

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

[Docket No. 0648-AT14: 060809214-6214-01]

RIN 0648-AT14**Gulf of the Farallones National Marine Sanctuary Regulations**

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notice of public availability of draft management plan/draft environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan and revised regulations for the Gulf of the Farallones National Marine Sanctuary (GFnMS or Sanctuary). The proposed set of regulations includes new regulations, modifications, as well as clarifications to existing regulations. Proposed new regulations include changes to the permit issuance criteria and procedures, and new or revised prohibitions on: Discharging or depositing from within or into the Sanctuary any material or matter from a cruise ship; 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; taking or possessing marine mammals, birds and sea turtles within the Sanctuary; releasing introduced species into the Sanctuary; attracting or approaching a white shark; deserting a vessel or leaving harmful matter aboard a grounded or deserted vessel; possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure, a Sanctuary historical resource; and anchoring a vessel in a designated no-anchoring seagrass protection zone in Tomales Bay. The proposed actions would also permanently fix the shoreward boundary adjacent to Point Reyes National Seashore and add a manager's permit. The revised regulations would clarify: The description of the Sanctuary's boundaries; that the Sanctuary includes the submerged lands within its boundary; the exceptions for the prohibition on discharging or depositing materials and matter into the Sanctuary; and the exceptions for disturbing the submerged lands. Finally,

the proposed regulations would revise the prohibition against dredging or otherwise altering the submerged lands by removing the exceptions for ecological maintenance and construction of outfalls; prohibit discharging or depositing into the Sanctuary food waste resulting from meals onboard vessels; and remove the exception for discharge of dredge materials disposed of at the interim dumpsite.

No changes are proposed to be made to the "Defense Activities" section of the Designation Document.

DATES: Public hearings will be held as detailed in the **SUPPLEMENTARY INFORMATION** section.

Comments will be considered if received by January 5, 2007.

ADDRESSES: Written comments should be sent by mail to: Brady Phillips, JMP Management Plan Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by e-mail to jointplancomments@noaa.gov, or by fax to (301) 713-0404. Copies of the DMP/DEIS are available from the same address and on the Web at <http://www.sanctuaries.nos.noaa.gov/jointplan>. Comments can also be submitted to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Bizot, National Permit Coordinator, National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, Maryland 20910, by e-mail to David.Bizot@noaa.gov, or by fax to 301-713-0404; and by e-mail to David.Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Maria Brown, Sanctuary Superintendent at (415) 561-6622, Extension 301 or Maria.Brown@noaa.gov.

SUPPLEMENTARY INFORMATION:**Introduction**

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 (e)) the National Marine Sanctuary Program (NMSP) has completed its review of the management plan for Gulf of the Farallones National Marine Sanctuary (GFnMS or Sanctuary), located off the coast of northern California. The review has resulted in a proposed new management plan for the Sanctuary, some proposed changes to existing regulations, and

some proposed new regulations. The proposed new regulations include prohibitions on:

- Discharging or depositing from within or into the Sanctuary any material or matter from a cruise ship, except vessel engine cooling water;
- 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;

• Taking and possessing marine mammals, birds and sea turtles, except as authorized by the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 et seq.), the Endangered Species Act, as amended (16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 et seq.), and any regulations, as amended, promulgated under these acts;

• 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, and except species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of this regulation;

• Attracting a white shark in the Sanctuary, and approaching within 50 meters of any white shark within the line approximating 2 nmi around the Farallon Islands;

• Deserting a vessel within the Sanctuary adrift, at anchor or aground;

• Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary; and

• Anchoring a vessel in designated no-anchoring seagrass protection zones in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit or license.

These measures would afford better protection to the nationally significant natural and cultural resources of GFnMS.

Existing regulations would also be revised to:

• Clarify that the Sanctuary includes the submerged lands within the Sanctuary boundary;

• Permanently fix the shoreward boundary adjacent to Point Reyes National Seashore;

• Clarify that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices, and that the vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;

- Specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to lawful fishing activities within the Sanctuary;
- Remove an exception for discharging or depositing food waste resulting from meals on board vessels;
- Remove an exception for discharging dredge material disposed of at the interim dumpsite;
- Specify that attempting to move, remove or injure a sanctuary historical resource is prohibited;
- Remove the exceptions to the discharging or depositing prohibition that pertain to discharge of municipal sewage;
- Clarify that the exception for laying of pipelines is specific to pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary;
- Clarify that the routine maintenance exception to dredging or otherwise altering the seabed applies to docks and piers in Tomales Bay; and
- Remove the ecological maintenance exception to the disturbing of the submerged lands prohibition.

The permit regulations for the Sanctuary are also being revised and clarified. Proposed permit regulations would add a manager's permit, which would be a new type of permit for GFNMS. Additionally, in deciding whether to issue a permit, the Director of the NMSP would be required to consider factors such as: Duration; effects on Sanctuary resources and qualities; potential indirect, secondary, or cumulative effects; and whether it is necessary to conduct the activity in the Sanctuary. In addition, the proposed modifications to the permit procedures and criteria (15 CFR 922.83) would further refine current requirements and procedures found in the general NMSP regulations (15 CFR 922.48(a) and (c)). The revised section would add language to the GFNMS permit regulations about procedures and criteria for permit renewal. The proposed modifications to the permit regulations would also expressly require that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

The proposed revised management plan for the Sanctuary contains a series of action plans that outline management, research, education, operational, and performance measurement activities that are planned for the next five years. The activities are designed to address specific issues facing the Sanctuary and, in doing so, would help achieve the mandates of the NMSP and the Sanctuary's designation.

This document publishes the proposed new regulations and the proposed changes to existing regulations, publishes the text of the proposed Revised Designation Document for the Sanctuary, and announces the availability of the draft management plan and the draft environmental impact statement (DMP/DEIS). The existing GFNMS Designation Document was published at the time of Sanctuary designation in 1981 and, per the NMSA (at 16 U.S.C. 1434(a)(4)), describes the geographic area included within the Sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that are subject to regulation by the Secretary to protect those characteristics. The NMSP is proposing certain revisions to the Sanctuary's Designation Document, which include changes to the description of the area, an updated and more complete description of characteristics that give the Sanctuary particular value, an updated explanation of the relation to other regulatory programs, and a number of substantive changes to the Sanctuary's scope of regulations.

Since designation, the area of GFNMS has been described as approximately 948 square nautical miles. However, as a result of the proposed regulation changes that correct inaccuracies and ambiguities in the coordinates and the description of the Sanctuary's outer and shoreline boundaries, the GFNMS area is now calculated as approximately 966 square nautical miles. The legal description of GFNMS is proposed to be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather a more precise estimate of its size.

Because this proposed action includes changes to the Sanctuary's Designation Document, the DMP/DEIS is developed pursuant to section 304(a)(2) of the NMSA, 16 U.S.C. 1434(a)(2), consistent with, and in fulfillment of, the requirements of the National Environmental Policy Act of 1969.

Sanctuary Environment

Designated on January 16, 1981, (46 FR 7936) the Gulf of the Farallones National Marine Sanctuary (GFNMS) lies off the coast of California, to the west and north of San Francisco. The GFNMS is composed of offshore waters extending out to and around the Farallon Islands and nearshore waters (up to the mean high tide line) from Bodega Head to Rocky Point in Marin.

The GFNMS is characterized by the widest continental shelf on the west

coast of the contiguous United States. In the Gulf of the Farallones, the shelf reaches a width of 32 nautical miles (59 km). Shoreward of the Farallon Islands, the continental shelf is a relatively flat sandy/muddy plain, which slopes gently to the west and north from the mainland shoreline. It provides an especially large and relatively shallow (120 meters) habitat for coastal and oceanic seabirds, marine mammals, and fish.

The Farallon Islands lie along the outer edge of the continental shelf, between 13 and 19 nautical miles (24 and 35 km) southwest of Point Reyes and approximately 26 nautical miles (48 km) due west of San Francisco. The islands are located on part of a larger submarine ridge that extends approximately 10 nautical miles along the shelf edge. These islands provide essential habitat for seabirds and marine mammals.

In addition to sandy beaches, rocky cliffs, small coves, and offshore stacks, the GFNMS includes open bays (Bodega Bay, Drakes Bay) and enclosed bays or estuaries (Bolinas Lagoon, Tomales Bay, Estero Americano, and Estero de San Antonio). The open bays are sheltered from prevailing southward flows and allow some plankton to be retained there. Water and water-borne materials in the enclosed bays are exchanged with coastal waters through tidal currents, although inner bay waters may be resident for long periods. The mouths of the two Esteros are closed during summer and fall, but the mouths of Tomales and Bolinas remain open year-round. Tomales Bay, Bolinas Lagoon and Bodega Bay lie on the San Andreas Fault.

