

promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action amending the Manchester Regional Boston Airport, NH, Class C airspace description, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, signed August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 4000 Class C Airspace.

* * * * *

ANE NH C Manchester, NH

Manchester Boston Regional Airport, NH (Primary Airport)

(Lat. 42°55'58" N, long. 71°26'09" W)

Boire Field Airport, NH

(Lat. 42°46'57" N, long. 71°30'51" W)

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Manchester Boston Regional Airport; including that airspace extending upward from 2,500 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport; including that airspace from 1,500 feet MSL between a 5-mile radius and 10-mile radius south of the airport from Interstate 93 clockwise to the eastern edge of the 5-mile radius of Boire Field Airport; including that airspace from 2,000 feet MSL between a 5-mile radius and 10-mile radius north of the airport from a line formed by a point at the 307° bearing from the airport at 5 miles direct to a point at the 311° bearing from the airport at 10 miles clockwise to Interstate 93.

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Issued in Washington, DC, on May 29, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–12151 Filed 6–5–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 240329–0091]

RIN 0648–BJ62

Lake Ontario National Marine Sanctuary; Final Regulations

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

ACTION: Final rule.

SUMMARY: NOAA is issuing final regulations for the designation of the Lake Ontario National Marine Sanctuary (LONMS) in eastern Lake Ontario to recognize the national significance of the area’s historical, archaeological, and cultural resources and to manage this special place as part of the National Marine Sanctuary System. The area encompasses 1,300 nmi² (1,722 mi²) of eastern Lake Ontario waters and borders Wayne, Cayuga, Oswego, and Jefferson counties. NOAA will co-manage LONMS with New York State.

DATES: Effective Date: Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress, beginning on the date on which this Federal rulemaking is published, which is June 6, 2024, unless the Governor of the State of New York certifies to the Secretary of Commerce during that same review period that the designation or any of its terms is unacceptable, in which case the designation or any unacceptable term shall not take effect. The public can track days of Congressional session at the following website: <https://www.congress.gov/days-in-session>. NOAA will publish an announcement of the effective date of the final regulations in the **Federal Register**.

NOAA is staying the effective date of § 922.223(a)(3), until July 21, 2026. All other regulatory provisions will become effective on the effective date of this final rule.

ADDRESSES: Copies of the final environmental impact statement (FEIS) and management plan described in this rule and the record of decision (ROD) are available at <https://sanctuaries.noaa.gov/lake-ontario/>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA’s Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System.

NOAA is designating the Lake Ontario National Marine Sanctuary (LONMS) in eastern Lake Ontario to recognize the national significance of the area’s historical, archaeological, and cultural resources and to manage this special place as part of the National Marine Sanctuary System. To designate a national marine sanctuary, NOAA will set a boundary to delineate the borders

of the sanctuary; run the site as a part of the National Marine Sanctuary System under the National Marine Sanctuaries Act; establish site-specific regulations to protect underwater cultural and historical resources; and implement a management plan that provides a comprehensive, long-term plan to manage the sanctuary and interpret the significance of the resources and surrounding area to the public. The sanctuary boundary encompasses 1,300 nmi² (1,722 mi²) of eastern Lake Ontario waters and borders Wayne, Cayuga, Oswego, and Jefferson counties. NOAA will co-manage LONMS with New York State.

Eastern Lake Ontario is one of the most historically significant regions in the Great Lakes and the country. Approximately 1,000 years ago, the distinct cultural groups living along the lake shoreline had unified as the Haudenosaunee Confederacy. Portions of the original homelands of the Onondaga Nation, Cayuga Nation, Seneca Nation, and Oneida Nation lie within the boundaries of the sanctuary. This region has been critical to maritime trade for centuries, and it also represents a diverse array of important events in our Nation's history from military conflicts, maritime innovation, and American expansion to the west. During the colonial period, Lake Ontario was a strategic theater of conflict among European powers and the young American republic. Military actions occurred in the region during the French and Indian War, Revolutionary War, and the War of 1812. Later, this region was critical to the development of the American West and the Nation's industrial core. One of the more tangible and identifiable assets of this history were the vessels that plied Lake Ontario's waters. Carrying goods, people, and the community histories of the Great Lakes region, some of these vessels encountered treacherous conditions and sank. The cold, fresh water of the Great Lakes has preserved a number of these shipwrecks along with their historical and cultural context, making them a cornerstone for the protection, study, and interpretation offered by national marine sanctuaries.

LONMS contains 41 known shipwrecks and one known submerged aircraft, including one shipwreck (*St. Peter*) listed on the National Register of Historic Places and another listed as a New York State Submerged Cultural Preserve and Dive Site (*David Mills*). This area may also include approximately 19 additional potential shipwreck sites (shipwrecks which may exist, but additional research is needed to verify and describe them); three

aircraft; and several other underwater archaeological sites, such as remnants of piers, aids to navigation, historic middens, and historic properties that may be of religious and cultural significance to Indigenous Nations and Tribes. At this time, NOAA is unaware of any foreign sovereign shipwrecks located within the sanctuary boundary.

The exceptional archaeological, historical, and recreational value of these assets spans centuries, as demonstrated by the commercial schooner *Washington* that was built in 1797, and U.S. Coast Guard Cable Boat 56022, which was lost under tow in 1977. The sanctuary will also include early American commercial vessels, submerged battlefields from the Seven Years War and War of 1812 (at Oswego and Sackets Harbor, respectively), and stellar examples of innovative technologies in shipbuilding from the last two centuries.

B. Need for Action

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate new national marine sanctuaries to meet the purposes and policies of the NMSA, including:

- “to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System” (16 U.S.C. 1431(b)(1));
- “to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities” (16 U.S.C. 1431(b)(2)); and
- “to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities” (16 U.S.C. 1431(b)(6)).

The nationally significant underwater cultural and historical resources within the sanctuary require long-term protection and management to reduce threats that adversely affect their historical, cultural, archaeological, recreational, and educational value. For example, many of the shipwrecks in the sanctuary, which have a high level of structural integrity as a result of the preservative properties of the cold, fresh water of Lake Ontario and the great depth at which several of them lie, are threatened by both natural processes and human activities. These threats include wind, waves, currents, storms, and ice; invasive species such as zebra

and quagga mussels, which currently cover many shipwrecks; anchors and grappling hooks from dive boats; poorly attached mooring lines; artifact removal; artifacts being moved within a shipwreck site; and entanglement from remotely operated vehicle tethers and fishing gear.

Accordingly, NOAA is designating this area as a national marine sanctuary to: (1) manage and protect nationally significant underwater cultural and historical resources through a regulatory and nonregulatory framework; (2) document, further locate, and monitor these resources; (3) provide interpretation of their cultural, historical, and educational value to the public; and (4) promote public stewardship and responsible use of these resources for their recreational value.

Establishing a national marine sanctuary in eastern Lake Ontario will: (a) allow NOAA to complement and supplement existing State and Federal efforts to protect underwater cultural and historical resources and actively manage, study, and interpret them for the public; (b) through outreach and communication, recognize and promote this area's nationally significant historical and cultural properties; (c) provide access to NOAA's extended network of scientific expertise and technological resources, enhance ongoing research, and provide an umbrella for the coordination of these activities; (d) create and build upon existing educational initiatives and provide programming and technology for students, teachers, and the general public across the country; (e) enhance and facilitate public stewardship of underwater cultural and historical resources; and (f) bolster broader lake conservation efforts and stimulate maritime heritage-related tourism in the many communities that have embraced their centuries-long relationship with Lake Ontario, the St. Lawrence River, the Great Lakes region, and the Nation.

C. Designation Process

1. Notice of Intent To Designate a National Marine Sanctuary

On January 17, 2017, leaders of four New York counties (Oswego, Jefferson, Cayuga, and Wayne) and the City of Oswego, with support from the Governor of New York, submitted a nomination to NOAA through the Sanctuary Nomination Process (SNP) (79 FR 33851) asking NOAA to consider designating a national marine sanctuary in eastern Lake Ontario waters to protect, and increase awareness of, a nationally significant collection of

submerged maritime heritage resources; build new partnerships for research and education; and promote tourism and economic development opportunities. NOAA completed its review of the nomination and, on March 21, 2017, added the area to the inventory of nominations eligible for designation. All nominations submitted to NOAA can be found at: <https://nominate.noaa.gov/nominations/>. NOAA's decision to initiate a designation is based on a number of factors, including the need for resource protection, community and stakeholder support, and agency capacity. NOAA chose to move forward with designating LONMS because its designation would advance the goals of the National Marine Sanctuaries Act and increase the diversity of national marine sanctuary sites by including historical and cultural resources not represented elsewhere in the National Marine Sanctuary System. NOAA also considered the excellent condition of the resources located within the nominated area.

On April 17, 2019, NOAA began the sanctuary designation process for LONMS by publishing a notice of intent (84 FR 16004, April 17, 2019) to prepare a draft environmental impact statement (DEIS) and to initiate the public scoping process as required by the National Marine Sanctuaries Act (NMSA) and the National Environmental Policy Act (NEPA). The notice of intent also announced NOAA's intent to fulfill its responsibilities under the National Historic Preservation Act (NHPA).

NOAA established a Sanctuary Advisory Council in 2020 to bring members of the local community together to provide advice to NOAA, to serve as a liaison with the nominating community, and to assist in guiding NOAA through the designation process. The council consists of 15 members in the following seats: citizens-at-large, divers/dive clubs/shipwreck explorers, maritime history, education, tourism, economic development, recreational fishing, and shoreline property owners. In addition, representatives of the four counties, the city of Oswego, the U.S. Coast Guard, the Port of Oswego Authority, New York Sea Grant, and New York State are non-voting members.

2. Draft Environmental Impact Statement and Public Comment

In accordance with NEPA (42 U.S.C. 4321 *et seq.*) and the NMSA (16 U.S.C. 1434), NOAA published a DEIS and draft management plan for the national marine sanctuary designation on July 7, 2021 (86 FR 35757). The DEIS (<https://nmssanctuaries.blob.core.windows.net/>

[sanctuaries-prod/media/docs/20210701-proposed-lake-ontario-national-marine-sanctuary-draft-environmental-impact-statement.pdf](https://www.regulations.gov/document/NOAA-NOS-2021-0050-0077)) described the purpose and need for the proposed action, identified a range of alternatives, evaluated the environmental consequences of the proposed designation of a national marine sanctuary, and provided an assessment of resources and uses in the area. NOAA included three alternatives in the DEIS: (1) a "no action" alternative where the area would not become a national marine sanctuary; (2) an alternative that would include 1,349 nm² (1,786 mi²) in eastern Lake Ontario and the Thousand Islands region of the St. Lawrence River; and (3) an alternative that would include 1,300 nmi² (1,724 mi²) in eastern Lake Ontario without the St. Lawrence River. The DEIS also described proposed regulatory concepts and non-regulatory management actions outlined in the draft management plan to identify the tools employed by NOAA to manage the sanctuary, such as research and monitoring, education and outreach, tourism and economic development, sanctuary resource protection, and sanctuary operations. NOAA did not select a preferred alternative in the DEIS.

During the public comment period on the DEIS and draft management plan, NOAA held four virtual public meetings. NOAA received 87 separate comments either through www.regulations.gov, by mail, or during the virtual public meetings. All comments on the DEIS are available at the [Regulations.gov](http://www.regulations.gov) website.¹ NOAA's response to the public comments is set forth in Section IV of this document and Appendix E of the final environmental impact statement, which was made available to the public on April 19, 2024 (89 FR 28771).

3. The Proposed Rule

On January 19, 2023, NOAA published a notice of proposed rulemaking (NPRM) for the sanctuary designation of approximately 1,302 nmi² (1,724 mi²) of eastern Lake Ontario waters (88 FR 3334). NOAA solicited public comment on the proposed rule from January 19, 2023 to March 20, 2023. NOAA accepted comments in the form of letters and written comments through electronic submissions to <http://www.regulations.gov>, letters submitted by mail, and both in-person and virtual

¹ Public comments are available for review at <https://www.regulations.gov/docket/NOAA-NOS-2021-0050>. The comment period on the DEIS started on July 7, 2021 and ended on September 10, 2021.

public hearings. NOAA received 96 comments during the public comment period on the NPRM. All public comments on the proposed designation are available at <https://www.regulations.gov/document/NOAA-NOS-2021-0050-0077>. NOAA's response to the public comments is set forth in Section IV of this document and Appendix E of the final environmental impact statement, which was made available to the public on April 19, 2024 (89 FR 28771).

II. Changes From Proposed to Final Regulations

Based on public comments received between January and March 2023, internal deliberations, interagency consultations, meetings with constituent groups, and evaluation of this input with the State of New York, NOAA has made the following changes to the proposed rule and corresponding changes to the FEIS and management plan.

