

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 210107–0004]

RIN 0648–BA21

**Expansion of Flower Garden Banks National Marine Sanctuary**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Final rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) issues final regulations to implement the expansion of the boundaries of Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary) and revise the sanctuary's terms of designation. The purpose of this action is to expand the sanctuary to include portions of 14 additional reefs and banks in the northwestern Gulf of Mexico, representing approximately a 104 square mile increase in area. With this action, the existing FGBNMS regulations will apply to the expanded locations.

**DATES:** *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 date on which this document is published. The public can track the days of Congressional session at <https://www.congress.gov/days-in-session>. After the close of the forty-five days of continuous session of Congress, NOAA will publish a document announcing the effective date of the final regulations in the **Federal Register**.

**ADDRESSES:** Copies of the Final Environmental Impact Statement (FEIS) described in this rule and the record of decision (ROD) are available at <https://flowergarden.noaa.gov/management/sanctuaryexpansion.html>.

**FOR FURTHER INFORMATION CONTACT:** George P. Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, Texas 77551, at 409–356–0383, or [fgbexpansion@noaa.gov](mailto:fgbexpansion@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction****1. Flower Garden Banks National Marine Sanctuary**

Located in the northwestern Gulf of Mexico, 70 to 115 nautical miles (130 to 213 kilometers) off the coasts of Texas and Louisiana, FGBNMS encompasses approximately 56 square miles and includes three separate undersea features: East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank. The banks range in depth from 55 feet (17 meters) to nearly 500 feet (152 meters), and are geological formations created by the movement of ancient salt deposits pushed up through overlying sedimentary layers.

The banks provide a wide range of habitat conditions that support several distinct biological communities, including the northernmost coral reefs in the continental United States and mesophotic coral habitats. These and similar formations throughout the northwestern Gulf of Mexico provide the foundation for essential habitat for numerous marine species, including a variety of fish species of commercial and recreational importance, and several endangered or threatened species, including sea turtles and mobula rays. The combination of location and geology makes the sanctuary an extremely productive and diverse ecosystem.

NOAA issued a final rule to implement the designation of FGBNMS on December 5, 1991 (56 FR 63634). Congress subsequently passed a law recognizing the designation on January 17, 1992 (Pub. L. 102–251, Title I, Sec. 101). At that time, the sanctuary consisted of two areas known as East and West Flower Garden Banks (56 FR 63634). Among other things, FGBNMS regulated a narrow range of activities, established permit and certification procedures, and exempted certain U.S. Department of Defense (DOD) activities from the sanctuary's prohibitions (56 FR 63634). Those regulations became effective on January 18, 1994 (58 FR 65664). In 1996, Congress added Stetson Bank to the sanctuary (Pub. L. 104–283). The boundaries of Stetson Bank and West Flower Garden Bank were later amended to improve administrative efficiencies and increase the precision of all boundary coordinates based on new positioning technology (65 FR 81175, Dec. 22, 2000). FGBNMS regulations can be found at 15 CFR part 922, subpart L, and the sanctuary management plan may be found on the FGBNMS website.<sup>1</sup> As a result of this

<sup>1</sup> <https://flowergarden.noaa.gov/management/2012mgmtplan.html>.

action, FGBNMS is being expanded to a total of 160.4 square miles, with the existing regulations applying to the expansion area.

**2. Need for Action**

The NMSA authorizes the Secretary of Commerce (Secretary) to designate and protect, as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. Day-to-day management of national marine sanctuaries is delegated by the Secretary to ONMS. The primary objective of the NMSA is to protect nationally significant marine resources, including biological features such as coral reefs, and cultural resources, such as historic shipwrecks and archaeological sites. The mission of FGBNMS is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the sanctuary and its regional environment for this and future generations.

This action responds to the need to provide comprehensive and coordinated management of, and additional regulatory protection for, sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico. The current jurisdictional regime divides authority among several governmental entities that regulate offshore energy exploration (Bureau of Ocean Energy Management (BOEM)), fishing (Gulf of Mexico Fishery Management Council (GMFMC)), and water quality (Environmental Protection Agency (EPA)), but does not provide comprehensive and effective management for the full range of activities that impact the sensitive reefs and banks in the region. For example, BOEM has established No Activity Zones (NAZs) that prohibit anchoring only by vessels engaged in development activities and platform services specific to a particular lease, while anchoring by other vessels remains unregulated. Further, these anchoring regulations in the NAZs apply only on a lease-by-lease basis. Other vessel ground tackle (including anchors, chains, and cables) and marine salvage activities were unregulated and have caused significant injury to sensitive biological communities. Sanctuary designation will allow for additional protection of these reefs and banks from other bottom-disturbing activities, which are otherwise unregulated at this time.

The sanctuary expansion areas are recognized as hotspots of marine biodiversity that provide vital habitat for many important species in the Gulf of Mexico region. They are home to the most significant examples of coral and algal reefs, mesophotic and deepwater coral communities, and other biological assemblages in the Gulf of Mexico. Furthermore, these areas provide important habitat for vulnerable species such as mobula rays, sea turtles, and whale sharks, while serving as nurseries for numerous fish species of commercial and recreational importance. As such, most of these areas have also been identified as nationally significant through their designation as Habitat Areas of Particular Concern (HAPC) by the GMFMC and as NAZs by BOEM. These habitats are vulnerable to a variety of known and potential impacts, including large vessel anchoring, marine salvage operations, fishing techniques that may injure benthic habitat (e.g., trawling, bottom-tending gear), and certain oil and gas exploration and development activities. These impacts will more effectively be addressed within the expanded areas through the comprehensive habitat conservation and management authorities under the NMSA. The protection of these ecologically significant sites would increase the resilience of marine ecosystems and enhance the sustainability of the region's thriving recreation, tourism, and commercial economies. Ultimately, expanding FGBNMS will help ensure that valuable marine resources remain available for the use and enjoyment of future generations of Americans.

This sanctuary expansion is the outcome of decades of scientific research and growing public recognition of the need for coordinated protection of significant offshore marine places in the northwestern Gulf of Mexico region. Protecting additional habitat in the northwestern Gulf of Mexico emerged as one of the highest priorities identified during a vigorous public review process of FGBNMS management issues. Subsequently, "Sanctuary Expansion" was incorporated as a discrete action plan in the 2012 revision of the sanctuary's management plan. The region is utilized for a variety of recreational, commercial, and industrial purposes, and there are ongoing impacts from bottom-disturbing activities, such as large vessel anchoring and marine salvage, on the sensitive biological resources and geological features associated with many reefs and banks in the area. Therefore, pursuant to the NMSA's purpose to "facilitate to the

extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas," FGBNMS can further resource protection while balancing multiple uses. This action will expand FGBNMS by incorporating portions of selected reefs and banks in the northwestern Gulf of Mexico. In doing so, this action will provide management of and protection for nationally significant areas with biological, ecological, and/or structural links to the existing sanctuary, including vulnerable mesophotic and deep benthic habitat sites, while providing important opportunities for research and recovery of resources from observed impacts. These areas contain the most significant examples of mesophotic coral communities in the United States, including some of the highest known densities (colonies per square meter) and species richness of mesophotic corals (Cairns et al. 2017). In addition, and as noted above, many banks in the expansion area have also been recognized by BOEM and GMFMC as nationally significant and designated as HAPCs and NAZs.

## II. History of the FGBNMS Expansion Process

### 1. Management Plan Review

NOAA is required by NMSA Section 304(e) to periodically review sanctuary management plans to ensure that sanctuary management continues to effectively conserve, protect, and enhance the nationally significant living and cultural resources at each site. Management plans generally outline regulatory goals, describe boundaries, identify staffing and budgetary needs, and set priorities and performance measures for resource protection, research, and education programs. Management plans also guide the development of future management activities.

The FGBNMS management plan review process began in 2006 with a series of scoping meetings to obtain information about the public's interests and priorities for FGBNMS management (71 FR 52757; September 7, 2006). Subsequently, NOAA worked with the FGBNMS Advisory Council to prioritize issues and develop appropriate management strategies and activities for the preparation of a draft revised management plan. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review process.

In 2007, the FGBNMS Advisory Council, using information developed by its Boundary Expansion Working Group (BEWG), recommended a range of sanctuary boundary expansion alternatives. Based on this input, and information obtained through a subsequent public process, NOAA prepared a revised management plan (77 FR 25060, April 27, 2012) that contained six action plans, including one that specifically addressed sanctuary expansion. The Sanctuary Expansion Action Plan outlined a strategy to expand the protected areas to include additional reefs and banks in the northwestern Gulf of Mexico, and to develop a Draft Environmental Impact Statement (DEIS) to evaluate appropriate expansion alternatives. The recommended expansion alternative, as identified by the FGBNMS Advisory Council in 2007, was included in the Sanctuary Expansion Action Plan. This recommendation included nine additional reefs and banks, encompassing approximately 281 square miles.

### 2. Boundary Expansion Notice of Intent

On February 3, 2015, NOAA published a Notice of Intent (NOI) to prepare a DEIS for expanding FGBNMS boundaries (80 FR 5699). The NOI solicited public input on the range and significance of issues related to sanctuary expansion, including potential boundary configurations, resources to be protected, other issues NOAA should consider, and any information that should be included in the resource analysis. The public scoping period was open through April 6, 2015, during which time ONMS held three public hearings and interested parties submitted both written and oral comments.

NOAA received approximately 200 comments during the scoping period. Most commenters were strongly supportive of the concept of sanctuary expansion. In addition to broad general support, some comments expressed conditional support while raising user concerns primarily relating to the potential impact of sanctuary expansion on the offshore oil and gas industry and historic fishing practices. Other commenters recommended that NOAA consider a broader geographical area than the Sanctuary Expansion Action Plan identified, especially in light of the 2010 BP/Deepwater Horizon oil spill and new information that became available since the 2007 FGBNMS Advisory Council recommendation. This information was considered during the development of the expansion alternatives in the DEIS.

### 3. Draft Environmental Impact Statement

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and the NMSA (16 U.S.C. 1434), NOAA prepared and released a DEIS (81 FR 37576, June 10, 2016). The DEIS considered alternatives for the proposed expansion of boundaries at FGBNMS and application of the existing sanctuary regulations and management actions to the expanded area. The DEIS evaluated the environmental consequences of the alternatives and provided an in-depth resource assessment. The action alternatives in the DEIS would expand the network of protected areas within FGBNMS by incorporating selected reefs, banks, and other features throughout the north central Gulf of Mexico.

The DEIS evaluated five alternatives, ranging from “no action” (maintaining the current boundaries) to one that included a total of 45 discrete boundary units and encompassed approximately 935 square miles. The action discussed in this rulemaking falls within the bounds of the DEIS alternatives as discussed below in part II, section 5 of this final rule and in the supplemental information report which is available at the FGBNMS website.<sup>2</sup> NOAA’s preferred alternative in the 2016 DEIS (Alternative 3) sought to expand the existing sanctuary from approximately 56 square miles to approximately 383 square miles, including additional important and sensitive marine habitat areas in the northwestern Gulf of Mexico. This alternative would have applied the existing sanctuary regulations and management actions to the expanded area. The 2016 preferred alternative included 15 reefs and banks (in addition to those contained within the existing 3 sanctuary units) encompassed within 11 discrete boundary polygons, including multi-bank complexes. No significant adverse impacts to the human environment were identified under any alternative considered in the DEIS.

In June 2016, NOAA opened a public comment period on the DEIS for sixty-nine (69) days, which closed on August 19, 2016. During this public comment period, NOAA also held five (5) in person public hearings in Galveston, TX; Houston, TX; New Orleans, LA; Lafayette, LA; and Mobile, AL. NOAA received 1,421 separate comments, including three letter campaigns and one petition, each with multiple signatories. All written comments on

the DEIS are available at the *Regulations.gov* website.<sup>3</sup> NOAA’s response to the public comments are set forth in Appendix A of the FEIS, which was made available to the public on December 11, 2020 (85 FR 80093).

### 4. NOAA’s Revised Preferred Alternative and Supplemental Information Report

In response to concerns raised primarily by the oil and gas industry regarding the potential impacts to offshore energy operations arising from the Preferred Alternative presented in the 2016 DEIS, the FGBNMS Advisory Council (Advisory Council) established a new BEWG to review NOAA’s expansion proposal and make a recommendation. Between July 2016 and May 2018, the BEWG met 21 times, and considered a variety of topics, including a range of boundary and regulatory issues. The BEWG recommended revised FGBNMS expansion boundaries that tracked the BOEM-designated NAZs. NAZs are areas within which no operations, anchoring, or structures are allowed for oil and gas operations. The NAZs were developed in the 1970–1980’s to protect the shallowest portion of the reefs and banks. Based primarily on the May 2018 FGBNMS Advisory Council recommendation, along with input received from public comments and consultation with the GMFMC and various Federal agencies, NOAA revised the preferred alternative.

In the revised preferred alternative, NOAA reduced the size of the expansion areas proposed in the 2016 DEIS preferred alternative to promote compatibility with users and reduce potential economic impacts to the offshore energy and fishing industries. On March 22, 2019, NOAA evaluated changes to the 2016 DEIS preferred alternative in a Supplemental Information Report (SIR). Through this review, NOAA determined that preparing a supplement to the 2016 DEIS is neither required nor necessary under NEPA. The SIR is available on the FGBNMS website.<sup>4</sup> Pursuant to applicable Council on Environmental Quality (CEQ) guidance, NOAA’s rationale for the revised preferred alternative is now presented as NOAA’s Final Preferred Alternative in the FEIS and part II, section 7 of this final rule and the ROD.

<sup>3</sup> <https://www.regulations.gov/docket?D=NOAA-NOS-2016-0059>.

<sup>4</sup> <https://nmsflowergarden.blob.core.windows.net/flowergarden-prod/media/archive/doc/expansion/deissupplementalinforeport.pdf>.

### 5. The Proposed Rule

On May 1, 2020, NOAA published a proposed rule which would expand the boundaries of FGBNMS from approximately 56 square miles to 160 square miles (85 FR 25359 May 1, 2020). This action would add 14 banks, for a total of 17 banks, represented in 19 polygons (including 3 banks with multi-polygons), and apply the existing sanctuary regulations and management plan to the expanded sanctuary boundaries. Under the existing sanctuary regulations, only conventional hook and line gear would be permissible in the expanded sanctuary boundaries.

NOAA solicited public comment on the proposed rule from May 1, 2020 to July 3, 2020, including specifically on whether to provide exemptions for spearfishing and pelagic longline in the expanded area. NOAA accepted comments in the form of letters and written comments through electronic submissions to <http://regulations.gov>, letters submitted by mail, and public hearings. As a result of the Coronavirus global pandemic and restrictions on public gatherings, three virtual public hearings were held via Gotowebinar®.

NOAA received 485 separate comments, including four letter campaigns and four petitions, each with multiple signatories, for a total of 36,111 comments. All written public comments on the proposed expansion are available on the *Regulations.gov* website.<sup>5</sup> NOAA’s responses to the public comments are available in Appendix A of the FEIS, and in section IV of this final rule.

## III. Summary of Final Regulations

With this final rule, NOAA is revising the FGBNMS regulations at 15 CFR part 922, subpart L, as follows.

### 1. Sanctuary Boundary Expansion

NOAA is amending the sanctuary boundary descriptions at 15 CFR part 922, subpart L, and the terms of designation in order to expand the boundaries of FGBNMS to include portions of 14 additional reefs and banks in the sanctuary, adding approximately 104 square miles, bringing the total area to 160.4 square miles and encompassing 17 banks. The boundary changes were selected through a public process to identify and assess marine areas that could more effectively complement current management authorities or enhance natural and cultural resource values.

<sup>5</sup> <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=comment DueDate&po=0&D=NOAA-NOS-2019-0033>.

<sup>2</sup> <https://flowergarden.noaa.gov/management/expansionnpr.html>.

