the State's underwater cultural resources in four ways: (1) The Sanctuary regulations apply to all shipwrecks, not just those that are abandoned; (2) The use of grappling hooks or other anchoring devices is prohibited on underwater cultural resource sites that are marked with a mooring buoy; (3) "Hand-taking" of artifacts outside the Thunder Bay Underwater Preserve, but still within the Sanctuary boundary, is prohibited; and (4) Permit applications to conduct a prohibited activity are more detailed to satisfy the Federal Archaeology Program guidelines.

4. *Comment:* Fishing should not be regulated or restricted by the Sanctuary. Fishing in Thunder Bay could be

affected by designation of a National Marine Sanctuary.

*Response:* Commercial and recreational fishing activities (including fishery-related research and stocking programs) are not included within the Designation Document's scope of possible activities that could be regulated as part of the Sanctuary regime. See introduction to regulation-related comments and responses. Of course, fishing within Thunder Bay is subject to State regulation and to non-sanctuary Federal regulation under such authorities as the Endangered Species Act. For example, State regulations require all but diving-tending vessels to not be operated within 200 feet of a buoyed diver's flag. The regulation of who may use the Thunder Bay National Marine Sanctuary and Underwater Preserve and for what purpose is not included within the scope of possible regulated activities.

If a fishing activity alters a Sanctuary underwater cultural resource (an act that is prohibited by 15 CFR 922.193(a)(1)), the fishing activity would be in violation of the Sanctuary regulations regardless of whether it is a traditional fishing activity (defined in 15 CFR 922.191). However, traditional fishing activities are exempt from the prohibition on altering the lakebottom (15 CFR 922.193(a)(2)). A permit would be necessary to conduct a prohibited activity.

5. *Comment:* The Sanctuary should not restrict diving and access to shipwrecks.

*Response:* Non-consumptive access to shipwrecks and non-consumptive commercial and recreational diving are not included within the Designation Document's scope of possible activities that could be regulated as part of the Sanctuary regime. See introduction to regulation-related comments and responses. Of course, diving within Thunder Bay is subject to State regulation, such as the requirement to fly a "divers" flag when diving. No Sanctuary permits are required to dive in the Sanctuary. However, the recovery, alteration, destruction, or possession of underwater cultural resources (i.e., the consumption of underwater cultural resources) is prohibited.

It will be the policy of the Thunder Bay National Marine Sanctuary and Underwater Preserve to foster free and open access to all underwater cultural resources. This is the philosophy of the National Marine Sanctuary Program. Non-consumptive diving is allowed and encouraged in all National Marine Sanctuaries. For example, the Florida Keys National Marine Sanctuary has

constructed a "shipwreck trail," which encourages access to the shipwrecks. Even on the Monitor (the Civil War ironclad off the coast of North Carolina), which is too deep for most recreational divers, licensed dive operators have been allowed to conduct non-consumptive dives.

On rare occasions, the Thunder Bay National Marine Sanctuary and Underwater Preserve may need to place temporary emergency limits on access to a shipwreck (e.g., if a historically significant shipwreck is newly discovered and NOAA and the State need to document the artifacts). The only way in which NOAA could do this would be through the imposition of an emergency regulation pursuant to 15 CFR 922.196. In accordance with the regulations and the MOU that will be entered into, NOAA cannot impose a temporary emergency regulation without the approval of the Governor.

In the event that NOAA imposes some type of restriction on access to allow documentation of a newly-discovered shipwreck, NOAA envisions using volunteer divers who are trained to assist the agency in collecting information.

6. *Comment:* The Sanctuary should not prohibit anchoring at shipwreck sites.

*Response:* Due to damage to underwater cultural resources that could be caused by grappling hooks or anchoring devices, and in response to a recommendation from the Sanctuary Advisory Council (SAC), NOAA added a prohibition on the use of grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy (15 CFR 922.193(a)(3)). If a site is not marked with a mooring buoy, grappling hooks or anchoring devices may be employed. However, because of the potential of damaging an underwater cultural resource, NOAA recommends that such devices only be used at a non-mooring buoy-marked site when there is no alternative. In such case, the person intending to use an anchoring device should consult with the Sanctuary manager to determine ways of avoiding damage to the underwater cultural resource at the site (e.g., obtaining information about how the anchoring device should be placed and oriented to avoid damaging vulnerable parts of the resource).

The State of Michigan considers damage to abandoned property caused by grappling hooks a violation of Part 761, Aboriginal Records and Antiquities of Public Act 451 (1994), as amended. Therefore, the Sanctuary regulation is fully consistent with state law.

As discussed in the response to comment 23, a high priority activity once the Sanctuary is designated is the placement of mooring buoys at all shipwreck sites where a mooring buoy may feasibly be placed. This will allow safe access for divers, allow boats to tie up to the mooring buoys, and eliminate the need for anchoring on the lakebottom.

*7. Comment:* The Sanctuary should not restrict or regulate private archaeological surveys.

*Response:* The Sanctuary regulations prohibit the recovering, altering, destroying, or possession of any underwater cultural resource regardless of how that recovering, altering, destroying, or possession occurs (e.g., through the conduct of a private archaeological survey). Even if the conduct of private archaeological surveys is not expected to alter or otherwise adversely impact an underwater cultural resource, NOAA encourages the surveyor to consult with the Sanctuary manager. In general, NOAA and the State encourage research and documentation on underwater cultural resources, as long as the activity does not violate the Sanctuary regulations. If an activity would violate a Sanctuary prohibition, a Sanctuary permit authorizing the activity must first be obtained.

*8. Comment:* The Sanctuary should not restrict commercial diving charter operations.

*Response:* See response to comment 5. The regulations do not place any restrictions on the number of commercial dive charter operations in the Sanctuary, nor do they require dive charters to have a license or to register their boats for use in the Sanctuary. NOAA will not charge a user fee for commercial diving charter operations. NOAA and the State will work in partnership with dive operators to educate divers about the Sanctuary.

*9. Comment:* The Sanctuary should not require registration for divers or boats.

*Response:* The regulations do not require divers or boat operators to register to be in Sanctuary waters. NOAA will not charge a user fee for divers or boat operators.

*10. Comment:* The Sanctuary should not grant leases or issue permits for the removal of oil and/or gas from locations under the bottomlands within the Sanctuary boundary.

*Response:* The State, not the Sanctuary, has ownership rights to and leasing authority over oil, gas, and mineral resources lying beneath the lakebottom. The need to obtain a Sanctuary permit would arise only if the

State grants a lease for the removal of oil and/or gas and that activity would affect underwater cultural resources. If such activity would not impact underwater cultural resources, no Sanctuary permit would be required.

The Sanctuary regulations include a prohibition on drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of: (i) anchoring vessels; (ii) traditional fishing operations; or (iii) minor projects that do not adversely affect underwater cultural resources. Any person conducting an activity that adversely impacts underwater cultural resources would be required to obtain a permit pursuant to the Sanctuary regulations. Any such permit would have to meet the requirements of Section 922.195.

*11. Comment:* The Sanctuary should not restrict property rights and land use.

*Response:* The Sanctuary will have no effect on existing property rights or on existing land uses. The landward boundary of the Sanctuary extends along the ordinary high water mark between the north and south Alpena County lines. The MOU will contain the following provision: "NOAA does not have the ability to, and therefore cannot, acquire land to regulate activities landward of the ordinary high water mark (e.g., limiting public access from the shore to Lake Huron). NOAA does have authority to co-manage activities lakeward of the ordinary high water mark pursuant to the Sanctuary regulations."

*12. Comment:* The Sanctuary should not regulate hunting activities.

*Response:* Hunting is not included within the Designation Document's scope of possible activities that could be regulated as part of the Sanctuary regime. See introduction to regulation-related comments and responses. Any hunting activity on land would be outside the Sanctuary boundary and therefore not affected at all by the Sanctuary regulations. Waterfowl hunting on the water is outside the scope of possible activities that could be regulated as part of the Sanctuary regime.

*13. Comment:* The Sanctuary should not impose more regulations in the future.

*Response:* The Sanctuary has a very narrow management focus on underwater cultural resources, with virtually no effect on individual activities in Thunder Bay unless these

activities would cause a violation of one of the four categorical prohibitions in the regulations.

The Designation Document, which is in essence the constitution for the Sanctuary, contains a section limiting the scope of activities which the Sanctuary can regulate, on other than a temporary emergency basis, to these four categories. In order for an activity outside the scope of the activities listed for possible regulation in the Designation Document to be regulated other than on a temporary emergency basis, the Designation Document would have to be revised following the designation process set forth in Section 304 of the NMSA. This process includes extensive public involvement and review, as well as input and opportunity to veto by the Governor. In order for a temporary emergency regulation to be imposed, the Governor must approve. In order for an activity within the scope of activities listed for possible regulation in the Designation Document to be regulated or for an existing regulation affecting such an activity to be revised, the procedures of the Administrative Procedure Act would have to be followed and under the terms of the MOU that will be entered into the Governor would have the opportunity to veto the regulation.

*14. Comment:* The definition of traditional fishing does not specifically reference tribal fishing.

*Response:* NOAA included in the proposed Sanctuary regulations a definition of "traditional fishing" because it is an activity that is exempt from 15 CFR 922.193(a)(2), alteration of the lakebottom. NOAA agrees that even though tribal fishing is prohibited in this area under the 1985 Consent Agreement, it is an activity that was "customarily conducted within the Sanctuary prior to its designation." NOAA, therefore, has clarified in the final regulations that tribal fishing falls under the definition of traditional fishing.

*15. Comment:* The Sanctuary should not be allowed to issue emergency regulations.

