

personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. 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 part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Preston, MN; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 28 SIAP at Fillmore County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (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 proposed rule 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

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to 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. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Preston, MN [New]

Fillmore County Airport, MN
(lat. 43°40'36"N, long. 92°10'47"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Fillmore County Airport, excluding that airspace within the Rochester, MN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on May 21, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97-15535 Filed 6-12-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 950609150-7080-03]

RIN 0648-AI06

Jade Collection in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD); Office of Ocean and

Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notice of public availability of draft supplemental environmental impact statement/management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to amend the regulations and Designation Document for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary. NOAA is issuing this proposed rule to provide notice to the public and invite advice, recommendations, information, and other comments from interested parties on the proposed rule and Draft Supplemental Environmental Impact Statement/Management Plan (DSEIS/MP). A public hearing will be held; a separate notice of the date and time will be published.

DATES: Comments must be received by August 12, 1997.

ADDRESSES: Comments should be sent to Scott Kathey, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, California, 93940, or Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910.

Comments will be available for public inspection at the same addresses. Copies of the DSEIS/MP are available from the same addresses.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647-4251 or Elizabeth Moore at (301) 713-3141 ext. 170.

SUPPLEMENTARY INFORMATION:

I. Background

In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) was designated on September 18, 1992. SRD issued final regulations, effective January 1, 1993, to implement the Sanctuary designation (15 CFR Part 922 Subpart M). The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities and thus make it unlawful for any person to conduct them to cause them to be conducted.

The MBNMS regulations prohibit exploring for, developing or producing oil, gas or minerals within the Sanctuary

(15 CFR 922.132(a)(1)). Further, the regulations and Designation Document (the constitution for the Sanctuary) prohibit NOAA from issuing a permit or other approval for this activity in the Sanctuary (15 CFR 922.132(f); Designation Document, Article V). Therefore, the Sanctuary regulations and Designation Document absolutely prohibit exploring for, developing or producing oil, gas or minerals in the MBNMS.

The region within the Sanctuary known as the Jade Cove area consists of a series of small coves located south of Big Sur, near the town of Gorda. Jade (also called nephrite) occurs in veins in the serpentine bedrock formation, extending down the cliffs and into the seabed. The coastal area is very dynamic, subject to strong waves and tides, which erode the veins and sometimes release the jade. Jade is found primarily as pebbles or larger stones on the shore and seabed, and as revealed deposits in the seafloor.

For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade.

Even prior to the designation of the MBNMS, extraction of minerals from State submerged lands was prohibited by State law, unless authorized under a permit from the State. The U.S. Forest Service also prohibits the removal without a lease of any rocks or minerals within the Los Padres National Forest, which abuts the inshore boundary of the Sanctuary in the Jade Cove area.

NOAA is proposing to amend the regulations for the MBNMS to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary (the area bounded by the 35°53'20"N latitude parallel (North Plaskett Point), the 35°53'20"N latitude parallel (Cape San Martin), from the mean high tide line seaward to the 90-foot isobath (depth line)). It appears that limited, small scale collection of loose pieces of jade (which would otherwise naturally disintegrate) from the Jade Cove area will have at most a *de minimis* effect on the jade resource, a non-living resource, and will not destroy, cause the loss of, or injure other resources or qualities of the MBNMS. It should also be noted that the MBNMS Sanctuary Advisory Council (Council) has recommended to SRD that the regulations be amended to allow jade collection. The Council has devoted considerable time during several of its monthly meetings to obtain information and public testimony, and convened a working group to review this issue. There is also public support for the proposed course of action.

The prohibition against permitting or otherwise approving the exploration, development or production of oil, gas or minerals in the Sanctuary is a term of the Designation Document for the Sanctuary. Pursuant to section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(a)(4)), the terms of designation of a national marine sanctuary may be modified only by the same procedures by which the original designation is made. Therefore, to allow limited, small-scale jade collection in the Jade Cove area of the Sanctuary, NOAA must comply with the procedures by which the Sanctuary was designated. Designations of national marine sanctuaries are governed by sections 303 and 304 of the NMSA (16 U.S.C. 1433, 1434). Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary (the proposed rule pertains entirely to State waters). This proposed rule is therefore accompanied by a Draft Supplemental Environmental Impact Statement/Management Plan, which is available at the addresses listed at the beginning of this notice. This proposed rule represents NOAA's preferred alternative as discussed in the DSEIS/MP.

