

CALIFORNIA COASTAL COMMISSION

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**RECORD PACKET COPY****Tu12b****STAFF REPORT AND RECOMMENDATION****ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-101-00
Staff:	LJS-SF
File Date:	9/7/2000
45 th Day:	10/22/2000
60 th Day:	11/6/2000
Commission Meeting:	10/10/2000

FEDERAL AGENCY:**National Oceanic and Atmospheric
Administration****PROJECT
LOCATION:**

Gulf of the Farallones National Marine Sanctuary (Exhibit 1)

**PROJECT
DESCRIPTION:**Adoption of regulations to prohibit motorized personal watercraft
in the Gulf of the Farallones National Marine Sanctuary.**SUBSTANTIVE FILE DOCUMENTS:**

1. Coastal Development Permit 2-00-005 (Marin County; prohibition of the use and operation of motorized personal watercraft in waters from the shoreline of the Pacific Ocean to three miles seaward, bounded to the north by the Sonoma County line and to the south by the Golden Gate Bridge, including all estuaries, rivers, and bays within Marin County jurisdiction).

2. Negative Determination ND-53-99 (NOAA; prohibition of the operation of motorized personal watercraft in the nearshore waters of the Gulf of the Farallones National Marine Sanctuary).
3. Coastal Development Permit 6-99-075 (International Jet Sports Boating Association; Jet Ski World Finals in Mission Bay Park, San Diego).
4. ND-60-96 (NOAA; installation of buoys to delineate previously-authorized jet ski use areas within the Monterey Bay National Marine Sanctuary).
5. CD-66-92 (NOAA; designation of the Monterey Bay National Marine Sanctuary, including a prohibition of the use and operation of personal water craft within the Sanctuary except off the harbors of Pillar Point, Santa Cruz, Moss Landing, and Monterey).

EXECUTIVE SUMMARY

The National Oceanic and Atmospheric Administration (NOAA) submitted a consistency determination to amend the regulations governing activities in the Gulf of the Farallones National Marine Sanctuary (Sanctuary) to prohibit the operation of motorized personal watercraft (MPWC) within the boundaries of the Sanctuary. The Executive Director previously concurred with a negative determination (ND-53-99) prohibiting operation of MPWC in the nearshore waters (out 1,000 yards from the shoreline) of the Sanctuary. However, NOAA has now determined that a total ban on MPWC operations is necessary to adequately protect all Sanctuary resources. NOAA reached this conclusion after considering the comments in response to its proposed nearshore prohibition, the new MPWC regulations adopted by agencies with contiguous and overlapping jurisdictional boundaries with the Sanctuary, the increased sitings of federally threatened southern sea otters, the numbers of gray whales feeding in Bodega Bay, the new listings for salmon and steelhead, the requirements for the protection of the Sanctuary's unique assemblage of marine biological resources, and the potential for increasing conflicts among MPWC operations and other recreational uses in the Sanctuary.

The proposed regulations prohibiting use of MPWC in the Sanctuary will eliminate adverse effects on water quality generated by MPWC engines that vent unburned oil and gasoline directly into the water, and are consistent with the water quality policies of the California Coastal Management Program (CCMP; Section 30231 of the Coastal Act). The use of MPWC in the Sanctuary causes significant adverse effects on a broad assemblage of seabirds, shorebirds, marine mammals, fishes, invertebrates, and marine flora, including 34 threatened, endangered, or special concern species of fish and wildlife. The prohibition on MPWC operations will protect sensitive marine resources and environmentally sensitive habitat from the adverse effects of MPWC operations, and is consistent with the marine resource and sensitive habitat policies of the CCMP (Sections 30230 and 30240 of the Coastal Act). MPWC operations conflict with other recreational uses in the Sanctuary (including kayaking, hiking, picnicking, and wildlife watching) and have been banned in several adjacent and overlapping coastal jurisdictions. The Sanctuary is not a coastal area suitable for MPWC recreation and there are alternate inland and coastal areas available for such operations. The prohibition of MPWC from the Sanctuary will eliminate use conflicts and protect recreational opportunities consistent with the public access

and recreation policies of the CCMP (Sections 30210, 30214(a)(2), 30220, and 30240 of the Coastal Act).

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description and History.

