SECTION 7
RESPONSE TO COMMENTS

NOAA summarized the comments according to the content of the statement or question put forward in written statements or oral testimony regarding the proposed actions. NOAA also made changes to the FEIS and Sanctuary Management Plans in response to the comments, where appropriate, including updates to socioeconomic and ecological data where the comments affect the impact analysis or are relevant to the sanctuary action plans. Several technical or editorial comments on the DEIS and Management Plans were also taken under consideration by NOAA and, where appropriate, applied to the FEIS and/or Management Plans. These comments are not, however, included in the list below.

Alteration of or Construction on the Seabed

Anchoring on Cordell Bank

Comment: The Cordell Bank regulation regarding anchoring outside the 50 fathom line should be edited to make clear that anchoring is only allowed in conjunction with lawful fishing activities, with the assumption that allowances/regulations for other cases (such as anchoring in emergency situations) are handled elsewhere as needed.

Response: The regulation would not prohibit anchoring of any type outside the 50-fathom depth contour around Cordell Bank. Anchoring for both lawful fishing and other uses is allowed outside the 50 fathom line. The intent of the proposed prohibition is consistent with the wording as drafted and no changes are necessary.

Coastal Armoring

Comment: The MBNMS Coastal Armoring Action Plan should include a guidance statement acknowledging that the implementation of this Action Plan may involve costs, which are not feasible for the landowner.

Response: The Coastal Armoring Action Plan in the MBNMS Management Plan provides programmatic guidance and no additional regulations for landowners. NOAA understands development of additional structures to protect existing structures involves certain market and non-market costs for landowners and the public. Loss of natural resources also represents costs to landowners and the public.

Comment: The Coastal Armoring Action Plan should be more neutral in tone and discuss the circumstances in which the benefits of projects might outweigh potential environmental impacts.

Response: NOAA recognizes coastal armoring may have benefits in certain situations. The MBNMS Management Plan and Action Plans were written to describe the issues that MBNMS is addressing – in the case of coastal armoring, NOAA is concerned about damage to the seafloor, wildlife impacts, loss of habitat, aesthetic impacts, and loss of recreational opportunities.

Comment: I strongly support regulations to restrict coastal armoring along MBNMS's coastline. The proliferation of structures such as seawalls and breakwaters is having a damaging effect on intertidal habitats and is blocking public access to beaches.

Response: NOAA recognizes coastal armoring can involve adverse impacts to coastal habitats and users. The action plans for the MBNMS Management Plan were written to address these issues as part of a comprehensive program including existing sanctuary regulatory prohibitions regarding alteration of the seabed and discharging into the sanctuary.

Artificial Reefs

Comment: How would the vessel abandonment prohibition affect proposals to sink ships as artificial reefs? Some people are interested in doing this in MBNMS and areas north of San Francisco.

Response: The proposed regulation prohibiting deserting a vessel is primarily designed to address vessels posing a threat of discharge or seabed alteration but that have not yet submerged. However, existing regulations for the sanctuaries prohibit discharge and abandonment of any matter onto the seafloor within the sanctuary. The existing and new prohibitions would not apply, however, if a person/entity conducting an otherwise prohibited activity has a valid permit or authorization from the appropriate sanctuary superintendent issued pursuant to the regulations for that sanctuary. Anyone wishing to establish an artificial reef within one of the sanctuaries could apply for a permit or authorization. NOAA's review of such a project would include a consideration of all relevant environmental issues, such as contaminant discharges/leaching/flaking, entrapment hazards, loss of natural habitat and displacement/loss of natural species assemblages, alteration of local trophic relationships, fisheries interactions, physical stability and long-term impacts, monitoring and liability.

Ocean Drilling

Comment: An offshore oil drilling ban should be expanded.

Response: There is currently a regulatory prohibition on exploring for, developing, or producing oil, gas, or minerals in the three national marine sanctuaries (with the exception of mineral extraction in MBNMS, these prohibitions are also statutory for the MBNMS and CBNMS); this ban on oil drilling activities does not extend beyond the boundaries of the sanctuaries. Other regulatory authorities including the Minerals Management Service and the State of California have regulatory authority for oil drilling, e.g., outside of national marine sanctuaries.

Comment: Offshore drilling for oil and gas should be permitted.

Response: The current regulations prohibit exploring for, developing or producing oil, gas or minerals in all three sanctuaries. The MBNMS Designation Document also contains such a prohibition. NOAA has not modified these prohibitions because it believes they are appropriate. In addition, in the MBNMS and CBNMS there are statutory prohibitions on certain oil and gas activities NOAA cannot change. Public Law

101-74 (August 9, 1989) prohibits "the exploration for, or the development or production of, oil, gas, or minerals in any area of the" CBNMS. Similarly, Public Law 102-587 (November 4, 1992 at section 2203) prohibits "any leasing, exploration, development, or production of oil or gas" within the MBNMS.

Comment: There is concern with the MBNMS 'alteration of submerged lands' prohibition, as it relates to the sanctuary permitting process for a potential large-scale research project associated with the Integrated Ocean Drilling Program.

Response: The general permitting process, protocols, and guidelines have not changed in response to the updated language used to describe the prohibition on the alteration of submerged lands within the sanctuary. NOAA will continue to review any proposal to conduct an otherwise prohibited activity, whether it is a commercial or research project, and evaluate proposals on a case-by-case basis, to determine whether the project is consistent with the NMSA and MBNMS regulations.

Research and Fishing Exceptions

Comment: The bottom trawling exception for alteration of submerged lands in GFNMS, 922.82 (5)(B), should be modified to allow "setting fish traps or longlines" and "permitted research vessel."

Response: The proposed regulatory text has been revised to use language consistent with MBNMS regulations. The exception to altering submerged lands for "bottom trawling from a commercial fishing vessel" will be changed to "while conducting lawful fishing operations." This change did not necessitate modification to the environmental analysis. However, the regulations would not provide an exception for permitted research vessels. The Director, at his or her discretion, may issue a permit, subject to certain conditions, to allow otherwise prohibited activities if they further research related to Sanctuary resources and qualities.

Submerged Cables

Comment: Should the Submerged Cables Action Plan in the MBNMS Management Plan also be incorporated into the Gulf of the Farallones and Cordell Bank management plans?

Response: The siting of submerged cables was not identified as a priority issue in the GFNMS and CBNMS scoping meetings and is thus not addressed in the GFNMS or CBNMS management plans. NOAA reviews permit applications to install submerged cables in those sanctuaries pursuant to the NMSA and applicable sanctuary regulations in 15 CFR Part 922. NOAA would also consider how similar applications were addressed by the NMSP for other sanctuaries.

Comment: NOAA is wrong in distinguishing between submarine cables for scientific purposes and those for commercial purposes. Both have nearly identical environmental impacts and pose a conflict for other lawful users of a sanctuary. Although NOAA's special use permit policy on submarine cables does not distinguish among the reasons for the "maintenance of submarine cables beneath or below the seabed," MBNMS recently issued a permit for a research cable not subject to the special use permit restrictions in the National Marine Sanctuaries Act. In 2000, Congress added language waiving "fees for any special use permit" for a non-profit activity but did not authorize waiving the requirement for the permit. This issue must be clarified in a manner confirming that any submarine cable operator must first obtain a special use permit and file an appropriate bond to protect other users of a marine sanctuary. Also, research cables may have commercial benefits to the owners, so an assessment needs to be made as to whether fees are appropriate.

Response: Submarine cables for scientific and commercial purposes could have similar impacts to marine resources. Both types of cable projects are required to undergo thorough environmental review. The NMSP has distinct authorities (prescribed by law and regulations) to allow the conduct of specific otherwise prohibited activities within national marine sanctuaries. The most commonly used authority is found in NMSP regulations (15 CFR Part 922) to allow certain types of activities, such as research, education and resource management, to occur in instances where it would otherwise be prohibited by the NMSP regulations. In addition, NMSP regulations applicable to MBNMS allow "authorization" of other agency permits for prohibited activities not qualifying for a research or other permit. Another authority derives from Section 310 of the National Marine Sanctuaries Act (16 U.S.C. 1441), regarding "Special use permits" for activities requiring access to or non-injurious use of sanctuary resources. To date, the NMSP has issued few special use permits for various commercial activities not injuring sanctuary resources. NOAA would issue special use permits for submerged cables only for continued presence of commercial submarine cables already on or beneath the seafloor and likely in conjunction with an authorization for the installation and removal components of any project. The NMSP clarified special use authority for commercial submarine cables in the Federal Register (Vol. 71, No. 19, Monday, January 30, 2006). As stated therein, "The NMSP does not consider intrusive activities related to commercial submarine cables such as installation (*e.g.,* burial), removal, and maintenance/repair work to qualify for a special use permit. When such activities are subject to NMSP regulatory prohibitions, they will be reviewed and, if appropriate, approved through the NMSP's regulatory authority (and not through the special use permit authority)." Currently, only special use permits are subject to fees.

Comment: The MBNMS Draft MP should not include reference to allowing a special use permit for submarine cables for commercial purposes within sanctuary waters. Many of the activities inherent to submarine cable installation, operation, repair and removal are generally incompatible with the National Marine Sanctuaries Act's statutory objective of resource protection and violate existing MBNMS prohibitions against "drilling into, dredging, or otherwise altering the submerged lands of the sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the sanctuary..." Although exceptions may be made for cable projects designed to enhance scientific understanding of the sanctuary, no such exception exists for purely commercial projects. Special use permits are designed for activities that have a short-term duration (no more than five years). Therefore, the MBNMS Draft MP should be revised to clarify that submarine cables for commercial projects will not be permitted.

Response: The MBNMS Superintendent has the discretion to issue appropriate permits or authorizations allowing specific activities otherwise prohibited in the sanctuary and NOAA's regulations do not limit this discretion in the manner recommended by the commenter. See previous response regarding special use permits. The National Marine Sanctuaries Act states that special use permits shall not authorize the conduct of any activity for a period of more than 5 years unless they are renewed. Consideration of any permit or authorization for commercial cables requires extensive information and analyses as outlined in detail in the MBNMS Submerged Cables Action Plan. The MBNMS will continue to evaluate projects and proposals on a case-by-case basis to ensure compatibility with protection of sanctuary resources.

Aquaculture & Kelp Harvesting

Aquaculture

Comment: Commercial fish farming poses tremendous risk to native species and the environment from food additives, fecal contamination, interbreeding / genetic pollution, pharmaceuticals, food colorings and

pathogens. Consider a ban or subject these activities to rigorous regulation and monitoring. Aquaculture should be restricted to native species only.

Response: Permitting decisions for aquaculture involving any species other than native species will consider the risk of harm from escape or predation. Certain activities associated with aquaculture operations are already regulated. Discharges from a future aquaculture operation, if allowed, is also regulated under prohibitions against discharge or depositing from within or into the sanctuary as well as any discharge or deposits from beyond the boundary of the sanctuary that enter the sanctuary and injure a sanctuary resource. If NOAA determines additional aquaculture regulation is necessary for the protection of sanctuary resources and qualities in the future, NOAA could issue regulations as appropriate.

Comment: Mariculture operations should be part of the sanctuary's education component, in terms of educating public/children during tours of facilities about this sustainable food system, its impacts, and the marine ecosystem as a whole.

Response: Ocean-based commerce and industries are important to the maritime history, the modern economy, and the social character of this region. The GFNMS Maritime Heritage Action Plan includes activities to cultivate partnerships with local and state programs and communities to help educate the public about maritime economic activities and human interaction with the ocean. NOAA's implementation of the MBNMS Fishing Related Education and Research Action Plan will educate the public about fishing issues, including mariculture operations in the MBNMS, to increase public education about sustainable fisheries and food systems.

Comment: The proposed regulations prohibit new piers and docks in the GFNMS. There had been some exemption for coastal dependent uses in the past because these facilities are important to mariculture industry, in terms of being able to land shellfish in the GFNMS.

Response: NOAA is not issuing a new prohibition on piers and docks in these regulations. The construction of docks and piers has been prohibited within the GFNMS since its original designation in 1981. The exception to this prohibition in Tomales Bay remains in the regulations. New language clarifies existing regulations and all current exemptions. This regulation also does not prohibit mariculture operations from using existing piers and docks.

Comment: The proposed regulations include a provision about a moratorium on laying any pipeline. This may be an issue for mariculture in terms of intakes.

Response: The regulations do not include a moratorium on laying pipelines for water intake. The new language in the GFNMS regulations would clarify the existing regulation and prohibit installing pipeline in the GFNMS related to hydrocarbon operations outside the GFNMS.

Kelp Harvesting

Comment: The kelp beds surrounding Pleasure Point (Santa Cruz) that used to clean and calm the surf under windy/choppy conditions have been over-harvested. There is a noticeable effect on the water quality involving lack of kelp and the oils that the kelp provides for calming the surface conditions. The kelp is cut at low tide and is reducing the protection it provides to the eroding cliffs. The kelp is nine feet under water at high tide. The effects on aquatic life have not been researched adequately. Kelp beds that are adjacent to surf areas should be left in their natural state as a control and compared to those areas that are being harvested.

Response: Kelp harvesting is currently regulated by the California Department of Fish and Game (CDFG) under the authority of the Fish and Game Commission. CDFG has conducted extensive research on impacts of kelp removal and prescribes restrictions for kelp harvesting by permitted parties. NOAA will continue to work with CDFG to implement the kelp harvesting policies adopted by the Commission in 2000.

Boundaries

Davidson Seamount

Comment: NOAA should prohibit deep sea trawling at Davidson Seamount.

Response: On June 12, 2006, NOAA prohibited use of any gear that could contact the bottom, including trawl gear, at a depth of greater than 3,000 feet in the Davidson Seamount Management Zone. This prohibition was included in management measures to implement Amendment 19 to the West Coast Groundfish Fishery Management Plan. See Federal Register Docket No. 051213334–6119–02; I.D. 112905C].

Comment: There is no reason at this time for including the Davidson Seamount within the Monterey Bay sanctuary, since there are no threats currently on the horizon to that area.

Response: Sanctuary designation or expansion is premised upon setting aside areas of the marine environment that have nationally, and sometimes internationally significant living or non-living resources. Sanctuary designation provides authority for comprehensive protection and management, including research, education, and outreach. Thus, designation does not require an existing or imminent threat. The MBNMS Management Plan, however, describes threats to the Davidson Seamount in the Davidson Seamount Action Plan. In addition to resource protection, other management interests warrant including the Davidson Seamount in the National Marine Sanctuary System. There is currently no comprehensive conservation and management scheme in place to protect the organisms on the seamount or the surrounding ecosystem. While resource protection is the primary purpose for designation as a national marine sanctuary, NOAA also seeks to increase national awareness and public understanding of seamount systems.

Comment: The addition of Davidson Seamount to the sanctuary will certainly provide additional protection for this area. Will there be considerations for researchers who may want to study the seamount and its ecology?

Response: NOAA's goals in incorporating the Davidson Seamount into the MBNMS are to increase understanding and protection of the seamount through characterization and ecological process studies. NOAA encourages researchers to study the seamount and to share the gained knowledge about this important area. However, if the research involves collection of resources or involves prohibited activities such as disturbance of the seafloor or discharge of matter, the researchers must seek a permit from NOAA prior to engaging in those activities.

Comment: Can you provide supporting references regarding the uniqueness of Davidson Seamount?

Response: Davidson Seamount is the largest seamount in the western Pacific Ocean and is one of the largest seamounts in the world. It may have unique links to the nearby Partington and Monterey submarine canyons. The seamount is home to fragile coral colonies estimated to be more than 100 years old. It provides habitat for many rare and endemic species. Davidson Seamount is home to previously undiscovered species (i.e., 15 species are currently being described as new to science) and large patches of corals and sponges provide an opportunity to discover new ecological processes. The high biological diversity of these assemblages may be

found on other central California seamounts; however, we currently do not have enough scientific information. The seamount habitat of Davidson Seamount would be unique to the MBNMS and National Marine Sanctuary System as there are no other seamounts within the current sanctuary boundaries. The Davidson Seamount description in the Designation Document has been clarified to describe the national significance of the resources and qualities of the Davidson Seamount.

(Davis et al. 2002; GSA Bulletin 14(3):316-333)

(DeVogelaere et al. 2005; In: A. Freiwald and J.M. Roberts (eds), Cold-water Corals and Ecosystems. Springer-Verlag Berlin Heidelberg, pp 1189-1198.)

(Planet Earth DVD 2007; British Broadcasting Corporation)

Comment: Use NMSA to protect Davidson Seamount if MSA protections are reduced or eliminated.

Response: NOAA has two statutory authorities relevant to this comment: the National Marine Sanctuaries Act (NMSA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). NOAA considers both the NMSA and MSA as tools that can be used exclusively or in conjunction to protect sanctuary resources. NOAA evaluates the regulatory options on a case by case basis to determine which mechanism is most appropriate to meet the stated goals and objectives of a sanctuary. In the case of the Davidson Seamount Zone, NOAA chose to use both authorities to prohibit fishing and other extractive activities below 3,000 feet. If, in the future, the goals and objectives of the Davidson Seamount Zone are not met because of the reduction or removal of MSA protections in the Davidson Seamount Zone, the NMSP will re-evaluate impacts on the zone. If additional regulations on fishing are warranted, the NMSP will follow the process set forward in Section 304(a)(5) of the NMSA.

Comment: How does the circular designation match the EFH designation? Which one more closely matches the EFH designation – the circle or the square? Perhaps a depth contour approach or lines based on a contour would be more appropriate.

Response: NOAA selected the rectangular boundary based on input from the Sanctuary Advisory Council and the Pacific Fishery Management Council for ease of understanding and enforcement of regulations. The rectangular shape matches the designation of the area as Essential Fish Habitat and a Habitat Area of Particular Concern, as well as associated fishing regulations.

