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Proposed Expansion and Regulatory Revision of Gulf of the Farallones
and Cordell Bank National Marine Sanctuaries; Proposed Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 130405335-4240-01]

RIN 0648-BD18

Proposed Expansion and Regulatory Revision of Gulf of the Farallones and Cordell Bank National Marine Sanctuaries

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to expand the boundaries of Gulf of the Farallones National Marine Sanctuary (GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their current boundaries, as well as to amend existing sanctuary regulations and add new regulations. NOAA is also proposing to revise the corresponding sanctuary terms of designation and management plans. The purpose of this action is to extend national marine sanctuary protections to an area that has nationally significant marine resources and habitats and is the source of nutrient-rich upwelled waters for the existing sanctuaries. A draft environmental impact statement and draft revised management plans have been prepared for this proposed action. NOAA is soliciting public comment on the proposed rule, draft environmental impact statement, and draft revised management plans.

DATES: Comments on this proposed rule will be considered if received by June 30, 2014. Public hearings will be held as detailed below:

(1) Sausalito, CA

Date: May 22, 2014.

Location: U.S. Army Corps of Engineers Bay Model Visitor Center.
Address: 2100 Bridgeway Blvd., Sausalito, CA 94965.
Time: 6 p.m.

(2) Point Arena, CA

Date: June 16, 2014.

Location: Point Arena City Hall.
Address: 451 School St., Point Arena, CA 95468.
Time: 6 p.m.

(3) Gualala, CA

Date: June 17, 2014.

Location: Gualala Community Center.
Address: 47950 Center St., Gualala, CA 95445.
Time: 6 p.m.

(4) Bodega Bay, CA

Date: June 18, 2014.

Location: Grange Hall.
Address: 1370 Bodega Ave., Bodega Bay, CA 94923.
Time: 6 p.m.

ADDRESSES: You may submit comments on this document, identified by NOAA-NOS-2012-0228, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/ #!docketDetail;D=NOAA-NOS-2012-0228, click the "Comment Now!" icon, complete the required fields and enter or attach your comments.

- *Mail:* Submit written comments to Maria Brown, Sanctuary Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. ONMS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Maria Brown at Maria.Brown@noaa.gov or 415-561-6622; or Dan Howard at Dan.Howard@noaa.gov or 415-663-0314.

SUPPLEMENTARY INFORMATION:**I. Introduction***A. Gulf of the Farallones and Cordell Bank National Marine Sanctuaries*

Gulf of the Farallones National Marine Sanctuary

GFNMS was designated in 1981, and was established to protect and preserve a unique and fragile ecological community, including the largest seabird colony in the contiguous United States and diverse and abundant marine

mammals. GFNMS is located along and offshore California's north-central coast, west of northern San Mateo, San Francisco, Marin and southern Sonoma Counties. GFNMS is composed of approximately 1,279 square statute miles (966 square nautical miles) of offshore waters extending out to and around the Farallon Islands and nearshore waters (up to the mean high water line) from Bodega Head to Rocky Point in Marin. The Farallon Islands lie along the outer edge of the continental shelf, between 15 and 22 statute miles (13 and 19 nmi) southwest of Point Reyes and approximately 30 miles (26 nmi) due west of San Francisco. In addition to sandy beaches, rocky cliffs, small coves, and offshore stacks, GFNMS includes open bays (Bodega Bay, Drakes Bay) and enclosed bays or estuaries (Bollinas Lagoon, Tomales Bay, Estero Americano, and Estero de San Antonio). GFNMS is located inshore of the California current, and its waters are characterized by wind-driven upwelling, localized eddies, counter-current gyres, high nutrient supply, and high levels of phytoplankton.

Cordell Bank National Marine Sanctuary

CBNMS was designated in 1989, and was established to protect and preserve the extraordinary ecosystem, including invertebrates, marine birds, mammals, and other natural resources, of Cordell Bank and its surrounding waters. CBNMS is located offshore of California's north-central coast, off of Marin County. CBNMS protects an area of 529 square statute miles (399 square nautical miles). The main feature of the sanctuary is Cordell Bank, an offshore granite bank located on the edge of the continental shelf, about 49 miles (43 nmi) northwest of the Golden Gate Bridge and 23 miles (20 nmi) west of the Point Reyes lighthouse. CBNMS is entirely offshore and shares its southern and eastern boundary with GFNMS. Similar to GFNMS, CBNMS is located in a major coastal upwelling system. The combination of oceanic conditions and undersea topography provides for a highly productive environment in a discrete offshore area. Prevailing currents push nutrients from upwelling southward along the coast, moving nutrients and other prey over the upper levels of the Bank. The vertical relief and hard substrate of the Bank provide benthic habitat with near-shore characteristics in an open ocean environment 23 miles (20 nmi) from shore. The combination of sedentary plants and animals typical of nearshore waters in close proximity to open ocean species like blue whales and albatross creates a rare mix of species and a

unique biological community at CBNMS.

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) gives NOAA the authority to expand national marine sanctuaries to meet the purposes and policies of the NMSA, including:

- “. . . to provide authority for comprehensive and coordinated conservation and management of these marine areas [national marine sanctuaries], and activities affecting them, in a manner which complements existing regulatory authorities (16 U.S.C. 1431(b)(2)); [and]

- to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations and ecological processes . . .” (16 U.S.C. 1431(b)(3)).

The NMSA also requires NOAA to periodically review and evaluate progress in implementing the management plan and goals for each national marine sanctuary. The management plans and regulations must be revised as necessary to fulfill the purposes and policies of the NMSA (16 U.S.C. 1434(e)) to ensure that each sanctuary continues to best conserve, protect, and enhance their nationally significant living and cultural resources.

In addition to expanding the boundaries of GFNMS and CBNMS, the proposed action would revise the sanctuaries' management plans. Application of the NMSA to the expanded sanctuary boundaries through the proposed action would provide comprehensive and coordinated management for the Point Arena upwelling area and south to the existing national marine sanctuaries. Some of the GFNMS and CBNMS regulations would be extended to the expansion area without changes, some regulations would be altered, and some new regulations would be added in order to best suit the resource protection needs of the expanded sanctuaries. The regulatory changes are described in detail below in the “Summary of the Regulatory Amendments” section. The boundary expansion, regulatory changes, and new management plans would result in additional safeguards for the resources of the area while facilitating uses compatible with resource protection.

The environmental effects of the proposed expansion of sanctuary boundaries and revisions to sanctuary regulations and management plans are analyzed in the DEIS. The public is invited to comment on the DEIS and draft management plans, which are available at www.regulations.gov/

#!/docketDetail;D=NOAA-NOS-2012-0228 or http://farallones.noaa.gov/manage/expansion_cbgf.html or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

B. Need for Action

The proposed action would expand the boundaries of GFNMS and CBNMS north and west of the sanctuaries' current boundaries and would include waters and submerged lands off of Marin, Sonoma and Mendocino Counties. This expansion would add to the National Marine Sanctuary System a globally significant coastal upwelling center originating off of Point Arena and flowing into GFNMS and CBNMS via wind-driven currents. The proposed action would also apply existing regulations into the expansion area, amend current regulations for GFNMS and CBNMS, and add new regulations. Together these regulatory changes would provide comprehensive management and protection of the nationally significant resources of the area encompassed by the current sanctuaries and the expansion area.

The proposed expansion area, from the upwelling off the Point Arena coast and the waters south to GFNMS and CBNMS, is an integral geographic component of the overall marine ecosystem for these sanctuaries. The upwelled water, rich with nutrients, that flows from the Point Arena upwelling center is the regional ecosystem driver for productivity in coastal waters of north-central California. Flowing south from Point Arena, the area supports a marine food web made up of many species of algae, invertebrates, fish, seabirds, and marine mammals. Some species are transitory, travelling hundreds or thousands of miles to the region, such as endangered blue whales, albatross, shearwaters, king salmon, white and salmon sharks, while others live year round in the sanctuaries, such as Dungeness crab, sponges, other benthic invertebrates and many species of rockfish. Of note, the largest assemblage of breeding seabirds in the contiguous United States is at the Farallon Islands, and each year their breeding success depends on a healthy and productive marine ecosystem to allow nesting adults and fledgling young to feed and flourish. Given that these sensitive resources are particularly susceptible to damage from human activities, including this area within CBNMS and GFNMS would conserve and protect critical resources by preventing or reducing human-caused impacts such as marine pollution, and wildlife and seabed disturbance.

In addition, the proposed action would protect significant submerged cultural resources and historical properties, as defined by the National Historic Preservation Act and its regulations (historical properties include but are not limited to: Artifacts, records, remains related to or located in the properties and properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria). There are several existing state and federal laws that provide some degree of protection of historical resources, but the State of California regulations only extend 3 nautical miles offshore and existing federal regulations do not provide comprehensive protection of these resources. Records document over 200 vessel and aircraft losses between 1820 and 1961 along California's north-central coast from Bodega Head north to Point Arena. Submerged archaeological remnants related to a number of former doghole ports, are likely to exist in the area. Doghole ports were small ports on the Pacific Coast between Central California and Southern Oregon that operated between the mid-1800s until 1939. Such archaeological remnants could include landings, wire, trapeze loading chutes and offshore moorings.

While there is no documentation of submerged Native American human settlements in the proposed boundary expansion area, some may exist there, since Coast Miwok and Pomo peoples have lived and harvested the resources of this abundant marine landscape for thousands of years. Sea level rise at the end of the last great Ice Age inundated a large area that was likely used by these peoples when it was dry land. The proposed action would prohibit possession, moving, removing, or injuring sanctuary historical resources.

C. History of the Proposed Boundary Expansion

In 2001, NOAA received public comment during the joint management plan review scoping meetings requesting that GFNMS and CBNMS be expanded north and west. Since 2003, sanctuary advisory councils for both national marine sanctuaries have regularly discussed and supported boundary expansion northward and westward at advisory council meetings, which are open to the public. In addition to the public and advisory council input, legislation was proposed between 2004 and 2011 by then-Congresswoman Lynn Woolsey, Senator Barbara Boxer, and cosponsors, to expand and protect GFNMS and CBNMS, but was never passed by Congress. Congressional, public, and

NOAA interest in expanding CBNMS and GFNMS stemmed from a desire to protect the biologically rich underwater habitat and important upwelling center off Point Arena, which, as described, is the source of nationally significant nutrient-rich waters.

The sanctuary advisory councils formally expressed support for the proposed boundary expansion and protection legislation in four resolutions. On April 19, 2007, the Gulf of the Farallones Advisory Council passed a resolution supporting sanctuary boundary expansion. On September 19, 2007, the CBNMS Advisory Council passed a resolution supporting protection for Bodega Canyon via proposed legislation. On December 13, 2007, the GFNMS Advisory Council passed another resolution supporting legislation to expand the sanctuaries. On November 11, 2011, the GFNMS Advisory Council passed a third resolution which acknowledged the legislation under consideration at that time and again supported expanding the GFNMS and CBNMS boundaries.

As a result of the public interest in boundary expansion and the potential need for and benefits from additional resource protection, in 2008 NOAA included boundary expansion actions in the revised management plans for CBNMS and GFNMS. The strategies (GFNMS Resource Protection Action Plan, Strategy RP-9 and CBNMS Administration Action Plan, Strategy AD-10) indicated the sanctuary managers would develop a framework to evaluate boundary alternatives, with public input. Some of the recommended criteria included consideration of boundary changes that would: Be inclusive and ensure the maintenance of the area's natural ecosystem, including its contribution to biological productivity; be biogeographically representative; facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the marine resources; and provide additional comprehensive and coordinated management of the area.

Due to continued interest in expanding GFNMS and CBNMS, NOAA, in compliance with Section 304(e) of the NMSA, conducted public scoping from December 21, 2012, to March 1, 2013 (77 FR 75601), to identify issues associated with a proposed expansion. NOAA held three public scoping meetings during this period: One in Bodega Bay in January 2013, one in Point Arena in February 2013, and one in Gualala in February 2013. These public meetings were attended by

several hundred people. NOAA received more than 300 written submissions, along with the oral comments received during the three public scoping meetings, posted under docket number NOAA-NOS-2012-0228 on www.regulations.gov.

Comments received during this process were analyzed by ONMS staff, and are addressed in the accompanying draft environmental impact statement, with analysis of the proposed action and four alternatives. Scoping revealed wide support for the protection of areas in Sonoma and southern Mendocino Counties, as well support for the area included in the proposed expansion. Some commenters also suggested the protection of areas further north and south of the proposed expansion or other alternate boundary configurations for expanding the boundaries of GFNMS and CBNMS. Whereas some commenters were opposed to expanding the sanctuaries or specific sanctuary regulations, there was generally strong support for extending existing sanctuary regulations to the proposed expanded area, including prohibitions on oil and gas development. Many commenters also indicated opposition to any future regulations of fishing under the NMSA. Other comments focused on: Operation of motorized personal watercraft use in the expanded portions of GFNMS; protection of wildlife from human disturbance; and future development of alternative energy and aquaculture.

During the development of this action, it became clear that a wholesale extension of GFNMS and CBNMS regulations to the respective expansion areas would not be the most judicious approach in order to meet the goals of providing resource protection and allowing compatible uses. Therefore, NOAA is proposing to extend some of the regulations unchanged to the proposed expansion area, amend some of the existing regulations that would apply to both the existing sanctuaries and the proposed expansion area, and add some new regulations.