The National Oceanic and Atmospheric Administration (NOAA) proposes to amend the regulations governing activities in the Gulf of the Farallones National Marine Sanctuary (Sanctuary) to prohibit the operation of motorized personal watercraft (MPWC) within the boundaries of the Sanctuary (Exhibit 1). This proposed action responds to a proposed rule published on April 23, 1999, that called for prohibiting MPWC within the nearshore areas of the Sanctuary (out to 1,000 yards from the shoreline), and to a June 2, 1999, public hearing on that rule. The proposed action withdraws and replaces the 1999 proposed rule with a complete prohibition on MPWC throughout the entire Sanctuary. NOAA states that:

After considering the comments in response to NOAA's April 23, 1999, proposed rule, reviewing new MPWC regulations for agencies with contiguous and overlapping jurisdictional boundaries, and considering the increased sightings for federally threatened southern sea otters and numbers of gray whales feeding in Bodega Bay, new listings for salmon and steelhead, and requirements for the protection of the Sanctuary's biological resources, NOAA has determined that a total ban on MPWC is necessary to adequately protect Sanctuary resources. This proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users in the Sanctuary. A total ban on MPWC within the GFNMS is the most effective, safe and enforcement regulations that ensures Sanctuary resource protection.

The proposed amendments to the Sanctuary regulations are as follows:

The addition to 15 CFR 922.82(a) of a prohibition against operation of MPWC in the Sanctuary. The prohibition would include an exception for the use of MPWC for emergency search and rescue and law enforcement (other than training activities) by Federal, State and local jurisdictions.

An amendment to 15 CFR 922.81 to add a definition of "motorized personal watercraft." "Motorized personal watercraft" would be defined as "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."

The Commission and the Executive Director have acted on several proposals to regulate the operation of MPWC. On August 12, 1992, the Commission concurred with consistency determination CD-66-92 made by NOAA for the designation of the Monterey Bay National Marine Sanctuary (MBNMS). The consistency determination included regulations that prohibit

the operation of MPWC within the Sanctuary except off the harbors of Pillar Point, Santa Cruz, Moss Landing, and Monterey. On June 3, 1996, the Executive Director concurred with negative determination ND-60-96 for NOAA's proposal to install buoys to delineate the aforementioned MPWC allowable use areas within the MBNMS.

On September 3, 1999, the Executive Director concurred with negative determination ND-53-99 for NOAA's proposal to prohibit operation of MPWC in the nearshore waters (out to 1,000 yards from shore) of the Gulf of the Farallones National Marine Sanctuary. On August 12, 1999, the Commission denied the International Jet Sports Boating Association's (IJSBA) coastal development permit application (6-99-075) to set up and conduct the IJSBA Jet Ski World Finals in Mission Bay Park in San Diego. On August 9, 2000, the Commission approved Marin County's coastal development permit application (2-00-005) to prohibit the operation of MPWC in the waters from the shoreline of the Pacific Ocean to three miles seaward, bounded to the north by the Sonoma County line and to the south by the Golden Gate Bridge, including all estuaries, rivers, and bays within Marin County jurisdiction.

Additionally, several other MPWC-related regulatory actions which were not reviewed by the Commission are nevertheless relevant to the proposed project. In November 1998, MPWC were prohibited within the Golden Gate National Recreation Area (GGNRA) boundary, from the shore seaward to one-quarter mile; launching or landing MPWC within the GGNRA is also prohibited. In October 1998 MPWC were prohibited within 1,200 feet of the shoreline in the City and County of San Francisco; two 200-foot-wide access corridors are provided. In July 1998 MPWC were prohibited within the Point Reyes National Seashore boundary, from the shore seaward to one-quarter mile, including Tomales Bay. In April 1994 the City of Sausalito restricted MPWC to 5.0 mph within 500 feet of the shoreline between the southern city boundary and Spinnaker Point.

II. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the LCP has been certified by the Commission and incorporated into the CCMP, it can provide guidance in applying Chapter 3 policies in light of local circumstances. If the LCP has not been incorporated into the CCMP, it cannot be used to guide the Commission's decision, but it can be used as background information. The Sonoma, Marin, and San Francisco County LCPs have been certified by the Commission and incorporated into the CCMP.

III. Federal Agency's Consistency Determination.

The National Oceanic and Atmospheric Administration has determined the project consistent to the maximum extent practicable with the California Coastal Management Program.