Collectively, these new areas capture a greater diversity of habitats and biological resources than currently protected by FGBNMS. Inclusion of these areas within the sanctuary system will provide additional regulatory protection, additional management actions and initiatives, and improved public awareness of their natural resource values. Detailed maps of these boundary changes are available on the FGBNMS website.<sup>6</sup>

Under this action, NOAA is expanding the boundaries of the sanctuary by 104.2 square miles from 56.2 square miles to 160.4 square miles as follows:

- a. *Stetson Bank*—increase of area by 0.6 square miles from 0.8 square miles to 1.4 square miles
- b. *West Flower Garden Bank*—increase of area by 7.22 square miles from 29.94 square miles to 37.16 square miles
- c. *East Flower Garden Bank*—increase of area by 2.4 square miles from 25.4 square miles to 27.8 square miles
- d. *Horseshoe Bank*—28.7 square miles
- e. *MacNeil Bank*—2.7 square miles
- f. *Rankin/28 Fathom Banks*—5.6 square miles
- g. *Bright Bank*—7.7 square miles
- h. *Geyer Bank*—11.5 square miles
- i. *Elvers Bank*—4.6 square miles
- j. *McGrail Bank*—4.7 square miles
- k. *Sonnier Bank*—3.1 square miles
- l. *Bouma Bank*—7.7 square miles
- m. *Rezak Bank*—3.7 square miles
- n. *Sidner Bank*—2.0 square miles
- o. *Alderdice Bank*—5.0 square miles
- p. *Parker Bank*—7.0 square miles

#### 2. Apply the Existing Sanctuary Regulations and Management Action to the Expanded Area

NOAA will apply the existing sanctuary regulations (including regulatory prohibitions set forth in § 922.122) and the existing management plan<sup>7</sup> to the expanded sanctuary boundary in order to provide for more comprehensive management and protection of sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico. Accordingly, 15 CFR 922.122(e) will be updated to reflect the effective date of the sanctuary expansion, and no further amendments of the regulatory text in 15 CFR part 922 are necessary to implement this action.

<sup>6</sup> <https://flowergarden.noaa.gov/management/sanctuaryexpansion.html>.

<sup>7</sup> <https://flowergarden.noaa.gov/management/2012mgmtplan.html>.

#### 3. Department of Defense Activities

NOAA's decision to amend the effective date in § 922.122(e) addresses concerns raised by the Department of the Navy (DON) during coordination in development of this final rule. In the final rule, NOAA clarifies that the prohibitions in § 922.122(a)(2) through (11) do not apply to the activities being carried out by the Department of Defense as of the date of sanctuary expansion.

#### 4. Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area of the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary of Commerce to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made.

The terms of designation for FGBNMS was first published in 1991 (56 FR 63637), and became effective in 1994 (58 FR 65664). The terms of designation were not incorporated into the Code of Federal Regulations, and, whenever there was a proposed regulatory change, NOAA and the general public had to refer to the preamble of the 1991 final rule to understand the nature and scope of the terms of designation. With this final rule, NOAA is making the terms of designation more readily available to the general public by amending the FGBNMS regulations at 15 CFR part 922, subpart L, to incorporate the terms of designation as a new appendix B to the FGBNMS regulations. NOAA is amending Article II. Description of the Area to include Stetson Bank (added by Congress in 1996 pursuant to Pub. L. 104–283) and the additional reefs and banks included in this expansion, add a new section relating to the U.S. Department of Defense (DoD) exemption, and revising the “Consistency with International Law” section of the terms of designation in order to address comments raised by the U.S. Department of State during interagency consultation.

#### 5. No Exemptions for Spearfishing and Pelagic Longline Fishing in the Expanded Sanctuary

Based on the public comments received on the proposed rule, NOAA has decided not to provide exemptions for spearfishing or pelagic longline fishing. The rationale for the decisions

not to provide exemptions for spearfishing or pelagic longline fishing are addressed below in section IV. Responses to Comments.

#### IV. Response to Comments

NOAA received 1,421 individual (8,491 campaigns and petitions) public comments on the DEIS and 485 individual (36,111 including campaigns and petitions) public comments on the proposed rule. The majority of comments expressed general support for sanctuary expansion, others expressed concerns about the reduced size of the boundaries, and few comments were received opposing the expansion of FGBNMS. Of the comments received during this action, approximately one third supported the revised preferred alternative in the proposed rule (which is identified as NOAA's Final Preferred Alternative in the FEIS). Public comments identified specific geographic locations of concern that were not included in the revised preferred alternative. Comments raised concerns about boundary enforcement, essential fish habitat, preservation of biodiversity, connectivity between bank areas, mesophotic/deepwater coral ecosystems, mobula rays, whale sharks, sea turtles, sharks, marine mammals, and commercial and recreationally important fish. Many of the comments supportive of the proposed expansion referred to industrial, environmental, and global impacts.

In response to NOAA's request for public comment on fishery exemptions for pelagic longline fishing and spearfishing with sanctuary expansion, 25,641 comments opposed an exemption for pelagic longline fishing, 23,353 opposed an exemption for spearfishing, 2 comments supported allowing pelagic longline fishing, and 8 comments indicated conditional support for spearfishing. Conditional support for spearfishing included an exemption for breath-hold only spearfishing, establishing an initial limited capacity fishery that could be assessed at a reduced number of banks, and an exemption for lionfish only. NOAA analyzed comments received during this process and considered them in preparation of this FEIS, as well as developed agency responses. NOAA's responses to the public comments are included in Appendix A of the FEIS and in this document (Part IV).

NOAA has consolidated public comments from the DEIS and proposed rule and collectively responds to those comments here and in Appendix A of the FEIS.

### *General Support and Opposition of Proposed Sanctuary Expansion*

1. *Comment:* NOAA received comments that supported the proposed expansion of the sanctuary and encouraged NOAA to proceed with the expansion process. Comments also supported the Revised Preferred Alternative (NOAA's Final Preferred Alternative).

*Response:* Comment accepted. NOAA has considered these comments in carrying the Revised Preferred Alternative forward to the Final Environmental Impact Statement (FEIS) and final rule as NOAA's Final Preferred Alternative.

2. *Comment:* NOAA received comments that opposed the overall sanctuary expansion process citing reasons including: (1) Existing protections for sensitive resources; (2) concern of restricting use/access to the public; (3) safety, budget, and management limitations; and (4) socioeconomic consequences to certain industries.

*Response:* NOAA determined the proposed action responds to the need to provide additional protection and management of sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico. The current jurisdictional regime divides authority among several governmental entities that regulate offshore energy exploration (Bureau of Ocean and Energy Management (BOEM)), fishing (Gulf of Mexico Fishery Management Council (GMFMC)), and water quality (Environmental Protection Agency (EPA)). NOAA has determined the current jurisdictional regime does not provide comprehensive and effective management for the full range of activities that impact the sensitive reefs and banks in the region. Chapter 2 of the FEIS and Part I, Section 2 of the preamble to the final rule describe the purpose and need for this proposed expansion. Extending the sanctuary boundary to new reefs and banks in the northwestern Gulf of Mexico promotes ecological conservation and biodiversity, expands sanctuary management efforts in the region, and helps to balance multiple uses.

### *Boundaries*

3. *Comment:* NOAA received comments that generally supported expansion, but opposed the boundaries in the Revised Preferred Alternative (NOAA's Final Preferred Alternative). These comments indicated that the proposed boundaries of the Revised

Preferred Alternative were too small or would exclude some "topographic highs" and reduce migratory corridors, or that NOAA should select a larger boundary alternative. Additionally, comments noted the removal of buffer zones entirely in the Revised Preferred Alternative and that very small areas were created at some banks (e.g., Elvers, McGrail), which results in fragmented connectivity and diminished ecological and species function. Comments also stated NOAA's Preferred Alternative in the DEIS (Alternative 3) excluded 39 nationally significant areas and 9 nationally significant shipwrecks.

*Response:* NOAA developed the Final Preferred Alternative in response to public comments and recommendations from the Sanctuary Advisory Council. NOAA's Final Preferred Alternative was based on boundary configurations developed by the Advisory Council's Boundary Expansion Working Group and the Advisory Council's 2018 recommendation. It was also based on research conducted by the Office of National Marine Sanctuaries, consultation with other Federal and state agencies, strong public support and comment during public meetings preceding this proposal, and extensive input from oil and gas, and fishing interests. The Final Preferred Alternative further follows the National Marine Sanctuaries Act's goal of facilitating, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources.

NOAA modified DEIS Alternative 3 to develop the Final Preferred Alternative under which the boundaries were drawn more tightly around the shallowest portions of the geological features identified in Alternative 3. The new boundaries closely follow the BOEM No Activity Zones, which have prohibitions on oil and gas exploration and development, but allow other bottom-disturbing activities that can cause severe negative impacts to the benthic areas. NOAA's Final Preferred Alternative expands the sanctuary by approximately 104 square miles, to include additional important and sensitive marine habitat areas outside the current sanctuary boundary, which will offer additional protection not provided by BOEM's current regulations. NOAA has determined the Final Preferred Alternative minimizes the impact to offshore energy exploration and production while providing substantial protection to sensitive marine habitats of national significance and meeting the expansion objectives as identified in the 2012 FGBNMS management plan and 2016

DEIS. Refer also to FEIS Chapter 3, Section 3.2 for additional details on the development of NOAA's proposed action.

NOAA submits there were more environmentally preferable alternatives assessed in the DEIS; however, ONMS has identified the Final Preferred Alternative as one that, based on strong input from the public and the Sanctuary Advisory Council, provides a significant environmental benefit, can be managed with current FGBNMS operational capacity, and minimizes negative impact to industry activities.

NOAA has determined the Final Preferred Alternative remains within the range of alternatives and impacts analyzed in the 2016 DEIS. Also refer to NOAA's Supplemental Information Report and FEIS Chapter 3, Section 3.2 for additional details on the development of the Final Preferred Alternative.

4. *Comment:* NOAA received comments requesting additional areas and banks to be considered in the proposed expansion process, including: Coffee Lump, 32 Fathom, Claypile, Applebaum, 29 Fathom, Fishnet, Phleger, Sweet, and Jakkula Banks, Florida Middle Grounds, Madison/Swanson, and Alabama Pinnacles, north central Gulf of Mexico, Ewing Bank (whale shark aggregation), Bryant Bank, more of Bright Bank complex, and the Deep Water Horizon (Deepwater Horizon) rig/well area.

*Response:* NOAA rejects the requests to add these additional banks and areas for two primary reasons, (1) there was insufficient data to characterize these areas as nationally significant, or (2) they were too far from the existing sanctuary. NOAA considered including 32 Fathom Bank, Applebaum Bank, Coffee Lump Bank, Fishnet Bank, Phleger Bank, Sweet Bank, Diaphus Bank, and Sackett Bank but determined either insufficient data were available to adequately characterize the sites or available data does not indicate sufficiently unique, diverse, productive, or otherwise nationally significant biological communities or geologic features.

Sites in biogeographic regions other than the north central Gulf of Mexico were also eliminated from further consideration; areas to both the east and west of the area roughly defined by the 87th and 95th west meridians reflect geologic/sedimentary and hydrologic/oceanographic settings, as well as biological communities, that are distinctly different from those of the north central Gulf of Mexico and are faced with distinctly different threats or other conservation issues. Features

eliminated from further consideration based on this distinction include Big Dunn Bar, Small Dunn Bar, Blackfish Ridge, Mysterious Bank, the South Texas Banks (Dream Bank, Southern Bank, Hospital Bank, North Hospital Bank, Aransas Bank, Baker Bank, and South Baker Bank), Madison-Swanson, the Florida Middle Grounds, and Pulley Ridge. Bryant Bank and more areas of the Bright Bank Complex were primarily excluded from the Final Preferred Alternative because of concerns raised from the oil and gas industry.

Although these additional areas were rejected for consideration in the current FEIS, FGBNMS will consider extending sanctuary protection and management to these additional biogeographic regions and habitat types during the next management plan review.

For more information on how the Final Preferred Alternative was developed and selected, refer to FEIS Chapter 1, Sections 1.5 and Chapter 3, Sections 3.1 and 3.2.

5. *Comment:* NOAA received a comment that requested the agency identify areas to redraw boundaries to reduce impact on fishing (*i.e.*, northern boundary of MacNeil, northern boundary of Sonnier, and northeast boundary of Bouma).

*Response:* NOAA considered this request, and following the DEIS, slightly reduced the boundaries at these banks to more closely align with BOEM designated NAZs. The decrease in proposed expansion area in the Final Preferred Alternative was partly in response to requests, such as this, to reduce impacts to historical fishing activities. Moreover, ONMS has completed consultation with the GMFMC pursuant to NMSA section 304(a)(5) regarding the boundaries and fishing regulations in the Final Preferred Alternative, and GMFMC concurred with this action. See Appendix G of the FEIS for more details on the 304(a)(5) consultation.

6. *Comment:* NOAA received a comment that requested coordinates for all proposed alternatives be included.

*Response:* NOAA disagrees. NOAA provided the coordinates of NOAA's Final Preferred Alternative in Appendix H of the FEIS. Additionally, the coordinates of NOAA's Final Preferred Alternative are included as appendix A to the final rule which will be codified in 15 CFR part 922, subpart L. NOAA does not believe inclusion of coordinates for all other alternatives is necessary. However, maps of all alternatives can be reviewed in FEIS Chapter 3 and Appendix D.

7. *Comment:* NOAA received comments requesting an explanation of

how the FGBNMS Advisory Council's recommendations were incorporated throughout the expansion process.

*Response:* The Sanctuary Advisory Council was involved in developing DEIS Alternative 2, reviewing DEIS Alternative 3, and providing recommendations to modify the alternative. Ultimately, NOAA's Final Preferred Alternative was largely developed by recommendations proposed by the Sanctuary Advisory Council. Refer to FEIS Chapter 1, Section 1.5, which provides background information on development of the DEIS alternatives and the process by which NOAA modified DEIS Alternative 3 to develop the Final Preferred Alternative, including information of the Sanctuary Advisory Council's involvement. See response to comment #3 pertaining to the Revised Preferred Alternative.

8. *Comment:* NOAA received comments that requested a buffer around reefs to enhance connectivity, compliance, and enforcement, as well as to keep out any structure that may act as a vector for invasive species spread.

*Response:* Buffers were considered during the FGBNMS Advisory Council's Boundary Expansion Working Group meetings and were rejected due to potential impacts to the oil and gas and fisheries industries. The 2018 Sanctuary Advisory Council recommendation for sanctuary expansion did not include buffers. Refer to FEIS Chapter 1, Section 1.5 for details regarding development of the Final Preferred Alternative and associated interagency consultations and coordination.

9. *Comment:* NOAA received comments suggesting the boundaries proposed in the Revised Preferred Alternative (NOAA's Final Preferred Alternative) were too complicated for enforcement purposes, stating that simpler boundaries make enforcement easier, which results in better compliance of user groups.

*Response:* Along with input for NOAA's Office of Law Enforcement (OLE), ONMS considered this concern and determined the expansion boundaries are enforceable as proposed in NOAA's Final Preferred Alternative. The boundaries achieve a polygonal configuration, which is recommended by the OLE, and closely follow the existing BOEM designated NAZ boundaries. This polygonal approach uses fewer vertices, simplifying the NAZ boundaries and allowing for heightened enforceability and user compliance.

ONMS believes that vessels visiting the sanctuary are likely to be equipped with onboard mapping technology (*e.g.*, Global Positioning System) that would

inform operators of their vessel's position relative to the expanded sanctuary boundary. In light of the technological capabilities of onboard positioning systems, ONMS decided to continue with the boundary configuration of the Final Preferred Alternative, confident that user compliance and agency enforcement can be achieved.

Please refer to FEIS Chapter 3, Section 3.2 for more details regarding development of the Final Preferred Alternative boundaries.

10. *Comment:* NOAA received comments related to the influence of the oil and gas industry on the boundary configurations of the proposed expansion of banks and reefs, including a claim that the FGBNMS Advisory Council's Boundary Expansion Working Group was biased (towards the oil and gas industry).

*Response:* The BEWG included Advisory Council members representing multiple stakeholder groups including the oil and gas industry, commercial and recreational fishing industries, recreational diving, science, and conservation. The BEWG presented its revised FGBNMS expansion boundaries recommendation to the full FGBNMS Advisory Council, representing all user groups, on May 9, 2018, and the recommendation was accepted by the Advisory Council and subsequently by ONMS as proposed. Refer to responses to comments #3 and #7 and FEIS Chapter 3, Section 3.2, which details the Sanctuary Advisory Council's BEWG process for developing the Revised Preferred Alternative.

#### *Purpose and Need for Proposed Expansion/Regulations*

11. *Comment:* NOAA received comments suggesting that the purpose and/or need for the proposed expansion was not warranted, citing several reasons including: (1) Need for protection was not demonstrated; (2) expansion would offer no benefit of protection; (3) government overreach; (4) majority of sites are already protected from oil and gas development by the existing BOEM's No Activity Zones; and (5) proposed expansion areas are not nationally significant or unique.

*Response:* Pursuant to the National Environmental Policy Act (NEPA), NOAA has established a strong purpose and need to expand FGBNMS (See FEIS Chapter 2). Through the management plan review and scoping process, NOAA identified several gaps in management of reefs and banks near the current sanctuary where habitats were experiencing damage from anchoring

and fishing gear in addition to potential for further industrial development. NOAA determined that extending sanctuary management to these areas would assist in addressing these gaps in protections by supplementing and complementing existing authorities established by BOEM and the GMFMC. While BOEM-designated NAZ's protect from oil and gas development, without sanctuary management efforts, habitats would remain vulnerable to anchor damage, detrimental fishing impacts, and other threats.