There is a 60-day comment period on this proposed rule and DSEIS/MP. After the close of the comment period NOAA will prepare a Final Supplemental Environmental Impact Statement/Management Plan (FSEIS/MP) and then issue a final rule. Further, as the amendment changes a term of designation, the Governor of California will have forty-five days of continuous session of Congress beginning on the day the final rule is issued to certify that the final rule is unacceptable, should he make such a finding. If the Governor certifies the rule as unacceptable, it will not take effect and the original prohibition will remain in effect.

NOAA issued an Advance Notice of Proposed Rulemaking (ANPR) on August 9, 1995 (60 FR 40540), to inform the public of the issue under consideration and to invite advice, recommendations, information, and other comments from interested parties. The comment period closed on September 8, 1995, with 195 comments received. Most comments were from individuals and favored unrestricted jade collection. A general summary of comments and NOAA's response to them follow.

II. Comments and Responses

(1) *Comment:* Collection of jade in the Jade Cove area has been legal and nearly unrestricted for 50 years, with only minimal restrictions from the U.S. Forest Service in place, such as no explosives, no winches, and no mechanical tools.

Response: Prior to the Sanctuary's designation, jade collection from State submerged lands without a permit was prohibited by State law. As for other existing restrictions, the Los Padres National Forest has a posted sign at the site that reads "Prospecting, mining, or removal of any rock, mineral, or material prohibited above mean high tide level." The Sanctuary boundary extends from the mean high tide level seaward, and the Sanctuary regulations as currently written absolutely prohibit exploring for, developing or producing oil, gas or minerals within the Sanctuary, which encompasses jade collection in Jade Cove.

(2) *Comment:* This is a Sanctuary and the jade should be protected. No jade collection should be allowed.

Response: NOAA agrees that marine jade resources should be protected. The primary mandate of the MBNMS is to protect Sanctuary resources. However, the Sanctuary also facilitates multiple uses that are compatible with the primary mandate of resource protection. NOAA is proposing this action foremost because it appears that limited, small scale collection of loose pieces of jade (which would otherwise naturally disintegrate) from the Jade Cove area will have at most a *de minimis* effect on the jade resource, a non-living resource, and will not destroy, cause the loss of, or injure other resources or qualities of the MBNMS.

(3) *Comment:* Commercial mining should be prohibited.

Response: NOAA agrees. Existing regulations absolutely prohibit exploration, development or production of oil, gas or minerals. The amendment proposed will allow limited, small-scale jade collection, but should in no way be considered a prelude to allowance of commercial mining activities in the Sanctuary.

(4) *Comment:* Hand tools should/should not be allowed for jade collection.

Response: NOAA believes that most tools should not be allowed as these could be used to dig into the seabed or otherwise damage Sanctuary resources or qualities. However, jade collection under the exception may be conducted with the use of a hand tool (a hand-held implement that is not greater than 36 inches in length and has no moving

parts (e.g., dive knife, pry bar or abalone iron)) to maneuver and lift a loose piece of jade, and a lift bag(s) with a total lifting capacity not to exceed two hundred pounds. A vessel (except for a motorized personal watercraft (see § 922.132(a)(7)) may also be used to provide access to the authorized area. Further, NOAA may also allow additional or larger tools to collect larger pieces of loose jade under a Sanctuary permit that would be required for such collection. However, no pneumatic, mechanical, electrical, hydraulic or explosive tools would be allowed to be used to collect jade under any circumstances.

(5) *Comment:* There should be limits/no limits on the amount of jade an individual can take.

