

APPENDIX A: RULES AND REGULATIONS

MONDAY MAY 19, 1975
WASHINGTON, D.C.

Volume 40 Number 97—*FEDERAL REGISTER*

Part I

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

MONITOR MARINE SANCTUARY
Final Regulations

Chapter IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
DEPARTMENT OF COMMERCE

PART 924—MONITOR MARINE SANCTUARY

FINAL REGULATIONS

On January 30, 1975, the Secretary of Commerce designated as a marine sanctuary an area of the Atlantic Ocean around and above the submerged wreckage of the Civil War ironclad MONITOR pursuant to the authority of Section 302(a) of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat 1052, 1061, hereafter the Act). The sanctuary area (hereafter the Sanctuary) is about 16.10 miles south-southeast of Cape Hatteras (North Carolina) Light.

Section 302(f) of the Act directs the Secretary to issue necessary and reasonable regulations to control any activities permitted within a designated marine sanctuary. This section also provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of Title III of the Act ("Marine Sanctuaries"); and that it can be carried out within the regulations promulgated under section 302(f).

The authority of the Secretary to administer the provisions of the Act has been delegated to the Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (hereafter the Administrator, 39 FR 10255, March 19, 1974).

On February 5, 1975, the Administrator published in the *Federal Register* interim regulations applicable to the MONITOR Marine Sanctuary (40 FR 5347), and invited comments on these regulations until March 7, 1975. Comments which have been received have suggested six changes in the regulations as follows:

1. That Section 924.2, the description of the Sanctuary, be somewhat shortened and revised to read:

The Sanctuary consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00'23" north latitude and 73°24'32" west longitude.

2. That Section 924.3, which prohibits "bottom anchoring" in the Sanctuary, be revised to read:

Anchoring in any manner, stopping, remaining, or drifting without power at any time.

3. That Section 924.3(i), which prohibits the "discharging of waste material" into the waters of the Sanctuary, be revised to read:

Discharging waste material into the water in violation of any Federal statute or regulation.

It was stated that this change was felt to be desirable because of the breadth of the original language, and the difficulty of enforcing a prohibition which could be constructed to extend to routine operational discharges from vessels—such as bilge, sanitary and galley wastes—which discharges would have no adverse impact on the MONITOR.

4. That Section 924.4, which lists penalties for the commission of prohibited acts within the Sanctuary, be revised to read:

Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000.00 against any citizen of the United States for each violation of any regulation issued pursuant to Title III of the Act.

and further authorizes proceedings in rem against any vessel used in violation of the penalty described above. See also 15 CFR 922 (published at 39 FR 23254-23257, June 27, 1974), for details applicable to any instance of a violation of these regulations.

Essentially this change substitutes "the penalty described above" for "Any such regulations" at the end of the first sentence of the interim regulations; and rephrases the second and third sentences without substantially changing their meaning.

5. That so much of the last part of Section 924.5 as provides that "except that, no permit is required for the conduct of any activity immediately necessary in connection with an air or marine casualty" be revised to read:

"except that, no permit is required for the conduct of any activity necessary for the protection of life, property or the environment."

The suggested change would appear to add an environmental casualty, such as oil spill, to the air and/or marine casualties already contemplated by the regulation.

6. That Section 924.7, having to do with certification procedures, be revised so as to require any Federal agency which, as of the effective date of the regulations, has authorized any prohibited activity in the Sanctuary, be required to notify the Administrator of that fact in writing. The change was from "activity," as stated in the interim regulations, to "prohibited activity". It was stated that the Secretary's concern should be with any prohibited activity, not with an activity not prohibited.

Except as noted below, and for the reasons there set out, the Administrator has decided to accept these suggested changes, and they have been incorporated into the final regulations. With regard to the suggested changes in Section 924.4 (paragraph 4. above) it is felt that the substitution of "penalty" for "regulations" somewhat misstates the thought involved since the violation in question is of the regulations, not of the penalty. Otherwise, the suggested changes do not alter the meaning of the interim language. Therefore Section 924.4 will be retained in its present form. With regard to the suggested change in Section 924.5 (paragraph 5. above), it is felt that there must be an immediate and urgent need for the activity if it is to be conducted without a permit. Therefore the words "immediately and urgently" will be added before "necessary". At the same time, it is felt that a permit should be required for any activity to be conducted in a sanctuary pertaining to an air or marine casualty already passed, in regard to which there is no need for immediate entry into the sanctuary, such as in relation to salvage or recovery operations. Therefore Section 924.5 (a) (2) has been appropriately modified. Finally the Administrator felt it desirable to provide for the exten-

sion of the various time limits prescribed in Section 924.3 for good cause shown. This has been done by the addition of a new paragraph (e).

There having been no other comments, and the Administrator being of the view that no additional changes in the regulations are necessary at this time, there are published herewith final regulations pertaining to the MONITOR Marine Sanctuary to become effective May 19, 1975.

15 CFR Part 924 is revised as follows:

Sec.

