

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production:

(1) On bypassed acreage, if the acreage is bypassed due to the breakdown or non-operation of equipment or facilities;

(2) On bypassed acreage, if acreage to be bypassed is selected based on the availability of a crop insurance payment;

(3) Due to the processing tomatoes not being timely harvested, unless such delay in harvesting is solely and directly due to an insured cause of loss;

(4) Due to your failure to follow the requirements contained in the processor contract;

(5) Due to damage that occurs to unharvested production after you deliver the production required by the processor contract; or

(6) Due to failure to market the tomatoes unless such failure is due to actual physical damage from a cause specified in section 11(a).

12. Replanting Payment

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the crop sustained a loss exceeding 50 percent of the plant stand and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 3 tons, multiplied by your price election, multiplied by your share.

13. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the tomatoes in the unit; or

(2) Discontinuance of harvest on a unit on which production remains;

(b) Within 3 days of the date harvest should have started on any acreage that will not be harvested and document why the acreage was bypassed. Failure to provide such information may result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit and must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during harvest. If you fail to notify us we may consider all such production to be undamaged and include it as production to count.

14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result in section 14(b)(1) by the respective price election by type, if applicable;

(3) Totaling the results in section 14(b)(2);

(4) Multiplying the total production to be counted, by type if applicable, (see subsection 14(c)) by the respective price election;

(5) Totaling the results in section 14(b)(4);

(6) Subtracting the result in section 14(b)(5) from the result in section 14(b)(3); and

(7) Multiplying the result in section 14(b)(6) by your share.

(c) The total production to count, specified in tons, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) For which you fail to provide production records that are acceptable to us; or

(E) That is bypassed unless the acreage was bypassed due to a cause of loss stated in section 11(a).

(ii) Production lost due to uninsured causes;

(iii) Potential production on insured acreage that you intend to put to another use or abandoned, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested production (in tons) delivered to the processor which meets the quality requirements of the processor

contract (expressed as usable or payable weight).

(3) All harvested tomato production delivered to processor which does not meet the quality requirements of the processor contract due to not being timely delivered.

(d) Once harvest has begun on any acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnity payable will be limited to an amount based on the number of tons of production necessary to fulfill the quantity of production remaining to be delivered under the processor contract consistent with the number of acres planted.

15. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 15(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on June 16, 1997.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 97-16273 Filed 6-20-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 970404078-7078-01]

RIN 0648-AE41

Proposed Thunder Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National

Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to designate an approximately 808 square mile area of waters encompassing and surrounding Thunder Bay, Lake Huron, Michigan, and the submerged lands thereunder as a National Marine Sanctuary. This document publishes the proposed Designation Document for the proposed Sanctuary and summarizes the draft management plan. The draft management plan details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the proposed Sanctuary. By this notice, NOAA also proposes regulations to implement the proposed designation and regulate activities consistent with the provisions of the proposed Designation Document. The regulations include boundary coordinates for the proposed Sanctuary. Finally, this notice announces the public availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) prepared for the proposed designation.

DATES: comments must be received by September 22, 1997.

ADDRESSES: Comments must be submitted to Stephanie R. Thornton, Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, SSMC4, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Ellen Brody at (313) 741-2270 or Ed Lindelof at (301) 713-3137, ext. 131.

SUPPLEMENTARY INFORMATION:

I Background

The National Marine Sanctuaries Act (NMSA), as amended, 16 U.S.C. 1431 *et seq.* (also known as title III of the Marine Protection, Research, and Sanctuaries Act), authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national Marine Sanctuaries to protect their conservation, recreational, ecological, historical, research, educational or esthetic qualities.

In January 1982, NOAA published a program Development plan (PDP) for the National Marine Sanctuary Program, describing the Program's mission and

goals; site identification and selection criteria; and the nomination and designation process. Based on the PDP and Program regulations, NOAA published a proposed Site Evaluation List (SEL) of highly-qualified marine sites identified and recommended to NOAA by regional resource evaluation teams (RRETs), based on the Program's mission and goals. Comments on the proposed SEL and additional site recommendations were solicited from the public during the autumn of 1982. The Great Lakes RRET met initially in May 1982 and selected Thunder Bay as one of five potential SEL sites, based in part on strong local and regional support evidenced during the public comment period.

