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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No. 070726412-1300-02

RIN 0648-AV88

Research Area within Gray's Reef National Marine Sanctuary

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

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is creating a research area within Gray's Reef National Marine Sanctuary (GRNMS, or sanctuary). A research area is a region specifically designed for conducting controlled scientific studies in the absence of certain human activities that could affect the results. NOAA is prohibiting fishing, diving, and stopping a vessel in the research area.

DATES: *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the revised designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Announcement of the effective date of the final regulations will be published in the Federal Register.

ADDRESSES: Copies of the final environmental impact statement (FEIS) described in this rule and the record of decision (ROD) are available upon request to Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411, Attn: Dr. George Sedberry, Superintendent. The FEIS can also be viewed on the Web and downloaded at http://graysreef.noaa.gov.

FOR FURTHER INFORMATION CONTACT:
Resource Protection Coordinator Becky Shortland at (912) 598–2381.

SUPPLEMENTARY INFORMATION:

On September 14, 2010, NOAA published a proposed rule to establish a research area within Gray's Reef National Marine Sanctuary and announced the availability of a draft environmental impact statement (DEIS) (75 FR 55692). This final rule establishes the research area; prohibits fishing, diving, and stopping a vessel in the research area; publishes the revised designation document for the sanctuary; responds to comments that were received regarding the proposed rule and DEIS; and announces the availability of the final environmental impact statement and record of decision.

I. Background

A. Gray's Reef National Marine Sanctuary

NOAA designated GRNMS as the nation's fourth national marine sanctuary in 1981 for the purposes of: protecting the quality of this unique and fragile ecological community; promoting scientific understanding of this live bottom ecosystem; and enhancing public awareness and wise use of this significant regional resource. GRNMS is located 17.5 miles offshore of Sapelo Island, Georgia, on an area of continental shelf stretching from Cape Hatteras, North Carolina, to Cape Canaveral, Florida (referred to as the South Atlantic Bight). GRNMS protects 22 square miles

of open ocean and submerged lands of particularly dense nearshore patches of productive “live bottom habitat”. "Live bottom" is a term used to refer to hard or rocky seafloor that typically supports high numbers of large invertebrates such as sponges, corals and sea squirts. These spineless creatures thrive in rocky areas, as many are able to attach themselves more firmly to the hard substrate, as compared to sandy or muddy "soft" bottom habitats. Within the Gray's Reef National Marine Sanctuary there are rocky ledges with sponge and coral live bottom communities, as well as sandy bottom areas that are more typical of the seafloor off the southeastern U.S. coast. The sanctuary is influenced by complex ocean currents and serves as a mixing zone for temperate (colder water) and sub-tropical species. An estimated 200 species of fish, encompassing a wide variety of sizes, forms, and ecological roles, have been recorded at GRNMS. Loggerhead sea turtles, a threatened species, use GRNMS year-round for foraging and resting, and the highly endangered North Atlantic right whale is occasionally seen in Gray’s Reef.

The sanctuary contains one of the largest nearshore live-bottom reefs in the southeastern United States. Within the sanctuary, rock outcroppings stand above the shifting sands. The series of rock ledges and sand

expanses has produced a complex habitat of burrows, troughs, and overhangs that provide a solid base for the abundant sessile invertebrates to attach and grow. This topography supports an unusual assemblage of temperate and tropical marine flora and fauna. This flourishing ecosystem attracts numerous species of benthic and pelagic fish including mackerel, grouper, red snapper, black sea bass, angelfish, and a host of other fishes. Since GRNMS lies in a transition area between temperate and tropical waters, the composition of reef fish populations changes seasonally.

B. Purpose and Need for Research Area

In 2008, NOAA released the GRNMS Condition Report, a report on the condition of GRNMS providing a summary of the status of resources, pressures on those resources, current conditions and trends, and management responses to the pressures that threaten the integrity of the marine environment. Specifically, the document includes information on water quality, habitat, living resources, and maritime archaeological resources and the human activities that affect them. Overall, the resources protected by GRNMS appear to be in fair condition, as defined in the 2008 GRNMS condition report. Emerging threats to the sanctuary include invasive species,

contamination of organisms by waterborne chemicals from human coastal activities, climate change and ever-increasing coastal populations and recreational use of the sanctuary. For a copy of the 2008 GRNMS condition report, please visit http://sanctuaries.noaa.gov/science/condition/grnms/welcome.html

NOAA's regulations for the sanctuary limit fishing gear in the sanctuary to rod and reel (which are used by the vast majority of users in the sanctuary), and handline. Despite these gear restrictions, fishing continues to impact the living marine resources and habitat of the sanctuary. Recreational fishing is the primary fishing activity and occurs throughout the sanctuary but tends to be concentrated in certain areas.