Additional information on the background of the proposed action is available at http://farallones.noaa.gov/manage/expansion_cbgf.html.

II. Summary of Proposed Changes to the Sanctuary Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include: (1) The geographic area included within the Sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and (3) the types of activities subject to

regulation by NOAA to protect those characteristics. This section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation is made.

To implement this action, NOAA is proposing changes to the GFNMS and CBNMS terms of designation, which were last published in the **Federal Register** on November 20, 2008 (73 FR 70488).

A. Revisions to the GFNMS Terms of Designation

NOAA is proposing to revise the GFNMS terms of designation to:

1. Update the title by adding "Terms of" and removing "Document."
2. Modify the geographical description of the sanctuary in the preamble.
3. Modify Article I "Effect of Designation" by referring specifically to Gulf of the Farallones National Marine Sanctuary.
4. Modify Article II "Description of the Area" by updating the description of the size of the sanctuary and describing the proposed new boundary for the sanctuary.
5. Modify Article III "Characteristics of the Area That Give It Particular Value" by updating the description of the nationally significant characteristics of the area to include the globally significant coastal upwelling center.
6. Modify Article IV "Scope of Regulation" by updating Section 1 to include: A more complete description of "hydrocarbon operations"; adding "minerals" to what had been "hydrocarbon operations"; and adding a new subsection I, "Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations", and "In addition, under no circumstances would a permit or authorization be issued for exploring for, developing or producing oil, gas, or minerals within the Sanctuary."
7. Modify Article V "Relation to Other Regulatory Programs" by updating Section 3 to include the dates of designation and expansion used for certification.

The revised terms of designation are proposed to read as follows (new text in quotes and deleted text in brackets and *italics*): This proposed rule provides only those articles and sections of the terms of designation for GFNMS for which NOAA proposes a change. The full text for the current GFNMS terms of designation may be found at: Farallones.noaa.gov/manage/pdf/

GFNMS Revised_Designation_11-20-2008.pdf.

Terms of Designation for the Gulf of the Farallones National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, Public Law 92–532 (the Act), the waters and submerged lands along the Coast of California [north and]south of “Alder Creek along the 39th parallel” [Point Reyes Headlands], between “Manchester Beach in Mendocino County” [Bodega Head] and Rocky Point “in Marin County” and surrounding the Farallon Islands “and Noonday Rock along the northern coast of California,” are hereby designated a National Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

Article I. Effect of Designation

Within the area [designated in 1981 as The Point Reyes/Farallon Islands National Marine Sanctuary (the Sanctuary)] described in Article II, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the “Gulf of the Farallones National Marine” Sanctuary “(the Sanctuary)”. Section 1 of Article IV of th“ese”[is] “Terms of” Designation [Document] lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of an area of the waters and the submerged lands thereunder adjacent to the coast of California of approximately “2,490” [966] square nautical miles (nmi)[.]. “The boundary” extend“s” [ing] seaward to a distance of “30” [6] nmi “west” from the mainland “at Manchester Beach and extends south approximately 45 nmi to the northwestern corner of Cordell Bank National Marine Sanctuary (CBNMS), and extends approximately 38 nmi east along the northern boundary of CBNMS, approximately 7 nmi west of Bodega Head. The boundary extends” from [Point Reyes to] Bodega Bay “to Point Reyes” and 12 nmi west from the Farallon Islands and Noonday Rock, and includ“es” [ing] the intervening waters and submerged lands. “The Sanctuary includes Bolinas Lagoon, Tomales Bay, Giacomini Wetland, Estero de San Antonio (to the tide gate at Valley Ford-Franklin School Road) and Estero Americano (to the bridge at Valley Ford-Estero Road), as well as Bodega Bay, but does not include Bodega Harbor, the Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, the Arena Cove Pier or the Garcia River Estuary”. The precise boundaries are defined by regulation.

Article III. Characteristics of the Area That Give It Particular Value

The Sanctuary “encompasses a globally significant coastal upwelling center that” includes a rich and diverse marine ecosystem and a wide variety of marine habitats, including habitat for over 36 species of marine mammals. Rookeries for over half of California’s nesting marine bird populations and nesting areas for at least 12 of 16 known U.S. nesting marine bird species are found within the boundaries. Abundant populations of fish and shellfish are also found within the Sanctuary. The Sanctuary also has one of the largest seasonal concentrations of adult white sharks (*Carcharodon carcharias*) in the world. “The area adjacent to and offshore of Point Arena, due to seasonal winds, currents and oceanography, drives one of the most prominent and persistent upwelling centers in the world, supporting the productivity of the sanctuary. The nutrient-rich water carried down coast by currents promote thriving nearshore kelp forests, productive commercial and recreational fisheries, and diverse wildlife assemblages. Large predators, such as white sharks, sea lions, killer whales, and baleen whales, travel from thousands of miles away to feed in these productive waters. Rocky shores along the Sonoma and Mendocino County coastlines are largely intact, and teem with crustaceans, algae, fish and birds.”

Article IV. Scope of Regulation

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- a. [Hydrocarbon operations] “Exploring for, developing or producing oil, gas, or minerals within the Sanctuary”;
- b. Discharging or depositing any substance within or from beyond the boundary of the Sanctuary;
- c. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- d. Activities regarding cultural or historical resources;
- e. Introducing or otherwise releasing from within or into the Sanctuary an introduced species;
- f. Taking or possessing any marine mammal, marine reptile, or bird within or above the Sanctuary except as permitted by the Marine Mammal Protection Act, Endangered Species Act, and Migratory Bird Treaty Act;
- g. Attracting or approaching any animal;
- h. Operating a vessel (i.e., watercraft of any description) within the Sanctuary[.] “; and
- i. Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations.

In addition, a permit or authorization may not be issued for exploring for, developing or producing oil, gas, or minerals within the Sanctuary under any circumstances.”

Article V. Relation to Other Regulatory Programs

Section 3. Other Programs

All applicable regulatory programs will remain in effect, and all permits, licenses, “approvals,” and other authorizations issued [pursuant thereto] “after January 16, 1981, with respect to activities conducted within the original Sanctuary boundary and after the effective date of the expansion of the Sanctuary with respect to activities conducted within the expansion area” will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV. “No valid lease, permit, license, approval or other authorization for activities in the expansion area of the Sanctuary issued by any federal, State, or local authority of competent jurisdiction and in effect on the effective date of the expansion may be terminated by the Secretary of Commerce or by his or her designee provided the holder of such authorization complies with the certification procedures established by Sanctuary regulations.” [The Sanctuary regulations shall set forth any necessary pertaining to certification procedures in order for them to remain valid.]

[End Of Terms Of Designation]

B. Revisions to the CBNMS Terms of Designation

NOAA is revising the CBNMS terms of designation to:

1. Update the title by adding “Terms of”, removing “Document”, and making minor technical changes.
2. Modify the Preamble to add “Bodega Canyon” and “submerged lands” as part of the area designated the Cordell Bank National Marine Sanctuary, and making minor technical changes.
3. Modify Article I “Effect of Designation” by making minor technical changes.
4. Modify Article II “Description of the Area” by changing the description of the size of the sanctuary and describing the proposed new boundary for the sanctuary.
5. Modify Article III “Characteristics of the Area That Give It Particular Value” by updating the description of the nationally significant characteristics of the area to include Bodega Canyon and the additional area in the Sanctuary.
6. Modify Article IV “Scope of Regulation” by updating section 1, subsection c, to include a more complete description of “hydrocarbon operations” and adding “minerals” to what had been “hydrocarbon operations”; and by adding a new subsection i to section 1, “Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations”, and by adding “In addition, under no circumstances would a permit or

authorization be issued for exploring for, developing or producing oil, gas, or minerals within the Sanctuary.”

7. Modify Article V “Relation to Other Regulatory Programs” by updating section 3 to include the dates of designation and expansion used for certification.

This proposed rule provides only those articles and sections for the terms of designation for CBNMS for which NOAA proposes a change. The full text for the current CBNMS terms of designation may be found at cordellbank.noaa.gov/library/74_fr_12088.pdf. The revised CBNMS terms of designation are proposed to read as follows (new text in quotes and deleted text in brackets and italics):

Terms Of Designation For The Cordell Bank National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 et seq. (the “Act”), [the]Cordell Bank, “Bodega Canyon,” and “their”[its] surrounding waters “and submerged lands” offshore northern California, as described in Article “II”[2], are hereby designated as the Cordell Bank National Marine Sanctuary (the Sanctuary) for the purpose of protecting and conserving that special, discrete, highly productive marine area and ensuring the continued availability of the conservation, ecological, research, educational, aesthetic, historical, and recreational resources therein.

Article 1. Effect of Designation

The Sanctuary was designated on May 24, 1989 (54 FR 22417). Section 308 of the National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq. (NMSA), authorizes the issuance of such regulations as are necessary to implement the designation, including managing, protecting and conserving the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of the Sanctuary. Section 1 of Article IV of th“ese”[is] “Terms of” Designation [Document] lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activit“y”[ies] will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of a“n approximately 971”[399] square nautical mile area of marine waters and the submerged lands thereunder encompassed by a “northern” boundary [extending approximately 250° from the northernmost]” that begins approximately 6 nautical miles west of Bodega Head in Sonoma County, California and extends west approximately 38 nautical miles, coterminous with the” boundary of the Gulf of the Farallones

National Marine Sanctuary (GNFMS). “From that point, the western boundary of the Sanctuary extends south approximately 34 nautical miles. From that point, the southern boundary of the Sanctuary continues east 15 nautical miles, where it intersects the GNFMS boundary. The eastern boundary of the Sanctuary is coterminous with the GNFMS boundary, and is a series of straight lines connecting in sequence,” [to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the GNFMS boundary and back to the northeast along this boundary] to the beginning point. The precise boundaries are set forth in the regulations.

Article III. Characteristics of the Area That Give It Particular Value

Cordell Bank “and Bodega Canyon are” [is] characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. In addition, the Bank, “Canyon,” and “their” [its] surrounding waters may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. “The Bank is” [It lies on a plateau] 300–400 feet (91–122 meters) deep and ascends to within [about] 115 feet (35 meters) of the surface at its shallowest point. “Bodega Canyon is about 12 miles (10.8 nautical miles) long and is over 5,000 feet (1,524 m) deep.” The seasonal upwelling of nutrient-rich bottom waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank “and Bodega Canyon” includes an exceptional assortment of [algae,] invertebrates, fishes, marine mammals and seabirds. “Predators travel from thousands of miles away to feed in these productive waters.”

Article IV. Scope of Regulation

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- Depositing or discharging any material or substance;
- Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or on or within the line representing the 50 fathom isobath surrounding the Bank;
- “Exploring for, developing or producing oil, gas or minerals within the Sanctuary”[Hydrocarbon (oil and gas) activities within the Sanctuary];
- Anchoring on the Bank or on or within the line representing the 50 fathom contour surrounding the Bank;
- Activities regarding cultural or historical resources;
- Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or

abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;

g. Taking or possessing any marine mammal, marine reptile, or bird except as permitted under the Marine Mammal Protection Act, Endangered Species Act or Migratory Bird Treaty Act; [and]

h. Introducing or otherwise releasing from within or into the Sanctuary an introduced species[.]”; and

i. Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations.

In addition, a permit or authorization may not be issued for exploring for, developing or producing oil, gas, or minerals within the Sanctuary under any circumstances.”

Article V. Relation to Other Regulatory Programs

Section 3. Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, approvals, and other authorizations issued “after July 31, 1989, with respect to activities conducted within the original Sanctuary boundary and after the effective date of the expansion of the Sanctuary with respect to activities conducted within the expansion area” pursuant to those programs shall be valid unless prohibited by regulations implementing Article IV.

[End Of Terms Of Designation]

III. Summary of the Regulatory Amendments

With this action, NOAA is proposing to do the following:

- Amend the regulations describing the sanctuary boundaries in order to expand the sanctuaries;
- Extend existing sanctuary regulations to the expansion area without any changes;
- Amend existing sanctuary regulations that apply in either or both existing and expansion areas; and
- Add new regulations.

Gulf of the Farallones National Marine Sanctuary Regulations

The proposed new boundary for GNFMS would increase the size of the sanctuary from approximately 1,279 square miles to 3,297 square miles and would extend protection to the submerged lands and the globally-significant coastal upwelling center at Point Arena and the nutrient-rich waters that flow via wind-driven currents from the upwelling center into the existing portions of GNFMS. These nutrients are the foundation of the food-rich environment of the sanctuary.

This section describes the changes NOAA is proposing to make to the regulations for GNFMS to implement the proposed expansion of the sanctuary, which is the basis for this rulemaking. It is organized by type of regulatory amendments as follows:

- It includes proposed changes to the boundary description;
- It would apply existing regulations without changes to the proposed expansion area for

certain regulations and exceptions related to discharge, altering the seabed, taking and possessing certain species, disturbing historical resources, introducing introduced species, attracting white sharks, deserting a vessel, exemptions for Department of Defense and emergency response, and permit criteria and requirements;

- It would amend several existing regulations and apply them to either or both the existing sanctuary and proposed expansion area including prohibiting oil, gas and minerals exploration, discharging graywater, operating motorized personal watercrafts, flying aircrafts below 1,000 feet in certain designated zones, sailing cargo vessels in certain designated zones, approaching white sharks in certain designated zones, and minor technical changes to boundary coordinates;
- It would add new regulations related to interference with an investigation and the ability for NOAA to authorize certain activities otherwise prohibited.