Expansion

Comment: NOAA should expand the Cordell Bank and Gulf of the Farallones National Marine Sanctuary boundaries north to cover the entire Sonoma County Coast to the Mendocino County line including the rivers and estuaries.

Response: NOAA is not proposing to expand the Cordell Bank and Gulf of the Farallones Sanctuary boundaries as part of the Joint Management Plan Review process. However, the CBNMS and GFNMS management plans include strategies to develop a framework for identifying and analyzing boundary alternatives.

Comment: Bodega Harbor should be included in GFNMS.

Response: At this time, NOAA is not considering adding Bodega Harbor to GFNMS and is not considering any expansion of the Sanctuary boundary.

Comment: The Santa Cruz City Council unanimously voted to support a boundary adjustment to include the nearshore waters of the City of Santa Cruz within the MBNMS. In addition to the technical corrections to the boundary, specific mention of this area should be included in the Final EIS.

Response: Consistent with the request of the Santa Cruz City Council, NOAA has adjusted the MBNMS boundary to include within the sanctuary the outer harbor waters of the City of Santa Cruz, but exclude Santa Cruz Small Craft Harbor. This boundary change is now explicitly referenced in Section 2.6 of the Final EIS.

Comment: Expand the MBNMS boundary south to Pt. Sal to encompass San Luis Obispo County.

Response: During the scoping and prioritization process, NMSP determined there was support for and opposition to a boundary expansion of MBNMS to include additional waters offshore of San Luis Obispo County. There were also various suggestions on how far south to extend the boundary. The NMSP, in consultation with elected officials in this region, determined not to expand the boundary to allow the local community to work towards a consensus on boundary expansion. For this management plan review process, the NMSP has not included or expanded the boundary off San Luis Obispo coastline, but could reconsider this in the future.

Internal Boundaries

Comment: The Marin coastline in the Sanctuary System is divided between MBNMS (5%) and GFNMS (95%), which has no basis in science and is simply a historic attribute. There is unnecessary confusion, and the Marin coastline should be part of the GFNMS. Also, the current "fixed boundary" proposed between GFNMS and National Park Service (NPS) is unworkable and should be amended to be a flexible boundary that follows the NPS boundary or the Mean High Water Line, whichever is further from land. NPS has authority and protections that meet or exceed those of GFNMS, so there is no reason for joint jurisdiction.

Response: The MBNMS and GFNMS contain a Northern Management Plan Cross-Cutting Action Plan to provide consistent management of the resources. NOAA is fixing the GFNMS boundaries in Tomales Bay to the coordinates established during the original designation of the Sanctuary in 1981 to avoid confusion and allow for accurate mapping. The boundaries would return to the mean high water line except in the Point Reyes National Seashore (PRNS) where the GFNMS boundary follows the seaward extent of the PRNS. Establishing fixed points for the boundaries of the GFNMS in Tomales Bay would not affect the National Park Service's authority to extend the PRNS boundaries into the Sanctuary. Fixing the boundaries to a set coordinate avoids confusion of affected agencies and the public. Having National Seashore and National Marine Sanctuary protection strengthens the safeguards for resources in the area. If the National Park Service proposes to remove a shoreline parcel from its boundaries, the NMSP may conduct the appropriate review for inclusion in the Sanctuary.

Comment: The management of the San Mateo coast by the GFNMS should be made permanent.

Response: The management of sanctuary waters off San Mateo County (and San Francisco and Marin County) will remain as defined by the NMSP Director in 2004. The GFNMS will be the lead for most issues, including those related to enforcement of MBNMS regulations. The MBNMS will be the lead to implement the Water Quality Protection Program. Both sanctuaries' staff and the NMSP West Coast Regional Office coordinate closely in this management regime.

Depositing and Discharging Activities

Desalination

Comment: Consideration of whether or not desalination facilities may provide for environmental enhancement, such as restoring coastal stream flows or overdrafted groundwater basins (and appropriate regulatory mechanisms) should be added to the list of comprehensive potential impacts.

Response: NOAA recognizes desalination technologies potentially address water shortages and may, in some cases, be a preferred alternative to further overdrafting of groundwater basins or damming of coastal streams. This consideration is added to the list in Activity 2.3 of the Desalination Action Plan in the MBNMS Management Plan .

Comment: A comprehensive water resource management plan should be included as an information requirement under Activity 4.2 of the Desalination Action Plan.

Response: A water resource management plan may be necessary for other agency review of a potential desalination project. However, at this time, NOAA believes the existing list of submittal requirements is adequate to review a project for potential impacts on sanctuary resources and qualities. If additional information is necessary, NOAA may request information from the project applicant.

Comment: NOAA should provide exemptions to MBNMS prohibitions on exploring for, developing, or producing oil, gas or minerals within the Sanctuary and drilling, dredging or otherwise altering submerged lands to allow for desalination exploration and construction, repair, or maintenance of seawater desalination systems.

Response: NOAA will continue to work with desalination plant owners and operators as well as other relevant management authorities to consider projects on a case-by-case basis. NOAA is concerned with negative effects of desalination activities, both individually and cumulatively, on the health of the ecosystem and will continue to review projects for impacts from discharges, alterations of the seabed, and the taking of marine mammals, turtles, and seabirds.

Comment: We understand MBNMS has proposed changes that refer to "beach wells" as an alternative source of water for new desalination plants. We object to the MBNMS proposals to consider, support, recommend, or approve beach wells for the purposes of desalination and exporting groundwater from our Salinas Valley groundwater aquifers to the Monterey Peninsula. The MBNMS has no authority to advocate, support, promote or adopt policies, or grant approval of any project that relies on the illegal taking of groundwater that belongs to the overlying landowners of the Marina / Castroville / Moss Landing areas.

Response: NOAA makes no reference to or recommendations regarding beach wells as a source of water for desalination facilities in the proposed rule or DEIS/draft management plan.

Comment: NOAA should develop regional oversight and guidelines for proposed desalination plants to eliminate piecemeal and inconsistent reviews.

Response: There is a need to take a regional approach to reviewing the need for and siting of desalination facilities. The MBNMS Desalination Action Plan includes a strategy to encourage development of a regional program.

Comment: The Desalination Action Plan should not apply to previously submitted applications for desalination projects.

Response: The Desalination Action Plan outlines NOAA's role within the regulatory framework – the plan does not include additional regulations. NOAA's review of any application for desalination projects will include, but not be limited to: 1) pipeline construction on the seabed; 2) degradation of water quality from chemicals in the discharge brines and their potential impacts on the resources and qualities of the sanctuary; and 3) discharge treatment methods utilized to reduce the injury to sanctuary resources and qualities.

Comment: Reductions in urban runoff and increased use of porous surfaces, retention ponds and cisterns would reduce the need for desalination facilities.

Response: The GFNMS and MBNMS Management Plans include water quality programs encouraging reductions in urban runoff.

Dredged Material Disposal / Ocean Dumping

Comment: Several agencies and organizations oppose or do not understand NOAA's involvement, oversight or regulation of disposal of dredged material in the MBNMS.

Response: NOAA reviews the composition of the sediment, volumes, grain size, and contaminant load to determine if the dredged sediments are appropriated for disposal in the MBNMS and comply with the provisions of the National Marine Sanctuaries Act. NOAA works closely with the Army Corps of Engineers and Environmental Protection Agency to determine the need for additional measures in the regulatory program necessary to ensure protection of sanctuary resources and qualities. The Harbors and Dredge Disposal Action Plan includes a more complete description of the role of the MBNMS in regulating discharges of dredged material and resulting disturbance of the seabed. In 1992, the designation of the MBNMS prohibited use of new ocean dredged material disposal sites within the Sanctuary.

Comment: Beneficial use / beach nourishment sites are recognized at Santa Cruz, Moss Landing and possibly Pillar Point. We urge NOAA to be open to future beach nourishment sites. Loss of sand and beach value is a national issue, as well as a California issue. Opportunities of all types should be recognized and nurtured.

Response: NOAA does not regulate disposal of matter above the mean high water line on beaches adjacent to the sanctuary, except as regards discharges that enter the sanctuary and injure a sanctuary resource. NOAA has included a strategy in the MBNMS Management Plan (HDD-5) to address alternatives to ocean disposal, particularly beneficial uses such as beach nourishment. NOAA deleted language in this strategy regarding the lack of need for additional beach nourishment sites in response to comments.

Comment: California Coastal Commission staff notes the increasing number of incremental requests for changing permitted harbor dredging operations in the region. NOAA and the Commission should work with the harbors and require them to conduct a more systematic and longer review of their operation needs and materials management. Commission staff recommends additional text for Strategy HDD-5 Alternative Disposal Methods to explore a long-term approach with harbors and deletion of text that characterized a lack of need for additional beach nourishment sites within the MBNMS since this characterization may be premature.

Response: NOAA has also received requests to increase amounts of dredged material to be disposed in the MBNMS. NOAA is considering a variety of potential modifications in the approach to dredged material

disposal, including additional use of multiyear authorizations, an ongoing interagency workgroup to review permits and a small relocation of one of the designated disposal sites at Moss Landing. NOAA also considers various means to reduce dredging requirements through source reduction or bypasses, and options for potential beneficial uses. NOAA has added additional language to the MBNMS Management Plan to reflect the need for long term planning, similar to the approach to coastal armoring, and has deleted the language in Strategy HDD-5 regarding lack of need for additional beach nourishment sites.

Comment: EPA guidelines do not state that dredged material for ocean disposal must be at least 80 percent sand.

Response: The Clean Water Act guidelines for disposal of dredged material state that material should be "predominantly" sand for the purpose of applying the testing exclusion criteria of the ocean dumping regulations in Section 404. The EPA has provided guidance stating "predominantly" should be interpreted as 80%.

Marine Debris

Comment: The sanctuaries need stronger comprehensive action plans and implementation to halt marine debris and litter, including more staffing. Also, there is a concern that none of the water quality platforms deal with the prevalence of marine debris in the MBNMS. Marine debris is a separate important facet of urban run off. NOAA should ask restaurants to use biodegradable take-out containers, employ more cleanup crews, and install more recycling bins (e.g., there are no recycling bins on Fisherman's Wharf in Monterey). Other recommended measures include: installing filters for all the drains to the bay, in order to catch large debris; employing crews to clean up the marine environment like on the highways; working with companies to change the shape of items that become debris so that the items don't look so much like food that animals eat; and educating the population about the dangers of marine debris, regarding ingestion, entanglement, etc. There are laws requiring public outreach and education regarding storm drains, but very little effort/attention is given to this important issue.

Response: NOAA will work closely with the State to address issues identified in the February 2007 resolution passed by the Ocean Protection Council to reduce and prevent marine debris. There are also opportunities to partner with the recently created NOAA Marine Debris Program to address issues related to marine debris in sanctuaries. The NOAA Marine Debris Program has awarded grants to reduce and remove marine debris from the sanctuaries on the central California coast. NOAA has incorporated monitoring of marine debris into monthly monitoring activities to better understand sources and timing of debris in sanctuaries. This information will help NOAA design targeted outreach and education messages to reduce marine debris. The MBNMS's existing Urban Runoff Water Quality Action Plan addresses the problem of land based runoff including "marine debris." NOAA has also developed restoration projects to remove submerged entanglement hazards and debris from the MBNMS.

Radioactive Waste

Comment: There is nuclear waste sitting on the ocean floor of GFNMS. Please do something about the nuclear waste.

Response: The GFNMS Management Plan includes Strategy RP-11 (Radioactive Waste Dump) to evaluate the condition of, and actual impacts on, sanctuary resources and qualities from the Farallon Islands radioactive waste dump site.

Comment: The GFNMS Resource Protection Action Plan strategy for radioactive waste should begin year one instead of year four. Also this strategy should include a proposal for the designation and demarcation of the approximate area of the dump site on the nautical charts.

Response: GFNMS Management Plan Strategy RP-11 (Radioactive Waste Dump) has been amended to seek to include an update to the NOAA nautical charts of the known area with radioactive waste containers. The timeline has been modified to implement strategy RP-11 starting in Year 1.

Use of Dispersants

Comment: A coordinated sanctuary emergency plan should include coordination and decision-making responsibilities on use of dispersants.

Response: Any sanctuary emergency response plan will include identification of decision-making responsibilities on use of dispersants. Use of dispersants in national marine sanctuaries is discussed in the Sector San Francisco Oil Spill Area Contingency Plans for northern and central California coastal counties.

Water Quality

Comment: Ensure that the final management plans contain strong goals, regulations and implementation strategies for improving water quality in our oceans, particularly regarding the land-sea connection.

Response: The Water Quality Protection Program Implementation Action Plan in the MBNMS Management Plan summarizes five action plans developed through a collaborative stakeholder process to address a variety of water quality issues related to the land-sea connection, including urban and agricultural runoff, microbial contamination of beaches, and regional monitoring. The GFNMS Management Plan also contains a water quality Action Plan with an emphasis on watershed and water quality issues affecting bays and estuaries. These plans contain a wide range of implementation strategies including management measures, improved monitoring, and outreach and education. In addition, existing regulations for MBNMS prohibit discharges from outside the boundary of the sanctuary that enter and injure a sanctuary resource or quality, and identical regulatory language is proposed as a new regulation for GFNMS and as a modification of the existing CBNMS regulation.

Comment: Urban runoff needs to be addressed by reducing impervious surfaces. In that way, pollutants into the sanctuary would be minimized and groundwater could be recharged. This will reduce the need for desalinization plants and their detrimental environmental effects.

Response: NOAA promotes reduction of impervious surfaces in outreach and technical training programs, and also ensures these techniques are addressed in the National Pollutant Discharge Elimination System (NPDES) storm water management plans developed by local cities with the state's Regional Water Quality Control Boards. Cities are required as part of these state-regulated plans to implement best management practices reducing permeable surfaces at new construction sites as well as addressing water flowing off new developments. In addition, NOAA added a strategy to the MBNMS Water Quality Protection Program Implementation Plan addressing the need for more permeable surfaces in watersheds bordering the sanctuary. This strategy identifies measures to replace impermeable surfaces with permeable surfaces and to promote Low Impact Development strategies in new developments. These efforts will help to recharge ground water and improve the quality of water flowing to the sanctuary.

Comment: The San Lorenzo River has some water quality problems and is being tested, at great cost to the water company. There are several agencies involved, all specifying different things, which is not helping. The problems might be solved if a lead agency could work on this river and coordinate agency efforts.

Response: Several management plans have been developed and implemented in the San Lorenzo River watershed by local agencies and organizations; notably the 1979 San Lorenzo River Watershed Management Plan and the 1995 Wastewater Management Plan for the San Lorenzo River Watershed. Each of these plans contains detailed recommendations that address water supply, water quality, erosion and sedimentation, instream flows, fishery resources, and aquatic habitat, among many others. These programs have resulted in improvements in water quality of the San Lorenzo River and reductions in septic system failures and nitrate concentrations. More work remains, particularly for sediment reduction, and the Santa Cruz County Environmental Health Services Department is the lead on implementation of these plans. Specific concerns mentioned in the comment are best addressed by working directly with Santa Cruz County. In addition, NOAA has a long standing partnership with the County, as the County is an active participant on the Water Quality Protection Program's Committee.

Comment: The Monterey County Board of Supervisors wants to increase population by 50 percent within 20 years. Is this going to create more pollution in the ocean (e.g., more oil runoff)?

Response: Population projections in all counties adjacent to the three sanctuaries indicate that population growth will increase in the future. NOAA regulates discharges into all three sanctuaries through various prohibitions. The GFNMS and MBNMS Management Plans include Water Quality Action Plans addressing discharges through runoff from land-based sources. The NMSP will continue to work with local governments and government associations to reduce pollutant discharges.

Comment: The GFNMS may want to look beyond traditional pollutants and focus on emerging contaminants like pharmaceuticals, pesticides and chemicals that are found in treated and untreated wastewater and agricultural and urban runoff. Land based water quality problems are passed on to the oceans and the Sanctuary must vigorously advocate for aggressive study and regulation of all pollutants.

Response: Treated and untreated wastewater, agricultural and urban runoff, and various land based water quality issues are addressed in the Water Quality Action Plan of the GFNMS proposed Management Plan. Specific reference to pharmaceuticals and other micropollutants has been added to Activity 3.1 of the Water Quality Action Plan.

Comment: Beach closures and postings are also due to microbial contamination from wildlife in and around the ocean. The goal of the Beach Closure and Microbial Contamination Action Plan should be modified to include "eliminate beach closures by reducing microbial contamination caused by human activities."

Response: Beaches are closed only when a known sewer spill has occurred. Beach postings are due to high *E.coli* and *Enterrococcus* concentrations from unknown sources. The Action Plan includes references to the fact there are many sources of microbial contamination that may trigger a posting. There are many contributors of microbial contamination in the ocean, of which anthropogenic sources are just one. The Beach Closure Action Plan explains the difficulty in distinguishing the source of the *E. coli*. The first three strategies address the use and need for new technology to both pinpoint sources of *E.coli* and to find alternative indicators identifying the pathogens causing harm to both humans and marine organisms.

Comment: Marine mammals and birds are a significant source of bacterial contamination yet this section is heavily biased toward sewers as the main source of the contamination. The City of Monterey has inspected all of the sewer lines and has not found any illicit connections.

Response: Because the Action Plan is intent on reducing beach closures, the discussion and strategies focus on the source of beach closures - known sewer spills or overflows. The reasons for potential overflows and the strategies to reduce them are discussed. NOAA is aware warm blooded animals contribute to microbial contamination in the environment. This is a natural phenomenon, and it is unfortunate the technology is not readily available to distinguish between the different sources. The Action Plan addresses this and the need to support research to find a real time indicator identifying contamination sources. NOAA values the City of Monterey's partnership and recognizes the leadership role it has taken in regard to proactive responses to water quality conditions flowing into the Bay. This Action Plan addresses the entire sanctuary including other urban areas that have not yet addressed these issues.

