

Municipal-Southworth Airport, Chetek, WI. The intended effect of this action is to ensure segregation of the aircraft landing and takeoff approach procedures in instrument flight conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before March 31, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 89-AGL-3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

COMPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AGL-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of

Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Chetek, WI.

The development of a new VOR/DME Runway 17 SIAP requires that the FAA designate airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Chetek, WI [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Chetek Municipal-Southworth Airport (lat. 45°18'24" N., long. 91°38'18" W.); within 1.25 miles each side of the Rice Lake VOR (lat. 45°28'33" N., long. 91°43'30" W.) 159 radial extending from the 5-mile radius to 12.5 miles northwest of the Chetek Municipal-Southworth Airport, excluding that portion which overlies the Rice Lake, WI, transition area.

Issued in Des Plaines, Illinois, on February 10, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-4237 Filed 2-23-89; 8:45 am]

BILLING CODE 4910-13-01

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 943

[Docket No. 80851-8151]

Flower Garden Banks National Marine Sanctuary Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration, by the proposed Designation Document contained in this notice, proposes to designate two areas of marine waters over the East and West Flower Garden Banks in the northwestern Gulf of Mexico as the Flower Garden Banks

National Marine Sanctuary. The area proposed for designation at the East Bank, located approximately 120 nautical miles south southwest of Cameron, Louisiana, encompasses 19.20 square nautical miles, and the area proposed for designation at the West Bank, located approximately 110 nautical miles southeast of Galveston, Texas, encompasses 22.50 square nautical miles. The total area of the proposed Flower Garden Banks National Marine Sanctuary is 41.70 square nautical miles.

By the proposed regulations, also contained in this notice, NOAA intends to implement the proposed designation and regulate activities in the sanctuary consistently with the provisions of the Designation Document. The notice also announces the public availability of the draft environmental impact statement and management plan prepared for the proposed designation, summarizes the draft management plan prepared for the sanctuary, and invites public comments on the proposal, proposed regulations, and draft management plan.

After the comments received during the comment period have been considered, a final environmental impact statement and management plan will be prepared, and a notice of designation together with final regulations implementing the designation will be published in the Federal Register. The designation will become final after the close of a 45-day period for Congressional review unless Congress passes a joint resolution of disapproval.

DATE: Comments will be considered if received by April 25, 1989.

ADDRESSES: Send comments to Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. Copies of the draft management plan and the draft environmental impact statement are available upon request to the Office of Ocean and Coastal Resource Management.

FOR FURTHER INFORMATION CONTACT: Rafael Lopez, 202/673-5122.

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Marine Protection, Research, and Sanctuaries Act, as amended ("Act"), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if, as required by section 303

of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with Congress, a variety of fulfill the purposes and policies of Title III (set forth in section 301(b) of the Act (16 U.S.C. 1431(b)) and: (1) The area proposed for designation is of special national significance due to its resource or human-use values; (2) existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Before the Secretary may designate an area as a national marine sanctuary, section 303 (16 U.S.C. 1433) requires him or her to make the above described findings and section 304 (16 U.S.C. 1434), setting forth the procedures for designation, requires him or her to issue in the Federal Register this notice of the proposal, proposed regulations, and a summary of the draft management plan.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management in the National Oceanic and Atmospheric Administration (DOC/DAO 25-5A, § 3.01(z), Aug. 26, 1985, as amended; NOAA Circular 83-38, Sept. 21, 1983, as amended).

The Flower Garden Banks are two of over thirty major outer-continental shelf structures in the northwestern Gulf of Mexico. The East and West Flower Garden Banks, separated by eight nautical miles of open water, sustain the northernmost living coral reefs on the U. S. continental shelf. The complex and biologically productive reef communities that cap the Banks are in delicate ecological balance because of the fragile nature of coral and the fact that the Banks lie on the extreme northern edge of the zone in which extensive reef development can occur. In addition to their coral reefs, the Banks harbor the only known oceanic brine seep in continental shelf waters of the Atlantic Ocean. Because of these features, the Flower Garden Banks offer a combination of esthetic appeal and recreational and research opportunity matched in few other ocean areas.

In April 1979, NOAA published proposed regulations (44 FR 22081) and a draft environmental impact statement (DEIS) on the proposed designation of

the East and West Flower Garden Banks as a national marine sanctuary.

