

vulnerable to the effects of anchoring. The documented increases of population in the region and of visitor use at GRNMS suggest that the risk from vessel anchoring will also increase and that prohibiting anchoring would help protect the live bottom habitat and the associated living marine resources that GRNMS was designated to protect. This regulation would have little impact on current users of the Sanctuary. Based on findings of a socioeconomic study (Ehler and Leeworthy) conducted in 2002, virtually none of the activities that occur at GRNMS require anchoring. Fishermen routinely allow their boats to drift during bottomfishing or are trolling for migratory species, and divers frequently use a "live-boat" for drift diving, due to the strong currents. There is overall support for the ban on anchoring among users surveyed during the socioeconomic study. In an emergency situation, boaters would be allowed to anchor in the Sanctuary and existing boundary marker buoys provide a place for a boat to moor in an emergency as well.

Finally, the regulations for the issuance of permits are being revised to add a new permit category for assisting in managing the Sanctuary. This would authorize NMSP to issue a permit to the Sanctuary manager for activities that otherwise would be prohibited if the activities assist in sanctuary management and if they satisfy permit criteria. The permit criteria are also being revised to allow NMSP or the manager to consider the duration of a proposed activity, its cumulative effects, and whether it is necessary to conduct the proposed activity in the Sanctuary. A permit holder would be required to display a copy of the permit in any vessel or aircraft being used in the permitted activity.

The following regulatory changes are also being proposed by this document: The term "seabed" is being replaced with "submerged lands of the Sanctuary" to be consistent with usage in the NMSA. The prohibition against dredging, drilling into or altering submerged lands of the Sanctuary specifically includes bottom formations to call attention to one of the critical elements of the ecosystem at GRNMS. The current prohibition against constructing any structure other than a navigation aid would be revised to include constructing, placing, abandoning any structure, or material on the Sanctuary submerged lands. This change would, among other things, prohibit activities that have been identified in the Florida Keys National Marine Sanctuary, where materials are placed on the submerged lands to create

lobster habitat. The prohibition against using poisons, electric charges, explosives, or similar methods to take any marine animal not otherwise prohibited from being taken would be revised to prohibit the use underwater of explosives and devices producing electric current while the reference to poisons is being removed because it is already addressed by the prohibition against discharges. Use of these items would be prohibited regardless of whether marine animals are being taken. NOAA is not aware of any non-scientific use of these materials underwater at GRNMS and proposes that their use be completely prohibited. The regulation prohibiting tampering with, damaging or removing historic or cultural resources is being revised to prohibit moving, removing, damaging, or possessing any Sanctuary historical resource, or attempting any of these. This change will better protect these resources from being removed and will facilitate enforcement by prohibiting their possession.

Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act, 16 U.S.C. 1434(a)(4), requires that the procedures specified in section 304 for designating a National Marine Sanctuary be followed for modifying any term of designation. Because this action would revise the Sanctuary boundary specifically to include the submerged land, it would revise the boundary terms of designation thus triggering the requirements of section 304. In particular, section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed designation (or in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required documents are being submitted to the specified 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 DMP/DEIS on the proposal and copies are available at the address listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on the DMP/DEIS will be published in the FEIS and final rule.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be 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 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 that the DMP/DEIS for the GRNMS would not have a significant economic impact on a substantial number of small entities, based on the regulatory flexibility analysis as follows:

Initial Regulatory Flexibility Analysis for the Proposed Management Plan and Proposed Rule for the Gray's Reef National Marine Sanctuary

Description of the action being taken: This action involves changes to clarify existing regulations and promulgation of new regulations for the Gray's Reef