

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



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STAFF REPORT AND RECOMMENDATION**ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-009-07
Staff:	CLT-SF
File Date:	2/28/2007
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Extended to:	8/17/2007
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FEDERAL AGENCY: **National Oceanic and Atmospheric Administration**

**PROJECT
LOCATION:**

The Cordell Bank National Marine Sanctuary consists of approximately 397 square nautical miles of offshore federal ocean waters off the northern coast of California. The eastern boundary begins six miles from shore at Point Reyes and the western boundary is the 1000 fathom isobath on the edge of the continental slope. The sanctuary shares its southern and eastern boundary with the Gulf of the Farallones National Marine Sanctuary (Exhibit 1).

**PROJECT
DESCRIPTION:**

Revised management plan and revised set of regulations for the Cordell Bank National Marine Sanctuary.

**SUBSTANTIVE
FILE DOCUMENTS:**

See page 27.

EXECUTIVE SUMMARY

The National Oceanic and Atmospheric Administration (NOAA) has submitted a consistency determination for the revised management plan and set of regulations governing activities in the Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary). NOAA states that the proposed measures would afford better protection to the natural and cultural resources of the CBNMS. NOAA describes the proposed set of regulations as including both new regulations as well as changes to existing regulations, as follows:

Proposed new regulations include prohibitions on:

- *discharging or depositing, from within or into the Sanctuary, other than from a cruise ship or any other vessel of 300 gross registered tons or more with sufficient holding tank capacity¹, any material or other matter **except**: (1) biodegradable material or other matter from a vessel resulting from deck wash down or vessel engine cooling water; or (2) vessel engine exhaust;*
- *discharging or depositing, from within or into the Sanctuary, any material or matter from a cruise ship or any other vessel of 300 gross registered tons or more with sufficient holding tank capacity except vessel engine cooling water;*
- *discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as allowed above;*
- *releasing or otherwise introducing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity;*
- *taking or possessing (regardless of where taken, moved or removed from) any marine mammal, bird or sea turtle within or above the Sanctuary, except as permitted by regulations²;*
- *drilling into, dredging or otherwise altering the submerged lands, or constructing, placing, or abandoning any structure, material or matter on the submerged lands in the Sanctuary **on or within** the line representing the 50-fathom isobath³ surrounding Cordell Bank; except incidental and necessary to lawful use of any fishing gear during normal fishing operations; and*
- *drilling into, dredging or otherwise altering the submerged lands or constructing, placing, or abandoning any structure, material or matter on the submerged lands in the Sanctuary **beyond** the line representing the 50-fathom isobath surrounding Cordell Bank except as incidental and necessary for anchoring a vessel or use of any lawful fishing gear during normal fishing operations;*

¹ For the purposes of this regulation “sufficient holding tank capacity” has been defined as a holding tank of sufficient capacity to contain sewage and graywater while the vessel is within the Sanctuary.

² Including the Marine Mammal Protection Act, Endangered Species Act and Migratory Bird Treaty Act

³ The 50-fathom isobath refers to all areas on or within the 300 foot depth contour surrounding Cordell Bank.

- *these prohibitions do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director.*

Existing regulations would also be revised to:

- *replace the term “seabed” with “submerged lands,” the term used in the National Marine Sanctuary Act;*
- *correct inaccuracies in the coordinates and description of the Sanctuaries seaward boundaries;*
- *clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and that vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;*
- *revise the discharge and deposit exception language by eliminating the provision that would allow the discharge of food waste resulting from meals on board vessels;*
- *revise the exception for normal fishing operations in regards to the taking of benthic invertebrates and algae to “except as incidental and necessary to lawful use of any fishing gear” and;*
- *clarify and refine the permit procedures to give the authority to issue sanctuary permits for management purposes and provide other changes to the permit issuance criteria.*

In addition to these regulatory changes to the CBNMS, NOAA is proposing significant updates and revisions to the Cordell Bank National Marine Sanctuary’s original 1989 management plan as well. These changes are intended to address the significant advances in science and technology, innovations in marine resource management techniques and challenging new resource management issues that have emerged in the past several decades and rendered the original 1989 management plan inadequate. The management plan details information about the Sanctuary’s staffing and administration, operational and programmatic costs, performance measures, priority management issues and the actions proposed to address them. Its revision will allow the Sanctuary to take a closer look at how the environment has changed over the past eighteen years; understand the cause and effect relationship of human activity and natural perturbations on the Sanctuary’s marine resources; engage the public in the management decision making process; and guide site management towards achievement of the Sanctuary’s goals with the best means available. Briefly stated, the management plan addresses priority resource management issues through the following management action plans: Education and Outreach, Ecosystem Protection-Impacts from Fishing Activities, Partnerships with Community Groups, Conservation Science, Administration, Administration and Operations, Community Outreach, Ecosystem Monitoring, and Maritime Heritage.

The vast ecological wealth of the Cordell Bank National Marine Sanctuary has been well documented by NOAA’s Environmental Impact Statement and Management Plan as well as by the Coastal Commission’s marine preservation and management work over the last eighteen years. Collectively, the natural resources found in the Sanctuary constitute some of the most significant natural marine assets in the United States.

Within the context of the continuing management and protection of these marine assets and resources, NOAA has drafted its current revised management plan proposal. In evaluating the potential impacts of this proposal on the physical and biological environment, cultural/historical resources, and human uses of the CBNMS, NOAA has determined that:

The Proposed Action would result in... less than significant adverse impacts on Commercial Fisheries, Land Use, Marine Transportation, and Socioeconomics; and beneficial impacts on Air Quality, Biological Resources, Ocean/Geologic Resources, Water Quality, Commercial Fisheries, Cultural Resources, Hazardous Materials, Land Use and Development, Public Access and Recreation, Research and Education, Socioeconomics, and Visual Resources... No significant unavoidable impacts would occur as a result of the proposed actions.

The proposed new and revised regulations on altering the seabed, abandoning material within the Sanctuary, disturbing, taking or possessing marine mammals, seabirds or sea turtles, releasing invasive organisms, and discharging and depositing material within or into the Sanctuary, as proposed by NOAA to adopt vessel discharge regulation language that reflects current state standards, will serve to eliminate adverse effects on water quality and enhance marine resource protection consistent with the water quality and marine resource policies of the California Coastal Management Program (CCMP; Sections 30230 and 30231 of the Coastal Act). At the same time, when adopted into the Sanctuary's comprehensive management plan, these regulatory changes will not adversely affect the recreational and public access opportunities and commercial and recreational fishing activities that currently exist within the Sanctuary and will be consistent with the public access and recreation and commercial and recreational fishing policies of the CCMP (Sections 30210, 30214, 30220, 30234 and 30234.5 of the Coastal Act).

STAFF SUMMARY AND RECOMMENDATION:

I. STAFF SUMMARY

A. Project Description. Initially designated in 1989, the Cordell Bank National Marine Sanctuary consists of approximately 397 square nautical miles of offshore ocean waters and their underlying submerged lands off the northern coast of California. The Sanctuary's eastern boundary begins six miles offshore of Point Reyes and extends seaward to the 1,000-fathom (6,000 foot) isobath of the outer continental shelf, a distance of approximately 20 nautical miles from shore. The main feature of the Sanctuary is its namesake, an offshore granite bank 4.5 miles wide by 9.5 miles long. The rocky bank emerges from the soft sediments of the continental shelf, with the upper pinnacles reaching to within 120 feet of the ocean's surface and the base in roughly 400 feet of water.

