

APPENDIX D PROPOSED RULE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No. 060222048-6048-01

RIN 0648-AT17

Channel Islands National Marine Sanctuary Regulations

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notice of public availability of draft management plan/draft environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing a revised management plan and a revised set of regulations for the Channel Islands National Marine Sanctuary (CINMS or Sanctuary). The proposed set of regulations includes both new regulations as well as changes to existing regulations. Proposed new regulations include prohibitions on: exploring for, developing, or producing minerals within the Sanctuary; abandoning matter on or in Sanctuary submerged lands; taking marine mammals, seabirds, or sea turtles within or above the Sanctuary; possessing within the Sanctuary any marine mammal, sea turtle, or seabird; marking, defacing, damaging, moving, removing, or tampering with Sanctuary signs, monuments, boundary markers, or similar items; introducing or otherwise releasing from within or into the Sanctuary an introduced species; and operating motorized personal watercraft within waters of the Channel Islands National Park. Proposed changes to existing regulations would clarify or refine: the coordinates and description of the Sanctuary's outer and shoreline boundaries; the inclusion of submerged lands within Sanctuary boundaries; the area in which altering submerged lands is prohibited; exceptions from the prohibition on discharging or depositing matter into the Sanctuary; the regulation on operating a vessel within one NM of any island within the Sanctuary; the regulation on moving, removing, or injuring a Sanctuary historical resource; exemptions for military activities; and permit issuance criteria and procedures. The revised regulations would also remove the exception for discharging or depositing meals on board vessels into the Sanctuary and include an additional prohibition on discharging and depositing any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

The NMSP is also proposing certain revisions to the Sanctuary's Designation Document. Proposed revisions of the Description of the Area would: clarify that the submerged lands at CINMS are legally part of the Sanctuary and are included in the boundary description, replace the term "seabed" with "submerged lands of the Sanctuary", and express boundary coordinates based on the North American Datum of 1983 (NAD 83). Proposed changes to the Scope of Regulations would authorize Sanctuary regulation of: exploring for, developing, or producing minerals within the Sanctuary; 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; placing or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary; moving, injuring, possessing, or attempting to move, injure, or possess a Sanctuary historical resource; taking any marine mammal, sea turtle, or seabird within or above the Sanctuary; possessing within the Sanctuary any marine mammal, sea turtle, or seabird; marking, defacing, damaging, moving, removing, or tampering with any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary; and introducing or otherwise releasing from within or into the Sanctuary an introduced species. Additional proposed changes to the Designation Document would provide: an updated and more complete description of characteristics that give the Sanctuary particular value; greater clarity on the applicability of Sanctuary emergency regulations (and in keeping with the National Marine Sanctuary Program regulations of general applicability, 15 CFR Part 922, Subpart E); revision of the Scope of Regulations section on consistency with international law with language taken directly from sec. 305(a) of the National Marine Sanctuaries Act (NMSA), which deals with application of regulations; an updated explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights; an update of the section entitled Alterations to This Designation to reflect the NMSA as currently written; and occasional wording fine-tuning in order to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries. No changes are proposed to be made to the "Fishing" and "Defense Activities" sections within Article V (Relation to Other Regulatory Programs) of the Designation Document.

DATES:

NOAA is publishing this proposed rule to provide notice to the public and invite advice, recommendations, information, and other comments from interested parties on the proposed rule and Draft Management Plan/Draft Environmental Impact Statement (DMP/DEIS). Public hearings will be held as detailed below:

- (1) Tuesday, June 27, 2006, at the Sheraton Four Points hotel, San Buenaventura Ballroom, 1050 Schooner Drive, in Ventura, California.
- (2) Thursday, June 29, 2006, at the Earl Warren Showgrounds, Warren Hall, 3400 Calle Real Street, in Santa Barbara, California.

Comments will be considered if received by July 21, 2006.

ADDRESSES: Copies of the DMP/DEIS are available at Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, California and on the web at <http://channelislands.noaa.gov>. You may submit comments, identified by RIN 0648-AT17, by any of the following methods:

- E-mail: cinms.mgtplan@noaa.gov.
- Fax: (805) 568-1582.
- Mail: Chris Mobley, Superintendent, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, California, 93109.
- Hand Delivery / Courier: Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, California, 93109.

FOR FURTHER INFORMATION CONTACT: Michael Murray at (805) 884-1464 or michael.murray@noaa.gov.

SUPPLEMENTARY INFORMATION:**Introduction**

Pursuant to section 304(e) of the NMSA, 16 U.S.C. 1431 et seq. the National Marine Sanctuary Program (NMSP) conducted a review of the management plan and regulations for the Channel Islands National Marine Sanctuary (CINMS or Sanctuary), located off the coast of southern California. The review has resulted in a proposed new management plan for the Sanctuary, some proposed changes to existing regulations, and some proposed new regulations. The proposed new regulations include prohibitions on:

- exploring for, developing, or producing minerals within the Sanctuary, except producing by-products incidental to authorized hydrocarbon production;
- abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- taking any marine mammal, sea turtle, or seabird within or above the Sanctuary, except as expressly authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq., or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.
- possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird, except as expressly authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA;
- marking, defacing, damaging, moving, removing, or tampering with any sign, notice or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary;
- introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Roccus saxatilis*) released during catch and release fishing activity; and
- operating a motorized personal watercraft (MPWC) within waters of the Channel Islands National Park.

These measures would afford better protection to the natural and cultural resources of CINMS.

Existing regulations would also be revised to:

- clarify that Sanctuary boundaries encompass the submerged lands;
- correct some inaccuracies and ambiguities in the coordinates and description of the Sanctuary's outer and shoreline boundaries;
- remove outdated and unnecessary oil spill contingency equipment requirements;
- clarify that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices;
- provide an exemption for discharges by vessels of the Armed Forces allowed under section 312(n) of the Federal Water Pollution Control Act, as amended, (uniform national discharge standards for vessels of the Armed Forces);
- specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to such discharge or deposit during the conduct of lawful fishing activity within the Sanctuary;
- remove an exception for discharging or depositing meals on board vessels;
- prohibit discharges or deposits of any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality;

- extend from 2 NM to the outer Sanctuary boundary (approximately 6 NM) the existing prohibition on alteration of the submerged lands of the Sanctuary;
- prohibit not just vessels engaged in the trade of carrying cargo and vessels engaged in the trade of servicing offshore installations, but also vessels of 300 gross registered tons or more (excluding fishing and kelp harvesting vessels) from operating within 1 NM of any island;
- revise and strengthen the existing protection of cultural resources to prohibit moving, possessing, injuring, or attempting to move, remove, injure, or possess any Sanctuary historical resource;
- clarify, update, and refine the regulation of Department of Defense activities occurring within the Sanctuary to, among other things, provide more consistency with the NMSA (as it now reads); and
- conform wording, where appropriate, to wording used for more recently designated sanctuaries.

The permit regulations for the Sanctuary are also being revised and clarified. Activities that assist in Sanctuary management or further salvage or recovery operations for certain abandoned shipwrecks would be added to the list of activities for which the Director of the NMSP (Director), or designee, may issue a permit. The modified permit regulations also specify that the Director may only issue permits for specific activities that would otherwise (without a permit) violate certain prohibitions: discharging and depositing; altering the submerged lands; abandoning (structures, material or other matter on the submerged lands); nearshore operation of vessels; disturbing a seabird or marine mammal by aircraft overflight below 1000 feet within 1 NM of the Islands; moving, removing, injuring or possessing, or attempting to move, remove, injure or possess a Sanctuary historical resource; taking any marine mammal, sea turtle or seabird within or above the Sanctuary; possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird; and operating a MPWC within waters of the Channel Islands National Park. In deciding whether to issue a permit, the Director of the NMSP would be required to consider the proposed activity in terms of: duration; effects on Sanctuary resources and qualities; potential indirect, secondary, or cumulative effects; and whether it is necessary to conduct the activity in the Sanctuary. In addition, the proposed modifications to the permit procedures and criteria (15 CFR 922.72) would further refine current requirements and procedures found in the general NMSP regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications found in the Office of Management and Budget approved applicant guidelines (OMB Control Number 0648-0141). The proposed modifications to the permit regulations would also expressly require that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

The proposed revised management plan for the Sanctuary contains a series of action plans that outline management, research, education, operational, and performance measurement activities planned for the next five years. The activities are designed to address specific issues facing the Sanctuary and, in doing so, help achieve the mandates of the NMSP and the Sanctuary's designation.