*Response:* Pursuant to 15 CFR 922.196, an activity may be temporarily regulated in an emergency to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource. Eliminating this authority would jeopardize the Sanctuary's ability to react and respond quickly to emergency situations threatening Sanctuary resources. Although the provision for emergency temporary regulation is vitally important to ensure the Program's ability to respond to emergency situations, the mechanism is

very rarely used. The Designation Document and the regulations require that NOAA obtain the approval of the Governor prior to an emergency regulation taking effect. The MOU between NOAA and the State will contain the same provision.

**16. Comment:** Exempt from prosecution charter boat operators and personal sport divers who dive a wreck without a mooring buoy, if the reason for the absence of a buoy is that it has not been set, or that it has been accidentally destroyed.

**Response:** The regulations for the Thunder Bay National Marine Sanctuary and Underwater Preserve do not require that divers use mooring buoys. The regulations at 15 CFR 922.193(a)(3), however, prohibit the use of grapple hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy. If the site does not have a mooring buoy, there is no prohibition on the use of grapple hooks or anchoring devices. See response to Comment 6. As discussed in Comment 23, it will be a priority of the Thunder Bay National Marine Sanctuary and Underwater Preserve to install and maintain a mooring buoy system.

**17. Comment:** Adopt Sanctuary regulations that mirror the State of Michigan regulations protecting underwater cultural resources, per Alternative A, Regulatory Alternatives.

**Response:** NOAA's preferred regulatory alternative is Alternative B (see Section 5 of the FEIS/MP), which is to adopt Sanctuary regulations consistent with the purpose and intent of State regulations under Part 761, Aboriginal Records and Antiquities, of P.A. 451 (1994), as amended, and Part 325, Great Lakes Submerged Lands, of P.A. 451 (1994), as amended. The primary advantage of Alternative B is that protective coverage is extended to all shipwrecks within the Sanctuary boundary; not just to "abandoned" shipwrecks, as defined under State law and the federal Abandoned Shipwreck Act. In effect, adoption of Alternative B will serve as a safety net for State underwater cultural resources that might be unprotected under either State law or the Abandoned Shipwreck Act.

NOAA has revised the Sanctuary regulations to reflect the language in the State law. For example, NOAA changed the definition of "underwater cultural resources" to a definition that uses terms similar to the State definition of "abandoned property" (which is the State term for underwater cultural resources). NOAA also changed the wording of a prohibited activity (15 CFR 922.193(a)(1)) to more closely reflect the State prohibition under Part 761,

Aboriginal Records and Antiquities of P.A. 451 (1994), as amended. Therefore, while NOAA is still adopting Regulatory Alternative B, this alternative is closer to Regulatory Alternative A than it was in the DEIS/DMP.

**18. Comment:** What procedures are in place to ensure that NOAA cannot make unilateral changes to the Sanctuary (e.g., changing the scope of regulations)?

**Response:** See response to comment 13.

#### *Extent of Underwater Cultural Resources in the Boundary*

**19. Comment:** The collection of underwater cultural resources (primarily shipwrecks) in Thunder Bay is not "nationally significant," and thus does not qualify for National Marine Sanctuary status.

**Response:** The collection of approximately 116 shipwrecks both known and thought to be located within the boundary of the Thunder Bay National Marine Sanctuary and Underwater Preserve represents a large diversity of vessels that navigated the Great Lakes in the 19th and 20th centuries. Collectively, these shipwrecks reflect transitions in ship architecture and construction methods, from wooden sailing boats to early steel-hulled steamers. In addition to representing important transitions in ship architecture and construction, the collection also conveys many stories of Great Lakes transportation and commerce over the past two hundred years.

Section 303(a)(2) of the NMSA requires that in order to be designated as a National Marine Sanctuary an area contain resources or human-use values of special national significance. NOAA funded a study to determine whether the underwater cultural resources of the Thunder Bay region are nationally significant. There is strong evidence, based on this study, of national historic significance attached to this collection of underwater cultural resources located in the Thunder Bay area (See Preliminary Comparative and Theme Study of National Historic Landmark Potential for Thunder Bay, Martin 1996). Martin (1996) indicated that the collection of shipwrecks would likely qualify as a National Historic Landmark. In addition, several of the known shipwrecks individually have potential national historic significance, e.g., Isaac M. Scott, which foundered in the Great Storm of 1913 (See Section 4, E. of the FEIS/MP for a complete discussion of these shipwrecks).

**20. Comment:** The number of shipwrecks occurring outside Alpena County does not warrant extension of

the Sanctuary boundary beyond Alpena County.

**Response:** Although the majority of known and suspected shipwrecks occur in waters off Alpena County, there are also a significant number of known or suspected shipwrecks occurring in waters off both Alcona and Presque Isle Counties, notably near the lighthouses at both locations. (See Figure 5.4 of the FEIS/MP, "Approximate Locations of Shipwrecks in the Thunder Bay Region"). As described in Table 5.1 of the FEIS/MP, "Number of known, probable, and suspected shipwrecks," the greatest increase occurs from Boundary B (Alpena County lines) and Boundary C (Presque Isle Lighthouse as the northern boundary and Sturgeon Point Lighthouse as the southern boundary) NOAA's preferred boundary). The number of known, probable, and suspected shipwrecks increases from 116 in Boundary B to 160 in Boundary C.

In response to a request by the State of Michigan, however, NOAA reduced the size of the boundary from 808 square miles (2093 square kilometers) to 448 square miles (1169 square kilometers). The revised boundary still uses the 83 degrees longitude as the lakeward boundary, but uses the Alpena County lines as the north and south landward boundary points. The State requested a smaller boundary due to the higher concentration of shipwrecks in this area and fewer local governments with whom to coordinate. NOAA agreed to the adoption of Boundary B with the stipulation that an inventory will be conducted of shipwrecks in the larger area (the additional 360 square miles (932 square kilometers)) to determine if boundary expansion is warranted after five years. The Governor has veto authority over boundary expansion.

To achieve the uniformity of regulations, the State intends to make the boundary of the existing state Underwater Preserve coterminous with the National Marine Sanctuary.

**21. Comment:** The National Marine Sanctuary Program should not be supporting sanctuaries that only protect cultural resources.

**Response:** Section 301(a)(2) of the NMSA states "the Congress finds that certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national, and in some cases, international significance." The Secretary of Commerce is not required to designate national marine sanctuaries based upon a finding that *all* of these listed criteria are present. A sanctuary may be designated based on the national

significance of any one of the listed criteria, provided that the requirements of sections 303 and 304 of the NMSA are met.

*22. Comment:* Arrange the boundaries of the Sanctuary to include only areas with a high concentration of known and probable wrecks.

*Response:* It would be very difficult administratively to manage a Sanctuary with many noncontiguous areas as envisioned in this comment. While it is estimated the Sanctuary contains approximately 116 shipwrecks, and some of these have been identified, many more are thought to be in the Thunder Bay area and have yet to be located and documented. Provided a shipwreck lies within the boundary of the contiguous area, it is subject to all Sanctuary protections. If as the commenter suggests, a sanctuary was designated consisting of noncontiguous boundaries lying around each known wreck, in order to protect additional wrecks, the expensive and cumbersome sanctuary designation process would have to be repeated.

#### *Management of Shipwrecks*

*23. Comment:* Use State and federal funds to maintain mooring buoys, anchored within 50 feet of each dive site, from May 1st to October 31st of each year, on all identified wrecks within the Sanctuary that are within 130 feet of the surface. Fit the anchor line for each buoy with a permanent guideline that maintains a depth of  $\pm 5$  feet from the shallowest point of the dive site.

*Response:* The placement of mooring buoys is an important element of ensuring safe and open public access to Thunder Bay's underwater cultural resources, while also ensuring the protection of these resources. NOAA and the State will pursue placing mooring buoys at identified dive sites, and will also pursue collaboration with private and/or other governmental sources of support to implement full mooring buoy placement and maintenance, as appropriate. The specifics of mooring buoy placement will be addressed following designation, in part through findings and assessments resulting from Sanctuary inventory surveys. As with any activity, however, the placement and maintenance of mooring buoys will be subject to available funding.

*24. Comment:* Regularly publicize coordinates of existing and newly-found shipwrecks, dates of upcoming studies of wrecks and other research projects, and results of completed and ongoing research projects.

*Response:* Consistent with goals of the National Marine Sanctuary Program Strategic Plan, NOAA promotes "coordinated research and monitoring efforts throughout the Program." As discussed in the Management Plan (see Section 3 of the FEIS/MP), goals of the research/monitoring program at Thunder Bay include inventory and assessment of Sanctuary resources, and development of collaborative programs with other agencies, businesses, and organizations.

NOAA has authority under Section 304 of the National Historic Preservation Act and Section 9(a) of the Archaeological Resource and Protection Act to withhold the location of certain shipwrecks. It will be the policy of the Thunder Bay National Marine Sanctuary and Underwater Preserve to make these coordinates available to the public. However, for safety or enforcement purposes, exact locations of newly discovered shipwrecks may not be reported immediately.

Dates of Sanctuary-funded or Sanctuary-permitted studies of shipwrecks and other research projects will be available to the interested public, once those dates are established. Finally, results of completed research also will be made available to the interested public; progress on ongoing research projects will also be made available to the public, as appropriate.

*25. Comment:* Use State and federal funds, and/or assistance in fundraising, to purchase and install a hyperbaric chamber near the Sanctuary.

*Response:* Decisions related to the purchase and installation of a hyperbaric chamber near the Sanctuary to support Sanctuary research/monitoring programs will be made as annual detailed research plans for the Sanctuary are developed. Such plans also will include discussion of funding for various equipment and supplies. NOAA acknowledges the importance of having a hyperbaric chamber in close proximity to the Thunder Bay National Marine Sanctuary and Underwater Preserve.