A. Sanctuary Boundary

In response to public comments and discussions with New York State, NOAA modified the sanctuary area from 1,724 square miles to 1,722 square miles. The final boundary includes 41 known shipwrecks and one known submerged aircraft; approximately 19 additional potential shipwreck sites; three aircraft; and several other underwater archaeological sites, such as remnants of piers, aids to navigation, and historic properties that may be of religious and cultural significance to Indigenous Nations and Tribes. Specific changes include: revising the known shipwreck number from 43 to 41 due to removing the wreck of the *Congercoal*, which NOAA has been advised is outside of the sanctuary boundary, and the wreck of the *Jefferson*, which is on private property; revising the potential shipwreck site count from 20 to 19 due to the positive identification of the schooner *Napoleon*; moving the eastern edge of the boundary from the Town of Cape Vincent to Tibbetts Point Lighthouse to ensure that no portion of the St. Lawrence River is included within the sanctuary; amending the boundary coordinates and preamble language to clarify that East Bay, Port Bay, Blind Sodus Bay, North Pond, South Colwell Pond, Goose Pond, Floodwood Pond, and Black Pond are not included within the boundaries of the sanctuary; updating the name from "Great Sodus" to "Sodus Bay" and "Little Sodus" to "Little Sodus Bay" in the list of ports and harbors excluded from the sanctuary; adding language to the description of the Low Water Datum

and the 1985 International Great Lakes Datum to clarify that the boundary will reflect any updates to either datum made in the future.

B. Effective Date of the Prohibition on Grappling Into or Anchoring on Shipwreck Sites

As explained above in the **DATES** section of this document, NOAA postpones the effective date for the prohibition on grappling into or anchoring on shipwreck sites until July 21, 2026. The purpose of this postponement is to provide NOAA with adequate time to develop a shipwreck mooring program plan, seek input from the dive community about the mooring buoy plan, begin installing mooring buoys, and develop best practices for accessing shipwrecks when mooring buoys are not present. All other regulations will become effective as described in the **DATES** section above, including the prohibition on altering, destroying, or otherwise injuring any sanctuary resource (including shipwrecks) under 15 CFR 922.223(a)(1). It also continues to be a violation of State law to damage shipwrecks, including damage from anchoring or grappling.

C. Terminology Change in Section 922.227 “Effect on Affected Federally-Recognized Nations and Tribes”

NOAA amended the term in section 922.227 from “federally-recognized Indian Tribes” to “federally-recognized Nations and Tribes” as a result of consultation with the Onondaga Nation, which uses the term “Nation” to reflect their sovereignty. The United States recognized Onondaga as a nation, and as a treaty partner, in its three treaties with the Six Nations in the late 18th century. NOAA does not intend to change the meaning of section 922.227 with this terminology change. Consistent with NOAA’s definition of “Indian tribe” at 15 CFR 922.11, the term “federally-recognized Nations and Tribes” in section 922.227 is intended to refer to an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130.

D. Sunken Military Craft

NOAA has added new text to Section 922.222 (Co-Management) regarding the Sunken Military Craft Act acknowledging that sunken military craft in LONMS will continue to be administered by the respective Secretary concerned pursuant to the Sunken

Military Craft Act. NOAA will enter into a Memorandum of Agreement with the appropriate agencies regarding collaboration on implementing the Sunken Military Craft Act. See Section V.I. for more information.

E. Technical Edits

In addition to the changes discussed above, NOAA has made technical edits throughout this final rule. The majority of these technical edits are necessary to conform with revisions to 15 CFR part 922 that became effective on April 7, 2023 (88 FR 19824), after the proposed rule for LONMS was published in the **Federal Register**.

These technical edits are not substantive.

NOAA has also made two non-substantive changes to the terms of designation that were included in the proposed rule. First, NOAA has removed a sentence from Article IV, Section 1, because it was duplicative of the statement in Article V that the terms of designation may be modified only by the same procedures by which the original designation was made, consistent with Section 304(a)(4) of the NMSA. Second, NOAA has added “Interfering with an investigation in connection with enforcement of the NMSA” to the list of activities subject to regulation in Article IV of the terms of designation to reflect the full scope of activities that are prohibited or otherwise regulated under 15 CFR 922.223(a).

III. Summary of all Final Regulations

A. Adding New Subpart U

NOAA is amending 15 CFR part 922 by adding a new subpart (subpart U) that contains site-specific regulations for the sanctuary. This subpart will include the boundary, contain definitions of common terms used in the new subpart, provide a framework for co-management of the sanctuary, identify prohibited activities and exceptions, and establish procedures for certification of existing uses, permitting otherwise prohibited activities, and emergency regulation procedures.

B. Sanctuary Name

NOAA has decided to name the sanctuary “Lake Ontario National Marine Sanctuary” as originally proposed. NOAA sought public comment on potential names for the sanctuary at each stage of the designation. This decision was based on public comment, on input from the Lake Ontario Sanctuary Advisory Council, and consultation with New York State, Indigenous Nations and Tribes, and local governments.

C. Sanctuary Boundary

NOAA designates 1,300 nmi² (1,722 mi²) of eastern Lake Ontario waters, which border Wayne, Cayuga, Oswego, and Jefferson counties, as Lake Ontario National Marine Sanctuary. The shoreline sanctuary boundary is set at the Low Water Datum (LWD) as defined by the International Great Lakes Datum (IGLD). The LWD is determined by the U.S. Army Corps of Engineers and is the chart datum to which soundings are referenced for NOAA charts in the Great Lakes. The LWD is also well understood internationally because it is a fixed datum for each lake. New York State uses the LWD as the line that delineates public land ownership. The sanctuary boundary will automatically incorporate any changes to the shoreline as defined by the LWD when the datum is updated in the future.

NOAA sets the northern boundary approximately along the U.S. and Canadian border in both Lake Ontario and the entrance to the St. Lawrence River. The western sanctuary boundary is set approximately along the western border of Wayne County. The eastern boundary is a line near the entrance to the St. Lawrence River from approximately the international border between the United States and Canada near Wolfe Island, ON, to the shoreline near Tibbetts Point Lighthouse to the southwest of the town of Cape Vincent, NY. The remainder of the eastern sanctuary boundary, as well as the southern boundary, follows the shoreline around eastern Lake Ontario.

To ensure compatible use with commercial shipping and other activities, NOAA excludes the ports and harbors of Oswego, Pultneyville, Little Sodus Bay, Sodus Bay, and Port Ontario from the sanctuary. NOAA excludes the Federal navigation channel approaches to these harbors, as well as Federal anchorage areas to avoid unintended effects on port operations critical to the local, regional, and national economies. NOAA also excludes privately owned bottomlands from the sanctuary. NOAA is including Sackets Harbor in the sanctuary because of the possible presence of underwater cultural and historical resources at that location.

The boundary of LONMS cuts across the mouths of rivers, streams, creeks, and ponds as it continues along the coastline of the sanctuary, which excludes those water bodies from the sanctuary. This is the case for East Bay, Port Bay, Blind Sodus Bay, North Pond, South Colwell Pond, Goose Pond, Floodwood Pond, and Black Pond. Therefore, these bays and their channels

to the lake will not be included within the boundaries of the sanctuary.

D. Definitions

NOAA is including a site-specific definition of “sanctuary resource” for LONMS, to include only the historical resources found in this area in accordance with the purpose of this designation. The definition does not include biological and ecological resources of the area. Creating this site-specific definition requires NOAA to modify the national definition of “sanctuary resource” in the national regulations at section 922.11 to add an additional sentence that defines the site-specific definition for the sanctuary at section 922.221. This is similar to the approach taken for other national marine sanctuaries, such as Thunder Bay National Marine Sanctuary, that do not use the full national “sanctuary resource” definition. NOAA defines “sanctuary resource” for the purposes of LONMS to mean all historical resources as defined at 15 CFR 922.11, which includes any pre-contact and historic sites, structures, districts, objects, and shipwreck sites within sanctuary boundaries.

NOAA further defines “shipwreck site” for the purposes of LONMS to mean all archaeological and material remains associated with sunken watercraft or aircraft that are historical resources, including associated components, cargo, contents, artifacts, or debris fields that may be exposed or buried within the lake bed.

NOAA also defines “tethered underwater mobile system” for the purposes of LONMS to mean remotely operated vehicles and other systems with onboard propulsion systems that utilize a tether connected to a station-holding (e.g. by anchor, dynamic positioning, or manual vessel operation) surface support vessel.

E. Co-Management of the Sanctuary

To enhance opportunities and build on existing protections, NOAA and New York State will collaboratively manage the sanctuary. NOAA establishes the framework for co-management in section 922.222 and will develop a Memorandum of Agreement (MOA) with the State to establish further details of co-management. NOAA and the State may develop additional agreements as necessary that would provide details on the execution of sanctuary management, such as activities, programs, and permitting programs, that can also be updated to adapt to changing conditions or threats to the sanctuary resources. Any proposed changes to sanctuary regulations or boundaries will be jointly

coordinated with the State and subject to public review as mandated by the NMSA and other Federal statutes.

Sunken military craft in LONMS will continue to be administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act. NOAA will develop an MOA with the appropriate agencies regarding collaboration on implementing the Sunken Military Craft Act. The ONMS Director will request approval from the respective Secretary concerned for any terms and conditions of ONMS authorizations that may involve sunken military craft in LONMS.

Additionally, NOAA recognizes that designation of a national marine sanctuary will lead to subsequent activities that may be subject to review under section 106 of the National Historic Preservation Act. Therefore, NOAA is pursuing execution of a Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b). The PA would provide a framework for consideration of future undertakings resulting from management of the sanctuary. NOAA is developing this agreement in consultation with the New York State Historic Preservation Officer, the Advisory Council on Historic Preservation, federally-recognized Nations and Tribes, and other consulting parties.

F. Prohibited and Regulated Activities

NOAA will supplement and complement existing management of this area by implementing the following regulations in section 922.223 to protect sanctuary resources.

1. Prohibition on Damaging or Altering Sanctuary Resources

As a complement to existing protections under State laws and Federal laws, the regulations for LONMS prohibit moving, removing, recovering, altering, destroying, possessing or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource. This prohibition aims to reduce the risk of direct harm to sanctuary resources. The terms “moving” and “altering” include any changes to the position or state of sanctuary resources, as well as covering, uncovering, moving, or taking sanctuary resources, even if the resources are not located on or near a shipwreck. This sanctuary prohibition will supplement section 233 of the New York State Education Law which makes it unlawful for any person to “investigate, excavate, remove, injure, appropriate or destroy any object of archaeological, historical, cultural, social, scientific or

paleontological interest situated on, in or under lands owned by the State of New York without written permission of the commissioner of education.” NY Educ L § 233.4. This State regulation currently applies in U.S. waters of Lake Ontario and will continue to apply to such objects in these waters.

2. Prohibition on Possessing, Selling, Offering for Sale, Purchasing, Importing, Exporting, Exchanging, Delivering, Carrying, Transporting, or Shipping by Any Means Any Sanctuary Resource Within or Outside of the Sanctuary

This prohibition is intended to deter looting of sanctuary resources and to further the policy of *in situ* preservation of these resources. As noted, the listed activities will be prohibited both within and outside of the sanctuary. This prohibition does not apply to artifacts or other historical resources collected before the effective date of sanctuary designation.

3. Prohibition on Grappling Into or Anchoring on Shipwreck Sites

The regulations for LONMS prohibit the use of grappling hooks and anchoring devices into or on shipwreck sites, to protect fragile shipwrecks and aircraft within the sanctuary from damage. To help vessels avoid anchoring on known shipwrecks sites, NOAA intends to publish known shipwreck site coordinates on the LONMS website (<https://sanctuaries.noaa.gov/lake-ontario>). However, in accordance with section 304 of the National Historic Preservation Act, NOAA would withhold from public disclosure information about the location, character, or ownership of a historic property if NOAA, in consultation with the Secretary of the Interior, determined that disclosure may risk harm to the historic property. NOAA will also coordinate with the New York State Historic Preservation Officer in making such a determination. Shipwreck sites for which NOAA does not publish coordinates remain, nevertheless, as sanctuary resources, and this prohibition on grappling into or anchoring on shipwreck sites will still apply. The management plan includes surveying the sanctuary area to identify additional shipwreck sites. As appropriate, and in consideration of resource management conflicts, NOAA intends to update its website as new shipwreck sites are found by the sanctuary or other public or private groups and individuals. As NOAA seeks to promote public access while also ensuring sound resource protection, an initial focus of the sanctuary management plan will be the

installation of mooring systems at select sanctuary shipwreck sites. Moorings provide a secure and convenient anchoring point for users, which eliminates the practice of grappling into a shipwreck to access the site. NOAA also intends to publish guidelines on best practices for anchoring near shipwreck sites to avoid injuring sanctuary resources. For example, NOAA intends to publish instructions for the public on how to use a weighted line and surface float at sites without moorings to mark a wreck for divers to descend and ascend. This weighted line would not be used as an anchoring line, and it would need to be continuously tended and then completely removed before the dive boat leaves the area.