NOAA disagrees with the comment that the expansion demonstrates government overreach. The NMSA provides NOAA with the authority to designate, as marine sanctuaries, areas of the marine environment, which are of special national significance that possess conservation, ecological, and scientific qualities. Through decades of scientific research and exploration, NOAA has determined that the sanctuary expansion areas contain some of the highest reported densities of corals in the U.S. and other unique deepwater habitats that are not found elsewhere in the world, making them nationally significant and worthwhile to protect.

#### *Sanctuary Regulations and Enforcement*

12. *Comment:* NOAA received comments requesting changes to existing regulations including: (1) Allow anchoring for fishing; (2) a reasonable range of alternative management actions; (3) allow spearfishing; and (4) an exemption for pelagic longline fishing.

*Response:* NOAA rejected these requests because it was determined that granting them would negate the overall effectiveness of the existing regulations in the expansion areas. Current sanctuary regulations will address gaps in protection of the expansion areas. In the NPRM for sanctuary expansion, NOAA requested public comments on two fishery exemption requests: to allow pelagic longlining and spearfishing. NOAA received very limited support for exempting these activities (see fishing section below) and has determined that extension of existing fishing regulations to the expansion area is appropriate. Refer to FEIS Chapter 3, Section 3.1.2 for alternatives considered but rejected.

13. *Comment:* NOAA received comments that suggested the agency should provide enforcement policies to enhance the effectiveness of sanctuary expansion.

*Response:* The FGBNMS management plan details the enforcement policy for the expansion areas. NOAA will continue to work with Federal and state

enforcement partners to maintain water and aerial surveillance, update patrol guides and regulatory handbooks, and conduct interpretive/outreach patrols within all of FGBNMS.

#### *Air Quality and Climate Change*

14. *Comment:* NOAA received comments requesting that NOAA evaluate how the sanctuary expansion would affect the climate (*i.e.*, potential impacts to greenhouse gas emissions within sanctuary expansion areas).

*Response:* NOAA agrees with the need to evaluate the impacts of sanctuary expansion on the climate and has provided analysis of the potential beneficial effects of the expansion on physical and biological resources, including beneficial impacts derived from prohibiting harmful activities. NOAA also estimates that this action will help offset impacts of climate change (see FEIS Chapter 5, Section 5.3.1).

15. *Comment:* NOAA received comments requesting an assessment of how climate change affects FGBNMS, how it will affect proposed additions, and methods to reduce greenhouse gases with sanctuary expansion areas. One comment also requested a program-wide evaluation of climate adaption management gaps and needs.

*Response:* The management plan for FGBNMS contains Conservation Science Action Plans, which include goals to increase knowledge and understanding of the sanctuary's ecosystem, develop new and continue ongoing research and monitoring programs to identify and address specific resource management issues, and encourage information exchange, and cooperation. FGBNMS participated in development of the Ocean Acidification Action Plan<sup>8</sup> for national marine sanctuaries. The plan has numerous research recommendations for studying ocean acidification, a common consequence expected of future climate change.

Please also visit NOAA's website<sup>9</sup> for program-wide climate change initiatives, data, observations, and outreach materials. ONMS is standing up a Focus Group on climate, with the goal to develop the ONMS Climate Strategic Plan. FGBNMS is an active participant in this initiative, and the sanctuary, including the expansion areas, will be integrated into the overall plan. Ocean Acidification, specifically, has been integrated into FGBNMS long-term monitoring programs.

16. *Comment:* NOAA received recommendations that the agency use

newer emissions inventory for the analysis on air monitoring and pollutants.

*Response:* NOAA used the best available data for their environmental analysis of air emissions and pollutants when developing the FEIS. Please refer to FEIS Chapter 4, Section 4.2.1 for detailed information about the data and resources used for air quality and climate change.

17. *Comment:* NOAA received a comment that suggested the No Action Alternative (Alternative 1) does contribute to climate change over time as it does not prevent climate change from progressing, and requested the agency amend the analysis in DEIS Section 5.3.1.

*Response:* Since implementation of the No Action Alternative is expected to leave the existing environment unchanged except for continuation of existing impacts, including on-going impacts of climate change, the effect of this alternative is the same as described in Chapter 4. The "No Action" Alternative served as a baseline for the impact analysis to compare all other alternatives. As such, there would be no additional change to climate expected under this alternative. The text has been slightly amended in FEIS Chapter 5, Section 5.2 to offer clarification in response to this comment.

#### *Biological Resources*

18. *Comment:* NOAA received comments related to biological resource concerns. Biological comments focused on how sanctuary expansion would protect resources against damages (*e.g.*, anchoring, invasive species), the benefits sanctuary protection would provide (*e.g.*, improvements in fish stocks and productivity, preservation of biodiversity, continued discovery of new species), and requests for protection of specific species/groups (*e.g.*, *Mobula* rays, sea turtles, sharks, coral).

*Response:* NOAA concurs with the importance of protecting vulnerable biological resources and believes that this action helps to address many of the remaining gaps that threaten biological resources in the expanded sanctuary. With this action, NOAA is prohibiting the following activities in the sanctuary: Anchoring; drilling into, dredging, or altering the seabed; discharging or depositing of material; any injury to coral, rays, or whale sharks; fishing except for with conventional hook and line gear; and take of marine mammals and turtles except when permitted under the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA). Collectively, these

<sup>8</sup> <https://oceanacidification.noaa.gov/Home.aspx>.

<sup>9</sup> <https://www.noaa.gov/climate>.



prohibitions will help to protect fishes from unsustainable harvest by limiting fishing; help to maintain biodiversity of benthic habitats by protecting the seafloor; and allow further protection of many vulnerable living marine resources including rays, sea turtles and other ESA and MMPA-listed species. Please also refer to FEIS Chapter 5, Section 5.3.6 and 5.3.8 for additional details regarding impacts of sanctuary expansion to biological resources.

19. *Comment:* NOAA received comments requesting the sanctuary protect resources from negative impacts of fishing. Commenters noted the vulnerability of the expansion area to fishing injury, and urged protection of fish species in order to achieve fishing sustainability. Requests for fishery management included: (1) Limiting fishing locations; (2) prohibiting bottom-dragging gear; and (3) continuing to limit fishing to hook and line only. Some of the comments received in support of expansion were from members of the fishing sector.

*Response:* NOAA intends to extend the current sanctuary regulations to the proposed expansion areas, which includes restricting fishing activities to conventional hook and line techniques only (*i.e.*, any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand- or electrically-operated, hand-held or mounted). NOAA prohibits the use of any bottom tending fishing gear to protect delicate corals and important benthic habitat from fishing impacts, which will continue in the expansion areas. A detailed list of the current regulations can be reviewed in Table 1.1, Chapter 1, Section 1.4.

20. *Comment:* NOAA received a comment requesting projections of ecosystem services (*i.e.*, estimates for the increase in value of managing protected species and habitats such as hard and soft corals, fish, and mesophotic reefs) be included in the final analysis.

*Response:* Analysis of ecosystem services is beyond the scope of the environmental analysis necessary for this action, and thus, NOAA rejects this request. Instead, NOAA provided an economic analysis in the FEIS that estimated a passive economic value (*i.e.* non-use value) of the sanctuary expansion. For details on the economic analysis, please refer to Chapter 4, Section 4.4.7 of the FEIS or the peer-reviewed publication that resulted from this study, Stefanski and Shimshack (2016).

21. *Comment:* NOAA received a comment which indicated that the BEWG was informed that higher coral counts had been observed outside of the NAZs, than inside NAZs, and requested an explanation for why this was not considered during the boundary configuration of the Revised Preferred Alternative.

*Response:* Additional areas containing higher coral colony counts were quantified during remotely operated vehicle (ROV) surveys, and the data was considered during the National Centers for Coastal Ocean Sciences (NCCOS) collaboration with the FGBNMS Advisory Council's BEWG. The BEWG selected smaller boundaries, which closely follow the NAZs, primarily to reduce impacts to the oil and gas industry and to retain access for historical fishing practices. Outside of the expansion process, NOAA will provide the processed data and associated publication to both BOEM and NMFS, for consideration during review of regulations, and for future oil and gas, and fishing activities. While this will not provide blanket protection measures, it will be valuable in protections from potential major impacts.

22. *Comment:* NOAA received comments requesting an analysis of the impacts sustained to the environment from run-off of toxic and hazardous elements, sewage, pollution, and potential expansion of the Gulf of Mexico hypoxic zone, or 'dead zone', into the proposed sanctuary expansion areas.

*Response:* NOAA used the best available data to evaluate the environmental impacts to the expansion areas as required under NEPA and the Council of Environmental Quality's (CEQ's) 1978 NEPA regulations. NOAA, however, is studying these issues and plans to continue analyzing the impacts in its next management plan review process.

23. *Comment:* NOAA received comments regarding disturbances (vessel traffic) related to the noise environment, including a request to quantify the additional impact from an increased number of boaters.

*Response:* NOAA continues to study the issue of noise impacts on sanctuary resources. Sanctuary regulations prohibit the disturbance of marine mammals and turtles except when permitted under the MMPA and ESA. With respect to sonar testing, Section 304(d) of the NMSA provides for consultation with other federal agencies if their actions have the likelihood to injure sanctuary resources. NOAA has previously used this mechanism in

consultations to minimize impacts of noise on marine mammals and other species. FGBNMS is actively engaged in a vessel traffic and noise assessment and monitoring program within the sanctuary, which will be expanded to the new areas.

Please refer to FEIS Chapter 4, Section 4.2.2 for detailed information about the noise environment in the current FGBNMS, as well as expansion areas. Additionally, refer to FEIS Chapter 5, Section 5.3.2 for NOAA's analysis of environmental consequences to marine resources with respect to noise disturbances.

24. *Comment:* NOAA received comments requesting protection for fish spawning aggregations with the expansion.

*Response:* NOAA concurs with commenters and believes the expansion of the sanctuary will assist in the protection of fish spawning aggregations in the northwestern Gulf of Mexico. With this action, NOAA will extend sanctuary regulations to the expansion areas which limit fishing activities to conventional hook and line techniques, prohibit bottom tending gear, and restrict the use of anchors within sanctuary boundaries. This action will thereby complement protections for fish spawning habitats provided under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Fish spawning aggregations have been observed and recorded during ROV explorations at reefs and banks included in the expansion areas. Therefore, NOAA determined that sanctuary designation will directly protect habitat where the aggregations occur. NOAA intends to consider further protection of spawning aggregations during the next management plan review.

25. *Comment:* NOAA received a comment requesting NOAA consider designating areas within the sanctuary as "no take" marine reserves.

*Response:* NOAA considered this request and does not intend to designate any "no-take" marine reserves within the sanctuary through this action. With this action, NOAA extends the current fishing regulations to the expansion areas which limit fishing activities to conventional hook and line techniques and exclude any bottom tending gear. Anchoring will also be prohibited in the expanded sanctuary, and mooring buoys will be installed so that fishers and vessels (<100 feet long) can safely moor within the sanctuary boundaries.

To evaluate the impact of conventional hook and line fishing to managed fish species in the sanctuary, NOAA conducted an environmental impact analysis on living marine



resources, including fish in relation to the different expansion alternatives (see FEIS Chapter 5, Section 5.3.6). Overall, NOAA determined none of these resources would sustain any significant adverse impacts with sanctuary designation. However, NOAA determined that this action will provide benefit to fish, given the added protection to critical habitat and restrictions to fishing techniques. Mesophotic and deep water reefs have been shown to have low resilience and slow recovery potential, and harbor greater fish biomass than their shallower counterparts, underlining the importance of their protection (Lindfield et al. 2016, Huvenne et al. 2016). By reducing fishing pressure through sanctuary protection, fish size, biomass, and abundance could increase, while also enhancing coral reef resiliency (Reed 2002, 2007, Bozec et al. 2016, Chirico et al. 2017). Impacts to the resources may be reduced due to limitations on fishing that can otherwise alter predator-prey relationships, disturb bottom habitats, and increase loss of fish biomass. The added prohibition of spearfishing further protects fish from direct extraction (Lindfield et al. 2014).

Sanctuary management actions could reduce marine debris and impacts of debris on corals and other organisms, such as entanglement in derelict fishing gear and incidental catch of fish in “ghost” fishing gears. Moreover, extending to the expansion areas the prohibition of bottom-tending fishing gear, limits on anchoring and the discharge of pollutants, removal of marine debris such as derelict fishing gear, and invasive species removal, would all improve habitat for benthic coral communities and fish communities.

Designating areas as a “no take” marine reserve is an important issue and NOAA plans to consider it in the next review of the FGBNMS management plan.

26. *Comment:* NOAA received a comment requesting that a Gulf Sperm Whale/Pelagic Ecosystem national marine sanctuary be established.

*Response:* NOAA does not intend to establish a Gulf Sperm Whale/Pelagic Ecosystem National Marine Sanctuary. The request is beyond the scope of this proposed action.

#### Visual Resources

27. *Comment:* NOAA received a comment on DEIS Section 5.3.2.3—Scenic and Visual Resources requesting that negative impacts to scenic and visual resources that could occur because of an increased number of

boaters and/or increased use of fishing line be considered in the analysis.

*Response:* NOAA evaluated both beneficial and adverse impacts to each resource area and determined there would be no adverse impacts to scenic and visual resources. NOAA predicts beneficial impacts on the scenic and visual resources of the proposed expansion areas by reducing marine debris including derelict fishing gear, vessel traffic, and industrial infrastructure. Refer to FEIS Chapter 5, Section 5.3.3.

#### Fishing, Fishery Regulations, and Fishery Management

28. *Comment:* NOAA received a comment that requested the agency to analyze recreational fishing activities in the proposed expansion areas.

*Response:* NOAA addressed the request for this analysis by evaluating the level of recreational fishing activity expected to occur in the proposed expansion areas, using the best available data, to capture the socioeconomic impact to this industry. Ultimately, NOAA determined that there would be no significant adverse impacts to recreational fishers. For analysis of recreational fishing activities, please refer to FEIS Chapter 4, Section 4.4.1.2 for a description of the data used and Chapter 5, Section 5.3.9.2 for the expected environmental impact.

29. *Comment:* NOAA received a comment that requested the agency clarify benefits of the expansion to commercial fishers and improve the socioeconomic analysis of commercial fishers.

*Response:* NOAA updated FEIS Chapter 4, Section 4.4.1 to supplement the analysis on commercial fisheries with additional and current VMS data to assess socioeconomic impacts imposed by the expansion on commercial (Section 4.4.1.1) and recreational (Section 4.4.1.2) fishers. Overall, NOAA determined that no significant adverse impacts to fishers would result from the proposed expansion (See Chapter 5, Section 5.3.9.1 and 5.3.9.2). NOAA concluded minor benefits to commercial fishers may occur with the expansion of the sanctuary (see Chapter 5, Section 5.3.9.1) as fish production may increase in general with the decreased fishing pressure and habitat protections of specific locations.

Broadly, it is well documented by the scientific community that coral reef and mesophotic coral communities provide necessary habitat for a significant number of fish species, and the prevention of loss of these habitats will help to maintain and enhance fish populations dependent on these areas.

More specifically, higher biomass and abundance of fish are often associated with greater habitat coverage and/or complexity, such that, protecting habitat has an increased likelihood to improve fish stocks (Jones et al. 2004, Coker et al. 2014, Lindfield et al. 2016, Komyakova et al. 2018, Carminatto et al. 2020, Russ et al. 2020). Additionally, reducing fishing pressure could lead to an increased monetary value of commercial fisheries, partly due to the presence of larger individuals (thus more valuable) and higher densities of high-value species (Chirico et al. 2017). Mesophotic reefs have been found to harbor greater biomass of fishery-targeted species than shallower reefs, suggesting these habitats are important to protect for the longevity of commercial harvests (Lindfield et al. 2016). In essence, sanctuary expansion is protecting critical habitat which may result in increased fish biomass (Edgar et al. 2011, Harborne et al. 2008) or abundance (Jeffrey et al. 2012), particularly where fishing pressure is reduced (Edgar et al. 2011, Kramer and Heck 2007), which could benefit commercial fishers.

30. *Comment:* NOAA received comments regarding spearfishing, with the majority requesting a prohibition on this activity. Some commenters offered conditional support of spearfishing, suggesting allowing the activity: (1) In a limited capacity with access at a limited number of banks and reefs in the expansion area; (2) only for the removal of lionfish, an invasive species present in the current and proposed sanctuary areas; or (3) by breath hold only.

