

CALIFORNIA COASTAL COMMISSION

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



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STAFF REPORT AND RECOMMENDATION**ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-011-07
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 Monterey Bay National Marine Sanctuary extends from Marin County to Cambria (San Luis Obispo County), encompassing nearly 300 miles of shoreline and 5,322 square miles of ocean extending an average of twenty-five miles from shore (Exhibit 1).

PROJECT
DESCRIPTION:

Revised management plan and revised set of regulations for the Monterey Bay National Marine Sanctuary.

SUBSTANTIVE
FILE DOCUMENTS:

See page 37.

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 Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary). NOAA states that the proposed measures would afford better protection to the natural and cultural resources of the MBNMS. 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;*
- *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, to allow a process for the NMSP Director to “authorize” any approval, permit, or lease by the State of California;*
- *disturbing or taking a Sanctuary resource below 3000 feet of the sea surface in the Davidson Seamount Management Zone;*
- *deserting a vessel aground, at anchor, or adrift within the Sanctuary;*
- *leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary.*

Existing regulations would also be revised to:

- *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;*
- *specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to such discharges/deposits during the conduct of lawful fishing activities within the Sanctuary;*

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.”

- *clarify that the exceptions from the prohibition against altering the submerged lands within the Sanctuary only apply to the extent necessary to accomplish the exempted activities;*
- *modify the definition of “attract or attracting” to apply to all animals;*
- *expand the existing prohibition on the attraction of white sharks in state waters to apply throughout the Sanctuary;*
- *clarify that the prohibition against discharges/deposits applies to discharges/deposits both within and into the Sanctuary;*
- *revise the definition of “motorized personal watercraft” [to apply to a wider range of vessels typically considered to be motorized personal watercraft⁴];*
- *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.*

In addition to these regulatory changes to the MBNMS, NOAA is proposing to include the Davidson Seamount into the boundaries of the MBNMS as the 585 square nautical mile Davidson Seamount Management Zone, and is proposing significant updates and revisions to the Monterey Bay National Marine Sanctuary’s original 1992 management plan as well. These changes are intended to recognize the unique habitats, resources and conservation opportunities available at the Davidson Seamount and 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 fifteen years and rendered the original 1992 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 fifteen 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

⁴ For the purposes of this regulation, “motorized personal watercraft” has been defined as (1) any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride or behind the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel; (2) any vessel less than 20 feet in length overall and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard’s maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183 (except submarines); or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

goals with the best means available. Briefly stated, the management plan addresses priority resource management issues through thirty specific management action plans in the following focus areas: Coastal Development, Ecosystem Protection, Operations and Administration, Partnerships and Opportunities, Water Quality, Wildlife Disturbance, and Cross-Cutting.

The vast resources and ecological wealth of the Monterey Bay 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 fifteen 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 MBNMS, NOAA has determined that:

The Proposed Action would result in a significant adverse impact on Recreational resources from the [change in the regulatory definition of motorized personal watercraft that would result in a] pre-emption of tow-in surfing in MBNMS; 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. The significant impact on Recreational resources can be reduced to a level that is not significant through implementation of the identified mitigation measure [as committed to in the July 16, 2007 letter from the NMSP to the Commission and as detailed on page 34 of this staff report]. No significant unavoidable impacts would occur as a result of the proposed actions.

As conditioned, the regulation on releasing introduced species within the Sanctuary and the proposed new and revised regulations on discharging or depositing material within the Sanctuary, altering the seabed, abandoning vessels within the Sanctuary, attracting or approaching white sharks, protecting the benthic resources in the Davidson Seamount Management Zone and including this area in the MBNMS, leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary, operating motorized personal watercraft within the Sanctuary, 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, as conditioned, 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 1992, the Monterey Bay National Marine Sanctuary (MBNMS) consists of approximately 5,322 square miles of nearshore and offshore ocean waters and their underlying submerged lands off the central coast of California. The Sanctuary extends from Marin County in the north to the town of Cambria in the south, encompassing roughly 300 miles of shoreline and extending an average distance of twenty-five miles from shore. At its deepest point the MBNMS reaches down 10,663 feet below the ocean surface into one of North America's largest marine canyons. The Sanctuary represents about thirty percent of the area protected by the National Marine Sanctuary System and two-thirds of all the marine and coastal waters in this system, by volume. This area was designated a sanctuary because its waters provide important marine, deep ocean and nearshore habitats for a diverse array of marine mammals and marine birds as well as fishery, plant, algae and benthic resources. MBNMS is home to one of the most diverse marine ecosystems in the world, including the nation's largest kelp forest, 33 species of marine mammals, 94 species of seabirds, 345 species of fish and numerous invertebrate and plant species.

The Sanctuary's primary objective is to conserve, protect, and enhance the biodiversity and ecological integrity of marine resources within Monterey Bay 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 of 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 Monterey Bay National Marine Sanctuary. This review constituted the first formal review and revision of the Sanctuary management plan and regulations since the Sanctuary was originally designated. The MBNMS management plan review, as part of the Joint Management Plan Review of the three northern California marine sanctuaries, began with public scoping and issue identification in 2001 and expanded 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, the National Oceanic and Atmospheric Administration (NOAA) proposes the following: (1) inclusion of five additional activities to the list of activities currently prohibited within the Sanctuary boundaries (specifically detailed in Exhibit 2), (2) clarification and refinement of twelve existing regulations (also described in Exhibit 2), (3) inclusion of the Davidson Seamount into the boundaries of the MBNMS as the 585 square nautical mile Davidson Seamount Management Zone, and (4) adoption of over one hundred and sixty specific programs comprising thirty Sanctuary specific action plans and eight cross-cutting action plans⁵ within 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)).

⁵ 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.

Proposed new regulations include prohibitions on:

- *discharging or depositing any matter from a cruise ship⁶, or any other vessel of 300 gross registered tons or more with sufficient holding tank capacity⁷, other than biodegradable vessel engine cooling water;*
- *releasing or otherwise introducing from within or into the Sanctuary an introduced species⁸ 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, to allow a process for the NMSP Director to “authorize” any approval, permit, or lease by the State of California;*
- *disturbing or taking a Sanctuary resource below 3000 feet of the sea surface in the Davidson Seamount Management Zone;*
- *deserting a vessel aground, at anchor, or adrift within the Sanctuary;*
- *leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary.*

Existing regulations would also be revised to:

- *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;*
- *specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to such discharges/deposits during the conduct of lawful fishing activities within the Sanctuary;*
- *clarify that the exceptions from the prohibition against altering the submerged lands within the Sanctuary only apply to the extent necessary to accomplish the exempted activities;*
- *modify the definition of “attract or attracting” to apply to all animals;*
- *expand the existing prohibition on the attraction of white sharks in state waters to apply throughout the Sanctuary;*
- *clarify that the prohibition against discharges/deposits applies to discharges/deposits both within and into the Sanctuary;*
- *revise the definition of “motorized personal watercraft” [to apply to a wider range of vessels typically considered to be motorized personal watercraft⁹];*

⁶ For the purposes of the MBNMS regulations, “cruise ship” has been defined as “a vessel with 250 or more passenger berths for hire.”

⁷ 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.

⁸ For the purposes of the MBNMS 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.”

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- *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 occurred since original designation of the Sanctuary fifteen 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 Monterey Bay National Marine Sanctuary include the following action plans (specific strategies and programs included within each of the action plans are detailed in the Sanctuary's management plan and described in brief in Exhibit 3):

Sanctuary Specific Action Plans

- ***Coastal Armoring Action Plan***
- ***Desalination Action Plan***
- ***Harbors and Dredge Disposal Action Plan***
- ***Submerged Cables Action Plan***
- ***Big Sur Coastal Ecosystem Action Plan***
- ***Bottom Trawling Effects on Benthic Habitats Action Plan***
- ***Davidson Seamount Action Plan***
- ***Emerging Issues Action Plan***
- ***Introduced Species Action Plan***
- ***Sanctuary Integrated Monitoring Network Action Plan***
- ***Special Marine Protected Areas Action Plan***
- ***Operations and Administration Action Plan***
- ***Performance Evaluation Action Plan***
- ***Fishing Related Education and Research Action Plan***

contrast to the conventional manner, where the operator stands or sits inside the vessel; (2) any vessel less than 20 feet in length overall and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183 (except submarines); or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

- *Interpretive Facilities Action Plan*
- *Ocean Literacy and Constituent Building Action Plan*
- *Beach Closures and Microbial Contamination Action Plan*
- *Cruise Ship Discharges Action Plan*
- *Water Quality Protection Program Implementation Action Plan*
- *Marine Mammal, Seabird, and Turtle Disturbance Action Plan*
- *Motorized Personal Watercraft Action Plan*
- *Tidepool Protection Action Plan*

Cross-Cutting Action Plans

- *Administration and Operations Action Plan*
- *Community Outreach Action Plan*
- *Ecosystem Monitoring Action Plan*
- *Maritime Heritage Action Plan*

Northern Management Area (NMA) Transition Plan

- *NMA Administration and Operations*
- *NMA Resource Protection*
- *NMA Research and Monitoring*
- *NMA Education and Outreach*

Similar to the proposed regulatory changes, the action plans listed 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-011-07 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-011-07 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 MBNMS 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.

