

CALIFORNIA COASTAL COMMISSION

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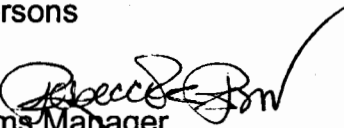


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November 3, 2004

TO: Commissioners and Interested Persons

FROM: Peter Douglas, Executive Director 
Rebecca K. Roth, Federal Programs Manager

SUBJECT: **Gulf of the Farallones and Cordell Bank National Marine Sanctuary Expansion H.R. 5352 (Woolsey)** for public hearing and Commission action at the Coastal Commission Meeting of November 17, 2004, Item 19a.

RECOMMENDATION:

Staff recommends that the Commission support H.R. 5352 (Woolsey), a bill that would expand the Gulf of Farallones and Cordell Bank National Marine Sanctuaries to include the coast and ocean along Sonoma County.

MOTION:

"I move that the Commission support H.R. 5352, a bill that would expand the Gulf of Farallones and Cordell Bank National Marine Sanctuaries to include the coast and ocean along Sonoma County."

Staff recommends a **YES** vote

BACKGROUND

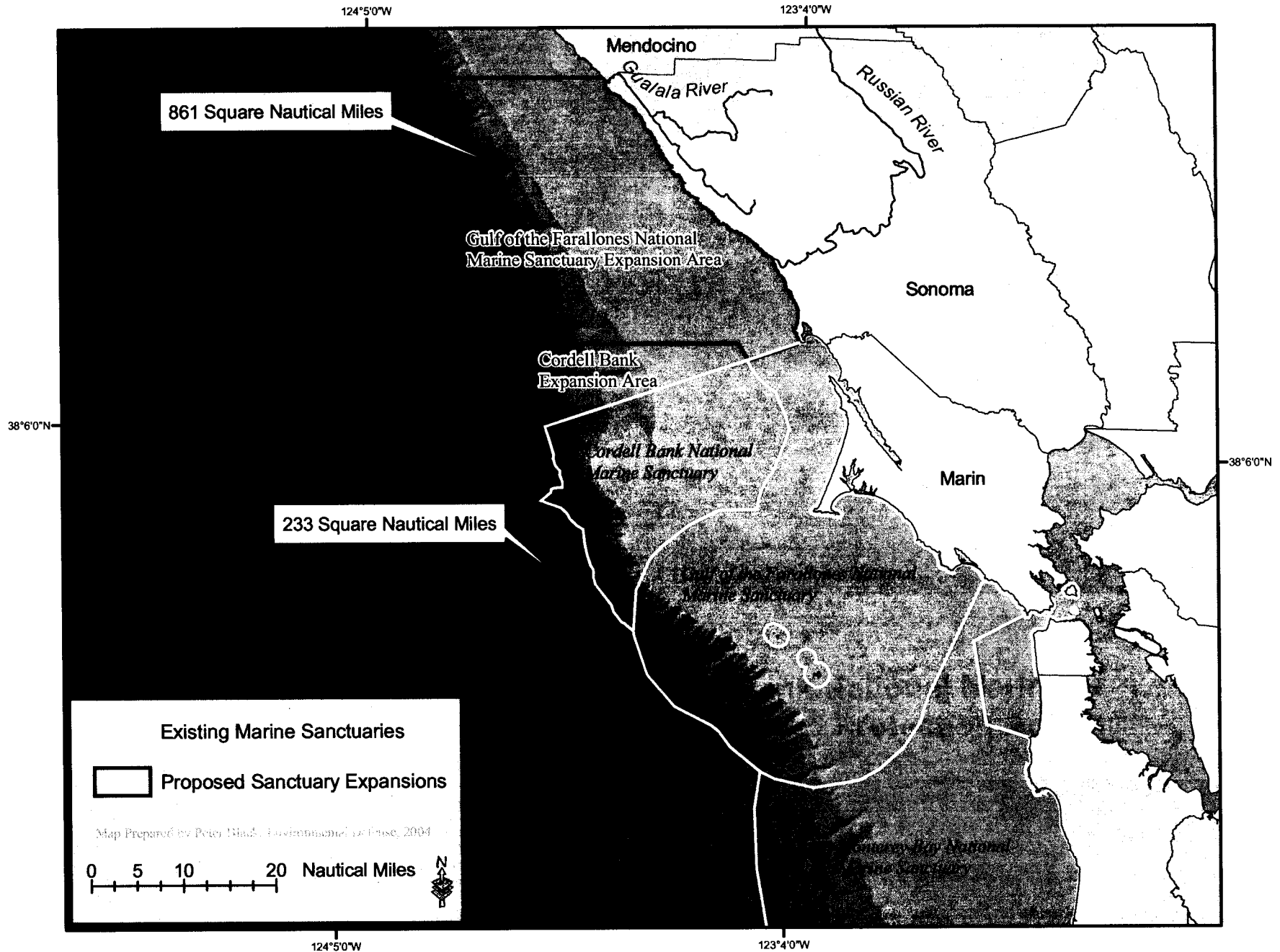
The Marine Protection, Research and Sanctuaries Act of 1972 (Sanctuaries Act) authorizes the Secretary of Commerce to designate and manage areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. The Sanctuaries Act directs the Secretary to facilitate all public and private uses of those resources that are compatible with the primary objective of resource protection.