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

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

- (1) The area is of special national significance due to its resource or human-use values;
- (2) Existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;
- (3) Designation of the area as a national marine sanctuary will facilitate the objectives in the subparagraph (2); and
- (4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

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

The authority of the Secretary to designate National Marine Sanctuaries has been delegated to the Under Secretary of Commerce for Oceans and

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

The Thunder Bay region contains over 160 shipwrecks that span more than a century of Great Lakes maritime history. Although many of these wrecks have been identified, many more are thought to be in the Thunder Bay area and have yet to be located. Collectively, Thunder Bay's shipwrecks present a "microcosm" of the Great Lakes commercial shipping industry. Based on studies undertaken to date, there is strong evidence of Thunder Bay's national historical significance, as the sunken vessels reflect transitions in ship architecture and construction methods, from wooden sailboats to early iron hulled steamers. Additional significance is attached to the collection (or number) of shipwrecks in the Thunder Bay region, if not to individual vessel characteristics. A large array of shipwrecks exist in the Thunder Bay region, including virtually all types of vessels used on the open Great Lakes. These vessels were engaged in nearly every type of trade, thereby linking Thunder Bay inextricably to Great Lakes commerce.

The historical themes encompassed by existing investigation of shipwrecks in Thunder Bay (Martin 1996) include:

- Prehistoric transportation;
- Early trade and exploration by Europeans;
- Early settlement and military affairs (1679-1860);
- Westward expansion (1763-1898);
- Business and agricultural products;
- Lumber, coal, stone, and ore;
- Foreign trade and the St. Lawrence Seaway;
- Transportation technology (commercial sail);
- Transportation technology (commercial steam); and
- Transportation technology (motor-powered and unpowered—vessels).

From even the most general of observations, Thunder Bay's collection of shipwrecks may be considered nationally significant historically, as the wrecks present a broad history of Great Lakes culture and commercial history. A recent study also has investigated the potential of Thunder Bay for possible National Historic Landmark status (Martin 1996).

On July 15, 1991, NOAA published a **Federal Register** notice announcing the active candidacy of Thunder Bay as a

potential National Marine Sanctuary (56 *FR* 32178). Following this notice, NOAA conducted two public scoping meetings (September 29 and 30, 1991) in Lansing and Alpena, Michigan, to gather information and comments from individuals, organizations, and government agencies on the range and significance of issues related to the Sanctuary proposal (56 *FR* 51686). Over the next two to three years, there followed a series of meetings of informal working groups to bring together local, state, federal, and tribal agencies, organizations, and business to discuss the scope of a National Marine Sanctuary at Thunder Bay.

In 1994, a Thunder Bay Core Group was formed, whose members represent local, state, federal and tribal agencies. The Core Group assisted in the development and review of management alternatives, in cooperation with a variety of community interests. By mid-1995, the Core Group had narrowed the management focus of a potential Thunder Bay National Marine Sanctuary to underwater cultural resources (e.g., shipwrecks). This recommended focus was presented and agreed upon at a community meeting in June 1995. Since that time, development of the Draft Environmental Impact Statement/Draft Management Plan has proceeded in accordance with the recommendations of the Core Group.

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

After the comments received during the comment period have been considered, NOAA, in consultation with the State of Michigan, will determine whether to proceed with designation of the Sanctuary. If it is decided to proceed, a final environmental impact statement and management plan will be prepared, and a notice of designation together with final regulations implementing the designation may be published in the **Federal Register**. The designation (and any of its terms) and regulations would take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published, unless the Governor of the State of Michigan certifies within the forty-five-day period to the Secretary of Commerce that the designation or any of

its terms is unacceptable. In such case the designation or unacceptable term cannot take effect in the area of the Sanctuary lying within State of Michigan waters.

II. Summary of Draft Environmental Impact Statement/Management Plan

The DEIS/MP for the proposed Thunder Bay National Marine Sanctuary sets forth the Sanctuary's location and provides details on the cultural and historical resources and uses of the Sanctuary. The DEIS/MP describes the Sanctuary goals and objectives, research and education programs, and details the specific activities to be taken in each program. The DEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities.

Goals and Objectives

The highest priority management goal would be to protect the underwater cultural resources of the proposed Sanctuary. The specific objectives of protection efforts are to: (1) coordinate policies and procedures among the agencies sharing responsibility for protection and management of resources; (2) encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs); (3) develop an effective and coordinated program for the enforcement of Sanctuary regulations; (4) promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use; (5) ensure that the appropriate management agency incorporates research results and scientific data into effective resource protection strategies; and (6) reduce threats to Sanctuary resources.