Offshore, currents are dominated by the seasonal winds. Lying inshore of the large California Current, these waters are characterized by wind-driven upwelling, high nutrient supply and high levels of phytoplankton. The inner Gulf of Farallones is also influenced by outflow from San Francisco Bay.

During the spring-summer upwelling season (typically March–July), strong northerly winds drive surface waters offshore (due to the Coriolis effect) and cold deep waters are upwelled to the surface over the continental shelf. These waters are rich in nutrients and feed very high levels of primary production near-surface. The resultant phytoplankton blooms are the foundation of the rich GFNMS food webs, involving zooplankton, benthic invertebrates, fish, birds, and mammals. Over the middle and outer shelf, currents are strongly southward, but nearshore flow patterns are mixed. During brief periods of weak winds

(relaxation periods), much of the inner and mid-shelf waters move as currents north along the coast past Point Reyes and Bodega Head. Phytoplankton levels peak during these relaxation periods. At depth along the shelf-edge, the California Undercurrent carries cold high-salinity waters north, providing a source for upwelling. And, nearshore, the San Francisco Bay and other outflows are carried south by the prevailing coastal currents.

In the fall, upwelling winds weaken and water temperatures increase. Sometimes known as the oceanic season, this period (typically August–November) is also characterized by onshore flow of oceanic surface waters (warmer and lower salinity). Periods of upwelling winds and phytoplankton blooms do still occur during the fall.

Winter in the GFNMS is characterized by the passage of rain-bearing cold fronts, accompanied by westerly and southerly winds that drive northward flow and downwelling over the shelf. While these fronts characterize the months of December through March, northerly upwelling winds are equally common and many upwelling events are also observed (although phytoplankton blooms are weak owing to the lower levels of light in winter). During the downwelling events, surface waters move onshore and land runoff is held nearshore. Further, large runoff plumes are also subject to the Coriolis effect and the San Francisco Bay outflow typically remains nearshore and moves north around Point Reyes following major rain and runoff events. Lowest salinities are observed in the GFNMS during this winter runoff season.

Both offshore, in the core of the California Current, and in the waters over the shelf, flows exhibit a complexity due to eddies. In the coastal waters of the GFNMS, fast flow past headlands like Point Reyes and Bodega Head creates eddies that may then move through the region. This interaction of flow with the coastline results in a partial retention of these rich, upwelled waters and helps explain the high levels of plankton, fish, mammals and birds observed in this region—marine life protected by the Sanctuary.

Proposed Revised Designation Document

The Designation Document for the Sanctuary contains the terms of designation as defined in the NMSA (16 U.S.C. 1434(a)(4)). NOAA is proposing some changes to the Designation Document as part of this management plan review process. Specifically, NOAA is proposing to clarify in the Designation Document that the

submerged lands at GFNMS are legally part of the Sanctuary and are included in the boundary description. At the time the Sanctuary was designated in 1981, Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the NMSA) characterized national marine sanctuaries as consisting of coastal and ocean waters but did not expressly mention submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98–498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, NOAA is updating the Designation Document and the boundary description, and is also replacing the term “seabed” with “submerged lands.” Additionally, boundary coordinates in the revised Designation Document and in the sanctuary regulations would be expressed by coordinates based on the North American Datum of 1983 (NAD 83).

NOAA also proposes to modify the Designation Document to authorize Sanctuary regulation of: Discharging or depositing from beyond the boundary of the Sanctuary; possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure, a Sanctuary historical resource; taking or possessing any marine mammal, sea turtle, or bird within or above the Sanctuary except as permitted by the Marine Mammal Protection Act, Endangered Species Act, and the Migratory Bird Treaty Act; releasing or otherwise introducing from within or into the Sanctuary an introduced species; attracting or approaching any animal; and operating a vessel (i.e., watercraft of any description) within the Sanctuary, including but not limited to, anchoring or deserting. These proposed revisions to and addition of new activities subject to Sanctuary regulation would enable new and emerging resource management issues to be addressed, and are necessary in order to ensure the protection, preservation, and management of the conservation, recreational, ecological, historical, cultural, educational, archeological, scientific, and esthetic resources and qualities of the Sanctuary.

Additional proposed changes to the Designation Document would provide: An updated and more complete description of characteristics that give the Sanctuary particular value; greater clarity on the applicability of Sanctuary emergency regulations (and consistent with the National Marine Sanctuary

Program regulations of general applicability, 15 CFR part 922, subpart E); an updated explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights; and various minor revisions to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries. In Article V (Relation to Other Regulatory Programs), the “Fishing and Waterfowl Hunting” section is being revised to clarify the original intent that, although the Sanctuary does not have authority to regulate fishing, fishing vessels may be regulated with respect to discharge and anchoring in accordance with Article IV. No changes are proposed to be made to the “Defense Activities” section of the Designation Document.

An additional proposed change to the Designation Document would update Article VI regarding the process to modify the Designation. This change would delete the requirement that modifications to the Designation must be approved by the President of the United States and would require instead that changes be approved by the Secretary of Commerce or his or her designee. This would be consistent with amendments to the NMSA that were enacted after the Sanctuary was designated in 1981 and which removed Presidential approval as a requirement for designation.

The NMSP has carefully considered existing state and federal authorities in proposing new regulatory authorities to ensure protection and management of sanctuary resources. Proposed new authorities are intended to complement existing authorities.

Proposed Revised Designation Document 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 north and south of Point Reyes Headlands, between Bodega Head and Rocky Point and surrounding the Farallon Islands, are hereby designated a Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

Article I. Effect of Designation

Within the area designated in 1981 as The Point Reyes/ Farallon Islands Marine Sanctuary (the Sanctuary) described in Article II, the Act authorizes the promulgation of such regulations as are reasonable and

necessary to protect the values of the Sanctuary. Section 1 of Article IV of this Designation Document 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 966 square nautical miles (nmi), extending seaward to a distance of 6 nmi from the mainland and 12 nmi from the Farallon Islands and Noonday Rock, and including the intervening waters and submerged lands. The precise boundaries are defined by regulation.

Article III. Characteristics of the Area That Give it Particular Value

The Sanctuary 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 and nesting areas for at least 12 of 16 known U.S. nesting marine bird species are found within the boundaries. Abundant fish and shellfish are also found within the Sanctuary.

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. Hydrocarbon operations.
- 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. Activities regarding 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, including, but not limited to, anchoring or deserting.

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 mariculture activities involving alterations of or construction on the seabed, or release of introduced species by mariculture activities not covered by a valid lease from the State of California and in effect on the effective date of the final regulation, 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 of 1976, 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 and in Article IV includes mariculture.

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, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV. The Sanctuary regulations will set forth any necessary certification procedures.

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 DESIGNATION DOCUMENT]

Summary of the Proposed Regulatory Amendments

The proposed regulatory changes would clarify that "submerged lands" are within the Sanctuary boundary, i.e. part of the Sanctuary. This would update the boundary regulation to make it consistent with the NMSA and the revised Designation Document. (See explanation of boundary clarification in preceding discussion of proposed revised Designation Document.) The Sanctuary's outer boundary coordinates and description of the shoreline boundary demarcation are also proposed for technical corrections using the North American Datum of 1983, and to clarify that the shoreline boundary is the Mean High Water Line (MHWL) of island shores. Since designation the area of GPNMS has been described as approximately 948 square nautical miles. However, adjusting for technical corrections and using updated technologies, the GPNMS area is now calculated as approximately 966 square nautical miles. The legal description of GPNMS is proposed to be updated to reflect this change. This update would

not constitute a change in the geographic area of the Sanctuary but rather a more precise estimate of its size.

The proposed regulatory changes would include permanently fixing the shoreward boundary of the Sanctuary that is adjacent to Point Reyes National Seashore (PRNS). The 1981 sanctuary designation linked that portion of the boundary to the seaward limit of PRNS. Since then, PRNS has made at least two boundary modifications in areas adjacent to the sanctuary, requiring the sanctuary to redefine its own boundary, the geographic extent of its authority, and enforcement and implementation of programs. Fixing the shoreward boundary of the Sanctuary that is adjacent to PRNS as it was at the time of Sanctuary designation in 1981 by coordinates using the North American Datum of 1983 would ensure consistency and continuity for the sanctuary boundary, sanctuary management and user groups.

