

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2020-0605; Airspace Docket No. 19-ANM-34". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at [https://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](https://www.faa.gov/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

#### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas,

air traffic service routes, and reporting points.

#### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace, extending upward from 700 feet above the surface, at Hermiston Municipal Airport. This area is designed to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area would be described as follows: That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hermiston Municipal Airport.

Class E5 airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

#### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

#### ANM OR E5 Hermiston, OR [New]

Hermiston Municipal Airport, OR  
(Lat. 45°49'42" N, long. 119°15'33" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hermiston Municipal Airport.

Issued in Seattle, Washington, on June 29, 2020.

**Shawn M. Kozica,**

*Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2020–14347 Filed 7–2–20; 8:45 am]

**BILLING CODE 4910–13–P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 200617–0162]

RIN 0648–BI01

#### Monterey Bay National Marine Sanctuary Regulations

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

**ACTION:** Proposed rule; withdrawal of notice of intent to prepare an environmental impact statement; notice of availability of a draft management plan and draft environmental assessment.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing revised regulations, a revised management plan, and a draft environmental assessment for Monterey Bay National Marine Sanctuary (MBNMS or sanctuary). The proposed rule includes four modifications to existing MBNMS regulations, the modification of an appendix to the MBNMS regulations that describes sanctuary zone boundaries, and the addition of one new definition to the MBNMS regulations. A draft environmental assessment (EA) has been prepared for this proposed action. NOAA is soliciting public comments on the proposed rule, draft revised management plan, and draft EA.

**DATES:** NOAA will consider all comments received by September 4, 2020. NOAA will hold a virtual public meeting at the following date and time: Thursday, July 23, 2020, 6:00 p.m.–8:00 p.m. PT. In addition, NOAA will accept public comments on this proposed rule during the Monterey Bay National Marine Sanctuary virtual advisory council meeting on Friday, August 21, 2020 at 12:30 p.m. PT and at the Greater Farallones National Marine Sanctuary virtual advisory council meeting on Monday, August 24, 2020 at 11:00 a.m. PT.

**ADDRESSES:** You may submit comments on the proposed rule, the draft management plan, and/or the draft EA, identified by NOAA–NOS–2020–0094, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NOS-2020-0094](http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2020-0094), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Written comments may also be mailed to: Paul Michel, Superintendent, Monterey Bay National Marine Sanctuary, 99 Pacific Street, Suite 455A, Monterey, California 93940.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personally identifiable information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required

fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

To participate in the virtual public meetings, online registration is requested in advance via the following links. When joining the session, if possible, select the option to use your computer’s audio. If you cannot use computer audio it is possible to select the phone audio option upon joining the event. In GoToWebinar, The phone number and audio PIN will show up in the audio pane when you select phone audio.

- (1) Virtual Public Hearing—Thursday, July 23, 2020, 6:00 p.m.–8:00 p.m. PT

Registration: <https://attendee.gotowebinar.com/register/398908723113760523>.

- (2) Monterey Bay National Marine Sanctuary virtual advisory council meeting—Friday, August 21, 2020 at 12:30 p.m. PT

Registration: <https://attendee.gotowebinar.com/register/3876637613490216459>.

- (3) Greater Farallones National Marine Sanctuary virtual advisory council meeting—Monday, August 24, 2020 at 11:00 a.m. PT

This meeting will be held on Google Meet. Link: <https://meet.google.com/tyr-enfp-cet>. To participate by phone only, dial: 1 (641) 821–2321, PIN: 135 736 466#

If you would like to comment during the virtual public meetings, please sign up in advance by selecting “yes” during the online registration. The order of comments will be based on your date and time of registration. If you will be participating by phone, send an email to [Dawn.Hayes@noaa.gov](mailto:Dawn.Hayes@noaa.gov) to add your name to the speaker list. Please note, no public comments will be audio or video recorded. If you would like to provide public comment anonymously during the virtual public hearing, email your comment to [Dawn.Hayes@noaa.gov](mailto:Dawn.Hayes@noaa.gov) or type your comment into the question box and ask for it to be read anonymously during the assigned time.

For more details on the virtual public meetings, visit <https://montereybay.noaa.gov/>.

Copies of the proposed rule, draft management plan and draft EA can be downloaded or viewed on the internet at [www.regulations.gov](http://www.regulations.gov) (search for docket #NOAA–NOS–2020–0094) or at <https://montereybay.noaa.gov/intro/mp/2015review/welcome.html>.

**Important Note for All Participants:** No portion of the virtual public

meetings, including any public comments, will be audio or video recorded. All public comments received, including any associated names, will be captured and included in the written meeting minutes, will be public, and will be maintained by NOAA as part of its administrative record. All public comments received will be publicly available at [www.regulations.gov](http://www.regulations.gov) under docket #NOAA–NOS–2020–0094.

**FOR FURTHER INFORMATION CONTACT:** Paul Michel, Monterey Bay National Marine Sanctuary Superintendent, at [Paul.Michel@noaa.gov](mailto:Paul.Michel@noaa.gov) or 831–647–4201.

## SUPPLEMENTARY INFORMATION:

### I. Background

#### A. Introduction

NOAA’s Office of National Marine Sanctuaries (ONMS) serves as the trustee for a network of underwater parks encompassing more than 600,000 square miles of marine and Great Lakes waters from Washington state to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 14 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments.

#### B. Monterey Bay National Marine Sanctuary

NOAA established MBNMS in 1992 for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area, including the submarine Monterey Canyon and, subsequently, Davidson Seamount. MBNMS is located offshore of California’s central coast, encompassing a shoreline length of approximately 276 statute miles (240 nmi) between Rocky Point (Marin County) and Cambria (San Luis Obispo County). With the inclusion of the Davidson Seamount Management Zone (DSMZ) in 2008, the sanctuary spans approximately 6,094 square statute miles (4,602 square nautical miles) of ocean and coastal waters, and the submerged lands thereunder, extending an average distance of 30 statute miles (26 nmi) from shore. Supporting some of the world’s most diverse and productive marine ecosystems, it is home to numerous mammals, seabirds, fishes, invertebrates, sea turtles and plants.

#### C. Need for Action

The primary purpose of the proposed action is to fulfill section 304(e) of the National Marine Sanctuaries Act (16

U.S.C. 1431 *et seq.*) (NMSA). Section 304(e), 16 U.S.C 1434(e), requires periodic review of sanctuary management plans to ensure that site-specific management techniques and strategies: (1) Effectively address changing environmental conditions and threats to protected resources and qualities of the sanctuaries; and (2) fulfill the purposes and policies of the NMSA. Accordingly, ONMS conducted a review of the management plan and regulations for MBNMS that has resulted in a proposed new management plan for the sanctuary, and proposed changes to sanctuary regulations.

