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## DEPARTMENT OF COMMERCE

National Oceanic and  
Atmospheric Administration



### MONITOR MARINE SANCTUARY Final Regulations



## RULES AND REGULATIONS

of Title III of the Act ("Marine Sanctuaries"); and that it can be carried out within the regulations promulgated under section 302(f).

The authority of the Secretary to administer the provisions of the Act has been delegated to the Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (hereafter the Administrator, 39 FR 10255, March 19, 1974).

On February 5, 1975, the Administrator published in the FEDERAL REGISTER interim regulations applicable to the MONITOR Marine Sanctuary (40 FR 5347), and invited comments on these regulations until March 7, 1975. Comments which have been received have suggested six changes in the regulations as follows:

1. That § 924.2, the description of the Sanctuary, be somewhat shortened and revised to read:

The Sanctuary consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00'23" north latitude and 75°24'32" west longitude.

2. That § 924.3, which prohibits "bottom anchoring" in the Sanctuary, be revised to read:

Anchoring in any manner, stopping, remaining, or drifting without power at any time;

3. That § 924.3(i), which prohibits the "discharging of waste material" into the waters of the Sanctuary, be revised to read:

Discharging waste material into the water in violation of any Federal statute or regulation.

It was stated that this change was felt to be desirable because of the breadth of the original language, and the difficulty of enforcing a prohibition which could be constructed to extend to routine operational discharges from vessels—such as bilge, sanitary and galley wastes—which discharges would have no adverse impact on the MONITOR.

4. That § 924.4, which lists penalties for the commission of prohibited acts within the Sanctuary, be revised to read:

Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000 against any citizen of the United States for each violation of any regulation issued pursuant to Title III of the Act, and further authorizes proceedings *in rem* against any vessel used in violation of the penalty described above. See also 15 CFR 922 (published at 39 FR 23254, 23257, June 27, 1974), for details applicable to any instance of a violation of these regulations.

Essentially this change substitutes "the penalty described above" for "Any such regulations" at the end of the first sentence of the interim regulations; and rephrases the second and third sentences without substantially changing their meaning.

5. That so much of the last part of § 924.5 as provides that "except that, no permit is required for the conduct of any activity immediately necessary in con-

nection with an air or marine casualty" be revised to read:

except that, no permit is required for the conduct of any activity necessary for the protection of life, property or the environment.

The suggested change would appear to add an environmental casualty, such as oil spill, to the air and/or marine casualties already contemplated by the regulation.

6. That § 924.7, having to do with certification procedures, be revised so as to require any Federal agency which, as of the effective date of the regulations, has authorized any prohibited activity in the Sanctuary, be required to notify the Administrator of that fact in writing. The change was from "activity," as stated in the interim regulations, to "prohibited activity." It was stated that the Secretary's concern should be with any prohibited activity, not with an activity not prohibited.

Except as noted below, and for the reasons there set out, the Administrator has decided to accept these suggested changes, and they have been incorporated into the final regulations. With regard to the suggested changes in § 924.4 (paragraph 4, above), it is felt that the substitution of "penalty" for "regulations" somewhat misstates the thought involved, since the violation in question is of the regulations, not of the penalty. Otherwise, the suggested changes do not alter the meaning of the interim language. Therefore, § 924.4 will be retained in its present form. With regard to the suggested change in § 924.5 (paragraph 5, above), it is felt that there must be an immediate and urgent need for the activity if it is to be conducted without a permit. Therefore the words "immediately and urgently" will be added before "necessary." At the same time, it is felt that a permit should be required for any activity to be conducted in a sanctuary pertaining to an air or marine casualty already passed, in regard to which there is no need for immediate entry into the sanctuary, such as in relation to salvage or recovery operations. Therefore § 924.5 (a) (2) has been appropriately modified. Finally, the Administrator felt it desirable to provide for the extension of the various time limits prescribed in § 924.8 for good cause shown. This has been done by the addition of a new paragraph (e).

There having been no other comments, and the Administrator being of the view that no additional changes in the regulations are necessary at this time, there are published herewith final regulations pertaining to the MONITOR Marine Sanctuary to become effective May 19, 1975.