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. Similar to Cordell Bank and Gulf of the Farallones National Marine Sanctuaries, the unique and diverse environment of MBNMS is host to a multitude of biological resources. MBNMS is one of the most diverse marine ecosystems in the world, with numerous types of habitats, and a wide variety of wildlife species, including 36 species of marine

mammals, 94 species of seabirds, 345 species of fishes, and numerous invertebrates and plants. In addition to the kelp forests, rocky and soft bottom sub- or inter-tidal habitats, Monterey Canyon, one of the deepest marine trenches in U.S. territorial waters, contains unique hydrothermal vents, cool seeps, and deep-sea habitats. In addition, the many miles of rocky coastline within MBNMS support a variety of intertidal organisms and a diverse range of habitats.

Seabirds are relatively numerous at MBNMS compared to other portions of the west coast due to an abundance of prey and the nutrient rich waters that result from the persistent upwelling plume produced by the California Current system that emanates southward from Año Nuevo Point and brings nutrient rich deep ocean water up to the surface. Tidal and wetland areas, such as shores, marshes, and estuaries, are frequented by about 90 species of birds and many more seabirds are seasonal visitors to MBNMS.

The waters of MBNMS provide wintering habitat for many species that use the rich prey resources that result from the upwelling. Due to the presence of submarine canyons in MBNMS, very deep water occurs within a few miles of shore, and in fact this constitutes the predominant habitat in terms of total surface area of Sanctuary waters. As a result of this bottom topography, surface waters overlying these depths (over 6,562 feet deep) provide habitat for pelagic birds such as the black-footed albatross, ashly storm-petrel, and Xantus's murrelet during summer and fall, and northern fulmars and black-legged kittiwakes during winter and early spring. Along the continental shelf break (656 to 6,558 feet), a relatively narrow habitat, seabird densities are also substantial. These waters are dominated by sooty shearwaters during spring and summer and by fulmars and gulls during winter; in addition to other characteristic species such as pink-footed and Buller's shearwaters, black storm-petrels, and rhinoceros auklets. Inshore of slope waters (less than 656 feet deep), the prevalent bird species consist of sooty shearwaters, western grebes, pacific loons, California brown pelicans, Brandt's and pelagic cormorants, western gulls, and common murres. In waters very close to shore, in the surf zone, surf and white-winged scoters and marbled murrelets can be found.

There are several species of special concern in MBNMS that are listed predominantly due to their small population sizes. Among these species are the endangered brown pelican (which had historic breeding ground in the Sanctuary), the threatened marbled murrelet (the MBNMS population is known to be the smallest, most disjointed and, therefore, most precarious breeding population of this species), Xantus's murrelet and several species being considered for listing (such as the California Department of Fish and Game Species of Special Concern, black storm-petrel and ashly storm petrel). The world's largest known concentration of ashly storm-petrel can be found in Monterey Bay in the fall.

The Sanctuary also has a large assemblage of marine mammals for the same reasons that seabirds occur; that is, the high level of prey and the deep water habitats. It contains six species of pinnipeds, 26 species of cetaceans, and one species of sea otter occurring (southern sea otter). California sea lions occur with great frequency, but the fastest growing marine mammal population is the northern elephant seal, with haul-out sites at Año Nuevo, Point Piedras Blancas,

and isolated Big Sur beaches. Numerous species of large whales occur, several of which are listed under the ESA, including the humpback, fin, blue whale, sperm whale, and, rarely, North Pacific right whale. Gray whales, recently de-listed, are known migrants and pass through on both their southward and northward routes. In addition, minke whales and several toothed whale species, such as killer whales and beaked whales, occur within the Sanctuary.

Fish populations in MBNMS are diverse, including about 200 commercial and recreational fisheries species, as well as many other species. Anadromous fish, including coho and chinook salmon and steelhead, are an important part of the MBNMS ecosystem. Thousands of species of invertebrates inhabit MBNMS as well. Kelp forests, which support marine mammals, fishes, algae, and invertebrates, are prominent throughout nearshore waters. The marine algae found in MBNMS ranges from microscopic phytoplankton to seaweed and surfgrasses to giant kelp.

Approximately 24 wildlife species occurring in MBNMS are listed as threatened or endangered.

Davidson Seamount

Davidson Seamount, proposed to be included into the boundaries of the MBNMS as the 585 square nautical mile Davidson Seamount Management Zone, is 75 miles to the southwest of Monterey (see Exhibit 1). One of the largest known seamounts in U.S. waters, it is 26 miles long and 8 mile wide. From base to crest, Davidson Seamount is 7,546 feet tall, yet its summit remains 4,265 feet below the sea surface. Davidson Seamount has an atypical seamount shape, with northeast-trending ridges. Many undersea explorations have occurred here, resulting in characterizations of species patterns of distribution and abundance at the Seamount. Species associated with the Davidson Seamount can be divided into different habitats, including the sea surface habitat (birds in flight and sea surface), the mid-water habitat (0 to 4,101 feet below sea surface), the crest habitat (4,101 to 4,921 feet deep), the slope habitat (0.9 to 1.6 miles deep), and the base habitat (1.6 to 2.2 miles deep). The surface habitat hosts a variety of seabirds, marine mammals, and surface fishes. The mid-water habitat is patchy with marine “snow,” organic matter that continually rains down from the sea surface, most likely providing an important food source for deep-sea animals. The crest habitat is the most diverse, including large gorgonian coral forests, vast sponge fields, crabs, deep-sea fishes, shrimp, and basket stars. The slope habitat is composed of cobble and rocky areas interspersed with areas of ash and sediment. This area hosts a diverse assemblage of sessile invertebrates and rare deep-sea fishes. Finally, the base habitat is the interface between rocky outcrops and the deep soft bottom. Species here are similar looking to their relatives in the nearshore, including sea cucumbers, urchins, anemones, and sea stars.

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 Monterey Bay 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 for the MBNMS describes five new or revised regulations that may potentially yield direct or indirect benefits to water quality and/or marine resources, as follows:

Davidson Seamount - *The Proposed Action would incorporate the Davidson Seamount area into the boundaries of MBNMS. The Davidson Seamount is a biologically significant area and one of the largest known seamounts in US waters. Its inclusion into MBNMS would increase the size of the Sanctuary by approximately 15 percent (equivalent to approximately 585 square nm; 775 square miles; 2,000 square km) and would protect a greater number of benthic biological resources. Seamounts are known to offer unique biological environments and to contain unusual species and species assemblages. The Proposed Action would incorporate changes at MBNMS for this area, creating added protection for the benthic and surrounding communities of the Davidson Seamount.*

Potential threats to the resources of the Davidson Seamount include bioprospecting, marine debris/dumping, and harvesting, which would affect endemic species. These species are known to have lower resilience, on the whole, to disturbance. These threats also would disturb the benthic habitat and seabed and their associated resources. In particular, protection from physical damage and collection is needed for the fragile and long-lived species, such as corals and sponges, that occur in this habitat.

The proposed regulation would protect Davidson Seamount from future disturbance or from resource exploitation. The standard MBNMS discharge regulations and seabed disturbance regulations relating to drilling, dredging, seabed alterations, construction, and anchoring would apply in the DSMZ (with certain exceptions). At depths greater than 3,000 feet (914 meters) below the sea surface, the NMSP would prohibit moving, removing, taking, collecting, harvesting, disturbing, breaking, cutting, or otherwise injuring Sanctuary resources (or attempting to do those activities), except for fishing,

which is prohibited pursuant to the MSA (50 CFR part 660). The Sanctuary would also prohibit the possession of Sanctuary resources taken from below 3,000 feet within the DSMZ, except for the possession of fish resulting from fishing, which is prohibited pursuant to the MSA. The NMSP would rely upon the NOAA Fisheries regulatory amendments to the Groundfish FMP to regulate any fishing-related impacts below 3,000 feet. The specific amended regulation prohibits fishing with dredge gear, beam trawl, certain types of bottom trawl, and bottom-contact gear or any other gear that is deployed at depths greater than 500 fathoms (3000 feet) (71 FR 27408). Therefore, fishing would take place in the water column above 3,000 feet but not below it and as such fishing activities would not impact the seamount. By incorporating the seamount into MBNMS, its resources would be protected, and opportunities would be provided for a better understanding of the seamount. Therefore, the increased level of resource protection provided by this Proposed Action would have significant beneficial impacts on the biological resources of the Davidson Seamount by limiting disturbance or injury.

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– *Extending the prohibition on attracting white sharks anywhere in the Sanctuary, rather than just within State waters, would have the potential to provide benefits for biological resources. Attraction activities alter natural feeding and breeding behavior of white sharks. Although there are no currently known white shark attraction activities that take place beyond State waters, the proposed prohibition would protect the species from potential threats in the future. This protection is considered a beneficial impact on biological resources.*

Dredge Disposal – SF-12 – *The Proposed Action would relocate disposal site SF-12 to the head of Monterey Canyon. Disposal of dredged material in the ocean adversely affects the marine environment in numerous ways, including smothering benthic organisms, increasing water column turbidity, which affects foraging and predator/prey*

relationships, increasing sedimentation and decreasing water quality, and degrading adjacent habitats. Current impacts from dredge disposal in MBNMS would be shifted from the present location to the head of the canyon; the result of this move is a decrease in impacts on biological resources, since the new location is expected to reduce effects of dredge disposal on the shallow nearshore and dilute it over a deep water canyon. Placing the material as close to the head of the canyon as possible should increase the flow of sediment into the deep-sea fan. This would have several effects, including reducing environmental impacts on local beaches caused by disposal in the nearshore subtidal area. Disposal in this area has caused material to be washed onshore, resulting in adverse impacts on beach habitat. Moving the site would also reduce siltation, which would reduce cloudiness in the water and benefit biological resources. Moving the SF-12 dredge disposal site from its existing location to the new site would not result in any new impacts associated with dredge disposal. Moving the site is expected to reduce turbidity associated with dredged sediment washed into the surf zone at Moss Landing, which causes localized impacts. An increase in the percentage of volume of material that enters the Monterey Canyon would reduce sedimentation in the nearshore benthic areas north of the canyon, where much of the disposal occurs at this time. Disposal at the head of the Monterey Canyon may result in a turbidity current that would move the sediment to the deep-sea fan. No increase in the volume of dredge material volume is a part of this action. An overall beneficial impact is expected for biological resources.