The Sanctuary's primary objective is to conserve, protect, and enhance the biodiversity and ecological integrity of marine resources on and surrounding the Cordell Bank for current and future generations. The significance of this objective is underscored by the Sanctuary's rich and diverse range of marine life and habitats and unique and productive oceanographic processes and ecosystems. This objective is also directly reflected in the nine specific goals of the Sanctuary that are derived from the overarching mission of the National Marine Sanctuary Program and the policies of the National Marine Sanctuaries Act:

- 1) *Identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and manage these areas as the National Marine Sanctuary System;*
- 2) *Enhance public awareness, understanding, appreciation, and wise sustainable use of the marine environment, and the natural, historical, cultural and archeological resources of the National Marine Sanctuary System;*
- 3) *Maintain the natural biological communities in the national marine sanctuaries, and protect, and, where appropriate, restore and enhance natural habitats, populations and ecological processes;*
- 4) *Support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;*
- 5) *Provide authority for comprehensive and coordinated conservation and management of these marine areas and activities affecting them, in a manner that compliments existing regulatory authorities;*
- 6) *Facilitate to the extent compatible with the primary objective if resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;*
- 7) *Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;*

- 8) *Create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and*
- 9) *Cooperate with global programs encouraging conservation of marine resources.*

Pursuant to 304 (e) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*, the National Marine Sanctuary Program (NMSP) conducted a review of the management plan and regulations for the Cordell Bank National Marine Sanctuary. This review constituted the first formal review and revision of the Sanctuary management plan and regulations since the Sanctuary was originally designated. The CBNMS management plan review began with public scoping and issue identification in 2001 and expanded to include issue prioritization, action plan development and draft management plan preparation. These processes were conducted in coordination with working groups consisting of sanctuary staff, members of the Sanctuary Advisory Council, relevant scientific and policy professionals, representatives from state and federal agencies and members of the general public. Based on information gathered and priority resource management issues identified during this review, the National Oceanic and Atmospheric Administration (NOAA) proposes the following: (1) inclusion of seven additional activities to the list of activities currently prohibited within the Sanctuary boundaries (specifically detailed in Exhibit 2); (2) clarification and refinement of six existing regulations (also described in Exhibit 2); and (3) adoption of over thirty specific programs comprising six Sanctuary specific action plans and five cross-cutting action plans⁴ within the Sanctuary's overall management plan. The changes proposed through the implementation of action plan strategies and regulatory additions and revisions are intended to facilitate improved "on the ground" Sanctuary management, increase coordination among California's three northern marine sanctuaries and are needed for the Sanctuary to meet the goals and mission of the NMSP (15 C.F.R. Part 922.2(b)).

The proposed new regulations would specify that the following additional activities are prohibited and thus are unlawful for any person to conduct or cause to be conducted within the Sanctuary:

- *discharging or depositing, from within or into the Sanctuary, other than from a cruise ship or any other vessel of 300 gross registered tons or more with sufficient holding tank capacity⁵, any material or other matter **except**: (1) biodegradable material or other matter from a vessel resulting from deck wash down or vessel engine cooling water; or (2) vessel engine exhaust;*
- *discharging or depositing, from within or into the Sanctuary, any material or matter from a cruise ship or any other vessel of 300 gross registered tons or more with sufficient holding tank capacity except vessel engine cooling water;*

⁴ The goal of the cross-cutting action plans is to build upon existing coordination efforts among Cordell Bank, Gulf of the Farallones and Monterey Bay National Marine Sanctuaries and identify some activities that should be jointly implemented so that these three sites can operate as integrated and complementary sites to better protect the sanctuary resources.

⁵ For the purposes of this regulation "sufficient holding tank capacity" has been defined as a holding tank of sufficient capacity to contain sewage and graywater while the vessel is within the Sanctuary.

- *discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as allowed above;*
- *releasing or otherwise introducing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity;*
- *taking or possessing (regardless of where taken, moved or removed from) any marine mammal, bird or sea turtle within or above the Sanctuary, except as permitted by regulations⁶;*
- *drilling into, dredging or otherwise altering the submerged lands, or constructing, placing, or abandoning any structure, material or matter on the submerged lands in the Sanctuary **on or within** the line representing the 50-fathom isobath⁷ surrounding Cordell Bank; except incidental and necessary to lawful use of any fishing gear during normal fishing operations; and*
- *drilling into, dredging or otherwise altering the submerged lands or constructing, placing, or abandoning any structure, material or matter on the submerged lands in the Sanctuary **beyond** the line representing the 50-fathom isobath surrounding Cordell Bank except as incidental and necessary for anchoring a vessel or use of any lawful fishing gear during normal fishing operations;*
- *these prohibitions do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director.*

Existing regulations would also be revised to:

- *replace the term “seabed” with “submerged lands,” the term used in the National Marine Sanctuary Act;*
- *correct inaccuracies in the coordinates and description of the Sanctuaries seaward boundaries;*
- *clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and that vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;*
- *revise the discharge and deposit exception language by eliminating the provision that would allow the discharge of food waste resulting from meals on board vessels;*
- *revise the exception for normal fishing operations in regards to the taking of benthic invertebrates and algae to “except as incidental and necessary to lawful use of any fishing gear” and;*
- *clarify and refine the permit procedures to give the authority to issue sanctuary permits for management purposes and provide other changes to the permit issuance criteria.*

⁶ Including the Marine Mammal Protection Act, Endangered Species Act and Migratory Bird Treaty Act

⁷ The 50-fathom isobath refers to all areas on or within the 300 foot depth contour surrounding Cordell Bank.

The changes listed above have been proposed to help strengthen and clarify Sanctuary goals and regulations as well as to integrate some of the technological and scientific advances that have occurred since original designation of the Sanctuary in 1989. The net result of these various revisions and additions is the formation of a Sanctuary management plan that will be better able to actively and effectively address the resource management and resource protection challenges that are facing the Sanctuary presently and will potentially arise in the future.

Additional changes proposed by NOAA for the Cordell Bank National Marine Sanctuary include the following action plans, specific strategies and programs included within the Sanctuary's management plan:

1. Education and Outreach Action Plan

- ED.1 – Develop community support and partnerships through targeted outreach efforts*
- ED.2 – Utilize volunteers to assist Sanctuary staff in communicating Sanctuary messages*
- ED.3 – Leverage local and national media opportunities to increase awareness and knowledge of CBNMS resources and activities*
- ED.4 – Develop portable products as an outreach tool to educate a broader audience about the resources and activities of CBNMS [including a video and interactive CD-ROM]*
- ED.5 – Increase awareness and knowledge of CBNMS through interpretive signage and exhibits throughout the region*
- ED.6 – Increase awareness and knowledge of CBNMS by developing a thematic and educational lecture series*
- ED.7 – Increase awareness and knowledge of CBNMS by engaging teachers and students to CBNMS research projects*
- ED.8 – Increase awareness and knowledge about CBNMS through adult education opportunities*
- ED.9 – Develop a standing Education Working Group of the Sanctuary Advisory Council*
- ED.10 – Conduct an audience demographics assessment to identify underserved audiences of CBNMS, and to guide the future of its education programs*

2. Ecosystem Protection – Impacts from Fishing Activities Action Plan

- FA.1 – Establish region-wide Sanctuary representation at Pacific Fisheries Management Council and Fish and Game Commission meetings*
- FA.2 – Establish process to track fishing and other human activities in the Sanctuary*
- FA.3 – Establish process to evaluate fishing and other human activities in the Sanctuary*
- FA.4 – If significant negative impacts detected, develop policy recommendations or management actions to address impacts from human use activities on Sanctuary resources*
- FA.5 – Work regionally to develop recommendations addressing krill harvesting*
- FA.6 – Profile history and evolution of fishing activities occurring in the Sanctuary*

3. Partnerships with Community Groups Action Plan

- PC.1 – Develop and maintain partnerships with research community*
- PC.2 – Culture the advisory council as a link to the community*
- PC.3 – Use media opportunities to raise identity of Sanctuary*
- PC.4 – Identify the mechanisms to raise and manage additional sources of revenue*

4. Conservation Science Action Plan

- CS.1 – Prepare and oceanographic climatology*
- CS.2 – Map and characterize CBNMS habitats*
- CS.3 – Characterize soft bottom epifaunal communities*
- CS.4 – Characterize soft bottom infaunal communities*
- CS.5 – Collect, inventory, and catalog new and previously unsorted Cordell Bank benthic invertebrate specimens*
- CS.6 – Survey museum collections and literature for information about CBNMS and generate a verified species list*
- CS.7 – Understand the function and variability of pelagic ecosystems*
- CS.8 – Continue monitoring of fish and invertebrate assemblages in relation to the fine-scale habitat on and adjacent to the Bank portion of CBNMS*
- CS.9 – Manage and store data in easily accessible and secure formats and locations*

