

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION**ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-010-07
Staff:	CLT-SF
File Date:	2/28/2007
60 th Day:	4/29/2007
75 th Day:	5/14/2007
Extended to:	8/17/2007
Commission Meeting:	8/10/2007

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

PROJECT
LOCATION:

The Gulf of the Farallones National Marine Sanctuary consists of approximately 966 square nautical miles of nearshore and offshore ocean waters west and north of San Francisco including the waters around the Farallon Islands and along the mainland coast of the Point Reyes Peninsula between Bodega Head and Rocky Point. Most of the Sanctuary lies in the Gulf of the Farallones between the western edge of the continental shelf and the coast of Marin and Sonoma counties and includes Bolinas Bay and Lagoon, most of Tomales Bay, Estero Americano, Estero de San Antonio, and Bodega Bay (excluding Bodega Harbor) (Exhibit 1).

PROJECT
DESCRIPTION:

Revised management plan and revised set of regulations for the Gulf of the Farallones National Marine Sanctuary.

SUBSTANTIVE
FILE DOCUMENTS:

See page 36.

EXECUTIVE SUMMARY

The National Oceanic and Atmospheric Administration (NOAA) submitted a consistency determination for the revised management plan and set of regulations governing activities in the Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary). NOAA states that the proposed measures would afford better protection to the natural and cultural resources of the GFNMS. 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 any matter from a cruise ship¹, or any other vessel of 300 gross registered tons or more with sufficient holding tank capacity², other than biodegradable 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;*
- *releasing or otherwise introducing from within or into the Sanctuary an introduced species³ except: 1) striped bass (*Morone saxatilis*) released during catch and release fishing activity; and, 2) as stipulated in the NMSP [National Marine Sanctuary Program] letter of July 16, 2007, except to allow for a full buildout of existing introduced species aquaculture projects in Tomales Bay, provided no new introduced species are farmed;*
- *taking or possessing marine mammals, birds, or sea turtles within the Sanctuary;*
- *attracting a white shark or approaching within 50-meters of a white shark;*
- *anchoring a vessel in a designated no-anchoring seagrass protection zone in Tomales Bay;*
- *deserting a vessel aground, at anchor, or adrift within the Sanctuary;*
- *leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary;*

Proposed Regulations would also:

- *permanently fix the shoreward boundary on the western side of Tomales Bay to the boundary adjacent to Point Reyes National Seashore boundary at the time of Sanctuary designation.*

Existing regulations would also be revised to:

¹ For the purposes of the GFNMS regulations, “cruise ship” has been defined as “a vessel with 250 or more passenger berths for hire.”

² 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.

³ For the purposes of the GFNMS regulations, “introduced species” has been defined 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.”

- *replace the term “seabed” with “submerged lands,” the term used in NMSA [National Marine Sanctuary Act];*
- *correct inaccuracies in the coordinates and description of the Sanctuary’s seaward and shoreline boundaries;*
- *clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices in a manner that prevents discharge of untreated sewage;*
- *revise the prohibition against dredging or otherwise altering the submerged lands by removing the exceptions for ecological maintenance and construction of outfalls;*
- *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 discharge and deposit exemptions for dredge materials disposed of at the interim dumpsite [to reflect the fact that the interim dumpsite referenced in the Sanctuary’s original regulations is no longer in service];*
- *make the prohibition on possession of Sanctuary historical resources apply both within and outside the Sanctuary; 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 GFNMS, NOAA is proposing significant updates and revisions to the Gulf of the Farallones National Marine Sanctuary’s original 1981 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 1981 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 twenty-six 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: Water Quality, Wildlife Disturbance, Introduced Species, Ecosystem Protection-Impacts from Fishing Activities, Impacts from Vessel Spills, Education and Outreach, Conservation Science, Resource Protection, Administration, Administration and Operations, Community Outreach, Ecosystem Monitoring, Maritime Heritage, Northern Management Area Transition Plan.

The vast ecological wealth of the Gulf of the Farallones 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 twenty-six 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 GFNMS, 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.

As conditioned, the proposed new and revised regulations on discharging and depositing material within the Sanctuary, releasing introduced species, altering the seabed, abandoning vessels within the Sanctuary, disturbing, taking or possessing marine mammals, seabirds, sea turtles, attracting or approaching white sharks, anchoring vessels in seagrass protection areas, and issuing permits 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, recreation, and commercial and recreational fishing policies of the CCMP (Sections 30210, 30214, 30220, 30232, 30234 and 30234.5 of the Coastal Act).

STAFF SUMMARY AND RECOMMENDATION:

I. STAFF SUMMARY

A. Project Description. Initially designated in 1981, the Gulf of the Farallones National Marine Sanctuary consists of approximately 966 square nautical miles of nearshore and offshore ocean waters and their underlying submerged lands off the northern coast of California. The Sanctuary is just north of San Francisco and includes Bolinas Bay and Lagoon, much of Tomales Bay, Estero Americano, Estero de San Antonio, Bodega Bay (excluding Bodega Harbor) and the waters between Bodega Head, the Point Reyes Headlands and the Farallon Islands (Exhibit 1). This area was designated a sanctuary because its waters provide important marine and nearshore habitats for a diverse array of marine mammals and marine birds as well as fishery, plant, algae and benthic resources. The marine mammals and seabirds present in abundant numbers at the Farallon Islands and the mainland coast depend as much on the integrity and productivity of these adjacent ocean and estuarine waters as on the preservation of the shore areas they use for breeding, foraging and resting.

The Sanctuary's primary objective is to conserve, protect, and enhance the biodiversity and ecological integrity of marine resources within the Gulf of the Farallones 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 Gulf of the Farallones 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 twenty six years ago. The GFNMS management plan review began with public scoping and issue identification in 2001 and grew to include issue prioritization, action plan development and draft management plan preparation in coordination with working groups consisting of sanctuary staff, members of the Sanctuary Advisory Council, experts, agencies representatives, and the public. Based on information gathered and priority resource management issues identified during this review, as well as the analysis provided by the October 2006 draft Environmental Impact Statement (EIS) and Management Plan Review for the GFNMS, NOAA proposes the following: (1) inclusion of eight additional activities to the list of activities currently prohibited within the Sanctuary boundaries (specifically detailed in Exhibit 2), (2) clarification and refinement of eight existing regulations (also described in Exhibit 2), and (3) adoption of over sixty specific programs contained within five Sanctuary specific action plans and five cross-cutting action plans⁴ in the Sanctuary's overall management plan. The goal of the cross-cutting action plans is to build upon existing coordination efforts among Gulf of the Farallones, Cordell Bank, 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 their resources. 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 include prohibitions on:

- *discharging or depositing any matter from a cruise ship⁵, or any other vessel of 300 or more gross registered tons with sufficient holding tank capacity⁶, other than biodegradable 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 the GFNMS regulations, "cruise ship" has been defined as "a vessel with 250 or more passenger berths for hire."