The management plan review process includes, among other things, an assessment of existing sanctuary regulations to determine if any regulatory changes are needed to support management plan objectives. NOAA is proposing to make four modifications to existing MBNMS regulations, to modify Appendix E to the MBNMS regulations, and to add one new definition to the MBNMS regulations. These changes will support more efficient and effective program management and enhanced stewardship of the sanctuary's natural resources. The need for each individual regulatory action is described in greater detail in section II (Summary of the Proposed Changes to MBNMS Regulations) below.

In accordance with the National Environmental Policy Act (NEPA), on August 27, 2015, NOAA published a notice of intent to prepare an Environmental Impact Statement (EIS) in order to identify and analyze potential impacts associated with a review of the 2008 management plan for MBNMS (80 FR 51973). Preliminary analysis of this revised management plan and the proposed regulatory changes indicates no significant impacts are expected. Accordingly, NOAA determined the preparation of an EIS would not be necessary, and instead prepared an EA, which is available for public review. NOAA is therefore withdrawing the portion of the **Federal Register** Notice published on August 27, 2015, that provided notice of intent to prepare an EIS.

NOAA has conducted an analysis of the revised management plan and the regulatory changes in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500–1508). As required by the Council on Environmental Quality, NEPA, and NEPA's implementing regulations, all reasonable alternatives to the proposed Federal action that meet the purpose and need for the action are considered

in the EA. These alternatives include no action and a range of reasonable alternatives for managing MBNMS according to the objectives of the National Marine Sanctuaries Act.

#### *D. Process*

The process for this action is composed of four major stages: (1) Information collection and characterization via development and issuance of a sanctuary condition report that describes the status and trends of driving forces and pressures on the ecosystem and natural and archaeological resource conditions in MBNMS, and public scoping to further identify issues associated with revising the management plan (scoping was completed on October 30, 2015); (2) preparation and release of a proposed rule, draft revised management plan, and draft EA in accordance with NEPA; (3) public review and comment on the proposed rule, draft management plan, and draft EA; and (4) preparation and release of a final management plan and final EA, and any final amendments to the MBNMS regulations, if appropriate. With the publication of this proposed rule, NOAA completes the second phase of this process and enters the third phase.

Together with this proposed rule, NOAA is releasing the draft management plan and draft EA. The draft management plan describes proposed strategies and action plans for future conservation and management of the sanctuary, and the draft EA contains more detailed information on the considerations of this proposal, including an assessment of alternatives, analysis of potential environmental impacts, and references. The draft management plan and draft EA can be found through the website listed in the **ADDRESSES** section above.

## **II. Summary of the Proposed Changes to MBNMS Regulations**

### *A. Beneficial Use of Clean and Suitable Dredged Material*

NOAA proposes to add a new definition for “beneficial use of dredged material” at 15 CFR 922.131 and to amend 15 CFR 922.132(f) to clarify that *beneficial use* of clean and suitable dredged material for habitat restoration purposes within MBNMS is not *disposal* of dredged material as described at 15 CFR 922.132(a)(2)(i)(F) and 15 CFR 922.132(f).

This action would amend 15 CFR 922.131 by adding a definition for “beneficial use of dredged material.” The new definition would clarify that the existing prohibition against

permitting the disposal of dredged material in MBNMS does not apply to habitat restoration projects using clean dredged material, because such beneficial use of dredged material would not be considered “disposal.” In addition, this definition would apply only to dredged material removed from any of the four public harbors immediately adjacent to the sanctuary (Pillar Point, Santa Cruz, Moss Landing, or Monterey). This action would also amend 15 CFR 922.132(f) to clarify that the disposal of dredged material does not include the beneficial use of dredged material. Together, these regulatory changes would clarify that the language in the terms of designation and MBNMS regulations that prohibit permitting the disposal of dredged material within the sanctuary other than at sites authorized by the U.S. Environmental Protection Agency prior to the effective date of designation (Article V of the MBNMS Terms of Designation, 73 FR 70477, 70494 (Nov. 20, 2008): 15 CFR 922.132(f)), do not preclude NOAA from authorizing the beneficial use of clean dredged material within sanctuary boundaries when suitable for habitat restoration purposes.

In the current MBNMS Management Plan (November 2008<sup>1</sup>), NOAA stated, “If investigations indicate that employment of additional beach nourishment sites using clean dredged harbor material would be possible and appropriate, MBNMS may examine whether revision of MBNMS regulations and Designation Document may be warranted; or if a beneficial program might occur via MBNMS permit or authorization in concert with other agencies.” (Management Plan at 96.) For the reasons explained below, NOAA anticipates that employment of additional habitat restoration sites using clean dredged material would be possible and appropriate, and that beneficial use projects may occur through MBNMS permits or authorizations.

First, there are several examples in which NOAA has accommodated requests for beneficial use of sediment for beach nourishment in locations adjacent to the sanctuary where the bathymetry and topography allow space for sediment placement above the MHW line. Beach replenishment projects currently occur at Del Monte beach in Monterey and Twin Lakes beach in Santa Cruz. The City of Monterey has an MBNMS authorization for the annual placement of clean dredged material from Monterey Harbor at two onshore

<sup>1</sup> Final Management Plan, available at <https://montereybay.noaa.gov/intro/mp/welcome.html>.

locations (approved by EPA) above MHW adjacent to Del Monte Beach. The authorization specifically allows for the decant water from the slurry material to return into the waters of MBNMS. Clean material deposited at these two locations is eventually moved via natural wave action to points within the lower tidal range (*i.e.*, below MHW and thus into MBNMS) and along the beach laterally, effectively maintaining or creating improved coastal habitat and recreational resources within the sanctuary. Both habitat restoration projects at Santa Cruz and Monterey have proven successful in maintaining the integrity of high public use beaches that would otherwise suffer from accelerated erosion due to human interruptions of natural sediment transport patterns in the area. Placement of clean dredged material on these beaches has helped stabilize beach profiles at these sites.

NOAA anticipates that the employment of additional habitat restoration sites—namely, the placement of clean dredged material *below* the MHW line (in the sanctuary) for habitat restoration purposes—would be possible and appropriate. One example would be the potential placement of clean sand (dredged from Pillar Point Harbor) onto an eroded beach (Surfer's Beach) immediately adjacent to the harbor along the sanctuary's shoreward boundary. Due to the interruption of natural sand transport patterns by shoreline infrastructure (*e.g.*, the harbor breakwaters), the beach has eroded to such a degree that ocean waters now extend to the toe of the riprap armoring that safeguards Highway 1 (located along the shoreline from the base of the east Pillar Point Harbor breakwater to the ocean terminus of Coronado Street). Surfer's Beach is now submerged at MHW, and only a fraction of the former beach appears at the lowest tide levels.