*Response:* NOAA intends to extend the current sanctuary regulations to the expansion areas proposed in the Final Preferred Alternative. As such, NOAA will not be implementing any additional fishing regulations as part of the final rulemaking. NOAA prohibits spearfishing in the current boundary to protect delicate corals, including threatened species, and important benthic habitat from fishing impacts, which will continue in the expansion areas. Spearfishing for lionfish is not a permissible activity within sanctuary borders. However, spearfishing with pole spears has been performed opportunistically by research staff through permitted long-term monitoring activities at FGBNMS. Additionally, lionfish invitational research cruises have been a permitted activity since 2015 at FGBNMS to remove the invasive species with highly skilled, qualified recreational divers and contribute to a variety of research projects with external academic and agency partners. NOAA intends to continue to permit

lionfish removals, with restrictions and obligations to properly train divers in effective removal techniques that prioritize coral and ecosystem health. A detailed description of sanctuary regulations is described in FEIS Table 1.1, Chapter 1, Section 1.4.

31. *Comment:* NOAA received a comment that suggested the spearfishing community has been excluded from access to the sanctuary.

*Response:* NOAA solicited public comment to exempt spearfishing in the proposed sanctuary boundary with the release of the NPRM. In response, NOAA received overwhelming support to continue prohibition of this activity. Please see additional information provided in comment #30. This will restrict access to the sanctuary expansion areas for the spearfishing community.

32. *Comment:* In response to the DEIS, NOAA received a request seeking a pelagic longline exemption from the otherwise applicable sanctuary fishing prohibitions proposed for the expansion areas. NOAA also received a few similar comments in response to the NPRM. However, there were also a significant number of NPRM commenters that opposed this exemption.

*Response:* NOAA considered the request made during the public review of the DEIS for a pelagic longline exemption to the proposed fishing prohibitions in the expansion area. In response, NOAA solicited public comments pertaining to pelagic longline fishing in the NPRM. Based on strong public support to prohibit this activity, NOAA has rejected the request for an exemption for pelagic longlining and, instead, intends to extend the current sanctuary regulations to the expansion areas. Under existing regulations, fishing will only be allowed with conventional hook and line gear (*i.e.*, any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand- or electrically operated, hand-held or mounted). NOAA believes the expansion of FGBNMS to additional reefs and banks in the northwestern Gulf of Mexico will add critical protection for fish, marine mammals, threatened and endangered species, as well as their habitat. NOAA determined the existing regulations would best accomplish this protection and fulfill the NMSA obligation to protect nationally significant environmental features.

A detailed description of sanctuary regulations is described in the FEIS Table 1.1, Chapter 1, Section 1.4. NOAA has been in consultation with NMFS

and GMFMC throughout the entire scoping process of sanctuary expansion, please refer to FEIS Chapter 1, Section 1.5.4.2, for additional details on these consultations.

33. *Comment:* NOAA received a comment requesting its fisheries analysis in the DEIS include more types of fishing gear and data to determine what areas were used by fishers and the value of these areas to those fisheries.

*Response:* NOAA provided a detailed list of the types of commercial vessel and recreation vessels that operate within the proposed sanctuary boundaries in the DEIS. NOAA has added a new table to the FEIS to include gear types used by commercial fishers that were observed in the vicinity of the Final Preferred Alternative. Please review Section 5.3.9.1 and 5.3.9.2 for a description of the commercial and recreational fishing vessels that operate within the proposed sanctuary boundaries based on permit or gear type. This analysis estimates the number of vessels within the vicinity of the boundaries under each alternative.

34. *Comment:* NOAA received a comment requesting an analysis of the potential impact(s) of weights used in bandit reel gear configurations on the benthic habitat and corals, as well as more information on the types of gear used in this type of fishing configuration.

*Response:* FGBNMS intends to continue investigating impacts of recreational and commercial fishing in the sanctuary, including bandit reel gear, and will address this in more detail during the next management plan review.

35. *Comment:* NOAA received a comment requesting a comprehensive commercial endorsement and certification program be developed to allow commercial fishers to continue to operate within the proposed boundaries. Additionally, there was a request to create an exemption for shrimpers in the Royal Red Shrimp industry to continue their historical practices.

*Response:* NOAA has considered this request, and following consultation with GMFMC pursuant to NMSA section 304(a)(5), decided not to establish a commercial endorsement and certification program or provide an exemption for shrimpers or other fishers in the sanctuary, based on the reduction in size of the new areas. Facilitating commercial fishing in the sanctuary, even through an endorsement and certification process, could make corals and other sensitive bottom habitats vulnerable to injury. NOAA believes that the reduction in boundaries between the 2016 original preferred

alternative and the Final Preferred Alternative, in addition to allowing conventional hook and line fishing in the expanded sanctuary, facilitates an appropriate balance between environmental protection and user access dictated as mandated by the NMSA. A detailed description of sanctuary regulations is described in FEIS Table 1.1, Chapter 1, Section 1.4. FEIS Chapter 1, Section 1.5.2 provides additional details on this consultation.

36. *Comment:* NOAA received a comment that suggested specific language be added for the discharge of natural waste of farmed fish related to open gulf mariculture, stating that fish farming operations outside of sanctuary boundaries may discharge sinking organic material that deposit within the sanctuary with prevailing currents.

*Response:* NOAA determined this request is outside the scope of this action. While sanctuary regulations do not specifically prohibit aquaculture, some associated activities are prohibited such as discharge of certain material, alteration of the seabed, and injury to sanctuary resources. Furthermore, the suitability of the area for aquaculture is being separately considered under other authorities including E.O. 13921, (October 23, 2020; 85 FR 67519). FGBNMS will further consider aquaculture and its potential impacts during the next management plan review.

#### *Military Uses*

37. *Comment:* A comment related to the Department of the Navy's activities within the proposed sanctuary areas suggested to: (1) Include in the FEIS, Department of Defense (DoD) use of water space in the vicinity of proposed expansion and current sanctuary; (2) provide a map of the Gulf of Mexico warning areas for military use; (3) add military uses to marine-use categories; and (4) add an analysis of the potential impact to military uses.

*Response:* Homeland security and military uses of the expanded sanctuary are subject to compliance with NEPA and NMSA, in addition to all applicable environmental regulations. DoD would be required to consult with ONMS pursuant to NMSA section 304(d) on any new military activities in the expansion area that are likely to injure sanctuary resources. NOAA believes the existing regulatory framework sufficiently addresses DoD impacts on sanctuary resources. Existing military uses and an analysis of their environmental effects in the expansion area have been added to Chapter 4, Section 4.4.5 and Chapter 5, Section 5.3.9.7 of the FEIS.

### NEPA Process

38. *Comment:* NOAA received comments regarding the NEPA process. Commenters requested NOAA conduct a new NEPA analysis because of: (1) The difference in methodologies used to configure the Final Preferred Alternative and Alternative 3 in the DEIS; and (2) new circumstances and/or information available (e.g., fishing exemptions, removal of buffer zones).

*Response:* NOAA evaluated the changes made from the 2016 original preferred alternative (Alternative 3) to the Final Preferred Alternative presented in the NPRM and this FEIS. The Final Preferred Alternative revised Alternative 3 boundaries to be more tightly drawn near the shallowest portions of the geological features of interest, largely in response to existing fishing activity and oil and gas activity (see response to comment #3). The new polygons included all of the same reefs and banks, excluding Bryant Bank, which is not included in the Final Preferred Alternative. Ultimately, NOAA determined that the changes reflected in the Final Preferred Alternative were not “substantial changes in the proposed action that are relevant to environmental concerns” (40 CFR 1502.9(c)(1)(i)). NOAA further determined the comments received on the 2016 DEIS did not “constitute significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” (40 CFR 1502.9(c)(1)(ii)). As such, NOAA concluded that preparing a supplemental environmental impact statement or new NEPA analysis is neither required nor necessary under NEPA. NOAA has documented the agency’s rationale for revising the Final Preferred Alternative (see Chapter 3, Section 3.2) and provided updated information on the affected environment in FEIS Chapter 5, Section 5.3, and related Record of Decision. Please refer to NOAA’s Supplemental Information Report that was provided with the release of the NPRM for further information.

39. *Comment:* NOAA received a comment that requested that the Protected Species analysis in Section 5.3.2.7 of the DEIS be public and open for review/comment.

*Response:* ONMS conducted an ESA Section 7 consultation with NMFS in conjunction with the development of both the DEIS and NPRM. In the DEIS, ONMS included a list of protected species which may be affected by the proposed action, and the DEIS was subsequently submitted for public

comment. Additional species were included in the NPRM consultation. See FEIS Chapter 4, Section 4.3.4 for additional information on protected species with an updated list of protected species and Appendix G for a summary of how ONMS satisfied ESA consultation requirements including ONMS’s ESA consultation correspondence.

40. *Comment:* NOAA received a comment stating that the Notices to Lessees are not simply guidance because they contain requirements for oil and gas.

*Response:* NOAA disagrees. Please refer to the Bureau of Safety and Environmental Enforcement Notice to Lessees 2009–G39,<sup>10</sup> which provides and consolidates guidance for oil and gas.

### National Marine Sanctuaries Act

41. *Comment:* NOAA received comments that suggested the expansion of sanctuaries must be conducted through an act of Congress, otherwise it violates Congressional intent found in the NMSA.

*Response:* NOAA disagrees. NOAA can administratively designate and expand sanctuaries pursuant to Section 303 of the NMSA (16 U.S.C. 1433), using procedures set forth in section 304 (16 U.S.C. 1434). It is also possible for Congress to legislatively designate a sanctuary; Stetson Bank (Pub. L. 104–283) in the current FGBNMS serves as an example of a legislatively designated sanctuary.

42. *Comment:* NOAA received comments stating the NPRM did not comply with the NMSA and the FGBNMS 2012 management plan to prioritize conservation of surrounding reefs and banks.

*Response:* The proposed action responds to the need to provide additional protection of sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico. NOAA adds 14 additional reefs and banks, for a total of 17 features to be protected, expanding the sanctuary by approximately three times its current spatial extent. In addition to prioritizing the conservation of nationally significant biological features, the NMSA section 301 (16 U.S.C. 1431) directs NOAA to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not

prohibited pursuant to other authorities. Thus, compliant with the NMSA, NOAA believes the current expansion in this FEIS and final rule, as proposed in the NPRM, maximizes conservation and user group interests to allow for greater protection of these areas.

### Oil & Gas Exploration and Development

43. *Comment:* NOAA received comments from the oil and gas industry in response to the 2016 DEIS alternatives regarding recognition and inclusion of existing oil and gas leases. Commenters expressed concern that sanctuary expansion could be more costly or difficult for oil and gas production, new leases would be precluded, and the loss of oil and gas exploration may lead to reliance on foreign oil. Industry representatives noted their reliance on the 2007 Sanctuary Advisory Council recommendation (Alternative 2) to inform their investment in resources for the industry’s development and growth, or their decision to relinquish certain lease blocks. Industry representatives requested oil and gas access, leasing, produced water discharge requirements, and seismic acquisition should remain as is, with no additional regulations.

*Response:* To address concerns from the oil and gas industry, the FGBNMS Sanctuary Advisory Council’s BEWG underwent an extensive process to evaluate how protecting biologically significant areas may impact the oil and gas industry. They proposed modifying DEIS Alternative 3 to develop the Revised Preferred Alternative (see comment #3). This process also involved input from the Sanctuary Advisory Council, the GMFMC, and coordination within NOAA. The new boundaries closely follow BOEM’s NAZs, encompassing the shallowest portions of the banks, which are already protected from oil and gas exploration and development. Furthermore, ONMS consulted with BOEM pursuant to E.O. 13795—Implementing an America-First Offshore Energy Strategy and determined that expanding the sanctuary would not have a significant economic impact on oil and gas exploration and development. BOEM’s analysis is summarized in the NPRM and in FEIS Chapter 5, Section 5.3.9.5.

44. *Comment:* NOAA received a comment requesting an analysis of the inclusion of four oil and gas platforms within the expansion areas for advantages and disadvantages, especially in the context of Sanctuary Expansion Action Plan Objective 6C.

*Response:* NOAA’s Final Preferred Alternative does not include any

<sup>10</sup> <https://www.bsee.gov/notices-to-lessees-ntl/notices-to-lessees/ntl-2009-g39-biologically-sensitive-underwater-features>.

additional oil and gas platforms within the existing or expanded sanctuary boundaries, thus, the requested analysis is not necessary. NOAA did, however, consider inclusion of certain oil and gas platforms as part of the alternatives considered in the NEPA analysis for this action. See Alternatives 4 and 5 of this FEIS. Please also refer to FEIS Chapter 5, Section 5.3.9.5 for analysis of impacts to offshore energy resources. Finally, NOAA intends to continue analyzing the advantages and disadvantages of oil and gas structure inclusion within FGBNMS as part of its ongoing management plan review process.

45. *Comment:* NOAA received a comment that requested an economic analysis of: (1) Impacts to oil and gas resources due to directional drilling; (2) affected lease blocks; and (3) a comparison in area between NAZs and proposed sanctuary expansion areas. There was also a request to identify any future management actions/mitigations which may affect oil and gas activities.

*Response:* BOEM analyzed potential impacts to oil and gas resources pursuant to E.O. 13795, and these results are available on the sanctuary website.<sup>11</sup> BOEM determined that expanding the sanctuary would not have significant economic impacts on the oil and gas industry, and NOAA accepted BOEM's findings. NOAA will continue to coordinate with BOEM to co-manage these resources and mitigate any impacts to oil and gas activities, including the 11 active Outer Continental Shelf (OCS) oil and gas leases that will lie wholly or partially within the boundaries of the expanded FGBNMS. For new leases, approvals or permits, licenses, or other authorizations in existence prior to the date in which the FGBNMS expansion is finalized, lessees or operators will be required to obtain from NOAA a certification to authorize the oil and gas activities within the FGBNMS. The certification will require compliance with the FGBNMF's regulations, as well as the permits or plan approvals issued by BOEM and/or BSEE, and the topographic features stipulation (as applicable) in the lease.

Refer to FEIS Section 5.3.9.5 for additional analysis of the impacts to oil and gas activities.

46. *Comment:* NOAA received a comment to incorporate BOEM lease sales and stipulations into BOEM's Record of Decision and Final Notice of Sale.

*Response:* As a non-voting member on the Sanctuary Advisory Council, and a cooperating agency in the preparation of the 2016 DEIS, BOEM has incorporated lease sales and stipulations into BOEM's Record of Decision and Final Notice. FEIS Chapter 5, Section 5.3.9.5 shows that there were 13 active lease blocks, as reported by BOEM in their 2019 report. However, since publication of that report, two leases were relinquished. There are currently 11 active leases in the expansion area, averaging approximately 17% of the lease blocks falling within the Final Preferred Alternative boundaries. Lease sales issued between 1996 and 2001 provided Information for Lessees indicating "Minimizing Oil and Gas Structures near Flower Garden Banks". Lease sales issued between 2002 through 2014 did not specifically mention FGBNMS, but the lease sales do refer to the Notice to Lessees outlining the topographic and live bottom stipulations. The sanctuary regulations track the operational requirements established by BOEM in those stipulations. Lease sales issued between 2015 to the present provide notice to prospective leaseholders of the proposed expansion. More information regarding BOEM lease sales may be found on BOEM's website.<sup>12</sup>

47. *Comment:* NOAA received a comment that requested the agency develop an appropriate regulatory "firewall" that will set a precedent for other sanctuaries to protect those areas from offshore drilling practices.

*Response:* NOAA believes this request is beyond the scope of this action but will continue to work toward balancing multiple user interests with the NMSA's primary goal of resource protection.

48. *Comment:* NOAA received comments related to environmental impacts of the oil and gas industry. Of these, nearly half requested the sanctuary update the regulations to prohibit oil and gas development and to ensure management protects against damages from this industry. Concerns raised included: (1) Oil spills and leaks; (2) extraction practices; (3) encroaching drilling and exploration; and (4) the vulnerability of biological resources to oil and gas activities. Comments also requested that NOAA prohibit fracking and analyze the potential for fracking fluids and directional hydraulic fracturing to impact the area in and near the sanctuary. A few comments related specifically to methane hydrate extraction.

*Response:* NOAA determined the Final Preferred Alternative balances

protecting vulnerable habitats with multiple uses of the region. See FEIS Chapter 3, Section 3.2 for more details regarding the Final Preferred Alternative. NOAA intends to extend the current FGBNMS regulations to the new expansion areas. Please refer to FEIS Table 1.1 in Chapter 1, Section 1.4 for a list of current sanctuary regulations and management efforts from impacts of oil and gas activities. Additionally, sanctuary regulations prohibit discharge of any kind from oil and gas activities that may be harmful to the benthic environment.