The primary function of the Sanctuary's resource protection program would be to ensure, through cooperative stewardship, the protection of Thunder Bay's underwater cultural resources, for their long-term integrity and use. cooperative stewardship, as described by the Michigan Underwater Preserve Council and other organizations, involves the active participation in resource protection activities by agencies, organizations and businesses. The Sanctuary would support the State's goal for increased protection of resources of historic value. Stewardship is important to achieving this primary goal, as is Sanctuary coordination with existing State and regional resource protection plans. Such plans include Michigan's Underwater Preserve

Program. The Thunder Bay Underwater Preserve was created by the State, in part, to protect abandoned property of historical value. Sanctuary resource protection activities could include:

- Coordinating management agencies (e.g., NOAA, the State of Michigan's Department of Environmental Quality, Department of State, and Department of Natural Resources);
- Science-based decisionmaking, including baseline inventory and assessment activities;
- Developing and maintaining a mooring buoy system; and
- Providing additional support for enforcement.

Research Program

Effective management of the proposed Sanctuary would require the initiation of a Sanctuary research program. The purpose of Sanctuary research activities is to improve understanding of the Thunder Bay environment, and its cultural and historical resources, and to resolve specific management problems. Research results would be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for protection and management of the Sanctuary's cultural and historical resources.

Specific objectives for the research program would be to: (1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary; (2) incorporate research results into the interpretive/education program in a format useful for the general public; (3) focus and coordinate data collection efforts on the identification, condition and location of submerged shipwrecks within the Sanctuary; (4) encourage studies that integrate research on submerged shipwrecks and Great Lake processes; (5) initiate a monitoring program to assess environmental changes as they occur due to natural and human processes; (6) identify the range of effects on Sanctuary resources that would result from predicted changes in human activity or natural phenomena; and (7) encourage information exchange among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management.

The Sanctuary Research Program would complement the Michigan Underwater Preserve Program by supporting the inventory, assessment, and monitoring of Sanctuary underwater cultural resources. The Sanctuary Research Program also would

be complementary to the Michigan Department of State goal of documenting more fully Michigan's historic resources. An additional benefit of the Sanctuary Research Program would be the potential assistance in implementation of coastal management plans, through identification and evaluation of these resources.

Priorities for Sanctuary research activities and strategies would be incorporated into a Sanctuary Research Plan, to be developed if Sanctuary designation occurs. Possible Sanctuary research priorities could include:

- Conducting preliminary historical research (i.e., completion of research on all sunken vessels identified in the Thunder Bay vicinity). These data would be important to further analysis of the collection of wrecks and their eventual interpretation for both popular and scholarly audiences;
- Inventory and locating historical materials, involving research of collections at local and regional archives, as well as those of private owners;
- Conducting a full scale contextual theme study to develop a database of Great Lakes shipwrecks, to enable further evaluation of Thunder Bay region shipwrecks and possible formal nomination to the U.S. Department of the Interior for National Landmark status; and
- Producing a historical guide to maritime resources of the Thunder Bay region, to be available for a variety of user groups.

These research activities would aid in interpreting Thunder Bay's history within regional, national, and international contexts, and would involve local communities in discovering their maritime heritage. Additional possible research and monitoring priorities include archaeological inventory and assessment of Thunder Bay's shipwrecks, and investigation into impacts of zebra mussels on shipwrecks and recreational diving.

Education Program

The Sanctuary Educational Program's primary function would be to promote understanding, appreciation, and involvement in the protection and stewardship of Thunder Bay's underwater cultural resources. The goal for education programs would be to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources. The management objectives designed to meet this goal would be to: (1) Provide the public with information on the Sanctuary and its goals and

objectives, with an emphasis on the need to use Sanctuary resources wisely to ensure their long-term viability; (2) broaden support for Sanctuary management by offering programs suited to visitors with a range of diverse interests; (3) provide for public involvement by encouraging feedback on the effectiveness of education programs; (4) collaborate with Sanctuary management staff in extension and outreach programs; and participate in other volunteer programs; and (5) collaborate with other organizations to provide educational services complementary to the Sanctuary program. Possible activities would include a wide range of programs, facilities, and services offered through schools; interpretation; and outreach activities. Program activities would support the priorities of the Michigan Underwater Preserve Program, particularly those of the Thunder Bay Underwater Preserve. Sanctuary education activities would complement existing efforts relating to underwater cultural resources and the Thunder Bay area's maritime heritage.

