

**CALIFORNIA COASTAL COMMISSION**

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

**F 10****ENERGY, OCEAN RESOURCES, AND FEDERAL CONSISTENCY DIVISION REPORT**

FOR THE

**FEBRUARY 13, 2015 MEETING OF THE CALIFORNIA COASTAL COMMISSION**

**TO: Commissioners and Interested Parties**

**FROM: Alison Dettmer, Deputy Director**  
**Energy, Ocean Resources & Federal Consistency**

**NEGATIVE DETERMINATIONS**

APPLICANT	PROJECT	LOCATION
<b>ND-0047-14</b> National Park Service	Removal of Onshore Structures Action: <b>Concur, 12/30/2014</b>	Drake's Estero, Point Reyes National Seashore, Marin Co.
<b>ND-0048-14</b> National Maine Fisheries Service	Coho Salmon Contingency Plan Action: <b>Concur, 1/26/2015</b>	Scott Creek Shoreline Santa Cruz County
<b>ND-0049-14</b> General Services Administration	Conveyance of Surplus Property to City of L.A. Dept. of Recreation and Parks Action: <b>Concur, 1/7/2015</b>	Point Fermin, San Pedro Los Angeles County
<b>ND-0004-15</b> National Park Service	Oyster Rack Removal Method Test (and access fencing) Action: <b>Concur, 2/4/2015</b>	Drake's Estero, Point Reyes National Seashore, Marin Co.
<b>Modification to CD-010-07 &amp; CD-011-07</b> NOAA	Modifications to previously-modified consistency determinations for Sanctuary Management Plans, concerning introduced species regulations for the two sanctuaries Action: <b>Concur, 1/15/2015</b>	Monterey Bay and Gulf of the Farallones National Marine Sanctuaries, offshore central California



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# F10

**DATE:** February 6, 2015

**TO:** Coastal Commissioners and Interested Parties

**FROM:** Charles Lester, Executive Director  
Alison Dettmer, Deputy Director  
Mark Delaplaine, Manager, Energy, Ocean Resources and Federal  
Consistency Division

**RE:** Negative Determinations Issued by the Executive Director  
[Executive Director decision letters are attached]

PROJECT #:	ND-0047-14
APPLICANT:	National Park Service
LOCATION:	Drake's Estero, Point Reyes National Seashore, Marin Co.
PROJECT:	Removal of Onshore Structures
ACTION:	Concur
ACTION DATE:	12/30/2014

PROJECT #:	ND-0048-14
APPLICANT:	National Marine Fisheries Service
LOCATION:	Scott Creek Shoreline, Santa Cruz Co.
PROJECT:	Coho Salmon Contingency Plan
ACTION:	Concur
ACTION DATE:	1/26/2015

PROJECT #:	ND-0049-14
APPLICANT:	General Services Administration
LOCATION:	Point Fermin, San Pedro, Los Angeles Co.
PROJECT:	Conveyance of Surplus Property to City of LA Dept. of Recreation and Parks
ACTION:	Concur
ACTION DATE:	1/7/2015

PROJECT #:	ND-0004-15
APPLICANT:	National Park Service
LOCATION:	Drake's Estero, Point Reyes National Seashore, Marin Co.
PROJECT:	Oyster Rack Removal Method Test (and access fencing)
ACTION:	Concur
ACTION DATE:	2/4/2015

PROJECT #:	Modification to CD-010-07 & CD-011-07
APPLICANT:	NOAA
LOCATION:	Monterey Bay and Gulf of the Farallones National Marine Sanctuaries, offshore Central CA
PROJECT:	Modifications to previously-modified consistency determinations for Sanctuary Management Plans, concerning introduced species regulations for the two Sanctuaries
ACTION:	Concur
ACTION DATE:	1/15/2015

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December 30, 2014

Cicely A. Muldoon  
Superintendent  
Point Reyes National Seashore  
ATTN: Brannon Ketcham  
Point Reyes, CA 94956

Subject: Negative Determination ND-0047-14 (Removal of Structures from Onshore  
Portions of the Drakes Bay Oyster Company Use Area, Point Reyes National Seashore,  
Marin Co.)