IV. Staff Recommendation. The staff recommends that the Commission adopt the following motion:

MOTION:

I move that the Commission agree with consistency determination CD-101-00 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

STAFF RECOMMENDATION:

Staff recommends a YES vote on the motion. Passage of this motion will result in an agreement with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

RESOLUTION TO AGREE WITH CONSISTENCY DETERMINATION:

The Commission hereby agrees with consistency determination CD-101-00 by the National Oceanic and Atmospheric Administration, on the grounds that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the CCMP.

V. Findings and Declarations.

The Commission finds and declares as follows:

A. Sanctuary Resources. The Gulf of the Farallones National Marine Sanctuary (Sanctuary) was designated in 1981 in recognition of the unique marine environment in the Gulf of the Farallones. The Sanctuary encompasses approximately 1,235 square miles of nearshore and offshore waters, including the Farallones Islands, southwest of Marin County (Exhibit 1). The subject consistency determination states that the Sanctuary includes five state-designated Areas of Special Biological Significance and four semi-enclosed estuarine areas, and that:

The waters of the Sanctuary are home to a rich diversity of marine biota and provide critical habitat for seabirds, marine mammals, fishes, invertebrates, sea turtles, and marine flora. The importance and uniqueness of Sanctuary waters has been internationally recognized by the incorporation of Sanctuary waters into the United Nations' Man in the Biosphere system as part of the Golden Gate Biosphere Reserve, and the designation of Bolinas Lagoon as a RAMSAR site (the Convention for Wetlands of International Significance). The National Marine Fisheries Service is considering areas within the Sanctuary for designation as Essential Fish Habitat as mandated by the Magnuson-Stevens Fisheries Conservation and Management Act (James Bybee, NOAA, pers.comm., 7 January 2000).

Hundreds of bird species reside in or migrate through the Sanctuary and 22 species are listed as either federally or state endangered, threatened, or of special concern. There are twelve critical marine bird nesting areas along the shoreline of the Sanctuary. The nesting population on the Farallones Islands comprises the largest concentration of breeding marine birds in the continental United States. During nesting and rearing of young, these sea birds are especially dependent on the Sanctuary's offshore waters for food.

Thirty-three species of marine mammals have been observed in the Sanctuary, including sea otters, four species of sea turtles, six species of pinnipeds (including 20% of the state's breeding population of harbor seals), and twenty-six species of cetaceans (nineteen migratory and seven resident). Twelve species are listed as either threatened or endangered. Many of these marine mammals occur in large concentrations and are dependent on the productive and secluded habitat of the Sanctuary's waters and adjacent coastal areas for breeding, pupping, hauling-out, feeding, and resting during migration. NOAA reports that populations of several species of marine mammals are recovering and using feeding areas and haul outs in the Sanctuary that have not been used for decades.

The consistency determination states that:

Because of its unique geology and geography, the biological diversity found within the Gulf of the Farallones National Marine Sanctuary rivals any location along the Pacific coast. Fueled by the strongest coastal upwelling in North America (Bakun 1973), abundant biological resources thrive in the productive waters of the Gulf's broad, shallow continental shelf. A counter-clockwise eddy that swirls south of Point Reyes in the Gulf of the Farallones concentrates the products of upwelling (Wing et al 1995) and acts like an incubator for small developing animals. These in turn are food for organisms higher up on the food web.

...

The protected bays and coastal wetlands of the Sanctuary, such as Bodega Bay, Tomales Bay, Drakes Bay, Bolinas Lagoon, Estero Americano and Estero de San Antonio, provide diverse habitats including intertidal mudflats, sand flats, salt marshes, submerged rocky terraces, and shallow subtidal areas. . . Over 150 species of fish are found in the Sanctuary including the federally endangered winter-run Chinook salmon and the federally-threatened coho salmon, spring run Chinook salmon, steelhead trout, and tidewater goby.

The nearshore waters of the Sanctuary are the areas most heavily used for recreation. Areas such as Bodega Bay and Tomales Bay are used for sailing, canoeing, rowing, kayaking and swimming. The offshore waters of the Sanctuary support active sport and commercial fisheries. Commercial whale watching operators regularly use the offshore waters of the Sanctuary for wildlife viewing opportunities.

The consistency determination states that:

Because of the significant biological diversity found within the Sanctuary including 11 federally endangered and 7 threatened species of birds, fish, turtles, and marine mammals and the importance of Sanctuary habitats for maintaining these populations, NOAA as the public trustee agency for these resources takes a precautionary approach to their protection. . .

...