The proposed regulations would also clarify and otherwise modify the existing (1981) regulation prohibiting discharging or depositing any material or other matter. Clarifications would be made to make it clear that the regulation applies to discharges and deposits “from within or into the Sanctuary” (“into” is intended to make clear that the prohibition would apply not only to discharges and deposits originating in the Sanctuary (e.g., from vessels in the Sanctuary), but also, for example, from discharges and deposits above the Sanctuary, such as from aircraft and from outside the Sanctuary such as outfall pipes). The exception for fish, fish parts, or chumming materials (bait) is clarified so that it applies only to such discharges or deposits made during the conduct of lawful fishing activity within the Sanctuary. The exception for biodegradable effluent discharges from marine sanitation devices is clarified to apply only to operable Type I or II marine sanitation devices approved by the United States Coast Guard in accordance with the Federal Water Pollution Control Act, as amended. Although the existing exception for vessel wastes “generated by marine sanitation devices” was intended to prohibit the discharge of untreated sewage into the Sanctuary, the proposed change would clarify that such discharges are only allowed if generated by Type I or II marine sanitation devices. (Type I and Type II marine sanitation devices treat wastes, but Type III marine sanitation devices store waste until it is removed at designated pump-out stations on shore or discharged at sea.)

The discharge and deposit regulation would be modified by removing the exception for discharging or depositing food waste resulting from meals onboard vessels. Coast Guard regulations prohibit discharge of food wastes (garbage) within three nmi and prohibit discharge of food wastes unless ground to less than one inch within three to twelve nmi. The proposed Sanctuary regulation modification would mirror the Coast Guard regulations within three nmi and provide increased protection to Sanctuary resources and qualities from such marine debris vis-à-vis the Coast Guard regulations in the area of the Sanctuary beyond three nmi.

No other changes are being made to the exceptions that allow discharge of water (including vessel cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by routine vessel maintenance (e.g., deck wash down) and engine exhaust. These exceptions do not include and, therefore, it continues to be prohibited to discharge, ballast water or oily wastes resulting from bilge pumping. Ballast water is a known vector for introduced species and other contaminants from the source area. The discharge of oily wastes from bilge pumping is interpreted here to mean any waste that produces a visible sheen. The proposed clarifications and modifications are intended to achieve increased protection of Sanctuary resources and qualities.

The discharge and deposit regulation would be augmented by adding a prohibition on discharging or depositing any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality. “Sanctuary resource” is defined at 15 CFR 922.3 as “any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.” “Sanctuary quality” is defined at 15 CFR 922.3 as “any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological

health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.” This modification would provide consistency with the regulatory language of other more recently designated sanctuaries, and help to protect Sanctuary resources and qualities from harmful influences originating outside the boundaries of the GFNMS. The coastal waters of the sanctuary, particularly the estuarine habitats of Bolinas Lagoon, Tomales Bay, Estero Americano and Estero de San Antonio, are vulnerable to land-based nonpoint source pollution from outside the sanctuary. Sources of concern include runoff, agriculture, marinas and boating activities, past mining, and aging and undersized septic systems. Water quality in offshore areas of the sanctuary could be threatened or impacted by large or continuous discharges from shore, spills by vessels, illegal dumping activities or residual contaminants from past dumping activities. The threat of an offshore oil spill is a constant reality near the busy shipping lanes in and adjacent to the sanctuary. This new proposed regulatory action would contribute to increased protection of water quality, impacting both physical and biological resources in the sanctuary.

The proposed regulations would also modify the existing (1981) regulation prohibiting discharging or depositing any material or other matter by removing the exception of dredge material disposed of at the interim dumpsite, and the discharge of municipal sewage if certified in accordance with 922.84. The interim dumpsite, located approximately 10 nmi south of Southeast Farallon Island, is no longer in use as the permanent dumpsite has been selected and in use for more than fifteen years, making this a remnant and an outdated exception to the discharge regulation. Additionally, at the time of designation of the sanctuary in 1981, there was no permit, license or authorization that had been issued within the sanctuary for municipal sewage discharge. No applications have been submitted for more than 25 years, thus NOAA finds it unnecessary to maintain this exception to the discharge regulation. By removing these two exceptions, the discharge regulation has been streamlined, focusing on current and necessary exceptions to the prohibition.

The proposed exceptions to the revised discharge and deposit regulation would restrict cruise ships to discharging only vessel cooling water into the Sanctuary. “Cruise ship” is defined to mean: A vessel with 250 or more passenger berths for hire. The

prohibition would protect Sanctuary water quality from the potentially large volume of wastewater that may be discharged by cruise ships, while allowing for them to transit the Sanctuary. Currently 643,000 cruise ship passengers embark annually from California ports in San Francisco Bay, Los Angeles, and San Diego. Ninety cruise ship arrivals and departures (Metropolitan Stevedore Company) are estimated at the San Francisco Passenger Terminal in 2006. Many of these cruise ships will be entering and exiting the Bay through the northbound vessel traffic lanes, which transit through the Sanctuary. Although partly constrained by the lack of local docking facilities, cruise ship visits are likely to continue to increase as the fleet shifts from international to more domestic cruises, and begins using a new cruise ship docking facility planned for San Francisco Bay. Due to their sheer size and passenger capacity, cruise ships can cause serious impacts to the marine environment. The main pollutants generated by a cruise ship are: Sewage, also referred to as black water; gray water; oily bilge water; hazardous wastes, and solid wastes. Based on EPA estimates, in one week a 3,000-passenger cruise ship generates about 210,000 gallons of sewage, 1,000,000 gallons of gray water, 37,000 gallons of oily bilge water, more than 8 tons of solid waste, millions of gallons of ballast water containing potentially invasive species, and toxic wastes from dry cleaning and photo-processing laboratories. Although cruise ships discharge waste from a single source, they are exempted from regulation under the Clean Water Act (CWA) point source permitting system. The CWA allows the discharge of untreated black water anywhere beyond three miles from shore, and does not require any treatment of gray or ballast water.

The proposed regulatory changes would also modify the existing prohibition against altering the seabed of the Sanctuary or constructing a structure thereupon. The term "seabed" would be replaced with "submerged lands" to be consistent with language used in the NMSA. The proposed regulations would clarify that the existing (1981) regulation prohibiting disturbance to the submerged lands except for the laying of pipelines is specific to pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary as referenced in 15 CFR 922.82 (1) and in accordance with section 922.84: "Pipelines related to hydrocarbon operations outside the sanctuary may be placed at a distance

greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and any Areas of Special Biological Significance (ASBS) where certified to have no significant effect on sanctuary resources in accordance with section 922."

Clarifying that the laying of pipelines is specifically limited to hydrocarbon operations adjacent to the Sanctuary (i.e., bordering) rather than anywhere outside the Sanctuary will protect sensitive sanctuary benthic habitats from impacts from disturbance.

The proposed regulations would modify the existing (1981) regulation prohibiting disturbance to the submerged lands, by removing the exception for ecological maintenance. Ecological maintenance is not defined in the regulations or administrative record, making it difficult to interpret, and thus is being removed to streamline the regulatory language. There is no record of the ecological maintenance exception ever having been used.

The proposed regulatory changes would also specify that abandoning, by which is meant leaving without intent to remove, any structure, material, or other matter on or in the submerged lands of the Sanctuary is prohibited. This change would be consistent with similar regulations at more recently designated sanctuaries and would help protect the Sanctuary from debris (e.g., wrecked vessels or seabed research equipment) abandoned by Sanctuary users.

The proposed regulatory changes would also include a modification to the existing (1981) prohibition on removing or damaging any historical or cultural resource. The proposed modification would add "moving" and "possessing" to the existing prohibition; would replace "damage" with "injure," a term defined at 15 CFR 922.3; and add "attempting" to move, remove, injure, or possess as a prohibition. The intent of this modification is to provide added protection to these fragile, finite, and non-renewable resources so they may be studied, and so appropriate information about them may be made available for the benefit of the public. The proposed regulation would also replace "historical or cultural resource" with "Sanctuary historical resource" to be consistent with regulatory language used at several other more recently designated national marine sanctuaries. ("Historical resource" is defined in NMSP 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. Historical resources include "submerged cultural resources," and also include "historical properties," as defined in the National Historic Preservation Act, as amended, and its implementing regulations, at 15 CFR 922.3).