Absent clarification in past and current MBNMS regulations that *disposal of dredged material* is a fundamentally different activity than *beneficial use of dredged material for shoreline restoration*, NOAA has not authorized discharges of clean dredged material directly into the sanctuary, pursuant to managerial discretionary authority under 15 CFR 922.48, 922.49, and 922.133. Though NOAA has previously provided information to Pillar Point Harbor about how to implement beach nourishment projects similar to those described above for Santa Cruz and Monterey Harbors, no such project has been pursued by the harbor district. To date, only periodic shoreline armoring has been installed to

arrest erosion. But armoring is neither a sustainable long-term solution nor a beach restoration activity. Longer-term, softscape alternatives to armoring are desired to protect the beach and restore beach habitat.

The beneficial use of clean dredged material for habitat restoration purposes would provide an additional effective and sustainable option to address sites in MBNMS where shoreline habitat and resources are increasingly impacted by erosion due to shoreline structures, coastal armoring, sea level rise, and documented, increased storm activity.

The beneficial use of dredged material at sites within the sanctuary, such as Surfer's Beach, would require: A sanctuary permit or authorization; additional rigorous testing and screening of the material to ensure that the material is both clean and suitable for habitat restoration; additional review of the proposed project under NEPA and other applicable statutes; and permitting, as applicable, by other federal, state and local regulatory authorities with jurisdiction over the proposed beneficial use project. Furthermore, a proposed project involving use of dredged material would only be eligible for approval by NOAA if the project demonstrated a sanctuary habitat restoration purpose under the proposed new definition of *beneficial use of dredged material* at 15 CFR 922.131, and if the project otherwise met the permit or authorization procedures and review criteria described in 15 CFR 922.48, 922.49, and 922.133. The permit and environmental reviews of the proposed beneficial use project would continue to prevent the disposal of unsuitable and unclean material into the sanctuary that could adversely affect sanctuary resources.

Clean dredged materials from harbors immediately adjacent to the sanctuary would be considered an eligible source of material for restoring (or partially restoring) habitats degraded by interruption of local sediment transport cells by harbor infrastructure (*e.g.*, jetties, seawalls and piers). Since dredged materials from distant harbors would not be indigenous to local sediment transport cells, NOAA would not approve the use of such materials for habitat restoration purposes. The limitations on use of dredged material would not restrict or limit NOAA's existing authority to permit the use of non-dredged materials for beneficial habitat restoration projects within MBNMS.

This proposed action, which would clarify the ability of NOAA to authorize beneficial use of clean and suitable dredged material originating from any of

the four adjacent public harbors for habitat restoration purposes within the sanctuary, would be consistent with the regulatory framework for dredge, fill, and disposal projects as outlined by the Clean Water Act (33 U.S.C. 1251 *et seq.*), the Ocean Dumping Act (33 U.S.C. 1401 *et seq.*), and applicable U.S. Army Corps of Engineers and U.S. Environmental Protection Agency regulations. The existing regulatory framework differentiates between the disposal (*i.e.*, discarding) of dredged material and its beneficial use (*i.e.*, purposeful application). For example, the "disposal into ocean waters" of dredged material is regulated under provisions of the Ocean Dumping Act, whereas discharge of dredged material for fill, including beach restoration, is regulated under Section 404 of the Clean Water Act. 33 CFR 336.0. Moreover, any proposed beneficial use of dredged material project in MBNMS would be subject to applicable permit and regulatory reviews of other federal, state and local authorities with jurisdiction over the proposed project.

Finally, pursuing this proposed action would also be consistent with current state and federal coastal management practices that favor softscape approaches to restoring and protecting beaches and shorelines over hardscape methods (*e.g.*, riprap, groins and seawalls). The USACE Engineering and Design Manual on Dredging and Dredged Material (July 2015)<sup>2</sup> states, "Interest in using dredged material as a manageable, beneficial resource, as an alternative to conventional placement practices, has increased." The USACE/USEPA Beneficial Use Planning Manual<sup>3</sup> states, "the promotion of beneficial uses continues to require a shift from the common perspective of dredged material as a waste product to one in which this material is viewed as a valuable resource that can provide multiple benefits to society." The planning manual further notes that in general, "clean, coarse-grained sediments (sands) are suitable for a wide variety of beneficial uses." Finally, the USACE/USEPA Manual on The Role of the Federal Standard in the Beneficial Reuse of Dredged Material<sup>4</sup> indicates,

<sup>2</sup> EM 1110-2-5025 at page 5-1 (July 31, 2015), available at [http://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM\\_1110-2-5025.pdf](http://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_1110-2-5025.pdf).

<sup>3</sup> Identifying, Planning, and Financing Beneficial Use Projects Using Dredged Material at 9 (October 2007), available at [https://www.epa.gov/sites/production/files/2015-08/documents/identifying\\_planning\\_and\\_financing\\_beneficial\\_use\\_projects.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/identifying_planning_and_financing_beneficial_use_projects.pdf).

<sup>4</sup> EPA842-B-07-002 (October 2007) at 3, available at <https://www.epa.gov/sites/production/>

“a beneficial use option may be selected for a project even if it is not the Federal Standard for that project.”

For all of the above reasons, NOAA anticipates that the placement of clean locally-dredged material in the sanctuary for habitat restoration purposes would be appropriate and consistent with the existing regulatory framework for dredge, fill, and disposal projects. Accordingly, NOAA proposes this regulatory change to clarify the ability of NOAA to authorize the beneficial use of clean and suitable dredged material for habitat restoration purposes within MBNMS, because such proposed use would not be “disposal of dredged material” within the meaning of the MBNMS terms of designation and regulations.

#### *B. Modification of Seasonal/Conditional Requirement for Motorized Personal Watercraft Access to MPWC Zone 5 (Mavericks)*

With this proposed rule, NOAA would amend MBNMS regulations to reduce the sea state condition required for motorized personal watercraft (MPWC) access to the Mavericks seasonal-conditional MPWC zone at Half Moon Bay. NOAA would change the current High Surf Warning (HSW) requirement to a less stringent High Surf Advisory (HSA) requirement. The seasonal-conditional MPWC zone was created in 2009 primarily to allow MPWC to support big-wave surfing at Mavericks during winter months when wildlife activity is significantly reduced in this area. Currently, MPWC can freely access the Mavericks seasonal-conditional zone only when HSW conditions (predicted breaking waves at the shoreline of 20 feet or greater) are in effect, as announced by the National Weather Service for San Mateo County during the months of December, January, and February. However, due to unique bathymetric features at Mavericks, waves can exceed 20 feet well before HSW conditions are announced county-wide. Allowing MPWC access to Mavericks during HSA conditions (predicted breaking waves at the shoreline of 15 feet or greater) would allow MPWC presence at the break 3–5 more days per year to provide safety assistance to surfers operating in a highly energized surf zone.

