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15 CFR Part 922

Expansion of Gulf of the Farallones and Cordell Bank National Marine Sanctuaries, and Regulatory Changes; Final Rule

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 130405335-4999-02]

RIN 0648-BD18

**Expansion of Gulf of the Farallones and Cordell Bank National Marine Sanctuaries, and Regulatory Changes**

**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:** The National Oceanic and Atmospheric Administration (NOAA) is expanding the boundaries of Gulf of the Farallones National Marine Sanctuary (GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their current boundaries. As part of this action, NOAA is revising the terms of designation, management plans, and regulations for these two sanctuaries.

**DATES:** *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the revised designations 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 March 12, 2015. Additional information regarding the effective date for this final rule is contained in the "Background" section, below. NOAA will publish an announcement of the effective date of the final regulations in the **Federal Register**.

**ADDRESSES:** Copies of the final environmental impact statement (FEIS) described in this rule and the record of decision (ROD) are available upon request to Maria Brown, Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129. Copies of the FEIS, final management plans, and the final rule can also be viewed or downloaded at [http://farallones.noaa.gov/manage/expansion\\_cbgf.html](http://farallones.noaa.gov/manage/expansion_cbgf.html).

**FOR FURTHER INFORMATION CONTACT:** Maria Brown at [Maria.Brown@noaa.gov](mailto:Maria.Brown@noaa.gov) or 415-561-6622; or Dan Howard at [Dan.Howard@noaa.gov](mailto:Dan.Howard@noaa.gov) or 415-663-0314.

**SUPPLEMENTARY INFORMATION:****I. Background***A. Effective Date*

This rule postpones for 6 months the effective date for the discharge requirements in both expansion areas with regard to U.S. Coast Guard activities. In the course of this rule making NOAA learned from Coast Guard that the discharge regulations had the potential to impair the operations of Coast Guard vessels and air craft conducting law enforcement, search and rescue training and other statutorily mandated activities in Gulf of the Farallones and Cordell Bank national marine sanctuaries. The USCG supports national marine sanctuary management by providing routine surveillance and dedicated law enforcement of the national marine sanctuaries. It does so concurrently with other Coast Guard operations, which include those relating to homeland security, search and rescue, regulatory program enforcement (such as vessel air pollution low sulfur fuel program requirements, fisheries management, oil spill response, marine living resource protection), vessel traffic management, and drug interdiction. Coast Guard training involving use of force and search and rescue drills require expenditure of ammunition or pyrotechnics ("live fire training"). Additionally, some vessels used by the Coast Guard in both sanctuaries have limited capacity to store sewage, and that may impact Coast Guard's capability to conduct extended, necessary operations in the expansion areas. Accordingly, to ensure that this rule does not undermine Coast Guard's ability to perform its duties, NOAA is postponing for 6 months the date when the discharge requirements will become effective with regard to Coast Guard operations. During this time, NOAA will consider how to address Coast Guard's concerns and will consider, among other things, whether to exempt certain Coast Guard activities in both sanctuaries similar to existing exemptions provided for Department of Defense activities (15 CFR 922.82(b) and 922.112(c)). The 6-month postponement will begin at the time the regulations for the expansion areas become effective. As noted above, NOAA will publish a notice when the regulations promulgated by this rule become effective and will include in that notice the date when the postponement of the effective date for Coast Guard activities ends. The public, other federal agencies, and interested stakeholders will be given an opportunity to comment on various alternatives that are being considered. This will include the

opportunity to review any proposed rule and related environmental analyses.

*B. GFNMS Background*

NOAA designated GFNMS in 1981 to protect and preserve a unique and fragile ecological community, including the largest seabird colony in the contiguous United States and diverse and abundant marine mammals. GFNMS is located along and offshore California's north-central coast, west of northern San Mateo, San Francisco, Marin and southern Sonoma Counties. GFNMS was previously composed of approximately 1,282 square miles (968 square nautical miles (sq. nmi)) of offshore waters extending out to and around the Farallon Islands, nearshore waters (up to the mean high water line unless otherwise specified) from Bodega Head to Rocky Point in Marin, and the submerged lands beneath these waters. The Farallon Islands lie along the outer edge of the continental shelf, between 15 and 22 miles (13 and 19 nmi) southwest of Point Reyes and approximately 30 miles (26 nmi) due west of San Francisco. In addition to sandy beaches, small coves, and offshore stacks, GFNMS includes open bays (Bodega Bay, Drakes Bay) and enclosed bays or estuaries (Bollinas Lagoon, Tomales Bay, Estero Americano, and Estero de San Antonio). GFNMS is located within the California current, and its waters are characterized by wind-driven upwelling, localized eddies, counter-current gyres, high nutrient supply, and high levels of phytoplankton. As a result of this action, GFNMS is being expanded to a total of 3,295 square miles (2,488 sq. nmi).

*B. CBNMS Background*

NOAA designated CBNMS in 1989 to protect and preserve the extraordinary ecosystem, including invertebrates, marine birds, mammals, and other natural resources, of Cordell Bank and its surrounding waters. CBNMS is located offshore of California's north-central coast, west of Marin County. CBNMS previously protected an area of approximately 529 square miles (399 sq. nmi). The main feature of the sanctuary is Cordell Bank (Bank), an offshore granite bank located on the edge of the continental shelf, about 49 miles (43 nmi) northwest of the Golden Gate Bridge and 23 miles (20 nmi) west of the Point Reyes lighthouse. CBNMS is entirely offshore and shares its southern and eastern boundary with GFNMS. Similar to GFNMS, CBNMS is located in a major coastal upwelling system. The combination of oceanic conditions and undersea topography provides for a

highly productive environment in a discrete offshore area. Prevailing currents push nutrients from upwelling southward along the coast, moving nutrients and other prey over the upper levels of the Bank. The vertical relief and hard substrate of the Bank provide benthic habitat with near-shore characteristics in an open ocean environment. The combination of algae and sedentary animals typical of nearshore waters in close proximity to open ocean species like blue whales and albatross creates a rare mix of species and a unique biological community at CBNMS. As a result of this action, CBNMS is being expanded to a total of 1,286 square miles (971 sq. nmi).

### C. Purpose and Need for Action

The purpose of NOAA's action is to add national marine sanctuary protections to the globally significant coastal upwelling center originating off of Point Arena, which is the source of nutrient-rich upwelled waters that flow into GFNMS and CBNMS via wind-driven currents. NOAA's action expands the boundaries of GFNMS and CBNMS north and west of the sanctuaries' original boundaries to extend regulatory protections and management programs to the nationally significant marine resources and habitats of the waters and submerged lands offshore of San Mateo, San Francisco, Marin, Sonoma and Mendocino Counties.

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) gives NOAA the authority to expand national marine sanctuaries to meet the purposes and policies of the NMSA, including:

- “. . . to provide authority for comprehensive and coordinated conservation and management of these marine areas [national marine sanctuaries], and activities affecting them, in a manner which complements existing regulatory authorities (16 U.S.C. 1431(b)(2)); [and]
- to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations and ecological processes . . .” (16 U.S.C. 1431(b)(3)).

The NMSA also requires NOAA to periodically review and evaluate progress in implementing the management plan and goals for each national marine sanctuary. The management plans and regulations must be revised as necessary to fulfill the purposes and policies of the NMSA (16 U.S.C. 1434(e)) to ensure that each sanctuary continues to best conserve, protect, and enhance their nationally significant living and cultural resources.

In addition to expanding the boundaries of GFNMS and CBNMS, NOAA's action revises the sanctuaries' management plans and modifies the sanctuaries' regulations. Together these changes provide comprehensive management and protection of the nationally significant resources of the area, while facilitating uses compatible with resource protection. The regulatory changes are described in detail below in the “Summary of the Regulatory Amendments.”

The expansion area, from the upwelling off the Point Arena coast and the waters south to GFNMS and CBNMS, is ecologically connected to the current sanctuaries. The upwelled water, rich with nutrients, largely originates offshore of Point Arena and flows south. It is the regional ecosystem driver for productivity in coastal waters of north-central California. The area supports a rich marine food web made up of many species of algae, invertebrates, fish, birds, and marine mammals. Some species are transitory, travelling hundreds, thousands or tens of thousands of miles to the region, such as endangered blue whales, albatross, shearwaters, white and salmon sharks, while others live year round in the sanctuaries, such as Dungeness crab, sponges, other benthic invertebrates, salmon, many species of rockfish and flatfish, and harbor seals and harbor porpoises. Of note, the largest assemblage of breeding seabirds in the contiguous United States is at the Farallon Islands, and each year their breeding success depends on a healthy and productive marine ecosystem to allow breeding adults and fledgling young to feed and flourish. Given that these sensitive resources are particularly susceptible to damage from human activities, expanding CBNMS and GFNMS conserves and protects critical resources by preventing or reducing human-caused impacts such as marine pollution, and wildlife and seabed disturbance.

In addition, this action protects significant submerged cultural resources and historical properties, as defined by the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, and its regulations (historical properties include among other things: Artifacts, records, remains related to or located in the properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria). Several state and federal laws exist that provide some degree of protection of historical resources, but the State of California regulations only extend 3 nautical miles offshore, and existing federal regulations do not

provide comprehensive protection of these resources. Records document over 200 vessel and aircraft losses between 1820 and 1961 along California's north-central coast from Bodega Head north to Point Arena. Submerged archaeological remnants related to a number of former doghole ports are likely to exist in the area. Doghole ports were small ports on the Pacific Coast between Central California and Southern Oregon that operated from the mid-1800s until 1939. Such archaeological remnants could include landings, wire, trapeze loading chutes and offshore moorings.

While there is no documentation of submerged Native American human settlements in the boundary expansion area, some may exist there, since Coast Miwok and Pomo peoples have lived and harvested the resources of this abundant marine landscape for thousands of years. Sea level rise at the end of the last great Ice Age inundated a large area that was likely used by these peoples when it was dry land.

### D. History of the Boundary Expansion

In 2001, NOAA received public comment during a review of the GFNMS and CBNMS management plans requesting that both sanctuaries be expanded north and west. Since 2003, sanctuary advisory councils for both national marine sanctuaries have regularly discussed and supported boundary expansion northward and westward at advisory council meetings, which are open to the public. In addition to the public and advisory council input, legislation was proposed several times between 2004 and 2011 by then-Representative Lynn Woolsey, Senator Barbara Boxer, and cosponsors, to expand and protect GFNMS and CBNMS, but was never passed by Congress. In general, interest in expanding CBNMS and GFNMS has stemmed principally from a desire to protect the biologically rich underwater habitat of the expansion area and the important upwelling current originating off Point Arena.

The sanctuary advisory councils formally expressed support for the proposed boundary expansion in four resolutions prior to NOAA issuing the proposed rule in April 2014. The GFNMS advisory council passed three separate resolutions on April 19 and December 13, 2007, and November 11, 2011, supporting sanctuary boundary expansion. On September 19, 2007, the CBNMS advisory council passed a resolution supporting protection for Bodega Canyon via proposed legislation.

As a result of the public interest in boundary expansion, in 2008 NOAA included actions to consider a future

boundary expansion in the revised management plans for CBNMS and GFNMS. The management plans indicate NOAA would develop a framework to evaluate boundary alternatives, with public input. Some of the recommended criteria included consideration of boundary changes that would: Be inclusive of and ensure the maintenance of the area's natural ecosystem, including its contribution to biological productivity; be biogeographically representative; facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the marine resources; and provide additional comprehensive and coordinated management of the area.

NOAA, in compliance with Section 304(e) of the NMSA, conducted public scoping from December 21, 2012, to March 1, 2013 (77 FR 75601), to identify issues associated with a proposed expansion. In January and February 2013 NOAA held three public scoping meetings in Bodega Bay, Point Arena and Gualala. These public meetings were attended by several hundred people. NOAA received more than 300 written submissions, along with the oral comments received during the three public scoping meetings, which are posted under docket number NOAA–NOS–2012–0228 on [www.regulations.gov](http://www.regulations.gov).

NOAA analyzed comments received during this process and considered them in the draft environmental impact statement accompanying the proposed rule (79 FR 20982), with analysis of the proposed action and four alternatives. Scoping revealed wide support for the protection of areas offshore Sonoma and southern Mendocino Counties. Some commenters also suggested the protection of areas further north and south of the proposed expansion or other alternate boundary configurations for GFNMS and CBNMS. Whereas some commenters were opposed to expanding the sanctuaries or specific sanctuary regulations, there was generally strong support for extending existing sanctuary regulations to the proposed expanded area, including prohibitions on oil and gas development. Many commenters also indicated opposition to any regulations of fishing under the NMSA. Other comments focused on: Operation of motorized personal watercraft (MPWC) in the expanded portions of GFNMS; protection of wildlife from human disturbance; and future development of alternative energy and aquaculture.

During the development of the proposed action, it became clear that an extension of all existing GFNMS and

CBNMS regulations to the respective expansion areas would not meet NOAA's goals of providing resource protection and facilitating compatible uses. Therefore, NOAA proposed to extend some of the existing GFNMS and CBNMS regulations to the proposed expansion area without any changes, amend some of the existing regulations that would apply to both the existing sanctuaries and the proposed expansion area, and add some new regulations.

The DEIS was made available for public comment on April 4, 2014, and the proposed rule was published in the **Federal Register** (79 FR 20982) on April 14, 2014. NOAA solicited public comments until June 30, 2014, and held four public hearings in Sausalito (May 22), Point Arena (June 16), Gualala (June 17) and Bodega Bay, CA (June 18). NOAA received about 1,000 individual comments, including letters, online submissions on [www.regulations.gov](http://www.regulations.gov), and oral testimonies at public hearings. In addition, both CBNMS and GFNMS sanctuary advisory councils provided comments to NOAA on the proposed action (see [http://farallones.noaa.gov/manage/sac\\_actions.html](http://farallones.noaa.gov/manage/sac_actions.html)). All public comments are available for public viewing at [www.regulations.gov](http://www.regulations.gov) (search for docket number NOAA–NOS–2012–0228). The comments and NOAA's responses are summarized below.

## II. Revisions to the Sanctuary Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include: (1) The geographic area included within the Sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and (3) the types of activities subject to regulation by NOAA to protect those characteristics. This section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation is made.

To implement this action, NOAA is changing the GFNMS and CBNMS terms of designation, which were last published in the **Federal Register** on February 19, 2015 (80 FR 8778) for GFNMS and on November 20, 2008 (73 FR 70488) for CBNMS.

### A. Revisions to the GFNMS Terms of Designation

NOAA is revising the GFNMS terms of designation to:

1. Update the title by adding “Terms of,” removing “Document” and making minor technical changes.

2. Modify the geographical description of the sanctuary in the preamble.

3. Modify Article I “Effect of Designation” by referring to Gulf of the Farallones National Marine Sanctuary.

4. Modify Article II “Description of the Area” by updating the description of the size of the sanctuary and describing the proposed new boundary for the sanctuary.

5. Modify Article III “Characteristics of the Area That Give It Particular Value” by updating the description of the nationally significant characteristics of the area to include the globally significant coastal upwelling area.

6. Modify Article IV “Scope of Regulation” by updating section 1, subsection a, by replacing “hydrocarbon operations” with a more complete description of oil and gas activities; adding “minerals” to what had been “hydrocarbon operations”; by clarifying the actual activities related to cultural and historical resources that are prohibited; and adding a new subsection i, “Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations.”

7. Modify Article V “Relation to Other Regulatory Programs” by updating section 1 to replace the term “mariculture” with the term “aquaculture” and replacing “seabed” with the term “submerged lands” used throughout the terms of designation and regulations; by updating section 3 to include the dates of designation and expansion used for certification; and adding “In addition, a permit or authorization may not be issued under any circumstances for exploring for, developing or producing oil, gas, or minerals within the Sanctuary.”

The revised terms of designation read as follows:

## REVISED TERMS OF DESIGNATION FOR GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

### Preamble

Under the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, Public Law 92–532 (the Act), the waters and submerged lands along the Coast of California to the 39th parallel, between Manchester Beach in Mendocino County and Rocky Point in Marin County and surrounding the Farallon Islands and Noonday Rock along the northern coast of California, are hereby designated a National Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

### Article I. Effect of Designation

Within the area described in Article II, the Act authorizes the promulgation of such

regulations as are reasonable and necessary to protect the values of Gulf of the Farallones National Marine Sanctuary (the Sanctuary). Section 1 of Article IV of these Terms of Designation lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

## Article II. Description of the Area

The Sanctuary consists of an area of the waters and the submerged lands thereunder adjacent to the coast of California of approximately 2,488 square nautical miles (sq. nmi). The boundary extends seaward to a distance of 30 nmi west from the mainland at Manchester Beach and extends south approximately 45 nmi to the northwestern corner of Cordell Bank National Marine Sanctuary (CBNMS), and extends approximately 38 nmi east along the northern boundary of CBNMS, approximately 6 nmi west of Bodega Head. The boundary extends from Bodega Bay to Point Reyes and 12 nmi west from the Farallon Islands and Noonday Rock, and includes the intervening waters and submerged lands. The Sanctuary includes Bolinas Lagoon, Tomales Bay, Estero de San Antonio (to the tide gate at Valley Ford-Franklin School Road) and Estero Americano (to the bridge at Valley Ford-Estero Road), as well as Bodega Bay, but does not include Bodega Harbor, the Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, Arena Cove or the Garcia River Estuary. The precise boundaries are defined by regulation.

## Article III. Characteristics of the Area That Give It Particular Value

The Sanctuary encompasses a globally significant coastal upwelling center that includes a rich and diverse marine ecosystem and a wide variety of marine habitats, including habitat for over 36 species of marine mammals. Rookeries for over half of California's nesting marine bird populations and nesting areas for at least 12 of 16 known U.S. nesting marine bird species are found within the boundaries. Abundant populations of fish and shellfish are also found within the Sanctuary. The Sanctuary also has one of the largest seasonal concentrations of adult white sharks (*Carcharodon carcharias*) in the world. The area adjacent to and offshore of Point Arena, due to seasonal winds, currents and oceanography, drives one of the most prominent and persistent upwelling centers in the world, supporting the productivity of the sanctuary. The nutrient-rich water carried down coast by currents promotes thriving nearshore kelp forests, productive commercial and recreational fisheries, and diverse wildlife assemblages. Large predators, such as white sharks, sea lions, killer whales, and baleen whales, travel from

thousands of miles away to feed in these productive waters. Rocky shores along the Marin, Sonoma and Mendocino County coastlines are largely undisturbed, and teem with crustaceans, algae, fish and birds.

## Article IV. Scope of Regulation

### Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- a. Exploring for, developing or producing oil, gas, or minerals within the Sanctuary;
- b. Discharging or depositing any substance within or from beyond the boundary of the Sanctuary;
- c. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- d. Taking, removing, moving, collecting, possessing, injuring, destroying or causing the loss of, or attempting to take, remove, move, injure, destroy or cause the loss of a cultural or historical resources;
- e. Introducing or otherwise releasing from within or into the Sanctuary an introduced species;
- f. Taking or possessing any marine mammal, marine reptile, or bird within or above the Sanctuary except as permitted by the Marine Mammal Protection Act, Endangered Species Act, and Migratory Bird Treaty Act;
- g. Attracting or approaching any animal;
- h. Operating a vessel (*i.e.*, watercraft of any description) within the Sanctuary; and
- i. Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations.

### Section 2. Consistency With International Law

The regulations governing the activities listed in section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

### Section 3. Emergency Regulations

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

## Article V. Relation to Other Regulatory Programs

### Section 1. Fishing and Waterfowl Hunting

The regulation of fishing, including fishing for shellfish and invertebrates, and waterfowl hunting, is not authorized under Article IV.

However, fishing vessels may be regulated with respect to vessel operations in accordance with Article IV, section 1, paragraphs (b) and (h), and aquaculture activities involving alterations of or construction on the submerged lands, or introduction or release of introduced species by aquaculture activities, can be regulated in accordance with Article IV, section 1, paragraph (c) and (e). All regulatory programs pertaining to fishing, and to waterfowl hunting, including regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV.

The term "fishing" as used in this Article includes aquaculture.

### Section 2. Defense Activities

The regulation of activities listed in Article IV shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

### Section 3. Other Programs

All applicable regulatory programs will remain in effect, and all permits, licenses, approvals, and other authorizations issued after January 16, 1981, with respect to activities conducted within the original Sanctuary boundary and after the effective date of the expansion of the Sanctuary with respect to activities conducted within the expansion area will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV. No valid lease, permit, license, approval or other authorization for activities in the expansion area of the Sanctuary issued by any federal, State, or local authority of competent jurisdiction and in effect on the effective date of the expansion may be terminated by the Secretary of Commerce or by his or her designee, provided the holder of such authorization complies with the certification procedures established by Sanctuary regulations. In addition, the Secretary may not under any circumstances issue a permit or authorization for exploring for, developing or producing oil, gas, or minerals within the Sanctuary.

## Article VI. Alterations to This Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.

[END OF TERMS OF DESIGNATION]

### C. Revisions to the CBNMS Terms of Designation

NOAA is revising the CBNMS terms of designation to:

1. Update the title by adding "Terms of" and removing "Document."
2. Modify the geographical description in the preamble by adding "Bodega Canyon" and "submerged lands" and making minor technical changes.
3. Modify Article I "Effect of Designation" by making minor technical changes.
4. Modify Article II "Description of the Area" by updating the description of the size of the sanctuary and describing the proposed new boundary for the sanctuary.
5. Modify Article III "Characteristics of the Area That Give It Particular Value" by updating the description of the nationally significant characteristics of the area to include Bodega Canyon and the additional area in the sanctuary.
6. Modify Article IV "Scope of Regulation" by updating section 1, subsection c, by replacing "hydrocarbon operations" with a more complete description of oil and gas activities, and adding "minerals"; by clarifying the actual activities related to cultural and historical resources that are prohibited; and by adding a new subsection i "Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations."
7. Modify Article V "Relation to Other Regulatory Programs" by updating section 3 to include the dates of designation and expansion used for certification and by adding "In addition, a permit or authorization may not be issued under any circumstances for exploring for, developing or producing oil, gas, or minerals within the Sanctuary."

The revised CBNMS terms of designation read as follows:

#### TERMS OF DESIGNATION FOR CORDELL BANK NATIONAL MARINE SANCTUARY

##### Preamble

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (the "Act"), Cordell Bank, Bodega Canyon, and their surrounding waters and submerged lands offshore northern California, as described in Article II, are hereby designated as Cordell Bank National Marine Sanctuary (the Sanctuary) for the purpose of protecting and conserving that special, discrete, highly productive marine area and ensuring the continued availability of the conservation, ecological, research, educational, aesthetic, historical, and recreational resources therein.

#### Article 1. Effect of Designation

The Sanctuary was designated on May 24, 1989 (54 FR 22417). Section 308 of the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.* (NMSA), authorizes the issuance of such regulations as are necessary to implement the designation, including managing, protecting and conserving the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of the Sanctuary. Section 1 of Article IV of these Terms of Designation lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

#### Article II. Description of the Area

The Sanctuary consists of an approximately 971 square nautical mile (sq. nmi) area of marine waters and the submerged lands thereunder encompassed by a northern boundary that begins approximately 6 nmi west of Bodega Head in Sonoma County, California and extends west approximately 38 nmi, coterminous with the boundary of the Gulf of the Farallones National Marine Sanctuary (GFNMS). From that point, the western boundary of the Sanctuary extends south approximately 34 nmi. From that point, the southern boundary of the Sanctuary continues east 15 nmi, where it intersects the GFNMS boundary. The eastern boundary of the Sanctuary is coterminous with the GFNMS boundary, and is a series of straight lines connecting in sequence, back to the beginning point. The precise boundaries are set forth in the regulations.

#### Article III. Characteristics of the Area That Give It Particular Value

Cordell Bank (Bank) and Bodega Canyon are characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. The Sanctuary may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. The Bank is 300–400 feet (91–122 meters) deep at the base and ascends to within 115 feet (35 meters) of the surface at its shallowest point. Bodega Canyon is about 12 miles (10.8 nmi) long and is over 5,000 feet (1,524 m) deep. The seasonal upwelling of nutrient-rich bottom waters and wide depth ranges in the vicinity have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank and Bodega Canyon includes an exceptional assortment of invertebrates, fishes, marine mammals and seabirds. Predators travel from thousands of miles away to feed in these productive waters.

#### Article IV. Scope of Regulation

##### Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- a. Depositing or discharging any material or substance;
- b. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or on or within the line representing the 50 fathom isobath surrounding the Bank;
- c. Exploring for, developing or producing oil, gas or minerals within the Sanctuary;
- d. Anchoring on the Bank or on or within the line representing the 50 fathom contour surrounding the Bank;
- e. Taking, removing, moving, collecting, possessing, injuring or causing the loss of, or attempting to take, remove, move, collect, injure or cause the loss of a cultural or historical resource;
- f. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- g. Taking or possessing any marine mammal, marine reptile, or bird except as permitted under the Marine Mammal Protection Act, Endangered Species Act or Migratory Bird Treaty Act;
- h. Introducing or otherwise releasing from within or into the Sanctuary an introduced species; and
- i. Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations.

##### Section 2. Consistency With International Law

The regulations governing activities listed in Section 1 of this Article shall apply to foreign flag vessels and foreign persons only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

##### Section 3. Emergency Regulations

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in Section 1 of this Article, are subject to immediate temporary regulation, including prohibition, within the limits of the Act on an emergency basis for a period not to exceed 120 days.