Because fishing is allowed throughout the sanctuary, NOAA has limited options for gaining better management information on the effects it has on fish and invertebrate populations and their habitats. A research area will allow investigations to evaluate possible impacts from fishing – particularly bottom fishing – on the sanctuary's natural resources by providing a zone free of human activities and impacts to habitats or populations that result from those activities. The research area will also allow researchers

to more accurately determine the effects of natural events (e.g., hurricanes) and cycles (e.g. droughts) on the sanctuary. The research area could also serve as an important sentinel site to monitor and study impacts of climate change, such as ocean acidification, which can be better determined in the absence of additional human factors such as fishing. Sentinel sites are areas well-suited to ensure sustained observations of environmental change, to track indicators of ecosystem integrity, and to provide early warning services. Currently, the effects of subtle natural variability may be masked by the sometimes overwhelming effect of fishing. The ability to conduct these investigations in a marine environment relatively free of direct human influences is critical to meet the resource protection and scientific research mandates of GRNMS.

The National Marine Sanctuaries Act (NMSA) provides NOAA the authority for comprehensive and coordinated conservation and management of natural resources of a sanctuary. To achieve this, GRNMS requires a research (control) area where human impacts are limited. There are currently no natural live bottom areas in the South Atlantic Bight that have been set aside for scientific use. Because GRNMS is relatively shallow, it affords the

opportunity to conduct experiments and make observations using SCUBA in a productive reef habitat that is relatively close to shore. The proximity of the sanctuary to coastal universities and marine research laboratories makes GRNMS a logical natural area that can be used to further the understanding and management of these complex ecosystems. There is scientific agreement that without having an area of naturally occurring live bottom devoted to research, it becomes very difficult to understand: (a) how these reefs function in the life history of many economically valuable species, and (b) the effects of extractive uses on ecosystem productivity. NOAA believes the action provides a balance between user concerns and the research opportunities that are emphasized in the sanctuary's goals and objectives.

C. Research Area Background

The concept of a research (control) area within the sanctuary has been under discussion for many years. The idea was first raised by members of the public in 1999 during the early stages of the GRNMS management plan review process at public scoping meetings. The GRNMS Sanctuary Advisory Council (SAC) set a target to increase the opportunity to distinguish, scientifically, between natural and human-induced change to species populations in the

sanctuary (NMSP 2006). As a means to reach this target, the SAC formed a broad-based Research Area Working Group (RAWG) to consider the concept of a research area within the sanctuary.

The RAWG consisted of representatives from research, academia, conservation groups, sport fishing and diving interests, education, commercial fishing, law enforcement and state and federal agency representatives. The RAWG employed a consensus-driven, constituent-based process. A Geographic Information System (GIS) tool was also developed by NOAA to analyze options RAWG members brought forward; this tool is described in more detail in the environmental impact statement supporting this action.

The principal conclusion of the RAWG, which was ultimately adopted by the SAC, was that significant research questions exist at GRNMS that can only be addressed by establishing a research (control) area. The final SAC recommendations to NOAA, presented in 2008, also included the unanimous recommendation that all fishing be prohibited in the research area.

In the decision to recommend prohibition of all fishing in the research area, the RAWG took into consideration new information on the growing knowledge of the linkages between benthic and pelagic natural

communities. The RAWG also considered methods used by sport fishermen to fish both coastal pelagic and bottom fish (reef) species at the same time. In addition, downriggers and planers, types of fishing gear that are currently permitted in the sanctuary, allow anglers to fish the entire water column, including near the bottom. These gear types can impact benthic communities and allow catch of bottom fish, a primary marine resource to be studied in the research area. Therefore, allowing any fishing including trolling for pelagic fish species could significantly compromise the integrity and effectiveness of a research area.

Law enforcement officials expressed concern that the enforcement of prohibitions on fishing will be more difficult if diving or stationary vessels were allowed to continue in the research area, due to the difficulty of determining the activities of a boat's occupants from a distance or as officers approach a boat. The SAC also observed that any recreational diving activity in the research area would make law enforcement difficult and could undermine the validity of the research area.

From 2004-2008, the RAWG and SAC also continued to evaluate criteria and boundaries utilizing the GIS tool and incorporating new information as it became available.

Ultimately, four boundary scenarios were recommended as viable locations for a research area in GRNMS. These boundary scenarios and several activity restrictions became the focus of public scoping during March and April 2008. After consideration of public comments and deliberations by the RAWG, the sanctuary superintendent received final recommendations from the SAC in January 2009. The action presented in this final rule is the direct result of the RAWG's recommendations that were adopted by the SAC and provided to the GRNMS superintendent, comments received during the spring 2008 public scoping, and public review of the proposal in a proposed rulemaking and draft EIS. Several alternatives to the action are analyzed in the accompanying final environmental impact statement (FEIS).

D. South Atlantic Fishery Management Council

Pursuant to section 304(a)(5) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(5); NMSA), NOAA provided the South Atlantic Fishery Management Council (SAFMC or Council) with the opportunity to develop fishing regulations to implement the goals of the research area.

On March 4, 2009, the SAFMC passed a motion to: "Defer to Gray's Reef NMS for rule-making in terms of the establishment of the Research Area." On April 22, 2009,

the Council's decision was formally communicated to the GRNMS Superintendent.