BOEM assessed the potential for offshore energy resources including oil and gas and methane hydrate resources in the proposed expansion areas. BOEM determined that due to the shallow-water depth of the proposed expansion areas, the formation of methane hydrate in the subsurface is unlikely. BOEM's E.O. 13795 report is available on the sanctuary website.<sup>13</sup>

The FEIS describes damages related to oil and gas activities observed at banks proposed in the expansion, as well as potential impacts that could be sustained to these resources. Please review Chapter 4, Section 4.4.3 of the FEIS for additional information.

Furthermore, in 2016, the NOAA Office of Response and Restoration Gulf of Mexico Disaster Response Center convened with the Department of Interior and a variety of environmental, regulatory, and resource protection agencies to develop a document outlining "Oil Spill Response Options for FGBNMS." This document may be found at the University of New Hampshire, Coastal Response Research Center and the Center for Spills and Environmental Hazards website.<sup>14</sup>

49. *Comment:* NOAA received comments related to the prohibition of oil and gas development. Specifically, NOAA was requested to prohibit: (1) New oil and gas directional drilling, infrastructure, and transport; (2) oil and gas leasing within new boundary areas; and (3) directional drilling under new boundary areas.

*Response:* With this action, NOAA intends to extend existing sanctuary prohibitions, which allow and regulate oil and gas exploration and development to the expansion areas. Directional drilling permits for oil and gas will continue to be considered for surface operations in the expansion

<sup>11</sup> <https://nmsflowergarden.blob.core.windows.net/flowergarden-prod/media/archive/doc/expansion/boemenergyanalysis.pdf>.

<sup>12</sup> <https://www.boem.gov/oil-gas-energy/lease-sale-information>.

<sup>13</sup> <https://nmsflowergarden.blob.core.windows.net/flowergarden-prod/media/archive/doc/expansion/boemenergyanalysis.pdf>.

<sup>14</sup> [https://crrc.unh.edu/sites/crrc.unh.edu/files/nrpt\\_oil\\_spill\\_response\\_impacting\\_fgbnms\\_tx\\_report.pdf](https://crrc.unh.edu/sites/crrc.unh.edu/files/nrpt_oil_spill_response_impacting_fgbnms_tx_report.pdf).

areas, given existing prohibitions, outside of the BOEM-designated No Activity Zones. Pursuant to NMSA Section 301(b)(6), NOAA will continue “to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities”. Please also refer to comment #49 and FEIS Table 1.1, Section 1.4 for current sanctuary regulations.

50. *Comment:* NOAA received comments from oil and gas industry companies in support of this expansion that recognized the balance between conservation, extraction, and user groups achieved through the Sanctuary Advisory Council’s process in developing the Revised Preferred Alternative (NOAA’s Final Preferred Alternative).

*Response:* NOAA has carried forward the 2018 BEWG’s recommendation, which is now NOAA’s Final Preferred Alternative. Please refer above to the Boundaries section and to FEIS Chapter 3, Sections 3.1 and 3.2 for more information regarding the development of alternatives and selection of the Final Preferred Alternative.

*Sanctuary Management and Administration, Funding, Education and Outreach, and Sanctuary Advisory Council*

51. *Comment:* NOAA received comments requesting that FGBNMS develop a Resilient Habitat Plan, which seeks to enhance habitat resilience to uncertain and unpredictable effects of future change, such as climate change.

*Response:* The current FGBNMS management plan serves as a framework for addressing issues facing the sanctuary and lays the foundation for protecting, conserving, and enhancing FGBNMS and its regional environment in the Gulf of Mexico. Following this expansion, NOAA will begin the process to review and update the FGBNMS Management Plan as needed. NOAA acknowledges the growing need to integrate resiliency plans into their habitat management schemes and are beginning to implement sanctuary climate assessment and adaptations plans sitewide. As determined during management plan review, FGBNMS will aim to integrate adaptation and resiliency strategies into their habitat and resource management. Additionally, FGBNMS will begin development of a Condition Report describing the current status of sanctuary resources, including the expansion areas. As described in the FEIS Executive Summary, NOAA will

be extending the existing sanctuary management plan and regulations to the newly expanded area.

52. *Comment:* NOAA received a comment on DEIS Section 5.3.6—Irreversible and Irrecoverable Commitments of Resources requesting NOAA include costs of expansion and evaluate potential impacts to conservation and management activities.

*Response:* NEPA requires an analysis of the extent to which the proposed project’s primary and secondary effects would commit nonrenewable resources to uses that future generations would be unable to reverse (42 U.S.C. 4332(C)(v); 40 CFR 1502.16). See FEIS Chapter 5, Section 5.6.4 which describes any impacts, or losses, to resources that cannot be recovered or reversed associated with the proposed action or alternatives. Alternatives 1–3 and the Final Preferred Alternative are within the current operational budget, and NOAA expects field operations to continue at current intensity in the expanded sanctuary. Also refer to the 2012 FGBNMS Management Plan for additional budgetary information.

53. *Comment:* NOAA received comments requesting the FEIS to clearly describe “best diving practices” in Section 5.3.9.4, how they will be implemented, how they will protect FGBNMS, and how NOAA will enforce their use.

*Response:* The existing sanctuary regulations (15 CFR 922.122(a)(2)(iii)) require any vessel moored in the sanctuary to exhibit the blue and white International Code flag “A” (“alpha” dive flag) or red and white “sports diver” flag whenever a scuba diver from that vessel is in the water and remove the “alpha” dive flag or “sports diver” flag after all divers exit the water and return on board the vessel, consistent with U.S. Coast Guard guidelines relating to sports diving as contained within “Special Notice to Mariners” (00–2008) for the Gulf of Mexico. This final rule will apply that requirement to the expanded areas and must be followed. The FGBNMS Trip Prep web page<sup>15</sup> provides recreational divers with information to prepare for their trip to the sanctuary, information about the challenging diving conditions that can be experienced at FGBNMS, and how to safely prepare for these visits, and includes information on best diving and boating practices to ensure the safety of visitors. Additionally, the FGBNMS Trip Prep web page includes a link to reef etiquette, which provides

information about the best diving practices to ensure the protection of the environment. A link to this reef etiquette web page<sup>16</sup> has been added to Section 5.3.6. NOAA believes when these practices are followed, reefs sustain very minimal, if any, damage. While compliance with the sanctuary regulations is mandatory, some of the best diving practices set forth on the FGBNMS Trip Prep web page are voluntary.

FGBNMS also has regulations prohibiting resources from being taken from the sanctuary (e.g., shells, coral, invertebrates) and restricting harassment of marine wildlife (e.g., *Mobula* rays, whale sharks). A list of the regulations is provided in FEIS Chapter 1, Section 1.4, Table 1.1. The USCG and NOAA’s OLE are jointly responsible for enforcing regulations at FGBNMS.

54. *Comment:* NOAA received comments regarding sharing its coral and habitat information with the GMFMC so the data could be included in the coral portal. Also, FGBNMS was asked to collaborate with NOAA’s National Resource Damage Assessment’s (NRDA) Trustee Council’s Open Ocean Trustee Implementation Group to restore mesophotic and deep benthic communities (MDBC).

*Response:* NOAA welcomes the opportunity to collaborate with organizations to build community partnerships for education, outreach, research, monitoring, and resource protection. Before, during, and after the release of the DEIS and the NPRM, the FGBNMS Superintendent presented information to the GMFMC on the FGBNMS proposed sanctuary expansion. Additionally, FGBNMS provides benthic (e.g., coral) data from the current and expanded FGBNMS, as well as other offshore banks and reefs in the northwestern Gulf of Mexico to GMFMC for its publicly accessible coral portal.<sup>17</sup> FGBNMS has been intently involved as an Active Management Project Partner with NRDA’s Mesophotic Deepwater Benthic Community’s planning projects. Project goals include: (1) Enhancing public awareness and performing active management and protection activities by undertaking education and outreach targeting MDBC resource users and the general public; (2) engaging stakeholders and developing socioeconomic analyses to evaluate potential impacts of management or protection actions; and (3) directly

<sup>16</sup> <https://flowergarden.noaa.gov/visiting/reefetiquette.html>.

<sup>17</sup> <https://portal.gulfcouncil.org/cp/>.

<sup>15</sup> <https://flowergarden.noaa.gov/visiting/tripprep.html>.

addressing threats to MDBC through management activities.

55. *Comment:* NOAA received a comment requesting a Critical Habitat Assessment of the banks be included in the proposed expansion as required in the International Finance Corporation (IFC) Performance Standard 6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources).

*Response:* To develop each alternative, NOAA identified nationally significant coral habitats that are vulnerable to multiple threats as detailed in the FEIS and final rule's Need for Action sections. For more detail regarding how specific habitats were selected in the alternatives, refer to Chapter 3 of the FEIS. In summary, ONMS determined the selected habitats were most in need of protection based on the best available scientific information as well as through public comment and interagency coordination.

56. *Comment:* NOAA received a comment that requested the agency incorporate and address management of artificial reefs within sanctuary boundaries, specifically decommissioning of oil and gas platforms.

*Response:* NOAA's Final Preferred Alternative does not include any artificial reef structures. Federal policy on artificial reefs is discussed in the FEIS Appendix G and in the 2012 FGBNMS Management Plan.

57. *Comment:* NOAA received a comment requesting the use of collaborative, consensus-building, transparent processes for selection and management of sanctuary resources.

*Response:* ONMS uses several public, stakeholder-driven processes to ensure collaborative, transparent selection and management of resources. National marine sanctuaries have sanctuary advisory councils, composed of voting and non-voting members that represent a variety of government agencies; local user groups; and the general public, that advise sanctuary superintendents on priority issues. Sanctuary advisory councils may choose to establish committees and working groups to further delve into issues; working groups provide an opportunity to involve more stakeholders from the community in developing recommendations for consideration by the full sanctuary advisory councils. Additionally, through NEPA and the federal rulemaking processes, ONMS is required to solicit, consider, and respond to public comments during each stage in an expansion, designation, or regulatory update. All comments

received are made available and considered by ONMS.

58. *Comment:* NOAA received comments requesting the use of British Petroleum (BP) restoration funds to justify expansion to Alternatives 4 and 5. One comment noted specific issues affecting FGBNMS' operational capacity to manage alternatives with greater environmental benefit had changed (*i.e.* substantial resources have since been dedicated to managing mesophotic and deep benthic communities in the Gulf of Mexico through the Deepwater Horizon NRDA).

*Response:* FGBNMS is engaged in collaborative efforts with NOAA Fisheries through the MDBC project funded through NRDA. NOAA has determined, for the purpose of this action, that Alternatives 4 and 5 are beyond the geographic scope that is feasible for the sanctuary to effectively manage (see comment #54 and refer to Chapter 3 of the FEIS).

59. *Comment:* NOAA received a comment requesting FGBNMS design, develop, and commission a research vessel dedicated to studying marine mammal population growth in the pelagic environment.

*Response:* FGBNMS currently operates the R/V *Manta*, a research vessel that can be used as a platform to research marine mammals, and thus rejects this request. NOAA Fisheries conducts marine mammal population studies and their Southeast Fisheries Science Center develops a report every 5 years. Further, the sanctuary collaborates with external organizations and partners to support marine mammal research.

60. *Comment:* NOAA received a comment requesting the creation of an interpretive center in support of the sanctuary.

*Response:* NOAA will evaluate opportunities for an interpretive center through the next FGBNMS management plan review process.

61. *Comment:* NOAA received a comment requesting inclusion of a user education and enforcement program to ensure the public is aware of new boundaries and requirements.

*Response:* Existing online and print materials created for the proposed action contain select maps and several photographs. When the proposed action becomes final, NOAA will work to update and distribute printed and online materials to reflect the features and boundaries of FGBNMS.

62. *Comment:* NOAA received comments regarding input from the FGBNMS Sanctuary Advisory Council and other stakeholders. More specifically, commenters asked why the

FGBNMS Sanctuary Advisory Council was not informed of new information and proposed boundaries for NOAA's original preferred alternative in the DEIS (Alternative 3) prior to publication, and asked why NOAA selected Alternative 3 instead of the 2007 FGBNMS Advisory Council's recommendation (Alternative 2).

*Response:* FGBNMS received input from its Sanctuary Advisory Council through a Boundary Expansion Working Group comprised of stakeholders from varied constituent seats. In 2007, the working group presented its recommendation for sanctuary expansion to the full Advisory Council, after which the 2007 Sanctuary Advisory Council recommendation (Alternative 2) was approved, based on the criteria developed by the original BEWG. Their recommendation became the foundation for NOAA's original preferred alternative (Alternative 3), which also included additional research in the northwestern Gulf of Mexico. After the release of the DEIS, a Sanctuary Advisory Council working group reformed. Based on the Sanctuary Advisory Council recommendations in response to the DEIS, NOAA made a number of changes to the boundaries of the polygons surrounding the banks and submerged features. In 2018, the BEWG brought forth its recommendation for sanctuary expansion to the full Advisory Council, which was approved and became NOAA's Revised Preferred Alternative for the NPRM and the Final Preferred Alternative in this FEIS.

NOAA's Final Preferred Alternative represents the collaborative efforts between constituent/stakeholder groups and the sanctuary's multi-use management. Refer to FEIS Chapter 3, Sections 3.2 and 3.5 which details development of the Final Preferred Alternative and provides the rationale for the selection of Alternative 3 as the original preferred alternative in the DEIS, respectively.

63. *Comment:* NOAA received a comment suggesting FGBNMS form an Advisory Council working group on maritime shipping traffic regarding shipping routes.

*Response:* NOAA will consider this suggestion in the future.

64. *Comment:* NOAA received comments claiming science was disregarded during the development of the boundary configuration for the Revised Preferred Alternative presented in the NPRM.

*Response:* The bank boundaries of the Revised Preferred Alternative presented in the NPRM (NOAA's Final Preferred Alternative) closely follow BOEM's NAZs, which were based on information

available in 1970–1980's, and designated to protect active reef building benthic communities, associated with the shallowest portions of the geographic features. NOAA reduced the size of the expansion areas proposed in the 2016 DEIS original preferred alternative to minimize user conflicts and potential economic impacts to the offshore energy industry in accordance with NMSA section 301 (16 U.S.C. 1431), which supports establishing compatible uses with public and private resource users.

#### *Socioeconomic Issues and Access*

65. *Comment:* NOAA received comments stating that the economic impact analysis in the DEIS was insufficient and requested updates to data pertaining to scuba diving, commercial fishing, air emissions, and oil and gas.

*Response:* NOAA used the best available scientific information to conduct the economic analysis for the DEIS and incorporated updated data and analysis, if available, in the FEIS (see Chapter 5). Specifically, ONMS updated analyses of impacts to commercial and recreational fishing and impacts to oil and gas resources in the FEIS.

66. *Comment:* NOAA received comments related to the positive socioeconomic impacts resulting from sanctuary expansion on local tourism/businesses and the recreation industry. Commenters noted some fishing practices were harmful and therefore, fishing restrictions in the expansion areas would benefit the recreational fishing industry, the commercial fishing industry, and fisheries/seafood production.

*Response:* Potential positive and adverse impacts to socioeconomic resources (e.g., recreation, fishing) are detailed in FEIS Chapter 5. NOAA does not anticipate any significant adverse impacts to be incurred on the commercial or recreational fishing industry as a result of this expansion. Rather, fishers may find a minor beneficial impact with an increase in fish production with the protection of these important areas. Please review FEIS Chapter 5, Section 5.3.9.1 and 5.3.9.2 for more details on the expected impact to commercial and recreational fishing industries, respectively.

67. *Comment:* NOAA received comments suggesting that the proposed action removes an asset from public use for both commercial and recreational purposes, restricts recreational diving access, and restricts recreational fishing opportunities. Commenters urged NOAA to allow for multiple use of the

sanctuary, with reasonable access regulations and reasonable mitigation measures that directly address threats.

*Response:* By expanding the sanctuary's boundaries and extending existing regulations to the expansion areas, NOAA is not restricting access to divers or hook and line fishers in any part of the sanctuary as long as users do not injure or possess any sanctuaries resources (see FEIS regulations Table 1.1, Chapter 1, Section 1.4). NOAA determined through the Sanctuary Advisory Council process and through public input that the expansion would allow for multiple uses of the sanctuary while addressing threats to sanctuary resources, as is set forth in NMSA Section 301. For additional details pertaining to impacts to socioeconomic resources such as recreational diving, please refer to FEIS Chapter 5.

68. *Comment:* NOAA received comments from the diving industry and scuba divers supporting sanctuary expansion. Divers urged NOAA to install mooring buoys in the expansion areas to increase access and to provide better maintenance of the mooring buoys and longlines.