Comment: Is there local data to back up the assertion that public sanitary sewers are a significant source of anthropogenic bacterial contamination?

Response: Strategy 5 in the MBNMS Beach Closures Action Plan states that sewer systems, septic systems and urban runoff are a significant pathway of anthropogenic bacterial contamination. Sewers and septic systems carry bacteria. Because they carry sewage, which contains bacteria, they present a risk of discharge of bacteria into the environment. The plan includes strategies to minimize this risk.

Comment: Regarding the Beach Closure & Microbial Contamination Action Plan, since these are already required by the sewer system Waste Discharge Requirements (WDRs), how is the MBNMS going to encourage those of us with WDRs to do what is already mandated?

Response: NOAA will promote adequate ongoing maintenance of sewer systems with a diversity of approaches including assisting local jurisdictions whenever possible to access grant funding to implement the strategies that are identified in /strategy 5 of the Beach Closures Action Plan.

Comment: It is not clear what criteria for the certification of an approved vendor would be to address sewer system upsets. How would a voluntary lateral inspection program be encouraged?

Response: Currently, in certain cities on the Monterey Peninsula, plumbers that attend workshops designed to educate the industry on prevention of sewer spills are put on a list and are recommended by the public works department. This is one way to create an "approved vendor list." Regarding the voluntary lateral inspection, there are cities on the peninsula already implementing a sewer lateral program. NOAA will look to those programs for guidance and to determine what incentives work.

Comment: Why are the coordination and outreach efforts only being aimed at the Phase II communities?

Response: Phase II communities were specifically identified because there is only one Phase I city within the Sanctuary watersheds and that city, while updating its SWMP, has had a plan in effect for over 5 years. The focus currently is on Phase II cities that are developing their plans and need more assistance for regional outreach coordination. However, reference to Phase I cities has been added to Activity 7.2 in the MBNMS Beach Closure Action Plan.

Comment: The sanctuary should work through the state to get notifications via the state's notification system. Notifying the sanctuary of all spills appears to be overly burdensome**.**

Response: Strategy 9 in the MBNMS Beach Closures Action Plan identifies the need to have a single 24 hour number to call for sewer spill emergencies. This number has been created for the Monterey Peninsula cities by calling 1-800-CLEANUP. The strategy does not require that the sanctuary be notified directly.

Comment: The Monterey Chapter of the Surfriders requests more money be allocated to water quality testing and offers their organization as a partner to develop a comprehensive educational program that increases the public's awareness of the issue.

Response: NOAA encourages Surfrider Foundation members to participate in the Citizen Watershed Monitoring Network volunteer monitoring programs. There is identified capacity to enhance these programs by adding monitoring sites or expanding the duration of the monitoring possibly into the winter months.

Comment: Do red tides in nearshore waters relate to the level of nutrients in urban runoff?

Response: Excess nutrients contribute to the formation of algal blooms that can be red in color. There are also recent laboratory studies that have been conducted at UCSC directly correlating the amount of urea to domoic acid in algal blooms. Urea is a form of nitrogen found in fertilizer and animal waste. Domoic acid is known to be harmful to both humans and marine organisms.

Comment: The sanctuaries need to pursue an aggressive, coordinated water quality program by working closely with the U.S. EPA and California State Water Resources Control Board. Also, the sanctuaries need to work closely with local, regional, state and federal agencies in rigorous monitoring regulation of all toxics and pathogens. These policies must be frequently revised in view of rapidly advancing scientific evidence of toxicity for many man-made chemistries that have heretofore not been adequately evaluated for biological impacts.

Response: NOAA and its partners created the MBNMS Water Quality Protection Program in 1994 with twenty-five federal, state and local agencies, public and private groups in order to protect and enhance water quality in the sanctuary and its watersheds. There is a long history of multiple agencies collaborating on water quality issues, and NOAA is also pursuing these same relationships for the watersheds of the Gulf of the Farallones and Cordell Bank NMS. Currently, the MBNMS is synthesizing and assessing major water quality monitoring programs within the sanctuary to determine the state of water quality, trends over time, effectiveness of management measures and appropriate recommendations to improve a regional monitoring program. To address emerging water quality issues associated with anthropogenic sources, the Beach Closure and Microbial Contamination Action Plan in the MBNMS Management Plan identifies four activities to investigate indicators that provide real time information on pollutants, and to develop indicators that correspond directly to disease causing agents and are able to pinpoint sources of the pathogens.

Comment: The NMSP needs to partner with local water quality groups (e.g., Bodega Bay Watershed Council and others) to address the problem of runoff from erosion and sedimentation (non-point source pollution). The whole system needs to be evaluated to understand what is flowing into the estuaries, as the health is deteriorating. There is a need to look "upstream" to address the problem.

Response: It is important to investigate sources of pollution upstream and partner with local water quality groups and other agencies to address the problems.

Comment: Shouldn't there be one governmental authority that would be in charge of pollution on the beaches? Greater water quality monitoring is needed in the winter season, when runoff can most likely bring e-coli and toxins into the bay and surfing areas.

Response: California Assembly Bill 411, passed in 1997, gave responsibility to county environmental health departments along the coast to monitor at public beaches with more than 50,000 visitors a year and that are adjacent to storm drain outfalls. AB 411 also set uniform health standards for those monitoring programs and requires health officials to close beaches when pollution levels exceed the established limits. It also set up a hotline for beach closure information. Counties monitor pollution levels weekly from April through October and then monthly from November through March. In addition, the Beach Closures and Microbial Contamination Action Plan in the MBNMS Management Plan contains strategies to address microbial contamination on beaches throughout the sanctuary. These strategies include more real time detection, source tracking, infrastructure improvements, increased monitoring, enhanced notification, technical training, public outreach, enforcement and emergency response.

Comment: The sanctuaries are restricted in their ability to limit toxic runoff, and correct deficits in antiquated treatment systems. More effective regulation of pollution is still needed, especially where public health is often put at risk by bacterial contamination at beaches. The NMSP needs to look for authority to regulate runoff into the ocean from land-based sources, which is the source of a lot of pollution.

Response: The NMSP is able to address sources of water pollution through both regulatory and non-regulatory means, and partners with other federal, state and local agencies and organizations to address these issues (see above response). In addition, the Beach Closures and Microbial Contamination Action Plan in the MBNMS Management Plan contains multiple strategies to address microbial contamination at beaches.

Comment: NOAA should address cleaning storm drain runoff, which is the worst thing that is polluting our oceans.

Response: The Sanctuary Management Plans contain detailed Water Quality Action Plans that include provisions to address stormwater runoff. The Action Plans include many measures such as working with relevant jurisdictions to reduce contaminants in stormwater runoff and implementing extensive education programs. For additional details see the three Draft Management Plans. The NMSP has worked closely with local municipalities over the last ten years to implement these strategies.

Comment: The NMSP should evaluate the feasibility of creating a program in cooperation with the coastal cities and operators of proposed desalination facilities to bring one or two historic lakes (specifically Merritt and Espinosa Lakes, historic water bodies that are still surrounded by rural lands with large watersheds, both of which must be mechanically drained and which empty into the existing Tembladero Slough) and marsh lands back into existence adjacent to the MBNMS. These water bodies historically collected and filtered runoff.

Response: In recognition of the important roles of these types of water bodies, the Water Quality Protection Program Implementation Action Plan in the MBNMS Management Plan includes a recommendation to develop a new plan focused on protection of wetland and riparian corridors. It addresses the need for wetland inventory, assessment and restoration. The Action Plan includes a strategy to identify historic wetlands that might be restored and used for multiple benefits such as ground water recharge, water quality improvements and possibly water reuse.

Comment: The NMSP needs to expand the non-point source pollution water quality issue into pathogen pollution and address the land/sea connection (e.g., feral cats and the parasite being shed by cats into the watershed and sanctuary, which kills otters). Pathogen pollution and non-point source pollution are going to become more critical as the landscape continues to be used by humans.

Response: The NMSP is very concerned about the decline of the Southern Sea Otter population. Research has shown nearly 40 percent of sea otter deaths were due to protozoal parasites and bacteria spread by fecal contamination of nearshore marine waters by terrestrial animals or humans. The Beach Closure and Microbial Contamination Action Plan in the MBNMS Management Plan includes numerous strategies to address this issue. NOAA also has a long term program monitoring bacterial contamination discharging from urban storm drains and works closely with cities to identify sources of the bacteria.

Comment: There needs to be horse manure management education. A lot of manure is not composted or managed and there is nitrogen and sediment going into the creeks.

Response: The Water Quality Protection Program Action Plan in the MBNMS Management Plan contains various strategies to educate ranchers and rural homeowners about best management practices that can be implemented on ranches and ranchettes to improve water quality. NOAA coordinates with partners such as the Natural Resources Conservation Service, the Resource Conservation Districts and local Farm Bureaus to implement the agricultural aspects of the plan through numerous strategies such as improved communications among ranchers, provision of technical expertise, and funding incentives. These partners identify specific ranches having manure management issues and help them mitigate sources of manure entering local streams.

Comment: The management plans should address acid pollution effects on marine life, as research indicates that crustaceans will be harmed to the point of extinction in about 25 years, if acidification continues. The main source of acid pollution in the area is woodburning – fireplaces and fire pits.

Response: In its response to comments regarding global warming and in the implementing additions to the Management Plan action plans, NOAA will continue to evaluate and address global warming impacts on a number of factors including ocean chemistry, including acidification as the key chemical change being projected. The management actions at this time, however, do not address the sources the commenter mentions. NOAA believes this type of point source pollution is out of its scope of authority, better managed by relevant federal, state, and local authorities.

Comment: The "enter and injure" discharge rule should be worded to include discharge from land-based sources, thus allowing similar prosecution and enforcement.

Response: The regulation includes material or other matter from land-based sources. The prohibition is broad and includes 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 including land-based sources of discharge.

Comment: The Sanctuary needs an "enter and injure" clause to its regulations to protect the Sonoma coast from pollution and mining discharges. There was also concern expressed about proposed and current mining operations in Sonoma County causing sedimentation, siltation, a need for dredging in Bodega Harbor, and damage to fish from dynamite blasting.

Response: NOAA's regulations would prohibit 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. (This regulation is already in effect for the MBNMS.) Although this regulation by itself would not prevent activities beyond the Sanctuary boundary (e.g., coastal development, dredging, mining or other resource extraction activities) including in Bodega Harbor, it can be used to prevent injury to sanctuary resources from these activities.

Vessel Abandonment

Comment: The proposed prohibition against abandoning a vessel would make it a federal penalty to leave: "... 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." This language does not make sense. The regulation states that the vessel in question would be anchored. Normally, if a vessel is anchored, it is secured. Thus, the phrase "secure the vessel in a timely manner" would not be germane in this situation. NOAA should re-write this section for clarity. Also, the phrase "potential for grounding" is overly broad and would be subject to arbitrary law enforcement standards.

Response: There have been many situations in the sanctuaries where a vessel has been either left adrift, left partially submerged at anchor, or is dragging anchor in such a way as to create an imminent threat of a grounding or sinking. Previously, NOAA had to wait until these imperiled vessels went aground or sank in order to take action, as no discharge or disturbance of the seabed had yet occurred. This regulation would allow NOAA to be more proactive in preventing harm to marine resources. The proposed regulation clearly states that an anchored vessel is not considered secure if it is in such a state that it creates the potential for a grounding, discharge, or deposit and the owner / operator fails to remedy the situation. NOAA believes the regulation as drafted provides sufficient guidance to enforcement personnel to assess environmental threats and scale their response to the circumstances in a given incident.

Comment: The proposed prohibition regarding deserted vessels lacks clear standards and is too broad. The Coast Guard should be consulted on this issue. The standard for issuing a civil penalty of any size should be spelled out and should only be issued for a condition that everyone agrees is grossly negligent and imminently dangerous. The protocols established by the sanctuary must include consultation with the Coast Guard and any applicable local port authority. With a lack of a complete network of harbors of refuge, a sailboat with an outboard engine with two gallons of gasoline could sink and be fined for failing to salvage the vessel. Also, a vessel adrift from a boating accident should not be penalized, especially when the occupants may have lost their lives due to a disastrous situation beyond their control.

Response: The proposed definition for "deserting" a vessel lists clear and specific qualifying standards, including the physical state of the vessel, notification protocols, specific time requirements, and required hazard remediation actions. The U.S. Coast Guard has had an opportunity to review the draft regulation and has forwarded no objections or comments to NOAA regarding this issue. Coast Guard regulations about vessel abandonment primarily center on obstruction of navigable waterways and public safety issues, so the Coast Guard's definition and timelines for addressing abandoned vessels are designed for an intent other than natural resource protection. The sanctuary definition for a deserted vessel is designed to address the risk of natural resource injury from an unattended vessel through its potential grounding, sinking, discharging of hazardous materials and marine debris. Thus, a deserted vessel presents a more immediate concern to natural resource managers tasked with protecting marine habitat and wildlife. NOAA civil penalties are assessed based upon Federal law and the particular facts of a case, including aggravating and mitigating circumstances.

The proposed regulation would in no way limit the authority of the Coast Guard or local port districts to manage the marine waters within their jurisdictions. NOAA enforcement officials consider aggravating circumstances and mitigating circumstances in all vessel casualty incidents and assess penalties appropriately.

Comment: Local and state enforcement agencies should be the point of contact regarding deserted vessels.

Response: Deserted vessels that pose a threat to sanctuary resources and qualities require immediate attention before being rapidly destroyed by open ocean forces. State and local enforcement agencies have limited resources and mandates to address derelict vessels on short notice or to compel immediate corrective action by a vessel owner / operator. State and local jurisdictions overlay less than 20% of sanctuary waters. Also, State and local governments must often give first priority to derelict vessel removal from inland waterways due to navigational obstruction issues or constituent concerns. Vessel casualties can present a significant threat anywhere in the Sanctuaries and at any time. The MBNMS and GFNMS need consistent regulations that compel immediate action by vessel operators/owners to remediate threats to protected national resources.

Comment: The proposed prohibition regarding deserted vessels could be a detriment to safety of life at sea, in that the threat of penalty may cause a master to delay abandonment of a sinking vessel beyond what is prudent. This regulation should be much more narrowly drafted to allow for a master's judgment in extremis.

Response: Sanctuary regulations include exceptions for otherwise prohibited activities when conducted in response to an emergency threatening life, property, or the environment. Thus evacuation of crew members whose lives are in immediate danger would constitute an exception to the prohibition. A vessel master's primary duty is to safeguard the lives of his/her crew and passengers, in all circumstances. Further, NOAA considers mitigating circumstances when reviewing vessel casualty incidents for potential legal action. However, the prohibition against deserting a vessel could apply, for example, where the crew has been removed to safety and the vessel owner or operator fails to take immediate action to prevent environmental damage from a vessel casualty or where other circumstances warrant such application.

Vessel Discharges

Note: For the purposes of the responses below, "discharge" is intended also to encompass "deposit."

Comment: The regulations for the MBNMS should prohibit large cargo vessels from operating within Areas of Special Biological Significance (ASBSs).

Response: The ASBSs in the MBNMS are nearshore and do not need protection from transiting cargo ships. Vessel traffic lanes were established in offshore waters of the MBNMS for the movement of cargo vessels through the sanctuary. These lanes are well outside of ASBS areas. The ASBSs within the MBNMS are protected by the same sanctuary discharge prohibitions that apply throughout the Sanctuary.

Comment: The proposed cross-cutting vessel discharge regulations, which allow the discharge of "biodegradable effluent incidental to vessel use and generated by an operable Type I or II marine sanitation device..." regardless of the size of the vessel, may be inconsistent with State law. Recently enacted State regulations (SB 771, Ch. 588 of the Statutes of 2005, titled "The California Clean Coast Act of 2005") prohibit sewage and graywater discharges (including oily bilgewater, hazardous waste and other waste – photographic, dry-cleaning and medical waste) from vessels of 300 gross registered tons or more if vessels have holding tank capacity (rather than allowing discharge from Type II MSD). NOAA should consider

whether it is appropriate to change the management plans and regulations to reflect these State standards or if this current proposal can be complementarily implemented with the State standards.

Response: The regulations would prohibit discharging any matter from a cruise ship other than engine or generator cooling water and anchor wash. For vessels other than cruise ships, the regulations clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices, and vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage. In response to the comment, the NMSP proposes prohibiting sewage and graywater discharges from vessels of 300 gross tons or more, consistent with SB771. Similar to the State regulation, the prohibition would only apply if vessels have sufficient holding tank capacity when in sanctuary waters.

Comment: MARPOL Annexes should provide a benchmark for "minimum" standards for compliance by vessels operating within a national marine sanctuary.

Response: MARPOL Annexes are the original minimum standards for compliance for vessels operating in a national marine sanctuary. The national marine sanctuaries include additional regulations and higher standards for discharges and use of marine sanitation devices, which are desirable to protect sanctuary resources and qualities from marine pollution. The regulations are enforced in accordance with international law..

Comment: The need and intent of the proposed regulation for locking marine sanitation devices are not entirely clear. The proposal to lock all sanitation devices on small vessels in sanctuary waters has neither a factual basis nor extensive analysis.

Response: The MBNMS regulations have included a prohibition against discharge of untreated sewage from vessels since 1992; however, detection and identification of unlawful sewage discharges from vessels at sea and/or underway has proven to be impractical. The requirement that MSDs be locked in a manner that prevents overboard discharges (e.g., locking closed an overboard discharge valve) provides a practical compliance element for enforcing this prohibition and helps prevent both intentional and unintentional overboard discharges of untreated sewage within the MBNMS.