After considering the comments in response to NOAA's April 23, 1999, proposed rule, reviewing new MPWC regulations for agencies with contiguous and overlapping jurisdictional boundaries, and considering the increased sitings for federally threatened southern sea otters and numbers of gray whales feeding in Bodega Bay, new listings for salmon and steelhead, and requirements for the protection of the Sanctuary's biological resources, the Sanctuary has determined that a total ban on MPWC is necessary to adequately protect Sanctuary resources. This proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users in the Sanctuary. A total ban on MPWC within the GFNMS is the most effective, safe and enforcement regulations [sic] that ensures Sanctuary resource protection.

B. Water Quality. Section 30231 of the Coastal Act provides the following:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Motorized personal watercraft (MPWC) use a two-stroke internal combustion engine with an exhaust expulsion system that vents directly into the water, and which runs on a mixture of oil and gasoline to power a jet pump. The significant adverse effects of two-stroke engines to water quality and the corresponding impacts to aquatic organisms are well documented in the scientific literature. NOAA reports in its consistency determination that:

The two-stroke engines found on the vast majority of MPWC in the United States discharge more of their fuel (ranging from 10% to more than 50% of the unburned fuel/oil mixture, depending on manufacturing conditions and operating variables) than the four-stroke engines found on conventional recreational boats (Tahoe Research Group, 1997). These emissions pose a serious threat to the environment, as two-stroke engines introduce more volatile organic compounds (by a factor of 10) into the water than four-stroke engines (Juttner et al. 1995; Tjarnlund et al. 1995). These emissions can have significant adverse impacts in all areas of the Sanctuary.

In its approval of coastal development permit 2-00-005 (County of Marin; prohibition of operation of MPWC), the Commission found that gasoline constituents released into the water from MPWC include benzene, a known carcinogen, toluene, xylene, and methyl-tertiary-butyl-ether ("MTBE"). MTBE is a fuel oxygenate added to boost octane and make gasoline burn more efficiently and therefore "cleaner." MTBE is also thought to be a potential human carcinogen (CA Department of Boating and Waterways 1999). MTBE is a synthetic molecule that dissolves in water and therefore seeps into groundwater farther and more easily than other gasoline

constituents. MTBE has been detected in many water sources (CA Department of Boating and Waterways 1999; Johnson 1998).

Use and operation of MPWC discharge gasoline and oil, including the constituents discussed above, directly into marine waters. Environmental impacts from a two-stroke engine are especially significant because of where and how MPWC are used. MPWC are capable of traveling in shallow and remote areas, where waterfowl and other wildlife are most prevalent and most sensitive to environmental pollution. Hydrocarbons in gas and oil released from two-stroke motors float on the surface and settle within the estuarine and shallow ecosystems of water bodies, where marine life breeds and is most vulnerable. These areas also support many organisms at the base of the food chain, such as fish eggs, algae, shellfish, and zooplankton.

Experiments conducted in Lake Tahoe in 1997 provided evidence that ambient levels of pollutants discharged by motorized watercraft caused toxicity to both fish and zooplankton (Oris 1998). Laboratory studies indicate that the exhaust from two-stroke outboard engines has a negative impact on fish. Studies have documented the disruption of normal biological functions at a variety of levels, including cellular and sub cellular processes, (DNA adduct levels, enzyme activity) and physiological functions (carbohydrate metabolism, immune system) (Tjarnlund 1995, Balk 1994). Mussels and oysters exposed to a diluted effluent from a two-stroke outboard motor in a running seawater system displayed physiological stress, degeneration of gill tissue, and uptake of paraffin hydrocarbons from the effluent (Clark 1974). Scientists have determined that hydrocarbon pollution can bio-accumulate within the complex food web, posing a serious threat to the marine environment.

The Commission agrees that based on the substantial scientific evidence discussed above, the operation of MPWC in the Gulf of the Farallones National Marine Sanctuary causes significant adverse impacts to the unique quality and biological productivity of coastal and marine waters within Sanctuary boundaries. Therefore, the Commission finds that the proposed regulations to prohibit the operation of MPWC in the Sanctuary are consistent with the water quality policies of the California Coastal Management Program (Section 30231 of the Coastal Act).