*26. Comment:* Provide incentives and mechanisms to encourage private individuals and companies to explore shipwrecks not yet discovered; and to share information and documentation they already have, or gather in the future, on shipwrecks in the area.

*Response:* Among the highest priorities to ensure effective Sanctuary management are research and inventory activities to establish baseline information on the location and status of underwater cultural resources. There will be no restrictions on divers or other public access to known or suspected

shipwrecks within the Sanctuary, provided diving activity is conducted in a manner that complies with Sanctuary and other valid regulations. Individuals will be encouraged to explore the Sanctuary for the potential discovery of underwater cultural resources, and to share this information and documentation. NOAA and the State will facilitate these efforts by developing and providing information forums and written and/or visual materials for the public.

*27. Comment:* Provide State and federal support for selecting, purchasing, cleaning up, and scuttling additional vessels within the Sanctuary.

*Response:* The selection, purchase, clean-up and scuttling of "additional" vessels within the Sanctuary will not be a management activity for the Sanctuary. The purpose of the Sanctuary is to manage and protect existing shipwrecks within the Sanctuary boundary.

#### *Development of Educational Programs*

*28. Comment:* Develop joint State and federal public education programs, including a web page on the Internet, to promote understanding of the resources available in the Sanctuary to the public of the State, nation, and world.

*Response:* Development of joint State and federal public education and interpretive programs on the maritime heritage of the Thunder Bay area are contemplated in the Management Plan (see Section 3, Management Plan, FEIS/MP). Part of such programs will include further and continuing development and maintenance of a web page. A web page has already been developed containing preliminary information about the site and its progress toward National Marine Sanctuary designation. The web page address is: <http://www.glerl.noaa.gov/glsr/thunderbay>.

*29. Comment:* Provide joint federal and State support for local educational opportunities to all ages and types of schools about aspects of marine and ecological sciences and history in the Thunder Bay area; train educators in the use of that programming.

*Response:* As generally described in Section 3, Management Plan, the Sanctuary's goals for education include development and implementation of science-based programs that promote awareness and understanding of the Thunder Bay area's underwater cultural resources and maritime heritage. The primary purpose of the Thunder Bay National Marine Sanctuary and Underwater Preserve is to provide comprehensive, long-term protection—through education, research and management programs—for the

nationally-significant collection of underwater cultural resources found in the Thunder Bay area. Given this singular management focus, development and support for programming (and training in the use of that programming) to educate children, college students, and the public about aspects of marine and ecological science and history in the Thunder Bay area will not be a high management priority for the Sanctuary, unless such inquiries relate to maritime heritage (e.g., the effects of zebra mussels on shipwrecks).

**30. Comment:** Provide that the Sanctuary Manager or designee shall make presentations as requested to community organizations on the functions, budget, and staff of the Sanctuary.

**Response:** Success of the Thunder Bay National Marine Sanctuary and Underwater Preserve will depend in large part upon its integration into the local and surrounding communities. Outreach and communication efforts made by the Sanctuary staff to those communities will support such integration. In coordination with its State partners and others, the Sanctuary Manager will be available to make presentations to community organizations on Sanctuary activities, programs and administration.

**31. Comment:** Provide publicity and mechanisms to invite and incorporate the involvement of local residents, who have appropriate credentials and experience, in Sanctuary research projects.

**Response:** A Sanctuary Research Plan will be developed, identifying research and monitoring activity priorities. As Sanctuary funds are available, some may be competitively awarded to support these research and/or monitoring projects. The funds will be awarded to individuals with appropriate credentials and experience from local residents and those from outside the area.

**32. Comment:** Provide specific mechanisms for involving the diving community in planning and conducting research and educational projects related to the Sanctuary.

**Response:** As with area residents interested in potential Sanctuary research and educational projects, the Sanctuary will make information and opportunities for planned research and education projects known to the diving community. One way for interested area residents and representatives of the diving community to become involved in helping to plan for such projects is through the SAC and its subcommittees. The SAC will advise and provide recommendations to the Sanctuary

Manager regarding development of priorities for annual research and education plans. In other sanctuaries, NOAA depends on the experience and expertise of divers to provide input to the Sanctuary Manager. NOAA and the State will place a high priority on building a strong relationship with local and regional divers.

**33. Comment:** Use federal and State funds to document the cultural resources within the Sanctuary and to provide at least one public resource center through each tourist season.

**Response:** The identification and documentation of underwater cultural resources within the Sanctuary clearly are priority items for planning site management, which includes the provision of complete, current information to the user and other interested publics. NOAA and the State will pursue development of a Maritime Heritage Center with other agencies, businesses, and organizations. This type of Center would provide the public with information on the Sanctuary, its resources, and the maritime heritage of the Thunder Bay area.

#### *User Fees*

**34. Comment:** A number of commenters expressed concern that user fees may be imposed on various Sanctuary users, such as those engaged in fishing, diving or boating activities.

**Response:** NOAA will not impose user fees on any activity within the Sanctuary. The MOU between NOAA and the State of Michigan will contain a provision stating that any user fee would be subject to a veto by the Governor of Michigan.

#### *Conflict Resolution*

**35. Comment:** Tribal participation must be included in the conflict resolution procedures.

**Response:** NOAA agrees that tribal interests should be considered in the conflict resolution process. The MOU between the State of Michigan and NOAA will set forth a conflict resolution process. The Chippewa-Ottawa Fishery Treaty Management Authority and other tribes may enter into a separate MOU(s) with NOAA and/or the State to address such concerns.

**36. Comment:** How will the Sanctuary deal with potential conflicts between fishermen and divers?

**Response:** State regulations require divers to fly a "divers" flag and for all vessels not tendering the divers to not be operated within 200 feet of the flag. This should minimize conflicts between fisherman and divers with minimal interference and inconvenience to

fishermen. Accordingly, there would not appear to be a need for separate Sanctuary regulations on this subject matter. If conflicts do arise, there will be a framework for conflict resolution in the MOU. The SAC or other local forum will be critical to the resolution of this type of conflict.

#### *Economic Impact Assessment*

**37. Comment:** There is an error in the Economic Impact Assessment regarding the transcription of projected use data from one table to another.

**Response:** The DEIS/DMP contained a word processing error in Table 1 of Appendix F and Table 6.1 in Volume 1 of the Draft EIS/DMP (i.e., the use projections for bird watching [overnight trips] were inadvertently duplicated for kayaking/canoeing [day trips]). The word processing error resulted in trip figures after bird watching (overnight trips) to be "thrown off" by one line. The Total party trips in Table 1 and Table 6.1 should be 6,150 for FY97; 9,200 for FY98; 14,175 for FY99; 23,000 for FY00; and 31,700 for FY01 (as shown on the last line of Table 2 in Appendix F). The use projections in Table 1 and Table 6.1 should have been consistent with Table 2 in Appendix F of the DEIS/DMP. This correction was made in the FEIS/MP.

**38. Comment:** The use of kayaking, bird watching and sightseeing as categories for tourism in the economic impact assessment is not appropriate because the Sanctuary is limited to the protection of underwater cultural resources.

**Response:** Section 6 of the DEIS/DMP (the economic impact assessment) included bird watching, kayaking/canoeing, and sightseers in the impact calculations for an "underwater" sanctuary for several reasons. First, the Sanctuary will interpret and promote the entire "maritime cultural landscape" in partnership with the community and state, and the landscape includes resources other than shipwrecks. Second, a certain segment of visitors will be attracted to the region simply because there is a National Marine Sanctuary there. They may be primarily interested in cultural heritage, but can realistically be assumed to participate also in recreation associated with natural heritage (in addition, some of this "natural" heritage is an important component of the maritime cultural landscape). Finally, social research involving heritage tourism indicates that a primary motivation for visitation is history and human heritage, but that these visitors also participate in other outdoor recreation activities. These are supported by social research

in heritage tourism; aggregate trends and projections of use for bird watching, canoeing/kayaking, and sightseeing (i.e., nature-based tourism along the shorelands and from boats); and some results from the Florida Keys recreation and tourism study (Leeworthy et al. 1996).

*39. Comment:* The impact of increased visitors on the area's local infrastructure and on the environment is not adequately addressed.

*Response:* The economic impact assessment was limited in scope due to financial constraints and availability of data. However, NOAA does not believe the projected increase in visitation would cause stresses on the area's infrastructure. The City of Alpena is growing, with new businesses and stores locating there. This growth, which is not a result of the Sanctuary, will prepare the City for increased visitation.

#### Other

*40. Comment:* Is State or local matching funding required for the Sanctuary?

*Response:* The NMSA does not require any State and/or local support for Sanctuary programs and activities. The MOU will contain the following statement to address this concern: "No local funding is required to implement the Management Plan, its implementing regulations, or any provisions of this MOU." Initial NOAA funding levels for the Sanctuary will be at least \$250,000 annually. This figure could be higher or lower depending on appropriations. The State of Michigan, as a joint manager of the sanctuary/preserve, has also committed to provide financial support. In addition to this level of support, there are opportunities for revenue enhancement and cost-sharing with a variety of agencies, organizations, institutions, businesses and individuals, to assist in meeting Sanctuary Program objectives. NOAA and the State will continue to promote and encourage means such as partnerships and sponsorships, to raise additional support for Sanctuary programs.

*41. Comment:* Involve the existing SAC in reviewing and revising the MOU to ensure that it accurately addresses local concerns.

*Response:* Prior to the release of this FEIS/MP, the SAC was requested to review and make recommendations to NOAA regarding the MOU. Before the FEIS/MP release, the SAC also reviewed and endorsed the Programmatic Agreement among NOAA, the State of Michigan and the Advisory Council on Historic Preservation. The SAC's

involvement has been critical in shaping the terms and scope of the Sanctuary.