Individual educational activity priorities would be identified in an Education Plan, to be developed if the Sanctuary is designated. Possible education activities include:

- Working cooperatively with Great Lakes educators (i.e., schools, colleges and universities, MSU Extension, museums) and other agencies, organizations and businesses interested in Great Lakes education to identify education themes based on the maritime cultural landscape focus of the Sanctuary (e.g., industrial development, western expansion, relationships between cultural resources and the natural environment);
- Utilizing existing information on Great Lakes education programs to identify those which support Sanctuary education themes. The Sanctuary could then work cooperatively to complement, and assist in maintaining and enhancing these programs. Examples of existing programs include the Elder Hostel program, and the signage, displays and materials along the riverwalk trail;
- Identifying and supporting a network of volunteers to help enhance and maintain activities that are consistent with Sanctuary education themes. The network could utilize community expertise and interests in matching volunteers with needed activities. Training, support, and incentives could be provided to volunteers as needs and interests arise;
- Establishing remote video hook-ups of researchers inventorying and documenting the shipwrecks.

Utilization of this technology would provide visual access to shipwrecks for non-drivers; and

- Developing a "Thunder Bay Shipwreck Trail." The Sanctuary could select and interpret a selection of shipwrecks to develop a "shipwreck trail" that would highlight Thunder Bay's maritime heritage. Themes would be developed and matched with appropriate wreck sites to educate visiting divers and non-divers about such subjects as historical ship construction, Great Lakes shipping, the effect of environmental processes on shipwrecks, and the effects of salvage on historic shipwrecks.

Sanctuary Administration

The Sanctuary Administration Program would focus on the roles and responsibilities of the agencies, organizations, and businesses that would be involved in operation of the Sanctuary. Successful operation of the proposed Sanctuary would be possible only through cooperative efforts of appropriate local, state, federal, and tribal agencies, organizations and businesses. This section also discusses potential Sanctuary staff and facilities, including staff roles, office establishment in Alpena, with possible satellite offices (if needed in the future), and development of a Great Lakes education center, which would enhance education opportunities for both local residents and visitors to the region.

The Sanctuary's goal for visitor management would be to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives would be to: (1) Provide relevant information about Sanctuary regulations, use policies and standards; (2) collaborate with public and private organizations in promoting compatible uses of the Sanctuary; (3) encourage the public who use the Sanctuary to respect sensitive Sanctuary resources; and (4) monitor and assess the current levels of use to identify and control potential degradation of Sanctuary resources and minimize potential user conflicts.

The possible establishment of a Sanctuary Advisory Council (SAC) is discussed as a mechanism to provide advice and recommendations to the Sanctuary Manager about issues related to Sanctuary programs and implementation. The SAC would encourage community participation in the management of the proposed Sanctuary. Members of a Thunder Bay SAC may not exceed fifteen in number,

and would be determined by NOAA, in consultation with the State of Michigan.

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

III. Proposed Designation Document

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities subject to regulation by the Secretary 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. Thus, the terms of designation serve as a constitution for the Sanctuary. The proposed Designation Document follows:

Proposed Designation Document for the Proposed Thunder Bay National Marine Sanctuary

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

Article I: Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, historical, research, and educational resources and qualities of the Thunder Bay National Marine Sanctuary (the "Sanctuary"). Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that an activity will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

Article II: Description of the Area

The Sanctuary boundary encompasses a total of approximately 808 square miles of waters, and the submerged lands thereunder, surrounding Thunder Bay, Lake Huron, Michigan. The boundary forms an approximately rectangular area by extending along the ordinary high water mark of the Michigan shoreline from Presque Isle Lighthouse, at 45 21.4 N latitude, south to Sturgeon Point Lighthouse, at 44 42.7 N latitude, and lakeward from those points along latitude lines to 83 W longitude. The precise boundary is set forth in Appendix I to this Designation Document.

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

Thunder Bay and its surrounding waters contain over 160 shipwrecks spanning more than a century of Great Lakes maritime history. Virtually every type of vessel used on open Great Lakes areas has been documented in the Thunder Bay region, linking Thunder Bay inextricably to Great Lakes commerce. Most of the Great Lakes trades had a national, and sometimes an international, significance, and resulted in uniquely designed vessels. Although not all of Thunder Bay's shipwrecks have been identified, based on studies undertaken to date, there is strong evidence of the Bay's national historic significance. The sunken vessels reflect transitions in ship architecture and construction methods, from wooden sailboats to early iron-hulled steamers.

Several major conclusions regarding Thunder Bay's shipwrecks may be drawn from research and analysis undertaken to date: they are representative of the composition of the Great Lakes merchant marine from 1840 to 1970; they provide information on the various phases of American westward expansion; they provide information on the growth of American extraction and use of natural resources; they illustrate the various phases of American industrialization; one shipwreck (Issac M. Scott) provides the vehicle for study and interpretation of a specific event (the Great Storm of 1913) that had strong repercussions nationally, regionally and internationally; and they provide interpretive material for understanding American foreign inter-continental trade within the Great Lakes.