II. Revisions to GRNMS Terms of Designation

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 by the same procedures by which the original designation was made. To implement this action, NOAA is modifying the GRNMS terms of designation, which were most recently published in the Federal Register on October 12, 2006 (74 FR 60055), to read as follows (new text in bold and deleted text in brackets and italics):

1. No change to Article 1, Designation and Effect
2. No change to Article 2, Description of the Area
3. No change to Article 3, Characteristics of the Area
4. Article 4, Scope of Regulation, Section 1, Activities Subject to Regulation, is amended by:

a. Modifying the 4th bullet of Section 1 to read as follows: “Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities; [,by any means except by use of rod and reel, and handline gear;]”

b. Modifying the 6th bullet of Section 1 as follows: “Using explosives, or devices that produce electric charges underwater; [*and*]”

c. Modifying the 7th bullet of Section 1 as follows: “Moving, removing, injuring, or possessing a historical resource, or attempting to move, remove, injure, or possess a historical resource[.]; **and**”

d. Adding the following at the end of Section 1: “**8. Diving.**”

5. No Change to Article 5, Relation to Other Regulatory Programs

6. No change to Article 6, Alteration of This Designation

The revised terms of designation will read as follows upon effectiveness of this rule:

Revised Designation Document for the Gray's Reef National Marine Sanctuary

Preamble

Under the Authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, (the Act), the waters and the submerged lands thereunder at Gray's Reef in the South Atlantic Bight off the coast of Georgia are hereby designated a National Marine Sanctuary for the purposes of: (1) Protecting the quality of this unique and fragile ecological community; (2) promoting scientific understanding of this live bottom ecosystem; and (3) enhancing public awareness and wise use of this significant regional resource.

Article 1. Designation and Effect

The Gray's Reef National Marine Sanctuary was designated on January 16, 1981 (46 FR 7942). The Act authorizes the Secretary of Commerce to issue such regulations as are necessary to implement the designation, including managing and

protecting the conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational or aesthetic resources and qualities of a national marine sanctuary. Section 1 of Article 4 of this Designation Document lists activities of the type that are presently being regulated or may need to be regulated in the future, in order to protect sanctuary resources and qualities. Listing in Section 1 does not mean a type of activity is currently regulated or would be regulated in the future. If a type of activity is not listed, however, it may not be regulated except on an emergency basis, unless section 1 is amended to include the type of activity following the same procedures by which the original designation was made. Nothing in this Designation Document is intended to restrict activities that do not cause an adverse effect on the resources or qualities of the sanctuary or on sanctuary property or that do not pose a threat of harm to users of the sanctuary.

Article 2. Description of the Area

The sanctuary consists of an area of ocean waters and the submerged lands thereunder located 17.5 miles due east of Sapelo Island, Georgia. The exact coordinates are defined by regulation (15 CFR 922.90).

Article 3. Characteristics of the Area

The sanctuary consists of submerged calcareous sandstone rock reefs with contiguous shallow-buried hard layer and soft sedimentary regime which supports rich and diverse marine plants, invertebrates, finfish, turtles, and occasional marine mammals in an otherwise sparsely populated expanse of ocean seabed. The area attracts multiple human uses, including recreational fishing and diving, scientific research, and educational activities.

Article 4. Scope of Regulation

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the NMSA. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of the area. Because an activity is listed here does not mean that such activity is being or would be regulated. If an activity is listed, however, the activity can be regulated, after compliance with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA (16 U.S.C. 1434(a) and (b)).

1. Dredging, drilling into, or otherwise altering the submerged lands of the sanctuary;

2. Within the boundary of the sanctuary, discharging or depositing any material or other matter or constructing, placing, or abandoning any structure, material or other matter; or discharging or depositing any material or other matter outside the boundary of the sanctuary that

subsequently enters the sanctuary and injures a sanctuary resource or quality;

3. Vessel operations, including anchoring;

4. Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities;

5. Possessing fishing gear that is not allowed to be used in the sanctuary;

6. Using explosives, or devices that produce electric charges underwater;

7. Moving, removing, injuring, or possessing a historical resource, or attempting to move, remove, injure, or possess a historical resource; and

8. Diving.

Section 2. Emergency Regulation

Where necessary to prevent or minimize the destruction of, loss of, or injury to a sanctuary resource or quality; or to minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in Section 1

of this Article, is subject to immediate temporary regulation, including prohibition.

Article 5. Relation to Other Regulatory Programs

Section 1. Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practical.

Section 2. Other Programs

All applicable regulatory programs will remain in effect, and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the sanctuary unless authorizing any activity prohibited by a regulation implementing Article 4.

Article 6. Alteration of This Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the procedures outlined in paragraphs (a) and (b) of section 304 of the Act including public hearings, consultation with interested Federal, State, and local government agencies, and the South Atlantic Fishery Management Council, review by the appropriate congressional committees, and approval by the Secretary of Commerce or designee.