Motorized Personal Watercraft - A new definition is proposed for MPWC that would directly benefit biological resources by reducing disturbances to marine mammals, birds, sea turtles, and other fauna and flora. The proposed regulatory change would clarify the definition of MPWC to meet the original intent of the regulation when the sanctuary was designated in 1992. Redefining MPWC would encompass nearly all MPWCs and would make them all subject to the existing Sanctuary regulation, which restricts them to the four zoned areas [as originally designated in the 1992 management plan, as well as a new, limited use fifth area proposed as part of the current management plan update¹⁰]. This would minimize disturbances to marine wildlife caused by MPWC, enhance existing habitat, and reduce human disturbance and harassment in Sanctuary waters. MPWC are small, fast, and highly maneuverable craft. Their small size, shallow draft, instant thrust, and quick reflex enable them to operate at high speeds and close to shore areas that typically have a high number of biological resources. MPWC commonly accelerate and decelerate repeatedly and unpredictably and travel at rapid speeds directly toward shore (versus motorboats, which generally slow down as they approach shore). Current regulations restrict MPWC to four specific zones within MBNMS. However, the current definition of MPWC does not cover all types of these watercraft. Watercraft that are larger and can accommodate three or more persons are not currently included in the existing definition of MPWC and therefore are not subject to the regulations. These

¹⁰ This area, MPWC Zone 5, is proposed to be designated offshore Pillar Point surrounding the location of the Mavericks surf break and would be available only between December 1st and February 28th during periods when NOAA's National Weather Service declares a high surf warning for Half Moon Bay. This area and the potential implications of its designation on the Sanctuary's recreational resources are discussed further on pages 30-36.

larger models are preferred in the high-energy ocean environment due to their increased power, range, and towing ability. Additionally, MPWC use is often multiplied since they are operated in pairs or larger groups. MPWC use is often sustained in a relatively confined area, potentially concentrating impacts over time in remote areas.

These watercraft are particularly disturbing and harassing to marine mammals and seabird colonies due to the high noise levels they produce and the associated frequent speed changes that produce mechanical ratchets and whines underwater, sounds known to disturb marine mammals and birds. Numerous assessments of MPWC impacts indicate that unrestricted use by such craft poses a threat to wildlife. For example, these craft are already restricted in MBNMS and GFNMS [as well as the waters of Marin County and the Channel Islands National Marine Sanctuary, as discussed and approved in CD-66-92 (Monterey Bay), CDP 2-00-005 (Marin County), CD-101-00 (Gulf of the Farallones) and CD-036-06 (Channel Islands)] and have been restricted in waters off Maui during the Hawaiian humpback whale breeding season due to the high incidence of harassment of the animals that inhabit the coastal zones (Hurley 2004).

MPWC use disturbs wildlife and degrades the habitat of many species. Data has shown that sounds from MPWC elicited stronger responses in wildlife than that from motorboats. Studies have also shown a broad range of impacts related to sounds MPWC produce (both in air and water), causing disturbance reactions in birds and mammals. Reactions include the following:

- *Seabirds abandon their nests and have lower reproductive success (Burger 1998);*
- *Cetaceans and pinnipeds, especially mother/pup pinnipeds, are disrupted (Green et al. 2002); and*
- *Species exhibit such reactions as alarm, flight, avoidance, disturbance, changes in community structure, loss of habitat use, and in some cases, even mortality (National Park And Conservation Association 1999; Snow 1989).*

The additional access MPWCs allow to remote and sensitive shoreline areas increases wildlife harassment. Slow-moving or unaware animals can be injured or killed by direct impact with an MPWC. Proposed MPWC restrictions will protect important and sensitive biological areas at Pebble Beach (Pescadero Point) and Mavericks (Pillar Point), as well as the nearshore kelp beds and surf areas where sea otters, harbor seals, and sea lions congregate.

The proposed definition change would expand the current definition to cover all categories of MPWC and would eliminate the loophole for larger vehicles. Significant beneficial environmental impacts on biological resources are expected from the Proposed Action due to the reduction of disturbance to wildlife.

As briefly described above, in recognition of the important and unique recreational resource provided by the big wave surf break at Mavericks and in an effort to alleviate some of the

potential adverse affects to the recreational use of this resource by the tow-in surfing community, the NMSP has committed to designating a seasonal, big wave MPWC zone at Pillar Point. To ensure that the use of this area by MPWC powered tow-in surfers does not conflict substantially with its use by traditional paddle-in surfers or result in significant disturbances or adverse affects to marine life, including the important pinniped and seabird haul-out, foraging, roosting and mating areas located at and around Pillar Point, the use of the big wave MPWC zone will be restricted to only periods between December 1st and February 28th when NOAA's National Weather Service has issued a high surf warning for Half Moon Bay. These warnings are issued at times when the wave height at the shoreline in this area reaches or exceeds 20 feet. On average, NOAA estimates that the conditions necessary for a warning to be issued are met between zero and ten times each winter. The designation of this big wave MPWC zone will ensure that this unique big wave surfing resource remains available during periods of high surf when tow-in surfing at Mavericks is most appropriate. At the same time, the seasonal and oceanic condition limitations on the use of this zone will serve to restrict use to a minimum number of days per year and thereby minimize the potential for MPWC use to adversely affect the marine resources of this area.

Cross-Cutting

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 described above that are 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 Monterey Bay 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, NMSP staff plan to make a change to include a process for the NMSP director to “authorize” any approval, permit, or lease by the State of California in the Monterey Bay National Marine Sanctuary. [underline added for emphasis and clarity] This authorization process is the same process used by MBNMS at authorize Commission permits for coastal development (e.g., seawalls, cables, pipelines, etc.) otherwise restricted by sanctuary prohibitions. Allowing a process of joint review of potential non-native aquaculture activity in MBNMS provides for both State and NOAA approval if such an activity is proposed for MBNMS.

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 species¹¹, except: (A) striped bass (*Morone saxatilis*) released during catch and release fishing activity;*

The change to the proposed MBNMS 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 providing a means by which these species could be legally released. Although joint federal and state approval would still be required to allow introduced species, other than striped bass, to be released into the Sanctuary, the facilitation on the release of introduced species provided by this regulation appears to conflict with the goals, mission and stewardship responsibility of the National Marine Sanctuary Program as well as the marine resource protection provisions of the California Coastal Management Program (Coastal Act Sections 30230 and 30231). Given the well established and documented threat that introduced species pose to marine ecosystems and native species, as well as the fact that the only shellfish aquaculture operations that currently exist within the Monterey Bay area are dedicated to raising native species, it is difficult to envision a situation in which the release of introduced species into the Monterey Bay National Marine Sanctuary would benefit the Sanctuary or its multitude of unique and sensitive marine resources, especially considering that the goals of the NMSP and Sanctuary explicitly state that the Sanctuary’s primary objective is resource protection.

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 which would allow for “authorization” of introduced species releases within the MBNMS 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

¹¹ 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.

the proposed introduced species regulation and adopt the alternate introduced species regulation described, analyzed and advanced in the project EIS.

If modified as conditioned to protect the Sanctuary's marine resources from the adverse effects of additional introduced species, the Commission finds that the prohibition on introduced species within the Monterey Bay 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.

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

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

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.*

Davidson Seamount – *The proposed regulation would include incorporating a rectangular area around the Davidson Seamount in MBNMS and including most of the existing MBNMS sanctuary regulations. The rectangular area would be centered on the top of the Davidson Seamount and consist of approximately 585 square nm (841 square miles; 2,100 square km) of ocean waters and submerged lands thereunder.*

The proposed regulation would protect Davidson Seamount from future disturbance or from resource exploitation. The standard MBNMS discharge regulations and seabed disturbance regulations relating to drilling, dredging, seabed alterations, construction, and anchoring would apply in the DSMZ (with certain exceptions). At depths greater than 3,000 feet (914 meters) below the sea surface, the NMSP would prohibit moving, removing, taking, collecting, harvesting, disturbing, breaking, cutting, or other wise injuring Sanctuary resources (or attempting to do those activities), except for fishing, which is prohibited pursuant to the MSA (50 CFR part 660). The Sanctuary would also prohibit the possession of Sanctuary resources taken from below 3,000 feet within the DSMZ, except for the possession of fish resulting from fishing, which is prohibited pursuant to the MSA. The NMSP would rely upon the NOAA Fisheries regulatory amendments to the Groundfish FMP to regulate any fishing-related impacts below 3000 feet. These NOAA Fisheries amended regulations prohibit fishing with dredge gear, beam trawl, certain types of bottom trawl, and bottom contact gear or any other gear that is deployed greater than 500 fathoms (3,000 feet) (71 FR 27408). Therefore fishing would take place in the water column above 3,000 feet but not below it and as such existing

fishing activities would not impact the seamount. By incorporating the seamount into MBNMS, its resources, including fish habitats, would be protected. Therefore, the increased level of resource protection provided by this Proposed Action would have minor beneficial impacts on the fisheries of the Davidson Seamount by preventing any type of disturbance or injury to fish or fish habitat.