NOAA is delaying the effective date for the prohibition on grappling into or anchoring on shipwreck sites for two years beyond the effective date of the sanctuary designation. The purpose of this delay is to provide NOAA with adequate time to develop a shipwreck mooring program in consultation with the dive community and State and Federal agencies; begin installing moorings at high priority shipwreck sites; and publish site plans and best practices for accessing shipwreck sites with and without moorings. All other regulatory provisions will become effective on the effective date of the sanctuary designation that is implemented by this final rule, including the prohibition on altering, destroying, or otherwise injuring any sanctuary resource (including shipwrecks) under 15 CFR 922.223(a)(1). It continues to be a violation of State law to damage shipwrecks, including damage from anchoring or grappling.

4. Prohibition on Use of Tethered Underwater Mobile Systems at Shipwreck Sites

Tethered underwater mobile systems, such as remotely operated vehicles (ROVs), are widely used in underwater survey and site exploration activities, as they enable access to underwater cultural and historical resources at depths beyond recreational and technical diving limits. As tethered instrument use has continued to increase in the scientific, commercial, and recreational user communities, there is a heightened threat of damage to underwater cultural resources by these systems. Tethered systems present three distinct threats to shipwreck sites: intentional site disturbance, incidental site disturbance, and site pollution. Intentional disturbance includes the intentional recovery of sanctuary resources from a wreck site, which may

range from minor alterations to large-scale recovery. Incidental disturbance occurs when, for example, a tethered system makes contact with the wreck or the instrument tether gets entangled on protruding portions of a wreck, such as the mast. Under these circumstances, disentanglement or attempted disentanglement of snagged instruments can displace or damage the wreck. The impact from such activities can result in severe damage to artifact assemblages and the structural integrity of a site. This risk is particularly concerning in LONMS, where a large number of wrecks have intact masts and high site integrity. Finally, if the instrument cannot be disentangled, cutting the tether line pollutes the site with abandoned equipment.

Therefore, the regulations for LONMS prohibit deploying a tethered underwater mobile system at shipwreck sites. The provision complements New York State's prohibition on damaging cultural resources by proactively deterring damage, disturbance, and pollution of these nationally significant sites from tethered systems. Because New York State does not proactively manage or protect shipwrecks in Lake Ontario, it also does not regulate the use of tethered systems at shipwreck sites, which, as described above, pose a threat to these resources. New York State's existing program focuses on permitting for terrestrial resources, rather than underwater cultural and historical resources. As a result, New York State has limited staff expertise regarding maritime archaeology that could inform whether an application for the permitted use of a tethered system is consistent with the preservation of these underwater cultural and historical resources.

The prohibition on operating tethered systems at shipwreck sites does not apply to any activity conducted in accordance with the scope, purpose, terms, and conditions of a permit issued by NOAA, including special use permits pursuant to section 310 of the NMSA. Users may apply for a permit to operate tethered underwater mobile systems at shipwreck sites within the sanctuary. NOAA will review project proposals against the permit criteria outlined in part 922, subpart D and the permit conditions specific to LONMS to determine whether permitting the proposed operation is consistent and compatible with the purposes of sanctuary designation.

Permits issued by New York State relative to the State prohibition are intended to serve the purposes of the New York State Museum by ensuring the appropriate acquisition of cultural

and historical objects for the State Museum's archiving purposes. Permits issued by NOAA serve a distinct, yet complementary, purpose of ensuring the permitted activity is consistent and compatible with the purposes for which the sanctuary is designated. Furthermore, because NOAA's prohibition makes it unlawful for any person to deploy a tethered underwater mobile system at a shipwreck site without a NOAA permit, authorized officers can target and investigate the unauthorized use of such systems at shipwreck sites before harm occurs. By contrast, the existing New York prohibition is ambiguous in its application prior to direct injury to cultural resources, and this ambiguity could complicate and potentially compromise similar proactive enforcement measures relying on this provision of New York State law. For more information about NOAA permits please see section 8 below.

NOAA does not intend for this prohibition to apply to autonomous underwater vehicles or towed systems, such as side-scan sonar, magnetometers, survey trawls, or other survey instruments that are pulled behind a vessel via a tow cable. Towed systems are typically operated high above the lakebed to avoid snagging on objects, so they do not present the same level of entanglement threat to shipwrecks as tethered underwater mobile systems. However, should an autonomous underwater vehicle, towed system, or any similar operation alter, destroy, cause the loss of, or otherwise injure any sanctuary resource managed within LONMS, any and all responsible persons are still subject to civil liability under NMSA and its implementing regulations.

5. Prohibition on Interfering With Investigations

The regulations for LONMS prohibit interfering with sanctuary enforcement activities. This regulation will assist in NOAA's enforcement of the sanctuary regulations and strengthen sanctuary management.

6. Exemption for Emergencies and Law Enforcement

The prohibitions for the sanctuary do not apply to any activity necessary to respond to emergencies that threaten lives, property, or the environment, or activities that are necessary for law enforcement purposes.

G. Emergency Regulations

The regulations for LONMS include the authority for NOAA to issue emergency regulations in the sanctuary.

Emergency regulations are used in limited cases and under specific conditions when there is an imminent risk to sanctuary resources and where a temporary prohibition would prevent the destruction or loss of those resources. An emergency regulation will not take effect without the approval of the Governor of New York or her/his designee or designated agency. NOAA may only issue emergency regulations that address an imminent risk for a fixed amount of time with a maximum of 6 months that can be extended one time for no more than 6 months. NOAA must go through a full rulemaking process to consider making an emergency regulation a permanent regulation, which would include a public comment period.

This final rule adds LONMS to the list of sanctuaries that have site-specific regulations related to emergency regulations at 922.7 and also includes detailed site-specific regulations regarding emergency regulations at section 922.224.

H. Treaty Rights

The exercise of treaty rights, reserved rights, or similar rights for federally-recognized Nations and Tribes, including the Haudenosaunee Confederacy, and their citizens is not modified, altered, or in any way affected by these regulations. The Director shall consult with the governing body of each Nation or Tribe protected by the 1794 Treaty of Canandaigua regarding any matter which might affect the ability of their citizens to participate in activities protected by this treaty in the sanctuary. Please see section III.E “Executive Order 13175” of this document for information about how NOAA has engaged with Nations and Tribes through the sanctuary designation process.

I. General Permits, Certifications, Authorizations, and Special Use Permits

1. General Permits

The regulations for LONMS include the authority for NOAA to issue permits to allow certain activities that would otherwise violate the prohibitions listed and described above.² Similar to other national marine sanctuaries, NOAA may issue general permits for the purposes of education, research, or management. In order for an activity to be considered for

² A NOAA permit does not relieve a permittee of responsibility to comply with all other Federal, State and local laws and regulations, and the permit is not valid until all other necessary permits, authorizations, and approvals are obtained. A permittee must, at all times, comply with the terms and conditions of the permit. As co-managers, NOAA will coordinate the issuance of permits with New York State.

a general permit, it must also further the goals of the national marine sanctuary and meet regulatory permit review criteria. The Director may subject a general permit to specific terms and conditions as they deem appropriate. For example, a research institution may request to conduct limited archaeological testing at a shipwreck site that involves taking a sample for the purpose of dating the site. This activity would violate the prohibition on damaging or altering a sanctuary resource and would therefore require the issuance of a general permit to allow the activity for the purposes of education, research, or management. NOAA would evaluate the request and consider the inclusion of permit terms and conditions to ensure the activities are conducted by qualified professionals and to proper archaeological standards, as well as to further ensure that the activity is meeting the appropriate purpose of education, research, or management of the resource.

To address the above additions to the NOAA general permit authority for LONMS, NOAA amends the regulatory text in the program-wide regulations in part 922, subpart D, to add references to subpart U, as appropriate.

2. Certifications

Pre-existing activities conducted pursuant to a valid lease, permit, license, or right of subsistence use or of access might be occurring within the LONMS area on the date of sanctuary designation that would otherwise be prohibited by sanctuary regulations. NOAA adds section 922.226, which describes the process by which it may certify a valid lease, permit, license, or right of subsistence use or of access within the sanctuary boundaries. In compliance with the NMSA, the regulations at section 922.226 state that certification is the process by which permitted activities existing prior to the designation of the sanctuary that violate sanctuary prohibitions may be allowed to continue. NOAA may, however, further regulate the exercise of those permitted activities consistent with the goals of the sanctuary by applying additional terms and conditions to the certification. Requests for certifying permitted existing uses must be received by NOAA within 90 days of the effective date of the designation.

3. Authorizations

The regulations for LONMS include the authority for NOAA to consider allowing an activity otherwise prohibited by section 922.223 within the sanctuary if such activity is specifically authorized by any valid

Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of sanctuary designation. NOAA also has the authority to add terms and conditions to authorizations to ensure that activities conducted within the sanctuary are carried out in a manner that is consistent with the purposes for which the sanctuary was designated. As such, NOAA amends the regulatory text at section 922.36 to add reference to subpart U.

4. Special Use Permits

NOAA has the authority under the NMSA to issue special use permits (SUPs) at national marine sanctuaries, as established by section 310 of the NMSA. SUPs can be used to authorize specific activities in a sanctuary if such authorization is necessary to establish conditions of access to, and use of, any sanctuary resource or to promote public use and understanding of a sanctuary resource. The NMSA requires SUPs to contain four specific conditions (16 U.S.C. 1441(c)): (1) activities must be compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources; (2) activities carried out under the permit must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; (3) permittees are required to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims; and (4) SUPs shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary. As is the case with general permits, NOAA can place additional conditions on SUPs specific to the activity being permitted. The activities that qualify for a SUP are set forth in the **Federal Register** (78 FR 25957 (May 3, 2013); 82 FR 42298 (Sept. 7, 2017)). Categories of SUPs may be changed or added to through public notice and comment.

NOAA is creating a new SUP category for “the operation of tethered underwater mobile systems at shipwreck sites in Lake Ontario National Marine Sanctuary” to apply when the proposed activity does not qualify for a general permit or authorization, as described above, and the proposed activity otherwise satisfies the requirements in the applicable sanctuary regulations and section 310 of the NMSA.³ NOAA determined that

³ A NOAA permit does not relieve a permittee of responsibility to comply with all other Federal,

after appropriate environmental review and application of terms and conditions, operating tethered underwater mobile systems at shipwreck sites can occur without injuring sanctuary resources. Upon receiving an SUP application, NOAA will coordinate with the New York State Historic Preservation Officer to consider terms and conditions that prevent harm to sanctuary resources. Such terms and conditions will generally address potential impacts such as tether management and entanglement mitigation, as well as avoidance of site pollution. While the NMSA allows NOAA to assess and collect fees for the conduct of any activity under an SUP, it also allows NOAA to waive or reduce fees for activities that do not derive profit from the access or use of sanctuary resources. NOAA will waive the associated fee for issuing an SUP for operating tethered underwater mobile systems at shipwreck sites within LONMS when non-commercial operators do not derive profits from their use of the sanctuary or when the operators further the sanctuary's objectives (e.g., educating the public about the sanctuary or contributing to the sanctuary's research goals).

J. Other Conforming Amendments

NOAA is amending the general regulations in part 922, subpart A and part 922 subpart D so that the regulations are accurate and up-to-date. The modified sections to conform to adding a new sanctuary are:

- Section 922.1 Purposes and applicability of the regulations
- Section 922.4 Boundaries
- Section 922.6 Prohibited or otherwise regulated activities
- Section 922.7 Emergency regulations
- Section 922.11 Definitions
- Section 922.30 National Marine Sanctuary general permits
- Section 922.36 National Marine Sanctuary authorizations

K. Terms of Designation

Section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) requires that the terms of designation include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value;

State and local laws and regulations, and the permit is not valid until all other necessary permits, authorizations, and approvals are obtained. A permittee must, at all times, comply with the terms and conditions of the permit. As co-managers, NOAA will coordinate the issuance of permits with New York State.

and the types of activities that will be subject to regulation by the Secretary of Commerce to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made.

With this rulemaking, NOAA establishes the terms of designation that describe the geographic area, resources, and activities as described in details above. NOAA will add the terms of designation language for LONMS as appendix B to the regulations at 15 CFR part 922, subpart U.

IV. Response to Comments

NOAA consolidated public comments from the DEIS and NPRM and collectively responds to those comments here and in Appendix E of the FEIS. For the purposes of managing responses to public comments, NOAA grouped similar comments by theme. These themes align with the content of the proposed rule and environmental impact statement that identified the purposes and needs for a national marine sanctuary, and the draft management plan that identified the proposed non-regulatory programs and sanctuary operations. They are summarized below, followed by NOAA's response.