However, a final EIS was not prepared. NOAA withdrew the DEIS in April 1982, and removed the site from the list of areas being considered for designation. One of the major reasons for this action was that a Fishery Management Plan (FMP) for coral in the Gulf of Mexico was about to be implemented. It was expected that the FMP and its implementing regulations would protect the coral formations in the area of the proposed national marine sanctuary from being damaged by large-vessel anchoring. However, the final regulations implementing the FMP (49 FR 29607 (1984)) did not include the expected "no anchoring" provision.

The continued lack of a ban on large-vessel anchoring led to renewed interest in ensuring the site's protection by designating it as a national marine sanctuary, and on August 2, 1984 NOAA announced (49 FR 30988) that the Flower Garden Banks had again become an Active Candidate for sanctuary designation. On June 24, 1986, NOAA sponsored a public scoping meeting in Galveston, Texas, to solicit public comment on the scope and significance of issues involved in designating the sanctuary. Again the response was generally favorable to proceeding with the evaluation.

II. Summary of the Draft Management Plan

The draft management plan for the proposed Flower Garden Banks National Marine Sanctuary recognizes the need for a balanced approach to management that reflects the multiple use character of the area as well as the need to protect its resources. The plan is designed to guide management of the sanctuary for the first five years after implementation. After describing the proposed sanctuary's location, resources and uses, the management plan discusses proposed programs for resource protection, research, and interpretation and details agency administrative roles and responsibilities.

The proposed designation of the Flower Garden Banks as a national marine sanctuary focuses attention on the value of the area's resources. To ensure that these resources are protected, the sanctuary resource protection program includes: (1) Coordination of policies and procedures among the agencies sharing responsibility for resource protection; (2) participation by interested agencies and organizations in the development of procedures to address specific

management concerns (e.g., monitoring and emergency-response programs); and (3) the enforcement of sanctuary regulations in addition to other regulations already in place.

Effective management of the sanctuary requires the initiation of a sanctuary research program that addresses management issues. The sanctuary research program will be directed to improving knowledge of the sanctuary's resources and environment and of how they may be affected by various types of human activity. To avoid duplication of effort and achieve maximum benefits from the research, NOAA will coordinate its research efforts with those of other agencies.

Increased public understanding and appreciation of the value of Flower Garden Bank natural resources is essential for their protection. The interpretation program for the proposed Flower Garden Banks National Marine Sanctuary will be directed to developing public awareness of the sanctuary, its resources, and the regulations designed to protect them.

Under the preferred management alternative, the proposed Flower Garden Banks National Marine Sanctuary would be managed, at least initially, by NOAA's Marine and Estuarine Management Division in Washington. Sanctuary enforcement personnel be headquartered locally.

III. Proposed Designation Document

Section 304(a)(4) of the Act requires that the proposed designation include the geographic area proposed to be included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. The section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation was made. Thus the terms of the designation serve as a constitution for the sanctuary.

Proposed Designation Document for the Flower Garden Banks National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (Act), 16 U.S.C. 1431 *et seq.*, the waters over the East and West Flower Garden Banks in the Gulf of Mexico, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purpose of protecting and conserving these two highly

productive marine areas and the waters over them and ensuring the continued availability of the areas and the waters as ecological, recreational, research and educational resources.

Article 1. Effect of Designation

Regarding the area designated as the Flower Garden Banks National Marine Sanctuary (Sanctuary), described in Article 2, the Act authorizes the promulgation of such regulations as are necessary and reasonable to protect the characteristics of the Sanctuary that give it conservation, recreational, ecological, historical, research, educational, or esthetic value. Restrictions on activities may be imposed only by specific regulation. Section 2 of Article 4 of this Designation Document lists those activities which have been identified as activities that may require regulation now or in the future in order to protect Sanctuary resources. Listing does not by itself imply that an activity will be regulated. However, activities not listed may be regulated, other than on an emergency basis under Section 3 of Article 4, only by amending Section 2 of Article 4 by the same procedures through which the original designation was made.

Article 2. Description of the Area

The Sanctuary boundaries encompass a total of 41.70 square nautical miles (143.02 square kilometers): 19.20 square nautical miles (65.85 square kilometers) at the East Bank and 22.50 square nautical miles (77.17 square kilometers) at the West Bank. The precise boundaries are defined in the regulations.