C. Marine Resources and Environmentally Sensitive Habitat. The Coastal Act provides in the following sections that:

30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

As noted earlier in this report, the waters of the Sanctuary are home to a rich diversity of marine biota and provide critical habitat for seabirds, marine mammals, fishes, invertebrates, sea turtles, and marine flora. The Sanctuary was created to protect and preserve the unique resources of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource. As such, the Commission may find that the Sanctuary is an environmentally sensitive habitat area (ESHA) as defined pursuant to Coastal Act Section 30107.5. In such case, the Commission's consideration of the proposed regulations must address Section 30240 of the Coastal Act, which limits the uses allowable in ESHAs. However, even if the Commission finds that the Sanctuary does not fit the Coastal Act definition of ESHA, the marine resource protection requirements of Section 30230 are applicable throughout the waters of the Sanctuary. Section 30230 states that special protection shall be given to areas and species of special biological or economic significance. As documented below, the Sanctuary is an area of special biological significance and is therefore subject to special protection under Section 30230.

NOAA states in its consistency determination that:

- *The Sanctuary was designated for special protection by NOAA because it contains marine resources and habitats that are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. The Sanctuary provides habitat for 34 threatened, endangered, or special concern species including the Southern sea otter, Guadalupe fur seal, Humpback whale, Sperm whale, Blue whale, Brown pelican, California least tern, Peregrine falcon, and Western snowy plover.*
- *MPWC use in the Sanctuary is increasing at a time when marine mammal occurrence is expanding in duration of stay, numbers, species, and location.*
- *Regulations banning MPWC use in adjoining Marin County, Point Reyes National Marine Seashore, Golden Gate National Recreation Area, and in the Monterey Bay National Marine Sanctuary leave the GFNMS resources vulnerable to increased interactions among MPWC and marine mammals, sea birds, shore birds, wading birds, and other Sanctuary resources and users.*
- *There are significant concerns regarding the effects of MPWC on living resources dependent upon the vitality of Sanctuary resources. Marine mammals currently at risk from MPWC include the southern sea otter, blue whale, humpback whale, gray whale, Guadalupe fur seal, northern fur seal, Stellar sea lion, and harbor porpoise. All of these animals move freely through the Sanctuary and four are listed as threatened or endangered.*

- *As stated clearly by the MPWC industry in their comments, existing laws are not being followed by all MPWC operators and are also not enforced. Interactions of MPWC with marine mammals, as well as with shore birds, wading birds, and swimmers, are already illegal under federal, state, or local statute, but still occur. A total prohibition will provide a clear and simple enforceable rule within the GFNMS.*
- *Research in Florida indicates that MPWC cause wildlife to flush at greater distances, with more complex behavioral responses than observed in disturbances caused by automobiles, all-terrain vehicles, foot approach, or motorboat. This was partially attributed by the scientists to the typical operation of MPWC, where they accelerate and decelerate repeatedly and unpredictably, and travel at fast speeds directly toward shore, while motor boats generally slow down as they approach shore (Rogers 1997).*
- *There is a general conclusion that marine mammals are more disturbed by watercraft such as MPWC, which run faster, on varying courses, or often change direction and speed, than they are by boats running parallel to shore with no abrupt course or major speed change.*
- *Researchers note that MPWC may be disruptive to marine mammals when they change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. In addition, because MPWC lack low-frequency long distance sounds underwater, they do not signal surfacing mammals or birds of approaching danger until they are very close to them (Gentry 1996; Osborne 1966).*
- *Many seabirds and marine mammals use the surface layer of the ocean within the GFNMS for resting and feeding opportunities. Common murrelets, loons, cormorants, grebes, auklets, and phalaropes are some of the seabirds that float on the surface of the ocean while resting or before diving and pursuing prey. These seabirds are at an increased risk from MPWC because MPWC operation causes disturbance and more complex behavioral responses from seabirds and at greater distances than that observed for motorboats (Rodgers 1997).*
- *Research notes that declining nesting success of grebes, coots, and moorhens in the Imperial National Wildlife Refuge were due to the noise and physical intrusion of MPWC (Snow 1989). In addition, MPWC have been observed flushing wading birds and nesting osprey from their habitat, contributing to abnormally high numbers of abandoned osprey nests on certain islands in the Florida Keys (U.S. Fish and Wildlife Service 1992).*
- *Numerous shoreline roost sites exist within the Sanctuary, and research has shown that human disturbance at bird roost sites can force birds to completely abandon a nesting area. Published evidence strongly suggests that estuarine birds may be seriously affected by even occasional disturbance during key parts of their feeding cycle, and when flushed from feeding areas, such as eelgrass beds, will usually abandon the area until the next tidal cycle (Kelly 1997). Nearshore areas in Bodega Bay, Sonoma County, provide important foraging habitat for shorebirds and waterfowl along the Pacific flyway. The Farallon Islands, located in San Francisco County, support the largest concentration of breeding seabirds in the continental United States. Several species of diving birds that nest on the Farallon Islands*

use the offshore areas of the Sanctuary to forage. These animals float on the surface of the water between repeated dives for food. MPWC operating in this offshore habitat would certainly disrupt seabirds foraging for prey to bring back to their young in nests.