#### Article V. Relation to Other Regulatory Programs

##### Section 1. Fishing

The regulation of fishing is not authorized under Article IV. All regulatory programs pertaining to fishing, including Fishery

Management Plans promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* ("Magnuson-Stevens Act"), shall remain in effect. All permits, licenses, approvals, and other authorizations issued pursuant to the Magnuson-Stevens Act shall be valid within the Sanctuary. However, all fishing vessels are subject to regulation under Article IV with respect to discharges and anchoring.

#### Section 2. Defense Activities

The regulation of activities listed in Article IV shall not prohibit any Department of Defense (DOD) activities that are necessary for national defense. All such activities being carried out by DOD within the Sanctuary on the effective date of designation shall be exempt from any prohibitions contained in the Sanctuary regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, shall be subject to all prohibitions contained in the Sanctuary regulations.

#### Section 3. Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, approvals, and other authorizations issued after July 31, 1989, with respect to activities conducted within the original Sanctuary boundary and after the effective date of the expansion of the Sanctuary with respect to activities conducted within the expansion area pursuant to those programs shall be valid unless prohibited by regulations implementing Article IV. In addition, the Secretary may not under any circumstances issue a permit or authorization for exploring for, developing or producing oil, gas, or minerals within the Sanctuary.

#### Article VI. Alterations to This Designation

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

[END OF TERMS OF DESIGNATION]

### III. Summary of Regulatory Amendments

- With this action, NOAA is:
- Modifying the GFNMS and CBNMS boundary descriptions and coordinates;
  - Applying certain existing prohibitions to the expansion areas;
  - Amending certain existing prohibitions that apply in the original and expanded areas; and
  - Adding new prohibitions.

Specific regulatory language for each of the two sanctuaries can be found at the end of this document.

#### A. Summary of Boundary Modifications

NOAA is modifying the boundary of GFNMS by extending it northward to the 39th parallel, just north of Point Arena in Mendocino County, in order to include the coastal waters and submerged lands north of the original sanctuary, and extending the boundary seaward to the continental slope to approximately the 10,000-foot (1,667-fathom) depth contour. The combined expanded boundary increases the size of the sanctuary from approximately 1,282 square miles (968 square nautical miles) to approximately 3,295 square miles (2,488 square nautical miles). The expanded area extends shoreward to the mean high water line, including restored wetlands, but does not include Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, Arena Cove or the Garcia River Estuary. The southern boundary and portions of the western boundary of GFNMS are coterminous with CBNMS. A map of the expanded sanctuary is available online at [http://farallones.noaa.gov/manage/expansion\\_cbgf.html](http://farallones.noaa.gov/manage/expansion_cbgf.html).

NOAA is increasing the size of CBNMS from approximately 529 square miles (399 square nautical miles) to 1,286 square miles (971 square nautical miles), by including the waters and submerged lands north and west of the original sanctuary. The revised boundary for CBNMS includes Bodega Canyon, a significant bathymetric feature that contributes directly to the biological productivity of the existing sanctuary ecosystem. Submarine canyons support deep water communities and affect local and regional water circulation patterns. The eastern and northern boundaries of CBNMS are coterminous with GFNMS.

NOAA has also made minor technical changes to the textual descriptions and point locations of the No-Anchoring Seagrass Protection Zones in the Tomales Bay area of GFNMS. NOAA converted metric values (hectares and meters) to nautical miles and miles to be consistent with the rest of the document. All zones with a shoreline component to their boundary are now described in language that complies with current ONMS conventions for boundary descriptions. In addition to modifying the text, the index numbers of some coordinate pairs were reordered and some coordinates were modified to accommodate the edited text. NOAA has made no change to the existing zone locations or areas, except that the boundary coordinates of Seagrass Protection Zone 5 were modified slightly to better align with GFNMS boundaries. Therefore, this final rule

corrects minor errors and incorporates these changes without significantly altering the size or location of the seagrass protection zones.

#### B. Summary of Existing Regulations Extended to the Expansion Areas

NOAA is extending the following prohibitions and exemptions from the original sanctuaries to the expansion areas.

##### • Prohibition on Certain Discharges (GFNMS and CBNMS)

Generally, discharging or depositing any material or other matter from within or into the sanctuary is prohibited in GFNMS and CBNMS with the following exceptions for all vessels including cruise ships: discharge of clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, anchor wash, and vessel engine or generator exhaust. All vessels other than cruise ships are also allowed to discharge or deposit within or into the sanctuary: fish, fish parts, chumming materials or bait as part of lawful fishing activities; clean effluent generated incidental to vessel use and generated by a Type I or II marine sanitation device; and clean vessel deck wash down. Note that the discharge prohibition applies not only to discharges and deposits originating in the sanctuary (*e.g.*, from vessels in the sanctuary), but also from discharges and deposits occurring above the sanctuaries.

The prohibition against discharge/deposit originating outside the sanctuary boundaries that subsequently enter and injure a sanctuary resource and quality is also being applied in the expansion areas, subject to the same exceptions described above for discharges within or into the sanctuary.

##### • Prohibition on the Take and Possession of Certain Species (GFNMS and CBNMS)

NOAA extends the prohibition on the taking or possession of any marine mammal, sea turtle or bird within or above the sanctuary unless it is authorized by the Marine Mammal Protection Act, as amended, (MMPA; 16 U.S.C. 1361 *et seq.*), Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA. This regulation under the NMSA provides an important and additional deterrent for violations of existing laws designed to protect marine mammals, birds, or sea turtles, than that provided by those other laws alone. It

does not apply to activities (including a federally or state-approved fishery) that have been authorized under the MMPA, ESA, MBTA or implementing regulations.

Therefore, under this regulation, if the National Marine Fisheries Service (NMFS) or the United States Fish and Wildlife Service (USFWS) issues a permit for, or otherwise authorizes, the take of a marine mammal, bird, or sea turtle, the permitted or authorized taking is allowed under this rule and would not require an additional sanctuary permit unless the activity also violates another provision of the sanctuary's regulations. The intent of this regulation is to enhance the protection of the diverse and vital marine mammal, bird, and sea turtle populations of the sanctuaries. This area-specific focus is complementary to efforts of other resource protection agencies.

- Prohibition on the Introduction of Introduced Species (GFNMS and CBNMS)

Since 2008, it has been unlawful to introduce or release an introduced species in the federal waters of both sanctuaries. Through a separate rulemaking, NOAA recently published a final rule prohibiting the introduction of an introduced species into the state waters within the original boundary of GFNMS (80 FR 8778). With this final rule, NOAA extends this prohibition on introducing an introduced species into the expanded areas of both GFNMS and CBNMS, subject to existing exceptions for catch and release of striped bass (*Morone saxatilis*) and for any aquaculture project conducted within Tomales Bay (in GFNMS) consistent with a permit, lease or license issued by the State of California.

- Prohibition on Construction on and Alteration of the Submerged Lands (GFNMS and CBNMS)

NOAA extends to the GFNMS expansion area the prohibition on constructing any structure other than a navigation aid on or in the submerged lands of the sanctuary; placing or abandoning any structure on or in the submerged lands of the sanctuary; or drilling into, dredging, or otherwise altering the submerged lands of the sanctuary in any way. This prohibition includes four exceptions: (1) Anchoring vessels; (2) while conducting lawful fishing activities; (3) routine maintenance and construction of docks and piers on Tomales Bay; or (4) aquaculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the

State of California. In addition, GFNMS regulations at 15 CFR 922.84 state that permitted activities existing prior to the expansion of the sanctuary may be allowed to continue through the process of certification described below.

For CBNMS, NOAA extends to the expansion area the existing regulation in the sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank, which prohibits drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing or abandoning any structure, material or matter on the submerged lands of the sanctuary. This prohibition includes two exceptions: (1) Anchoring vessels; and (2) while conducting lawful fishing.

- Prohibition on the Disturbance of Historic Resources (GFNMS)

NOAA extends to the expansion area for GFNMS the existing prohibition on possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure a sanctuary historical resource in the sanctuary. This regulation provides added protection to fragile, finite, and non-renewable resources so they may be studied, and appropriate information may be made available for the benefit of the public. The term "historical resource" is defined in ONMS program-wide regulations as any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. As defined in the National Historic Preservation Act, as amended, and NOAA national marine sanctuary regulations, (15 CFR 922.3), historical resources include "submerged cultural resources," and "historical properties." This rule prohibits the possession of a sanctuary historical resource regardless of whether it is possessed within or outside the sanctuary. For example, this rule makes it unlawful to possess anywhere an artifact that was unlawfully taken from a shipwreck in GFNMS.

- Prohibition on White Shark Attraction (GFNMS)

NOAA extends to the GFNMS expansion area the existing prohibition on attracting a white shark anywhere within the sanctuary. The intent of this regulation is to prevent harm or behavioral disturbance to white sharks, which are one of the key predators in the GFNMS ecosystem.

- Prohibition on the Desertion of Vessels (GFNMS)

NOAA extends to the GFNMS expansion area the existing prohibition on deserting a vessel aground, at anchor, or adrift in the sanctuary. Deserting a vessel increases the likelihood of a calamitous event or the risk of sinking, which could result in the discharge of harmful toxins, chemicals or oils into the marine environment, reducing water quality and impacting biological resources and habitats. In addition, the vessel itself and its materials on board can damage habitat. As defined in the regulations, the term "deserting" includes leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit; and the owner/operator fails to secure the vessel in a timely manner.

NOAA also is extending to the GFNMS expansion area the prohibition on leaving harmful matter aboard a grounded or deserted vessel in the GFNMS. Once a vessel is grounded or deserted, there is a high risk of discharge/deposit of harmful matter into the marine environment. Harmful matter aboard a deserted vessel also poses a threat to water quality. The prohibition implemented by this rule is intended to reduce or avoid harm to sanctuary resources and qualities from potential deposit or leakage of hazardous or other harmful matter from a vessel.

- Prohibition on Oil, Gas, or Minerals Exploration (CBNMS)

NOAA extends to the expansion area for CBNMS the existing prohibition on exploring for, developing or producing oil, gas, or minerals.

- Exemption for Department of Defense Activities (GFNMS and CBNMS)

NOAA extends to the GFNMS and CBNMS expansion areas each sanctuary's existing exemption for DOD activities necessary for national defense. The activities may be conducted in these areas, provided such activities were conducted by DOD on or prior to the effective date of the expansions. DOD activities necessary for national defense initiated after the effective date could be exempted after consultation with the sanctuary superintendent, with authority delegated from the ONMS Director. In CBNMS, DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions listed in the CBNMS regulations.



- Exemption for Emergencies (GFNMS and CBNMS)

NOAA extends to the GFNMS and CBNMS expansion areas the existing exemption for activities necessary to respond to an emergency threatening life, property, or the environment from sanctuary regulations.

- Exemption for Permitted Activities (GFNMS and CBNMS)

NOAA extends to the expanded area for both sanctuaries the exemption for activities permitted by the sanctuary superintendent, with authority delegated from the ONMS Director, in accordance with the permit issuance criteria found in 15 CFR 922.48, 15 CFR 922.83 (GFNMS) and 15 CFR 922.113 (CBNMS). It is important to note that permits will only be available for activities that would otherwise be prohibited by the regulations at 15 CFR 922.82(a)(2) through (a)(9) and (a)(11) through (a)(16) for GFNMS, and at 15 CFR 922.112(a)(2) through (a)(7) for CBNMS. No permit may be issued for activities that violate: 15 CFR 922.82(a)(1) (GFNMS) and 15 CFR 922.112(a)(1) (CBNMS), which prohibit the exploration for, development, or production of oil, gas or minerals within the sanctuary; 15 CFR 922.82(a)(10) (GFNMS) and 15 CFR 922.112(a)(8), which prohibit the introduction of an introduced species; and 15 CFR 922.82(a)(17) (GFNMS) and 15 CFR 922.112(a)(9) (CBNMS), which prohibit interference with an enforcement action. A sanctuary superintendent may issue a sanctuary permit to: (1) Further research or monitoring related to sanctuary resources and qualities; (2) further the educational value of the sanctuary; (3) further salvage or recovery operations; or (4) assist in managing the sanctuary.

- Issuance of Emergency Regulations (GFNMS and CBNMS)

The terms of designation for both sanctuaries include the authority for NOAA to issue regulations on an emergency basis to prevent immediate, serious and irreversible damage to sanctuary resources. In GFNMS, emergency regulations would be issued under national marine sanctuary system regulations at 15 CFR 922.44. In CBNMS, emergency regulations would be issued under site regulations at 15 CFR 922.112(d).

### C. Summary of Amendments to Existing Regulations

With this rule, NOAA is amending the following regulations and applying them throughout the sanctuaries, including in the expansion areas.

- New Exemption for Graywater Discharges (GFNMS and CBNMS)

With the final rule, NOAA is including an additional exemption to allow the discharge/deposit of graywater, as defined by section 312 of the Federal Water Pollution Control Act (FWPCA), by vessels less than 300 GRT, or vessels 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the sanctuary. This new exception does not apply to cruise ships. This modification recognizes the large area of the combined boundaries (and the difficulty some vessels may have to hold graywater while transiting the sanctuary), and now allows certain vessels to discharge clean graywater within the existing and expanded sanctuaries. Note that vessels greater than 300 GRT with holding capacity are still prohibited from discharging graywater anywhere in the sanctuary.

The graywater exemption also applies to the prohibition on a discharge/deposit originating outside the sanctuary boundaries that subsequently enters and injures a sanctuary resource or quality. Vessels less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity for graywater are exempt from this “enter and injure” prohibition.

- Prohibition on Oil, Gas, or Minerals Exploration (GFNMS)

NOAA is extending the existing GFNMS prohibitions on oil and gas exploration, development, and production to the expanded area, with the following modifications:

1. NOAA is amending the current GFNMS regulation to also prohibit exploring for, developing, or producing minerals within the existing and expanded GFNMS boundary to be consistent with the adjacent CBNMS and Monterey Bay National Marine Sanctuary. No commercial exploration, development, or production of minerals is currently conducted, nor is such activity anticipated in the near future.

2. NOAA is removing the GFNMS exception for laying pipelines related to hydrocarbon operations adjacent to the sanctuary. There are no existing or proposed oil or gas pipelines in the vicinity and no currently planned or reasonably foreseeable oil or gas leases or development projects that would necessitate pipelines.

- Prohibition on Operating MPWC (GFNMS)

GFNMS regulations in the original sanctuary prohibit the operation of all MPWC, except for emergency search

and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

This final rule does not change the prohibition on the operation of MPWC within the original sanctuary boundary and does not change the definition of MPWC. During the comment period, NOAA received a wide range of comments from the public regarding whether and how MPWCs should be regulated in the expansion area. As a result of the breadth and diversity of comments, NOAA is not extending the MPWC prohibition to the GFNMS expanded area from the southernmost tip of Bodega Head (the parallel at 38.29800 degrees North Latitude) and to the northern boundary near Point Arena so that it may consider the issue in more depth through a separate process, which will include public input, once the expansion of the sanctuary is final. Use of MPWC in most of the GFNMS expansion area will remain unregulated by NOAA at this time.

- Prohibition on Low Flying Aircraft in Designated Zones (GFNMS)

GFNMS regulations prohibit disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance (ASBS, see description below), except to transport persons or supplies to or from the Farallon Islands or for enforcement purposes. NOAA presumes that a failure to maintain a minimum altitude of 1,000 feet above ground level over such waters disturbs marine mammals or seabirds. NOAA is amending this regulation as follows: (1) Changing the name of all zones where this prohibition is applied to Special Wildlife Protection Zones (SWPZs); (2) changing the shape of these zones from round to polygon; (3) clarifying that the exception for transporting persons or supplies to or from Southeast Farallon Island is limited to transports authorized by the U.S. Fish and Wildlife Service, Farallon National Wildlife Refuge; and (4) adding two new SWPZs (where the low overflight restriction applies) in the GFNMS expansion area. The combined area for all seven SWPZs covers 2.77% of sanctuary waters (approximately 91.5 square miles). Each of these four changes is described in more detail below. NOAA provides the boundaries of the SWPZs as an appendix to the regulations. A map of the various zones designated in this rule can be viewed

online at [http://farallones.noaa.gov/manage/expansion\\_cbgf.html](http://farallones.noaa.gov/manage/expansion_cbgf.html).

1. NOAA is deleting the definition of ASBS in GFNMS regulations (although those areas are still designated by the state of California for water quality purposes and their status under State law remains unaffected by this rule). ASBS, as adopted by California's State Water Resources Control Board, are designated to protect water quality based on the presence of certain species or biological communities that, because of their value or fragility, deserve special protection. Within the original GFNMS boundaries, ASBS coincided with areas of high concentrations and/or biological diversity of breeding pinnipeds and birds and, as such, provided the rationale for NOAA's overflight restrictions. However, ASBS in the GFNMS expansion area are not in locations with high concentrations of breeding pinnipeds or birds.

Therefore, NOAA has added a definition for Special Wildlife Protection Zones (SWPZ) and is no longer utilizing the references to Bird Rock ASBS (at Tomales Point), Point Reyes Headlands ASBS, Double Point ASBS, Duxbury Reef ASBS, Bolinas Lagoon and the waters around the Farallon Islands. Instead, NOAA is renaming and redefining these areas as SWPZs. NOAA is also designating two new SWPZs in the GFNMS expansion area where breeding birds and pinnipeds aggregate and would benefit from overflight restrictions. Within these SWPZs, disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters (except when transiting SWPZs to transport authorized persons or supplies to or from Southeast Farallon Island authorized by the U.S. Fish and Wildlife Service, Farallon National Wildlife Refuge, or for enforcement purposes) is prohibited. Failure to maintain a minimum altitude of 1000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds. This presumption of disturbance could be overcome by contrary evidence that disturbance did not, in fact, occur (e.g., evidence that no marine mammals or seabirds were present in the area at the time of the low overflight).

2. With this rule NOAA is also changing the shape of the zones from circles to polygons to improve the compliance with regulations that apply in the zones and has delineated boundaries around known points, islands and landmarks. These five SWPZs—Tomales Point, Point Reyes, Duxbury Reef-Bolinas Lagoon, and two zones at the Farallon Islands—remain

similar in size and location to the original low overflight restriction areas (Bird Rock ASBS, Point Reyes Headlands ASBS, Double Point ASBS, Duxbury Reef ASBS, Bolinas Lagoon and the waters around the Farallon Islands). The new SWPZs result in a slight increase in zone size for some areas and a decrease in size in other areas. NOAA believes the small changes in size to these zones add little to no additional flight time for aircraft and therefore result in a negligible change of operations for low flying aircrafts above the existing sanctuary. A detailed description of each of the zones may be found in the FEIS section 3.2.

3. The final rule clarifies that the exemption for low overflight restriction at SWPZ 6 applies specifically to persons authorized by the U.S. Fish and Wildlife Service and Farallon National Wildlife Refuge to allow transiting Zone 6 to transport authorized persons or supplies to or from Southeast Farallon Island, or for enforcement purposes.

4. This rule is creating two new SWPZs in the GFNMS expansion area. Low overflight restriction regulations will apply to the two new SWPZs. The first zone extends south along the coast from Havens Neck in Mendocino County approximately 10 miles to Del Mar Point in Sonoma County. The size of this zone is approximately 10.5 square miles. The second zone extends south along the coast from Windermere Point, north of the Russian River in Sonoma County, approximately 14 miles to Duncan's Point. The size of the zone is approximately 21.4 square miles. The overflight restrictions for these two new zones, consistent with those of the SPWZs within the original GFNMS boundaries, are intended to protect high concentrations of breeding pinnipeds and birds from certain human activities that could harm these sensitive resources.

- Prohibition on Cargo Vessels in Designated Areas (GFNMS)

NOAA is amending the regulation that prohibits cargo vessels from transiting closer than two nautical miles from the Farallon Islands, Bolinas Lagoon, or any ASBS. As previously explained, these areas are now renamed SWPZs. Restricting the distance that cargo vessels may approach SWPZs is intended to prevent wildlife disturbance and minimize the risk of oil spills in these areas. For the five cargo vessel prohibition zones in the original sanctuary boundaries, NOAA is changing the shape from circles to polygons to improve the compliance with this regulation and to facilitate enforcement. Although a cargo vessel

prohibition zone currently exists at the Middle Farallon Island, NOAA is now removing it because the International Maritime Organization amended the San Francisco Traffic Separation Scheme to route vessel traffic farther away from the Farallon Islands, virtually eliminating the potential for cargo vessels to transit the area between those islands. Because SWPZs extend one mile seaward from land and because the cargo vessel restriction zones would extend one additional mile beyond SWPZs, this rule creates a two nautical mile cargo vessel restriction zone. Thus, the overall size and location of the new zones will not significantly differ from the existing areas, resulting in a negligible change for transiting cargo vessels.

In addition, NOAA is adding two new cargo prohibition zones in the expansion area that extend one nautical mile beyond each of the two newly designated SWPZs. Operating any vessel engaged in the trade of carrying cargo is prohibited in the zones. The combined area of the new cargo vessel zones in the expansion area is approximately 61.7 square miles. These two new zones are inshore of known cargo vessel traffic routes; therefore NOAA does not expect them to interfere significantly with current cargo vessel traffic. NOAA provides the boundaries of the cargo vessel restriction zones as an appendix to the regulations. A map of the various zones designated with this rule is available online at [http://farallones.noaa.gov/manage/expansion\\_cbgf.html](http://farallones.noaa.gov/manage/expansion_cbgf.html).

- Prohibition on White Shark Approach (GFNMS)

This final rule modifies the locations where approaching a white shark is prohibited at the Farallon Islands. NOAA originally prohibited approaching within 50 meters of a white shark within two nautical miles of the Farallon Islands to prevent harassment and to reduce wildlife disturbance to white sharks. The rule removes the approach prohibition around Middle Farallon Island because NOAA no longer considers the waters around that island as a location of primary food source for white sharks. NOAA is maintaining the zones off North and Southeast Farallon Islands and reconfiguring those zones to polygon shapes to improve compliance. NOAA provides the boundaries of the prohibition zones as an appendix to the regulations. As now revised, the combined area of the two new white shark protection zones is approximately 47.7 square miles, which reduces the total size of the prohibition area by approximately 4.5 square miles. NOAA

believes this change in boundaries will result in a negligible change for researchers and tourism operators in the existing sanctuary and the reconfiguration of zones will result in more effective resource protection.

- **Procedures To Certify Certain Activities [GFNMS]**

NOAA is amending the explanation of the procedure by which preexisting leases, permits, licenses, or approvals for activities in the expansion area and in existence on the effective date of the sanctuary expansion may be certified (see 15 CFR 922.84). NOAA clarifies that the certification process will only apply to activities in the expansion area, defines the application process, including limiting the duration of time for the application submittal process, and establishes criteria for the certification approval process. The certification process is developed as part of a separate mandate under the NMSA and is unrelated to the authorization process proposed by NOAA in the proposed rule.

- **D. Summary of New Regulations**

NOAA is implementing the following new prohibitions and exemptions for the existing and expanded sanctuary area.

- **Prohibition on Interference With an Investigation (GFNMS and CBNMS)**

NOAA is adding new regulations that apply in the original and expanded areas of GFNMS and CBNMS. The regulations prohibit interfering with, obstructing, delaying, or preventing an investigation, search or seizure in connection with an enforcement action related to the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*). For better compliance with sanctuary regulations, this regulation codifies an existing mandate from the NMSA (16 U.S.C. 1436).

- **Prohibition on the Disturbance of Historic Resources (CBNMS)**

NOAA is adding a new regulation to the existing and expanded CBNMS boundary prohibiting disturbance of, or attempts to disturb, a sanctuary historical resource within CBNMS (this prohibition already exists within GFNMS). This new prohibition helps protect fragile, finite, and non-renewable historical resources so they may be studied, and appropriate information may be made available for the benefit of the public. This rule also prohibits the possession of a sanctuary historical resource, and provides for comprehensive protection of sanctuary resources by making it illegal to possess

historical resources in any geographic location. For example, under this regulation it is unlawful for anyone to possess an artifact taken from a shipwreck in CBNMS, even if the artifact is no longer in the sanctuary.

- **IV. Changes From Proposed to Final Rule**

Based on public comments received between April 14 and June 30, 2014, as well as internal deliberations and interagency consultation, NOAA has made the following changes to its proposed rule. NOAA has revised the FEIS accordingly.

- **1. Authorization Authority for CBNMS and GFNMS**

In the proposed rule, NOAA proposed adding to the GFNMS and CBNMS regulations the authority for ONMS to consider an otherwise prohibited activity if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization (“authorization authority”). While NOAA believes authorization authority is a valuable tool for managing certain coastal and marine uses within national marine sanctuaries, the agency has removed this proposal in response to the wide range of concerns expressed by the public during the comment period. NOAA is not amending the regulations at 15 CFR 922.49 (ONMS regulations), 15 CFR 922.82(e) (GFNMS regulations) or 15 CFR 922.112(d) (CBNMS regulations) that would have given GFNMS and CBNMS authorization authority. NOAA intends to initiate a separate process that will include public input on the topic of authorization authority for GFNMS and CBNMS after the finalization of this expansion rule.