This document publishes the proposed new regulations and the proposed changes to existing regulations, publishes the text of the proposed Revised Designation Document for the Sanctuary, and announces the availability of the draft management plan and the draft environmental impact statement (DMP/DEIS). The existing CINMS Designation Document was published in 1980 upon establishment of the Sanctuary and, per the NMSA (at 16 U.S.C. 1434(a)(4)), describes the geographic area proposed to be 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. The NMSP is proposing certain revisions to the Sanctuary's Designation Document, which include changes to the description of the area, an updated and more accurate description of characteristics that give the Sanctuary particular value, an updated

explanation of the relation to other regulatory programs, and a number of substantive changes to the Sanctuary's scope of regulations.

Since designation, the area of CINMS has been described as approximately 1252.5 square nautical miles (NM). However, as a result of the proposed regulation changes that correct inaccuracies and ambiguities in the coordinates and the description of the Sanctuary's outer and shoreline boundaries, the CINMS area is now calculated as approximately 1243 square NM. The legal description of CINMS is proposed to be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather an improvement in the estimate of its size.

Because this proposed action includes changes to the terms of designation of the Sanctuary, as defined at 16 U.S.C. 1434(a)(4), as required by 16 U.S.C. 1434(a)(2), a DEIS has been developed consistent with the National Environmental Policy Act of 1969.

Marine Reserves and Conservation Areas

In 2002 NOAA considered merging environmental review processes for consideration of establishing marine reserves (no-take zones) and/or marine conservation areas (limited-take zones) within the Sanctuary, and the management plan revision, but subsequently decided to proceed with two separate processes. Consequently, a separate DEIS and draft proposed rule are being prepared to address consideration of marine reserves and conservation areas. As such, the consideration of marine reserves and conservation areas is outside the scope of this proposed rule. No part of this proposed rule directs or influences a future decision on the separate process to consider establishing marine reserves and conservation areas within the Sanctuary.

Sanctuary Environment

Designated on October 2, 1980 (45 FR 65200), the Sanctuary consists of an area off the coast of California of approximately 1243 square NM adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands) extending seaward to a distance of approximately six NM. The Sanctuary is located within the upper portion of the Southern California Bight (SCB), which is formed by a transition in the California coastline wherein the north-south trending coast begins to trend east to west. The SCB stretches from Point Conception in the north to Punta Eugenia (Mexico) in the south. Due to the oceanographic features of the SCB, its three bioregions, and the complex bottom topography and diversity of habitats found at the Islands, the Sanctuary has a great diversity of marine life.

The Sanctuary is located within a 300-mile long oceanographic region known as the Continental Borderland, a unique region of the continental shelf characterized by basins and elevated ridges. The California Current, the major ocean current moving through the region, transports cold water southward from upwelling centers along the coast. Point Conception, on the mainland coast north of San Miguel Island, is the southernmost major upwelling center on the west coast of the United States. This upwelling results in increased primary productivity and large zooplankton populations that support exceptionally abundant populations of small schooling fish. The Southern California Countercurrent transports warm water northward from the U.S.-Mexico border into the Santa Barbara Channel. Point Conception marks a transition zone between these cool surface waters to the north and warm waters to the south. The confluence of the California Current and Southern California Countercurrent creates three distinct bioregions in and around the Sanctuary: 1) the cold Oregonian Province; 2) the warm California Province; and 3) the transition zone between the two. These bioregions often overlap within the Sanctuary, resulting in a unique and highly diverse array of marine life including cold water species at the southern end of their range and warm water species at the northern end of their range.

Numerous important habitats are represented within the Sanctuary including kelp forests, surfgrass and eelgrass, intertidal, nearshore subtidal, deep-water benthic, and pelagic habitats. Giant kelp beds are highly productive Sanctuary habitats that provide food, shelter, attachment sites, and nursery habitat for myriad invertebrates and fishes. Greater habitat heterogeneity within the Sanctuary has resulted in increased kelp forest species diversity compared to that of mainland kelp forests. The extent of kelp beds varies considerably based on environmental conditions such as water temperature and natural predation. Surfgrass and eelgrass beds are also highly productive and complex microhabitats that support a wide variety of marine species. Intertidal habitat within the Sanctuary is composed of approximately 94.5 miles of rocky coastline interspersed with approximately 47 miles of sandy beaches. Rocky shores support a rich assortment of plants and animals, including numerous green, brown, and red algae, as well as beds of surfgrass. Nearshore subtidal habitats include mud, sand, gravel, cobble, and bedrock substrates. Rocky nearshore subtidal habitats are widespread, especially high relief volcanic reefs with walls, ledges, caves, and pinnacles. Typical shallow subtidal areas in the Sanctuary contain assemblages of plants, invertebrates, and fishes, with giant kelp dominating. Many shallow reefs grazed by sea urchins have less giant kelp and greatly reduced species diversity. Deeper reefs have well-developed invertebrate cover. Deep-water benthic or bottom habitats in the Sanctuary are 90% fine sediment or clay, with the remainder consisting of rocky areas. High relief pinnacles and ridges occur off the northwest end of San Miguel Island. While offshore benthic habitats do not support marine plants, they do support numerous invertebrates and demersal fishes such as various species of rockfish. Pelagic habitat, within the water column, supports numerous marine plants, fishes, and invertebrates, including plankton.

Diversity of marine plants is greater in the SCB, which includes the Sanctuary, as indicated above, than along coastal central California. In the SCB, there are at least 492 species of algae and 4 species of seagrasses known to occur of the 673 species described for California.

The total number of invertebrate species in the SCB is estimated at more than 5,000, not including microinvertebrates. Select invertebrates in the Sanctuary include many species of corals, prawns, spiny lobster, crabs, sea urchins, sea cucumbers, sea star, abalone, nudibranchs, scallops, mussels, squid, clams, barnacles, snails, salps, tunicates, jellyfish, sea slugs, and anemones. White abalone is protected by the Endangered Species Act.

About 481 species of fish inhabit the SCB. Abundance of fish assemblages is greater surrounding the Islands than at nearby coastal regions of the southern California mainland. Select fishes commonly found in the Sanctuary include: albacore, anchovy (northern), bass (various species), cabezon, California sheephead, California halibut, garibaldi, rockfish (various species), salmon (king), sardine (Pacific), shark (various species), surfperch (various species), swordfish, and white sea bass.

Four species of sea turtles have been reported in the offshore southern California region: green, loggerhead, olive Ridley, and leatherback. Southern California sea turtle stranding data indicate that all four species of sea turtle found in the region may be found within the Sanctuary at any time of year. All sea turtles are protected by the Endangered Species Act.

Over 195 species of birds use open water, shore, or island habitats in the SCB. The Sanctuary provides stopover habitat during both northern and southern bird migrations along the Pacific Flyway. The Sanctuary provides important habitat for eight seabirds that have special status under federal or state law: ashy storm-petrel, black storm-petrel, California brown pelican, California least tern, double-crested cormorant, rhinoceros auklet, western snowy plover, and Xantus' murrelet.