The Gulf of the Farallones National Marine Sanctuary was designated in 1981 and Cordell Banks National Marine Sanctuary was designated in 1989. Congresswoman Lynn Woolsey (Sonoma County) introduced H.R. 5352, a bill that would expand the boundaries of these two northern California national marine sanctuaries boundaries to include the coast and ocean along Sonoma County. Accordingly, the expansion of the designated Sanctuaries would provide additional protection and enhancement to the marine environment in Sonoma County coastal waters and estuaries. The attached boundary modification exhibit depicts the boundaries of the existing sanctuaries and the boundaries proposed by the expansion.

STAFF ANALYSIS:

Both sanctuaries are currently in the advanced states of reviewing and updating their management plans – a process that involved numerous public meetings and hundreds of public comments. The review also included a biological assessment of ocean and coastal resources from as far north as Point Arena (Mendocino County) to Point Sal (Santa Barbara County). The data in the management plan update process identifies an abundance of marine and estuarine resources that would qualify as nationally significant, some of which exceed the significance of resources found in the sanctuaries. In addition the goal of the Sanctuaries Act to “. . .direct the Secretary to facilitate all public and private uses of those resources that are compatible with the primary objective of resource protection,” is consistent with the resource protection policies of Chapter 3 of the California Coastal Act. Therefore, staff recommends the Commission support H.R. 5352.

Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act



108TH CONGRESS
2D SESSION

H. R. 5352

To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

IN THE HOUSE OF REPRESENTATIVES

Ms. WOOLSEY introduced the following bill; which was referred to the
Committee on _____

A BILL

To

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

- (1) The Gulf of the Farallones extends approximately 100 miles along the coast of Marin and Sonoma counties of northern California. It includes approximately one-half of California’s nesting seabirds, rich benthic marine life on hard-rock substrate, prolific fisheries, and substantial concentrations of resident and seasonally migratory marine mammals.
- (2) Cordell Bank is adjacent to the Gulf of the Farallones and is a submerged island with spectacular, unique, and nationally significant marine environments.
- (3) These marine environments have national and international significance, exceed the biological productivity of tropical rain forests, and support high levels of biological diversity.

(4) These biological communities are easily susceptible to damage from human activities, and must be properly conserved for themselves and to protect the economic viability of their contribution to national and regional economies.

(5) The Gulf of the Farallones and Cordell Bank include some of the Nation's richest fishing grounds, supporting important commercial and recreational fisheries. These fisheries are regulated by State and Federal fishery agencies and are supported and fostered through protection of the waters and habitats of Gulf of the Farallones National Marine Sanctuary and Cordell Bank National Marine Sanctuary.

(6) The report of the Commission on Ocean Policy established by Public Law 106-256 calls for comprehensive protection for the most productive ocean environments and recommends that they be managed as ecosystems.

(7) New scientific discoveries by the National Marine Sanctuary Program support comprehensive protection for these marine environments by broadening the geographic scope of the existing Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

(8) Cordell Bank is at the nexus of an ocean upwelling system, which produces the highest biomass concentrations on the west coast of the United States.

SEC. 3 POLICY AND PURPOSE.