The proposed regulatory changes would also include a new prohibition on take of marine mammals, birds, and sea turtles, except as expressly authorized by the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 et seq.) (MMPA), Endangered Species Act, as amended (16 U.S.C. 1531 et seq.) (ESA), Migratory Bird Treaty Act, as amended (16 U.S.C. 703 et seq.) (MBTA), or any regulation, as amended, promulgated under one of these acts. The intent of this regulation is to bring a special focus to protection of the diverse and vital marine mammal and bird populations and the sea turtles of the Sanctuary. This area-specific focus is complementary to the efforts of other resource protection agencies, especially given that other federal and state authorities must spread limited resources over much wider geographic areas. This regulation would be consistent with regulations at several other more recently designated national marine sanctuaries, and would provide additional deterrence per the higher civil penalties afforded under the NMSA than the penalties provided by the MMPA, ESA, and MBTA. Further, the prohibition would cover all marine mammals, sea turtles, and birds (including, but not limited to, seabirds, shorebirds and waterfowl) within or above the Sanctuary. The Sanctuary's proposed regulation would not apply if an activity (including a federally or state-approved fishery) that does or might cause take of marine mammals, birds or sea turtles has been expressly authorized to do so under the MMPA, ESA, or MBTA or an implementing regulation. With this proposed regulation, if the National Marine Fisheries Service (NMFS) or the United States Fish and Wildlife Service (USFWS) issues a permit for the take of a marine mammal, bird, or sea turtle, the permitted taking would be allowed under NMSP regulations and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary regulation.

The proposed regulatory changes would also prohibit possessing within the Sanctuary (regardless of where taken, moved, or removed from) any marine mammal, bird, or sea turtle except as authorized under the MMPA, the ESA, the MBTA, and any

regulations, as amended, promulgated under these acts. This proposed regulation serves to provide a stronger deterrent for violations of existing laws protecting marine mammals, birds, or sea turtles, than that offered by those other laws alone. This proposed regulation would also be consistent with recent regulations adopted by other national marine sanctuaries and would enhance protection provided by the prohibition on take of marine mammals, birds and sea turtles (see above). With this proposed regulation, if NMFS or the USFWS issues a permit for the possession of a marine mammal, bird, or sea turtle, the permitted activity would be allowed under NMSP regulations and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary regulation.

"Take" is defined in the NMSP program-wide regulations at 15 CFR 922.3. The proposed prohibition on take of marine mammals, birds, and sea turtles would complement the current regulation prohibiting disturbing birds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nmi of the Farallon Islands, Bolinas Lagoon, or any ASBS. The current regulation remains unique and important in that it provides special focus on a specific type of activity, operation of motorized aircraft, within particularly sensitive environments of the Sanctuary. The current regulation includes several exceptions (for enforcement purposes, or to transport persons or supplies to or from an Island), that would remain subject to the prohibitions of the MMPA, ESA and the MBTA, and any regulations, as amended, promulgated under these acts.

The proposed regulatory changes would prohibit releasing or otherwise introducing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity; and except species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of this regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species.

"Introduced species" is defined to mean: (1) A species (including any of its biological matter capable of propagation) that is non-native to the ecosystems protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been

transferred in order that the host organism acquires the genetic traits of the transferred genes. The prohibition would not apply to activities such as the release of striped bass (*Morone saxatilis*) during catch and release fishing activity because the fish was already present in the Sanctuary and its release would not constitute an "introduction." Striped bass were intentionally introduced in California in 1879, and in 1980 the California Department of Fish and Game initiated a striped bass hatchery program to support the striped bass sport fishery, which according to the California Department of Fish and Game is one of the most important fisheries on the Pacific Coast. The California Department of Fish and Game manages the striped bass fishery through a Striped Bass Management Conservation Plan.

There are currently twelve active state water bottom mariculture leases in Tomales Bay managed by the California Department of Fish and Game. Three of those leases have been recently renewed: M-430-19 (Marin Oyster Company, 2001), M430-05 (Tomales Bay Oyster Company, 2002), and M-430-06 (Cove Mussel Company, 2002). The other nine leases were issued in the 1980s and have not yet come up for renewal. The exception to the introduced species prohibition would grandfather in the current lease agreements that are in effect on the effective date of the final regulation and allow for the introduction of introduced species as specified in these lease agreements. However, any new lease agreements executed after this date would be subject to this prohibition. Operations conducted under new lease agreements could cultivate native species but would be subject to the prohibition regarding introduced species. NOAA is not aware of any pending lease applications.

This prohibition is designed to help reduce the risk from introduced species, including their seeds, eggs, spores, and other biological material capable of propagating. The intent of the prohibition is to prevent injury to Sanctuary resources and qualities, to protect the biodiversity of the Sanctuary ecosystems, and to preserve the native functional aspects of the Sanctuary ecosystems, all of which are put at risk by introduced species. Introduced species may become a new form of predator, competitor, disturber, parasite, or disease that can have devastating effects upon ecosystems. For example, introduced species impacts on native coastal marine species of the Sanctuary could include: Replacement of a functionally similar native species

through competition; reduction in abundance or elimination of an entire population of a native species, which can affect native species richness; inhibition of normal growth or increased mortality of the host and associated species; increased intra- or interspecies competition with native species; creation or alteration of original substrate and habitat; hybridization with native species; and direct or indirect toxicity (e.g., toxic diatoms). Changes in species interactions can lead to disrupted nutrient cycles and altered energy flows that ripple with unpredictable results through an entire ecosystem. Introduced species may also pose threats to endangered species and native species diversity. A number of non-native species now found in the Gulf of the Farallones region were introduced elsewhere on the west coast but have spread through hull-fouling and accidental introductions.

The proposed regulatory changes would prohibit approaching within 50 meters of a white shark within 2 nmi around the Farallon Islands and prohibit attracting any white shark within the Sanctuary. *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). Harassment and disturbance related to human interaction is increasing from controversial shark diving programs known as adventure tourism. These programs may degrade the natural environment, impacting the species as a whole, and individual sharks that may be negatively impacted from repeated encounters with humans and boats. Implementing these regulations will resolve user conflicts (shark researchers vs. adventure tourism) and prevent interference with the seasonal feeding behavior of white sharks. Reducing human interaction and chumming would decrease the impacts on natural shark behavior.

The proposed regulatory changes would add a new prohibition on deserting a vessel within the sanctuary. In particular, Tomales Bay is believed to have more than 100 derelict vessels. Leaving vessels unattended increases the likelihood of a calamitous event, or the risk of sinking. These events could result in the discharge of harmful toxins, chemicals or oils into the marine environment, reducing water quality and impacting biological resources and habitats. The proposed regulation would help to protect biological resources from

the threat posed by derelict vessels. *Deserting* means: leaving a vessel aground or adrift: (1) 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; (2) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or (3) 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. Deserting also means 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.

The proposed regulatory changes would add a new prohibition on leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary. Once a vessel is grounded 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. Currently, preemptive removal of harmful substance (e.g., motor oil) is not required by regulation. This prohibition would help reduce or avoid harm to Sanctuary resources and qualities from potential leakage of hazardous or other harmful matter from a vessel.

The proposed regulatory changes would add a new prohibition on anchoring a vessel in a designated no-anchoring seagrass protection zone in Tomales Bay. This prohibition would not apply to vessels anchoring as necessary for mariculture operations that are conducted pursuant to a valid lease, permit, or license. For the purposes of this regulation, anchoring refers to the dropping and placement of an anchor that is attached to a vessel, and which, being cast overboard, retains the vessel in a particular station. There are a total of seven no-anchoring zones proposed as part of this regulation, which comprise 22% of the surface area of Tomales Bay. The zones encompass the known seagrass coverage areas, as based upon data provided by California Department of Fish and Game from 1992, 2000, 2001 and 2002. The location and coverage area of seagrass beds can change over time. The adequacy of these zones will be reviewed and updated periodically, as needed, based on new seagrass monitoring data.