Support and Opposition of the National Marine Sanctuary

1. Comment: Commenters cited several reasons for supporting sanctuary designation, including: long-term protection for nationally significant shipwrecks; increased accessibility to these shipwrecks; additional recreational opportunities; potential for national recognition of the area to support local tourism and economies; Federal resources to support research on shipwrecks; establishing a mooring program; and potential educational opportunities for students to study cultural and biological resources in the lake. Local, State, and governments and organizations also expressed strong support of the sanctuary, offering opportunities to partner for education, research, outreach, and other activities. New York State agencies expressed commitment to be key partners in co-management and implementation of the national marine sanctuary.

Response: NOAA agrees that these are some of the main benefits of designating LONMS. NOAA has considered these comments in writing the FEIS, management plan, and final rule. The management plan identifies actions to support these goals.

2. Comment: NOAA received comments that opposed designating a sanctuary, citing reasons including: enough State and Federal protections for sensitive historic underwater resources already exist; concern that there is not enough public interest in local shipwrecks; most of the wrecks have already been found by private explorers and, thus, NOAA research is not needed; and the level of economic development would not be high enough to justify the creation of a national marine sanctuary.

Response: NOAA determined that this action responds to the need to provide additional protection and management of nationally significant underwater cultural and historical resources in eastern Lake Ontario. NOAA determined the current jurisdictional regime does not provide comprehensive and effective management for the full range of activities that impact the underwater cultural and historical resources in the region. Chapter 2 of the FEIS describes the purpose and need for this sanctuary. The LONMS Management Plan describes a wide variety of activities that will be implemented if this is designated a national marine sanctuary.

3. Comment: Some commenters expressed conditional support for a sanctuary as long as legal fishing, hunting, and fur trapping activities are not limited by the sanctuary.

Response: NOAA's goal of establishing a national marine sanctuary in eastern Lake Ontario is to comprehensively manage the underwater cultural resources in the area. NOAA's regulations will not limit legal fishing, hunting, or fur trapping within the boundaries of the sanctuary, as long as those activities do not damage or disturb sanctuary resources.

4. Comment: NOAA received a few comments questioning why the sanctuary should be established if there are only a few diveable shipwrecks in the proposed boundaries.

Response: As demonstrated across the National Marine Sanctuary System, the public will benefit both from activities occurring within the LONMS and activities occurring on land. People will be able to enjoy the sanctuary through diving, kayaking, boating, and snorkeling, as well as through museums, interpretive displays, websites, formal and informal educational programs, enhanced tourism opportunities, multidisciplinary research opportunities, and other unique sanctuary-related partnerships and activities. The LONMS Management Plan outlines priorities in these areas for the first five years of the sanctuary's

operation with the goal of providing benefits to a broad range of public uses and users.

5. Comment: NOAA received a few comments stating that Federal funding of a national marine sanctuary would be a waste of Federal funds.

Response: NOAA has determined this action responds to the need and opportunity to provide additional protection and management of nationally significant underwater cultural and historical resources in eastern Lake Ontario. NOAA has received consistent support for this sanctuary designation from the local communities and New York State. NOAA prepared a draft management plan with significant input from the Lake Ontario Sanctuary Advisory Council, who are local community members. NOAA describes the benefits of this sanctuary in Chapter 2 of the FEIS and will spend Federal funds prudently to accomplish the goals of the sanctuary.

6. Comment: NOAA received a comment questioning whether NOAA has the ability to enforce sanctuary regulations in such a large area.

Response: Law enforcement authorities within NOAA and the State of New York will coordinate to ensure that sanctuary regulations are enforced. NOAA and New York State intend to examine their existing joint enforcement agreement to consider opportunities for State personnel to assist in the enforcement of national marine sanctuary regulations. NOAA also intends to coordinate with the U.S. Coast Guard to ensure compliance with the NMSA and sanctuary regulations.

7. Comment: One commenter expressed concern about advertising the area to scuba divers when several of the wrecks in the sanctuary lie outside of recreational dive limits (over 130 feet of water). Commenters were also concerned about safety issues arising from increased diving activity in the St. Lawrence River if it was included in the sanctuary, due to the proximity of several of the wrecks to shipping channels.

Response: NOAA notes that it is safest for divers to only dive within the scope of an individual's personal training, experience, and comfort level. While it is true that a number of shipwrecks within the boundaries lie in over 130 feet of water and are only accessible to technical divers, there are also several sites that lie in shallower waters and are more easily accessible to recreational divers. The LONMS Management Plan includes actions that support these goals. NOAA will prioritize placing mooring buoys at these popular dive

sites in the sanctuary to provide safer access to the wrecks, as well as to reduce ongoing impacts to those sites from visitor traffic (Strategy RP-1 in the LONMS Management Plan). NOAA does not plan on installing mooring buoys at all shipwreck sites, nor encouraging diving at all sites. When evaluating sites for mooring buoys, NOAA will consider the impact to the shipwreck, the safety conditions of accessing the site, the depth of the site, and the cost of installing and maintaining the buoy. NOAA will also publish shipwreck site plans to aid divers in planning their dives. NOAA has a strong track record of working with local dive shops to educate business owners and their clients about safe diving practices for both human safety and protection of dive sites. NOAA will also work with local emergency responders to ensure they are prepared for responding to dive emergencies. Finally, the LONMS boundaries will not include the St. Lawrence River.

8. Comment: NOAA received a comment expressing concern that improving access to shipwrecks for scuba divers would increase the degradation of the resources that NOAA is trying to protect.

Response: It is the responsibility of and highest priority for NOAA to protect the integrity of sanctuary resources. NOAA will utilize a range of management actions to ensure that sanctuary resources are not degraded as a result of a sanctuary designation. These actions include implementing regulations tailored to protect sanctuary resources from disturbance; installing a network of mooring buoys that provide safe ascent lines for divers and eliminates the practice of anchoring or grappling into shipwrecks to access the site; publishing and distributing site plans and best practices for wreck diving; and increasing the enforcement presence in the area. In order to assess changes to the resource's stability over time, NOAA will develop and implement a monitoring program for underwater cultural resources in the sanctuary. NOAA can also protect sensitive sites and newly discovered sites by withholding the coordinates of shipwrecks that it believes are sensitive or need evaluation and documentation.

NOAA believes that increasing public access and tourism to shipwreck sites is an important way to foster awareness, appreciation, and, ultimately, the protection of these special places. While NOAA expects tourism, including dive tourism, to increase in Lake Ontario after sanctuary designation, we do not anticipate a major increase in diving due to the great depth of many of the

wrecks and the somewhat low level of diving activity in the Great Lakes in general. As discussed above, implementing the sanctuary regulations, mooring program, permitting system, and increasing enforcement in the sanctuary will minimize any direct impacts to the shipwrecks. Similarly, the final management plan includes education and outreach efforts that will promote responsible diving practices and increase public appreciation and stewardship of these sanctuary resources. Overall, NOAA determined that any adverse impacts on underwater cultural resources from designating the sanctuary would be negligible (refer to Sections 5.3.1 and 5.4.1 of the FEIS for more information).

Sanctuary Boundary

9. Comment: NOAA received several comments on the two boundary alternatives in the draft environmental impact statement and on the proposed boundary in the NPRM. With regard to the size of the boundary, NOAA received several comments supporting inclusion of the Thousand Islands Region of the St. Lawrence River in the sanctuary's boundary. NOAA also received several comments that were opposed to the inclusion of this area of the St. Lawrence River. In raising concerns about the St. Lawrence River, some commenters noted that sanctuary designation could potentially lead to an increased number of divers and other recreational users in the St. Lawrence Seaway shipping channel, which they believed could present safety and navigational challenges. Commenters noted that the St. Lawrence River is managed jointly with Canada, has high shipping traffic in narrow shipping channels, has unpredictable weather, and has several islands and other obstacles in the river that present navigational challenges. Commenters were also concerned that if NOAA were to install surface mooring buoys in navigation channels this would create a navigation hazard for vessels.

Response: After evaluating public comments, NOAA did not include the St. Lawrence River segment within the sanctuary boundary. After considering public comments, NOAA has made a minor change to the eastward end of the sanctuary boundary by moving the boundary from Market Street in Cape Vincent to Tibbetts Point Lighthouse to ensure the sanctuary will not be in the St. Lawrence River. As the St. Lawrence River is critical to the maritime history of the area, NOAA will still include the story of the area in its interpretive materials and work with partners in this area. In addition, NOAA added *Strategy*

RP-6: Evaluate opportunities to consider future sanctuary expansion to include the Thousand Islands region of the St. Lawrence River to the management plan, as there was considerable support for this area being included in the boundary.

10. Comment: NOAA received several comments asking NOAA to clarify which ports, harbors, and marinas are excluded from the sanctuary.

Response: NOAA is excluding the ports and harbors of Oswego, Pultneyville, Little Sodus Bay, Sodus Bay, and Port Ontario from the sanctuary boundary to ensure compatible use with commercial shipping and other activities, such as maintenance dredging. NOAA will also exclude privately owned bottomlands from the sanctuary. NOAA is including Sackets Harbor in the sanctuary because of the possible presence of underwater cultural and historical resources at that location.

In addition, the boundary of LONMS cuts across the mouths of rivers, streams, creeks, and ponds as it continues along the coastline of the sanctuary, which excludes those water bodies from the sanctuary. This is the case for East Bay, Port Bay, Blind Sodus Bay, North Pond, South Colwell Pond, Goose Pond, Floodwood Pond, and Black Pond. Therefore, these bays and their channels to the lake will not be included within the boundaries of the sanctuary. Please refer to Section III C. for more information.

11. Comment: NOAA received two comments seeking clarification of which water level datum will be used for the shoreline and how the shoreline boundary will be affected by fluctuating water levels.

Response: For the Lake Ontario shoreline, NOAA will set the shoreline sanctuary boundary at the Low Water Datum (LWD). The LWD is determined by the U.S. Army Corps of Engineers and is the chart datum to which soundings are referenced for NOAA charts in the Great Lakes. The LWD is also well understood internationally because it is a fixed datum for each lake relative to the International Great Lakes Datum. The sanctuary shoreline boundary will therefore automatically reflect any changes to either the Low Water Datum or the International Great Lakes Datum. As the LWD is set at a fixed elevation, the sanctuary boundary line is not affected by water levels in the lake.

12. Comment: NOAA received a few comments that certain areas important to commercial shipping, including current and future Federal anchorage

areas, Recommended Courses,⁴ and current and future dredged material disposal areas, should be excluded from the sanctuary. NOAA received one question about how sanctuary designation would affect Port Bay, New York's status as a safe harbor.

Response: NOAA will exclude the Federal navigation channel approaches and Federal anchorage area from the sanctuary to avoid unintended effects on port operations critical to the local, regional, and national economies. While NOAA initially excluded open lake dredged material disposal areas in the DEIS, after further internal analysis and consultations with the U.S. Army Corps of Engineers and New York State, NOAA is not excluding open lake dredged material disposal areas from the sanctuary boundary. Excluding these areas would create unwanted "holes" in the sanctuary boundary, which can create confusion for the public about the exact location of sanctuary boundaries. In addition, there is one active open lake dredged material disposal area in the sanctuary boundary, off the Port of Oswego, which has been in use since the late 1980s. The New York State Historic Preservation Officer verified that there are no known underwater cultural resources in that area. Therefore, dredged material disposal could continue in that area without violating NOAA's prohibitions, and sanctuary designation will not affect management of that area. NOAA will also have the authority to certify existing leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of the sanctuary. Therefore, existing dredged material disposal activities may be certified upon sanctuary designation if properly requested by the holder of the lease, permit, license, or right of subsistence use or access in question, if such activities would otherwise be in violation of sanctuary regulations. NOAA cannot exclude future dredged material disposal areas from the physical boundaries of the sanctuary, as they do not exist at this time.

NOAA has decided not to exclude Recommended Courses from the sanctuary, because they are voluntary courses and neither normal nor emergency transit activities occurring in these routes are expected to violate sanctuary prohibitions. NOAA will consider Recommended Courses when determining where to place mooring buoys and to ensure that any diving activity would be conducted at a safe

distance from these courses. NOAA will exclude the existing Federal anchorage area from the sanctuary boundary (Tibbetts Point Anchorage Area). NOAA is not responsible for establishing new Federal anchorage areas and has not excluded a Federal anchorage area off of the Port of Oswego as suggested, as none exist at this time. Port Bay's status as a Safe Harbor would not be affected by the sanctuary designation.

Definitions and Scope of Regulations

13. Comment: NOAA received one comment supporting NOAA's proposal to require users to obtain a special use permit from NOAA to operate tethered underwater mobile systems at shipwreck sites. One commenter stated that operating tethered underwater mobile systems do not pose a threat to shipwreck sites in Lake Ontario.