Article 3. Characteristics of the Area That Give It Particular Value

The Flower Gardens sustain the northernmost living coral reefs on the U.S. continental shelf. They are isolated from other reef systems by over 300 n.m. (550 km) and exist under hydrographic conditions generally considered marginal for tropical reef formation. The composition, diversity and vertical distribution of benthic communities on the Banks are strongly influenced by this physical environment. Epibenthic populations are distributed among several interrelated biotic zones, including a *Diploria-Montastrea-Porites* zone, a *Madracis mirabilis* zone, and an algal sponge zone.

The complex and biologically productive reef communities that cap the Banks offer a combination of esthetic appeal and recreational and research opportunity matched in few other ocean areas. These reef communities are in delicate ecological

balance because of the fragile nature of coral and the fact that the Banks lie on the extreme northern edge of the zone in which extensive reef development can occur. In addition to their coral reefs, the Banks contain the only known oceanic brine seep in continental shelf waters of the Atlantic Ocean. Because of these features, the Flower Gardens are particularly valuable for scientific research.

Article 4. Scope of Regulation

Section 1. Activities Subject to Regulation. The following activities may be regulated within the Sanctuary and adjacent waters to the extent necessary and reasonable to ensure the protection of Sanctuary characteristics that give it conservation, recreational, ecological, historical, research, educational or esthetic value:

- a. Anchoring by vessels;
- b. Depositing or discharging of materials or substances;
- c. Altering the seabed except by hydrocarbon exploration and development in Sanctuary areas lying outside of the no-activity zones established by the Department of the Interior and defined by the topographic features stipulation for OCS lease sale 112;
- d. Removing or injuring coral or other resources;
- e. Using fishing gear other than conventional hook and line gear; and
- f. Detonating explosives or releasing electrical charges.

Section 2. Consistency with International Law—The regulations governing activities listed in Section 1 of this Article shall apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3. Emergency Regulations—Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities not listed in Section 1 of this Article may be regulated within the limits of the Act on an emergency basis for a period not to exceed 120 days.

Article 5. Relation to Other Regulatory Programs

Section 1. Fishing—The regulation of the use of conventional hook and line fishing gear is not authorized under Article 4. All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson Fishery Conservation and

Management Act, 16 U.S.C. 1801 *et seq.*, shall remain in effect. Where regulations promulgated under these programs are in conflict with Sanctuary regulations, the more restrictive regulations will prevail.

Section 2. Defense Activities—The regulation of activities listed in Article 4 will not prohibit any Department of Defense activity that is necessary for national defense. All activities carried out by the Department of Defense within the area of the proposed Sanctuary on the effective date of designation that are necessary for the national defense shall not be subject to Sanctuary prohibitions. Additional activities having the potential for significant environmental impact may be exempted from regulation after consultation between the Department of Commerce and the Department of Defense.

Section 3. Other Programs—All applicable regulatory programs shall remain in effect. Where regulations promulgated under these programs are in conflict with Sanctuary regulations, the more restrictive regulations shall prevail.

Article 6. Alterations to This Designation

This designation may be altered only in accordance with the same procedures which it has been made, including public hearings, consultation with interested Federal and State agencies and the Gulf of Mexico Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce or his or her designee.

IV. Summary of Proposed Regulations

The proposed regulations would prohibit a relatively narrow range of activities in the proposed Sanctuary, would establish procedures for issuing permits to conduct otherwise prohibited activities for a narrow range of purposes and would set forth the maximum per day penalty for conducting a prohibited activity without a permit.

Specifically, the proposed regulations would add a new part 943 to title 15, Code of Federal Regulations.

Proposed § 943.1 would set forth the statutory authority for the designation of the Sanctuary and for the issuance of the regulations.

Proposed § 943.2 would set forth as the purposes for designating the Sanctuary: (1) Protecting and conserving the East and West Flower Garden Banks and the waters over them; and (2)

ensuring the continued availability of the Banks and the waters as ecological, recreational, research, and educational resources.

Proposed § 943.3 and the appendix following propose § 943.10 would set forth the boundaries of the Sanctuary.

Proposed § 943.4 would define various terms used in the regulations.

"Conventional hook and line" would be defined as any apparatus composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand or electrically operated, hand held or mounted. "Injure" would be defined as to change adversely, either in the long- or short-term, a chemical or physical quality or the viability of a Sanctuary resource. "Person" would be defined to mean any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department or instrumentality of the Federal government, of any State or local government, or of any foreign government. "Sanctuary resource" would be defined to mean any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or esthetic value, including, but not limited to the carbonate-rock substratum of the Banks, corals and coralline algae, benthic invertebrates, brine-seep biota, pelagic fish, turtles and marine mammals.