*42. Comment:* Who on the state or local level would be responsible for enforcement of the Sanctuary regulations? The Final Management Plan should include a provision for funding enforcement activities.

*Response:* Enforcement of Sanctuary regulations will be discussed in the MOU, and the MOU will provide for possible deputization of State of Michigan, Michigan State Police, and county marine sheriff enforcement personnel, for the enforcement of Sanctuary regulations. NOAA envisions developing a separate MOU for enforcement. Under such an agreement, the appropriate State agency would be recognized as the lead enforcement entity, and provisions for necessary cost-sharing for law enforcement activities would be made.

*43. Comment:* NOAA needs to address the impacts of zebra mussels on shipwrecks.

*Response:* NOAA recognizes that zebra mussels will be a management concern for the Sanctuary. If this is determined to be a priority research activity, funds will be allocated to examine the impact of zebra mussels on shipwrecks.

*44. Comment:* The availability of the open water placement site for future placement of clean dredged materials is critical for continued maintenance of the Federal navigation channel at Alpena Harbor.

*Response:* NOAA recognizes the importance of maintaining the navigation channel at Alpena Harbor; it is not aware of adverse impacts to underwater cultural resources caused by the open water placement site. Unless there are adverse impacts, the Sanctuary will not impose restrictions on the continued availability of the open water placement site currently used by the Corps for placement of clean dredged materials resulting from periodic maintenance dredging of navigation channels and harbors located on Lake Huron.

*45. Comment:* Safety of Sanctuary users should be considered in light of commercial shipping traffic in Thunder Bay. Mooring buoys should be kept out of commercial course lines.

*Response:* After Sanctuary designation, NOAA and the State will work with the U.S. Coast Guard and the Lake Carriers' Association to develop a safe and effective mooring buoy system, as well as to ensure that mooring buoys are not placed in major shipping channels.

*46. Comment:* In the event of an oil spill, NOAA should comply with U.S. Coast Guard Area Contingency Plan.

*Response:* After designation, NOAA will work closely with the U.S. Coast Guard to ensure that NOAA is aware of, and part of, the Area Contingency Plan. NOAA added information in Section 4 of the FEIS/MP on the Area Contingency Plan.

*47. Comment:* Why isn't the Fame included in the list of shipwrecks?

*Response:* Upon further research, it is apparent that the ship came to rest on the shores of Presque Isle. The ship's unusually accident-prone history, including its stranding in Thunder Bay early in its career, likely contributed to the confusion regarding its eventual fate. It appears that few remains of the vessel probably exist at the location of its loss because of salvage and shoreland development activities. Due to the adoption of a smaller boundary, however, the Fame will be outside the Sanctuary boundary.

## II. Designation Document

Section 304(a)(4) of the Act requires that the terms of designation set forth the geographic area 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 subject to regulation by the Secretary to protect those characteristics. This section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation is made. Thus the terms of designation serve as a constitution for the Sanctuary.

The Designation Document for the Thunder Bay National Marine Sanctuary and Underwater Preserve follows:

### Designation Document for the Proposed Thunder Bay National Marine Sanctuary and Underwater Preserve

Under the authority of the National Marine Sanctuaries Act, as amended (the "Act" or "NMSA"), 16 U.S.C. 1431 *et seq.*, Thunder Bay and its surrounding waters offshore of Michigan, and the submerged lands under Thunder Bay and its surrounding waters, as described in Article II, are hereby designated as the Thunder Bay National Marine Sanctuary and Underwater Preserve for the purposes of providing long-term protection and management to the conservation, recreational, research, educational, and historical resources and qualities of the area.

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area 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 of Commerce to protect those characteristics. The terms of designation may be modified only by the procedures provided in Section 304(a) of the Act (the same procedures by which the original designation is made). Thus, the terms of designation serve as a constitution for the Sanctuary.

#### *Article I. Effect of Designation*

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, historical, research, and educational resources and qualities of the Thunder Bay National Marine Sanctuary and Underwater Preserve (the "Sanctuary"). Section 1 of Article IV of this Designation Document lists those activities that may be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. 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 to include the type of activity by the same procedures by which the original Sanctuary designation was made, as outlined in Section 304(a) of the NMSA.

#### *Article II. Description of the Area*

The Thunder Bay National Marine Sanctuary and Underwater Preserve consists of an area of approximately 448 square miles of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark of the Michigan shoreline from the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83 degrees west. The coordinates of the boundary are set forth in Appendix A to the regulations.

#### *Article III. Characteristics of the Area That Give It Particular Value*

Thunder Bay and its surrounding waters contain approximately 116 shipwrecks spanning more than a century of Great Lakes maritime history. Virtually every type of vessel used on open Great Lakes waters has been documented in the Thunder Bay region, linking Thunder Bay inextricably to Great Lakes commerce. Most of the Great Lakes trades had a national, and sometimes an international, significance, and resulted in uniquely-designed vessels. Although not all of Thunder Bay's shipwrecks have been identified, studies undertaken to date indicate strong evidence of the Bay's national historic significance. The sunken vessels reflect transitions in ship architecture and construction methods, from wooden sailboats to early iron-hulled steamers.

Several major conclusions regarding Thunder Bay's shipwrecks may be drawn from research and analysis undertaken to date: they are representative of the composition of the Great Lakes merchant marine from 1840 to 1970; they provide information on the various phases of

American westward expansion; they provide information on the growth of American extraction and use of natural resources; they illustrate various phases of American industrialization; one shipwreck (Isaac M. Scott) may be used to study and interpret a specific event (the Great Storm of 1913) that had strong repercussions regionally, nationally, and internationally; and they provide interpretive material for understanding American foreign intercontinental trade within the Great Lakes.

Thunder Bay was established as the first State of Michigan Underwater Preserve in 1981 to protect underwater cultural resources. Increasing public interest in underwater cultural resources underscores the importance of continued efforts to discover, explore, document, study and to provide long-term, comprehensive protection for the Bay's shipwrecks and other underwater cultural resources.

#### *Article IV. Scope of Regulations*

##### *Section 1. Activities Subject to Regulation.*

The following activities are subject to regulation under the NMSA, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, recreational, historical, research and educational resources and qualities of the area:

- a. Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy or possess, an underwater cultural resource;
- b. Drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of:
  - (i) Anchoring vessels;
  - (ii) Traditional fishing operations (as defined in the regulations); or
  - (iii) Minor projects as defined upon adoption of this regulation in R.322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451 (1994), as amended, that do not adversely affect underwater cultural resources (see Appendix B of Subpart R);
- c. Using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy;
- d. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the NMSA or any regulations issued under the NMSA.

*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 flagged vessels and persons who are 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 and all such activities, including those not listed in Section 1, are subject to immediate temporary regulation, including prohibition. Any such emergency regulation shall not take effect without the approval of the Governor of Michigan.

#### *Article V. Effect on Other Regulations, Leases, Permits, Licenses, and Rights*

*Section 1. Fishing Regulations, Licenses, and Permits.* Fishing in the Sanctuary 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, State, Tribal and local authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder.

*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 designee, in consultation with the State of Michigan, to be more protective of Sanctuary resources shall govern.

Pursuant to Section 304(c)(1) of this 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 designee, 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 designee, in consultation with the State of Michigan, may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

#### *Article VI. Alteration of This Designation*

The terms of designation, as defined under Section 304(e) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, State, Tribal, regional, and local authorities and agencies, review by the appropriate Congressional committees, and review and non-objection by the Governor of the State of Michigan, and approval by the Secretary of Commerce, or his or her designee. End Designation Document.

### **III. Summary of the Final Management Plan**

The FEIS/MP for the Thunder Bay National Marine Sanctuary and Underwater Preserve recognizes the need for a balanced approach to

management, which reflects the multiple-use character of the area, as well as the paramount need to protect its resources. The Management Plan guides management of the Sanctuary during the first five years of operation. In describing the Sanctuary's location, resources and uses, the Management Plan discusses programs for resource protection, research, and education/interpretation, and details Federal and State agency administrative roles and responsibilities.

The Sanctuary Manager, within a year of being hired, will submit a revised Management Plan to the Joint Management Committee for approval. Revisions will be based on the Management Plan published in the FEIS, the State's August 1999, "Thunder Bay Underwater Park and National Shipwreck Sanctuary: A Business Plan," and on input from the SAC and other affected parties.

#### *Resource Protection*

The highest priority management goal is to protect the underwater cultural resources of the Thunder Bay region, in partnership with the State of Michigan, to ensure the long-term use and integrity of those resources for present and future generations. Specific objectives to achieve and maintain this goal are to:

- (1) Coordinate management activities with other government and non-government programs that protect underwater cultural resources;
- (2) Establish innovative partnerships with local, state, federal, and tribal agencies, organizations, and businesses that support the resource protection mission of the Sanctuary;
- (3) Develop active and sustainable community involvement through diverse volunteer and private sector initiatives;
- (4) Establish an effective enforcement program for Sanctuary regulations that protect underwater cultural resources;
- (5) Develop and implement effective emergency response and resource damage assessment programs; and
- (6) Ensure that management decisions are based on the best available information, but where such information is incomplete, follow those options that best protect the Sanctuary's underwater cultural resources.