*Response:* NOAA intends to extend the current management regime to the expansion areas, under which the sanctuary would provide and maintain mooring buoys so that vessels (< 100 feet long) could safely moor in the sanctuary boundaries, as is logistically feasible. See the current FGBNMS Management Plan.

#### *Regulatory Impact Review (RIR)*

NOAA received eight comments on the Bureau of Ocean Management's (BOEM) analysis (the RIR) (85 FR 74630, November 23, 2020) and collectively responds to those comments here.

69. *Comment:* NOAA received comments expressing concern about the short length of the period provided for public comment, suggesting (1) it was not long enough to provide substantive feedback; (2) no similar National Marine Sanctuary System has offered a 15-day comment period; and (3) that it was not circulated with other documents prior to this period. NOAA also received a request to provide justification for the legality of the 15-day comment period, and further requested that NOAA extend the comment period for 60 days.

*Response:* The request to extend the comment period is denied. Prior to soliciting public comment for the RIR, a 60-day comment period was open for the proposed rule, including a fulsome summary of the RIR, which allowed the public to comment on the proposed action in its entirety (85 FR 25359, May 1, 2020). On November 23, 2020, NOAA

acknowledged the oversight of not circulating the RIR, and reopened the public comment period (85 FR 74630). Given that NOAA provided 60 days for public comment period on the proposed rule, which contained a summary of the BOEM analysis, the additional comment period is reasonable.

70. *Comment:* NOAA received comments suggesting that the RIR was outdated and requesting a new analysis, suggesting that a decline in the current value of oil and gas and other hydrocarbon resources leads to mistaken assumptions in the current RIR. Additionally, commenters suggest that the RIR is no longer an accurate portrayal of expected impacts to the oil and gas industry. According to the commenters, lower oil and gas prices reduce the desire to explore and develop resources in the region and, thus, oil and gas resources cannot be considered economically recoverable.

*Response:* NOAA disagrees with this comment due to the uncertainty in determining future oil prices, and because BOEM's February 2019 report provides the best available economic information. NOAA summarized this analysis in the proposed rule for sanctuary expansion and further evaluated impacts of this action on the oil and gas industry in their Final Environmental Impact Statement (FEIS); see Chapter 5, Section 5.3.9.5.

71. *Comment:* NOAA received comments requesting the other alternatives be re-evaluated in light of the analysis presented in the RIR.

*Response:* NOAA updated the analyses of all alternatives in the FEIS; see Chapters 4 and 5. Ultimately, NOAA decided to move forward with the Revised Preferred Alternative, as presented in the proposed rule, as their Final Preferred Alternative.

## **VI. Classification**

### *A. National Marine Sanctuaries Act*

Section 301(b) of the NMSA (16 U.S.C. 1431) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. Section 304(a)(4) of the NMSA (16 U.S.C. 1434) requires that the procedures specified in Section 304 for designating a national marine sanctuary be followed for modifying any term of designation. This action, in addition to expanding the sanctuary, is revising the terms of designation (e.g., scope of regulations) for the FGBNMS. In accordance with Section 304, the documents relevant to the expansion of Flower Garden Banks



are being submitted to the House Resources Committee and the Senate Committee on Commerce, Science, and Transportation. Section 304(a)(5) of the NMSA also requires that NOAA consult with the appropriate Federal fishery management council on any action proposing to regulate fishing in federal waters. Consultation with the Gulf of Mexico Fishery Management Council (GMFMC) is discussed above in part II sections 4 and 5. NOAA solicited comments on potential exemptions for pelagic longline and spearfishing in the expanded area, and based on public comment and coordination with NOAA fisheries, determined to not grant these exemptions and to extend existing fishing regulations into the expansion areas.

#### B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of NEPA (42 U.S.C. 4321–4370), NOAA has prepared a FEIS to evaluate the impacts of this action. Because this environmental review began before September 14, 2020, which was the effective date of the amendments to the Council on Environmental Quality (CEQ) regulations implementing NEPA (85 FR 43372 (Jul. 16, 2020)), the FEIS was prepared using the 1978 CEQ NEPA regulations. The Notice of Availability (December 11, 2020, 85 FR 80093) of the FGBNMS FEIS is available on the FGBNMS website.<sup>18</sup> NEPA reviews initiated prior to the effective date of the 2020 revised CEQ regulations may be conducted using the 1978 version of the regulations. NOAA has also prepared a ROD. Copies of the FEIS and ROD are available at the address and website listed in the **ADDRESSES** section of this final rule.

#### C. Executive Order 12866: Regulatory Impact

This final rule has been determined to be “significant” within the meaning of Executive Order 12866. Details on the estimated costs of this rule are discussed in BOEM’s E.O. 13795 report, which is available on [regulations.gov](https://www.regulations.gov) at docket NOAA–NOS–2019–033, and serves as a substitute for the Regulatory Impact Review (RIR). NOAA inadvertently omitted this report in the public docket for this action when the NPRM was published. NOAA subsequently published a **Federal Register** notice on November 23, 2020 (85 FR 74630), making the RIR available for public comments. Refer to section V

of this rule for comments received on the RIR. Details on the estimated benefits of this action are discussed in Chapter 5, section 5.3 of the FEIS.

#### D. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The area that is the subject of the final rule is located entirely within federal waters outside of state or local jurisdiction. This rule will not have a substantial or direct effect on states or local governments.

#### E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This Executive Order reaffirms the Federal government’s commitment to tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as they develop policies on issues that impact Indian communities. This action is not anticipated to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibility between the Federal Government and Indian tribes.

#### F. Executive Order 13795: Implementing an America-First Offshore Energy Strategy

Executive Order 13795 directs the Secretary of Commerce to refrain from designating or expanding any national marine sanctuary unless the proposal includes a full accounting from the DOI of any energy or mineral resource potential (including offshore energy from wind, oil, natural gas, methane hydrates, and any other sources that the Secretary of Commerce deems appropriate) within the expansion area, and the potential impact of the expansion on energy or mineral resource potential within the designated area. On February 25, 2019, BOEM provided NOAA with a review of offshore energy and mineral resource potential located within the revised expansion areas in accordance with Executive Order 13795. BOEM’s report is available at the Supporting Document section of the docket identified by NOAA–NOS–2019–033, and posted at <https://www.regulations.gov/document?D=NOAA-NOS-2019-0033-1630>.

#### G. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a significant energy action under the definition in E.O. 13211. It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Moreover, the Administrator of OIRA has not otherwise designated this action as a significant energy action. A Statement of Energy Effects, therefore, is not required.

#### H. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare an analysis of a rule’s impact on small entities whenever the agency is required to publish a rule, unless the head of the agency can certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, if the head of an agency (or his or her designee) certifies that a rule will not have a significant impact on a substantial number of small entities, then the agency is not required to prepare a regulatory flexibility analysis.

Pursuant to section 605(b), the Chief Counsel for Regulations for the Department of Commerce, through delegation by the head of the agency, certified to the Office of Advocacy of the Small Business Administration during the proposed rule stage that the regulations would not have a significant economic impact on a substantial number of small entities. The factual basis for certification was published in the proposed rule (85 FR 25367). No public comments were received regarding this certification. Therefore, a regulatory flexibility analysis was not required and none was prepared.

#### I. Paperwork Reduction Act

The existing FGBNMS regulations contain a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), approved by The Office of Management and Budget (OMB), under control number 0648–0141, for collection-of-information for reporting and recordkeeping requirements under 15 CFR part 922. This final rule would not increase or otherwise revise the existing paperwork burdens.

The public reporting burden for national marine sanctuary general permit applications is estimated to average 1 hour 30 minutes per application, including the time for reviewing the application instructions,

<sup>18</sup> <https://flowergarden.noaa.gov/management/sanctuaryexpansion.html>.

searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. For special use permits, a collection-of-information requirement is necessary to determine whether the activities are consistent with the terms and conditions of special use permits prescribed by the NMSA. The public reporting burden for this collection of information is estimated to average twenty four (24) hours per response (application, annual report, and financial report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate does not include additional time that may be required should the applicant be required to provide information to NOAA for the preparation of documentation that may be required under NEPA (16 U.S.C. 1431 *et seq.*).

NOAA determined that this final rule would not appreciably change the average annual number of respondents or the reporting burden for the information requirements supporting special use or research permits because few activities requiring new permits are expected for the new areas. Much of the research is expected to be conducted by the sanctuary, and other uses that require permits are anticipated with very low intensity in the proposed expansion areas. NOAA also determined that these regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act. Comments on this determination were solicited in the proposed rule, and no public comments were received. Notwithstanding any other provision of 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, unless that collection of information displays a currently valid OMB control number.

#### J. National Historic Preservation Act

The National Historic Preservation Act (NHPA; 16 U.S.C. 470 *et seq.*) is intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic

properties, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP (36 CFR part 800). Pursuant to 36 CFR 800.16(l)(1), historic properties include: “any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior.” The term includes artifacts, records, and remains that are related to and located within such properties. NOAA did not identify any known historic properties within the boundaries of the Final Preferred Alternative, and received no public comments regarding historic properties in the Final Preferred Alternative boundaries.

#### K. Coastal Zone Management Act

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies carrying out an activity that would affect any land or water use or natural resource of the coastal zone to provide a consistency determination to the relevant state agencies before final approval of the agency action. Copies of the Draft Environmental Impact Statement were provided to five Gulf Coast States (Texas, Louisiana, Alabama, Florida, and Mississippi), soliciting feedback on reasonably foreseeable effects on coastal resources and uses. Responses were received from Mississippi Department of Marine Resources and the Texas General Land Office indicating no objection to the proposed boundary changes or the DEIS. With this information in addition to analysis provided in the FEIS, NOAA determined this action would have no effect on coastal resources. On November 16, 2020, NOAA prepared a consistency determination, which was submitted to the five Gulf Coast States along with the proposed rule. In response to this request, the five Gulf States of Alabama, Florida, Louisiana, Mississippi, and Texas concurred with NOAA’s consistency determination.

#### List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources,

Penalties, Recreation and recreation areas, Wildlife.

#### Nicole R. LeBoeuf,

*Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.*

Accordingly, for the reasons set forth above, NOAA amends part 922, title 15 of the Code of Federal Regulations as follows:

### PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

#### Subpart L—Flower Garden Banks National Marine Sanctuary

- 2. Revise § 922.120 to read as follows:

##### § 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (sanctuary) boundary encompasses a total area of approximately 121 square nautical miles (160.35 square miles) of offshore ocean waters, and submerged lands thereunder, along the continental shelf and shelf edge in the northwestern Gulf of Mexico. The entire sanctuary boundary is comprised of 19 unique polygons. The precise boundary coordinates for each polygon are listed in appendix A to this subpart.

- 3. In § 922.121, revise the term “No-activity zone” to read as follows:

##### § 922.121 Definitions.

\* \* \* \* \*

*No-activity zone* (applicable only to oil and gas industry activities) means the geographic areas delineated by the Department of the Interior in Topographic Features Stipulations for Outer Continental Shelf (OCS) lease sales as defined by a bathymetric contour (isobath) ranging from 55–85m in depth, with the exception of Stetson Bank (52m) and East and West Flower Garden Banks (100m). The Notice to Lessees (NTL) No. 2009–G39 provides and consolidates guidance for the avoidance and protection of biologically sensitive features and areas (*i.e.* topographic features, pinnacles, live bottoms (low relief features)) and other potentially sensitive biological features (PSBFs) when conducting operations in water depths shallower than 980 feet (300 meters) in the Gulf of Mexico. NTL 2009–G39 remains in effect pursuant to NTL No. 2015–N02. The no-activity zones are based on depth contours as noted for the following Banks: Stetson Bank (52 meters), MacNeil Bank (82

meters), Rankin Banks (including 28 Fathom Bank) (85 meters), Bright Bank (85 meters), Geyer Bank (85 meters), Elvers Bank (85 meters), McGrail Bank (85 meters), Bouma Bank (85 meters), Rezak Bank (85 meters), Sidner Bank (85 meters), Sonnier Bank (55 meters), Alderdice Bank (80 meters), and Parker Bank (85 meters). For East and West Flower Garden Banks, the no-activity zones are based on the “¼ ¼ ¼” aliquot system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath. The precise aliquot part description of these areas around East and West Flower Garden Banks are provided in appendix A of this subpart.

■ 4. Revise § 922.122(e)(1) to read as follows:

**§ 922.122 Prohibited or otherwise regulated activities.**

\* \* \* \* \*

(e)(1) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of the revised terms of sanctuary designation. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities. The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impact on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities. New activities with the potential for significant adverse impact on Sanctuary resources or qualities may

be exempted from the prohibitions in paragraphs (a)(2) through (11) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities.

\* \* \* \* \*

■ 5. Revise appendix A to subpart L to read as follows:

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

**Flower Garden Banks National Marine Sanctuary**

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	1	Stetson Bank	28.15673	-94.29673
2	1	Stetson Bank	28.15661	-94.30312
3	1	Stetson Bank	28.15862	-94.30888
4	1	Stetson Bank	28.16950	-94.30839
5	1	Stetson Bank	28.17386	-94.30257
6	1	Stetson Bank	28.17583	-94.29445
7	1	Stetson Bank	28.17543	-94.29327
8	1	Stetson Bank	28.17284	-94.28952
9	1	Stetson Bank	28.16924	-94.28677
10	1	Stetson Bank	28.16428	-94.28681
11	1	Stetson Bank	28.16274	-94.28756
12	1	Stetson Bank	28.15796	-94.29047
13	1	Stetson Bank	28.15673	-94.29673
1	2	West Flower Garden Bank	27.84363	-93.78549
2	2	West Flower Garden Bank	27.81750	-93.81056
3	2	West Flower Garden Bank	27.81752	-93.84752
4	2	West Flower Garden Bank	27.83069	-93.86271
5	2	West Flower Garden Bank	27.81735	-93.87490
6	2	West Flower Garden Bank	27.83220	-93.89185
7	2	West Flower Garden Bank	27.85854	-93.89369
8	2	West Flower Garden Bank	27.87925	-93.87853
9	2	West Flower Garden Bank	27.92626	-93.82011
10	2	West Flower Garden Bank	27.92620	-93.81759
11	2	West Flower Garden Bank	27.91801	-93.80801
12	2	West Flower Garden Bank	27.90969	-93.77939
13	2	West Flower Garden Bank	27.88644	-93.77939
14	2	West Flower Garden Bank	27.84363	-93.78549
1	3	Horseshoe Bank	27.82317	-93.62789
2	3	Horseshoe Bank	27.80927	-93.63578
3	3	Horseshoe Bank	27.80568	-93.65541
4	3	Horseshoe Bank	27.79429	-93.66555
5	3	Horseshoe Bank	27.78357	-93.68846
6	3	Horseshoe Bank	27.79640	-93.70534
7	3	Horseshoe Bank	27.81855	-93.75198
8	3	Horseshoe Bank	27.82742	-93.74743
9	3	Horseshoe Bank	27.81868	-93.68868
10	3	Horseshoe Bank	27.83143	-93.68941
11	3	Horseshoe Bank	27.84699	-93.70079
12	3	Horseshoe Bank	27.87165	-93.73947
13	3	Horseshoe Bank	27.88602	-93.73294
14	3	Horseshoe Bank	27.87252	-93.64648
15	3	Horseshoe Bank	27.85861	-93.63908
16	3	Horseshoe Bank	27.82317	-93.62789
1	4	East Flower Garden Bank	27.89455	-93.57040
2	4	East Flower Garden Bank	27.87999	-93.61309
3	4	East Flower Garden Bank	27.88003	-93.62961