Response: NOAA is moving forward with requiring operators to obtain a permit to operate tethered underwater mobile systems at shipwreck sites. A new special use permit category for "the operation of tethered underwater mobile systems at shipwreck sites within Lake Ontario National Marine Sanctuary" could apply when the proposed activity does not qualify for a general permit or authorization under the LONMS regulations, and the proposed activity otherwise satisfies the requirements in the applicable sanctuary regulations and section 310 of the NMSA. NOAA disagrees that remotely operated vehicle tethers do not pose a threat to shipwrecks. NOAA has included additional language in Section III E.4. to explain why tethered vehicles pose several threats to shipwreck sites, including intentional site disturbance, incidental site disturbance, and site pollution. The impact from such activities can result in damage to artifact assemblages and the structural integrity of a site. This risk is particularly concerning in the sanctuary area, as a large number of shipwrecks have intact masts and high site integrity.

14. Comment: NOAA received a few comments suggesting that the proposed NOAA regulations are duplicative of New York State's regulations that protect underwater cultural and historical resources.

Response: NOAA's prohibition on damage to underwater cultural and historical resources will complement and supplement the State's prohibition by adding an additional layer of Federal protection for those resources. Section 233(4) of New York's Education Law focuses on the New York State Museum and its collections procedures, and it authorizes the issuance of permits to excavate and gather cultural and

⁴ <https://lcaships.com/wp-content/uploads/2022/02/LCA-CMC-Recommended-Courses-Rev.-to-December-2021.pdf>.

historical objects upon the authorization of the New York State commissioner of education. This State law is aimed at ensuring the appropriate acquisition of cultural and historical objects for the State Museum's archiving purposes, while NOAA's regulation is intended to preserve *in situ* historic and culturally significant areas within the marine environment. In addition, the New York Education Law does not include equivalent programs to NOAA's for underwater archaeological research, education, interpretation, and enforcement, and NOAA's other regulations are designed to specifically address identified threats to underwater cultural and historical resources within LONMS. National marine sanctuary designation allows NOAA to utilize its Federal assets and enforcement capabilities to actively manage, protect, and interpret underwater cultural and historical resources in Lake Ontario. Refer to FEIS Appendix C: Analysis of Relevant Federal and State Statutes for more information on how the regulations complement and supplement State and Federal regulations and fill legal gaps.

15. Comment: NOAA received one comment that stated that the definition of "sanctuary resource" in the proposed rule was too broad and suggested that NOAA should use the programmatic definition of sanctuary resource under 15 CFR 922.11. The commenter said that by including the word "object" in the definition, that anything could be included, even on the shore. Another comment on the DEIS stated that it was unclear what NOAA was using for the definition of "shipwreck."

Response: In the DEIS, NOAA proposed regulatory concepts, including suggested definitions. In the NPRM, NOAA used those concepts and created proposed regulatory definitions in the LONMS regulations for "sanctuary resource" and "shipwreck site" to include only the historical resources found in this area in accordance with the purpose of this designation. This definition of sanctuary resource does not include biological and ecological resources. For the purposes of LONMS, "sanctuary resource" means all historical resources as defined at 15 CFR 922.11, which includes any pre-contact and historic sites, structures, districts, objects, and shipwreck sites within the sanctuary's boundaries. NOAA's definition refers back to the programmatic definition of "historical resource" in 15 CFR 922.11, which does include the word "object", but only objects that possess historical, cultural, archaeological or paleontological significance are included in this

definition. The NPRM also proposed defining "shipwreck site" to mean all archaeological and material remains associated with sunken watercraft or aircraft that are historical resources, including associated components, cargo, contents, artifacts, or debris fields that may be exposed or buried within the lake bed. NOAA believes its definition is clear, and did not receive additional comments on the definition of "shipwreck site" after the NPRM was published. Therefore, NOAA is moving forward with this definition in this final rule. These definitions only apply to resources within the LONMS sanctuary boundaries, which start below the low water datum on the shoreline.

16. Comment: NOAA received several comments that the prohibition on anchoring could be problematic for commercial vessels and that NOAA should publish both the known and potential locations of shipwrecks sites. A related comment noted that if the no-anchoring prohibition extends to undiscovered shipwrecks, shippers might not be able to avoid anchoring on a shipwreck if they do not know where it is. Therefore, all locations, known or approximated, should be published by NOAA in a format accessible and useful to all mariners.

Response: Anchoring within the sanctuary is not prohibited in LONMS. However, grappling into or anchoring on a shipwreck site is prohibited. NOAA has narrowly worded this regulation to protect historic shipwrecks and aircraft from anchor damage, while still allowing anchoring inside of the sanctuary and outside of these discrete areas. The prohibition does not apply to any activity necessary to respond to an emergency threatening life or the environment. In addition, existing State regulations already prohibit damaging historic shipwreck sites within the area. To help vessels avoid anchoring on known shipwrecks sites, NOAA intends to publish known shipwreck site coordinates on the LONMS website (<https://sanctuaries.noaa.gov/lake-ontario>).

15. Comment: NOAA received some comments that expressed concern that as written, the prohibition on grappling into or anchoring on shipwreck sites would prohibitively limit diver access to shipwreck sites without providing an alternative means of access. Comments suggested amending the proposed prohibition on grappling into or anchoring on shipwreck sites to say that grappling into or anchoring on shipwreck sites is prohibited at sites where mooring buoys have been installed.

Response: As NOAA seeks to promote public access while also ensuring sound resource protection, an initial focus of the sanctuary management plan will be the installation of mooring systems at sanctuary shipwreck sites. Moorings provide a secure and convenient anchoring point for users, which eliminates the practice of grappling into or anchoring on shipwrecks to access the site. NOAA also intends to publish guidelines on best practices for anchoring near shipwreck sites both with and without moorings to avoid injuring sanctuary resources. For example, NOAA intends to publish instructions for the public on how to use a weighted line and surface float at sites without moorings to mark a wreck for divers to descend and ascend. This weighted line would not be used as an anchoring line, and it would need to be continuously tended and then completely removed before the dive boat leaves the area.

NOAA is delaying implementation of the prohibition of grappling into or anchoring on shipwreck sites by two years rather than amending the prohibition as suggested by the commenters. This delayed implementation is intended to provide NOAA with adequate time to develop a shipwreck mooring program in consultation with the dive community and State and Federal agencies; begin installing moorings at high priority shipwreck sites; and publish site plans and best practices for accessing shipwreck sites with and without moorings. After this two-year period, NOAA will continue to build out a mooring buoy program as funds become available. During this two-year period, all other statutory and regulatory provisions will be in effect from the effective date of designation, including the prohibition on altering, destroying, or otherwise injuring any sanctuary resource (including shipwrecks) under 15 CFR 922.223(a)(1). It also continues to be a violation of State law to damage shipwrecks, including damage from anchoring or grappling.

16. Comment: NOAA received a few comments requesting that sanctuary regulations protect natural and biological resources in the Great Lakes ecosystem. Commenters suggested regulations to prevent wastewater discharges, discharge of mercury and other toxic materials, risks from aging infrastructure, spread of invasive species, and other risks to wildlife and habitat.

Response: This is beyond the scope of the purpose and need for this action, which is focused on the protection, management, and interpretation of

underwater cultural and historical resources.

17. *Comment:* NOAA received several comments asking for clarification on how the sanctuary would affect dredging in the area.

Response: The sanctuary prohibitions seek to ensure that any activity carried out within sanctuary boundaries does not negatively impact underwater cultural resources. Dredging, pier construction and maintenance, and other construction activities are not expressly prohibited activities under the regulations. However, should the performance of any of these activities violate, for example, the sanctuary prohibition on “moving, removing, recovering, altering, destroying, possessing, or otherwise injuring” a sanctuary resource, it would be prohibited under those circumstances. Therefore, if dredging activities would not otherwise violate a sanctuary prohibition, they may occur within the sanctuary without a permit from NOAA.

Dredging activities in eastern Lake Ontario are regulated by New York State and the U.S. Army Corps of Engineers. Consideration of impacts to cultural resources should already be incorporated into the permit review processes for both the State and the U.S. Army Corps of Engineers because they both have legal requirements to minimize damage to cultural resources. NOAA would only be involved in those permitting processes if it is determined that underwater cultural and historical resources within the sanctuary may be impacted. NOAA, through its co-management arrangement with the State and through the consultation requirement for Federal agencies under the NMSA Section 304(d), will coordinate its involvement, including potential permitting, authorization, and consultation under Section 106 of the National Historic Preservation Act, when underwater cultural and historical resources may be impacted (see Section III I.3. for more information about authorizations).

NOAA recognizes that inlet dredging may extend into the sanctuary boundary. However, as indicated above, this dredging would only be prohibited by the sanctuary regulations and require a permit from NOAA if it is determined that underwater cultural and historical resources within the sanctuary may be impacted.

18. *Comment:* NOAA received comments asking whether the sanctuary would create any additional restrictions or regulatory requirements related to pier structure maintenance, pier construction, and shoreside construction.

Response: The shoreline boundary line for the sanctuary is set at the low water datum along the lakeshore. Any activities conducted above this line will be outside of the sanctuary and not subject to NOAA’s jurisdiction. The LONMS regulations are narrowly focused on protecting underwater cultural and historical resources. Pier construction and other construction activities are not expressly prohibited activities under the regulations. However, should the performance of any of these activities violate, for example, the sanctuary prohibition on “moving, removing, recovering, altering, destroying, possessing, or otherwise injuring” a sanctuary resource, it would be prohibited under those circumstances. Therefore, if constructing a dock or pier would not otherwise violate a sanctuary prohibition, it may occur within the sanctuary. These types of activities are regulated by State and other Federal entities, and therefore, consideration of the impact to cultural resources should already be incorporated into the applicable permit review processes.

19. *Comment:* NOAA received a comment from Region 2 of the U.S. Environmental Protection Agency (EPA) that NOAA should address projected climate change effects in the region, greenhouse gasses, and land-based infrastructure impacts in the FEIS.

Response: NOAA considers climate management an agency priority, and therefore has incorporated a discussion of climate change impacts in the Great Lakes and potential negligible greenhouse gas emissions from its management activities into the FEIS (see FEIS Sections 4.4.1.2, 5.3.3, 5.4.3). NOAA has not identified any specific construction projects associated with sanctuary designation at this time, and therefore has not evaluated the environmental impacts for facility construction or operation as part of the action. Based on a facilities assessment, NOAA may choose to rent space in existing facilities rather than constructing new facilities. NOAA will evaluate the environmental impacts and consider environmentally responsible practices suggested in EPA’s recommendations for infrastructure projects on a project-by-project basis.

20. *Comment:* NOAA received several comments about how the sanctuary would impact Great Lakes wind development in Lake Ontario.

Response: NOAA is not aware of any current Great Lakes wind energy projects in the area. All proposed energy generation and transmission projects are subject to rigorous Federal and State review to minimize or avoid impacts to

historic resources, including shipwrecks. NOAA will work with the relevant authorities, including New York State, to ensure that any proposed wind turbines and supporting infrastructure would be properly sited to avoid negative impacts to underwater cultural resources within the sanctuary.

Management Plan, Sanctuary Name, Operations

21. *Comment:* NOAA received a number of suggestions during the public comment period regarding naming the national marine sanctuary in Lake Ontario, including: Lake Ontario National Marine Sanctuary, Eastern Lake Ontario National Marine Sanctuary, Shining Waters National Marine Sanctuary, Great Lake Ontario National Marine Sanctuary, Great Lake Ontario—Thousand Islands National Marine Sanctuary, Gateway to the West National Marine Sanctuary, Gateway National Marine Sanctuary, and Carr National Marine Sanctuary.

Response: NOAA has decided to keep the name of the sanctuary as Lake Ontario National Marine Sanctuary. This decision was based on public comment, input from the Lake Ontario Sanctuary Advisory Council, and consultation with New York State, Indigenous Nations and Tribes, and local governments.

22. *Comment:* NOAA received several comments encouraging NOAA to invest in visitor centers and other facilities for people to learn about the sanctuary, the history of the area, and Lake Ontario. Commenters identified Huron, NY; Wayne County, NY; the eastern shore; Henderson, NY; Sackets Harbor; Sodus Point, NY as places to consider for interpretive facilities.

Response: NOAA agrees that facilities adjacent to the sanctuary are essential to its efforts to introduce the public to the sanctuary and to educate visitors about the significance of the area. Per the management plan Strategy SO–2, NOAA will conduct an infrastructure needs assessment to develop a ‘NOAA presence’ in the sanctuary communities. The assessment will evaluate how NOAA and its partners can support the sanctuary’s mission to provide a range of experiences to the public and then work with local communities, New York State, the Lake Ontario National Marine Sanctuary Advisory Council, and other appropriate partners to implement these plans.

23. *Comment:* NOAA received comments on the draft management plan that supported certain activities and suggested specific other ideas for education, research, and interpretation activities for the sanctuary.