⁶ 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;*
 - *releasing or otherwise introducing from within or into the Sanctuary an introduced species⁷, other than striped bass released during catch and release fishing activity and, as stipulated in the NMSP letter of July 16, 2007, except to allow for a full buildout of existing introduced species aquaculture projects in Tomales Bay, provided no new introduced species are farmed;*
 - *taking or possessing marine mammals, birds, or sea turtles within the Sanctuary;*
 - *attracting a white shark or approaching within 50-meters of a white shark;*
 - *anchoring a vessel in a designated no-anchoring seagrass protection zone in Tomales Bay;*
 - *deserting a vessel aground, at anchor, or adrift within the Sanctuary;*
 - *leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary;*
- Proposed regulations would also:*
- *permanently fix the shoreward boundary on the western side of Tomales Bay to the boundary adjacent to Point Reyes National Seashore boundary at the time of Sanctuary designation.*

Existing regulations would also be revised to:

- *replace the term “seabed” with “submerged lands,” the term used in NMSA;*
- *correct inaccuracies in the coordinates and description of the Sanctuary’s seaward and shoreline boundaries;*
- *clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices in a manner that prevents discharge of untreated sewage;*
- *revise the prohibition against dredging or otherwise altering the submerged lands by removing the exceptions for ecological maintenance and construction of outfalls;*
- *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 discharge and deposit exemptions for dredge materials disposed of at the interim dumpsite (there is no interim dumpsite);*
- *make the prohibition on possession of Sanctuary historical resources apply both within and outside the Sanctuary; 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.*

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

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occurred since original designation of the Sanctuary twenty-six years ago. 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 Gulf of the Farallones National Marine Sanctuary include the following action plans, specific strategies and programs included within the Sanctuary's management plan:

Water Quality Action Plan

WQ.1 – Coordinate Partnerships in implementing a comprehensive and integrated water quality monitoring program

WQ.2 – Address sources of anthropogenic pathogens and pollutants on estuarine and nearshore environments from recreational and commercial boating activities and marinas

WQ.3 – Coordinate with other agencies to address land-based discharges into the estuarine and nearshore areas of the sanctuary including Areas of Special Biological Significance (ASBS) and Critical Coastal Areas

WQ.4 – Evaluate Areas of Special Biological Significance (ASBS) and make a determination whether to implement a vessel discharge prohibition within these areas of concern

WQ.5 – Ensure the continuation of the long-term data collection efforts under the Mussel Watch program

WQ.6 – Develop a standing water quality working group of the sanctuary advisory council, supported by sanctuary staff

WQ.7 – Develop administrative capacity to support a comprehensive and coordinated water quality protection plan

WQ.8 – Develop an annotated bibliography of water quality research and monitoring programs in and adjacent to the sanctuary to evaluate data and determine the overall water quality of the sanctuary's ecosystem

WQ.9 – Educate local decision makers on land-based water quality impacts in the sanctuary

Wildlife Disturbance Action Plan

WD.1 – Create easily accessible centralized Web-based spatial database to house information pertaining to wildlife disturbance

WD.2 – Through the use of volunteer monitoring programs, observe and record impacts from human activities on marine resources and key habitats of the sanctuary, such as the rocky intertidal

WD.3 – Coordinate with other agencies, institutions and programs to better understand and address noise, light and visual impacts on wildlife from vessels and low flying aircraft.

WD.4 – Through interpretive enforcement and law enforcement efforts, address human behavior that may adversely impact wildlife

WD.5 – Develop wildlife viewing guidelines to reduce disturbance to wildlife from human interactions

WD.6 – Maximize media venues to augment directed outreach efforts and increase public awareness of wildlife disturbance issues

Introduced Species Action Plan

IS.1 – Develop a native and introduced species inventory and database specifically for GFNMS and areas adjacent to the sanctuary

IS.2 – In coordination with existing monitoring programs, develop a program to detect introduced species in estuarine environments of the sanctuary

IS.3 – Develop a monitoring program to detect and monitor introduced species in the rocky intertidal areas of the sanctuary

IS.4 – Develop a monitoring program to detect and monitor introduced species in the pelagic environment of the sanctuary

IS.5 – Develop a volunteer-based outreach and monitoring program to improve early detection of introduced species

IS.6 – Develop partnerships with other agencies and organizations that are involved in issues related to introduced species to advise the sanctuary

IS.7 – Develop a rapid response plan and streamlined permit process in order to respond in a timely manner to necessary eradication or control efforts in the sanctuary

IS.8 – Take action to control new introductions of introduced species

IS.9 – Through outreach efforts, inform targeted audiences and industry about pathways through which introduced species may enter the sanctuary and educate those targeted audiences on prevention methods

Ecosystem Protection – Impacts from Fishing Activities Action Plan

FA.1 – Develop a resource characterization of the sanctuary to better understand types and distributions of habitats, species, and processes

FA.2 – Develop a socioeconomic profile of fishing activities and communities in and adjacent to the sanctuary

FA.3 – Evaluate impacts from fishing activities on sanctuary resources

FA.4 – Develop policy recommendations or management action(s) to address impacts from fishing activities on sanctuary resources

FA.5 – Develop public awareness about the value and importance of the historical and cultural significance of maritime communities and their relationship and reliance on healthy sanctuary waters

FA.6 – Establish consistent and coordinated region-wide sanctuary representation at the Pacific Fishery Management Council and Fish and Game Commission meetings

FA.7 – Work with Cordell Bank and Monterey Bay national marine sanctuaries and the PFMC on developing a recommendation to address impacts on marine ecosystems in and around sanctuary waters from krill harvesting

Impacts from Vessel Spills Action Plan

VS.1 – Expand Monterey Bay National Marine Sanctuary (MBNMS) drift analysis model to include Point Arena and Mendocino.

VS.2 – Refine oceanographic data used in existing spill and drift model to increase accuracy of risk assessments

VS.3 – Evaluate vessel activities in GFNMS as a first step to assessing the risk of spills in the sanctuary

VS.4 – Evaluate recent vessel routing changes related to MBNMS vessel traffic study

VS.5 – Track distribution and numbers of species of concern and habitats in relation to probable spill trajectories

VS.6 – Participate on Regional Response Team to address risks to sanctuary resources

VS.7 – Revise GFNMS in-house emergency response plan

VS.8 – Continue to improve integration of GFNMS Beach Watch and Ecosystem Dynamic Study (EDS) data into Area Contingency Plan

VS.9 – Conduct outreach to mariners to increase stewardship of the sanctuary, including voluntary compliance with Vessel Traffic System (VTS) and sanctuary regulations

VS.10 – Increase regular communication between GFNMS and maritime trade industry

VS.11 – Select a sanctuary representative to participate in regional forums for addressing vessel traffic issues

VS.12 – Create a standing vessel spills working group to advise the sanctuary on implementation of proposed action plans

Education and Outreach Action Plan

ED.1 – Educate K-8 students about the sanctuary through visitor center, classroom, and field activities

ED.2 – Educate high school students and teachers about the sanctuary through classroom and field activities

ED.3 – Educate culturally diverse inner city children about the sanctuary through summer camp experiences

ED.4 – Educate teachers about the resources and programs of the sanctuary by providing professional development programs

ED.5 – Provide stewardship opportunities for high school students

ED.6 – Create stewards of the GFNMS by engaging middle and high school students in a large-scale, long-term monitoring project

ED.7 – Expand the reach of GFNMS education and outreach programs by expanding Sanctuary Naturalist Corps program to deploy trained volunteers to educate about the sanctuary at various events and locations

ED.8 – Increase awareness and knowledge of the sanctuary through a lecture series

ED.9 – Increase awareness and build knowledge of the sanctuary through educational programs and exhibits at the visitor center

ED.10 – Increase awareness of the sanctuary and reach a large audience through production and distribution of videos on the sanctuary and its resources

ED.11 – Increase awareness of GFNMS by using effective media and marketing techniques

ED.12 – Increase audience by building a larger visitor center with increased exhibits, programs, and opportunities to learn about and support GFNMS

ED.13 – Increase awareness of the sanctuary through interpretive signage and exhibits at strategic locations

ED.14 – Outreach to residents and visitors in inland areas of the GFNMS watersheds and educate them about their connection with the sanctuary

Conservation Science Action Plan

CS.1 – Build upon and expand existing ocean and coastal outreach

CS.2 – Enhance and coordinate ocean and coastal education

CS.3 – Enhance ocean and coastal stewardship

Resource Protection Action Plan

RP.1 – Establish a framework for identifying, tracking, and addressing emerging issues on a timely basis

RP.2 – Develop a coordinated communication system among all national marine sanctuaries and other resource management agencies to stay informed about new and emerging issues, share information, and provide a forum for exchange and policy discussion

RP.3 – As GFNMS' priorities shift, due to both availability of resources and priority of resource management issues, all current, new, and emerging issues need to be continually tracked and re-evaluated

RP.4 – GFNMS will develop a formalized program to consistently and continuously review and evaluate effectiveness of sanctuary regulations

RP.5 – Develop a formalized permit program as a mechanism to review requests to conduct prohibited activities within the sanctuary, and where possible permit these activities to be conducted in such a way to have negligible effects

RP.6 – Strive to increase resource protection through compliance with sanctuary regulations and other applicable state and federal statutes