Dear Ms. Muldoon:

The Coastal Commission staff has reviewed the above-referenced project. The National Park Service (NPS) proposes to remove the remaining structures related to the Drakes Bay Oyster Company (DBOC) shellfish aquaculture operation from the former DBOC onshore use area at Drakes Estero in Point Reyes National Seashore. The structures include a dock, barges, work platform, conveyor, shop, and processing building as well as three mobile homes, a one story residence, cabin, and associated outbuildings and infrastructure, including a septic system. The proposed activities are consistent with the Settlement Agreement and Consent Decree (SA/CD) approved by the U.S. District Court for the Northern District of California on October 8, 2014 (Case4:12-cv-06134-YGR Document 157 Exhibit 1). The proposed activities are outlined in Section 3(d)(i) of the SA/CD, which states that after December 31, 2014, the NPS may immediately proceed with removal of all remaining onshore and offshore property. The proposed activities will be carried out in combination with the removal of onshore equipment and structures previously authorized by Negative Determination ND-0042-14. No other work by the NPS at Drakes Estero is proposed in this negative determination. Future removal of offshore DBOC structures and equipment and restoration work by the NPS in Drakes Estero will be the subject of future federal consistency determinations.

The removal of the wooden dock and barges will include disconnecting them from supports and ramps and floating them to an access point on the adjacent shoreline for recovery. Recovery activities will include use of an excavator to lift and pull the structures from the shoreline and place them into a disposal container for transport offsite. The excavator will also be used for removing the work platform and underlying pad and support/anchoring system. This work will be carried out at low tide and the work area will be isolated with a silt fence to reduce the potential dispersal of sediments that may become disturbed during removal. The excavator will remain above mean-high-water at all times and will not enter intertidal or submerged areas.

Removal of the approximately 1900 square foot processing building and adjacent 300 square foot shop will include extracting all equipment and infrastructure from inside before disassembling the wooden walls and roofs with mechanized equipment. Both buildings are surrounded by paved surfaces and areas heavily disturbed by past activities so no significant ground disturbance or vegetation removal will occur during demolition. Equipment access and staging will be confined to these paved and disturbed areas during building removal. All equipment and materials from these buildings will be collected and placed in a disposal container for transport to an appropriate offsite waste receiving facility.

The three mobile homes, residence, cabin, and outbuildings will be demolished onsite using an excavator, placed in transport containers, and removed to an offsite waste receiving facility. Prior to demolition, all utilities and services attached to these structures will be disconnected and removed. Staging for demolition activities will be located in paved and disturbed areas and minimal disturbance of ground surfaces and vegetation is expected to occur.

Removal of the septic system will include pumping out the tank by a local septic service contractor prior to its excavation with heavy equipment. Associated piping and plumbing will be removed during tank removal and excavated soils and clean fill material from offsite will be used to return the site surface to a level grade.

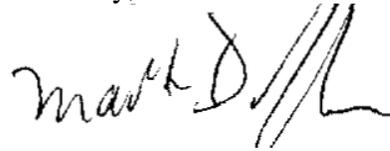
After the project areas are cleared of structures and debris, the NPS contractor will perform a final cleaning using a magnet and fine rake to remove small debris, and the finished grade will be raked smooth.

All proposed demolition, removal, and clean-up work will take place in highly disturbed areas regularly used as part of the DBOC operations, and no proposed work will take place within the water. A silt fence and/or construction fencing will be installed around the work areas to delineate them, to minimize the project footprint, and to prevent dispersal of debris. The NPS states that demolition and removal of the structures will be conducted by a park contractor using mechanized equipment (e.g., excavator, backhoe, loader) and hand labor, and that all materials and debris will be hauled offsite for appropriate disposal outside the National Seashore. Best management practices will be implemented to contain all demolition debris and prevent any adverse effects to water quality. Consultation with the State Historic Preservation Officer, Native American Heritage Commission, and Federated Indians of the Graton Rancheria has been carried out and although no sites of historic or cultural significance are located within the project site, an archeological monitor will oversee all ground disturbance activities. The NPS expects that the proposed work will last approximately one week and aims to complete the project by mid-January 2015.

The Commission staff **agrees** that the proposed demolition and removal of the dock, barges, work platform, conveyor, shop, processing building, three mobile homes, residence, cabin, and associated outbuildings and infrastructure at the DBOC site will not adversely affect coastal zone resources. As stated above, no other work by the NPS at this site is proposed in this negative determination, and any additional onshore or in-water removal and restoration work by the NPS at DBOC will be the subject of future federal consistency determinations. We therefore **concur**

with your negative determination made pursuant to 15 CFR 930.35 of the NOAA implementing regulations. Please contact Cassidy Teufel at (415) 904-5502 should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Lester". The signature is stylized and cursive, with a prominent "C" and "L".

