

(4) SBA may reconsider its approval to retain the use of the original Class 2 Appreciation at any time based on information that may affect the value of an investment.

(b) Any time you submit a request for SBA approval to retain the use of the original Class 2 Appreciation under paragraph (a) of this section, you may also request SBA's written approval to modify your computation of Adjusted Unrealized Gain under § 107.1840(d)(4) as provided in paragraph (c) of this section.

(c) If SBA determines that the appreciation on an investment, based on its current fair value, is at least two times the original Class 2 Appreciation on the investment, SBA may allow you, based on relevant information, to compute your Adjusted Unrealized Gain for the duration of the extension period as follows:

(1) Compute Adjusted Unrealized Gain in accordance with § 107.1840(d)(4).

(2) If your result in paragraph (c)(1) of this section was computed using the first line of the table in § 107.1840(d)(4):

(i) Calculate 50 percent of the original Class 2 Appreciation on the individual investment that is the subject of this paragraph (c), and

(ii) Add it to the result from paragraph (c)(1) of this section to determine your Adjusted Unrealized Gain.

(3) If your result in paragraph (c)(1) of this section was computed using the second line of the table in § 107.1840(d)(4):

(i) Calculate 50 percent of the original Class 2 Appreciation on the individual investment that is the subject of this paragraph (c).

(ii) Subtract your Class 1 Appreciation from your Net Appreciation, and multiply the result by 50 percent.

(iii) Add the lesser of (c)(3)(i) and (ii) of this section to the result from paragraph (c)(1) of this section to determine your Adjusted Unrealized Gain.

Karen G. Mills,
Administrator.

[FR Doc. 2012-10120 Filed 4-26-12; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 120314191-2216-01]

RIN 0694-AF61

Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding sixteen persons under eighteen entries to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the countries of Afghanistan, Pakistan and the United Arab Emirates (U.A.E.).

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective April 27, 2012.

FOR FURTHER INFORMATION CONTACT:

Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Fax: (202) 482-3911, Email: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from BIS and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-user Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to

the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add sixteen persons under eighteen entries to the Entity List on the basis of Section 744.11 (license requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The eighteen entries added to the Entity List consist of twelve entries in Afghanistan, three in Pakistan, and three in the U.A.E. Two of the eighteen entries cover multiple addresses, in different countries for two of the persons being added to the Entity List.

The ERC reviewed Section 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to Section 744.11. Paragraphs (b)(1)–(b)(5) of Section 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. All sixteen persons are believed to have been involved in activities described under paragraphs (b)(1) and (b)(2) of Section 744.11. Specifically, the sixteen persons are being added to the Entity List on the basis of their provision of support to persons engaged against U.S. and Coalition forces in Afghanistan. All sixteen of the persons are involved in supply networks that provide components used to make improvised explosive devices (IEDs) used against U.S. and coalition troops in Afghanistan.

For the sixteen persons added to the Entity List under eighteen entries, the ERC specified a license requirement for all items subject to the EAR, and established a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser,

intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following sixteen persons under eighteen entries to the Entity List:

Afghanistan

(1) *Afghan-German Construction Company*, Golaye Park, Shari Naw, Kabul, Afghanistan; and Dasht Qala, Takhar Province, Afghanistan;

(2) *Haji Khalil Construction Company*, Wazir Akbar Khan, Road Number 10, In front of National Bank, District 10, Kabul, Afghanistan;

(3) *Khalil Zadran*, a.k.a., the following eight aliases:

—Samar Gul Khalil;
—Khalil Samar Gul;
—Samer Khalil;
—Samer Gul Khalil;
—Khalil Khalil;
—Khalil Khalil;
—Khalil Khualil; and
—Haji Khalil.

Shahreno, Kabul, Afghanistan (See alternate address in Pakistan);

(4) *Heim German Afghan Khalil Company*, Wazir Akbar Khan, District 10, Kabul, Afghanistan; and Shahr-e-Now, Kabul, Afghanistan; and Paktiyakoot, Jalalabad Road, District #9, Kabul, Afghanistan;

(5) *Ibrahim Haqqani*, a.k.a., the following two aliases:

—Hajji Sahib; and
—Maulawi Haji Ibrahim Haqqani.

(6) *Khalil Zadran Company*, a.k.a., the following alias:
—Khalil Construction.