RP.7 – Review and revise the sanctuary's emergency response plan in order to be prepared to respond to an incident

RP.8 – Formalize plan to respond to incidents that damage sanctuary resources and qualities

RP.9 – Develop a framework for identifying and analyzing boundary alternatives

RP.10 – Continue to culture partnerships and leverage opportunities for protecting sanctuary resources

RP.11 – Evaluate condition of, and actual impacts on sanctuary resources and qualities from the Farallon Islands radioactive waste dump

RP.12 – In cooperation and coordination with the other nine local, state and federal agencies, develop a comprehensive plan to ensure the protection of water quality, natural resources and safety in Tomales Bay

Administration Action Plan

AD.1 – New sanctuary facilities will be developed through various partnerships with both the public and private sector

AD.2 – The primary focus of GFNMS is marine resource protection. Basic staffing requirements must provide support for administration and the program areas of conservation science, education/outreach, and resource management

AD.3 – With limited staff and financial resources, GFNMS will develop partnerships and identify outside funding sources and in-kind services to assist in the implementation of the management plan

AD.4 – As the sanctuary advisory council matures and develops a strong voice within the community, its role in resource management should be more clearly defined. With experience, the sanctuary advisory council will develop, and can draw on, a historical framework for ongoing community-based decision making as they assume a leading role in providing advice to the sanctuary superintendent

AD.5 – NOAA and GFNMS recognize all other authorities in and around sanctuary waters as important components of effective ecosystem protection. Therefore, GFNMS' regulations complement or supplement, but do not replace, existing authorities. To ensure coordination and cooperation with federal, state, and local jurisdictions within or adjacent to the sanctuary, GFNMS seeks to formalize intra- and interagency efforts

AD.6 – Develop and make use of performance indicators to measure effectiveness of the management of the sanctuary as a whole, as well as to evaluate specific strategies within the management plan

Cross-cutting Action Plans

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

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

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

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 conditionally concur with consistency determination CD-010-07 that the project described therein, if modified in accordance with the conditions below, would be fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).**

RESOLUTION TO CONDITIONALLY CONCUR WITH CONSISTENCY DETERMINATION:

The Commission hereby conditionally concurs with the consistency determination CD-010-07 by NOAA on the grounds that, if modified as described in the Commission’s conditional concurrence, the project would be consistent with the enforceable policies of the CCMP, provided that NOAA satisfies the condition specified below pursuant to 15 CFR §930.4.

Conditions:

- 1. Release of Invasive Species.** NOAA will revise GFNMS regulations to include proposed language advanced in the project EIS to prohibit releasing or otherwise introducing from within or into the Sanctuary: (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; other than striped bass released during catch and release fishing activity and species cultivated by mariculture activities in Tomales Bay pursuant to valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of the final regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species.

III. APPLICABLE LEGAL AUTHORITIES.

Section 307 of the Coastal Zone Management Act (CZMA) provides in part:

(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

A. Conditional Concurrences. 15 CFR § 930.4 provides, in part, that:

(a) Federal agencies, ... agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under Subpart C ... would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart...

(2) The Federal agency (for Subpart C) ... shall modify the applicable plan [or] project proposal ... pursuant to the State agency's conditions. The Federal agency ... shall immediately notify the State agency if the State agency's conditions are not acceptable; and ...

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

15 CFR § 930.34 (d) and (e) elaborate, providing that:

(d) ... At the end of the ... [statutory time] period the Federal agency shall not proceed with the activity over a State agency's objection unless: (1) the Federal agency has concluded that under the "consistent to the maximum extent practicable" standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§930.32(a) and 930.39(a)), or (2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State

agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

B. Consistent to the Maximum Extent Practicable. Section 930.32 of the federal consistency regulations provides, in part, that:

(a)(1) The term “consistent to the maximum extent practicable” means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

The Commission recognizes that the standard for approval of Federal projects is that the activity must be “consistent to the maximum extent practicable” (Coastal Zone Management Act Section 307(c)(1)). This standard allows a federal activity that is not fully consistent with the CCMP to proceed, if compliance with the CCMP is “*prohibited [by] existing Federal law applicable to the Federal agency's operations*” (15 C.F.R. § 930.32). NOAA did not provide any documentation to support a maximum extent practicable argument in its consistency determination. Therefore, there is no basis to conclude that existing law applicable to the Federal agency prohibits full consistency.

IV. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

A. Sanctuary Resources. Located in the waters west of San Francisco, the GFNMS provides many examples of the marine life and habitats characteristic of cold temperate waters of the eastern Pacific marine region that extends from Point Conception to British Columbia. Most of the Sanctuary lies in the Gulf of the Farallones between the western edge of the continental shelf and the coast of Marin and Sonoma counties.

As noted by NOAA in the project EIS, some of the largest and most diverse eastern Pacific populations of seabirds and pinnipeds south of Alaska occur in the Gulf. Large populations of Cassin’s auklets, common murre, western gulls, and the endangered brown pelican feed on the small fish and crustaceans that are abundant in the surface waters of the Sanctuary. This food source also supports California’s largest breeding population of harbor seals, as well as a growing population of northern elephant seals. Large numbers of whales and dolphins, including the California gray whale, the Pacific humpback whale and the blue whale are found in the area. Around the Farallon Islands is one of the world’s largest seasonal congregations of great white sharks as well. There are also many significant nearshore habitats represented within the Sanctuary, such as the inland reaching Estero Americano and Estero de San Antonio, the extensive wetlands of Tomales Bay and Bolinas Lagoon and the large intertidal and subtidal reef at Duxbury Reef. The Sanctuary and its surrounding waters also have supported large commercial fisheries, including a large percentage of the San Francisco fleet. Sport fishing also generates revenue for the party boat fleets operating out of San Francisco Bay, Half Moon Bay, and Bodega Bay. Whale watching and offshore excursions are other uses of the Sanctuary that

have grown in popularity and the Sanctuary also contains some of the West Coast's busiest shipping lanes.

NOAA goes on to note that "the Farallon Islands support the largest concentration of breeding seabirds in the contiguous US" and that "eleven of the sixteen species of seabirds known to breed in along the US Pacific Coast have breeding colonies on the Farallon Islands and feed in the Sanctuary." Furthermore, the Sanctuary includes a bay and a lagoon as well as four separate estuaries which provide foraging habitat for thousands of migrating and wintering birds as well as a large variety of resident shorebirds and waterfowl.

The Sanctuary supports at least 36 species of marine mammals, including six species of pinnipeds (seals and sea lions), 28 species of cetaceans (whales, dolphins and porpoises) and two species of otter that occur in large concentrations and depend on the Sanctuary's productive and secluded habitats for breeding, pupping, hauling out, feeding, and resting during migration. Additionally, at least 25 species of threatened or endangered species have been recorded within GFNMS.

These diverse and protected habitats also contribute to abundant fish resources throughout the Sanctuary. The wide continental shelf and configuration of the coastline within the Sanctuary are vital to the health and existence of salmon, northern anchovy, rockfish, flatfish and pelagic species and the Sanctuary's numerous bays, inlets and estuaries and the salt marshes and eelgrass beds found within them provide abundant feeding, spawning and nursery areas and enhance the overall productivity of the region's fisheries.