(a) **POLICY.**—It is the policy of the United States in this Act to protect and preserve living and other resources of the Gulf of the Farallones and Cordell Bank marine environments.

(b) **PURPOSE.**—The purposes of this Act are the following:

(1) To extend the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary to the areas described in section 5.

(2) To strengthen the protections that apply in the Sanctuaries.

(3) To educate and interpret for the public regarding those marine environments.

(4) To manage human uses of the Sanctuaries under this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.).

(c) **EFFECT ON FISHING ACTIVITIES.**—Nothing in this Act is intended to alter any existing authorities regarding the conduct of fishing activities in the Sanctuaries.

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SEC. 4. DEFINITIONS.

In this Act:

- (1) **AQUACULTURE.**—The term “aquaculture” means the propagation or rearing of aquatic organisms in controlled or selected aquatic environments for any commercial, recreational, or public purpose.
- (2) **CORDELL BANK NMS.**—The term “Cordell Bank NMS” means the Cordell Bank National Marine Sanctuary.
- (3) **FARALLONES NMS.**—The term “Farallones NMS” means the Gulf of the Farallones National Marine Sanctuary.
- (4) **SANCTUARIES.**—The term “Sanctuaries” means the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, as expanded by section 5.
- (5) **SECRETARY.**—The term “Secretary” means the Secretary of Commerce.
- (6) **MEAN HIGHER HIGH WATER MARK.** – The term “Mean Higher High Water Mark” means the arithmetic average of the elevations of the higher of two high waters of a tidal day over a period of time as determined by the National Oceanic and Atmospheric Administration.
- (7) **PERSON.** – The term “Person” means any private or public individual, corporation, partnership, trust, institution, association, or any other public or private entity, whether foreign or domestic, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State, tribal or local unit of government, or of any foreign government.

SEC. 5. NATIONAL MARINE SANCTUARY BOUNDARY ADJUSTMENTS.

(a) GULF OF THE FARALLONES.—

(1) **BOUNDARY ADJUSTMENT.**—The area described in paragraph (2) is added to the existing Gulf of the Farallones National Marine Sanctuary described in part 922.80 of title 15, Code of Federal Regulations.

(2) **AREA INCLUDED.**—

(A) **IN GENERAL.**—The area referred to in paragraph (1) consists of all submerged lands and waters, including living marine and other resources within and on those lands and waters, from the mean higher high water mark to the boundaries described in subparagraph (B).

(B) **BOUNDARIES.**—The boundaries referred to in paragraph (1) are the following:

(i) A boundary forming one polygon added under paragraph (1), that—

(I) begins at Bodega Head’s Southernmost Point located at 38 degrees 17 minutes 36 seconds north latitude, 123 degrees 3 minutes 29 seconds west longitude;

- (II) then connects in succession the points at the coordinates—
 - (aa) 38 degrees 15 minutes 46 seconds north latitude, 123 degrees 10 minutes 45 seconds west longitude;
 - (bb) 38 degrees 17 minutes 37 seconds north latitude, 123 degrees 12 minutes 8 seconds west longitude;
 - (cc) 38 degrees 16 minutes 28 seconds north latitude, 123 degrees 52 minutes 42 seconds west longitude; and
 - (dd) 38 degrees 45 minutes 23 seconds north latitude, 123 degrees 54 minutes 22 seconds west longitude; and
- (III) then runs eastward to 38 degrees 46 minutes 6 seconds north latitude, 123 degrees 31 minutes 53 seconds west longitude.

(ii) A boundary forming another polygon added under paragraph (1), that—

(I) begins approximately 107.55 km south of the described in clause (i)(III) at 37 degrees 48 minutes 2 seconds north latitude, 123 degrees

28 minutes 22 seconds west longitude; and

(II) then connects in succession the points at the coordinates—

(aa) 37 degrees 48 minutes 7 seconds north latitude, 123 degrees 25 minutes 31 seconds west longitude;

(bb) 37 degrees 46 minutes 2 seconds north latitude, 123 degrees 25 minutes 35 seconds west longitude;

(cc) 37 degrees 46 minutes 49 seconds north latitude, 123 degrees 26 minutes 47 seconds west longitude; and

(dd) 37 degrees 47 minutes 00 seconds north latitude, 123 degrees 27 minutes 16 seconds west longitude.