- **2. Certification of Existing Uses**

Because of the possibility that preexisting activities that are permitted by other federal or state agencies might be occurring within the GFNMS expanded area that would otherwise be prohibited by GFNMS regulations, NOAA is clarifying the language at 15 CFR 922.84 describing the process by which it can certify existing permitted activities within the expansion area. In compliance with the NMSA, GFNMS regulations at 15 CFR 922.84 state that certification is the process by which permitted activities existing prior to the expansion of the sanctuary that violate sanctuary prohibitions may be allowed to continue, provided certain conditions are met. The certification process only applies to activities in the GFNMS expanded area. Applications for certifying permitted existing uses must

be received by NOAA within 90 days of the effective date of this final rule. In the proposed rule, the time period when an application for certifying permitted existing uses should be received was 60 days. However, to ensure sufficient time for outreach and for any potential party affected to prepare an application, NOAA has extended the time period to 90 days.

- **3. Description of the Area for GFNMS**

NOAA has made a small change to its proposed estimate of the area for GFNMS, changing it from 3,297 square miles (2,490 square nautical miles) to 3,295 square miles (2,488 square nautical miles), due to the following factors: Change of boundaries at Arena Cove (described below); use of an updated NOAA shoreline map; and the exclusion of offshore rocks and islands that are above the mean high water line. In addition, NOAA removed the reference to Giacomini Wetland in the description of the sanctuary that was included in the proposed rule. The reference generated confusion regarding the areal extent of Tomales Bay that is within the sanctuary. NOAA was not proposing to change the GFNMS boundary in Tomales Bay. The addition of Giacomini Wetland to the GFNMS boundary occurred as a result of the migration of the Mean High Water Line in Tomales Bay when the Waldo Giacomini Ranch was converted into a wetland through the Giacomini Wetland Restoration Project. The purpose of previously listing its inclusion in the current boundary description was to inform the public that since the last official boundary area calculation, which was conducted in 2007, GFNMS waters have since migrated into the Giacomini Wetland and those waters overlap with National Park Service property. However, it is not necessary to include the wetland as part of the boundary description, so the specific reference to Giacomini Wetland is removed from the final boundary description in order to avoid confusion.

- **4. Arena Cove**

After careful consideration of all comments, NOAA has adjusted the sanctuary boundary to exclude a larger area of Arena Cove than originally proposed. The final boundary for Arena Cove is approximately 900 feet from the end of the harbor pier, which excludes all of the current harbor moorings within the cove and allows for expansion of pier and harbor operations. The final boundary is drawn at a line that connects two points on each side of the cove. NOAA rejected one suggestion to align the boundary with the existing

buoy at the edge of the harbor, given the buoy is not a fixed location and would require use of latitude/longitude coordinates for boundary identification (which is less effective for compliance and enforcement purposes). This change at Arena Cove decreases the size of the expanded sanctuary by approximately one tenth of a square nautical mile.

#### 5. MPWC Use

In the proposed rule, NOAA had proposed restricting use of MPWCs to specific zones in the GFNMS expansion area. As proposed, MPWCs would have been prohibited in most of the area. However, due to the range of comments in support of, in opposition to, and suggesting change to the MPWC regulations in the proposed rule, NOAA has removed its proposal for MPWC use zones from this final action. NOAA has concluded that addressing the various, divergent public comments and the issues that were raised regarding MPWC regulations in the expansion area is not feasible at this time. As a result, MPWCs are not regulated in most of the expansion area, from the southernmost tip of Bodega Head (the parallel at 38.29800 degrees North Latitude) to the northern boundary near Point Arena, with this rulemaking, but will continue to be prohibited (with exceptions) in the existing GFNMS boundaries, including Bodega Bay.

Furthermore, because NOAA is removing its former MPWC proposal in this final action, the proposed requirement of a GPS unit for all MPWCs is also being removed from this final rule. The existing definition of MPWC will remain unchanged and continue to apply in the original area of GFNMS. NOAA intends to initiate a separate public process on the topic of MPWC for GFNMS after the finalization of this expansion rule to receive additional public input and information on this issue.

#### 6. Special Wildlife Protection Zone (SWPZ) Definition

Given the confusion of public comments over the types of activities that would be regulated within SWPZs, this final rule revises the proposed definition of SWPZs at 15 CFR 922.81 in order to clarify its intent. This change clarifies that SWPZs are defined areas susceptible to human disturbances. Specific prohibitions for transiting cargo vessels, low flying aircraft and vessels approaching white sharks within these zones apply to the SWPZs. NOAA is also clarifying that SWPZs do not include pinniped and bird resting and foraging areas. The definition is purposefully limited to breeding

pinnipeds, and, at this time, is not intended to address other marine mammals such as whales and dolphins. The definition has also been modified from “seabirds” to “birds” to include all breeding birds (*e.g.* oyster catchers) that may be susceptible to human disturbance from low flying aircraft and transiting cargo vessels along the sanctuary shoreline.

#### 7. Overflight Exception for SWPZ 6

In its proposed rule, NOAA recommended the following exception for SWPZ 6: “. . . transiting Zone 6 to transport authorized persons or supplies to or from Southeast Farallon Island or for enforcement purposes.” Based on comments submitted by the Department of the Interior, NOAA is clarifying that this exception applies specifically to persons authorized by the U.S. Fish and Wildlife Service and Farallon National Wildlife Refuge. The exception for enforcement purposes remains unchanged.

#### 8. Use of the Term “Mariculture”

NOAA has historically used the term “mariculture” in the original GFNMS terms of designation and regulations. However, the term “aquaculture” has now become more widely used to describe the same activities as those described as “mariculture,” is used by other national marine sanctuaries (including the adjacent Monterey Bay NMS), and is the term used in NOAA’s 2011 policy on aquaculture. With this final rule, NOAA replaces the term “mariculture” with “aquaculture” in the GFNMS regulations. This is a technical change that does not have any effect on the types of activities subject to NOAA regulation.

#### 9. Separate Rulemaking on Introduced Species

NOAA has been conducting a separate rulemaking on regulations relating to the introduction of introduced species in GFNMS and MBNMS. That rulemaking, completed prior to this final rule, amends regulations and terms of designation for GFNMS. Accordingly, this final rule includes this new regulatory language that had not yet been promulgated when the proposed rule for boundary expansion was published. Changes include the actual regulatory prohibition in § 922.82(a)(10), a reference to the boundary of Tomales Bay added as appendix D to the subpart, and a new § 922.85 regarding a memorandum of agreement between NOAA and state agencies describing how the agencies will consult on any future review of aquaculture projects in Tomales Bay. These changes are not part

of this action, but were subject to public review in that separate rulemaking and are presented as part of the current regulations that now apply in GFNMS.

#### 10. Boundary Coordinates

NOAA is providing exact boundary coordinates for the regulations that prohibit transit of cargo vessels and approaching a white shark, whereas in the proposed rule the areas were only defined by specifying a one-mile radius around SWPZs.

#### 11. Cultural Resources Within the Terms of Designation for CBNMS and GFNMS

The existing terms of designation for both GFNMS and CBNMS describing activities subject to regulation included the general term “activities regarding cultural and historical resources.” Consistent with the regulations already in place for both sanctuaries and with the terms of designation for the adjacent Monterey Bay National Marine Sanctuary, NOAA has clarified the activities subject to regulation related to cultural resources are in fact: Taking, removing, moving, collecting, possessing, injuring or causing the loss of, or attempting to take, remove, move, collect, injure or cause the loss of cultural or historical resources.

#### 12. Permits for Oil, Gas, and Minerals Within the Terms of Designation for CBNMS and GFNMS

In the proposed rule, NOAA proposed placing the following phrase in the GFNMS and CBNMS terms of designation Article IV, Section 1: “In addition, the Secretary may not under any circumstances issue a permit or authorization for exploring for, developing or producing oil, gas, or minerals within the Sanctuary.” NOAA has determined that this phrase is better placed in the terms of designation Article V, Section 3 for both sanctuaries, with slight modification, to read as follows: “In addition, a permit or authorization may not be issued under any circumstances for exploring for, developing or producing oil, gas, or minerals within the Sanctuary.”

### V. Response to Comments

NOAA received over 1,000 comments on the DEIS, proposed rule and GFNMS and CBNMS draft revised management plans during the April 14 to June 30, 2014 public review period. Comments were received via mail, submissions on the *regulations.gov* Web site and oral testimony at four public meetings.

NOAA summarized the comments according to the content of the statement or question put forward in

written statements or oral testimony regarding the proposed action and alternatives. NOAA also made changes to the DEIS, proposed rule and CBNMS and GFNMS management plans in response to the comments, where appropriate, including updates to data where the comments affect the impact analysis or are relevant to the sanctuary action plans. Several technical or editorial comments on the DEIS and management plans, and comments merely pointing out a mistake or missing information were addressed directly in the body of the documents in question, without a separate response being presented by NOAA.

Overall, there was strong support for the proposed sanctuary boundary expansion and the proposed actions for increasing protection of marine resources. Most comments focused on the regulatory aspects of the proposed action, including concerns about the proposed authorization authority, motorized personal watercraft use, and the proposed Special Wildlife Protection Zones. Boundary issues were focused primarily on the inclusion of estuaries and river mouths and on extending the boundaries to include the entire Mendocino coastline. Numerous comments requested modifications to the draft revised sanctuary management plans to strengthen resource protection. Each of these issues is addressed below.

Comments were grouped into categories, starting with more general issues, followed by specific issue comments, most of which correspond to the EIS issue area topics (e.g., biological resources, fishing, oil and gas facilities, military uses, etc.). For most topics, there are numerous sub-categories or issues, under which several comments may have been combined.

#### *General Support and Opposition of Proposed Sanctuary Expansion*

##### *Support for Sanctuary Expansion*

*Comment:* Many comments voiced support for the proposed expansion of sanctuary boundaries and encouraged NOAA to proceed with the expansion process.

*Response:* Comment noted.

##### *Opposition to Sanctuary Expansion*

*Comment:* Some of the comments stated opposition to the overall sanctuary expansion process for various reasons.

*Response:* Comment noted.

##### *Authorization Authority*

*Comment:* NOAA should remove its proposal to provide GFNMS and CBNMS with the authority to authorize

the permits of other agencies for activities that would otherwise be prohibited within the sanctuaries because it would allow activities in conflict with marine resource protection.

*Response:* Due to issues raised regarding authorizations in comments received during the public review period, NOAA has removed authorization authority from the final regulations for both sanctuaries. However, NOAA believes authorization authority could be a valuable tool in managing several types of uses that currently occur in the proposed expansion area or may be proposed in the future in the expanded sanctuaries. NOAA intends to conduct a separate process with sanctuary advisory councils and public input to consider authorization authority after this rule is finalized.

*Comment:* NOAA should narrow or otherwise limit the list of uses that could be approved through the authorization process, such as sewage discharges.

*Response:* NOAA intends to conduct a separate public process to consider authorization authority after this rule is finalized. As part of this process, NOAA will consider which activities could be potentially considered for an authorization.

*Comment:* NOAA should move forward with authorization authority, because it may be useful for considering activities with minimum impacts and for improving consultation with other agencies.

*Response:* NOAA originally proposed adding authorization authority at both sanctuaries because it has proven to be a useful and necessary regulatory tool at other sanctuaries similar in size and scope to GFNMS and CBNMS. As described in the responses above, NOAA will rely on a separate process to work with communities, including other agencies, on the need for and benefits of extending authorization authority to GFNMS and CBNMS.

##### *Boundaries*

##### *Western Boundaries of CBNMS and GFNMS*

*Comment:* NOAA should make minor adjustments to the proposed western boundaries: they are highly angular and may not consistently reflect actual wildlife activity.

*Response:* The western, northern, and southern boundaries of the expanded CBNMS and GFNMS correspond to specified points of latitude and longitude primarily for purposes of enforcement and education. Many

species of marine mammals, fish, birds and invertebrates inhabit the waters and submerged lands in the proposed expanded sanctuaries and it would be difficult to design boundaries to reflect specific wildlife activity. In addition, the proposed western boundaries meet the purpose for the action by containing most of the source waters of CBNMS and GFNMS stemming from the upwelling cell originating off Point Arena. As such, NOAA is not changing the expanded western boundaries of CBNMS and GFNMS as described.

##### *Expand GFNMS To Include Portions of the MBNMS Boundary*

*Comment:* NOAA should include a portion of the Marin County coastline to Point Bonita; or the entire Marin County coastline; or the northern region of MBNMS from Año Nuevo to the current GFNMS boundary at Rocky Point to reflect the oceanographic boundaries of GFNMS and improve conservation and management over these waters.

*Response:* Expanding the GFNMS boundary to include waters adjacent to the southern portion of Marin County outside of the current MBNMS boundary, or the waters adjacent to the Marin County or San Mateo County coast within MBNMS, is outside the scope of this proposed action. GFNMS has administrative jurisdiction over the northern portion of MBNMS, from the San Mateo/Santa Cruz County line northward to the existing boundary between the two sanctuaries, including the waters adjacent to southern Marin County and most of San Mateo County. MBNMS remains the lead for water quality issues in this area. NOAA is satisfied with the effectiveness of the management framework at this time.

##### *Expand CBNMS and GFNMS in Other Configurations or Size*

*Comment:* NOAA should design CBNMS and GFNMS boundaries in other configurations than the proposed action or alternatives.

*Response:* NOAA believes the boundary configuration best meets the stated purpose of the proposed action to protect upwelling off Point Arena and waters flowing south from it to CBNMS and GFNMS.

*Comment:* NOAA should expand CBNMS and GFNMS boundaries even farther north to include other communities interested in protecting areas through a national marine sanctuary.

*Response:* The purpose of this action is to protect the upwelling cell originating off Point Arena. NOAA believes the northern boundary of GFNMS properly encompasses the area

oceanographically and ecologically. However, NOAA has recently developed a process for communities to nominate areas for consideration as a national marine sanctuary as described online at <http://www.nominate.noaa.gov/>. Any community group interested in additional protection for nearby coastal waters can consider that process.

#### Arena Cove Boundary

*Comment:* NOAA should exclude a larger area of Arena Cove than what was proposed in order to lessen impacts of regulations on current human uses in the cove, such as moorings.

*Response:* After careful consideration of all comments, NOAA has adjusted the sanctuary boundary to exclude all of Arena Cove. Thus, the final boundary excludes all of the current harbor moorings as well as all basic pier and harbor operations immediately west of the end of the pier. Other activities, such as discharges from fireworks, will not be regulated by GFNMS, provided the discharges fall within the area of Arena Cove that is not included in the sanctuary. The final boundary excludes Arena Cove shoreward of a line that connects the two points on the northwest and southeast sides of the cove. The boundary is shown in Figure 3.2—16 in the FEIS.

*Comment:* NOAA should include all of Arena Cove, because without sanctuary protection, incompatible uses such as oil and gas facilities may be permitted within and adjacent to the cove.

*Response:* With this final rule, oil and gas exploration and development is prohibited in the expansion area, including areas adjacent to Arena Cove. Although sanctuary regulations do not apply in Arena Cove, there are state regulations and restrictions that prohibit oil and gas development in state waters, which include Arena Cove. Therefore, given the small area excluded in Arena Cove, and the presence of other existing regulations in adjacent waters, NOAA believes it is unlikely that oil and gas facilities would be constructed in Arena Cove.

#### Giacomini Wetland and Overlap With National Park Service (NPS) Boundaries

*Comment:* NOAA should clarify the extent of the overlap between sanctuary waters and the Giacomini Wetland, as well as any jurisdictional conflict with the NPS.

*Response:* NOAA was not proposing a change to the GFNMS boundary in Tomales Bay. By mentioning the Giacomini Wetland in the description of the sanctuary, the proposed rule generated some confusion regarding the

areal extent of GFNMS in Tomales Bay. The addition of Giacomini Wetland to the GFNMS boundary occurred as a result of the migration of the mean high water line in Tomales Bay when the Waldo Giacomini Ranch was converted into a wetland through the Giacomini Wetland Restoration Project. The purpose of listing its inclusion in the proposed boundary description was to inform the public that since the last official boundary area calculation in 2007, GFNMS waters have since migrated into the Giacomini Wetland and those waters overlap with NPS property. However, it is not necessary to list this area in the boundary description since the mean high water line is the official boundary of the sanctuary in that location, so the specific reference to Giacomini Wetland has been removed from the boundary description in the final rule.

GFNMS boundaries currently overlap with the NPS in Tomales Bay on the east and south shores. The GFNMS boundary does not affect the NPS' authority to extend its boundaries into the sanctuary. As a routine matter, NOAA coordinates its management efforts with NPS and any potential future conflicts that may arise would be addressed through this coordination.

#### Inclusion of Estuaries and Russian River Mouth

*Comment:* NOAA should include the Russian River Estuary, Salmon Creek Estuary, Gualala River Estuary, and the Garcia River Estuary to the mean high water line, in the expanded sanctuary.

*Response:* In this rule, NOAA is only extending the GFNMS boundary to mean high water and outside of river mouths and estuaries. The revised GFNMS management plan includes an activity requesting the Sanctuary Advisory Council to provide recommendations on the possible inclusion of coastal estuaries in the sanctuary.

*Comment:* NOAA should clarify that the Russian River Estuary Management Project, which is managed by the Sonoma County Water Agency, is outside the proposed boundaries of the GFNMS and CBNMS expansion.

*Response:* NOAA confirms the new GFNMS boundaries are outside those of the Russian River Estuary Management Project. A map showing sanctuary boundaries is available for download in the "management section" on the GFNMS Web site: [http://farallones.noaa.gov/manage/expansion\\_cbgf.html](http://farallones.noaa.gov/manage/expansion_cbgf.html).

*Comment:* NOAA should add a coordinate between Points 37 and 38 to further clarify the proposed boundary

expansion at the mouth of the Russian River.

*Response:* A new coordinate at the Russian River is not necessary. When a national marine sanctuary does not include a certain estuary, NOAA identifies the boundary as crossing the mouth of the river or creek in a straight line that intersects the mean high water line on each side. This straight line is defined by two points, one on either side of the river or creek. A third point is not necessary unless the line has multiple segments.

#### Purpose and Need for Proposed Expansion/Regulations

*Comment:* NOAA should explain why it aims to protect only one upwelling area when the upwelling phenomenon occurs throughout the coastline along California, Oregon and Washington.

*Response:* The upwelling cell originating at Point Arena, which is strongly linked with the sanctuary waters to the south, is distinctly different and is largely separate from other upwelling cells to the north. Including other upwelling cells to the north or south of the existing CBNMS and GFNMS would not support the purpose and need for this proposed action, because there is less ecological connection between those upwelling cells and the waters of CBNMS and GFNMS. Additional information is provided in Sections 2.1 and 2.2 of the FEIS.

*Comment:* NOAA should elaborate on how sanctuary expansion would offer more protection to resources in the upwelling zone. There are both negative and beneficial effects of the proposed action, and there does not appear to be adequate analysis of a net benefit beyond existing protections such as the State-designated marine protected areas (MPAs).

*Response:* NOAA's regulations do not duplicate those of the state MPAs (which primarily restrict fishing), but rather complement them. Sanctuary regulations, as well as its research and education programs, collectively provide additional protection for resources in the upwelling zone. Examples of regulations that provide additional protection include prohibitions on oil and gas exploration, discharges of harmful matter, and altering the submerged lands.

The analysis in the FEIS finds that none of the alternatives would result in a significant adverse impact on any of the marine resources or uses in the existing CBNMS or GFNMS or expansion areas of the two sanctuaries. NOAA identified substantial benefits to physical resources, biology and cultural

and maritime heritage resources as a result of habitat qualities maintained or improved, with negligible costs to businesses in the commercial and recreational fishing industry. For a summary of benefits, see FEIS Section 4.11.2.

### Sanctuary Regulations

#### Existing Regulations Alternative

*Comment:* NOAA should adopt the Existing Regulations alternative as the preferred alternative rather than the proposed action, in order to be consistent with bills proposed in the past by then-Representative Lynn Woolsey and Senator Barbara Boxer.

*Response:* The administrative process to expand a national marine sanctuary under the authority of the National Marine Sanctuaries Act (NMSA) requires NOAA to examine current agency authorities and management regimes and consider the results of agency and tribal consultations, and public input. When developing the DEIS for the expansion proposals, NOAA determined that modifications to existing regulations would better address and protect sanctuary resources in both the existing and expanded sanctuary boundaries. NOAA believes the regulatory modifications are important in ensuring protection of marine resources and balancing uses consistent with resource protection within sanctuary waters. Furthermore, modifications to existing regulations would bring consistency with regulations in other national marine sanctuaries. Some modifications to existing regulations, such as removing the exemption for constructing an oil and gas pipeline across GFNMS, received considerable public support. NOAA intends to conduct separate public review processes for those proposed actions that require more public deliberation, such as the inclusion of rivers and estuaries. NOAA's final action meets the overall intent of the proposed legislation from former Representative Woolsey and Senator Boxer.

#### Separate Regulations Amendment Process

*Comment:* NOAA should consider any change to sanctuary regulations through a separate process after the geographic expansion becomes final, particularly for the proposed authorization of certain prohibited activities and the motorized personal watercraft (MPWC) regulations.

*Response:* When developing the DEIS for the expansion proposals, NOAA determined that modifications to

existing regulations would better address and protect sanctuary resources in both the existing and expanded sanctuary boundaries. After this rule is finalized, NOAA intends to carry out a separate public review process to address authorization authority and the use of MPWC in the expansion area. Other potential changes to sanctuary regulations could be considered as well.

#### National Regulations Concern

*Comment:* In their January 2013 proposed national regulations, NOAA did not adequately describe the set of criteria by which NOAA would determine whether an authorization is granted for an activity otherwise prohibited in a national marine sanctuary.

*Response:* As noted above, NOAA is not including authorization authority in this final rule, but intends to consider it in a subsequent, separate action. Comments on NOAA's January 2013, rulemaking are outside the scope of this proposed action.

#### Other Regulations

*Comment:* NOAA should connect sanctuary-specific regulations with regulations from other environmental statutes in order to more effectively protect land, water and air.

*Response:* Several regulations for both GFNMS and CBNMS already include specific references to other resource agencies, such as the discharge regulation (Environmental Protection Agency), the regulation prohibiting take of certain species (NMFS), and the introduced species regulation (State of California). Additionally, one of the mandates of the NMSA is to "develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, [ . . . ]" (16 U.S.C. 1431(b)(7)). For this final rule, NOAA consulted with a variety of agencies that share jurisdiction over the resources in the waters of the national marine sanctuaries (see Appendix F in FEIS). These consultations were designed not only to ensure seamless coordination among agencies, but also to explore opportunities for further aligning agency efforts to maximize the conservation goals of the sanctuary expansion. NOAA will continue to engage other agencies through direct consultation and participation on the sanctuary advisory councils.

#### Recreational or Commercial Use Zones

*Comment:* NOAA should consider the development of marine zones in order to

allow for some submarine cable activities or yet to be determined future recreational and/or commercial uses.

*Response:* NOAA is not aware of any upcoming proposals to lay cables through the sanctuary and believes the establishment of such cable zones to be premature. However, the maintenance of any existing cables would qualify for a certification of pre-existing authorizations or rights in accordance with national regulations at 15 CFR 922.47 and GFNMS regulations at 15 CFR 922.84. If new marine zones were warranted for future commercial or recreational activities, NOAA could then initiate a separate public process to consider those actions.

#### Restrict Vessel Speed

*Comment:* NOAA should consider regulating vessel speed as the primary means for reducing lethal vessel collisions with whales and for reducing chronic exposure of whales to underwater engine and propeller noise.

*Response:* NOAA is in the process of investigating Dynamic Management Areas (DMAs) as a way to address ship speed in the shipping lanes at the approaches to San Francisco Bay. DMAs were recommended in the CBNMS and GFNMS advisory councils' joint working group report, *Vessel Strikes and Acoustic Impacts*. A first step is to request voluntary speed restrictions for vessels transiting shipping lanes at the entrance of San Francisco Bay when there is a high concentration of whales. NOAA began implementing this approach in 2014, by requesting vessels to slow-down to ten knots or less in one of three lanes with the highest concentration of whales at the approach to San Francisco Bay. NOAA has also begun implementing a whale sighting network along the west coast to help build a robust monitoring program. Therefore, NOAA is not promulgating new regulations on vessel speed in GFNMS or CBNMS at this time. For a list of current actions to reduce risk of ship strikes to whales conducted by CBNMS, GFNMS, and other national marine sanctuaries on the west coast see the Web site <http://sanctuaries.noaa.gov/protect/shipstrike/research.html>.

#### Emergency Regulation of Activities

*Comment:* In a separate regulatory process NOAA should add a clause for regulating an activity on an emergency basis for no more than 120 days in GFNMS.

*Response:* The terms of designation for GFNMS already allow NOAA to adopt immediate temporary regulation, including prohibition, where necessary

to protect sanctuary resources (Article 4, Section 3). To date, NOAA has not adopted an emergency regulation for GFNMS, but it has the authority to do so, should the need arise in the future. CBNMS and MBNMS have this same authority.

#### Harmful Matter Definition

*Comment:* NOAA should define harmful matter, and add introduced species (including non-native terrestrial species such as rodents) in that definition.

*Response:* Harmful matter and introduced species are already defined at 15 CFR 922.81 for GFNMS and 922.111 for CBNMS. NOAA is addressing matters related to introduced species in GFNMS in a separate rulemaking. See comment below for additional information regarding introduced species.

