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15 CFR Chapter IX, Subchapters A and B
and Part 944

Monterey Bay National Marine Sanctuary
Regulations; Final Rule

DEPARTMENT OF COMMERCE

15 CFR Chapter IX, Subchapter A and B and Part 944

[Docket No. 900122-2020]

RIN 0648-AC63

Monterey Bay National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; National Marine Sanctuary Designation; final rule; and summary of final management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), by the Designation Document contained in this document, and as required by section 205(a)(3) of Public Law 100-627, designates an approximately 4,024 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay off the coast of central California as the Monterey Bay National Marine Sanctuary. This document publishes the Designation Document for the Sanctuary and summarizes the final management plan for it. The final management plan details the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the Sanctuary.

Further, NOAA issues final regulations to implement the designation by regulating activities affecting the Sanctuary consistent with the provisions of the Designation Document. The intended effect of these regulations is to protect the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary.

EFFECTIVE DATES: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act, Congress and the Governor of the State of California have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the designation and regulations before they take effect. After forty-five days, the designation (and any of its terms not disapproved by Congress through enactment of a joint resolution) and regulations automatically become final and take effect. Further, if the Governor of the State of California certifies within the forty-five-day period to the

Secretary of Commerce that the designation or any of its terms is unacceptable, the designation or the unacceptable terms cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State. If the Secretary considers that any disapproval will affect the designation in a manner that the goals and objectives of the Sanctuary cannot be fulfilled, the Secretary may withdraw the entire designation. A document announcing the effective date will be published in the **Federal Register**.

ADDRESSES: Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared for the designation are available upon request to the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 202/606-4126.

SUPPLEMENTARY INFORMATION:**I. Background**

Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (the "Act" or "MPRSA"), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if, as required by section 303 of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with Congress, a variety of specified officials, and other interested persons, that the designation will fulfill the purposes and policies of the Act (set forth in section 301(b) (16 U.S.C. 1431(b)) and:

(1) The area proposed for designation is of special national significance due to its resource or human-use values;

(2) Existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research and public education;

(3) Designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and

(4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Before the Secretary may designate an area as a national marine sanctuary, section 303 (16 U.S.C. 1433) requires him or her to make the above described findings and section 304 (16 U.S.C. 1434),

setting forth the procedures for designation, requires him or her to publish in the **Federal Register** regulations implementing the designation and to advise the public of the availability of the FEIS/MP.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act has been delegated to the Under Secretary of Commerce for Oceans and Atmosphere by DOC Organization Order 10-15, section 3.01(z), January 11, 1988. The authority to administer the other provisions of the Act has been redelegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50, September 21, 1983, as amended.

The State of California nominated the Monterey Bay area in 1977, along with nine other offshore marine areas, for consideration for designation as national marine sanctuaries. In response to these nominations, NOAA selected the Channel Islands, the Point Reyes-Farallon Islands, and the Monterey Bay areas for further consideration. In December 1978, NOAA released an issue paper on these three sites, presenting several boundary and regulatory options for each site. Public hearings were held and, based on the responses, NOAA, on August 10, 1979, declared all three sites as active candidates for designation as national marine sanctuaries.

On September 21, 1980, the Channel Islands National Marine Sanctuary was designated and on January 16, 1981, the Point Reyes-Farallon Islands National Marine Sanctuary (later renamed the Gulf of the Farallones National Marine Sanctuary) was designated. On December 14, 1983 (see 48 FR 56253), NOAA removed the Monterey Bay area from the list of active candidates.

On November 7, 1988, Public Law 100-627, which amends and authorizes appropriations for title III of the Act, was signed into law. Section 205(a)(3) of Public Law 100-627 directs that the Secretary of Commerce designate the Monterey Bay National Marine Sanctuary.

On January 6, 1989, NOAA announced (54 FR 448) that the Monterey Bay area had again become an active candidate for designation as a national marine sanctuary. On January 25 and 26, 1989, NOAA sponsored two public scoping meetings in Monterey and Santa Cruz to solicit public comment on the scope and significance of issues involved in designating the Sanctuary. The public response was extremely favorable to proceeding with the evaluation.

On August 3, 1990 NOAA published a proposed Designation Document and proposed implementing regulations and announced the availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) (55 FR 86). Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/MP were held on September 12, 1990 in Monterey; on September 13, 1990 in Santa Cruz; and on September 14, 1990 in Half Moon Bay, California. All comments received by NOAA in response to the Federal Register notice and at the public hearings were considered and, where appropriate, were incorporated. A summary of the significant comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow. The comments are both presented and responded to in greater detail in appendix F of the FEIS/MP.

(1) *Comment:* NOAA should extend its preferred Boundary Alternative 2 both north and south and choose Boundary Alternative 5. Boundary Alternative 5 would protect critical nesting and migratory paths between Monterey and San Mateo County coasts, create a continuous protected management regime between the Gulf of the Farallones National Marine Sanctuary and the proposed Monterey Bay National Marine Sanctuary, provide a greater buffer to sensitive areas such as Año Nuevo and the Fitzgerald Marine Reserve, and protect a greater area of the southern California sea otter range and habitat.

Response: NOAA agrees. The FEIS/MP-preferred Boundary Alternative 5 incorporates a north and south extension of the DEIS/MP-preferred Boundary Alternative 2. Boundary Alternative 5 received the vast majority of support from the public during the public comment period. Boundary Alternative 5 has been chosen as preferred because it integrates important coastal, nearshore and deep-ocean canyon resource zones under one management regime. These zones include the Monterey submarine canyon—the focal point of the Sanctuary; Monterey Bay itself; the Big Sur and San Mateo coastal area, including Año Nuevo and the Fitzgerald Marine Reserve; the adjacent continental shelf, slope and rise; certain highly productive shoreline and intertidal areas, such as Pescadero Marsh and Elkhorn Slough; and the deep ocean environments of the Ascension, Monterey Bay, Big Sur and Farthington Canyon complexes.

The boundary expansion excludes a small area of approximately 71 square nautical miles off the north coast of San Mateo County and the City and County of San Francisco. The excluded area encompasses the anticipated discharge plume of the combined sewer overflow component of the City and County of San Francisco's sewage treatment program, the shipping channel providing access to and from San Francisco Bay, and the Golden Gate dredged material disposal site associated with this channel. NOAA has determined that the nature and level of these activities are not appropriate for inclusion within a national marine sanctuary. By excluding this small area from the Sanctuary, NOAA will be able to focus Sanctuary management on the long-term protection of other areas that contain nationally significant resources and qualities and are less heavily impacted by human activity. By excluding the anticipated discharge plume of the combined sewer overflow from the Sanctuary, a buffer zone has been created protecting Sanctuary resources and qualities from the discharge.

The boundary expansion not only encompasses additional resources but also will provide enhanced protection from potential human threats to the north and south. For example, to the north, off of the San Mateo coast, potential new dredged material disposal and oil and gas development activities are under consideration within the Sanctuary boundary. To the south, the pristine area of the Big Sur coast and sea otter habitat would be encompassed and protected by the Sanctuary regime.

(2) *Comment:* Oil and gas development within the Sanctuary should either be prohibited or regulated. Concerns range from impacts of potential toxic wastes released from oil-drilling platforms, reduced tourism due to diminished scenic views, lack of adequate emergency oil response capabilities, to catastrophic blow outs.

Response: NOAA agrees. The regulations prohibit exploring for, developing or producing oil or gas throughout the entire Sanctuary. Such economic development and construction of man-made structures would severely disrupt the natural and aesthetic qualities of the area and be inconsistent with the purposes of the Sanctuary. Although certain man-made structures may be permissible in the future for limited purposes such as research or natural resource protection, the threats from oil and gas activities to Sanctuary resources and qualities warrant prohibition. Threats include not only catastrophic events such as oil spills

associated with blow-outs, rupture of pipelines or loading of tankers but also long-term chronic events such as discharge of drilling fluids, cuttings and air emissions. Offshore oil and gas activities have never been conducted in the Monterey Bay area. The area would suffer aesthetic disturbance ranging from the presence of offshore rig structures to building of shore facilities and the necessary transportation of personnel and equipment to and from the offshore rigs.

(3) *Comment:* NOAA should either regulate or prohibit vessel traffic within the Sanctuary area. Specifically:

(1) Traffic should be prohibited unless vessels are bound for a destination within the Sanctuary;

(2) Size of vessels to be regulated or prohibited from the Sanctuary area should be clarified;

(3) Vessels should either be routed offshore and avoid the Sanctuary area completely, or traffic lanes should be developed along the Sanctuary edges; and

(4) Vessels traveling along the Sanctuary boundary should be limited to specific port access routes and shipping lanes established by the United States Coast Guard (USCG) and NOAA.

Response: The Designation Document lists vessel operations as being subject to Sanctuary regulation. However, upon designation only the operation of personal water craft is being regulated as part of the Sanctuary regime (see comment responses 18 and 19). There are no Sanctuary regulations planned at this time for the traffic regulation of other vessels. NOAA is currently working with the USCG, the primary source of vessel traffic regulation, to determine the need for additional measures to ensure protection of Sanctuary resources and qualities from vessel traffic. These consultations aim to determine which resources are most at risk, which vessel traffic practices are most threatening and which regulations or restrictions would be most appropriate to alleviate potential threats, including those, if any, from foreign vessels. Because the disposal of dredged material outside the Sanctuary (see Comment/Response (9) below) will necessitate the transport of these materials through the Sanctuary, NOAA will also work closely with the U.S. Army Corps of Engineers (COE) and U.S. Environmental Protection Agency (EPA) on such transport activities.

These ongoing consultations build upon recent Federal and State legislation (since publication of the DEIS/MP in August 1990) that further protects Sanctuary resources and

qualities from vessel traffic. Specifically, the National Oil Pollution Act of 1990 establishes double hull requirements for tank vessels. Most tank vessels over 5,000 gross tons will be required to have double hulls by 2010, while vessels under 5,000 gross tons will be required to have a double hull or a double containment system by 2015. All newly constructed tankers must contain a double hull (or double containment system if under 5,000 gross tons), while existing vessels are phased out over a period of years. In addition, SB 2040, California's Oil Spill Prevention and Response Act, requires numerous prevention as well as mitigation measures aimed at protecting marine resources from oil spills particularly from tankers.

Vessel traffic separation zones off of San Francisco, implemented by the USCG, also help protect Sanctuary resources and qualities.

If it appears that regulation of vessel traffic as part of the Sanctuary regime may be necessary, NOAA will make such determination in consultation with the USCG, COE, EPA, other affected Federal and State agencies and the International Maritime Organization (IMO) through the USCG. If it is determined that such regulation is necessary, NOAA will develop the necessary regulations, also in coordination with those agencies. Coordination among agencies is intended to focus ongoing efforts to provide adequate protection to the Sanctuary and to emphasize the sensitivity of Sanctuary resources and qualities.