5. Administration Action Plan

- AD.1 – Develop additional facilities through partnerships*
- AD.2 – Acquire basic staffing requirements to support administration and program areas*
- AD.3 – Develop partnerships to assist in the implementation of the management plan*
- AD.4 – Clearly define a leading role for the advisory council in providing advice to the Sanctuary manager*
- AD.5 – Formalize intra- and interagency efforts*
- AD.6 – Create a regular, ongoing enforcement presence in Sanctuary waters and compliance with Sanctuary regulations*
- AD.7 – Review and revise emergency response plan*
- AD.8 – Continuously measure and evaluate activities*
- AD.9 – Continuously evaluate the effectiveness of current Sanctuary regulatory language and permitting authority*
- AD.10 – Track existing, emerging and potential future issues*
- AD.11 – Continuously measure and evaluate activities*

Cross-cutting Action Plans

6. Administration and Operations Action Plan

- XAO.1 – Improve internal communications among the three Sanctuaries*
- XAO.2 – Improve the efficiency and cost-effectiveness of program operations*
- XAO.3 – Improve the efficiency and cost-effectiveness of program administration*

XAO.4 – Improve coordination of Sanctuary resource protection activities and programs

7. Community Outreach Action Plan

- XCO.1 – Build upon and expand existing ocean and coastal outreach*
- XCO.2 – Enhance and coordinate ocean and coastal education*
- XCO.4 – Enhance ocean and coastal stewardship*

8. Ecosystem Monitoring Action Plan

- XEM.1 – Coordinate existing targeted monitoring activities to promote greater efficiency and effectiveness*
- XEM.2 – Coordinate and implement existing regional ecosystem monitoring activities*
- XEM.3 – Establish a joint internal monitoring coordination team*
- XEM.4 – Consider establishing a joint research activities panel to enhance research and monitoring collaborations*

9. Maritime Heritage Resources Action Plan

- XMHR.1 – Establish maritime heritage resources program*
- XMHR.2 – Inventory and assess submerged sites*
- XMHR.3 – Assess shipwrecks and submerged structures for hazards*
- XMHR.4 – Protect and manage submerged archaeological resources*
- XMHR.5 – Conduct public outreach with traditional user and ocean-dependant groups and communities*
- XMHR.6 – Establish maritime heritage focused education and outreach programs*

Similar to the proposed regulatory changes, the action plan strategies outlined above represent the wide variety of management tools that the Sanctuary is planning to employ to better manage and protect its marine resources. As NOAA describes, “Action plans allow the sanctuaries to address the resource issues identified for this management plan and to fulfill the purposes and policies of the NMSA.”

B. 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.

II. STAFF RECOMMENDATION. The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission concur with consistency determination CD-009-07 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 concurrence 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 CONCUR WITH CONSISTENCY DETERMINATION:

*The Commission hereby **concurs** with consistency determination CD-009-07 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.*

III. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

A. Sanctuary Resources. NOAA designated the Cordell Bank National Marine Sanctuary in 1989 due to its unique geological and oceanic features that create conditions supportive of an extraordinarily diverse and abundant marine life. CBNMS is entirely offshore, in federal waters, and shares its southern and eastern boundary with the Gulf of the Farallones National Marine Sanctuary. The CBNMS eastern boundary is six miles from shore and the western boundary is the 1,000 fathom (6,600 foot) isobath on the edge of the continental slope (Exhibit 1).

The main feature of the Sanctuary is Cordell Bank, an offshore granite bank located on the edge of the continental shelf, about 43 nautical miles northwest of the Golden Gate Bridge and 20 nautical miles west of the Point Reyes lighthouse. Due to its unique location and geology, Cordell Bank supports an abundant cover of benthic organisms on its upper rock surfaces and contributes significantly to the productivity of regional marine waters. The high light penetration in the open ocean waters surrounding Cordell Bank allows for algal photosynthesis to occur at far greater depths than in nearshore waters and the constant food supply washing over the Bank, combined with abundant hard substrate for attachment, provide ideal conditions that support a rich assemblage of benthic invertebrates. Ridges and pinnacles at the Bank's upper reaches are reportedly covered up to one foot thick in places by a variety of sponges, anemones, hydrocorals, hydroids, and tunicates as well as a rich diversity of invertebrates including crabs, sea cucumbers and gastropods.

CBNMS is located in one of the world's four major coastal upwelling systems. The combination of oceanic conditions and undersea topography provides for a highly productive environment in a discrete, well defined area as the vertical relief and hard substrate of Cordell Bank provides benthic habitat with nearshore characteristics in an open ocean environment 20 nautical miles from shore – a singularly unique situation in northern California.

As NOAA states in the subject Management Plan, the waters around Cordell Bank provide valuable habitat for a variety of wildlife, including seabirds, marine mammals, fishes and other marine species:

CBNMS provides critical foraging habitat for many species of seabirds and seabird density over Cordell Bank can be among the highest of any area in central and northern California. Fifty-nine seabird species have been identified feeding in or near the Sanctuary including both local breeding birds and highly migratory open-ocean species... Hundreds of thousands of sooty shearwaters can be seen on days when they are migrating through the Sanctuary and most of the world's small population of ashy storm-petrels, which nest nearby on Southeast Farallon Island, can be seen on the water near Cordell Bank.

In addition, the Sanctuary serves as a destination feeding ground for a variety of marine mammals. Twenty-six species (both residents and migratory species) have been observed within the Sanctuary including gray whales migrating between Arctic feeding grounds and Mexican breeding areas, resident Dall's porpoises, harbor porpoises, Pacific white-sided dolphins, eastern Pacific humpback whales and blue whales that feed during the summer within the Cordell Bank – Bodega Canyon area, and Stellar sea lions that have decreased drastically in California in recent years but continue to use the region around Cordell Bank as a principal feeding area.

The abundance and diversity of fish and invertebrates is also a remarkable feature of the Sanctuary. Roughly 180 species of fish are known to inhabit the Sanctuary and estimates of the invertebrate diversity are typically in excess of several thousand species. This tremendous diversity is due in part to the number of powerful upwelling zones located in the waters in and around the Sanctuary and in part due to the hard substrate habitat provided by the Bank which supports a rich assemblage of benthic invertebrates.

B. Marine Resources/Water Quality. The Coastal Act provides:

Section 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 marine organisms adequate for long-term commercial, recreational, scientific and educational purposes.

Section 30231: 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.

Updating the Cordell Bank National Marine Sanctuary's management plan and the implementation of NOAA's proposed regulations will substantially improve marine resource and water quality protection as needed to implement Coastal Act Sections 30230 and 30231. The October 2006 draft Environmental Impact Statement (EIS) and Management Plan Review for the CBNMS describes seven new or revised regulations that may potentially yield direct or indirect benefits to water quality and/or marine resources. Each of these proposed regulations is detailed below.

Seabed Protection – Cordell Bank and its high relief rocky ridges, pinnacles and outcrops are some of the most important and fragile resources contained within CBNMS. Unlike habitats such as kelp forests and coral reefs that are potentially able to recover from physical disturbance, if the granite pinnacles of the Bank become damaged or compromised, there would be no opportunity for recovery and their habitat value would be severely degraded. The pinnacles and ridges of the Bank provide a hard substrate for attachment resulting in the thick coverage on the Bank comprised of sponges, anemones, hydrocorals, hydroids, tunicates, crabs, sea cucumbers, and gastropods. This benthic coverage in turn provides important habitat and food for fishes and other marine organisms. This area is one of complexity, sensitivity and ecological importance so to address the sensitivity of benthic habitats and organisms on Cordell Bank and provide greater protection for these unique areas, the updated Management Plan is proposing to add the following to the list of activities and actions prohibited or otherwise regulated within the Sanctuary:

*(a)(4)(i) Except incidental and necessary to lawful use of any fishing gear, during normal fishing operations: drilling into, dredging, or otherwise altering Cordell Bank or the submerged lands **on or within** the line representing the 50-fathom isobath⁸; or constructing, placing, or abandoning any structure, material or other matter on the Bank or on the submerged lands within the line representing the 50-fathom isobath surrounding the Bank.*

*(a)(4)(ii) Except as is incidental and necessary for anchoring a vessel or use of any lawful fishing gear during normal fishing operations: drilling into, dredging, or otherwise altering the submerged lands in the Sanctuary **beyond** the line representing the 50- fathom isobath surrounding Cordell Bank; or constructing, placing, or abandoning any structure, material or matter on the submerged lands in the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank.*

[The Proposed Action exempts lawful fishing activities and defers the regulation of bottom contact fishing gear to recent NOAA Fisheries amendments to the Groundfish Fishery Management Plan (71 FR 27408).]