Boundary Expansion

NOAA is proposing to modify the boundary of GFNMS to include the coastal waters and submerged lands north of the current sanctuary extending to the 39th parallel, just north of Point Arena in Mendocino County, and extending seaward to the continental slope to approximately the 10,000-foot (1,667-fathom) depth contour. NOAA is also proposing to clarify that the boundary of GFNMS includes the restored Giacomini Wetland at the northeastern end of Tomales Bay to the Mean High Water Line consistent with current sanctuary regulations. The combined expanded boundary would increase the size of the sanctuary from 1,279 square miles (966 square nautical miles) to 3,297 square miles (2,490 square nautical miles). The expanded area would extend shoreward to the Mean High Water Line, but would not include Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, Arena Cove east of the pier or the Garcia River Estuary. The southern boundary and portions of the western boundary of GFNMS would be coterminous with CBNMS. A map of the area under consideration may be found online at http://farallones.noaa.gov/manage/expansion_cbgf.html.

Application of Existing Regulations Without Changes to Proposed Expansion Area

Prohibition on Certain Discharges

Generally, discharging or depositing any material or other matter from within or into the sanctuary are prohibited in the existing sanctuary and would be prohibited in the proposed expansion area as well. The exceptions currently in place for some activities would apply in the proposed expansion area as well and are described below. The prohibition would apply not only to discharges and deposits originating in the sanctuary (e.g., from vessels in the sanctuary), but also, for example, from discharges and deposits occurring above the sanctuaries. A description of the impacts of this discharge regulation can be found in the discussion of the proposed action in the DEIS

published concurrently with this proposed rule. NOAA is proposing to extend the following exceptions to the GFNMS discharge/deposit prohibition to the expansion area:

1. The discharge/deposit of fish, fish parts, chumming materials or bait would be allowed as long as it occurred during the conduct of lawful fishing activities within the sanctuary.
2. The discharge/deposit of clean effluent generated incidental to vessel use and generated by a Type I or II marine sanitation device approved by the United States Coast Guard in accordance to section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA; 33 U.S.C. 1322) would be allowed for vessels less than 300 gross registered tons (GRT) or for vessels 300 GRT or above without sufficient holding tank capacity to hold sewage while within the sanctuary.
3. The discharge/deposit of clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, anchor wash, vessel engine or generator exhaust from all vessels, including cruise ships, would be allowed. An additional exception of clean vessel deck wash down would apply to all vessels other than cruise ships. The discharge/deposit of oily waste from bilge pumping would be prohibited from any vessel if the waste contained any detectable levels of harmful matter. In this case, a detectable level of oil would be interpreted to include anything that produced a visible sheen.

Prohibition on Construction on and Alteration to the Seabed

NOAA proposes to extend to the proposed expansion area for GFNMS a provision that would prohibit constructing any structure other than a navigation aid on or in the submerged lands of the Sanctuary; placing or abandoning any structure on or in the submerged lands of the Sanctuary; or drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary in any way. This provision would include four existing exceptions to this prohibition: (1) Anchoring vessels; (2) while conducting lawful fishing activities; (3) routine maintenance and construction of docks and piers on Tomales Bay; or (4) mariculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.

Prohibit the Take and Possession of Certain Species

NOAA proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit the taking or possession of any marine mammal, sea turtle or bird within or above the sanctuary unless it is authorized by the Marine Mammal Protection Act, as amended, (MMPA; 16 U.S.C. 1361 et seq.), Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq., or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA. A description of the impacts of this regulation can be found in the discussion of the proposed action in

the DEIS published concurrently with this proposed rule.

Prohibit the Disturbance of Historic Resources

NOAA proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure a sanctuary historical resource in the sanctuary. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Prohibit the Introduction of Introduced Species

Currently, the introduction of introduced species is prohibited in the federal waters of GFNMS, with the exception of catch and release of striped bass (*Morone saxatilis*). In a separate rulemaking, NOAA proposed to amend the regulation pertaining to introduced species (79 FR 17073). This separate rulemaking would provide an exception for the introduction of non-native shellfish species for cultivation by mariculture activities in Tomales Bay, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization and subsequently authorized by the sanctuary pursuant to 15 CFR 922.49 and 922.82. It would also give NOAA the ability to consider and authorize new or amended existing operations of commercial mariculture activities in state waters involving certain introduced species of shellfish that are determined to be non-invasive, including in Tomales Bay.

With this action, NOAA proposes to extend to the proposed expansion area for GFNMS the existing provision that prohibits the introduction of introduced species in the sanctuary as well as the new provisions that will result from the ongoing separate rulemaking mentioned above.

Prohibit White Shark Attraction and Approach

NOAA proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit attracting a white shark anywhere within GFNMS.

Prohibit the Desertion of Vessels

NOAA proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit deserting a vessel aground, at anchor, or adrift in the Sanctuary. NOAA also proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit leaving harmful matter aboard a grounded or deserted vessel in the GFNMS. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Exemption for Department of Defense Activities

NOAA proposes to extend to the GFNMS expansion area an existing exemption for Department of Defense (DOD) activities necessary for national defense, provided such

activities are conducted on or prior to the effective date of GFNMS designation or GFNMS expansion. DOD activities necessary for national defense initiated after the effective date of designation or expansion could be exempted after consultation with the Sanctuary Superintendent, with authority delegated from the ONMS Director. DOD activities not necessary for national defense, such as routine exercises and vessel operations, would be subject to all prohibitions that apply to GFNMS.

Exemption for Emergencies

NOAA proposes to extend to the proposed expansion area for GFNMS a provision that would exempt from sanctuary regulations for activities necessary to respond to an emergency threatening life, property, or the environment.

Exemption for Permitted Activities

NOAA proposes to extend to the expanded area an exemption for activities that are permitted by the Sanctuary Superintendent, with authority delegated from the ONMS Director, in accordance with the permit issuance criteria found in 15 CFR 922.48 and 15 CFR 922.83. It is important to note that permits would only be available for activities that violate the regulations at 15 CFR 922.83(a)(2) through (a)(16). No permit could be issued for activities that violate 15 CFR 922.83(a)(1) which prohibit the exploration for, development, or production of oil, gas or minerals within the sanctuary. A Sanctuary Superintendent may issue a sanctuary permit to: (1) Further research or monitoring related to sanctuary resources and qualities; (2) further the educational value of the sanctuary; (3) further salvage or recovery operations; or (4) assist in managing the sanctuary.

Amend Existing Regulations

Regulations That Would Apply to Both Existing Sanctuary and Proposed Expansion Area

Prohibition on Oil, Gas, or Minerals Exploration

NOAA is proposing to extend the current GFNMS regulations pertaining to oil and gas exploration, development, and production to the proposed expanded area, as well as making some amendments to the regulation that would apply both to the current GFNMS as well as the proposed expanded area, as described below.

1. NOAA is proposing to amend the current GFNMS regulation to also prohibit exploring for, developing, or producing minerals within the current boundary as well as the expansion area of GFNMS to be consistent with CBNMS and Monterey Bay National Marine Sanctuary, which are both adjacent to and abutting GFNMS. No commercial exploration, development, or production of minerals is currently conducted, nor is such activity anticipated in the near future.

2. NOAA is proposing to remove the exception for laying pipelines related to hydrocarbon operations adjacent to the sanctuary. There are no existing or proposed oil or gas pipelines in the vicinity and no currently planned or reasonably foreseeable

oil or gas development projects or leases that would necessitate pipelines. Should an oil or gas pipeline be proposed in the future, the new proposed authorization process (described below) could be used to allow such a use.

Prohibition on Certain Discharges

The discharge/deposit of graywater as defined by section 312 of the FWPCA by vessels less than 300 GRT, or vessels 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the sanctuary would be exempted from the discharge prohibition. This new exception is intended to allow small vessels producing a small amount of clean graywater to continue operating within the sanctuary. This new exception would not apply to cruise ships. It would allow some vessels to discharge clean graywater within the sanctuary (which is currently prohibited) as well as in the proposed expansion area. Since the sanctuary would be expanded and the adjacent CBNMS would be expanded, the larger area may make it difficult for some larger vessels lacking holding capacity to hold graywater discharges while transiting through the sanctuaries. By allowing this discharge, non-cruise ship vessels would not be forced to hold all graywater and would have the option of discharging clean graywater in the sanctuary, consistent with the existing provisions in MBNMS and state and federal regulations. However, larger vessels greater than 300 GRT that have holding capacity would be prohibited from discharging gray water anywhere in the sanctuary.

This rule would extend to the proposed expansion area for GFNMS an existing provision that also prohibits the discharge/deposit originating outside the boundary of GFNMS that subsequently would enter the sanctuary and injure a sanctuary resource or quality. This existing regulation would be applied to the expansion area with the addition of the exception for a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold the graywater while within the Sanctuary, as mentioned above. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Modification of the Prohibition on Operating Motorized Personal Watercraft

GFNMS regulations prohibit the operation of all motorized personal watercraft (MPWC), except for emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions. MPWC, which are often referred to as "jetskis"® or simply "skis," include several small vessel designs that share similar performance characteristics. NOAA has restricted the use of MPWC within various sanctuaries when MPWC operation poses a unique and significant threat of disturbance to sanctuary habitats and wildlife through repetitive operation within sensitive environments. NOAA's assessments of MPWC impacts indicate that unrestricted access to all

reaches of the sanctuary by such craft are likely to pose a threat to wildlife and other ocean users. Some MPWC operators commonly accelerate and decelerate repeatedly and unpredictably, travel at rapid speeds directly toward shore, and may maneuver close to rocks. Thus wildlife disturbance impacts from MPWC tend to be more likely than those from motorboat use, due to impacts in ecologically sensitive areas, often in nearshore locations. More detailed information on the impacts of MPWC can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

NOAA proposes to extend the current regulation to the proposed expanded area, but would modify it to allow for the use of a MPWC equipped with a functioning Global Positioning System (GPS) unit within four newly designated zones within the sanctuary expansion area, as described in the next section.

Regulations That Would Apply Only to Existing Sanctuary Area

Prohibit Low Flying Aircraft in Designated Zones

Currently NOAA prohibits disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance (ASBS, see description below), except to transport persons or supplies to or from the Islands or for enforcement purposes. NOAA presumes that a failure to maintain a minimum altitude of 1,000 feet above ground level over such waters disturbs marine mammals or seabirds. NOAA is proposing to rename the areas of overflight regulation "Special Wildlife Protection Zones" (SWPZs) and make small changes to the areas of overflight regulation within the existing boundaries of GFNMS. The new SWPZs would implement restrictions to disturbing marine mammals or seabirds by flying a motorized aircraft as well as to the sailing of cargo vessels. In this section, NOAA describes changing the zones from using existing state designated Areas of Special Biological Significance and specific area names to a new slightly modified configuration of Special Wildlife Protection Zones; NOAA describes overflight regulations below and describes the restrictions to cargo vessel use in a separate section below. A map of the zones under consideration may be found in the DEIS posted online at http://farallones.noaa.gov/manage/expansion_cbgf.html.

1. NOAA is proposing to no longer use the location of State-designated ASBS to define the areas where the low flying aircraft prohibition applies. Instead, NOAA would designate SWPZs as defined below. NOAA would delete the definition of ASBS in sanctuary regulations, although those areas are designated by the state of California for water quality purposes and they would continue to exist in that capacity. The existing GFNMS regulations use a combination of specified locations and State ASBS to protect sensitive seabird and pinniped areas from cargo vessel disturbance or discharge, and from low flying aircraft

disturbance. ASBS are those areas designated by California's State Water Resources Control Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 *et seq.* These areas were designated based on the presence of certain species or biological communities that, because of their value or fragility, deserve special protection by preserving and maintaining natural water quality conditions to the extent practicable. Within the existing GFNMS boundaries, ASBS coincide with areas of high biological diversity and/or abundance of species, which is why NOAA originally prohibited low overflights above these ASBS areas and within one nautical mile of the edge of their boundaries. However, the ASBS in the expansion area are not in locations that would provide adequate protection to wildlife if used for low flying aircraft prohibitions. Therefore, NOAA is proposing to standardize the nomenclature for the zones where low overflight is prohibited by naming all of them SWPZs in both the existing sanctuary and the proposed expansion area.

2. Instead of continuing to use ASBS boundaries with a one nautical mile buffer and other specified locations, the new proposed regulation would prohibit disturbing marine mammals or seabirds by flying motorized aircraft at less than 1000 feet over the waters within the newly designated SWPZs (except to transport persons or supplies to or from the Farallon Islands or for enforcement purposes.) Failure to maintain a minimum altitude of 1000 feet above ground level over such waters would still be presumed to disturb marine mammals or seabirds. This presumption of disturbance could be overcome by contrary evidence that disturbance did not, in fact, occur (e.g., evidence that no marine mammals or seabirds were present in the area at the time of the low overflight).

3. SWPZs would be defined as areas of high biological diversity and/or abundance of species including federally listed and specially protected species. In particular these areas are white shark, seabird, and marine mammal (pinniped) "hotspots". White shark hotspots contain globally significant concentrations of white sharks. Seabird hotspots are areas with large historic populations, species diversity, and high concentration of nesting and roosting birds. Pinniped hotspots provide critical habitat for pupping seals and sea lions. In the proposed new boundaries for GFNMS, SWPZs would be established where such hotspots are susceptible to disturbance by low flying aircraft, cargo vessel operations, or in the case of white sharks, tourism vessels. Therefore, SWPZs are proposed to better encompass areas needing protection from certain human activities and to provide consistency between the existing and proposed areas of GFNMS.