924.1 Authority.

924.2 Description of the Sanctuary.

924.3 Activities Prohibited Within the Sanctuary.

924.4 Penalties for Commission of Prohibited Acts.

924.5 Permitted Activities.

924.6 Permit Procedures and Criteria.

924.7 Certification Procedures.

924.8 Appeals of Administrative Action.

AUTHORITY: Secs. 302(f), 302(g), 303 Marine Protection, Research and Sanctuaries Act of 1972.

924.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Section 302 (a) of the Act. The following regulations are issued pursuant to the authorities of Sections 302 (f), 302 (g) and 303 of the Act.

924.2 Description of the Sanctuary.

The Sanctuary consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00'23" north latitude and 75°24'32" west longitude.

924.3 Activities prohibited within the Sanctuary.

Except as may be permitted by the Administrator, no person subject to the jurisdiction of the United States shall conduct, nor cause to be conducted, any of the following activities in the Sanctuary:

(a) anchoring in any manner, stopping, remaining, or drifting without power at any time;

(b) any type of subsurface salvage or recovery operation;

(c) any type of diving whether by an individual or by a submersible;

(d) lowering below the surface of the water any grappling, suction, conveyor, dredging or wrecking device;

(e) detonation below the surface of the water of any explosive or explosive mechanism;

(f) seabed drilling or coring;

(g) lowering, laying, positioning or raising any type of seabed cable or cablelaying device;

(h) trawling; or

(i) discharging waste material into the water in violation of any Federal statute or regulation.

924.4 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000 for each violation of any regulation issued pursuant to Title III of the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation. Details are set out in Subpart (D) of Part 922 of this Chapter (39 FR 23254, 23257, June 27, 1974). Subpart (D) is applicable to any instance of a violation of these regulations.

924.5 Permitted Activities.

Any person or entity may conduct in the Sanctuary any activity listed in 924.3 of this Part if: (a) such activity is either (1) for the purpose of research related to the MONITOR, or (2) pertains to salvage or recovery operations in connection with an air or marine casualty; and (b) such person or entity is in possession of a valid permit issued by the Administrator authorizing the conduct of such activity; except that no permit is required for the conduct of any activity immediately and urgently necessary for the protection of life, property or the environment.

924.6 Permit Procedures and Criteria.

(a) Any person or entity who wishes to conduct in the Sanctuary an activity for which a permit is authorized by Section 924.5 (hereafter a permitted activity) may apply in writing to the Administrator for a permit to conduct such activity citing this section as the basis for the application. Such application should be made to the Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20230. Upon receipt of such application the Administrator shall request and such person or entity shall supply to the Administrator such information and in such form as the Administrator may require to enable him to act upon the application.

(b) In considering whether to grant a permit for the conduct of a permitted activity for the purpose of research related to the MONITOR, the Secretary shall evaluate such matters as (1) the general professional and financial responsibility of the applicant; (2) the appropriateness of the research method(s) envisioned to the purpose(s) of the research; (3) the extent to which the conduct of any permitted activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information; (4) the end value of the research envisioned; and (5) such other matters as the Administrator deems appropriate.

(c) In considering whether to grant a permit for the conduct of a permitted activity in the Sanctuary in relation to an air or marine casualty, the Administrator shall consider such matters as (1) the fitness of the applicant to do the work envisioned; (2) the necessity of conducting such activity; (3) the appropriateness of any activity envisioned to the purpose of the entry

into the Sanctuary, (4) the extent to which the conduct of any such activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information; and (5) such other matters as the Administrator deems appropriate.

(d) In considering any application submitted pursuant to this Section the Administrator may seek and consider the views of any person or entity, within or outside of the Federal Government, as he deems appropriate, except that he shall seek and consider the views of the Advisory Council on Historic Preservation.