Thunder Bay was established as the first State of Michigan Bottomland Preserve in 1981, to protect these underwater cultural resources. Increasing public interest in underwater cultural resources underscores the

importance of continued efforts to discover, explore, document and study the Bay's shipwrecks.

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, historical, research and educational resources and qualities of the area:

- a. Disturbing, moving, removing or injuring, possessing, or attempting to disturb, move, remove, injure, or possess an underwater cultural resource;
- b. Drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of:
 - (i) Anchoring vessels;
 - (ii) Traditional fishing operations;
 - (iii) Minor projects as currently defined in R. 322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451 (1994), as amended, that do not adversely affect underwater cultural resources; or
- c. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the NMSA or any regulations issued under the NMSA.

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

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

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

Section 1. Fishing Regulations, Licenses, and Permits. Fishing in the

Sanctuary shall not be regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated other than under the Act by Federal, State, Tribal and local authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder.

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

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

Article VI. Alteration of This Designation

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

Appendix I. Proposed Thunder Bay National Marine Sanctuary Boundary Coordinates

(Appendix I will set forth the final Sanctuary boundary after consideration of comments received on the DEIS/MP.)

End of Proposed Designation Document.

IV. Summary of Proposes Regulations

The proposed regulations would set forth the boundary of the proposed Thunder Bay National Marine Sanctuary; prohibit a narrow range of activities; and establish certification and permitting procedures. Other provisions of the existing National Marine Sanctuary Program regulations would also apply to the Sanctuary. These include the regulations for certification of existing permits and other authorizations, notification and review procedures to conduct otherwise prohibited activities, setting forth the maximum per day penalties for violating Sanctuary regulations, and establishing procedures for administrative appeals.

Specifically, the proposed regulations would add a new Subpart R to part 922, title 15, Code of Federal Regulations.

Proposed § 922.190 and proposed appendix A to subpart R would set forth the boundary of the Sanctuary.

Proposed § 922.191 would define various terms used in the regulations. Sanctuary resources would be defined to mean any underwater cultural resource. Underwater cultural resource would be defined as "any submerged resource possessing historical, cultural, or archaeological significance, including shipwrecks, sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events." This definition would also state that "[h]istorical resources include 'historical properties,' as defined under the National Historic Preservation Act, as amended, and its implementing regulations, as amended." That Act defines "historic properties" as "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource."

State of Michigan agency representatives suggested NOAA include resource that are significant primarily due to their recreational attraction and use within the definition of underwater cultural resources, similar to provisions of Part 761, Aboriginal Records and Antiquities of Public Law 451 (1994), as amended. However, NOAA's focus has been on those resources that are significant due to their historical, cultural, or archaeological significance. Further, many of the resources within NOAA's proposed definition would include sites that enjoy a substantial amount of recreational use. Consequently, NOAA

has preliminarily determined that the proposed definition should not be expanded, but specifically requests comments on this issue.

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

Proposed § 922.192 would prohibit a narrow range of activities and thus make it unlawful to conduct them. However, the prohibited activities could be conducted lawfully if:

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

(2) Conducted pursuant to a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or to any valid right of subsistence use or access, in existence as of the effective date of this designation subject to certification by the Director of the Office of Ocean and Coastal Resource Management under § 922.193 and § 922.47; or

(3) Conducted in accordance with the scope, purpose, terms and conditions of a State or Federal permit issued pursuant to § 922.193 and § 922.49; a National Marine Sanctuary permit issued pursuant to § 922.193 and § 922.48; or a Special Use permit issued pursuant to section 310 of the NMSA.

The first activity prohibited would be disturbing, moving, removing or injuring, possessing, or attempting to disturb, move, remove or injure, or possess an underwater cultural resource, from within the boundary of the Sanctuary. The intent of this regulation is to protect the underwater cultural resources of the Sanctuary for the benefit of the public through, for example, education, observation *in situ*, and research.

The second activity prohibited would be drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of:

(a) Anchoring vessels; (b) traditional fishing operations; or (c) minor projects that the State Archaeologist certifies will not adversely affect underwater cultural resources. Appendix B to Subpart R lists the minor projects that may fall within this latter exception; taken from the current version of R 322.1013 of Part 325, Great Lakes

Submerged Lands of Public Act 451. The intent of this regulation is to protect the underwater cultural resources of the Sanctuary from the harmful effects of activities such as, but not limited to, dredging, excavations, drilling into the lakebottom, and dumping of dredged materials.