(4) *Comment:* If spills cannot be prevented entirely, a contingency plan should exist for emergency response and cleanup. To facilitate response action, NOAA should work with, and build upon, the efforts of other organizations and agencies already developing plans for the area.

Response: NOAA agrees and will work with, and build upon, the efforts of others. The FEIS/MP identifies existing oil spill contingency plans and efforts in the Monterey Bay area. The Monterey Bay National Marine Sanctuary requires its own contingency plan to ensure that resources are protected during events that threaten the environment. A prototype sanctuary contingency plan is almost complete, and will be tested at the Channel Islands National Marine Sanctuary. Once implementation experience has been gained, the plan will be adapted to other sanctuary sites, including Monterey Bay.

(5) *Comment:* Agreements should be established between various local,

regional, State, and Federal agencies to ensure adequate cleanup response.

Response: Under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, the USCG serves as the Federal on-scene coordinator to organize all containment, removal and disposal efforts, and resources during a spill event. If a spill occurs, NOAA will take an active role, to the extent allowable, to participate, coordinate, and actively protect natural resources. During the planning phase, NOAA will work with the existing response mechanism, and will cooperate with local government, industry, organizations and interested individuals to implement a comprehensive contingency plan. A top priority for the Sanctuary Manager will be to meet with those involved with contingency planning to coordinate Sanctuary roles and responsibilities during an emergency response situation.

(6) *Comment:* Depositing or discharging from any location within the boundary of the Sanctuary or from beyond the boundary of the Sanctuary should be prohibited. The regulation of discharges to improve water quality is a significant concern.

Response: The regulations prohibit depositing or discharging most material and other matter from any location within the boundary of the Sanctuary, and from beyond the boundary of the Sanctuary if such matter subsequently enters the Sanctuary and injures resources or qualities.

NOAA has entered into a Memorandum of Agreement (MOA) with the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses (i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section 13377 of the California Water Code and (ii) Waste Discharge Requirements issued by the State of California under section 13263 of the California Water Code. The MOA specifies how the Sanctuary certification process for existing permits and review process for new or revised (including renewal) permits will be administered within State waters within the Sanctuary in coordination with the State permit program. The MOA also addresses integration and coordination of research and monitoring efforts and the development of a comprehensive water quality protection program for the Sanctuary.

(7) *Comment:* NOAA should clarify in the FEIS/MP what harbors will be excluded and why.

Response: The FEIS/MP includes a specific section on harbors. Pillar Point, Santa Cruz, Moss Landing (except waters, and submerged lands thereunder, of Elkhorn Slough east of the U.S. Highway One bridge to the boundary of the Elkhorn Slough National Estuarine Research Reserve), and Monterey harbors shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines are not part of the Sanctuary. NOAA excluded these harbor areas from the Sanctuary because they do not possess resources and qualities warranting Sanctuary protection.

(8) *Comment:* Dredging is essential to maintaining viable working harbors. However, because of potential degradation to the environment, dredging should be prohibited within the Sanctuary. NOAA should clearly state how regulations will affect current dredging activities in the Sanctuary.

Response: Most harbor areas do not lie within the Sanctuary (see Comment/Response (7) above) and therefore are not affected by the Sanctuary dredging prohibitions. In addition, existing activities relating to the maintenance of the harbors have been exempted from Sanctuary regulation. NOAA will work closely with COE and EPA to ensure that Sanctuary resources and qualities are protected, while allowing essential dredging activities to be conducted.

(9) *Comment:* Ocean dumping is a threat to the marine environment and should be entirely prohibited within the Sanctuary area. NOAA should also specify whether Federally authorized dredged material disposal sites SF-12 and SF-14 will remain available for future dredging projects that would otherwise qualify for State and Federal permits.

Response: The Sanctuary regulations prohibit the designation and use of any new ocean dredged material disposal sites within the Sanctuary. The ocean disposal of dredged material is subject to stringent regulation under title I of the MPRSA. NOAA will work closely with COE and EPA to ensure Sanctuary resources and qualities are protected from future dredged material disposal activities.

With regard to the COE dredged material disposal activities: (a) Those activities located within the Sanctuary boundary will continue to be regulated under section 103 of the MPRSA and section 404 of the Clean Water Act. These activities have previously undergone intense public scrutiny and

environmental oversight by EPA. Any proposed new activities at existing sites, *i.e.*, activities not pursuant to and in compliance with an existing permit or approval, will be subject to the review process of § 944.11.

(b) Those activities located at existing sites outside the Sanctuary boundary and at the authorized disposal site that will result from the disposal site study underway on the effective date of Sanctuary designation will be regulated primarily under section 103 of the MPRSA and section 404 of the Clean Water Act and will not be regulated under the Sanctuary regulatory regime. Because of the intensive environmental evaluation of disposal sites and disposal activities by COE and EPA, NOAA does not anticipate that any site designated for disposal of dredged material will impact Sanctuary resources. Therefore, the Sanctuary regulatory prohibition on discharges does not apply to dredged material deposited outside the Sanctuary at existing disposal sites off of the Golden Gate (see appendix IV to the regulations) and will not apply to dredged material deposited outside the Sanctuary at the authorized disposal site that will result from the disposal site study underway on the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval. The future disposal site will be located within one of the Long-Term Management Strategy Ocean Study Areas described in appendix IV. When that site is authorized, appendix IV will be updated to incorporate its precise location. COE will coordinate closely with NOAA concerning the management of dredged material disposal activities at the new site.

(10) *Comment:* The regulatory regime for aquaculture and kelp harvesting activities within the Sanctuary remains unclear. Currently, aquaculture development is the responsibility of the California Department of Fish and Game (CDF&G), and because of this, aquaculture operations requiring seabed alterations should be excluded from Sanctuary regulations, and allowed to continue.

Response: Neither kelp harvesting nor aquaculture is being regulated as part of the Sanctuary regime upon designation. Both activities are included in the Designation Document as activities subject to future regulation should be need arise. NOAA will coordinate with the CDF&G, which is responsible for managing kelp harvesting and aquaculture operations.

(11) *Comment:* The Sanctuary should include all waters in the Elkhorn Slough

National Estuarine Research Reserve (ESNERR), and this relationship should be formalized. It is important to create a link between the Monterey Bay Sanctuary and the Reserve, even if this means exempting Moss Landing Harbor. An agreement should be developed between NOAA and the Moss Landing Harbor District to ensure the success of the two programs as well as coordinating the management plans and objectives of both sites.

Response: NOAA agrees it is important to coordinate closely with the ESNERR to ensure the success of both sites. The Sanctuary includes all waters, and submerged lands thereunder, in the Slough up to the ESNERR boundary. NOAA agrees that links should be fostered since missions and goals are similar. NOAA supports the exchange of information, research, education and staff expertise between the two programs. Meeting the objectives for both sites, as well as implementing the management plans, can be coordinated through the Sanctuary Advisory Committee and the ESNERR Advisory Committee. NOAA encourages Sanctuary and ESNERR staff to participate actively in this process.

However, regardless of their similarities, the two programs must remain separate because the National Estuarine Reserve Research System Program regulations prohibit the inclusion of reserves within sanctuaries (15 CFR 921.4(c)).

After consultation with the Moss Landing Harbor District, NOAA has determined the most appropriate method of linking the two sites is to exclude from the Sanctuary Moss Landing Harbor east of the Colregs. line and west of the Highway One bridge, and to include the waters of Elkhorn Slough east of the Highway One bridge to the boundary of the ESNERR with overlapping jurisdiction with the Moss Landing Harbor District over the Moss Landing Harbor.

(12) *Comment:* There is a need for landward protection and controls on nearshore development. Adequate protection of the ocean environment must include management of the adjacent coastal and upland zones. NOAA should extend its jurisdiction to include beaches, dunes, uplands, and wetland habitats adjacent to the proposed Sanctuary.

Response: NOAA agrees that protection and management of the land portion of the coastal zone is necessary for adequate protection of the ocean environment. NOAA will coordinate with existing coastal management authorities, such as COE, EPA, the California Coastal Commission, State

Water Resources and Regional Water Quality Control Boards and State Lands Commission, regarding potential land- and water-based threats and impacts to the Sanctuary. The physical boundary of this sanctuary encompasses ocean and coastal waters up to the mean high-water line. NOAA intends to protect the Sanctuary from the impacts of coastal development via its regulation of discharges or deposits from beyond the boundary of the Sanctuary that subsequently enter the Sanctuary and injure a Sanctuary resource or quality.

(13) *Comment:* NOAA should clarify whether it will limit the amount of silt in the sand used for beach nourishment. Even though the sand may be placed above the high tide mark, erosion may move silt into the Bay.

Response: NOAA will work with COE, EPA and other appropriate authorities to determine the impacts of beach nourishment programs. If it should appear that a particular project would injure Sanctuary resources or qualities, NOAA may impose terms and conditions pursuant to 15 CFR 944.10 and 944.11.

(14) *Comment:* Protection of historical and cultural resources within the Sanctuary is a significant concern. NOAA should prohibit moving, injuring, or possessing historical resources within the Sanctuary. However, Sanctuary regulations should not apply to activities permitted by the State within State waters under the Shipwreck and Historic Maritime Resources Program.

Response: NOAA agrees that it is necessary to protect and manage historical and cultural resources within the Sanctuary boundary. The regulations include a prohibition on moving, removing, possessing or injuring, or attempting to move, remove or injure these resources.

The Abandoned Shipwreck Act of 1987 gives States the title to certain abandoned shipwrecks in State waters. Under the MPRSA, the Sanctuaries and Reserves Division, NOAA, has managerial responsibilities for abandoned shipwrecks within National Marine Sanctuaries, including those located in State waters, for the purpose of protecting them. NOAA will coordinate with State agencies to ensure that historical and cultural resources, as well as living marine resources, within the Sanctuary are protected.

(15) *Comment:* The prohibition on the taking of marine mammals and seabirds within the Sanctuary is redundant with the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA) and the Migratory Bird Treaty Act (MBTA).

Response: While marine mammals, migratory seabirds and endangered species are protected under these acts, NOAA believes that the higher penalties afforded under the MPRSA will provide a stronger deterrent.

The MBTA sets maximum criminal fines at either \$500 or \$2,000 per violation, depending on the violation. The MMPA sets maximum civil penalties at \$10,000 and maximum criminal fines at \$20,000. The ESA sets maximum civil penalties at \$500, \$12,000 or \$25,000 per violation, depending on the violation; maximum criminal fines are set at \$50,000. (All three statutes also provide for imprisonment for criminal violations.)

