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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 construed 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

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. L. CARNAHAN,
*Acting Assistant Administrator
for Administration.*

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