Response: NOAA made revisions to the final management plan to add several new activities and clarify the intent of some of the existing activities. NOAA expanded some of the education activities to include working with partners on digital immersive experiences and other outreach opportunities; including partners to help determine the level of and type of visitor uses; and using side scan multi-beam sonar to map sanctuary resources. NOAA also added several new activities to address climate change, including integrating emissions reductions into sanctuary operations, considering how resource protection and management may need to evolve, and expanding education and outreach to include what climate change impacts in the Great Lakes and possible impacts to sanctuary resources. NOAA also added a new introduction to provide more background information about the sanctuary, the purpose of the management plan, and roles for NOAA, New York State, and the Lake Ontario National Marine Sanctuary Advisory Council.

Engagement With Indigenous Communities

24. *Comment:* NOAA received a few comments on the importance of acknowledging the Haudenosaunee Confederacy's ancestral homelands along Lake Ontario and involving the Haudenosaunee Confederacy Nations and Tribes in the interpretation of the proposed sanctuary.

Response: From the initiation of the designation process, NOAA has reached out to the seven federally recognized Indigenous Nations and Tribes in New York State that have connections to Lake Ontario. NOAA has engaged with the Onondaga Nation in government-to-government consultation throughout the designation process and has had meetings with the Seneca Nation. After designation, NOAA intends to continue to work in collaboration with the Indigenous Nations and Tribes to incorporate Indigenous history into sanctuary educational and outreach materials (including interpretive exhibits) and to collaborate on research regarding potential historic Indigenous resources in the area. Please refer to Section V.E. for more information on government-to-government consultation.

Comments on Known Shipwrecks and Identified Threats to Sanctuary Resources

25. *Comment:* NOAA received comments regarding the accuracy of information on the list of shipwrecks

and suggestions that NOAA add dates for historical events.

Response: NOAA researchers corroborated the edits suggested in these comments and NOAA has made corrections to the list of known shipwrecks in the FEIS. NOAA intends to continue to refine and update the shipwreck inventory over time as more information becomes available.

26. *Comment:* NOAA received comments on its list of identified threats in the DEIS and the proposed rulemaking, including suggestions of additional threats (e.g., fishing equipment, such as downriggers), and skepticism about NOAA's ability to address impacts to the shipwrecks from natural threats identified in the DEIS and NPRM.

Response: NOAA included entanglement of "fishing equipment" as a threat to underwater cultural and historical resources in both the DEIS and NPRM. NOAA has added downriggers as a specific example of fishing equipment in the FEIS and final rulemaking in response to commenters who noted damage to shipwrecks from this type of fishing equipment. NOAA also added two actions to the management plan (Activities RP 3.1 and 3.2) to assess the amount and type of marine debris, including fishing gear, found on sanctuary resources and to remove debris from the sanctuary.

NOAA included natural processes in the list of identified threats to explain that the long-term integrity of underwater cultural resources are affected by numerous factors. NOAA does not claim to be able to prevent some of these natural processes from occurring. Rather, acknowledging these processes provides context for the state of underwater cultural and historical resources, and NOAA will document and monitor the progress of these processes to inform research and management decisions. For example, while the establishment of a sanctuary cannot prevent climate change, it allows NOAA to monitor and document the effects of climate change on the deterioration rates of wooden shipwrecks in fresh water, which is important information for the scientific and archaeological community. The final management plan includes actions that support this goal.

V. Classification

A. National Marine Sanctuaries Act

NOAA has determined that the designation of LONMS will not have a negative impact on the national marine sanctuary system and that sufficient resources exist to effectively implement

sanctuary management plans and to update site characterizations. The finding for NMSA section 304(f) is published on the ONMS website for the Lake Ontario designation at <https://sanctuaries.noaa.gov/lake-ontario>.

B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of NEPA (42 U.S.C. 4321–4370), NOAA has prepared a FEIS to evaluate the environmental effects of this action and alternatives. As this environmental review began before September 14, 2020, which was the effective date of the amendments to the Council on Environmental Quality (CEQ) regulations implementing NEPA (85 FR 43372 (Jul. 16, 2020)), the FEIS was prepared using the 1978 CEQ NEPA regulations. The Notice of Availability of the LONMS FEIS was made available to the public on April 19, 2024 (89 FR 28771). NOAA has also prepared a Record of Decision (ROD). Copies of the FEIS and ROD are available at the address and website listed in the **ADDRESSES** section of this final rule.

C. Executive Orders 12866: Regulatory Impact, 13563 Improving Regulation and Regulatory Review, and 14094: Modernizing Regulatory Review

OMB has determined this rule is significant under Executive Order 12866, and as supplemented by E.O. 14094 NOAA prepared an analysis of the potential costs and benefits associated with this action. This analysis, "Supporting Economic Information for the Final Rulemaking Regarding Lake Ontario National Marine Sanctuary," is available in the docket.

D. Executive Order 13132: 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 13132 because NOAA supplements and complements State and local laws under the NMSA rather than supersedes or conflicts with them.

E. E.O. 13175 Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175 of November 6, 2000, Federal departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with officials of federally-recognized Nations and Tribes on the development of Federal policies that have implications for Indigenous peoples and are responsible for

strengthening the government-to-government relationship between the United States and Indian Nations and Tribes. NOAA has concluded that this regulatory action does have Tribal implications under Executive Order 13175.

NOAA invited the following federally-recognized Nations and Tribes to engage in government-to-government consultation on the sanctuary designation: Cayuga Nation, Oneida Nation, Onondaga Nation, Seneca Nation of Indians, Saint Regis Mohawk Tribe, Tonawanda Seneca Nation, and Tuscarora Nation. NOAA sent initial letters inviting the seven Nations and Tribes to participate in government-to-government consultation prior to publication of the Notice of Intent (December 14, 2018). NOAA later sent notice of the DEIS publication (July 8, 2021) and the NPRM (January 19, 2023) to the same Nations and Tribes.

The Onondaga Nation elected to engage in government-to-consultation with NOAA, and the initial government-to-government consultation meeting with the Onondaga Nation was held on July 30, 2020. The Seneca Nation of Indians chose to informally engage with NOAA throughout the designation process instead of participating in formal government-to-government consultation. NOAA has also invited the seven federally-recognized Nations and Tribes to participate in the development of a Programmatic Agreement to fulfill NOAA's obligations under section 106 of the National Historic Preservation Act. In accordance with NOAA's policy on government-to-government consultation, the agency concluded the consultation with the Onondaga Nation on the designation process.

Upon designation, NOAA will offer consultation to federally recognized Nations and Tribes on sanctuary actions that may have Tribal implications as described in E.O. 13175, including those actions that might affect the ability of Nation or Tribal citizens to participate in activities protected by the 1794 Treaty of Canandaigua.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended and codified at 5 U.S.C. 601 *et seq.*, requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of

Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that the proposed rule would not have a significant impact on a substantial number of small entities. The rationale for that certification was set forth in the preamble of the proposed rule (88 FR 3334, January 19, 2023), and NOAA's analysis stands.

Although NOAA has made minor changes to the regulations from the proposed rule to the final rule, none of the changes alter the initial determination that this rule will not have a significant impact on a substantial number of small entities. NOAA also did not receive any comments on the certification or conclusions. Therefore, the determination that this rule will not have a significant economic impact on a substantial number of small entities remains unchanged. As a result, a final regulatory flexibility analysis was not required and none was prepared.

G. Paperwork Reduction Act

Notwithstanding any other provisions 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 Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

NOAA has a valid Office of Management and Budget (OMB) control number (0648-0141) for the collection of public information related to the processing of permits across the National Marine Sanctuary System. Designating a national marine sanctuary in Lake Ontario will likely result in a minimal increase in the number of requests for general permits, special use permits, certifications, and authorizations because this action proposes to add those approval types for this sanctuary. A large increase in the number of permit requests would require a change to the reporting burden certified for OMB control number 0648-0141. While not expected, if such permit requests do increase, a revision to this control number for the processing of permits would be requested.

In the most recent Information Collection Request revision and approval for national marine sanctuary permits (dated November 30, 2021), NOAA reported approximately 424 national marine sanctuary permitting actions each year, including applications for all types of permits,

requests for permit amendments, and the conduct of administrative appeals. Of this amount, LONMS is expected to add 4 to 5 permit requests per year. The public reporting burden for national marine sanctuaries general permits is estimated to average three responses with an average of 1.5 hours per response, to include application submission, a cruise or flight log (or some other form of activity report), and a final summary report after the activity is complete. Therefore, the total annual burden hours is expected to increase by approximately 18 to 22.5 hours.

NOAA determined that these regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act. NOAA solicited comments on this determination in the proposed rule, and no public comments were received.

H. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. 306108) requires Federal agencies to consider the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment. "Historic property" means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and material remains that are related to and located within such properties, including properties of traditional religious and cultural importance to an Indigenous Nation or Tribe or Native Hawaiian organization. The regulations implementing section 106 of the NHPA (36 CFR 800) guide Federal agencies in meeting this responsibility through a process to identify historic properties potentially affected by the undertaking, assess its effects, and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties, all of which occur in consultation with interested parties.

NOAA has determined that although designation of LONMS and the promulgation of sanctuary-specific regulations meet the definition of an undertaking as defined at 800.16(y), these activities are not of the type that have the potential to cause effects on historic properties. Therefore, NOAA has no further obligations under section 106, per 800.3(a)(1). However, NOAA recognizes that designation of a national marine sanctuary will lead to subsequent activities that may

constitute undertakings subject to section 106 review under the NHPA and, therefore, NOAA is pursuing execution of a Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b). The PA will provide a framework and process for consideration of future undertakings resulting from management of the sanctuary, associated field operations, and other activities. NOAA will develop this agreement in consultation with the New York State Historic Preservation Officer (SHPO), and the ACHP, with the Onondaga Nation participating as a consulting party.

I. Sunken Military Craft Act

The Sunken Military Craft Act of 2004 (SMCA; Pub. L. 108–375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note) preserves and protects from unauthorized disturbance all sunken military craft that are owned by the United States government, as well as foreign sunken military craft that lie within United States waters, as defined in the SMCA. These craft, and their associated contents, represent a collection of non-renewable and significant historical resources that may also serve as maritime graves, carry unexploded ordnance, or contain oil and other hazardous materials.

Sunken military craft are administered by the respective Secretary concerned pursuant to the SMCA. The Secretary concerned is solely responsible for authorizing disturbance of sunken military craft under the SMCA, specifically for archaeological, historical, or educational purposes, and will consult with NOAA when considering permitting such activities. The Secretary concerned is also responsible for determinations of sunken military craft status and ownership, publicly disclosing the location of sunken military craft, and for determining eligibility and nominating sunken military craft as historic properties to the National Register of Historic Places. Any agreements with foreign sovereigns regarding sunken military craft in U.S. waters are negotiated by the Secretary of Defense, the Secretary of State, and the Secretary of the Navy, according to authorities vested in each by the SMCA. The Secretary concerned, or his or her designee, and NOAA will ensure coordination and foster collaboration on any research, monitoring, and educational activities pertaining to sunken military craft located within the sanctuary system.

Two known sunken military craft are located within LONMS (U.S. Coast Guard Cable Boat 56022 and a U.S.

Army Air Force C–45 Expeditor) and the sanctuary may include additional sunken military craft that have yet to be discovered.

J. Coastal Zone Management Act (CZMA)

Section 307(c) of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451 *et seq.*) requires Federal activities affecting the land or water uses or natural resources of a State's coastal zone to be consistent with that State's approved coastal management program to the maximum extent practicable. 16 U.S.C. 1456(c). In January 2023, NOAA initiated Federal consistency review with the New York State's Coastal Management Program. The New York Coastal Management Program provided comments to NOAA on the proposed rule. The New York Coastal Management Program issued a letter of concurrence with NOAA's consistency determination on April 7, 2023.

K. Executive Order 12898: Environmental Justice and Executive Order 14096: Revitalizing Our Nation's Commitment on Environmental Justice for All

Executive Order 12898 directs that the programs of Federal agencies identify and avoid disproportionately high and adverse effects on human health and the environment of minority or low-income populations. The designation of national marine sanctuaries by NOAA helps to ensure the enhancement of environmental quality for all populations in the United States. Designating the sanctuary will not result in disproportionate negative impacts on any minority or low-income population. In addition, many of the impacts from designating the sanctuary will result in long-term or permanent beneficial impacts by protecting underwater cultural and historical resources, which may have a positive impact on communities by providing employment and educational opportunities, and potentially result in improved ecosystem services.