Surfers have developed new techniques for paddling onto larger and larger waves, so paddle surfers now routinely surf extremely large waves at Mavericks during winter HSA

conditions when MPWC access to the zone is currently prohibited. In February 2017, an MBNMS Advisory Council subcommittee recommended lowering the current conditional threshold for MPWC access to Mavericks from a HSW to a HSA during the months of December, January, and February to allow expanded use of MPWC for safety assistance to surfers recreating in extreme sea conditions. The MBNMS Advisory Council voted unanimously to support the subcommittee recommendation on February 17, 2017. NOAA agrees with the Advisory Council recommendations and believes it would benefit public safety, while posing no significant added threat of disturbance to protected wildlife in the area due to minimal wildlife activity there during winter extreme high-surf events.

#### *C. Exempted Department of Defense Activities Within Davidson Seamount Management Zone*

With this proposed rule, NOAA would amend MBNMS regulations by modifying 15 CFR 922.132(c)(1) to correct an error. The current regulatory text at 15 CFR 922.132(c)(1) states, in part, that a list of exempted Department of Defense (DOD) activities at the Davidson Seamount Management Zone (DSMZ) is published in the 2008 MBNMS Management Plan Final Environmental Impact Statement (FEIS). However, due to an administrative error, the list of exempted activities (identified in a December 18, 2006, letter to NOAA from the U.S. Air Force 30th Space Wing and subsequently affirmed by NOAA), was never included in the 2008 FEIS. The MBNMS Superintendent confirmed in a January 5, 2009, letter to the U.S. Air Force 30th Space Wing that NOAA acknowledged the list of exempted activities as valid from the effective date of inclusion of the DSMZ within MBNMS (March 9, 2009) and that NOAA would correct the administrative record and regulations to properly document the exempted DOD activities within the DSMZ. Accordingly, NOAA proposes to modify 15 CFR 922.132(c)(1) by replacing “2008 Final Environmental Impact Statement” with “2020 Final Environmental Assessment for the MBNMS Management Plan Review.”

An appendix in the 2020 draft EA serves as the published list of exempted DOD activities within the DSMZ referenced and confirmed by the January 5, 2009, letter to the U.S. Air Force 30th Space Wing from the MBNMS Superintendent. NOAA herein affirms that the exemptions requested by the Air Force in 2006 and confirmed

by NOAA in 2009 have been valid since the effective date of the DSMZ’s addition to MBNMS (March 9, 2009).

#### *D. Reconfiguration of Year-Round MPWC Zone Boundaries*

With this proposed rule, NOAA would amend MBNMS regulations to modify boundaries of four year-round MPWC riding zones in a manner that maintains NOAA’s original intent to provide recreational opportunities for MPWC within the sanctuary, while safeguarding sensitive sanctuary resources and habitats from unique threats of disturbance by these watercraft.

Specifically, the proposed modifications would reduce the number of deployed boundary buoys and associated navigational hazards, aesthetic impacts, and mooring failures that create public safety issues, marine debris, seafloor impacts, and excessive maintenance effort. The zones were established in 1992 to provide recreational use areas for MPWC while safeguarding marine wildlife and habitats from the unique capability of MPWC to sharply maneuver at high speeds in the ocean environment and freely access remote and sensitive marine habitat areas, unlike any other type of motorized vessel (57 FR 43310).

The four MPWC riding zones were established near each of the four harbors in the sanctuary where MPWC operators typically launch. The boundaries were delineated without any consideration of practical matters such as buoy station integrity or sustainability. For example, buoys deployed off rocky points have experienced repeated mooring failures due to heavy wave diffraction/reflection, abrasive and mobile rocky substrate affecting mooring tackle, and lack of soft sediments for secure anchor set. Buoys deployed in deep water have repeatedly failed due to suspected interactions with vessels and commercial fishing gear. Mooring failures cause deposition of chain and anchors on the seafloor and pose a hazard to mariners and the public from drifting buoys. Even when buoys hold station, they could present navigation obstacles. Reducing the number of boundary buoys by utilizing more existing marks and geographical features (e.g., United States Coast Guard navigation buoys and landmarks) can markedly reduce navigational hazards and mooring failures that create public safety issues, marine debris, seafloor impacts, and excessive maintenance effort.

Anecdotal observations of MPWC zone use over time by harbor officials, marine enforcement officers, ocean

users, sanctuary staff, and volunteers indicate that the zones are rarely used by MPWC operators. Therefore, reconfiguring the zones will have minimal impact to a small number of users.

Reconfiguring zones to be smaller and closer to shore would provide improved MPWC access and operator safety, and would also aid zone monitoring, enforcement, and planned systematic surveys of zone use described in the new MBNMS management plan. Relocation of marker buoys to shallower mooring depths would improve station-keeping, inspection, and maintenance of boundary buoy moorings. Reconfiguration of zones would achieve a 40% reduction in the overall number of deployed MPWC boundary buoys from 15 to 9. It would eliminate six existing buoy mooring stations entirely; replace four existing mooring stations with four new shallower mooring stations; and leave five previous mooring stations unchanged. This would result in the permanent removal of anchors and chain from the seafloor at 10 sites and installation of anchors and chain at four new sites—a 40% net reduction in the number of MPWC boundary buoy mooring sites. As previously stated, the four new mooring stations would be in shallower water and deliberately sited in mud/sand substrate to avoid rocky reef habitat—a purposeful reduction of negative environmental impacts. Zone reconfigurations would result in a 59% reduction of total areal coverage of the four year-round zones, resulting in an equal reduction of surface area subject to direct MPWC interactions with specially protected marine wildlife, such as migratory birds, whales, dolphins, porpoise, turtles, sea lions, and sea otters.

The reconfigured MPWC zones would still provide considerable area adjacent to all four harbors for general use of MPWC, fulfilling the original goal for the zones when established in 1992. The four reconfigured year-round access zones would offer 0.96 square miles (614 acres) of riding area south of Pillar Point Harbor, 2.63 square miles (1,683 acres) off Santa Cruz Harbor, 2.29 square miles (1,466 acres) off Moss Landing Harbor, and 3.10 square miles (1,984 acres) off Monterey Harbor. Maps depicting proposed MPWC zone boundary changes can be found in the draft EA.