#### *Research Program*

Effective management of the Sanctuary requires the initiation of a Sanctuary research program that supports the overriding management goal of resource protection, through effective and efficient research and monitoring programs, which will:

- (1) Inventory and assess Sanctuary resources, and existing and potential threats to those resources;
- (2) Monitor Sanctuary resources to ensure their long-term protection and provide for evaluation of management practices;
- (3) Develop a research plan that places the highest priority on research addressing threats to Sanctuary resources;
- (4) Develop and encourage collaborative programs with other agencies, organizations and businesses;
- (5) Identify and evaluate the values associated with Sanctuary resources (e.g., historical, recreational, economic, aesthetic); and
- (6) Encourage research targeted at management issues such as resolving multiple-use conflicts, and understanding user impacts.

#### *Education Program*

In order to conduct meaningful education programs that focus on underwater cultural resources and the maritime heritage of the region, the goal of the Sanctuary's education program is to improve public awareness, understanding and appreciation of these resources. Management objectives designed to meet this goal are to:

- (1) Develop and implement science-based education programs that promote awareness and understanding of the Sanctuary's underwater cultural resources, Thunder Bay's maritime heritage, and the National Marine Sanctuary Program;
- (2) Provide educational leadership to develop and implement collaborative education programs that meet the needs and interests of residents, local and regional schools, and visitors to the Sanctuary;
- (3) Act as a clearinghouse of quality education materials (e.g., curricula, equipment, technology and expertise), and assist in developing and maintaining an inventory of existing education programs so they are accessible to educators;
- (4) Encourage the involvement of volunteers to help foster understanding and participation in the protection and stewardship of Sanctuary resources;
- (5) Ensure that education programs support overall management goals for resource protection, research and administration; and
- (6) Facilitate the transfer of Sanctuary information and experiences for use locally, regionally, nationally, and globally.

#### *Visitor and Recreational Use*

The Sanctuary Program's goal for visitor management and recreational

enhancement is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of Sanctuary resources which are not prohibited pursuant to other authorities.

Specific management objectives include:

- (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 using the Sanctuary to respect the sensitivity and quality of Sanctuary resources; and
- (4) Monitor and assess the levels of uses to identify and control potential degradation of Sanctuary resources, and to minimize potential use conflicts.

#### *Sanctuary Administration*

The Sanctuary Administration Program focuses on the roles and responsibilities of the agencies, organizations, and businesses that will be involved in operation of the Sanctuary. Successful operation of the Sanctuary will be possible only through cooperative efforts of appropriate local, State, federal and tribal agencies, organizations, and businesses. This section also discusses potential Sanctuary staff and facilities, including staff roles, office establishment in Alpena, with possible satellite offices (if needed in the future), and development of a Maritime Heritage Center to enhance education opportunities for both local residents and visitors to the region. The selection of Alpena, Michigan as the location of the Sanctuary office is premised on its central location on Thunder Bay.

The Sanctuary regulations require the establishment of a state/federal Joint Management Committee. The Joint Management Committee, which will be comprised of one State and one NOAA representative, will exercise decision-making authority over key Sanctuary management issues, such as approval of the Management Plan, approval of annual work plans, and approval, on an annual basis, of the expenditure of available funds.

The Sanctuary Advisory Council will provide advice and recommendations to the Sanctuary Manager and the Joint Management Committee about issues related to Sanctuary programs and implementation. The existence of a SAC encourages community participation in the Sanctuary's management. Membership may not exceed fifteen individuals, and members will be mutually agreed upon by NOAA and the State of Michigan.

Finally, a five-year projection of Sanctuary activities, necessary financial obligations, and economic impacts of the Sanctuary is provided.

#### IV. Summary of Regulations

The regulations set forth the boundary of the Thunder Bay National Marine Sanctuary and Underwater Preserve; establish a state/federal Joint Management Committee, prohibit a narrow range of activities focused exclusively on the protection of Thunder Bay's underwater cultural resources; establish certification and permitting procedures; provide for the promulgation of emergency regulations; provide for consultation affected federally-recognized Indian tribes; and specify procedures for giving a vessel 50 years or older that sinks in the Sanctuary after the date of designation the status of an underwater cultural resource. Other provisions of the existing National Marine Sanctuary Program regulations also apply to the Sanctuary. These include the regulations for certification of existing permits and other authorizations; notification and review procedures to conduct otherwise prohibited activities; the maximum per day penalties for violating Sanctuary regulations; and the procedures applicable to administrative appeals.

Specifically, the regulations revise the regulations applicable to all National Marine Sanctuaries to include the Thunder Bay National Marine Sanctuary and Underwater Preserve and add a new Subpart R to Part 922, title 15, Code of Federal Regulations, to provide the regulations applicable just to the Thunder Bay National Marine Sanctuary and Underwater Preserve.

It is significant to note that the definition for sanctuary resource in section 922.3, the definition section applicable to all National Marine Sanctuaries, is revised to reflect the fact that the only sanctuary resources in the Thunder Bay National Marine Sanctuary and Underwater Preserve are underwater cultural resources.

In response to a request from the State of Michigan, the name of the Sanctuary has been changed from the "Thunder Bay National Marine Sanctuary" to the "Thunder Bay National Marine Sanctuary and Underwater Preserve." This name change recognizes the State's designation of 290 square miles (751 square kilometers) of Thunder Bay as the Thunder Bay Underwater Preserve and the role of the State in jointly managing the sanctuary/preserve with NOAA.

Section 922.190 and Appendix A following § 922.198 set forth the

boundary of the Sanctuary. In response to concerns by the State of Michigan, NOAA reduced the size of the boundary from 808 square miles (2093 square kilometers)(preferred boundary alternative A) to 448 square miles (1169 square kilometers)(boundary alternative B). The revised boundary still uses the 83 degrees longitude as the lakeward boundary, but uses the Alpena County lines as the north and south landward boundary points. The State requested a smaller boundary due to the higher concentration of shipwrecks in this area and fewer local governments with whom to coordinate. NOAA agreed to the adoption of boundary alternative B with the stipulation that an inventory will be conducted of shipwrecks in the larger area (the additional 360 square miles (932 square kilometers)) to determine if boundary expansion may be warranted after five years. The Governor has veto authority over any future boundary expansion.

Section 922.191 defines various terms applicable specifically to the Thunder Bay National Marine Sanctuary and Underwater Preserve. Underwater cultural resources are defined to be:

(1) Any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sank prior to the effective date of Sanctuary designation; and (2) any of the above that sinks on or after the date of Sanctuary designation determined to be an underwater cultural resource by the Director pursuant to § 922.198. Underwater cultural resource also includes any historical remnant of docks or piers or associated material, or materials resulting from activities of historic and prehistoric Native Americans.

The definition of "underwater cultural resource" was modified from the draft regulations. The revised definition reflects terms that are similar to the State of Michigan definition of "abandoned property." NOAA modified the definition to make it clearer to the public the difference between State of Michigan law and the Sanctuary regulations.

NOAA also modified the definition of traditional fishing to clarify that it includes subsistence fishing and all tribal fishing rights as provided for in the 1836 Treaty of Washington and subsequent court decisions related to the Treaty.

State of Michigan agency representatives suggested that NOAA

include resources that are significant primarily due to their recreational attraction and use within the definition of underwater cultural resources, similar to provisions of Part 761, Aboriginal Records and Antiquities of Public Law 451 (1994), as amended. NOAA's focus has been on those resources that are significant due to their historical, cultural, or archaeological qualities. Many of the resources within NOAA's proposed definition include sites that enjoy a substantial amount of recreational use; consequently NOAA has determined that the proposed definition of "underwater cultural resource" does not require expansion.

Other terms appearing in the regulations are defined at 15 CFR part 922, subpart A, and/or in the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

Section 922.192 is added to establish a state/federal Joint Management Committee (JMC), in recognition that the underwater cultural resources are in State waters and located wholly on State bottomlands. The JMC will ensure that NOAA and the State of Michigan are equal partners in management of the sanctuary/preserve. The JMC, which will be comprised of one State and one NOAA representative (who cannot be the Sanctuary Manager (the individual who exercises day-to-day management over the Sanctuary) and must have a civil service grade higher than the Sanctuary Manager)), will exercise decision-making authority over key sanctuary management issues, such as approval of the Management Plan, approval of annual work plans, and approval, on an annual basis, of the expenditure of available funds consistent with those plans. In the event of a disagreement between NOAA and the State, the parties will adhere to the conflict resolution procedures described in the MOU.

The JMC is also given the responsibility of developing a position description, recruiting prospective candidates, interviewing candidates, and taking part in the annual performance evaluation of the Sanctuary Manager. While the Sanctuary Manager will be a Federal civil servant (as are all sanctuary managers) and thereby subject to Federal civil service regulations including those relating to hiring and firing, the Sanctuary Manager must satisfy the expectations of both parties.

Pursuant to Section 922.192(f), membership in the JMC is limited to NOAA and the State of Michigan. However, the JMC may invite public parties (e.g., local units of governments)

to participate in certain aspects of sanctuary management, as appropriate. The interlocal agreement between NOAA and the State of Michigan (which will be based on the draft MOU published in the FEIS/MP) will describe the process for becoming a party to the interlocal agreement. Local governments may also be members of the SAC, and in that capacity will serve in an advisory role on a range of Sanctuary management issues.

Section 922.193 prohibits a narrow range of activities and thus makes it unlawful to conduct them. However, the prohibited activities could be conducted lawfully if:

(1) Necessary for law enforcement, or to respond to an emergency threatening life or the environment;

(2) Conducted pursuant to a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or to any valid right of subsistence use or access, in existence as of the effective date of this designation subject to certification by the Director of the Office of Ocean and Coastal Resource Management under § 922.194 and § 922.47; or

(3) Conducted in accordance with the scope, purpose, terms and conditions of a State or Federal permit issued pursuant to § 922.194, § 922.195, and § 922.49; a National Marine Sanctuary permit issued pursuant to § 922.194, § 922.195, and § 922.49; or a Special Use permit issued pursuant to Section 310 of the NMSA.