Comment: Vessels 300 GRT or greater with insufficient holding capacity for treated sewage from a Type I or II MSD may not be able to "lock" the system, yet would still only discharge treated sewage above and beyond their holding capacity. NOAA should substitute the term "operate" for the term "lock" to avoid confusion and provide protection sought by the regulation.

Response: The intention of the regulation for restricting discharges of treated sewage from vessels 300 GRT or greater is to minimize discharges from these large vessels while in the sanctuary. If the vessel does not have sufficient holding capacity while operating in the sanctuary, the vessel may discharge sewage treated by a Type I or II MSD. The term "lock" only refers to ensuring the device is operational and not in a mode bypassing the treatment device. NOAA understands the determination as to whether a vessel has sufficient holding tank capacity to provide for no discharge of treated sewage or graywater will vary depending on a number of factors and must be determined by each vessel at the time it enters the boundaries of the National Marine Sanctuary. A vessel with adequate holding capacity must retain those discharges to the extent possible in designated waters. Vessels without holding capacity, either because of a lack of holding tanks or lack of excess capacity within their tanks, may discharge treated sewage and graywater in designated waters.

Comment: Adequate education about these discharge restrictions will ensure the ocean going fleet retains all discharges to the greatest extent possible within these sanctuaries.

Response: NOAA will continue to educate vessel operators about existing and new regulations regarding discharge of matter in National Marine Sanctuaries. NOAA will also seek assistance from the various marine shipping representatives such as the World Shipping Council and Pacific Merchant Shipping Association to educate its member companies about operational restrictions in National Marine Sanctuaries.

Comment: More consideration and discussion should be devoted to the need to control microbial pathogens from anthropogenic onshore sources that may affect the marine habitat, as well as from vessel discharges. These are highly significant water quality problems that are expected to increase with population growth and increases in vessel traffic. This issue needs more explicit attention in order to plan for the protection of both humans visiting the sanctuaries as well as the veterinary medical implications of current research in the survival of waterborne microbial pathogens in marine ecosystems. Viruses are a concern due to their high survival rates in marine waters and their capacity for causing infection in much lower doses than are generally required in the case of bacterial pathogens. They can pose both a public health hazard and veterinary medical hazard to various species, as implicated in various studies. Some of the implications of these findings strongly suggest that current federal performance standards for MSDs, based as they are on fecal coliforms, are insufficiently protective of both human water-contact activities and marine mammals. Graywater discharges from vessels are generally untreated, yet may also contain a similar range of microbial pathogens, in particular those associated with galley waste (e.g., Salmonella), hand-washing facilities, laundry services, and bathing facilities. NOAA should prohibit discharges of graywater and treated sewage from vessels in each sanctuary in the following areas: all State waters, other locations where there are resident colonies of protected marine mammals, shellfish beds, and areas in which the public has significant contact with either marine waters and/or resources harvested in the sanctuaries, and other locations which NOAA determines there is a significant likelihood that wildlife, fisheries, and/or the public could be harmed from exposure to microbial pathogens.

Response: NOAA recognizes microbial contamination is a significant issue for health of living marine resources. These contaminants from anthropogenic land based sources and from vessels are addressed in the management plans and regulations. Proposed regulations prohibit discharge of sewage and graywater from cruise ships and vessels 300 gross tons or more in all three sanctuaries. Discharge of sewage from other types of vessels is prohibited except for effluents free from harmful matter and incidental to vessel use and generated by an operable Type I or Type II marine sanitation device. Discharge of graywater from other types of vessels is prohibited under existing and proposed regulations in GFNMS and CBNMS, while the proposed regulation for MBNMS would allow the discharge of graywater only if it does not contain harmful matter. For land-based sources of microbial contamination, the MBNMS Beach Closures and Microbial Contamination Action Plan includes strategies for working with partners improving analyses and reducing microbial contamination, including enhanced research and monitoring, notification programs, source control, technical training, public outreach and enforcement. In addition, NMSP staff review, comment on and authorize National Pollutant Discharge Elimination System (NPDES) permits ensuring sewage treatment plants and municipal stormwater systems are adequately addressing microbial contamination.

Comment: What benefit would be gained from a prohibition on discharges from small vessels (with small crew or passenger loads) through all of the sanctuary waters, given both the *de minimus* impact of such discharges on water quality and the vast size of the combined waters of the three sanctuaries? That a

transiting recreational boater unfamiliar with sanctuary regulations would be subject to fairly considerable penalties for using a non-biodegradable cleaning agent while washing his deck or dishes demonstrates the unfortunate consequences of excessive regulation.

Response: The purpose of requiring deck wash down and graywater to be biodegradable was to prevent boaters from washing their decks down with solvents, or discharging harmful chemicals in their graywater. However, NOAA agrees use of the term "biodegradable" potentially raises enforcement and compliance issues. It is not a term that has a recognized legal definition and products are labeled as "biodegradable" without reference to a fixed set of standards. NOAA could define the term; however, it would not be reasonable to expect a boater to know which of the wide spectrum of products labeled as "biodegradable" meet NOAA's definition. For all three sanctuaries, NOAA plans to replace the requirement that deck wash down and graywater be "biodegradable" with the requirement that they be free of detectable levels of "harmful matter" as defined in the regulations. This facilitates compliance by providing boaters a definition of what is prohibited, and will be more focused on the type of contaminants that pose the greatest threat to water quality.

Comment: The DEIS frequently cites recreational boating as a source of water contamination, which presumably underlies its proposed requirements with respect to graywater, bilge, deck wash and sewage discharges. Yet, the DEIS provides little in the way of specific data regarding the extent of potential water contamination associated with recreational boating or the impact such contamination would have on marine life.

Response: The changes to the discharge regulations with respect to use of marine sanitation devices on vessels are meant to clarify existing prohibitions. The FEIS does not distinguish discharges from commercial or recreational vessels, only a vessel's size and the material or other matter discharged. Discussions of those discharges and impacts on marine life are discussed in the Biological Resources section of the FEIS. New prohibitions with respect to cruise ships and vessels 300 gross tons or more address impacts associated with discharges from large vessels.

Comment: The proposed rule that prohibits discharge or depositing of any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the sanctuary should be deleted. It is absurd to the extreme for the NMSP to seek to impose its civil and criminal authorities to activities conducted outside of any sanctuary boundaries.

Response: Activities taking place beyond sanctuary boundaries are only subject to this regulation if the discharge injures a sanctuary resource or quality within the sanctuary. This is not a new regulation for MBNMS, where it has been in place since 1993. The proposed regulation does not change the boundaries of the sanctuary except for the addition of the Davidson Seamount to the MBNMS. The regulation has two additive elements. In order for a violation to occur, the material discharged or deposited from beyond the boundary of the sanctuary subsequently entering the sanctuary must also injure a sanctuary resource or quality, except for the exclusions listed in the regulations.

Comment: The proposed cruise ship discharge prohibition should be extended to all ocean-going vessels. While the volume of discharge is considerably smaller per ship, relative to cruise ships, the total volume has the potential to harm sanctuary resources. Under the proposed regulations, "biodegradable" graywater and vessel deck wash, and "clean" bilge water could be discharged, but the regulations do not define biodegradable, and provide no means for actually enforcing these limitations. Graywater can contain pollutants such as oil, grease, ammonia, detergents, metals, and pesticides. Even in minuscule amounts, oil in

bilge water or graywater has the potential to harm sanctuary resources. The best way to ensure that sanctuary resources are protected is to prohibit discharges completely. Without significant enforcement efforts, the ability to distinguish "clean" discharge from harmful effluent is nearly impossible. In addition, the sanctuaries should implement an education, monitoring and enforcement program similar to those proposed for cruise ships.

Response: Regulations for each of the sanctuaries prohibit the discharge of most matter; however, prohibiting discharges completely would be nearly impossible given the size of the sanctuaries, use of the sanctuaries by commercial and recreational vessels, and proximity to coastal development. NOAA included additional regulations restricting treated waste and graywater discharges from vessels 300 gross registered tons or greater with sufficient holding capacity while in the sanctuary. See the response in this section regarding graywater and the term "biodegradable."

Comment: Discharge from advance wastewater purification (AWP) systems on cruise ships should be permitted. These systems provide tertiary treatment resulting in an effluent quality cleaner than a Type II MSD and a majority of shoreside treatment facilities. Extensive study in Alaska has shown these systems to be acceptable for discharge and the US EPA is evaluating these systems. NOAA should consult closely with the EPA and Alaska Department of Environmental Conservation as they have both done substantive work on this issue.

Response: The DEIS evaluated an alternative regulation allowing cruise ships to discharge from advanced wastewater systems (see DEIS Section 2.2.1 for a description of this alternative). NOAA is aware of the work done by EPA and the Alaska Department of Environmental Conservation regarding AWP systems. The program adopted in Alaska is a complex arrangement requiring issuance of a permit, prior demonstration that the ships can meet water quality standards based on independent contractor evaluation, environmental compliance fees, wastewater sampling and testing protocols, record keeping and reporting protocols, on-board observers, and a tax per passenger to fund the administration of the program. Such a program is inherently difficult to monitor and enforce, and the NMSP has no mechanism in place for recouping the necessary funds needed to administer it (see below for additional information regarding the Alaska regulations). Also, the EPA studies indicate that although AWPs remove most of the priority pollutants of concern, they do not adequately reduce discharge of ammonia and metals.

Comment: The DEIS analyzes an "alternative prohibition" that would allow discharge from AWP systems on cruise ships, in compliance with minimum effluent water quality standards established by the Coast Guard in Alaska at 33 CFR 159. There are serious concerns about the feasibility of administering, monitoring and enforcing such a program. The Alaska regulations have been widely recognized to lack adequate monitoring and enforcement prohibitions and the Alaska program has significant administrative costs. The DEIS does not provide this important information about recent changes to the Alaska regulations. The new Alaska regulations prohibit the discharge of any treated sewage, graywater, or other wastewater from a large passenger vessel unless the owner or operator obtains a permit and discharges may not violate any applicable effluent limits or standards under state or federal law. Unlike Alaska, the NMSP does not have a mechanism in place to recover the administration costs. The alternative prohibition is not feasible, is inconsistent with state law, and should not be adopted.

Response: The EIS has been revised to reflect the current cruise ship regulations in Alaska, as summarized in the comment. See FEIS Section 3.5.4. The referenced alternative prohibition that would allow discharge from AWPs was analyzed in the DEIS, but it is not NOAA's preferred alternative.

Comment: The Cruise Ship Discharges Action Plan's stated goal "to prevent impacts...from cruise ship discharges" is not consistent with proposed regulations. The proposed regulation prohibits any discharge. Ships have been outfitted with treatment units that convert all black and graywater into potable water, which can then be discharged. Several ships that visited Monterey with advanced treatment systems spent approximately 5 million dollars per ship to install such a system. There is no scientific basis to prohibit all discharges and no reason why material from this advanced treatment could not be discharged.

Response: By only allowing certain types of discharge from a cruise ship, NOAA has in effect targeted the discharges that have the potential to be harmful to sanctuary resources. Effluent monitoring would be cost prohibitive and infeasible, particularly for vessels underway. Additionally, ship discharge audits often reveal a discharge occurred but do not contain information on contaminant levels. Advanced waste water treatment systems (AWPs) on cruise ships do not always function properly and when they do, they may not effectively remove all contaminants. Therefore NOAA believes prohibiting discharge with specified exceptions is the most effective and enforceable regulation.

Comment: Didn't the California Governor recently sign a bill to prevent all cruise ship dumping?

Response: California law imposes restrictions on cruise ships operating in state waters or calling on state ports. These restrictions prohibit the burning of wastes and the discharging of graywater and sewage. However the national marine sanctuaries off of central California are predominantly federal waters (beyond 3 nautical miles) and not protected by the State's laws. The proposed regulations would be complementary to the State's laws and would provide comprehensive protection from the threat of cruise ship discharges throughout the three national marine sanctuaries.

Comment: Anchor wash and cooling water for all engines, whether main propulsion or electrical power generation should be permitted in GFNMS and CBNMS. This change will match the MBNMS regulation, which contains exemptions for vessel engine cooling water, vessel generator cooling water, or anchor wash.

Response: NOAA has incorporated revised wording in the draft final regulations allowing discharge of cooling water for engines and generators and anchor wash in all three sanctuaries.

Comment: Prohibiting discharge of any material from a cruise ship, other than the noted exceptions, could be interpreted to prohibit deck runoff during a rainstorm or high seas.

Response: The proposed regulations would not prohibit routine runoff of rainwater or ocean spray/water from vessels.

Comment: The preamble discussion in the proposed rule affecting cruise ships states that "...such discharged effluent associated with cruise ships may not adequately disperse to avoid harm to marine resources." This statement is inaccurate and misleading and is not supported by scientific evaluation. Numerous studies of discharged effluent dispersion from cruise ships indicate that both the near-field and far-field dispersion of discharged effluent is significantly high when a ship is underway at moderate speed. Please see the US EPA report on Cruise Ship Plume Tracking Survey (July 30, 2001). This report concludes that "...discharges from cruise ships undergo a dilution that is much greater than the initial dilution predicted by a model...Measure dilutions ranged from 195,000:1 to 666,000:1. Secondary dilution, as the effluent passes through the propellers is an important factor when considering the ambient concentrations of discharge effluents, as the effluent will undergo a dramatic and rapid dilution after mixing with ambient water in the prop wash. See additional studies by the State of Alaska, the US Navy and M. Rosenblatt and Sons. These

studies should be fully evaluated before enacting the proposed prohibition. The drafters of the proposed regulations consider the dilution from a moving source that is mixing its effluent in the propellers as inadequate and completely ignore fixed point discharges from municipal waste water treatment plants.

Response: NOAA reviewed these studies. Dilution may help reduce impacts; however, dilution rates vary with the speed of a vessel, and dilution does not change the volume of sewage, graywater, and bilge water discharged from the vessel. The NMSP also addresses discharges from wastewater treatment plants. These facilities are regulated by the state's Regional Water Quality Control Boards under the National Pollutant Discharge Elimination System (NPDES). The NMSP tracks and evaluates NPDES permit applications for these facilities, coordinates with the State on development of appropriate permit and monitoring conditions to ensure protection of sanctuary resources, and—for MBNMS-- issues a sanctuary authorization of the permit. The NMSP coordinates with State and local agencies to track and follow up on spills or other compliance violations at these facilities.

Comment: The proposed rule affecting cruise ships states, "Due to their sheer size and passenger capacity, cruise ships can cause serious impacts to the marine environment." It goes on to state that cruise ships generate sewage (blackwater), graywater from showers and sinks, oily bilge, hazardous waste, solid waste, toxic waste from dry cleaning and photo processing laboratories, and millions of gallons of ballast water containing potentially invasive species. The next sentence implies to the reader and public that cruise ships discharge all these byproducts and waste from a "single source" that is not regulated. This is misleading at best. Waste onboard cruise ships is fully regulated and very carefully handled. Hazardous waste is carefully segregated, packaged onboard and discharged ashore in accordance with very stringent Resource Conservation and Recovery Act requirements. Other waste is disposed of as permitted by law and regulation. The preamble should be rewritten to accurately reflect cruise industry environmental management practices and procedures.

Response: NOAA recognizes many cruise ship waste products are regulated, and has added clarifying language to the FEIS Section 2.2.1 and the three management plans indicating that many cruise ship discharges are regulated in some form by state or federal law and/or by international treaties.

Comment: Discharge from Type II MSD units onboard cruise ships should be permitted.

Response: NOAA is not proposing to allow discharge from Type II MSD units for cruise ships because Type II MSDs can fail to meet applicable federal standards. Also see section 3.5 of the FEIS, which contains a discussion of sewage and other discharges from cruise ships. Further, allowing Type II MSD discharge would be inconsistent with State of California discharge law for cruise ships.

Comment: Cruise ships should be permitted to discharge effluent oil content at 15 parts per million with no visible sheen.

Response: To ensure a heightened level of protection for the resources and qualities of the national marine sanctuaries, the oil discharge prohibition for all vessels is more restrictive than standards for areas outside of national marine sanctuaries.

Fishing Activities

Bottom Trawling

Comment: Trawling indiscriminately takes all ages and species in the trawl nets' paths, as well as damaging/destroying habitat. Bottom trawling should be prohibited in the three national marine sanctuaries.

Response: Bottom trawling is currently banned, with limited exceptions, in State waters. With the implementation of Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan, NOAA provided a program to describe and protect essential fish habitat (EFH) for Pacific Coast Groundfish. The measures include fishing gear restrictions and prohibitions, areas that are closed to bottom trawling, and areas that are closed to all fishing that contacts the bottom.

Comment: Because bottom trawling impacts are in no way limited to the MBNMS, the MBNMS Bottom Trawling Action Plan should be made cross-cutting and apply to all three central coast sanctuaries. Some of the strategies described under the MB Action Plan are currently underway in GFNMS and CBNMS. Also, this Action Plan should include a more definitive commitment to pursue additional regulation of bottom trawling within sanctuary waters because bottom trawling is a destructive fishing practice that is inconsistent with the primary objective of the NMSP of resource protection.

Response: While the GFNMS and the CBNMS do not have an action plan focused specifically on the effects of bottom trawling on benthic habitats, they have plans that more broadly address the impacts from fishing on the ecosystem. In addition, NOAA proposes to prohibit bottom trawling in waters less than 50 fathoms on Cordell Bank itself. If NOAA determines additional regulations are necessary to prevent harm to the ecosystem from trawling, it will work with fishery managers and industry to develop regulations under the authority of the Magnuson Stevens Fishery Conservation and Management Act, the National Marine Sanctuaries Act, or both, as appropriate.