4. There would be a total of five SWPZs in the current sanctuary boundaries coinciding with previous state ASBS boundaries, which were previously used to delineate the areas

subject to prohibitions on low flying aircraft: Tomales Point, Point Reyes, Duxbury Reef-Bolinas Lagoon, and two zones at the Farallon Islands. In the existing sanctuary boundaries, the proposed boundaries of the SWPZs would remain similar in size and location to the areas currently protected from low flying aircraft. The shape would change from circles to polygons and would be delineated around known points, islands and landmarks, instead of following ASBS boundaries with either one or two nautical mile buffers. The proposed changes are designed to aid compliance with the low overflight restriction zones by allowing for visual recognition of the zones from the air. The proposed new SWPZs would result in a slight increase in zone size for some areas and a decrease in size in other areas as defined below. For the Tomales Point zone, SWPZ 3, the boundaries would encompass the area within the sanctuary surrounding Tomales Point and the northern portion of Tomales Bay to the east shore at Toms Point, and north to Estero de San Antonio. The proposed change would increase the area by approximately 5 square miles. However, it would only increase the time an aircraft would have to stay above 1,000 feet by approximately 35 seconds if traveling at a speed of 120 miles per hour, assuming the flight line is roughly parallel to the coast. For the Point Reyes zone, SWPZ 4, the boundaries would encompass the area within the sanctuary surrounding Point Reyes. This change in shape would increase area by approximately 1.8 square miles, but it would not increase the time an aircraft would have to stay above 1,000 feet if traveling at a speed of 120 miles per hour. For the Duxbury Reef-Bolinas Lagoon zone, SWPZ 5, the boundary would encompass all of Bolinas Lagoon, but not Seadrift Lagoon, and extend west to Bolinas Bay, south to Rocky Point and north to Millers Point. The proposed change would increase area by approximately 4.5 square miles and increase the time an aircraft would have to stay above 1,000 feet by approximately 20 seconds if traveling at a speed of 120 miles per hour. The Southeast Farallon Islands Zone, SWPZ 6, extends approximately 1 nautical mile seaward of Southeast Farallon Island and Maintop Island. The proposed change would decrease the area by approximately 2.2 square miles and decrease the time an aircraft would have to stay above 1,000 feet by approximately 60 seconds if traveling at a speed of 120 miles per hour. The North Farallon Islands Zone, SWPZ 7, extends approximately 1 nautical mile seaward of North Farallon Island and Isle of St. James. The proposed change would increase the area by approximately 1.4 square miles, but would not increase the time an aircraft would have to stay above 1,000 feet if traveling at a speed of 120 miles per hour. Using points, landmarks and islands changes the shape of the five existing zones from circular to a polygon. However, the zones encompass the same wildlife hotspots as the current zones and NOAA believes such small changes in size of the new SWPZs would be inconsequential when flying an aircraft due to the short amount of additional flight time in which it would result. Also, the change in shape and the use of known points, islands

and landmarks, which can be identified from the air would likely facilitate compliance from pilots. Therefore, NOAA estimates that this proposed change in boundaries would result in a negligible change of operations for low flying aircrafts above the existing sanctuary.

Prohibit Cargo Vessels in Designated Zones

Currently NOAA prohibits cargo vessels from transiting closer than two nautical miles of the Farallon Islands, Bolinas Lagoon, or any ASBS to prevent wildlife disturbance and minimize the risk of oil spills in these areas. NOAA is proposing to amend the current prohibition on cargo vessels transiting close to sensitive wildlife areas in the sanctuary to the proposed expanded area with the following two changes. A map of the zones under consideration may be found in the DEIS posted online at http://farallones.noaa.gov/manage/expansion_cbgf.html. NOAA would replace the current zones including a two-nautical-mile buffer around the Farallon Islands, Bolinas Lagoon, or any ASBS with SWPZs that would extend 1 nautical mile into the same waters. Cargo vessels would be required to sail at least one nautical mile from any SWPZ. Although the new proposed regulation would change the buffer in the existing zones from two nautical miles to one nautical mile, the proposed new SWPZs would encompass the same areas that were previously identified in the regulations. Therefore, the proposed new cargo vessel prohibition would remain similar in size and location to the areas currently protected from cargo vessels.

As proposed, the cargo vessel prohibition zones in the existing sanctuary (which would encompass an area covering the SWPZs as well as a one-mile buffer around them) would be very similar to the areas currently protected from transiting cargo vessels, meaning that overall size and location of the zones would not significantly differ from the existing protected areas. The changes to the areas in the existing sanctuary would result in a total area that would only be 6.4 square miles larger than the existing cargo vessel prohibition zones. Therefore, this proposed change in the current boundaries would result in a negligible change for transiting cargo vessels.

Prohibit White Shark Attraction and Approach

NOAA also prohibits approaching within 50 meters of a white shark within 2 nautical miles of the Farallon Islands to prevent harassment and to reduce wildlife disturbance to white sharks. The proposed rule would amend the approach regulation in the current GFNMS regulations, as described below.

1. NOAA is proposing to refine and further delineate the zone in which it is prohibited to approach a white shark within 2 nautical miles of the Farallon Islands by creating two zones that encompass both the Southeast and North Farallon Islands. The location and size of the zones would effectively remain similar to the current prohibition at both the Southeast and North Farallon Islands, however, the area around Middle Farallon Island would be removed resulting in a total area that is smaller than the existing zone.

The previous zone was circular and surrounded all the Farallon Islands. The two new zones would be changed to a polygon and match the cargo vessel prohibition zones by creating a one nautical mile buffer around proposed SWPZs 6 and 7. The proposed regulation would prohibit disturbing white sharks by approaching within 50 meters of a white shark while within one nautical mile of, and inside, the newly designated SWPZs 6 and 7 around Southeast and North Farallon Islands. Middle Farallon Island would not be included in the approach prohibition. Middle Farallon Island is not considered to be a location of primary food source (i.e., pinnipeds) for white sharks. According to data collected by Point Blue Conservation Science (1987–2011) only one confirmed white shark predation event has occurred near middle Farallon Island during the fall season. Only a small number (30 or less) of sea lions are able to haul out on Middle Farallon Island at a time. In 2011, island biologists observed a shark thrashing several times over a number of hours, but no carcass or blood was ever observed, therefore the attack was not confirmed. Additionally, researchers and tourism operators have not been observed or reported in their logs approaching white sharks near Middle Farallon Island.

2. SWPZs 6 and 7 would be the only two SWPZs in the current sanctuary boundaries where approaching white sharks would be prohibited. The proposed boundaries of the new SWPZs are very similar to the areas currently protected from approaching white sharks around the Southeast and North Farallon Islands meaning that overall size and location would generally be the same as the existing protected areas. The combined area of the current white shark protection zone is approximately 52.3 square miles. The combined area of the two new white shark protection zones would be approximately 47.7 square miles. This is a reduction of 4.6 sq mi or approximately 10% of the current area, but that reduction is due to the removal of the Middle Farallon Island from the zone. Therefore, NOAA believes this proposed change in boundaries would result in a negligible change for researchers and tourism operators in the existing sanctuary, and that the reconfiguration of SWPZs would result in more effective resource protection.

Technical Changes to Boundaries

Minor technical changes were needed for the textual descriptions and point locations of the No-Anchoring Seagrass Protection Zones in Tomales Bay. Metric values (hectares and meters) were converted to English units to be consistent with the rest of the document. All zones with a shoreline component to their boundary are now described in language that complies with current ONMS conventions for boundary descriptions. In addition to modifying the text, the index numbers of some coordinate pairs were reordered and some coordinates were modified to accommodate the edited text. No change was made to the existing zone locations or areas, except that the boundary coordinates of Zone 5 were modified slightly so that the zone better align with GFNMS boundaries. Therefore, this proposed rule would correct minor errors

and incorporate these changes without significantly altering the size or location of the seagrass protection zones.

Regulations That Would Apply Only to Proposed Expansion Area

Motorized Personal Watercraft Zones

Operation of MPWC would be allowed only within four designated zones within the proposed expansion area and would limit access to the nearshore. The proposed regulations specify that an operable GPS unit in working condition must be carried on all MPWC accessing each zone in order to accurately and precisely navigate to MPWC zones and to ensure that the MPWC stays within the designated zones. The proposed action would allow use of MPWC in areas totaling 33.4 square nautical miles. A map of the zones under consideration may be found in the DEIS posted online at http://farallones.noaa.gov/manage/expansion_cbgf.html.

The sites of the four zones have been specifically proposed to minimize or prevent impacts on nearshore wildlife, and to protect known wildlife hotspots (which include areas of high biological diversity or abundance of species) or federally listed and specially protected species, while still allowing access to important recreational areas for surfing and where species of concern have a low likelihood of disturbance. Access to the proposed zones by conventional vessels would continue unchanged.

NOAA is proposing three year-round MPWC use zones and one seasonal MPWC zone within the GFNMS expansion area. Zone 1 is approximately 8.5 square miles and is proposed from latitude 39 to Arena Cove. This seasonal zone would be open from October through February. It would be closed from March through September to limit potential negative interactions with MPWC landing on Manchester Beach during the time Snowy Plovers, listed as threatened by the Endangered Species Act, nest on beaches. Zone 2 is approximately 26.2 square miles and is proposed from Arena Cove to Havens Neck. Prominent visual markers at Arena Cove, Moat, Saunders Landing, Iverson Landing and Haven's Neck would be used to define the eastern boundary. The proposed zone would require MPWC users to stay seaward of all the listed points at all times. Use of waypoints at each of the shoreside locations would help operators with compliance. Zone 3 is approximately 3.8 square miles and is offshore of Timber Cove. Zone 3 would be accessed through a boat ramp at Timber Cove. Zone 4 is approximately 6.1 square miles including the access route area and is proposed offshore of Bodega Head to Coleman Beach. A 100-yard access route from Bodega Harbor using the harbor entrance and two navigational buoys would allow entrance to the southern boundary of the zone. Seasonal access would also be available through Salmon Creek, at Bean Avenue and the Ranger Station.

NOAA is not proposing to change the definition of MPWC used by current GFNMS regulations in this proposed rule. However, NOAA has proposed to consolidate and standardize definitions that are common to

all sanctuaries (including modifications to definition of MPWC) in a separate rulemaking (78 FR 5998) published January 28, 2013. The reasoning behind and impacts of this proposal are being analyzed as part of the separate rulemaking with a separate public review process. A final rule is currently in development for this separate action.

Prohibit Low Flying Aircraft in Designated Zones

NOAA proposes to prohibit disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of SWPZs except for enforcement purposes. Similar to the current regulations applying to the existing sanctuary, NOAA would presume that a failure to maintain a minimum altitude of 1,000 feet above ground level over such waters disturbs marine mammals or seabirds. NOAA is proposing to add two discrete SWPZs with overflight restrictions in the proposed expanded area, as described below. The new SWPZs would implement restrictions to disturbing marine mammals or seabirds by flying a motorized aircraft as well as to the sailing of cargo vessels. In this section, NOAA describes the effect of the new SWPZs to low overflight regulations and describes the restrictions to cargo vessel use in the following section.

SWPZs would be defined as areas of high biological diversity and/or abundance of species including federally listed and specially protected species. In particular these areas are white shark, seabird, and marine mammal (pinniped) "hotspots". White shark hotspots contain globally significant concentrations of white sharks. Seabird hotspots are areas with important populations, species diversity, and which support a high concentration of nesting and roosting birds. Pinniped hotspots provide vital habitat for pupping seals and sea lions. In the proposed new boundaries for GFNMS, SWPZs would be established where such hotspots are susceptible to disturbance by low flying aircraft, cargo vessel operations, or in the case of white sharks, tourism vessels. Therefore, SWPZs are proposed to better encompass areas needing protection from certain human activities and to provide consistency between the existing and proposed areas of GFNMS.

Two new SWPZs would be created in the proposed expansion area. The first zone, SWPZ 1, would extend south along the coast from Havens Neck in Mendocino County approximately 10 miles to Del Mar Point in Sonoma County and from the Mean High Water Line approximately 1.75 miles seaward. The size of the zone would be approximately 10.5 square miles. The overflight time would be about 200 seconds (3.33 minutes) for an aircraft traveling at 120 miles per hour. SWPZ 1 would include observed pinniped haul-out areas, 3 species of breeding seabird colonies and one roosting seabird species at Fish Rocks; and observed pinniped haul-out areas and 5 species of breeding seabirds at Gualala Point Island. The second zone, SWPZ 2, would extend south along the coast from Windermere Point, north of the Russian River in Sonoma County, approximately 14 miles to Duncans

Point and from the Mean High Water Line approximately 1.85 miles seaward. The size of the zone would be approximately 21.4 square miles. The overflight time would be about 375 seconds (6.25 minutes) for an aircraft traveling at 120 miles per hour. SWPZ 2 would include observed Steller Sea Lion haul out areas at Northwest Cape (Fort Ross); and harbor seal haul out areas and 5 species of breeding seabirds throughout the entire Russian River Colony Complex, which is a system of offshore rocks north and south of the Russian River. The seven zones would include 11 seabird hotspots and 9 pinniped hotspots within the existing sanctuary and the proposed sanctuary expansion area. Many of these "hotspots" are "colony complexes" which means that the area may include cliffs (used by seabirds), clusters of rocks, or tidal mudflat islands (used by pinnipeds). The combined area for all 7 SWPZs would cover 2.77% of sanctuary waters (approximately 91.5 square miles).