The first activity prohibited is recovering, altering, destroying, possessing, or attempting to recover, alter, destroy, or possess an underwater cultural resource, from within the boundary of the Sanctuary. The intent of this regulation is to protect the underwater cultural resources of the Sanctuary for the benefit of the public through, for example, education, observation *in situ*, and research. To clarify what types of activities are subject to the Sanctuary regulations, NOAA included language in the final regulations that is similar to language in State law—Part 761, Aboriginal Records and Antiquities of Public Act 451, as amended.

The second activity prohibited is drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of: (a) Anchoring vessels; (b) traditional fishing operations

(as defined in the regulations); or (c) minor projects that the State Archaeologist certifies will not adversely affect underwater cultural resources. Appendix B to Subpart R lists the minor projects that may fall within this latter exception (taken from the current version of State administrative rule—R 322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451). The intent of this regulation is to protect the underwater cultural resources from the harmful effects of activities such as, but not limited to, dredging, excavations, drilling into the lakebottom, and dumping of dredged materials.

The third activity prohibited, which was added to the final regulations, is using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy. The intent of this regulation is to prevent damage often caused by grappling hooks or other anchoring devices on underwater cultural resources. The State of Michigan also views damage caused by grappling hooks and other anchoring devices to be a violation of State law.

The fourth activity prohibited is interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the NMSA or any regulations issued under the NMSA.

Section 922.193(b) specifies that members of federally-recognized Indian tribes may exercise their treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of the prohibitions in Section 922.193. The exercise of these rights, however, must be authorized by the tribe by regulation, license, or permit. This provision was added to the final regulations in response to comments from federally-recognized Indian tribes.

Section 922.194 provides for the certification by the Director of OCRM of activities conducted pursuant to a valid lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any valid right of subsistence use or access, in existence as of the effective date of Sanctuary designation.

Section 922.195 provides for the conduct of activities prohibited by Section 922.193(a)(1) through (3), provided that the activity is conducted in accordance with the scope, purpose, manner, terms and conditions of a State of Michigan permit (State permit), certified by the State Archaeologist as consistent with the Programmatic

Agreement among NOAA, the State, and the Advisory Council on Historic Preservation, developed pursuant to the NMSA and Section 106 of the National Historic Preservation Act (NHPA). Such State permits are deemed to have met the "authorization" requirements of 15 CFR 922.49 of the National Marine Sanctuary Program regulations. If a State permit is not certified as consistent with the Programmatic Agreement, the applicant would be required to follow the procedures of 15 CFR 922.49 to obtain an individual Sanctuary authorization of the State permit. Such activity would also be subject to section 106 of the NHPA. If there is only a Federal permit applicable to the activity, the applicant must follow the procedures of 15 CFR 922.49 to obtain an individual Sanctuary authorization of the Federal permit, subject to section 106 of the NHPA. Finally, if there is no State or Federal permit required to conduct the prohibited activity, the person must obtain a Sanctuary permit pursuant to 15 CFR 922.48 of the NMSP regulations to conduct such activity, subject to section 106 of the NHPA. For a proposed activity not prohibited by Sanctuary regulations but that may impact Sanctuary resources, NOAA may review State permit applications for such activity during identified public comment periods and provide comments to the Michigan Department of Environmental Quality, the Michigan Department of State, and other management agencies, as appropriate.

Under Section 922.195, NOAA added (d) and (e). Section 922.195 (d) specifies that a permit may be issued if the proposed activity satisfies the requirements for permits, or if the recovery of the underwater cultural resource is in the public interest, is part of research to preserve historic information for public use, and is necessary or appropriate to protect the resource, preserve historical information, or further the policies of the Thunder Bay National Marine Sanctuary and Underwater Preserve.

Section 922.195(e) describes the permit application process and criteria. The information required for submitting a permit application is based on requirements in the National Historic Preservation Program.

At the request of the State of Michigan, NOAA added Section 922.196, which provides for the imposition, extension, or renewal of Sanctuary emergency regulations. Section 922.196 specifies that emergency regulations may be imposed to prevent or minimize the destruction of, loss of, or injury to an underwater cultural resource. Emergency

regulations shall not take effect without the approval of the Governor of Michigan. They shall remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The regulations may be extended once for not more than six months.

NOAA added Section 922.197, which states that the Director shall regularly consult with the governing bodies of federally-recognized Indian tribes.

Section 922.198 specifies procedures for determining watercraft and related items which sink on or after the date of Sanctuary designation to be an underwater cultural resource. The Director, in consultation with the State of Michigan, appropriate federal agencies, and the governing body of any affected federally-recognized tribe, may determine, after providing 45 days for public comment, that any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sinks on or after the date of Sanctuary designation, to be an underwater cultural resource if such is determined by the Director to be 50 years or older and of special national significance due to architectural significance or association with individuals or events that are significant to local or national history.

## V. Miscellaneous Rulemaking Requirements

### *National Marine Sanctuaries Act*

Section 304 of the NMSA requires the Secretary to submit this notice to the appropriate Congressional Committees and to the Governor of the State of Michigan, on the same day this notice is published. The required services are being made.

### *National Environmental Policy Act*

Section 304 of the NMSA, 16 U.S.C. 1434, requires the preparation of a final environmental impact statement (FEIS), as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the FEIS be made available to the public. NOAA published a FEIS/MP for the proposed designation of the Thunder Bay National Marine Sanctuary in June 1999. The FEIS/MP is available at the addresses listed in the Addresses section of this Notice of Final Rule.

### *Executive Order 12866: Regulatory Impact*

This regulatory action has been determined to be not significant for purposes of Executive Order 12866.

### *Executive Order 13132: Federalism*

A Federalism Assessment (FA) was prepared for the proposed designation document, proposed management plan, and proposed implementing regulations in accordance with the then in effect Executive Order 12612, Federalism Considerations in Policy Formulation Implementation (52 FR 41685, Oct. 26, 1987). The FA concluded that all were fully consistent with the principles, criteria, and requirements set forth in section 2 through 5 of the Executive Order. Copies of the FA are available upon request from the Office of Ocean and Coastal Resource Management at the address listed above. Executive Order 12612 was superseded on November 2, 1999, by Executive Order 13132, Federalism. The new Executive Order sets forth Fundamental Federalism Principles (section 2) to guide federal agencies in formulating and implementing policies that have federalism implications and Federalism Policymaking Criteria (section 3) to adhere to, the extent permitted by law, when formulating and implementing policies that have federalism implications. Since these final regulations do not preempt State law, the requirements of section 4 and section 6(c) of the Executive Order do not apply.

### *Federalism Summary Impact Statement*

Pursuant to the requirements of section 6(b)(2), NOAA has consulted regularly with the State of Michigan and local elected officials since beginning the designation process in 1991. On average, NOAA staff met with State agency staff and local governments once every two months. These face-to-face meetings were supplemented with at least weekly telephone conversations to discuss the sanctuary regulations, scope of management, and State or local concerns. During Fall 1997 and Summer 1998, NOAA staff met with the Sanctuary Advisory Council (which includes local elected officials) every two weeks to obtain local input into the sanctuary designation process. In addition, there was correspondence between NOAA and the State of Michigan, including several letters between U.S. Secretary of Commerce William Daley and Michigan Governor John Engler (dated January 24, 2000; February 11, 2000; and May 8, 2000). These communications are being made

available to the Director of the Office of Management and Budget.

State and local concerns about the Sanctuary related to federal government intrusion in State waters, a fear that activities (e.g., fishing and diving) would be restricted, and questions about the need for the Sanctuary to protect underwater cultural resources when the State already provides some protection. NOAA addressed these concerns by involving local citizens in writing a draft MOU to address their concerns, amending the Sanctuary regulations to provide veto authority to the Governor of Michigan on many aspects of sanctuary management, agreeing to establish the Joint Management Committee to ensure equal governance of the Sanctuary, and reducing the size of the Sanctuary.

### *Regulatory Flexibility Act*

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. While minor modifications have been made to the rule proposed, the basis for that certification has not changed. Accordingly, a Regulatory Flexibility Analysis was not prepared.

### *Paperwork Reduction Act*

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains a collection of information requirement subject to the requirements of the PRA. This collection-of-information requirement has been approved by OMB under OMB control number 0648-0141. The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the final activities are consistent with the management goals for the Sanctuary. The public reporting burden per respondent for the collection of information contained in this rule is estimated to be: 1 hour for a general permit; 15 minutes for a permit amendment; 30 minutes for certification of a preexisting lease, license, permit, approval or authorization; 1 hour for a

notification of other Federal agency permits; and 1.5 hours for appeals.

Send comments on the burden estimate or on any other aspect of the collection-of-information, and ways of reducing the burden, to NOAA and OMB (see **ADDRESSES**).

#### *Unfunded Mandates Reform Act of 1995*

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **List of Subjects in CFR Part 922**

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and record-keeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 16, 2000.

**John Oliver,**

*Chief Financial Officer, National Ocean Service.*

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

#### **PART 922—AMENDED**

1. The authority citation for part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 *et seq.*

2. Section 922.1 is revised as follows:

##### **§ 922.1 Applicability of regulations.**

Unless noted otherwise, the regulations in Subparts A, D and E apply to all thirteen National Marine Sanctuaries for which site-specific regulations appear in Subparts F through R, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

3. Section 922.3 is revised to read as follows:

##### **§ 922.3 Definitions.**

*Sanctuary resource* means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants

and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at § 922.191.

4. Section 922.40 is revised to read as follows:

##### **§ 922.40 Purpose.**

The purpose of the regulations in this Subpart and in Subparts F through R is to implement the designations of the thirteen National Marine Sanctuaries for which site specific regulations appear in Subparts F through R, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at §§ 922.160, and 922.180, respectively.