(b) CORDELL BANK.—

(1) BOUNDARY ADJUSTMENT.—The area described in paragraph (2) is added to the existing Cordell Bank National Marine Sanctuary described in part 922.80 of title 15, Code of Federal Regulations.

(2) AREA INCLUDED.—

(A) IN GENERAL.—The area referred to in paragraph (1) consists of all submerged lands and waters, including living marine and other resources within those waters, within the boundary described in subparagraph (B).

(B) BOUNDARY.—The boundary referred to in paragraph (1)—

(i) begins approximately 55 km to the west of Bodega Head at 38 degrees 16 minutes 49 seconds north latitude, 123 degrees 41 minutes 20 seconds west longitude; and

(ii) then connects in the succession the points at the coordinates—

- (I) 38 degrees 17 minutes 41 seconds north latitude, 123 degrees 12 minutes 11 seconds west longitude; (II) 38 degrees 15 minutes 53 seconds north latitude, 123 degrees 10 minutes 46 seconds west longitude;
- (III) 38 degrees 15 minutes 51 seconds north latitude, 123 degrees 10 minutes 52 seconds west longitude;
- (IV) 38 degrees 7 minutes 56 seconds north latitude, 123 degrees 38 minutes 33 seconds west longitude;
- (V) 38 degrees 6 minutes 45 seconds north latitude, 123 degrees 38 minutes 00 seconds west longitude;
- (VI) 38 degrees 4 minutes 58 seconds north latitude, 123 degrees 37 minutes 14 seconds west longitude;
- (VII) 38 degrees 4 minutes 28 seconds north latitude, 123 degrees 37 minutes 17 seconds west longitude;
- (VIII) 38 degrees 3 minutes 42 seconds north latitude, 123 degrees 36 minutes 55 seconds west longitude;
- (IX) 38 degrees 3 minutes 11 seconds north latitude, 123 degrees 36 minutes 19 seconds west longitude;
- (X) 38 degrees 2 minutes 46 seconds north latitude, 123 degrees 36 minutes 21 seconds west longitude;
- (XI) 38 degrees 2 minutes 2 seconds north latitude, 123 degrees 35 minutes 56 seconds west longitude;
- (XII) 38 degrees 1 minute 27 seconds north latitude, 123 degrees 35 minutes 55 seconds west longitude;
- (XIII) 38 degrees 1 minute 22 seconds north latitude, 123 degrees 36 minutes 55 seconds west longitude;
- (XIV) 38 degrees 1 minute 11 seconds north latitude, 123 degrees 37 minutes 28 seconds west longitude;
- (XV) 38 degrees 00 minutes 49 seconds north latitude, 123 degrees 37 minutes 29 seconds west longitude;
- (XVI) 37 degrees 59 minutes 54 seconds north latitude, 123 degrees 38 minutes 47 seconds west longitude;
- (XVII) 37 degrees 59 minutes 12 seconds north latitude, 123 degrees 35 minutes 59 seconds west longitude;
- (XVIII) 37 degrees 58 minutes 39 seconds north latitude, 123 degrees 35 minutes 14 seconds west longitude;

(XIX) 37 degrees 58 minutes 00 seconds north latitude, 123 degrees 34 minutes 42 seconds west longitude;
(XX) 37 degrees 57 minutes 19 seconds north latitude, 123 degrees 33 minutes 43 seconds west longitude;
(XXI) 37 degrees 56 minutes 56 seconds north latitude, 123 degrees 32 minutes 51 seconds west longitude;
(XXII) 37 degrees 56 minutes 18 seconds north latitude, 123 degrees 32 minutes 49 seconds west longitude;
(XXIII) 37 degrees 55 minutes 22 seconds north latitude, 123 degrees 32 minutes 36 seconds west longitude;
(XXIV) 37 degrees 54 minutes 26 seconds north latitude, 123 degrees 32 minutes 26 seconds west longitude;
(XXV) 37 degrees 53 minutes 7 seconds north latitude, 123 degrees 31 minutes 46 seconds west longitude;
(XXVI) 37 degrees 52 minutes 34 seconds north latitude, 123 degrees 31 minutes 18 seconds west longitude;
(XXVII) 37 degrees 51 minutes 42 seconds north latitude, 123 degrees 31 minutes 19 seconds west longitude;
(XXVIII) 37 degrees 50 minutes 59 seconds north latitude, 123 degrees 31 minutes 2 seconds west longitude;
(XXIX) 37 degrees 48 minutes 49 seconds north latitude, 123 degrees 28 minutes 44 seconds west longitude;
(XXX) 37 degrees 48 minutes 3 seconds north latitude, 123 degrees 28 minutes 23 seconds west longitude;
(XXXI) 37 degrees 48 minutes 2 seconds north latitude, 123 degrees 28 minutes 22 seconds west longitude; and
(XXXII) 37 degrees 47 minutes 43 seconds north latitude, 123 degrees 39 minutes 54 seconds west longitude.