⁸ The 50-fathom isobath refers to all areas on or within the 300 foot depth contour surrounding Cordell Bank.

As described above, this proposed regulation would prohibit drilling, dredging, altering, constructing, placing, or abandoning any structure material or matter on the submerged lands within the line representing the 50-fathom isobath or 300 foot depth contour surrounding Cordell Bank, but would allow activities that are “incidental and necessary to lawful use of any fishing gear, during normal fishing operations.” Additionally, the regulation would prohibit the same activities listed above in the remainder of the Sanctuary outside the 50-fathom isobath, with the exception of anchoring, and as “use of any lawful fishing gear while conducting lawful fishing activity.” Although the lawful use of fishing gear is exempt from the proposed regulation, fishing is otherwise regulated by NOAA Fisheries regulatory amendments to the Groundfish Fisheries Management Plan that restricts bottom-contact fishing gear on and within the 50-fathom isobath surrounding Cordell Bank. Implementing and clarifying regulations that address seabed protection within the Sanctuary would have a beneficial impact on the geological and biological resources of the Sanctuary, whether the protection is from preventing any type of future drilling (no drilling currently takes place or is proposed) or from reducing activities (such as placing structures or dredging) that could physically disturb, harm, or injure the seafloor structure. The prohibitions would safeguard the fragile high relief on the Bank, particularly the pinnacles and ridges, from the threat of permanent destruction. The proposed regulatory change would clearly eliminate or at least reduce the likelihood of detrimental activities from affecting the seafloor, particularly on Cordell Bank. Therefore, the regulation would result in enhanced protections for the benthic environment and their associated biological assemblages.

As NOAA describes in the EIS:

Implementing and clarifying regulations that address seabed protection within the Sanctuary would have a beneficial impact on biological resources, whether the protection is from preventing any type of future drilling (no drilling currently takes place or is proposed) or from reducing activities (such as placing structures or dredging) that could physically disturb, harm, or injure benthic communities. The prohibitions would safeguard the fragile high relief on the Bank, particularly the pinnacles and ridges, from the threat of permanent destruction. The relief and benthic cover on the Bank provide food and shelter for many species of fish. The proposed regulatory change would clearly eliminate or at least reduce the likelihood of detrimental activities from affecting the seafloor, particularly on Cordell Bank.

Stricter regulations prohibiting construction, drilling, and dredging inside the Sanctuary would preserve habitats and as such predator-prey relationships that have established along with undisturbed habitats. Although there is currently no seabed construction or drilling activities in the Sanctuary, there is the potential for future seabed-disturbing activities, if new technologies are developed. This prohibition would beneficially affect biological resources by directly minimizing physical disturbance to the species and their habitat. The prohibition would also provide indirect beneficial impacts on biological resources by reducing sediment-related disturbances. The proposed seafloor protection regulations would increase protection of the benthic environment and actually enhance

the long-term health of the benthos and its associated fishes and invertebrate communities, which affect those species that depend on these resources (such as seabirds, marine mammals, and humans). This provision would result in beneficial impacts on biological resources.

Benthic Habitat Protection – Although CBNMS currently has a regulation that provides benthic habitat protection for resources on and around the Bank, this regulation is slightly unclear in regard to legal and lawful fishing activity. To address this issue, NOAA is proposing to amend and clarify this regulation. Similar to the proposed seabed protection regulation discussed above, the EIS describes that:

There is an existing benthic habitat regulation that prohibits the removal, taking, or injuring benthic invertebrates or algae on or within the 50-fathom isobath surrounding Cordell Bank, except for “accidental removal, injury, or takings during normal fishing operations.” The proposed regulatory change would clarify that the exception is for “incidental and necessary to lawful use of any fishing gear during normal fishing operations.” As such, it clarifies that the exemption is only applicable during “lawful use” or as allowed by federal or state fishery management regulations. This also makes this exception for fishing language identical to the seabed protection regulation. Fishing related impacts on the benthic resources on Cordell Bank are being addressed by NOAA Fisheries regulations that limit bottom-contact fishing gear on and within the 50-fathom isobath on Cordell Bank. Therefore, the NMSP clarifications to the Cordell Bank benthic habitat regulation will have the same amount of protection as the existing regulation and would result in negligible impacts on biological resources.

The Commission agrees with the analysis provided by NOAA in the EIS with regard to the increased clarity allowed by the proposed regulatory amendment and the continuing benthic habitat protection provided by this regulation.

Wildlife Disturbance – At present, CBNMS does not provide specific additional protection for wildlife resources located within the Sanctuary beyond that protection provided by existing laws such as the Marine Mammal Protection Act, the Migratory Bird Treaty Act and the Endangered Species Act. In recognition and support of the protection provided by these laws, NOAA is proposing to include the following two descriptions under the list of activities and actions prohibited within the CBNMS:

(a)(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1362 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq.

(a)(6) Possessing within the Sanctuary (regardless of where taken, moved or removed from) except as necessary for valid enforcement purposes, any marine mammal, sea

turtle or bird taken, except as authorized under the MMPA, ESA, MBTA, under any regulation, as amended, promulgated under these Acts, or as necessary for valid law enforcement purposes.

As stated in the EIS:

Implementing regulations in CBNMS relevant to control and disturbance of marine mammals, sea turtles, and birds would have a beneficial impact on biological resources by reducing the impacts of human disturbance on their nesting, feeding, reproductive and resting activities. Numerous seabird and marine mammal species, as mentioned above, occur in CBNMS, and these added protections would be highly beneficial to these species. Regulations will improve the enforcement and outreach of existing protections for seabirds in colonies, and on and above the water, as well as for seals that are in the water, along the shoreline, or on land above the high tide mark. While, as a rule, this regulation applies to resources taken in or above the Sanctuary and not beyond the boundary, if a protected species were harassed or disturbed and then entered Sanctuary waters as a result of disturbance, then prohibitions from these regulations would apply.

...

This prohibition would complement the MMPA, ESA, and MBTA by extending protection for Sanctuary resources across all three sanctuaries in federal and state waters and providing a greater deterrent with civil penalties up to \$130,000 per taking, enforceable under the NMSA. This comprehensive prohibition covers all marine mammals, sea turtles, and birds in and above the Sanctuary.

Adding this language to CBNMS regulations would benefit biological resources by reducing the likelihood of human disturbance and injury to marine mammals, birds and sea turtles, and by allowing them to engage in uninterrupted breeding, nursing, resting activities. Beneficial effects are expected for marine mammals, sea turtles, and birds due to the greater deterrence provided by the regulation and the civil penalty, which makes it less likely those individuals would violate the prohibition.

Cross-Cutting Regulations

In addition to the Sanctuary specific regulations described above, the following cross-cutting regulations would apply to Cordell Bank, Gulf of the Farallones and Monterey Bay National Marine Sanctuaries.

Introduced Species – The Cordell Bank National Marine Sanctuary does not currently restrict or prohibit the introduction or release of invasive species within Sanctuary waters. To address this increasingly recognized threat to native species and ecosystems, NOAA is proposing an additional regulation which:

*Prohibits introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.*

and:

Defines “introduced species” as (1) a species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

As NOAA describes in the DEIS for the Joint Management Plan Review:

Implementing regulations to reduce the number of introduced species entering the Sanctuary would have a direct beneficial impact on biological resources. There is currently no language in the Sanctuary regulations that addresses introduced species, though the State of California prohibits the introduction of nonnative species in its waters. The proposed management measures would prohibit the release of introduced species...