The MPRSA (under section 307) allows NOAA to assess civil penalties as high as \$50,000 for each violation. In addition, monies collected under the MPRSA are available to enhance the National Marine Sanctuary Program.

(16) *Comment:* Many commenters stated fishing should not be prohibited within the Sanctuary. Instead, fisheries resource regulation should remain under the jurisdiction of the State of California, the National Marine Fisheries Service (NMFS) and the Pacific Fisheries Management Council (PFMC). Other commenters requested NOAA to regulate harmful fishing activities such as gill-netting and shark finning. NOAA's position should be clarified in the FEIS/MP.

Response: Fishing is not being regulated as part of the Sanctuary regime and is not included in the Designation Document as an activity subject to future regulation. Fisheries management will remain under the existing jurisdiction of the State of California, NMFS and PFMC. Sanctuary prohibitions that may indirectly affect fishing activities have been written to explicitly exempt aquaculture, kelp harvesting and traditional fishing activities.

Existing fishery management agencies are primarily concerned with the regulation and management of fish stocks for a healthy fishery. In contrast, the sanctuary program has a different and broader mandate under the MPRSA to protect all sanctuary resources on an ecosystem wide basis. Thus, while fishery agencies may be concerned about certain fishing efforts and techniques in relation to fish stock abundance and distribution the Sanctuary program is also concerned about the potential incidental impacts of specific fishery technique on all sanctuary resources including benthic habitats or marine mammals as well as the role the target species plays in the health of the ecosystem. In the case of

the Monterey Bay area fish resources are already extensively managed by existing authorities.

Should problems arise in the future NOAA would consult with the State, PFMC and NMFS as well as the industry to determine an appropriate course of action.

(17) *Comment:* Many commenters requested NOAA to prohibit motorized aircraft from flying over the Sanctuary. Other commenters stated Federal Aviation Regulations (FARs) already adequately protect Sanctuary resources from aircraft impacts, making additional regulations unnecessary. In addition, new regulations may hinder cooperative emergency response plans, routine helicopter operations, and rescue attempts.

Response: The regulations prohibit flying motorized aircraft at less than 1,000 feet above the Sanctuary within four zones. Generally, these zones are from Point Santa Cruz north, Carmel Bay south (overlapping the California Sea Otter Game Refuge), and around Moss Landing and Elkhorn Slough (see appendix II for specific zones).

NOAA recognizes that overflights are regulated under the FARs. Unlike the FARs, however, Sanctuary overflight regulations are intended to protect the living marine resources of the Sanctuary from disturbance by low-flying aircraft and in this case require flying at higher altitudes than normally required by the FARs. The prohibition does not apply to overflights that:

- (1) Are necessary to respond to an emergency threatening life, property or the environment;
- (2) Are necessary for valid law enforcement purposes; or
- (3) Conducted by the Department of Defense and specifically exempted by NOAA after consultation with that Department.

(18) *Comment:* A more precise definition of "thrill craft" is needed.

Response: NOAA has changed the term "thrill craft" in the proposed regulations to "motorized personal water craft" (MPWC) in the final regulations and revised the definition to include vessels up to fifteen feet. This category of vessel was selected because of the threat posed to Sanctuary resources by their operation.

(19) *Comment:* Thrill craft should be prohibited throughout the Sanctuary. The danger these craft pose to the biological resources of the area, such as marine mammals and kelp beds, as well as other users of the area such as divers and surfers necessitates a prohibition or regulation of personal water craft. In addition, MPWC should be prohibited in "areas of biological significance."

including those with high human-use levels such as beaches; diving, swimming and surfing areas; state parks; and reserves. Besides the potential danger to recreationists, MPWC disrupt low-intensity area uses. In addition, many commenters found the operation of MPWC to be incompatible with the existence of the Sanctuary for reasons unquantifiable.

Response: NOAA recognizes the threat posed by MPWC operation to the conservational, recreational, ecological and esthetic resources and qualities of the Sanctuary. As a result, the regulations have been revised to prohibit the operation of MPWC within the Sanctuary, except within four zones and access routes (15 CFR 944.5(a)(8)). Generally, these areas are located off the harbors of Pillar Point, Santa Cruz, Moss Landing, and Monterey. They were chosen to avoid injury to kelp beds, sea otters and other marine mammals, seabirds and other marine life and to minimize conflicts with other recreational users and because these areas are accessible from launch areas and encompass areas traditionally used by MPWC. Restriction of MPWC operation to these areas of the Sanctuary will also reduce esthetic disturbance.

A prohibition of MPWC operation in the Sanctuary except in the four areas is designed to increase resource protection while still allowing opportunities for this form of recreation in the Sanctuary. There has been at least one reported collision in the Monterey Bay area between a jet ski and sea otters. Collisions with and other disturbance of marine mammals elsewhere from MPWC have also occurred. The small size, maneuverability and high speed of these craft is what causes these craft to pose a threat to resources. Resources such as sea otters and seabirds are either unable to avoid these craft or are frequently alarmed enough to significantly modify their behavior such as cessation of feeding or abandonment of young. Also other, more benign, uses of the Sanctuary such as sailing, kayaking, surfing and diving are interfered with during the operation of MPWC. Further, as indicated above, restriction of operation of MPWC to the specified zones and access routes will reduce esthetic disturbance. The zones and access routes where the MPWC can still operate allow the MPWC operators to continue this form of recreation albeit in areas away from those other forms of recreation and beyond those areas inhabited by marine mammals and seabirds and other sensitive marine life. By establishing defined MPWC

operating areas, this approach provides more effective enforcement to protect sensitive marine life and for less confusion to MPWC operators and other recreationists than would the establishment of minimum approach distances governing approaches by MPWC to sensitive marine life or other recreational uses. NOAA intends to install buoys to mark the boundaries of the MPWC operating areas.

(20) *Comment:* NOAA should choose DEIS/MP management plan alternative 2, which proposes that full-time staffing be implemented immediately after designation. The Sanctuary is important, and the commitment of a full-time and immediate staff is necessary to initiate Sanctuary programs.

Response: NOAA's preferred management plan is a variation of alternative 2. This plan would establish the Sanctuary headquarters soon after designation and immediately provide full-time staffing of approximately five personnel to ensure that the Sanctuary program is implemented quickly and efficiently. NOAA's preferred management plan will build upon public support from the designation process and will increase opportunities for interpretation and research programs soon after designation. Additional staff and satellite facilities will be phased in after designation.

(21) *Comment:* NOAA should clearly identify how the Sanctuary Advisory Committee (SAC) will be set up, who will be on it, and how it will function.

Response: One of the Sanctuary Manager's first priorities will be to create the SAC according to the process and guidelines of the Federal Advisory Committee Act (FACA). See appendix A of the FEIS/MP. It is NOAA's goal to have wide representation on the SAC, and the Manager will consider the comments of all interested parties. NOAA will draft a charter, make membership recommendations, which will include appropriate governmental and non-governmental representatives, to the Secretary of Commerce, and coordinate with the General Services Administration's review of the SAC formation and accomplishments. The SAC will function strictly in an advisory capacity. Once the Sanctuary Manager is selected, terms of office, committee composition and function will be defined in accordance with FACA.

(22) *Comment:* NOAA should clarify the relationship between Department of Defense (DOD) national defense exemptions from prohibited activities and oil and gas activities.

Response: The Minerals Management Service (MMS) in the Department of the Interior (DOI) is responsible for

hydrocarbon development lease sales in Federal waters, not DOD. While the Sanctuary regulations allow DOD to conduct certain prohibited activities, they do not allow DOD to conduct any oil, gas or mineral activity in the Sanctuary.

II. Designation Document

Section 304(a)(4) of the Act requires that the terms of designation set forth the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. This section also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus the terms of designation serve as a constitution for the Sanctuary.

The Designation Document for the Monterey Bay National Marine Sanctuary follows:

Designation Document for the Monterey Bay National Marine Sanctuary

Under the authority of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, Monterey Bay and its surrounding waters offshore central California, and the submerged lands under Monterey Bay and its surrounding waters, as described in Article II, are hereby designated as the Monterey Bay National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that either are to be regulated on the effective date of designation or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency

basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Monterey Bay National Marine Sanctuary (the "Sanctuary") boundary encompass a total of approximately 4,024 square nautical miles (approximately 13,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California. The northern terminus of the boundary is located along the southern boundary of the Gulf of Farallones National Marine Sanctuary and runs westward to approximately 123°07'W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03'N, the boundary arcs south to 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41'W, 35°33'N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the Gulf of Farallones National Marine Sanctuary and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing, and Monterey harbors are all excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of the Elkhorn Slough east of the Highway One bridge is included within the Sanctuary boundary. Appendix I to this Designation Document sets forth the precise Sanctuary boundary.

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

The Monterey Bay area is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive ecosystem and a wide variety of marine habitat. The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This canyon system provides habitat for pelagic communities and, along with other distinct bathymetric features, may modify currents and act to enrich local waters

through strong seasonal upwelling.

Monterey Bay itself is a rare geological feature, as it is one of the few large embayments along the Pacific coast.

The Monterey Bay area has a highly diverse floral and faunal component. Algal diversity is extremely high and the concentrations of pinnipeds, whales, otters, and some seabird species is outstanding. The fish stocks, particularly in Monterey Bay, are abundant and the variety of crustaceans and other invertebrates is high.

In addition there are many direct and indirect human uses of the area. The most important economic activity directly dependent on the resources is commercial fishing, which has played an important role in the history of Monterey Bay and continues to be of great economic value.

The diverse resources of the Monterey Bay area are enjoyed by the residents of this area as well as the numerous visitors. The population of Monterey and Santa Cruz counties is rapidly expanding and is based in large part on the attractiveness of the area's natural beauty. The high water quality and the resulting variety of biota and their proximity to shore is one of the prime reasons for the international renown of the area as a prime tourist location. The quality and abundance of the natural resources has attracted man from the earliest prehistoric times to the present and as a result the area contains significant historical, e.g., archaeological and paleontological, resources, such as Costanoan Indian midden deposits, aboriginal remains and sunken ships and aircraft.

The biological and physical characteristics of the Monterey Bay area combine to provide outstanding opportunities for scientific research on many aspects of marine ecosystems. The diverse habitats are readily accessible to researchers. Thirteen major research and education facilities are found within the Monterey Bay area. These institutions are exceptional resources with a long history of research and large databases possessing a considerable amount of baseline information on the Bay and its resources. Extensive marine and coastal education and interpretive efforts complement Monterey Bay's many research activities. For example, the Monterey Bay Aquarium has attracted millions of visitors who have experienced the interpretive exhibits of the marine environment. Point Lobos Ecological Reserve, Elkhorn Slough National Estuarine Research Reserve, Long Marine Laboratory and Año Nuevo State Reserve all have excellent docent programs serving the public, and marine

related programs for school groups and teachers.