There are three marine mammal groups in the Sanctuary: whales, dolphins, and porpoises (cetaceans); seals and sea lions (pinnipeds); and the southern sea otter. All marine mammals are protected under the

Marine Mammal Protection Act of 1972. In addition, some marine mammals are protected under both the federal and state endangered species acts. At least 33 species of cetaceans have been reported in the Sanctuary region. Species commonly found in the Sanctuary include: long-beaked common dolphin, short-beaked common dolphin, bottlenose dolphin, Pacific white-sided dolphin, northern right whale dolphin, Risso's dolphin, California gray whale, blue whale, and humpback whale. Seven species of pinnipeds are found throughout or in part of the Sanctuary: the California sea lion (common), northern fur seal (uncommon), northern elephant seal (common), Pacific harbor seal (common), Guadalupe fur seal (extremely rare), Steller sea lion (rare), and ribbon seal (rare). The Sanctuary provides vital pinniped habitat including important feeding areas, breeding sites, and haul outs. Sea otters were common around the Islands until prolonged periods of hunting led to local extinction at the Islands and severe depletion along the mainland California coast. Rare sightings of sea otters in the Sanctuary have been reported since the 1987-to-1990 U.S. Fish and Wildlife Service (USFWS) translocation of 139 sea otters to San Nicolas Island. The southern sea otter is listed as threatened under the Endangered Species Act.

The ecological and cultural values of the Islands and surrounding waters are recognized nationally and internationally by several special designations, including that as a national marine sanctuary. In 1980 the United States not only designated the Sanctuary, but also designated Anacapa, San Miguel, Santa Barbara, Santa Cruz, and Santa Rosa Islands and 125,000 acres of submerged lands surrounding them as the Channel Islands National Park. In addition, the United Nations Educational, Scientific and Cultural Organization's (UNESCO) Man and the Biosphere Program designated the Sanctuary as a Biosphere Reserve in 1986.

The Sanctuary's cultural values stem largely from its rich array of maritime heritage resources (shipwrecks, aircraft wrecks, material associated with wharves, piers and landings, prehistoric archaeological sites and their associated artifacts, and paleontological remains). Carbon dating indicates that humans were present at the Islands as early as 13,000 years ago, with a site on Santa Rosa Island presenting the oldest human remains yet discovered in North America. The Islands and surrounding Sanctuary contain an abundance of prehistoric Native American Chumash artifacts and are still revered as a homeland by Chumash descendants. Historical remains may exist from as early as Juan Rodriguez Cabrillo's European voyage of discovery (1542 to 1543) through modern times. Known historical remains are represented in an inventory of over 140 shipwrecks and aircraft wrecks documented in the Sanctuary since 1853.

The uniqueness of the Sanctuary region and its proximity to several major ports and harbors along the mainland coast has made it a popular destination for numerous recreational and commercial activities. Sportfishing, diving, snorkeling, whale watching, pleasure boating, kayaking, surfing, and sightseeing are all popular pastimes within the Sanctuary, which is often referred to as "the Galapagos of the north." In 1999, recreation and tourism businesses represented almost 480 thousand person-days of activity within the Sanctuary. The Sanctuary also has very productive commercial fishing grounds. Key commercially targeted species include: squid, sea urchin, spiny lobster, prawn, nearshore and offshore finfishes, coastal pelagic species, flatfishes, rock crab, sea cucumber, tuna, and kelp. Of these market squid, sea urchin, spiny lobster, and halibut are the most economically valuable. In 1999 the ex-vessel value of species commercially caught within the Sanctuary was approximately \$42,777,444. Other human uses that occur adjacent to and in the Sanctuary are oil and gas activities, shipping, Department of Defense and Department of Homeland Security activities, and scientific research and education.

The Sanctuary is located near an area of southern California coastline that has experienced a dramatic increase in population. Whereas the population of southern California (Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura counties) was approximately 13.5 million in 1980, population levels now reach nearly 20 million. This represents a regional increase in

population of approximately 43%. Aerial and on-water surveys indicate that visitation to CINMS has increased significantly since 1980. With continued technological innovations such as global positioning systems (GPS) and improved watercraft design, it is likely that there will be continued increasing visitation to the Sanctuary and added pressure on its resources. With its proposed revised management plan and regulations, NOAA hopes to continue to protect CINMS for continued appreciation and appropriate use by current and future generations.

Proposed Revised Designation Document

The Designation Document for the Sanctuary contains the terms of designation as defined in the NMSA (16 U.S.C. 1434(a)(4)). NOAA is proposing some changes to the Designation Document as part of this management plan review process. Specifically, NOAA is proposing to clarify in the Designation Document that the submerged lands at CINMS are legally part of the Sanctuary and are included in the boundary description. At the time the Sanctuary was designated in 1980, Title III of the Marine Protection, Research, and Sanctuaries Act (now known as the NMSA) characterized national marine sanctuaries as consisting of coastal and ocean waters but did not expressly mention submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98-498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, NOAA is updating the Designation Document and the boundary description, and is also replacing the term “seabed” with “submerged lands of the Sanctuary.” In addition, boundary coordinates in the revised Designation Document and in the Sanctuary regulations would be expressed by coordinates based on the North American Datum of 1983 (NAD 83). Since designation the area of CINMS has been described as approximately 1252.5 square NM. However, adjusting for technical corrections and using updated technologies, the CINMS area is now calculated as approximately 1243 square NM. The legal description of CINMS is proposed to be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather an improvement in the estimate of its size.

The Designation Document is also proposed to be modified to authorize Sanctuary regulation of: exploring for, developing, or producing minerals within the Sanctuary; 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; placing or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary; moving, injuring, possessing, or attempting to move, injure, or possess a Sanctuary historical resource; taking any marine mammal, sea turtle, or seabird within or above the Sanctuary; possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle or seabird; marking, defacing, damaging, moving, removing, or tampering with any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary; and introducing or otherwise releasing from within or into the Sanctuary an introduced species. These proposed revisions to and addition of new activities subject to Sanctuary regulation would enable new and emerging resource management issues to be addressed, and are necessary in order to ensure the protection, preservation, and management of the conservation, recreational, ecological, historical, cultural, educational, archeological, scientific, and esthetic resources and qualities of the Sanctuary.

Additional proposed changes to the Designation Document would provide: an updated and more complete description of characteristics that give the Sanctuary particular value; greater clarity on the applicability of Sanctuary emergency regulations (in keeping with the National Marine Sanctuary Program regulations of general applicability, 15 CFR Part 922, Subpart E); revision of the Scope of Regulations section on consistency with international law with language taken directly from sec. 305(a) of the NMSA, which deals with application of regulations; an updated explanation of the effect of Sanctuary authority on

preexisting leases, permits, licenses, and rights; an update of the section entitled Alterations to This Designation to reflect the NMSA as currently written; and occasional wording fine-tuning in order to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries. No changes are proposed to be made to the “Fishing” and “Defense Activities” sections within Article V (Relation to Other Regulatory Programs) of the Designation Document.

The NMSP has carefully considered existing state and federal authorities in proposing new regulatory authorities to ensure protection and management of sanctuary resources. Proposed new authorities are intended to complement existing authorities.

Proposed Revised Designation Document for the Channel Islands National Marine Sanctuary

Article I. Effect of Designation

The Channel Islands National Marine Sanctuary was designated on October 2, 1980 (45 FR 65200). Section 308 of the National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq., (NMSA) authorizes the issuance of such regulations as may be necessary to implement the designation, including managing, protecting and preserving the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and esthetic resources and qualities of the Channel Islands National Marine Sanctuary (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 be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of an area of approximately 1243 square nautical miles (NM) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. The Sanctuary boundary begins at the Mean High Water Line of and extends seaward to a distance of approximately six NM from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands). The seaward boundary coordinates are listed in the Appendix to this Designation Document.

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

The Islands and surrounding ecosystems are unique and highly valued, as demonstrated by, for example, several national and international designations. The Islands and surrounding ecosystems are characterized by a unique combination of features including: complex oceanography, varied bathymetry, diverse habitats, remarkable biodiversity, rich maritime heritage, remote yet accessible location, and relative lack of development. These features yield high existence values as well as human use values for research, education, recreation, and commerce.

The Islands are located within a 300-mile long oceanographic region known as the Continental Borderland, a unique region of the continental shelf characterized by basins and elevated ridges. Within this region the confluence of the cool California Current and warm Southern California Countercurrent creates three distinct bioregions in and around the Sanctuary: the cold Oregonian Province, the warm California Province, and the transition zone between the two. The overlap of these bioregions results in a unique and highly diverse array of marine life within the Sanctuary, including cold water species at the southern end of their range and warm water species at the northern end of their range. In addition, the Sanctuary is located offshore from Point Conception, the southernmost major upwelling center on the west coast of the United States. Upwelling yields increased primary productivity essential to the marine

food web.