Response: NOAA believes that such restrictions as the natural situation of the area (access via a steep trail, rough water conditions, and isolated area), prohibition of tools other than hand tools, lift bags and vessels as described in the response to comment (4), and a limit that persons can only collect what they can individually carry per trip will sufficiently limit the amount of jade that will be collected, ensuring that the jade resource will not be degraded. Further, the proposed rule would require a Sanctuary permit for any collection of larger loose stones of jade not allowed to be removed under the general jade collection exception.

(6) *Comment:* NOAA wasted time and money with the Advance Notice of Proposed Rulemaking.

Response: NOAA disagrees that providing information to, and obtaining input from the public is a waste of time or money. In this instance, NOAA determined that the Advance Notice of Proposed Rulemaking (ANPR), an optional step to the rulemaking process, increased the opportunity for public comment and participation, and aided NOAA in developing the regulation proposed in this rulemaking.

(7) *Comment:* NOAA has ignored or forgotten the public comments and expert testimony provided before the Advance Notice of Proposed Rulemaking.

Response: In addition to information provided by experts and the recommendation from the Sanctuary Advisory Council, NOAA also considered the public comments received on this issue both before and after the Advance Notice of Proposed Rulemaking in determining whether to propose to amend the Sanctuary regulations to allow limited, small-scale jade collection.

(8) *Comment:* The Jade Working Group of the Sanctuary Advisory

Council adopted protocols for jade collection.

Response: The Jade Working Group of the Sanctuary Advisory Council was formed to assist NOAA in resolving this issue. The Working Group met for about eight months and developed and submitted to the Council a draft list of jade collection protocols, but did not adopt or recommend any particular final plan.

(9) *Comment:* The Sanctuary Advisory Council endorsed the jade collection plan developed by the Jade Working Group.

Response: As stated above, neither the Jade Working Group nor the Sanctuary Advisory Council adopted or recommended a particular final plan. However, the Council did send a letter to NOAA recommending that the agency amend the regulations to allow limited collection of jade, while protecting the jade resource for the future. A plan submitted to the Council by a local interest group was attached to the letter and referenced as one option for managing jade collection.

(10) *Comment:* There is an ongoing mischaracterization of NOAA's actions being conducted by jade collection advocates.

Response: NOAA has received copies of an August 1995 newsletter distributed by the Free Jade Cove Committee that contains incorrect information regarding the issue and NOAA's intent. The headline of the newsletter implies that no restrictions currently exist on jade collection and that NOAA's current action will impose new restrictions, when in fact NOAA's proposed action will relax existing regulations. The newsletter also implies that NOAA ignored the Sanctuary Advisory Council's assistance and advice. To the contrary, the recommendation of the SAC to allow limited jade collection was considered, and led in part to NOAA's decision to propose to amend the Sanctuary regulations to allow limited, small-scale jade collection. As stated above, the SAC provided an option for NOAA to consider, but did not recommend any specific course of action.

III. Proposed Revised Article V of the Designation Document for the Monterey Bay National Marine Sanctuary

No changes to Articles I-IV, and Article VI of the Designation Document are proposed by NOAA. Article V of the Designation Document is proposed to be amended by revising paragraph 2. Paragraph 2 of Article V is presented in its entirety with the proposed revised language in italics.

Article V. Effect on Leases, Permits, Licenses, and Rights

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) the exploration for, development of or production of oil, gas or minerals within the Sanctuary *except for limited, small-scale jade collection in the Jade Cove area of the Sanctuary (defined as the area bounded by the 35°55'20"N latitude parallel (north Plaskett Point), the 35°53'20"N latitude parallel (Cape San Martin), the mean high tide line seaward and the 90-foot isobath (depth line);* (2) the discharge of primary-treated sewage (except for regulation, pursuant to Section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

End of Proposed Revised Article V of the Designation Document

IV. Summary of the Proposed Regulatory Amendment

Jade is a non-living resource of the MBNMS (see 15 CFR 922.3). Allowing limited, small-scale collection of small pieces already loose, which would otherwise naturally disintegrate, would have at most a *de minimis* effect on the jade resource. Further, it appears that collection of loose pieces of jade from the authorized area of the Sanctuary could be conducted without destroying, causing the loss of, or injuring other Sanctuary resources or qualities. Small scale, limited jade collection would be allowed under an exception to the MBNMS prohibitions, with certain conditions. Larger loose pieces of jade not allowed to be collected under the exception may be authorized to be collected under a Sanctuary permit. However, under no circumstances would NOAA allow the use of pneumatic, mechanical, electrical, hydraulic or explosive tools to collect jade.