[End of designation document]

III. Summary of Revisions to the Sanctuary Regulations

A. Establishment of a Research Area

This rule establishes a research area within the GRNMS that prohibits fishing, diving, and stopping a vessel within the area. Please refer to the GRNMS website and the final environmental impact statement supporting this rulemaking for more information and a map depicting the location of the research area within the GRNMS. This area is referred to as the Southern Option Boundary in the FEIS. The research area, which occupies the southern portion of the GRNMS, is wholly within the boundary of the sanctuary

and does not change its overall size. The total area designated as a research area inside GRNMS is 8.27 square miles (see the Appendix for coordinates).

According to boat sighting data from 1999-2007, only 9.2 percent of boats sighted in the sanctuary visited or transited the area of the research area, leading to the conclusion that this area is not as popular with sport fishermen and sport divers as the north-central portion of the sanctuary. NOAA believes the action provides a balance between user concerns and the research opportunities that are emphasized in the sanctuary's goals and objectives. The amendments to the regulations for GRNMS are described at the end of this notice.

B. Activities Prohibited within the Research Area

The following prohibitions are in addition to the existing prohibitions set out in 922.92, which apply throughout the Sanctuary. In the research area, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted*:* Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead (there will be a rebuttable presumption that any marine organism or part

thereof, living or dead, found in the possession of a person within the research area has been collected from the research area); possessing, carrying, or using any fishing gear or means for fishing unless such gear or means is stowed and not available for immediate use while on board a vessel transiting through the research area without interruption or for valid law enforcement purposes; diving; or stopping a vessel in the research area.

C. Enforcement

The regulations are enforced by NOAA and other authorized agencies (i.e., United States Coast Guard, and Georgia Department of Natural Resources) in a coordinated and comprehensive way. Enforcement actions for a violation will be prosecuted under the appropriate statutes or regulations governing that violation. The prohibition against catching or harvesting marine organisms includes a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the research area has been collected from the research area.

D. Permitting

A research area in the southern portion of the sanctuary provides researchers a valuable opportunity to

discern between human-induced and natural changes in the Gray's Reef area. Researchers are required to obtain permits to conduct activities related to research that are otherwise prohibited by the regulations.

The ONMS regulations, including the regulations for the GRNMS, allow NOAA to issue permits to conduct activities that are otherwise prohibited by the regulations (15 CFR 922 and 922.93). Most permits are issued by the Superintendent of the GRNMS. Requirements for filing permit applications are specified in ONMS regulations and the Office of Management and Budget-approved application guidelines (OMB control number 0648-0141). Criteria for reviewing permit applications are also contained in the ONMS regulations at 15 CFR 922.93. In general, permits may be issued for activities related to scientific research, education, and management.

IV. Responses to Public Comments

During the public comment period, eight (8) written comments were received through the electronic rulemaking portal http://www.regulations.gov. Three (3) public hearings were also held to receive comment, but no members of the public attended. The written comments were compiled and grouped by general topics. Substantive comments are

summarized below, followed by NOAA's response. Similar comments have been treated as one comment for purposes of response resulting in 15 different comments with responses.

Comment 1: Several commenters expressed support for the establishment of a research area in GRNMS.

Response: Comment noted.

Comment 2: The Southern Option Boundary represents minimal impact to members of the general public who wish to visit and use the sanctuary.

Response: NOAA agrees that the preferred alternative Southern Option Boundary would result in minimal impact to visitors. In addition, all bottom types are included in the Southern Option Boundary and there would be more than adequate ledge and other habitat types outside the boundary for necessary comparisons and to provide areas for activities such as recreational fishing and diving. In fact, the areas outside of the Southern Option Boundary appear to be the preferred fishing and diving locations for users.

Comment 3: The Optimal Scientific Option Boundary would be a better boundary choice for the research area because it

includes the existing long-term monitoring site and data buoy. If the existing monitoring equipment were included within the boundaries, valuable scientific analysis could occur immediately without costly delays. If the long-term monitoring site and data buoy cannot be included, discussion of an alternate form of monitoring and data collection should be provided in the FEIS.

Response: NOAA agrees that the Optimal Scientific Option Boundary would offer multiple benefits toward realizing the purpose of a research area as this boundary was designed based solely on scientific research considerations. Although inclusion of the long-term monitoring site and the data buoy was initially preferred inside the boundary of a research area due to the available data sets for both, further consideration by the RAWG and Advisory Council resulted in a different conclusion. Maintaining the status quo of the long-term monitoring site (outside the research area) allows continuation of the baseline of conditions, avoiding the need to establish a new monitoring station outside of the research area. Further, because the data buoy collects oceanographic variables that are basically uniform at the scale of the whole sanctuary, the buoy does not need to be inside the research area. NOAA agrees with that conclusion. In addition, the Optimal Scientific

Option Boundary does not satisfy NOAA's selection criteria to minimize user displacement; it would have the highest level of displacement (67 percent). The Optimal Scientific Option Boundary also creates open areas of the sanctuary on all sides resulting in compliance and enforcement complications. Pending proper funding of planned activities in the research area, it might be possible to replicate a portion of the oceanographic data which is being collected presently with the data buoy in the northern portion of the sanctuary. The research area management plan, found in the FEIS associated with this action, describes protocols for monitoring and research.