5. Section 922.41 is revised to read as follows:

##### **§ 922.41 Boundaries.**

The boundary for each of the thirteen National Marine Sanctuaries covered by this part is described in Subparts F through R, respectively.

6. Section 922.42 is revised to read as follows:

##### **§ 922.42 Allowed Activities.**

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in Subparts F through R, subject to any emergency regulations promulgated pursuant to §§ 922.44, 922.111(c), 922.165, 922.186, or 922.196, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the National Marine Sanctuaries Act (NMSA), (16 U.S.C. 1431 *et seq.*). The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

7. Section 922.43 is revised to read as follows:

##### **§ 922.43 Prohibited or otherwise regulated activities.**

Subparts F through R set forth site-specific regulations applicable to the activities specified therein.

8. Section 922.44 is revised to read as follows:

##### **§ 922.44 Emergency regulations.**

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 and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys, Hawaiian Islands Humpback Whale, and Thunder Bay National Marine Sanctuaries. See §§ 922.111(c), 922.165, and 922.186, 922.196, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

9. Section 922.47 is amended by revising paragraph (b) as follows:

##### **§ 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.**

\* \* \* \* \*

(b) The prohibitions listed in Subparts F through P, and Subpart R 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, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, and issued 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, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

10. Section 922.48 is amended by revising paragraphs (a), (b), (d) and (f) as follows:

**§ 922.48 National marine sanctuary permits—application procedures and issuance criteria.**

(a) A person may conduct an activity prohibited by Subparts F through O, if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and Subparts F through O, as appropriate. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by Subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166. For the Thunder Bay National Marine Sanctuary and Underwater Preserve, a person may conduct an activity prohibited by Subpart R in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.195.

(b) Applications for permits to conduct activities otherwise prohibited by Subparts F through O should be addressed to the Director and sent to the address specified in Subparts F through O, or Subpart R, as appropriate. An application must include:

- (1) A detailed description of the proposed activity including a timetable for completion;
- (2) The equipment, personnel and methodology to be employed;
- (3) The qualifications and experience of all personnel;
- (4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and
- (5) Copies of all other required licenses, permits, approvals or other authorizations.

\* \* \* \* \*

(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 a prohibited activity, in accordance with the criteria found in Subparts F through O, or Subpart R, as appropriate. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

\* \* \* \* \*

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or Subparts F through O, Subpart R or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail 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.

11. Paragraphs (a) through (c) of section 922.49 are revised to read as follows:

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

(a) A person may conduct an activity prohibited by Subparts L through P, or Subpart R, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in Subpart P, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, whichever is later;

(2) The applicant complies with the other provisions of this § 922.49;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by Subparts L through P, or Subpart R, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in Subparts L through P, or Subpart R, as appropriate. A copy of the application must accompany the notification.

\* \* \* \* \*

12. Paragraph (a) of Section 922.50 is revised to read as follows:

**§ 922.50 Appeals of administrative action.**

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable

procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit issued pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under § 922.47; or, for those Sanctuaries described in Subparts L through P and Subpart R, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) the granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) the conditioning, amendment, suspension or revocation of a certification under § 922.47; or

(iii) for those Sanctuaries described in Subparts L through P and Subpart R, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(b) For those National Marine Sanctuaries described in Subparts F through K, any interested person may also appeal the same actions described in § 922.50(a)(1)(i) and (ii). For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term "appellant" includes any such interested persons.

\* \* \* \* \*

Part 922 is amended by adding a new subpart R immediately following Subpart Q as follows:

**Subpart R—Thunder Bay National Marine Sanctuary and Underwater Preserve**

Sec.

922.190 Boundary.

922.191 Definitions.

922.192 Joint Management Committee.

922.193 Prohibited or otherwise regulated activities.

922.194 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

922.195 Permit procedures and criteria.

922.196 Emergency regulations.

922.197 Consultation with affected federally-recognized Indian tribes.

922.198 Procedures for determining watercraft and related items which sink on or after the date of Sanctuary designation to be an underwater cultural resource.

Appendix A to Subpart R of Part 922—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Coordinates

Appendix B to Subpart R of Part 922—Minor Projects for Purposes of § 922.193(a)(2)(iii)

### Subpart R—Thunder Bay National Marine Sanctuary and Underwater Preserve

#### § 922.190 Boundary.

The Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 448 square miles (1169 square kilometers) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark between the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83 degrees west. The coordinates of the boundary are set forth in Appendix A to this Subpart.

#### § 922.191 Definitions.

(a) The following terms are defined for purposes of Subpart R:

*Minor project* means any project listed in Appendix B to this Subpart.

*Programmatic Agreement* means the agreement among NOAA, the Federal Advisory Council on Historic Preservation, and the State of Michigan, developed pursuant to the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.* and section 106 of the National Historic Preservation Act of 1966 as amended, 16 U.S.C. 470 *et seq.*, which, in part, sets forth the procedures for review and approval of State Permits that authorize activities prohibited by the Sanctuary regulations.

*State Archaeologist* means the State Archaeologist, Michigan Historical Center, Michigan Department of State.

*State Permit* means any lease, permit, license, approval, or other authorization issued by the State of Michigan for the conduct of activities or projects within the Thunder Bay National Marine Sanctuary and Underwater Preserve that are prohibited by the regulations at § 922.193.

*Traditional fishing* means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation, as identified in the Final Environmental Impact Statement and Management Plan for this Sanctuary. Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) are available upon request to the Marine Sanctuaries Division, Office of Ocean

and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, (301) 713-3125.

Traditional fishing includes tribal fishing rights as provided for in the 1836 Treaty of Washington and subsequent court decisions related to the Treaty.

*Underwater cultural resource* means:

(1) Any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sank prior to the effective date of Sanctuary designation; and

(2) Any of the above that sinks on or after the date of Sanctuary designation determined to be an underwater cultural resource by the Director pursuant to § 922.198. Underwater cultural resource also means any historical remnant of docks or piers or associated material, or materials resulting from activities of historic and prehistoric Native Americans.

(b) Other terms appearing in the regulations are defined at 15 CFR part 922 subpart A, and/or in the National Marine Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

#### § 922.192 Joint Management Committee.

(a) A state/federal Joint Management Committee shall be established to oversee and engage in decision-making authority for the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(b) The Joint Management Committee shall be comprised of one Federal employee named by the NOAA Administrator and one state employee named by the Governor of Michigan. The Federal employee cannot be the sanctuary manager (the individual who exercises day-to-day management over the Sanctuary) and must have a civil service grade higher than that of the sanctuary manager.

(c) The Joint Management Committee shall:

(1) Develop a position description for, recruit prospective candidates for the position of, interview candidates for the position of, and take part in the annual performance evaluation of, the sanctuary manager;

(2) Approve revisions to the Management Plan;

(3) Approve annual work plans;

(4) Approve, on an annual basis, the expenditure of allocated state and

federal funds and other sources of revenue for the Thunder Bay National Marine Sanctuary and Underwater Preserve, in accordance with the Management Plan and the annual work plans; and

(5) Make decisions on other key issues related to management of the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(d) The Joint Management Committee shall meet as agreed to by the members but not less than once annually.

(e) If the Joint Management Committee is unable to reach agreement on an issue, the members shall follow the "Consultation and Conflict Resolution" procedures set forth in the Interlocal Agreement between NOAA and the State of Michigan.

(f) The Joint Management Committee may invite affected public parties to participate in selected aspects of Sanctuary management as:

(1) Parties to the Interlocal Agreement pursuant to the Michigan Urban Cooperation Act of 1967, MCL 124.501 *et seq.*; and/or

(2) Pursuant to the NMSA.

#### § 922.193 Prohibited or otherwise regulated activities.

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

(1) Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy, or possess an underwater cultural resource.

(2) Drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Minor projects (as defined in Appendix B of this subpart) that do not adversely affect underwater cultural resources.

(3) Using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy.

(4) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulations issued under the Act.

(b) Members of a federally-recognized Indian tribe may exercise treaty-secured

rights, subject to the requirements of other applicable law, without regard to the requirements of this subpart. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary, provided that the rights are authorized by the tribe by regulation, license, or permit.

(c) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to valid law enforcement activities, or any activity necessary to respond to an emergency threatening life or the environment.

(d) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity:

(1) Specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued pursuant to § 922.195 or a Special Use Permit issued pursuant to section 310 of the NMSA.

(2) Specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of these regulations, or by any valid right of subsistence use or access in existence on the effective date of these regulations, provided that the holder of such authorization or right complies with § 922.194 and § 922.47 and with any terms and conditions for the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

**§ 922.194 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.**

(a) A person may conduct an activity prohibited by § 922.193 (a)(1) through (3) if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, *provided that*:

(1) for any State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, the State Archaeologist certifies to the Director, within 90 days of the effective date of designation, that the activity authorized under the State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, is being conducted consistent with the Programmatic Agreement, in which case such activity

shall be deemed to have met the requirements of this section and § 922.47; or

(2) In the case where either:

(i) The State Archaeologist does not certify that the activity authorized under a State or local lease, permit, license, approval, or other authorization, or right of subsistence use is being conducted consistent with the Programmatic Agreement; or

(ii) The activity is conducted pursuant only to a Federal permit, the holder of the authorization or right complies with paragraphs (b) through (k) of this section.

(b) For an activity described in paragraph (a)(2) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.193 (a)(1) through (3) *provided that*:

(1) The 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 requests certification of such authorization or right;

(2) The holder complies with the other provisions of § 922.194; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(c) The holder of an authorization or right described in paragraph (a)(2) of this section authorizing an activity prohibited by § 922.193 may conduct the activity without being in violation of applicable provisions of § 922.193, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.194.