The Final Environmental Impact Statement/Management Plan provides more detail on the characteristics of the Monterey Bay area that give it particular value.

Article IV. Scope of Regulations

Section 1. Activities subject to regulation

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area:

a. Exploring for, developing or producing oil, gas or minerals (e.g., clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores or any other solid material or other matter of commercial value) within the Sanctuary;

b. Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except dredged material deposited at disposal sites authorized prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation;

c. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except dredged material deposited at the authorized disposal sites described in appendix II of this Designation Document, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval;

d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, sea turtle, seabird, historical resource or other Sanctuary resource;

e. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;

f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found with the Sanctuary, would be a Sanctuary resource;

g. Flying a motorized aircraft above the Sanctuary;

h. Operating a vessel (i.e., water craft of any description)-in the Sanctuary;

i. Aquaculture or kelp harvesting within the Sanctuary; and

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

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses and Rights

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) The exploration for, development of or production of oil, gas or minerals within the Sanctuary; (2) the discharge of primary-treated sewage (except for regulation, pursuant to section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of this Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.

Appendix I. Monterey Bay National Marine Sanctuary Boundary Coordinates

(Appendix based on North American Datum of 1983.)

APPROXIMATELY 4,024 SQUARE NAUTICAL MILES

Point	Latitude	Longitude
1.....	37 52 56.09055	122 37 39.12564
2.....	37 39 59.06176	122 45 3.79307
3.....	37 36 58.39164	122 46 9.73871
4.....	37 34 17.30224	122 48 14.38141
5.....	37 31 47.55649	122 51 35.56769
6.....	37 30 34.11030	122 54 22.12170
7.....	37 29 39.05866	123 00 27.70792
8.....	37 30 29.47603	123 05 46.22767
9.....	37 31 17.66945	123 07 47.63363
10.....	37 27 10.93594	123 08 24.32210
11.....	37 20 35.37491	123 06 54.12763
12.....	37 13 50.21805	123 06 15.50600
13.....	37 07 48.76810	123 01 43.10994
14.....	37 03 46.60999	122 54 45.39513
15.....	37 02 06.30955	122 46 35.02125
16.....	36 55 17.56782	122 48 21.41121
17.....	36 48 22.74244	122 48 56.29007
18.....	36 41 30.91516	122 48 19.40739
19.....	36 34 45.76070	122 46 26.96722
20.....	36 28 24.18076	122 43 32.43527
21.....	36 22 20.70312	122 39 28.42026
22.....	36 16 43.93588	122 34 26.77255
23.....	36 11 44.53838	122 28 37.16141
24.....	36 07 26.88988	122 21 54.97541
25.....	36 04 07.08898	122 14 39.75924
26.....	36 01 28.22233	122 07 00.19068
27.....	35 59 45.46381	121 58 56.36189
28.....	35 58 59.12170	121 50 26.47931
29.....	35 58 53.63866	121 45 22.82363
30.....	35 55 45.60623	121 42 40.28540
31.....	35 50 15.84256	121 43 09.20193
32.....	35 43 14.26690	121 42 43.79121
33.....	35 35 41.88635	121 41 25.07414
34.....	35 33 11.75999	121 37 49.74192
35.....	35 33 17.45869	121 05 52.89891
36.....	37 35 39.73180	122 31 14.96033
37.....	37 36 49.21739	122 37 00.22577
38.....	37 46 00.98983	122 39 00.40466
39.....	37 49 05.69080	122 31 46.30542

Appendix II. Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary

(Appendix based on North American Datum of 1983.)

As of the effective date of Sanctuary designation, the U.S. Army Corps of Engineers operates the following dredged material disposal sites adjacent to the Sanctuary off of the Golden Gate:

Point	Latitude	Longitude
1.....	37 45.875	122 34.140
2.....	37 44.978	122 37.369
3.....	37 44.491	122 37.159
4.....	37 45.406	122 33.889
5.....	37 45.875	122 34.140

In addition, the U.S. Environmental Protection Agency, as of the effective date of Sanctuary designation, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary. When that disposal site is authorized, this appendix will be updated to incorporate its precise location. The site will be located outside the Monterey Bay National Marine Sanctuary and any other existing national marine sanctuary and within one of the following Long-Term Management Strategy ocean study areas:

Study Area 3

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1.....	37 25.850	123 21.926
2.....	37 25.793	123 21.928
3.....	37 25.733	123 21.919
4.....	37 25.688	123 21.910
5.....	37 25.630	123 21.896
6.....	37 25.566	123 21.875
7.....	37 25.513	123 21.859
8.....	37 25.451	123 21.820
9.....	37 25.394	123 21.779
10.....	37 25.334	123 21.698
11.....	37 25.268	123 21.595
12.....	37 25.180	123 21.456
13.....	37 25.139	123 21.358
14.....	37 25.057	123 21.240
15.....	37 24.992	123 21.167
16.....	37 24.878	123 21.093
17.....	37 24.765	123 21.034
18.....	37 24.700	123 20.975
19.....	37 24.602	123 20.872
20.....	37 24.521	123 20.783
21.....	37 24.449	123 20.682
22.....	37 24.391	123 20.599
23.....	37 24.342	123 20.503
24.....	37 24.298	123 20.421
25.....	37 24.245	123 20.340
26.....	37 24.193	123 20.238
27.....	37 24.147	123 20.134
28.....	37 24.103	123 20.031
29.....	37 24.062	123 19.934
30.....	37 24.017	123 19.839
31.....	37 23.952	123 19.652
32.....	37 23.906	123 19.517
33.....	37 23.855	123 19.396
34.....	37 23.790	123 19.278
35.....	37 23.728	123 19.125
36.....	37 23.644	123 18.968
37.....	37 23.562	123 18.836
38.....	37 23.482	123 18.707
39.....	37 23.367	123 18.556
40.....	37 23.254	123 18.437
41.....	37 23.123	123 18.319

Point	Latitude	Longitude
42.....	37 22.977	123 18.231
43.....	37 22.820	123 18.142
44.....	37 22.685	123 18.113
45.....	37 22.555	123 18.083
46.....	37 22.392	123 18.068
47.....	37 22.229	123 18.054
48.....	37 22.051	123 18.039
49.....	37 21.868	123 18.023
50.....	37 21.697	123 18.023
51.....	37 21.547	123 18.010
52.....	37 21.401	123 17.995
53.....	37 21.173	123 17.980
54.....	37 20.978	123 17.965
55.....	37 20.767	123 17.950
56.....	37 20.588	123 17.936
57.....	37 20.458	123 17.921
58.....	37 20.285	123 17.894
59.....	37 20.179	123 17.876
60.....	37 20.084	123 17.876
61.....	37 19.986	123 17.882
62.....	37 19.877	123 17.894
63.....	37 19.792	123 17.921
64.....	37 19.694	123 17.950
65.....	37 19.592	123 17.999
66.....	37 19.489	123 18.056
67.....	37 19.352	123 18.134
68.....	37 19.223	123 18.231
69.....	37 19.126	123 18.305
70.....	37 19.028	123 18.378
71.....	37 18.914	123 18.482
72.....	37 18.833	123 18.556
73.....	37 18.719	123 18.658
74.....	37 18.615	123 18.764
75.....	37 18.492	123 18.880
76.....	37 18.378	123 18.998
77.....	37 18.265	123 19.101
78.....	37 18.151	123 19.190
79.....	37 18.070	123 19.264
80.....	37 18.004	123 19.328
81.....	37 17.951	123 19.393
82.....	37 17.884	123 19.454
83.....	37 17.805	123 19.525
84.....	37 17.735	123 19.567
85.....	37 17.641	123 19.600
86.....	37 17.565	123 19.617
87.....	37 17.489	123 19.622
88.....	37 17.401	123 19.617
89.....	37 17.352	123 19.606
90.....	37 17.305	123 19.583
91.....	37 17.272	123 19.558
92.....	37 17.248	123 19.514
93.....	37 25.802	123 0.617
94.....	37 25.850	123 21.926

The portion of the area described by the above points that lies within the Monterey Bay National Marine Sanctuary as described in Appendix I is excluded.

Study Area 4

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1.....	37 17.496	123 7.528
2.....	37 17.499	123 14.071
3.....	37 17.383	123 14.285
4.....	37 17.279	123 14.412
5.....	37 17.176	123 14.537
6.....	37 17.047	123 14.651
7.....	37 16.949	123 14.754
8.....	37 16.814	123 14.879
9.....	37 16.664	123 15.026

Point	Latitude	Longitude
11	37 16.568	123 15.118
	37 16.451	123 15.219
	37 16.348	123 15.308
	37 16.206	123 15.383
	37 16.090	123 15.446
	37 15.999	123 15.484
16	37 15.818	123 15.547
17	37 15.637	123 15.585
18	37 15.482	123 15.585
19	37 15.314	123 15.598
20	37 15.184	123 15.610
21	37 15.055	123 15.635
22	37 14.912	123 15.673
23	37 14.783	123 15.698
24	37 14.667	123 15.712
25	37 14.551	123 15.724
26	37 14.421	123 15.749
27	37 14.292	123 15.799
28	37 14.188	123 15.850
29	37 14.072	123 15.887
30	37 13.956	123 15.938
31	37 13.801	123 16.001
32	37 13.672	123 16.064
33	37 13.568	123 16.102
34	37 13.451	123 16.178
35	37 13.322	123 16.229
36	37 13.193	123 16.266
37	37 13.063	123 16.279
38	37 12.973	123 16.304
39	37 12.830	123 16.330
40	37 12.650	123 16.355
41	37 12.456	123 16.367
42	37 12.275	123 16.367
43	37 12.122	123 16.349
44	37 11.987	123 16.312
45	37 11.853	123 16.269
46	37 11.754	123 16.216
47	37 11.631	123 16.142
48	37 11.537	123 16.067
49	37 11.473	123 15.994
50	37 11.420	123 15.930
51	37 11.380	123 15.872
	37 11.344	123 15.825
	37 11.279	123 15.698
	37 11.227	123 15.547
53	37 11.188	123 15.421
56	37 11.150	123 15.269
57	37 11.116	123 15.124
58	37 11.098	123 14.980
59	37 11.085	123 14.828
60	37 11.072	123 14.626
61	37 11.059	123 14.437
62	37 11.052	123 14.359
63	37 11.033	123 14.259
64	37 11.004	123 14.158
65	37 10.978	123 14.078
66	37 10.942	123 13.978
67	37 10.890	123 13.877
68	37 10.847	123 13.802
69	37 10.804	123 13.727
70	37 10.712	123 13.614
71	37 10.648	123 13.531
72	37 10.564	123 13.439
73	37 10.508	123 13.370
74	37 10.502	123 7.508
75	37 17.496	123 7.528