A third prohibition would make it unlawful to interfere with, obstruct, delay or prevent an investigation, search, seizure or disposition of seized property in connection with enforcement of the NMSA or any regulations issued under the NMSA.

Proposed § 922.193 would provide for certification by the Director of OCRM of activities conducted pursuant to a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or to any valid right of subsistence use or access, in existence as of the effective date of Sanctuary designation.

Proposed § 922.194 would provide for the conduct of activities prohibited by Sanctuary regulations at § 922.192(a) (1) through (2), provided that the activity is conducted in accordance with the scope, purpose, manner, terms and conditions of a State of Michigan permit (State Permit) which the State Archaeologist certifies is consistent with the Programmatic Agreement among NOAA, the State and the Advisory Council on Historic Preservation, developed pursuant to the NMSA and section 106 of the National Historic Preservation Act (NHPA). Such State Permits are deemed to have met the "authorization" requirements of 15 CFR § 922.49 of the National Marine Sanctuary Program regulations. If a State Permit is not certified as consistent with the Programmatic Agreement, the applicant would be required to follow the procedures of 15 CFR § 922.49 to obtain an individual Sanctuary authorization of the State Permit. Such activity would also be subject to section 106 of the NHPA. If there is only a Federal permit applicable to the activity, the applicant must follow the procedures of 15 CFR § 922.49 to obtain an individual Sanctuary authorization of the Federal permit, subject to section 106 of the NHPA. Finally, if there is no State or Federal permit required to conduct the prohibited activity, the person must obtain a Sanctuary permit pursuant to 15 CFR § 922.48 of the NMSP regulations to conduct such activity, subject to section 106 of the NHPA. For a proposed activity not prohibited by Sanctuary regulations but that may impact Sanctuary resources, NOAA may review state permit applications for such activity during

identified public comment periods and provide comments to the Michigan Department of Environmental Quality, the Michigan Department of State, and other management agencies, as appropriate.

As appropriate, the Director of OCRM would coordinate with the State of Michigan, governing bodies of Tribes with reservations affected by the Sanctuary, and representatives of adjacent county governments, regarding areas of mutual concern and threats to Thunder Bay's underwater cultural resources. The Director may enter into memoranda of understanding regarding such coordination to further the goals of the Sanctuary.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304 of the NMSA also requires the Secretary to submit to the appropriate Congressional Committees, on the same day this notice is published, documents, including an executive summary, consisting of the terms of the proposed designation, the proposed regulations and the DEIS/MP. In accordance with section 304, the required documents are being submitted to the appropriate Congressional Committees.

National Environmental Policy Act

Section 304 of the NMSA, 16 U.S.C. 1434, requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the DEIS be made available to the public. NOAA has prepared a DEIS/MP for proposed designation of the Thunder Bay National Marine Sanctuary. The DEIS/MP is available at the addresses listed in the Address section of this proposed rule.

Executive Order 12866: Regulatory Impact

NOAA has concluded that this regulatory action is not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in:

(1) An annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety;

(2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlements,

grants, user fees, or loan programs or rights and obligations of such recipients; or

(4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12612: Federalism Assessment

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

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule issued under authority of the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.*, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities as follows:

This proposed rule implements the proposed designation of the Thunder Bay National Marine Sanctuary (TBNMS or Sanctuary). The primary purpose of the proposed Sanctuary would be to protect shipwrecks and other underwater cultural resources. The proposed Sanctuary regulations prohibit the following two activities: (1) disturbing, moving, removing or injuring, possessing, or attempting to disturb, move, remove or injure, or possess an underwater cultural resource; and (2) drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of: (i) anchoring vessels; (ii) traditional fishing operations; or (iii) minor projects that do not adversely affect underwater cultural resources. The regulations, if adopted as proposed, would pertain solely to protection of underwater cultural resources and would not be expected to have a significant impact on a substantial number of small businesses because they would not eliminate or curtail most existing recreational or commercial activities (e.g., recreational diving, sport fishing and hunting, commercial fishing, charter operations, or commercial shipping). Although limited in number, commercial salvage companies and businesses that sell

shipwreck artifacts and other archaeological materials may be adversely impacted because they could not remove or injure underwater cultural resources without a permit. However, such impacts will not be significant because the entire Sanctuary is within State of Michigan waters and commercial salvage and sale of artifacts are already subject to state regulations. Further, the proposed Sanctuary regulations are consistent with prohibitions already in place under State law for the Thunder Bay Underwater Preserve, which is encompassed by the Sanctuary, designated by the State in 1981. There have been no significant commercial shipwreck salvage or "treasure hunting" operations in the Thunder Bay region since the State designated the Thunder Bay Underwater Preserve. Moreover, since 1980, there have been only seven salvage permits issued by the State for removal or alteration of shipwrecks or associated artifacts in the region. Consequently, the rule is not expected to significantly impact a substantial number of small business entities.