#### Introduced Species

*Comment:* NOAA should not allow exotic species to be brought into the California marine environment via aquaculture, and should ban offshore finfish aquaculture.

*Response:* NOAA does not expressly prohibit aquaculture in GFNMS or CBNMS. However, any proposed aquaculture project in the sanctuaries may be subject to several existing prohibitions: Constructing on or altering the submerged lands; discharging any matter or material; and introducing introduced species into the sanctuary (see also response to comment "Aquaculture" in the Fishing section). NOAA recently finalized a prohibition on introduced species in the state's waters of the GFNMS. With this final rule, NOAA extends that prohibition all areas within GFNMS, with exceptions for shellfish aquaculture in Tomales Bay and the catch and release of striped bass.

#### Air Quality and Climate Change

##### Climate Change Benefits on Wildlife

*Comment:* NOAA should better describe the proposed action's potential benefits to wildlife from reducing the effects of climate change. The proposed expansion of the sanctuary could result in further habitat protection from human disturbance, which could help counter increased stress in wildlife due to climate change.

*Response:* NOAA analyzes the beneficial effects of the GFNMS and CBNMS regulations on biological resources in the FEIS (see Section 4.3.4), including positive direct and indirect impacts from prohibiting harmful activities. Although it is likely these

benefits would help offset impacts of climate change on wildlife, the extent of the benefit is not currently quantifiable. Text has been added to the FEIS to note potential benefits related to offsetting climate change impacts on wildlife.

*Comment:* With the expansion of the sanctuaries, NOAA should conduct more research on climate change such as ocean acidification.

*Response:* The management plans for both CBNMS and GFNMS contain Conservation Science Action Plans, which include goals to increase knowledge and understanding of the sanctuaries' ecosystem, develop new and continue ongoing research and monitoring programs to identify and address specific resource management issues, and encourage information exchange and cooperation. Both sanctuaries participated in development of the Ocean Acidification Action Plan for national marine sanctuaries of the west coast. The plan has numerous research recommendations for studying ocean acidification. The report is available at: <http://sanctuaries.noaa.gov/about/westcoast.html#oa>.

#### Biological Resources

##### Abalone Protection

*Comment:* NOAA and the California Department of Fish and Wildlife (CDFW) should work cooperatively to ensure adequate abalone protection.

*Response:* CDFW is the state agency responsible for managing abalone stocks. NOAA will continue partnering with the state on a range of resource protection issues in the GFNMS and CBNMS expansion areas, including protection of red abalone habitat and populations, as well as recovery of the endangered black abalone.

##### Endocrine Disruption

*Comment:* NOAA and other institutions should address problems related to endocrine disruption and other pollutants.

*Response:* The Water Quality Action Plan in the GFNMS management plan references threats from pharmaceuticals and other chemicals that can act as endocrine disruptors and outlines activities to address this issue.

##### Marine Life Protection

*Comment:* NOAA should state unequivocally that wildlife must not be disturbed and marine life should not be taken. The expanded sanctuaries and their wildlife should be protected forever.

*Response:* Wildlife protection within national marine sanctuaries is an

important priority for NOAA. This final rule extends to the expansion areas sanctuary regulations that protect a variety of species, biological communities, and habitats, including a prohibition on the take of marine mammals, birds and turtles except when permitted under the Marine Mammal Protection Act and Endangered Species Act. These two laws are implemented by NMFS and USFWS. NOAA is also designating low overflight prohibition areas and cargo vessel restriction areas in the GFNMS expansion area to provide added protection for breeding birds and breeding pinnipeds, as well as promulgating specific regulations to protect white sharks. NOAA believes this management framework represents a proactive approach to fulfilling the resource conservation mandate of the NMSA.

#### Noise

*Comment:* NOAA should study the effects of noise on marine mammals and other animals, ensure that noise levels not found in nature do not stress marine mammals and other species, and prohibit sonar testing if it exceeds safe levels.

*Response:* NOAA is studying the issue of noise impacts on sanctuary resources. NOAA has also responded to the GFNMS advisory council regarding its recommendations about the joint GFNMS and CBNMS advisory council working group report, *Vessel Strikes and Acoustic Impacts*. In addition, CBNMS and GFNMS management plans outline activities to monitor and address noise in the GFNMS Wildlife Disturbance Action Plan and the CBNMS Ecosystems Protection Action Plan. Sanctuary regulations prohibit the disturbance of marine mammals, birds and turtles except when permitted under the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA).

With respect to sonar testing, section 304(d) of the NMSA provides for consultation with other federal agencies if their actions have the likelihood to injure sanctuary resources. NOAA has previously used this mechanism in consultations to minimize impacts of noise on marine mammals and other species. NOAA believes these tools provide a proactive approach to resource conservation and that an explicit prohibition on sonar testing is unwarranted at this time.

#### Ship Strikes and Noise Impacts on Wildlife

*Comment:* NOAA should implement all recommendations from the CBNMS and GFNMS advisory councils' report



*Vessel Strikes and Acoustic Impacts.*

Those recommendations will adequately address significant ship strike and underwater acoustic impact concerns.

*Response:* NOAA has reviewed *Vessel Strikes and Acoustic Impacts* and has already begun to implement some of the recommended actions to reduce impacts on marine mammals. The revised management plan for CBNMS specifically lists as an activity to implement the recommendations from this report, while the revised management plans for both sanctuaries have several general activities (monitoring, education and outreach, collaborations) related to addressing the issue of ship strikes and noise on whales (also see previous responses to comment above). Current actions being taken can be found in the document "GFNMS Response to the Report" and can be downloaded at: <http://farallones.noaa.gov/eco/vesselstrikes/welcome.html>. All of these recommended actions, originally developed for the existing sanctuaries, apply in the expansion areas.

## Protect Assets

*Comment:* NOAA needs to protect and preserve our human assets over extractive assets.

*Response:* Comment noted. Per the NMSA, NOAA regulates a number of extractive activities within national marine sanctuaries that have negative effects on sanctuary resources. At the same time, NOAA facilitates uses of the national marine sanctuaries compatible with resource protection. As such, NOAA works to best conserve all the assets of the national marine sanctuary system.

*Special Wildlife Protection Zones and Associated Regulations*

## Special Wildlife Protection Zone (SWPZ) Definition and Scope of Regulations

*Comment:* NOAA should revise the definition of SWPZs to clarify their intent.

*Response:* NOAA has clarified in the final rule that SWPZs are located in areas susceptible to human disturbances, and that SWPZs do not include pinniped and marine bird resting and foraging areas. The definition is purposefully limited to breeding pinnipeds rather than marine mammal hotspots, and, at this time, is not intended to address other marine mammals such as whales and dolphins. The definition has also been modified from "seabirds" to "birds" to include all breeding birds (e.g. oyster catchers) that may be susceptible to human

disturbance from low flying aircraft and transiting cargo vessels along the sanctuary shoreline.

*Comment:* NOAA should better articulate what would be regulated within SWPZs.

*Response:* 15 CFR 922.82 (prohibited or otherwise regulated activities) describes the prohibitions and exceptions for each SWPZ. The project description (Section 3.2) in the FEIS has been updated to better clarify the scope of the SWPZ definition and the prohibitions that use the SWPZ definition. Prohibitions that apply to the SWPZ are limited to GFNMS.

*Comment:* NOAA should clarify how the sanctuary will coordinate with the State of California on State Special Closures in regards to SWPZs to avoid duplication of efforts and/or confusion.

*Response:* Prohibitions that apply to SWPZs are limited to transiting cargo vessels, low flying aircraft, and approaching white sharks. The regulations are not intended to address disturbance from other human uses. The State of California established Special Closures in the original GFNMS area that prohibit access by watercraft in waters adjacent to designated seabird breeding areas and marine mammal breeding and haul-out sites. Therefore, both types of special areas complement each other for the purpose of marine conservation by focusing on different human uses. However, the special closures exist only under state law and are not part of the GFNMS regulations. NOAA will continue to work closely with the State of California to educate the public on wildlife disturbance issues and focus outreach on preventing human caused disturbance to wildlife.

*Comment:* NOAA should move forward with the removal of Areas of Special Biological Significance (ASBS) as a defined area within sanctuary regulations.

*Response:* NOAA agrees. The final rule includes removal of references to ASBS and other area names for purposes of sanctuary regulations. State-designated ASBS will still exist under state laws and regulations. NOAA is now designating SWPZs because it believes they will be more easily understood by sanctuary users.

*Comment:* NOAA should establish on-the-water, year-round or seasonal closures for vessels at Fish Rocks, Haven's Neck, Gualala Pt., the Pt. Arena Peninsula, Bodega Rock, and Gull Rock to reduce wildlife disturbance. NOAA should also consider additional sanctuary protections to waters contiguous with the NPS Phillip Burton Wilderness area.

*Response:* NOAA is not establishing this type of closure with this final rule. However, sanctuary regulations include prohibitions on taking or harassing certain species of wildlife, including marine mammals, sea turtles and birds (see 15 CFR 922.82) which help protect all wildlife throughout GFNMS, not just in specific zones. As stated above, the State of California established "Special Closure" zones within GFNMS waters to protect wildlife from watercraft, and which also support wildlife conservation. NOAA, in partnership with the Seabird Protection Network, will continue to collaborate with other agencies and organizations to monitor human use and educate target audiences (e.g. pilots, boaters and humans on foot) about preventing human-caused impacts on marine wildlife. In addition, the Resource Protection Action Plan within the GFNMS management plan has been modified to include additional activities to identify and address habitats that are known to be "special areas of concern," including developing a sanctuary policy on areas adjacent to NPS Wilderness Areas.

*Comment:* In 15 CFR 922.82, when referring to the exception for SWPZ 6, NOAA should make changes as follows: 1) "Authorized persons or supplies" should be defined and limited to the U.S. Fish and Wildlife Service, Farallon National Wildlife Refuge; 2) Authorized law enforcement should be defined; and 3) Search and rescue should be excepted.

*Response:* NOAA has revised the final rule to limit "authorized persons" to the U.S. Fish and Wildlife Service, Farallon National Wildlife Refuge. NOAA is not further defining authorized law enforcement, because the current text under the enforcement section in the NMSA (Sec. 307 [16 U.S.C. 1437]) has been effective in the past. There is an existing exception to this regulation for search and rescue in accordance with 15 CFR 922.82(c), for activities necessary to respond to an emergency threatening life, property, or the environment, consistent with regulations in many other national marine sanctuaries.

## Mapping Zones

*Comment:* NOAA should include in the FEIS better maps of the SWPZs; and maps that depict other zones and state marine protected areas (MPAs).

*Response:* NOAA has developed a separate map of the proposed boundaries of all area-based GFNMS and CBNMS regulations, including SWPZs, which is available for download on the GFNMS Web site: [http://farallones.noaa.gov/manage/expansion\\_cbgf.html](http://farallones.noaa.gov/manage/expansion_cbgf.html). NOAA does not regulate

state-designated MPAs, and thus adding these zones to the map could create confusion about NOAA's jurisdiction and the scope of this action, including the scope and definition of SWPZs. Therefore, the map shows only GFNMS and CBNMS boundaries and regulations.

#### Opposition to Special Wildlife Protection Zone 3

*Comment:* NOAA should not expand SWPZ 3 into Tomales Bay. There is no possibility of cargo ships entering into Tomales Bay due to a lack of deep water, and there is no documentation of low flying aircraft in the area within that part of Tomales Bay; therefore this designation is unwarranted.

*Response:* SWPZ 3 does not extend throughout Tomales Bay. The area contained within SWPZ 3 is already part of a State Area of Special Biological Significance (ASBS), and in 1981 NOAA established additional federal regulations for ASBS in the sanctuary to protect breeding birds and pinnipeds in the area from disturbance from low flying aircraft and transiting cargo vessels. NOAA is changing the term ASBS to SWPZs (see FEIS Section 3.2).

#### Overflight Regulations: Reconfigure Proposed SWPZ and Develop New Zones

*Comment:* NOAA should add overflight regulations to protect pinnipeds and marine birds in Tomales Bay, Pt. Resistance, Bodega Rock/Head, the spits at Drakes Estero, Devil's Slide Rock and the shoals near the Farallones, harbor seal pupping areas South of Del Mar Landing State Marine Reserve area, and Tidepool Beach, Shell Beach and Green Cove at The Sea Ranch.

*Response:* NOAA has updated the GFNMS management plan with an action requesting a GFNMS advisory council working group to assess the need for additional low overflight zones throughout the entire sanctuary. Comments provided during this rulemaking process will be considered in any future zoning actions taken by the sanctuary. The revised management plan does not include a list of specific areas for future zoning, but NOAA recognizes that areas surrounding The Sea Ranch, Tomales Bay, and Devil's Slide Rock may be "special areas of concern" within the revised boundaries of GFNMS.

*Comment:* NOAA should conduct a literature review regarding seabird protection and low overflights.

*Response:* NOAA used the best available science in support of the low overflight prohibitions in the GFNMS expansion area. Any future process that

considers low overflight zones in GFNMS would include a literature review of bird breeding areas adjacent to sanctuary waters, and a review of data regarding impacts on birds from low overflights.

#### Overflight Regulations: Minimum Altitudes

*Comment:* NOAA should extend the 1,000 feet minimum altitude of overflight regulation areas to also include adjacent land areas.

*Response:* NOAA's authority to protect marine life by restricting overflights only applies to the waters of the sanctuaries, including waters around islands and sea stacks within specified zones of the sanctuaries.

*Comment:* NOAA should raise the minimum altitude for overflight regulations. A 1,000 foot ceiling over the waters would only be approximately 660 feet above the highest point of Southeast Farallon Islands, for example. Thus, the 1,000 foot overflight protection for wildlife "hotspots" is inadequate. In addition, the 1,000 foot overflight limit is also inconsistent with other federal authorities, such as NPS (5,000 ft.) and FAA (2,000 ft.) protections, and the Olympic Coast National Marine Sanctuary's overflight regulations.

*Response:* Monitoring data in central California has shown that an overflight height of 1,000 feet above ground level (AGL) has proven to be an adequate buffer in minimizing disturbance to breeding pinnipeds and birds within the jurisdiction of the sanctuary, by reducing disturbance by 96%. NOAA considers this information, coming from the specific region where GFNMS is located, most relevant to protecting the resources of the sanctuary. While NOAA considered overflight management practices in other national marine sanctuaries or other protected areas in the development of this regulation, it believes that, other things being equal, location-specific data is more relevant and should be given greater weight than practices designed for different ecosystems.

*Comment:* NOAA should not include overflight regulations in the expanded area, because the restrictions place pilots and passengers at risk with the fog and marginal weather in this area.

*Response:* NOAA has determined that overflight regulations in the expanded area are necessary to prevent disturbance to breeding birds and pinnipeds. Therefore, the final rule maintains the previously existing altitude restrictions within the existing sanctuary areas, and adds two new zones with the same altitude restrictions

in the expansion area. During the development of this rule, NOAA determined that pilots have several options if weather conditions are such that maintaining visual flight rules cannot be achieved while avoiding the minimum altitude, rather than violating overflight regulations within the zones the pilot could instead choose to do any of the following: (1) Avoid flying over sanctuary waters by flying inland; (2) fly instrument flight rules through the fog; or (3) fly above the fog. With regards to safety, GFNMS regulations contain an exemption from the overflight prohibition in the event of an emergency threatening life, property or the environment.

#### Overflight Regulations: Drone Use for the Purpose of Research

*Comment:* The use of solar powered drones and ultra-light aircraft for research purposes should be highly encouraged as it provides a quieter, more environmentally friendly, and a more economical alternative.

*Response:* NOAA agrees that such technology can be useful, and is working with other resource management agencies to best understand the potential benefits and drawbacks of drones and other light aircraft in protected areas like national marine sanctuaries. GFNMS and CBNMS regulations prohibit "take," including operating a vessel or aircraft or doing any other act that results in the disturbance of sea turtles, birds, and marine mammals, and NOAA is now analyzing new information regarding the potential impacts of these machines on these species. NOAA may issue permits for research activities otherwise prohibited by sanctuary regulations, and researchers may apply to operate motorized aerial vehicles, including motorized ultra-light aircraft and "unmanned aerial systems" (drones) at low altitudes, within the boundaries of SPWZs.

#### Overflight Regulations: Private Airstrip Located in Vicinity of SWPZ

*Comment:* NOAA should change the overflight regulations in the vicinity of Point Arena, due to the location of the private airstrip at 27711 South Hwy 1. It is necessary to fly over the ocean under 1,000 feet during arrival and departure from this airstrip, which has been in use since 1970.

*Response:* NOAA is not including an overflight zone next to Point Arena in its final regulations. The southernmost point of the private airstrip is approximately 5 nautical miles from the northernmost boundary of SWPZ 1, which is the nearest SWPZ to the

airstrip. NOAA believes that the distance between SWPZ 1 and the airstrip would not impact takeoff or landing at this airstrip.

#### Cargo Vessel Regulations: Expand the Prohibition Regulations

*Comment:* NOAA should not remove the zone that excludes cargo vessels around Middle Farallon Island; NOAA should create a new zone to include the waters of CBNMS. This would benefit pelagic wildlife over Cordell Bank, Fanny Shoals, and the Shelf Break west of the Farallon Islands. It would also encourage ships to operate away from the Farallon Islands, reducing the risk of strikes to whales in that area.

*Response:* The International Maritime Organization amended the San Francisco Traffic Separation Scheme effective June 1, 2013 to route vessel traffic farther away from the Farallon Islands. Extending the western shipping lanes to the southwest and the northern shipping lanes to the northwest has virtually eliminated the potential for cargo vessels to transit the area between Southeast and North Farallon Islands. Because the shipping lanes effectively prohibit cargo vessels near the Middle Island, there is no need to include a sanctuary cargo vessel prohibition around this island and NOAA is removing it in this final rule. Because the purpose of the cargo vessel prohibition zones are to reduce the risk of a collision with islands, and given the Cordell Bank is deep enough underwater, NOAA does not believe it is necessary to exclude cargo vessel operation in CBNMS.

*Comment:* NOAA should designate a two-nautical mile buffer distance for cargo vessels around both the existing ASBs and the proposed SWPZs within the GFNMS expansion area.

*Response:* In the final rule, NOAA designed the cargo vessel restriction boundaries to extend one-nautical mile seaward of SWPZs. This effectively translates into a two-nautical mile area around designated biologically sensitive areas. Therefore, NOAA has not modified the action with respect to the size of the zones where cargo vessel operation is restricted.

*Comment:* NOAA should add white shark protection by including Tomales Point and Tomales Bay as additional SWPZs that protect white sharks from close approaching vessels.

*Response:* The final rule prohibits attracting white sharks throughout all GFNMS waters, including Tomales Point, Tomales Bay, and the expansion area. The prohibition on approaching white sharks within 50 meters only applies inside of and within one

nautical mile of SWPZ 6 and 7 (the North and Southeast Farallon Islands), because the waters around the Southeast Farallon Islands are where tourism and research vessels are most likely to be found, and therefore most likely to disturb feeding white sharks. Impact analyses on creating additional white shark approach prohibition areas were not conducted as part of this rulemaking. However, the revised GFNMS management plan outlines a process for GFNMS to minimize future user conflicts and provide special areas of protection for sensitive habitats, living resources, and other unique sanctuary features, such as SPWZs. See comment below for more detail on this process.

#### Process for Designating Additional Zones

*Comment:* NOAA should clearly describe the process by which it would designate additional SWPZs within any of the four national marine sanctuaries on the California coast or make changes to the regulations that apply within those zones.

*Response:* SWPZs are only being established in GFNMS. If NOAA intended to designate additional SWPZs, it would initiate a public process under the NMSA, NEPA and the Administrative Procedure Act (APA), all of which include opportunities for public review and comment as well as consultation with appropriate Federal, state, and local agencies.

#### Enforcement and Penalties

*Comment:* NOAA should have a strong enforcement element and adequate funding for more patrols by California Department of Fish and Wildlife (CDFW) and U.S. Coast Guard (USCG). NOAA should perform a gap analysis to identify increased enforcement needs so that management of existing sanctuaries will not be compromised, particularly in these times of uncertain federal funding.

*Response:* Enforcement of sanctuary regulations are handled principally by NOAA's Office for Law Enforcement (OLE), USCG, and respective state resource management agencies. Although this expansion action does not include an automatic increase in enforcement funding, CDFW officers work together with NOAA to conduct patrols and investigate potential violations throughout California. NOAA OLE and GFNMS currently provide funding for patrols of sanctuary waters to the CDFW through a joint enforcement agreement. In addition to the cooperative assistance by the state, USCG conducts air and sea surveillance

within the expansion area and has broad federal enforcement authority. Additionally, NOAA will continue to work with federal and state enforcement partners, both within the current boundaries and in the expansion area, to maintain water and aerial surveillance, update patrol guides and regulatory handbooks, and conduct interpretive/outreach patrols. Based on these ongoing enforcement mechanisms, NOAA does not believe a gap analysis is warranted. More information about enforcement of NOAA regulations is available at <http://www.nmfs.noaa.gov/ole/index.html>.

*Comment:* NOAA should clarify how it assesses penalties on people engaging in activities prohibited by sanctuary regulations. Penalties for violations in protected ocean areas should be severe.

*Response:* The NMSA establishes a limit on the maximum civil penalties that can be charged for violations of sanctuary regulations and law, presently set at \$140,000 per violation. The amount of any penalty is generally determined by the nature of a violation and a variety of aggravating/mitigating circumstances. NOAA attorneys generally scale proposed penalties to fit the nature of a particular violation. NOAA's Office of the General Counsel considers the aggravating and mitigating circumstances and assesses penalties appropriately. NOAA's policy for assessment of civil administrative penalties and permit sanctions is available at: [http://www.gc.noaa.gov/documents/Penalty%20Policy\\_FINAL\\_07012014\\_combo.pdf](http://www.gc.noaa.gov/documents/Penalty%20Policy_FINAL_07012014_combo.pdf).

#### Fishing

##### Discharge Exemption

*Comment:* NOAA should clarify whether the routine practice of washing ice and slime off the deck of a fishing boat would be considered a prohibited discharge under NOAA's proposed regulations for graywater.

*Response:* Graywater is defined according to section 312 of the FWPCA as "galley, bath and shower water." This definition does not include ice and slime from deck wash. Further, NOAA regulations provides an exemption for clean vessel deck wash down (15 CFR 922.82(a)(2)(iii) and 15 CFR 922.112(a)(2)(i)(C)) and for fish, fish parts or bait (15 CFR 922.82(a)(2)(i) and 15 CFR 922.112(a)(2)(i)(A)), with clean defined as not containing detectable levels of harmful matter. Therefore, the routine practice of washing ice and slime off the deck of a fishing boat conducting lawful fishing in the sanctuary is not prohibited, provided it is during the conduct of lawful fishing

activity and the material is otherwise clean.

#### Fishery Regulations

*Comment:* NOAA should clarify how the authorization authority interacts with the Pacific Fishery Management Council (PFMC) process in assessing impacts on fishery management, because of concerns for impacts on fisheries or essential fish habitat (EFH).

*Response:* NOAA has removed the authorization provision from the final rule, but intends to address it through a separate rulemaking process after this expansion action is complete. (See response to comments under "Authorization" heading.)

*Comment:* NOAA should ban all fishing and taking of wildlife, especially of threatened or endangered species. NOAA should not allow long-line fishing or the type of fishing that may capture, harm or kill unintended marine wildlife.

*Response:* NOAA is not implementing any fishing regulations as part of this rulemaking. Fishing is regulated at GFNMS and CBNMS by CDFW, the California Fish and Game Commission, and NMFS (in consultation with the Pacific Fishery Management Council). Regarding long-line fishing, NMFS has implemented several regulations to reduce bycatch of non-target species such as marine turtles, mammals and birds. Within NOAA, the Office of National Marine Sanctuaries and NMFS work closely together and with CDFW to ensure that fishing activities within the national marine sanctuaries do not pose a threat to any threatened or endangered species.

*Comment:* NOAA or Congress should clarify that sanctuaries do not regulate fishing and that the Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the primary statute for any fishing-related management issue, including the creation of MPAs inside national marine sanctuaries. NOAA should use regulatory and/or statutory mechanisms at the national level, so that it would apply to all national marine sanctuaries.

*Response:* Both the NMSA and MSA provide NOAA tools to regulate fishing activities in national marine sanctuaries. NOAA and the relevant Regional Fishery Management Councils examine the need for fishing regulations.

Depending on the determination made, NOAA may need to use the authorities under either or both Acts as the most appropriate regulatory approach to meet the stated goals and objectives of a sanctuary. The process for establishing fishing regulations in national marine sanctuaries is codified in the NMSA at

Section 304(a)(5) [16 U.S.C. 1434]. Here, NOAA is not promulgating any fishing regulations or proposing to designate specific MPAs within the expanded sanctuaries. Promulgating regulations affecting all national marine sanctuaries is beyond the scope of this rulemaking.

*Comment:* Enforcement of the present set of discharge regulations would comprise a *de facto* fishing ban in sanctuary waters, resulting from requirements for holding tanks or MSD.