Executive Order 14096 builds on and supplements the foundational efforts of Executive Order 12898. This new Executive Order directs federal agencies to better protect overburdened communities from pollution and environmental harms; strengthen engagement with communities and mobilize federal agencies to confront existing and legacy barriers and injustices; promote the latest science, data, and research, including on cumulative impacts; increase accountability and transparency in federal environmental justice policy;

and honor and build on the foundation of ongoing environmental justice work. The designation of the sanctuary, with a focus on community well-being and improving access to resources, will address the goals of Executive Order 14096.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Cultural resources, Historic preservation, Marine protected areas, Marine resources, National marine sanctuaries, Recreation and recreation areas, Reporting and recordkeeping requirements, Shipwrecks.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

For the reasons set forth above, NOAA is amending 15 CFR part 922 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. Amend § 922.1 by revising paragraph (a)(2) to read as follows:

§ 922.1 Purposes and applicability of the regulations

(a) * * *

(2) To implement the designations of the national marine sanctuaries, for which site specific regulations appear in subparts F through U of this part, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve, manage, and thereby ensure the health, integrity and continued availability of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological and aesthetic resources and qualities of these areas.

* * * * *

■ 3. Revise § 922.4 to read as follows:

§ 922.4 Boundaries

The boundaries for each of the sixteen National Marine Sanctuaries covered by this part are described in subparts F through U, respectively.

■ 4. Revise § 922.6 to read as follows:

§ 922.6 Prohibited or otherwise regulated activities

Subparts F through U set forth site-specific regulations applicable to the activities specified therein.

■ 5. In § 922.7, add paragraph (b)(7) to read as follows:

§ 922.7 Emergency regulations.

* * * * *

(b) * * *

(7) Lake Ontario National Marine Sanctuary, § 922.224.

■ 6. Amend § 922.11 by revising the definition of “sanctuary resource” to read as follows:

§ 922.11 Definitions.

* * * * *

Sanctuary resource means any living or non-living resource of a national marine sanctuary, or the parts or products thereof, that contributes to the conservation, recreational, ecological, historical, educational, cultural, archaeological, scientific, or aesthetic value of the national marine sanctuary, including, but not limited to, waters of the sanctuary, the seabed or submerged lands of the sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, birds, sea turtles and other marine reptiles, marine mammals, and maritime heritage, cultural, archaeological, and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource is defined at § 922.191. For Hawaiian Islands Humpback Whale, Sanctuary resource is defined at § 922.182. For Mallows Bay-Potomac River National Marine Sanctuary, Sanctuary resource is defined at § 922.201(a). For Wisconsin Shipwreck Coast National Marine Sanctuary, sanctuary resource is defined at § 922.211. For Lake Ontario National Marine Sanctuary, sanctuary resource is defined at § 922.221.

* * * * *

■ 7. Amend § 922.30 by revising paragraph (a)(2) to read as follows:

§ 922.30 National Marine Sanctuary general permits.

(a) * * *

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site-specific regulations appearing in subparts F through U of this part.

* * * * *

■ 8. Amend 922.36 by revising paragraphs (a) and (b)(1)(ii) to read as follows:

§ 922.36 National Marine Sanctuary authorizations.

(a) *Authority to issue authorizations.* The Director may authorize a person to conduct an activity otherwise prohibited by subparts L through P, subpart R, or subpart U of this part, if such activity is specifically allowed by any valid Federal, State, or local lease, permit, license, approval, or other authorization (hereafter called “agency approval”) issued after the effective date of sanctuary designation or expansion, provided the applicant complies with the provisions of this section. Such an authorization by ONMS is hereafter referred to as an “ONMS authorization.”

(b) * * *

(1) * * *

(ii) Notification must be sent to the Director, Office of National Marine Sanctuaries, to the attention of the relevant Sanctuary Superintendent(s) at the address specified in subparts L through P, subpart R, or subpart U, as appropriate.

* * * * *

■ 9. Add subpart U to read as follows:

Subpart U—Lake Ontario National Marine Sanctuary

Sec.

- 922.220 Boundary.
- 922.221 Definitions.
- 922.222 Co-management.
- 922.223 Prohibited or otherwise regulated activities.
- 922.224 Emergency regulations.
- 922.225 Permit procedures and review criteria.
- 922.226 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.
- 922.227 Effect on affected federally-recognized Indian Tribes.
- Appendix A to Subpart U of Part 922—Lake Ontario National Marine Sanctuary Boundary Description and Coordinates of the Excluded Areas
- Appendix B to Subpart U of Part 922—Lake Ontario National Marine Sanctuary Terms of Designation

Subpart U—Lake Ontario National Marine Sanctuary

§ 922.220 Boundary.

Lake Ontario National Marine Sanctuary consists of an area of approximately 1,300 square nautical miles (1,722 square miles) of Lake Ontario waters within New York State and the submerged lands thereunder; over, around, and under the submerged underwater cultural and historical resources in Lake Ontario. The precise boundary coordinates are listed in Appendix A to this subpart. The western boundary of the sanctuary begins at approximately the border

between Wayne County and Monroe County where the shoreline (defined here and throughout the remainder of this boundary description as the low water datum) intersects the line segment formed between Point 1 and Point 2. From this intersection the sanctuary boundary continues north into Lake Ontario to Point 2 and then to each successive point in numerical order to Point 7. From Point 7 the sanctuary boundary continues east to each successive point in numerical order to Point 10. From Point 10 the boundary continues roughly to the northeast to Point 11 and then to Point 12 just southeast of Wolfe Island, ON, Canada and the end of 5th Line Road. From Point 12 the boundary continues roughly southeast towards Point 13 until it intersects the shoreline at the low water datum at Tibbetts Point near the Tibbetts Point Lighthouse southwest of Cape Vincent, New York. From this intersection the boundary follows the shoreline roughly to the southeast around Tibbetts Point and then continues roughly to the southeast around Wilson Point and Dablon Point until it intersects the line segment formed between Point 14 and Point 15 at the Rt. 6 bridge at the upper end of Mud Bay. From this intersection the boundary continues towards Point 15 until it intersects the shoreline at approximately the mouth of Kents Creek. From this intersection the boundary follows the shoreline to the southwest around Baird Point continuing roughly southeast cutting across the mouths of creeks and streams around Point Peninsula and along western and then northern Chaumont Bay until it intersects the line segment formed between Point 16 and Point 17. From this intersection the boundary continues across the Chaumont River towards Point 17 until it intersects the shoreline near the eastern side of the West Main Street bridge. From this intersection the boundary follows the shoreline around eastern Chaumont Bay, Point Salubrious, and Guffin Bay cutting across the mouths of rivers, streams, and creeks and then around Pillar Point and Everleigh Point and up the western side of Black River Bay until it intersects the line segment formed between Point 18 and Point 19 at approximately the mouth of Black River. From this intersection the boundary continues across the Black River towards Point 19 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly southwest along the eastern side of Black River Bay and then southwest along the eastern side of Henderson Bay

continuing around Stony Point and then roughly south cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 20 and Point 21 at the mouth of the Salmon River near Port Ontario. From this intersection the boundary continues to Point 21 and each successive point in numerical order to Point 24. From Point 24 the boundary continues towards Point 25 until it intersects the shoreline. From this intersection the boundary follows the shoreline south and then west around Mexico Bay cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 26 and Point 27 just east of Oswego Harbor. From this intersection the boundary continues towards Point 27 until it intersects the shoreline at the eastern breakwater of Oswego Harbor. From this intersection the boundary follows the lakeward shoreline northwest along the breakwater until it intersects the line segment formed between Point 28 and Point 29. From this intersection the boundary continues across the mouth of Oswego Harbor to Point 29 and each successive point in numerical order to Point 34. From Point 34 the boundary continues towards Point 35 until it intersects the shoreline at the end of the western breakwater of Oswego Harbor. From this intersection the boundary follows the lakeward shoreline roughly to the southwest cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 36 and Point 37 on the eastern side of the mouth of The Pond. From this intersection the boundary continues across the mouth of The Pond towards Point 37 until it intersects the shoreline on the western side. From this intersection the boundary follows the shoreline west and then north to the intersection of the line segment formed between Point 38 and Point 39 at the northern end of the eastern breakwater of Little Sodus Bay. From this intersection the boundary continues across the mouth of Little Sodus Bay to Point 39 and each successive point in numerical order to Point 42. From Point 42 the boundary continues towards Point 43 until it intersects the shoreline at the northern end of the western breakwater of Little Sodus Bay. From this intersection the boundary follows the lakeward shoreline roughly west until it intersects the line segment formed between Point 44 and Point 45 on the eastern side of the mouth of Blind Sodus Bay. From this intersection the boundary continues to the

intersection of the shoreline and the line segment formed between Point 46 and Point 47 on the western side of the mouth of Blind Sodus Bay. From this intersection the boundary follows the shoreline roughly southwest cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 48 and the intersection of the shoreline and the line segment formed between Point 49 and Point 50 on the eastern side of the mouth of Port Bay. From this intersection on the eastern side of the mouth of Port Bay the boundary continues to the intersection of the shoreline and the line segment formed between Point 49 and 50 on the western side of the mouth of Port Bay. From this intersection the boundary follows the shoreline roughly west until it intersects the line segment formed between Point 51 and the intersection of the shoreline and the line segment formed between Point 52 and Point 53 on the eastern side of the mouth of East Bay. From this intersection on the eastern side of the mouth of East Bay the boundary continues to the intersection of the shoreline and the line segment formed between Point 52 and Point 53 on the western side of the mouth of East Bay. From this intersection the boundary follows the shoreline roughly west until it intersects the line segment formed between Point 54 and Point 55 at the northern end of the eastern breakwater of Sodus Bay. From this intersection the boundary continues across the mouth of Sodus Bay to Point 55 and each successive point in numerical order to Point 61. From Point 61 the boundary continues towards Point 62 until it intersects the shoreline at the northern end of the western breakwater of Sodus Bay. From this intersection the boundary follows the shoreline roughly west cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 63 and Point 64 south of the mouth of Salmon Creek near Pultneyville, NY. From this intersection the boundary continues to Point 64 and each successive point in numerical order to Point 69. From Point 69 the boundary continues towards Point 70 until it intersects the shoreline north of the mouth of Salmon Creek. From this intersection the boundary follows the shoreline roughly west until it intersects the line segment formed between Point 71 and Point 72 at the eastern side of the R.E. Ginna Nuclear Power Plant water outfall. From this intersection the boundary continues towards Point 72 until it intersects the shoreline on the western side of the R.E. Ginna Nuclear

Power Plant water outfall. From this intersection the boundary follows the shoreline west cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 73 and Point 74 where it ends. The inner landward sanctuary boundary is defined by and follows the shoreline as defined by the low water datum where not already specified in the boundary description above. The Tibbetts Point Anchorage Area is excluded from the sanctuary area described above, and its boundary begins at Point TPAA1 and continues to each successive point in numerical order until ending at Point TPAA7.

§ 922.221 Definitions.

The following terms are defined for purposes of this subpart U:

Sanctuary resource means all historical resources as defined at 15 CFR 922.11, which includes any pre-contact and historic sites, structures, districts, objects, and shipwreck sites within sanctuary boundaries.

Shipwreck site means all archaeological and material remains associated with sunken watercraft or aircraft that are historical resources, including associated components, cargo, contents, artifacts, or debris fields that may be exposed or buried within the lake bed.

Tethered underwater mobile system means remotely operated vehicles and other systems with onboard propulsion systems that utilize a tether connected to a station-holding (e.g. by anchor, dynamic positioning, or manual vessel operation) surface support vessel.

§ 922.222 Co-management.

(a) NOAA has primary responsibility for the management of the Sanctuary pursuant to the Act. However, as the Sanctuary is in State waters, NOAA will co-manage Lake Ontario National Marine Sanctuary in collaboration with New York State. The Director may enter into a Memorandum of Agreement regarding this collaboration that may address, but not be limited to, such aspects as areas of mutual concern, including sanctuary resource protection, programs, permitting, activities, development, and threats to sanctuary resources.

(b) Furthermore, sunken military craft are administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act. The Director will enter into a Memorandum of Agreement regarding collaboration with other federal agencies charged with implementing the Sunken Military Craft Act that may address aspects of

managing and protecting sunken military craft. The Director will request approval from the Secretary concerned for any terms and conditions of ONMS authorizations that may involve sunken military craft.

§ 922.223 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraph (b) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Moving, removing, recovering, altering, destroying, possessing or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource.

(2) Possessing, selling, offering for sale, purchasing, importing, exporting, exchanging, delivering, carrying, transporting, or shipping by any means any sanctuary resource within or outside of the sanctuary.

(3) Grappling into or anchoring on shipwreck sites.

(4) Deploying a tethered underwater mobile system at shipwreck sites.

(5) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or any permit issued under the Act.

(b) The prohibitions in paragraphs (a)(1) through (5) of this section do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment; or to activities necessary for valid law enforcement purposes.

§ 922.224 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of New York or her/his designee or designated agency.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.225 Permit procedures and review criteria.