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 Gulf of the Farallones 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 GFNMS describes ten new or revised regulations that may potentially yield direct or indirect benefits to water quality and/or marine resources, as follows:

Discharges from Outside the Sanctuary – *GFNMS is proposing a prohibition on discharges from outside the Sanctuary that enter and injure Sanctuary resources. This prohibition provides a mechanism for the Sanctuary to address potentially harmful sources of pollution such as gas, oil, sewage, and other hazardous and toxic wastes that originate outside the Sanctuary, but could enter and injure Sanctuary resources. Potential upland sources of pollution include municipal wastewater outfalls, industrial outfalls, surface runoff (nonpoint source pollution), and oil and hazardous materials spills. Some examples of marine based sources of pollution include discharges from transiting and wrecked ships, and underwater pipelines). This regulation would have direct beneficial impacts on biological resources, by minimizing or reducing the likelihood of potentially harmful or toxic spills or discharges that could kill, injure or impair birds, marine mammals, sea turtles, fish and other Sanctuary resources.*

Deserted Vessels – *Prohibiting marine vessel owners from deserting vessels and from leaving harmful materials on deserted vessels is expected to have direct and indirect beneficial impacts on biological resources. When a vessel is deserted, the likelihood of a vessel going aground increases, as does the risk of sinking or spilling its contents, including fuel, oil, or any other harmful materials left on board (such as fishing gear, nets, cargo, etc.). These events could result in discharge of harmful toxins, chemicals, or oils into the marine environment, any of which would reduce the quality of the habitat both directly (through introduction of noxious materials) and indirectly (through reduction in available prey or other resources). The proposed requirement would provide greater protection of habitats, the ecosystem, and a wide range of organisms in the Sanctuary, because the possibility of incurring a NMSA civil penalty would be an incentive for owners to remove the vessel before it breaks apart, sinks, or spills its contents. This would help reduce the risk of discharges of harmful matter into surrounding waters. Therefore, the Proposed Action would have direct and indirect benefits on biological resources. Preventing vessel owners from allowing their vessels to become threats to the marine environment prevents harm to biological resources.*

White Shark Attraction and Approaching – *The proposed regulation would define “attracting,” which is an important step to clarifying which actions are legal or illegal in relation to interacting with the sharks. The proposed regulation would prohibit all white shark attraction activities within the Sanctuary and prohibit approaching within 50 meters (164 feet) of any sharks within 2 nm (2.3 miles; 3.7 km) of the Farallon Islands. This would greatly increase the protection of the white sharks known to make an annual migration to the Farallon Islands to feed and would prevent disturbances and/or alterations in their natural behaviors, including feeding, breeding, aggregating, and*

migrating. Elsewhere in GFNMS (outside of the 2 nm [2.3 miles, 3.7 km] radius around the Farallon Islands), the prohibition regarding “approaching” would not apply.

This regulation is expected to have a beneficial impact on this species since it would curtail existing attraction activities that may interfere or disrupt undisturbed shark behavior patterns, such as breeding, feeding, resting and socializing. This regulation would also reduce conflicts between shark researchers and shark wildlife viewing operators. Multiple pleasure boats and ecotour operators travel to the southeast Farallon Islands mainly from September through November to give paying participants a chance to view these animals. Some deploy surfboards to elicit strike/attack responses from the resident and potentially sensitive populations of white sharks located between Mirounga Bay and Fisherman’s Cove at the southeast Farallon Islands (Absolute Adventures 2003). Some of these groups engage in chumming with fish parts or oil (Absolute Adventures 2003).

To date, human harassment and disturbance of white sharks has resulted mainly from dive-with shark programs and scientific researchers studying the sharks. Scientific researchers have long been studying white sharks off the Farallon Islands. When researchers need to get close to a shark to sample its blood or attach an instrument, they will use fish bait, chum, blood or even towed surfboards to attract sharks. While this activity certainly changes the behavior of the sharks, the knowledge that scientists gain significantly contributes to our understanding of white sharks and their role in the ecosystem at the Farallon Islands. Dive-with-shark operators use similar methods to attract sharks to provide their customers with a guaranteed “encounter” with a white shark. Ultimately, attracting white sharks alters their natural behavior and may distract them from conducting other activities, such as feeding or breeding.

Regulating attracting activities is especially important to the shark’s critical feeding behaviors, as interrupting the foraging of an individual can cause a series of problems related to their success both in terms of survival and reproduction. Indirectly, other human impacts associated with close proximity, such as sound, light, and humans in the water, may also alter a shark’s behavior. Implementing these regulations will help resolve user conflicts (such as current controversies involving shark researcher studies versus encounters related to adventure tourism) and will prevent intervention with the feeding behavior of white sharks. The additional protections for white sharks provided by the shark attraction and approach regulation will have a direct beneficial impact on this species and may have indirect beneficial impacts on other biological resources in which the white shark plays a key predator role by maintaining the health of the overall ecosystem. Further beneficial impacts are expected from the 50-meter (164-foot) approach prohibition around the Farallon Islands, where white sharks are known to occur with seasonal frequency. By not attracting a top food chain predator, the possibility of sharks habituating to human activities would be reduced or eliminated. For reasons described above, reducing human interaction and preventing chumming would increase the likelihood that a shark would go about its natural feeding and daily

activities and would prevent any unnatural dependency on a commercial recreational situation. This would result in a beneficial impact on biological resources.

Wildlife Disturbance – *The proposed wildlife disturbance regulatory language for GFNMS is the same as that described above for CBNMS. As with CBNMS, there is no regulatory language regarding wildlife disturbance in GFNMS, though there are federal regulations that address wildlife disturbance. Implementing regulations in GFNMS relevant to control and disturbance of wildlife (marine mammals, sea turtles, and birds) would have a beneficial impact on biological resources. GFNMS provides indispensable valuable habitat for many biological resources, especially seabirds and marine mammals. GFNMS is a significant area for many protected species, providing foraging, breeding, and other habitat for aquatic and migratory birds. There are also thirty-six species of marine mammals, including pinnipeds, whales, dolphins, porpoises, and otters. Adding this language to GFNMS regulations would benefit biological resources due to the greater protections provided by the regulation for marine mammals, sea turtles, and birds.*

Oil and Gas Pipeline Regulation Clarification – *The proposed regulation would modify the existing oil and gas regulation by limiting pipelines going through the Sanctuary to those associated with hydrocarbon operations outside but directly adjacent to the Sanctuary. The clarification does not limit exploration outside the Sanctuary, however, it does limit oil and gas pipelines within the Sanctuary to only those where there is an adjacent oil and gas development site and there is a geographic requirement to cross the Sanctuary. This regulation would have direct minor beneficial impacts on biological resources. While no such oil and gas pipelines exist in GFNMS—in fact a moratorium is in place on oil and gas development in federal waters outside the Sanctuary, as well as within the Sanctuary—this regulation would eliminate the potential for new oil and gas pipelines crossing the Sanctuary unless there is a hydrocarbon operation on a lease adjacent to the sanctuary. Reducing the potential for pipelines to cross the Sanctuary would reduce impacts on benthic habitats from the physical damage caused by installing the pipe and would reduce the risk of potential oil spills from a pipeline leak or rupture. This reduced risk of oil spills would be beneficial for all marine and coastal biological resources.*

Anchoring in Seagrass Protection Zones – *Prohibiting vessels from anchoring in designated seagrass protection zones would result in both direct and indirect beneficial impacts on biological resources...*

Seagrass are commonly found in tidal and upper subtidal zones and are located throughout the GFNMS in estuaries, bays and lagoons, such as Tomales Bay and Bolinas Lagoon. Seagrass beds serve as nurseries for fish and invertebrates and provide important foraging habitat for migratory birds and shorebird species. Seagrass also serve as buffer zones in protecting coastal erosion and are a filter for pollutants. Seagrasses are particularly important in the sustainability of commercial and

recreational fisheries, primarily because of their roles in maintaining sediment stability and water quality, and in providing shelter and food critical to the survival of a variety of aquatic biota. In Tomales Bay, eelgrass provides a substrate for Pacific herring to attach their eggs and spawn. This annual event supports other wildlife and a small commercial fishery. Seagrasses also produce a large amount of organic material, which enters the estuarine food chain. Many species of juvenile fish and crustaceans use seagrasses as nursery areas before moving to other ocean or coastal habitats. Because of their particular importance as shelter and habitat to the juvenile life history stages of marine fish and crustaceans, seagrass are sometimes referred to as the “nurseries of the sea.”

...

Both recreational vessels (sailboats, pleasure boats, recreational fishing boats) and commercial vessels (commercial fishing or vessels used in mariculture operations) regularly anchor throughout Tomales Bay. Vessel anchors cast into seagrass beds can damage individual seagrass plants and disturb the substrate onto which the seagrass grows. Pulling an anchor can also suspend sediments in the water column, which reduces the amount of light available to the plants and may interfere with filter feeding organisms. By prohibiting vessel anchoring in designated zones in Tomales Bay, the seagrass in these areas would be protected from the physical disturbance caused by the vessel’s anchor or dragging the anchor on the bottom. It would also help prevent sediments from being suspended into the water column. By maintaining healthy seagrass areas, this valuable habitat and the sensitive species it supports would be benefited as well.