*Response:* NOAA disagrees. Enforcement of the discharge regulations in the footprint of the original GFNMS and CBNMS has not comprised a *de facto* fishing ban. Fishing occurs routinely within these sanctuaries and is regulated by CDFW, the California Fish and Game Commission and NMFS in consultation with PFMC. The aim of the discharge regulations is to improve water quality and ecosystem health; not to ban fishing within the sanctuaries. The discharge regulations implemented by national marine sanctuaries affect the treatment of sewage and other materials associated with vessel operations, and may therefore result in adverse impacts on the operations of a commercial fishing vessel. However, current state and federal regulations already limit different types of vessel discharges into the waters of the expansion area. Therefore, the addition of sanctuary regulations only represents an incremental increase in restrictions on vessel discharges.

*Comment:* Enforcement of the present set of regulations would comprise a *de facto* fishing ban in sanctuary waters, resulting from a prohibition on cleaning of fish as per the prohibition on discharges (15 CFR 922.82(a)(2)(i)).

*Response:* NOAA disagrees. The discharge regulation prohibits the discharge into the sanctuary of material resulting from unlawful fishing or from fishing outside the boundaries of the sanctuary, including discharge of material acquired outside the sanctuary while transiting the sanctuary. Regulations for both CBNMS and GFNMS identify fish and fish parts, including discharges of fish and fish parts from fish cleaning, as part of lawful fishing activities, and therefore exempt from the discharge regulation.

*Comment:* Enforcement of the present set of regulations would comprise a *de facto* fishing ban in sanctuary waters, resulting from the definition of harmful matter under 15 CFR 922.81, because fishing activity in sanctuary waters necessarily involves the risk of loss of fishing tackle, including sinkers, hooks, and line.

*Response:* The full definition of harmful matter (15 CFR 922.81 and 922.111) states that any substance, or combination of substances that because of *their quantity and concentration*, or physical, chemical, or infectious characteristic *may pose a threat* to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act at 40 CFR 302.4. The intent of including fishing nets, fishing line, hooks, fuel, oil, and other contaminants to the definition of harmful is not to prohibit the loss of fishing gear incidental to fishing activity, but to restrict the loss of fishing gear in concentrations that could pose a threat to sanctuary resources, which could potentially happen if a fishing vessel were grounded or deserted within a sanctuary. Grounding or deserting a fishing vessel with concentrations of fishing gear that may pose a threat to sanctuary resources is prohibited as defined at 15 CFR 922.82(a)(15), which states that leaving harmful matter aboard a grounded or deserted vessel in the sanctuary is prohibited. NOAA is willing to discuss the interpretation of "harmful matter" with the fishing community at a future date to determine the scope of the concern and potential solutions.

*Comment:* NOAA should develop language for the on-going discharge of non-toxic gray water from commercial fishing vessels and recreational craft.

*Response:* With this final rule, NOAA exempts clean graywater from the discharge regulations in GFNMS and CBNMS.

#### Fishing and Introduced Species Definition

*Comment:* NOAA needs to clarify the definition for introduced species, because of concerns for how the current definition may be applied to different types of bait used by fishermen and thereby restrict or prohibit fishing within the Sanctuary.

*Response:* The definition for introduced species at 15 CFR 922.81 and 922.111 states that an introduced species means any species or its biological matter *capable of propagation* that is non-native to the ecosystem of the sanctuary. Bait of non-native fish carcasses or poultry parts are not capable of propagation or reproduction and therefore are not within the definition of introduced species. Consequently, using species (or

biological matters of species) not native to the ecosystem and not capable of propagation as bait while conducting lawful fishing is not subject to the sanctuaries' regulations related to introduced species.

#### Fishery Management

*Comment:* NOAA should create a blanket law regulating all of the nationally recognized fisheries controlled by the United States.

*Response:* The MSA is implemented by NMFS within NOAA and the Regional Fishery Management Councils. Most fisheries that solely occur within the limits of state waters are managed by the respective state fishery management agency. Promulgating regulations affecting all fisheries in the United States is beyond the scope of this rulemaking.

*Comment:* NOAA should regulate fishing to sustainable or healthy levels and provide adequate funding for enforcement of regulations.

*Response:* NOAA is not implementing any fishing regulations as part of this rulemaking. Almost all of the regulations regarding fishing off of California are promulgated by NMFS and the State of California. The regulations are enforced by NOAA OLE and CDFW officers with assistance from partners, such as USCG and California State Parks with funding appropriated by Congress and the California Legislature. As components of NOAA, ONMS and NMFS work closely together and with CDFW to ensure that fishing activities within national marine sanctuaries support healthy and sustainable fish populations and do not pose a threat to any threatened or endangered species.

#### Aquaculture

*Comment:* NOAA should prohibit offshore aquaculture in the sanctuary and clarify whether future new aquaculture projects in sanctuary waters would be geographically restricted to Tomales Bay, or would be allowed in all sanctuary waters of GFNMS.

*Response:* While GFNMS regulations do not prohibit aquaculture operations, the activities typically associated with aquaculture, such as disturbance of submerged lands (anchoring pens and structures), introduction of introduced species, or discharges (food, medicine) are prohibited within the sanctuary. (It should be noted, per NOAA's recent rulemaking on the introduction of introduced species, existing state-approved aquaculture projects in Tomales Bay are exempt from the introduced species prohibition.) Thus, whereas any future offshore aquaculture

is not explicitly prohibited by GFNMS regulations, it would be subject to these other associated prohibitions.

*Comment:* The DEIS does not comment on potential negative effects of future aquaculture operations on areas of special designation like Essential Fish Habitat (EFH), marine protected areas (MPAs), etc.; the DEIS provides no analysis of how these operations might affect fisheries and marine ecosystems, including cumulative effects.

*Response:* The purpose of the EIS is to assess impacts of the proposed action, which is sanctuary expansion and adoption of proposed regulations. The final action does not propose future aquaculture operations. There are numerous future activities that could impact sanctuary resources, each of which would be subject to review and approval from state and federal agencies, including NOAA. At that time, impacts of a proposed activity would be assessed through the NEPA or California Environmental Quality Act process depending on if it is a local, state or federal action. The rulemaking about introduced species is prohibiting aquaculture that uses introduced species from all state waters except Tomales Bay.

#### Fishing Grounds Impacts From Alternative Energy Development

*Comment:* NOAA should clarify how currently productive fishing grounds may be impacted by non-mineral energy development.

*Response:* NOAA assumes the reference to non-mineral energy development refers to alternative energy development (for example wind or marine hydrokinetic energy). Energy development and its effects on fishing are outside the scope of this action.

*Comment:* NOAA should support a comprehensive marine spatial planning effort to analyze uses, including fishing and habitat conservation, as they relate to alternative energy production.

*Response:* NOAA collaborates with the Bureau of Ocean Energy Management (BOEM), Department of Energy, Federal Energy Regulatory Commission, and other agencies, as part of the West Coast Governors Alliance (WCGA) on Ocean Health. For any future alternative energy projects along the west coast, NOAA will work through any of the strategies developed by the WCGA. Moreover, it would not be appropriate for national marine sanctuaries to lead a marine spatial planning effort for the State of California, given BOEM cannot issue a lease for alternative energy projects within national marine sanctuaries. However, if an applicant requested a

permit to test an alternative energy project within state waters of GFNMS and the project fit into a sanctuary permit category, GFNMS would conduct a planning exercise on the scale of the sanctuary to determine how to best minimize impacts on existing uses (including fishing) and sanctuary natural resources.

#### Whale Entanglement

*Comment:* NOAA could help in efforts to have fishing gear modified to reduce entanglements with whales, particularly from pots and gear from Bodega Bay north.

*Response:* NMFS has lead authority for implementing the MMPA and ESA for whale species, and is therefore also the lead NOAA agency for whale entanglements. ONMS will continue to consult with NMFS, CDFW and the California Fish and Game Commission on matters of whale entanglement.

#### Historic Resources

##### Point Arena Pier Wrecks

*Comment:* There are at least two shipwrecks in the waters adjacent to the Point Arena pier; while there may be interest in preserving the shipwreck sites, it is equally important that any preservation effort not interfere with the uses of the pier.

*Response:* NOAA is no longer including waters adjacent to the Point Arena pier in the expansion of GFNMS (see response to comment regarding Arena Cove boundary). Management of cultural and maritime heritage resources outside sanctuary boundaries will continue under the existing regulatory framework summarized in the Cultural and Maritime Heritage Resources section of the FEIS.

##### Salvage of Historic Resources

*Comment:* NOAA should allow the salvage of historic resources.

*Response:* The NMSA directs NOAA to enhance the protection of historical, cultural, and archaeological resources. Therefore, CBNMS and GFNMS regulations prohibit possessing, moving, or injuring, or attempting to possess, move, remove or injure, a sanctuary historical resource. However, through a sanctuary permit, salvage of historic resources may be allowed to further research or monitoring, further the educational value of the sanctuary, or assist in managing the sanctuary.

##### Marine Transportation—Shipping Lanes

*Comment:* NOAA should certify that the shipping lanes are an existing use within the GFNMS and CBNMS and shall not be terminated by the ONMS Director.

*Response:* Certification applies to holders of an existing permit or other authorization or right to conduct an otherwise prohibited activity in the expansion area. The shipping lanes are neither in the sanctuary expansion area nor a prohibited activity in CBNMS and GFNMS and therefore do not require a certification as an existing use.

#### Military Uses

##### DOD Consultation

*Comment:* NOAA should develop a formal consultation process between ONMS and DOD to assure minimization of impacts on sanctuary resources. This process should include PFMC and NMFS notification so that impacts on EFH in the sanctuaries can be minimized.

*Response:* NOAA disagrees that a new consultation process with DOD is necessary. The extent of DOD activities not included in the existing exemptions from CBNMS and GFNMS regulations would be determined in consultation with ONMS pursuant to section 304(d) of the National Marine Sanctuaries Act (NMSA), which contains formal procedures for required interagency consultation on federal actions that are likely to injure sanctuary resources. DOD would be required to follow all consultation requirements contained in the NEPA and NMSA, among other statutes. The DOD would be required to consult directly with NMFS for any projects that may have an adverse impact on EFH, whether the EFH is within a national marine sanctuary or not.

##### DOD Exemption

*Comment:* The Navy opposes the provision in the proposed rule that would maintain an existing exemption from the prohibitions in the CBNMS regulations that provides that Department of Defense activities not necessary for national defense, such as routine exercises and vessel operations, would be subject to all prohibitions contained in the regulations. 15 CFR 922.112(c). Navy proposes instead that CBNMS adopt the regulatory provision regarding exemption for Department of Defense (DOD) activities to the existing prohibitions set out in GFNMS regulations that states that all activities currently carried out by Department of Defense within the sanctuary are essential for national defense and therefore, not subject to the prohibitions contained in the regulations in this subpart. 15 CFR 922.82(b). Further, the Navy objects to any amendments to the current GFNMS DOD exemption and suggests that the agencies that are

responsible for ensuring national security are in the best position to determine which actions are necessary for national defense. Lastly, the Navy cites an inconsistency in the summary of regulatory amendments and proposed regulatory text. The summary of regulatory amendments implies that existing language from CBNMS regulations would be applied to the GFNMS exemption for DOD activities, but the regulatory text does not reflect such a change.

*Response:* NOAA acknowledges that there is an inconsistency in the summary of regulatory amendments and proposed regulations in the preamble to the proposed rule. In response, NOAA has modified the preamble to clarify that the proposed rule for this rulemaking did not include any amendments to the current GFNMS DOD exemption.

NOAA recognizes that the DOD exemption differs between CBNMS and GFNMS because "routine exercises and vessel operations" are not exempted in CBNMS regulations as they are in GFNMS regulations. NOAA believes that the issue of consistency in the language for DOD exemptions across the national marine sanctuary system is broader in scope than this rulemaking, which focuses on the expansion of CBNMS and GFNMS, and that the issue is more appropriately addressed separately. Therefore, NOAA will continue for the time being to make no changes to the existing DOD exemptions in CBNMS and GFNMS as they have been in the regulations since 1989 and 1981 respectively. NOAA, however, commits to undertaking a separate process to consider additional amendments to the regulations governing military exemptions from prohibitions on a system-wide basis across all national marine sanctuaries, in consultation with DOD and the Department of Homeland Security concerning the Coast Guard.

*Comment:* NOAA should exclude all activities by the DOD, such as the use of sonar, which can affect marine mammals, in the expansion area since it is such a special place.

*Response:* Existing military uses and an analysis of their environmental effects in the study area are contained in Section 4.9 of the FEIS. Homeland security and military uses of the expanded CBNMS and GFNMS are subject to NEPA and the NMSA, and they are also subject to all applicable federal regulations and requirements related to the environment. DOD is required to consult with ONMS pursuant to NMSA section 304(d) on any proposed military activities in the

expansion area that would be likely to injure sanctuary resources. Therefore, NOAA believes the existing regulatory framework sufficiently addresses DOD impacts on sanctuary resources and excluding military activities from the expansion area is not warranted.

#### Motorized Personal Watercraft (MPWC) Use

##### Support for Conditional MPWC Use

*Comment:* NOAA should move forward with alternative approaches to regulating MPWCs that would allow some MPWC use in the proposed expansion area.

*Response:* Due to the range of comments in support of, in opposition to and suggesting changes to MPWC regulations, NOAA removed from the final rule the MPWC use zones in the GFNMS expansion area (see Figure 3.2–17 in the FEIS). The proposed access route to Zone 4 was removed from the final rule and the area where MPWC are prohibited was extended slightly northward through establishing a line of latitude that corresponds with the southernmost tip of Bodega Head. This specific line was established to aid navigation and enforcement of the regulation.

MPWC use is allowed to continue within the GFNMS expansion area north of Bodega Head, (excluding Bodega Bay due to existing laws and regulations) until NOAA can implement a separate process to evaluate the feasibility of managing MPWC within the expansion area. Further consideration of MPWC use patterns and activities, and public input on the scope of sanctuary regulations are needed. MPWC use will continue to be prohibited in the original GFNMS boundaries, with exceptions for emergency search and rescue missions or law enforcement operations. MPWC will continue to be allowed in CBNMS. Additional information regarding impacts of MPWC use is in Section 3.2 of the FEIS.

*Comment:* NOAA should avoid any overlap of the proposed zones for MPWC use with California-designated MPAs.

*Response:* See response above. The regulations that apply to State marine protected areas (such as Marine Reserves, Marine Parks and Marine Conservation Areas) from Bodega Head to Point Arena prohibit the take of marine resources. Some of those MPAs allow take of certain species, while others prohibit all take, but none prohibit any types of vessel use and are not designed to protect wildlife from boat-based disturbance.

Total Allowance (*i.e.* No Regulation) of MPWC

*Comment:* NOAA should allow MPWC use throughout the entire expansion area, including CBNMS, and/or GFNMS. The DEIS did not provide adequate rationale for the purpose and need to regulate MPWC and potential impacts from MPWC have not been shown to be significant and/or are no different than other types of vessels.

*Response:* See response to the comment on "Support for Conditional MPWC Use."

Prohibition of MPWC

*Comment:* NOAA should prohibit MPWC use throughout the entire GFNMS sanctuary (both the previous boundaries and the entire expansion area) as it creates a risk of wildlife disturbance and is a use that is incompatible with sanctuary resources and values. Moreover, the use of MPWC could adversely affect the public's experience of such a pristine coastal area and is already prohibited in GFNMS.

*Response:* See response to the comment on "Support for Conditional MPWC Use."

Socioeconomic Impacts of Regulating MPWC

*Comment:* NOAA should better address socioeconomic impacts on the MPWC industry, local economy, including loss of recreational opportunities.

*Response:* Socioeconomic considerations are fully addressed in the EIS for both the former proposed action (which would have prohibited MPWC use in most of the proposed expansion area but allowed MPWC use in designated zones) and for the existing regulations alternative, which would prohibit MPWC use throughout the expansion area. The EIS found that with MPWC restrictions wildlife protection would be improved, and given the relatively low level of existing MPWC use within the GFNMS expansion area, the impact on MPWC users was expected to be less than significant.

As explained above, NOAA has revised the final rule (see response to comment under "Support for Conditional MPWC Use.")

*Comment:* NOAA should compensate MPWC owners for taxes and registration costs paid on their watercraft if a ban is enacted within the expansion area.

*Response:* Since NOAA is not regulating MPWC use in the expansion area, other than the slight extension of original GFNMS regulations to the southernmost tip of Bodega Head,

discussion about potential socioeconomic mitigation measures is premature.

MPWC Education and Outreach

*Comment:* NOAA should promote voluntary programs (similar to the Blue Rider Ocean Awareness and Stewardship Program in the Florida Keys National Marine Sanctuary (FKNMS)) to educate the public on responsible MPWC use as an alternative to implementing additional regulations and restrictions.

*Response:* NOAA recognizes the importance of education and outreach to MPWC users as a complement to MPWC regulations. GFNMS has updated the Wildlife Disturbance Action Plan in its revised management plan to include outreach to MPWC users.

MPWC Enforcement

*Comment:* NOAA does not have the authority to require MPWC users to carry a GPS unit and to enforce this requirement.

*Response:* As a tool for compliance with zonal regulations, NOAA has the authority to require such specific equipment on vessels and watercraft in order for MPWC users to accurately and precisely navigate to access and stay within the designated zones. However, NOAA is not moving forward with regulation of MPWC in the expansion area at this time. See response to comment on "Support for Conditional MPWC Use."

*Comment:* The opening of an access channel for the proposed Zone 4 creates additional enforcement challenges. NOAA should implement a permit program for surfer safety and lawful fishing to allow for limited MPWC use within the GFNMS expansion area using visual and permitted identification (*e.g.* stickers).

*Response:* At this time, NOAA removed the zones and the proposed access channel to Zone 4 from the final rule, and thus permitting for certain uses is not applicable. MPWC use will continue to be allowed throughout almost all of the GFNMS expansion area. A permitting program for MPWC use could be evaluated in the future assessment and potential regulatory framework of MPWC use in the GFNMS expansion area.

*Comment:* NOAA should extend the existing GFNMS regulation prohibiting MPWC use to apply to the expansion area (as well as the previous boundaries of the sanctuary) but temporarily not enforce this regulation in the expansion area until the working group concludes its work and NOAA implements revised MPWC rules in the expansion area.

*Response:* All regulations are subject to enforcement. See response to comment on "Support for Conditional MPWC Use."

MPWC Use Liability

*Comment:* Within the DEIS, NOAA neglected to consider the chain of liability incurred from proposed MPWC launch points in the event of injuries or fatalities resulting from public use of these launch locations.

*Response:* All launch points discussed in the EIS currently exist and are open to multiple ocean user groups. NOAA is not constructing any launch points as part of the final action. Furthermore, NOAA is not liable for injuries or fatalities resulting from public use of sanctuary waters.

MPWC Rulemaking Process

*Comment:* The proposed MPWC zones appear to have been developed by NOAA in a closed process that did not inform or involve the sanctuary advisory councils or include representative coastal residents that could have provided local knowledge on wildlife populations; the only input on zones came from special interests seeking to maintain MPWC activity.

*Response:* NOAA complied with the public noticing requirements as specified by the NEPA and APA during this rulemaking process, including providing a public scoping period at the beginning of the process, which is when NOAA started gathering information on the use of MPWC in the expansion area. Due to the range of comments in support of, in opposition to and suggesting changes to MPWC regulations, NOAA removed from the final rule the MPWC use zones in the expansion area and is prohibiting the use of MPWC in the original GFNMS boundary and up to the southernmost tip of Bodega Head.

MPWC Definition

*Comment:* A wide range of comments suggested various changes to the definition of MPWCs, including using the definitions from the USCG and Society of Automotive Engineers.

*Response:* NOAA removed all proposed changes to the GFNMS definition of MPWC. This maintains the status quo with respect to regulation of MPWC in the previously-existing GFNMS. NOAA is considering potential changes to the definition of MPWC as part of a separate national rulemaking process (78 FR 5998), which is still underway.

### MPWC Use and Potential Impacts on the Affected Environment

*Comment:* NOAA should investigate the technology and design and different methods of operation of MPWC in the marine environment, because the 4-stroke engines contained in modern MPWC are less polluting, more fuel efficient, and quieter than earlier MPWC models.

*Response:* NOAA acknowledges the changes in MPWC technology, but continues to have concerns with MPWC use. See response to comment on "Support for Conditional MPWC Use."

*Comment:* MPWC are not more detrimental to the environment than other vessel types that are allowed in the sanctuary, therefore regulating MPWC more strictly than other vessels, such as fishing vessels and rescue vessels, constitutes unfair discrimination against one particular user group.

*Response:* See response to comment on "Support for Conditional MPWC Use."

*Comment:* NOAA should better assess the potential impacts of MPWC sound on wildlife, including thresholds for noise impacts that can induce a "take" of marine mammals and seabirds under the MMPA. In addition, NOAA should analyze current uses and future trends in demand for MPWC use within the expansion area, especially MPWC use patterns in the proposed expansion area and proposed MPWC use zones in relation to wildlife hotspots.

*Response:* Further review of all available information pertaining to MPWC use and their potential effects could be beneficial during a future public process evaluating the feasibility of regulating MPWC use in the expansion area.

*Comment:* NOAA should work with stakeholders to justify the MPWC zones in MBNMS and their definition.

*Response:* Although the information provided by the commenter may be useful to consider in any subsequent process that evaluates the potential regulation of MPWC use, this comment is outside the scope of the proposed action.

### NEPA Process

#### NEPA Compliance

*Comment:* NOAA has violated the processes required by NEPA. Proposed authorizations would be allowed in the existing CBNMS and GFNMS. Over half of the existing GFNMS lies south of Sausalito, yet there have been no hearings held south of the Golden Gate Bridge.

*Response:* NOAA believes it has fully complied with NEPA requirements and regulations promulgated by the Council on Environmental Quality (40 CFR 1506.6(c)). The location of public hearings is not specified as part of the requirements. Public hearings were held in Sausalito (May 22), Bodega Bay (June 19), Gualala (June 18), and Point Arena (June 17), CA. Sausalito, where one of the public hearings was held, is in close proximity to the southern portion of GFNMS. Furthermore, public comment could also have been submitted via letter to the GFNMS superintendent or via electronic submission via the Federal e-Rulemaking Portal. NOAA considered comments in the same manner, regardless of means of delivery. Also, see response to comments on "Authorizations."

#### Commenting Through Regulations.gov

*Comment:* NOAA should make it less confusing to which document the comment should be directed.

*Response:* NOAA sought comment on four different documents: the proposed rule, which contains the action NOAA proposed, supplementary information in the DEIS, and the draft CBNMS and GFNMS management plans. NOAA acknowledges that some comments could apply to more than one of the documents. NOAA received all the comments, then evaluated if changes were necessary to support the proposed action, and if so, which document(s) would need to be changed. The Regulations.gov Web site is set up to serve all federal government agencies, and is administered by USEPA; NOAA does not have the flexibility to alter this interface for public comment.

#### Public Hearings Testimony

*Comment:* At future hearings, NOAA should not say that repeating comments is not necessary because it implies that people's comments are unimportant. Also elected officials should not be prioritized.

*Response:* NOAA regrets if it created the impression that comments are not important during the public hearings. As required by law, NOAA reviews the substance of every comment received on a proposed action. The intent of the directions provided at the public hearings was to acknowledge that NOAA focuses on the quality, rather than quantity, of the comments. This means that NOAA bases its decision on the merit of the comments raised, not just on the number of comments received on a particular topic. Regarding priority for elected officials, it is standard practice by many agencies to acknowledge public officials and allow

them to present their testimony first. In this way, members of the public have the opportunity to state their support or opposition to comments made by elected officials and provide additional rationale for consideration.

### National Marine Sanctuaries Act

*Comment:* Congress should reauthorize the NMSA to make clear the mandate of multiple use and the need to balance this mandate with resource protection.

*Response:* Reauthorization and the ability to make changes to the NMSA are within the authority of Congress, not NOAA or other executive branch agencies. NOAA believes the purposes and policies of the NMSA are clear; among other things, they direct NOAA 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)).

*Comment:* The expansion of sanctuaries should be done through an act of Congress. This would provide adequate public forum to debate the expansion.

*Response:* The designation of new national marine sanctuaries as well as the expansion of existing sanctuaries can be achieved congressionally or administratively by NOAA under the authority of the NMSA. In order to expand the sanctuary, NOAA needs to comply with public notice and comment requirements of the NMSA, NEPA, and APA, which provide for extensive public involvement during the developmental phases of a proposed action, such as sanctuary expansion.

*Comment:* NOAA should explain why expansions do not violate Congressional intent found in the NMSA.

*Response:* In 2000, Congress amended the NMSA by requiring certain findings be made by the agency before designating a new sanctuary (16 U.S.C. 1434 (f)(1)). This particular requirement does not apply to this action because NOAA is expanding the boundaries of existing sanctuaries, not designating new national marine sanctuaries.

### Oil, Gas, Alternative Energy and Mining Development

#### Alternative Energy Development Concerns

*Comment:* NOAA should define the process, policy and standards for approval of alternative energy projects, given the new proposed authorization provisions.

*Response:* As explained above, the final rule no longer includes provisions



for authorizations. Alternative energy projects would be subject to sanctuary regulations, such as the restrictions against altering the submerged lands and discharges or deposits. Projects that would otherwise be in violation of the regulations could be allowed if they qualified for a sanctuary permit.