Comment 4: In choosing the Southern Option Boundary NOAA has overestimated the socioeconomic costs and underestimated the numerous benefits of the Optimal Scientific Option Boundary that includes the long-term monitoring site and data buoy. Socioeconomic impacts to the sanctuary should be analyzed within the broader scope of fishing expenditures in Georgia as a whole. For instance, 2006 saltwater fishing expenditures in Georgia totaled $119,250,000; therefore, the Optimal Scientific Option Boundary would impact only 0.86% of Georgia fishing

expenditures compared to 0.13% for the Southern Option Boundary.

Response: NOAA agrees that from the perspective of total fishing expenditures in Georgia, the potential economic loss from fishing displacement is quite small. NOAA, however, considered the population of users most affected by this action, and thus, analyzed the environmental (economic) consequences using GRNMS fishing expenditures instead of Georgia-wide fishing expenditures. See response to comment #3 above.

Comment 5: I support the Optimal Scientific Option Boundary. Studies have shown that restoration of fish populations in "no take" areas actually leads to *increased* fish catches outside of the protected area due to "spillover" effects. This effect could generate positive economic impacts in Georgia that would mitigate losses due to user displacement from establishment of a research area using the Optimal Scientific Option Boundary.

Response: Although the primary goal of the research area is not to increase fish populations for harvest, NOAA agrees that "spillover" effects may be a result of no fishing in the proposed research area. NOAA also agrees that this may mitigate some of the economic impacts of the

research area, regardless of which boundary option is selected. However, NOAA believes that the benefits of lower displacement and expected compliance and enforcement benefits if the research area is located at a distance from heavily fished areas outweigh the benefits of the Optimal Scientific Option Boundary. Also see responses to comments #3 and #4 above.

Comment 6: A third of the sanctuary is an excessive area to set aside for academic studies.

Response: The primary site selection criterion for a research area was an area that included bottom features representative of the sanctuary as a whole, with a minimum of 20 percent densely-colonized ledge habitat including small, medium and tall ledges. The RAWG also determined that while ledge habitat is the highest priority in terms of research interest, sufficient amounts of the other three habitat types (flat sand, rippled sand, and sparsely-colonized ledge habitat) are necessary to replicate the diversity of sanctuary habitats in a research area. The size of the Southern Option Boundary is based on the minimum of this criterion. A smaller boundary size for this option would result in insufficient habitat diversity.

Comment 7: The most important use of the sanctuary is recreation, not research. Therefore, recreation opportunities at Gray's Reef should not be restricted in order to further research objectives.

Response: The protection of the natural and cultural resources of sanctuaries is NOAA's primary objective under the NMSA. GRNMS was designated in 1981 as a national marine sanctuary in part for its unique marine ecosystem, which was determined to be of national significance due to its natural resource and ecological qualities, maintenance of ecosystem structure, and biological productivity as well as its recreational and commercial value. NOAA has determined that fully meeting its resource protection mandate requires being able to answer significant questions about the impacts of human use on sanctuary resources, which cannot be done without a control (research) area for scientific studies.

Comment 8: Preserving the reef, which is one of the largest of the unique live bottom reefs in the southeastern U.S., presents greater benefits than protecting fishing operations.

Response: See response to comments #6 and #7 above and #9 below.

Comment 9: NOAA should adopt the proposed rule to establish a research area within the GRNMS and prohibit fishing, diving, and stopping while transiting the area. NOAA should also encourage research to assess the localized effects of removing fishing and other human activities on the size, distribution, abundance, and reproduction of economically important fish and shellfish within and outside the research area.

Response: The purpose of a research area would be to increase the opportunity to discriminate scientifically between natural and human-induced change to species populations in the sanctuary. The research area would also allow researchers to more accurately determine the effects of natural events (e.g., hurricanes) and to study impacts of climate change, including ocean acidification, which can be better determined in the absence of additional factors like fishing and diving.

Comment 10: The sanctuary provides habitat for Atlantic spotted and bottlenose dolphins, the latter of which are designated as depleted under the Marine Mammal Protection Act. The proposed research area also may provide opportunities to advance scientific understanding and

management of those dolphins. NOAA should encourage researchers in the GRNMS to record information on bottlenose dolphins that occur in this area and thereby provide a stronger basis for their management and conservation. Such information might include where and when dolphins are sighted, group size, behavior, and collection of tissue samples from dead animals for genetic analysis. Such activities should be coordinated with the National Marine Fisheries Service to ensure that they are permitted appropriately.

Response: NOAA agrees that the proposed research area might be used to collect data on bottlenose dolphin presence/absence, group size and behavior. Very few bottlenose dolphins are seen in GRNMS and the occurrence of a dead animal has never been recorded in the sanctuary. NOAA will work with the Marine Mammal Commission to better understand data collection needs to benefit marine mammal research. Furthermore, activities related to marine mammals would be coordinated with and, as necessary, permitted by the National Marine Fisheries Service.

Comment 11: Support curtailment of human activities that are necessary to carry out studies in the GRNMS proposed

research area. Ban all fishing gear of any type in this area.