This beneficial effect would occur only in the designated zones in Tomales Bay and not other areas of the Sanctuary, such as Bolinas Lagoon where seagrass may also be present. Although the seven zones encompass most of the seagrass beds in Tomales Bay, there are some small areas located near marinas and day-use recreational areas that were not included in the no-anchoring zone since they are high use areas and displacement of vessels near these areas is not practicable.

The Commission agrees with the analysis provided by NOAA in the project EIS with regard to the increased clarity of prohibitions and enhanced water quality and marine resource protection enabled by the proposed regulatory amendments and additions described above as well as the habitat and species conservation benefits provided by these regulations.

The following cross-cutting regulations would apply to Cordell Bank, Gulf of the Farallones and Monterey Bay National Marine Sanctuaries:

Introduced Species – As noted by NOAA in the project EIS:

Introduced species (also known as nonnative or exotic species) are present in the marine and estuarine environment and are a major environmental threat to living resources and habitats of all three sanctuaries. Introduced species alter species composition, threaten the abundance and diversity of native marine species (especially threatened and

endangered species), and interfere with the ecosystem's function. They may cause local extinction of native species either by preying on them directly or by out-competing them for prey. For example, the European green crab, now found in Elkhorn Slough, Tomales Bay, Bodega Bay, Bolinas Lagoon, Estero de San Antonio, and Estero Americano, preys on the young of valuable species (such as oysters and Dungeness crab) and competes with them for prey and suitable habitats. Introduced species may cause changes in physical habitat structure.

Once established, introduced species can be extremely difficult to control or to eradicate. Hundreds of federal programs, state organizations, international organizations and non-profit organizations have established databases, community outreach, monitoring, eradication, research and education programs...

Implementing regulations to reduce the number of introduced species entering the sanctuaries 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 some nonnative species in its waters. The proposed management measures would prohibit the release of introduced species into the sanctuary...

As a result of the proposed regulation prohibiting introduced species in the sanctuary ...there would be beneficial impacts on biological resources, including maintaining the natural habitats, species diversity, and ecosystem balance in the sanctuaries. Additional beneficial effects would include disease prevention and maintenance of native species genetic makeup.

In addition to these statements regarding the beneficial effects anticipated by NOAA as a result of this proposed regulation, NOAA has also disclosed that, as stated in the NMSP letter of 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 Sanctuary Act or the designation of these sanctuaries nor is it healthy for these native ecosystems.

The Commission concurs with NOAA's conclusions above regarding invasive species and the threat posed to native species, habitats and ecosystems from these exotic organisms. Currently within California, massive expenditures of time, money and energy are directed towards limiting the spread of established invasive marine species such as *Caulerpa taxifolia*, green crab, mitten crab and seaweed of the genus *Undaria*; preventing further species releases; and continuing the monitoring, education and eradication efforts of dedicated staff at agencies and organizations including the California Department of Fish and Game's Office of Spill Prevention and Response and the California State Lands Commission's Ballast Water Program. In addition, recent passage of legislation (SB 497 in 2006) has reaffirmed the importance and necessity of the State of California's Marine Invasive Species Program and suggested that the efforts to protect

California's native marine populations from the pressures of resource competition and displacement caused by exotic invasive species are far from over. Accordingly, the Commission welcomes the foresight that the National Marine Sanctuary Program has demonstrated in addressing an obvious regulatory gap by proposing a comprehensive regulation directed toward prohibiting the release of additional introduced species within the unique and vital marine ecosystems under NMSP stewardship in the Gulf of the Farallones National Marine Sanctuary.

Despite NOAA's dedication to invasive species regulation and the well recognized need for protection against the establishment and spread of invasive species, the NMSP letter of July 16, 2007, substantially changed the invasive species regulatory language that was proposed, analyzed and advanced in the project EIS and weakened the ability of this regulation to prevent the release of introduced species within both state and federal waters. Specifically, this letter clarifies that the new proposed regulation (included in the letter and underlined below) should be considered by the Commission to replace the introduced species regulation included in the project EIS and states that:

After extensive discussions with senior staff from the California Resources Agency and the California Department of Fish and Game... For the Gulf of the Farallones National Marine Sanctuary (GFNMS), NMSP staff will change the proposal to allow for a full buildout of existing introduced species aquaculture projects in Tomales Bay, provided no new introduced species are farmed. [underline added for emphasis and clarity]

This stance represents a departure from the more expansive and protective regulation proposed, considered and advanced in the project EIS which would prohibit:

*introducing or otherwise releasing from within or into the Sanctuary an introduced species⁸, except: (A) striped bass (*Morone saxatilis*) released during catch and release fishing activity; and (B) species cultivated by mariculture activities in Tomales Bay pursuant to valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of the final regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species.*

Although seemingly minor, the change to the proposed GFNMS introduced species prohibition advanced by NMSP in the July 16, 2007, letter has the potential to substantially increase the numbers and locations of introduced species that are released into the Sanctuary's waters by enabling "full buildout of existing introduced species aquaculture projects in Tomales Bay." Although it is uncertain at this time what the precise quantitative implications of "full buildout" would be, it could result in increased aquaculture cultivation acreage in the Sanctuary and the potential release of substantially more introduced mussels, clams, scallops and oysters within the

⁸ NOAA has defined "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.

Sanctuary (under this proposed regulation, the types of introduced species would be limited to those exotic species currently in production in Tomales Bay, however). Although Tomales Bay has sustained introduced species aquaculture operations for many decades, maintaining as many as eleven introduced species in production including non-native Pacific oysters, rock scallops, bay mussels and Manila clams, these operations have remained small in scale over the years. Currently, six companies maintain leases on approximately 513 acres of state bottomlands in Tomales Bay, representing about six percent of the bay's overall area. As allowed under the proposed regulation, the amount of lease area dedicated to shellfish aquaculture would potentially be allowed to expand to include a greater portion of Tomales Bay and large numbers of additional introduced organisms would be allowed to be placed within these areas. This regulation would have the potential consequence of adversely affecting the sustainability of historic aquaculture operations and increasing the effects of these operations on the native populations and habitats found within the bay. Therefore, in the interest of sustaining the productivity, health and vitality of the Sanctuary's marine ecosystems and resources, the Commission finds that as proposed, the introduced species regulation that would allow for "full buildout" of Tomales Bay's introduced species aquaculture facilities is inconsistent with the marine resource protection provisions of the California Coastal Management Program (Sections 30230 and 30231 of the Coastal Act). To resolve this inconsistency, the Commission is adopting a condition which would specify that NOAA abandon the proposed introduced species regulation and adopt the alternate introduced species regulation described, analyzed and advanced in the project EIS. This condition **would not** prohibit or limit current introduced species aquaculture activities within Tomales Bay in any way. As stated in the project EIS:

The proposed regulation is not expected to negatively impact existing mariculture operations in the ROI [region of influence – GFNMS]. The only mariculture operations within the boundaries of the 3 sanctuaries are twelve existing mariculture lease holders in Tomales Bay. The exception to the introduced species prohibition would grandfather in these current State of California lease agreements that are in effect on the effective date of the final regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species. However, any new lease agreements executed after this date would be subject to this prohibition. Operations conducted under new lease agreements could cultivate native species but would be subject to the prohibition regarding introduced species. NOAA is not aware of any pending lease applications for future mariculture operations in Tomales Bay.

If modified as conditioned to protect the Sanctuary's marine resources from the adverse affects of additional introduced species, the Commission finds that the prohibition on introduced species within the Gulf of the Farallones National Marine Sanctuary would be consistent with the marine resource and water quality policies of the CCMP (Coastal Act Sections 30230 and 30231).

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 capacity, 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.

As described in the analysis of a similar discharge regulation for the Cordell Bank National Marine Sanctuary, the discharge of liquid wastes from vessels in the GFNMS 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 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 GFNMS 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 GFNMS 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 24 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).