As a result of the proposed regulation prohibiting introduced species in the Sanctuary (except striped bass released during catch and release activities)... there would be beneficial impacts on biological resources, including maintaining the natural habitats, species diversity, and ecosystem balance in the Sanctuary. Additional beneficial effects would include disease prevention and maintenance of native species genetic makeup.

In addition, as noted by the West Coast Regional Director of the National Marine Sanctuary Program in a letter to Commission staff on July 16, 2007:

NMSP staff do not consider introducing a new, non-native species into a national marine sanctuary consistent with the purposes and policies of the National Marine Sanctuaries Act or the designations of these sanctuaries nor is it healthy for these native ecosystems.

In general, introduced species in the marine environment can threaten the diversity and/or abundance of native marine species, may hamper the ecosystem’s ability to support itself, and therefore can adversely affect marine biological resources. This proposed prohibition would help to prevent injury to Sanctuary resources, protect the biodiversity of the CBNMS ecosystems, and preserve the native functional aspects of these ecosystems.

Clarifications and Additions to Discharge Regulations – The proposed clarifications and additions to existing discharge regulations are as follows – both existing and proposed regulations are included below for comparison:

Existing: *Prohibits (a)(1)(i) Depositing or discharging, from any location within the boundary of the Sanctuary, material or other matter of any kind except:*

- (A) Fish, fish parts, chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary;*
- (B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by: Marine sanitation device approved by the United States Coast Guard; routine vessel maintenance, e.g. deck wash down; engine exhaust; or meals on board vessels.*

Proposed: *Prohibits (a)(1)(i) Discharging or depositing, from within or into the Sanctuary, other than from a cruise ship or any other vessel of 300 or more gross registered tons with sufficient holding tank capacity⁹, any material or other matter except:*

- (A) Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary and discharged or deposited while conducting lawful fishing activity within the Sanctuary;*
 - (B) Biodegradable effluents incidental to vessel use and generated by: an operable Type I or Type II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA) 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;*
 - (C) Biodegradable material or other matter from a vessel resulting from deck wash down or vessel engine cooling water; or*
 - (D) Vessel engine exhaust.*
- (ii) Discharging or depositing, from within or into the Sanctuary, any material or other matter from a cruise ship or any other vessel of 300 or more gross registered tons with sufficient holding tank capacity except vessel engine cooling water.*
- (iii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as listed in paragraph (a)(1)(i) and (a)(1)(ii) of this section.*

The discharge of liquid wastes from vessels in the Sanctuary has the potential to negatively affect both biological resources and water quality inside the Sanctuary as well as in surrounding waters outside of the Sanctuary's borders as contaminated water could easily flow out of the Sanctuary and into these areas. Potential impacts from vessel discharges include release of invasive species and parasites in ballast water and untreated sewage, eutrophication and promotion of plankton blooms from nutrient laden discharges and release of harmful chemicals, paints, oils and non-biodegradable pollutants in deck wash down water. The proposed regulatory modifications and additions described above are targeted at minimizing these impacts within and outside the Sanctuary by (1) clarifying the existing regulatory language to facilitate compliance and (2) specifying that additional discharges will also be prohibited. Clarifying the language of Sanctuary discharge regulations in this way, so that discharge prohibitions are clearer and more

⁹ For the purposes of this regulation "sufficient holding tank capacity" has been defined as a holding tank of sufficient capacity to contain sewage and graywater while the vessel is within the Sanctuary.

consistent in Sanctuary waters, is likely to have an overall direct beneficial effect on biological resources in the Sanctuary by facilitating compliance by Sanctuary users and thereby reducing the likelihood that harmful releases of liquid pollutants will occur. Similarly, the new discharge regulations being proposed may also serve to decrease the types and quantities of potentially harmful discharges from entering Sanctuary waters and causing injury, harm or death to living Sanctuary resources such as those non-biodegradable wastes from deck wash down, and wastes associated with meals on board vessels (food, plastics, trash, etc.), graywater, bilge water, ballast water, untreated or minimally treated sewage from non-cruise ship vessels, as well as large volumes of sewage and biodegradable effluents associated with cruise ship and large vessel discharges.

As noted in the EIS:

The new regulations under the Proposed Action would provide greater protections to the Sanctuary's waters from vessel pollution and all associated impacts and would thus have direct beneficial impacts on biological resources. There would also be indirect impacts as a result of better water quality, which would in turn create better habitat and improve conditions for biological resources. In addition, this would benefit fish populations and other species that rely on fish for prey...

The Proposed Action requires use of Type I or Type II MSD, in order to discharge treated sewage, operated in a manner that prevents discharge of untreated sewage. The Proposed Action also requires that deck washdown be biodegradable, clarifies that ballast waters and oil wastes from bilge pumping are prohibited, and prohibits discarding food overboard. NOAA proposes to clarify its regulations that already require the use of Type I or II MSD devices for any treated sewage discharge throughout the sanctuaries' waters. The clarification would make it understood that use of a Type III MSD (a holding tank of untreated sewage) is allowed but that a discharge from a Type III MSD would be prohibited in the sanctuaries. Additionally, the proposed regulation requires that the boat users lock (secure) the valves on such systems to prevent users from bypassing the storage of sewage and directly discharging the untreated sewage. This regulation is meant to facilitate enforcement by the Coast Guard to prevent accidental discharge and reduce the discharge of raw sewage into sanctuary waters. MSD regulations address the discharge of raw sewage, which has a specific harmful biological impact.

The clarification of the existing regulations may increase compliance and enforceability and reduce unintentional violations relating to the use of MSDs in the sanctuaries. This is expected to result in a decrease in the discharge of raw sewage from vessels, which in turn is expected to benefit water quality by reducing fecal coliform bacteria and other associated viruses and pathogens in the marine environment. Since the Proposed Action has the potential to reduce the quantity of sewage discharge into the sanctuaries, it would have potential significant beneficial future impacts on biological resources, as a result of improved water quality and associated habitat benefits.

As described previously, NOAA is also proposing a new regulation that prohibits cruise ship and large vessel discharges throughout the Sanctuary. Cruise ships, as defined under the proposed regulations to include all vessels with 250 or more passenger berths for hire, and all vessels of 300 gross registered tons or more with sufficient holding tank capacity to contain sewage and graywater while the vessel is within the Sanctuary, would no longer be permitted to discharge biodegradable effluents (both treated and untreated sewage and graywater), deck wash, treated wastewater, or any other materials other than vessel engine cooling water into the Sanctuary. The primary concerns associated with cruise ships and large vessels are the large volumes of discharges and wide array of pollutants (e.g., sewage, graywater, oily bilge water, hazardous waste, and solid wastes) that may be discharged due to the sheer size, passenger and crew capacity, and environmental practices of these vessels. Proposed changes to existing discharge regulations would affect how current activities within the Sanctuary are conducted and represent a substantial increase in the level of marine resource and water quality protections provided by CBNMS regulations as compared to existing regulations. In addition, through coordination with Commission and Regional Water Quality Control Board staff, NOAA has committed to ensuring that CBNMS vessel discharge prohibitions remain consistent with existing California State law. As demonstrated in the NMSP letter of July 16, 2007, NOAA is aware of the recently enacted Clean Coast Act (SB 771) and has agreed to “plan to propose a new regulation to address sewage and graywater discharges from vessels of 300 gross registered tons or more. Mirroring state regulations, [namely, the Clean Coast Act,] the prohibition would only apply if vessels have sufficient holding tank capacity when in Sanctuary waters.” This commitment is reflected in the existing versus proposed vessel discharge language included on page 18 and has been reflected in the proposed project currently being considered in this consistency determination.

This commitment was established in recognition of the fact that potentially harmful sewage and graywater discharges could be released from both cruise ships and other large oceangoing vessels and that the Clean Coast Act, which became effective on January 1, 2006, was structured to specifically target these classes of discharges. Additionally, the proposed vessel discharge regulation is consistent with the purpose of the Commission’s conditional concurrence when this same issue arose during review of the Channel Islands National Marine Sanctuary management plan update (CD-036-06) and both addresses the potential threat to State waters and marine resources posed from vessel discharges released in Sanctuary waters that subsequently enter State waters, and enhances consistency between Sanctuary discharge regulations and existing California State law. The Commission therefore finds that the proposed regulatory changes will substantially enhance water quality and marine resource protection within the Sanctuary and will eliminate or reduce the occurrence of a number of activities that would be inconsistent with both California State law and the goals and objectives of the Sanctuary. The Commission also agrees with NOAA that the regulatory additions and revisions described above would be consistent with the marine resource and water quality policies of the CCMP (Coastal Act Sections 30230 and 30231).