- *Possible disturbance effects of MPWC on marine mammals could include shifts in activity patterns and site abandonment by harbor seals and Steller sea lions; site abandonment by harbor porpoise; injuries from collisions; and avoidance by whales (Gentry 1996; Richardson et al. 1995). The gray whale migration corridor passes directly through the GFNMS. Twice a year gray whales pass through the Sanctuary on their migration between wintertime calving grounds in Mexico and summer feeding grounds in Alaska. In spring, mothers and calves travel in pairs close to shore. Since the whale migration corridor passes through the entire Sanctuary in a north-south direction, but varies in distance from shore, there is no way to distance MPWC from the migrating whales.*
- *In addition, the GFNMS is a destination feeding area for the endangered blue and humpback whales. Each summer these whales migrate to the GFNMS to feed on abundant swarms of krill found in the surface layers in the Gulf of the Farallones. It is critical that these whales feed enough in the summer and fall to sustain them through their migration and winter reproductive season. Disturbance from MPWC could reduce feeding opportunities and have serious consequences for these endangered populations. Endangered blue whales were observed feeding two miles off of the Point Reyes headlands during July of 1999. This is unusually close to shore for these animals, whose numbers in the area comprise a major concentration for the world, and who normally forage farther offshore. This unpredictable blue whale feeding activity demonstrates the necessity for protecting all of the Sanctuary's waters. Other jurisdictions have regulated MPWC specifically to protect marine mammals (e.g., Hawaii).*
- *NOAA's initial proposal of a 1000 yd. buffer would leave 95% of the Sanctuary open for MPWC operation. The Sanctuary was created in 1981 to protect and preserve the extraordinary ecosystems, including marine birds, mammals, and other natural resources of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource. As discussed throughout this document, information supports a need to address the impacts of MPWC operation throughout the Sanctuary. As the public trustee for these important resources, it would be inadequate for the Sanctuary to leave resources at risk in 95% of the GFNMS and therefore NOAA has proposed a prohibition of the operation of MPWC in the entire Sanctuary.*

In its approval of coastal development permit 2-00-005 (Marin County), which covered an area that partially overlaps the Sanctuary, the Commission relied, in part, on a review of numerous studies (some of which are referenced in NOAA's consistency determination) documenting the adverse effects on marine resources and habitat by the operation of MPWC. The Commission concluded in 2-00-005 that:

Based on the evidence discussed above, it is clear that the operation of PWC is harmful to the marine resources including sensitive species and habitat areas found in the Special Use

Area [The coastal waters extending three miles offshore of Marin County]. These impacts are of particular concern because the number of PWC in use is growing rapidly. As of December 31, 1998, there were approximately 161,000 PWC registered in California, comprising 18 percent of registered vessels in the State (CA Department of Boating and Waterways June, 1999). Because of a 10-fold growth rate in the last decade, PWC represent the fastest-growing segment of the recreational boating industry.

Sections 30230 and 30240 of the Coastal Act require that marine resources and environmentally sensitive habitat areas be protected from harmful effects. In light of the evidence provided by NOAA of the adverse effects of MPWC to the marine habitat and resources of the Sanctuary, the Commission finds that adoption of the proposed regulations prohibiting the operation of MPWC is consistent with the marine resource policies of Sections 30230 and 30240 of the Coastal Act.

Coastal Act Section 30240(a) requires not only that the habitat values of ESHAs shall be protected from any significant disruption, but it also limits uses within ESHAs to those that are dependent on the resources of the area. While the use of MPWC is dependent on water, it is not dependent on the specific waters of the Sanctuary. Furthermore, 30240(a) only allows resource dependant uses that do not result in significant disruption of the habitat. As discussed above, the use of MPWC within the Sanctuary does cause significant disruption of environmentally sensitive habitat areas, and would therefore not be allowable under 30240(a) even if it was a use dependant on the resources of these specific waters. Therefore, the proposed regulations do not conflict with either requirement contained in Section 30240(a) of the Coastal Act.