There are only two commercial fisheries that now operate in the area of the Davidson Seamount, drift gillnetting for swordfish and sharks, and trolling for albacore tuna. These fisheries operate only in the top 164 feet (50 meters) of the water column and would not be affected. It is unlikely that any fisheries would have future interest in the deep habitats (beyond 3,000 feet depth) of the Davidson Seamount.

Designating this area as part of MBNMS would have other minor adverse socioeconomic impacts on the fisheries. Namely, all the discharge restrictions that would apply to the MBNMS would apply to this new area. Compliance with these discharge regulations would not place a substantial burden on commercial fishing operations. The resource protective measures included in the MBNMS regulations, considered collectively, would cause a slight reduction in environmental health risks for fish populations and could result in minor beneficial impacts on these populations. In summary, there would be less than significant adverse economic and operational impacts from this proposed action on commercial fisheries, and minor beneficial impacts on fish populations.

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

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

Complying with the proposed discharge amendments could result in slight adverse socioeconomic effects on fishermen within the sanctuaries. Fishing vessels would no longer be able to dispose of waste from meals into the sanctuary, which may require some vessels to upgrade their on-vessel disposal facilities so that they could store their waste onboard until they could dispose of it dockside. Fishing vessels would only be allowed to use biodegradable materials in deck washing if they wish to allow the washings to drain into the sanctuaries. Those vessels wishing to discharge their washings into the sanctuaries that do not currently use biodegradable cleaning products would need to change to such products. The potential change in waste disposal facilities and

cleaning products may result in minor, increased costs to fishing operations. It should be noted that discharge regulations provide exceptions for fish, fish parts or bait/chumming materials resulting from lawful fishing activity.

The proposed discharge regulations would require fishing vessels to discharge other wastewaters (graywater and black water) using a Type I or Type II MSD, or, if they are using a Type III MSD, to hold the waste until they are either out of the sanctuaries or pump out the waste at a harbor pumpout facility... The only new requirement in the proposed regulations is that fishermen may have to upgrade their MSD equipment, so that it could not discharge untreated sewage. This requirement may pose a minor burden on boat owners who have not purchased a lock or clasp to ensure the effective operation of the MSD. However, the impact of this addition is negligible. The benefits of doing such activity would actually improve fishing habitat in the long term.

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

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

In addition, as proposed, the cruise ship and large vessel discharge prohibition would not have the potential to adversely affect those fishing vessels large enough to fall within the 300 gross registered ton or more threshold (most commercial and recreational fishing vessels that operate within the Sanctuary are less than 300 gross registered tons) because the regulation specifically exempts those vessels without sufficient holding tank capacity from retaining discharges on board. This regulation would not require those vessels without sufficient capacity to purchase or invest in upgrading their holding tanks.

Cross-Cutting

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

Release of Introduced Species – *Controlling the number of introduced species could have both beneficial and adverse effects on fisheries. The Proposed Action could benefit fisheries by limiting the competition between introduced and native species, thus*

improving the ongoing stability of the native species populations, improving stability in the numbers of native species available for catch, and helping to stabilize the potential for future revenues derived from commercial catch within the sanctuaries. In this regard, the Proposed Action would have a beneficial impact on commercial fisheries.

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

...

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

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 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.*

The Sanctuary's 276 miles of coastline provide substantial recreational resources for kayakers, recreational sailors and boaters, SCUBA divers, birders, marine mammal and other wildlife watchers, as well as surfers and motorized personal watercraft (MPWC) users. It has been estimated that the central coast of California – including all of the MBNMS – is one of the most popular surfing areas in the world, serving as home to 45 percent of the nation's 1.6 million surfers in 2002, and likely even more today.¹² In addition, highly scenic areas such as the Big Sur coast and Monterey Peninsula provide exceptional opportunities for recreational kayakers and boaters while the abundance of rocky reef and kelp forest habitats in these areas are world renowned diving locations. 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 on the release of introduced species, discharges from vessels, deserted vessels, dredge disposal, motorized personal watercraft use and white shark attraction as well as those regulations providing protection for the Sanctuary's historic and cultural resources and the benthic habitats and ecosystems of the Davidson Seamount 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.*

Davidson Seamount – *Adding the Davidson Seamount to the boundary of MBNMS would have minimal impacts on recreation. Prohibiting or regulating activities that could impact benthic communities is not likely to have an impact on recreational uses since there is no evidence that any significant recreational activity takes place at Davidson Seamount.*

¹² Ehler, Leeworthy and Wiley 2003.

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.*

White Shark Attraction - *Currently white shark attraction is already prohibited in state waters of MBNMS. This proposed regulation would extend the prohibition to federal waters to make the regulation more consistent throughout the entire Sanctuary and with the proposed regulation in GFNMS [Gulf of the Farallones National Marine Sanctuary]. However, unlike GFNMS where this activity occurs around the Farallon Islands, this activity does not occur in these deeper offshore waters of MBNMS because there are many fewer white sharks and they are not easily accessed in concentrated feeding areas such as the Farallon Islands. Therefore, no impact on this type of recreational use is expected.*

Dredge Disposal – *Redefining and officially locating disposal site SF-12 would reduce the probability of accidental release of dredged material in areas of the Sanctuary used for recreation. The purpose of this proposal is to reduce impacts on local beaches and nearby harbors and estuaries caused by current disposal in the nearshore subtidal area. Movement of the site to the head of the Monterey Canyon may reduce existing impacts associated with dredged sediment being washed into the surf zone at Moss Landing and deposited in the beach, harbor and estuary areas. This action would have a beneficial impact on recreational activities, by improving the beach environment for recreational use.*

Motorized Personal Watercraft – *As described previously in this report and further clarified in the July 16, 2007 NMSP letter to the Commission:*

The existing regulations restrict use of motorized personal watercraft (MPWC) in the Monterey Bay National Marine Sanctuary to four zones near the harbors of Monterey, Santa Cruz, Moss Landing, and Pillar Point. However, the current definition of MPWC does not cover all types of existing MPWC. Watercraft that are larger and can accommodate three or more passengers are not subject to the regulations because they are not included in the current definition. To address these concerns, changes are proposed to the current definition that would cover all categories of MPWC and that would therefore eliminate the loophole in the current regulation.

Commission staff commented about the need to develop a special use program to facilitate the training of public safety personnel and to ensure the safety and continuance of a limited number of special tow-in and paddle-in surfing competitions and activities such as those held at Mavericks near Pillar Point. Commission staff encouraged the NMSP to consider proposals developed by traditional and tow-in surfing communities in the region as we moved forward with implementing the MPWC Action Plan.

NMSP staff emphasize this prohibition does not apply to activities necessary to respond to emergencies threatening life, property or the environment. Therefore, a bona fide public safety agency engaged in life saving activities is not restricted by this regulation. NMSP staff are also committed to developing official protocols for training of public safety personnel and has already begun working with regional public safety agencies to develop a program to permit this activity.

Regarding special tow-in activities and competitions, NMSP staff [has amended the proposal currently before the Commission to reflect the] plan to create a new MPWC zone at the Mavericks surf break [as shown in Exhibit 4]. This zone would be limited to large wave conditions, avoiding time periods when wildlife are most vulnerable to disturbance or when wildlife are found in peak concentrations [by restricting access and use to only periods when NOAA's National Weather Service declares a high surf warning for Half Moon Bay between December 1st and February 28th of each year¹³]. An access route to this new zone from Pillar Point Harbor will be created to avoid sensitive marine mammal, seabird, and shorebird areas (e.g. Fitzgerald Marine Reserve and reef off Pillar Point). This new large wave zone should help avoid user conflicts with paddle-in surfing activities.

In addition, NMSP staff plan to establish a permit program for a commercially sponsored surfing competition at Mavericks, which involves the use of MPWC as support vessels (generally, one is held at Mavericks per year).

MPWC, also known by the brand names of the popular models Jetski and Waverunner, are small, fast, and highly maneuverable craft that possess unconventionally high thrust capability and horsepower relative to their size and weight. This characteristic enables them to make sharp turns at high speeds and alter direction rapidly while maintaining controlled stability. Their small size, shallow draft, instant thrust, and “quick reflex” enable them to operate closer to shore and in areas that would commonly pose a hazard to conventional boats operating at comparable speeds. Many can be launched across a beach area, without the need for a launch ramp. Most MPWC are designed to shed water, enabling an operator to roll or swamp the vessel without serious complications or interruption of vessel performance. The ability to shunt water from the load carrying area exempts applicable MPWC from Coast Guard safety rating standards for small boats. MPWC often are designed to accommodate sudden separation and quick remount by a rider. MPWC are not commonly equipped for night operation and have limited instrumentation and storage space compared to conventional vessels. Many MPWC propelled by a directional water jet pump do not have a rudder and must attain a minimum speed threshold to achieve optimal maneuverability.

Water jet-propelled MPWC gained mainstream popularity in the US in the 1980s, and sales accelerated through the mid-1990s. Their size, power, speed, and sophistication have advanced

¹³ NOAA's National Weather Service office issues a “high surf warning” for Half Moon Bay when wave heights at the shoreline reach or exceed 20 feet. On average, these warnings may be issued between zero and ten times between December 1st and February 28th of each year.

steadily. Some current models can carry up to 4 passengers and achieve maximum speeds between 30 and 60 or more miles per hour. Engine size, horsepower ratings, and vessel range and endurance have increased over time.