Prohibit Cargo Vessels in Designated Zones

Currently NOAA prohibits cargo vessels from transiting closer than two nautical miles of the Farallon Islands, Bolinas Lagoon, or any ASBS to prevent wildlife disturbance and minimize the risk of oil spills in these areas. NOAA is proposing to extend the current prohibition on cargo vessels transiting close to sensitive wildlife areas in the sanctuary to the proposed expanded area by proposing a total of two new cargo prohibition zones in the proposed expansion area.

The two proposed new cargo vessel restriction zones in the proposed expansion area would be based on the proposed SWPZs, as described above. Combined area of new proposed cargo vessel zones in expansion area would be approximately 61.7 square miles. These two new SWPZs would be inshore of known cargo vessel traffic routes, therefore NOAA does not expect them to interfere significantly with current cargo vessel traffic.

Add New Regulations

Prohibit Interference With an Investigation

NOAA proposes to add a new regulation to enhance an existing statutory prohibition on interfering with, obstructing, delaying, or preventing an investigation, search or seizure in connection with an enforcement action related to the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 et seq.).

Exemption for Authorized Activities

Current GFNMS permit regulations do not allow NOAA to authorize any prohibited activity other than through the issuance of a national marine sanctuary permit. With this action, NOAA is proposing to add to GFNMS regulations the authority to authorize certain activities such as the discharge, construction, drilling, dredging or other disturbance on submerged land, taking and possessing a marine mammal, sea turtle, or bird, and possessing historical resources, as long as those activities are permitted or licensed by another federal, State, or local agency, and as long as the applicant complies with any terms and conditions deemed necessary to protect sanctuary resources and qualities. In addition, NOAA is proposing as part of a

separate rulemaking to add to GFNMS regulations the authority to authorize new or amended existing operations of commercial mariculture activities in state waters involving certain introduced species of shellfish that are determined to be non-invasive (79 FR 17073). In the case of authorization, the activity would have to comply with such terms, but would not have to fit within the categories of activities for which a sanctuary permit may be obtained. The activities would have to be authorized by the Sanctuary Superintendent, with authority delegated from the ONMS Director, under 15 CFR 922.83(d) and 15 CFR 922.49. This authorization provision is similar to that in the existing regulations for MBNMS and five other national marine sanctuaries. The Sanctuary Superintendent may also deny an authorization or condition an approval to protect sanctuary resources.

The exemption for authorized activities in this proposed rule would result in a new management authority in GFNMS as it currently stands as well as in the proposed expanded sanctuary.

In addition, NOAA is proposing to amend in the GFNMS regulations the explanation of the procedure by which preexisting leases, permits, licenses, or rights of subsistence use or access applying to the expansion area and in existence on the effective date of the sanctuary expansion may be certified (see 15 CFR 922.84), to clarify that the certification process would only be in place in the expansion area.

Cordell Bank National Marine Sanctuary Regulations

This section describes the changes NOAA is proposing to make to the regulations for CBNMS to implement the proposed expansion of the sanctuary, which is the basis for this rulemaking. It is organized by type of regulatory amendments as follows:

- It includes proposed changes to the boundary description;
- It would apply existing regulations without changes to the proposed expansion area for certain regulations and exceptions related to discharge, prohibiting oil, gas and minerals exploration, taking and possessing certain species, introducing introduced species, exemptions for Department of Defense and emergency response, permit criteria and requirements, and issuance of emergency regulations;
- It would amend an existing regulation regarding graywater discharge and apply it to both the existing sanctuary and proposed expansion area;
- It would add new regulations related to disturbing historical resources, interference with an investigation and the ability for NOAA to authorize certain activities otherwise prohibited.

Boundary Expansion

NOAA is proposing to modify the boundary of CBNMS. The proposed new boundary for CBNMS would increase the size of the sanctuary from approximately 528 square miles (399 nautical square miles) to 1,286 square miles (971 nautical square miles) and would include the waters and submerged lands north and west of the

current sanctuary. The larger boundary for CBNMS would include Bodega Canyon, a significant bathymetric feature that contributes directly to the biological productivity of the existing sanctuary ecosystem but is not currently part of CBNMS. Submarine canyons support deep water communities and affect local and regional water circulation patterns. The eastern and northern boundaries of CBNMS would be coterminous with GFNMS.

Extension of Existing Regulations Without Changes to Proposed Expansion Area Prohibition on Certain Discharges

Generally, discharging or depositing any material or other matter from within or into the sanctuary are prohibited in the existing sanctuary and would be prohibited in the proposed expansion area as well. The exceptions currently in place for some activities would apply in the proposed expansion area as well and are described below. The prohibition would apply not only to discharges and deposits originating in the sanctuary (e.g., from vessels in the sanctuary), but also, for example, from discharges and deposits occurring above the sanctuaries. A description of the impacts of this discharge regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule. NOAA is proposing to extend the following exceptions to the CBNMS discharge/deposit prohibition to the expansion area:

1. The discharge/deposit of fish, fish parts, chumming materials or bait would be allowed as long as they were made during the conduct of lawful fishing activities within the sanctuary. This existing regulation would be applied to the expansion area without amendment. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

2. The discharge/deposit of clean effluent generated incidental to vessel use and generated by a Type I or II marine sanitation device approved by the United States Coast Guard in accordance to section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA; 33 U.S.C. 1322) would be allowed for vessels less than 300 gross registered tons (GRT) or for vessels 300 GRT or above without sufficient holding tank capacity to hold sewage while within the sanctuary. This existing regulation would be applied to the expansion area without amendment. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

3. The discharge/deposit of clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, anchor wash, vessel engine or generator exhaust from all vessels, including cruise ships, would be allowed. An additional exception of clean vessel deck wash down would apply to all vessels other than cruise ships as defined above in the existing sanctuary and the expansion area. The discharge/deposit of oily waste from bilge pumping would be prohibited from any vessel if the waste contained any detectable levels of harmful

matter. In this case, a detectable level of oil would be interpreted to include anything that produced a visible sheen. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Prohibit Oil, Gas, or Minerals Exploration

NOAA is proposing to apply to the proposed expansion area for CBNMS an existing provision that would prohibit exploring for, developing or producing oil, gas, or minerals within CBNMS.

Prohibit the Take and Possession of Certain Species

NOAA is proposing to extend to the proposed expansion area for CBNMS an existing provision that prohibits the taking or possession of any marine mammal, sea turtle or bird within or above the sanctuary unless it is authorized by the Marine Mammal Protection Act, as amended, (MMPA; 16 U.S.C. 1361 et seq.), Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq., or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Prohibit the Introduction of Introduced Species

NOAA is proposing to extend to the proposed expansion area for CBNMS a provision that would prohibit introducing or otherwise releasing from within or into the sanctuary an introduced species, except striped bass (*Morone saxatilis*) released in the sanctuary during catch and release fishing. The rationale for this proposed regulation is the same as that for the proposed introduced species regulation for GFNMS.

Exemption for Department of Defense Activities

NOAA proposes to extend to the proposed expansion area for CBNMS the existing provision that would exempt the Department of Defense (DOD) from sanctuary regulations for activities carried out before the effective date of designation (for current CBNMS boundary) or before the effective date of expansion (for proposed expanded area) that are necessary for national defense. DOD activities necessary for national defense initiated after the effective date of designation (for current CBNMS boundary) or expansion date (for proposed expanded area) could be exempted after consultation between DOD and the Sanctuary Superintendent, with authority delegated from the ONMS Director. DOD activities not necessary for national defense, such as routine exercises and vessel operations, would be subject to all prohibitions that apply to CBNMS.

Exemption for Emergencies

NOAA proposes to apply to the proposed expansion area for CBNMS the existing exemption for activities necessary to respond to an emergency threatening life, property, or the environment.

Exemption for Permitted Activities

NOAA proposes to provide an exemption for activities that are permitted by the Sanctuary Superintendent, with authority delegated from the ONMS Director, in accordance with the permit issuance criteria found in 15 CFR 922.48 and 15 CFR 922.113. The Sanctuary Superintendent may issue a sanctuary permit to: (1) Further research or monitoring related to sanctuary resources and qualities; (2) further the educational value of the sanctuary; (3) further salvage or recovery operations; or (4) assist in managing the sanctuary. It is important to note that permits would only be available for activities that otherwise violate the regulations at 15 CFR 922.112, (a)(2) through (a)(7). No permit could be issued for activities that violate 15 CFR 922.112(a)(1), which prohibits the exploration for, development, or production of oil, gas or minerals within the sanctuary.

Provision for Emergency Regulation

NOAA proposes to extend to the proposed expansion area for CBNMS a provision that would allow NOAA to issue emergency regulations, within the limits of the NMSA, for no more than 120 days in order to prevent immediate, serious, and irreversible damage to a sanctuary resource.

Amend Existing Regulations

Regulations That Would Apply to Both Existing Sanctuary and Proposed Expansion Area

Prohibition on Certain Discharges

The discharge/deposit of graywater, as defined by section 312 of the FWPCA, by vessels less than 300 GRT, or vessels 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the sanctuary would be excepted. This exception is intended to allow small vessels producing a small amount of waste to continue operating within the sanctuary. This exception would not apply to cruise ships, as defined above. This regulation does not currently exist in CBNMS; its promulgation would result in new sanctuary protection measure in both CBNMS as it currently stands as well as in the proposed expanded sanctuary. This new exemption would allow some vessels to discharge clean graywater within the sanctuary (which is currently prohibited) as well as in the proposed expansion area. However, larger vessels greater than 300 GRT that have holding capacity would be prohibited from discharging gray water anywhere in either sanctuary. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

This rule would extend to the proposed expansion area for CBNMS a provision that also prohibits the discharge/deposit originating outside the boundary of CBNMS that subsequently would enter the sanctuary and injure a sanctuary resource or quality. This existing regulation would be applied to the expansion area, with the addition of the exception for a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold the graywater while within the Sanctuary, as mentioned above. A

description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Add New Regulations

Prohibit the Disturbance of Historic Resources

NOAA is proposing to prohibit the disturbance of, or attempts to disturb, a sanctuary historical resource. This modification would add protection to these fragile, finite, and non-renewable resources so they may be studied, and appropriate information may be made available for the benefit of the public. This rule would also prohibit the possession of a sanctuary historical resource, and would provide for comprehensive protection of sanctuary resources by making it illegal to possess historical resources in any geographic location. For example, this rule would make it illegal for anyone to possess an artifact taken from a shipwreck in CBNMS even if the individual is no longer in the sanctuary. While the presence of historical resources on Cordell Bank or in its surrounding waters is not known, such resources could exist. Since the proposed expanded sanctuary would be considerably larger in size, there may be submerged resources requiring protection that have yet to be discovered.

Prohibit Interference With an Investigation

NOAA proposes to add a new regulation to implement an existing statutory prohibition on interfering with, obstructing, delaying, or preventing an investigation, search or seizure in connection with an enforcement action related to the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 et seq.).

Exemption for Authorized Activities

Current CBNMS permit regulations do not allow the authorization of any prohibited activity other than through the issuance of a national marine sanctuary permit.

NOAA is proposing to add to CBNMS regulations the authority to authorize certain activities such as the discharge, construction, drilling, dredging or other disturbance on submerged land outside of the line representing the 50-fathom isobath around Cordell Bank, taking and possessing a marine mammal, sea turtle, or bird, and possessing historical resources, as long as those activities are permitted or licensed by another federal or State agency, and as long as the applicant complies with any terms and conditions deemed necessary to protect sanctuary resources and qualities. In the case of authorization, the activity would have to comply with such terms, but would not have to fit within the categories of activities for which a sanctuary permit may be obtained. The activities would have to be authorized by the Sanctuary Superintendent, with authority delegated from the ONMS Director, under 15 CFR 922.112(d) and 15 CFR 922.49. This authorization provision is similar to that in the existing regulations for MBNMS and five other national marine sanctuaries. The Sanctuary Superintendent may also deny an authorization or condition an approval to protect sanctuary resources.

The exemption for authorized activities in this proposed rule would result in a new

management authority in CBNMS as it currently stands as well as in the proposed expanded sanctuary.

IV. Classification

National Environmental Policy Act

NOAA has prepared a draft environmental impact statement to evaluate the environmental effects of the proposed rulemaking. Copies are available at the address and Web site listed in the ADDRESSES section of this proposed rule. Responses to comments received on this proposed rule will be published in the final environmental impact statement and preamble to the final rule.

Coastal Zone Management Act

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a state's coastal program on potential Federal regulations having an effect on state waters. NOAA will submit a copy of this proposed rule and supporting documents to the California Coastal Commission for evaluation of Federal consistency under the CZMA.