The proposed zone reconfigurations would shorten the length of the MPWC access corridors to the Santa Cruz and Monterey zones by 66% and 23% respectively, allowing MPWC operators easier and quicker access to both riding

areas. The shorter access corridors would reduce the period of restricted maneuverability for transiting MPWC and thus lower the potential for negative interaction with marine traffic and wildlife as MPWC approach/depart harbor entrances. Planned rotation of the access corridor at Monterey away from the predominant marine traffic pattern to/from the harbor will also reduce the potential for negative interaction with other vessels there. The reconfigured zone boundaries at Santa Cruz would shift that zone closer to shore, improving safety for MPWC operators should they need emergency assistance. A shortened access corridor and zone shift closer to shore at Santa Cruz have been requested by MPWC users in the past.

Each existing MPWC zone would remain at its current general geographical location, with the following changes:

1. Modify the year-round Half Moon Bay MPWC zone by using existing Coast Guard red bell buoy “2” and existing Coast Guard green gong buoy “1S” as boundary points instead of current MBNMS buoys PP2 and PP3; this would enable permanent removal of two buoys from the ocean. By re-shaping the current zone from a parallelogram to a concave pentagon, the zone’s general position south of Pillar Point Harbor would be maintained, the zone area would increase by 9% (from .87 sq mi to .96 sq mi), and two buoys would be permanently removed from the waterway, reducing navigational obstructions, risk of mooring failure, and buoy and tackle loss.

2. Modify the year-round Santa Cruz MPWC zone by using existing Coast Guard red/white whistle buoy “SC” as a boundary point, instead of current MBNMS buoy SC7; this would enable permanent removal of one MBNMS buoy from this zone. By re-shaping the current zone from a rectangle to a parallelogram, the zone position would rotate 45° clockwise to the NE, and the zone area would be reduced by 59% (from 6.36 sq mi to 2.63 sq mi). One MBNMS buoy would be permanently removed from the waterway, one buoy would remain on station, and two buoys would be redeployed to shallower depths. The redistributed buoys would be positioned within better visible range of one another, in softer seafloor sediments, and away from rocky points, thus reducing navigational obstructions, risk of mooring failure, and buoy and tackle loss.

The reconfigured zone boundaries at Santa Cruz would shift the zone closer to shore, providing MPWC operators easier and quicker access to the riding

area and improved safety, should an MPWC operator need emergency assistance. The transit route to the zone from the entrance of the Santa Cruz Small Craft Harbor would be reduced from 1.35 miles to 0.5 miles, providing a 66% shorter route and transit time for MPWC operators. As noted above, these specific zone modifications have been requested by MPWC users in the past. Since the prescribed 100-yard wide MPWC transit corridor for accessing the zone from the small craft harbor would be shorter, MPWC would be in the transit corridor for less time, resulting in a shorter period of restricted maneuverability and lowered potential for negative interaction with marine traffic and wildlife when approaching/departing the harbor entrance.

3. Modify the year-round Moss Landing MPWC zone by eliminating current MBNMS buoys ML4 and ML5; this would enable permanent removal of two buoys from the ocean. By re-shaping the current zone from an irregular hexagon to a trapezoid, the eastern portion of the zone would remain in its current position, the zone area would be reduced by 72% (from 8.10 sq mi to 2.29 sq mi), and two MBNMS buoys would be permanently removed from the waterway, reducing navigational obstructions, risk of deep-water mooring failures, and buoy and tackle loss.

4. Modify the year-round Monterey MPWC zone by using existing Coast Guard red bell buoy “4” as a boundary point instead of MBNMS buoy MY3; this would enable permanent removal of one MBNMS buoy from this zone. By re-shaping the current zone from a trapezoid to a parallelogram, the zone position would rotate 90° clockwise to the NE, and the zone area would be reduced by 51% (from 6.36 sq mi to 3.10 sq mi). One MBNMS buoy would be permanently removed from the waterway, one buoy would remain on station, and two buoys would be redeployed to shallower depths. The redistributed buoys would be positioned within better visible range of one another, in softer seafloor sediments, and away from rocky points and popular commercial squid fishing grounds, thus reducing navigational obstructions, risk of deep-water mooring failure, risk of disruption to commercial fisheries, and buoy and tackle loss.

The length of the prescribed zone transit route from Monterey Harbor would decrease from 1.00 mile to 0.77 mile, reducing the length of the transit corridor by 23% and facilitating more immediate access to and from the harbor by MPWC operators and reduced risk of wildlife disturbance. In addition, the

transit corridor would be rotated 52 degrees further east from the harbor entrance, away from the predominant marine traffic pattern to/from the harbor.

In summary, revising locations of MPWC zone boundaries represents essential adaptive management practice as envisioned in the National Marine Sanctuaries Act and the required management plan review process. The adjustments maintain 9 square miles (5,760 acres) of the sanctuary for operating MPWC off all four harbors in areas with decreased likelihood of wildlife disturbance, which were goals for the original creation of the zones in 1992. Observations by NOAA staff, volunteers, and partner agencies indicate these areas are not highly used. Nevertheless, coupled with the increased operating days at the Mavericks MPWC zone proposed in this draft rule, NOAA's original intent to facilitate MPWC recreational opportunities will be maintained.

The reconfigured boundaries will also improve access to the MPWC zones by shifting them closer to shore and harbor launch points. Reducing the number of necessary MPWC boundary buoys also reduces impacts to benthic habitats, risk of wildlife entanglements, and risk of maritime collisions. Relocating buoys will make them more resistant to storm damage and buoy anchor/chain failure, thereby reducing risks to mariners from drifting buoys and marine debris from unnecessary deposition of chain and anchors on the seafloor. Utilizing mooring locations over soft seafloor sediments can reduce scarring and damage to hard-substrate benthic habitat and organisms from mooring chain. Maps depicting the proposed MPWC zone boundary changes can be found in the draft EA.

### III. Classification

#### A. National Environmental Policy Act

NOAA has prepared a draft environmental assessment (EA) to evaluate the potential impacts on the human environment of this proposed rulemaking (the preferred regulatory action analyzed in the draft EA), as well as several alternative actions. No significant impacts to resources and the human environment are expected to result from this proposed action, and accordingly, under NEPA (42 U.S.C. 4321 *et seq.*), a draft EA is the appropriate document to analyze the potential impacts of this action. Following the close of the public comment period and the satisfaction of consultation requirements under applicable natural and cultural resource

statutes (described below), NOAA will finalize its NEPA analysis and findings and prepare a final NEPA document. Copies of the draft EA are available at the address and website listed in the **ADDRESSES** section of this proposed rule.

#### B. Executive Order 12866: Regulatory Planning and Review

This rule has been determined to be not significant for purposes of Executive Order 12866.

#### C. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not an Executive Order 13771 regulatory action because it is not a significant regulatory action under Executive Order 12866.