15 CFR Part 924 is revised as follows:

Sec.	
924.1	Authority.
924.2	Description of the Sanctuary.
924.3	Activities Prohibited Within the Sanctuary.
924.4	Penalties for Commission of Prohibited Acts.
924.5	Permitted Activities.
924.6	Permit Procedures and Criteria.

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 924—MONITOR MARINE SANCTUARY

Final Regulations

On January 30, 1975, the Secretary of Commerce designated as a marine sanctuary an area of the Atlantic Ocean around and above the submerged wreckage of the Civil War ironclad MONITOR pursuant to the authority of section 302 (a) of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052, 1061, hereafter the Act). The sanctuary area (hereafter the Sanctuary) is about 16.10 miles south-southeast of Cape Hatteras (North Carolina) Light.

Section 302(f) of the Act directs the Secretary to issue necessary and reasonable regulations to control any activities permitted within a designated marine sanctuary. This section also provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes

Sec.  
 §24.7 Certification Procedures.  
 §24.8 Appeals of Administrative Action.

AUTHORITY: Secs. 302(f), 302(g), 303, Marine Protection, Research and Sanctuaries Act of 1972.

§ 924.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Act. The following regulations are issued pursuant to the authorities of sections 302(f), 302(g) and 303 of the Act.

§ 924.2 Description of the Sanctuary.

The Sanctuary consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00'23" north latitude and 75°24'32" west longitude.

§ 924.3 Activities prohibited within the Sanctuary.

Except as may be permitted by the Administrator, no person subject to the jurisdiction of the United States shall conduct, nor cause to be conducted, any of the following activities in the Sanctuary:

- (a) anchoring in any manner, stopping, remaining, or drifting without power at any time;
- (b) any type of subsurface salvage or recovery operation;
- (c) any type of diving, whether by an individual or by a submersible;
- (d) lowering below the surface of the water any grappling, suction, conveyor, dredging or wrecking device;
- (e) detonation below the surface of the water of any explosive or explosive mechanism;
- (f) seabed drilling or coring;
- (g) lowering, laying, positioning or raising any type of seabed cable or cable-laying device;
- (h) trawling; or
- (i) discharging waste material into the water in violation of any Federal statute or regulation.

§ 924.4 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000 for each violation of any regulation issued pursuant to Title III of the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. Details are set out in Subpart (D) of Part 922 of this Chapter (39 FR 23254, 23257, June 27, 1974). Subpart (D) is applicable to any instance of a violation of these regulations.

§ 924.5 Permitted activities.

Any person or entity may conduct in the Sanctuary any activity listed in § 924.3 of this Part if: (a) such activity is either (1) for the purpose of research related to the MONITOR, or (2) pertains to salvage or recovery operations in connection with an air or marine casualty; and (b) such person or entity is in possession of a valid permit issued by the Administrator authorizing the conduct

of such activity; except that, no permit is required for the conduct of any activity immediately and urgently necessary for the protection of life, property or the environment.

§ 924.6 Permit procedures and criteria.

(a) Any person or entity who wishes to conduct in the Sanctuary an activity for which a permit is authorized by § 924.5 (hereafter a permitted activity) may apply in writing to the Administrator for a permit to conduct such activity citing this section as the basis for the application. Such application should be made to the Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20230. Upon receipt of such application, the Administrator shall request, and such person or entity shall supply to the Administrator, such information and in such form as the Administrator may require to enable him to act upon the application.

(b) In considering whether to grant a permit for the conduct of a permitted activity for the purpose of research related to the MONITOR, the Secretary shall evaluate such matters as (1) the general professional and financial responsibility of the applicant; (2) the appropriateness of the research method(s) envisioned to the purpose(s) of the research; (3) the extent to which the conduct of any permitted activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information; (4) the end value of the research envisioned; and (5) such other matters as the Administrator deems appropriate.

(c) In considering whether to grant a permit for the conduct of a permitted activity in the Sanctuary in relation to an air or marine casualty, the Administrator shall consider such matters as (1) the fitness of the applicant to do the work envisioned; (2) the necessity of conducting such activity; (3) the appropriateness of any activity envisioned to the purpose of the entry into the Sanctuary; (4) the extent to which the conduct of any such activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information; and (5) such other matters as the Administrator deems appropriate.