(for) CHARLES LESTER  
Executive Director

cc: CCC – North Central Coast District

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January 26, 2015

Irma Lagomarsino  
Assistant Regional Administrator  
National Marine Fisheries Service  
777 Heindon Road  
Arcata, California 95521

Re: **ND-0048-14** National Marine Fisheries Service (NMFS), Negative Determination,  
Coho Salmon Contingency Plan, Scott Creek, Santa Cruz Co.

Dear Ms. Lagomarsino:

The Coastal Commission staff has reviewed the above-referenced project. The Commission originally logged in this proposal as a coastal development permit (Application 3-14-0640), but during our review we realized it was a federal agency activity, more appropriately reviewed as a federal consistency matter. NMFS is proposing a contingency plan to be implemented when needed (during drought conditions) to breach the sandbar at the mouth of Scott Creek to facilitate Coho Salmon migration from the ocean to the creek. The proposal involves the potential to move up to 700 linear feet (5,400 cu. yds.) of beach sand up to eight times (up to four winter and four spring periods) over a 10-year time-frame. Decisions would be made annually, during mid-late January, to determine whether beaching is needed based on drought or delayed rain conditions and projected weather patterns. Breaching would be limited to high tides and would minimize lagoon drainage to the extent practicable. Up to 40 Coho smolts entering the creek would be captured and artificially spawned at the Monterey Bay Salmon and Trout Project (MBPST) facility on Big Creek (a tributary to Scott Creek), and, at the appropriate time in their life cycle, would be returned to the ocean. Breaching may, if needed, involve mechanized equipment. Best Management Practices would be implemented to protect against fuel spills and other potential impacts on water quality. Equipment staging would not affect public access.

The project would not adversely affect coastal resources and would benefit anadromous fishery migration. We therefore **concur** with your negative determination made pursuant to 15 CFR 930.35 of the NOAA implementing regulations. Please contact Mark Delaplaine at (415) 904-5289 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "mark D. Lester".

(for) CHARLES LESTER  
Executive Director

cc: North Central Coast District  
Corps of Engineers, San Francisco District  
Erin Seghesio, NOAA Fisheries  
West Coast Region  
777 Sonoma Ave, Room 325  
Santa Rosa, CA 95404

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January 7, 2015

Clark Van Epps  
Director  
Office of Real Property Utilization & Disposal  
U.S. General Services Administration  
50 United Nations Plaza, Room 4341  
San Francisco, CA 94102

Subject: Negative Determination ND-0049-14 (Conveyance of Surplus Property at Point  
Fermin Light Station, San Pedro, Los Angeles County)

Dear Mr. Van Epps:

The Coastal Commission staff has reviewed the above-referenced project. The General Services Administration (GSA) proposes to convey to the City of Los Angeles Department of Recreation and Parks (LADRP) an approximately 3.5-acre parcel of surplus property located at Point Fermin in the community of San Pedro, City of Los Angeles. The property is improved with a three-story lighthouse tower, an office, garage, and other associated buildings and structures, and is located within the boundaries of the 37-acre municipal Point Fermin Park. The United States Coast Guard (and its predecessor agencies) has owned and operated the light station facility since its construction in 1874, and today owns and maintains active Federal Aid to Navigation equipment on the property. However, the lighthouse has not functioned as a coastal navigational light since the start of World War II.

The Point Fermin Light Station is listed on the National Register of Historic Places, and the GSA is consulting with the California Historic Preservation Officer to develop mitigation measures to limit potential adverse effects of the disposal action on the property's historic resources. Since 1992 the LADRP has operated a portion of the site, funded restoration work, and offered public tours of the light station and museum. The City of Los Angeles general plan and zoning designation for the property is "Open Space" and states that the highest and best use of the site is for park and recreation purposes. Future development of the site is governed by the provisions of the City of Los Angeles' *San Pedro Specific Plan for the San Pedro Coastal Zone*.

GSA will convey the property to the LADRP pursuant to the National Historic Lighthouse Preservation Act (NHLPA), which allows lighthouse properties to be transferred for public purposes, including park, recreation, cultural, historic, and educational uses. The NHLPA is administered through the combined efforts of the GSA, the Coast Guard, and the National Park

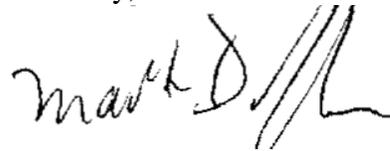
Service. The LADRP's approved program for the light station property includes the following provisions:

- Continue existing public access to the lighthouse
- Maintain grounds of the property and adjacent areas
- Provide space for meetings, volunteer development, exhibits, and newsletters
- Make available educational and interpretive tours
- Offer public and community events
- Actively ensure preservation of the historic structures and artifacts, in part through increased public/private partnerships
- Work in cooperation with non-profit organizations (e.g., Point Fermin Lighthouse Society) to support the mission of the lighthouse and the museum.