Executive Order 12866: Regulatory Impact

Under Executive Order 12866, if the proposed regulations are "significant," as defined in section 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

Executive Order 13175: Tribal Consultation and Collaboration

Representatives from the Manchester Band of Pomo Indians, Kashia Band of Pomo Indians of Stewarts Point Rancheria, and Federated Indians of Graton Rancheria were invited in writing to consult with NOAA under Executive Order 13175. As of publication date of this notice of proposed rulemaking, NOAA has not received answers to the consultation letters. However, NOAA will continue to seek their participation in the development of this rulemaking.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration has established thresholds on the designation of businesses as "small entities". A fish-harvesting business is considered a small business if has annual receipts not in excess of \$3.5 million (13 CFR 121.201). Sports and

recreation businesses and scenic and sightseeing transportation businesses are considered small businesses if they have annual receipts not in excess of \$6 million (13 CFR 121.201). According to these limits, each of the businesses potentially affected by the proposed rule, except those in the oil and gas and commercial marine transportation businesses would most likely be small businesses.

The analysis presented here is based on limited quantitative information on how much activity occurs within the boundaries of the proposed expansion areas for CBNMS and GFNMS, except for commercial fishing operations.

In 2013, NOAA conducted a study on the economic impact of California's commercial fisheries in all four California national marine sanctuaries, including the expansion area for the CBNMS and GFNMS. NOAA obtained commercial fishing data from the California Department of Fish and Wildlife (CDFW) for years 2000 to 2012. In 2012, there were a little over 200 fishing operations that made some catch from the CBNMS-GFNMS expansion area. These operations had harvest revenue of \$6.55 million (measured in 2013 dollars using the Consumer Price Index, which generated income (including multiplier impacts) of \$5.45 million and 246 full and part-time jobs.

Methodology. Due to the lack of quantitative data on the number of businesses directly affected by the proposed regulations and their levels of revenues, costs and profits from their activities in the CBNMS-GFNMS expansion area, the assessment here is qualitative.

Scales Used for Assessing Impacts. For assessing levels of impacts within an alternative, NOAA used three levels plus "no impacts". The three levels are "negligible", "moderate" and "high."

For levels of impacts within a proposed alternative, negligible means very low benefits, costs, or net benefits (less than 1% change). Moderate impacts would be more than 1% and less than or equal to 10%, and high impacts would be more than 10%. For market economic values (revenue, costs, and profits), negligible would mean no likely impact whereas moderate and high could mean some measurable impact on market economic values at the levels noted above. NOAA analyzed five regulatory alternatives (Proposed Action, No Action, Existing Regulations, Arena Cove Boundary, and Alternative Motorized Personal Watercraft (MPWC) Zones.) User groups that entail small businesses included commercial fishing operation, recreation-tourism related businesses, and land use and development businesses. Other user groups included in the full regulatory impact review and not included here are research and education, people who receive passive economic use value from improvements in natural resource qualities/quantities, businesses in offshore energy (oil and gas industry and alternative energy such as wave and wind energy firms) and those firms involved in marine transportation. Firms involved in offshore energy and marine transportation directly affected by the proposed regulations were judged not to be small businesses.

NOAA assessed three types of regulations included in the proposed action (discharges, submerged lands—seabed alterations, and introduced species), plus the impact of all regulations combined. Oil and gas regulations addressed in the full regulatory impact review are not discussed here since the oil and gas industry is judged not to involve small businesses.

Proposed Action

Discharge Regulations. Under the proposed rule, NOAA would require commercial fishing operations and businesses involved in providing guide services in the recreation-tourism industry (e.g. charter and party boat fishing operations and whale-watching or other wildlife observation or guide businesses) to hold and dispose of wastes prohibited by the regulations from discharge or deposit within the sanctuary until they are outside sanctuary boundaries. NOAA expects negligible costs from these regulations for all these operations. NOAA's proposed exemption for graywater discharges for vessels under 300 gross registered tons (GRT) or over 300 GRT but without sufficient holding tank capacity, would lessen the impact of the regulation in the sanctuary, and therefore would reduce the cost of compliance. NOAA expects both the commercial fishing industry and the recreation-tourism industry to receive moderate net benefits from these regulations in that habitat qualities would improve generating increased fish stocks for commercial and recreational fishing and improvements in the qualities that the recreation-tourism industry depends upon resulting in increased business revenues and profits. Thus, NOAA expects that the commercial fishing and recreation-tourism industries would benefit from the discharge regulations. NOAA expects the proposed action to generate a mid-range level of costs and mid-range levels of costs with a mid-range level of net benefits compared with all other regulatory alternatives. Land use and development businesses would not be directly affected by the discharge regulations.

Submerged lands—Seabed Alteration Regulations. Regulations prohibiting disturbances of the seabed would impact the commercial fishing industry, the recreation-tourism industry, and land use and development industry. NOAA expects all of these industries to receive moderate net benefits from these regulations because of the improvement or maintenance of habitat qualities that these industries depend upon. NOAA also expects businesses in these industries to experience negligible increases in costs of operations. The land use—development industry would be expected to benefit through increased property values. There are many examples in the economics literature showing that property values are enhanced when located near protected areas. Because of the exemptions, permit, and authorization processes in the proposed action, which may allow for some activities that disturb the seabed, costs are less than the alternative of extending existing regulations in the current sanctuaries to the proposed expansion area and would be expected to be in the mid-range of costs across all alternatives.

Introduced Species Regulations. Baiting and processing can be pathways for introduction of invasive species. The proposed action could potentially require commercial and recreational fishing operations to alter their baiting methods to reduce the likelihood for the introduction of invasive species into the proposed sanctuary expansion areas, but this is not likely because no known non-native species are currently being used as bait in these areas. No current operations involving fish processing vessels within the expansion area are known. NOAA expects the proposed action to limit competition between introduced and native species and provide ongoing stability to native populations of harvested species. Thus, NOAA expects these regulations to result in moderate benefits and net benefits to the commercial fishing industry, the recreation-tourism industry and businesses in the land use and development industry as habitat qualities are maintained or improved, while resulting in negligible costs to businesses in the commercial and recreational fishing industry. Again, the businesses in land use and development would benefit through enhanced property values. The proposed action is in the mid-range of benefits, costs and net benefits for the commercial fishing and recreation-tourism industry businesses across all regulatory alternatives, while land use and development would be expected to be in the mid-range of benefits and net benefits and no costs.

All Regulations. NOAA expects the combined effects of all of the regulations in the proposed action to generate moderate benefits and net benefits to businesses in all three industries, while imposing negligible costs. NOAA also expects the proposed action to result in a mid-range of benefits and net benefits to businesses in all three industries, while imposing next to the lowest costs across all regulatory alternatives analyzed in the draft environmental impact statement.

Because the impacts of this proposed rule on commercial fishing, recreational tourism, and land use and development businesses are minimal, the Chief Counsel for Regulation certified to the Chief Counsel for Advocacy at SBA that this rulemaking would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0141) for the collection of public information related to the processing of ONMS permits across the National Marine Sanctuary System. NOAA's proposal to expand GFNMS and CBNMS would likely result in an increase in the number of requests for ONMS general permits, special use permits, and authorizations due to the increase in the spatial extent of the applicable regulations for these sanctuaries and the addition of the authority to authorize other valid federal, state, or local leases, permits, licenses, approvals, or other authorizations. An increase in the number of ONMS permit requests would require a change to the reporting burden certified for OMB control

number 0648–0141. An update to this control number for the processing of ONMS permits would be requested as part of the final rule for sanctuary expansion.

Send comments regarding the burden estimate for this data collection requirement, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see **ADDRESSES**) and by email to *OIRA_submission@omb.eop.gov*, or fax to (202) 395–7285. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

V. Request for Comments

NOAA requests comments on this proposed rule by June 30, 2014.

VI. References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: April 4, 2014.

Holly A. Bamford,

Assistant Administrator, for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration proposes to amend 15 CFR part 922 as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.49 by revising paragraphs (a), (b), and (c) to read as follows:

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subpart H, subparts K through P, or subpart R, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine

Sanctuary after the effective date of the regulations in subpart P, provided that:

* * * * *

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subpart H, subparts K through P, or subpart R, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in subpart H, subparts K through P, or subpart R, as appropriate. A copy of the application must accompany the notification.

* * * * *

■ 3. Revise part 922 Subpart H to read as follows:

Subpart H—Gulf of the Farallones National Marine Sanctuary

§ 922.80 Boundary.

(a) Gulf of the Farallones National Marine Sanctuary (Sanctuary) encompasses an area of approximately 2,490 square nautical miles (3,297 square miles) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands and Noonday Rock along the northern coast of California. The precise boundary coordinates are listed in Appendix A to this subpart.

(b) The western boundary of the Sanctuary extends south from Point 1 approximately 45 nautical miles (52 miles) to Point 2, which is the northwestern corner of Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then extends from Point 2 approximately 38 nautical miles (43 miles) east along the northern boundary of CBNMS to Point 3, which is approximately 7 nautical miles (8 miles) west of Bodega Head. From Point 3 the Sanctuary boundary continues to south and west to Points 4 through Point 19 (in numerical sequence) and is coterminous with the eastern boundary of CBNMS. From Point 19 the Sanctuary boundary continues south and east to Points 20 through 25 (in numerical sequence) until it intersects the boundary for Monterey Bay National Marine Sanctuary (MBNMS) at Point 26. From Point 26 the Sanctuary boundary extends eastward and northward, coterminous with MBNMS, to Points 27 through 33 (in numerical sequence). From Point 33 the boundary proceeds along a straight line arc towards Point 34 until it intersects the Mean High Water Line at Rocky Point, California. From this intersection the Sanctuary

boundary follows the Mean High Water Line northward until it intersects the boundary for Point Reyes National Seashore approximately 0.7 nautical miles (0.8 miles) south and east of Bolinas Point in Marin County, California. The Sanctuary boundary then approximates the boundary for Point Reyes National Seashore, as established at the time of designation of the Sanctuary, to the intersection of the Point Reyes National Seashore boundary and the Mean High Water Line approximately 0.13 nautical miles (0.15 miles) south and east of Duck Cove in Tomales Bay. The Sanctuary boundary then follows the Mean High Water Line along Tomales Bay and Giacomini Wetland and up Lagunitas Creek to the U.S. Highway 1 Bridge. Here the Sanctuary boundary crosses Lagunitas Creek and follows the Mean High Water Line north to the Estero de San Antonio and up the Estero to the tide gate at Valley Ford-Franklin School Road. Here the Sanctuary boundary crosses the Estero de San Antonio and proceeds west and north following the Mean High Water Line to the Estero Americano and up the Estero to the bridge at Valley Ford-Estero Road. Here the Sanctuary boundary crosses the Estero Americano and proceeds west and north following the Mean High Water Line to the Salmon Creek Estuary. At the Salmon Creek Estuary the boundary continues along the Mean High Water Line of the southern shore of the Salmon Creek Estuary until it intersects a straight line arc connecting Point 35 and Point 36. At that intersection the boundary extends across the estuary towards Point 36 until it intersects the Mean High Water Line of the northern shore of the Salmon Creek Estuary. From this intersection the boundary follows the Mean High Water Line to the Russian River. At the Russian River the boundary continues along the Mean High Water Line of the southern shore of the Russian River until it intersects a straight line arc connecting Point 37 and Point 38. At that intersection the boundary extends across the river towards Point 38 until it intersects the Mean High Water Line of the northern shore of the Russian River. From this intersection the boundary follows the Mean High Water Line to the Gualala River. At the Gualala River the boundary continues along the Mean High Water Line of the southern shore of the Gualala River until it intersects a straight line arc between Point 39 and Point 40. At that intersection the boundary extends across the river towards Point 40 until it intersects the Mean High Water Line of the northern shore of the Gualala

River. From this intersection the boundary follows the Mean High Water Line to Arena Cove in Mendocino County. At Arena Cove the boundary continues along the Mean High Water Line of the southern shore of Arena Cove until it intersects a straight line arc connecting Point 41 and Point 42. At that intersection the boundary extends across the cove towards Point 42 until it intersects the Mean High Water Line of the northern shore of Arena Cove. From this intersection the boundary follows the Mean High Water Line north to the Garcia River. At the Garcia River the boundary continues along the Mean High Water Line of the southern shore of the Garcia River until it intersects a straight line arc connecting Point 43 and Point 44. At that intersection the boundary extends across the river towards Point 44 until it intersects the Mean High Water Line of the northern shore of the Garcia River. The Sanctuary boundary then continues to follow the Mean High Water Line until it intersects the rhumb line connecting Point 45 at Manchester Beach in Mendocino County, California and Point 46. From this intersection the Sanctuary boundary continues west along its northernmost extent to Point 46. The Sanctuary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford-Franklin School Road) and Estero Americano (to the bridge at Valley Ford-Estero Road), as well as Bodega Bay, but does not include Bodega Harbor, the Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, the portion of Arena Cove from the end of the pier eastward, or the Garcia River Estuary. Unless otherwise specified, where the Sanctuary boundary crosses a waterway, the Sanctuary excludes this waterway.

§ 922.81 Definitions.

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

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

Clean means not containing detectable levels of harmful matter.

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

Deserting means leaving a vessel aground or adrift 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, after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or 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 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.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

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

Motorized personal watercraft means 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; any vessel less than 20 feet in length overall as manufactured 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 any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

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

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

Special Wildlife Protection Zones are areas of high biological diversity and/or abundance of species that are susceptible to disturbance, including

federally listed and specially protected species. In particular these areas are white shark, seabird and marine mammal (pinniped) "hotspots". White shark "hotspots" are where there are globally significant concentrations of white sharks. Seabird "hotspots" are areas with important populations, species diversity, and which support high concentration of nesting and roosting birds. Pinniped "hotspots" provided vital habitat for pupping seals and sea lions. Special Wildlife Protection Zones are established where "hotspots" are susceptible to disturbance and their coordinates are found in Appendix D of this Subpart.