#### D. Executive Order 13132: Federalism

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

#### E. Regulatory Flexibility Act

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

The analysis below seeks to fulfill the requirements of Executive Order 12866 and the Regulatory Flexibility Act. The Small Business Administration has established thresholds on the designation of businesses as "small entities." A finfish fishing business is considered a small business if it has annual receipts of less than \$20.5 million. Scenic and Sightseeing and Recreational industries are considered small businesses if they have annual receipts not in excess of \$7.5 million. According to these limits, each of the businesses potentially affected by this proposed rule would most likely be small businesses. However, as further discussed below, these regulations will not have a significant economic impact on the affected small entities, and the Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have significant economic impact on a substantial number of small entities. Thus, NOAA is not required to prepare and has not prepared an initial regulatory flexibility analysis.

*Methodology.* The analysis here is based on limited quantitative information on how much each activity occurs within MBNMS. Consequently, the result is more qualitative than quantitative.

#### *Scales Used for Assessing Impacts.*

For assessing levels of impacts within an alternative, NOAA used three levels: "negligible," "moderate" and "high," in addition to "no impacts." For levels of impacts within the proposed alternatives being analyzed, negligible means very low benefits, costs, or net benefits (less than 1% change anticipated following the proposed regulatory change). Moderate impacts would be more than 1% but less than or equal to 10% change, and high impacts would be more than 10% change. Negligible and moderate impacts identified in this assessment would not constitute significant economic impacts. NOAA analyzed the impacts on small entities of the four regulatory changes proposed as part of the management plan review process for MBNMS. Small entity user groups include commercial fishing operation, recreation-tourism related businesses, and land use and development businesses.

#### Proposed Action

(1) Add a new definition for the phrase "beneficial use of dredged material" at 15 CFR 922.131, and clarify that the existing prohibition on the disposal of dredged material in MBNMS does not apply to habitat restoration projects using clean dredged material.

Clarifying the authorized uses of clean dredged material from local harbors for habitat restoration in the sanctuary may create additional opportunities for entities such as state and local agencies to propose beneficial use of such dredged materials, which, in turn, may trickle down to opportunities for businesses. The costs would be negligible to non-existent because the regulatory clarification of authorized uses of clean dredged material may facilitate appropriate entities to propose these authorized uses. There may be negligible to moderate benefits to shoreline restoration businesses and negligible to moderate benefits to businesses that clean dredge material due to the additional business opportunities facilitated by this regulatory clarification. There may be negligible to moderate benefits to shoreline recreation businesses such as surf shops, since at least the possible use of clean dredged material at Pillar Point could help improve a prominent surf spot and increase general beach use.



(2) Allow MPWC access to MPWC Zone 5 (Mavericks surf break) during High Surf Advisory conditions rather than High Surf Warning conditions.

With this proposed rule, NOAA would amend MBNMS regulations to increase access to an MPWC zone by reducing the sea state condition required for motorized personal watercraft (MPWC) access to the Mavericks seasonal-condition zone (Zone 5). NOAA would change the current High Surf Warning (HSW) requirement to a less stringent High Surf Advisory (HSA) requirement. Allowing MPWC access to Mavericks during HSA conditions (predicted breaking waves at the shoreline of 15 feet or greater) would allow MPWC presence at the break 3–5 more days per year to provide safety assistance to surfers operating in a highly energized surf zone.

Additional days of MPWC access may result in increased recreational opportunities. This means that businesses that rent MPWC or offer MPWC tours may have additional days when they could rent equipment or offer tours. However, the sea state conditions tend to favor experienced MPWC users (who likely own their MPWC) rather than casual, recreational MPWC users who would be more likely to rent or participate in a tour with an operator. The costs are expected to be non-existent, and the benefits would be negligible.

(3) Rectify an oversight in the 2009 MBNMS rulemaking regarding

Exempted Department of Defense activities in the Davidson Seamount Management Zone (DSMZ).

NOAA's proposal to modify 15 CFR 922.132(c)(1) by replacing "2008 Final Environmental Impact Statement" with "2020 Final Environmental Assessment for Monterey Bay National Marine Sanctuary Management Plan Review" would publish the list of exempted DOD activities in the Davidson Seamount Management Zone that were originally intended for inclusion in the 2008 Final Environmental Impact Statement. There is no expected impact as a result of addressing the oversight from 2008. The changes are superficial in nature and do not result in changes to activities that are or are not prohibited.

(4) Reconfigure motorized personal watercraft (MPWC) zone boundaries.

The regulations allowing the use of MPWC in the zones would not change, but the shape and size of the zones would be altered.

The table below shows the size of the current and reconfigured year-round zones where MPWC are allowed. One zone would increase in size; three zones would decrease in size. The overall size of the year-round zones would decrease by 59%. The size of the Mavericks seasonal-conditional zone would remain unchanged. Observations showed little MPWC use in the areas selected; therefore, NOAA expects a minimal impact on the use of the zones by MPWC. MPWC rental businesses may experience a negligible impact, as

MPWC operation would still be allowed in the areas, just in smaller zones. The reduced number of deployed buoys and reduced risk of drifting buoys that have parted from their moorings would produce negligible benefits to boaters (such as commercial fishers) and other water users by reducing risk of collision/allision.

Zone	Current size (sq. mi)	Proposed size (sq. mi)
Pillar Point .....	0.87	0.96
Santa Cruz .....	6.36	2.63
Moss Landing .....	8.10	2.29
Monterey .....	6.36	3.10
Total .....	21.69	8.98

The table below summarizes the findings for each proposed regulatory action described above and includes a column for passive use. "Nonuse" or "passive use" economic values encompass what economists refer to as option value, existence value and other nonuse values. All nonuse economic values are based on the fact that people are willing to pay some dollar amount for a good or service they currently do not use or consume directly. In the case of an ecological reserve, they are not current visitors (users), but derive some benefit from the knowledge that the reserve exists in a certain state and are willing to pay some dollar amount to ensure that the resources are maintained and/or improved.

Regulation <sup>1</sup>	Dredge and restoration	Commercial fishermen	Scuba diving	Recreational water based <sup>2</sup>	Passive use <sup>3</sup>
(1) Adding a new definition for the phrase "beneficial use of dredged material" and amending existing sanctuary regulations to clarify the authorized use of clean dredged material for habitat restoration.	Negligible to Moderate Benefits.	No Impact .....	No Impact .....	Negligible to Moderate Benefits.	No Impact.
(2) Allowing MPWC access to MPWC Zone 5 (Mavericks surf break) during High Surf Advisories.	No Impact .....	No Impact .....	No Impact .....	Negligible Benefits	No Impact.
(3) Correcting an oversight in the 2009 revised MBNMS management plan rulemaking.	No Impact .....	No Impact .....	No Impact .....	No Impact .....	No Impact.
(4) Modifying the boundaries of four existing year-round motorized personal watercraft (MPWC) zones.	No Impact .....	Negligible Benefits	No Impact .....	Negligible Cost .....	No Impact.
All Regulations .....	Negligible to Moderate Benefits.	No Impact .....	No Impact .....	Negligible Benefits	No Impact.