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
4	4	East Flower Garden Bank	27.89330	-93.64172
5	4	East Flower Garden Bank	27.92101	-93.64747
6	4	East Flower Garden Bank	27.95899	-93.64490
7	4	East Flower Garden Bank	27.97485	-93.63086
8	4	East Flower Garden Bank	27.98177	-93.60996
9	4	East Flower Garden Bank	27.98554	-93.58188
10	4	East Flower Garden Bank	27.95206	-93.57810
11	4	East Flower Garden Bank	27.92151	-93.56880
12	4	East Flower Garden Bank	27.89455	-93.57040
1	5	MacNeil Bank	28.00226	-93.51550
2	5	MacNeil Bank	27.99707	-93.52669
3	5	MacNeil Bank	28.00136	-93.52423
4	5	MacNeil Bank	28.00518	-93.52425
5	5	MacNeil Bank	28.01694	-93.52233
6	5	MacNeil Bank	28.01883	-93.51264
7	5	MacNeil Bank	28.03670	-93.50300
8	5	MacNeil Bank	28.03724	-93.49844
9	5	MacNeil Bank	28.03113	-93.49199
10	5	MacNeil Bank	28.01300	-93.49624
11	5	MacNeil Bank	28.00331	-93.50725
12	5	MacNeil Bank	28.00226	-93.51550
1	6	Rankin Bank & 28—Fathom Bank	27.92554	-93.40593
2	6	Rankin Bank & 28—Fathom Bank	27.92039	-93.41021
3	6	Rankin Bank & 28—Fathom Bank	27.92035	-93.42474
4	6	Rankin Bank & 28—Fathom Bank	27.91387	-93.43165
5	6	Rankin Bank & 28—Fathom Bank	27.90829	-93.42234
6	6	Rankin Bank & 28—Fathom Bank	27.90641	-93.42535
7	6	Rankin Bank & 28—Fathom Bank	27.90489	-93.44219
8	6	Rankin Bank & 28—Fathom Bank	27.89549	-93.44396
9	6	Rankin Bank & 28—Fathom Bank	27.88892	-93.43403
10	6	Rankin Bank & 28—Fathom Bank	27.88072	-93.42805
11	6	Rankin Bank & 28—Fathom Bank	27.87676	-93.42787
12	6	Rankin Bank & 28—Fathom Bank	27.88449	-93.44458
13	6	Rankin Bank & 28—Fathom Bank	27.88803	-93.45159
14	6	Rankin Bank & 28—Fathom Bank	27.88794	-93.45905
15	6	Rankin Bank & 28—Fathom Bank	27.89234	-93.46410
16	6	Rankin Bank & 28—Fathom Bank	27.89971	-93.45571
17	6	Rankin Bank & 28—Fathom Bank	27.90910	-93.45343
18	6	Rankin Bank & 28—Fathom Bank	27.92847	-93.45335
19	6	Rankin Bank & 28—Fathom Bank	27.93407	-93.44743
20	6	Rankin Bank & 28—Fathom Bank	27.93599	-93.44215
21	6	Rankin Bank & 28—Fathom Bank	27.92554	-93.40593
1	7	Bright Bank	27.87310	-93.27056
2	7	Bright Bank	27.86549	-93.29462
3	7	Bright Bank	27.87300	-93.31055
4	7	Bright Bank	27.89058	-93.32193
5	7	Bright Bank	27.89839	-93.31987
6	7	Bright Bank	27.90336	-93.30953
7	7	Bright Bank	27.91010	-93.30562
8	7	Bright Bank	27.91634	-93.29292
9	7	Bright Bank	27.91263	-93.28816
10	7	Bright Bank	27.90354	-93.28386
11	7	Bright Bank	27.90253	-93.27238
12	7	Bright Bank	27.89927	-93.26729
13	7	Bright Bank	27.87310	-93.27056
1	8	Geyer Bank	27.78848	-93.07794
2	8	Geyer Bank	27.79458	-93.08448
3	8	Geyer Bank	27.83313	-93.07913
4	8	Geyer Bank	27.85306	-93.08279
5	8	Geyer Bank	27.86328	-93.07885
6	8	Geyer Bank	27.86908	-93.06974
7	8	Geyer Bank	27.86556	-93.05944
8	8	Geyer Bank	27.85211	-93.05391
9	8	Geyer Bank	27.83713	-93.05725
10	8	Geyer Bank	27.82540	-93.04312
11	8	Geyer Bank	27.82490	-93.04276
12	8	Geyer Bank	27.80846	-93.03412
13	8	Geyer Bank	27.78997	-93.04096
14	8	Geyer Bank	27.78602	-93.05384
15	8	Geyer Bank	27.78848	-93.07794
1	9A	Elvers Bank—A	27.82285	-92.88605
2	9A	Elvers Bank—A	27.82087	-92.88600
3	9A	Elvers Bank—A	27.82009	-92.88670

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
4	9A	Elvers Bank—A	27.81869	-92.89235
5	9A	Elvers Bank—A	27.81690	-92.89404
6	9A	Elvers Bank—A	27.81615	-92.89653
7	9A	Elvers Bank—A	27.80645	-92.90884
8	9A	Elvers Bank—A	27.81221	-92.92082
9	9A	Elvers Bank—A	27.81599	-92.93908
10	9A	Elvers Bank—A	27.81934	-92.93940
11	9A	Elvers Bank—A	27.82250	-92.92465
12	9A	Elvers Bank—A	27.82809	-92.91359
13	9A	Elvers Bank—A	27.83973	-92.89876
14	9A	Elvers Bank—A	27.83972	-92.88038
15	9A	Elvers Bank—A	27.83003	-92.86983
16	9A	Elvers Bank—A	27.82285	-92.88605
1	9B	Elvers Bank—B	27.85645	-92.92310
2	9B	Elvers Bank—B	27.85662	-92.91922
3	9B	Elvers Bank—B	27.85334	-92.91631
4	9B	Elvers Bank—B	27.85076	-92.91727
5	9B	Elvers Bank—B	27.84903	-92.92097
6	9B	Elvers Bank—B	27.85145	-92.92524
7	9B	Elvers Bank—B	27.85645	-92.92310
1	10A	McGrail Bank—A	27.97684	-92.58489
2	10A	McGrail Bank—A	27.97749	-92.57716
3	10A	McGrail Bank—A	27.97475	-92.56753
4	10A	McGrail Bank—A	27.97304	-92.56191
5	10A	McGrail Bank—A	27.95173	-92.53902
6	10A	McGrail Bank—A	27.94849	-92.54254
7	10A	McGrail Bank—A	27.96632	-92.56116
8	10A	McGrail Bank—A	27.96792	-92.58152
9	10A	McGrail Bank—A	27.95989	-92.58187
10	10A	McGrail Bank—A	27.95409	-92.57057
11	10A	McGrail Bank—A	27.94951	-92.57135
12	10A	McGrail Bank—A	27.94920	-92.57994
13	10A	McGrail Bank—A	27.95846	-92.60274
14	10A	McGrail Bank—A	27.97286	-92.61901
15	10A	McGrail Bank—A	27.98096	-92.60158
16	10A	McGrail Bank—A	27.97684	-92.58489
1	10B	McGrail Bank—B	27.94116	-92.54750
2	10B	McGrail Bank—B	27.94180	-92.54543
3	10B	McGrail Bank—B	27.94010	-92.54202
4	10B	McGrail Bank—B	27.93616	-92.54151
5	10B	McGrail Bank—B	27.93481	-92.54398
6	10B	McGrail Bank—B	27.93529	-92.54803
7	10B	McGrail Bank—B	27.93859	-92.54901
8	10B	McGrail Bank—B	27.94116	-92.54750
1	11	Bouma Bank	28.07909	-92.47305
2	11	Bouma Bank	28.07370	-92.44900
3	11	Bouma Bank	28.07370	-92.44891
4	11	Bouma Bank	28.06544	-92.43518
5	11	Bouma Bank	28.05162	-92.43380
6	11	Bouma Bank	28.03846	-92.44065
7	11	Bouma Bank	28.03463	-92.45289
8	11	Bouma Bank	28.03114	-92.45537
9	11	Bouma Bank	28.02915	-92.46338
10	11	Bouma Bank	28.03154	-92.47259
11	11	Bouma Bank	28.04166	-92.47229
12	11	Bouma Bank	28.04525	-92.46717
13	11	Bouma Bank	28.04751	-92.47310
14	11	Bouma Bank	28.04676	-92.48308
15	11	Bouma Bank	28.04866	-92.48462
16	11	Bouma Bank	28.05687	-92.48145
17	11	Bouma Bank	28.06388	-92.49262
18	11	Bouma Bank	28.07018	-92.49141
19	11	Bouma Bank	28.06974	-92.48613
20	11	Bouma Bank	28.06594	-92.48098
21	11	Bouma Bank	28.07109	-92.47708
22	11	Bouma Bank	28.07683	-92.48071
23	11	Bouma Bank	28.07909	-92.47305
1	12	Sonnier Bank	28.32652	-92.45356
2	12	Sonnier Bank	28.32495	-92.45647
3	12	Sonnier Bank	28.32501	-92.45965
4	12	Sonnier Bank	28.32796	-92.46626
5	12	Sonnier Bank	28.33523	-92.47536
6	12	Sonnier Bank	28.34453	-92.47511

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
7	12	Sonnier Bank	28.34840	-92.47439
8	12	Sonnier Bank	28.35256	-92.47181
9	12	Sonnier Bank	28.35416	-92.46784
10	12	Sonnier Bank	28.35456	-92.46135
11	12	Sonnier Bank	28.35351	-92.45729
12	12	Sonnier Bank	28.35174	-92.45107
13	12	Sonnier Bank	28.34852	-92.44564
14	12	Sonnier Bank	28.34303	-92.44045
15	12	Sonnier Bank	28.34048	-92.44024
16	12	Sonnier Bank	28.33584	-92.44669
17	12	Sonnier Bank	28.33068	-92.44985
18	12	Sonnier Bank	28.32652	-92.45356
1	13	Rezak Bank	27.95420	-92.36641
2	13	Rezak Bank	27.95847	-92.37739
3	13	Rezak Bank	27.95629	-92.38599
4	13	Rezak Bank	27.97297	-92.39248
5	13	Rezak Bank	27.97892	-92.39845
6	13	Rezak Bank	27.98869	-92.39964
7	13	Rezak Bank	27.99372	-92.38244
8	13	Rezak Bank	27.98603	-92.36697
9	13	Rezak Bank	27.98022	-92.36429
10	13	Rezak Bank	27.97442	-92.36996
11	13	Rezak Bank	27.96006	-92.36854
12	13	Rezak Bank	27.95420	-92.36641
1	14	Sidner Bank	27.93046	-92.36762
2	14	Sidner Bank	27.91368	-92.37398
3	14	Sidner Bank	27.91462	-92.38530
4	14	Sidner Bank	27.91976	-92.39427
5	14	Sidner Bank	27.92306	-92.38792
6	14	Sidner Bank	27.94525	-92.38305
7	14	Sidner Bank	27.94166	-92.37565
8	14	Sidner Bank	27.94231	-92.37189
9	14	Sidner Bank	27.93046	-92.36762
1	15A	Parker Bank—A	27.95067	-92.00294
2	15A	Parker Bank—A	27.94177	-91.99762
3	15A	Parker Bank—A	27.93547	-91.99568
4	15A	Parker Bank—A	27.92937	-91.99981
5	15A	Parker Bank—A	27.93224	-92.02999
6	15A	Parker Bank—A	27.93401	-92.03946
7	15A	Parker Bank—A	27.93958	-92.05015
8	15A	Parker Bank—A	27.95012	-92.05050
9	15A	Parker Bank—A	27.96214	-92.05407
10	15A	Parker Bank—A	27.96630	-92.04745
11	15A	Parker Bank—A	27.96869	-92.04120
12	15A	Parker Bank—A	27.96925	-92.02758
13	15A	Parker Bank—A	27.96678	-92.02175
14	15A	Parker Bank—A	27.95067	-92.00294
1	15B	Parker Bank—B	27.96082	-91.99450
2	15B	Parker Bank—B	27.96432	-91.99285
3	15B	Parker Bank—B	27.96566	-91.99014
4	15B	Parker Bank—B	27.96385	-91.98600
5	15B	Parker Bank—B	27.96149	-91.98639
6	15B	Parker Bank—B	27.95931	-91.98760
7	15B	Parker Bank—B	27.95824	-91.99183
8	15B	Parker Bank—B	27.96082	-91.99450
1	16	Alderdice Bank	28.09726	-91.99328
2	16	Alderdice Bank	28.09474	-91.98619
3	16	Alderdice Bank	28.09569	-91.97526
4	16	Alderdice Bank	28.09184	-91.97361
5	16	Alderdice Bank	28.08410	-91.97273
6	16	Alderdice Bank	28.07506	-91.97457
7	16	Alderdice Bank	28.07053	-91.98465
8	16	Alderdice Bank	28.06959	-91.99347
9	16	Alderdice Bank	28.06819	-92.00512
10	16	Alderdice Bank	28.07026	-92.01321
11	16	Alderdice Bank	28.07562	-92.02032
12	16	Alderdice Bank	28.08058	-92.02436
13	16	Alderdice Bank	28.08463	-92.02577
14	16	Alderdice Bank	28.09024	-92.02296
15	16	Alderdice Bank	28.09487	-92.01231
16	16	Alderdice Bank	28.09627	-92.00735
17	16	Alderdice Bank	28.09507	-92.00008
18	16	Alderdice Bank	28.09726	-91.99328

■ 6. Revise appendix B to subpart L to read as follows:

### **Appendix B to Subpart L of Part 922—Flower Garden Banks National Marine Sanctuary—Terms of Designation**

#### **Preamble**

Under the authority of title III of the Marine Protection, Research, and Sanctuaries Act, as amended (“the Act”), 16 U.S.C. 1431 *et seq.*, 19 separate unique polygon areas of ocean waters and the submerged lands thereunder, along the continental shelf and shelf edge in the northwestern Gulf of Mexico, as described in Article II, are hereby designated as Flower Garden Banks National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreation, research, education, historic and aesthetic resources and qualities of these areas.

#### **Article I—Effect of Designation**

The Act authorizes the Secretary of Commerce to issue such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of a 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. Thus, the act of designation empowers the Secretary of Commerce to regulate the activities listed in Section 1. Listing does not necessarily mean that an activity will be regulated. However, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original designation was made.

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

The Flower Garden Banks National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 121 square nautical miles (160 square miles) of offshore ocean waters, and submerged lands thereunder, along the continental shelf and shelf edge in the northwestern Gulf of Mexico. The entire sanctuary boundary is composed of 19 unique polygons. The precise boundary coordinates for each polygon are listed in appendix A to this subpart.

The sanctuary boundary for Polygon 1 begins at Point 1 and continues in numerical order to Point 13 and contains the submerged feature of Stetson Bank with an area of approximately 1.1 square nautical miles (1.5 square miles), located approximately 71 nautical miles (82 miles) south-southeast of Galveston, Texas. The sanctuary boundary for Polygon 2 begins at Point 1 and continues in numerical order to Point 14 and contains the submerged feature of West Flower Garden Bank with an area of approximately 28.0 square nautical miles (37.1 square miles), located approximately 97 nautical miles (111 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 3 begins at Point 1 and continues in numerical order to

Point 16 and contains the submerged feature of Horseshoe Bank with an area of approximately 21.7 square nautical miles (28.7 square miles), located approximately 102 nautical miles (117 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 4 begins at Point 1 and continues in numerical order to Point 12 and contains the submerged feature of East Flower Garden Bank with an area of approximately 21.0 square nautical miles (27.8 square miles), located approximately 101 nautical miles (116 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 5 begins at Point 1 and continues in numerical order to Point 12 and contains the submerged feature of MacNeil Bank with an area of approximately 2.1 square nautical miles (2.7 square miles), located approximately 103 nautical miles (118 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 6 begins at Point 1 and continues in numerical order to Point 21 and contains the submerged features of Rankin Bank and 28 Fathom Bank with an area of approximately 4.2 square nautical miles (5.6 square miles), located approximately 109 nautical miles (126 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 7 begins at Point 1 and continues in numerical order to Point 13 and contains the submerged features of Bright Bank with an area of approximately 5.8 square nautical miles (7.6 square miles), located approximately 115 nautical miles (133 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 8 begins at Point 1 and continues in numerical order to Point 15 and contains the submerged feature of Geyer Bank within an area of approximately 8.7 square nautical miles (11.5 square miles), located approximately 126 nautical miles (145 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 9A begins at Point 1 and continues in numerical order to Point 16 and contains part of the submerged feature of Elvers Bank within an area of approximately 3.3 square nautical miles (4.4 square miles), located approximately 134 nautical miles (154 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 9B begins at Point 1 and continues in numerical order to Point 7 and also contains part of the submerged feature of Elvers Bank within an area of approximately 0.1 square nautical miles (0.2 square miles), located approximately 133 nautical miles (153 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 10A begins at Point 1 and continues in numerical order to Point 16 and contains part of the submerged feature of McGrail Bank with an area of approximately 3.4 square nautical miles (4.5 square miles), located approximately 142 nautical miles (163 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 10B begins at Point 1 and continues in numerical order to Point 8 and also contains part of the submerged feature of McGrail Bank with an area of approximately 0.1 square nautical miles (0.2 square miles), located approximately 146 nautical miles (168 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 11 begins at Point 1 and continues in numerical order to Point 23

and contains the submerged feature of Bouma Bank with an area of approximately 5.8 square nautical miles (7.7 square miles), located approximately 145 nautical miles (167 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 12 begins at Point 1 and continues in numerical order to Point 18 and contains the submerged feature of Sonnier Bank with an area of approximately 2.3 square nautical miles (3.1 square miles), located approximately 138 nautical miles (159 miles) east-southeast of Galveston, Texas. The sanctuary boundary for Polygon 13 begins at Point 1 and continues in numerical order to Point 12 and contains the submerged feature of Rezak Bank with an area of approximately 2.8 square nautical miles (3.7 square miles), located approximately 151 nautical miles (174 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 14 begins at Point 1 and continues in numerical order to Point 9 and contains the submerged feature of Sidner Bank with an area of approximately 1.5 square nautical miles (2.0 square miles), located approximately 153 nautical miles (177 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 15A begins at Point 1 and continues in numerical order to Point 14 and contains part of the submerged feature of Parker Bank within an area of approximately 5.2 square nautical miles (6.8 square miles), located approximately 168 nautical miles (194 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 15B begins at Point 1 and continues in numerical order to Point 8 and also contains part of the submerged feature of Parker Bank within an area of approximately 0.1 square nautical miles (0.2 square miles), located approximately 171 nautical miles (197 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 16 begins at Point 1 and continues in numerical order to Point 18 and contains the submerged feature of Alderdice Bank within an area of approximately 3.8 square nautical miles (5.0 square miles), located approximately 166 nautical miles (191 miles) east-southeast of Galveston, Texas.