Study Area 5

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1	37 43.444	123 23.515
2	37 43.436	123 30.053
3	37 34.568	123 30.053

Point	Latitude	Longitude
4	37 34.574	123 20.234
5	37 34.661	123 19.507
6	37 34.725	123 19.376
7	37 34.725	123 19.376
8	37 35.031	123 19.452
9	37 35.935	123 19.081
10	37 36.769	123 18.542
11	37 37.698	123 17.788
12	37 37.765	123 17.743
13	37 37.789	123 17.827
14	37 37.838	123 17.911
15	37 37.887	123 17.996
16	37 37.937	123 18.105
17	37 37.998	123 18.202
18	37 38.085	123 18.359
19	37 38.183	123 18.529
20	37 38.270	123 18.674
21	37 38.356	123 18.832
22	37 38.455	123 18.977
23	37 38.554	123 19.134
24	37 38.640	123 19.255
25	37 38.726	123 19.364
26	37 38.825	123 19.497
27	37 38.911	123 19.606
28	37 38.985	123 19.703
29	37 39.071	123 19.811
30	37 39.195	123 19.981
31	37 39.318	123 20.138
32	37 39.404	123 20.272
33	37 39.478	123 20.356
34	37 39.565	123 20.465
35	37 39.664	123 20.574
36	37 39.762	123 20.695
37	37 39.840	123 20.791
38	37 39.992	123 20.889
39	37 39.997	123 20.986
40	37 40.095	123 21.095
41	37 40.181	123 21.192
42	37 40.268	123 21.288
43	37 40.330	123 21.373
44	37 40.416	123 21.470
45	37 40.516	123 21.563
46	37 40.616	123 21.667
47	37 40.736	123 21.785
48	37 40.860	123 21.906
49	37 40.983	123 22.027
50	37 41.107	123 22.148
51	37 41.230	123 22.269
52	37 41.378	123 22.390
53	37 41.515	123 22.499
54	37 41.669	123 22.607
55	37 41.803	123 22.704
56	37 41.920	123 22.768
57	37 42.036	123 22.825
58	37 42.174	123 22.889
59	37 42.295	123 22.957
60	37 42.421	123 23.012
61	37 42.583	123 23.105
62	37 42.704	123 23.165
63	37 42.826	123 23.225
64	37 43.005	123 23.310
65	37 43.088	123 23.358
66	37 43.205	123 23.410
67	37 43.327	123 23.467
68	37 43.376	123 23.482
69	37 43.444	123 23.515

End of Designation Document

III. Summary of Final Management Plan

The FEIS/MP for the Monterey Bay National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of the Sanctuary. The FEIS/MP describes the resource protection, research, education and interpretive programs, and details the specific activities to be taken in each program.

The FEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities. The goals and objectives for the Sanctuary are:

Resource Protection

The highest priority management goal is to protect the marine environment, resources and qualities of the Sanctuary. The specific objectives of protection efforts are to:

- (1) Coordinate policies and procedures among agencies sharing responsibility for protection and management of resources;
- (2) Encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs);
- (3) Develop an effective and coordinated program for the enforcement of Sanctuary regulations;
- (4) Enforce Sanctuary regulations in addition to other regulations already in place;
- (5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use;
- (6) Ensure that the water quality of Monterey Bay is maintained at a level consonant with Sanctuary designation;
- (7) Establish mechanisms for coordination among all the agencies participating in Sanctuary management;
- (8) Ensure that the appropriate management agencies incorporates research results and scientific data into effective resource protection strategies; and
- (9) Reduce threats to Sanctuary resources and qualities.

Research Program

Effective management of the Sanctuary requires the initiation of a Sanctuary research program. The purpose of Sanctuary research activities is to improve understanding of the Monterey Bay area environment, resources and qualities, and to resolve specific management problems, some of which may involve resources common to both the Bay and nearby State parks, refuges, and reserves. Research results will be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for protection and management of resources and qualities.

Specific objectives for the research program are to:

- (1) Establish a framework and procedures for administering research to ensure that research projects are

responsive to management concerns and results contribute to improve management of the Sanctuary;

(2) Incorporate research results into the interpretive/education program in a form useful for the general public;

(3) Focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary;

(4) Encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes;

(5) Initiate a monitoring program to assess environmental changes as they occur due to natural and human processes;

(6) Identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and

(7) Encourage information exchange among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management.

Education Program

The goal for education programs is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources and qualities.

The management objectives designed to meet this goal are to:

Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability;

(2) Broaden support for the Sanctuary management by offering programs suited to visitors with a range of diverse interests;

(3) Provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and

(4) Collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

The Sanctuary goal for visitor management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are

(1) Provide relevant information about Sanctuary regulations, use policies and standards;

(2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;

(3) Encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities and

(4) Monitor and assess the levels of use to identify and control potential degradation of resources and qualities and minimize potential user conflicts.

The Sanctuary will be managed from a headquarters located in the Monterey Bay region.

IV. Summary of Regulations

The regulations set forth the boundary of the Sanctuary; prohibit a relatively narrow range of activities; establish procedures for applying for national marine sanctuary permits to conduct prohibited activities; establish certification procedures for existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity; establish notification and review procedures for applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and establish procedures for administrative appeals.

Specifically, the regulations add a new part 944 to title 15, Code of Federal Regulations.

Section 944.1 sets forth as the purpose of the regulations to implement the designation of the Monterey Bay National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Section 944.2 and appendix I following § 944.12 set forth the boundary of the Sanctuary.

Section 944.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the MPRSA.

Section 944.4 allows all activities except those prohibited by § 944.5 to be undertaken subject to the requirements of any emergency regulation promulgated pursuant to § 944.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act.

Section 944.5 prohibits a variety of activities and thus makes it unlawful for

any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for: (1) The exploration for, development or production of oil, gas or minerals in the Sanctuary, (2) the discharge of primary-treated sewage within the Sanctuary (except for certification, pursuant to § 944.10, of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction), or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to the effective date of designation could be conducted lawfully if one of the following four situations applies:

(1) The activity is necessary to respond to an emergency threatening life, property or the environment; authorized by a National Marine Sanctuary permit issued under section 944.9; or authorized by a Special Use permit issued under Section 310 of the Act.

(2) With regard to Department of Defense activities: The activity is an existing military activity; or the activity is a new activity and exempted by the Director of the Office of Ocean and Coastal Resource Management or designee after consultation between the Director or designee and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities and that it, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by it, promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality. The final regulation regarding Department of Defense activities differs from the proposed regulation principally by:

(i) Making all military activities (as specifically identified in FEIS/MP) currently being carried out by the Department of Defense exempt from the Sanctuary regulatory prohibitions, not just those determined necessary for the national defense;

(ii) Adding the requirement to avoid to the maximum extent practicable any adverse impacts; and

(iii) Adding the requirement of prompt coordination, in the event of an

stoward incident, for the purpose of
ing appropriate actions.

(3) The activity is authorized by a certification by the Director of the Office of Ocean and Coastal Resource Management or designee under § 944.10 or a valid lease, permit, license or other authorization issued by any Federal, State or local authority of competent jurisdiction and in existence on (or conducted pursuant to any valid right of subsistence use or access in existence on) the effective date of this designation, subject to complying with any terms and conditions imposed by the Director or designee as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(4) The activity is authorized by a valid lease, permit, license, approval or other authorization issued by any Federal, State or local authority of competent jurisdiction after the effective date of Sanctuary designation, provided that the Director of the Office of Ocean and Coastal Resource Management or designee was notified of the application in accordance with the requirements of § 944.11, the applicant complies with the requirements of § 944.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

The first activity prohibited is exploring for, developing or producing oil, gas or minerals within the Sanctuary. The resources and qualities of the Monterey Bay area, particularly sea otters, sea birds, and pinnipeds that use the haul-out sites, kelp forests and rocks along the Monterey Bay coast, and the high water quality of the area, are especially vulnerable to oil and gas activities in the area. A prohibition on oil and gas activities within the Sanctuary boundary will provide partial protection from oil and gas activities for the resources and qualities within the boundary. Only partial protection would be provided due to the remaining threat from oil and gas activities outside of the Sanctuary boundary and from vessel traffic, particularly oil tankers, transiting through and near the Sanctuary. A prohibition on mineral activities within the Sanctuary is consistent with the prohibition on alteration of or construction on the seabed as discussed below. "Mineral" is defined to mean clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore or any other solid material or other matter of commercial value.

The second activity prohibited is depositing or discharging from any

location within the boundary of the Sanctuary materials or other substances except: (1) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary; (2) biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*; (3) water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping; (4) engine exhaust, and (5) dredged materials deposited at disposal sites authorized by COE or EPA prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation.

This prohibition is necessary in order to protect Sanctuary resources and qualities from the effects of pollutants deposited or discharged into the Sanctuary.

Disposal activities at the existing sites within the Sanctuary are allowed provided such disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation. Once existing permits expire, additional disposal at such previously approved or permitted sites must be approved by NOAA in accordance with § 944.11. All other disposal of dredged material within the Sanctuary is prohibited. Point source discharges, including, but not limited to, desalination plants, are allowed provided such discharge is certified by NOAA in accordance with § 944.10 or approved by NOAA in accordance with § 944.11. After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of § 944.11. At a minimum, secondary treatment will be required. Depending on the risk to Sanctuary resources and qualities, greater treatment may be required.

The third activity prohibited is depositing or discharging, from beyond the boundary of the Sanctuary, materials or other matter that subsequently enter the Sanctuary and injure a Sanctuary resource or quality, except for the first four exclusions discussed above for the second prohibited activity, dredged material deposited outside the Sanctuary at disposal sites off of the Golden Gate authorized prior to the effective date of Sanctuary designation, and dredged

material deposited outside the Sanctuary at the duly authorized disposal site that will result from the disposal site study underway on the effective date of Sanctuary designation, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval. The future disposal site will be located within one of the Long-Term Management Strategy Ocean Study Areas described in appendix IV. When that disposal site is authorized, appendix IV will be updated to incorporate its precise location. The intent of this prohibition is to protect the Sanctuary resources and qualities from the harmful effects of land and sea-generated non-point and point source pollution.

The fourth activity prohibited is moving, removing or injuring or attempting to move, remove or injure a Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to moving, removing or injury resulting incidentally from kelp harvesting, aquaculture or traditional fishing operations.