Response: NOAA agrees that without having an area of the naturally-occurring live bottom devoted to research and devoid of direct human impacts, it is very difficult to scientifically understand how live bottom reefs, including GRNMS, function.

Comment 12: I support keeping all fishing and research out of this area and keep it closed to all boats.

Response: While fishing will be restricted in the research area, the purpose of a research area is to allow research to be conducted within that area. This will result in vessels operating in the research area to support scientific and working divers, and vessels may transit the area without stopping.

Comment 13: NOAA should designate a research site within GRNMS. Habitat needs should be emphasized as the primary criteria and displacement of users as secondary in selecting the site.

Response: NOAA agrees that habitat needs should be the primary site selection criteria for a research area. In fact, the RAWG determined, and recommended to the advisory

council early in deliberations, that the primary site selection criterion for a research area was an area that included bottom features representative of the sanctuary as a whole, with a minimum of 20 percent densely-colonized ledge habitat including small, medium and tall ledges. The RAWG also determined, and recommended to the advisory council, that while ledge habitat is the highest priority in terms of research interest, sufficient amounts of the other three habitat types (flat sand, rippled sand, and sparsely-colonized ledge habitat) are necessary to replicate the diversity of sanctuary habitats in a research area.

Comment 14: In order to eliminate or minimize confounding parameters, the research area should prohibit all fishing and diving and consider prohibiting boat traffic (except for emergencies and study access). Eliminating boat traffic other than research vessels would also minimize potential water quality impacts. Attempts should also be made to locate and configure the site so that boaters can reasonably circumvent it.

Response: NOAA's preferred alternatives for human activities includes the prohibition of fishing and diving. Throughout the process to develop the concept of a research

area and specific boundaries in GRNMS, NOAA sought ways to minimize impacts on users of the sanctuary. Thousands of locations and configurations were considered and refined by consensus criterion down to the four boundary options analyzed in the draft and final environmental impact statement. NOAA considered a "no entry" alternative whereby boaters would be prohibited from entering the research area. While this alternative would simplify law enforcement, it could increase fuel and other costs to boaters, and would not offer environmental benefits that outweigh the costs. Therefore, NOAA did not choose this alternative.

Comment 15: The site boundaries should conform to some of the sanctuary boundaries by having some common sides with the sanctuary (to simplify enforcement and minimize the need for boundary marker buoys, which may attract fish and bias the studies).

Response: NOAA agrees that compliance and enforcement would be enhanced if the research area boundaries were common with sanctuary boundaries. In fact, one of the reasons the Southern Option Boundary is preferred is because three sides of the research area will be contiguous with existing boundaries of the sanctuary. GRNMS

boundaries have been in place for 30 years and most boaters in the area would be familiar with the sanctuary and its location, facilitating compliance.

V. Changes from the Proposed Rule

Regulation changes between the proposed and final rules include the following:

- In the regulatory text, NOAA changed the location of the exception to the prohibitions listed under §922.94 for certain activities related to national defense or for responding to an emergency threatening life, property or the environment. In the proposed rule, the reference for this exception was located under §922.94. However, NOAA found that the repetition of the same exception for activities related to national defense or for responding to an emergency threatening life, property or the environment in two separate locations in the regulations was redundant and potentially confusing. For this reason, NOAA has decided to combine this exception with a similar exception in §922.92 for clarity. This change made between the proposed and final rules does not change the intent of the exception to §922.92, which existed prior to the proposed action, and of the exception to

§922.94, which was presented for public review in the proposed rule.

- NOAA has deleted the term “or means for fishing” in the prohibited or regulated activities in the research area in § 922.94(2). The term was initially proposed to ensure that all form of fishing would be prohibited in the research area; however, after consideration NOAA believes that the term “fishing gear” is comprehensive and meets the purpose of the research area. Deleting the term “or means for fishing” simplifies the regulation.
- NOAA has updated the coordinates for the boundary of the research area to ensure consistency with the boundaries of the sanctuary, after finding a minute discrepancy between the points describing the corners of the sanctuary and the research area.

VI. Classification

A. National Marine Sanctuaries Act

Section 301(b) of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1434) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. Section 304(a)(4) of the NMSA

specifies that “the terms of designation may be modified only by the same procedures by which the original designation is made.” Because this action revises the GRNMS terms of designation by modifying the list of activities that may be regulated, NOAA is required to comply with section 304 of the NMSA. In addition, section 304(a)(5) of the NMSA requires that NOAA consult with the appropriate fishery management council on any action proposing to regulate fishing. As stated in the preamble above, NOAA has worked with the South Atlantic Fishery Management Council, and State of Georgia on this issue and all necessary requirements have been fulfilled. In accordance with section 304, the appropriate documents are also being submitted to certain Congressional committees.

B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321-4370(a)), a FEIS has been prepared for this action. The FEIS contains a statement of the purpose and need for the project, description of alternatives including the no action alternative, description of the affected environment, and evaluation and comparison of environmental consequences

including cumulative impacts. The preferred alternative, chosen by NOAA as the final action, incorporates the creation of a research area in the Southern Option Boundary, and prohibition of fishing, diving, and stopping a vessel in the research area. Copies of the FEIS are available upon request at the address and website listed in the ADDRESSES section of this rule.