Diverse bathymetry and habitats are also important and unique characteristics of the Islands and surrounding ecosystems. The Sanctuary contains many important and varied physical and geological features including a complex of plateaus, continental slope, gyres, banks, subsea canyons, and rocky reefs. The diversity of accentuated bottom relief, abrupt change in depth, and varied substrate provide a spectrum of marine habitats. Some of the key marine habitats are sandy beach, rocky intertidal, kelp forest, rocky reef, and sandy bottom.

The Sanctuary's oceanographic and physical features support a great diversity of marine species, many of which are extremely rare and afforded special protection by federal and state law. At least 33 species of cetaceans are found within the Sanctuary, including blue, gray, and humpback whales and numerous dolphin species. While historically seven species of pinnipeds have been found throughout or in part of the Sanctuary, at least four species maintain important rookery and/or haul out sites on the Islands. Following the 1987 to 1990 translocation of southern sea otters to San Nicolas Island, rare sea otter sightings have been reported in the Sanctuary. Over 60 species of seabird occur within the Sanctuary, eleven of which utilize breeding habitat at the Islands. In addition, over 400 species of fish and more than 5,000 species of invertebrates are found in the Sanctuary. Stranding data indicate that green, loggerhead, olive Ridley, and leatherback sea turtles may also be found within the Sanctuary. Finally, numerous marine algae and plant species occur within the Sanctuary, the most notable among these being giant kelp and eelgrass.

The quality and abundance of natural resources at the Islands and surrounding waters have attracted man from the earliest prehistoric times to the present. As a result, the Sanctuary contains significant prehistoric and historic maritime heritage resources. Prehistoric maritime heritage resources include submerged Native American sites, the significance of which is underscored by a terrestrial Islands site with human remains dated to 13,000 years ago, the oldest human remains yet discovered in North America. Maritime heritage resources date back as far as 1542 and include over 140 historic shipwreck and aircraft sites. These wrecks reveal the diverse range of activities and nationalities that have traversed the Santa Barbara Channel. Following the mission era human occupation of the Islands transitioned from significant Chumash Native American villages, to land grant and ranching settlements, and finally to joint public-private ownership and management aimed at resource conservation and compatible public use. Modern-day descendants of the Chumash people still value and enjoy the Islands and surrounding Sanctuary waters, and work to keep preserve aspects of Chumash cultural history and practices. Despite this long history of human presence on the Islands, they remain remote yet accessible, and undeveloped relative to the burgeoning populations of nearby mainland southern California.

The physical, biological, and cultural characteristics of the Sanctuary combine to provide outstanding opportunities for appropriate scientific research, education, recreation, commerce, and natural and maritime heritage resource protection, preservation, and management. The Islands and surrounding Sanctuary are the subject of extensive research, primarily in the following categories: physical and biological science research; socioeconomic, cultural, and historic research; and political science research. Since its designation in 1980 the Sanctuary has played an important role in marine science education for all ages on a local, regional, national, and international scale. Popular Sanctuary recreation activities include wildlife viewing, boating, sailing, kayaking, diving, and sportfishing. Commercial activities within the Sanctuary include maritime shipping, oil and gas activities (two leases pre-date the Sanctuary), kelp harvesting, and commercial fishing. Some of the state's most valuable commercial fisheries occur within the Sanctuary. A complex web of county, state, and federal agencies manages the resources of the Islands and surrounding area and human uses thereof.

Several special designations recognize the Islands' and surrounding ecosystems' unique value. In 1980 the United States designated both the Channel Islands National Marine Sanctuary, as well as the islands of Anacapa, San Miguel, Santa Barbara, Santa Cruz, and Santa Rosa and 125,000 acres of submerged lands surrounding them as the Channel Islands National Park. In addition, the United Nations Educational, Scientific and Cultural Organization's (UNESCO) Man and the Biosphere Program designated the Sanctuary as a Biosphere Reserve in 1986.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

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

- a. Exploring for, developing, or producing hydrocarbons or minerals within the Sanctuary;
- b. Discharging or depositing from within or into the Sanctuary any material or other matter;
- c. 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;
- d. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- e. Operating a vessel (i.e., watercraft of any description) within the Sanctuary except fishing vessels or vessels traveling within a Vessel Traffic Separation Scheme or Port Access Route designated by the Coast Guard outside of 1 NM from any Island;
- f. Disturbing a marine mammal or seabird by an overflight below 1000 feet;
- g. Moving, removing, injuring, possessing, or attempting to move, remove, injure, or possess a Sanctuary historical resource;
- h. Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary;
- i. Possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird;
- j. Marking, defacing, damaging, moving, removing, or tampering with any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary;
- k. Introducing or otherwise releasing from within or into the Sanctuary an introduced species.

Section 2. Consistency with International Law

The regulations governing the activities listed in Section 1 of this article shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with: generally recognized principles of international law; an agreement between the United States and the foreign state of which the person is a citizen; or an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.

Section 3. 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, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition, consistent with the Administrative Procedure Act.

Article V. Relation to Other Regulatory Programs

Section 1. Fishing

The regulation of fishing is not authorized under Article IV. However, fishing vessels may be regulated with respect to discharges in accordance with Article IV, Section 1, paragraphs (b) and (c) and aircraft conducting kelp bed surveys below 1000 feet can be regulated in accordance with Article IV, Section 1, paragraph (f). All regulatory programs pertaining to fishing, including particularly regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., shall remain in effect. All permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV. Fishing as used in this article and in Article IV includes kelp harvesting.

Section 2. Defense Activities

The regulation of those activities listed in Article IV shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of an emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c) of the NMSA, 16 U.S.C. 1434(c), 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.

Article VI. Alterations to This Designation

The terms of designation, as defined under section 304(a) of the NMSA, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested federal and state agencies and the Pacific Fishery Management Council, approved by the Secretary of Commerce or designee, and after the close of a review period of forty-five days of continuous session of Congress.

Appendix -- Channel Islands National Marine Sanctuary Boundary Coordinates

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

Point ID #	Lat. North	Long. West
1	33.94138	-119.27422
2	33.96776	-119.25010
3	34.02607	-119.23642
4	34.07339	-119.25686
5	34.10185	-119.29178
6	34.11523	-119.33040
7	34.11611	-119.39120
8	34.11434	-119.40212
9	34.11712	-119.42896
10	34.11664	-119.44844
11	34.13389	-119.48081

Point ID #	Lat. North	Long. West
12	34.13825	-119.49198
13	34.14784	-119.51194
14	34.15466	-119.59059
15	34.15142	-119.61254
16	34.13411	-119.66024
17	34.14635	-119.69780
18	34.15988	-119.76688
19	34.15906	-119.77800
20	34.15928	-119.79327
21	34.16213	-119.80347
22	34.16962	-119.83643

Point ID #	Lat. North	Long. West
23	34.17266	-119.85240
24	34.17588	-119.88903
25	34.17682	-119.93357
26	34.17258	-119.95830
27	34.13535	-120.01964
28	34.13698	-120.04206
29	34.12994	-120.08582
30	34.12481	-120.11104
31	34.12519	-120.16076
32	34.11008	-120.21190
33	34.11128	-120.22707
34	34.13632	-120.25292
35	34.15341	-120.28627
36	34.16408	-120.29310
37	34.18231	-120.31224
38	34.19117	-120.32576
39	34.20224	-120.35122
40	34.20707	-120.41801
41	34.20520	-120.42859
42	34.19254	-120.46041
43	34.20540	-120.50728
44	34.20486	-120.53987
45	34.18182	-120.60041
46	34.10208	-120.64208
47	34.08151	-120.63894
48	34.05848	-120.62862
49	34.01940	-120.58567
50	34.01349	-120.57464
51	33.98698	-120.56582
52	33.95039	-120.53282
53	33.92694	-120.46132
54	33.92501	-120.42170
55	33.91403	-120.37585
56	33.91712	-120.32506
57	33.90956	-120.30857
58	33.88976	-120.29540
59	33.84444	-120.25482
60	33.83146	-120.22927
61	33.81763	-120.20284
62	33.81003	-120.18731
63	33.79425	-120.13422
64	33.79379	-120.10207
65	33.79983	-120.06995
66	33.81076	-120.04351
67	33.81450	-120.03158
68	33.84125	-119.96508