Afghanistan (See alternate address in Pakistan);

(7) *Onyx Construction Company*, Shahr-e-Now, Charahi Haji Yaqoub, In front of the AIB Bank, District 10, Kabul, Afghanistan; and Char Rahi Ansari, Toaward Kolola Poshta, Shar-Naw Kabul, Afghanistan 11496;

(8) *Triangle Technologies*, Afghanistan;

(9) *Zurmat Construction Company offices*, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; and Wazir Akbar Khan, District 10, Apartment 319, Kabul, Afghanistan; and Tarin Cot City, Afghanistan; and Behind UNAMA Office, Pir Bagh Office, Gardez, Afghanistan; and House No. 01, Street No. 01, Muhageq Road (Behind Pakistan and Turkish Embassies), Mazar-e-Sharif, Afghanistan; and Hazratana Street

(Behind Jalalabad Teaching Hospital), Jalalabad, Afghanistan; and Aino Mena, Street No. 22 (Blue Color House Left Side of Road), Kandahar, Afghanistan;

(10) *Zurmat Foundation*, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; and Wazir Muhammad—Akbar Khan, Kabul, Afghanistan; and Wazir Akbar Khan, District 10, Apartment 319, Kabul, Afghanistan;

(11) *Zurmat Group of Companies*, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; and

(12) *Zurmat Material Testing Laboratory*, House 01, Street 01, Kart-e-3 (opposite of Habibia High School), Dar-ul-Aman Road, Kabul, Afghanistan; and House No. 02, Street No. 01, Kart-e-Malemin, Khandahar, Afghanistan.

Pakistan

(1) *Khalil Zadran*, a.k.a., the following eight aliases:

—Samar Gul Khalil;
—Khalil Samar Gul;
—Samer Khalil;
—Samer Gul Khalil;
—Khalil Khalil;
—Khalil Khalil;
—Khalil Khualil; and
—Haji Khalil.

House 14, Street 13, Sector F-7/2, Islamabad, Pakistan; and House 20-B, Main College Road, Sector F-7/2, Islamabad, Pakistan (See alternate address in Afghanistan);

(2) *Jalaluddin Haqqani*, a.k.a., the following seven aliases:

—General Jalaluddin;
—Haqqani Sahib;
—Maulama Jalaluddin;
—Maulawi Haqqani;
—Molvi Sahib;
—Mullawi Jalaluddin; and
—Mullah Jalaluddin.

Miranshah, Pakistan; and

(3) *Khalil Zadran Company*, a.k.a., the following alias:

—Khalil Construction.

Pakistan (See alternate address in Afghanistan).

United Arab Emirates

(1) *Al Maskah Used Car and Spare Parts*, Maliha Road, Industrial Area 6, Sharjah, U.A.E.;

(2) *Feroz Khan*, a.k.a., the following three aliases:

—Haaje Khan;
—Haaji Khan, and
—Feroz.

Maliha Road, Industrial Area 6, Sharjah, U.A.E.; and

(3) *Zurmat General Trading*, Office No. 205, Platinum Business Center,

Baghdad Street, Al-Nahda 2, Al-Qusais, Dubai, U.A.E.; and P.O. Box No. 171452, Dubai, U.A.E.; and 1st Street, Industrial Area 4th, Sharjah, U.A.E. (Behind the Toyota Showroom); and P.O. Box 35470, Sharjah, U.A.E.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on April 27, 2012, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694-0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to Jasmeet_K_Seehra@omb.eop.gov, or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published, it would create an incentive for these persons to either

accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of September 21, 2011, 76 FR 59001 (September 22, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012).

■ 2. Supplement No. 4 to part 744 is amended:

■ (a) By adding under Afghanistan, in alphabetical order, twelve Afghan entities;

■ (b) By adding under Pakistan, in alphabetical order, three Pakistani entities; and