Consequently, NOAA is proposing to amend section 922.132(a)(1) and section 922.133(c) to provide an exception to the prohibition against exploring for, developing or producing oil, gas or minerals in the Sanctuary, to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary (defined as the area bounded by the 35°55'20"N latitude parallel (north Plaskett Point), the 35°53'20"N latitude parallel (Cape San Martin), from the

mean high tide line seaward to the 90-foot isobath (depth line)). NOAA is also proposing to amend section 922.132(a)(4) to provide, for consistency, a corresponding exception to the prohibition against alteration of the seabed for collection of loose jade as described below. The proposed exception is limited to the Jade Cove area as this has been the area historically of marine jade collection.

The proposed exception also contains certain other limitations to protect Sanctuary resources and qualities. The proposed exception limits collection to jade pieces already loose from the seabed, meaning that natural storm or wave action has already completely separated the stone from the seabed. Under the general exception, no tools may be used to collect jade except (a) a hand tool, defined as a hand-held implement utilized for the collection of jade pursuant to section 922.132(a)(1) that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron), to maneuver and lift loose jade pieces; (b) a lift bag or multiple lift bags with a combined lift capacity not to exceed 200 pounds; or (c) a vessel (except for a motorized personal watercraft (see § 922.132(a)(7)) to provide access to the authorized area. Finally, each person may collect only what that person individually carries. The two hundred pound lift bag limit corresponds with the restriction limiting jade removal to what each person individually carries. Over one hundred pounds is considered to be a very heavy physical demand level (see Matheson, L. and Matheson, M. *Examiners Manual for the Spinal Function Sort*), and appears to correspond with the maximum amount that an average person could lift. The two hundred pound lift bag will allow safe transport to the surface of stones weighing less than 200 pounds. More important, the limitation is consistent with the overall effort to avoid jade collection that could adversely impact benthic (bottom) habitat.

Loose stones exceeding two hundred pounds would be of such mass as to be more likely to support important components of the benthic community and should not be readily made available for removal under the regulatory exception. A Sanctuary permit would be required for the collection of such loose pieces of jade. Applications for Sanctuary permits would be reviewed on a case-by-case basis under the general permit criteria contained at 15 CFR §§ 922.48 and 922.133, and would require that the applicant have all necessary approvals from other jurisdictions, including the

California State Lands Commission. Preference would be given to those applicants proposed to collect such larger pieces for research or educational purposes. Any Sanctuary permits issued for jade collection would be conditioned to protect Sanctuary resources and in no circumstances will NOAA permit the use of pneumatic, mechanical, electrical, hydraulic or explosive tools to collect jade. Nor will NOAA permit any excavation or mining of the jade resource, or the collection of larger loose pieces that support important components of the benthic community.

The proposed exception for the limited, small-scale collection of loose pieces of jade does not extend to oil or gas or any other mineral. Furthermore, there is a statutory prohibition against leasing, exploration, development, or production of oil or gas in the Sanctuary.

Should this proposed regulation be adopted as final, any collection of jade in Jade Cove, which is within California State waters, will require a State permit because of the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands. This is consistent with 15 C.F.R. § 922.42 which provides that any activity within a specific national marine sanctuary not expressly prohibited or otherwise regulated by that sanctuary's regulations may be conducted subject to, among other things, all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction. Current Federal and State restrictions on jade collection in upland areas adjacent to the Sanctuary are unaffected by this proposed rulemaking.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act, 16 U.S.C. 1434(a)(4), provides that the terms of designation may be modified only by the same procedures by which the original designation is made. Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. 1433, 1434. Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary.

