

## Issue 6: Alteration of or Construction on the Seabed

### Comment

#### Regulatory Authority

Proposed regulation 15 CFR §944.5 (a) (5) should be modified so as to not pre-empt the existing authority of CDF&G to allow seabed alteration if necessary for the development of aquaculture operations.

#### Geophysical Surveys

Geophysical survey activities should be prohibited or strictly regulated due to the short-and long-term effects of deep seismic surveys on marine biota.

#### Dredging

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.

NOAA regulations should be avoided due to the additional cost to the local taxpayer.

### NOAA Response

#### Regulatory Authority

NOAA's proposed regulation prohibiting alteration of or construction on the seabed has been amended to exclude alteration or construction resulting incidentally from aquaculture, kelp harvesting or traditional fishing operations. Aquaculture operations, if any, will be investigated by the Sanctuary and CDF&G and other relevant agencies for appropriate future action. If NOAA determines in the future that aquaculture, kelp harvesting or traditional fishing operations are resulting in injury to Sanctuary resources and qualities from alteration of or construction on the seabed, changes to the Sanctuary regulations would be undertaken pursuant to the APA's notice-and-comment rulemaking process and the requirements of NEPA.

#### Geophysical Surveys

NOAA encourages research within the Sanctuary. If the proposed research would involve a prohibited activity (such as alteration of or construction on the seabed) researchers are required to obtain a sanctuary research permit (15 CFR §944.9). NOAA will determine the environmental consequences of the proposed research, including short-and long-term effects on marine biota, in deciding whether to issue a permit.

#### Dredging

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

NOAA has determined that the overall socio-economic impact of the Sanctuary will be positive due to the enhanced resource protection regime for this valuable environment (See FEIS/MP, Part IV, Section IV).

**Comment**

**NOAA Response**

---

Contrary to the DEIS/MP, agencies regulating and reviewing the dredging process have done a thorough job, and an additional step in the permit process would be unnecessary, cumbersome, and expensive.

NOAA recognizes the roles of the agencies presently regulating and reviewing the dredging process. However, unlike NOAA, these agencies are not mandated to consider Sanctuary protection foremost or review activities from an ecosystem perspective. The goal assigned the highest priority for Sanctuary management is to protect the marine environment, resources, and qualities of the MBNMS. NOAA will work with the current regulatory agencies to ensure that mutual goals are satisfied. In addition, NOAA intends to work within the existing process to reduce unnecessary steps.

Sand and mud dredging is necessary to maintain operations at the PG&E plant.

Most dredging activities associated with the PG&E plant fall within the jurisdiction of the Moss Landing Harbor District. The entire harbor west of the U.S. Highway 1 bridge is outside the Sanctuary. Harbor maintenance activities, including the dredging of entrance channels, occurring within the Sanctuary have been exempted from Sanctuary regulation.

**Ocean Dumping**

**Ocean Dumping**

Ocean dumping is a threat to the marine environment and should be entirely prohibited within the Sanctuary area.

The Sanctuary regulations prohibit the designation and use of any new ocean dredged material disposal sites within the Sanctuary. NOAA intends to work closely with the COE and EPA to determine the need for any additional measures in their regulatory program necessary to insure protection of Sanctuary resources and qualities from existing and future dredged material disposal activities within the Sanctuary. See the *Introduction to the Depositing and Discharging Activities* response.

NOAA should address the potential conflicts between Boundary Alternatives 4 and 5, and the current EPA efforts to designate a permanent ocean disposal site off the coast of San Francisco.

NOAA's preferred Boundary Alternative 5 overlaps with two, and a small portion of a third, of the five EPA study areas and would preclude the use of these sites for dredged material disposal. In any case, EPA has indicated that the areas within the preferred Sanctuary boundary appear to have a much lower potential for disposal site designation than the areas outside the boundary, whether a sanctuary exists or not. The remaining areas are available for designation of a disposal site within their boundaries.

Any additional layers in the permit process would be unnecessary, cumbersome, and expensive.

NOAA intends to work within the existing process regarding dredge material disposal at existing sites.

**Comment**

The DEIS/MP does not specify whether 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.

**Sandmining**

Sandmining is detrimental to the environment, especially drag line and hydraulic slurry sandmining, and this type of extraction should be prohibited. However, existing sandminers should be grandfathered to allow continued extraction activities in the Sanctuary.

**Artificial Reefs**

Artificial reefs should be allowed through a permitting process devised by NOAA, not at the discretion of the Sanctuary Manager.

**NOAA Response**

---

SF-12 and SF-14 are authorized pursuant to approvals existing prior to Sanctuary designation and will remain available for disposal of dredged materials. Any proposed new activities at these 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 15 CFR §944.11.

**Sandmining**

Sandmining in the Sanctuary is prohibited. Preexisting permits for sandmining in the surf zone have expired.

**Artificial Reefs**

NOAA is not aware of any existing artificial reefs in the Sanctuary. The creation of new artificial reefs would involve alteration of the seabed, which is prohibited by Sanctuary regulations. It is unlikely that artificial reefs would be eligible for a National Marine Sanctuary permit under 15 CFR §944.9, although reef placement could be considered under the Special Use Permit authority of Section 310 of the MPRSA. Proposed permits required by other state and Federal authorities for the placement of artificial reefs would be reviewed by NOAA and either approved, modified, or denied in accordance with 15 CFR §944.11. The authority for this review is vested in the Director of the Office of Ocean and Coastal Resource Management, NOAA. The Sanctuary Manager would provide recommendations to the Director regarding the review of proposed activities under §944.11. While the authority to approve of activities under §944.11 may be delegated below the Director's level, the authority granted the Director under §944.11 to object to or impose terms and conditions on the exercise of any authorization may not be delegated to other Federal officials below the Director's level.