C. Commercial and Recreational Fishing. Aside from the commercial fishing protection

afforded under Section 30230, quoted above on page 11, Sections 30234 and 30234.5 provide for the need to protect commercial and recreational fishing opportunities, as follows:

30234: *Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

30234.5: *The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.*

Several of the regulatory changes proposed by NOAA as part of the management plan review have the potential to both indirectly and directly affect commercial and recreational fishing activity within the Sanctuary. NOAA anticipates that overall, the changes that it has proposed will have a largely beneficial impact on fishing activities and will therefore be consistent with the specific policies of Coastal Act sections 30234 and 30234.5, as explained below.

Regarding the proposed regulations that would provide enhanced seabed and benthic habitat protection within the Sanctuary, the EIS and Management Plan describe the potential direct and indirect impacts that these regulations would have on commercial and recreational fishing:

Seabed Protection – *The proposed regulation would result in enhanced protections for habitat and species by reducing or eliminating certain physical impacts and associated habitat loss. This in turn would result in beneficial impacts to fisheries resources. This proposed regulation would not create an adverse impact on commercial fishing operations, since lawful fishing activities exempt from the prohibition. Although the lawful use of fishing gear is exempt from the proposed regulation, fishing is otherwise regulated by NOAA Fisheries amendments to the Groundfish FMP that restrict bottom-contact fishing gear on and within the 50-fathom isobath surrounding Cordell Bank.*

...

The CBNMS regulations issued under the Proposed Action would provide added and complementary protection to the benthic habitats in this core area and would prevent a further loss and degradation of habitats on the Bank used as core nursery and spawning areas. As a result, the proposed CBNMS Seabed Protection regulation implemented under the Proposed Action would cause an indirect minor beneficial impact on commercial fishing from habitat enhancement. The prohibition of bottom-contact fishing gear is associated with the NOAA Fisheries regulations, and is not attributable to any action taken by NMSP. Therefore the Proposed Action would result in a minor beneficial impact on commercial fisheries.

Benthic Habitat Protection – *There is an existing benthic habitat regulation that prohibits the removal, taking, or injuring benthic invertebrates or algae Bank on or within the 50-fathom*

isobath surrounding Cordell Bank, except for “accidental removal, injury, or takings during normal fishing operations.” The proposed regulatory change would clarify that the exception is for “incidental and necessary to lawful use of any fishing gear during normal fishing operations.” As such it clarifies that the exemption is only applicable during “lawful use” or as allowed by federal or state fishery management regulations. This also makes this exception for fishing language identical to the seabed protection regulation. Fishing related impacts to the benthic resources on Cordell Bank are being addressed by NOAA Fisheries regulations that limit bottom-contact fishing gear on and within the 50-fathom isobath on Cordell Bank. Therefore, the NMSP clarifications to the Cordell Bank benthic habitat regulation will have the same amount of protection as the existing regulation and would result in negligible impacts to fisheries.

Regarding the effects that NOAA’s proposed new and clarified cross-cutting regulations on the discharge of materials from vessels within the Sanctuary, NOAA states:

Clarifications to Discharge Regulations – *There are several proposed regulatory modifications that would limit general vessel discharges and clarify requirements for use of Marine Sanitation Devices within the Sanctuaries. These regulations...are expected to have beneficial impacts on the water quality of the marine sanctuaries. The beneficial water quality impacts would likely in turn have minor benefits for commercial fish species. Fish species would be exposed to fewer contaminants and bacteria and would therefore potentially have a reduced risk of health problems. Better water quality would also create better habitat, which would benefit fish populations and potentially result in increased reproductive success and increases in population sizes.*

Complying with the proposed discharge amendments could result in slight adverse socioeconomic effects on fishermen within the sanctuaries. Fishing vessels would no longer be able to dispose of waste from meals into the sanctuary, which may require some vessels to upgrade their on-vessel disposal facilities so that they could store their waste onboard until they could dispose of it dockside. Fishing vessels would only be allowed to use biodegradable materials in deck washing if they wish to allow the washings to drain into the sanctuaries. Those vessels wishing to discharge their washings into the sanctuaries that do not currently use biodegradable cleaning products would need to change to such products. The potential change in waste disposal facilities and cleaning products may result in minor, increased costs to fishing operations. It should be noted that discharge regulations provide exceptions for fish, fish parts or bait/chumming materials resulting from lawful fishing activity.

The proposed discharge regulations would require fishing vessels to discharge other wastewaters (graywater and black water) using a Type I or Type II MSD, or, if they are using a Type III MSD, to hold the waste until they are either out of the sanctuaries or pump out the waste at a harbor pumpout facility... The only new requirement in the proposed regulations is that fishermen may have to upgrade their MSD equipment, so that it could not discharge untreated sewage. This requirement may pose a minor burden

on boat owners who have not purchased a lock or clasp to ensure the effective operation of the MSD. However, the impact of this addition is negligible. The benefits of doing such activity would actually improve fishing habitat in the long term.

In summary, the proposed regulations would have minor beneficial impacts on commercial fish species but may have some minor adverse impacts on some fishing vessels. The proposed regulatory change would not cause a substantive economic loss to the commercial fishery industry; therefore, it is not considered to create a significant adverse impact.

Cruise Ship and Large Vessel Discharge Prohibition – *By preventing almost all cruise ship [and large vessel] discharge into the sanctuaries, this provision would result in a minor indirect beneficial impact on commercial fish species through an increase in water quality. Eliminating the potential for substantial discharges of treated wastewater, graywater, oily bilge water, and ballast water would have a direct beneficial effect on water quality in the sanctuaries. Improved water quality would have indirect beneficial effects on fish habitat and fishing activities.*

In reference to the additional proposed cross-cutting regulation that would prohibit the release of introduced species into the Sanctuary and how this regulation may affect recreational and commercial fishing activities within the Sanctuary, NOAA notes the following:

Release of Introduced Species – *Controlling the number of introduced species could have both beneficial and adverse effects on fisheries. The Proposed Action could benefit fisheries by limiting the competition between introduced and native species, thus improving the ongoing stability of the native species populations, improving stability in the numbers of native species available for catch, and helping to stabilize the potential for future revenues derived from commercial catch within the sanctuaries. In this regard, the Proposed Action would have a beneficial impact on commercial fisheries.*

One of the pathways for the introduction of species into the sanctuaries is through commercial fishing operations, specifically, baiting and processing. The Proposed Action would potentially require commercial fisheries to alter their baiting and processing methods so as to reduce the likelihood for the introduction of species into the sanctuaries. These alterations may increase the burden on the fisheries. This requirement may have minor adverse impacts on commercial fisheries.

...

Due to the potential for both beneficial and adverse impacts, the Proposed Action is expected to have no net impact on commercial fisheries.

Although not specifically analyzed in the project EIS, the proposed regulation on the take and/or possession of a marine mammal, sea turtle or seabird within the Sanctuary also has the potential to affect commercial and recreational fishing activities within the Sanctuary. However, because take of most of these species is already illegal except when expressly authorized by the Marine

Mammal Protection Act (MMPA), Endangered Species Act (ESA), or Migratory Bird Treaty Act (MBTA), this regulation would have no significant adverse impact on human uses of the CBNMS. Because the Sanctuary would not need to authorize take under a CBNMS permit for activities permitted pursuant to the MMPA, ESA, or MBTA, this regulation would not affect the permit processes of other agencies (e.g., USFWS, National Marine Fisheries Service, CDFG, etc.). In addition, commercial fishing or certain research activities which may involve the occasional take of these species may lawfully operate as such under authorizations granted pursuant to the MMPA, ESA, or MBTA. Further strengthening the prohibition of unpermitted, illegal activities that cause take of these species would have an indirect long-term beneficial impact on human uses such as recreation, tourism, research, and education and would not adversely affect fishing. For example, the added protection of marine mammals, seabirds, and sea turtles can complement business activities focused on whale watching or other marine excursion tours within the Sanctuary.