The fifth activity prohibited is drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except if any of the above results incidentally from: (1) Anchoring vessels; (2) kelp harvesting, aquaculture or traditional fishing operations; (3) installation of navigation aids; (4) harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties; or (5) construction, repair, replacement or rehabilitation of docks or piers. Federal Projects are any water resources development projects conducted by COE or operating under a permit or other authorization issued by COE and authorized by Federal law.

The intent of this prohibition is to protect the resources and qualities of the Sanctuary from the harmful effects of activities such as, but not limited to, archaeological excavations, drilling into the seabed, strip mining, laying of pipelines and outfalls, and offshore commercial development, which may disrupt and/or destroy sensitive marine

benthic habitats, such as kelp beds, invertebrate populations, fish habitats, and estuaries and sloughs.

The sixth activity prohibited is taking marine mammals, sea turtles or seabirds 100 or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.* The term "taking" includes all forms of harassment. The MMPA, ESA and MBTA prohibit the taking of species protected under those Acts. The prohibition overlaps with the MMPA, ESA, and MBTA but also extends protection for Sanctuary resources on an environmentally holistic basis and provides a greater deterrent with civil penalties of up to \$50,000 per taking. The prohibition covers all marine mammals, sea turtles and seabirds in or above the Sanctuary.

The seventh activity prohibited is flying motorized aircraft at less than 1,000 feet (305 m) above the Sanctuary within four specified zones (See appendix II for the zones). This area-specific prohibition on overflights below 1,000 feet (305 m) is designed to limit potential noise impacts, particularly those that might startle hauled-out seals and sea lions, sea otters or birds nesting along the shoreline margins of the Sanctuary.

The eighth activity prohibited is the operation of motorized personal water craft within the Sanctuary except in four specified zones and access routes to and from these zones (see appendix III for the zones and routes). This regulation is intended to provide enhanced resource protection by prohibiting operation of motorized personal water craft in areas of high marine mammal and seabird concentrations, kelp forest areas, river mouths, estuaries, lagoons and other similar areas where sensitive marine resources are concentrated and most vulnerable to disturbance and other injury from personal water craft. The regulation is also intended to allow the continuation of this form of recreation while minimizing conflicts with other recreational users, as well as reducing esthetic disturbance.

Both the ninth and tenth prohibitions serve to facilitate enforcement actions for violations of Sanctuary regulations. The ninth prohibition is the possession within the Sanctuary of any historical resource or marine mammal, sea turtle or seabird, regardless of where the resource was taken, except in compliance with the ESA, MMPA and MBTA and the tenth prohibition is

interfering with, obstructing, delaying or preventing investigations, searches, seizures of disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 944.6 authorizes the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Section 944.7 sets forth the maximum statutory civil penalty for violating a regulation—\$50,000. Each day of a continuing violation constitutes a separate violation. Section 944.8 repeats the provision in section 312 of the Act that any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury. The purpose of these sections is to notify the public of the liability for violating a Sanctuary regulation or the Act.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

Section 944.9 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A permit may be granted by the Director of the Office for Ocean and Coastal Resource Management or designee if he or she finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in the management of the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director or designee is required to

consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and the duration of its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, the cumulative effects of the activity, and the end value of the activity. In addition, the Director or designee is authorized to consider any other factors she or he deems appropriate.

Section 944.10 sets forth procedures for requesting certification of leases, licenses, permits, approvals, other authorizations or rights in existence on the date of Sanctuary designation authorizing the conduct of an activity prohibited under paragraphs (a) (2)–(9) of § 944.5. Pursuant to paragraph (f) of § 944.5, the prohibitions in paragraphs (a) (2)–(9) of § 944.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 944.10 (e.g., notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee as she or he deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 944.10 allows the holder 90 days from the effective date of Sanctuary designation to request certification. The holder is allowed to conduct the activity without being in violation of paragraphs (a) (2)–(9) of § 944.5 pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 944.10.

Section 944.10 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, approval, other authorization or right as she or he

deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section

(c)(2) of the Act. (Section 944.10 has application to oil, gas or mineral activities as there is no existing lease, permit, license, approval, other authorization or right for any of these activities within the Sanctuary.)

The MOA entered into by NOAA, the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary (discussed under Comment/Response (6) under section I. Background of this notice) specifies how the process of § 944.10 will be administered within State waters within the Sanctuary in coordination with the State permit program.

The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 944.12.

Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 944.11.

Section 944.11 states that consistent with paragraph (g) of § 944.5, the prohibitions of paragraphs (a)(2)-(9) of § 944.5 do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary designation, whichever is later, that the applicant is in compliance with the other provisions of § 944.11, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. In order to ensure maintenance of program-wide consistency regarding these activities, which may address issues or uses of a highly sensitive nature on the local level, the authority granted the Director under § 944.11 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation will not be delegated or otherwise assigned to

other Federal officials below the Director's level.

Section 944.11 allows the Director or designee to request additional information from the applicant and to seek the views of other persons.

An application for an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 944.11.

The MOA entered into by NOAA, the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary specifies how the process of § 944.11 will be administered within State waters within the Sanctuary in coordination with the State permit program.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the procedures set forth in § 944.12.

Section 944.12 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to: (1) The granting, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit under § 944.9 or a Special Use permit under section 310 of the Act; (2) the granting, denial, conditioning, amendment, suspension or revocation of a certification under § 944.10; or (3) the objection to issuance or the imposition of terms and conditions under § 944.11.

Prior to conditioning the exercise of existing leases, permits, licenses, approvals, other authorizations or rights or conditioning or objecting to proposed authorizations NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants. NOAA's policy is to encourage best available management practices to minimize non-point source pollution entering the Sanctuary and, for municipal sewage discharge, to require, at a minimum, secondary treatment and sometimes tertiary treatment or more, depending on predicted effects on Sanctuary resources and qualities.

v. Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department must judge whether the regulations in this notice are "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact

Analysis be prepared. The Administrator of NOAA has determined that the regulations in this motive are not major because they are not likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The regulations in this motive allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity will all act to lessen any adverse economic effect on small entities. The regulations, in total, will not have a significant economic impact on a substantial number of small entities, and when they were proposed the General Counsel of the Department of Commerce so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reductions Act

This rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-511). The collection of information requirements contained in the rule have been reviewed by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act and have been approved under OMB Control No. 0648-0141. Comments from the public on the collection of information requirements contained in this rule are invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (attn: Desk Officer for NOAA) and to Richard Roberts, room 305, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

Federalism Assessment (FA) was prepared for the proposed designation, management plan and proposed permitting regulations. The FA added that all were fully consistent with the principles, criteria and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with Section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a DEIS/MP was prepared for the designation and the proposed regulations. As required by section 304(a)(2) of the Act, the DEIS/MP included the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundary of the area proposed to be designated, and the existing and potential uses and resources of the area. Copies of the DEIS/MP were made available for public review on August 3, 1990, with comments due on October 3, 1990. Public hearings were held in Monterey, Santa Cruz and Half Moon Bay, California from September 12 to 14, 1990. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations. Copies of the FEIS/MP are available upon request (see address section).

Executive Order 12630

This rule does not have takings implications within the meaning of Executive Order 12630 sufficient to require preparation of a Takings Implications Assessment under that order. It would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the prohibition on the exploration, development and production of oil, gas and minerals from the Sanctuary might have a takings implication if it abrogated an existing lease for OCS tracts within the Sanctuary or an approval of an

exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 15, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reason set forth above, 15 CFR chapter IX is amended as follows:

SUBCHAPTER B—OCEAN AND COASTAL RESOURCE MANAGEMENT**Parts 921-943 [Transferred to Subchapter B]**

1. Subchapter B heading is added to read as set forth above.
2. Parts 921 through 943 are transferred from subchapter A to subchapter B.
3. Part 944—is added to subchapter B to read as follows:

PART 944—MONTEREY BAY NATIONAL MARINE SANCTUARY

- Sec.
- 944.1 Purpose.
 - 944.2 Boundary.
 - 944.3 Definitions.
 - 944.4 Allowed activities.
 - 944.5 Prohibited activities.
 - 944.6 Emergency regulations.
 - 944.7 Penalties for violations of regulations.
 - 944.8 Response costs and damages.
 - 944.9 National Marine Sanctuary permits—application procedures and issuance criteria.
 - 944.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.
 - 944.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.
 - 944.12 Appeals of administrative action.

Appendix I to Part 944—Monterey Bay National Marine Sanctuary Boundary Coordinates

Appendix II to Part 944—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited

Appendix III to part 944—Zones and Access Routes Within the Sanctuary Where the Operation of Personal Water Craft Is Allowed

Appendix IV to Part 944—Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary

Authority: Sections 302, 303, 304, 305, 307, 310 and 312 of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.*).

§ 944.1 Purpose.

The purpose of the regulations in this part is to implement the designation of the Monterey Bay National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

§ 944.2 Boundary.

(a) The Monterey Bay National Marine Sanctuary consists of an area of approximately 4,024 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California.

(b) The northern terminus of the boundary is located along the southern boundary of the Gulf of Farallones National Marine Sanctuary and runs westward to approximately 123°07'W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03'N, the boundary arcs south to 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41'W, 35°33'N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the Gulf of Farallones National Marine Sanctuary and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing and Monterey harbors are excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge is included within

Sanctuary boundary. The precise boundary of the Sanctuary appears in appendix I to this part.

3 Definitions.

The following definitions apply to this part:

Act means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.*).

Administrator or Under Secretary means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Director means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

Effective date of Sanctuary designation means the date the regulations in this part implementing the designation of the Sanctuary become effective.

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

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures and human activities and events. Historical resources include historical properties as defined in the National Historic Preservation Act, as amended, and implementing regulations, as amended.

Injure means to change adversely, either in the long or short term, a chemical, biological or physical attribute of, or the viability of. To "injure" therefore includes, but is not limited to, to cause the loss of and to destroy.

Mineral means clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore or any other solid material or other matter of commercial value.

Motorized personal water craft means any motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis,

wet bikes, surf jets, miniature speed boats, air boats and hovercraft.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Sanctuary means the Monterey Bay National Marine Sanctuary.

Sanctuary quality means any particular and essential characteristic of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or esthetic value, including, but not limited to, the substratum of the Monterey Bay area, bottom formations, coralline algae, marine plants and algae, invertebrates, plankton, fish, birds, sea turtles, marine mammals and historical resources.