Conclusion - The Commission finds that, as conditioned, the above 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 the goals and objectives of the Sanctuary. If modified as conditioned, the Commission therefore agrees with NOAA that the regulatory additions and revisions described above are 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 prohibit attracting and approaching white sharks, potentially harmful discharges, deserted vessels, anchoring in eelgrass beds, and releasing introduced species 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:

White Shark Attraction and Approaching – The proposed regulation would prohibit attracting any white shark in the Sanctuary, and approaching any white shark within 2 nm of the Farallon Islands. This proposed change is geared towards eliminating potential impacts from commercial shark viewing enterprises and is not intended to affect commercial fishing activities. There would be a slight potential for adverse effects on commercial fishing if chumming activities associated with fishing resulted in the accidental attraction of white sharks.

Discharges from Outside the Sanctuary – This proposed change would have minor beneficial impacts on fish species populations and their respective commercial and recreational fisheries from a decrease in pollution entering and impacting sanctuary resources, including fish. There may be some instances when fishing vessels may need to store non-biodegradable wastes and dispose of on them onshore or further from the

sanctuary, if they could enter the sanctuary and cause injury to sanctuary resources. However, these requirements would have minimal impacts to the fishing industry. Overall, the improvements in water quality and associated benefits to fisheries would have minor beneficial impacts to fisheries.

Deserted Vessels – *This regulation may have some minor adverse impacts on the commercial fishing industry, as it would place an additional economic burden on vessel owners to ensure that a capsized or otherwise incapacitated vessel be salvaged and not abandoned and to ensure that any hazardous substances are removed from an abandoned vessel. However, the intent of this regulation is to ensure that vessel owners take responsibility for their vessels before additional damage can be done to Sanctuary resources. It is far less expensive to a vessel owner to salvage their incapacitated vessel than to pay fines, fees, costs associated with response, damage assessment, and restoration activities should the vessel ground on shore and cause damage to Sanctuary resources. While this may be an immediate burden for the vessel owner, the overall risk of an individual boat being abandoned is relatively small, and the impact on the commercial fishing industry as a whole is considered minor. Reducing the risks of hazards posed by abandoned vessels would have beneficial effects on fisheries and fishing operations and activities.*

No-Anchoring Seagrass Protection Zones – *Seagrasses are particularly important in the sustainability of commercial and recreational fisheries because of their roles in maintaining sediment stability and water quality, and in providing shelter and food critical to their survival. Many species of juvenile fish and crustaceans use seagrasses as nursery areas before moving to other habitats. Seagrass provides spawning substrate for herring, which hosts a commercial fishery that has an annual spawning biomass average of 3,887 tons (average is based on seasons since the fishery re-opened in 1992). It is also estimated that about 18 percent of the commercial fish and shellfish harvested in California are dependent on estuaries and the wetlands. In 1990, the total value of California wetlands to commercial fisheries production was more than \$90 million (Allen et al. 1992). Therefore, protection of this habitat in the designated zones from physical damage caused by anchoring would provide long-term beneficial effects to commercial fish species that use seagrass beds during a portion of their life cycle.*

Commercial fishing operations are extremely limited in shallow areas where seagrass is present. The Pacific herring fishery is the only fishery that focuses its operations near or occasionally in seagrass habitat in Tomales Bay. In late fall, adult herring gradually enter the bay, and build up into large aggregations for several weeks before spawning in seagrass; later spawning adults move into the Bay just before they spawn. The commercial fishery targets female herring for their eggs, which is used in the Asian and American sushi market. Currently the State of California issues 34 limited entry commercial herring gillnet permits in Tomales Bay, which in 2005 had a quota of 400 tons (California Department of Fish and Game, 2006). Fishermen deploy gillnets usually in the channels near seagrass beds when the fish are in the Bay; occasionally they will

deploy them in seagrass beds. Gillnets may be anchored to the bottom to keep them from moving with the tide. After a period of time, the fishermen will go over to the net in their vessel, reel in the net, and pick out the caught fish. The proposed prohibition would apply only to the physical act of anchoring a vessel and would not prohibit commercial fishing activities related to the gillnet fishery. While fishermen may anchor their vessel while waiting to retrieve a net, they could conduct this activity in the remaining 78% of the bay that is not included in the no-anchoring zone. They are not required to anchor their vessel to actually engage in the fishery (Mello, 2006). Therefore, the proposed prohibition against anchoring in seagrass would have a negligible adverse effect on the commercial herring fishing.

The only other commercial fishery-related operations in shallow water areas that may include seagrass habitat is mariculture. There are twelve existing mariculture lease holders in Tomales Bay. As part of their operations, it may be required not only to anchor the cages to the seafloor, but also to anchor a vessel when conducting work to seed, maintain, and harvest the shellfish. The proposed regulation to prohibit anchoring a vessel in designated seagrass protection zones specifically exempts existing mariculture operations conducted pursuant to a valid lease, permit, or license. As such, the proposed regulation is not expected to negatively impact existing mariculture operations in the ROI. Overall, this prohibition would result in a net beneficial effect on commercial fishing since it would improve habitats that support many fish species, and not impact existing fishery operations.

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.*

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

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.

The Commission agrees with NOAA's analysis of this regulation, as conditioned, and its potential to affect commercial fishing operations within the GFNMS.

Wildlife Disturbance - 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 GFNMS. Because the Sanctuary would not need to authorize take under a GFNMS permit for activities permitted pursuant to the MMPA, ESA, or MBTA, this regulation would not impact 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. 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.

Conclusion - 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, as conditioned, 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 its EIS:

Deserted Vessels – *Prohibiting marine vessel owners from deserting vessels and from leaving harmful matter aboard grounded or deserted vessels could indirectly be a beneficial impact on recreational resources. When a vessel is left unattended, there is a potential risk of discharge of harmful matter (e.g., fuel or motor oil) into the marine environment or risk of physically damaging habitats, impairing a majority of the recreational activities in the Sanctuary, including fishing, surfing, diving and swimming. Therefore, this regulatory change would result in a beneficial impact on recreational resources, by reducing the potential for harmful discharges that could affect recreation resources.*

No-Anchoring Seagrass Protection Zones – *Minor adverse impacts on recreational boating in general may occur as a result of the proposed prohibition on anchoring a vessel in a designated seagrass protection zones in Tomales Bay, except as necessary for*

mariculture operations conducted pursuant to a valid lease, permit, or license. The total estimated size of the no-anchor seagrass protection zones affected by this regulation is approximately 654 hectares, which comprises approximately 22% of Tomales Bay. The zones were designed so that they do not include areas adjacent to marinas or other recreational day use areas where boaters are known to anchor.

Tomales Bay is a popular recreational area. Recreational boaters include small sailboats, pleasure craft, and recreational fishing vessels. Recreational fishing includes clamming on mudflats, California halibut and salmon fishing in deeper areas of the bay, and crab trapping. Recreational fishermen generally do not target their activity within seagrass, since that is not the primary habitat areas where salmon or halibut are located. Boaters, including recreational fishermen, generally avoid shallow areas of the Bay (which includes seagrass habitat) to avoid grounding, unless they are trying to “store” or anchor their vessels overnight or for longer periods. Due to the tidal extremes and the shallow depths along the shoreline, vessels may be completely exposed during low tide and rest directly on the seabed (or in seagrass). The NMSP estimates, through aerial surveys conducted during summer, that between 5 and 50 recreational vessels use Tomales Bay on any given day. Fewer vessels use the bay in the winter months.

The proposed regulation would allow vessel operators to continue to sail, boat, fish or transit the Bay, and even anchor adjacent to marinas (since these areas are not included in the zones). Though the regulation would prohibit operators from anchoring a vessel in a designated seagrass protection zone, they could still anchor in the remaining 78% of the Sanctuary. Because this regulation does not limit actual vessel use, and provides alternatives for anchoring a vessel outside of designated zones, the adverse impacts on the public access and recreation would be less than significant.