<sup>1</sup> For levels of impacts within the proposed alternatives being analyzed, negligible means very low benefits, costs, or net benefits (less than 1% change). Moderate impacts would be more than 1% but less than or equal to 10%, and high impacts would be more than 10%. No impact means no costs or benefits are expected.

<sup>2</sup> Recreational water based includes businesses that may provide equipment or rent items for recreational water use, such as boats or jet skis that would be used for recreation on the water that does not include fishing or diving.

<sup>3</sup> Passive use may create additional economic value and benefits as people spend time and money to learn about the resources through the purchase of materials such as books, brochures, etc.



#### F. Paperwork Reduction Act

This proposed rule does not create any new information collection requirement, nor does it revise the information collection requirement that was approved by the Office of Management and Budget (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### G. National Historic Preservation Act

In fulfilling its responsibility under the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 *et seq.*) and NEPA, NOAA intends to determine whether the proposed rule is the type of activity that could affect historic properties. If so, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; assess potential adverse effects; and resolve adverse effects. If applicable, NOAA will initiate formal consultation with the State Historic Preservation Officer/Tribal Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties as appropriate; involve the public in accordance with NOAA's NEPA procedures; and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties as appropriate and describe them in the environmental assessment. NOAA will complete applicable NHPA requirements before finalizing its NEPA analysis. Individuals or organizations who wish to participate as a consulting party should notify NOAA.

#### H. Endangered Species Act

The Endangered Species Act (ESA) of 1973 as amended (16 U.S.C. 1531, *et seq.*), provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Federal agencies have an affirmative mandate to conserve ESA-listed species. Section 7(a)(2) of the ESA requires federal agencies, in consultation with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an ESA-listed species or

result in the destruction or adverse modification of designated critical habitat. NOAA's ONMS intends to begin informal consultation under the ESA with NOAA's Office of Protected Resources (OPR) and the U.S. Fish and Wildlife Service upon publication of this proposed rule and complete consultation prior to the publication of the final rule or finalization of the NEPA analysis. NOAA's consultation will focus on any potential adverse effects of this action on threatened and endangered species and/or designated critical habitat.

#### I. Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et seq.*), as amended, prohibits the "take"<sup>5</sup> of marine mammals in U.S. waters. Section 101(a)(5)(A–D) of the MMPA provides a mechanism for allowing, upon request, the "incidental," but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. ONMS intends to request technical assistance from NMFS upon publication of this proposed rule on ONMS's preliminary assessment that this action is not likely to result in take of marine mammals. If NMFS recommends that ONMS seek an Incidental Harassment Authorization or Letter of Authorization, then ONMS will submit an application for any incidental taking of small numbers of marine mammals that ONMS and NMFS conclude could occur as a result of this proposed rulemaking. NOAA's request for technical assistance will focus on the effects of this action on marine mammals. NOAA will complete any MMPA requirements before finalizing its NEPA analysis.

#### J. Coastal Zone Management Act

The principal objectives of the Coastal Zone Management Act (CZMA) are to encourage and assist states in developing coastal management programs, to coordinate State activities, and to preserve, protect, develop and, where possible, restore or enhance the resources of the nation's coastal zone.

<sup>5</sup> The MMPA defines take as: "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal." 16 U.S.C. 1362. Harassment means any act of pursuit, torment, or annoyance which, (1) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B Harassment).

Section 307(c) of the CZMA requires federal activity affecting the land or water uses or natural resources of a state's coastal zone to be consistent with that state's approved coastal management program to the maximum extent practicable. NOAA will provide a copy of this proposed rule, the draft EA, and a consistency determination to the California Coastal Commission (Commission) upon publication. NOAA will wait for concurrence from the Commission prior to publication of the final rule.

#### IV. Request for Comments

NOAA requests comments on this proposed rule, the draft management plan, and the draft EA. The comment period will remain open until September 4, 2020.

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

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

Nicole R. LeBoeuf,

Acting Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

For the reasons set forth above, NOAA proposes amending part 922, title 15 of the Code of Federal Regulations as follows:

#### PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

#### Subpart M—Monterey Bay National Marine Sanctuary

■ 2. Amend § 922.131 by adding the definition for "Beneficial use of dredged material" to read as follows:

#### § 922.131 Definitions.

\* \* \* \* \*

*Beneficial use of dredged material* means the use of dredged material removed from any of the four public harbors immediately adjacent to the shoreward boundary of the sanctuary (Pillar Point, Santa Cruz, Moss Landing, and Monterey) that has been determined by the Director to be clean (as defined by this section) and suitable (as consistent with regulatory agency reviews and approvals applicable to the proposed beneficial use) as a resource for habitat restoration purposes only.

Beneficial use of dredged material is not disposal of dredged material.

\* \* \* \* \*

■ 3. Amend § 922.132 by:

■ A. Revising paragraphs (a)(7) and (c)(1).

■ B. Amending paragraph (f) by adding a new sentence before the last sentence in the paragraph.

The revisions and addition read as follows

**§ 922.132 Prohibited or otherwise regulated activities.**

(a) \* \* \*

(7) Operating motorized personal watercraft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix E to this subpart. Zone Five (at Pillar Point) exists only when a High Surf Advisory has been issued by the National Weather Service and is in effect for San Mateo County,

and only during December, January, and February.

\* \* \* \* \*

(c) \* \* \*

(1) All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (12) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). For purposes of the Davidson Seamount Management Zone, these activities are listed in the 2020 Final Environmental Assessment for Monterey Bay National Marine Sanctuary Management Plan Review.

New activities may be exempted from the prohibitions in paragraphs (a)(2) through (12) of this section by the Director after consultation between the Director and the Department of Defense.