Take or taking means the following:

(1)(i) For any sea turtle, marine mammal or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, the term means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct;

(ii) For any other sea turtle, marine mammal or seabird, the term means to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(2) For the purpose of both paragraphs (1) (i) and (ii), of this definition the term includes, but is not limited to, any of the following activities: Collecting any dead or injured sea turtle, marine mammal or seabird, or any part thereof; restraining or detaining any sea turtle, marine mammal or seabird, or any part thereof, no matter how temporarily; tagging any sea turtle, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any sea turtle, marine mammal or seabird.

Vessel means a watercraft of any description capable of being used as a means of transportation in/on the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.2 and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§ 944.4 Allowed activities.

All activities except those prohibited by § 944.5 may be undertaken subject to

any emergency regulations promulgated pursuant to § 944.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act (see § 944.8).

§ 944.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (h) of this § 944.5, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

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

(2) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(ii) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(iii) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(iv) Engine exhaust; or
(v) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation.

(3) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(2) (i) through (iv) of this § 944.5 and dredged material deposited at the authorized disposal sites described in appendix IV to this part, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally

from kelp harvesting, aquaculture or traditional fishing operations.

(5) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

- (i) Anchoring vessels;
- (ii) Aquaculture, kelp harvesting or traditional fishing operations;
- (iii) Installation of navigation aids;
- (iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties; or

(v) Construction, repair, replacement or rehabilitation of docks or piers.

(6) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

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

(8) Operating motorized personal water craft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix III to this part.

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

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

(b) The regulations in this part shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions and other international agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a)(2) through (10) of this § 944.5 do not apply to activities necessary to respond

to emergencies threatening life, property or the environment.

(d)(1) All Department of Defense activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235.) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (9) of this § 944.5 by the Director or designee after consultation between the Director or designee and the Department of Defense.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 944.9 or a Special Use permit issued pursuant to section 310 of the Act.

(f) The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with § 944.10 and with any terms and conditions on the exercise of such authorization or right imposed by the Director or designee as a condition of certification as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(g) The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 944.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this § 944.5, in no event may the Director or designee issue a National Marine Sanctuary permit under § 944.9 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 944.10, of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to the effective date of Sanctuary designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

§ 944.6 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities are subject to immediate temporary regulation, including prohibition.

§ 944.7 Penalties for violations of regulations.

(a) Each violation of the Act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than \$50,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials enforcement reasons, issuance and of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

§ 944.8 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

§ 944.9 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 944.5 (a)(2) through (9) if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this § 944.9.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed. The qualifications and experience of all personnel must be set forth in the application. The application must set forth the potential effects of the activity, if any, on Sanctuary resources and qualities. Copies of all other required licenses, permits, approvals or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons.

(d) The Director or designee, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 944.5(a)(2) through (9) if the Director or designee finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: Further research related to

Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director or designee shall consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director or designee may consider such other factors as he or she deems appropriate.

(e) A permit issued pursuant to this § 944.9 is nontransferable.

(f) The Director or designee may amend, suspend or revoke a permit issued pursuant to this § 944.9 for good cause. The Director or designee may deny a permit application pursuant to this § 944.9, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of the regulations in this part or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

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

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

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

(j) The applicant for or holder of a National Marine Sanctuary permit may

appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 944.12.

§ 944.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.

(a) The prohibitions set forth in § 944.5(a)(2) through (9) do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that:

(1) The holder of such authorization or right notifies the Director or designee, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 944.10; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director or designee, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 944.5(a)(2) through (9) may conduct the activity without being in violation of § 944.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 944.10.

(c) Any holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited under § 944.5(a)(2) through (9).

(d) Requests for findings or certifications should be addressed to the

Director, Office of Ocean and Coastal Resource Management; Attn: Actuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. A copy of the lease, permit, license, approval or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as he deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this § 944.10 whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this § 944.10, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 944.10 may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 944.12.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 944.11.

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

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

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

(2) The MOA specifies how the certification process of this § 944.10 will be administered within State waters within the Sanctuary in coordination with the State permit program.

(3) The MOA may be obtained from the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235.

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

(a)(1) The prohibitions set forth in § 944.5(a)(2) through (9) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that:

(i) The applicant notifies the Director or designee, in writing, of the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later;

(ii) The applicant complies with the other provisions of this § 944.11;

(iii) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(iv) The applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(2) The authority granted the Director under this § 944.11 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation may not be delegated or otherwise assigned to other Federal officials below the Director's level.

(b) Any potential applicant for a lease, permit, license, approval or other authorization from any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) may request the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by § 944.5(a)(2) through (9).

(c) Notifications of filings of applications and requests for findings should be addressed to the Director, Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director, or designee if there are no objections, terms or conditions, shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director, or designee if there are no objections, terms or conditions, shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities.

(f) The Director may amend the terms and conditions deemed necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this § 944.11 may be extended by the Director or designee for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the procedures set forth in § 944.12.

(i)(1) NOAA has entered into a Memorandum of Agreement (MOA) with

the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

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

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

(2) The MOA specifies how the process of this § 944.11 will be administered within State waters within the Sanctuary in coordination with the State permit program.

§ 944.12 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a § 944.9 National Marine Sanctuary permit, an applicant for, or a holder of, a section 310 of the Act Special Use permit, a § 944.10 certification requester or a § 944.11 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The grant, denial, conditioning, amendment, suspension or revocation by the Director or designee of a National Marine Sanctuary or Special Use permit;

(2) The conditioning, amendment, suspension or revocation of a certification under § 944.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 944.11

(b) An appeal under paragraph (a) of this § 944.12 must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235.

(c) While the appeal is pending, appellants requesting certification pursuant to § 944.10 who are in compliance with such section may continue to conduct their activities without being in violation of the prohibitions in § 944.5 (a)(2) through (9). All other appellants may not conduct

their activities without being subject to the prohibitions in § 944.5 (a)(1) through (10).

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the **Federal Register** of the time, place and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefor in writing. The Assistant Administrator or designee's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this § 944.12 other than the 30 day limit for filing an appeal may be extended by the Assistant Administrator, designee or hearing officer for good cause.

Appendix I to Part 944—Monterey Bay National Marine Sanctuary Boundary Coordinates

(Appendix Based on North American Datum of 1983.)

APPROXIMATELY 4,024 SQUARE NAUTICAL MILES

Point	Latitude	Longitude
1	37 52 56.09055	122 37 39.12564
2	37 39 59.06176	122 45 3.79307
3	37 36 58.39164	122 46 9.73871
4	37 34 17.30224	122 48 14.38141
5	37 31 47.55649	122 51 35.56769
36	37 30 34.11030	122 54 22.12170
7	37 29 39.05866	123 00 27.70792
8	37 30 29.47603	123 05 46.22767
9	37 31 17.66945	123 07 47.63363
10	37 27 10.93594	123 08 24.32210
11	37 20 35.37491	123 07 54.12763
12	37 13 50.21805	123 06 15.50600
13	37 07 48.76810	123 01 43.10994
14	37 03 46.60999	122 54 45.39513
15	37 02 06.30955	122 46 35.02125
16	36 55 17.56782	122 40 21.41121
17	36 48 22.74244	122 48 56.29007
18	36 41 30.91516	122 48 19.40739
19	36 34 45.76070	122 46 26.96772
20	36 28 24.18076	122 43 32.43527
21	36 22 20.70312	122 39 28.42026
22	36 16 43.93588	122 34 26.77255
23	36 11 44.53838	122 28 37.16141
24	36 07 26.88988	122 21 54.97541
25	36 04 07.08898	122 14 39.75924
26	36 01 28.22233	122 07 00.19068
27	35 59 45.46381	121 58 56.36189
28	35 58 59.12170	121 50 26.47931
29	35 58 53.63866	121 45 22.82363
30	35 55 45.60623	121 42 40.28540
31	35 50 15.84256	121 43 09.20193
32	35 43 14.26690	121 42 43.79121
33	35 35 41.88635	121 41 25.07414
34	35 33 11.75999	121 37 49.74192
35	35 33 17.45869	121 05 52.89891
36	37 35 39.73180	122 31 14.96033
37	37 36 49.21739	122 37 00.22577
38	37 46 00.96983	122 39 00.40466
39	37 49 05.69080	122 31 46.30542

Appendix II to Part 944—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited

The four zones are:

(1) From mean high water out to three nautical miles between a line extending from Point Santa Cruz on a southwesterly heading of 220° and a line extending from 2.0 nautical miles north of Pescadero Point on a southwesterly heading of 240°;

(2) From mean high water out to three nautical miles between a line extending from the Carmel River mouth on a westerly heading of 270° and a line extending due west along latitude 35° 33' 17.5612 off of Cambria;

(3) From mean high water and within a five nautical mile arc drawn from a center point at the end of Moss Landing Pier; and

(4) Over the waters of Elkhorn Slough east of the Highway One bridge to Elkhorn Road.

Appendix III to Part 944—Zones and Access Routes Within the Sanctuary Where the Operation of Motorized Personal Water Craft is Allowed

The four zones and access routes are:

(1) The approximately one [1.0] square nautical mile area off Pillar Point Harbor from launch ramp (37°30' N, 122°29' W) through harbor entrance to the northern

boundary of Zone One bounded by (a) 37°29.6' N (breakwater buoy), 122°29' W; (b) 37°28.8' N (bell buoy), 122°28.9' W; (c) 37°28.8' 122°28' W; and (d) 37°29.6' N, 122°28' W.

(2) The approximately three [3.0] square nautical mile area off of Santa Cruz Small Harbor ramp from 36°57.4' N along a road wide access route due south along W to the northern boundary of Zone Two (marked by the whistle buoy at 10 fathom curve) bounded by (a) 36°55' N, 122°02' W; (b) 36°55' N, 121°58' W; (c) 36°56.5' N, 121°58' W; and (d) 36°56.5' N, 122°02' W;

(3) The approximately five [5.0] square nautical mile area off of Moss Landing Harbor/Elkhorn Yacht Club Launch Ramp from 36°48.5' N along a 100 yard wide access route due west along harbor entrance to the eastern boundary of Zone Three bounded by (a) 36°50' N, 121°49.3' W; (b) 36°50' N, 121°50.8' W; (c) 36°46.7' N, 121°50.8' W; (d) 36°46.7' N, 121°49' W; (e) 36°47.8' N, 121°48.2' W; and (f) 36°48.9' N, 121°48.2' W; and

(4) The approximately five [5.0] square nautical mile area off of the U.S. Coast Guard Pier (Monterey Harbor) Launch Ramp from 36°36.5' N, 121°53.5' W along a 100 yard wide access route due north to the southern boundary of Zone Four bounded by (a) 36°38.7' N, 121°55.4' W; (b) 36°36.9' N, 121°52.5' W; (c) 36°38.3' N, 121°51.3' W; and (d) 36°40' N, 121°54.4' W.