Proposed § 943.6 would prohibit a variety of activities and make it unlawful for any person to conduct them. However, any of the prohibited activities could be conducted lawfully if necessary for national defense; if necessary to respond to an emergency threatening life, property, or the environment; or pursuant to a permit issued by the Assistant Administrator for Ocean Services and Coastal Zone Management under proposed § 943.8.

The first activity prohibited would be anchoring within the Sanctuary by vessels greater than 100 feet in registered length. Vessels of 100 feet or less in registered length would be allowed to anchor in the Sanctuary, however, such vessels would be prohibited from using more than 15 feet of chain or wire rope attached to their anchors and from using anchor lines (exclusive of such chain or wire rope) that are not constructed of soft fiber or nylon, polypropylene, or similar material.

These proposed prohibitions on anchoring are necessary to protect the fragile coral bottom from damage. Although the proposed regulations would permit vessels of 100 feet or less in registered length to anchor subject to the limitations on anchoring gear, should such anchoring by these vessels damage coral resources, it could be prohibited or

further regulated by regulatory amendment.

The second activity prohibited would be depositing or discharging from any location within the boundaries of the Sanctuary, materials or substances of any kind, including anesthetics and toxins used for taking or collecting fish, but excepting fish or parts and chumming materials (bait) and water (including cooling water) and other biodegradable effluents as specified. Depositing or discharging, from any location beyond the boundaries of the Sanctuary, materials or substances of any kind except for the exclusions discussed above, would also be prohibited if they enter the Sanctuary and injure a Sanctuary resource.

The third activity prohibited would be dredging, constructing structures or otherwise altering the seabed, or attempting to do so, for any purpose other than the authorized installation of navigational aids or incidental to hydrocarbon exploration and development in areas of the Sanctuary lying outside of the no-activity zones established by the Department of the Interior and defined by the topographical lease sale 112.

The fourth activity prohibited would be injuring, damaging, taking or removing, or attempting to injure, damage, take or remove, any fish (except by conventional hook and line gear or by spearfishing gear), marine invertebrate, coral or other bottom formation, or plant. Any such resource found in the possession of a person within the Sanctuary would be presumed, subject to refutation, to have been taken from the Sanctuary.

The fifth activity prohibited would be the collecting, harvesting, or taking of any fish by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear or spearfishing gear. While spearfishing could be regulated or prohibited by regulatory amendment if deemed necessary for resource protection, the use of conventional hook and line gear could not be regulated or prohibited except on an emergency basis, without amending the designation document.

The sixth and last prohibited activity would be detonating explosives or releasing electrical charges within the Sanctuary.

Proposed § 943.5 would allow all activities to be conducted in the Sanctuary (subject to all other prohibitions, restrictions, or conditions imposed under any other program) except for those activities specifically

prohibited in proposed § 943.6. Thus, vessels of 100 feet or less in registered length could anchor in the Sanctuary subject to certain restrictions on their use of anchoring gear, and fish could be taken by use of conventional hook and line fishing gear and spearfishing gear.

Proposed § 943.7 would set forth the maximum statutory civil penalty per day for conducting a prohibited activity—\$50,000. Each day of a continuing violation would constitute a separate violation. Further, *in rem* actions against any vessel used in conducting a prohibited activity would be statutorily authorized. Regulations setting forth the administrative procedures governing the assessment of civil penalties, enforcement hearings, and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings appear at Part 904, title 15, Code of Federal Regulations.

Proposed § 943.8 would set forth the procedures for applying for a permit to conduct a prohibited activity in the Sanctuary and the criteria governing the issuance or denial of such permits. Permits would be granted by the Assistant Administrator for Ocean Services and Coastal Zone Management if he or she finds that the activity will further research related to Sanctuary resources; further the educational, historical or cultural value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty, or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Assistant Administrator may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated, and the end value of the applicant's overall activity.

Proposed § 943.9 would set forth the procedures governing appeals of the grant, conditioning, amendment, suspension or revocation of permits by the Assistant Administrator.