C. Coastal Management Act

In October 2010, NOAA sent a consistency determination to the State of Georgia as required by regulations implementing the Coastal Zone Management Act (16 U.S.C. §§ 1451–1464; 15 C.F.R. Part 930). Under the CZMA, actions undertaken by federal agencies must be consistent, to the maximum extent practicable, with the enforceable policies of a state's federally-approved coastal management program. The consistency determination described the proposed rule and stated that the proposed action was consistent to the maximum extent practicable with the enforceable policies of the Georgia Coastal Management Program. In March 2011, the State of Georgia concurred, subject to the adoption of four minor changes to the proposed action. In summary, the State of Georgia requested the installation of boundary markers around the

research area, the assurance of sufficient funding for enforcement and for conducting research in the research area, and a commitment to make research publicly available. After further consultation with the State, NOAA notified the State that the final rule establishing the research area is fully consistent with the enforceable policies of Georgia's Coastal Management Program, and that while the Agency is willing to continue discussing ways to address State concerns, NOAA will proceed with the final rule as originally proposed.

D. Executive Order 12866: Regulatory Impact

Under Executive Order (E.O.) 12866, if the regulations are "significant" as defined in section 3(f)(1), (2), (3), or (4) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This final rule has been determined to be not significant within the meaning of E.O. 12866.

E. Executive Order 13132: Federalism Assessment

This action will occur in the Exclusive Economic Zone beyond state jurisdiction. There are no federalism implications as that term is used in E.O. 13132. The changes will not preempt State law, but will simply

complement existing State authorities. In keeping with the intent of the Order, NOAA consulted with a number of entities within the region, the State of Georgia, and the South Atlantic Fishery Management Council which participated in development of the research area.

F. Regulatory Flexibility Act

In accordance with the requirements of section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604), NOAA has prepared a final regulatory flexibility analysis (FRFA) that describes the impact that the proposed action, along with other non-preferred alternatives, will have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, a statement of any changes made in the proposed rule as a result of such comments, and a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of

the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. The FRFA is provided below.

Final Regulatory Flexibility Act Analysis

The Small Business Administration has established thresholds on the designation of businesses as ”small entities”. The entities that may be impacted by this rule are fish-harvesting business, sports and recreation businesses, scenic and sightseeing transportation businesses. A fish-harvesting business is considered a ”small” business if it has annual receipts not in excess of $3.5 million (13 CFR 121.201). Sports and recreation businesses and scenic and sightseeing transportation businesses are considered ”small” businesses if they have annual receipts not in excess of $6 million (13 CFR 121.201). According to these limits, all the vessels impacted by this rule are considered small entities. All analyses are based on the most recently updated and best available information.

In 2002, a survey of charter fishing boat owners/operators was completed. This survey identified 15 charter fishing boats that utilize GRNMS as one of their

fishing locations. It was estimated that their 2001 total gross revenue was $1,029,000 and their total operating expenses was $582,000 with total profit of $447,000. Converting these values to 2008 dollars using the consumer price index results in gross revenue of $1,251,264 total operating expenses of $707,712, and total profit of $543,552. The survey found that approximately 40 percent of their fishing activity took place in GRNMS.

The economic impact of the five alternatives considered for this action, and further described in the FEIS, can be estimated by combining results from the 2002 survey with boat location analysis completed in 2009. The results of this analysis are summarized in Table 1. The five alternatives contain a no action alternative (i.e., no designation of a research area) and four alternatives distinguished by different locations within the sanctuary and by varying sizes. The Southern Option Boundary (preferred) impacts 9 percent of recreational fishing resulting in impacts of $46K to total gross revenue and $20K to total profit. The Optimal Scientific Option Boundary impacts 67 percent of recreational fishing resulting in impacts of $335K to total gross revenue and $146K to total profit. The Minimal User Impact Option Boundary impacts 15 percent of recreational fishing

resulting in impacts of $75K to total gross revenue and $32K to total profit. The Compromise Option Boundary impacts 35 percent of recreational fishing resulting in impacts of $175K to total gross revenue and $76K to total profit. The last three alternatives were rejected because they all had more impact on sanctuary activities (mainly recreational fishing) than the preferred alternative, while the preferred alternative had a minimal impact on sanctuary users and still fulfilled the purpose and need for the action.

This analysis assumes that all economic value associated with the areas closed is lost. Any factor that could mitigate or off-set the level of impact is not addressed. The estimated impacts are thought of as "maximum potential losses" because impacted businesses may take action to at least mitigate or off-set most losses (i.e., by conducting charter operations somewhere nearby).