(a) A person may conduct an activity otherwise prohibited by § 922.223(a)(1) through (4) if conducted under and in

accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Lake Ontario National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

§ 922.226 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or right to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.223(a)(1) through (4) within the sanctuary if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of sanctuary designation, provided that the holder of the lease, permit, license, or right of subsistence use or of access complies with § 922.10 and provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of the sanctuary designation of the existence and location of such authorization or right and requests certification of such authorization or right; and

(2) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the sanctuary was designated.

(b) Requests for certifications shall be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, Lake Ontario National Marine Sanctuary, 1305 East-West Hwy., 10th Floor, Silver Spring, MD 20910 or sent by electronic means as defined in the instructions for the ONMS permit application. A copy of the lease, permit, license, or right of subsistence use or of access must accompany the request.

(c) A certification requester with an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.223(a)(1) through (4) may continue to conduct the activity without being in violation of applicable provisions of § 922.223(a)(1) through (4), pending the Director's review of and decision regarding his or her certification request.

(d) The Director may request additional information from the certification requester as the Director deems reasonably necessary to condition appropriately the exercise of

the certified authorization or right to achieve the purposes for which the sanctuary was designated. The Director must receive the information requested within 45 days of the date of the Director's request for information. Failure to provide the requested information within this time frame may be grounds for denial by the Director of the certification request.

(e) In considering whether to issue a certification, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate by the Director.

(f) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(g) The Director may amend, suspend, or revoke any certification issued under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the certification holder and the agency that issued the underlying lease, permit, license, or right of subsistence use or of access, and shall set forth reason(s) for the action taken.

(h) The Director may amend any certification issued under this section whenever additional information becomes available that he or she determines justifies such an amendment.

(i) The certification holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth at § 922.37.

(j) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(k) It is unlawful for any person to violate any terms and conditions in a certification issued under this section.

§ 922.227 Effect on affected federally recognized Nations and Tribes.

The exercise of treaty rights for federally recognized Nations and Tribes and their citizens is not modified, altered, or in any way affected by the regulations promulgated in this subpart. The Director shall consult with the governing body of each federally-

recognized Nation and Tribe protected by the 1794 Treaty of Canandaigua regarding any matter which might affect the ability of the Nation and Tribe's citizens to participate in activities protected by that treaty in the Sanctuary.

**Appendix A to Subpart U of Part 922—
Lake Ontario National Marine
Sanctuary Boundary Description and
Coordinates of the Excluded Areas**

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

Point ID	Longitude	Latitude
1 *	-77.37605	43.27611
2	-77.37595	43.28695
3	-77.37586	43.29671
4	-77.37621	43.34516
5	-77.37720	43.37579
6	-77.38799	43.63154
7	-77.38811	43.63443
8	-77.27009	43.63406
9	-77.03338	43.63283
10	-76.79668	43.63112
11	-76.43893	44.09406
12	-76.39866	44.11289
13 *	-76.37053	44.10060
14 *	-76.31232	44.08230
15 *	-76.31207	44.08198
16 *	-76.14042	44.07041
17 *	-76.13852	44.06959
18 *	-76.06446	43.99626
19 *	-76.06179	43.99401
20 *	-76.20404	43.57746
21	-76.20447	43.57758
22	-76.20714	43.58113
23	-76.20748	43.58099
24	-76.20503	43.57775
25 *	-76.20529	43.57783
26 *	-76.50692	43.46890
27 *	-76.50783	43.46975
28 *	-76.51393	43.47389
29	-76.51426	43.47384
30	-76.51761	43.47726
31	-76.52558	43.47878
32	-76.52597	43.47667
33	-76.51946	43.47543
34	-76.51629	43.47349
35 *	-76.51675	43.47341
36 *	-76.69906	43.34447
37 *	-76.69941	43.34458
38 *	-76.70792	43.35032
39	-76.70816	43.35033
40	-76.70883	43.35635
41	-76.70939	43.35632
42	-76.70873	43.35032
43 *	-76.70895	43.35029
44 *	-76.72070	43.34361
45 *	-76.72068	43.34402
46 *	-76.72158	43.34399
47 *	-76.72161	43.34363
48 *	-76.83715	43.30499
49 *	-76.83720	43.30583
50 *	-76.83817	43.30492
51 *	-76.89154	43.29490
52 *	-76.89170	43.29537
53 *	-76.89215	43.29513
54 *	-76.97229	43.27682
55	-76.97277	43.27698
56	-76.97276	43.27705
57	-76.97254	43.27759

Point ID	Longitude	Latitude
58	-76.97227	43.28239
59	-76.97340	43.28243
60	-76.97367	43.27763
61	-76.97356	43.27724
62 *	-76.97398	43.27738
63 *	-77.18445	43.28297
64	-77.18445	43.28306
65	-77.18304	43.28320
66	-77.18278	43.28414
67	-77.18315	43.28419
68	-77.18334	43.28349
69	-77.18444	43.28324
70 *	-77.18444	43.28338
71 *	-77.30817	43.27903
72 *	-77.30843	43.27902
73 *	-77.37605	43.27611
74	-77.37595	43.28695
TPAA1	-76.39049	44.08896
TPAA2	-76.37805	44.08940
TPAA3	-76.38611	44.07613
TPAA4	-76.39271	44.06881
TPAA5	-76.41217	44.07577
TPAA6	-76.39897	44.09566
TPAA7	-76.39049	44.08896

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline at the low water datum.

**Appendix B to Subpart U of Part 922—
Lake Ontario National Marine
Sanctuary Terms of Designation**

Under the authority of the National Marine Sanctuaries Act, as amended (the "Act" or "NMSA"), 16 U.S.C. 1431 *et seq.*, 1,300 nmi² (1,722 mi²) of Lake Ontario off the coast of New York's coastal counties of Wayne, Cayuga, Oswego, and Jefferson are hereby designated as a National Marine Sanctuary for the purpose of providing long-term protection and management of the cultural and historical resources and the recreational, research, educational, and aesthetic qualities of the area.

Article I: Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the cultural and historical resources and the recreational, research, and educational qualities of Lake Ontario National Marine Sanctuary (the "Sanctuary"). Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated. However, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

Article II: Description of the Area

Lake Ontario National Marine Sanctuary covers approximately 1,300 nmi² (1,722 mi²) in eastern Lake Ontario. The boundary coordinates are defined by regulation (15 CFR 922.220).

Article III: Special Characteristics of the Area

Over 1,000 years ago, the Mohawk, Oneida, Onondaga, Cayuga and Seneca Nations were united into the Haudenosaunee Confederacy, under the Gayanashagowa, the Great Law of Peace. The Tuscarora later joined the Haudenosaunee Confederacy. Portions of the original homelands of the Onondaga Nation, Cayuga Nation, Seneca Nation, and Oneida Nation lie within the boundaries of the sanctuary. This area was their homeland and they developed a deep understanding of, and had a strong connection to, the land and to the water.

Eastern Lake Ontario represents a diverse array of important events in our Nation's history, including military conflicts, maritime innovation, and American expansion to the west. This area has been a critical nexus of maritime trade and transportation for centuries, beginning with canoes and boats of early Indigenous peoples. During the colonial period, Lake Ontario was a strategic theater of conflict among European powers and the young American republic. Military actions occurred in the region during the French and Indian War, Revolutionary War, and the War of 1812. Later, this region was critical to the development of the American West and the Nation's industrial core.

Well-preserved by cold, fresh water, the shipwrecks and other underwater cultural and historical resources in the sanctuary possess exceptional historical, archaeological and recreational value. Vessels that historically plied Lake Ontario's waters often met with treacherous conditions, which resulted in numerous wrecking events. The area contains a total of 41 known shipwrecks and one aircraft, including one shipwreck (*St. Peter*) that is listed on the National Register of Historic Places and one wreck (*David Mills*) that is a New York State Submerged Cultural Preserve and Dive Site. This area may also include approximately 19 potential shipwreck sites (shipwrecks that may exist, but additional research is needed to locate and describe these shipwrecks), three aircraft, and several other underwater archaeological sites. Represented in the collection are commercial and military vessels from colonial wars and the War of 1812, as well as submerged battlefields at Oswego and Sackets Harbor. Other shipwrecks represent the earliest maritime commerce on the Great Lakes, including the nearly intact sloop *Washington* built in 1797.

Article IV: Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the NMSA. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, historical, scientific, educational, cultural, archaeological, or aesthetic resources and qualities of the area. Listing an activity in the Terms of Designation does not mean that such activity is being or will be regulated. Listing an activity here means that Secretary of Commerce can regulate the activity, after complying with all applicable regulatory

laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b).

Activities Subject to Regulation:

- Injuring or disturbing sanctuary resources;
- Possessing, transporting, or engaging in commerce of any sanctuary resource;
- Grappling into or anchoring on shipwreck sites;
- Deploying tethered underwater mobile systems at shipwreck sites;
- Interfering with an investigation in connection with enforcement of the NMSA.

Section 2. Emergencies

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 activity and all activities, including those not listed in Section 1, are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of New York or her/his designee or designated agency.

Article V: Alteration of this Designation

The terms of designation, as defined under Section 304(a)(4) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, Tribal, State, regional, and local authorities and agencies, review by the appropriate Congressional committees, and approval by the Secretary of Commerce, or his or her designee.

§ 922.223 [Amended]

- 10. Stay § 922.223(a)(3) until July 21, 2026.

[FR Doc. 2024–11982 Filed 6–5–24; 8:45 am]

BILLING CODE 3510–NK–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4010, 4022, 4041, 4041A, 4043, 4044, 4050, 4262, and 4281

RIN 1212–AA55

Valuation Assumptions and Methods

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule updates the interest, mortality, and expense assumptions used to determine the present value of benefits for a single-employer pension plan under subpart B of the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans, to determine components of mass withdrawal liability for a multiemployer pension plan, and for other purposes.

DATES:

Effective date: This rule is effective July 8, 2024.

Applicability date: These amendments apply to calculations where the valuation date is on or after July 31, 2024.

Incorporation by reference: The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of July 8, 2024.

FOR FURTHER INFORMATION CONTACT:

Gregory M. Katz (*katz.gregory@pbgc.gov*), Deputy Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–3829. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose and Authority

This final rule updates the actuarial assumptions used to determine the present value of a single-employer plan's benefits when it terminates in a distress or involuntary termination, to determine the present value of multiemployer plan benefits in certain withdrawal liability calculations, and for other purposes. Except for conforming changes and some technical and editorial changes, the final rule is substantially the same as the proposed rule.

Legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes the Pension Benefit Guaranty Corporation (PBGC) to issue regulations to carry out the purposes of title IV of ERISA, and section 4044 of ERISA (Allocation of Assets). It also comes from section 4001 of ERISA (Definitions); section 4010 of ERISA (Authority to Require Certain Information); section 4022 of ERISA (Single-Employer Plan Benefits Guaranteed); section 4041 of ERISA (Termination of Single-Employer Plans); section 4041A of ERISA (Termination of Multiemployer Plans); section 4043 of ERISA (Reportable Events); section 4050 of ERISA (Missing Participants); section 4062 of ERISA (Liability for Termination of Single-Employer Plans Under a Distress Termination or a Termination by Corporation); section 4219 of ERISA (Notice, Collection, Etc., of Withdrawal Liability); section 4262 of ERISA (Special Financial Assistance by the Corporation); and section 4281 of

ERISA (Benefits Under Certain Terminated Plans).

Major Provisions

This final rule modifies the interest, mortality, and expense assumptions for valuing benefits under subpart B to PBGC's regulation on Allocation of Assets in Single-Employer Plans ("benefits valuation regulation") (29 CFR part 4044) to:

- Modernize the interest assumption structure by adopting a yield curve approach;
- Enable the use of market interest rates as of the date of liability measurement (*i.e.*, the valuation date) as the basis for the interest assumption;
- Increase transparency by using a procedure based on publicly available yield curves as of the valuation date;
- Adopt a more recent mortality table along with a generational mortality improvement projection; and
- Simplify the expense assumption.

Because the assumptions for valuing benefits are incorporated by reference in other regulations, the changes to these assumptions affect PBGC's regulations on Annual Financial and Actuarial Information Reporting (29 CFR part 4010); Missing Participants (29 CFR part 4050); Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219); Special Financial Assistance by PBGC (29 CFR part 4262); Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281); and other regulations.

Background

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private-sector defined benefit pension plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): a single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. In addition, PBGC administers a special financial assistance program for eligible financially distressed multiemployer plans.

Under the single-employer plan termination insurance program, covered plans that are underfunded may terminate either in a distress termination under section 4041(c) of ERISA or in an involuntary termination (one initiated by PBGC) under section 4042 of ERISA. When such a plan terminates, PBGC typically is appointed statutory trustee of the plan and becomes responsible for paying benefits in accordance with the provisions of title IV of ERISA.

Under the multiemployer insurance program, PBGC provides financial