Proposed § 943.10 would state that all permits, licenses, and other authorizations issued pursuant to any other authority are valid within the Sanctuary subject only to the prohibitions set forth in proposed § 943.6. All applicable regulatory programs would remain in effect. If regulations promulgated by another authority are in conflict with Sanctuary

regulations, the more restrictive regulations apply.

V. Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department must judge whether the regulations proposed in this notice are "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Assistant Administrator has determined that the regulations proposed in this notice are not major because, if adopted, they are not likely to result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The regulations proposed in this notice would allow all activities to be conducted in the proposed sanctuary other than a narrow range of prohibited or restricted activities. These prohibitions and restrictions are not expected to have a significant economic impact on a substantial number of small entities and the General Counsel of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed regulations would have no effect on small business or small government jurisdictions. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96-511). The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the proposed activities are consistent with the management goals for the sanctuary. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget

for review under section 3504(h) of the Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.75 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20530; and to Richard Roberts, Room 305, 601 Executive Boulevard, Rockville, DC, 20852.

Executive Order 12612

This proposed rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a draft environmental impact statement has been prepared for the proposed designation and the proposed regulations. As required by section 304(a)(2), the draft environmental impact statement includes the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. Copies of the draft environmental impact statement are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

Executive Order 12630

This proposed rule, if issued in final form as proposed, would not have any takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on private property sufficiently severe as to effectively deny economically viable use of any of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation.

List of Subjects in 15 CFR Part 943

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

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

1. Part 943 is added to read as follows:

PART 943—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Sec.

943.1 Authority.

943.2 Purpose.

943.3 Boundaries.

943.4 Definitions.

943.5 Allowed activities.

943.6 Prohibited activities.

943.7 Penalties for commission of prohibited activities.

943.8 Permit applications—procedures and criteria.

943.9 Appeals of administrative action.

943.10 Other authorities.

Appendix—Flower Garden Banks National Marine Sanctuary Boundary Coordinates.

Authority: Secs. 303, 304, 305, and 307, Title III, Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

§ 943.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (Act). The regulations in this part are issued pursuant to the authority of sections 303(a), 304, 305, and 307 of the Act.

§ 943.2 Purpose.

The purpose of designating the Sanctuary is to protect and conserve the discrete, highly productive marine areas called the East and West Flower Garden Banks and the waters over them and to ensure the continued availability of the areas and the waters as ecological, recreational, research and educational resources.

§ 943.3 Boundaries.

The Sanctuary consists of two areas of marine waters 110 nautical miles southeast of Galveston, Texas. The boundaries, encompassing 41.7 square nautical miles (143.21 square kilometers), include the "no activity" zones established by the Department of the Interior over the East and West Flower Garden Banks. The boundary

coordinates are listed in the appendix following § 943.10.

§ 943.4 Definitions.

(a) "Act" means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, or designee.

(c) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, NOAA, or designee.

(d) "Conventional hook and line" means any apparatus composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand or electrically operated, hand held or mounted.

(e) "Injure" means to change adversely, either in the long- or short-term, a chemical or physical quality or the viability of a Sanctuary resource.

(f) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department or instrumentality of the Federal government, of any state or local government, or of any foreign government.

(g) "Sanctuary" means the Flower Garden Banks National Marine Sanctuary.

(h) "Sanctuary resource" means a living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or esthetic value, including, but not limited to, the carbonate-rock substratum of the Banks, corals and coralline algae, benthic invertebrates, brine-seep biota, pelagic fish, turtles and marine mammals.

§ 943.5 Allowed activities.

All activities except those specifically prohibited by § 943.6 may be conducted within the Sanctuary subject to all other prohibitions, restrictions, and conditions imposed by any other authority.

§ 943.6 Prohibited activities.

(a) Unless permitted by the Assistant Administrator in accordance with § 943.8, or as may be necessary for national defense, or as may be necessary to respond to an emergency threatening life, property or the environment, it is unlawful for any person to conduct the following prohibited activities.

(1) *Anchoring by Vessels.* (i) Anchor within the Sanctuary a vessel greater than 100 feet in registered length;

(ii) Use more than fifteen (15) feet of chain or wire rope attached to any anchor to anchor within the Sanctuary a vessel of less than or equal to 100 feet in registered length;

(iii) Use anchor lines (exclusive of the anchor chain or wire rope permitted by paragraph (a)(1)(ii) of this section) other than those of a soft fiber or nylon, polypropylene, or similar material to anchor within the Sanctuary a vessel of less than or equal to 100 feet in registered length.