Appendix IV to Part 944—Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary

(Appendix based on North American Datum of 1983.)

As of the effective date of Sanctuary designation, the U.S. Army Corps of Engineers operates the following dredged material disposal sites adjacent to the Sanctuary off of the Golden Gate:

Point	Latitude	Longitude
1.....	37 45.875	122 34.140
2.....	37 44.978	122 37.369
3.....	37 44.491	122 37.159
4.....	37 45.406	122 33.889
5.....	37 45.875	122 34.140

In addition, the U.S. Environmental Protection Agency, as of the effective date of Sanctuary designation, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary. When that disposal site is authorized, this appendix will be updated to incorporate its precise location. The site will be located outside the Monterey Bay National Marine Sanctuary and any other existing national marine sanctuary and within one of the following Long-Term Management Strategy ocean study areas:

Study Area 3

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1.....	37 25.850	123 21.926
2.....	37 25.793	123 21.928
3.....	37 25.733	123 21.919
4.....	37 25.698	123 21.910
5.....	37 25.630	123 21.896
6.....	37 25.566	123 21.875
7.....	37 25.513	123 21.859
8.....	37 25.451	123 21.820
9.....	37 25.394	123 21.779
10.....	37 25.334	123 21.698
11.....	37 25.268	123 21.595
12.....	37 25.180	123 21.456
13.....	37 25.139	123 21.358
14.....	37 25.057	123 21.240
15.....	37 25.992	123 21.167
16.....	37 24.878	123 21.093
17.....	37 24.765	123 21.034
18.....	37 24.700	123 20.975
19.....	37 24.602	123 20.872
20.....	37 24.521	123 20.783
21.....	37 24.449	123 20.682
22.....	37 24.391	123 20.599
23.....	37 24.342	123 20.503
24.....	37 24.298	123 20.421
25.....	37 24.245	123 20.340
26.....	37 24.193	123 20.238
27.....	37 24.147	123 20.134
28.....	37 24.103	123 20.031
29.....	37 24.062	123 19.934
30.....	37 24.017	123 19.839
31.....	37 23.952	123 19.662
32.....	37 23.906	123 19.517
33.....	37 23.855	123 19.396
34.....	37 23.790	123 19.278
35.....	37 23.728	123 19.125
36.....	37 23.644	123 18.968
37.....	37 23.562	123 18.836
38.....	37 23.482	123 18.707
39.....	37 23.367	123 18.556
40.....	37 23.254	123 18.437
41.....	37 23.123	123 18.319
42.....	37 22.977	123 18.231
43.....	37 22.820	123 18.142
44.....	37 22.685	123 18.113
45.....	37 22.555	123 18.083
46.....	37 22.392	123 18.068
47.....	37 22.229	123 18.054
48.....	37 22.051	123 18.039
49.....	37 21.868	123 18.023
50.....	37 21.697	123 18.023
51.....	37 21.547	123 18.010
52.....	37 21.401	123 17.995
53.....	37 21.173	123 17.980
54.....	37 20.978	123 17.965
55.....	37 20.767	123 17.950
56.....	37 20.588	123 17.936
57.....	37 20.458	123 17.921
58.....	37 20.285	123 17.894
59.....	37 20.179	123 17.876
60.....	37 20.084	123 17.876
61.....	37 19.986	123 17.882
62.....	37 19.877	123 17.894
63.....	37 19.792	123 17.921
64.....	37 19.694	123 17.950
65.....	37 19.592	123 17.999
66.....	37 19.489	123 18.056
67.....	37 19.352	123 18.134
68.....	37 19.223	123 18.231
69.....	37 19.126	123 18.305
70.....	37 19.028	123 18.378
71.....	37 18.914	123 18.482
72.....	37 18.833	123 18.556
73.....	37 18.719	123 18.658
74.....	37 18.615	123 18.764
75.....	37 18.492	123 18.880
76.....	37 18.378	123 18.998
77.....	37 18.265	123 19.101
78.....	37 18.151	123 19.190
79.....	37 18.070	123 19.264
80.....	37 18.004	123 19.328
81.....	37 17.951	123 19.393
82.....	37 17.884	123 19.454

Point	Latitude	Longitude
83.....	37 17.805	123 19.525
84.....	37 17.735	123 19.567
85.....	37 17.641	123 19.600
86.....	37 17.565	123 19.617
87.....	37 17.489	123 19.622
88.....	37 17.401	123 19.617
89.....	37 17.352	123 19.606
90.....	37 17.305	123 19.583
91.....	37 17.273	123 19.558
92.....	37 17.248	123 19.514
93.....	37 25.802	123 0.617
94.....	37 25.850	123 21.926

The portion of the area described by the above points that lies within the Monterey Bay National Marine Sanctuary as described in Appendix I is excluded.

Study Area 4

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary that area: Table follows

Point	Latitude	Longitude
1.....	37 17.496	123 17.528
2.....	37 17.499	123 14.071
3.....	37 17.383	123 14.285
4.....	37 17.279	123 14.412
5.....	37 17.176	123 14.537
6.....	37 17.047	123 14.651
7.....	37 16.949	123 14.754
8.....	37 16.814	123 14.879
9.....	37 16.664	123 15.026
10.....	37 16.568	123 15.118
11.....	37 16.451	123 15.219
12.....	37 16.348	123 15.308
13.....	37 16.206	123 15.383
14.....	37 16.090	123 15.446
15.....	37 15.999	123 15.484
16.....	37 15.818	123 15.547
17.....	37 15.637	123 15.585
18.....	37 15.482	123 15.585
19.....	37 15.314	123 15.598
20.....	37 15.184	123 15.610
21.....	37 15.055	123 15.635
22.....	37 14.912	123 15.673
23.....	37 14.783	123 15.698
24.....	37 14.667	123 15.712
25.....	37 14.551	123 15.724
26.....	37 14.421	123 15.749
27.....	37 14.292	123 15.799
28.....	37 14.188	123 15.850
29.....	37 14.072	123 15.887
30.....	37 13.956	123 15.938
31.....	37 13.801	123 16.001
32.....	37 13.672	123 16.064
33.....	37 13.568	123 16.102
34.....	37 13.451	123 16.178
35.....	37 13.322	123 16.229
36.....	37 13.193	123 16.266
37.....	37 13.063	123 16.279
38.....	37 12.973	123 16.304
39.....	37 12.830	123 16.330
40.....	37 12.650	123 16.355
41.....	37 12.456	123 16.367
42.....	37 12.275	123 16.367
43.....	37 12.122	123 16.349
44.....	37 11.987	123 16.312
45.....	37 11.853	123 16.269
46.....	37 11.754	123 16.216
47.....	37 11.631	123 16.142
48.....	37 11.537	123 16.067
49.....	37 11.473	123 15.994
50.....	37 11.420	123 15.930
51.....	37 11.380	123 15.872
52.....	37 11.344	123 15.825
53.....	37 11.279	123 15.698

Point	Latitude	Longitude
54.....	37 11.227	123 15.547
55.....	37 11.188	123 15.421
56.....	37 11.150	123 15.269
57.....	37 11.116	123 15.124
58.....	37 11.098	123 14.980
59.....	37 11.085	123 14.828
60.....	37 11.072	123 14.626
61.....	37 11.059	123 14.437
62.....	37 11.052	123 14.359
63.....	37 11.033	123 14.259
64.....	37 11.004	123 14.158
65.....	37 10.978	123 14.078
66.....	37 10.942	123 13.978
67.....	37 10.890	123 13.877
68.....	37 10.847	123 13.802
69.....	37 10.804	123 13.727
70.....	37 10.712	123 13.614
71.....	37 10.648	123 13.531
72.....	37 10.564	123 13.439
73.....	37 10.508	123 13.370
74.....	37 10.502	123 7.508
75.....	37 17.496	123 7.528

Study Area 5

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary that area:

Point	Latitude	Longitude
1.....	37 43.444	123 23.515
2.....	37 43.436	123 30.053
3.....	37 34.568	123 30.053

Point	Latitude	Longitude
4.....	37 34.574	123 20.234
5.....	37 34.661	123 19.507
6.....	37 34.725	123 19.376
7.....	37 34.725	123 19.376
8.....	37 35.031	123 19.452
9.....	37 35.935	123 19.081
10.....	37 36.769	123 18.542
11.....	37 37.698	123 17.788
12.....	37 37.765	123 17.743
13.....	37 37.789	123 17.827
14.....	37 37.838	123 17.911
15.....	37 37.887	123 17.996
16.....	37 37.937	123 18.105
17.....	37 37.998	123 18.202
18.....	37 38.085	123 18.359
19.....	37 38.183	123 18.529
20.....	37 38.270	123 18.674
21.....	37 38.356	123 18.832
22.....	37 38.455	123 18.977
23.....	37 38.554	123 19.134
24.....	37 38.640	123 19.255
25.....	37 38.726	123 19.364
26.....	37 38.825	123 19.497
27.....	37 38.911	123 19.606
28.....	37 38.985	123 19.703
29.....	37 39.071	123 19.811
30.....	37 39.195	123 19.981
31.....	37 39.318	123 20.138
32.....	37 39.404	123 20.272
33.....	37 39.478	123 20.356
34.....	37 39.565	123 20.465
35.....	37 39.664	123 20.574
36.....	37 39.762	123 20.695
37.....	37 39.840	123 20.791
38.....	37 39.922	123 20.889
39.....	37 39.997	123 20.986

Point	Latitude	Longitude
40.....	37 40.095	123 21.095
41.....	37 40.181	123 21.192
42.....	37 40.268	123 21.288
43.....	37 40.330	123 21.373
44.....	37 40.416	123 21.470
45.....	37 40.516	123 21.563
46.....	37 40.616	123 21.667
47.....	37 40.736	123 21.785
48.....	37 40.860	123 21.906
49.....	37 40.983	123 22.027
50.....	37 41.107	123 22.148
51.....	37 41.230	123 22.269
52.....	37 41.378	123 22.390
53.....	37 41.515	123 22.499
54.....	37 41.669	123 22.607
55.....	37 41.803	123 22.704
56.....	37 41.920	123 22.768
57.....	37 42.036	123 22.825
58.....	37 42.174	123 22.889
59.....	37 42.295	123 22.957
60.....	37 42.421	123 23.012
61.....	37 42.583	123 23.105
62.....	37 42.704	123 23.165
63.....	37 42.826	123 23.225
64.....	37 43.005	123 23.310
65.....	37 43.088	123 23.358
66.....	37 43.205	123 23.410
67.....	37 43.327	123 23.467
68.....	37 43.376	123 23.482
69.....	37 43.444	123 23.515

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