In addition, the Commission notes that any future development on the site will be subject to coastal development permitting requirements.

In conclusion, the Commission staff **agrees** that the proposed conveyance of this property to the LADRP will not adversely affect coastal zone resources. We therefore **concur** with your negative determination made pursuant to 15 CFR 930.35 of the NOAA implementing regulations. Please contact Larry Simon at (415) 904-5288 should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Lester", written over a white background.

(for) CHARLES LESTER  
Executive Director

cc: CCC – South Coast District  
LADRP

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February 4, 2015

Cicely A. Muldoon  
Superintendent  
Point Reyes National Seashore  
ATTN: Brannon Ketcham  
Point Reyes, CA 94956

Subject: Negative Determination ND-0004-15 (Fence Installation and Oyster Rack Removal Method Test, Point Reyes National Seashore, Marin Co.)

Dear Ms. Muldoon:

The Coastal Commission staff has reviewed the above-referenced project. The National Park Service (NPS) proposes to install approximately 100 linear feet of split rail timber fencing and limited signage at the public parking and access site near the shore of Drakes Estero, and to carry out limited performance testing of up to six oyster cultivation rack removal methods within Drakes Estero. The removal methods to be tested include simultaneous removal of one, two, and three vertical rack members and associated crossbars; removal of broken and deteriorated rack members; and removal of rack members from above and below the waterline. All tests will be carried out using a generator-powered winch operated from a work barge, and all removed rack material will be placed aboard a second support barge for transport to shore and disposal at an appropriate offsite waste receiving facility. Rack removal testing will be carried out at up to five separate areas, selected to represent the range of available sediment and bathymetric conditions in Drakes Estero. Additional removal of offshore structures and equipment and restoration work by the NPS in Drakes Estero will be the subject of future federal consistency determinations. The results of the removal method testing activities will be used to inform and refine the proposed conduct of these future removal activities.

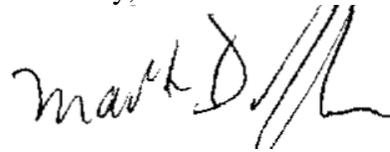
All proposed onshore signage and fence installation activities will take place in highly disturbed areas within and adjacent to an existing public parking area. Construction and installation work would be completed within one day, and no existing public parking spaces in the parking lot would be closed during or as a result of this work. Installed signs would be small wooden signs used to delineate existing residential areas on the site from public parking areas. These signs would be placed near the split rail fence and would not block or impede coastal views.

All proposed offshore removal method testing activities will be carried out in areas that do not currently support eelgrass, and all direct impacts to eelgrass will be avoided. In addition, all rack members targeted for removal in these tests will be inspected prior to removal and selected to

ensure that no invasive or potentially invasive marine fouling organisms would be dislodged or spread into the waters of the estero during removal.

The Commission staff **agrees** that the proposed installation of a split rail fence and onshore signage, as well as the conduct of a limited offshore cultivation rack removal methods test within Drakes Estero, will not adversely affect coastal zone resources. As stated above, no other work by the NPS at this site is proposed in this negative determination, and any additional onshore or in-water removal and restoration work by the NPS at Drakes Estero will be the subject of future federal consistency determinations. We therefore **concur** with your negative determination made pursuant to 15 CFR 930.35 of the NOAA implementing regulations. Please contact Cassidy Teufel at (415) 904-5502 should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Lester", with a stylized flourish at the end.

(for) CHARLES LESTER  
Executive Director

cc: California Coastal Commission, North Central Coast District  
Corps of Engineers, S.F. District  
California Department of Fish and Wildlife, Marine Region

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January 15, 2015

Dave Lott  
West Coast Region Operations Coordinator  
NOAA's Office of National Marine Sanctuaries  
99 Pacific Street, Suite 100F  
Monterey, CA 93940-2484

Re: **CD-011-07 and CD-010-07**, NOAA, Modification to previously-reviewed Consistency Determinations for Monterey Bay and Gulf of the Farallones National Marine Sanctuaries

Dear Mr. Lott:

On August 10, 2007, the Commission conditionally concurred with NOAA consistency determinations for Revised Management Plans for the Gulf of the Farallones (CD-010-07), and Monterey Bay (CD-011-07) National Marine Sanctuaries (GFNMS, and MBMNS). The Commission's conditions, to which NOAA agreed at the time of the Commission's action, would have limited introduced species associated with mariculture operations to existing mariculture sites in Tomales Bay (in the GFNMS), where such operations had already been approved by the State of California and were in effect on the effective date of NOAA's final regulation. New or expanded mariculture in the GFNMS, and new mariculture in the MBNMS, would have been prohibited under the conditions and final regulation contemplated.