*Comment:* NOAA should prohibit alternative energy development, especially development that would disturb the sea floor.

*Response:* See response to comment above. Development that would alter the submerged lands is prohibited, unless allowed by permit.

*Comment:* The DEIS indicates that there would be environmental consequences under the proposed action, as oil and gas development would be prohibited, but NOAA should also include a discussion of the potential for energy project development and its potential effect on wildlife.

*Response:* The purpose of the impact analysis is to disclose potential impacts caused by the proposed action and other alternatives. The FEIS addresses beneficial effects of the regulations on biological resources, as compared to existing conditions. NOAA is not proposing to undertake or to issue a permit for energy development with this rule. Accordingly, the FEIS does not analyze the impacts of energy projects on wildlife. The impacts of prohibiting oil and gas development are outlined in this section because the regulations prohibit all oil and gas development. In contrast, alternative energy development is not being specifically prohibited nor being proposed. The potential for future energy project development is not known at this time. As noted in the EIS, no lease requests have been received by BOEM for alternative energy projects in the expansion area or anywhere in California. Any future alternative energy project would be subject to the NEPA process if NOAA or another agency is involved in the establishment or permitting of an alternative energy project.

#### Alternative Energy Support

*Comment:* Alternative energy development should be allowed, if it were environmentally prudent to do so.

*Response:* The revised regulations do not specifically prohibit alternative energy projects but, as noted above, projects are subject to sanctuary regulations. NOAA intends to conduct a separate rulemaking process to consider establishing a process to allow each sanctuary to authorize other Federal or state permits. During this separate

public process, NOAA may consider authorizations for alternative energy development.

#### Methane Hydrates

*Comment:* NOAA should clarify that the oil, gas and mineral leasing prohibition precludes leasing, development or production of methane hydrates.

*Response:* Since methane hydrates are a form of gas, they are subject to the prohibition against gas development or production contained in the sanctuary regulations.

#### Oil and Gas Development Threats

*Comment:* NOAA should clarify what threat exists for oil and gas development, since regulatory protections are not necessarily permanent.

*Response:* Given the demand for oil and gas products, there is the potential for increased pressure to develop resources that have been identified offshore northern California. The final rule prohibits oil and gas development and does not have any exceptions for oil and gas facilities. In addition, no permit may be issued for oil and gas development in the sanctuaries. The existing exemption for oil and gas pipelines in GFNMS has been deleted in the final rule. Once in effect, reversal of the oil and gas prohibition would require an act of Congress or NOAA would need to commence a rulemaking and NEPA process to amend the regulation that prohibits oil and gas development.

#### Oil and Gas Development Prohibition

*Comment:* NOAA should adopt the strongest oil and gas prohibitions.

*Response:* The final rule includes a complete prohibition against oil and gas development. No permit may be issued for oil and gas development in the sanctuaries. Furthermore, it does not include an exemption for oil and gas pipelines in GFNMS, or any mechanism to issue a permit for a future proposal.

#### Oil Transportation

*Comment:* NOAA should revise sanctuary regulation § 922.82(a)(1) to also prohibit the transportation of oil, gas or minerals via pipeline and remove the existing pipeline exemption.

*Response:* The final rule includes deletion of the existing pipeline exemption; therefore, the suggested revision to GFNMS regulation 15 CFR 922.82 is not necessary. There would be no mechanism to allow oil and gas pipelines.

#### Oil and Gas Development Support

*Comment:* NOAA should adopt balanced policies that support affordable, reliable oil and gas development. BOEM estimates 700 million barrels of oil and 700 billion cubic feet of natural gas located in federal waters would be precluded by the expansion.

*Response:* One of NOAA's mandates is to "facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources [ . . . ]" (16 U.S.C. 1431(b)(6)). Oil and gas development in the marine environment has historically posed significant risks to marine resources, as evidenced by the magnitude of the impacts of some offshore oil spills. Therefore, NOAA has usually excluded traditional energy exploration and production in our nation's national marine sanctuaries.

#### Mining

*Comment:* NOAA should prohibit mining operations in the expansion area.

*Response:* Mineral development is prohibited, as stated in the sanctuary regulations that prohibit exploration for minerals.

#### Sanctuary Management and Administration

##### Collaboration

*Comment:* NOAA should collaborate with government and non-governmental organizations on monitoring wildlife, education, citizen science, outreach, and advancing ecosystem protection and marine conservation initiatives and programs.

*Response:* NOAA welcomes the opportunity to collaborate with organizations to build community partnerships for education, outreach, research, monitoring, and resource protection. The Stewards of the Coast and Redwoods, Bureau of Land Management's (BLM) California Coastal National Monument, as well as other local government and non-governmental organizations are listed as potential partners in the revised GFNMS management plan. For example, NOAA values the partnership with BLM and looks forward to continuing and strengthening this partnership in the expansion area through national and local initiatives, such as reducing and mitigating wildlife disturbance along the California coast through the Seabird Protection Network.

##### Coordinated Management

*Comment:* NOAA staff should meet with the California State Lands

Commission (CSLC) to determine the location and terms of CSLC leases in the proposed sanctuary in order to analyze how the leases would be affected by the proposed rule. CSLC suggests GFNMS enter into a Memorandum of Understanding (MOU) with the Commission on existing and future CSLC leases.

*Response:* NOAA will continue coordination with the CSLC and other agencies to ensure compatibility to the maximum extent practicable. NOAA would certify existing CSLC leases in accordance with 15 CFR 922.47 and 15 CFR 922.84. NOAA will also work with the CSLC on potential future leases, and mechanisms for potentially allowing those uses in the sanctuary, including MOUs.

#### GFNMS Collaboration

*Comment:* NOAA should work in a collaborative manner to achieve the goals of the Point Reyes-Farallon Islands Marine Sanctuary as listed in its original DEIS. The current process did not achieve those goals.

*Response:* The comment refers to text in Volume One of the FEIS on the Proposed Point Reyes-Farallon Island Marine Sanctuary (the original name of GFNMS), issued in 1980. NOAA manages GFNMS under the statutory authority of the NMSA. To meet its management responsibilities, NOAA implements the GFNMS management plan and develops regulations consistent with the terms of designation. The framework for expanding the sanctuary was laid out in the 2008 GFNMS management plan, which is in line with activities NOAA stated it would aim to achieve after initial sanctuary designation.

#### Governance Structure

*Comment:* NOAA should allow for significant local oversight in sanctuary governance.

*Response:* National marine sanctuaries have sanctuary advisory councils composed of voting and non-voting members that represent a variety of government agencies, local user groups, and the general public. Sanctuary advisory councils are very inclusive of local communities and stakeholders. The meetings have agendas set by the advisory council members, are hosted throughout the year in local communities, and always have an allotted time for public comment. Sanctuary advisory councils may choose to establish committees and working groups to further delve into issues; and working groups provide an opportunity to involve more stakeholders from the community in

developing recommendations for consideration by the full sanctuary advisory councils.

#### Funding

*Comment:* NOAA should clarify how funds will be used to manage the expanded sanctuary area, given the current uncertainties of federal funding for programs. The resources required to manage this large and new area could detract from the protection of existing resources in already designated sanctuaries.

*Response:* Once the regulations are in effect, prohibitions and environmental protections, such as the prohibition on oil and gas development, will be immediate and would entail virtually no cost to the sanctuary. NOAA recognizes resource limitations may limit or delay implementation of some of the activities in the management plans. NOAA will continue to evaluate future resource needs of all sanctuaries in its formulation of annual budget requests. In addition, the sanctuaries will work to build community partnerships in the expansion area to develop collaborative programs for education, outreach, research and monitoring, resource protection, and enforcement.

#### Monitoring

*Comment:* NOAA should clarify how it will monitor the protection of upwelling waters.

*Response:* GFNMS, CBNMS and MBNMS share an action plan in their respective management plans that is focused on monitoring the health of the ecosystem through offshore oceanographic and wildlife surveys. The action plan also describes how GFNMS and CBNMS will develop plans to extend monitoring efforts into the proposed expansion area to monitor the full extent of the upwelling area. Monitoring would help identify changes over time as well as potential problems that need to be addressed through management actions, enforcement and/or education.

#### Permits

*Comment:* NOAA should not grant any kind of permits to allow otherwise prohibited activities (including special event privileges) because it is contrary to the intended protection of sanctuary resources.

*Response:* NOAA has the authority to issue permits to allow some types of activities that are otherwise prohibited by sanctuary regulations, but which generally present a public benefit by furthering the management and protection of sanctuary resources. Permits usually include conditions that

are designed to minimize or eliminate impacts on sanctuary resources, and may also be designed to minimize user conflict. Various findings must also be met in order to issue a sanctuary permit, which can be issued for education, research, salvage (for GFNMS), and management. NOAA can also issue special use permits (SUP) to promote public access and use, and understanding of a sanctuary resource, when the superintendent can determine the activity will have no effect on sanctuary resources.

#### Sanctuary Advisory Councils

*Comment:* The current sanctuary advisory councils should be expanded to include additional representatives from the geographic area of the expanded sanctuary boundary.

*Response:* NOAA recognizes the need to potentially adjust the composition of the GFNMS advisory council and has revised the GFNMS management plan to reflect this need. NOAA will consider the addition of seats to the sanctuary advisory council after the expansion becomes final. NOAA is not considering the addition of seats to the CBNMS advisory council, as the expanded boundary of CBNMS would not add new constituencies not already represented on the CBNMS advisory council.

*Comment:* NOAA should consider using a sanctuary advisory council working group process to further investigate and make recommendations on how to address controversial items identified during the public comment period.

*Response:* NOAA has included this recommendation in the final GFNMS management plan. NOAA will propose to the sanctuary advisory council the establishment of working groups to address issues such as authorization authority, MPWC regulations, and additional low overflight prohibition zones as well as the configuration of those zones and the inclusion of estuaries in the GFNMS. The CBNMS advisory council decided to delay consideration of such a working group until after NOAA made a final decision about the expansion of CBNMS.

*Comment:* NOAA should consider using a sanctuary advisory working group to examine how existing uses in Arena Cove could continue.

*Response:* After review of all public comments, NOAA chose to exclude Arena Cove from the expansion area. Therefore, existing uses of Arena Cove do not fall under sanctuary regulations.

*Comment:* NOAA should clarify how community members may become

members of a sanctuary advisory council working group.

*Response:* If the CBNMS or GFNMS advisory councils convened working groups to make recommendations to the respective full advisory councils regarding a specific topic, they would work with sanctuary staff to identify a list of potential members including experts on a particular topic and/or appropriate interested parties. Interested community members may also express interest in participating on a working group by contacting any of the advisory council members or sanctuary staff listed on the sanctuary Web sites.

*Comment:* Sanctuary advisory councils should represent the will and voice of the communities, rather than be forced to support the goals of the sanctuary. They are controlled by the sanctuary because the sanctuary sets the agenda and has the right not to accept their recommendations.

*Response:* Sanctuary advisory councils are established by NOAA under the authority of the NMSA (16 U.S.C. 1445A). Congress intended the councils to include representatives interested in the protection and multiple use management of sanctuary resources. This means that representatives on a sanctuary advisory council may represent a wide range of views on sanctuary management. Congress intended sanctuary advisory councils to be advisory bodies, not decision-making bodies. Each sanctuary advisory council meeting is open to the public, and anyone is permitted to present oral or written statements on items of concern to sanctuary management. Therefore, NOAA believes that the sanctuary advisory councils in their current format are an efficient and effective way to receive input from communities affected by sanctuary management.

#### Management Plan Purpose

*Comment:* The GFNMS management plan should focus on preservation and restoration.

*Response:* The NMSA directs NOAA to manage national marine sanctuaries with the primary objective of resource protection. The NMSA further instructs NOAA to provide comprehensive management, which includes research, education, outreach, and facilitation of uses compatible with resource protection. Therefore, the GFNMS management plan contains action plans that focus on all of these mandates.

#### Radioactive and Toxic Waste

*Comment:* NOAA should do something about the vast quantity of

radioactive waste dumped near the Farallon Islands.

*Response:* The GFNMS management plan includes an action plan to evaluate the condition of, and actual impacts on, sanctuary resources and qualities from the Farallon Islands radioactive waste dump site.

#### State Control

*Comment:* The State of California rather than the federal government should manage the expansion area. There are concerns that the federal government will tell the State of California how to manage and regulate the area and wrong decisions will be made for the state.

*Response:* Although the State of California has an extensive MPA program established by the Marine Life Protection Act, much of the expansion area extends beyond the marine waters under state control and is beyond its jurisdiction.

NOAA closely collaborates with various agencies and departments of the State of California not only on the topic of sanctuary regulations, but also on various non-regulatory programs aimed at improving resource protection in national marine sanctuaries off the coast of California. The NMSA also includes a provision that allows a governor to review any terms of designation—boundary areas, activities subject to regulation—and accept or reject any term (in state waters) the governor finds objectionable; this provision helps create this strong collaboration. When it comes to sanctuary management, NOAA emphasizes coordination with state and federal agencies and therefore the State of California has representation on the GFNMS advisory council. Furthermore, there are numerous ways for the public to provide input on sanctuary management, including service as an advisory council member, providing public comment at advisory council meetings and commenting during the development of new management plans or regulations.

#### Science in Decisions

*Comment:* NOAA should use robust, peer-reviewed science for management decisions. Some ONMS scientific publications would benefit from independent peer-review.

*Response:* NOAA always strives to use the best available science to inform management decisions. One of the means to achieve that is the rigorous public process that accompanies management decisions. During a public comment period on a draft EIS and proposed rule, NOAA may receive relevant scientific information of which

it was unaware at the time of publication of the draft documents. Such public comments as well as consultations with various agencies assist NOAA in developing a sound final action.

The level of review for a NOAA scientific document is determined through the guidelines set forth in the Information Quality Act. These guidelines are in the Final Information Quality Bulletin for Peer Review published in 2004, and are administered by the White House Office of Management and Budget (OMB). Under OMB guidelines, any document that is deemed influential scientific information (*i.e.*, information that can reasonably be determined to have a “clear and substantial impact on important public policies or private sector decisions”) must be peer reviewed. NOAA guidelines also set forth requirements for NOAA publications with regards to peer review (see [http://www.cio.noaa.gov/services\\_programs/info\\_quality.html](http://www.cio.noaa.gov/services_programs/info_quality.html)). The ONMS Condition Reports and some of the ONMS Conservation Series reports fall into the category of influential scientific information. In addition, NOAA publishes some documents through the ONMS Conservation Series that are not considered influential scientific information under OMB guidelines, but internal policy still requires that they be peer reviewed.

#### Freedom of Information Act (FOIA) Compliance

*Comment:* NOAA should fully comply with the Freedom of Information Act (FOIA) in content and in a timely manner.

*Response:* Since 2010, NOAA has received 16 requests under the FOIA for information relating to CBNMS and GFNMS. NOAA responded to 13 requests in a timely and complete manner. Two requests were withdrawn by the applicants. Due to the complexity of the remaining request, it is still pending for further review. It is NOAA’s policy to fully comply with the FOIA.

#### Sanctuary Names

*Comment:* NOAA should consider new ecosystem-based names for the expanded GFNMS and CBNMS, since the action will lead to the inclusion of other prominent marine features.

*Response:* NOAA is considering a public process to gather input on a potential new name for GFNMS after finalization of this action. At this time, NOAA is not considering any name change for CBNMS.

*Socioeconomics Issues*Access to Expanded Sanctuaries—  
General Public Access

*Comment:* NOAA should ensure that there will be no loss of public access to the expansion area.

*Response:* The final rule does not contain any restrictions on public access to the shorelines in the GFNMS expansion area.

## Vessel/Vehicle Access

*Comment:* NOAA should prohibit or restrict use of vessels or vehicles in the proposed expansion area and/or in the rivers leading into the proposed sanctuary, for the following reasons: Noise disturbance to birds and marine mammals, water pollution (including from oil), disturbance of bottom vegetation, and further environmental risk to sensitive areas.

*Response:* NOAA believes current restrictions are sufficient to protect sanctuary resources. It is beyond the scope of this action for NOAA to broadly ban all vessels from the sanctuaries, or from the rivers feeding into the GFNMS expansion area. Existing regulations and management actions are extended to apply in the expanded boundary area to help mitigate resource impacts associated with vessel access/operation in the sanctuaries, such as restriction on cargo vessels near sensitive areas.

Bodega Marine Life Refuge Research  
and Education

*Comment:* NOAA should either: (1) Recognize and establish a special-use area for research and education (Research and Education Zone) managed by the University of California (University); (2) exclude the Bodega Marine Life Reserve from the sanctuary; or (3) include the Bodega Marine Life Reserve in the sanctuary and streamline the process to allow appropriate existing research and educational uses.

*Response:* Establishing a special-use area for research and education for the Bodega Marine Reserve would require NOAA to initiate a separate regulatory process, and excluding the Bodega Marine Reserve would prevent sanctuary protection from applying to the Reserve. Therefore, NOAA is including the Bodega Marine Life Reserve in the sanctuary, and will work towards certifying current research and education activities in accordance with 15 CFR 922.47 and 15 CFR 922.84. In addition, NOAA will meet with the University to streamline the permitting process and request the Marine Lab apply for an institutional permit for a

range of future activities within the boundaries of the Reserve.

## Bodega Bay Companies

*Comment:* NOAA should respect companies such as oyster farms and cattle ranches that have businesses in and around Bodega Bay, since they have continually protected the waters around them.

*Response:* NOAA acknowledges the importance of the local businesses around and in the sanctuary including ranches and oyster farms. NOAA has worked with ranchers and the oyster farms in and around Tomales Bay to protect water quality and will continue to work with groups near the original sanctuary and expansion area.

## Desalination

*Comment:* NOAA should clarify if desalination projects will be allowed in the future.

*Response:* The sanctuary regulations do not specifically prohibit desalination projects, but such development could be subject to regulations prohibiting the alteration of the submerged lands or the discharges or deposits. The project could qualify for some form of a sanctuary permit, which involves specific criteria and which typically includes conditions to protect sanctuary resources.

## Education Center Needed

*Comment:* NOAA should develop an education center and/or office in Bodega Bay or other location in the proposed expansion area.

*Response:* Bodega Marine Laboratory has been identified as a potential location for a sanctuary field office. GFNMS and CBNMS staff will consult with various public constituents including the sanctuary advisory councils to determine potential locations for sanctuary exhibits, a potential visitor center(s) and field office(s).

## Education Materials

*Comment:* NOAA should produce relevant outreach materials and maps online and in print, to visually highlight the features, ecosystems, and wildlife within the boundary expansion area.

*Response:* NOAA agrees that these types of materials would support public outreach. The existing online and print materials created for this action contain select maps and several photographs. NOAA will work to update and distribute printed and online materials to reflect the features and boundaries of CBNMS and GFNMS.

## Fireworks

*Comment:* Existing fireworks displays should be grandfathered in to the expansion area through the use of certification or special use permits; any additional proposals should be considered by applying appropriate biological and other criteria. Would a federal permit be needed for fireworks?

*Response:* The originally proposed authorization provision has been deleted from the sanctuary regulations. Therefore, NOAA does not have the ability to authorize firework activities on the basis of a state or local permit. As noted in the FEIS, NOAA will examine whether the discharge of fireworks could be allowed through certification (for existing permitted fireworks) pursuant to proposed 15 CFR 922.84, or through a special use permit, as described in Section 310 of the NMSA (16 U.S.C. 1441) and in the **Federal Register** notice published on May 3, 2013 (78 FR 25957). The potential to permit firework shows is also an activity that could be addressed in the separate process to consider authorization authority. For fireworks at Arena Cove, it should be noted that the boundary has been revised to exclude Arena Cove. Activities outside of the sanctuary that do not result in discharges that enter the sanctuary and cause injury to sanctuary resources do not require NOAA approval.

## Population

*Comment:* NOAA should address environmental concerns of a growing population.

*Response:* The sanctuary management plans provide action plans to address the issue of balancing resources with human activities.

## Research—Expand ACCESS Program

*Comment:* The Applied California Current Ecosystem Studies (ACCESS) integrated monitoring program should be extended into the sanctuary expansion areas.

*Response:* Both the CBNMS and GFNMS management plans contain action plans to maintain and extend ACCESS into the proposed expansion area.

## Visual Resources

*Comment:* NOAA should discuss visual resource impacts in the EIS since visual resources may benefit significantly from increasing protected habitat.

*Response:* Visual resources are indirectly captured in the FEIS discussion of benefits on marine resources, habitats, recreation and tourism.

*Water Quality, Discharges and Dredging*

## Vessel Graywater Discharges (Non-Cruise Ships)

*Comment:* NOAA should address graywater discharges from commercial vessels, including fishing vessels and recreational craft. Since both sanctuaries would be expanded, the larger area might make it difficult for some vessels to hold graywater discharges while transiting through the sanctuaries.

*Response:* NOAA prohibits discharging or depositing into CBNMS and GFNMS, other than from a cruise ship, any material *except* clean graywater (and other exemptions). By allowing the discharge of clean graywater by vessels less than 300 GRT or vessels 300 GRT or greater without sufficient tank capacity to hold graywater while within the sanctuary, NOAA does not force non-cruise ship vessels to hold all graywater and they have the option of discharging clean graywater in the sanctuary, consistent with the existing provisions in MBNMS and state and federal regulations.

*Comment:* NOAA should move forward with the graywater exemption and should consider the effects of sanctuary expansion upon the California No Discharge Zone (NDZ) and the water quality of the San Francisco Bay Estuary.

*Response:* See response to comment above. NOAA's final rule contains a graywater exemption. The effects of the sanctuary expansion upon the portion of the California NDZ in the expansion area were indirectly described in the EIS. Since many vessels transit the sanctuaries upon entering and exiting the San Francisco Bay, this exception avoids the potential situation of concentrating graywater discharges in a small area outside of the sanctuaries near the bay entrance. The water quality within the portions of the California NDZ in the expansion area and existing GFNMS is expected to be the same as, or similar to, that within the entire area of the expanded sanctuaries. In the portion of the San Francisco-Pacific Exclusion Area of northern MBNMS beyond 3 nm, vessels will continue to be able to discharge sewage and graywater as allowed by the current regulatory regime.

*Comment:* NOAA should only allow park service vessels to discharge graywater into the sanctuaries.

*Response:* See responses to comment above.

## Cruise Ship Discharges

*Comment:* NOAA should base the proposed rules upon best available science and the continuing

advancements in the shipboard treatment of wastewater to high standards and reconsider the current "no-discharge" approach for cruise ships. The proposed covered waters are expanding to the point where cruise ships may have difficulty managing their discharges over several days.

*Response:* NOAA disagrees that cruise ships transiting the expansion areas will face significant operational difficulties in holding discharges. As noted in the FEIS, NOAA's analysis of the issue indicates that transit of the expansion area will take only a few hours during normal circumstances, and that operators could hold discharges until they reach areas outside sanctuary boundaries (e.g., north and west of the expanded boundary or within the San Francisco-Pacific exclusion area) and discharge per the existing regulatory regime.

NOAA's decision to apply existing sanctuary discharge regulations to the expanded area were developed consistent with the scientific rigor associated with EPA's 2012 California NDZ (USEPA 2012) and NOAA's 2008 Joint Management Plan Review (NOAA 2008). NOAA also reviewed the Cruise Ship Assessment Discharge Report (USEPA 2008), which described, among other things, the nature and volume of waste streams, treatment methods, potential adverse impacts, and regulatory regime for cruise ship discharges. Based on these analyses, NOAA concludes that the volume and content of cruise ship discharges could adversely affect sanctuary resources in the expansion area and that their continued prohibition is warranted at this time. However, NOAA recognizes the cruise ship industry's recent advancements in shipboard treatments of wastewater, and plans to have ONMS consider these developments in a system-wide review of sanctuary cruise ship regulations, as described in the revised CBNMS and GFNMS management plan. Until such time NOAA can better understand these advancements, and their effect on sanctuary resources, it is making no changes to the discharge regulations promulgated with this action.

*Comment:* NOAA should give a better justification of the differential treatment of cruise ships with respect to the exceptions for treated sewage and graywater.

*Response:* The cruise ship regulations extended to the CBNMS and GFNMS expansion areas are existing CBNMS and GFNMS regulations. The existing cruise ship regulations were fully analyzed in the FEIS for the revised management plans of CBNMS, GFNMS,

and MBNMS and published on September 26, 2008 (73 FR 55842). Regarding cruise ships being different than other ships, many discharge regulations treat discharges from cruise ships as a distinct vessel class on the West Coast of the U.S. (e.g. California, Washington, and Alaska) and nationally (e.g., the Vessel General Permit [VGP]) of the EPA). Cruise ships are a unique class of vessel and have the potential to generate and discharge greater quantities of wastewater effluents than other vessel categories.

## Cruise Ships—Vessel Routes

*Comment:* The option of sailing to seaward of the sanctuaries would require significant additional time and cost and have additional environmental effects in terms of fuel consumption and resultant emissions from cruise ships. NOAA should analyze these effects.

*Response:* Cruise ships are not required to sail seaward, or west, of the expanded sanctuaries as a result of this action. Cruise ship operators could choose, but are not required, to implement vessel route changes based on their own assessment of the best methods to adjust to the sanctuary regulations, particularly as it pertains to the capacity to hold sewage and graywater during transit through the sanctuaries. Also, see response to first comment under the "Cruise Ship Discharges."