\* \* \* \* \*

(f) \* \* \* For the purposes of this Subpart, the disposal of dredged material does not include the beneficial use of dredged material as defined by 15 CFR 922.131. \* \* \*

■ 6. Amend Appendix E to Subpart M of Part 922 to read as follows:

**Appendix E to Subpart M of Part 922—Motorized Personal Watercraft Zones and Access Routes Within the Sanctuary**

The four zones and access routes are:

(1) The 0.96 mi<sup>2</sup> area off Pillar Point Harbor from harbor launch ramps, through the harbor entrance to the northern boundary of Zone One:

Point ID No.	Latitude	Longitude
1 (flashing white 5-second breakwater entrance light and horn at the seaward end of the outer west breakwater—mounted on 50-ft high white cylindrical structure) .....	37.49402	–122.48471
2 (triangular red dayboard with a red reflective border and flashing red 6-second light at the seaward end of the outer east breakwater—mounted on 30-ft high skeleton tower) .....	37.49534	–122.48568
3 (bend in middle of outer east breakwater, 660 yards west of the harbor entrance) .....	37.49707	–122.47941
4 (Southeast Reef—southern end green gong buoy “1S” with flashing green 6-second light) .....	37.46469	–122.46971
5 (red entrance buoy “2” with flashing red 4-second light) .....	37.47284	–122.48411

(2) The 2.63 mi<sup>2</sup> area off of Santa Cruz Small Craft Harbor from harbor launch ramps, through the harbor entrance, and then along a 100-yard wide access route

southwest along a bearing of approximately 196° true (180° magnetic) toward the red and white whistle buoy at 36.93899 N, 122.009612 W, until

crossing between the two yellow can buoys marking, respectively, the northeast and northwest corners of the zone. Zone Two is bounded by:

Point ID No.	Latitude	Longitude
1 (red/white striped whistle buoy “SC” with flashing white Morse code “A” light) .....	36.93899	–122.00961
2 (yellow can buoy) .....	36.95500	–122.00967
3 (yellow can buoy) .....	36.94167	–121.96667
4 (yellow can buoy) .....	36.92564	–121.96668

(3) The 2.29 mi<sup>2</sup> area off of Moss Landing Harbor from harbor launch ramps, through harbor entrance, and

then along a 100-yard wide access route southwest along a bearing of approximately 230° true (215° magnetic)

to the red and white bell buoy at 36.79893 N, 121.80157 W. Zone Three is bounded by:

Point ID No.	Latitude	Longitude
1 (red/white striped bell buoy “MLA” with flashing white Morse code “A” light) .....	36.79893	–121.80157
2 (yellow can buoy) .....	36.77833	–121.81667
3 (yellow can buoy) .....	36.83333	–121.82167
4 (yellow can buoy) .....	36.81500	–121.80333

(4) The 3.10 mi<sup>2</sup> area off of Monterey Harbor from harbor launch ramps to a point midway between the seaward end of the U.S. Coast Guard Pier and the

seaward end of Wharf 2, and then along a 100-yard wide access route northeast along a bearing of approximately 67° true (52° magnetic) to the yellow can

buoy marking the southeast corner of the zone. Zone Four is bounded by:

Point ID No.	Latitude	Longitude
1 (yellow can buoy) .....	36.61146	–121.87696
2 (red bell buoy “4” with flashing red 4-second light) .....	36.62459	–121.89594

Point ID No.	Latitude	Longitude
3 (yellow can buoy) .....	36.65168	-121.87416
4 (yellow can buoy) .....	36.63833	-121.85500

(5) The .13 mi<sup>2</sup> area near Pillar Point from the Pillar Point Harbor entrance along a 100-yard wide access route southeast along a bearing of approximately 174° true (159° magnetic) to the green bell buoy (identified as “Buoy 3”) at 37.48154 N, 122.48156 W

and then along a 100-yard wide access route northwest along a bearing of approximately 284° true (269° magnetic) to the green gong buoy (identified as “Buoy 1”) at 37.48625 N, 122.50603 W, the southwest boundary of Zone Five. Zone Five exists only when a High Surf

Advisory has been issued by the National Weather Service and is in effect for San Mateo County and only during December, January, and February. Zone Five is bounded by:

Point ID No.	Latitude	Longitude
1 (green gong buoy “1” with flashing green 2.5-second light) .....	37.48625	-122.50603
2 (intersection of sight lines due north of green gong buoy “1” and due west of Sail Rock) .....	37.49305	-122.50603
3 (Sail Rock) .....	37.49305	-122.50105
4 (intersection of sight lines due east of green gong buoy “1” and due south of Sail Rock) .....	37.48625	-122.50105

[FR Doc. 2020-14225 Filed 7-2-20; 8:45 am]

BILLING CODE 3510-NK-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[Docket Number USCG-2016-0897]

RIN 1625-AA01

#### Anchorage Grounds; Atlantic Ocean, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a dedicated offshore anchorage approximately seven nautical miles northeast of the St. Johns River inlet, Florida. This action is necessary to ensure the safety and efficiency of navigation for all vessels transiting in and out of the Port of Jacksonville. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before September 4, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0964 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed

rulemaking, call or email LT Emily Sysko, Sector Jacksonville Waterways Management Division Chief, U.S. Coast Guard; telephone 904-714-7616, email [Emily.T.Sysko@uscg.mil](mailto:Emily.T.Sysko@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
SNPRM Supplemental notice of proposed rulemaking  
§ Section

##### II. Background, Purpose, and Legal Basis

The project to establish an offshore anchorage just outside of the St. Johns River and offshore of Jacksonville was initiated in 2013. From 2013 through 2017, certain port stakeholders (St. Johns Bar Pilots Association (SJBPA), Jacksonville Marine Transportation Exchange (JMTX), National Oceanic and Atmospheric Administration (NOAA), and United States Coast Guard (USCG)) worked to determine a suitable location for the anchorage, with consideration given to, among other things, environmental factors and Seasonal Management Areas. However, a location was not determined during this timeframe. The U.S. Coast Guard conducted a Waterways Analysis and Management System (WAMS) survey for this proposed project and did not receive any comments of concern from the entities previously mentioned.

In 2016, the stakeholders re-engaged the USCG in an attempt to complete the offshore anchorage project. A Notice of Proposed Rulemaking was published on May 4, 2017 (82 FR 20859). Informal National Environmental Protection Act (NEPA) consultations were

disseminated requesting feedback on the proposed anchorage location. National Marine Fisheries (NMFS) and NOAA responded with significant concerns regarding the location. The aforementioned agencies requested an environmental study be completed to analyze potential hard bottom locations within the selected anchorage ground and the effects of vessels anchoring in these environmentally sensitive areas. The stakeholders involved at this time were unable to financially support the requested study. Due to these concerns, no further action was taken after the NPRM was published in 2017.

In 2018, the USCG met with the stakeholders again to determine a way forward with the proposed anchorage. Stakeholders concluded that three circular anchorages would meet the needs of an offshore anchorage, while allowing flexibility to avoid hard bottom areas. In 2019, USCG Sector Jacksonville sent out an informal consultation via email to federal, state, and local government and private stakeholders to solicit for feedback on the proposed, new anchorage construct. NMFS agreed with the construct, allowing USCG to move forward with formal NEPA consultation. Towards the end of 2019, USCG sent out formal consultation to approximately 20 different organizations and agencies regarding the anchorage. At this time, NMFS expressed some minor concerns. At the beginning of 2020, stakeholders and NMFS came to an agreement that addressed the minor concerns raised. The USCG is currently moving forward with the rulemaking and public comment period for the proposed anchorage location.

The purpose of this proposed rulemaking is to improve the navigational safety, traffic management