(d) In considering any application submitted pursuant to this Section, the Administrator may seek and consider the views of any person or entity, within or outside of the Federal Government, as he deems appropriate; except that, he shall seek and consider the views of the Advisory Council on Historic Preservation.

(e) The Administrator may, in his discretion, grant a permit which has been applied for pursuant to this Section, in whole or in part, and subject to such condition(s) as he deems appropriate, except that the Administrator shall attach to any permit granted for research related to the MONITOR the condition that any information and/or artifact(s) obtained in the research shall be made

available to the public. The Administrator may observe any activity permitted by this section; and/or may require the submission of one or more reports of the status or progress of such activity.

(f) A permit granted pursuant to this Section is nontransferable.

(g) The Administrator may amend, suspend or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely, if, in his view, the permit holder (hereafter the Holder) has acted in violation of the terms of the permit; or the Administrator may do so for other good cause shown. Any such action shall be in writing to the Holder, and shall set forth the reason(s) for the action taken. Any Holder in relation to whom such action has been taken may appeal the action as provided in § 924.8 of this Part.

§ 924.7 Certification procedures.

Any Federal agency which, as of the effective date of these regulations, already has permitted, licensed or otherwise authorized any prohibited activity in the Sanctuary shall notify the Administrator of this fact in writing. The writing shall include a reasonably detailed description of such activity, the person(s) involved, the beginning and ending dates of such permission, the reason(s) and purpose(s) for same, and a description of the total area affected. The Administrator shall then decide whether the continuation of the permitted activity, in whole or in part, or subject to such condition(s) as he may deem appropriate, is consistent with the purposes of Title III of the Act and can be carried out within these regulations. He shall inform the Federal agency of his decision in these regards, and the reason(s) therefore, in writing. The decision of the Secretary made pursuant to this section shall be final action for the purpose of the Administrative Procedure Act.

§ 924.8 Appeals of administrative action.

(a) In any instance in which the Administrator, as regards a permit authorized by, or issued pursuant to, this Part: (1) denies a permit; (2) issues a permit embodying less authority than was requested; (3) conditions a permit in a manner unacceptable to the applicant; or (4) amends, suspends, or revokes a permit for a reason other than the violation of regulations issued under this Part, the applicant or the permit holder, as the case may be (hereafter the Appellant), may appeal the Administrator's action to the Secretary. In order to be considered by the Secretary, such appeal shall be in writing, shall state the action(s) appealed and the reason(s) therefore; and shall be submitted within 30 days of the action(s) by the Administrator to which the appeal is directed. The Appellant may request a hearing on the appeal.

(b) Upon receipt of an appeal authorized by this Section, the Secretary may request, and if he does, the Appellant shall provide, such additional information and in such form as the Secretary

may request in order to enable him to act upon the appeal. If the Appellant has not requested a hearing, the Secretary shall decide the appeal upon (1) the basis of the criteria set out in §§ 924.6 (b) or 924.6(c) of this part, as appropriate, (2) information relative to the application on file in NOAA, (3) information provided by the Appellant, and (4) such other considerations as he deems appropriate. He shall notify the Appellant of his decision, and the reason(s) therefore, in writing within 30 days of the date of his receipt of the appeal.

(c) If the Appellant has requested a hearing, the Secretary shall grant an informal hearing before a Hearing Officer designated for that purpose by the Secretary after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing shall be held no later than 30 days following the Secretary's receipt of the appeal. The Appellant and any interested person may appear personally or by counsel at the hearing, present evidence, cross-examine witnesses, offer argument and file a brief. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Secretary based upon the considerations outlined in paragraph (b) of this section and based upon the record made at the hearing.

(d) The Secretary may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Secretary shall notify the Appellant of his decision, and the reason(s) therefore, in writing within 15 days of his receipt of the recommended decision of the Hearing Officer. The Secretary's action, whether without or after a hearing, as the case may be, shall constitute final action for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this Section may be extended by the Secretary for good cause, either upon the Secretary's own motion and upon written notification to an Appellant stating the reason(s) therefore, or upon the written request of an Appellant to the Secretary stating the reason(s) therefore, except that no time limit may be extended more than 30 days.

R. I. CARNAHAN,  
*Acting Assistant Administrator  
for Administration.*

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