(d) Any holder of an authorization or right described in paragraph (a)(2) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by § 922.193, thus requiring certification under this section.

(e) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Manager, Thunder Bay National Marine Sanctuary and Underwater Preserve, 1305 East-West Highway, N/ORM, Silver Spring, Maryland, 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(f) The Director may request additional information from the

certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(g) The Director may amend any certification made under this § 922.194 whenever additional information becomes available justifying such an amendment.

(h) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this § 922.194, 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 decision or action taken.

(i) Any time limit prescribed in or established under this § 922.194 may be extended by the Director for good cause.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(k) Any amendment, renewal, or extension made after the effective date of Sanctuary designation, to a lease, permit, license, approval, other authorization or right is subject to the provisions of § 922.195 and § 922.49.

(l) For any activity authorized pursuant to § 922.193 (b), the holder of such license or permit shall notify the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right.

**§ 922.195 Permit procedures and criteria.**

(a) A person may conduct an activity prohibited by § 922.193 (a)(1) through (3), if conducted in accordance with the scope, purpose, terms and conditions of a State Permit *provided that*:

(1) The State Archaeologist certifies to NOAA that the activity authorized under the State Permit will be conducted consistent with the Programmatic Agreement, in which case such State Permit shall be deemed to have met the requirements of § 922.49; or

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent

with the Programmatic Agreement, the person complies with the requirements of § 922.49 of this part.

(b) If no State Permit is required to conduct an activity prohibited by § 922.193 (a)(1) through (3) of this subpart, a person may conduct such activity if it is conducted in accordance with the scope, purpose, terms and conditions of a Federal permit, *provided that* the person complies with the provisions of § 922.49 of this part.

(c) In instances where the conduct of an activity is prohibited by § 922.193 (a)(1) through (3) of this subpart is not addressed under a State or other Federal lease, license, permit or other authorization, a person must obtain a Sanctuary permit from NOAA pursuant to § 922.48 (c) through (f) of this part and the Programmatic Agreement in order to conduct the activity.

(d) A permit for recovery of an underwater cultural resource may be issued if:

(1) The proposed activity satisfies the requirements for permits described under paragraphs (a) through (c) of this section;

(2) The recovery of the underwater cultural resource is in the public interest;

(3) Recovery of the underwater cultural resource is part of research to preserve historic information for public use; and

(4) Recovery of the underwater cultural resource is necessary or appropriate to protect the resource, preserve historical information, or further the policies of the Sanctuary.

(e) A person shall file an application for a permit with the Michigan Department of Environmental Quality, Land and Water Management Division, P.O. Box 30458, Lansing, MI, 48909-7958. The application shall contain all of the following information:

(1) The name and address of the applicant;

(2) Research plan that describes in detail the specific research objectives and previous work done at the site. An archaeological survey must be conducted on a site before an archaeological permit allowing excavation can be issued;

(3) Description of significant previous work in the area of interest, how the proposed effort would enhance or contribute to improving the state of knowledge, why the proposed effort should be performed in the Sanctuary, and its potential benefits to the Sanctuary;

(4) An operational plan that describes the tasks required to accomplish the project's objectives and the professional qualifications of those conducting and

supervising those tasks (see § 922.195(e)(9) of this section. The plan must provide adequate description of methods to be used for excavation, recovery and the storage of artifacts and related materials on site, and describe the rationale for selecting the proposed methods over any alternative methods;

(5) Archaeological recording, including site maps, feature maps, scaled photographs, and field notes;

(6) An excavation plan describing the excavation, recovery and handling of artifacts;

(7)(i) A conservation plan documenting:

(A) The conservation facility's equipment;

(B) Ventilation temperature and humidity control; and

(C) storage space.

(ii) Documentation of intended conservation methods and processes must also be included;

(8) A curation and display plan for the curation of the conserved artifacts to ensure the maintenance and safety of the artifacts in keeping with the Sanctuary's federal stewardship responsibilities under the Federal Archaeology Program (36 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections); and

(9) Documentation of the professional standards of an archaeologist supervising the archaeological recovery of historical artifacts. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

(i) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(ii) At least four months of supervised field and analytic experience in general North American archaeology;

(iii) Demonstrated ability to carry research to completion; and

(iv) At least one year of full-time professional experience at a supervisory level in the study of archeological resources in the underwater environment.

#### § 922.196 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to an underwater cultural resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Michigan.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

#### § 922.197 Consultation with affected federally-recognized Indian tribes.

The Director shall regularly consult with the governing bodies of affected federally-recognized Indian tribes regarding areas of mutual concern.

#### § 922.198 Procedures for determining watercraft and related items which sink on or after the date of Sanctuary designation to be an underwater cultural resource.

The Director, in consultation with the State of Michigan, appropriate federal agencies, and the governing body of any affected federally-recognized tribe, may determine, after providing 45 days for public comment, that any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sinks on or after the date of Sanctuary designation, to be an underwater cultural resource if such is determined by the Director to be 50 years or older and of special national significance due to architectural significance or association with individuals or events that are significant to local or national history.

#### Appendix A to Subpart R of Part 92—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Coordinates

[Based on North American Datum of 1983]

Point	Latitude	Longitude
1 .....	45°12'25.5"	83°23'18.6"
2 .....	45°12'25.5"	83°00'00"
3 .....	44°51'30.5"	83°00'00"
4 .....	44°51'30.5"	83°19'17.3"

#### Appendix B to Subpart R of Part 92—Minor Projects for Purposes of § 922.193(a)(2)(iii)

Pursuant to Michigan State Administrative Rule R 322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451 (Michigan State Statute), the Michigan Department of Environmental Quality (Department) issues permits for projects that are of a minor nature which are not controversial, which have minimal adverse environmental impact, which will be constructed of clean, non-polluting materials, which do not impair the use of the adjacent bottomlands by the public, and which do not

adversely affect riparian interests of adjacent owners. The following projects are minor projects:

(a) Noncommercial single piers, docks, and boat hoists which meet the following design criteria:

(i) are of a length or size not greater than the length or size of similar structures in the vicinity and on the watercourse involved; and

(ii) provide for the free littoral flow of water and drift material.

(b) Spring piles and pile clusters when their design and purpose is usual for such projects in the vicinity and on the watercourse involved.

(c) Seawalls, bulkheads, and other permanent revetment structures which meet all of the following purpose and design criteria:

(i) the proposed structure fulfills an identifiable need for erosion protection, bank stabilization, protection of uplands, or improvements on uplands;

(ii) the structure will be constructed of suitable materials free from pollutants, waste metal products, debris, or organic materials;

(iii) the structure is not more than 300 feet in length and is located in an area on the body of water where other similar structures already exist;

(iv) the placement of backfill or other fill associated with the construction does not exceed an average of 3 cubic yards per running foot along the shoreline and a maximum of 300 cubic yards; and

(v) the structure or any associated fill will not be placed in a wetland area or placed in any manner that impairs surface water flow into or out of any wetland area.

(d) Groins 50 feet or less in length, as measures from the toe to bluff, which meet all of the following criteria:

(i) the groin is low profile, with the lakeward end not more than 1 foot above the existing water level; and

(ii) the groin is placed at least  $\frac{1}{2}$  of the groin length from the adjacent property line or closer with written approval of the adjacent riparian.

(e) Filling for restoration of existing permitted fill, fills placed incidental to construction of other structures, and fills that do not exceed 300 cubic yards as a single and complete project, where the fill is of suitable material free from pollutants, waste metal products, debris, or organic materials.

(f) Dredging for the maintenance of previously dredged areas or dredging of not more than 300 cubic yards as a single and complete project when both of the following criteria are met:

(i) No reasonable expectation exists that the materials to be dredged are polluted; and

(ii) All dredging materials will be removed to an upland site exclusive of wetland areas.

(g) Structural repair of man-made structures, except as exempted by Michigan State Administrative Rule R 322.1008(3), when their design and purpose meet both of the following criteria:

(i) The repair does not alter the original use of a recently serviceable structure; and

(ii) The repair will not adversely affect public trust values or interests, including navigation and water quality.

(h) Fish or wildlife habitat structures which meet both of the following criteria:

(i) Are placed so the structures do not impede or create a navigational hazard; and

(ii) Are anchored to the bottomlands.

(i) Scientific structures such as staff gauges, water monitoring devices, water quality testing devices, survey devices, and core sampling devices, if the structures do not impede or create a navigational hazard.

(j) Navigational aids which meet both of the following criteria:

(i) Are approved by the United States Coast Guard; and

(ii) Are approved under Michigan State Act No. 303 of the Public Acts of 1967, as amended, being Section 281.1001 *et seq.* of the Michigan Compiled Laws, and known as the Marine Safety Act.

(k) Extension of a project where work is being performed under a current permit and which will result in no damage to natural resources.

(l) A sand trap wall which meets all of the following criteria:

(i) The wall is 300 feet or less in length along the shoreline;

(ii) The wall does not extend more than 30 feet lakeward of the toe of bluff;

(iii) The wall is low profile, that is, it is not more than 1 foot above the existing water level; and

(iv) The wall is constructed of wood or steel or other non-polluting material.

(m) Physical removal of man-made structures or natural obstructions which meet all of the following criteria:

(i) The debris and spoils shall be removed to an upland site, not in a wetland, in a manner which will not allow erosion into public waters;

(ii) The shoreline and bottom contours shall be restored to an acceptable condition; and

(iii) Upon completion of structure removal, the site does not constitute a safety or navigational hazard. Department staff shall consider fisheries and wildlife resource values when evaluating applications for natural obstruction removal.

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