(2) *Depositing or Discharging Materials or Substances.* (i) Deposit or discharge, from any location within the boundaries of the Sanctuary, materials or substances of any kind, including anesthetics and toxins, except:

(A) Fish or fish parts and chumming materials (bait); and

(B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by:

(1) Marine sanitation devices approved by the U.S. Coast Guard;

(2) Routine vessel maintenance (e.g., deck wash down or on-board meals); or

(3) Engine exhaust.

(ii) Deposit or discharge, from any location beyond the boundaries of the Sanctuary, materials or substances of any kind, including anesthetics and toxins, with the exceptions listed in paragraphs (a)(2)(i) (A) and (B) of this section, which enter the Sanctuary and injure a Sanctuary resource.

(3) *Altering the Seabed.* Dredge, construct structures or otherwise alter the seabed, or attempt such activity, within the Sanctuary, for any purpose other than the authorized installation of navigation aids, except for dredging, constructing structures, or otherwise altering the seabed incidental to hydrocarbon exploration and development in areas of the Sanctuary lying outside of the no-activity zones established by the Department of the Interior and defined by the topographic lease stipulation for OCS lease sale 112.

(4) *Injuring or Removing Resources.* Injure, damage, take or remove, or attempt to injure, damage, take or remove, any fish (except as provided in paragraph (a)(5) of this section), marine invertebrate, coral or other bottom formation, or plant within the Sanctuary. There shall be a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was removed from or taken in the Sanctuary.

(5) *Fishing or Collecting.* Collect, harvest or take any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear or spearfishing gear.

(6) *Explosives, Electrical Charges, and Toxins.* Detonate explosives or release electrical charges within the Sanctuary.

(b) Any activity necessary for the national defense that is being carried out by the Department of Defense within the Sanctuary on the effective date of designation is exempt from the prohibitions of this section. Additional activities of the Department of Defense may be exempted by the Assistant Administrator after consultation between the Department of Commerce and the Department of Defense.

(c) The prohibitions in this section shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

§ 943.7 Penalties for commission of prohibited activities.

(a) Section 307(b) 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 the Act. Each day of a continuing violation shall constitute a separate violation. Section 307(b)(3) further authorizes a proceeding *in rem* against any vessel used in violation of any regulation and for which a civil penalty has been assessed.

(b) Regulations setting forth the administrative procedures governing the assessment of civil penalties for violating the regulations in this part, enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings appear at 15 CFR Part 904.

§ 943.8 Permit applications—procedures and criteria.

(a) If a person wishes to conduct an activity prohibited under § 943.6, that person must apply for, receive, and have in possession on board any vessel used, a valid permit issued pursuant to this part authorizing that person to conduct that activity.

(b) Permit applications shall be processed to the Assistant Administrator, Ocean Services and Coastal Zone Management; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal

Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) Upon receipt of a complete application, the Assistant Administrator may seek the views of any person or entity, within or outside the Federal Government, and may hold a public hearing, in his or her discretion.

(d) The Assistant Administrator, in his or her discretion, may issue a permit, subject to such conditions as deemed appropriate, to conduct an activity otherwise prohibited by § 943.6, if the Assistant Administrator finds that the activity will: Further research related to Sanctuary resources; further the educational, historical or cultural value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Assistant Administrator may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.

(e) A permit issued pursuant to this section is nontransferable.

(f) The Assistant Administrator may amend, suspend or revoke a permit issued pursuant to this section or deny a permit application pursuant to this section, in whole or in part, if the Assistant Administrator determines that the permittee or applicant has acted in violation of the terms of the permit or of these regulations or for other good cause shown. Any such action shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

§ 943.9 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons and therefore covered by the procedures at Subpart D of 15 CFR Part 904, an applicant for a

permit, a permittee, or any other interested person (hereinafter appellant) may appeal the grant, conditioning, amendment, suspension or revocation of any permit issued under § 943.8 or the denial of any permit application under § 943.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, state the action(s) appealed and the reason(s) therefor, and be received within 30 days of the action(s) by the Assistant Administrator. The Administrator, in his or her discretion, may hold an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the appellant, the permit applicant or permittee, if other than the appellant, or any person or entity, within or outside the Federal Government, to submit such information as the Administrator may deem appropriate in order to decide the appeal. The Administrator shall decide the appeal based on the record before the Assistant Administrator and the record of the appeal. The Administrator shall notify the appellant of the final decision and the reason(s) therefor in writing, normally within 30 days of the date of the receipt of adequate information to make the decision.