Table 1. Estimated Economic Impacts to Recreational Charter Fishing Businesses by Alternative, in 2008 $

Alternative	Percent Impact	Total Impact to Gross Revenue	Total Impact to Profit
No Action	0%	-	-
Southern Boundary Options (preferred)	9%	46,047	20,003
Optimal Scientific Boundary Option	67%	335,339	145,672
Minimal User Impact Boundary Option	15%	75,076	32,613
Compromise Boundary Option	35%	175,177	76,097

No economic impact is expected to result to recreational charter diving businesses because there appear to be none currently operating within the sanctuary. In September 2007, in-person interviews were conducted with all businesses and organizations offering scuba diving trips along the Georgia coast. Four charter scuba operations and one scuba diving club were identified and interviewed. The interviews gathered information that included operating profiles, preferred diving locations and methods, detailed business data (revenue and costs), and general opinions of the current state of scuba diving and spearfishing off the Georgia coast. None of the businesses offer scuba diving trips to GRNMS.

G. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 0648–0141. The public reporting burden for national marine sanctuary permits is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining

the data needed, and completing and reviewing the collection of information.

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, three permits are active for research activities within the GRNMS. Even though this final rule may result in a few additional permits applications for scientific research at GRNMS, this rule will not appreciably change the average annual number of respondents or the reporting burden for this information requirement. Therefore, NOAA has determined that the regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act. Comments on this determination were solicited in the proposed rule. No comments were received.

Notwithstanding any other provision 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

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.

Date: September 29, 2011

David M. Kennedy

Assistant Administrator for Ocean Services and Coastal Zone Management.

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

PART 922 — NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

2. Revise § 922.92 to read as follows:

§ 922.92 Prohibited or otherwise regulated activities – Sanctuary-wide.

(a) Except as specified in paragraphs (b) through (d) of this section and in § 922.94 regarding additional prohibitions in the research area, the following activities

are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Dredging, drilling into, or otherwise altering in any way the submerged lands of the Sanctuary (including bottom formations).

(2) Constructing any structure other than a navigation aid, or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary.

(3) Discharging or depositing any material or other matter except:

(i) Fish or fish parts, bait, or chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling water.

(4) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.

(5)(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead,

within the Sanctuary by any means except by use of rod and reel, and handline gear;

(ii) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the Sanctuary has been collected from the Sanctuary.

(6) Using any fishing gear within the Sanctuary except rod and reel, and handline gear, or for law enforcement purposes.

(7) Using underwater any explosives, or devices that produce electric charges underwater.

(8) Breaking, cutting, damaging, taking, or removing any bottom formation.

(9) Moving, removing, damaging, or possessing, or attempting to move, remove, damage, or possess, any Sanctuary historical resource.

(10) Anchoring any vessel in the Sanctuary, except as provided in §922.92 when responding to an emergency threatening life, property, or the environment.

(11) Possessing or carrying any fishing gear within the Sanctuary except:

(i) Rod and reel, and handline gear;

(ii) Fishing gear other than rod and reel, handline gear, and spearfishing gear, provided that it is stowed on a vessel and not available for immediate use;

(iii) Spearfishing gear provided that it is stowed on a vessel, not available for immediate use, and the vessel is passing through the Sanctuary without interruption; and

(iv) For law enforcement purposes.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section and §922.94. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in this section and in §922.94 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a

National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.93.

(d) The prohibitions in this section and in §922.94 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

3. Revise § 922.93(a) to read as follows:

§ 922.93 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.92(a)(1) through (10) and § 922.94 if conducted in accordance within the scope, purpose, manner, terms and conditions of a permit issued under this section and §922.48.

* * * * *

4. Add § 922.94 to subpart I to read as follows:

§ 922.94 Prohibited or otherwise regulated activities – Research area.

In addition to the prohibitions set out in §922.92, which apply throughout the Sanctuary, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the research area described in Appendix A to this subpart.

(a)(1) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead.

(2) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the research area has been collected from the research area.

(b) Using any fishing gear, or possessing, or carrying any fishing gear unless such gear is stowed and not available for immediate use while on board a vessel transiting through the research area without interruption or for valid law enforcement purposes.

(c) Diving.

(d) Stopping a vessel in the research area.

5. Add Appendix A to Subpart I to read as follows:

Appendix A to Subpart I of Part 922 – Boundary Coordinates for the Gray's Reef National Marine Sanctuary Research Area

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

The research area boundary is defined by the coordinates provided in Table 1 and the following textual description. The research area boundary extends from Point 1, the southwest corner of the sanctuary, to Point 2 along a straight line following the western boundary of the Sanctuary. It then extends along a straight line from Point 2 to Point 3, which is on the eastern boundary of GRNMS. The boundary then follows the eastern boundary line of the sanctuary southward until it intersects the line of the southern boundary of GRNMS at Point 4, the southeastern corner of the sanctuary. The last straight line is defined by connecting Point 4 and Point 5, along the southern boundary of the GRNMS.

Table 1: Coordinates for the Research Area

Point ID	Latitude (north, in degrees)	Longitude (west, in degrees)
1	N 31.362732	W 80.921200
2	N 31.384444	W 80.921200
3	N 31.384444	W 80.828145
4	N 31.362732	W 80.828145
5	N 31.362732	W 80.921200

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