Point ID #	Lat. North	Long. West
69	33.84865	-119.92316
70	33.87038	-119.88247
71	33.86804	-119.87060
72	33.86110	-119.79017
73	33.86351	-119.77130
74	33.85995	-119.74390
75	33.86233	-119.68783
76	33.87330	-119.65504
77	33.88594	-119.62617
78	33.88688	-119.59423
79	33.88809	-119.58278
80	33.89414	-119.54861
81	33.90064	-119.51936
82	33.91569	-119.48263
83	33.91094	-119.46137
84	33.90424	-119.42422
85	33.90219	-119.40730
86	33.90131	-119.38373
87	33.90398	-119.36333
88	33.90635	-119.35345
89	33.91304	-119.33280
90	33.91829	-119.32206
91	33.48250	-119.16874
92	33.44235	-119.16797
93	33.40555	-119.14878
94	33.39059	-119.13283
95	33.36804	-119.08891
96	33.36375	-119.06803
97	33.36241	-119.04812
98	33.36379	-119.02811
99	33.36879	-118.99797
100	33.37441	-118.98194
101	33.38001	-118.96972
102	33.38914	-118.95492
103	33.40515	-118.93661
104	33.44006	-118.91519
105	33.48414	-118.90712
106	33.52444	-118.91492
107	33.53834	-118.92271
108	33.58616	-118.99540
109	33.59018	-119.02374
110	33.58516	-119.06745
111	33.58011	-119.08521
112	33.54367	-119.14460
113	33.51161	-119.16367

Summary of the Proposed Regulatory Amendments

The proposed regulatory changes would clarify that “submerged lands” are within the Sanctuary boundary, i.e., part of the Sanctuary. This would update the boundary regulation to make it consistent with the revised Designation Document. (See explanation of boundary clarification in preceding discussion of proposed revised Designation Document.) The Sanctuary’s outer boundary coordinates and description of the shoreline boundary demarcation are also proposed for technical corrections using the North American Datum of 1983, and to clarify that the shoreline boundary is the Mean High Water Line (MHWL) of Island shores. Since designation the area of CINMS has been described as approximately 1252.5 square NM. However, adjusting for technical corrections and using updated technologies, the CINMS area is now calculated as approximately 1243 square NM. The legal description of CINMS is proposed to be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather an improvement in the estimate of its size.

The proposed regulations would also modify the existing (1982) oil and gas regulation by removing the oil spill contingency equipment requirements, and modifying exceptions to this prohibition. The equipment requirements are outdated and unnecessary since Minerals Management Service lease agreement terms prescribe more stringent mandatory oil spill contingency plans. The following exceptions would be omitted for this prohibition: national defense; to respond to an emergency threatening life, property, or the environment; and as may be permitted by the Director in accordance with 15 CFR 922.48 and 922.72. These exceptions are not specific to the current regulation, but rather are “boilerplate” generic exceptions to the current prohibitions. The proposed revised regulations fine-tune the exceptions, as has been done in the regulations for more recently designated sanctuaries, so only if an exception is possibly applicable is it referenced for a particular prohibition. Accordingly, removal of the above exceptions is proposed because the limited exception for hydrocarbon exploration, development, or production is already provided within the regulation itself, because exploring for, developing, and producing hydrocarbons is not envisionable as a necessary activity to respond to an emergency threatening life, property, or the environment, and because such an activity could not meet the permit criteria requirements under 15 CFR 922.48 and 922.72. Department of Defense activities are addressed elsewhere in the regulations. Further, no such exceptions have ever been sought at CINMS.

The proposed regulations would also prohibit exploring for, developing, or producing minerals within the Sanctuary, except producing by-products incidental to hydrocarbon production allowed under the regulations. “Mineral” is defined by the NMSP program-wide regulations as clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value. 15 CFR 922.3. Mineral extraction activities could involve scraping the Sanctuary’s seabed surface and/or excavation of pits and tunnels into the seabed. This prohibition would protect Sanctuary resources and qualities from potentially damaging effects of offshore mining activities, including but not limited to: destruction and direct smothering of the benthic biota; alteration of the seabed surface profile; potential harm to fisheries; introduction of pollutants (e.g., drill cuttings and mud) that could cause interference with the filtering, feeding, or respiratory functions of marine organisms; loss of food sources and habitat for some species; possible lowered photosynthesis and oxygen levels; and degraded appearance of the water itself. Finally, prohibition of mining within the Sanctuary would reduce the risk of potential disturbance to underwater historical resources either through physical disturbance or increased turbidity, which would result in direct long-term beneficial impact to historical resources. A prohibition on mineral activities within the Sanctuary would be consistent with the prohibition on alteration of or construction on or in the submerged lands discussed below.

The proposed regulations would also clarify and otherwise modify the existing (1982) regulation prohibiting discharging or depositing any material or other matter. Clarifications include that: the

regulation applies to discharges and deposits “from within or into the Sanctuary” (“into” is intended to make clear that not only discharges and deposits originating in the Sanctuary (including from vessels in the Sanctuary), but also discharges and deposits from aircraft above the Sanctuary, from docks and piers extending over the Sanctuary, and from cliffs and other land adjacent to the Sanctuary, for example, are included in the prohibition); the exception for fish, fish parts, or chumming materials (bait) applies only to such discharges or deposits made during the conduct of lawful fishing activity within the Sanctuary; and the exception for biodegradable effluent discharges from marine sanitation devices applies only to operable Type I or II marine sanitation devices approved by the United States Coast Guard in accordance with the Federal Water Pollution Control Act, as amended. The existing exception for vessel wastes “generated by marine sanitation devices” was intended to prohibit the discharge of untreated sewage into the Sanctuary; the proposed clarification to this exception makes express that such discharges are only allowed if generated by Type I or II marine sanitation devices. (Type I and Type II marine sanitation devices treat wastes, but Type III marine sanitation devices do not.) In addition, the discharge and deposit regulation would be modified by removing the exception for discharging or depositing meals onboard vessels. Coast Guard regulations prohibit discharge of food wastes (garbage) within three NM and prohibit discharge of food wastes unless ground to less than one inch within three to twelve NM. The proposed Sanctuary regulation modification would mirror the Coast Guard regulations within three NM and provide increased protection to Sanctuary resources and qualities from such marine debris vis-à-vis the Coast Guard regulations in the area of the Sanctuary beyond three NM. The proposed clarifications and modification are intended to achieve increased protection of Sanctuary resources and qualities.

Finally, the discharge and deposit regulation would be augmented by adding a prohibition on discharging or depositing any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality. “Sanctuary resource” is defined at 15 CFR 922.3 as “any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.” “Sanctuary quality” is defined at 15 CFR 922.3 as “any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.” This modification would provide consistency with the regulatory language of other more recently designated sanctuaries, and help to protect Sanctuary resources and qualities from negative influences originating outside the boundaries of the CINMS.

The proposed regulatory changes would also modify the existing prohibition against altering the seabed of the Sanctuary or constructing a structure thereon. The term “seabed” would be replaced with “submerged lands” to be consistent with language used in the NMSA. In addition, the geographic extent of this regulation would be expanded from the first 2 NM offshore to the entire area of the Sanctuary in order to ensure protection of the diverse accentuated bottom relief, varied substrate, and concomitant benthic habitats of the Sanctuary, and wording would be conformed with similar regulations at more recently designated sanctuaries. Another proposed change to this regulation would modify the exception for “bottom trawling from a commercial vessel” to provide an exception for activities incidental and necessary to “conduct lawful fishing activity.” This broadening of the exception would encompass other bottom-touching gear types, such as pots and traps, which the drafters of the original regulations apparently did not realize could alter the seabed. This proposed change would thus remove any uncertainty about the existing regulation's applicability to such gear types.