As described above, none of the proposed regulations prohibit or significantly limit commercial or recreational fishing activity within the Sanctuary. The proposals instead either change the regulatory language to clarify that lawful fishing activity is exempt from regulation (as described under the regulations for seabed and benthic habitat protection), include provisions that enhance the quality of fishing activity (as described under the regulations on vessel discharges within the Sanctuary), support existing laws that regulate fishing (as described under the regulations on taking or possessing marine mammals, sea turtles or seabirds within the Sanctuary), or result in less than significant adverse impacts to commercial and recreational fishing (vessel discharge regulations). NOAA states that the Sanctuary cannot support the activities prohibited by the regulations listed above, that such activities are incompatible with other activities that occur within the Sanctuary, and that these regulations are necessary to protect the natural resources within the Sanctuary from harm and misuse. The Commission agrees and therefore finds that the proposed prohibitions are consistent with Sections 30234 and 30234.5 of the Coastal Act.

D. Public Access and Recreation. The Coastal Act provides for the protection of public access in Sections 30210 and 30214:

***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. . . .

In addition, Section 30220 of the Coastal Act also provides for the protection of water-oriented recreation:

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

Several of the proposed changes to the regulations contained within the Sanctuary's management plan have the potential to affect public access and recreational opportunities within the Sanctuary. The Commission must determine if NOAA's proposed regulations prohibiting the release of introduced species and certain discharges from vessels and providing protection for the Sanctuary's wildlife, submerged lands and benthic habitats are consistent with the above public access and recreation policies of the Coastal Act. NOAA reported the following in the project EIS:

Release of Introduced Species – *Implementing stricter regulations to reduce the number of introduced species in the sanctuaries would have a beneficial impact on recreational resources. As stated in the Proposed Action, several types of introduced species inhibit the survival of native species and can result in changes in species composition, abundance and distribution and overall predator-prey relationships. This in turn may negatively impact important recreational activities, such as fishing, scuba diving, wildlife watching, and clamming. By implementing measures to protect the resources that support recreation, the Proposed Action would provide a minor beneficial recreational effect.*

Clarifications to Discharge Regulations – *The proposed regulatory language modification clarifies that vessel operators must use a Type I or Type II MSD when discharging sewage, which is what is already required by the Coast Guard. The regulation would allow vessels to have a Type III MSD, but they could not discharge untreated waste into the sanctuary and would have to either discharge this waste at a harbor pump-out facility or outside the sanctuary according to Coast Guard regulations. Overall these regulatory changes would help improve water quality and thus improve recreational opportunities, such as diving, swimming, fishing, and surfing in the sanctuaries. This regulation essentially clarifies expectations to boaters and does not add any significant burdens beyond what is already required by sanctuary or Coast Guard regulations. Therefore, no adverse effect on recreational use is associated with the modification.*

Cruise Ship Discharges – *The proposed regulations on cruise ships would provide a beneficial impact on recreational uses within the sanctuaries. The proposed regulation would eliminate potentially harmful discharges from cruise ships in sanctuary waters and would reduce the amount of oily water, hydrocarbons, and sewage released into the sanctuaries that can sicken, injure or even kill plants and animals exposed to their effects. As a long-term impact, reducing pollution in the ocean would increase water*

quality and the health of the sanctuaries' ecosystems, both of which are key elements in recreation (e.g., fishing, scuba diving, wildlife watching, surfing, swimming and boating), and therefore the impact on recreational resources would be beneficial.

Wildlife Disturbance – *Adding sanctuary regulations on the taking or possessing of protected wildlife within CBNMS would have a minor beneficial impact on recreational viewing activities, such as wildlife watching and scuba diving, by adding further protection of the resources that recreational users are interested in viewing. Since users are already subject to regulations that prohibit the taking or harassment of animals, the additional sanctuary regulations will not add any new burdens, other than the possible increase in enforcement of these regulations. The overall impact would be beneficial, however the benefit is very minor, as there are existing regulations protecting wildlife and the proposed regulation essentially mirrors existing regulations.*

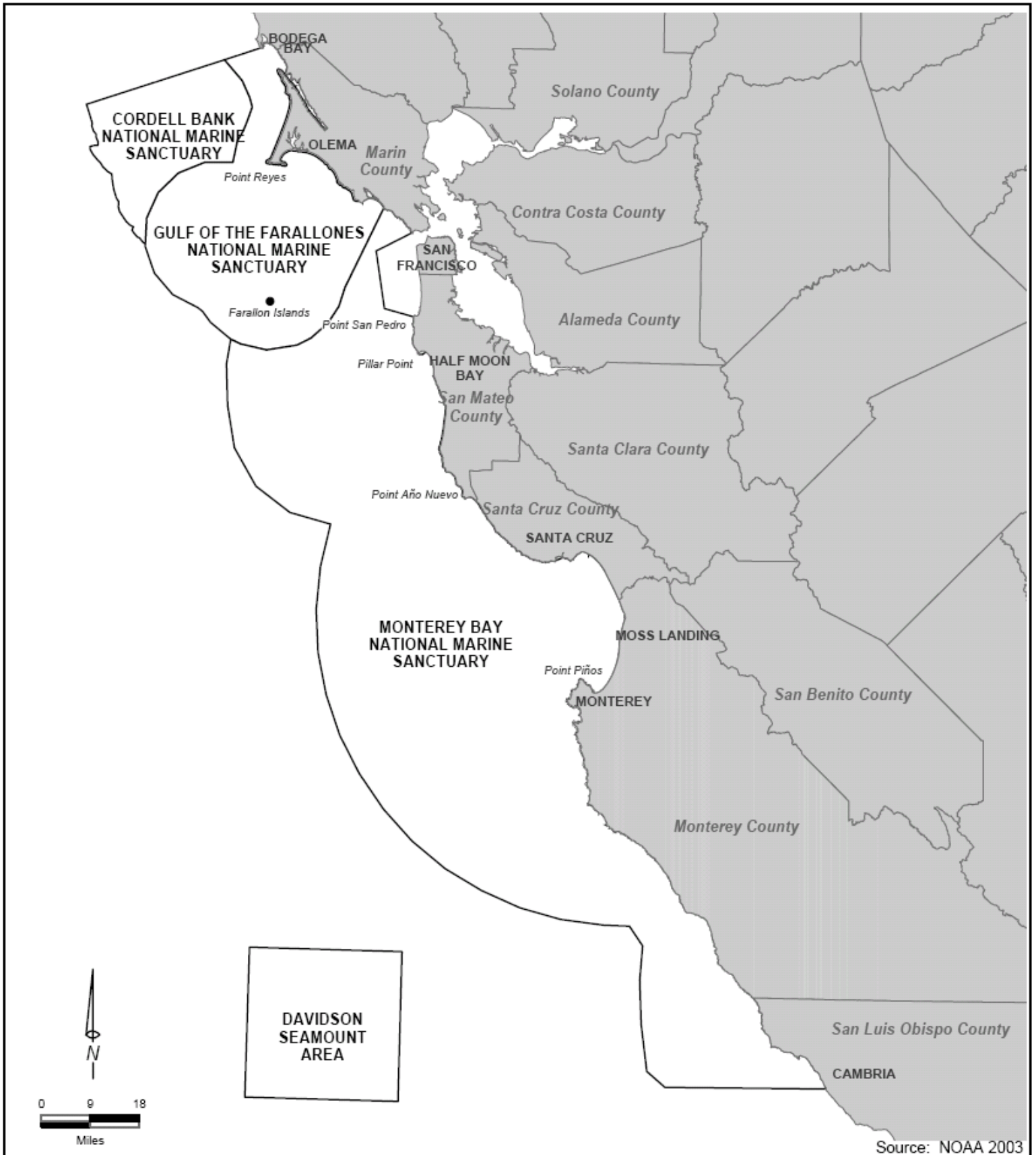
Seabed Protection – *The proposed regulation would prohibit drilling, dredging, or altering, constructing, placing, or abandoning any structure material or matter on the submerged lands within the line representing the 50-fathom isobath surrounding Cordell Bank, but would allow activities that are “incidental and necessary to lawful use of any fishing gear, during normal fishing operations.” Additionally, the regulation would prohibit the same activities listed above in the remainder of the sanctuary outside the 50-fathom isobath, with the exception of anchoring, and as “incidental and necessary during normal fishing operations while conducting lawful fishing activity.” The proposed regulation would result in enhanced protections for species and habitats by reducing or eliminating physical impacts and associated habitat loss and would result in positive impacts on biological resources at all trophic levels (i.e., within all categories of organisms, including fish, invertebrates, seabirds, and marine mammals). Therefore, the Proposed Action would have an indirect beneficial impact on recreation resources by protecting the species and habitats that are the focus of several recreational activities, including fishing and diving. This regulatory change would result in a minor beneficial impact on recreational uses.*