■ (c) By adding under the United Arab Emirates, in alphabetical order, three Emirati entities.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
Afghanistan	*	*	*	*
	Afghan-German Construction Company, Golaye Park, Shari Naw, Kabul, Afghanistan, and Dasht Qala, Takhar Province, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Haji Khalil Construction Company, Wazir Akbar Khan, Road Number 10, In front of National Bank, District 10, Kabul, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Heim German Afghan Khalil Company, Wazir Akbar Khan, District 10, Kabul, Afghanistan; and Shahr-e-Now, Kabul, Afghanistan, and Paktiyakoot, Jalalabad Road, District #9, Kabul, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Ibrahim Haqqani, a.k.a., the following two aliases: —Hajji Sahib; and —Maulawi Haji Ibrahim Haqqani. Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Khalil Zadran, a.k.a., the following eight aliases: —Samar Gul Khalil; —Khalil Samar Gul; —Samer Khalil; —Samer Gul Khalil; —Khlil Khalil; —Kalil Khalil; —Khalil Khualil; <i>and</i> —Haji Khalil. Shahreno, Kabul, Afghanistan. (See alternate address in Pakistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Khalil Zadran Company, a.k.a., the following alias: —Khalil Construction. Afghanistan (See alternate address in Pakistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Onyx Construction Company, Shahr-e-Now, Charahi Haji Yaqoub, In front of the AIB Bank, District 10, Kabul, Afghanistan; <i>and</i> Char Rahi Ansari, Toaward Kolola Poshta, Shar-Naw Kabul, Afghanistan 11496.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Triangle Technologies, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Zurmat Construction Company offices, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; <i>and</i> Wazir Akbar Khan, District 10, Apartment 319, Kabul, Afghanistan; <i>and</i> Tarin Cot City, Afghanistan; <i>and</i> Behind UNAMA Office, Pir Bagh Office, Gardez, Afghanistan; <i>and</i> House No. 01, Street No. 01, Muhageq Road (Behind Pakistan and Turkish Embassies), Mazar-e-Sharif, Afghanistan; <i>and</i> Hazratana Street (Behind Jalalalabad Teaching Hospital), Jalalalabad, Afghanistan, <i>and</i> Aino Mena, Street No. 22 (Blue Color House Left Side of Road), Kandahar, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Zurmat Foundation, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; <i>and</i> Wazir Muhammad—Akbar Khan, Kabul, Afghanistan; <i>and</i> Wazir Akbar Khan, District 10, Apartment 319, Kabul, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Zurmat Group of Companies, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Zurmat Material Testing Laboratory, House 01, Street 01, Kart-e-3 (opposite of Habibia High School), Dar-ul-Aman Road, Kabul, Afghanistan; <i>and</i> House No. 02, Street No. 01, Kart-e-Malemin, Khandahar, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
Pakistan	*	*	*	*
	Jalaluddin Haqqani, a.k.a., the following seven aliases: —General Jalaluddin; —Haqqani Sahib; —Maulama Jalaluddin; —Maulawi Haqqani; —Molvi Sahib; —Mulawi Jalaluddin; <i>and</i> —Mullah Jalaluddin. —Miram Shah, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Khalil Zadran, a.k.a., the following eight aliases: —Samar Gul Khalil; —Khalil Samar Gul; —Samer Khalil; —Samer Gul Khalil; —Khlil Khalil; —Kalil Khalil; —Khalil Khualil; <i>and</i> —Haji Khalil. House 14, Street 13, Sector F-7/2, Islamabad, Pakistan; <i>and</i> House 20-B, Main College Road, Sector F-7/2, Islamabad, Pakistan (See alternate address in Afghanistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Khalil Zadran Company, a.k.a., the following alias: —Khalil Construction. Pakistan (See alternate address in Afghanistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	*	*	*	*
United Arab Emirates	*	*	*	*
	Al Maskah Used Car and Spare Parts, Maliha Road, Industrial Area 6, Sharajah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Feroz Khan, a.k.a., the following three aliases: —Haaje Khan; —Haaji Khan; <i>and</i> —Firoz. Maliha Road, Industrial Area 6, Sharajah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Zurmat General Trading, Office No. 205, Platinum Business Center, Baghdad Street, Al-Nahda 2, Al-Qusais, Dubai, U.A.E.; <i>and</i> P.O. Box No. 171452, Dubai, U.A.E.; <i>and</i> 1st Street, Industrial Area 4th, Sharajah, U.A.E. (Behind the Toyota Showroom), <i>and</i> P.O. Box 35470, Sharajah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*

Dated: April 23, 2012.