The proposed regulatory changes would also specify that abandoning, by which is meant leaving without intent to remove, any structure, material, or other matter on or in the submerged lands of the Sanctuary, is prohibited. This change would be consistent with similar regulations at more recently designated sanctuaries and would help protect the Sanctuary from debris (e.g., wrecked vessels or seabed research equipment) abandoned by Sanctuary users. This change is consistent with the U.S. Ocean Action Plan: The Bush Administration's Response to the U.S. Commission on Ocean Policy. In this Action Plan the Administration acknowledges the harmful effects marine debris has on valuable marine resources, and calls for the re-establishment of the Interagency Marine Debris Coordinating Committee (re-established in December 2004), of which NOAA is a member.

The proposed regulatory changes would also modify the existing (1982) vessel approach regulation so that the prohibition against vessel operation within 1 NM of any of the Islands would apply not only to vessels engaged in the trade of carrying cargo and vessels engaged in the trade of servicing offshore installations but also to all vessels of 300 gross registered tons or more (excluding fishing and kelp harvesting vessels). The intent of this modification is to protect the sensitive nearshore areas off the Islands, including kelp forests, rocky reefs, and other areas, from the potential impacts of large-vessel groundings and collisions, including, but not limited to, cruise ships. The NMSP developed the proposed modified prohibition to more directly address the Sanctuary's concern that very large vessels, regardless of their purpose, not approach and put at risk sensitive nearshore areas of the Sanctuary.

The proposed regulatory changes would also include a modification to the existing (1982) prohibition on removing or damaging any historical or cultural resource. The proposed modification would add "moving" and "possessing" to the existing prohibition; would replace "damage" with "injure," a term defined at 15 CFR 922.3; and add "attempting" to move, remove, injure, or possess as a prohibition. The intent of this modification is to provide added protection to these fragile, finite, and non-renewable resources so they may be studied, and so appropriate information about them may be made available for the benefit of the public. The proposed regulation would also replace "historical or cultural resource" with "Sanctuary historical resource" to be consistent with regulatory language used at several other more recently designated national marine sanctuaries. "Historical resource" is defined in NMSP program-wide regulations as "any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include 'submerged cultural resources', and also include 'historical properties', as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended." (15 CFR 922.3).

The proposed regulatory changes would also include a new prohibition on take of marine mammals, seabirds, and sea turtles, except as expressly authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under one of these acts. The intent of this regulation is to bring a special focus to protection of the diverse and vital marine mammal and seabird populations and the sea turtles of the Sanctuary. This area-specific focus is complementary to the prohibitions against taking promulgated by other resource protection agencies, especially given that other federal and state authorities must spread limited resources over much wider geographic areas. This regulation would be consistent with regulations at several other more recently designated national marine sanctuaries, and would provide a greater deterrent due to the higher civil penalties afforded under the NMSA than the penalties provided by the MMPA, ESA, and MBTA. Further, the prohibition would cover all marine mammals, sea turtles, and seabirds within or above the Sanctuary. The Sanctuary's proposed regulation would not apply if an activity (including fishing in a federally or state-approved fishery) that does or might cause take of marine mammals, seabirds, or sea turtles has been expressly authorized to do so under the MMPA, ESA, or MBTA or an implementing regulation. With this proposed regulation, if NMFS or the USFWS issue a

permit for the take of a marine mammal, seabird, or sea turtle, such taking would not be prohibited by the NMSP and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary prohibition.

“Take” is defined in the NMSP program-wide regulations at 15 CFR 922.3. The proposed prohibition on take of marine mammals, seabirds, and sea turtles would be complementary to the current regulation prohibiting disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of any Island. The current regulation remains unique and important in that it provides a special focus on a specific type of activity, operation of motorized aircraft, within the particularly sensitive environments of the Sanctuary. The current regulation includes several exceptions (for enforcement purposes, to engage in kelp bed surveys, or to transport persons or supplies to or from an Island), which are still required to comply with the MMPA, ESA, MBTA, and any regulations, as amended, promulgated under these acts.

The proposed regulatory changes would also prohibit possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird, except as expressly authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA. This proposed regulation would serve to provide a greater deterrent against violations of existing laws protecting marine mammals, seabirds, and sea turtles than that offered by those other laws alone. This proposed regulation would also be consistent with recent regulations adopted by other national marine sanctuaries and would enhance protection provided by the prohibition on the take of marine mammals, seabirds, and sea turtles discussed above. With this proposed regulation, if NMFS or the USFWS issues a permit for the possession of a marine mammal, seabird, or sea turtle, it would not be prohibited by the NMSP and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary prohibition.

The proposed regulatory changes would include a prohibition on marking, defacing, damaging, moving, removing, or tampering with any sign, notice or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary. This prohibition is designed to protect Sanctuary property used for purposes including demarcation, enforcement, regulatory information, education, outreach, and research. This new proposed regulation would be consistent with other sanctuaries’ regulations.

The proposed regulatory changes would prohibit introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Roccus saxatilis*) released during catch and release fishing activity. “Introduced species” is defined to mean: (1) a species (including but not limited to any of its biological matter capable of propagation) that is non-native to the ecosystems protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes. This prohibition is designed to help reduce the risk from introduced species, including their seeds, eggs, spores, and other biological material capable of propagating. The intent of the prohibition is to prevent injury to Sanctuary resources and qualities, to protect the biodiversity of the Sanctuary ecosystems, and to preserve the native functional aspects of the Sanctuary ecosystems, all of which are put at risk by introduced species. Introduced species may become a new form of predator, competitor, disturber, parasite, or disease that can have devastating effects upon ecosystems. For example, introduced species impacts on native coastal marine species of the Sanctuary could include: replacement of a functionally similar native species through competition; reduction in abundance or elimination of an entire population of a native species, which can affect native species richness; inhibition of normal growth or increased mortality of the host and associated species; increased intra- or interspecies competition with native species; creation or alteration of original substrate and habitat; hybridization with native species; and direct or indirect

toxicity (e.g., toxic diatoms). Changes in species interactions can lead to disrupted nutrient cycles and altered energy flows that ripple with unpredictable results through an entire ecosystem. Exotic species may also pose threats to endangered species, and native species diversity. A number of non-native species now found in the Sanctuary region were introduced elsewhere on the west coast but have spread through hull-fouling and accidental introductions.

The proposed introduced species regulation includes an exception for striped bass (*Roccus saxatilis*) released during catch and release fishing activity. Striped bass were intentionally introduced in California in 1879, and in 1980 the California Department of Fish and Game initiated a striped bass hatchery program to support the striped bass sport fishery, which according to the California Department of Fish and Game is one of the most important fisheries on the Pacific Coast. The California Department of Fish and Game manages the striped bass fishery through a Striped Bass Management Conservation Plan. The proposed regulation is intended to acknowledge that striped bass are the focus of an established state-managed sport fishery and, since they consequently may be caught within the Sanctuary, make an exception for striped bass released during catch and release fishing activity.

The proposed regulatory changes would prohibit operating a MPWC within waters of the Channel Islands National Park, established by 16 U.S.C. 410(ff), which states that the boundaries of Channel Islands National Park include San Miguel and Prince Islands, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands, including the rocks, islets, submerged lands, and waters within one NM of each island, as depicted on the map entitled, "Proposed Channel Islands National Park" numbered 159-20,008 and dated April 1979. This proposed regulation would mirror an existing National Park Service ban on use of MPWC within waters of the Channel Islands National Park, and is intended to provide added deterrence for purposes of ensuring protection of the Sanctuary's sensitive nearshore marine wildlife and habitats. The Channel Islands National Park staff have observed an increase in use of MPWC within the park over the last several years, and park staff issue several dozen warnings per year for violation of this ban. For consistency (including enforcement) purposes the existing National Park Service definition of MPWC is proposed to be adopted for this proposed Sanctuary regulation. The National Park Service definition is as follows:

"Motorized personal watercraft" means a vessel, usually less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull. The length is measured from end to end over the deck excluding sheer, meaning a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not included in the measurement. Length is stated in feet and inches. 36 CFR 1.4(a).

