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**Issue 12: Taking of Marine Mammals and Seabirds****Comment****NOAA Response****Prohibition of Take****Prohibition of Take**

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).

While marine mammals, seabirds, and endangered and threatened 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 §307) allows NOAA to assess civil penalties as high as \$50,000 for each violation. In addition, monies collected under the MPRSA are available for use by the National Marine Sanctuary Program.

**Incidental Take****Incidental Take**

Data has been presented for California State waters showing that over 6,500 California sea lions, harbor seals, sea otters, and harbor porpoises were killed in gill and trammel nets between 1986 and 1987, in addition to thousands of seabirds. Additional regulations and protective measures are needed for these species.

The taking of marine mammals and seabirds would be prohibited except as permitted by regulations promulgated under the MMPA, ESA, and MBTA. Exemptions under the MMPA include a limited five-year incidental take of marine mammals, which will be in effect until 1993. The ESA also has a limited incidental take exemption, §1539 (2) B (i). NOAA is adopting the existing regulations including their exemptions in the Sanctuary regulatory regime and will work with the relevant management authorities to determine whether these exemptions are adequate to protect the resources and qualities of the Sanctuary. In addition, numerous State laws have recently been enacted to provide further protection specific to seabirds and marine mammals (see comment and response below).

The Sanctuary intends, when appropriate, to work with and enforce existing regulations that protect natural resources. In some cases, NOAA is creating and implementing stronger regulations in order to protect the natural environment (e.g., personal water craft regulations). A figure illustrating the geographic

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**Comment**

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**NOAA Response**

**Current Legislation**

Three pieces of legislation are being proposed or amended that have the potential to impact marine mammals and seabirds within the Sanctuary:  
1) California's proposed SB 2563 is prohibiting the use of gill or trammel nets within 30 fathoms or less throughout the present sea otter range; 2) the reauthorization of the state Marine Resources Protection Act (MRPA) that restricts gillnet fishing within three miles of the California coast, and prohibits gill netting of rock fish and incidental take of marine mammals in central California; and 3) the amendments of the MMPA (1993) that may allow a continued number of incidental takes in California waters.

**Coordination with U.S. Fish and Wildlife Service**

The FWS is responsible for Southern sea otter management, and should be involved in making decisions which could effect this species.

**Coordination with Environmental Groups**

The DEIS/MP ignores the fact that fishing and environmental organizations have successfully coordinated with fisheries management agencies to limit or eliminate harmful fishing methods in areas utilized by seabirds and mammals.

extent and existing state regulations has been added to the FEIS/MP, as has a discussion of the impacts of each regulation. If in the future NOAA determines that the existing regulations promulgated under MMPA, ESA, MBTA, or any other state or Federal statute are not adequate to ensure the coordinated and comprehensive management of marine mammals and seabirds, changes to the Sanctuary regulations would be undertaken pursuant to the APA's notice-and-comment rulemaking process and the requirements of NEPA.

**Current Legislation**

NOAA will track these legislative issues and provide recommendations to increase protection of Sanctuary resources. NOAA intends to follow these issues and legislation, and when appropriate, modify policies to protect Sanctuary resources.

**Coordination with U.S. Fish and Wildlife Service**

NOAA will consult the FWS on Southern sea otter management and other issues affecting both agencies.

**Coordination with Environmental Groups**

NOAA agrees, and recognizes the fact that significant progress has been made between environmental groups and fishery management agencies regarding the protection of the marine environment. NOAA intends to assist where possible to enhance positive relationships.