This prohibition is intended to protect seagrass beds in Tomales Bay from the destructive effects of anchoring vessels. *Seagrass* means any species of marine angiosperms (flowering plants) that

inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*. Seagrass beds are commonly found in tidal and upper subtidal zones and foster high levels of biological productivity. Seagrass beds are located throughout the sanctuary in estuaries, bays and lagoons, such as Tomales Bay and Bolinas Lagoon. Seagrass species, including *Zostera marina* and *Gracilaria spp.*, cover about 397 hectares (1.5 mi²) or 13% of Tomales Bay. The seagrass beds help trap sediments and reduce excess nutrients and pollutants in the water column and thereby contribute towards the Bay's high water quality. Seagrass provides breeding and nursery grounds for fish such as herring, which attach their eggs to the seagrass blades. Seagrass beds also provide important habitats for migratory birds, such as shorebirds, who feed upon the abundant fish and invertebrate species that live in the seagrass beds. The rapid disappearance of this habitat, undergoing conversion for agriculture and aquaculture, poses a particular threat to these vulnerable species. Seagrass beds also serve as buffer zones in protecting coastal erosion and are a filter for pollutants. In 2003 a Technical Committee (TC), consisting of 7 state and federal agencies, was formed to address boater impacts in Tomales Bay. In 2005, members of the TC discussed the need for no-anchor zones in the seagrass beds as a way to prevent habitat damage in Tomales Bay. It was determined that the Gulf of the Farallones National Marine Sanctuary has the broadest jurisdictional authority over the waters of Tomales Bay, and should propose an action to prohibit anchoring by vessels on seagrass beds. This action would afford direct and indirect protection to biological resources and habitats, and the ecological services they provide.

Since 2005, Tomales Bay has been the subject of a collaborative effort among ten local, state and Federal agencies (including NOAA/GFNMS) to develop additional conservation measures to better protect the Bay's sensitive habitats and resources. The framework for the multi-agency Tomales Bay plan is proposed to be included in the GFNMS draft management plan as a strategy in the Resource Protection section. Although the multi-agency plan for Tomales Bay is not part of this proposed rule, it would include narrowing the current exception for the construction of docks and piers in Tomales Bay to allow only the reconstruction of existing docks and

piers, and only within their existing footprint; construction of new docks and piers would be prohibited in Tomales Bay. GFNMS is publishing notice of this element of the multi-agency plan and this possible future regulatory change to the GFNMS regulation regarding docks and piers in Tomales Bay in order to advise the public of this potential change and to seek comment on it at this time, together with public comment on the proposed changes to GFNMS regulations that are the subject of this Notice.

The proposed regulatory changes would also modify the Sanctuary's permit regulations by adding a manager's permit to "assist in the managing of the Sanctuary." Activities that "assist in managing the Sanctuary" would be added to the types of activities (i.e., research, education, and salvage) for which the Director may issue a permit. This addition provides a mechanism by which the Director may issue permits for otherwise prohibited activities that will further Sanctuary management.

Another proposed modification to the permit regulations would, based on the decades of permitting experience the NMSP now has, strengthen and augment the criteria that the Director considers when evaluating permit applications. Whereas the existing regulation simply indicates that the Director shall consider certain matters in deciding whether to grant a permit, the proposed modified regulation would state that the Director may not issue a permit unless the Director first considers certain factors, including but not limited to whether: 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; and it is necessary to conduct the proposed activity within the Sanctuary.

The proposed modifications would also add permit application requirements. Permit applicants would be required to submit information addressing the criteria that the Director must consider in order to issue a permit. Additionally, the permit regulation would stipulate that Sanctuary permits are nontransferable.

The proposed modifications to the permit regulations would also stipulate that Sanctuary permits must contain certain terms and conditions. These terms and conditions would include

information deemed appropriate by the Director of the National Marine Sanctuary Program.

The proposed modifications to the permit regulations would also expressly require that in addition to any other terms and conditions that the Director deems appropriate, Sanctuary permits must require that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

Public Hearings

NOAA is publishing this proposed rule to provide notice to the public and invite advice, recommendations, information, and other comments from interested parties on the proposed rule and Draft Management Plan/Draft Environmental Impact Statement (DMP/DEIS). These are joint public hearings conducted by CBNMS, GFNMS and MBNMS and will be held as detailed below:

(1) November 29, 2006, 6:30 p.m. at the Cambria Pines Lodge, 2905 Burton Drive, Cambria, CA 93428.

(2) November 29, 2006, 6:30 p.m. at the Bodega Marine Laboratory, 2099 Westside Road, Bodega Bay, CA 94923.

(3) November 30, 2006, 6:30 p.m. at the Monterey Conference Center, One Portola Plaza, Monterey, CA 93940.

(4) November 30, 2006, 6:30 p.m. at the Dance Palace Community Center, 503 B Street, Point Reyes Station, CA 94956.

(5) December 5, 2006, 6:30 p.m. at the University of California Santa Cruz Inn and Conference Center, 611 Ocean Street, Santa Cruz, CA 95060.

(6) December 5, 2006, 6:30 p.m. at the Fort Mason Center, Firehouse (NE corner of Center), San Francisco, CA 94123.

(7) December 6, 2006, 6:30 p.m. at the Community United Methodist Church, 777 Miramontes Street, Half Moon Bay, CA 94019.

Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(4)) requires that the procedures specified in section 304 for designating a National Marine Sanctuary be followed for modifying any term of designation. In particular, section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed

designation (or in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required documents are being submitted to the specified Congressional Committees.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA (16 U.S.C. 1434) requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and that the DEIS be made available to the public. NOAA has prepared a DMP/DEIS on the proposal and copies are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on the DMP/DEIS will be published in the FMP/FEIS and final rule.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of section 3(f) of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action falls within the definition of "policies that have federalism implications" within the meaning of Executive Order 13132. The proposed changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the Executive Order, the NMSP consulted with a number of entities within the State who participated in development of the proposed rule, including but not limited to, the California Department of Boating and Waterways, the California State Lands Commission, the California Department of Fish and Game, and the California Resources Agency.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Based primarily on recent socioeconomic studies, NOAA has

identified the following small businesses and small organizations as defined by the Regulatory Flexibility Act. Small business concerns operating within the Sanctuary include commercial fishermen, mariculture operations, consumptive recreational charter businesses, and non-consumptive recreational charter businesses. Small organizations operating within the Sanctuary include non-governmental organizations (NGOs) and/or non-profit organizations (NPOs) dedicated to environmental education, research, restoration and conservation concerning marine and maritime heritage resources. There are no small governmental jurisdictions in the Sanctuary, though as explained below, there are some adjacent to the Sanctuary.

Small business concerns operating within the Sanctuary include commercial fishermen who vary in number seasonally and annually from approximately 300 to 500 boats; twelve mariculture lease holders in Tomales Bay; approximately 25 recreational charter fishing businesses; and approximately 7 recreational charter businesses engaged in wildlife viewing. The approximately 3 small organizations operating within the Sanctuary include non-governmental organizations (NGOs) and/or non-profit organizations (NPOs) dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. The Regulatory Flexibility Act (5 U.S.C. 601(5)) defines the term "small governmental jurisdictions" as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Bodega, Bolinas and Tomales Bay settlements would qualify as "small governmental jurisdictions" directly adjacent to the Sanctuary.

The proposed prohibition on abandoning any structure, material or other matter on or in the submerged lands of the Sanctuary would have no significant adverse impacts on small entities within the Sanctuary because none of these operations are dependent upon a practice of abandoning structures or other matter on or in the submerged lands of the Sanctuary. However, should a small entity, such as a research entity, occasionally want to temporarily leave materials on the submerged lands of the Sanctuary, such as research equipment, a Sanctuary research permit could be applied for. Additionally, this prohibition may offer

an indirect beneficial effect to marine salvage companies whose services may be called upon to remove grounded, sinking or submerged vessels that would otherwise be illegal to leave abandoned upon the submerged lands of the Sanctuary.

The proposed prohibitions on take and possession of marine mammals, birds and sea turtles are not expected to result in a significant adverse impact on small entities because those entities' operations may lawfully involve such takes under authorization granted pursuant to the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), Endangered Species Act (16 U.S.C. 1531 et seq.), Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), or any regulation promulgated under one of these acts. Additionally, non-consumptive recreational charter businesses may receive indirect beneficial effects from these proposed regulations because the added protection to marine mammals, birds, and sea turtles can complement business activities focused on whale watching, kayaking, or other marine excursion tours. For example, the additional protection this prohibition affords to certain animals may potentially result in improved status of such animals, particularly at the Farallon Islands. This in turn may lead to the beneficial effect of more consumer interest in services rendered by non-consumptive recreational charter businesses.