Based on the information submitted by NOAA in its consistency determination, including the expert opinions and scientific literature discussed above, and based on similar actions previously taken by the Commission in regulating MPWC operations in the Sanctuary and elsewhere, the Commission finds that the use of MPWC in the Gulf of the Farallones National Marine Sanctuary causes significant adverse impacts to sensitive marine resources and environmentally sensitive habitat, and that NOAA's proposed regulations prohibiting the operation of MPWC in the Sanctuary will ensure that these adverse impacts will not occur. Therefore, the Commission finds that the proposed prohibition of MPWC operations in the Sanctuary is consistent with marine resource and habitat protection policies of the California Coastal Management Program (Sections 30230 and 30240 of the Coastal Act).

D. Public Access and Recreation. The Coastal Act provides in the following sections that:

30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

30214. (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access

depending on the facts and circumstances in each case including, but not limited to, the following:

(2) The capacity of the site to sustain use and at what level of intensity. . . .

30220. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

30240. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The Commission must determine if NOAA's proposed regulations prohibiting MPWC from the Sanctuary are consistent with the above public access and recreation policies of the Coastal Act. NOAA reported in the consistency determination that:

- The number of MPWC currently being operated in Sanctuary waters is believed by the proprietors of Lawson's Landing, the primary MPWC launch site in Sanctuary waters, to be less than 200 launches per year by approximately 20 users.*
- The use of MPWC in Sanctuary waters is believed to be increasing.*
- April through November appear to be the times of highest use of MPWC in Sanctuary waters.*
- Over 95 percent of MPWC operation occurs in two areas: the vicinity of the mouth of Tomales Bay and the area outside Bodega Harbor.*
- As a result of the Marin County ordinance, Lawson's Landing is no longer a legal launch site for MPWC, and Tomales Bay and portions of Bodega Bay are now off limits to MPWC. Also, all coastal waters within three miles of shore in Marin County are off limits to MPWC operation. This area overlays the eastern edge of the GFNMS. The only remaining legal launch site into the Sanctuary is now from Bodega Harbor in Sonoma County, which is not within the jurisdictional boundary of the Marin County ordinance.*
- MPWC present a present and potential threat to resources and users of the Sanctuary.*
- Numerous respondents to the proposed [1999] rule noted that MPWC were interfering with, and often jeopardizing the well-being of, swimmers, kayakers, canoeists, and other recreational boaters and users of the Sanctuary.*
- NOAA concurs with and supports the other agencies assessment of resource impacts and user concerns created by the operation of MPWC in the marine environment of this area.*
- After consideration of public comment on this issue, including testimony at public hearings relative to MPWC use in or adjacent to the Sanctuary, NOAA has determined*

that MPWC conflict or pose the potential to conflict with other recreational uses such as swimming, kayaking, recreational fishing, boating, and wildlife viewing.

- *Based on new and recent regulations for areas with contiguous and overlapping boundaries, the latest biological information on impacts of MPWC in offshore areas, as well as conflicts with other Sanctuary users, NOAA has determined that a Sanctuary-wide prohibition on the operation of MPWC is necessary and the best way to adequately protect the Sanctuary's resources.*
- *With the implementation of the Marin County ban that regulates MPWC three miles shore, enforcing boundary violations would be difficult. Because the Sanctuary does not have enforcement personnel to staff a boat patrol at the three mile boundary and MPWC are not equipped with navigational equipment it would be impossible to enforce boundary violations. Before the Marin County ban, there was difficulty enforcing the Point Reyes National Seashore's (PRNS) quarter mile restriction. Despite local riders attempt at self-policing and creating no ride zones, violations were chronic and regulations were hard to enforce. This occurred in PRNS that has enforcement personnel on staff. A total prohibition will provide a clear and simple enforcement rule within the GFNMS.*

The proposed regulations do not prohibit coastal access to or recreation within the Sanctuary, but instead regulate the manner and place of public access and recreation consistent with the facts and circumstances concerning the capacity of the Sanctuary to sustain the type and intensity of recreational use. Substantial evidence is provided by NOAA to demonstrate that the Sanctuary cannot support the use of MPWC and that such use is incompatible with other public access and recreation activities and the need to protect natural resources within the Sanctuary from harm and overuse. Therefore, the Commission finds that the proposed prohibition of MPWC in the Sanctuary is a reasonable and necessary regulation of the place and manner of public access, and is consistent with Sections 30210 and 30214(a)(2) of the Coastal Act.