(c) **INCLUSION IN THE SYSTEM.**—The areas included in the Sanctuaries under subsections (a) and (b) of this section shall be managed as part of the National Marine Sanctuary System, established by section 301(c) of the National Marine Sanctuaries Act 16 U.S.C. 1431 (c), in accordance with that Act.

(d) **UPDATED NOAA CHARTS.**—The Secretary of Commerce shall—
(1) produce updated National Oceanic and Atmospheric Administration charts for the areas in which are located the Farallones NMS and Cordell Bank NMS; and
(2) include on those charts the boundaries of such national marine sanctuaries, as revised by this Act.

SEC. 6. PROHIBITION OF CERTAIN USES.

(a) **MINERAL AND HYDROCARBON LEASING, EXPLORATION, DEVELOPMENT, AND PRODUCTION.**—No leasing, exploration, development, production, or transporting by pipeline of minerals or hydrocarbons shall be permitted within the Sanctuaries.

(b) **AQUACULTURE.**—

(1) **PROHIBITION.**—It is unlawful for any person to conduct aquaculture in any area of the Sanctuaries.

(2) **EXISTING BIVALVE FARMING ALLOWED.**— The prohibition in paragraph (1) shall not apply to persons conducting farming operations of bivalve species that are in existence on the date of enactment of this Act.

(3) **REGULATIONS.**—The Secretary shall issue regulations that specify the operations referred to in paragraph (2).

(c) **DISCHARGE OF MATERIALS AND SUBSTANCES.**—

(1) **PROHIBITIONS.**—No person shall—

- (A) deposit or discharge any material or substance of any kind within the Sanctuaries, except those referred to in paragraph (4);
- (B) deposit or discharge any material or substance of any kind that enters or injures any sanctuary resource (as that term is defined in the National Marine Sanctuaries Act), except those referred to in paragraph (4); or
- (C) deposit or discharge any invasive species from a vessel in the Sanctuaries.

(2) **CHANGES IN SALINITY.**—No person shall cause a change of salinity in the Sanctuaries that is injurious to the marine ecosystem of the Sanctuaries.

(3) **LIMITATION ON APPLICABILITY.**—Paragraph (1) does not apply with respect to any discharge—

- (A) of fish, fish parts, and chumming materials resulting from, and while conducting otherwise lawful, fishing activity;
- (B) of food consumed onboard a vessel;
- (C) of biodegradable effluents incidental to vessel use and generated by an operable Type I or II marine sanitation device as classified by the United States Coast Guard, that is approved in accordance with section 1322 of title 33 provided the vessel operator secures all marine sanitation devices in a manner that prevents discharge of untreated sewage from a Type I or Type II Coast Guard-approved sanitation devices. This exception does

not apply within State waters or from a cruise ship within the boundaries of either sanctuary;
(D) of biodegradable material resulting from deck wash down and vessel engine cooling water (excluding ballast water and oily wastes from bilge pumping), from a vessel;
(E) from vessel engine exhaust; or
(F) that is permitted under a National Pollution Discharge Elimination System permit that is in effect on the date of enactment of this Act, or under a new or renewed National Pollution Discharge Elimination System permit that does not increase pollution in the Sanctuaries.

(d) **CONSULTATION REQUIREMENT FOR CHANGES IN WATER FLOW.**—Any federal, state or local government agency that is responsible for alteration of water flow regimes that may affect the Sanctuaries must consult with the Secretary prior to initiating such change in order to ensure sanctuary resources are not injured.

