Director will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the FEDERAL REGISTER.

(f) Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

(g) *Anchoring on Tortugas Bank.* Vessels 50 meters or greater in registered length, are prohibited from anchoring on the portion of Tortugas Bank within the Florida Keys National Marine Sanctuary west of the Dry Tortugas National Park that is outside of the Tortugas Ecological Reserve. The boundary of the area closed to anchoring by vessels 50 meters or greater in registered length is formed by connecting in succession the points at the following coordinates (based on the North American Datum of 1983):

(1) 24 deg. 32.00′ N 83 deg. 00.05′ W
(2) 24 deg. 37.00′ N 83 deg. 06.00′ W
(3) 24 deg. 39.00′ N 83 deg. 06.00′ W
(4) 24 deg. 39.00′ N 83 deg. 00.05′ W
(5) 24 deg. 32.00′ N 83 deg. 00.05′ W

[62 FR 32161, June 12, 1997, as amended at 63 FR 43873, Aug. 17, 1998; 66 FR 4369, Jan. 17, 2001]

§ 922.165 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida. Any temporary regulation may be in effect for up to 60 days, with one 60-day extension. Additional or extended action will require notice and comment rulemaking under the Administrative Procedure Act, notice in local newspapers, notice to Mariners, and press releases.

§ 922.166 Permits other than for access to the Tortugas Ecological Reserve—application procedures and issuance criteria.

(a) *National Marine Sanctuary General Permit.* (1) A person may conduct an activity prohibited by §§ 922.163 or 922.164, other than an activity involving the survey/inventory, research/recovery, or deaccession/transfer of Sanctuary historical resources, if such activity is specifically authorized by, and provided such activity is conducted in accordance with the scope, purpose, terms and conditions of, a National Marine Sanctuary General permit issued under this paragraph (a).

(2) The Director, at his or her discretion, may issue a General permit under this paragraph (a), subject to such terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

(i) Further research or monitoring related to Sanctuary resources and qualities;

(ii) Further the educational value of the Sanctuary;

(iii) Further the natural or historical resource value of the Sanctuary;

(iv) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty;

(v) Assist in managing the Sanctuary; or

(vi) Otherwise further Sanctuary purposes, including facilitating multiple use of the Sanctuary, to the extent compatible with the primary objective of resource protection.

(3) The Director shall not issue a General permit under this paragraph (a), unless the Director also finds that:

(i) The applicant is professionally qualified to conduct and complete the proposed activity;

(ii) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(iii) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(iv) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals

in relation to the activity's impacts on Sanctuary resources and qualities;

(v) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(vi) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes; and

(vii) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity.

(4) For activities proposed to be conducted within any of the areas described in §922.164 (b)–(e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§922.162 and 922.164 and in the management plan for the Sanctuary.

(b) *National Marine Sanctuary Survey/Inventory of Historical Resources Permit.* (1) A person may conduct an activity prohibited by §§922.163 or 922.164 involving the survey/inventory of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Survey/Inventory of Historical Resources permit issued under this paragraph (b). Such permit is not required if such survey/inventory activity does not involve any activity prohibited by §§922.163 or 922.164. Thus, survey/inventory activities that are non-intrusive, do not include any excavation, removal, or recovery of historical resources, and do not result in destruction of, loss of, or injury to Sanctuary resources or qualities do not require a permit. However, if a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Historical Resources permit is required. Regardless of whether a Survey/Inventory permit is required, a person may request such permit. Persons who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

(2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:

(i) Satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and

(iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Submerged Cultural Resources in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of Florida (hereinafter SCR Agreement), and that such permit issuance is in accordance with such SCR Agreement. Copies of the SCR Agreement may also be examined at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910; or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050.

(c) *National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit.* (1) A person may conduct any activity prohibited by §§ 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Research/Recovery of Historical Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

(i) Such activity satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) The recovery of the resource is in the public interest as described in the SCR Agreement;

(iii) Recovery of the resource is part of research to preserve historic information for public use; and

(iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(d) *National Marine Sanctuary Special-use Permit.* (1) A person may conduct any commercial or concession-type activity prohibited by §§ 922.163 or 922.164, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Special-use permit issued under this paragraph (d). A Special-use permit is required for the deaccession/transfer of Sanctuary historical resources.