Accordingly, a Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

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

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act. The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the final activities are consistent with the management goals for the Sanctuary. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 10 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information will have practical utility; (b) the accuracy of NOAA's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Desk Officer for NOAA); and to Richard Roberts, Room 724, 6010 Executive Boulevard, Rockville, MD 20852.

Unfunded Mandates Reform Act of 1995

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

List of Subjects in 15 CFR Part 922

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 13, 1997.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

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

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

2. Section 922.1 is revised as follows:

§ 922.1 Applicability of regulations.

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

3. Section 922.40 is revised to read as follows:

§ 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through R is

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

4. Section 922.41 is revised to read as follows:

§ 922.41 Boundaries.

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

5. Section 922.42 is revised to read as follows:

§ 922.42 Allowed activities.

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

6. Section 922.43 is revised to read as follows:

§ 922.43 Prohibited or otherwise regulated activities.

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

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

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

* * * * *

(b) The prohibitions listed in subparts F through P, or subpart R do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective

date of the regulations in subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the director deems necessary to achieve the purposes for which the Sanctuary was designated.

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

§ 922.48 National Marine Sanctuary permits—application procedures and issuance criteria.

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

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

* * * * *

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in subparts F through O, or subpart R, as appropriate. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

* * * * *

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

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

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

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

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

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

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

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

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

* * * * *

§ 922.50 [Amended]

10. Section 922.50 is amended by replacing "L through P" with "L through P, and subpart R" wherever "L through P" is found within this section.

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

Subpart R—Thunder Bay National Marine Sanctuary

922.190 Boundary.

922.191 Definitions.

922.192 Prohibited or otherwise regulated activities.

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

922.194 Permit procedures and criteria.

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

Appendix B to Subpart R of Part 922—Minor Projects for Purposes of Section 922.192(a)(2)(iii)

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

Subpart R—Thunder Bay National Marine Sanctuary

§ 922.190 Boundary.

(a) The Thunder Bay National Marine Sanctuary (Sanctuary) consists of an area of approximately 808 square miles of surface waters of Lake Huron and the submerged lands thereunder, over and around the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark of the Michigan shoreline from Presque Isle Lighthouse, at 45° 21.4' N latitude, south to Sturgeon Point Lighthouse, at 44° 42.7' N latitude, and lakeward from those points along latitude lines to 83° W longitude. The coordinates of the boundary are set forth in Appendix A to this subpart.

(b) [Reserved].

§ 922.191 Definitions.

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

Minor project means any project listed in Appendix B to this subpart.

Programmatic Agreement means the agreement among NOAA, the Federal Advisory Council on Historic Preservation, and the State of Michigan, developed pursuant to the NMSA and section 106 of the National Historic Preservation Act, setting forth the procedures for review and approval of State Permits which authorize activities prohibited by the Sanctuary regulations.

Sanctuary resource means any underwater cultural resource as defined in this section.

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

State Permit means leases, permits, licenses, approvals, or other authorizations issued by the State of Michigan for the conduct of activities or projects within the Thunder Bay National Marine Sanctuary that are prohibited by the regulations at section 922.192.

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation as identified in the

Environmental Impact Statement and Management Plan for the Sanctuary.

Underwater cultural resource means any submerged resource possessing historical, cultural, or archaeological significance, including shipwrecks, sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include "historical properties," as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended.

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

§ 922.192 Prohibited or otherwise regulated activities.

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

(1) Disturbing, moving, removing or injuring, possessing, or attempting to disturb, move, remove or injure, or possess an underwater cultural resource.

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

(i) Anchoring vessels;
(ii) Traditional fishing operations; or
(iii) Minor projects that do not adversely affect underwater cultural resources.

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

(b) The prohibitions in paragraphs (a) (1) and (2) of this section do not apply to valid law enforcement activities, or any activity necessary to respond to an emergency threatening life or the environment.

(c) The prohibitions in paragraphs (a) (1) and (2) of this section do not apply to any activity: certified by the Director pursuant to § 922.193 and § 922.47; executed in accordance with the scope, purpose, terms and conditions of a State

or Federal permit issued pursuant to § 922.193 (a) or (b), and § 922.49; National Marine Sanctuary permit issued pursuant to § 922.193(c) and § 922.48; or a Special Use permit issued pursuant to section 310 of the NMSA.