The proposed prohibition on releasing or otherwise introducing from within or into the Sanctuary an introduced species is not expected to significantly adversely impact small entities because releasing or otherwise introducing an introduced species is not part of the business associated with most of the identified small entities. Small entities whose business may include catch and release of striped bass (*Morone saxatilis*) (i.e., consumptive recreational charter businesses) would not be affected because the prohibition would not apply to the catch and release of striped bass. By prohibiting such introductions, indirect benefits may result for certain small entities since their activities could potentially be negatively impacted by the spread of introduced species.

There are twelve mariculture lease holders in Tomales Bay. All twelve of these lease holders would be exempt from the introduced species prohibition if they have active lease agreements at the time of implementation of this regulation. The exception only applies to introduced species specified in the lease agreement and for the term of that active lease. In other words, species cultivated by mariculture activity in

Tomales Bay pursuant to a valid lease, permit, license, or other authorization issued by the State of California and in effect on the effective date of this regulation, would be permitted, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated, or the size of the area under cultivation with introduced species. New mariculture leases would not be exempt from this prohibition. This prohibition would not put any current operations out of business.

None of the small entities conducting activities within the Sanctuary is expected to be significantly adversely impacted by the proposed clarifications and corrections to the Sanctuary's boundary because there would be no practical change resulting from these clarifications and corrections. The clarification that submerged lands are part of the existing Sanctuary boundary would not have a significant adverse impact on small entities within the Sanctuary because the Sanctuary has managed the submerged lands and has administered protective measures for them since designation in 1981. The NMSP manages submerged lands as part of national marine sanctuaries and this is reflected in amendments to the NMSA passed in 1984 (16 U.S.C. 1432(3)). Similarly, proposed corrections and clarifications to the Sanctuary's boundary coordinates would not significantly adversely impact any of the small entities operating within the Sanctuary because the proposed corrections and clarifications are merely technical in nature and will not affect the measurable size of the Sanctuary. For example, boundary coordinates are proposed to be updated using the North American Datum of 1983, which provides more accurate information than that originally used to describe the Sanctuary boundary coordinates.

The proposed modification to the Sanctuary's discharge/deposit regulation clarifying that discharges allowed from marine sanitation devices applies only to Type I and Type II marine sanitation devices would not introduce any new restrictions on small entities and would merely clarify the original intent of the Sanctuary's discharge regulation. To the extent that this clarification might affect customary, though illegal, sewage discharge practices of some small entities, the adverse affect on those operations is expected to be less than significant because such discharges may legally occur beyond the Sanctuary's boundary, or vessel sewage may be pumped out and disposed of at mainland ports and

harbors. Additionally, some small entities may receive indirect benefits from this clarification, especially as it might pertain to preventing large volume discharges from larger vessels, since it may contribute to sustaining favorable environmental quality in their area of operation.

The proposed modification to the Sanctuary's discharge/deposit regulation that would specify that discharging or depositing fish, fish parts, or chumming materials (bait) may occur only during the conduct of lawful fishing activity within the Sanctuary is not expected to have a significant adverse impact on small entities because it would not apply to conduct of lawful fishing activity within the Sanctuary. In some areas "chumming" is a practice that has been associated with non-consumptive recreational activities (e.g., attracting sharks for photography) or in some cases research activities (e.g., attracting birds for study). The two known shark viewing operations in business during the management plan review process were consulted with and support this proposed regulatory action.

Furthermore, small entities not engaged in lawful fishing could apply for and, if appropriate, be granted a Sanctuary permit (e.g., research or education) to conduct this otherwise prohibited discharge/deposit.

The proposed modification that would prohibit the discharge of food waste as a result of meals on board vessels would not result in a significant impact to small entities because it would merely introduce a new requirement that boaters not discard food wastes within the Sanctuary. Such discharges/deposits are already prohibited under the Act to Prevent Pollution from Ships, 33 U.S.C. 1901 et seq., within the first three nmi from shore and out to twelve nmi unless the food wastes are ground to less than one inch. Therefore, boaters could either properly dispose of food waste at port or appropriately discard it beyond the Sanctuary's boundary, when food wastes are ground to less than one inch. Resulting impacts may include additional costs and time potentially involved in traveling the additional distance offshore to appropriately dispose of food waste, although wastes may also be disposed of shoreside.

The proposed modification to the sanctuary's discharge regulation exception that would result in dredge material disposed of at the interim dumpsite is no longer applicable to any entity as the interim dumpsite is no longer in use.

The proposed modification to the sanctuary's discharge regulation that would no longer exempt municipal sewage discharge is only applicable to Marin and Sonoma counties. No permit applications have been received, nor has interest been expressed in applying for a permit, for the past 25 years. Thus, the proposed modification is expected to result in less than significant impact.

The proposed prohibition on discharge from cruise ships would have no adverse impacts on any current small entity operations. The Small Business Administration defines the threshold for a "Scenic and Sightseeing Transportation, Water" small business as an entity that has average annual receipts of \$6.5 million per year or less (NAICS 487210). "Cruise ship" is defined by the Sanctuary to mean a vessel with 250 or more passenger berths for hire. All of the cruise ship entities that operate vessels in the Sanctuary with more than 250 passenger berths are considered large entities. Additionally, cruise ships would not be prevented from transiting the sanctuary, as indicated by the exception for "vessel cooling water." All other discharge material must be disposed of beyond the sanctuary boundary, provided that it does not enter and injure a sanctuary resource.

Significant adverse impacts are not expected to result for any of the Sanctuary's small entities from the proposed prohibition on discharging or depositing any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality because in the course of normal, lawful operations, no small entity activities (e.g., commercial fishing businesses, recreational fishing businesses, non-consumptive charter businesses, research and education entities, aircraft businesses) are expected to produce such discharges/ deposits beyond the Sanctuary boundary. Additionally, this proposed regulation would except discharges/ deposits likely to come from vessel-based small entities, including: Biodegradable effluent 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 (33 U.S.C. 1321 *et seq.*); biodegradable matter from a vessel resulting from deck wash down and vessel engine cooling water; vessel engine exhaust; and fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity beyond the boundary of the Sanctuary,

provided that such discharge or deposit is during the conduct of lawful fishing activity there.

The proposed clarification to the sanctuary's disturbing the submerged lands regulation that would no longer exempt laying of pipelines except those related to hydrocarbon operations in leases adjacent to the sanctuary is not applicable to any known entity. Over the past 25 years, no permit applications have been received, and no interest in applying for a permit has been expressed. Thus, the proposed modification is expected to result in no significant impact.

The proposed modification to the sanctuary's disturbing the submerged lands regulation that would no longer exempt ecological maintenance is not applicable to any known entity. Over the past 25 years, no permit applications have been received, and no interest in applying for a permit has been expressed. Thus, the proposed modification is expected to result in no significant impact.

Significant adverse impacts to small entities are not expected to result from the revision and strengthening of the Sanctuary's regulation protecting historical resources because the regulation would remain essentially the same with regard to how small entities may conduct their activities. For example, non-consumptive recreational charter businesses are expected to continue to operate chartered trips in a manner that does not involve the unlawful practice of injuring or removing submerged cultural resources. Thus, although the proposed revised regulation would be more comprehensive in the protection provided to these resources (prohibiting possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure, a Sanctuary historical resource), no significant adverse impact is expected for existing lawful business practices. The proposed regulation may offer an indirect beneficial effect for non-consumptive recreational charter businesses, as it would help ensure that submerged cultural resources remain intact for divers and shoreline visitors to enjoy.

The proposed prohibition on attracting a white shark in the sanctuary, or approaching within 50 meters of any white shark within 2 nmi of the Farallon Islands would only be applicable to those vessel-based small entities that seasonally (Sept.–Dec.) run adventure tourism operations adjacent to the Farallon Islands. These proposed actions will not prevent the adventure tourism activities from taking place, but do prohibit deployment of attractants in

the Sanctuary and limit approach distances around the Farallon Islands. Some of the operations may be eligible for research or education permits. The two known shark viewing operations in business during the management plan review process were consulted with as part of a working group and support this proposed regulatory action. These specific small entities are expected to experience a less than significant impact from this proposed regulatory action.

The proposed prohibition on deserting a vessel and leaving harmful matter on a grounded or deserted vessel in the sanctuary will not have a significant economic impact on any small commercial entity or organization. The estimated 100 plus deserted vessels currently in existence (primarily in Tomales Bay,) may have been privately owned at one time, although at this time there is no apparent ownership, or it is not clear. The prohibition against deserting a vessel or leaving harmful matter on a grounded or deserted vessel would not have a significant adverse impact on small entities, as doing so is not an aspect of operation; as such the adverse impact to small entities would be less than significant. Indirect beneficial effects from this prohibition may result for those small entities, such as commercial and recreational charter businesses, which rely upon a healthy nearshore marine environment that is not impacted by vessel groundings, hazardous spills, and wildlife disturbance risks that grounded vessels can pose.