## Vessel General Permit Relationship to Regulations

*Comment:* NOAA's regulations should mirror the 2013 VGP, which provides a more extensive list of vessel discharge effluent streams than sanctuary regulations. The high water quality standards achieved under the VGP are confirmed by extensive research by the USEPA and the Alaska Science Advisory Panels, and there is no evidence that any threat would be posed to the environment or resources of the sanctuaries under that approach.

*Response:* The VGP only applies within three miles of the coastline; its application to waters beyond that has not been analyzed by the USEPA or the State of California. See response to comment under "Cruise Ship Discharge." NOAA is considering undertaking a review of national marine sanctuary cruise ship discharge regulations, which could include VGP effluent streams and the standards for them. This proposal is included in the revised management plans for CBNMS and GFNMS.

### Discharge-Related Regulatory Definitions

*Comment:* NOAA should change the definition of “clean” to mean not containing harmful matter, because the current definition is inconsistent with the definition of “harmful matter.” If applied strictly, this definition would effectively establish a limit of “non-detectable” for any “harmful matter” discharged by a ship.

*Response:* The qualifier “clean” is used in describing allowed discharges and is defined in §§ 922.81 and 922.111 as “. . . not containing detectable levels of harmful matter.” A substance may be at “detectable” levels, but pose no threat to the environment and therefore no longer be considered a “harmful matter.” Therefore the substance would be considered clean. As noted in the previous response, NOAA is considering having ONMS undertake a review of national marine sanctuary cruise ship discharge regulations, and could include a review of the definitions for “clean” and “harmful matter” as part of the review.

### Discharges That Cannot Be Terminated

*Comment:* The exceptions for other operational discharges (for both cruise ships and other vessels) are limited to clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilgewater or anchor wash. NOAA should include an exception for all “non-discretionary” discharges arising from vessel operation, such as leachate from anti-fouling hull coatings, cathodic protection, (as well as others described in the EPA VGP).

*Response:* The exceptions for discharges (§§ 922.81(a)(2)(iii) and (iv) and 922.111(a)(1)(i)(C) and (D)) are standard exceptions for most of the national marine sanctuaries across the country. A site-specific rulemaking such as this one is not the appropriate mechanism for a nation-wide amendment to sanctuary regulations. As mentioned in the response to comment “Cruise Ship Discharges,” NOAA is considering having ONMS undertake a review of national marine sanctuary cruise ship discharge regulations, which could also include a review of discharges noted as unable to be terminated.

### Land-Based Discharges

*Comment:* NOAA should use its expertise and authorities to address issues of estuarine and marine conservation as it relates to California’s non-point source management responsibility under the Coastal Zone Management Act (CZMA).

*Response:* The NMSA and CZMA are distinct and separate statutory authorities administered by different NOAA offices. Under the CZMA, NOAA’s Office for Ocean and Coastal Management reviews state coastal nonpoint source pollution control programs developed for approval under the Coastal Zone Act Reauthorization Amendments of 1990. The office also administers grants to states for coastal nonpoint source control program implementation activities. The Plan for California’s Nonpoint Source Pollution Control Program (NPS Plan), developed by the State Water Resources Control Board (SWRCB) and the California Coastal Commission, received full approval from the USEPA and NOAA in 2000. Although the proposed GFNMS final management plan is not linked to the NPS Plan, its Water Quality Action Plan includes activities to coordinate with other agencies to address land-based discharges into the estuarine and nearshore areas of the sanctuary.

*Comment:* NOAA should make it mandatory to aerobically compost biosolids, which will modify, degrade and in some cases eliminate some of the toxic compounds from farms.

*Response:* The regulation of biosolids is outside the scope of this rulemaking and outside the jurisdiction of national marine sanctuaries. The discharge of material beyond its boundaries is not regulated in GFNMS, except with regard to discharges that enter the sanctuary and injure a sanctuary resource. NOAA recognizes the connection between land-based pollution and sanctuary water quality, and therefore includes an activity to promote best management practices for agriculture in the GFNMS management plan.

*Comment:* NOAA should regulate discharge from agricultural activities and oil pollution from roads and cars by designating inland sanctuaries or expanding sanctuaries into inland areas to prevent inland discharges that may injure a sanctuary resource or quality.

*Response:* See response to the comment “Inclusion of Estuaries.” The discharge of material is not regulated in GFNMS beyond its boundaries, except with regard to discharges that enter the sanctuary and injure a sanctuary resource. The GFNMS revised management plan outlines steps to understand and address impacts from known sources of pollution.

### Russian River Discharge and Water Quality

*Comment:* NOAA should maintain or improve the Russian River Estuary Management Project to: Better address

impacts of breaching the Russian River, including release of toxins; identify sources of increased nutrients; and request maintenance of adequate flow in the Russian River.

*Response:* The Russian River Estuary Management Project is not within the boundary expansion of GFNMS. However, NOAA currently collaborates with the Estuary Project managers, through NMFS. Although NOAA is not expanding the sanctuary into the Russian River Estuary at this time, the management plan includes a strategy to collaborate and exchange information with agencies and authorities within estuaries adjacent to the proposed GFNMS expansion area. See the Water Quality Action Plan Strategy WQ-3 for more information.

### Beach Nourishment

*Comment:* NOAA should consider how the proposed regulatory framework may prohibit dredging and disposing of sediments for living shoreline projects (e.g., beach nourishment), which are environmentally beneficial.

*Response:* The disposal of matter above the mean high water line is not regulated in GFNMS, except with regard to discharges that enter the sanctuary and injure a sanctuary resource. Currently there are no known proposed living shoreline projects within the GFNMS boundary or expansion area. However, NOAA considers such projects a beneficial use that could be considered as an alternative to disposal of dredged materials. If a living shoreline project were to be proposed within GFNMS in the future, NOAA could consider a permit application in accordance with 15 CFR 922.83 or a separate regulatory process, if needed.

### NPDES Permits

*Comment:* NOAA should include an exemption to 15 CFR 922.84 for discharges regulated by NPDES discharge permits. These discharge permits are adopted to fully protect all beneficial uses and NPDES dischargers should not and need not be subject to additional regulations for GFNMS resources to be fully protected. NOAA should clarify that discharges to the Russian River regulated by NPDES permits are not considered unlawful activities under 15 CFR 922.82(a)(4).

*Response:* NOAA has not included an exemption to 15 CFR 922.84 for discharges regulated by NPDES discharge permits. The regulation is not intended to prevent discharge activities beyond the sanctuary boundary, including the Russian River Estuary discharges regulated by NPDES permits. NOAA could certify pre-existing NPDES

discharge permits that are already authorized by the State of California and in existence on the effective date of the proposed sanctuary expansion, such as the NPDES permit for the Russian River Estuary. See 15 CFR 922.47 and the procedures outlined in 15 CFR 922.84 for more information. In part, NOAA had originally proposed authorization authority to allow it to approve NPDES permits for discharges that would not cause significant, adverse harm to sanctuary resources; it is an example of an activity a sanctuary advisory council working group on authorizations could consider in making any recommendations.

#### State Water Resources Control Board (SWRCB) Jurisdiction

*Comment:* NOAA should communicate with the local communities regarding jurisdiction of storm water discharges.

*Response:* SWRCB regulates storm water discharge, and this action would not change SWRCB jurisdiction. NOAA is not regulating storm water discharge, except potentially for those discharges that enter the sanctuary and injure a sanctuary resource.

#### Bodega Harbor Dredging and Disposal

*Comment:* NOAA needs to exempt existing routine dredging of Bodega Harbor. Without such an exception, a small part of that size would be inadvertently shut down as a result of the cost of maintenance dredge disposal (whether on land or offshore). In addition, NOAA should designate a dredge disposal site in GFNMS for Bodega Harbor Channel Maintenance Dredging.

*Response:* Bodega Harbor is located outside of the sanctuary boundaries. Therefore, existing or future dredging of the harbor would not violate any sanctuary regulations that pertain to discharge of materials or alteration of the seafloor. Bodega Harbor maintenance projects conducted adjacent to GFNMS currently dispose of dredged materials at EPA-designated dredge disposal sites, which include ocean and upland locations outside the existing and proposed boundaries of GFNMS. There is no need to designate another dredge disposal site at this time. If the need arises in the future, the EPA would be the lead agency to designate any new dredge disposal sites.

#### Dredging Prohibition

*Comment:* NOAA should ban dredging throughout all sanctuary waters.

*Response:* NOAA agrees. The final rule prohibits drilling into, dredging, or

otherwise altering the submerged lands of GFNMS and CBNMS, with few exceptions.

#### *Technical Document Edits (Rule, EIS, Management Plans)*

Numerous comments requested specific edits to the text of the proposed rule, DEIS or management plans. To the extent that these edits are pertinent and correct, these edits have been made to the relevant documents and are not further addressed in the response to comments. Other minor typographical corrections have been made to the relevant documents and are also not further addressed here.

#### VI. Classification

##### *National Environmental Policy Act*

NOAA has prepared a final environmental impact statement to evaluate the environmental effects of this rulemaking. Copies are available at the address and Web site listed in the **ADDRESSES** section of this final rule. Responses to comments received on the proposed rule are presented in the final environmental impact statement (December 19, 2014; 79 FR 75800) and preamble to this final rule.

##### *Coastal Zone Management Act*

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a state's coastal program on potential Federal regulations having an effect on state waters. NOAA submitted a copy of the final environmental impact statement and supporting documents to the California Coastal Commission for evaluation of Federal consistency under the CZMA. On December 12, 2014, NOAA received confirmation from the California Coastal Commission that the action was consistent with the purposes of the California Coastal Management Program.

##### *Executive Orders 12866 and 13563*

This rule was drafted in accordance with Executive Orders 12866 and 13563. It was reviewed by the Office of Management and Budget, which found the rule to be "significant" according to EO 12866 and EO 13563.

##### *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.

##### *Executive Order 13175: Tribal Consultation and Collaboration*

Representatives from the Manchester Band of Pomo Indians, Kashia Band of Pomo Indians of Stewarts Point Rancheria, and Federated Indians of Graton Rancheria were invited in writing to consult with NOAA under Executive Order 13175. As of publication date of this notice of final rulemaking, NOAA only received a response from the Chairman of the Kashia Band of Pomo Indians to the consultation letters. NOAA will continue to consult and seek tribal participation in the management of CBNMS and GFNMS as appropriate.

##### *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. Under section 605(b) of the RFA, if the head of an agency (or his or her designee) certifies that a rule will not have a significant impact on a substantial number of small entities, the agency is not required to prepare a regulatory flexibility analysis. 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 original 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 that rule (79 FR 20982, April 14, 2014).

Although NOAA has made a few changes to the regulations for CBNMS and GFNMS from the proposed rule to the final rule, none of these changes alter the initial determination that this rule will not have an impact on the small businesses included in the original analysis presented in the proposed rule. Moreover, NOAA did not receive any comments on the certification or its conclusion. Therefore, the determination that this rule will not have a significant economic impact on a substantial number of small entities is unchanged. As a result, a final regulatory flexibility analysis is not required and has not been prepared.

*Paperwork Reduction Act*

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0141) for the collection of public information related to the processing of ONMS permits across the National Marine Sanctuary System. NOAA's proposal to expand GFNMS and CBNMS would likely increase the number of requests for ONMS general permits and special use permits, because the sanctuaries are now larger. An increase in the number of ONMS permit requests resulted in a change to the reporting burden certified for OMB control number 0648–0141. This control number for the processing of ONMS permits has been updated by OMB.

Comments on this determination were solicited in the proposed rule but none were received. Notwithstanding any other provision of 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

**VII. References**

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

**List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: February 27, 2015.

**W. Russell Callender,**

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

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration 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. Revise subpart H to read as follows:

**Subpart H—Farallones National Marine Sanctuary**

Sec.

922.80 Boundary.

922.81 Definitions.

922.82 Prohibited or otherwise regulated activities.

922.83 Permit procedures and issuance criteria.

922.84 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

922.85 Review of State permits and leases for certain aquaculture projects.

Appendix A to Subpart H of Part 922—Farallones National Marine Sanctuary Boundary Coordinates

Appendix B to Subpart H of Part 922—No-Anchoring Seagrass Protection Zones in Tomales Bay

Appendix C to Subpart H of Part 922—Northern Extent of Tomales Bay

Appendix D to Subpart H of Part 922—Special Wildlife Protection Zones within the Sanctuary

Appendix E to Subpart H of Part 922—Cargo Vessel Prohibition Zones in the Sanctuary

Appendix F to Subpart H of Part 922—White Shark Approach Prohibition Zones in the Sanctuary

**§ 922.80 Boundary.**

(a) Farallones National Marine Sanctuary (Sanctuary) encompasses an area of approximately 2,488 square nautical miles (3,295 square miles) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands and Noonday Rock along the northern coast of California. The precise boundary coordinates are listed in appendix A to this subpart.

(b) The western boundary of the Sanctuary extends south from Point 1 approximately 45 nautical miles (52 miles) to Point 2, which is the northwestern corner of Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then extends from Point 2 approximately 38 nautical miles (43 miles) east along the northern boundary of CBNMS to Point 3, which is approximately 6 nautical miles (7 miles) west of Bodega Head. From Point 3 the Sanctuary boundary continues south and west to Points 4 through 19 (in numerical sequence) and is coterminous with the eastern boundary of CBNMS. From Point 19 the Sanctuary boundary continues south and east to Points 20 through 25 (in numerical sequence) until it intersects the boundary for Monterey Bay National Marine Sanctuary (MBNMS) at Point 26. From Point 26 the Sanctuary boundary extends eastward and northward, coterminous with MBNMS, to Points 27 through 33 (in numerical sequence). From Point 33 the boundary proceeds along a straight line arc towards Point 34 until it intersects the Mean High Water Line at Rocky Point, California. From this intersection the Sanctuary boundary follows the Mean High Water

Line northward until it intersects the boundary for Point Reyes National Seashore approximately 0.7 nautical miles (0.8 miles) south and east of Bolinas Point in Marin County, California. The Sanctuary boundary then approximates the boundary for Point Reyes National Seashore, as established at the time of designation of the Sanctuary, to the intersection of the Point Reyes National Seashore boundary and the Mean High Water Line approximately 0.13 nautical miles (0.15 miles) south and east of Duck Cove in Tomales Bay. The Sanctuary boundary then follows the Mean High Water Line along Tomales Bay and up Lagunitas Creek to the U.S. Highway 1 Bridge. Here the Sanctuary boundary crosses Lagunitas Creek and follows the Mean High Water Line north to the Estero de San Antonio and up the Estero to the tide gate at Valley Ford-Franklin School Road. Here the Sanctuary boundary crosses the Estero de San Antonio and proceeds west and north following the Mean High Water Line to the Estero Americano and up the Estero to the bridge at Valley Ford-Estero Road. Here the Sanctuary boundary crosses the Estero Americano and proceeds west and north following the Mean High Water Line towards Salmon Creek. Approaching Salmon Creek the boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 35 and 36. From that intersection the boundary extends across the creek along the straight line arc towards Point 36 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line north towards the Russian River. Approaching the Russian River the boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 37 and Point 38. At that intersection the boundary extends across the river along the straight line arc towards Point 38 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line north towards the Gualala River. Approaching the Gualala River the boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 39 and Point 40. At that intersection the boundary extends across the river along the straight line arc towards Point 40 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line north to Arena Cove in Mendocino County. Approaching Arena Cove the



boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 41 and Point 42. At that intersection the boundary extends across the cove along the straight line arc towards Point 42 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line north towards the Garcia River. Approaching the Garcia River the boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 43 and Point 44. At that intersection the boundary extends across the river along the straight line arc towards Point 44 until it intersects the Mean High Water Line. The Sanctuary boundary then continues north following the Mean High Water Line until it intersects the rhumb line connecting Point 45 and Point 46. From this intersection the Sanctuary boundary continues west along its northernmost extent to Point 46. The Sanctuary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford-Franklin School Road) and Estero Americano (to the bridge at Valley Ford-Estero Road), as well as Bodega Bay, but does not include Bodega Harbor, the Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, Arena Cove, or the Garcia River Estuary. Unless otherwise specified, where the Sanctuary boundary crosses a waterway, the Sanctuary excludes this waterway upstream of the crossing.

#### § 922.81 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

*Attract or attracting* means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

*Clean* means not containing detectable levels of harmful matter.

*Cruise ship* means a vessel with 250 or more passenger berths for hire.

*Deserting* means leaving a vessel aground or adrift without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification, after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or when the owner/operator cannot after

reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

*Harmful matter* means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

*Introduced species* means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

*Motorized personal watercraft* means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

*Routine maintenance* means customary and standard procedures for maintaining docks or piers.

*Seagrass* means any species of marine angiosperms (flowering plants) that inhabit portions of the submerged lands in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*.

*Special Wildlife Protection Zones* are areas surrounding or adjacent to high abundance of white sharks, breeding pinnipeds (seals and sea lions) or high abundance and high biological diversity of breeding birds that are susceptible to human caused disturbance, including federally listed and specially protected species. Coordinates for Special Wildlife Protection Zones are found in appendix C of this Subpart.

#### § 922.82 Prohibited or otherwise regulated activities.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing, or producing oil, gas or minerals.

(2) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(ii) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(iii) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(iv) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA; or

(v) Vessel engine or generator exhaust.

(3) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the material or other matter excepted in paragraphs (a)(2)(i) through (v) and (a)(3) of this section.

(5) Constructing any structure other than a navigation aid on or in the submerged lands of the Sanctuary; placing or abandoning any structure on or in the submerged lands of the Sanctuary; or drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary in any way, except:

(i) By anchoring vessels (in a manner not otherwise prohibited by this part (see paragraph (a)(16) of this section);

(ii) While conducting lawful fishing activities;

(iii) Routine maintenance and construction of docks and piers on Tomales Bay; or

(iv) Aquaculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.

(6) Operating motorized personal watercraft (MPWC) anywhere in Bodega Bay and anywhere in the Sanctuary south of 38.29800 degrees North Latitude (the southernmost tip of Bodega Head), except for emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

(7) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle, or bird taken, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(9) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

(i) Striped bass (*Morone saxatilis*) released during catch and release fishing activity; or

(ii) Species cultivated by commercial shellfish aquaculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California. Tomales Bay is defined in § 922.80. The coordinates for the northern terminus of Tomales Bay are listed in appendix C to this subpart.

(11) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within any of the seven designated Special Wildlife Protection Zones described in appendix D to this subpart, except transiting Zone 6 to transport persons or supplies to or from Southeast Farallon Island authorized by the U.S.

Fish and Wildlife Service, Farallon National Wildlife Refuge, or for enforcement purposes. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

(12) Operating any vessel engaged in the trade of carrying cargo within any area designated Special Wildlife Protection Zone or within one nautical mile from these zones. The coordinates are listed in appendix E to this subpart. This includes but is not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations, except to transport persons or supplies to or from the Farallon Islands. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(13) Attracting a white shark anywhere in the Sanctuary; or approaching within 50 meters of any white shark within Special Wildlife Protection Zone 6 and 7 or within one nautical mile from these zones. The coordinates are listed in appendix F to this subpart.

(14) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(15) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(16) Anchoring a vessel in a designated seagrass protection zone in Tomales Bay, except as necessary for aquaculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in Appendix B to this subpart.

(17) 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 permit issued under the Act.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraphs (a)(2) through (9) and (a)(11) through (16) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit

issued pursuant to §§ 922.48 and 922.83 or a Special Use permit issued pursuant to section 310 of the Act.

**§ 922.83 Permit procedures and issuance criteria.**

(a) A person may conduct an activity prohibited by § 922.82(a)(2) through (9) and (a)(11) through (16) if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

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

(2) Further the educational value of the Sanctuary;

(3) Further salvage or recovery operations; or

(4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider factors such as:

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

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

(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

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

(5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(6) It is necessary to conduct the proposed activity within the Sanctuary;

(7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources

and qualities from the conduct of the activity; and

(8) Any other factors as the Director deems appropriate.

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

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

**§ 922.84 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.**

(a) A person may conduct an activity prohibited by § 922.82(a)(1) through (17) if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence prior to the effective date of sanctuary expansion and within the sanctuary expansion area and complies with § 922.47 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

(b) In considering whether to make the certifications called for in this section, 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.

(c) The Director may amend, suspend, or revoke any certification made 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 holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

(d) Requests for findings or certifications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) For an activity described in paragraph (a) of this section, the holder

of the authorization or right may conduct the activity prohibited by § 922.82 (a)(1) through (17) provided that:

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

(2) The holder complies with the other provisions of this section; and

(3) 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.

(f) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.82 may conduct the activity without being in violation of applicable provisions of § 922.82, pending final agency action on his or her certification request, provided the holder is otherwise in compliance with this section.

(g) The Director may request additional information from the certification requester as he or she 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 postmark date of the request. The Director may seek the views of any persons on the certification request.

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

(i) 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.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

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

**§ 922.85 Review of State permits and leases for certain aquaculture projects.**

NOAA has described in a Memorandum of Agreement (MOA) with the State of California how the State will consult and coordinate with NOAA to review any new, amended or expanded lease or permit application for aquaculture projects in Tomales Bay involving introduced species.

**Appendix A to Subpart H of Part 922—Farallones National Marine Sanctuary Boundary Coordinates**

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

Point ID No.	Latitude	Longitude
1 .....	39.00000	- 124.33350
2 .....	38.29989	- 123.99988
3 .....	38.29989	- 123.20005
4 .....	38.26390	- 123.18138
5 .....	38.21001	- 123.11913
6 .....	38.16576	- 123.09207
7 .....	38.14072	- 123.08237
8 .....	38.12829	- 123.08742
9 .....	38.10215	- 123.09804
10 .....	38.09069	- 123.10387
11 .....	38.07898	- 123.10924
12 .....	38.06505	- 123.11711
13 .....	38.05202	- 123.12827
14 .....	37.99227	- 123.14137
15 .....	37.98947	- 123.23615
16 .....	37.95880	- 123.32312
17 .....	37.90464	- 123.38958
18 .....	37.83480	- 123.42579
19 .....	37.76687	- 123.42694
20 .....	37.75932	- 123.42686
21 .....	37.68892	- 123.39274
22 .....	37.63356	- 123.32819
23 .....	37.60123	- 123.24292
24 .....	37.59165	- 123.22641
25 .....	37.56305	- 123.19859
26 .....	37.52001	- 123.12879
27 .....	37.50819	- 123.09617
28 .....	37.49418	- 123.00770
29 .....	37.50948	- 122.90614
30 .....	37.52988	- 122.85988
31 .....	37.57147	- 122.80399
32 .....	37.61622	- 122.76937
33 .....	37.66641	- 122.75105
34* .....	37.88225	- 122.62753
35* .....	38.35045	- 123.06711
36* .....	38.35665	- 123.06724
37* .....	38.44575	- 123.12602
38* .....	38.45531	- 123.13469
39* .....	38.76231	- 123.52957
40* .....	38.76941	- 123.53541
41* .....	38.91136	- 123.71061
42* .....	38.91766	- 123.72568
43* .....	38.95404	- 123.73405
44* .....	38.95944	- 123.71820
45* .....	39.00000	- 123.69710
46 .....	39.00000	- 124.33350

**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.

**Appendix B to Subpart H of Part 922—  
No-Anchoring Seagrass Protection  
Zones in Tomales Bay**

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

(1) No-Anchoring Seagrass Protection Zone 1 encompasses an area of approximately .11 square nautical miles (.15 square miles) offshore south of Millerton Point. The precise boundary coordinates are listed in the table following this description. The eastern boundary is a straight line arc that connects points 1 and 2 listed in the coordinate table below. The southern boundary is a straight line arc that connects points 2 and 3, the western boundary is a straight line arc that connects points 3 and 4 and the northern boundary is a straight line arc that connects point 4 to point 5.

Zone 1 Point ID No.	Latitude	Longitude
1 .....	38.10571	-122.84565
2 .....	38.09888	-122.83603
3 .....	38.09878	-122.84431
4 .....	38.10514	-122.84904
5 .....	38.10571	-122.84565

(2) No-Anchoring Seagrass Protection Zone 2 encompasses an area of approximately .15 square nautical miles (.19 square miles) that begins just south of Marconi and extends approximately 1.6 nautical miles (1.9 miles) south along the eastern shore of Tomales Bay. The precise boundary coordinates are listed in the table following this description. The western boundary is a series of straight line arcs that sequentially connect point 1 to point 5 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 5 towards point 6 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line north until it intersects the straight line arc that connects point 7 to point 8. From this intersection the northern boundary extends to point 8.

Zone 2 Point ID No.	Latitude	Longitude
1 .....	38.13326	-122.87178
2 .....	38.12724	-122.86488
3 .....	38.12563	-122.86480
4 .....	38.11899	-122.86731
5 .....	38.11386	-122.85851
6* .....	38.11608	-122.85813
7* .....	38.14078	-122.87433
8 .....	38.13326	-122.87178

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

(3) No-Anchoring Seagrass Protection Zone 3 encompasses an area of approximately .01 square nautical miles (.02 square miles) that begins just south of Marshall and extends approximately .5 nautical miles (.6 miles) south along the eastern shore of Tomales Bay.

The precise boundary coordinates are listed in the table following this description. The western boundary is a straight line arc that connects point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 2 towards point 3 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 4 to point 5. From this intersection the northern boundary extends westward along the straight line arc that connects point 4 to point 5.