At the time of the Commission's action, NOAA and the Commission were aware that the Governor of California was concerned about these restrictions, and that the Governor had the authority to "veto" any NOAA proposal so modified. After the Commission's action, NOAA published a final rule incorporating the Commission's conditions. As proscribed in the National Marine Sanctuaries Act (NMSA), NOAA notified the Governor's office of the Final Rule, and as allowed under the NMSA<sup>1</sup>, the Governor of California objected to the bans on invasive species in State waters.

NOAA subsequently submitted to the Commission staff a modified proposal that NOAA believed the Governor would accept. These modifications: (1) allowed future state-permitted aquaculture in the GFNMS; and (2) limited the ban on introduced species in the MBNMS to only federal waters. The Commission staff concurred with this modified proposal on February 11, 2010. The Commission staff's concurrence letter stated that the modified proposal would achieve consistency "as near to the Commission's original decisions as NOAA can practicably attain, given the constraints imposed by the National Marine Sanctuaries Act and the Governor's actions."

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<sup>1</sup> Under the NMSA (16 USC. §1434 (b)(1)), where a Sanctuary includes state waters, if the Governor of that state certifies to NOAA that the designation or any of its terms is unacceptable, the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

On March 18, 2013 (78 FR 16622), NOAA issued a proposed rule to amend the terms of designation and regulations regarding the introduction of introduced species into Gulf of the Farallones and Monterey Bay National Marine Sanctuaries. NOAA proposed to apply the original introduced species regulations to the entirety of both sanctuaries and provide exceptions for striped bass and mariculture activities in Tomales Bay. This action would make the regulation of introduced species consistent in all four of the national marine sanctuaries off of California.

Further discussions of these matters between NOAA, the Commission staff, the California Resources Agency, and the Governor's office have ensued. Following these discussions NOAA published an amended proposal, which it is currently in the process of responding to comments on, for a proposed rule that would allow it to authorize introduced species from shellfish mariculture in both Sanctuaries, if the mariculture activity has been authorized by State agencies, including the Commission.

NOAA's amended proposed rule as published on March 27, 2014 (78 FR 21658) proposes to allow MBNMS and GFNMS to authorize state permits or leases for commercial mariculture projects in state waters involving introduced species of shellfish that the state management agencies and NOAA have determined are non-invasive and would not have significant adverse impacts to sanctuary resources or qualities. State agencies understand NOAA's goal of achieving uniform management of introduced species throughout the two sanctuaries.

The amended proposed rulemaking includes further discussion of interagency efforts to achieve a state-federal working relationship to address introduced species regulatory concerns. These efforts include developing a Memorandum of Agreement (MOA) between NOAA, the Commission, the California Natural Resources Agency, the Ocean Protection Council, the California Department of Fish and Wildlife, and the California Fish and Game Commission. The agencies anticipate that, among other things, this MOA would outline agency review processes, and clarify interagency coordination responsibilities. It would not modify existing agency authorities. As currently contemplated, under the MOA State agencies would take the lead in determining whether an introduced species of shellfish is non-invasive, but would consult with NOAA early in the process to ultimately reach a joint decision.

NOAA has indicated it received few comments on the March 2013 proposed rulemaking regarding the introduced species regulation related to GFNMS. Both the GFNMS Advisory Council and several members of the public commented in strong support of the proposed rule and indicated appreciation that the state agencies had recognized the value of collaborating with NOAA to ensure state waters would receive additional protection from introduced species. However, the subsequent March 2014 proposed rule received considerable criticism from the public due to the addition of the authority for GFNMS to authorize other agency permits, leases or licenses that would allow new or expanded commercial shellfish aquaculture projects involving non-invasive introduced species. GFNMS does not presently have this permit authority and many commenters objected to inserting that authority and expanding the risk of an invasion by an introduced shellfish species in state waters of GFNMS. In a separate rulemaking related to

expansion of GFNMS boundaries (79 FR 20981), the state of California also requested that NOAA not provide GFNMS authorization authority at this time and that NOAA conduct a separate process to allow time for local input and education for such a regulatory change.