(c) If the Administrator determines that an informal hearing should be held, he or she may designate an officer before whom the hearing shall be held. Notice of the time, place, and subject matter of the hearing shall be published in the Federal Register. Such hearing shall be held no later than 30 days following publication of the notice in the Federal Register, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant or permittee and other interested persons may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 30 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or reject or modify it. In any event, the Administrator shall notify the appellant and other interested persons of his/her decision and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(c) Any time limit prescribed in this section may be extended by the Administrator for good cause for a period not to exceed 30 days, either on his/her own motion or upon written request from the appellant, permit applicant or permittee, stating the reason(s) therefor.

§ 943.10 Other authorities.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are valid within the Sanctuary subject only to the activity restrictions set forth in § 943.6. All applicable regulatory programs remain in effect. Where regulations promulgated by another authority are in conflict with Sanctuary regulations, the more restrictive regulations shall prevail.

Appendix: Flower Garden Banks National Marine Sanctuary Boundary Coordinates

Point no.	Latitude	Longitude
East Flower Garden Bank:		
E-1	27°52'52.13"	93°37'40.52"
E-2	27°53'33.81"	93°38'22.33"
E-3	27°55'13.31"	93°38'39.07"
	27°57'30.14"	93°38'32.26"
	27°58'27.79"	93°37'42.93"
	27°59'00.29"	93°35'29.56"
E-7	27°58'59.23"	93°35'09.91"
E-8	27°55'20.23"	93°34'13.75"
E-9	27°54'03.35"	93°34'18.42"
E-10	27°53'25.95"	93°35'03.79"
E-11	27°52'51.14"	93°36'57.59"
West Flower Garden Bank:		
W-1	27°49'09.24"	93°50'43.35"
W-2	27°50'10.23"	93°52'07.96"
W-3	27°51'13.14"	93°52'50.68"
W-4	27°51'31.24"	93°52'49.79"
W-5	27°52'49.55"	93°52'21.89"
W-6	27°54'59.08"	93°49'41.87"
W-7	27°54'57.08"	93°48'38.52"
W-8	27°54'33.46"	93°47'10.36"
W-9	27°54'13.51"	93°46'48.96"
W-10	27°53'37.67"	93°46'50.67"
W-11	27°52'56.44"	93°47'14.10"
W-12	27°50'38.31"	93°47'22.86"
W-13	27°49'11.23"	93°48'42.59"

[FR Doc. 89-4030 Filed 2-23-89; 8:45 am]

BILLING CODE 3510-08-M

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The purpose of this advance notice of proposed rulemaking and request for comments by the Federal Trade Commission is to incorporate public views on the operation of the Hart-Scott-Rodino premerger notification program prior to formulating specific proposals. The Federal Trade Commission, with the concurrence of the Assistant Attorney General for Antitrust, has several times amended the rules in order to improve the program's effectiveness. This notice is directed principally toward reducing the number of non-reportable transactions that may raise antitrust concerns and reducing the availability of devices for avoiding reporting and waiting requirements.

DATES: Comments must be received on or before April 25, 1989.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 172, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Roberta S. Baruch, Deputy Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-3300.

SUPPLEMENTARY INFORMATION: In furtherance of its efforts to improve the effectiveness of the Hart-Scott-Rodino premerger notification program, the Federal Trade Commission has considered preliminary, and now seeks public comments on, five approaches to reducing the number of non-reportable transactions that may raise antitrust concerns and to reducing the availability of devices for avoiding reporting and waiting requirements.

This notice is divided into two parts. Part One describes the development of the premerger notification rules and provides some background specific to the approaches discussed here. Part Two briefly describes each of the five options, discusses some of the merits and disadvantages of each, and raises questions about each to which concerned members of the public may wish to direct their comments. The public is also specifically invited to address any other issues raised by any of these options, and to suggest alternative approaches to addressing the problems of concern.

Part One: Background

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of

1976, requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General"), and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that the agencies deem to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the act requires that the antitrust agencies receive prior notification of significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it, reducing the problem of unscrambling the assets after the transaction has taken place.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C.