To the extent that small business-owned vessels do use the Sanctuary, and have in the past anchored in seagrass beds in Tomales Bay, the proposed prohibition against vessels anchoring in designated no-anchoring seagrass protection zones in Tomales Bay will not have a significant economic impact on any small commercial entity or organization. The seven no-anchoring seagrass protection zones comprise about 22% of the existing surface area in Tomales Bay. These zones include many areas that are unsuitable for vessel anchoring since it is exposed mud flat at low tide. As such, the net loss of anchoring area to vessel operators is likely less than 22% of the bay. Further, the no-anchoring zones were created to exclude known anchoring areas near marinas and recreational day-use areas. This design helped to reduce the likelihood of any potential impacts to vessel operators, including sailboats, pleasure craft and recreational fishermen. Although anchoring vessels in the seven proposed zones would be prohibited, vessel operators can still safely anchor in the remaining 78% of

the Sanctuary. While the no-anchoring zones may require some individual vessel owners to anchor in a new location outside one of the proposed zones, it would not prohibit them from using their vessel or accessing nearshore facilities. The proposed prohibition on will not affect aquaculture facilities in Tomales Bay because vessels that are operating in association with valid mariculture leases, permits, or licenses, would not be subject to the prohibition. In addition, the regulation only applies to vessels anchoring in these zones and not facilities, such as mariculture that may require anchoring structures to the seabed. This regulation prohibiting vessels from anchoring in specific zones is not expected negatively impact the 34 permitted commercial Pacific herring fishermen in Tomales Bay. Although the fishermen use gillnets, which are anchored to the bottom of the seafloor near or occasionally in seagrass beds, they do not need to anchor their vessels in seagrass to conduct their operations. Overall this proposed regulation would provide direct and indirect protection to biological resources and habitats, and the ecological services they provide, while having few, if any, impacts to small business entities.

The proposed modification of permit issuance criteria and procedures is not expected to significantly adversely affect any of the small entities within the Sanctuary as most of their activities do not require a Sanctuary permit. Furthermore, the proposed revised permit regulations not only maintain the current scope of activities for which a permit may be issued (research, education, and salvage), but also add one more such activity category (for activities that will assist in managing the Sanctuary), thereby broadening the types of otherwise prohibited activities for which a permit may be granted. If a Sanctuary-based research, education, salvage, or other project requires a permit, the proposed modified criteria and procedures are not expected to significantly adversely affect the activities of the requesting entities, because the proposed revised permit regulation merely clarifies other concepts implicit in the current regulation.

Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

Paperwork Reduction Act

This proposed rule involves an existing information collection requirement currently approved by OMB (OMB approval number 0648-

0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The proposed rule will not require any change to the currently approved OMB approval and would not result in any change in the public burden in applying for and complying with NMSP permitting requirements.

The public reporting burden for these permit application requirements is estimated to average 1.00 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to David Bizot, National Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by e-mail to *David.Bizot@noaa.gov*, by fax to (301) 713-0404; or by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395-7285.

The proposed revised permit regulations would require the Director of the NMSP to consider the proposed activity for which a permit application has been received. The proposed modifications to the permit procedures and criteria (15 CFR 922.83) would further refine current requirements and procedures of the general National Marine Sanctuary Program regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications found in the Office of Management and Budget approved applicant guidelines (OMB Control Number 0648-0141). The revised permit regulations would add language about: The qualifications, finances, and proposed methods of the applicant; the compatibility of the proposed method with the value of the Sanctuary and the primary objective of protection of Sanctuary resources and qualities; the necessity of the proposed activity; and the reasonably expected end value of the proposed activity.

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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

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, incorporation by reference.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 26, 2006.

Elizabeth R. Scheffler,
Associate Assistant Administrator for Management for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Subpart H is revised to read as follows:

Subpart H—Gulf of the 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 Other Permits.

Appendix A To Subpart H Of Part 922—Gulf Of The Farallones National Marine Sanctuary Boundary Coordinates.

Appendix B To Subpart H Of Part 922—2 nmi From The Farallon Islands Boundary Coordinates.

Appendix C To Subpart H Of Part 922—No Anchoring Seagrass Protection Zones in Tomales Bay.

§ 922.80 Boundary.

(a) The Gulf of the Farallones National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 966 square nautical miles (nmi) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands (and Noonday Rock) off the northern coast of California. The northernmost extent of the Sanctuary boundary is a geodetic line extending westward from Bodega Head approximately 6 nmi to the northern boundary of the Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then turns southward to a point approximately 6 nmi off Point Reyes, California, where it then turns westward again out towards the 1,000-fathom isobath. The Sanctuary boundary then extends in a southerly

direction adjacent to the 1,000-fathom isobath until it intersects the northern extent of the Monterey Bay National Marine Sanctuary (MBNMS). The Sanctuary boundary then follows the MBNMS boundary eastward and northward until it intersects the Mean High Water Line at Rocky Point, California. The Sanctuary boundary then follows the MHWL north until it intersects the Point Reyes National Seashore (PRNS) boundary. The Sanctuary boundary then approximates the PRNS boundary, as established at the time of designation of the Sanctuary, to the intersection of the PRNS boundary and the MHWL in Tomales Bay. The Sanctuary boundary then follows the MHWL up Tomales Bay and Lagunitas Creek to the Route 1 Bridge where the Sanctuary boundary crosses the Lagunitas Creek and follows the MHWL until it intersects its northernmost extent near Bodega Head. The Sanctuary boundary 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 not Bodega Harbor. Where the Sanctuary boundary crosses a waterway, the Sanctuary boundary excludes these waterways shoreward of the Sanctuary boundary line delineated by the coordinates provided. The precise seaward boundary coordinates are listed in Appendix A to this subpart.

(b) [Reserved]

§ 922.81 Definitions.

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

Areas of Special Biological Significance (ASBS) are those areas designated by California's State Water Resources Control Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 et seq.

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).

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

Deserting means

(1) leaving a vessel aground or adrift:

(i) 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;

(ii) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or

(iii) 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

(2) 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, which 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 (1) a species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Sanctuary; or (2) any organism into which 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 seabed in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*.

§ 922.82 Prohibited or otherwise regulated activities.

The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary: (a)(1) Exploring for, developing, or producing oil or gas

except that pipelines related to hydrocarbon operations adjacent to the Sanctuary may be placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance (ASBS) where certified to have no significant effect on Sanctuary resources in accordance with § 922.84.

(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, or chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary and discharged or deposited while conducting lawful fishing activity within the Sanctuary;

(ii) Biodegradable effluents incidental to vessel use and generated 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 of untreated sewage;

(iii) Biodegradable material or other matter from a vessel resulting from deck wash down or vessel engine cooling water; or

(iv) Vessel engine exhaust.

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

(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 exclusions listed in paragraphs (a)(2) (i) through (iv) and (a)(3) of this section.

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

(i) By anchoring vessels in a manner not otherwise prohibited by this part (see § 922.82(a)(16));

(ii) Bottom trawling from a commercial fishing vessel;

(iii) The laying of pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary in accordance with paragraph (a)(1) of this section;

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

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

(6) Operating any vessel engaged in the trade of carrying cargo within an area extending 2 nmi from the Farallon Islands, Bolinas Lagoon or any ASBS. 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 Islands or mainland areas adjacent to Sanctuary waters or any ASBS. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(7) Operation of motorized personal watercraft, except for the operation of motorized personal watercraft 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.

(8) Disturbing birds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nmi of the Farallon Islands, Bolinas Lagoon, or any ASBS except to transport persons or supplies to or from the Islands or for 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; and

(ii) species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of the final regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species.

(11) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1362 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq.

(12) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle, or bird taken, except as authorized under the MMPA, ESA,

MBTA, under any regulation, as amended, promulgated under these Acts, or as necessary for valid law enforcement purposes.

(13) Attracting a white shark in the Sanctuary; or approaching within 50 meters of any white shark within the line approximating 2 nmi around the Farallon Islands. The coordinates for the line approximating 2 nmi around the Farallon Islands are listed in Appendix B 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 mariculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in Appendix C to this subpart.

(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, or except as may be permitted by the Director in accordance with § 922.48 and § 922.83.