In response to the public's support for its March 2013 proposal regulating introduced species in state waters of GFNMS and opposition to its March 2014 proposed rule to establish authorization authority for GFNMS, NOAA has proposed to move forward with the regulatory proposals for GFNMS that were described in the March 2013 proposed rule. Specifically for GFNMS, the proposed final rule extends the introduced species prohibition to all of GFNMS state waters, but exempts catch and release of striped bass and any existing or future commercial aquaculture project involving introduced species approved by the state of California in sanctuary waters of Tomales Bay after consulting GFNMS. NOAA's proposed final rule is responsive to public support, eliminates the authorization authority for GFNMS that was the subject of considerable public concern, conforms to the state of California's request to consider authorization authority for GFNMS in a separate process, and allows existing aquaculture projects to continue in Tomales Bay, the only area of either sanctuary where such activity presently occurs.

NOAA's website further summarizes the modifications as follows:

#### *IV. Summary of the Revisions to GFNMS Regulations*

*GFNMS regulations would be modified to prohibit the introduction of introduced species except those cultivated by commercial shellfish mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the state of California. Tomales Bay is defined in § 922.80. NOAA will enter into a Memorandum of Agreement (MOA) with the State of California to identify and define how the State will consult and coordinate with NOAA to review any new, amended or expanded lease or permit application for mariculture projects in Tomales Bay involving introduced species...*

#### *V. Summary of the Revisions to MBNMS Regulations*

*MBNMS regulations would be modified to allow authorization of a valid permit, license or other authorization issued by the State of California for commercial shellfish aquaculture activities conducted in state waters of MBNMS involving introduced species of shellfish that NOAA and the State have determined to be non-invasive and would not cause significant adverse effects on sanctuary resources or qualities. MBNMS regulations already allow State of California permits to be authorized for certain activities that are otherwise prohibited in the sanctuary. This proposed rule would allow the Director to authorize state permits involving the introduction of an introduced species as described above. ...*

The current prohibition against the introduction of introduced species in the federal waters of GFNMS and MBNMS remains unchanged.

NOAA has informally sought Commission staff guidance over the most appropriate CZMA review mechanism for these proposed modifications to its previously approved final rule.

The Commission retains coastal development permitting (CDP) authority over any future mariculture operations proposed in GFNMS and MBNMS, and under the rule NOAA could not authorize any such proposal absent a prior Commission authorization of the activity. Any Commission CDP review would involve public notification and hearings prior to any Commission authorization. As stated above, even if other agencies have authorized an activity, NOAA retains the authority to deny a permit for an activity unless it determines (in conjunction with state management agencies) the activity would be “non-invasive and would not cause significant adverse effects on sanctuary resources or qualities.”

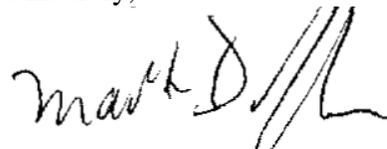
Because the Commission retains this permitting authority over future activities in these sanctuaries, the Commission staff does not believe the currently contemplated rule would alter NOAA’s GFNMS and MBNMS Sanctuary management plans, with which the Commission has concurred, to the degree that would trigger the need for supplemental consistency determinations, either: (1) under 15 CFR Section 930.31(e), which includes, as a “federal agency activity,” one that has been modified such that its effects are “substantially different” than those previously reviewed; or (2) under 15 CFR Section 930.45, a previously reviewed activity that is “no longer consistent” with the enforceable policies of the California Coastal Management Program.

We consider this approach to be comparable to that taken in our above-referenced February 11, 2010, concurrence letter to NOAA, in which we determined that the then-proposed modifications would be “as near to the Commission’s original decisions as NOAA can practicably attain, given the constraints imposed by the National Marine Sanctuaries Act and the Governor’s actions.”

Therefore, assuming no further changes are made to the proposed rule, the staff believes an administrative review, similar to the staff’s February 11, 2010, administrative concurrence mentioned above, would be sufficient to satisfy any necessary CZMA coordination requirements.

Please feel free to contact me at (415) 904-5289 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "mark D. L.", with a stylized flourish at the end.

MARK DELAPLAINE  
Manager, Energy, Ocean Resources,  
and Federal Consistency Division

cc: North Central District Office  
William Douros, Regional Director