(e) **SECRETARIAL AUTHORITY NOT LIMITED.**—In addition to the prohibitions listed in paragraph (1) of this subsection, the Secretary may restrict or otherwise regulate other types of discharges or changes in water flow into or that may enter the Sanctuaries.

(f) **PENALTIES AND ENFORCEMENT.**—A violation of this section shall be treated as a violation of section 306 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1436).

SEC. 7. MANAGEMENT PLANS AND REGULATIONS.

(a) **INTERIM PLAN.**—The Secretary shall complete an interim supplemental management plan for each of the Sanctuaries by not later than 30 months after the date of enactment of this Act, that focuses on management in the areas added under this Act. These supplemental plans shall not weaken existing resource protections.

(b) **REVISED PLANS.**—The Secretary shall issue a revised comprehensive management plan for each of the Sanctuaries during the next management review process required by section 304 of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)) for the Sanctuaries, and issue such final regulations as may be necessary.

(c) **APPLICATION OF EXISTING REGULATIONS.**—The regulations for the Gulf of the Farallones National Marine Sanctuary (15 C.F.R. 922, subpart H) and the Cordell Bank National Marine Sanctuary (15 C.F.R. 922, Subpart K) shall apply to the areas added to the Sanctuaries under section 5 until the Secretary modifies such regulations in accordance with this section.

(d) PROCEDURES.—In developing the revisions under this section, the Secretary shall follow the procedures specified in sections 303 and 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433 and 1434), except those procedures requiring the delineation of national marine sanctuary boundaries and development of a resource assessment report.

(e) CONTENTS OF PLANS.—Revisions to each comprehensive management plan under this section shall, in addition to matters required under section 304 (a)(2) of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1434(A)(2))—

- (1) facilitate all public and private uses of each of the Sanctuaries consistent with the primary objective of sanctuary resource protection;
- (2) establish temporal and geographical zoning if necessary to ensure protection of sanctuary resources;
- (3) identify priority needs for research which will—
 - (A) improve management of each of the Sanctuaries;
 - (B) diminish threats to the health of the ecosystems in the Sanctuaries; or
 - (C) fulfill both of subparagraphs (A) and (B);
- (4) establish a long-term ecological monitoring program and database, including the development and implementation of a resource information system to disseminate information on the Sanctuaries' ecosystem, history, culture and management;
- (5) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444);
- (6) ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities with jurisdiction within or adjacent to the Sanctuaries;
- (7) in the case of revisions to the plan for the Farallones NMS, promote cooperation with farmers and ranchers operating in the watersheds adjacent to the Gulf of the Farallones NMS and establish voluntary best practices programs for farming and ranching;
- (8) promote cooperative and educational programs with fishing vessel operators and crews operating in the waters of the Sanctuaries, and, whenever possible, include individuals who engage in fishing and their vessels in cooperative research, assessment, and monitoring programs of the education, among users of the Sanctuaries, about

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conservation and navigational safety and the conservation of those resources; and

(9) promote education, among users of the Sanctuaries, about conservation and navigational safety.

(f) PUBLIC PARTICIPATION.—The Secretary shall provide for participation by the general public in the revision of the comprehensive management plans and regulations under this section.

SEC. 8. FEASIBILITY OF A NEW SANCTUARY DESIGNATION.

(a) REVIEW AND RECOMMENDATION.—As part of the first review, following the date of enactment of this Act, of the Gulf of the Farallones National Marine Sanctuary Management Plan pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)), the Secretary shall—

- (1) conduct a review of the operations of the Farallones NMS; and
- (2) following not less than one public hearing held in the area added to the Farallones NMS by this Act and the receipt of public comment, determine whether that area shall be designated as a new and separate National Marine Sanctuary.

(b) CONSIDERATIONS FOR DETERMINATION.—In making the determination under subsection (a)(2), the Secretary shall consider responsiveness to local needs, the effectiveness of conservation, education and volunteer programs, and organizational efficiency.

(c) IMPLEMENTATION OF DETERMINATION.—If the Secretary determines under subsection (b) to designate a new national marine sanctuary, the Secretary shall implement measures to assure a smooth and effective transition to a separate national marine sanctuary.