White Shark Attraction and Approaching – *The Farallon Islands are among the best places in the United States to see white sharks because they feed upon the young elephant seal, harbor seal, and California sea lion pups. The Proposed Action would prohibit white shark attraction activities throughout the Sanctuary and prohibit white shark approaching activities from within 164 feet (50 meters) of any white shark within 2 nm (2.3 miles; 3.7 km) of the Farallon Islands (where the white sharks are most prevalent during feeding). The proposed regulation does not prevent any user, vessel or business from conducting shark viewing activities, however, it may reduce a company’s ability to predictably “attract” white sharks to their boat and offer a close encounter with the sharks. As such, this may reduce the number of people participating in this recreational activity.*

This regulation would create an adverse impact on those specific recreational activities that use decoys and chumming to feed and attract sharks for white shark viewing (e.g., photography, filming, and cage diving). Most of this unregulated seasonal activity (September-November) in GFNMS is directed at white shark populations located between Mirounga Bay and Fisherman’s Cove in the Southeast Farallon Islands (Absolute

Adventures-Shark Diver 2003). As described in the Affected Environment, up to eight shark-related individual or ecotourism groups have operated at the Farallones in the past, but currently only two companies are known to conduct operations. During the white shark season in fall 2005, the commercial companies conducting white shark dive trips at the Farallon Islands planned on offering a combined total of at least 71 full-day trips (NOAA 2005c).

Noninvasive shark viewing would continue to be permitted within the 2 nm (2.3 miles; 3.7 km) boundary around the islands, and approaching would continue to be permitted elsewhere in the Sanctuary. Vessels would be allowed to observe natural white shark feeding behavior. Furthermore, some shark approach activities that have a legitimate research or education value (e.g., educational filming or white shark behavior studies) could be allowed through the issuance of a sanctuary permit. Therefore, this prohibition would result in a less than significant adverse impact on recreation.

Beneficial effects on other recreational activities may result from the proposed prohibition. By not attracting a top food chain predator, the possibility of sharks habituating to human activities would be reduced or eliminated. This may prove beneficial for other nearby in-water human users, such as surfers, kayakers, divers, and swimmers.

Oil and Gas Pipeline Clarification – *The proposed change in regulations regarding the placement of oil and gas pipelines in GFMMS would have slight positive effects on recreational activities. Since pipelines would be permitted only for oil and gas operations that are adjacent to the Sanctuary, rather than oil and gas operations anywhere outside of the Sanctuary, the potential for future pipeline development would be more limited. Such limited pipeline construction would reduce the likelihood of any pipeline failure and spill. Therefore, the management measure would be a slightly beneficial impact on recreation by protecting water quality and health of marine wildlife that is the focus of several recreational activities, such as fishing and wildlife watching. However, there are no current oil and gas operations in the area and none planned in the near future.*

Historical and Cultural Resources – *Amending the administrative language regarding historical and cultural resources would have a minor positive impact on recreational resources within the Sanctuary. These cultural and historical resources will be protected and left in the Sanctuary for others to enjoy or even dive on.*

Regarding the effects that NOAA's proposed new and clarified cross-cutting regulations on the discharge of materials from vessels within the Sanctuary, disturbance to wildlife and the conditioned prohibition on releasing additional introduced species within the Sanctuary, NOAA states:

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 GFNMS 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.*

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 in 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.*

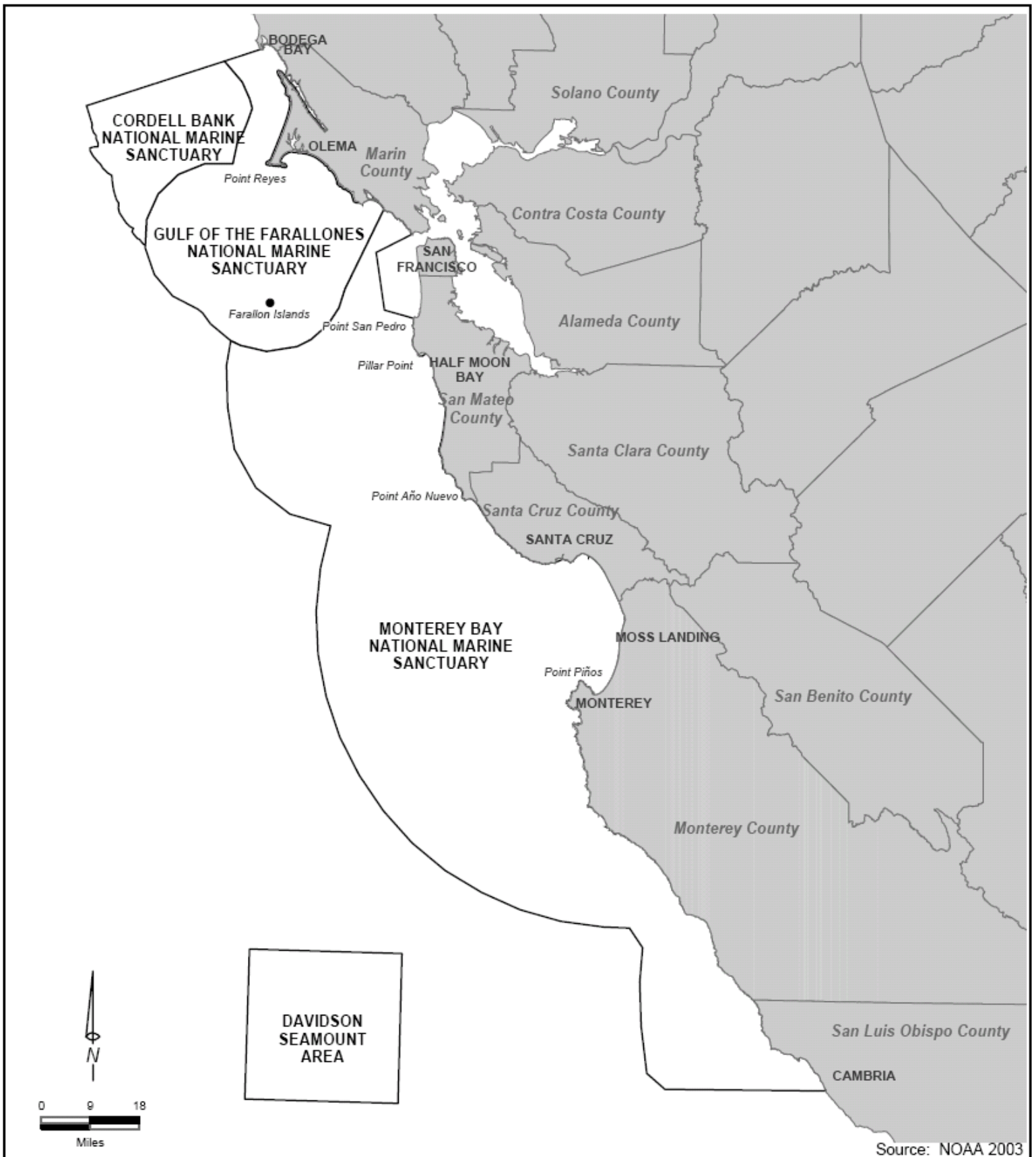
In addition, as conditioned, the regulation may have further beneficial affects on recreation and access by ensuring that additional undeveloped areas within Tomales Bay would not be converted to introduced species aquaculture production. With slightly more than six percent of

Tomales Bay currently dedicated to shellfish aquaculture, the amount of space available to recreational use such as kayaking, fishing and boating is slightly restricted. Further aquaculture development within the bay may prompt space conflicts with recreational users. However, as conditioned, the regulation on introduced species may have the indirect affect of benefiting recreation and access within the Tomales Bay portion of the Sanctuary over the long term.

Conclusion - As described above and conditioned, 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 many of the recreational activities that occur within the Sanctuary's boundaries are focused on the marine resources and wildlife found there, such as whale watching, birding and scuba diving, these activities 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, as conditioned, the new and revised regulations proposed under the updated GFNMS management plan would be 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 – Gulf of the Farallones 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-009-07, NOAA, Revised management plan and revised set of regulations for the Cordell Bank National Marine Sanctuary.
4. Consistency Determination CD-036-06, NOAA, Revised management plan and revised set of regulations for the Channel Islands National Marine Sanctuary.
5. Consistency Determination CD-66-92, NOAA, Designation of the Monterey Bay National Marine Sanctuary.