According to the analysis conducted by NOAA in the project EIS, although the Sanctuary's original regulations, reviewed and determined to be consistent with the CCMP by the Commission in CD-66-92, were meant to prohibit all MPWC use in the Sanctuary's waters, the loophole described above, in conjunction with advances in the design and passenger capacity of MPWC since 1992, have enabled some modern classes of watercraft to be used in the Sanctuary outside of the four designated MPWC zones. As described in the EIS, currently:

The two primary uses for MPWC in MBNMS are public safety and recreation. The main type of public safety use of this type of vessel is for search and rescue, although some patrol work is also performed using MPWC. Additionally, public safety organizations, including some from outside the Sanctuary, conduct MPWC training sessions in the Sanctuary in order to prepare for search and rescue work. Recreational use of MPWC in MBNMS includes [three] categories, general recreational riding, tow-in surfing [and tow-at surfing]. Because the waters of MBNMS are generally colder and rougher than those of inland lakes and reservoirs, few MPWC owners choose to ride in the Sanctuary rather than in lakes, and as a result there is little of this type of recreational activity. However, MPWC use for tow-in [and tow-at] surfing has increased substantially in the past five years.

Formal statistics documenting the use of MPWC within the boundaries of MBNMS are not collected... However, based upon reports from harbormasters and NOAA enforcement personnel, MBNMS estimates that 1,200 MPWC trips were conducted in the Sanctuary in 2002, which represents repeated activity of approximately 150 individual MPWC...

According to interviews, the majority of MPWC use in MBNMS occurs at surfing spots in San Mateo, Santa Cruz, and Monterey counties... and most or all of the growth in such use, is related to tow-in surfing. The difficulty lies in documenting just how popular tow-in surfing has become. Insufficient statistical data exist to document the growth of tow-in surfing, but anecdotal evidence suggests that this activity is a very small subset of surfing.

Information developed by NOAA in Ecosystem Observations for MBNMS (NOAA 2000) suggests that most of the surfing in Monterey Bay occurs in and around Santa Cruz. According to estimates in this document, the average daily number of people surfing in and around Santa Cruz is 300. In contrast, interviews with harbor personnel at Santa Cruz indicate that only 30 to 50 MPWC are launched there per year, and only 60 percent of these were for the purpose of tow-in surfing. This may be growing by 5 percent per year.

Field interviews also show that tow-in surfing is an extremely small portion of surfing. It is estimated that the Monterey Peninsula/Carmel Bay area has only six regular tow-in surfers, and that both Moss Landing and Santa Cruz have approximately the same number. However, tow-in is becoming increasingly popular at Moss Landing and around Monterey Peninsula. Tow-in surfing can also be considered necessary at some locations along the central/northern California coast. The Pillar Point area, most notably Mavericks, has the highest number of regular tow-in surfers, with as many as 20 two-man teams regularly operating there. Mavericks is a world-renowned big-wave location one quarter mile off the coast of Half Moon Bay within the MBNMS. MPWCs are typically used at this site for access and safety precautions due to waves that can crest at over 50 feet and remarkably strong currents, jagged rocks, shallow reefs, and frigid water temperatures (Mavericks Surf Ventures, LLC 2006). MPWCs are commonly used at the Mavericks Surf Contest for photographers to document the contest and to rescue competitors when necessary. The harbors at Monterey, Moss Landing, Santa Cruz, and Pillar Point are the primary locations for launching MPWC within MBNMS. Morro Bay Harbor is also a launch site, but it is 15 miles (24 km) past the southern end of the Sanctuary and sees very little MPWC launch activity related to the Sanctuary.

The project EIS further details MPWC use in the Sanctuary and assesses the potential affects of the proposed change in the definition of MPWC on these uses:

As described [previously], MPWC use in MBNMS is confined to four existing designated zones. However, some larger MPWC do not fall under the sanctuary's current definition of MPWC and therefore are not confined to the four zones. Altering the definition of MPWC to include a broader range of vessels, including increased rider capacity watercraft, would limit their operation to the four existing designated MPWC zones. The only exception to this regulation would be for emergency use by public safety agency personnel. For training of those public safety personnel during non-emergency situations, permits could be made available. Permits would be limited to training for public safety organizations with jurisdiction within the Sanctuary. MPWCs are used in a variety of environments and in a variety of ways in the Sanctuary. One of the primary uses is for "tow-in" and "tow-at" surfing. In "tow-in" surfing, MPWC use has allowed surfers to catch waves that are too large and consequently traveling too fast to catch by paddling. According to interviews with surfers and state and local personnel, most tow-in surfing activity occurs in big-wave conditions (larger than 15 feet), which are most often associated with the storms that occur between October and March. However, MPWC use has spread to towing surfers into more moderately sized waves that can also be ridden by paddling. Additionally, there has been an increase in what is known as "tow-at" surfing where MPWC are used to sling a surfer at smaller waves at high speeds.

There have been some anecdotal reports of increased use of MPWC in traditional paddle-in surf spots, causing some conflict between the two types of surfers, as well as conflict between MPWC users and other recreational uses of the Sanctuary, such as kayakers and wildlife-watchers. Restricting all MPWC to the designated zones would

eliminate this conflict, which would have a beneficial impact on other recreational users in areas outside the MPWC zones.

Eliminating all MPWC from use outside the MPWC zones would result in a significant adverse impact by creating a long-term preemption of the recreational use of MPWC to surf big waves, [except, as described previously, during winter periods of local high surf advisory within the planned MPWC Zone 5] at Mavericks. The MPWC prohibition would restrict all non-emergency MPWC use including two of the primary uses, “tow-in” and “tow-at” surfing. These activities [most commonly] occur at Moss Landing, Pescadero Point and at “Mavericks” off of Pillar Point, among other places. While the Mavericks surfing competition does not permit the use of MPWC for tow-in purposes, professional and recreational surfers practice at Mavericks using MPWCs, and MPWC are used during the competition by photographers, spectators, and rescue personnel. During such competitions public rescue personnel could be permitted to continue to provide a safety presence.

Impacts on other recreational MPWC use would not be significant because MPWC could still be used in the four designated MPWC zones in the sanctuary.

As suggested in the project EIS, the impact of the MPWC prohibition on recreation could be mitigated by the issuance of permits for tow-in surfing at Mavericks. The NMSP’s commitment to establish a permit program for a commercially sponsored surfing competition at Mavericks, as described in the July 16, 2007, NMSP letter to the Commission, as well as the further commitment, also detailed in this letter, to establish a seasonal big wave MPWC zone at this location (accessible from December through February during periods when NOAA’s National Weather Service issues a high surf warning for Half Moon Bay), would substantially reduce the potential adverse affects on the Sanctuary’s recreational resources resulting from the proposed prohibition on MPWC. In addition, by limiting the use of MPWC and the occurrence of tow-in surfing at Mavericks to only periods of very large surf, it is anticipated that this regulation will serve to alleviate some of the conflicts that have arisen at this location between different groups of recreational users, primarily between the traditional paddle-in surfing community and the tow-in surfing community. The planned seasonal big wave MPWC zone at Pillar Point would continue to enable the use of this unique surfing resource in a responsible manner by both tow-in surfers and traditional paddle-in surfers, and, as discussed on page 18, will minimize the potential for adverse impacts to the Sanctuary’s marine biological resources resulting from unrestricted MPWC use.

As discussed in the Commission’s findings on consistency determination CD-101-00 (Gulf of the Farallones National Marine Sanctuary), regulation of the use of MPWCs is consistent with the public access policies of the Coastal Act. In their review, the Commission found:

The proposed regulations do not prohibit coastal access to or recreation within the Sanctuary, but instead regulate the manner and place of public access and recreation consistent with the facts and circumstances concerning the capacity of the Sanctuary to

sustain the type and intensity of recreational use. Substantial evidence is provided by NOAA to demonstrate that the Sanctuary cannot support the use of MPWC and that such use is incompatible with other public access and recreation activities and the need to protect natural resources within the Sanctuary from harm and overuse. Therefore, the Commission finds that the proposed prohibition of MPWC are reasonable and necessary regulations of the place and manner of public access, and are consistent with Sections 30210 and 30214(a)(2) of the Coastal Act.

The proposed change to the MBNMS regulatory definition of MPWC brings up many of the same issues addressed in the above findings adopted by the Commission in CD-101-00. As detailed on pages 16-18 of this report, NOAA has provided evidence and analysis that the Sanctuary cannot support the unrestricted use of MPWC and that such use is incompatible with the Sanctuary's marine biological resource protection objectives and stewardship responsibilities. Through NOAA's analysis it is clear that, similar to the existing prohibitions on MPWC use in the Gulf of the Farallones National Marine Sanctuary and the Channel Islands National Marine Sanctuary, the proposed regulations on MPWC in the Monterey Bay National Marine Sanctuary do not prohibit coastal access to or recreation within the Sanctuary, but instead regulate the manner and place of public access and recreation consistent with the facts and circumstances governing the capacity of the Sanctuary to sustain the type and intensity of recreational use.

Regarding Coastal Act Section 30220 and the need for protecting coastal water oriented recreational activities that cannot be provided at inland waters, the Commission's findings on coastal development permit 2-00-005 (Marin County) explain that MPWC can be used at other inland water areas outside of the Sanctuary:

[M]PWC can be operated at inland water areas as readily as in coastal waters... Therefore, the operation of [M]PWC is not a recreational activity that cannot readily be provided at inland water areas.