Comment: Commercial harvesting heavily impacts many species of fish. The sanctuary managers must have strong statutory authority to protect endangered fish stocks. Similarly, the sanctuaries should have strong voice in the supervision and enforcement in international fishing treaties as well as local regulation of both commercial and sport harvesting.

Response: The National Marine Sanctuaries Act provides strong authority to address and manage all sanctuary resources and qualities, including endangered fish stocks that are important to the health of a sanctuary ecosystem. NOAA's Ocean Service, National Marine Fisheries Service, Office of Law Enforcement and Office of International Affairs coordinate supervision and enforcement of international fishing treaties as well as local fishing activities affecting national marine sanctuaries.

Exceptions for Lawful Fishing Activities

Comment: NMSP should use the word 'lawful fishing' as opposed to 'traditional fishing' in the proposed discharge and seabed disturbance regulatory exceptions for MBNMS in order to be consistent with language in the GFNMS and CBNMS regulations.

Response: To use consistent terminology and avoid unnecessary confusion, NOAA proposes incorporating the term 'lawful fishing' into the regulations for all three national marine sanctuaries. This change does not affect the environmental impact analysis in the EIS, although references in the EIS to traditional fishing have been changed.

Fishing Gear

Comment: There is a problem with the use and definition of the term "bottom contact gear" in the alternative CBNMS seabed protection prohibition. Any fishing line with a weight at the end could be considered as bottom contact gear. A weighted line is necessary even for fishing off the bottom, as occurs with salmon or schooling rockfish and thus the prohibition would prevent commercial or recreational hook-and-line fishing. Also, the definition of bottom contact gear does not include pot or trap gear. Even though the definition is not meant to be inclusive, traps and pots constitute a primary gear type and should be added.

Response: For consistency, NOAA used the definition for bottom contact gear developed by the Pacific Fishery Management Council (PFMC) in Amendment 19 (Essential Fish Habitat) of the Pacific Coast Groundfish Fishery Management Plan. NOAA has inserted additional language in the EIS from the PFMC definition for clarification of this alternative. Additional EIS language states: *Other gear, midwater trawl gear for example, although it may occasionally make contact with the sea floor during deployment, is not considered a bottom contact gear because the gear is not designed for bottom contact, is not normally deployed so that it makes such contact, nor is such contact normally more than intermittent. Similarly, vertical hook-and-line gear that during normal deployment is not permanently in contact with the bottom, would not be considered bottom-contact gear.* NOAA has added pots and trap gear to the list of prohibited gear types for clarity.

Comment: Evidence from recent submersible surveys document a prevalence of entangled fishing gear on Cordell Bank suggests that additional prohibitions targeting longlines on Cordell Bank may also be warranted; NOAA is urged to address this issue.

Response: CBNMS staff completed a three-year process working with the Pacific Fishery Management Council and NOAA Fisheries to address gear impacts and determined additional regulations targeting longlines are not necessary at this time.

Comment: The proposed rule may impact commercial and recreational fishing through loss of fishing area within the 50-fathom isobath surrounding Cordell Bank. The exception for fishing is not well defined. As written, the proposed action may be misinterpreted to indicate that fishing in a location that is not regularly fished is not "normal fishing operations." A more clear definition is needed.

Response: The wording has been revised for the Benthic Habitat Protection prohibition. See FEIS Section 2.2.2 and Table 2-1.

Comment: An official large whale disentanglement team should be established in Monterey Bay to respond to accidental entanglement in fishing gear or other entanglement. There is such a program developed by the Center for Coastal Studies on the East Coast.

Response: In the fall of 2006 and spring of 2008, NOAA offered public outreach events and conducted trainings in whale rescue techniques in conjunction with other partners to demonstrate techniques and gear used to disengage large whales from fishing gear and non-fishery equipment and marine debris. Training efforts were extended to a group of invited professionals who received special instruction consisting of classroom sessions and vessel-based training and exercises. Next steps would include establishing a large whale disentanglement team network. NOAA has added this as an action item to the Wildlife Disturbance: Marine Mammal, Seabird and Turtle Action Plan under Strategy MMST-4.

Comment: Make sure that the current regulations closing sanctuary waters to drift gillnetting during the fall each year remain in place to protect the endangered Pacific leatherback sea turtles. Federal fishery managers

are seriously considering reopening the area to drift gillnetters. MBNMS waters are among the most important on the west coast to turtle feeding. MBNMS managers have the authority and responsibility to protect endangered species in sanctuary waters regardless of what management measures are put into place by others.

Response: The NMFS is consulting with the NMSP regarding the potential issuance of an Exempted Fishing Permit for a single permittee to deploy drift gillnets during the fall. The NMSP will work closely with NMFS to ensure that any permitted drift gillnetting does not pose a threat to endangered species and birds in the Sanctuary.

Fishing Regulations

Comment: It was guaranteed in writing – known as 'the promise' - in the original designation documents that there would be no regulation governing fishing coming from the sanctuaries.

Response: The comment misunderstands and misstates the statement provided by NOAA in the 1992 MBNMS FEIS and Management Plan (FEIS/MP) and in similar documents for other national marine sanctuaries. In a response to comments published at page F-41 of the 1992 FEIS/MP, NOAA stated the sanctuary was not regulating fishing at that time but added that if sanctuary fishing regulations were necessary later to protect sanctuary resources and qualities, NOAA would take the steps required by section 304(a)(5) of the NMSA and applicable law. At page F-42 of the same document, NOAA explicitly stated certain fish species in the Sanctuary may eventually need to be regulated. NOAA did not and would not publish a statement promising not to ever use resource protection authority that Congress had provided.

Comment: Clarification is necessary on the term 'resource', which by definition could include fish species in Article IV. Scope of Regulations, Part D & F of the MBNMS designation document. Clarification is also necessary regarding the scope of these proposed regulations and whether or not they apply to fish species and/or the closure of federally regulated or state managed fisheries.

Response: The term "resource," as it is used in the terms of designation for MBNMS, includes the fish and other living and non-living resources of the sanctuary. The regulations do not, however, restrict the take of fish species as part of legal fishing activities. If in the future, NOAA determines additional sanctuary fishing regulations are necessary, it would follow the promulgation and coordination processes required by Section 304(a)(5) of the NMSA.

Comment: The proposed fishing regulations, as written, would have the dire effect of destroying the commercial fishing industry which is the economic life blood of the Monterey peninsula.

Response: The regulations do not contain prohibitions directly affecting or targeting fishing activities. Specific fisheries are also managed by other agencies, including the California Fish and Game Commission and NMFS in consultation with PFMC. See also previous responses to comment regarding fishing regulations.

Comment: The Sanctuary Program should remain vigilant and continue to work with PFMC to ensure that fishing regulations are not modified or eliminated in the future to the detriment of protection of the Cordell Bank. If such changes do occur, we urge the NMSP to act expeditiously to adopt regulations, as authorized under section 304(a)(5) of NMSA, to protect the Bank from bottom contact fishing gear.

Response: The NMSP will continue to work with NMFS and PFMC on the Cordell Bank EFH closure area and all other closures in National Marine Sanctuaries affecting fishing activities**.** If in the future existing EFH

protections for Cordell Bank from bottom contact fishing gear are modified, NMSP would examine potential impacts to the CBNMS environment relative to its goals and objectives. NOAA would determine if additional closures are warranted under either MSA and NMSA or a combination of both authorities. The JMPR EIS analyzes an alternative seabed protection regulation, in which bottom contact fishing gear is prohibited. This alternative was developed and evaluated in the event regulations protecting the seabed from bottom-contact fishing gear were not implemented through the MSA or did not meet the Sanctuaries' goals and objectives for protection of the Bank.

Fishery Management

Comment: NMSP should draft an integrated fishery management plan that addresses the San Francisco Bay and perimeters of the Sanctuary.

Response: NMSP works with the Pacific Fishery Management Council (PFMC) and the California Fish and Game Commission when appropriate to help meet sanctuary goals and objectives. San Francisco Bay, while providing important hydrologic and ecological connections to the sanctuaries, is not within any national marine sanctuary.

Marine Reserves / Marine Protected Areas

Comment: NOAA should pursue marine protected areas (MPAs) action plans in CBNMS and GFNMS similar to the MBNMS MPAs action plan. The sanctuaries must address marine protected areas as a management tool to achieve sanctuary goals related to ecosystem protection and research. Sanctuaries have both the legal authority and legal obligation to review changed conditions and adopt management plan changes, as necessary.

Response: NOAA does not believe there is a need for separate action plans to address MPAs in CBNMS and GFNMS. CBNMS Management Plan strategy EP-4 addresses impacts on sanctuary resources and area-based restrictions are proposed as one of the potential management actions, if needed in the future. The GFNMS Management Plan contains action plans on Impacts from Fishing Activities (Strategy FA-4) and Ecosystem Protection (Strategy EP-1), addressing the need to provide special areas of protection for sensitive habitats, living resources, and other unique sanctuary features. It considers a variety of tools, including area-based restrictions, to protect sanctuary resources.

Comment: NMSP should not be involved in creating no-take marine reserves. Fishing regulations should only be promulgated by the Pacific Fishery Management Council and State authorities. The Sanctuary designation documents should not be changed to allow fishing regulations.

Response: NOAA is not proposing to create any no-take MPAs as part of this rulemaking. NOAA has two relevant statutory authorities, the National Marine Sanctuaries Act (NMSA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). NOAA considers both the NMSA and MSA as tools that can be used exclusively or in conjunction to regulate fishing activities to meet sanctuary goals and objectives. Regulatory options are evaluated by NOAA on a case by case basis to determine the most appropriate regulatory approach to meet the stated goals and objectives of a sanctuary.

Comment: The use of an MPA working group would be appropriate to evaluate the utility of MPAs if the working group process was fairly constituted and science-based. However, it is the perception of the fishing community that the current MBNMS MPA working group is seriously flawed as a public/science-based process.

Response: The working group meeting from 2002-2007 included a broad mix of stakeholders including recreational and commercial fishermen, divers, scientists, environmentalists, and agency personnel. The working group includes preeminent local MPA scientists who help provide scientific guidance to the working group during deliberations. NOAA's decisions regarding if and where to create new MPAs will be grounded in the best available information and science.

Comment: There is lack of specificity in the strategies and associated activities in the MBNMS MPA Action Plan. There will be a rush by the sanctuaries to do something without a clear understanding of all the habitats within such a large coastal area, nor the ability to develop an integrated and adaptive management system.

Response: The MBNMS MPA Action Plan is intended to be a framework document that outlines the general types of evaluations, criteria, and programs for considering and effectively implementing MPAs. This framework identifies the areas where specific information will need to be developed, such as in habitat characterization, research and monitoring, enforcement, and education and outreach. The consideration of MPAs has been ongoing for five years and continues to move forward in a very deliberate and informed manner.

Comment: Monterey Bay should not close waters off for anadromous or pelagic fishing. These species cannot be protected by closing off one area or another to fishing, except where they spawn. And, the continuation of long-term sustainable fishing in the region requires that no marine reserves should be placed in areas important to the salmon fishery, the crab fishery and certain types in the rockfish fishery.

Response: NOAA is not proposing to create any marine reserves as part of this rulemaking. However, the Management Plan for the MBNMS includes an action plan with strategies for the consideration of new MPAs in the Sanctuary. This MPA Action Plan recognizes the value of full no-take MPAs. It also recognizes that allowing certain types of "take" within an MPA may be appropriate depending on the location and the objectives of the site.

Comment: The NMSP should adopt MPAs, including no-take reserves, within federal waters of the sanctuaries to complement the efforts of the State of California. The NMSP should move forward on creating MPAs in federal waters using NMSA if necessary.

Response: NOAA believes additional MPAs are needed in federal waters of the MBNMS to address ecosystem objectives, possibly including no-take marine reserves. As such, NOAA has initiated a process to consider how best to address this need through a collaborative public process that involves all affected stakeholders. NOAA has not determined there is a need for additional no-take marine reserves in the federal waters of CBNMS or GFNMS at this time. NOAA may take action in the future if there is a determination additional fishing regulations, possibly including no-take marine reserves, are necessary to protect sanctuary resources.

Comment: Limitations on noise should be included in the definition of an MPA.

Response: The Management Plan for the MBNMS includes strategies to reduce the threat of acoustic impacts on marine mammals and other species but not as part of the regulatory scheme for MPAs addressing fishing activities. See responses to comments in "Noise Impacts" section.

Comment: The proposed MPA Action Plan timeline is too slow. The plan should make implementation of marine protected areas – specifically fully protected marine reserves – much higher priority, and give it a more ambitious timeline.

Response: As is true with many community based initiatives, the process for considering and potentially siting MPAs in the MBNMS takes time. This does not mean that the issue is not a priority for NOAA. While the management plan review process has been progressing, NOAA convened a multi-stakeholder group to consider new MPAs.

Spearfishing

Comment: Do not prohibit free-dive spearfishing.

Response: NOAA is not regulating spearfishing at this time. Other regulatory authorities, including California Fish and Game Commission, have regulations prohibiting spearfishing in certain zones in State waters of the MBNMS and are developing regulations for zones that could affect spearfishing in the GFNMS. See also responses to comments regarding fishing regulations.

Working With Fishing Community

Comment: The National Marine Sanctuary Program should consider a larger role for the fishing community whose goodwill is important to long-term support for sanctuary programs and whose livelihoods depend on the protection of the sanctuary's resources.

Response: The fishing community is important and provides opportunities for involvement in Sanctuary research, education, and resource protection activities. Moreover, NOAA believes appropriate fisheries within a national marine sanctuary are an indication of a healthy ecosystem protected by that Sanctuary. The Cordell Bank, Gulf of the Farallones, and Monterey Bay National Marine Sanctuaries Joint Management Plan Cross-cutting Maritime Heritage Action Plan states ocean-based commerce and industries (e.g., fisheries) are important to the maritime history, the modern economy, and the social character of this region. The Action Plan states "there is the potential to cultivate partnerships with local, state, and federal programs and identified communities and that these partnerships could aid in the design and implementation of studies of living maritime heritage and folk life to help educate the public about traditional cultures and practices including fishermen and economic activities reflecting historic human interaction with the ocean." The MBNMS Management Plan includes the Fishing Related Education and Research Action Plan, whose goal is to involve fishermen in research activities to add to the body of research available for fishery-related decision-making processes. The GFNMS Management Plan includes strategy FA-5: Develop public awareness about the value and importance of the historical and cultural significance of maritime communities and their relationship and reliance on healthy sanctuary waters. The recreational and commercial fishing communities also hold seats on the advisory councils for the sanctuaries and provide input into education, research and resource protection activities.

Comment: The plan allowing fishermen to participate in fisheries research may be a conflict of interest.

Response: Allowing fishermen to participate in research activities adds to the body of research available to decision-makers and increases the fishing community's understanding of ongoing research projects. In many cases, fishermen possess experience and knowledge that can be particularly helpful in research activities.

Comment: Consider the impacts on fishermen. There is a lack of compassion for fisher folk; get them jobs on the water, or buy their boats and offer them jobs.

Response: The proposed actions have been found to have no adverse impact on fishing communities and do not include regulation of fishing activities; however, the management plans include activities to involve fisherman in research and outreach programs. See the previous response for ways the management plans involve fisherman in sanctuary management activities.

Introduced Species

Agency Coordination

Comment: It appears that the sanctuary wishes to grant itself unlimited authority to accomplish the task of preventing and managing the spread of introduced species. Regulations, permit requirements, or other enforcement oriented actions associated with the Introduced Species Action Plan affecting public agencies should be coordinated with, and agreed to by those agencies before they become federal law.

Response: NOAA considers the threat of introduced species to be a high priority. The strategies in the management plans to address this issue include research, education, and enforcement activities each including coordination with federal, state and local agencies. The regulation of introduced species involves various agencies, and NOAA is adopting a comprehensive program coordinated throughout the three sanctuaries in northern and central California.

Definition and Regulation

Comment: The proposed Introduced Species prohibition would prohibit any new leases for the Pacific oyster, which would impact the mariculture industry in Tomales Bay. NOAA states that there hasn't been interest in additional leases, but that's due to the existing regulatory framework, which is very restrictive and cumbersome.

Response: The regulation would restrict new leasing of areas to native species but would not impact any existing mariculture activities in Tomales Bay. Introduced species currently allowed by the State of California as of the date of this regulation, including Pacific Oysters, may continue to be farmed.

Comment: Will a list be provided of native species in each Sanctuary to allow the Sanctuary to determine if in fact a species introduced is non-native?

Response: NOAA does not have a comprehensive inventory of species introduced into the sanctuaries. If a species is documented as native to the ecosystem, it would not be considered an introduced species.

Comment: The proposed Introduced Species prohibition would prevent the introduction of genetically modified species (DEIS page 3-51), but there is no definition provided. Triploid oysters are commonly used by Tomales Bay oyster growers to avoid the oysters spawning, and thus avoid the resultant poor condition of oysters for sale. Would this proposed rule ban these oysters which are a more desirable nonnative, due to their lack of spawning, versus normal oysters which spawn but do not successfully establish?

Response: The rule would not prohibit triploid oysters currently used by Tomales Bay oyster growers and cultivation of them would be allowed to continue. Future leasing of undeveloped lands in Tomales Bay would be restricted to oysters not meeting the definition of an introduced species (i.e., where 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).

Comment: Currently the gross leased mariculture areas authorized by CDFG are 10-20% net usable for mariculture. New growing techniques and/or new CDFG policies could expand the size of the area currently under cultivation out to the boundary of the lease area, which would result in a 500% -1000% net increase. The area under cultivation should be limited to the current net usable footprint. Consideration should be made for the possibility of Drake Bay Oyster Company moving into Tomales Bay.