#### **Article III—Characteristics of Area That Give it Particular Value**

The Sanctuary contains a series of underwater features located along the edge of the continental shelf in the northwestern Gulf of Mexico. These features are of interest from both a geological and biological perspective. Formed primarily as the result of the movement of underlying salt deposits (also called salt domes or salt diapirs), and bathed by waters of tropical origin, they contain important geological features, biological habitats and other marine resources of national significance. They contain highly productive marine ecosystems that support a variety of fish and invertebrate communities of biological and economic importance.

The reefs and banks of the northwestern Gulf of Mexico are structurally complex and contain a range of marine habitats, including coral reefs, coralline algal reefs, algal nodule beds, mesophotic and deepwater reefs, and soft bottom communities. The composition,



diversity and vertical distribution of benthic communities on the banks are strongly influenced by the physical environment, including water temperature, turbidity and current regime. Geological features of interest include brine seeps, exposed basalt, methane seeps, and mud volcanoes. East and West Flower Garden Banks, the most well-known of the features, sustain the northernmost living coral reefs on the U.S. continental shelf, considered among the healthiest coral reefs in the Caribbean and Western Atlantic region. A deeper water coral reef also exists at McGrail Bank, consisting primarily of large colonies of blushing star coral (*Stephanocoenia intersepta*) at depths between 140 and 160 feet. These coral reefs are isolated from other reef systems by over 300 nautical miles (342 miles) and exist under hydrographic conditions generally near the northern limit for tropical reef formation. Several other banks, including Stetson, Sonnier, Geyer, and Bright Banks, contain various combinations of non-reef building coral species known collectively as coral communities, comprised of sponges, stony corals, fire coral, leafy algae and coralline algae. The deeper portions of the banks host thriving mid-depth (or "mesophotic") coral habitats characterized by the presence of both light-dependent and deepwater corals, including black corals, gorgonian corals, and associated organisms. Biological communities are distributed among several interrelated biotic zones, including a coralline algae zone, deep reef rocky outcrops, and soft bottom communities. The complex and biologically productive ecological communities of the banks offer a combination of aesthetic appeal and recreational and research opportunity matched in few other ocean areas.

The following are qualitative descriptions of the individual reefs and banks within the Sanctuary; specific boundary coordinates can be found in appendix A to this subpart.

*a. Stetson Bank, Depth Range 56ft–194ft*

Boundaries encompass a claystone/siltstone ring feature of mesophotic coral habitat revealed by high resolution multibeam bathymetric surveys, and subsequently ground-truthed by remotely operated vehicle surveys. These features are surface expressions of the salt dome associated with the feature, and provide habitat for sponges, gorgonians, stony branching corals, black corals, and associated fish and mobile invertebrates.

*b. West Flower Garden Bank, Depth Range 59ft–545ft*

Boundaries encompass mesophotic coral patch reefs to the north, southwest, and east of the existing sanctuary. These reefs provide coralline algae reef habitat for black corals, gorgonians, stony branching corals, and associated fish and mobile invertebrates.

*c. East Flower Garden Bank, Depth Range 52ft–446ft*

Boundaries to encompass mesophotic coral patch reefs to the north and southeast of the existing sanctuary. These reefs provide deep coral habitat for dense populations of black corals, gorgonians, stony branching corals, and associated fish and mobile invertebrates.

*d. Horseshoe Bank, Depth Range 243ft–614ft*

Extensive deepwater habitat and coralline algae reefs in the form of hundreds of patchy outcroppings covering an area of approximately 1.9 miles (3km) wide and having 16.4–49.2ft (5–15m) of relief above the seafloor, with dense assemblages of mesophotic black coral, gorgonians, stony branching corals, sponges, algae invertebrates, and fish; several conical-shaped mud volcanoes clustered near the center of the feature, with one rising 328ft (100m) above the sea floor.

*e. MacNeil Bank, Depth Range 210ft–315ft*

Deep reef bedrock outcrops and coralline algae patch reefs harboring populations of black corals and gorgonians, sponges, fish, and mobile invertebrates.

*f. Rankin/28 Fathom Banks, Depth Range 164ft–571ft*

Rankin Bank is just north of 28 Fathom Bank, and separated from it by a long trough, approximately 1,640-foot (500 m) wide, approximately 6,070-foot (1,850 m) which extends to a depth of approximately 570ft (174 m). The boundaries encompass the shallowest portions of Rankin and 28 Fathom Banks, which harbor coral algae reefs and deep coral reefs with populations of gorgonians, black corals, sponges, and associated fish and mobile invertebrates.

*g. Bright Bank, Depth Range 112ft–384ft*

Bright Bank previously harbored a coral reef on the very shallowest portions of the bank, which sustained extensive damage from salvage and mining activities employing dynamite for excavation activities. The cap is now considered a coral community, and in spite of these impacts, nine species of shallow water scleractinian corals survive, along with two deeper water species. The feature also harbors extensive coralline algae reefs, providing habitat for populations of gorgonians, black corals, sponges, and associated fish and mobile invertebrates.

*h. Geyer Bank, Depth Range 128ft–722ft*

Geyer Bank is a broad, relatively flat fault-bounded structure situated on an active salt diapir. This feature supports a coral community, as well as extensive coralline algae reefs and fields of algal nodules including dense fields of macro-algae, black corals, gorgonians, sponges, and associated fish and mobile invertebrates. Seasonal spawning aggregations of fish are associated with this bank, including enormous numbers of reef butterflyfish.

*i. Elvers Bank, Depth Range 213ft–686ft*

Two discreet polygons have been developed to protect portions of Elvers Bank: A larger polygon encompassing 4.43 square miles on the south side of the feature, and a small polygon, encompassing 0.19 square miles on the north side of the feature. The shallow areas of the bank feature coralline algae reefs and algal nodule fields, and the deeper areas in the southern polygon harbor large deep reef outcroppings, both providing habitat for black corals, gorgonians, sponges, and associated fish and mobile invertebrates. The deep reefs also harbor glass sponge

fields, a feature not documented in any other areas of the sanctuary, as well as a previously undescribed species of black coral.

*j. McGrail Bank, Depth Range 144ft–512ft*

Two discreet polygons have been developed to protect portions of McGrail Bank: A larger claw shaped polygon reaching from northwest to southeast, encompassing 4.54 square miles, and a smaller polygon, encompassing 0.17 square miles, situated on the southeast of the feature that wraps around a conical shaped mound. This bank features unique areas of coral reefs dominated by large colonies of the blushing star coral, *Stephanocoenia intersepta*, with 28% live coral cover in discrete areas (no other known coral reef is dominated by this species). Pinnacles varying in diameter from ~80 to 395 feet (24–120 m) and as tall as ~25 feet (8 m) are found on the southwest rim of the main feature, along east- and southeast-trending scarps leading away from the bank and in concentric fields to the south and southeast of the bank. A significant portion of the depth zone between 145 and 170 feet is dominated by coral colonies up to 5 feet tall, covering an area of approximately 37 acres. At least 14 species of stony corals have been recorded. Deeper portions of this site harbor mesophotic coral habitat for deep coral, coralline algae reefs, and fields of algal nodules. Dense populations of black corals, gorgonians, macro-algae fields, and associated fish and mobile invertebrates are present.

*k. Sonnier Bank, Depth Range 62ft–210ft*

Sonnier Bank consists of a series of isolated clusters of pinnacles comprised of uplifted siltstone and claystone, that rise mostly around the perimeter of a single, roughly circular ring 1.9 miles (3.2km) in diameter. Two peaks are accessible and popular with recreational scuba divers. The peaks are dominated by coral communities featuring fire coral, sponges, and algae. The deeper portions of the feature are fairly heavily silted, but provide habitat for black corals, gorgonians, and associated fish and mobile invertebrates.

*l. Bouma Bank, Depth Range 187ft–322ft*

Bouma Bank is dominated by coralline algae reefs and algal nodule fields, providing habitat for populations of black corals, gorgonians, algae, branching stony coral, clusters of cup coral, and associated fish and mobile invertebrates.

*m. Rezak Bank, Depth Range 197ft–430ft*

Rezak Bank is dominated by coralline algae reefs and extensive algal nodule fields, providing habitat for populations of black corals, gorgonians, algae, and associated fish and mobile invertebrates.

*n. Sidner Bank, Depth Range 190ft–420ft*

Dominated by coralline algae reefs and extensive algal nodule fields providing habitat for populations of black corals, gorgonians, algae, sponges, and associated fish and mobile invertebrates.

*o. Alderdice Bank, Depth Range 200ft–322ft*

This feature includes spectacular basalt outcrops of Late Cretaceous origin

(approximately 77 million years old) representing the oldest rock exposed on the continental shelf offshore of Louisiana and Texas. The outcrops at Alderdice Bank bear diverse, extremely dense assemblages of gorgonians and black corals, sponges, and swarms of reef fish. Mesophotic coralline algae reef habitats below the spires, silted over in areas, provide habitat for dense populations of black corals, gorgonians, sponges, branching stony corals, fields of macro-algae, and associated fish and mobile invertebrates.

*p. Parker Bank, Depth Range 187ft–387ft*

Two discreet polygons have been developed to protect portions of Parker Bank. A larger polygon bounding the central portion of the features, encompassing 6.82 square miles, and a smaller polygon to the east, encompassing 0.14 square miles. These boundaries protect the shallowest portions of the bank, which harbor coralline algae reefs and algal nodule fields and support populations of plating stony corals, black corals, gorgonians, sponges, macro-algae, and associated fish and mobile invertebrates.

#### Article IV—Scope of Regulations

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

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

- a. Anchoring or otherwise mooring within the Sanctuary;
- b. Discharging or depositing, from within the boundaries of the Sanctuary, any material or other matter;
- c. Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter;
- d. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;
- e. Exploring for, developing or producing oil, gas or minerals within the Sanctuary;
- f. Taking, removing, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, catch, collect, harvest, feed, injure, destroy or cause the loss of, a Sanctuary resource;
- g. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource.
- h. Possessing or using within the Sanctuary any fishing gear, device, equipment or other apparatus.
- i. Possessing or using airguns or explosives or releasing electrical charges within the Sanctuary.
- j. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

##### Section 2. Consistency With International Law

Any regulation of activities listed in Section 1 of this Article will be applied and enforced as mandated by 16 U.S.C. 1435(a).<sup>1</sup>

##### Section 3. 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 activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

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

##### Section 1. Fishing Regulations, Licenses, and Permits

The regulation of fishing is authorized under Article IV. All regulatory programs pertaining to fishing, including fishery management plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, shall remain in effect. Where a valid regulation promulgated under these programs conflicts with a Sanctuary regulation, the regulation deemed by the Secretary of Commerce or designee as more protective of Sanctuary resources and qualities shall govern.

##### Section 2. Other Licenses, Regulations, and Permits

If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Secretary of Commerce or designee as more protective of Sanctuary resources and qualities shall govern.

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal authority of competent jurisdiction, or any valid right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. However, the Secretary of Commerce or designee may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Accordingly, the prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with Sanctuary regulations regarding the

certification of such authorizations and rights (e.g., notifies the Secretary or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Secretary or designee as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

Pending final agency action on the certification request, such holder may exercise such authorization or right without being in violation of any prohibitions set forth in the Sanctuary regulations, provided the holder is in compliance with Sanctuary regulations regarding certifications.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity conducted in accordance with the scope, purpose, terms, and conditions of the National Marine Sanctuary permit issued by the Secretary or designee in accordance with the Sanctuary regulations. Such permits may only be issued if the Secretary or designee finds that the activity for which the permit is applied will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary.

The prohibitions set forth in the sanctuary regulations shall not apply to any activity conducted in accordance with the scope, purpose, terms, and conditions of a Special Use permit issued by the Secretary or designee in accordance with section 310 of the Act. However, in areas where sanctuary regulations prohibit oil, gas, or mineral exploration, development or production, the Secretary or designee may in no event, permit or otherwise, approve such activities in that area. Any leases, licenses, permits, approvals, or other authorizations issued after the effective date of designation authorizing the exploration or production of oil, gas, or minerals in that area shall be invalid.

##### Section 3. Department of Defense Activities

The prohibitions in § 922.122(a)(2) through (11) do not apply to activities being carried out by the Department of Defense as of the effective date of designation. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in § 922.122(a)(2) through (11) do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impact on Sanctuary resources and qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impact on Sanctuary resources and qualities may be exempted from the prohibitions in § 922.122(a)(2) through (11) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be

<sup>1</sup> Based on the legislative history of the NMSA, NOAA has long interpreted the text of 16 U.S.C. 1435(a) as encompassing international law, including customary international law.

carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

#### Article VI—Alterations to This Designation

The terms of designation may be modified only by the same procedures by which the original designation is made, including public hearings; consultation with any appropriate Federal, State, regional and local agencies; review by the appropriate Congressional committees; and approval by the Secretary of Commerce or designee.

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1223

[Docket No. CPSC-2013-0025]

#### Revisions to Safety Standard for Infant Swings

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Direct final rule.

**SUMMARY:** In November 2012, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for infant swings under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the ASTM voluntary standard that was in effect for infant swings at the time. The CPSIA sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when a voluntary standards organization revises the standard. Consistent with the CPSIA update process, the Commission issued a direct final rule in October 2013, to revise the incorporation by reference for the mandatory swings standard, to reflect ASTM'S revised voluntary standard. Since 2013, ASTM has revised the voluntary standard for infant swings three times. This direct final rule updates the mandatory standard for infant swings to incorporate by reference ASTM's 2020 version of the voluntary standard.

**DATES:** The rule is effective on April 3, 2021, unless CPSC receives a significant adverse comment by February 18, 2021.

If CPSC receives such a comment, it will publish a notice in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 3, 2021.

**ADDRESSES:** You can submit comments, identified by Docket No. CPSC-2013-0025, by any of the following methods:

**Electronic Submissions:** Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through <https://www.regulations.gov>. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

**Mail/hand delivery/courier Written Submissions:** Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you may email such submissions to: [cpsecos@cpsec.gov](mailto:cpsecos@cpsec.gov).

**Instructions:** All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

**Docket:** For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2013-0025, into the "Search" box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-6820; email: [kwalker@cpsec.gov](mailto:kwalker@cpsec.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

##### 1. Statutory Authority

Section 104(b)(1) of the CPSIA requires the Commission to assess the

effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be "substantially the same as" the voluntary standard, or may be "more stringent than" the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Section 104(b)(4)(B) of the CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. When rejecting a revision, the Commission must notify the voluntary standards organization of this determination within 90 days of receiving notice of the revision. If the Commission does not take this action to reject the revised standard, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision (or a later date specified by the Commission in the **Federal Register**). 15 U.S.C. 2056a(b)(4)(B).

##### 2. Safety Standard for Infant Swings

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant swings, codified in 16 CFR part 1223. The rule incorporated by reference ASTM F2088-12a, *Standard Consumer Safety Specification for Infant Swings*, with modifications to the labeling and test method requirements.<sup>1</sup> 77 FR 66703 (Nov. 7, 2012). At the time the Commission published the final rule, ASTM F2088-12a was the current version of the voluntary standard.

In April 2013, ASTM notified CPSC that it had issued a revised standard for infant swings, ASTM F2088-13. In accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, the revised standard became the new

<sup>1</sup> The modifications included changes to the required warning label content and a revised test method to address an omission in the voluntary standard for toy mobiles attached to swings.