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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No. 130813710-3710-01

RIN 0648-BD60

Gray's Reef National Marine Sanctuary Regulations and Management Plan

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

ACTION: Proposed rule.

SUMMARY: NOAA is proposing to update the regulations and management plan for Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary). The regulations would be revised to clarify the prohibition on anchoring and add an exemption to allow the use of weighted marker buoys that are continuously tended and used during otherwise lawful fishing or diving activities and that are not attached to a vessel and not capable of holding a boat

at anchor. A draft environmental assessment has been prepared that includes analysis of the consequences of this proposed action. A draft management plan outlining management priorities for GRNMS for the next 5-10 years has also been prepared. NOAA is soliciting public comment on the proposed rule, draft environmental assessment, and draft management plan.

DATES: Comments will be considered if received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. A Public hearing will be held as detailed below:

- (1) January 7, 2014, 5:30-7:30 p.m., Pooler Public Library, 216 S. Rogers St., Pooler, Georgia
- (2) January 8, 2014, 5:30-7:30 p.m., Statesboro Regional Library, 124 S. Main St., Statesboro, Georgia
- (3) January 9, 2014, 5:30-7:30 p.m., Marshes of Glynn Library, 208 Gloucester St., Brunswick, Georgia

ADDRESSES:

You may submit comments on this document, identified by NOAA-NOS-2013-0160, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NOS-2013-0160,

click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411, Attn: Greg McFall, Superintendent.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Shortland at (912) 598-2381.

Copies of the proposed rule, draft environmental assessment, and draft management plan can be downloaded or viewed on the internet at www.regulations.gov (search for docket # NOAA-NOS-2013-0160) or at <http://graysreef.noaa.gov>. Copies can also be obtained by contacting Resource Protection Coordinator Becky Shortland, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, Georgia; or, becky.shortland@noaa.gov.

SUPPLEMENTARY INFORMATION:

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 protects 22 square miles of open ocean and submerged lands of particularly dense and nearshore patches of productive live bottom habitat. The sanctuary is influenced by complex ocean currents and serves as a mixing zone for temperate (colder water) and sub-tropical species. The series of rock ledges and sand expanses has produced a complex habitat of caves, burrows, troughs, and overhangs that provide a solid

base upon which temperate and tropical marine flora and fauna attach and flourish.

B. Need for action

The National Marine Sanctuaries Act of 1972 (NMSA; 16 U.S.C. 1431 et seq.) section 304(e) requires that NOAA review and evaluate, among other things, the site-specific management techniques and strategies to ensure that each sanctuary continues to fulfill the purposes and policies of the NMSA. Emerging issues, such as the effects of invasive lionfish on sanctuary resources, for example, are not adequately addressed in the 2006 plan. The new draft management plan reflects some of these emerging issues and presents management priorities for GRNMS for the next 5-10 years. These proposed regulatory changes would, in the case of the anchoring prohibition, clarify that attempting to anchor is also prohibited because deployment of anchors, even if the anchors do not set on the bottom, can result in impacts to the submerged lands. In the case of the weighted marker buoys, these proposed regulatory changes would allow the placement of weighted marker buoys used during otherwise lawful fishing or diving activities. The purpose of deployment of a weight on the bottom is for safety or convenience while conducting diving and recreational fishing activities, since anchoring is not allowed.

II. Summary of the Proposed Revisions to GRNMS Regulations

The proposed regulatory action would clarify a prohibition and add an exemption.

(a) Clarification of anchoring prohibition:

NOAA is proposing to clarify the prohibition on anchoring in the sanctuary (15 CFR 922.92 (a)(10)) by adding "...or attempting to anchor" to GRNMS's existing anchoring regulation. This would facilitate law enforcement efforts and protect sanctuary resources by allowing authorized officers to enforce the anchoring prohibition even when an anchor had not yet been set in the submerged lands of the sanctuary. Enforcement officials have experienced occasions where sanctuary users were "attempting" to anchor in GRNMS despite the prohibition, but because the anchor had not yet been "set", the prohibition did not apply. This amendment would better align the regulation with its original intent to minimize disturbance to the submerged lands, which can occur during deployment of the anchor even if it has not been set on the bottom.