Response: NOAA acknowledges an increase in mariculture activities could occur within existing leases since most of the leases are not fully developed. The new regulation for introduced species would not prohibit mariculture operations in Tomales Bay conducted pursuant to an existing valid lease, permit, license or other authorization issued by the State of California. The regulation does not prohibit the transfer of current valid leases in Tomales Bay to new owners within existing lease areas or future leasing of areas in Tomales Bay provided the new leased areas do not include introducing a species not native to the ecosystem.

Comment: The exceptions would not allow existing leases to fully utilize lease acreage for which they pay the State to the degree authorized by their lease, Army Corps permit, and their Coastal Development permit. The prohibition conflicts with State policy and limits the existing authority of the CDFG to engage in additional bivalve shellfish aquaculture leases, with existing state environmental impact review in place. To address these concerns, the designation documents and proposed Introduced Species prohibition exceptions for all three sanctuaries should be revised to allow mariculture and research pursuant to a valid lease, permit, license or other authorization issued by the State of California.

Response: The restrictions on introduced species do not restrict any areas currently leased by the State of California so long as the species were being cultivated in those areas prior to the new prohibition taking effect. See previous responses to comments regarding the scope of this regulation. A complete exception is not provided for mariculture of introduced species and associated research activities because NOAA cannot accurately predict impacts that might result from introduced species that have not been previously cultivated in these areas. Please see the response to the next comment below.

Comment: The basis for the proposed Introduced Species prohibition cites information that is more related to finfish culture and net-pen culture than shellfish mariculture. These issues do not relate to shellfish mariculture in terms of the way it's conducted now or with existing CDFG regulations, which should be acknowledged (CDFG Title 24 regulations). The industry is heavily scrutinized in terms of seed pathogens; five years of pathology and cytology go into the CDFG review. Increasing the footprint is not going to increase potential impacts. Science has proven that there are more positive impacts (e.g., sustainability) than negative impacts from shellfish mariculture.

Response: There are some positive impacts from shellfish mariculture, and this regulation would not restrict mariculture of native species and would allow cultivation of introduced species currently authorized under State of California law in existing leases. However, past introduction of foreign shellfish has brought diseases, parasites, and predators that have damaged ecosystems and associated native species. Moreover, the potential exists ecologically for non-native shellfish to be accidentally released and established in sanctuary ecosystems.

Comment: The civil penalty of up to $100,000 is too onerous for a recreational boater who could unintentionally or unknowingly violate the proposed Introduced Species prohibition by releasing a nonnative seaweed or barnacle. This prohibition should be deleted and attention should be focused on education and on major sources of introduction such as ballast water exchange. Education is a more appropriate tool to

address invasive species; NOAA could partner with Department of Boating and Waterways to educate boaters about precautions.

Response: The National Marine Sanctuaries Act establishes a limit on the maximum civil penalties that can be charged for violations of sanctuary regulations and law. Currently, that limit is set at $130,000 per day for any continuing violation. However, the act does not require application of the maximum allowable penalty in any enforcement case. The amount of any penalty is generally determined by the nature of a violation and a variety of aggravating/mitigating circumstances, such as gravity of the violation, prior violations, harm to protected resources, value of protected resources, violator's conduct, and degree of cooperation. NOAA prosecutors generally scale proposed penalties to fit the nature of a particular violation. Recreational boating is a common method for spread of non-native species in California. However, this prohibition extends beyond small-scale introduction by a recreational boater. Introduced species could be discharged into a sanctuary on a large-scale, systematic basis through many vectors, such as commercial shipping, aquaculture, aquaria, or fishing operations. Further, there are circumstances in which introduced species could be willfully and intentionally discharged with full knowledge of the potential negative consequences. In such instances, education alone could not address the problem. Education is an important part of this issue and NOAA has included education components in its Action Plans regarding Introduced Species. NOAA coordinates with the California Department of Boating and Waterways already, and welcomes expanded interagency cooperation to reduce movement and introduction of non-native species from recreational boating.

Comment: The broad nature of the Introduced Species Action Plan may result in controls on the fishing fleet that would require all vessels to be inspected and cleaned before every trip in sanctuary waters. Vessels routinely enter and exit sanctuary waters. There is no scientific evidence that this activity has caused any environmental problem regarding non-resident species. Additional regulations, without any basis and without any evaluation of the pros and cons, should not be adopted.

Response: The proposed Action Plan does not mandate vessel inspections and cleaning before every entry to the sanctuary, and such activities are not required by the regulation. Multiple studies document the spread of non-native species by recreational and commercial vessels (e.g., Zebra mussels and quagga mussels). NOAA is also concerned about the spread of invasive algaes such as *Undaria* which have been found in the Santa Barbara Harbor and Monterey Harbor and could easily be transmitted by vessels as they transit the coastline.

Use of an Introduced Species as Bait

Comment: Bait used while fishing is an exception to the discharge rule but often times bait can be an introduced species, so the discharge exception needs to be clarified.

Response: The exception for the bait used in or resulting from lawful fishing activities from the prohibition on discharge of materials or other matter would not exempt the activity from the prohibition on the introduction of non-native species. Specific exceptions in one prohibition do not except the activity from other regulations. There is no need to further clarify this in the regulation as NOAA's intent in this matter is clearly articulated in the FEIS and will be in the final rule.

Motorized Personal Watercraft

Action Plan Review

Comment: There needs to be some mechanism for periodic review of the MBNMS MPWC Action Plan to allow the action plan to be periodically adjusted according to the effectiveness of the program.

Response: The National Marine Sanctuaries Act requires NOAA to review the management plans and action plans therein every five years.

Agency Coordination

Comment: NOAA should work with state and local jurisdictions with authority to regulate uses or activities causing concern rather than creating new authorities.

Response: NOAA has regulated MPWC use in the MBNMS since 1993 and in GFNMS since 2001. State and local jurisdictions overlay less than 20% of MBNMS waters. Local governments have no mandates or authority to issue MPWC regulations throughout State and Federal waters of the MBNMS. Where local marine jurisdictions exist, they seldom extend seaward of the 60-ft depth line and are geographically constrained. In addition, regulation of MPWC is often inconsistent between local jurisdictions within the MBNMS. State and local regulations pertaining to MPWC are usually designed primarily for public safety purposes, not natural resource conservation purposes. MPWC operations present unique threats to marine resources of the sanctuary due to their relative size and weight. See the MBNMS Motorized Personal Watercraft Action Plan for a description of uniqueness and subsequent impacts. By limiting use of the MPWC to certain areas, NOAA can ensure uniform and consistent management of this activity to minimize threats to protected national resources throughout the MBNMS.

Comment: NOAA should clarify what agency will enforce the provisions of the proposed regulations.

Response: Primary law enforcement responsibilities for NOAA regulations are assigned to NOAA's Office for Law Enforcement (OLE). Other federal and state agencies are also capable of enforcing NOAA regulations. For a complete description of enforcement responsibilities and partnerships see the responses to comments under the heading "Sanctuary Management - Enforcement."

Economic Impacts

Comment: The new definition of MPWC for MBNMS will have significant negative economic impacts.

Response: NOAA's socioeconomic assessment in the Draft and Final EIS found that the proposed change in the definition of MPWC for the MBNMS would have both beneficial and adverse socioeconomic impacts, and it concluded that overall negative socioeconomic impacts would be less than significant.

Prohibition and Exceptions

Comment: The proposed MPWC definition change to include "any other vessel that is less than 20 feet as manufactured, and is propelled by a water jet pump or drive" is very vague and significantly over-broad.

Response: The proposed revisions to the definition provide readily visual cues for determining if a vessel qualifies as an MPWC, and focus on a very specific group of small, powered vessels. The agency has been specific in describing the vessels of concern and believes the proposed definition is sufficiently clear to identify them.

Comment: NOAA should consider alternative regulatory language such as that used by the State of Hawaii which requires training and certification and a fixed speed of 5 miles per hour when within 300 – 1000 feet of the shoreline.

Response: Vessel training curricula and certification requirements are boating safety and registration issues which are more appropriately managed by State and Federal boat licensing agencies. NOAA is not proposing licensing requirements. Rules implemented by the State of Hawaii to regulate MPWC were developed

specifically to resolve boater safety and user conflict issues that had arisen in state coastal waters. The rules were amended in 1994 to make provisions for tow-in surfing activities and resolve mounting conflicts between traditional and tow-in surfing interests. The Hawaii rules were not developed in response to natural resource protection threats, nor are they specifically designed to ensure protection of nationally significant marine resources or sensitive habitat areas. No environmental studies were conducted as part of the rulemaking process for Hawaii MPWC regulations. Further, NOAA is not proposing a change to the MPWC regulation itself, but rather a revision to the definition

Comment: NOAA should develop a program to allow MPWC use in designated areas for tow-surfing activities.

Response: NOAA considered a permit program in the MBNMS Draft Management Plan and concluded no MPWC recreational activity could meet the required criteria for issuance of a Special Use Permit (see 15 CFR Sec. 922.133). NOAA will continue to allow MPWC use for all activities in four designated MPWC use zones, plus, per the draft final regulation (i.e., the FEIS preferred alternative), an additional zone specifically designed to accommodate big wave tow-in surfing.

During NOAA public scoping meetings in 2001, NOAA received comments that the Mavericks surf break at Half Moon Bay was a unique big wave tow-in surfing location in the continental United States, accessible only by MPWC tow-in techniques and should be given special consideration for MPWC access. Based upon the evidence that Mavericks was such a special national sporting venue, NOAA investigated whether allowing MPWC operations at that location could be accomplished in a manner compatible with the Sanctuary's primary goal of marine resource protection. As a result of the review, NOAA's draft final regulation would establish a new MPWC zone off Pillar Point Harbor that will allow for recreational access via MPWC to the Mavericks surf break during National Weather Service high surf warnings issued for San Mateo County during December, January, and February. During the course of management plan development, NOAA also received public comment requesting that MPWC access be granted for big wave tow-in surfing at a surf break known as Ghost Trees, located off Pescadero Point in Carmel Bay. NOAA examined this venue, but due to several factors (including sensitive wildlife resources, distant launch sites and lengthy transit corridors, and impacts on marine protected areas), determined that authorization of MPWC activity at this location would not be consistent with the sanctuary's primary goal of resource protection. NOAA also received public comments that broad access to sanctuary waters should be granted to MPWC to support tow-in surfing at virtually any location within the sanctuary and under any surf conditions. NOAA has thus in the draft final regulation made a limited provision for MPWC assisted tow-in surfing at the unique big wave site known as Mavericks, but would continue to prohibit MPWC use outside of the designated riding zones that have been in place since 1993. Many professional and recreational surfers access breaking surf up to 20 feet in height within the sanctuary without the use of MPWC and have done so for decades.

Comment: The existing MPWC zones are not used and should be removed.

Response: The existing MPWC zones are used in some areas of the MBNMS, although the volume of use is currently low. As the definition of MPWC is extended to encompass larger MPWC models currently in use within the sanctuary, the larger models of MPWC not currently regulated will be restricted to the five zones. Therefore, use of sanctuary MPWC operating zones is expected to increase. NOAA is not proposing to close any zones at this time. See above for additional discussion of zones.

Comment: NOAA should allow MPWC use for emergencies such as rescue operations or vessel assistance and provide a method for emergency response training.

Response: NOAA continues to allow use of MPWC for emergency response purposes. The prohibitions listed in the regulations at 15 CFR Section 922.132 (a)(2)-(11) do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment. NOAA has made provisions in the final management plan to support MPWC rescue and training operations by government search and rescue agencies operating within the MBNMS. Search and rescue personnel specialize in public safety, and their training and operations are primarily focused on that mission priority. NOAA will coordinate with government agency partners to ensure that training operations are conducted in a manner, and at times and locations, that minimize risk of disturbance or harm to protected resources and habitats within the Sanctuary.

User Conflicts

Comment: The MPWC issue is a user conflict between traditional paddle surfers and those who engage in tow-in and or tow-at surfing. NOAA should not discriminate between recreational activities.

Response: NOAA has regulated MPWC within the MBNMS since 1993, prior to any significant use of MPWC by surfers within the sanctuary. NOAA is not regulating surfing activity and does not promote one style of surfing over another. NOAA is concerned with threats posed by current and future MPWC activity within the sanctuary (not surfing) and is updating an existing 15-year-old restriction of MPWC to specific areas in the sanctuary. In response to comments and staff analysis of various alternatives, NOAA's draft final regulation adds a new zone to allow use of MPWC at Pillar Point (Mavericks) due to the unique geographic, oceanographic, and seasonal characteristics of that site. The zone would be in effect during National Weather Service high surf warnings issued for San Mateo County in December, January, and February.

Wildlife Disturbance

Comment: NOAA should update the MBNMS MPWC definition to protect wildlife and reduce user conflicts consistent with the original intent of the regulation.

Response: MPWC have special maneuver, thrust, and buoyancy capabilities distinguishing them from other watercraft, enabling sustained intrusion by MPWC into wildlife areas. See the response immediately below regarding protective measures by NOAA.

Comment: MPWC should be regulated in the same manner as other small vessels.

Response: MPWC have several characteristics distinguishing them from other small vessels. MPWC are small, fast, and highly maneuverable craft that possess unconventionally high thrust capability and horsepower relative to their size and weight. This characteristic enables them to make sharp turns at high speeds and alter direction rapidly, while maintaining controlled stability. Their small size, shallow draft, instant thrust, and "quick response" enable them to operate closer to shore and in areas that would commonly pose a hazard to conventional craft operating at comparable speeds. Many can be launched across a beach area, without the need for a launch ramp. Most MPWC are designed to shed water, enabling an operator to roll or swamp the vessel without serious complications or interruption of vessel performance. The ability to shunt water from the load carrying area exempts applicable MPWC from Coast Guard safety rating standards for small boats. MPWC are often designed to accommodate sudden separation and quick remount by a rider. MPWC are not commonly equipped for night operation and have limited instrumentation and storage space compared to conventional vessels. MPWC propelled by a directional

water jet pump do not commonly have a rudder and must attain a minimum speed threshold to achieve optimal maneuverability. Most models have no steerage when the jet is idle.

These characteristics enable MPWC to conduct sustained operations in sensitive habitat areas where other vessels cannot routinely operate, thus posing serious disturbance threats to marine wildlife in those areas. In addition, NOAA has received comments that operation of these craft in a manner that optimizes their design characteristics (i.e., normal operation) poses unique threats to other human uses of Sanctuary nearshore areas. Further, see the 1995 U.S. Court of Appeals decision unanimously upholding NOAA's regulation of MPWC in the MBNMS, Personal Watercraft Industry Association v. Department of Commerce, 48 F.3d. 540.

Comment: NOAA lacks adequate data regarding endangerment or harassment to wildlife from MPWC.

Response: Local observations and documentation of MPWC disturbance of marine birds and mammals elsewhere, provide sufficient information identifying the risks of MPWC. The regulation of MPWC within the Sanctuary in 1993 stemmed partially from complaints of endangerment and harassment of marine mammals, including highly publicized claims that a MPWC operator was observed running over a sea otter, a species protected under the Endangered Species Act, near Monterey. Again, the adequacy of NOAA's administrative record for regulation of MPWC has already been upheld in court. (See previous responses.) NOAA has received written and oral reports of MPWC users harassing sea otters, harbor seals, porpoise, dolphin and other wildlife in various areas of the sanctuary since implementation of the regulation in 1993. Sometimes, due to high surf conditions, operators are unaware of their impacts on wildlife. For example, sea otter biologists have observed MPWC/sea otter interactions during high surf events. In the first incident, a sea otter biologist observed an MPWC tow a skier across the course of an otter swimming perpendicular to them in Stillwater Cove. Due to high swell conditions, the MPWC team never saw or responded to the otter as it crossed their path. In a second incident, Monterey Bay Aquarium volunteers observed an MPWC drive directly through a group of otters at Otter Point in Monterey Bay during high surf conditions. U.S. Fish and Wildlife Service biologists also report flushing of Common Murres from the Devil's Slide Common Murre restoration project due to MPWC use. Scientific research and studies across the United States (e.g. California, New Jersey, Florida) have produced strong evidence that MPWC present a significant and unique disturbance to marine mammals and birds different from other watercraft. Though some other studies have found few differences between MPWC and small motor-powered boats, they have not presented evidence to invalidate the studies detecting significant impacts.

In 1994, NOAA commissioned a review of recreational boating activity in the MBNMS. The review provided statistics on MPWC use and operating patterns in the Sanctuary at the time and identified issues of debate from the research community regarding MPWC impacts on wildlife, but it made no formal conclusion or recommendation. A poll of Sanctuary harbormaster offices by NOAA in 2003 provided updated estimates on MPWC use in the Sanctuary that are discussed in the JMPR DEIS.

Comment: Improvements in MPWC technology have reduced pollution and noise.

Response: NOAA acknowledges that MPWC technology has improved to reduce noise and pollution. However, MPWC have also become larger, faster, and more powerful, with extended ranges, and retain the maneuverability characteristics that increase the potential for disturbance of wildlife, including acute turns at high speeds, rapid course alterations, and ability to operate closer to shore and in areas that would commonly pose a hazard to conventional craft operating at comparable speeds. Though newer MPWC are quieter than

older models under normal displacement conditions, such improvements are largely irrelevant when MPWC launch into the air off of waves or breaking surf. Also, lower sound intensity (decibel level) does not equally reduce the effects of oscillating sound caused by persistent throttling (revving) of the engine during repeated acceleration/deceleration within the surf zone (which is often necessary to avoid capsizing and pitch polling). Research and observations have shown that this frequent oscillating sound pattern of irregular intensities can be particularly disruptive to wildlife and humans. This is the very sound pattern that often elicits complaints from coastal residents and beachgoers. Many newer MPWC models have 4-stroke engine technology or cleaner 2-stroke engine technology required to meet increased governmental emissions standards. While cleaner emissions are welcomed, this improvement has little bearing on the primary reasons for regulating MPWC within the MBNMS.