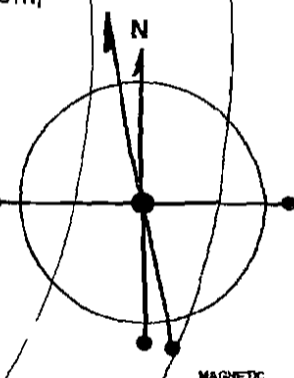
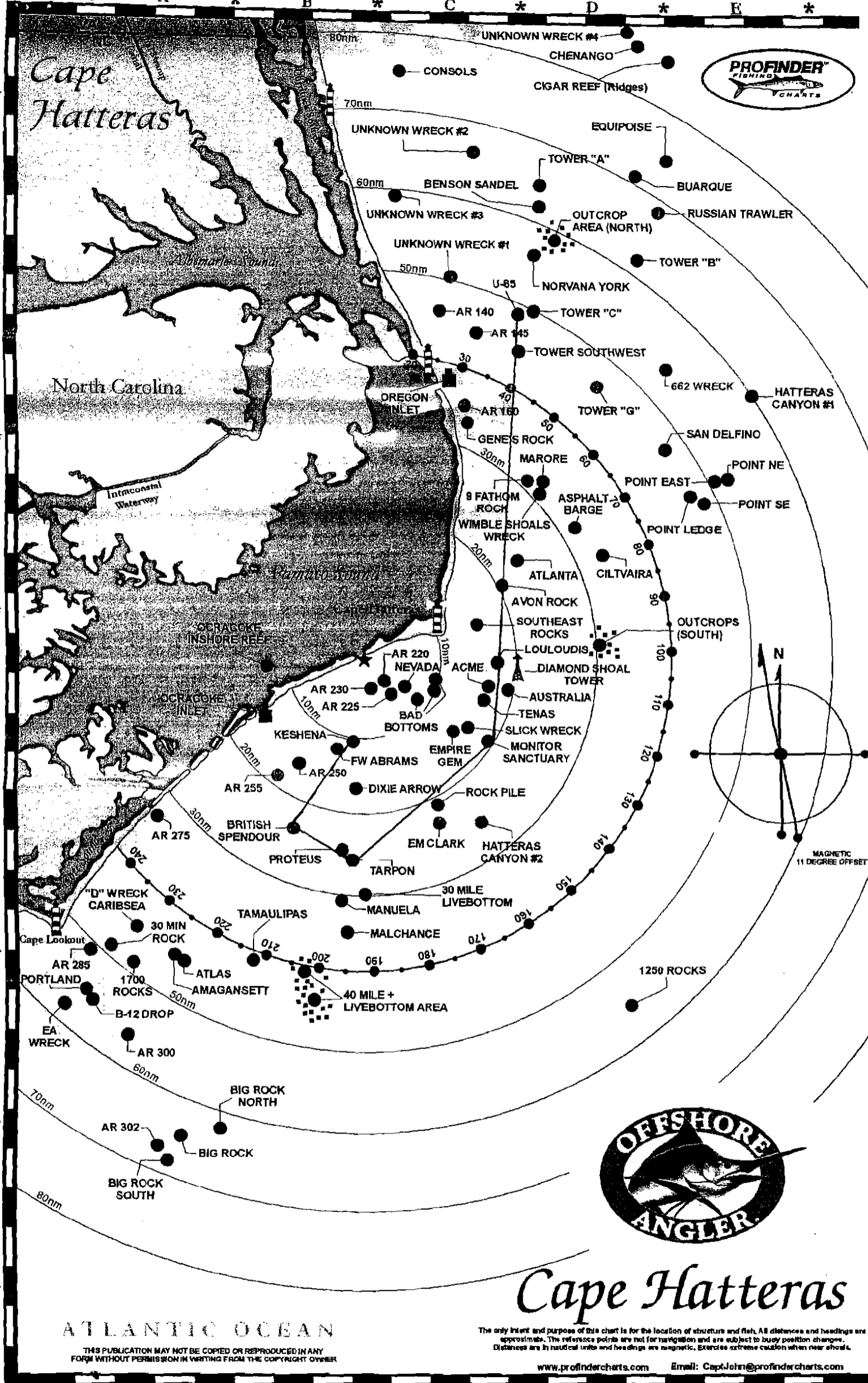
(e) The Administrator may, in his discretion grant a permit which has been applied for pursuant to this Section, in whole or in part, and subject to such condition(s) as he deems appropriate except that the Administrator shall attach to any permit granted for research related to the MONITOR the condition that any information and/or artifact(s) obtained in the research shall be made available to the public. The Administrator may observe any activity permitted by this Section and/or may require the submission of one or more reports of the status or progress of such activity.

(f) A permit granted pursuant to this Section is nontransferable.

(g) The Administrator may amend, suspend or revoke a permit granted pursuant to this Section in whole or in part, temporarily or indefinitely if, in his view the permit holder (hereafter the Holder) has acted in violation of the terms of the permit; or the Administrator may do so for other good cause shown. Any such action shall be in writing to the Holder, and shall set forth the reason(s) for the action taken. Any Holder in relation to whom such action has been taken may appeal the action as provided in 924.8 of this Part.

924.7 Certification Procedures.

Any Federal agency which, as of the effective date of these regulations, already has permitted, licensed or otherwise authorized any prohibited activity in the Sanctuary shall notify the Administrator of this fact in writing. The writing shall include a reasonably detailed description of such activity, the person(s) involved, the beginning and ending dates of such permission the reason(s) and purpose(s) for same and a description of the total area affected. The Administrator shall then decide whether the continuation of the permitted activity, in whole or in part, or subject to such condition(s) as he may deem appropriate is consistent with the purposes of Title III of the Act and can be carried out within these regulations. He shall inform the Federal agency of his decision in these regards and the reason(s) therefore, in writing. The decision of the Secretary made pursuant to this Section shall be final action for the purpose of the Administrative Procedure Act.



Cape Hatteras

ATLANTIC OCEAN

THIS PUBLICATION MAY NOT BE COPIED OR REPRODUCED IN ANY FORM WITHOUT PERMISSION IN WRITING FROM THE COPYRIGHT OWNER

The only intent and purpose of this chart is for the location of structure and fish. All distances and headings are approximate. The reference points are not for navigation and are subject to buoy position changes. Distances are in nautical units and headings are magnetic. Exercise extreme caution when near shoals.

www.profindercharts.com Email: CaptJohn@profindercharts.com