§ 922.83 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by 922.82 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, Gulf of the Farallones National Marine Sanctuary, Building 201, Fort Mason, San Francisco, CA 94123.

(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 other permits.

(a) A permit, license, or other authorization allowing: the laying of any pipeline related to hydrocarbon operations in leases adjacent to the Sanctuary and placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and any ASBS must be certified by the Director as consistent with the purpose of the

Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(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) Any certification called for in this section shall be presumed unless the Director acts to deny or condition certification within 60 days from the date that the Director receives notice of the proposed permit and the necessary supporting data.

(d) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such

action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

**Appendix A to Subpart H of Part 922—
Gulf of the 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
Sanctuary Boundary:		
1	38.29896	–123.05989
2	38.26390	–123.18138
3	38.21001	–123.11913
4	38.16576	–123.09207
5	38.14072	–123.08237
6	38.12829	–123.08742
7	38.10215	–123.09804
8	38.09069	–123.10387
9	38.07898	–123.10924
10	38.06505	–123.11711
11	38.05202	–123.12827
12	37.99227	–123.14137
13	37.98947	–123.23615
14	37.95880	–123.32312
15	37.90464	–123.38958
16	37.83480	–123.42579
17	37.76687	–123.42694
18	37.75932	–123.42686
19	37.68892	–123.39274
20	37.63356	–123.32819
21	37.60123	–123.24292
22	37.59165	–123.22641
23	37.56305	–123.19859
24	37.52001	–123.12879
25	37.50819	–123.09617
26	37.49418	–123.00770
27	37.50948	–122.90614
28	37.52988	–122.85988
29	37.57147	–122.80399
30	37.61622	–122.76937
31	37.66641	–122.75105

**Appendix B to Subpart H of Part 922—
2 NMI From The Farallon Islands
Boundary Coordinates**

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

Point ID Number (2nmi from the Farallon Islands Boundary)	Latitude	Longitude
0	37.77670	–123.14954
1	37.78563	–123.14632
2	37.79566	–123.13764
3	37.80296	–123.12521
4	37.80609	–123.11189
5	37.80572	–123.09847
6	37.80157	–123.08484
7	37.79776	–123.07836
8	37.79368	–123.06992
9	37.78702	–123.06076
10	37.77905	–123.05474
11	37.77014	–123.05169
12	37.76201	–123.05151
13	37.75758	–123.05248
14	37.76078	–123.04115

Point ID Number (2nmi from the Farallon Islands Boundary)	Latitude	Longitude
15	37.76151	-123.02803
16	37.75898	-123.01527
17	37.75267	-123.00303
18	37.74341	-122.99425
19	37.73634	-122.99017
20	37.73036	-122.97601
21	37.72042	-122.96548
22	37.70870	-122.95890
23	37.69737	-122.95720
24	37.68759	-122.95882
25	37.67768	-122.96469
26	37.66905	-122.97427
27	37.66352	-122.98478
28	37.66037	-122.99741
29	37.66029	-123.00991
30	37.66290	-123.02133
31	37.67102	-123.03830
32	37.67755	-123.04612
33	37.68844	-123.05334
34	37.69940	-123.05567
35	37.71127	-123.06858
36	37.72101	-123.07329
37	37.73167	-123.07399
38	37.73473	-123.07340
39	37.73074	-123.08620
40	37.73010	-123.09787
41	37.73265	-123.11296
42	37.73685	-123.12315
43	37.74273	-123.13124
44	37.74725	-123.13762
45	37.75467	-123.14466
46	37.76448	-123.14917
47	37.77670	-123.14954

**Appendix C 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.

Zone 1: Zone 1 is an area of approximately 39.9 hectares offshore south of Millerton Point. The eastern boundary is a straight line that connects points 1 and 2 listed in the coordinate table below. The southern boundary is a straight line that connects points 2 and 3, the western boundary is a

straight line that connects points 3 and 4 and the northern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 1 point ID	Latitude	Longitude
1	38.10571	-122.84565
2	38.09888	-122.83603
3	38.09878	-122.84431
4	38.10514	-122.84904
5	(¹)	(¹)

¹ Same as 1.

ZONE 2: Zone 2 is an area of approximately 50.3 hectares that begins just south of Marconi and extends approximately 3 kilometers south along the eastern shore of Tomales Bay. The eastern boundary is the

mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3. The western boundary is a series of straight lines that

connect points 3 through 6 in sequence and then connects point 6 to point 1. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 1 point ID	Latitude	Longitude
1	38.14071	-122.87440
2	38.11386	-122.85851
3	38.11899	-122.86731
4	38.12563	-122.86480
5	38.12724	-122.86488
6	38.13326	-122.87178
7	(¹)	(¹)

¹ Same as 1.

ZONE 3: Zone 3 is an area of approximately 4.6 hectares that begins just south of Marshall and extends approximately 1 kilometer south along the eastern shore of Tomales Bay. The eastern boundary is the

mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3, the western boundary is a straight line that connects

point 3 to point 4, and the northern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

	Zone 3 point ID	Latitude	Longitude
1		38.16031	-122.89442
2		38.15285	-122.88991
3		38.15250	-122.89042
4		38.15956	-122.89573
5		(1)	(1)

¹ Same as 1.

ZONE 4: Zone 4 is an area of approximately 61.8 hectares that begins just north of Nicks Cove and extends approximately 5 kilometers south along the eastern shore of Tomales Bay to just south of Cypress Grove. The eastern boundary is the

mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3. The western boundary is a series of straight lines that connect points 3 through 9 in sequence. The

northern boundary is a straight line that connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

	Zone 4 point ID	Latitude	Longitude
1		38.20073	-122.92181
2		38.16259	-122.89627
3		38.16227	-122.89650
4		38.16535	-122.90308
5		38.16869	-122.90475
6		38.17450	-122.90545
7		38.17919	-122.91021
8		38.18651	-122.91404
9		38.18881	-122.91740
10		(1)	(1)

¹ Same as 1.

ZONE 5: Zone 5 is an area of approximately 461.4 hectares that begins east of Lawsons Landing and extends approximately 5 kilometers east and south along the eastern shore of Tomales Bay but excludes areas adjacent (approximately 600 meters) to the mouth of Walker Creek. The boundary follows the mean high water (MHW) mark from point 1 and trends in a

southeast direction to point 2 listed in the coordinate table below. From point 2 the boundary trends westward in a straight line to point 3, then trends southward in a straight line to point 4 and then trends eastward in a straight line to point 5. The boundary follows the mean high water line from point 5 southward to point 6. The southern boundary is a straight line that

connects point 6 to point 7. The eastern boundary is a series of straight lines that connect points 7 to 9 in sequence and then connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

	Zone 5 point ID	Latitude	Longitude
1		38.23122	-122.96300
2		38.21599	-122.93749
3		38.20938	-122.94153
4		38.20366	-122.93246
5		38.20515	-122.92453
6		38.20073	-122.92181
7		38.19405	-122.93477
8		38.20436	-122.94305
9		38.21727	-122.96225
10		(1)	(1)

¹ Same as 1.

ZONE 6: Zone 6 is an area of approximately 3.94 hectares in the vicinity of Indian Beach along the western shore of Tomales Bay. The western boundary follows the mean high water (MHW) line from point

1 northward to point 2 listed in the coordinate table below. The northern boundary is a straight line that connects point 2 to point 3. The eastern boundary is a straight line that connects point 3 to point

4. The southern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

	Zone 6 point ID	Latitude	Longitude
1		38.13811	-122.89603
2		38.14040	-122.89676
3		38.14103	-122.89537

	Zone 6 point ID	Latitude	Longitude
4		38.13919	-122.89391
5		(¹)	(¹)

¹ Same as 1.

ZONE 7: Zone 7 is an area of approximately 32.16 hectares that begins just south of Pebble Beach and extends approximately 3 kilometers south along the western shore of Tomales Bay. The western boundary is the mean high water (MHW) line

from point 1 to point 2 listed in the coordinate table below. The northern boundary is a straight line that connects point 2 to point 3. The eastern boundary is a series of straight lines that connect points 3 through 7 in sequence. The southern

boundary is a straight line that connects point 7 to point 8. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

	Zone 7 point ID	Latitude	Longitude
1		38.11034	-122.86544
2		38.13008	-122.88742
3		38.13067	-122.88620
4		38.12362	-122.87984
5		38.11916	-122.87491
6		38.11486	-122.86896
7		38.11096	-122.86468
8		(¹)	(¹)

¹ Same as 1.

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