User Education

Comment: NOAA should work with the MPWC industry to develop user education programs.

Response: The MBNMS Management Plan includes *Strategy MPWC-3: Conduct Educational Outreach to MPWC Community,* which identifies the Personal Watercraft Industry Association and American Watercraft Association as potential education and outreach partners. These organizations, as well as agencies such as the California Department of Boating and Waterways, conduct user education programs throughout the State. NOAA will continue to work with these agencies and organizations to increase understanding of MPWC etiquette as well as the regulations regarding MPWC use in a national marine sanctuary.

Noise Impacts

Comment: Provisions in the MBNMS Marine Mammal, Seabird and Turtle Disturbance Action Plan regarding Acoustics (Strategy MMST-6) should be expanded and addressed in all three sanctuary management plans. Increased use of military high-intensity active sonar systems, undersea warfare training zones, shipping lanes, and increases in large vessel traffic can be expected to result in substantial levels of anthropogenic noise impacts. Also, a different branch of NOAA is currently funding geologic mapping of the coastal seabed, including the sanctuaries, the primary purpose of which is to determine the presence of oil deposits. This mapping uses an air concussion with underwater sound impact not unlike Low Frequency Active Sonar which has been blamed for dozens of whale beachings. Action plans might contain the following components: analyze noise sources, develop monitoring programs, address stranding issues and determine appropriate management responses.

Response: Additional provisions have been added to all three sanctuary Management Plans in response to this comment. See the MBNMS Marine Mammal, Seabird and Turtle Disturbance Action Plan regarding Acoustics, the CBNMS Ecosystem Protection Action Plan (Strategy EP-7), and the GFNMS Wildlife Disturbance Action Plan (Strategy WD-3). Sanctuary regulations would prohibit the "taking" of any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 et seq., the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703 et seq. Use of military high-intensity active sonar systems, undersea warfare training zones, and geologic mapping of the coastal seabed within the sanctuaries typically require that the project proponents receive approval (likely in the form of a MMPA Take Permit) from NOAA's National Marine Fisheries Service. As stated in the MBNMS Strategy MMST-6.2, the NMSP intends to continue collaborating with the NMFS in evaluating individual proposals on a case-by-case basis to determine the impacts of such projects and whether they would be appropriate to conduct within the sanctuaries. The Minerals Management Service is also conducting geologic mapping of the coastal seabed,

under provisions of the Energy Policy Act of 2005. A project of this sort would still be subject to the permitting and review provisions outlined above. See the Sanctuary Action Plans for additional activities related to addressing noise effects on wildlife. Although NOAA currently addresses and evaluates potential impacts on marine mammals resultant from acoustic sources under the Marine Mammal Protection Act, the NMSP will continue to coordinate with NMFS to evaluate acoustic impacts within sanctuaries. Increasing research efforts, such as those recommended within the National Academies' National Research Council's recent reports on the impacts of noise on marine mammals, will assist NOAA in continuing to evaluate the agency's management responses to this issue.

NOAA's National Marine Fisheries Service has a stranding response team that coordinates with sanctuary staff as appropriate on standings, including those that may be related to acoustic exposure. Additionally, the large whale disentanglement team network that is proposed for development would be able to assist in such an event.

Comment: Acoustic impacts should be divided into two categories and addressed in sanctuary management plans: impacts of noise on birds and pinnipeds above the water (e.g., from aircraft, boat traffic and MPWC), and the impacts of underwater noise (e.g., ship propulsion noise, active sonars and seismic airgun exploration) on fish, turtles, marine mammals and marine invertebrates.

Response: The physical characteristics of air-based and water-based sound sources are different (decibel levels, physics, attenuation, etc) and thus have different potential impacts on sanctuary species. Impacts on marine species from sound sources both above and below the water surface have been studied, and such data are available for management decision-making. Due to the importance of accounting for possible cumulative effects from exposure of sanctuary resources to multiple noise source types, sources are not divided into categories. Instead, each source's propagation is modeled individually and then considered additively (if necessary) to estimate total levels of ensonification over various spatial/temporal scales. Currently, NMFS addresses potential acoustic impacts on marine mammals in accordance with its mandates under the MMPA. The NMSP is increasingly interested in issues of noise impact on marine species. The NMSP will continue to work closely with NMFS and other research partners to help identify critical subject areas needing additional study and evaluation. Based on the results of these future studies, the NMSP will develop reasonable management approaches to responding to the issue. No additional changes to the EIS are needed.

Comment: There should be a permanent ban or rejection of any request of the Navy in regard to sonar testing experiments, which harm marine life, especially whales and dolphins.

Response: The U.S. Navy must consult with NOAA when its actions, including sonar testing, trigger consultation requirements under the NMSA, ESA, or MSA. Under the NMSA, this consultation is triggered when the action is likely to injure, cause the loss of, or destroy sanctuary resources. Once consultation is initiated, NOAA will recommend alternatives to the Navy to protect sanctuary resources. Please also see response to comments on Sanctuary Management: Military Exemption for more information on this issue.

Comment: Modify the DEIS to analyze suggested noise regulations.

Response: NOAA is not proposing new regulations on noise in the sanctuaries at this time. The proposed Management Plans include provisions for addressing noise and additional provisions have been included in the wildlife disturbance action plans, based on public comments. None of the proposed changes in the sanctuary regulations would result in significant increased noise impacts on wildlife in the sanctuaries. Noise has been added to the list of impacts found to be not significant in Section 5.5 of the EIS.

Comment: The sanctuaries should take a leadership role and establish noise level criteria and regulations to reduce or eliminate harmful anthropogenic noise impacts on marine life. Sanctuary management plans should allow for a time in the near future when an acceptable Ocean Noise Criteria system emerges. Until that time, precaution should inform decisions about introducing or permitting new, unusual, or loud human generated sounds into the sanctuaries. Knowing that we are already starting with a noisy acoustical environment should not stop us from moving ahead with informed regulations and a policy framework.

Response: NOAA recognizes the concern about potential negative impacts on marine mammals from a variety of acoustic disturbances (e.g., noise from ships, aircraft, research boats, and military and industrial activities). Noise can cause direct physiological damage, mask communication, or disrupt important migration, feeding or breeding behaviors. Active-sonar, specifically low frequency (100-500 Hz) and mid-frequency (2.8-3.3 kHz) active sonar used in military activities by the U.S. and other nations are of particular concern. The impact of seismic testing for geological mapping and oil and gas exploration is also unknown. The MBNMS Management Plan includes Marine Mammal, Seabird and Turtle Disturbance Action Plan Strategy MMST-6: Assess Impacts from Acoustics, which recognizes that noise levels in the sanctuaries is increasing. The Strategy includes activities to expand research and monitoring of acoustics and to continue to evaluate individual projects with the potential to disturb wildlife. NOAA's Acoustics Program is investigating all aspects of marine animal acoustic communication, hearing, and the effects of sound on behavior and hearing in protected marine species.

For additional information, please see: http://www.nmfs.noaa.gov/pr/acoustics/.

Comment: NOAA should prohibit seismic exploration for resource extraction or even for "asset surveys" and other sources of sound that may mask biological sounds critical to the survival of marine animals. Noise from seismic surveys adjacent to the sanctuaries does not conform to the sanctuary boundary, thus setting sanctuary limitations on "trans-boundary noise pollution" will require coordination and cooperation with other jurisdictions.

Response: Within the sanctuaries, NOAA prohibits exploring for, development or production of oil, gas, or minerals. NOAA works with the Department of the Interior's Minerals Management Service and other agencies to manage potential impacts to sanctuary resources from seismic exploration activities outside of the sanctuary's boundary.

Sanctuary Management

Agency Coordination

Comment: The management plans should include language regarding compatibility with the National Park Service and other agencies' management plans.

Response: As a routine matter, NOAA coordinates management efforts with managers of adjacent protected areas. Other agencies often manage resources pursuant to mandates, polices, and priorities that may be different from NOAA's National Marine Sanctuaries Program or priorities set forth in the National Marine Sanctuaries Act. NOAA will continue coordination with the National Park Service and other agencies to ensure compatibility, to the maximum extent practicable, with other agencies management plans.

Comment: The commenter disagrees with the findings under the Executive Order 13132 (which refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government) and request the background material that allowed said findings to be made.

Response: NOAA concluded the regulatory actions do not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. The ONMS consulted with a number of entities within the State which participated in development of the proposed rules, including but not limited to the California Coastal Commission, California Regional Water Quality Control Board, California Department of Fish and Game, and California Resources Agency. This lengthy, collaborative process led NOAA to conclude that the actions will not preempt State law, and to the conclusion that the actions will complement existing State authorities. NOAA also points out that section 304(b)(1) of the National Marine Sanctuaries Act (16 U.S.C. § 1434(b)(1)) provides the Governor of any affected state with the ability to object to any term of designation (or modification thereto). No term of designation certified as unacceptable by the Governor can be effective in state waters of the sanctuary.

Budget

Comment: We can't do a better job of conservation without spending some money. I hope the Sanctuary Program will fight for appropriate funding and staffing.

Response: NOAA recognizes resource limitations and necessary program and partner developments may limit implementation of all of the activities in the various management plans. NOAA will continue to work with the Department of Commerce, Office of Management and Budget, and Congress in developing supporting justifications when preparing budget submissions.

Emergency Regulations

Comment: Consistency does not exist between the three sanctuaries on the use of emergency regulations. CBNMS establishes a 120-day maximum and the others do not.

Response: NOAA will consider this issue as part of a separate rulemaking process that will propose to make conforming modifications to all sanctuary regulations to achieve an appropriate level of consistency, including the authority for emergency regulations.

Enforcement

Comment: NOAA should clarify what agency will enforce the provisions of the proposed regulations.

Response: Primary law enforcement responsibilities for NOAA regulations are assigned to the NOAA Office for Law Enforcement (OLE). An enforcement officer conducts investigations into violations of the National Marine Sanctuaries Act and regulatory prohibitions in coordination with State, local and other Federal law enforcement counterparts. In addition, a cooperative enforcement agreement was signed between NOAA and the State of California to deputize State Fish and Game Wardens and State Park Rangers as Federal Sanctuary enforcement officers. State peace officers work together with NOAA to conduct patrols and investigate potential violations. In addition to the cooperative assistance by the State, the U.S. Coast Guard conducts air and sea surveillance within sanctuaries and has broad Federal enforcement authority. NOAA OLE also works with the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, and the Federal Bureau of Investigations (FBI) to investigate violations of environmental laws within national marine sanctuaries. More information about enforcement of NOAA regulations can be found at http://www.nmfs.noaa.gov/ole/index.html.

Comment: New regulations and increasing the size of sanctuaries significantly impacts the fisheries enforcement staff of the California Department of Fish and Game. The staff work under a Joint Enforcement Agreement with NOAA. CDFG can only provide limited enforcement effort without additional staff and funding to successfully carry out expanded enforcement activities.

Response: NOAA understands the resource limitations of our partners in enforcement. However, the revised regulations and management plans make only one significant boundary modification –the addition of Davidson Seamount, which is in federal waters, to the MBNMS. This addition should not create an additional enforcement burden for the CDFG. NOAA acknowledges and appreciates the efforts of CDFG in assisting with enforcement of NMSP regulations. NOAA will continue to work with CDFG to seek additional resources to mitigate workload impacts.

Global Warming

Comment: The sanctuary management plans should address potential changes resulting from global warming, including monitoring, education and management responses. More specifically, NOAA should infuse the increasing body of scientific data, ranging from ocean acidification to rising sea temperatures and levels, as well as their causes, effects, and the huge potential ecosystem changes that they portend, into each of the appropriate action plan strategies.

Response: NOAA agrees global warming trends and impacts on ocean ecosystems have become important issues in recent years and should be addressed in the management plans. Language has been inserted into the emerging issues section of all three sanctuaries' management plans recommending several steps: a) identifying and coordinating with partners for evaluating and addressing global warming impacts on sanctuaries; b) enhancing scientific understanding of existing and future changes in temperature, rainfall and runoff, oceanographic patterns, ocean chemistry (including acidification), sea level, species composition, seasonal shifts, etc.; c) evaluating impacts of global warming on the other issues and strategies in management plans, including nonpoint runoff, beach erosion, tidepool protection, fisheries and MPAs, etc. and developing modifications as needed to these plans to reflect global warming concerns; d) implementing appropriate modifications to sanctuary facilities and operations ensuring the program minimizes its contribution to global warming; and e) developing and incorporating messages and recommendations about global warming and ocean impacts into outreach programs.

Military Exemptions

Comment: The U.S. Coast Guard requests the management plans and proposed regulations for each sanctuary include language exempting the U.S. Coast Guard and Department of Defense activities from all prohibitions, similar to provisions applicable to the Northwestern Hawaiian Islands Marine National Monument.

Response: Each of the regulations for the national marine sanctuaries include specific exceptions for activities carried out by the Department of Defense (DOD). In the sanctuaries, activities carried by the DOD prior to date of designation are generally exempted from the prohibitions contained in the regulations. Additional activities initiated after designation can be exempted after consultation between NOAA and DOD. The referenced exemption for the Northwestern Hawaiian Islands Marine National Monument were crafted to address the unique circumstances surrounding that area including its remote location, its large size, and the strategic military importance of the area as identified by DOD during interagency consultation on the regulations for the area. Nevertheless, the Proclamation establishing the Monument (Proclamation 8031) and the implementing regulations promulgated by NOAA and the Fish and Wildlife Service (50 C.F.R. Part 404) require the Armed Forces (including the Coast Guard) to carry out all activities in a manner that avoids,

to the extent practicable and consistent with operational requirements, adverse impacts on monument resources and qualities. In addition, in the event of a threatened or actual destruction of, loss of, or injury to a Monument resource or quality resulting from an incident, including but not limited to spills or groundings, caused by a component of the Department of Defense or the Coast Guard, the cognizant component shall promptly coordinate with the Secretaries of Commerce and the Interior for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the monument resource or quality. See 50 C.F.R. 404.9 (c) and (d).

Maritime Heritage

Comment: The GFNMS has significant maritime heritage resources. GFNMS needs to more explicitly address the individual and cumulative significance of shipwrecks, and the importance of revisiting the recommendations contained in the Submerged Cultural Resource Assessment of 1989 by doing a basic assessment and site survey. The program should consider a joint initiative with the Office of Exploration, and partner with NPS in regard to enhancing the interpretation of the submerged maritime heritage in the parks, and at the San Francisco Maritime NHP.

Response: NOAA has added additional discussion of the individual and cumulative significance of the shipwrecks in the GFNMS Management Plan's Maritime Heritage Cross-cutting Action Plan. Basic assessment and site survey of significant wrecks has been added as well as the need for establishing a baseline for further monitoring to ensure their protection. Additional information has also been added to the Gulf of the Farallones Administration Action Plan to include restoration, education, outreach, and exhibits about the historic Fort Point Coast Guard Station. The NMSP has also added NOAA's Office of Exploration and the National Park Service as partners.

Performance Measures

Comments: NOAA should review its proposals for measuring implementation success of each action plan to ensure that all desired outcomes and their corollary performance measures have been identified. For example, it appears that only a portion of the Monterey Bay Water Quality Program Action Plans has been covered.

Response: NOAA considers performance measurement an essential component of management responsibilities. All Action Plans have performance measures selected for their ability to indicate overall performance of the action plans or strategies. NOAA limited the number of performance measures to correlate with the resources available for program review.

Research and Monitoring

Comment: NOAA should include Coastal Commission and other Resource Agency partners in the execution of the research and monitoring strategies.

Response: NOAA considers the Coastal Commission a critical partner in management of sanctuary resources and will include the Coastal Commission in research and monitoring activities. California Resources Agency staff (including Coastal Commission and California Department of Fish and Game) are also members of the Sanctuary Advisory Councils and MBNMS Research Activity Panel helping guide implementation of research activity in the sanctuaries.

Permitting

Comment: It is unclear from the proposed language changes if currently authorized activities will still be permitted in the future. How would the proposed regulation changes impact currently permitted activities and similar future activities?

Response: Individuals with currently effective permits will be allowed to continue permitted activities under the terms and conditions of their permit. The new regulations will apply for new permits issued (and applications received) on or after the effective date of the new regulations.

Resource Protection

Comment: Please vacate failed plans to create so called marine sanctuaries off California. All Management Plans should be withdrawn because they are discriminatory, out of touch, abusive; some of the animals the plan intends to protect are destructive over-populated pests such as the sea lion. Entire U.S. industries and companies will be adversely affected by this Plan; jobs will be lost; and taxpayers will be denied access to U.S. waterways.

Response: The JMPR process updates existing management plans for existing marine sanctuaries; it does not create new sanctuaries. The proposed management plans are revisions to existing management plans and were developed with input from stakeholders, local and state agencies, and the general public. The commenter does not specify which parts of the management plans are flawed. Adverse impacts, including socioeconomic effects, associated with implementing the JMPR update are addressed in the FEIS. No significant impacts on businesses or jobs were identified in the FEIS. Taxpayers will not be denied access to the marine sanctuaries, although specific types of activities that pose risk of harm to sanctuary resources would be prohibited or restricted.

Comment: The Sanctuary should have very limited alteration and remain in its natural current state.