§ 922.82 Prohibited or otherwise regulated activities.

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

(1) Exploring for, developing, or producing oil, gas or minerals.

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

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

(ii) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(iii) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(iv) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold the graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA; or

(v) Vessel engine or generator exhaust.

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

water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

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

(5) Constructing any structure other than a navigation aid on or in the submerged lands of the Sanctuary; placing or abandoning any structure on or in the submerged lands of the Sanctuary; or drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary in any way, except:

(i) By anchoring vessels (in a manner not otherwise prohibited by this part (see § 922.82(a)(16)));

(ii) While conducting lawful fishing activities;

(iii) Routine maintenance and construction of docks and piers on Tomales Bay; or

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

(6) Operating motorized personal watercraft (MPWC), except for:

(i) Emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions; or

(ii) An MPWC equipped with an operable Global Positional System (GPS) unit in working condition within the four designated zones within the Sanctuary described in Appendix C to this subpart.

(7) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

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

(9) Possessing, moving, removing, or injuring, or attempting to possess, move,

remove or injure, a Sanctuary historical resource.

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

(i) Striped bass (*Morone saxatilis*) released during catch and release fishing activity; or

(ii) Species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of the final regulation.

(11) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within the seven designated Special Wildlife Protection Zones described in Appendix D to this subpart, except transiting Zone 6 to transport authorized persons or supplies to or from Southeast Farallon Island or for enforcement purposes. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

(12) Operating any vessel engaged in the trade of carrying cargo within an area extending 1 nautical mile from a designated Special Wildlife Protection Zone described in Appendix D to this subpart. This includes but is not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations, except to transport persons or supplies to or from the Islands or mainland areas adjacent to Sanctuary waters. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(13) Attracting a white shark anywhere in the Sanctuary; or approaching within 50 meters of any white shark within the line approximating 1 nautical mile around Special Wildlife Protection Zone 6 and 7 described in Appendix D.

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

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

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

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

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraphs (a)(2) through (9) and (a)(11) through (16) 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 922.83 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(2) through (9) and (10), for the introduction of a introduced species from shellfish mariculture in state waters determined to be non-invasive, 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 or expansion 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 or expansion constitute authorizations issued after the effective date of Sanctuary designation or expansion.

§ 922.83 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 922.82(a)(2) through (9) and (a)(11) through (16) if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

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

(1) Further research or monitoring related to Sanctuary resources and qualities;

(2) Further the educational value of the Sanctuary;

(3) Further salvage or recovery operations; or

(4) Assist in managing the Sanctuary.

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

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

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

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

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

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

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

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

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

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

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

§ 922.84 Certification of other permits.

A permit, license, or other authorization allowing activities prohibited by sanctuary regulations, occurring prior to the effective date of sanctuary expansion and within the sanctuary expansion area, must be certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency. In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate. Any request for certification called for in this section must be received by the Director within 60 days of the effective date of sanctuary expansion. The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

Appendix A to Subpart H of Part 922—Gulf of the Farallones National Marine Sanctuary Boundary Coordinates

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID No.	Latitude	Longitude
1	39.00000	- 124.33350
2	38.29989	- 123.99988
3	38.29989	- 123.20005
4	38.26390	- 123.18138
5	38.21001	- 123.11913
6	38.16576	- 123.09207
7	38.14072	- 123.08237
8	38.12829	- 123.08742
9	38.10215	- 123.09804
10	38.09069	- 123.10387
11	38.07898	- 123.10924
12	38.06505	- 123.11711
13	38.05202	- 123.12827
14	37.99227	- 123.14137
15	37.98947	- 123.23615
16	37.95880	- 123.32312
17	37.90464	- 123.38958
18	37.83480	- 123.42579
19	37.76687	- 123.42694
20	37.75932	- 123.42686
21	37.68892	- 123.39274
22	37.63356	- 123.32819
23	37.60123	- 123.24292
24	37.59165	- 123.22641
25	37.56305	- 123.19859
26	37.52001	- 123.12879
27	37.50819	- 123.09617

Point ID No.	Latitude	Longitude
28	37.49418	-123.00770
29	37.50948	-122.90614
30	37.52988	-122.85988
31	37.57147	-122.80399
32	37.61622	-122.76937
33	37.66641	-122.75105
34	37.88225	-122.62753
35	38.35055	-123.06659
36	38.35559	-123.06663
37	38.44575	-123.12602
38	38.45531	-123.13469
39	38.76231	-123.52957
40	38.76899	-123.53398
41	38.91172	-123.71152
42	38.91632	-123.71152
43	38.95404	-123.73405
44	38.96149	-123.71914
45	39.00000	-123.69710
46	39.00000	-124.33350

**Appendix B to Subpart H of Part 922—
No-Anchoring Seagrass Protection
Zones in Tomales Bay**

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

ZONE 1: Zone 1 is an area of approximately .11 square nautical miles (.15 square miles) offshore south of Millerton Point. The eastern boundary is a straight line arc that connects points 1 and 2 listed in the coordinate table below. The southern boundary is a straight line arc that connects points 2 and 3, the western boundary is a straight line arc that connects points 3 and 4 and the northern boundary is a straight line arc that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 1 Point ID	Latitude	Longitude
1	38.10571	-122.84565
2	38.09888	-122.83603
3	38.09878	-122.84431
4	38.10514	-122.84904
5	38.10571	-122.84565

ZONE 2: Zone 2 is an area of approximately .15 square nautical miles (.19 square miles) that begins just south of Marconi and extends approximately 1.6 nautical miles (1.9 miles) south along the eastern shore of Tomales Bay. The western boundary is a series of straight line arcs that connect point 1 to point 5 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 5 towards point 6 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line north until it intersects the straight line arc that connects point 7 to point 8. From this intersection the northern boundary extends to point 8. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 2 Point ID	Latitude	Longitude
1	38.13326	-122.87178
2	38.12724	-122.86488
3	38.12563	-122.86480
4	38.11899	-122.86731
5	38.11386	-122.85851
6	38.11608	-122.85813
7	38.14078	-122.87433
8	38.13326	122.87178

ZONE 3: Zone 3 is an area of approximately .01 square nautical miles (.02 square miles) that begins just south of Marshall and extends approximately .5 nautical miles (.6 miles) south along the eastern shore of Tomales Bay. The western boundary is a straight line arc that connects point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 2 towards point 3 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 4 to point 5. From this intersection the northern boundary extends westward along the straight line arc that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 3 Point ID	Latitude	Longitude
1	38.15956	-122.89573
2	38.15250	-122.89042
3	38.15292	-122.88984
4	38.16038	-122.89566
5	38.15956	-122.89573

ZONE 4: Zone 4 is an area of approximately .18 square nautical miles (.21 square miles) that begins just north of Nicks Cove and extends approximately 2.7 nautical miles (3.1 miles) south along the eastern shore of Tomales Bay to just south of Cypress Grove. The western boundary is a series of straight line arcs that connect point 1 to point 8 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 8 towards point 9 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line north until it intersects the straight line arc that connects point-10 to point 11. From this intersection the northern boundary extends westward along the straight line arc that connects point 10 to point 11. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 4 Point ID	Latitude	Longitude
1	38.20004	-122.92315
2	38.18881	-122.91740
3	38.18651	-122.91404
4	38.17919	-122.91021
5	38.17450	-122.90545
6	38.16869	-122.90475
7	38.16535	-122.90308

Zone 4 Point ID	Latitude	Longitude
8	38.16227	-122.89650
9	38.16266	-122.89620
10	38.20080	-122.92174
11	38.20004	-122.92315

ZONE 5: Zone 5 is an area of approximately 1.3 square nautical miles (1.6 square miles) that begins east of Lawsons Landing and extends approximately 2.7 nautical miles (3.1 miles) east and south along the eastern shore of Tomales Bay but excludes areas adjacent (approximately .32 nautical miles or .37 miles) to the mouth of Walker Creek. The eastern boundary is a series of straight line arcs that connect point 1 to point 3 listed in the coordinate table below. From point 3 the southern boundary trends eastward along the straight line arc that connects point 3 to point 4 until it intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 5 to point 6. From this intersection the boundary extends westward along the straight line arc that connects point 5 to point 6. From point 6 the boundary follows the straight line arc that connects point 6 to point 7, and then extends along the straight line arc that connects point 7 to point 8 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line until it intersects the straight line arc that connects point 9 to point 10. From this intersection the boundary extends to point 10 along the straight line arc that connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 5 Point ID	Latitude	Longitude
1	38.21825	-122.96041
2	38.20666	-122.94397
3	38.19431	-122.93431
4	38.20080	-122.92174
5	38.20522	-122.92446
6	38.20366	-122.93246
7	38.20938	-122.94153
8	38.21106	-122.93742
9	38.23129	-122.96293
10	38.21825	-122.96041

ZONE 6: Zone 6 is an area of approximately .01 square nautical miles (.02 square miles) in the vicinity of Indian Beach along the western shore of Tomales Bay. The eastern boundary is a straight line arc that connects point 1 to point 2 listed in the coordinate table below. The southern boundary extends westward along the straight line arc that connects point 2 to point 3 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 3 to point 4. From this intersection the northern boundary extends eastward along the straight line arc that connects point 4 to point 5. All coordinates are in the Geographic Coordinate

System relative to the North American Datum of 1983.

Zone 6 Point ID	Latitude	Longitude
1	38.14103	- 122.89537
2	38.13919	- 122.89391
3	38.13804	- 122.89610
4	38.14033	- 122.89683
5	38.14103	- 122.89537

Zone 7: Zone 7 is an area of approximately .09 square nautical miles (.12 square miles) that begins just south of Pebble Beach and extends approximately 1.6 nautical miles (1.9 miles) south along the western shore of Tomales Bay. The eastern boundary is a series of straight line arcs that connect point 1 to point 5 listed in the coordinate table below. The southern boundary extends along the straight line arc that connects point 5 to point 6 until it intersect the Mean High Water Line. From this intersection the western boundary extends north along the Mean High Water Line until it intersects the straight line arc that connects point 7 to point 8. From this intersection the northern boundary extends eastward along the straight line arc that connects point 7 to point 8. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 7 Point ID	Latitude	Longitude
1	38.13067	- 122.88620
2	38.12362	- 122.87984
3	38.11916	- 122.87491
4	38.11486	- 122.86896
5	38.11096	- 122.86468
6	38.11027	- 122.86551
7	38.13001	- 122.88749
8	38.13067	- 122.88620

**Appendix C to Subpart H of Part 922—
Motorized Personal Watercraft Zones
and Access Routes Within the
Sanctuary**

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

The four zones and access routes are:

(1) Motorized Personal Watercraft Zone 1 (MPWCZ 1) encompasses an area of approximately 6.4 square nautical miles (8.5 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of MPWCZ 1 extends due south along a meridian from Point 1, west of Manchester Beach in Mendocino County, to Point 2, which is west of Arena Cove. The boundary then follows a rhumb line east from Point 2 towards Point 3 until it intersects the Mean High Water Line at the south end of Arena Cove. From this intersection, the boundary follows the Mean High Water Line until it intersects the straight line arc that connects Point 4 and Point 5. The boundary extends across Arena Cove along this arc until it intersects the Mean High Water Line on the north side of Arena Cove. The boundary then follows the Mean High Water Line until it

intersects the rhumb line that connects Point 6 and Point 7. From this intersection, the boundary extends due west to Point 7. From Point 7 the boundary extends due north along the meridian that connects Point 7 and Point 8 until it intersects the Mean High Water Line on the north side of Point Arena. From this intersection the boundary again follows the Mean High Water Line until it intersects the rhumb line connecting Point 9 and Point 10. The boundary then turns seaward and extends due west to Point 10.

Zone 1 is bounded by:

Zone 1 Point ID No.	Latitude	Longitude
1	39.00000	- 123.75000
2	38.91024	- 123.75000
3	38.91024	- 123.71146
4	38.91172	- 123.71152
5	38.91632	- 123.71152
6	38.91790	- 123.72626
7	38.91790	- 123.74166
8	38.95554	- 123.74166
9	39.00000	- 123.69450
10	39.00000	- 123.75000

(2) Motorized Personal Watercraft Zone 2 (MPWCZ 2) encompasses an area of approximately 19.8 square nautical miles (26.2 square miles). The precise boundary coordinates are listed in the table following this description. The southern boundary of MPWCZ 2 extends due east along a rhumb line that connects Point 1, south of Arena Cove, to Point 2, just offshore of Haven's Neck in Mendocino County. From Point 2 the boundary trends north and west, generally parallel to the shoreline, and extends, in sequence, to Point 3 off Iversen Point, then to Point 4 off Saunders Landing, and then to Point 5 off Moat. From Point 5 the boundary follows the straight line arc that connects Point 5 and Point 6 until it intersects the Mean High Water Line at the south end of Arena Cove. From this intersection, the boundary follows the Mean High Water Line until it intersects the straight line arc that connects Point 7 and Point 8. The boundary extends across Arena Cove towards Point 8 until it intersects the Mean High Water Line on the north side of Arena Cove. The boundary then follows the Mean High Water Line until it intersects the meridian that connects Point 9 and Point 10. The boundary then extends due south to Point 10.