In addition, MBNMS has four existing MPWC use zones dedicated to providing opportunities for MPWC recreation in coastal waters and the prohibition of MPWC use outside of these zones was originally found to be consistent with Coastal Act Section 30220 in CD-66-92. Since that time, however, more specialized recreational uses of MPWC have been developed in the Sanctuary – namely, tow-in and tow-at surfing – which are dependant on ocean waves and cannot be provided at inland waters or within the four existing MPWC use areas. Accordingly, the NMSP has committed to providing an additional MPWC use zone (Zone 5 described on Exhibit 4) specifically located to provide continuing opportunities for tow-in surfing within the Sanctuary. In addition, as noted previously in this report, the Sanctuary is an area that provides habitat for threatened and endangered species, and the unrestricted use of MPWC has the potential to generate significant adverse effects on these species and their habitats. As a result, those areas of the Sanctuary outside of the four designated unrestricted use areas and the fifth planned restricted use zone, are not coastal areas that are suitable for MPWC recreation, and the proposed prohibition on operation of MPWC outside these five designated MPWC use zones is consistent with Section 30220 of the Coastal Act. In addition, the Sanctuary includes water areas that support recreational activities such as sailing, kayaking, windsurfing, canoeing, swimming,

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

Cross-Cutting

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:

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.

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 and Large Vessel Discharges – The proposed regulations on cruise ships [and vessels of 300 gross registered tons or more] 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,

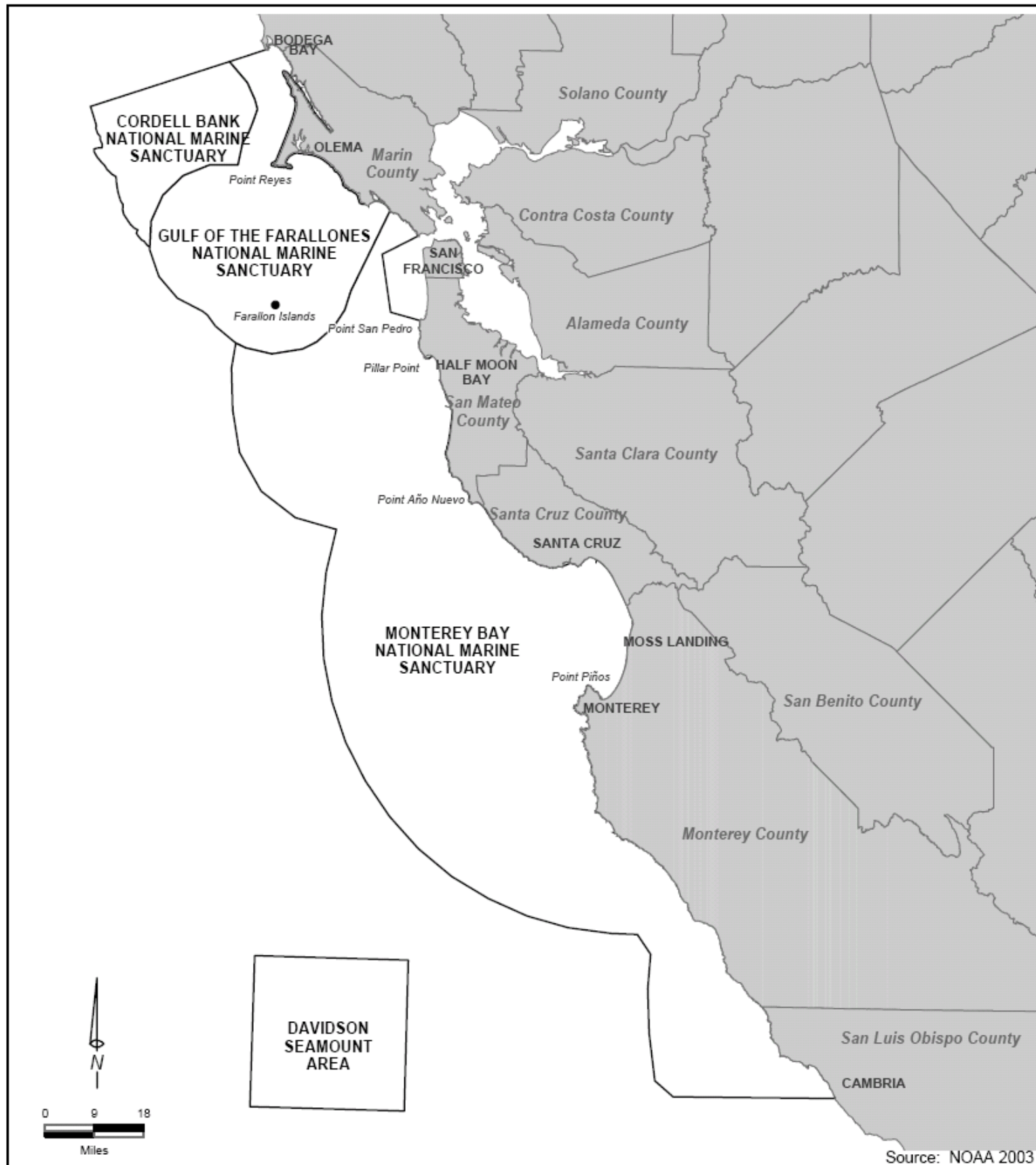
scuba diving, wildlife watching, surfing, swimming and boating), and therefore the impact on recreational resources would be beneficial.

Conclusion

As described above, with the potential to affect recreational activities or resources within the Sanctuary, the proposed regulations would result in either minor beneficial impacts or negligible adverse impacts. Many of the recreational activities that occur within the Sanctuary's boundaries are focused on the Sanctuary's marine resources and wildlife. These activities, including whale watching, birding and other wildlife viewing opportunities such as scuba diving would be likely to benefit from the increased numbers, diversity and health of marine resources that would result from the proposed regulations aimed at ecosystem and wildlife protection. Other recreational activities, including those dependant on the use of MPWC, would be limited by the proposed regulations; however, as discussed above, those areas of the Sanctuary not specifically designated for MPWC use are not suitable for this type of recreation, and the proposed regulations would serve to increase both the overall marine biological protection and recreational resource uses provided by the Sanctuary. Therefore, the Commission finds that the new and revised regulations proposed under the updated MBNMS management plan are consistent with the public access and recreation policies of the California Coastal Management Program (Sections 30210, 30214(a)(2) and 30220 of the Coastal Act).

V. SUBSTANTIVE FILE DOCUMENTS.

1. Draft Management Plan – 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.
6. Coastal Development Permit CDP-2-00-005, Marin County Prohibition on Motorized Personal Watercraft.



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-011-07
NOAA

Subpart M—Monterey Bay National Marine Sanctuary

Section 922.130 Boundary.

~~§922.130 Boundary.~~

~~(a) The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate ~~an~~ areas.~~

~~(a) The first area consists of an area of approximately 4,016²⁴ square nautical miles (nm) of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California.~~

~~(b) The northern terminus of the Sanctuary boundary is located along the southern boundary of the Gulf of the Farallones National Marine Sanctuary (GFNMS), beginning at Rocky Point just south of Stinson Beach in Marin County. The Sanctuary boundary follow the GFNMS boundary and runs westward to a point approximately 29 nm offshore from Moss Beach in San Mateo County. 123°07'W. The Sanctuary boundary then extends southward in a series of ~~an~~ arcs which generally follows the 500 fathom isobath to a point approximately 27 nm offshore of Cambria in San Luis Obispo County. At approximately 37°03'N, the boundary arcs south to 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41'W, 35°33'N, due west of Cambria. The Sanctuary boundary then extends shoreward eastward towards the shore until it intersects the Mean High-Water Line (MHWL) along the coast near Cambria. The landward Sanctuary boundary then follows the MHWL northward to the northern terminus at Rocky Point. is defined by the mean high-water line between the GFNMS and Cambria, exclusive of The shoreward Sanctuary boundary excludes a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point Harbor, Santa Cruz Harbor, Monterey Harbor, and Moss Landing Harbor, and Monterey harbors are all excluded from the Sanctuary boundary shoreward from the points listed in Appendix A, ~~is~~ respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge and west of the tide gate at Elkhorn Road and toward the center channel from the MHWL is included in the Sanctuary, excluding areas within the Elkhorn Slough National Estuarine Research Reserve, is included within the Sanctuary boundary. The Exact boundary coordinates for the seaward boundary and harbor exclusions are listed provided in Appendix A to this subpart.~~

~~(b) The Davidson Seamount Management Zone (DSMZ) is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 sq. nm of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 nm off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the DSMZ boundary are provided in Appendix F to this subpart.~~

§922.131 Definitions.

In addition to those definitions found at 15 CFR §922.3, the following definitions apply to this subpart:

Attract or attracting means the conduct of any activity that lures or may lure ~~white sharks~~ any animal by using food, bait, chum, dyes, decoys, acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, and surfers).

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to 15 CFR §922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron). Pneumatic, mechanical, electrical, hydraulic or explosive tools are, the examples of what does not meet this definition.

Motorized personal watercraft (MPWC) means (1) any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the vessel, in contrast to the

conventional manner, where the operator stands or sits inside the vessel; (2) any vessel less than 20 feet in length overall and propelled by machinery and that has been exempted from compliance, with the U.S. Coast Guard's maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183 (except submarines; or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

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. 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

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.