(2) The Director, at his or her discretion, may issue a Special-use permit in accordance with this paragraph (d), and subject to such terms and conditions as he or she deems appropriate and the mandatory terms and conditions of section 310 of the NMSA, if the Director finds that issuance of such permit is reasonably necessary to: establish conditions of access to and use of any Sanctuary resource; or promote public use and understanding of any Sanctuary resources. No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource, and if for the deaccession/transfer of Sanctuary Historical Resources, unless such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(3) The Director may assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this paragraph (d). No Special-use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition. In assessing a fee, the Director shall include:

(i) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

(A) Number of personnel;

(B) Personnel hours;

(C) Equipment;

(D) Biological assessments;

(E) Copying; and

(F) Overhead directly related to reviewing and processing the permit application;

(ii) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the Special-use permit is being issued, including, but not limited to:

(A) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to Sanctuary resources and qualities;

(B) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(C) Overhead costs directly related to the permitted activity; and

(iii) An amount which represents the fair market value of the use of the Sanctuary resource and a reasonable return to the United States Government.

(4) Nothing in this paragraph (d) shall be considered to require a person to obtain a permit under this paragraph for the conduct of any fishing activities within the Sanctuary.

(e) *Applications.* (1) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. All applications must include:

(i) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;

(ii) The qualifications and experience of all personnel;

(iii) The financial resources available to the applicant to conduct and complete the proposed activity;

(iv) A statement as to why it is necessary to conduct the activity within the Sanctuary;

(v) The potential impacts of the activity, if any, on Sanctuary resources and qualities;

(vi) The benefit to be derived from the activity; and

(vii) Such other information as the Director may request depending on the type of activity. Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.

(2) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The Director may require a site visit as part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director to constitute abandonment or withdrawal of the permit application.

(f) A permit may be issued for a period not exceeding five years. All permits will be reviewed annually to determine the permittee's compliance with permit scope, purpose, terms and conditions and progress toward reaching the stated goals and appropriate action taken under paragraph (g) of this section if warranted. A permittee may request permit renewal pursuant to the same procedures for applying for a new permit. Upon the permittee's request for renewal, the Director shall review all reports submitted by the permittee as required by the permit conditions. In order to renew the permit, the Director must find that the:

(1) Activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit;

(2) Permittee has at no time violated the permit, or these regulations; and

(3) The activity has not resulted in any unforeseen adverse impacts to Sanctuary resources or qualities.

(g) The Director may amend, suspend, or revoke a permit for good cause. The Director may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of a previous permit, of these regulations, of the NMSA or FKNMSPA, or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in Subpart D of 15 CFR part 904.

(h) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in §922.50.

(i) A permit issued pursuant to this section other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director. The permittee shall provide the Director with written notice of any proposed transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the Special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.

(j) The permit or a copy thereof shall be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity and be displayed for inspection upon the request of any authorized officer.

(k) Any permit issued pursuant to this section shall be subject to the following terms and conditions:

(1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources or qualities, except to the extent that such may be specifically authorized.

(2) The permittee agrees to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

(3) All necessary Federal, State, and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.

(l) In addition to the terms and conditions listed in paragraph (k) of this section, any permit authorizing the research/recovery of historical resources shall be subject to the following terms and conditions:

(1) A professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.

(2) An agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered.

(3) A curation agreement with a museum or facility for curation, public access and periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered historical resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Deaccession/transfer of historical resources requires a Special-use permit issued pursuant to paragraph (d) and such deaccession/transfer shall be executed in accordance with the requirements of the SCR Agreement).

(4) The site's archaeological information is fully documented, including measured drawings, site maps drawn to professional standards, and photographic records.

(m) In addition to the terms and conditions listed in paragraph (k) and (l) of this section, any permit issued pursuant to this section is subject to such other terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such terms and conditions may include, but are not limited to:

(1) Any data or information obtained under the permit shall be made available to the public.

(2) A NOAA official shall be allowed to observe any activity conducted under the permit.

(3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit.

(4) The permittee shall submit an annual report to the Director not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the year and/or term of the permit.

(5) The permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for destruction, loss of, or injury to Sanctuary resources arising out of the permitted activities. The amount of insurance or security should be commensurate with an estimated value of the Sanctuary resources in the permitted area. A copy of the insurance policy or security instrument shall be submitted to the Director.

§ 922.167 Permits for access to the Tortugas Ecological Reserve.

(a) A person may enter the Tortugas North area of the Tortugas Ecological Reserve other than for passage without interruption through the reserve, for