Source: NOAA 2003

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-010-07
NOAA

Subpart H—Gulf of the Farallones National Marine Sanctuary (Amended)

§ 922.80 Boundary

(a) ~~The Gulf of the Farallones National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 966 square nautical miles (nmi) consists of an area of the coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands (including Noonday Rock) adjacent to off the northern coast of California. The northernmost extent of the Sanctuary boundary is a geodetic line extending westward from north and south of the Point Reyes Headlands, between Bodega Head approximately 6 nmi to the northern boundary of the Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then turns southward to a point approximately 6nmi off Point Reyes, California, where it then turns westward again, and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (NM) out towards the 1,000 fathom isobath. The Sanctuary boundary then extends in a southerly direction adjacent to the 1,000 fathom isobath until it intersects the northern extent of the Monterey Bay National Marine Sanctuary (MBNMS). The Sanctuary boundary then follows the MBNMS boundary eastward and northward until it intersects the Mean High Water Line at Rocky Point, California. The Sanctuary boundary then follows the MHWL north until it intersects the Point Reyes National Seashore (PRNS) boundary. The Sanctuary boundary then approximates the PRNS boundary, as established at the time of designation of the Sanctuary, to the intersection of the PRNS boundary and the MHWL in Tomales Bay. The Sanctuary boundary then follows the MHWL up Tomales Bay and Lagunitas Creek to the Route 1 Bridge where the Sanctuary boundary crosses the Lagunitas Creek and follows the MHWL until it intersects its northernmost extent near Bodega Head. The Sanctuary boundary includes Bolinas Lagoon, Estero de San Antonio (to the Tide gate at Valley Ford Franklin School Road) and Estero de Americano (to the bridge at Valley Ford Estero Road), as well as Bodega Bay, but not Bodega Harbor. Where the Sanctuary boundary crosses a waterway, the Sanctuary boundary excludes these waterways shoreward of the Sanctuary boundary line delineated by the coordinates provided. The precise seaward boundary coordinates are listed in Appendix A to this subpart.~~

~~(b) The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 NM beyond State waters. The Sanctuary also includes the waters within 12 NM of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanctuary includes Bodega Bay, but not Bodega Harbor.~~

§ 922.81 Definitions

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

~~Areas of Special Biological Significance (ASBS) means are those areas established by the State of California, prior to the designation of the Sanctuary except that for purposes of the regulations in this subpart, the area established around the Farallon Islands shall not be included, designated by California's State Water Resources Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 et. seq.~~

~~Harmful matter means any substance, or combination of substances, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line,~~

hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4

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

Routine maintenance means customary and standard procedures for maintaining docks or piers.

Attract or attracting means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g. surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

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

Motorized personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

Deserting means

a) leaving a vessel aground or adrift:

(1) without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification;

(2) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or
(3) when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or

b) leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*.

§ 922.82 Prohibited or otherwise regulated activities

~~—(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.83, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:~~

—(1) Exploring for, developing and producing oil or gas except that pipelines related to hydrocarbon operations ~~outside adjacent to~~ the Sanctuary may be placed at a distance greater than ~~NM-nmi~~ NM-nmi from the Farallon Islands, Bolinas Lagoon, and Areas of Special Biological Significance (ASBS) where certified to have no significant effect on Sanctuary resources in accordance with §922.84.

~~————(2) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:~~

~~————(i) Fish, ~~or~~ fish parts, and chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary and discharged or deposited while conducting lawful fishing activity within the Sanctuary.~~

~~————(ii) Biodegradable effluents incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWCPA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;~~

~~(iii) Water (including cooling water) and other ~~b~~Biodegradable effluents material or other matter from a vessel resulting from deck wash down and vessel engine cooling water; or~~

~~(D) Vessel engine exhaust.~~

~~incidental to vessel use of the Sanctuary generated by:~~

~~Marine sanitation devices;~~

~~Routine vessel maintenance, e.g., deck wash down;~~

~~Engine exhaust; or~~

~~Meals on board vessels.~~

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

~~(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the exclusions listed in paragraph (a) (2) (i) through (iv) and (3) of this section.~~

~~(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 NM south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with §922.84.~~

~~(3) Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with § 922.84:~~

~~(5)(i) Constructing any structure other than a navigation aid;~~

~~(ii) Drilling through the seabed submerged lands; and placing or abandoning any structure; and~~

~~(iii) Dredging or otherwise altering the seabed submerged lands; in any way except:~~

~~(A) other than ~~b~~By anchoring vessels in a manner not otherwise prohibited by this part (see §922.82 (16)); ~~or~~~~

~~(B) ~~b~~Bottom trawling from a commercial fishing vessel;~~

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

~~(D), except for Routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers ~~on~~ Tomales Bay, and~~

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

~~(6)(4) Except to transport persons or supplies to or from islands or mainland areas adjacent to Sanctuary waters, within an area extending 2 NM from the Farallon Islands, Bolinas Lagoon, or any ASBS, ~~o~~Operating any vessel engaged in the trade of carrying cargo within an area extending 2 nmi from the Farallon Islands, Bolinas Lagoon or any area of ASBS, including This includes but, limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of se offshore installations, except:~~

~~To transport persons or supplies to or from the Islands or mainland areas adjacent to the Sa waters or any ASBS. In no event shall this section be construed to limit access for fishing, recreational or research vessels.~~

(7) Operation of motorized personal watercraft, except for the operation of motorized personal watercraft for emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

~~(8)(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of the Farallon Islands, Bolinas Lagoon, or any ASBS except to transport persons or supplies to or from the Islands or for enforcement purposes.~~

~~(9)(6) Possessing, moving, Removing, or damaginginjuring, or attempting to possess, move, remove or injure, a Sanctuary any historical or cultural resource.~~

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

(A) striped bass (*Morone saxatilis*) released during catch and release fishing activity; and

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

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

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

(13) Attracting a white shark in the Sanctuary; or aApproaching within 50 meters of any white shark within the line approximating 2nmi around the Farallon Islands. The coordinates for the line approximating 2nmi around the Farallon Islands are listed in Appendix B to this subpart.

(14) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(15) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(16) Anchoring a vessel in a designated seagrass protection zone in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in Appendix C to this subpart.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, except as may be permitted by the Director in accordance with §922.48 and §922.83.

§ 922.83 Permit procedures and criteria.

~~(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity in the Sanctuary, prohibited under § 922.82, if such an activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 of this section.~~

(b) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions, as he or she deems appropriate, if the Director finds that the activity will:

(1) Further Research or monitoring related to the Sanctuary resources of the Sanctuary and qualities;

(2)

~~To further the educational value of the Sanctuary, or;~~

~~(3) For Further salvage or recovery operations; or-~~

(4) Assist in managing the Sanctuary.

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

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

~~The general professional and financial responsibility of the applicant;~~

~~The appropriateness of the methods envisioned to the purpose(s) of the activity;~~

~~The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary;~~

~~The end value of the activity; and~~

~~Other matters as deemed appropriate:~~

(1) The applicant is qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

(4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the sanctuary, and the duration of such effects;

(6) It is necessary to conduct the proposed activity within the Sanctuary;

(7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(8) Any other factors the Director deems as appropriate.

~~(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.~~

(d) Applications.

(1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries, ATTN: Superintendent, Gulf of the Farallones National Marine Sanctuary, Building 201, Fort Mason, San Francisco, CA 94123

(2) In addition to the information listed in 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.

§ 922.84 Certification of other permits

(a) A permit, license, or other authorization allowing ~~the discharge of municipal sewage, the laying of any pipeline related to hydrocarbon operations in leases adjacent to the Sanctuary and placed outside at a distance greater than 2 NM nmi from the Farallon Islands, Bolinas Lagoon, and any ASBS, or the disposal of dredge material at the interim dumpsite now established approximately 10 NM south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if~~ must be certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(b) In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

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

(d) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.