Zone 3 Point ID No.	Latitude	Longitude
1 .....	38.15956	-122.89573
2 .....	38.15250	-122.89042
3* .....	38.15292	-122.88984
4* .....	38.16031	-122.89442
5 .....	38.15956	-122.89573

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

(4) No-Anchoring Seagrass Protection Zone 4 is an area of approximately .18 square nautical miles (.21 square miles) that begins just north of Nicks Cove and extends approximately 2.7 nautical miles (3.1 miles) south along the eastern shore of Tomales Bay to just south of Cypress Grove. The precise boundary coordinates are listed in the table following this description. The western boundary is a series of straight line arcs that sequentially connect point 1 to point 8 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 8 towards point 9 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line north until it intersects the straight line arc that connects point 10 to point 11. From this intersection the northern boundary extends westward along the straight line arc that connects point 10 to point 11.

Zone 4 Point ID No.	Latitude	Longitude
1 .....	38.20004	-122.92315
2 .....	38.18881	-122.91740
3 .....	38.18651	-122.91404
4 .....	38.17919	-122.91021
5 .....	38.17450	-122.90545
6 .....	38.16869	-122.90475
7 .....	38.16535	-122.90308
8 .....	38.16227	-122.89650
9* .....	38.16266	-122.89620
10* .....	38.20080	-122.92174
11 .....	38.20004	-122.92315

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

(5) No-Anchoring Seagrass Protection Zone 5 encompasses an area of approximately 1.3

square nautical miles (1.6 square miles) that begins east of Lawson's Landing and extends approximately 2.7 nautical miles (3.1 miles) east and south along the eastern shore of Tomales Bay but excludes areas adjacent (approximately .32 nautical miles or .37 miles) to the mouth of Walker Creek. The precise boundary coordinates are listed in the table following this description. The western boundary is a series of straight line arcs that sequentially connect point 1 to point 3 listed in the coordinate table below. From point 3 the southern boundary trends eastward along the straight line arc that connects point 3 to point 4 until it intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 5 to point 6. From this intersection the boundary extends westward along the straight line arc that connects point 5 to point 6. From point 6 the boundary follows the straight line arc that connects point 6 to point 7, and then extends along the straight line arc that connects point 7 to point 8 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line until it intersects the straight line arc that connects point 9 to point 10. From this intersection the boundary extends to point 10 along the straight line arc that connects point 9 to point 10.

Zone 5 Point ID No.	Latitude	Longitude
1 .....	38.21825	-122.96041
2 .....	38.20666	-122.94397
3 .....	38.19431	-122.93431
4* .....	38.20080	-122.92174
5* .....	38.20522	-122.92446
6 .....	38.20366	-122.93246
7 .....	38.20938	-122.94153
8* .....	38.21599	-122.93742
9* .....	38.23129	-122.96293
10 .....	38.21825	-122.96041

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

(6) No-Anchoring Seagrass Protection Zone 6 encompasses an area of approximately .01 square nautical miles (.02 square miles) in the vicinity of Indian Beach along the western shore of Tomales Bay. The precise boundary coordinates are listed in the table following this description. The eastern boundary is a straight line arc that connects point 1 to point 2 listed in the coordinate table below. The southern boundary extends westward along the straight line arc that connects point 2 to point 3 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 3 to point 4. From this intersection the northern boundary extends eastward along the straight line arc that connects point 4 to point 5.

Zone 6 Point ID No.	Latitude	Longitude
1 .....	38.14103	- 122.89537
2 .....	38.13919	- 122.89391
3* .....	38.13804	- 122.89610
4* .....	38.14033	- 122.89683
5 .....	38.14103	- 122.89537

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

(7) No-Anchoring Seagrass Protection Zone 7 encompasses an area of approximately .09 square nautical miles (.12 square miles) that begins just south of Pebble Beach and extends approximately 1.6 nautical miles (1.9 miles) south along the western shore of Tomales Bay. The precise boundary coordinates are listed in the table following this description. The eastern boundary is a series of straight line arcs that sequentially connect point 1 to point 5 listed in the coordinate table below. The southern boundary extends along the straight line arc that connects point 5 to point 6 until it intersects the Mean High Water Line. From this intersection the western boundary extends north along the Mean High Water Line until it intersects the straight line arc that connects point 7 to point 8. From this intersection the northern boundary extends eastward along the straight line arc that connects point 7 to point 8.

Zone 7 Point ID No.	Latitude	Longitude
1 .....	38.13067	- 122.88620
2 .....	38.12362	- 122.87984
3 .....	38.11916	- 122.87491
4 .....	38.11486	- 122.86896
5 .....	38.11096	- 122.86468
6* .....	38.11027	- 122.86551
7* .....	38.13001	- 122.88749
8 .....	38.13067	- 122.88620

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

**Appendix C to Subpart H of Part 922—Northern Extent of Tomales Bay**

For the purpose of § 922.82(a)(10)(ii), NOAA is codifying the northern geographical extent of Tomales Bay via a line running from Avalis Beach (Point 1) east to Sand Point (Point 2). Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point ID No. Tomales Bay Boundary	Latitude	Longitude
1 .....	38.23165	- 122.98148
2 .....	38.23165	- 122.96955

**Appendix D to Subpart H of Part 922—Special Wildlife Protection Zones Within the Sanctuary**

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

(1) Special Wildlife Protection Zone 1 (SWPZ 1) encompasses an area of approximately 7.9 square nautical miles (10.5 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 1 extends south from Point 1, west of Haven's Neck in Mendocino County, to Point 2, west of Del Mar Point. The boundary then extends east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the Mean High Water Line at Del Mar Point. The SWPZ 1 boundary then turns north to follow the Mean High Water Line towards Haven's Neck and continues until it intersects a straight line arc connecting Point 4 and Point 5. From this intersection the Sanctuary boundary continues west along its northernmost extent to Point 5.

Zone 1 Point ID No.	Latitude	Longitude
1 .....	38.80865	- 123.63227
2 .....	38.74096	- 123.54306
3* .....	38.74096	- 123.51051
4* .....	38.80865	- 123.60195
5 .....	38.80865	- 123.63227

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

(2) Special Wildlife Protection Zone 2 (SWPZ 2) encompasses an area of approximately 16.2 square nautical miles (21.4 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 2 extends south and east from Point 1, south of Windermere Point in Sonoma County, to Point 2 and then to Point 3 in sequence. Point 3 is west of Duncans Point in Sonoma County. The boundary then extends east from Point 3 along a straight line arc connecting Point 3 and Point 4 until it intersects the Mean High Water Line at Duncans Point. The boundary then turns north to follow the Mean High Water Line towards Windermere Point until it intersects a straight line arc connecting Point 5 and Point 6. From this intersection the boundary continues due south along a straight line arc to Point 6.

Zone 2 Point ID No.	Latitude	Longitude
1 .....	38.49854	- 123.26804
2 .....	38.45095	- 123.18564
3 .....	38.39311	- 123.12068
4* .....	38.39311	- 123.09527
5* .....	38.52487	- 123.26804

Zone 2 Point ID No.	Latitude	Longitude
6 .....	38.49854	- 123.26804

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

(3) Special Wildlife Protection Zone 3 (SWPZ 3) encompasses an area of approximately 7 square nautical miles (9.3 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 3 extends south and east from Point 1, southwest of the Estero de San Antonio in Sonoma County, to Point 2, south of Tomales Point in Marin County. The boundary then extends north and east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the boundary of the Point Reyes National Seashore. From this intersection the SWPZ 3 boundary follows the Point Reyes National Seashore boundary around Tomales Point into Tomales Bay and continues until it again intersects the straight line arc that connects Point 2 and Point 3. From this intersection the SWPZ 3 boundary follows the straight line arc north and east toward Point 3 until it intersects the Mean High Water Line at Toms Point in Tomales Bay. The SWPZ 3 boundary then follows the Mean High Water Line northward towards the Estero de San Antonio until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the Sanctuary boundary continues south and west to Point 5.

Zone 3 Point ID No.	Latitude	Longitude
1 .....	38.24001	- 123.02963
2 .....	38.19249	- 122.99523
3* .....	38.21544	- 122.95286
4* .....	38.27011	- 122.97840
5 .....	38.24001	- 123.02963

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

(4) Special Wildlife Protection Zone 4 (SWPZ 4) encompasses an area of approximately 10.2 square nautical miles (13.5 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 4 extends south and west from Point 1, west of Point Reyes in Marin County, to Point 2, south and west of Point Reyes Lighthouse. The boundary then follows a straight line arc east and south from Point 2 to Point 3. From Point 3 the boundary follows a straight line arc north to Point 4. From Point 4 the SWPZ 4 boundary proceeds west along the straight line arc that connects Point 4 and Point 5 until it intersects the Point Reyes National Seashore boundary north of Chimney Rock. The SWPZ 4 boundary then follows the Point Reyes National Seashore boundary around Point Reyes until it again intersects the

straight line arc that connects Point 4 and Point 5 north of the Point Reyes Lighthouse. From this intersection the SWPZ 4 boundary turns seaward and continues west to Point 5.

Zone 4 Point ID No.	Latitude	Longitude
1 .....	38.01475	- 123.05013
2 .....	37.97536	- 123.05482
3 .....	37.96521	- 122.93771
4 .....	38.00555	- 122.93504
5 .....	38.01475	- 123.05013

(5) Special Wildlife Protection Zone 5 (SWPZ 5) encompasses an area of approximately 14.8 square nautical miles (19.6 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 5 extends south and east from Point 1, near Millers Point in Marin County, to Point 2, which is south and west of Bolinas Point. The SWPZ 5 boundary then follows a straight line arc east from Point 2 towards Point 3 until it intersects the Mean High Water Line at Rocky Point. From this intersection, the SWPZ 5 boundary follows the Sanctuary boundary north to Bolinas Point and Millers Point, respectively, including Bolinas Lagoon but not including Seadrift Lagoon, until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the SWPZ 5 boundary turns seaward and continues west and south along the straight line arc to Point 5.

Zone 5 Point ID No.	Latitude	Longitude
1 .....	37.96579	- 122.83284
2 .....	37.88195	- 122.73989
3* .....	37.88195	- 122.62873
4* .....	37.98234	- 122.81513
5 .....	37.96579	- 122.83284

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

(6) Special Wildlife Protection Zone 6 (SWPZ 6) encompasses an area of approximately 6.8 square nautical miles (9 square miles) and extends from the Mean High Water Line seaward to the SWPZ 6 boundary. The precise boundary coordinates are listed in the table following this description. The boundary of SWPZ 6 extends south and west from Point 1, north of Southeast Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 6 Point ID No.	Latitude	Longitude
1 .....	37.72976	- 123.00961
2 .....	37.69697	- 123.04374
3 .....	37.66944	- 123.00176

Zone 6 Point ID No.	Latitude	Longitude
4 .....	37.70246	- 122.96608
5 .....	37.72976	- 123.00961

(7) Special Wildlife Protection Zone 7 (SWPZ 7) encompasses an area of approximately 6 square nautical miles (7.9 square miles) and extends from the Mean High Water Line seaward to the SWPZ 7 boundary. The precise boundary coordinates are listed in the table following this description. The boundary of SWPZ 7 extends south and west from Point 1, north of North Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 7 Point ID No.	Latitude	Longitude
1 .....	37.79568	- 123.10845
2 .....	37.76746	- 123.13869
3 .....	37.73947	- 123.09341
4 .....	37.76687	- 123.06330
5 .....	37.79568	- 123.10845

**Appendix E to Subpart H of Part 922—Cargo Vessel Prohibition Zones in the Sanctuary**

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

(1) Cargo Vessel Prohibition Zone 1 (CVPZ 1) is an area of approximately 20 square nautical miles (26 square miles) immediately offshore of Anchor Bay. The precise boundary coordinates are listed in the table following this description. The western boundary of extends south and east from Point 1, north and west of Haven's Neck, to Point 2, west and south of Del Mar Point. The CVPZ 1 boundary then extends east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the Sanctuary boundary. The CVPZ 1 boundary then turns north to follow the Sanctuary boundary past Haven's Neck and continues until it intersects the straight line arc connecting Point 4 and Point 5. From this intersection the CVPZ 1 boundary continues west along its northernmost extent to Point 5.

Zone 1 Point ID No.	Latitude	Longitude
1 .....	38.82485	- 123.68420
2 .....	38.72330	- 123.55145
3* .....	38.72330	- 123.47658
4* .....	38.82485	- 123.60953
5 .....	38.82485	- 123.68420

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

(2) Cargo Vessel Prohibition Zone 2 (CVPZ 2) encompasses an area of approximately 30 square nautical miles (40 square miles). The precise boundary coordinates are listed in the table following this description. The western CVPZ 2 boundary extends south and east from Point 1, west of Windermere Point in Sonoma County, to Point 2 and then to Point 3 in sequence. Point 3 is west of Duncans Point in Sonoma County. The CVPZ 2 boundary then extends east from Point 3 along a straight line arc connecting Point 3 and Point 4 until it intersects the Sanctuary boundary south of Duncans Point. The CVPZ 2 boundary then turns north to follow the Sanctuary boundary past Windermere Point until it intersects the straight line arc connecting Point 5 and Point 6. From this intersection the CVPZ 2 boundary continues due south along this straight line arc to Point 6.

Zone 2 Point ID No.	Latitude	Longitude
1 .....	38.48995	- 123.28994
2 .....	38.43749	- 123.19789
3 .....	38.37614	- 123.13153
4* .....	38.37614	- 123.07843
5* .....	38.54099	- 123.28994
6 .....	38.48995	- 123.28994

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

(3) Cargo Vessel Prohibition Zone 3 (CVPZ 3) encompasses an area of approximately 17 square nautical miles (22 square miles). The precise boundary coordinates are listed in the table following this description. The western CVPZ 3 boundary extends south and east from Point 1, west of the Estero de San Antonio in Sonoma County, to Point 2, south of Tomales Point in Marin County. The CVPZ 3 boundary then extends north and east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the Sanctuary boundary. From this intersection the CVPZ 3 boundary follows the Sanctuary boundary around Tomales Point into Tomales Bay and continues until it again intersects the straight line arc that connects Point 2 and Point 3. From this intersection the CVPZ 3 boundary follows the straight line arc north and east across Tomales Bay until it intersects the Sanctuary boundary south of Toms Point in Tomales Bay. The CVPZ 3 boundary then follows the Sanctuary boundary northward past the Estero de San Antonio until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the boundary continues south and west to Point 5.

Zone 3 Point ID No.	Latitude	Longitude
1 .....	38.24496	- 123.05698
2 .....	38.16758	- 123.00179
3* .....	38.21170	- 122.92566
4* .....	38.28215	- 122.99278

Zone 3 Point ID No.	Latitude	Longitude
5 .....	38.24496	- 123.05698

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

(4) Cargo Vessel Prohibition Zone 4 (CVPZ 4) encompasses an area of approximately 28 square nautical miles (37 square miles). The precise boundary coordinates are listed in the table following this description. The western CVPZ 4 boundary extends south and west from Point 1, west and north of Point Reyes in Marin County, to Point 2, south and west of Point Reyes Lighthouse. The CVPZ 4 boundary then follows a straight line arc east and south from Point 2 to Point 3. From Point 3 the CVPZ 4 boundary follows a straight line arc north to Point 4. From Point 4 the CVPZ 4 boundary proceeds west along the straight line arc that connects Point 4 and Point 5 until it intersects the Sanctuary boundary at Drakes Beach. The CVPZ 4 boundary then follows the Sanctuary boundary around Point Reyes until it again intersects the straight line arc that connects Point 4 and Point 5, north of the Point Reyes Lighthouse. From this intersection the CVPZ 4 boundary turns seaward and continues west to Point 5 along this arc.

Zone 4 Point ID No.	Latitude	Longitude
1 .....	38.03311	- 123.06923
2 .....	37.96053	- 123.07801
3 .....	37.94655	- 122.91781
4 .....	38.02026	- 122.91261
5 .....	38.03311	- 123.06923

(5) Cargo Vessel Prohibition Zone 5 (CVPZ 5) encompasses an area of approximately 29 square nautical miles (39 square miles). The precise boundary coordinates are listed in the table following this description. The western CVPZ 5 boundary extends south and east from Point 1, west of Millers Point in Marin County, to Point 2, south and west of Bolinas Point. The CVPZ 5 boundary then follows a straight line arc east from Point 2 towards Point 3 until it intersects the Sanctuary boundary. From this intersection, the CVPZ 5 boundary follows the Sanctuary boundary north towards Rocky Point and continues along the Sanctuary boundary past Bolinas Point and Millers Point, respectively, including Bolinas Lagoon but not including Seadrift Lagoon, until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the CVPZ 5 boundary turns seaward and continues west and south along the straight line arc to Point 5.

Zone 5 Point ID No.	Latitude	Longitude
1 .....	37.96598	- 122.85997
2 .....	37.86532	- 122.74797
3* .....	37.86532	- 122.63720

Zone 5 Point ID No.	Latitude	Longitude
4* .....	37.99449	- 122.82841
5 .....	37.96598	- 122.85997

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

(6) Cargo Vessel Prohibition Zone 6 (CVPZ 6) encompasses an area of approximately 21 square nautical miles (28 square miles) surrounding Southeast Farallon Island and extends from the Mean High Water Line to the CVPZ 6 boundary. The precise boundary coordinates are listed in the table following this description. The boundary extends south and west from Point 1, north of Southeast Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 6 Point ID No.	Latitude	Longitude
1 .....	37.75264	- 123.01175
2 .....	37.69461	- 123.07333
3 .....	37.64621	- 122.99867
4 .....	37.70538	- 122.93567
5 .....	37.75264	- 123.01175

(7) Cargo Vessel Prohibition Zone 7 (CVPZ 7) encompasses an area of approximately 20 square nautical miles (26 square miles) surrounding the North Farallon Islands and extends from the Mean High Water Line to the CVPZ 7 boundary. The precise boundary coordinates are listed in the table following this description. The boundary extends south and west from Point 1, north of North Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 7 Point ID No.	Latitude	Longitude
1 .....	37.81914	- 123.11155
2 .....	37.76497	- 123.16939
3 .....	37.71623	- 123.09089
4 .....	37.76872	- 123.03359
5 .....	37.81914	- 123.11155

**Appendix F to Subpart H of Part 922—White Shark Approach Prohibition Zones in the Sanctuary**

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

(1) White Shark Approach Prohibition Zone 1 (WSAPZ 1) encompasses an area of approximately 21 square nautical miles (28 square miles) surrounding Southeast Farallon Island and extends from the Mean High Water Line to the WSAPZ 1 boundary. The precise boundary coordinates are listed in the table following this description. The

boundary extends south and west from Point 1, north of Southeast Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 1 Point ID No.	Latitude	Longitude
1 .....	37.75264	- 123.01175
2 .....	37.69461	- 123.07333
3 .....	37.64621	- 122.99867
4 .....	37.70538	- 122.93567
5 .....	37.75264	- 123.01175

(2) White Shark Approach Prohibition Zone 2 (WSAPZ 2) encompasses an area of approximately 20 square nautical miles (26 square miles) surrounding the North Farallon Islands and extends from the Mean High Water Line to the WSAPZ 2 boundary. The precise boundary coordinates are listed in the table following this description. The boundary extends south and west from Point 1, north of North Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 2 Point ID No.	Latitude	Longitude
1 .....	37.81914	- 123.11155
2 .....	37.76497	- 123.16939
3 .....	37.71623	- 123.09089
4 .....	37.76872	- 123.03359
5 .....	37.81914	- 123.11155

■ 3. Revise subpart K to read as follows:

**Subpart K—Cordell Bank National Marine Sanctuary**

- Sec.
- 922.110 Boundary.
- 922.111 Definitions.
- 922.112 Prohibited or otherwise regulated activities.
- 922.113 Permit procedures and issuance criteria.
- Appendix A to Subpart K of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates
- Appendix B to Subpart K of Part 922—Line Representing the 50-Fathom Isobath Surrounding Cordell Bank

**§ 922.110 Boundary.**

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 971 square nautical miles (1,286 square miles) of offshore ocean waters, and submerged lands thereunder, surrounding the submarine plateau known as Cordell Bank along the northern coast of California, approximately 45 nautical miles west-northwest of San Francisco, California.

The precise boundary coordinates are listed in appendix A to this subpart. The northern boundary of the Sanctuary is a rhumb line that begins approximately 6 nautical miles (7 miles) west of Bodega Head in Sonoma County, California at Point 1 and extends west approximately 38 nautical miles (44 miles) to Point 2. This line is part of a shared boundary between the Sanctuary and Farallones National Marine Sanctuary (FNMS). The western boundary of the Sanctuary extends south from Point 2 approximately 34 nautical miles (39 miles) to Point 3. From Point 3 the Sanctuary boundary continues east 15 nautical miles (17 miles) to Point 4 where it intersects the FNMS boundary again. The line from Point 3 to Point 4 forms the southernmost boundary of the Sanctuary. The eastern boundary of the Sanctuary is a series of straight lines connecting Points 4 through 20 in numerical sequence. The Sanctuary is coterminous with FNMS along both its (the Sanctuary's) eastern and northern boundaries.

#### **§ 922.111 Definitions.**

In addition to the definitions found in § 922.3, the following definitions apply to this subpart:

*Clean* means not containing detectable levels of harmful matter.

*Cruise ship* means a vessel with 250 or more passenger berths for hire.

*Harmful matter* means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to title 42 of the United States Code.

*Introduced species* means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

#### **§ 922.112 Prohibited or otherwise regulated activities.**

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing, or producing oil, gas, or minerals.

(2)(i) Discharging or depositing from within or into the Sanctuary, other than

from a cruise ship, any material or other matter except:

(A) Fish parts, chumming materials, or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA; or

(E) Vessel engine or generator exhaust.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as listed in paragraphs (a)(2)(i) and (ii) of this section.

(3) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart, and the 50-fathom isobath is approximated by connecting these coordinates with straight line arcs in numerical sequence from Point 1 to

Point 15. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person.

(4)(i) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or other matter on or in the submerged lands. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart, and the 50-fathom isobath is approximated by connecting these coordinates with straight line arcs in numerical sequence from Point 1 to Point 15.

(ii) In the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or matter on the submerged lands except as incidental and necessary for anchoring any vessel or lawful use of any fishing gear during normal fishing activities. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart, and the 50-fathom isobath is approximated by connecting these coordinates with straight line arcs in numerical sequence from Point 1 to Point 15.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(6) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle or bird taken, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(7) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(8) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass



(*Morone saxatilis*) released during catch and release fishing activity.

(9) 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 permit issued under the Act.

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment.

(c) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation or expansion of the Sanctuary that are necessary for national defense are exempt from the prohibitions contained in the regulations in this subpart. Additional DOD activities initiated after the effective date of designation or expansion that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(d) The prohibitions in paragraphs (a)(2) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to §§ 922.48 and 922.113 or a Special Use permit issued pursuant to section 310 of the Act.

(e) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

**§ 922.113 Permit procedures and issuance criteria.**

(a) A person may conduct an activity prohibited by § 922.112(a)(2) through (7), if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a national marine sanctuary permit under this section, subject to terms and conditions, as he or she deems appropriate, if the Director finds that the activity will:

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

(2) Further the educational value of the Sanctuary;

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

(4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider such factors as:

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

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

(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

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

(5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(6) It is necessary to conduct the proposed activity within the Sanctuary;

(7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(8) The Director may consider additional factors as he or she deems appropriate.

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

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

**Appendix A to Subpart K of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates**

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

**SANCTUARY BOUNDARY COORDINATES**

Point ID No.	Latitude	Longitude
1 .....	38.29989	- 123.20005
2 .....	38.29989	- 123.99988
3 .....	37.76687	- 123.75143
4 .....	37.76687	- 123.42694
5 .....	37.83480	- 123.42579
6 .....	37.90464	- 123.38958
7 .....	37.95880	- 123.32312
8 .....	37.98947	- 123.23615
9 .....	37.99227	- 123.14137
10 .....	38.05202	- 123.12827
11 .....	38.06505	- 123.11711
12 .....	38.07898	- 123.10924
13 .....	38.09069	- 123.10387
14 .....	38.10215	- 123.09804
15 .....	38.12829	- 123.08742
16 .....	38.14072	- 123.08237
17 .....	38.16576	- 123.09207
18 .....	38.21001	- 123.11913
19 .....	38.26390	- 123.18138
20 .....	38.29989	- 123.20005

**Appendix B to Subpart K of Part 922—Line Representing the 50-Fathom Isobath Surrounding Cordell Bank**

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

**CORDELL BANK FIFTY FATHOM LINE COORDINATES**

Point ID No.	Latitude	Longitude
1 .....	37.96034	- 123.40371
2 .....	37.96172	- 123.42081
3 .....	37.9911	- 123.44379
4 .....	38.00406	- 123.46443
5 .....	38.01637	- 123.46076
6 .....	38.04684	- 123.47920
7 .....	38.07106	- 123.48754
8 .....	38.07588	- 123.47195
9 .....	38.06451	- 123.46146
10 .....	38.07123	- 123.44467
11 .....	38.04446	- 123.40286
12 .....	38.01442	- 123.38588
13 .....	37.98859	- 123.37533
14 .....	37.97071	- 123.38605
15 .....	37.96034	- 123.40371