Response: The intent of the sanctuary management plans and regulations is to protect sanctuary resources. Existing sanctuary regulations include prohibitions on numerous activities that would alter or otherwise impact sanctuary resources. The proposed changes to regulations and management plans are consistent with the intent to limit adverse effects on sanctuary resources.

Sanctuary Visibility

Comment: NOAA's National Marine Sanctuary Program needs to be more visible in the public eye including additional exposure on TV and radio.

Response: Please see the education, outreach and constituent building components of the site specific and cross-cutting action plans (contained within each Sanctuary's Management Plan), which include strategies to increase public education including the use of various forms of media.

Sanctuary Advisory Councils and Management Plan Review Process

Comment: There are problems in the structure and representation of the MBNMS Sanctuary Advisory Council and therefore the MBNMS Management Plan does not represent the public's priorities.

Response: The Monterey Bay National Marine Sanctuary Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local and state governmental jurisdictions. The Sanctuary Advisory Council adequately represents the public and specific stakeholders. In the past several years, the NMSP has worked with the Association of Monterey Bay Area Governments to make improvements to the selection process for councilmembers. People who apply for seats are reviewed

by a subgroup of the existing Sanctuary Advisory Council, are appointed competitively by NOAA, and serve three-year terms after which they are readvertised for selection. Local and state governmental jurisdiction representatives are chosen by their respective agencies. The recruitment of Sanctuary Advisory Council members is widely advertised throughout the state and the public is welcomed to comment or provide letters of support for applicants.

Furthermore, NOAA has taken extraordinary steps, above and beyond the advisory council, to repeatedly and regularly involve the general public in addressing the priority issues in the Management Plan. The process used by the NMSP is a very inclusive public process. Development of the MBNMS Management Plan included more than 120 public meetings including Advisory Council, Working Group, Scoping and Public Comment meetings. 223 individuals participated in working groups to develop the action plans for the MBNMS and the NMSP received over 30,000 comments during the review of the management plans.

Comment: NOAA should have issued the various draft management plans for public comment and following the inclusion of those comments released proposed changes to both the designation documents and regulations.

Response: The review of the management plans began in 2001, with scoping meetings requesting comments on potential changes to the management plans, regulations, and designation documents. In 2003, the Sanctuary Advisory Councils for each Sanctuary held public meetings taking comment from the public on the action plans, which make up the substantive programmatic direction in the management plan. This process occurred prior to release of any regulations and the public was encouraged to provide comments on any program including regulations and designation documents. After consideration of the comments received from the public and Sanctuary Advisory Councils, NOAA's release of the proposed rules and management plans in 2006 provided over 90 days for public comment.

Seagrass Protection

Anchoring

Comment: Eel grass bed protections should be strengthened to preclude both commercial and recreational uses that would further disturb these essential resources. Measures should include prohibitions of anchoring or mooring in the beds and prohibitions against shallow-draft motor boats that disturb root systems.

Response: The regulation of anchoring in seagrass zones in Tomales Bay is designed to prevent damage from vessel anchors. NOAA will monitor the seagrass protection zones for effectiveness and use a model of adaptive management to make appropriate adjustments to the zones. The use of shallow-draft motor boats will be monitored. A re-evaluation of the zones will include an assessment of all the effects of vessels on seagrass.

Comment: The creation of the no-anchor zones in Tomales Bay, though well intended, is ill considered because it prohibits an activity that never occurs, or only occurs to a truly insignificant and immaterial extent. At the very least, NOAA should consider putting a "sunset" provision on this requirement, so that it can be reevaluated to determine its need.

Response: NOAA has added language about the biology of seagrass and the effects from anchoring has been added to the FEIS to document the need for the proposed prohibition. Seagrass, including eelgrass, can grow in water depths up to 20 feet in Tomales Bay. The location and extent of the no-anchoring zones are based upon seagrass data provided by California Department of Fish and Game from 1992, 2000, 2001 and

2002. The no-anchoring seagrass protection zones include some areas where seagrass coverage is extensive and other areas where coverage is discontinuous and patchy. All zones extend to the shoreward MHWL boundary.

Vessels have been observed through California department of Fish and Game aerial photographs within current and historic eelgrass beds throughout Tomales Bay. The State regulation that states no eel grass, surf grass or sea palm may be cut or disturbed does not specifically prohibit anchoring. The proposed seagrass protection zone regulation is intended to complement existing State regulation. These zones would be more enforceable and facilitate specific types of vessel usage. The seagrass protection zones would prevent the risk of harm to seagrass beds before the damage occur. The regulation of anchoring in seagrass zones in Tomales Bay is designed to prevent damage from vessel anchors. NOAA will monitor the seagrass protection zones for effectiveness and use a model of adaptive management to make appropriate adjustments to the zones. The use of shallow-draft motor boats will be monitored. A re-evaluation of the zones will include an assessment of all the effects of vessels on seagrass.

Comment: Is there any evidence that any anchoring activities in Tomales Bay have caused any damage to the seagrass? If so, what is the relative impact of anchoring activities that would continue to be permitted as compared to the remote possibility of recreational boat anchoring? In the GFNMS MP and DEIS, the only basis was reference to a discussion at a meeting (DEIS page 2-17) of a technical committee formed to address boating impacts in Tomales Bay.

Response: Additional background information has been included in the FEIS regarding the number and types of vessels that use and anchor in Tomales Bay. NOAA has also added information about the effects of anchoring on seagrass. Although there have been no studies on the damage to seagrass beds from anchoring in Tomales Bay, studies in California, studies on similar types of seagrass in coastal Florida, and on seagrasses in other parts of the world have found that boat propellers, anchors and mooring lines can damage the underground root and rhizome system of seagrass (Milazzo, M., et al, 2002; Walker et al., 1989; Kentworthy et al, 2006).

Comment: What is the history of enforcement actions under the current regulations that would prevent anchoring in seagrass beds (Cal. Admin. Code Section 30.10) which has been in effect since 1984? Have law-enforcement organizations in Tomales Bay been asked for reports of any problems in enforcing this law? Why not direct the law enforcement agencies to create a high priority for enforcement of this law?

Response: Establishing specific seagrass zones and demarcating these zones with buoys would create an enforceable regulation that is easy for boaters to follow and understand, and is likely to result in protection of the seagrass beds. The State regulation on disturbing or cutting eel grass, surf grass, or sea palm does not specifically prohibit anchoring. As such, the seagrass protection zone regulation is intended to complement existing State regulation. These zones are more enforceable and facilitate specific types of vessel usage. The seagrass protection zones would prevent the risk of harm to seagrass beds before the damage occurs.

Comment: The DEIS states that the Tomales Bay Vessel Management Plan, currently being developed, would provide "positive effects on marine transportation and would offset any minor adverse effects of the seagrass anchoring prohibition," and that the implementation of the boating Management Plan would result in a "slight net positive cumulative effect on marine transportation." (DEIS p. 3-167, 3-184) How was this plan that is in development evaluated for its positive effect on marine transportation, and where can the public obtain a copy of the draft plan so that they can evaluate the "net positive cumulative effect"?

Response: Additional information about the Tomales Bay Vessel Management Plan has been added to the FEIS (see Section 3.10.8). This plan is part of a multi-agency effort to streamline future vessel-related management activities. Only approximately 22% of Tomales Bay is currently being zoned as a no-anchor area. The seagrass protection zones avoid navigation channels and other shallow, sheltered areas of Tomales Bay are still available for anchoring; including areas near boat launch ramps, marinas, and docks. Copies of the plan can be obtained from NOAA or by visiting the GFNMS website at: http://farallones.noaa.gov/ecosystemprotection/protect_tomalesbay.html.

Comment: What consideration has been given to the health and safety implications of requiring vessels to anchor in less protected areas than where they currently anchor?

Response: NOAA considered and identified safe anchorages when designing the proposed seagrass protection zones. Shallow, sheltered areas of Tomales Bay would still be available for anchoring, including areas near boat launch ramps, marinas, and docks. Also, see additional text in FEIS Section 3.10.8.

Comment: In order that the public can fairly evaluate the true impact of the no-anchoring plan, there should be temporary buoy fields set up marking the proposed zones. Why not consider simply referring to the area within 2-fathom (12 feet) line, which follows the actual contours of the bottom and is clearly shown on the nautical charts in both paper and electronic form?

Response: NOAA will mark the seagrass zones with buoys to provide clear direction to boaters. The location and area of the zones were identified based on California Department of Fish and Game seagrass surveys in 1992, 2000, 2001, and 2002. NOAA considered using depth contours to as the boundaries for the seagrass zones, but has determined depth contours to be unreliable as permanent boundaries and thus difficult to enforce.

Comment: Why do the no-anchoring zones extend into and encroach on private property? The proposed Zone 3 of Tomales Bay covering the Marshall area extends easterly to the mean high water line. That is across the boundary of the typical Marshall property line, which extends into the Bay to the mean low tide line, typically by referent to Tide Land Survey No. 145 Marin County.

Response: These submerged lands are part of the GFNMS and are subject to management actions of the sanctuary.

Comment: The proposed GFNMS prohibition of anchoring in designated seagrass protection zones in Tomales Bay should provide an exemption for research activities.

Response: Rather than provide a blanket exemption for research activities, NOAA has decided to consider allowing research activities on a case-by-case basis through its permitting system. The GFNMS Superintendent has the authority to issue permits for activities that further research or monitoring related to Sanctuary resources and qualities. This will allow NOAA to compare the relative benefits of the research with the impacts of the activity and to include special conditions to prevent harm to Sanctuary resources. The permitting system also allows NOAA to track research activities on a national level through a permitting database and on a regional level through the SIMoN website as part of an outreach tool to the public and the science community.

Taking of Marine Mammals, Seabirds and Turtles

Disturbance by Vessels

Comment: The MBNMS should prohibit vessels from coming within a quarter mile of areas where seabirds and mammals aggregate for feeding and/or breeding, especially those areas not protected under the State's Marine Life Protection Act.

Response: Preventing disturbance to marine mammals and seabirds is a primary focus of both the sanctuary regulations and its education and outreach programs. Sanctuary wildlife disturbance regulations complement the MMPA, ESA and MBTA by prohibiting unauthorized take of marine mammals and seabirds. "Take" is defined in §922.3 of the regulations for the National Marine Sanctuary Program to include operating a vessel in a way that "results in the disturbance or molestation of any marine mammal, sea turtle or seabird." The NMSP believes this approach of prohibiting unauthorized take wherever it occurs is a better approach with regard to general vessel traffic and is more functional than fixed distance regulations.

Disturbance by Overflights

Comment: The regulations for the MBNMS should prohibit aircraft from flying below 1000 feet above a state designated Area of Special Biological Significance (ASBS),

Response: The existing overflight zones in the MBNMS are focused on areas where seabirds and marine mammals are likely to be flushed by low flying aircraft. They overlap with the ASBSs off of Ano Nuevo and Big Sur. The air space around the Monterey Peninsula contains flight paths for the Monterey Peninsula Airport and overflight restrictions are not practicable.

Comment: I have observed aircraft flying low over Ano Nuevo Island in violation of Sanctuary regulations. It is my understanding that pilots are not informed about overflight restrictions in the Sanctuary. NOAA should work with the Federal Aviation Administration (FAA) to ensure that pilots are aware of federal regulations.

Response: NOAA has an outreach program to pilots to help ensure that they are aware of the restrictions. The NOAA Office for Law Enforcement routinely contacts pilots when aircraft are identified flying below 1000 feet within restricted overflight zones of the Sanctuary. However, the overflight restrictions in Sanctuary regulations are not accurately reflected on FAA aeronautical charts. NOAA will continue its efforts to work with FAA to update the charts.

Comment: GFNMS should change its overflight regulation to be consistent with MBNMS. Specifically, GFNMS should adopt the prohibition of flying motorized aircraft at less than 1000 feet, and remove the additional clause of disturbing seabirds or marine mammals.

Response: NOAA is not changing the overflight regulation for GFNMS or MBNMS at this time. NOAA is in conversations with the Federal Aviation Administration regarding the regulation of aircraft operations over national marine sanctuaries and may make modifications as part of a separate regulatory process if determined appropriate following those conversation. The public will be provided with an opportunity to provide input into any such process.

Lighting

Comment: Given the high seabird density, NOAA should further consider the potential effects of high intensity lights on sensitive species, including night foraging seabirds, within the GFNMS and CBNMS

Management Plans. The use of high powered, high intensity lights (e.g., squid fishing vessels) may pose a risk to sensitive resources.

Response: Currently the Market Squid Fishery Management Plan adopted in 2004 by the California Fish and Game Commission established a seabird closure restricting the use of attracting lights for commercial purposes in any waters of the GFNMS.

Regulations

Comment: In relation to the proposed prohibition on the "take" of marine mammals, birds and sea turtles, the NMSP should not grant itself expanded authority to impose severe criminal and civil penalties that far exceed those penalties as provided in the MMPA, ESA and Migratory Bird Treaty Act.

Response: The National Marine Sanctuaries Act establishes a limit on the maximum civil penalties (there are essentially no criminal penalties) that can be charged for violations of Sanctuary regulations and law. Currently, that limit is set at $130,000 per day for any continuing violation. However, the act does not require application of the maximum allowable penalty in any enforcement case. The amount of any penalty is determined by the nature of a violation and a variety of aggravating/mitigating circumstances, such as gravity of the violation, prior violations, harm to protected resources, value of protected resources, violator's conduct, and degree of cooperation. NOAA prosecutors scale penalties to fit the nature of a particular violation, and courts oversee penalty settlements to ensure penalties are appropriate.

While marine mammals, seabirds and endangered and threatened species are protected under other legislation, NOAA believes the higher penalties under the NMSA will provide a stronger deterrent.

Comment: The NMSP should continue to support research into the causes of endangerment of the elusive leatherback sea turtle and to try to create further protection. They're in a 90 percent decline over the last 30 years.

Response: Sanctuary regulations prohibit the unauthorized take of leatherback sea turtles. Additionally, the MBNMS management plan has strategies in its Wildlife Disturbance Action Plan to address disturbance to turtles from harassment and marine debris by working with NOAA's Office of Protected Resources. The Plan also addresses the need for research to more fully understand the life history characteristics of the turtles and the threats that they face. NOAA will continue its efforts to better understand and protect this endangered species.

White Shark Attraction

Prohibition

Comment: The proposed GFNMS prohibition on attracting white sharks should include an exemption for chumming conducted in the course of lawful fishing. Also, the Designation Document language, which allows the regulation of "attracting or approaching any animal" (page B-83), must be clarified to be specific to white sharks and not include chumming for lawful fishing.

Response: The prohibition against attracting white sharks is intended to address harassment and disturbance related to human interaction from shark diving programs known generally as adventure tourism, or from recreational visitors who may opportunistically approach a white shark after a feeding event. NOAA concluded these activities can degrade the natural environment, impacting the species as a whole, as well as individual sharks that may be impacted from repeated encounters with humans and boats. A similar

prohibition against attracting great white sharks was promulgated for the MBNMS in 1996 and has not affected lawful fishing activities.

The terms of designation for national marine sanctuaries (as defined in the NMSA (16 U.S.C. 1434(a)(4))) list the types of activities that they may be subject to regulation under sanctuary. Listing does not necessarily mean that a type of activity will be regulated. If a type of activity is not listed, it may not be regulated, except on an emergency basis, unless the terms of designation are amended to include the type of activity. NOAA must follow the same procedures by which the original designation was made to modify the terms of designation of any national marine sanctuary. In this case, the authority to regulate attraction or approach of any animal is only being applied with respect to white sharks. No regulations are being considered regarding attracting or approaching other animals at this time. Retaining the authority in the terms of designation to regulate attracting or approaching other animals will maintain flexibility to respond in the future, as necessary, to similar resource issues involving the attraction of other animals. It is important to note that, although it would not be necessary to amend the terms of designation to promulgate such regulations, NOAA would still be required to engage in a rulemaking process before any additional regulations could be issued. This would include, among other things, consultations with other governmental entities, public notice and comment of any proposed action, and compliance with all applicable laws such as the National Environmental Policy Act (NEPA).

Comment: The proposed GFNMS prohibition on attracting white sharks should be clarified to apply specifically to intentional approaching.

Response: The prohibition against approaching a white shark within the GFNMS is intended to apply to vessels that approach a white shark once it has been identified in the water. A white shark feeding event generally takes place at or near the surface of the water, and can be easily spotted. The regulation is not intended to apply to persons who are already near a white shark when it surfaces but would prohibit them from approaching closer.

Comment: Ecotourism should be allowed to continue at South East Farallon Island with educational permits. NOAA should establish a permit process to avoid curtailing traditional, legitimate, and first-hand education that does not require a Ph.D. in order to participate.

Response: NOAA will consider applications to conduct educational and research activities that would violate the regulation on attracting white sharks in the GFNMS on a case-by-case basis and will use the guidelines developed and approved by the SAC to help draft permit conditions. The Management Plan outlines the approaches that will be taken through the Wildlife Disturbance Action Plan, Strategy WD-5 and the Conservation Science Action Plan CS-1. In 2006, NOAA launched a pilot research program to assess current white shark viewing practices by adventure tourism operators, private boaters and researchers, which will also be used as a guide to developing permit conditions. NOAA will continue to conduct research to guide permit conditions for new white shark viewing and assess effectiveness of new regulations.

Comment: White shark attraction should be prohibited in all sites.

Response: The regulations would prohibit white shark attraction throughout MBNMS and GFNMS. NOAA has determined that at this time there is no need for a regulation prohibiting white shark attraction within CBNMS. CBNMS is entirely offshore and, unlike the Gulf of the Farallones, there are no seal or sea lion haul outs to attract sharks. Without aggregations of seals and sea lions to prey on, there is no draw for sharks to congregate or patrol within CBNMS.