(b) Exemption for marker buoys:

Current GRNMS regulations prohibit placing any material on the submerged lands of the sanctuary, including weights for marker buoys that sit on the seafloor to mark locations during recreational diving or fishing (15 CFR 922.92 (a)(2)). NOAA is proposing to add an exemption to this regulation for bottom placement of weighted marker buoys that are continuously tended and used during otherwise lawful fishing or diving activities and that are not attached to a vessel and not capable of holding a boat at anchor. Weights used with a marker buoy would not have a combined weight of more than 10 pounds, would be attached with not greater than one-fourth inch (1/4") line and would be removed from the sanctuary within twelve (12) hours of deployment. Any weighted marker buoy that is not continuously tended could be removed by the Assistant Administrator or designee or an authorized officer, without notice. By "continuously tended", NOAA means that the buoy is in use by fishers or divers at the time it is observed and that the fishers' or divers' boat is in some proximity to the buoy.

The weighted marker buoys would be used for diving safety (markers provide a stationary point for divers to more

accurately locate a site and for boat operators to find divers on their ascent), and to assist recreational fishers for marking and relocating a fishing spot as their boat drifts. Because anchoring in GRNMS is currently prohibited, recreational diving must be conducted by "live-boat" (non-anchored vessels), and recreational fishing by trolling or drifting with a vessel. Public comment and Sanctuary Advisory Council discussion during scoping for the management plan review indicated strong support for regulatory exemption of weighted marker buoys. Because the use of marker buoys for recreational fishing is more a matter of convenience than safety, the benefit of this action to recreational fishing would be minimal; however, the impact of weighted marker buoys from diving or fishing on sanctuary resources is negligible and essentially identical and therefore, NOAA is proposing to allow this practice for both of these activities.

III. Classification

A. National Environmental Policy Act

NOAA has prepared a draft environmental assessment to evaluate the impacts of the proposed rulemaking. Copies are

available at the address and Web site listed in the ADDRESSES section of this proposed rule.

B. Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant as that term is defined in Executive Order 12866.

C. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

D. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

NOAA expects the proposed regulatory exemption on the use of small, weighted marker buoys in the sanctuary to result in beneficial effects for recreational users of GRNMS by: a) enhancing dive opportunities at the Sanctuary and, b) enhancing

bottom fishing opportunities within the for-hire charter boat fishing and private recreational boating industries.

It is estimated that there are currently one or two diving operators occasionally taking people out to the sanctuary. A 2008 survey (Ehler 2010) identified 15 charter boats that utilize GRNMS as one of their fishing locations. The survey found that approximately 40 percent of their fishing activity took place in the sanctuary. In 2012, NOAA estimated that 245 people participated in bottom-fishing from private household boats in the sanctuary accounting for a little over 3,000 person-days of bottom-fishing. An additional 36 people participated in diving activities in the sanctuary via access from private household boats and accounted for a little over 300 person-days of activity (Leeworthy 2013). NOAA expects this rule to slightly increase the number of bottom-fishing trips from private household boats in the sanctuary with small positive benefits to the current participants and some additional small economic benefits to recreational fishing related economies based on increased activity and spending. All spending by the recreational sector would benefit small businesses that provide goods and services to recreational participants.

E. Paperwork Reduction Act

This proposed rule would not require any additional collection of information, and therefore no paperwork reduction act action is required. 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.

IV. Request for Comments

NOAA requests comments on this proposed rule for 60 days after publication of this notice.

V. References

A complete list of all references cited herein is available upon request (see ADDRESSES section).

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: November 29, 2013.

Holly A. Bamford, PhD.

Assistant Administrator, National Ocean Service,
National Oceanic and Atmospheric Administration.

Accordingly, for the reasons set forth above, NOAA proposes amending part 922, title 15 of the Code of Federal Regulations 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. In § 922.92, revise paragraphs (a)(2) and (a)(10) to read as follows:

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

(a) ***

(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 except weighted marker buoys that are continuously tended and used during otherwise lawful fishing or diving activities and that are not attached to a vessel and not capable of holding a boat at anchor. Weights used with a marker buoy shall not have a combined weight of more than 10 pounds, shall be attached with not greater than one-fourth inch (1/4") line and shall be removed from the Sanctuary within twelve (12) hours of deployment. Any weighted marker buoy that is not continuously tended may be removed by the Assistant Administrator or designee or an authorized officer, without notice.

(10) Anchoring, or attempting to anchor, any vessel in the Sanctuary, except as provided in paragraph (d) of this section when responding to an emergency threatening life, property, or the environment.

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