Zone 2 is bounded by:

Zone 2 Point ID No.	Latitude	Longitude
1	38.80856	- 123.72378
2	38.80856	- 123.60351
3	38.84514	- 123.64738
4	38.85202	- 123.65113
5	38.88255	- 123.68162
6	38.91033	- 123.71114
7	38.91172	- 123.71152
8	38.91632	- 123.71152
9	38.91790	- 123.72626

(3) Motorized Personal Watercraft Zone 3 (MPWCZ 3) encompasses an area of

approximately 2.9 square nautical miles (3.8 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of MPWCZ 3 extends due south along a meridian from Point 1, west of Timber Cove in Sonoma County, to Point 2, which is west of Fort Ross Reef. The boundary then turns east and follows a rhumb line from Point 2 to Point 3. From Point 3 the boundary turns due north and follows the meridian from Point 3 towards Point 4 until it intersects the Mean High Water Line at the south end of Timber Cove. From the south end of Timber Cove the boundary follows the Mean High Water Line until it intersects the rhumb line that connects Point 5 and Point 6. From this intersection the boundary extends due west to Point 6.

Zone 3 is bounded by:

Zone 3 Point ID No.	Latitude	Longitude
1	38.53150	- 123.30000
2	38.50000	- 123.30000
3	38.50000	- 123.26896
4	38.52519	- 123.26896
5	38.53150	- 123.27853
6	38.53150	- 123.30000

(4) Motorized Personal Watercraft Zone 4 (MPWCZ 4) encompasses an area of approximately 4.6 square nautical miles (6.1 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of MPWCZ 4 extends due south from Point 1, off Coleman Beach in Sonoma County, to Point 2, which is east of Bodega Head. From Point 2 the boundary extends due east along a rhumb line to Point 3. The boundary continues from Point 3 though Point 10 inclusive, in numerical sequence, to form an access route that connects to the entrance to Bodega Harbor. From Point 10 the boundary extends due north along the meridian that connects Point 10 and Point 11. At Point 11 the boundary turns west and follows a rhumb line to Point 12. At Point 12 the boundary turns due north and follows the meridian from Point 12 to Point 13. From Point 13 the boundary extends due east along a rhumb line that connects Point 13 and Point 14, until it intersects the Mean High Water Line at South Salmon Creek Beach. At this intersection the boundary turns northward and follows the Mean High Water Line until it intersects the rhumb line that connects Point 15 and Point 16. From this intersection the boundary extends due west to Point 16.

Zone 4 is bounded by:

Zone 4 Point ID No.	Latitude	Longitude
1	38.36615	- 123.10000
2	38.29800	- 123.10000
3	38.29800	- 123.07374
4	38.27972	- 123.07374
5	38.28542	- 123.03204
6	38.30574	- 123.04784
7	38.30574	- 123.04987
8	38.28619	- 123.03437
9	38.28142	- 123.07182

Zone 4 Point ID No.	Latitude	Longitude
10	38.29800	- 123.07182
11	38.31278	- 123.07182
12	38.31278	- 123.07824
13	38.33200	- 123.07824
14	38.33200	- 123.06928
15	38.36615	- 123.07186
16	38.36615	- 123.10000

**Appendix D to Subpart H of Part 922—
Special Wildlife Protection Zones
Within the Sanctuary**

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

(1) Special Wildlife Protection Zone 1 (SWPZ 1) encompasses an area of approximately 7.9 square nautical miles (10.5 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 1 extends south from Point 1, west of Haven’s Neck in Mendocino County, to Point 2, west of Del Mar Point. The boundary then extends east from Point 2 along a rhumb line connecting Point 2 and Point 3 until it intersects the Mean High Water Line at Del Mar Point. The SWPZ 1 boundary then turns north to follow the Mean High Water Line towards Haven’s Neck and continues until it intersects a rhumb line connecting Point 4 and Point 5. From this intersection the Sanctuary boundary continues west along its northernmost extent to Point 5.

Zone 1 Point ID No.	Latitude	Longitude
1	38.80865	- 123.63227
2	38.74096	- 123.54306
3	38.74096	- 123.51051
4	38.80865	- 123.60195
5	38.80865	- 123.63227

(2) Special Wildlife Protection Zone 2 (SWPZ 2) encompasses an area of approximately 16.2 square nautical miles (21.4 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 2 extends south and east from Point 1, south of Windermere Point in Sonoma County, to Point 2 and then to Point 3 in sequence. Point 3 is west of Duncans Point in Sonoma County. The boundary then extends east from Point 3 along a rhumb line connecting Point 3 and Point 4 until it intersects the Mean High Water Line at Duncans Point. The boundary then turns north to follow the Mean High Water Line towards Windermere Point until it intersects a meridian connecting Point 5 and Point 6. From this intersection the boundary continues due south along a meridian to Point 6.

Zone 2 Point ID No.	Latitude	Longitude
1	38.49854	- 123.26804

Zone 2 Point ID No.	Latitude	Longitude
2	38.45095	- 123.18564
3	38.39311	- 123.12068
4	38.39311	- 123.09527
5	38.52487	- 123.26804
6	38.49854	- 123.26804

(3) Special Wildlife Protection Zone 3 (SWPZ 3) encompasses an area of approximately 7 square nautical miles (9.3 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 3 extends south and east from Point 1, southwest of the Estero de San Antonio in Sonoma County, to Point 2, south of Tomales Point in Marin County. The boundary then extends north and east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the boundary of the Point Reyes National Seashore. From this intersection the boundary follows the Point Reyes National Seashore boundary around Tomales Point into Tomales Bay and continues until it again intersects the straight line arc that connects Point 2 and Point 3. From this intersection the boundary follows the straight line arc north and east until it intersects the Mean High Water Line at Toms Point in Tomales Bay. The SWPZ 3 boundary then follows the Mean High Water Line northward towards the Estero de San Antonio until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the Sanctuary boundary continues south and west to Point 5.

Zone 3 Point ID No.	Latitude	Longitude
1	38.24001	- 123.02963
2	38.19249	- 122.99523
3	38.21544	- 122.95286
4	38.27011	- 122.97840
5	38.24001	- 123.02963

(4) Special Wildlife Protection Zone 4 (SWPZ 4) encompasses an area of approximately 10.2 square nautical miles (13.5 square miles). The precise boundary coordinates are list in the table following this description. The western boundary of SWPZ 4 extends south and west from Point 1, west of Point Reyes in Marin County, to Point 2, south and west of Point Reyes Lighthouse. The boundary then follows a straight line arc east and south from Point 2 to Point 3. From Point 3 the boundary follows a straight line arc north to Point 4. From Point 4 the SWPZ 4 boundary proceeds west along the straight line arc that connects Point 4 and Point 5 until it intersects the Point Reyes National Seashore boundary north of Chimney Rock. The boundary then follows the Point Reyes National Seashore boundary around Point Reyes until it intersects the straight line arc that connects Point 4 and Point 5 north of the Point Reyes Lighthouse. From this intersection the boundary turns seaward and continues west to Point 5.

Zone 4 Point ID No.	Latitude	Longitude
1	38.01475	- 123.05013
2	37.97536	- 123.05482
3	37.96521	- 122.93771
4	38.00555	- 122.93504
5	38.01475	- 123.05013

(5) Special Wildlife Protection Zone 5 (SWPZ 5) encompasses an area of approximately 14.8 square nautical miles (19.6 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 5 extends south and east from Point 1, near Millers Point in Marin County, to Point 2, which is south and west of Bolinas Point. The boundary then follows a rhumb line east from Point 2 towards Point 3 until it intersects the Mean High Water Line at Rocky Point. From this intersection, the boundary follows the Mean High Water Line north to Bolinas Point and Millers Point, respectively, including Bolinas Lagoon but not including Seadrift Lagoon, until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the boundary turns seaward and continues to west and south along the straight line arc to Point 5.

Zone 5 Point ID No.	Latitude	Longitude
1	37.96579	- 122.83284
2	37.88195	- 122.73989
3	37.88195	- 122.62873
4	37.98554	- 122.81172
5	37.96579	- 122.83284

(6) Special Wildlife Protection Zone 6 (SWPZ 6) encompasses an area of approximately 6.8 square nautical miles (9 square miles). The precise boundary coordinates are listed in the table following this description. The boundary of SWPZ 6 extends south and west from Point 1, north of Southeast Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 6 Point ID No.	Latitude	Longitude
1	37.72976	- 123.00961
2	37.69697	- 123.04374
3	37.66944	- 123.00176
4	37.70246	- 122.96608
5	37.72976	- 123.00961

(7) Special Wildlife Protection Zone 7 (SWPZ 7) encompasses an area of approximately 6 square nautical miles (7.9 square miles). The precise boundary coordinates are listed in the table following this description. The boundary of SWPZ 7 extends south and west from Point 1, north of North Farallon Island, along a straight line arc to Point 2, then south and east along a

straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 7 Point ID No.	Latitude	Longitude
1	37.79568	- 123.10845
2	37.76746	- 123.13285
3	37.73947	- 123.09341
4	37.76687	- 123.06330
5	37.79568	- 123.10845

■ 4. Revise part 922 Subpart K to read as follows:

Subpart K—Cordell Bank National Marine Sanctuary

§ 922.110 Boundary.

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 971 square nautical miles (1,286 square miles) of offshore ocean waters, and submerged lands thereunder, surrounding the submarine plateau known as Cordell Bank along—the northern coast of California, approximately 45 nautical miles west-northwest of San Francisco, California. The precise boundary coordinates are listed in Appendix A to this subpart. The northern boundary of the Sanctuary is a rhumb line that begins approximately 6 nautical miles (8 miles) west of Bodega Head in Sonoma County, California at Point 1 and extends west approximately 38 nautical miles (44 miles) to Point 2. This line is part of a shared boundary between the Sanctuary and Gulf of the Farallones National Marine Sanctuary (GFNMS). The western boundary of the Sanctuary extends south from Point 2 approximately 34 nautical miles (39 miles) to Point 3. From Point 3 the Sanctuary boundary continues east 15 nautical miles (17 miles) to Point 4 where it intersects the GFNMS boundary again. The line from Point 3 to Point 4 forms the southernmost boundary of the Sanctuary. The eastern boundary of the Sanctuary is a series of straight lines connecting Points 4 through 20 in numerical sequence. The Sanctuary is coterminous with GFNMS along both its (the Sanctuary's) eastern and northern boundaries.

§ 922.111 Definitions.

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

Clean means not containing detectable levels of harmful matter.

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

Harmful matter means any substance, or combination of substances, that 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.

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

§ 922.112 Prohibited or otherwise regulated activities.

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

(1) Exploring for, developing, or producing oil, gas, or minerals.

(2)(i) Discharging or depositing from within or into 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 lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated 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. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA; or

(E) Vessel engine or generator exhaust.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge 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 as listed in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(3) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person.

(4)(i) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or other matter on or in the submerged lands. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart.

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

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*,

Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

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

(7) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(8) 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.

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment.

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

(d) The prohibitions in paragraphs (a)(2), (a)(3), and (a)(4)(ii) through (a)(7) 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 or expansion 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 or expansion constitute authorizations issued after the effective date of Sanctuary designation or expansion.

(e) The prohibitions in paragraphs (a)(2) through (7) 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 922.113 or a Special Use permit issued pursuant to section 310 of the Act.

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

§ 922.113 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 922.112, (a)(2), through (a)(7), if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

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

(1) Further research or monitoring related to Sanctuary resources and qualities;

(2) Further the educational value of the Sanctuary;

(3) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or

(4) Assist in managing the Sanctuary.

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

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

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

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

(4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the

conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;

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

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

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

(8) The Director may consider additional factors as he or she deems appropriate.

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

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

Appendix A to Subpart K of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

SANCTUARY BOUNDARY COORDINATES

Point ID No. sanctuary boundary	Latitude	Longitude
1	38.29989	- 123.20005
2	38.29989	- 123.99988
3	37.76687	- 123.75143
4	37.76687	- 123.42694
5	37.83480	- 123.42579
6	37.90464	- 123.38958
7	37.95880	- 123.32312
8	37.98947	- 123.23615
9	37.99227	- 123.14137
10	38.05202	- 123.12827
11	38.06505	- 123.11711
12	38.07898	- 123.10924
13	38.09069	- 123.10387
14	38.10215	- 123.09804

**SANCTUARY BOUNDARY
COORDINATES—Continued**

Point ID No. sanctuary boundary	Latitude	Longitude
15	38.12829	- 123.08742
16	38.14072	- 123.08237
17	38.16576	- 123.09207
18	38.21001	- 123.11913
19	38.26390	- 123.18138
20	38.29989	- 123.20005

**Appendix B to Subpart K of Part 922—
Line Representing the 50-Fathom
Isobath Surrounding Cordell Bank**

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

CORDELL BANK FIFTY FATHOM LINE

Point ID No.	Latitude	Longitude
1	37.96034	- 123.40371
2	37.96172	- 123.42081
3	37.9911	- 123.44379
4	38.00406	- 123.46443
5	38.01637	- 123.46076

**CORDELL BANK FIFTY FATHOM LINE—
Continued**

Point ID No.	Latitude	Longitude
6	38.04684	- 123.47920
7	38.07106	- 123.48754
8	38.07588	- 123.47195
9	38.06451	- 123.46146
10	38.07123	- 123.44467
11	38.04446	- 123.40286
12	38.01442	- 123.38588
13	37.98859	- 123.37533
14	37.97071	- 123.38605

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