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

(a) A person may conduct an activity prohibited by § 922.192 (a)(1) through (2) if such activity is specifically authorized by a valid State, or local lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, *provided that*:

(1) For any State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, the State Archaeologist certifies to NOAA, within 90 days of the effective date of designation, that the activity authorized under the State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, is being conducted consistent with the Programmatic Agreement, in which case such activity shall be deemed to have met the requirements of this section and § 922.47; or

(2) In the case where either (i) the State Archaeologist does not certify that the activity authorized under a State or local lease, permit, license, approval, or other authorization, or right of subsistence use is being conducted consistent with the Programmatic Agreement; or (ii) the activity is conducted pursuant only to a Federal permit, the holder of the authorization or right complies with paragraphs (b) through (k) of this section.

(b) For an activity described in paragraph (a)(2) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.192(a)(1) through (2) *provided that*: (1) the holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right; (2) the holder complies with the other provisions of this § 922.193; and (3) the holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(c) The holder of an authorization or right described in paragraph (a)(2) above authorizing an activity prohibited by § 922.192 may conduct the activity without being in violation of applicable provisions of § 922.192, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.193.

(d) Any holder of an authorization or right described in paragraph (a)(2) above may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by § 922.192, thus requiring certification under this section.

(e) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Manager, Thunder Bay National Marine Sanctuary, [Note: This paragraph will provide the Sanctuary Office address]. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(f) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purpose for which the Sanctuary was designated. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(g) The Director may amend any certification made under this § 922.193 whenever additional information becomes available justifying such an amendment.

(h) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this § 922.193, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(i) Any time limit prescribed in or established under this § 922.193 may be extended by the Director for good cause.

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

(k) Any amendment, renewal, or extension made after the effective date

of Sanctuary designation, to a lease, permit, license, approval, other authorization or right is subject to the provisions of § 922.194 and § 922.49.

§ 922.194 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 933.192 (a) (1) through (2) if conducted in accordance with the scope, purpose, manner, terms and conditions of a State Permit *provided that*:

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

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent with the Programmatic Agreement, the person complies with the requirements of § 922.49 of this part.

(b) If no State Permit is required to conduct an activity prohibited by § 922.192(a) (1) through (2) of this subpart, a person may conduct such activity if it is conducted in accordance with the scope, purpose, manner, terms and conditions of a Federal permit, *provided that* the person complies with the provisions of § 922.49 of this part.

(c) In instances where the conduct of an activity is prohibited by § 922.192(a) (1) through (2) of this subpart is not addressed under a State or other Federal lease, license, permit or other authorization, a person must obtain a Sanctuary permit from NOAA pursuant to § 922.48 of this part and the Programmatic Agreement in order to conduct the activity.

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

Note: Appendix A to subpart R will set forth the final Sanctuary boundary coordinates after consideration of comments received on the DEIS/MP.

Appendix B to Subpart R of Part 922—Minor Projects for Purposes of Section 922.192(a)(2)(iii)

Pursuant to R 322.1013 of part 325, Great Lakes Submerged Lands of Public Act 451, the Michigan Department of Environmental Quality (Department) issues permits for projects that are of a minor nature which are not controversial, which have minimal adverse environmental impacts, which will be constructed of clean, non-polluting materials, which do not impair the use of the adjacent bottomlands by the public, and which do not adversely affect riparian interests of adjacent owners. The following projects are minor projects:

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The groin is placed at least ½ of the groin length from the adjacent property line or closer with written approval of the adjacent riparian.

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

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

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

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

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

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

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

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

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

(ii) Are anchored to the bottomlands.

(i) Scientific structures such as staff gauges, water monitoring devices, water quality

testing devices, survey devices, and core sampling devices, if the structures do not impede or create a navigational hazard.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Upon completion of structure removal, the site does not constitute a safety or navigational hazard; and

(iv) Department staff shall consider fisheries and wildlife resource values when evaluating applications for natural obstruction removal.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960-AE67

Supplementary Security Income; Overpayment Recovery by Offset of Federal Income Tax Refund

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: These proposed regulations govern use of the Federal income tax refund offset program established under section 2653 of the Deficit Reduction Act of 1984, Pub. L. No. 98-369. They would permit the recovery of supplemental security income (SSI) overpayments through the withholding of amounts due to former SSI recipients as Federal income tax refunds. In these proposed rules, we reflect the provisions of the statute and explain the procedures that we will follow in referring SSI overpayments to the