Kevin J. Wolf,

*Assistant Secretary for Export
Administration.*

[FR Doc. 2012-10104 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 100222109-2171-02]

RIN 0648-AY35

Flower Garden Banks National Marine Sanctuary Regulations

AGENCIES: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; Public availability of final management plan and environmental assessment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations for Flower Garden Banks National Marine Sanctuary to improve vessel and user safety, protect sanctuary resources from user impacts, clarify discharge language, and make other technical changes and corrections.

DATES: *Effective Date:* May 29, 2012.

ADDRESSES: Copies of the final management plan (FMP) and environmental assessment (EA) described in this rule and the Finding of No Significant Impact (FONSI) are available upon request to Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551. The FMP and EA can also be viewed on the Web and downloaded at <http://flowergarden.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: George Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551. *Email:* fgbmanagementplan@noaa.gov. *Phone:* (409) 621-5151.

SUPPLEMENTARY INFORMATION:

I. Background

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as a national marine sanctuary areas of the marine environment that are of special national significance due to their

conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect sanctuary resources, such as coral reefs, and cultural resources, such as historical shipwrecks, historic structures, and archaeological sites.

NOAA designated Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary) on December 5, 1991 (56 FR 63634). Congress subsequently passed a law recognizing the designation in January 1992 (Pub. L. 102-251, Title I, Sec. 101). At the time, the Sanctuary consisted of two areas known as East and West Flower Garden Banks (56 FR 63634). Congress later added Stetson Bank in 1996 (Pub. L. 104-283).

These three areas are located in the northwestern Gulf of Mexico and are described as underwater hills formed by rising domes of ancient salt. The sanctuary ranges in depth from 55 feet to nearly 500 feet, providing conditions that support several distinct habitats, including the northern-most coral reefs in the continental United States. These and similar formations throughout the northern Gulf of Mexico provide the foundation for essential habitat for a variety of species. The combination of location and geology makes the sanctuary an extremely productive and diverse ecosystem, but it also presents a unique set of challenges for managing and protecting its natural wonders.

The FGBNMS regulations implementing the sanctuary were first published on December 5, 1991 (56 FR 63634). Those regulations became effective on January 18, 1994 (58 FR 65664). Among other things, the regulations set forth the sanctuary boundaries, prohibit a relatively narrow range of activities, and establish permit and certification procedures. The regulations were revised in December 2000 to add Stetson Bank to the boundary pursuant to Public Law 104-283 (65 FR 81176). NOAA amended the FGBNMS regulations again in 2001 (66 FR 58370) to conform to the regulations adopted by the International Maritime Organization and prohibit all anchoring in the sanctuary and restrict mooring to vessels 100 feet (30.48 meters) or shorter.

The ONMS is required by NMSA Section 304(e) to periodically review sanctuary management plans to ensure that sanctuary management continues to best conserve, protect, and enhance the

sanctuaries' nationally significant living and cultural resources. Management plans generally outline regulatory goals, describe boundaries, identify staffing and budget needs, and set priorities and performance measures for resource protection, research, and education programs. The plans also guide the development of future management activities.

The FGBNMS management plan review process began in the fall of 2006 with the release of the *Flower Garden Banks National Marine Sanctuary State of the Sanctuary Report*. At the outset, NOAA held a series of public meetings to obtain information about the public's interests and priorities for FGBNMS management (71 FR 52757; September 7, 2006). NOAA then 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. Based on this input, NOAA prepared a revised management plan consisting of six action plans: Sanctuary expansion, education and outreach, research and monitoring, resource protection, visitor use, and operations and administration. Because the resource protection and visitor use action plans include several strategies that require changes to the FGBNMS regulations, NOAA sought to amend the regulations for the sanctuary. Pursuant to the National Environmental Policy Act, 42 U.S.C. 4331-4345 (NEPA), NOAA also prepared a programmatic environmental assessment to analyze the environmental impacts associated with the proposed management plan revision and proposed rule. On October 22, 2010, the proposed rule, draft management plan, and programmatic environmental assessment were released for 90-day public review and comment (75 FR 65256).

NOAA is now amending the FGBNMS regulations to reflect these new strategies. The changes address: Potential conflicts between vessels and divers; protection of rays and whale sharks; and discharges and deposits. The changes also eliminate outdated references to paragraphs that no longer exist, update cross references to other paragraphs, and establish definitions for various new terms adopted in this rulemaking.

II. Summary of the Revisions

This rulemaking:

1. Requires 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