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

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 ecosystems 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.

The Davidson Seamount Management Zone means the area bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, and consists of approximately 585 square NM of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 NM off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the DSMZ boundary are provided in Appendix F to this subpart.

~~The Davidson Seamount Management Zone means the ocean waters and submerged lands thereunder bounded by coordinates West: 123.00000°W; East: 122.50000°W; North: 35.90000°N; South: 35.50000°N.~~

~~motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis, wet bikes, surf jets, miniature speed boats, air boats, and hovercraft.~~

§922.132 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (e) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary except: jade may be collected (~~meaning removed~~) from the area bounded by the ~~35°55'20"~~ 35.92222 N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach), the ~~35°53'20"~~ 35.88889 N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and from the mean high tide line seaward to the 90-foot isobath (depth line) (the "authorized area") *provided that*.

(i) Only jade already loose from the submerged lands of the Sanctuary ~~seabed~~ may be collected;

(ii) No tool may be used to collect jade except:

(A) A hand tool (as defined ~~in~~ at 15 CFR §922.131) to maneuver or lift the jade or scratch the surface of a stone as necessary to determine if it is jade;

(B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or

(C) A vessel (except for motorized personal watercraft) (see paragraph (a)(7) of this section) to provide access to the authorized area;

(iii) Each person may collect only what that person individually carries; and

(iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii) of this section, any person may apply for a permit to collect such a loose piece by following the procedures in 15 CFR §922.133.

(2)

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

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations within the Sanctuary, provided that such discharge or deposit is during the conduct of traditional fishing operations within the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by an operable Type I or 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, et seq. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;

(C) ~~Biodegradable Water generated by routine vessel operations (e.g., cooling water, deck wash down, vessel engine cooling water, vessel generator cooling water, anchor wash, clean bilge water (meaning not containing detectable levels of harmful matter as defined), and/or graywater as defined by section 312 of the FWPCA that is biodegradable excluding oily wastes from bilge pumping;~~

(D) Vessel engine or generator exhaust; or

(E) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation (January 1, 1993), provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on January 1, 1993. Authorized disposal sites within the Sanctuary are described in Appendix C.

(ii) Discharging or depositing, from within or into the Sanctuary, any material or other matter from a cruise ship except vessel engine cooling water, generator cooling water or anchor wash.

(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 those listed in paragraphs (a)(2)(i) (A) through (D) of this section and dredged material deposited at the authorized disposal sites described in Appendix DB to this subpart, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(3) ~~Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure,~~ a Sanctuary historical resource. This prohibition does not apply to possession, moving, removing or injury resulting incidentally from kelp harvesting, aquaculture or traditional fishing operations.

(4) Drilling into, dredging or otherwise altering the ~~seabed-submerged lands~~ of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the ~~seabed-submerged lands~~ of the Sanctuary except as ~~an incidental to and necessary to~~ result of:

~~(i) Anchoring vessels;~~

~~(ii) Conduct Aquaculture, kelp harvesting or traditional fishing operations;~~

~~(iii) Anchor a vessel;~~

~~(iii) Conduct aquaculture or kelp harvesting;~~

~~(iv) Install an authorized aid of navigational aids;~~

~~(iv) Conduct Harbor maintenance in the an areas necessarily associated with a Federal Projects in existence on January 1, 1993, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties;~~

~~(vi) Construction, repair, replacement or rehabilitation of a docks or piers; or~~

~~(vii) Collection of jade pursuant to paragraph (a)(1) of this section, provided that there is no constructing, placing, or abandoning any structure, material, or other matter on the seabed submerged lands of the Sanctuary.~~

The exceptions listed in subparagraphs (a)(4)(ii) through (a)(4)(vii) of this section do not apply in the Davidson Seamount Management Zone

(5) Taking any marine mammal, sea turtle or seabird ~~within~~ or above the Sanctuary, except as ~~expressly permitted authorized by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 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., or any regulations, as amended, promulgated under the MMPA, ESA, or MBTA.~~

(6) Flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1000 feet above any of the four zones within the Sanctuary described in Appendix BG to this subpart.

(7) Operating motorized personal water craft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in ~~Appendix E~~ to this subpart.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), ~~except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, sea turtle or seabird, taken except as authorized in violation of regulations, as amended, promulgated under the MMPA, ESA, or MBTA, under any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.~~

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

(10) Leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary.

(11)

(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to fishing below 3000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).

(ii) Possessing any Sanctuary resource the source of which is more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to possession of fish resulting from fishing below 3000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).

(12)

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

~~(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.~~

~~(130) Attracting any white shark within that part of the Sanctuary, out to the seaward limit of State waters. For the purposes of this prohibition, the seaward limit of State waters is a line three nautical miles distant from the coastline of the State, where the coastline is the line of ordinary low water along the portion of the coast in direct contact with the open sea. The coastline for Monterey Bay, which is inland waters, is the straight line marking the seaward limit of the Bay, determined by connecting the following two points: 36°57'6" N, 122°01'45" W and 36°38'16" N, 121°56'3" W.~~

~~(149) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.~~

(b) The prohibitions in paragraphs (a)(2) through (119) of this section do not apply to activities necessary to respond to an emergencies threatening life, property or the environment.

(c)(1) All Department of Defense activities ~~shall~~ must be carried out in a manner that avoids to maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The

prohibitions in paragraphs (a) (2) through (129) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940). New activities may be exempted from the prohibitions in paragraphs (a) (2) through (129) of this section by the Director after consultation between the Director and the Department of Defense.

(2) In the event of ~~threatened or actual~~ destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an ~~unintended~~ incident, including but not limited to ~~spills, discharges, deposits, and groundings~~, caused by ~~the a~~ Department of Defense activity, the Department of Defense, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director. ~~the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.~~

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, paragraphs (a) (2) ~~and (8) of this section, and paragraph through~~ (a)(110) and (a)(13) of this section, do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR §§922.48 and 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a) (2) through ~~(a)(88)~~ of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation (January 1, 1993), and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR §922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under 15 CFR §§922.48 and 922.133 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development or production of oil, gas or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to 15 CFR §922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

§922.133 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by sec. §922.132(a)(1) as it pertains to jade collection in the Sanctuary, and sec. §922.132(a) (2) through (118), or sec. (a)(13), and §922.132(a) (10), if s activity is specifically authorized by, and conducted in accordance with the scope, purpose, term conditions of a permit issued under this section and 15 CFR 922.48.

~~(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940.~~

~~(be) The Director, at his or her sole discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by sec. §922.132(a)(1) as it pertains to jade collection in the Sanctuary, sec. §922.132(a) (2) through (118), or sec. (a)(13), and §922.132(a)(10) if the Director finds the activity will have at most short-term only and negligible short-term adverse effects on Sanctuary resources and qualities and will:~~

~~(1) Is further research related designed to further understanding of the Sanctuary resources and qualities;~~

~~(2) Will further the educational, natural or historical resource value of the Sanctuary;~~

~~(3) Will further salvage or recovery operations within or near the Sanctuary in connection with a recent air or marine casualty;~~

~~(4) Will allow the removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove area under §922.132(a)(1)(iv); assist in managing the Sanctuary;~~

~~(5) Will or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California; or~~

~~(6) Will allow removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove Area under sec. 922.132(a)(1)(i+v).~~

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

~~(1) Will the activity be conducted by an applicant that is the professionally qualified to conduct and complete the activity;~~

~~(2) Will the activity be conducted by an applicant with adequate eations and financial resources available ability of the applicant as related to the proposed conduct and complete the activity;~~

~~(3) the duration of Is the activity proposed for no longer than necessary to achieve its stated purpose;~~

~~(4) Must the activity be conducted within the Sanctuary;~~

~~(5) Will the activity be conducted using and the duration of its effects; the appropriateness of the methods and procedures that are appropriate to achieve the goals of the proposed by the applicant for the conduct of the activity, especially in relation to the potential effects of the proposed activity on ; the extend to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities;~~

~~(6) Will the activity 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;~~

~~(7) Will the activity be conducted in a manner compatible with the value of the Sanctuary as a source of recreation and as a source of educational and scientific information, 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; and~~

~~(8) Does the reasonably expected end value of the activity to the furtherance of the Sanctuary goals and objectives outweigh any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity.~~

~~the cumulative effects of the activity, and the end value of the activity.~~ For jade collection, preference will be given for applications proposing to collect loose pieces of jade for research or education purposes. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) Applications.

~~(1) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries ~~Ocean and Coastal Resource Management~~; ATTN: ~~Manager~~ Superintendent ~~Superintendent~~, Monterey Bay National Marine Sanctuary, 299 Foam Street, ~~SSuite D~~, uite D Monterey, CA 93940.~~

~~(2) In addition to the information listed in 15 CFR 922.48(b), all applications must include information the Director needs to make the findings in paragraph (b) of this section and information to be considered by the Director pursuant to paragraph (c) of this section.~~

~~(e) In addition to any other terms and conditions that the Director deems appropriate, a permit issued pursuant to this section must require that the permittee agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.~~

~~(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.~~

~~(e) The Director may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.~~

~~(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.~~

§922.134 Notification and review.

(a) [Reserved]

(b)(1) NOAA has entered into a Memorandum of Agreement (MOA) with the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section ~~§~~13377 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under section ~~§~~13263 of the California Water Code.

(2) The MOA specifies how the process of 15 CFR ~~§~~922.49 will be administered within State waters within the Sanctuary in coordination with the State permit program.