Benthic Habitat Protection - *There is an existing benthic habitat regulation that prohibits the removal, taking, or injuring benthic invertebrates or algae on or within the 50-fathom isobath surrounding Cordell Bank, except for “accidental removal, injury, or takings during normal fishing operations.” The proposed regulatory change would clarify that the exception is for “incidental and necessary to lawful use of any fishing gear during normal fishing operations.” As such, it clarifies that the exemption is only applicable during “lawful use” or as allowed by federal or state fishery management regulations. Fishing related impacts on the benthic resources on Cordell Bank are being addressed by NOAA Fisheries regulations that limit bottom-contact fishing gear on and within the 50-fathom isobath on Cordell Bank. Therefore, this regulation would have the same amount of protection as the existing regulation and would result in negligible impacts on recreational activities.*

As described above, the proposed regulations with the potential to affect recreational activities or resources within the Sanctuary would result in either minor beneficial impacts or negligible adverse impacts. Furthermore, because of the location of the Sanctuary in open-ocean offshore waters, the majority of recreational activities that occur within its boundaries are focused on the Sanctuary's marine resources and wildlife. These activities, including whale watching, birding and other wildlife viewing opportunities such as scuba diving would be likely to benefit from the increased numbers, diversity and health of marine resources that would result from the proposed regulations aimed at ecosystem and wildlife protection. Therefore, the Commission finds that the new and revised regulations proposed under the updated CBNMS management plan are consistent with the public access and recreation policies of the California Coastal Management Program (Sections 30210, 30214(a)(2) and 30220 of the Coastal Act).

V. SUBSTANTIVE FILE DOCUMENTS.

1. Draft Management Plan – Cordell Bank National Marine Sanctuary, National Oceanic and Atmospheric Administration (NOAA), October 2006.
2. Draft Environmental Impact Statement – Cordell Bank, Gulf of the Farallones, and Monterey Bay National Marine Sanctuaries, NOAA, October 2006.
3. Consistency Determination CD-036-06, NOAA, Revised management plan and revised set of regulations for the Channel Islands National Marine Sanctuary.
4. Consistency Determination CD-66-92, NOAA, Designation of the Monterey Bay National Marine Sanctuary.



The JMPR study area covers over 5,000 square nautical miles of open ocean.

Joint Management Plan Review Study Area

Northern/Central California

EXHIBIT 1
Application No.
CD-009-07
NOAA

Subpart K—Cordell Bank National Marine Sanctuary (Amended)

§ 922.110 Boundary

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary consists of a 397.05 encompasses a total area of approximately 399-square nautical miles (211nmi) area of marine ocean waters, and submerged lands thereunder, off the northern coast of California approximately 50 miles west-northwest of San Francisco, California. The Sanctuary boundary extends westward (approximately 250 degrees) extending at 180 degrees from the northernmost boundary, northwestern most point of the Gulf of the Farallones National Marine Sanctuary (GFNMS) towards the 1,000 fathom isobath northwest of the Cordell Bank, then south along the Sanctuary boundary then generally follows this isobath in a southerly direction to the southwestern-most point of the GFNMS boundary. to The Sanctuary boundary then follows the GFNMS boundary and back again, to the northwestern-most point of the GFNMS, along this boundary to the beginning point. The exact boundary coordinates are listed in Appendix A to this subpart.

§922.111 Definitions

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

1) Introduced species means (1) a species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Sanctuary, or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

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

§ 922.112 Prohibited or otherwise regulated activities

(a) Except as necessary for national defense or to respond to an emergency threatening life, property, or the environment, or except as permitted in accordance with §922.48 and 922.112 or certified in accordance with §922.47, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted²²

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

(1)(i) Depositing or ~~Discharging or depositing~~, from any location within or into the boundary of the Sanctuary, other than from a cruise ship, any material or other matter of any kind except:

- (A) Fish, fish parts, chumming materials (bait), used in or resulting from lawful fishing activity within the Sanctuary and discharged or deposited while conducting lawful fishing activity within produced and discarded during routine fishing activities conducted in the Sanctuary and discharged or deposited while conducting lawful fishing activity within the Sanctuary; and
- (B) Water (including cooling water) and other ~~Biodegradable~~ effluents incidental to use of a vessel use in the Sanctuary and generated by: an operable Type I or II ~~m~~Marine sanitation device approved by the United States Coast Guard (U.S. Coast Guard classification); routine vessel maintenance, e.g. deck wash down; engine exhaust; or meals on board vessels; approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA) 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
- (C) Biodegradable material or other matter from a vessel resulting from deck wash down or vessel engine cooling water; or
- (D) Vessel engine exhaust.

(ii) ~~Depositing or~~ Discharging or depositing, from any location beyond the boundaries of within Sanctuary, any material or other ~~or~~ matter of any kind, except for the exclusions listed in paragraph

this section, which enter the Sanctuary and injure a Sanctuary resource: from a cruise ship except vessel engine cooling water.

(iii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as listed in paragraph (a)(1)(i) and (a)(1)(ii) of this section.

(2) Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. Except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations: removing, taking, or injuring or attempting to remove, take or injure benthic invertebrates or algae located on Cordell Bank or on or within the line representing the 50-fathom isobath surrounding the Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.

(3) Exploring for, or developing or producing, oil, gas, or minerals in any area of the Sanctuary.

(4) (i) Except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations: drilling into, dredging, or otherwise altering Cordell Bank or the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank; or constructing, placing, or abandoning any structure, material or other matter on the Bank or on the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart.

(ii) Except as incidental and necessary for anchoring a vessel or use of any lawful fishing gear during normal fishing operations: drilling into, dredging, or otherwise altering the submerged lands in the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank; or constructing, placing, or abandoning any structure, material or matter on the submerged lands in the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart.

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

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

(7) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(b) The prohibitions on paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with §922.48 and §922.113.

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

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

§922.112 Permit procedures and criteria

~~(a) If a person wishes to~~ may conduct an activity prohibited under §922.111, ~~that person must apply for, receive, and have in possession on board any vessel used a valid permit issued pursuant to this section and §922.48 authorizing that person to conduct that activity, if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under §922.48 and this section.~~

~~(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Cordell Bank National Marine Sanctuary, Fort Mason, Building #201, San Francisco, CA, 94123.~~

~~(c) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions, as he or she deems appropriate, if the Director finds the activity will: subject to such terms and conditions as deemed appropriate, to conduct an activity otherwise prohibited by §922.111, if the Director finds that the activity will further research related to Sanctuary resources; further the educational or historical value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.~~

- ~~(1) Further research or monitoring related to Sanctuary resources and qualities;~~
- ~~(2) Further the educational value the Sanctuary;~~
- ~~(3) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or~~
- ~~(4) Assist in managing the Sanctuary.~~

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

- ~~(1) The applicant is qualified to conduct and complete the proposed activity;~~
- ~~(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;~~
- ~~(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;~~
- ~~(4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resource~~

qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;

- (5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;
- (6) It is necessary to conduct the proposed activity within the Sanctuary;
- (7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and
- (8) any other factors the Director deems appropriate.

(d) Applications.

- (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries, ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.
- (2) In addition to the information listed in sec. 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

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