Section 304 of the NMSA also requires the Secretary to submit to the appropriate Congressional Committees, on the same day this notice is

published, documents, including an executive summary, consisting of the terms of the proposed designation (or in this case, change thereof), the proposed regulations and the draft supplemental environmental impact statement/management plan. In accordance with section 304, the required documents are being submitted to the appropriate Congressional Committees.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA, 16 U.S.C. 1434, requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the DEIS be made available to the public. NOAA has prepared a draft supplemental environmental impact statement/management plan for the Monterey Bay National Marine Sanctuary on the proposal to amend the regulations and Designation Document to allow limited, small-scale jade collection in the Jade Cove area of the Sanctuary. The DSEIS/MP is available at the addresses listed in the ADDRESS section of this proposed rule.

Executive Order 1286: Regulatory Impact

NOAA has concluded that this regulatory action is not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in:

(1) An annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety;

(2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of such recipients; or

(4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have sufficient federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration as follows:

The proposed rule would amend the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) regulations to allow limited, small-scale collection of jade from an area within the Sanctuary known as Jade Cove, consistent with other applicable Federal and State law. Prior to the designation of the Sanctuary, extraction of minerals from State submerged lands was prohibited by State law, unless authorized by a permit issued by the State. The regulations implementing the designation of the Sanctuary absolutely prohibit exploration for, development or production of oil, gas or minerals in the Sanctuary. Consequently, because jade is a mineral, its collection is absolutely prohibited even if authorized by a State permit. Should this proposed regulation be adopted as final, jade could be collected within Jade Cove, which is within California State waters, provided its collection is authorized by a State permit. Without a State permit, its collection would be prohibited by the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands. NOAA is aware of only one small business that used the jade resource prior to the Sanctuary's designation. That business did not conduct large-scale collection or rely solely on jade from Jade Cove. Most of its jade was collected from other sources, including from upland and out of state sources. Consequently, the rule is not expected to significantly impact a substantial number of small business entities.

Accordingly, a Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 30, 1997.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

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

PART 922—[AMENDED]

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

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

Subpart M—Monterey Bay National Marine Sanctuary

2. Section 922.131 is amended by adding the following definition in alphabetical order to read as follows:

§ 922.131 Definitions.

* * * * *

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to section 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron). Pneumatic, mechanical, electrical, hydraulic or explosive tools are, therefore, examples of what does not meet this definition.

* * * * *

3. Section 922.132 is amended by revising paragraphs (a)(1) and (a)(4) introductory text and adding paragraph (a)(4)(vi) as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary except: jade may be collected (meaning removed) from the area bounded by the 35°55'20"N latitude parallel (north Plaskett Point), the 35°53'20"N latitude parallel (Cape San Martin), from the mean high tide line seaward to the 90-foot isobath (depth line) (the "authorized area") *provided that:*

(i) Only jade already loose from the seabed may be collected;

(ii) No tool may be used to collect jade except:

(A) A hand tool (as defined in § 922.131 of this subpart);

(B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or

(C) A vessel (except for motorized personal watercraft (see § 922.132(a)(7) of this subpart) to provide access to the authorized area;

(iii) Each person may collect only what that person individually carries; and

(iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii), any person may apply for a permit to collect such a loose piece by following the procedures in § 922.133 of this subpart.

* * * * *

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary except as an incidental result of:

* * * * *

(vi) Collection of jade pursuant to § 922.132(a)(1) of this subpart.

4. Section 922.133 is amended by revising paragraph (c) to read as follows:

§ 922.133 Permit procedures and criteria.

* * * * *

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by §§ 922.132(a) (2) through (8), and (a)(10) if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; allow the removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove area under § 922.132(a)(1)(iv) of this subpart; assist in managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; 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 Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

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[FR Doc. 97-14787 Filed 6-12-97; 8:45 am]

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