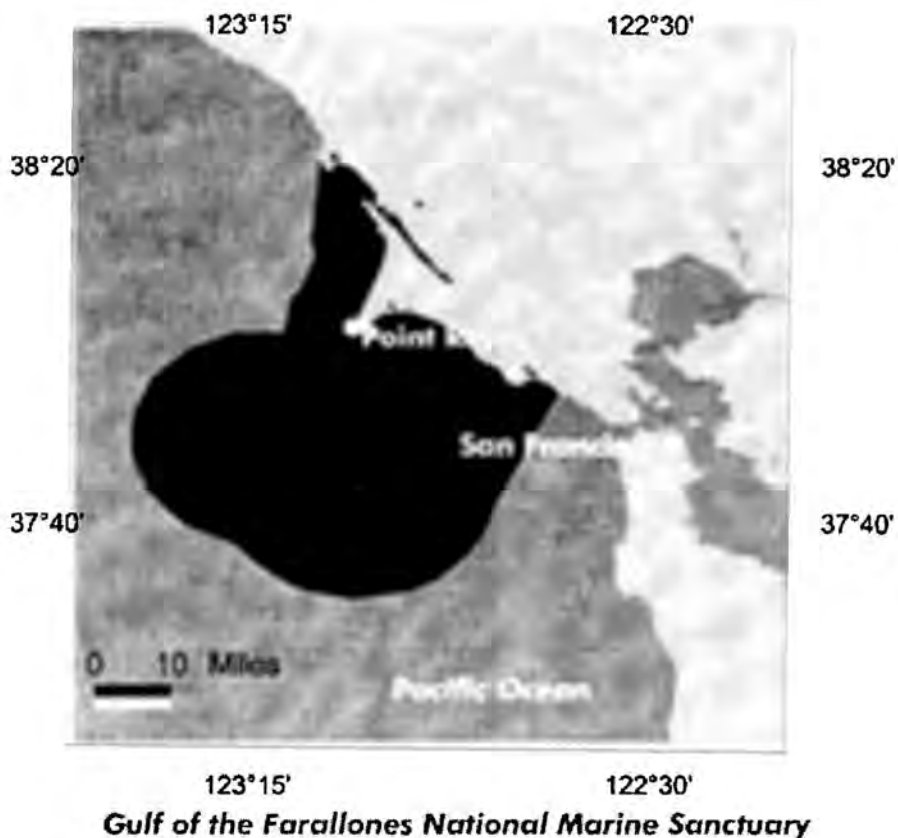
As discussed in the Commission's findings on coastal development permit 2-00-005 (Marin County), MPWC can be used at other coastal and inland water areas within proximity to the Sanctuary:

[M]PWC can be operated at inland water areas as readily as in coastal waters. For example, PWC may be operated at inland waterways outside of Marin County such as Lake Sonoma and at waterways under the jurisdictions of any of the incorporated cities within the county. In addition, the coastal waters within the city limits of Belvedere, Tiburon, Sausalito, Corte madera, and San Rafael, and the coastal waters within the boundaries of the China Beach State Park are all available for use by PWC. Therefore, the operation of PWC is not a recreational activity that cannot readily be provided at inland water areas.

As noted previously in this report, the Sanctuary is an area that provides habitat for threatened and endangered species, and the use of MPWC generates significant adverse effects on these species and their habitats. As a result the Sanctuary is not a coastal area that is suitable for MPWC recreation and the proposed prohibition on operation of MPWC is consistent with Section 30220 of the Coastal Act. In addition, the Sanctuary includes water areas that support

recreational activities such as sailing, kayaking, windsurfing, canoeing, swimming, surfing, and fishing. Shoreline uses directly adjacent to the Sanctuary support these and other recreational activities, including picnicking, camping, hiking, and bird watching. The consistency determination provides evidence that the noise generated by MPWC is disturbing and can pose a hazard to other recreational users of the Sanctuary. In conclusion, the Commission finds that the proposed regulations to prohibit the operation of MPWC in the Sanctuary are consistent with the public access and recreation policies of the California Coastal Management Program (Sections 30210, 30214(a)(2), 30220, and 30240 of the Coastal Act).

G/land use/federal consistency/staff report/2000/101-00



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<http://sanctuaries.nos.noaa.gov/oms/omsfarallones/omsfarallones.html>

EXHIBIT NO. 1
APPLICATION NO.
CD-101-00
California Coastal Commission