Coastal Development Action Plans

Coastal Armoring: The armoring of the coastline for protection of private and public structures continues to expand throughout the Sanctuary. This action plan proposes to address coastal armoring issues through development of a program to coordinate with the California Coastal Commission and other agencies to identify planning regions and guidelines and where possible, alternatives to armoring.

Desalination: Increased demand for water in various communities adjacent to the Sanctuary, together with advancements in technology, has made desalination an attractive source of fresh water. The Sanctuary proposes development of a regional program and policy regarding desalination facility locations. The action plan also includes development of facility siting guidelines and a modeling and monitoring program for desalination discharges.

Harbors and Dredge Disposal: The Sanctuary will continue to review the disposal of dredged material in approved locations at sea or along the shoreline. This action plan proposes several agency coordination improvements, and the development of review guidelines. It would also implement a sediment monitoring and reduction program, address fine grain material disposal at sea, and evaluate alternative disposal methods for the four harbors in the Sanctuary.

Submerged Cables: The installation, operation, and removal of submerged cable may disturb sensitive habitats and negatively impact areas of the seafloor. Implementation would provide administrative guidelines for applications and define sensitive Sanctuary habitats that should be avoided. This would include a program to provide siting guidelines in a Geographic Information System (GIS) to identify environmental constraints.

Ecosystem Protection Action Plans

Big Sur Coastal Ecosystem Plan: The Sanctuary is proposing development of a program to coordinate and integrate management plans from seven coastal agencies with jurisdiction in the Big Sur area. Full implementation would integrate management plans into one comprehensive regional plan and identify potential methods and locations of disposal associated with landslides and maintenance of Highway 1 in Big Sur.

Bottom Trawling Effects on Benthic Habitats: The effects of bottom trawling on benthic habitats in areas of the Sanctuary are not completely known. Implementation of this action plan would include development of a program to examine where trawling occurs and its impacts to sanctuary resources, and if necessary, to present potential protective measures to the National Marine Fisheries Service, the Pacific Fishery Management Council, and the California Department of Fish and Game.

Davidson Seamount: The Davidson Seamount is a pristine undersea volcano that is proposed for inclusion in the Sanctuary as part of the Jmpr. Inclusion of the Davidson Seamount would provide additional protection of the seamount, additional regulations, and a new management zone. Implementation of the action plan would initiate monitoring, research, and education activities focused on the Davidson Seamount increasing the public's knowledge of seamounts, and the variety of deep sea flora and fauna inhabiting the area.

Emerging Issues: This action plan provides a framework for staff to evaluate and adequately address emerging resource issues in a timely and responsible manner. The strategies outline a process to provide adequate staffing and operations.

Introduced Species: The introduction of non-native species can destroy natural biological communities and potentially harm commercial activities. The Sanctuary would develop a program to prevent introduction, collect baseline information, and develop a research monitoring program. The action plan also includes development of a detection and response program for potential introductions or releases of non-native species.

Sanctuary Integrated Monitoring Network (SIMoN): Comprehensive, long-term monitoring is a fundamental element of resource management and conservation. The MBNMS, in collaboration with the regional science and management community, designed SIMoN to identify and track natural and human induced changes to the MBNMS. This action plan outlines how SIMoN integrates and interprets results of individual efforts in a large ecosystem-wide context and continuously updates and disseminates data summaries to facilitate communication between researchers, managers, educators, and the public. Timely and pertinent information is provided to all parties through tools such as a SIMoN web site, an annual symposium, and a series of technical and public reports.

Marine Protected Areas (MPAs): The action plan outlines how the Sanctuary will examine the utility of additional marine protected areas (MPAs) in maintaining the integrity of biological communities. It also outlines a program for identifying various types of ocean uses, integrated management, MPA design criteria, socioeconomic impact analysis, MPA enforcement, outreach, and monitoring. This plan also provides a framework to identify how the Sanctuary will

coordinate with the National Marine Fisheries Service, Pacific Fishery Management Council, and California Department of Fish and Game.

Operations and Administration Action Plans

Operations and Administration: This action plan provides the administrative guidelines for programs such as operational planning, staffing and infrastructure needs, volunteer programs, administrative initiatives, interagency coordination, and reviewing requests to conduct prohibited activities that may injure Sanctuary resources. Other activities consist of streamlining the permit review process, including improved outreach and interagency coordination; improved permit compliance; and monitoring and enforcement of permit conditions. Part of this action plan also addresses operation of the Sanctuary Advisory Council and the standing working groups (Conservation Working Group, Sanctuary Education Panel, Business and Tourism Advisory Panel, and Research Activities Panel).

Performance Evaluation: MBNMS will effectively and efficiently incorporate performance measurement into the regular cycle of management. This action plan details how strategy and related activities are to be measured for effectiveness during implementation by staff. This action plan also details the process by which the Sanctuary will measure its management performance over time and report its progress in meeting goals and objectives.

Partnerships and Opportunities Action Plans

Fishing-Related Education and Research: The Sanctuary will work with the fishing community to develop education programs; enhance stakeholder communication; promote understanding of sustainable fisheries; increase involvement in education and research; promote fishery, socioeconomic, cultural, and historical data collection and distribution; and help educate the public on the role of healthy ecosystems and fish stocks.

Interpretive Facilities: This action plan describes the need for and location of interpretive facilities including visitor centers, kiosks, virtual experiences, and signage at various locations along the coastline. Implementation would include development of a Sanctuary Explorer Center in Santa Cruz and provide for a key education and outreach tool component for the priority action plans.

Ocean Literacy and Constituent Building: This action plan addresses the need to cultivate an informed, involved constituency who cares about restoring, protecting and conserving our precious ocean resources. The Sanctuary will implement an integrated outreach program to pull together specific outreach and education activities outlined in other sections of this management plan and coordinate their execution, further developing the Sanctuary's relationships with its constituencies.

Water Quality Action Plans

Beach Closures and Microbial Contamination: In the last ten years, beach closures and warnings due to microbial contamination have become more common. This action plan provides a program to identify sources of contamination; research pathogen sources; increase monitoring, education, and enforcement; expand notification and emergency response; and develop a database and a source control program to reduce beach closures and postings due to microbial contamination.

Cruise Ship Discharges: Cruise ships can carry upwards of 3,000 people, and the discharge of waste may harm the water quality and resources. The Sanctuary proposes to prohibit discharges from cruise ships and conduct outreach and coordination with the cruise ship industry, providing it with information about the MBNMS. The MBNMS would also monitor and enforce potential cruise ship discharges.

Water Quality Protection Program Implementation: Pollutants running off the land often lower the quality of the water as both a habitat and resource for recreational and commercial use. The Sanctuary has four existing action plans that are in place to prevent pollution and facilitate water quality improvements as part of the Water Quality Protection Program: Urban Runoff, Regional Monitoring, Marinas and Boating, and Agriculture and Rural Lands. This action plan integrates the four existing plans into the Sanctuary management plan and provides for full implementation to address pollutants and their sources.

Wildlife Disturbance Action Plans

Marine Mammal, Seabird, and Turtle Disturbance: Various activities occurring on the water, in the air, or on land have the potential to harm the sensitive wildlife inhabiting the Sanctuary. Through increased monitoring, education, outreach, and enforcement, the Sanctuary will address disturbance to marine mammals, birds, and turtles from vessels, aircraft, shore-based activities, marine debris, commercial harvest, and acoustic disturbance.

Motorized Personal Watercraft (MPWC): MPWC use has increased in the Sanctuary with the development of larger and more powerful vehicles for use in the marine environment. The MBNMS is proposing an updated definition of MPWC in order to address the original intent of the existing MBNMS regulation, which was to restrict them to four zones outside of the surf area. This action plan includes education and enforcement procedures and exploration of the need for certain exceptions.

Tidepool Protection: The MBNMS will evaluate and prioritize high-visitation tidepools to address possible impacts associated with potentially excessive use. The action plan includes education and enforcement programs, and implementation would include the development of guidelines for tidepool access and enjoyment.

Cross-Cutting (Multi-Sanctuary) Action Plans

The management plans also include several cross-cutting plans, which would be implemented through coordination among each of the three sanctuaries. The following action plans will be included as appendices to the management plans:

Administrative and Operations: This action plan will outline coordination and cooperation across all three sites and identify methods to work and function as an integrated team.

Community Outreach: This action plan will build awareness about the existence and purpose of the three Sanctuaries and why they are relevant to their communities. Implementation will identify how Sanctuaries work with constituents and how groups can become engaged in helping the Sanctuaries accomplish their goals.

Ecosystem Monitoring: This action plan provides a framework to coordinate the various monitoring activities and to conduct a monitoring needs assessment. The MBNMS will also coordinate with the other sites in expanding the SIMoN to integrate the numerous ecosystem monitoring operations throughout the Sanctuary.

Maritime Heritage: Implementation of this action plan will establish a maritime heritage program at each of the three sites, outline how the West Coast marine heritage program will conduct a submerged-site inventory and assessment, identify and address submerged hazards, and provide for extensive education and outreach.

Northern Management Area (NMA): This action plan outlines how this area will be managed given the recent transfer of management and administrative functions from the MBNMS to the Gulf of the Farallones National Marine Sanctuary (GFNMS) in the NMA, an area of the MBNMS extending from the Santa Cruz-San Mateo county line north to the adjacent GFNMS boundary.

Existing and Proposed Motorized Personal Watercraft Zones for Pillar Point