MPWCs operate in a manner unique among recreational vehicles and pose a threat to wildlife. Their shallow draft enables them to penetrate areas not available to conventional motorized watercraft (NPS 2000, MOCZM 2002). The high speed and maneuverability of MPWCs, along with the tendency to operate them near the shore and in a repeated fashion within a confined area, results in recurring disturbance to animals and habitats (Rodgers and Smith 1997, Snow 1989). Studies have shown that the use of MPWCs in nearshore areas can increase flushing rates, reduce nesting success of certain bird species, impact spawning fish, and reduce fishing success (Burger 1998, Snow 1989). The National Park Service (2000, 2004) identified several of these impacts along with interruption of normal activity, avoidance and displacement, loss of habitat use, interference with movement, direct mortality, interference with courtship, alteration of behavior, change in community structure, elevated noise levels,

and damage to aquatic vegetation. Further, offshore marine mammals or surfacing birds may be unaware of the presence of these vehicles due to their low frequency sound; when the inability to detect the vehicles is combined with their high speed and rapid and unpredictable movements, both animals and operators are at risk (Snow 1989).

Water quality concerns related to use of MPWC, and in particular those with two-stroke engines, include discharge of oil and gas, and air pollutants. MPWC using two-stroke engines may discharge as much as 25 percent of their gas and oil emissions directly into the water (NPS 2000). Two-stroke engines may also expel lubricating oil as part of their exhaust, and emit air pollutants such as volatile organic compounds, nitrogen oxides, particulate matter, and carbon monoxide (NPS 2004).

A review of information currently available from MPWC manufacturers indicates that they have made efforts to reduce emissions and noise through use of more efficient four-stroke engines as well as other technology (e.g., Bombardier Recreational Products, Inc. 2005a, 2005b; Personal Watercraft Industry Association 2005). However, it is not clear that such improvements have rendered emission and noise impacts due to MPWC insignificant. While industry sponsored studies indicate that MPWCs are no louder than similar motorized vessels under analogous conditions, other studies indicate that because MPWCs travel repeatedly in the same area, continually leaving and reentering the water, they create rapid cycles of noise that disturb humans and wildlife (MOCZM 2002). Industry improvements in noise and other emissions do not address impacts associated with the high speed, maneuverability, shallow draft, and nearshore operation of MPWC.

The area within one NM of island shores experiences the greatest visitor use and impact to sensitive nearshore Sanctuary marine resources. The proposed regulation would serve as an added deterrent to illegal MPWC use within the nearshore area and other waters of the Channel Islands National Park, and would carry a maximum civil penalty of \$130,000 per incident, per day.

The proposed regulatory changes would modify the existing (1982) regulation that states that all activities currently, (i.e., at the time of designation) carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions contained within the other Sanctuary regulations. As part of this modification the list of exempt military activities occurring within the Sanctuary would be updated to include present military activities if specifically identified in the Final Environmental Impact Statement (FEIS) to be released for this rule (see proposed regulatory text for precise requirements). In addition, consistent with the NMSA, mitigation and restoration or replacement of Sanctuary resources and qualities would be required when Department of Defense activity results in their injury, destruction, or loss. All Department of Defense activities would be required to be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

The proposed regulatory changes would also add one exception pertaining to vessels of the Armed Forces to the two discharge regulations discussed earlier. Namely, an exception would be made for discharges allowed under section 312(n) of the Federal Water Pollution Control Act. Section 312(n), which was enacted in 1996, provides for uniform national standards for discharges, other than sewage, incidental to normal operation of vessels of the Armed Forces.

The proposed regulatory changes would also modify the Sanctuary's permit regulations by slightly augmenting the types of activities for which the Director may issue a permit, and by specifying the Sanctuary prohibitions to which permits may be applied. Activities that "assist in managing the Sanctuary" would be added to the types of activities (i.e., currently, research, education, and salvage) for which the Director may issue a permit. This addition provides a mechanism by which the Director may issue permits for otherwise prohibited activities that will further Sanctuary management. In addition,

“salvage or recovery operations” would be divided into two activities for which the Director may issue a permit: those that further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California pursuant to the Abandoned Shipwreck Act of 1987, 43 U.S.C. 2101 et seq.; and those that further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty. The intent of this proposed modification is to clarify that the Director may issue permits for salvage activities pertaining to both abandoned shipwrecks (invoking maritime heritage resource protection concerns) and recent air or marine casualties (invoking prompt response concerns). The permit regulation would authorize the Director to issue permits with regard to the prohibitions on: discharging and depositing; altering the submerged lands; abandoning structures, material, or other matter on or in the submerged lands; nearshore operation of vessels; disturbing a seabird or marine mammal by aircraft overflight below 1000 feet within 1 NM of the Islands; moving, removing, injuring or possessing, or attempting to move, remove, injure or possess a Sanctuary historical resource; taking any marine mammal, sea turtle or seabird within or above the Sanctuary; possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird; and operating a MPWC within waters of the Channel Islands National Park.

Another proposed modification to the permit regulations would, based on the decades of permitting experience the NMSP now has, strengthen and augment the criteria the Director is to use when evaluating permit applications. Whereas the existing regulation simply indicates that the Director shall evaluate certain matters in deciding whether to grant a permit, the proposed modified regulation would state that the Director may not issue a permit unless the Director finds that: the proposed activity will have at most short-term and negligible adverse effects on Sanctuary resources and qualities; the duration of the proposed activity is no longer than necessary to achieve its stated purpose; the proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary, or cumulative effects of the activity, and the duration of such effects; and it is necessary to conduct the proposed activity within the Sanctuary. The required findings would also include modifications of several concepts that serve as review criteria in the existing regulation. Whereas the existing regulation simply requires the Director to evaluate the general professional and financial responsibility of the applicant, the revised review criteria clarify that the Director must find that the applicant is professionally qualified to conduct and complete the proposed activity; and that the applicant has adequate financial resources available to conduct and complete the proposed activity. In addition to several minor changes to the existing review criteria regarding the appropriateness of the methods proposed to conduct the activity, a new clause would be added emphasizing the consideration of potential indirect, secondary, and cumulative effects of the proposed activity on Sanctuary resources and qualities. In addition to minor modifications to the existing review criteria regarding whether permitted activities may diminish or enhance the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information, consideration of the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects, would be added. Finally, the modified regulation would require that the Director find that the reasonably expected end value of the proposed activity furthers Sanctuary goals and purposes and outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity. The proposed modifications to the permit regulations would also state that in addition to the information listed in 15 CFR 922.48(b), all permit applications must include information the Director needs to make the findings described above.

The proposed modifications to the permit procedures and criteria would also further refine current requirements and procedures from general National Marine Sanctuary Program regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit

applications found in the Office of Management and Budget approved applicant guidelines (OMB Control Number 0648-0141). The revised section would also add language to the CINMS permit regulations about permit duration, timelines, and procedures for permit processing, permit review, and procedures and criteria for permit renewal.

The proposed modifications to the permit regulations would also expressly require that in addition to any other terms and conditions the Director deems appropriate, Sanctuary permits must require that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

Although the NMSP is not currently proposing a prohibition on lightering in the Sanctuary, the NMSP is soliciting comments on such a potential prohibition and may issue a rule with such a prohibition at a future date. "Lightering" is defined at 15 CFR 922.3 as "at-sea transfer of petroleum-based products, materials, or other matter from vessel to vessel."

Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the NMSA (16 U.S.C. 1434(a)(4)) requires that the procedures specified in section 304 for designating a National Marine Sanctuary be followed in modifying any term of designation. In particular, section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed designation (in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, and research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required documents have been submitted to the specified congressional committees.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA (16 U.S.C. 1434) requires the preparation of a draft environmental impact statement (DEIS), as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and that the DEIS be made available to the public. NOAA has prepared a DMP/DEIS on the proposal and copies are available at the address and website listed in the Address section of this proposed rule. Responses to comments received on the DMP/DEIS will be published in the Final Management Plan (FMP)/FEIS and preamble to the final rule.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. As members of the Sanctuary Advisory Council, the California Resources Agency, California Department of Fish and Game, and the California Coastal Commission have been closely involved with the development of the management plan and proposed regulatory changes. In addition, staff from the NMSP's west coast region have consulted with the California Department of Boating and Waterways, California Department of Fish and Game, California State Lands Commission, and California Resources Agency. Also, in 2003, the NMSP consulted in writing with the above mentioned state agencies in addition to: the Office of the

Governor of California, the California Department of Parks and Recreation, the California Department of Water Resources, the California Department of Conservation, the California Environmental Protection Agency, the California State Water Resources Control Board, and the California Assembly Committee on Natural Resources.

Regulatory Flexibility Act

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

Small business concerns operating within the Sanctuary include over 500 commercial fishermen, approximately 28 consumptive recreational charter businesses, approximately 27 non-consumptive recreational charter businesses, one MPWC business, approximately 20 marine salvage companies, and one aviation business. The approximately 40 small organizations operating within the Sanctuary include non-governmental organizations (NGO's) and/or non-profit organizations (NPO's) dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. There are no small governmental jurisdictions in the Sanctuary.

The proposed prohibition on exploring for, developing or producing minerals within the Sanctuary would not have a significant adverse impact on small entities. No small entities practice mining activities within the Sanctuary.

The proposed prohibition on abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary would have no significant adverse impacts on small entities within the Sanctuary because none of these operations are dependent upon a practice of abandoning structures or other matter on or in the submerged lands of the Sanctuary. However, should a small entity, such as a research entity, occasionally want to temporarily leave materials on the submerged lands of the Sanctuary, such as research equipment, a Sanctuary research permit could be applied for. In addition, this prohibition may offer an indirect beneficial effect to marine salvage companies whose services may be called upon to remove grounded, sinking, or submerged vessels that would be illegal to leave abandoned upon the submerged lands of the Sanctuary.

The proposed prohibitions on take and possession of certain animals are not expected to result in a significant adverse impact on small entities because those entities' operations may lawfully involve such takes under authorization granted by the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), or any regulation promulgated under one of these acts. In addition, non-consumptive recreational charter businesses may receive indirect beneficial effects from these proposed regulations because the added protection to marine mammals, seabirds, and sea turtles could complement business activities focused on whale watching, kayaking, or other marine excursion tours. For example, the additional protection this prohibition affords to certain animals may potentially result in improved status of such animals at the Islands. This in turn may lead to the beneficial effect of more consumer interest in services rendered by non-consumptive recreational charter businesses.

The proposed prohibition on marking, defacing, damaging, moving, removing, or tampering with any Sanctuary-related sign, notice, placard, monument, stake, post, or other boundary marker is not expected to significantly adversely affect any of the small entities within the Sanctuary because routine small entity operations neither involve nor are likely to cause such damage.

The proposed prohibition on introducing or otherwise releasing from within or into the Sanctuary an introduced species is not expected to significantly adversely impact small entities because introducing or otherwise releasing an introduced species is not part of the business or operational practices associated with most of the identified small entities, and because, for those small entities whose operational practices may include catch and release of striped bass (*Roccus saxatilis*), (i.e., consumptive recreational charter businesses), an exception has been provided for striped bass released during catch and release fishing activity. By prohibiting such introductions, indirect benefits may result for certain small entities since their activities could potentially be negatively impacted by the spread of introduced species.

The proposed prohibition on operation of MPWC within waters of the Channel Islands National Park is not expected to have any significant adverse impact on these small entities. This activity is already illegal within the same area per a ban in place by the National Park Service (36 CFR 3.24), and as such MPWC businesses would not be subjected to any additional impact from this proposed regulation.

None of the small entities conducting activities within the Sanctuary is expected to be significantly adversely impacted by the proposed clarifications and corrections to the Sanctuary's boundary for the following reasons. The clarification that submerged lands are part of the existing Sanctuary boundary would not have a significant adverse impact on small entities within the Sanctuary because the Sanctuary has managed the submerged lands through administering protective measures for them since designation in 1980. The National Marine Sanctuary Program (NMSP) manages submerged lands as part of national marine sanctuaries and this is reflected in amendments to the NMSA passed in 1984 (16 U.S.C. 1432(3)). Similarly, proposed corrections and clarifications to the Sanctuary's boundary coordinates would not significantly adversely impact any of the small entities operating within the Sanctuary because the proposed corrections and clarifications are merely technical in nature. This update would not constitute a change in the geographic area of the sanctuary but rather an improvement in the estimate of its size. For example, boundary coordinates are proposed to be updated using the NAD 83, which provides more accurate information than that originally used to describe the Sanctuary boundary coordinates.

The proposed modification to the Sanctuary's discharge/deposit regulation that would clarify that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices would not introduce any new restrictions on small entities and would merely clarify the original intent of the Sanctuary's discharge regulation. To the extent that this clarification might affect customary, though illegal, sewage discharge practices of some small entities within the Sanctuary's 6 NM boundary, the adverse affect on those operations is expected to be less than significant because such discharges may legally occur beyond the Sanctuary's 6 NM boundary, or vessel sewage may be pumped out and disposed of at mainland ports and harbors. In addition, some small entities may receive indirect benefits from this clarification, especially as it might pertain to preventing large volume discharges from larger vessels, since it may contribute to sustaining favorable environmental quality in their area of operation.

The proposed modification to the Sanctuary's discharge/deposit regulation that would specify that the exception from the prohibition on discharging or depositing fish, fish parts, or chumming materials (bait) into the Sanctuary is valid only during the conduct of lawful fishing activity within the Sanctuary is not expected to have a significant adverse impact on small entities because it would not apply to conduct of lawful fishing activity within the Sanctuary. Although in some areas "chumming" marine waters is a practice that has been associated with non-consumptive recreational activities (e.g., attracting sharks for photography) or in some cases research activities (e.g., attracting seabirds for study), the NMSP is not aware of any such practices occurring within the Sanctuary. Furthermore, small entities not engaged in lawful fishing could apply for and, if appropriate, be granted a Sanctuary permit to conduct this otherwise prohibited discharge/deposit.

The proposed modification that would result in meals on board vessels no longer being excepted from the Sanctuary discharge/deposit prohibition would not result in a significant impact to small entities because it would merely introduce a new requirement that boaters not discard food wastes within three to six NM from Island shores. Such discharges/deposits are already prohibited under the Act to Prevent Pollution from Ships, 33 U.S.C. 1901 et seq., within the first three NM from Island shores, and also out to twelve NM unless the food wastes are ground to less than one inch. Therefore, boaters could either properly dispose of food waste at port or appropriately discard it beyond six NM (the Sanctuary's boundary) and out to twelve NM, when food wastes are ground to less than one inch. Resulting impacts may include additional costs and time potentially involved in traveling the additional distance from three to six NM offshore to appropriately dispose of food waste; however, these are not expected to be significant.

Significant adverse impacts are not expected to result for any of the Sanctuary's small entities from the proposed prohibition on discharging or depositing any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality because in the course of normal, lawful operations, no small entity activities (e.g., commercial fishing businesses, recreational fishing businesses, non-consumptive charter businesses, marine salvage companies, research and education entities, aircraft businesses) are expected to produce such discharges/deposits beyond the Sanctuary boundary. In addition, this proposed regulation would except discharges/deposits likely to come from vessel-based small entities, including: biodegradable effluent incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1321 et seq.); biodegradable matter from a vessel resulting from deck wash down, vessel engine cooling water, or graywater as defined by section 312 of the FWPCA; vessel engine or generator exhaust; and fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity beyond the boundary of the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity there.

No significant impact on small entities is expected to result from the proposed regulation change that would extend the prohibition on alteration of the submerged lands of the Sanctuary from 2 NM to the outer 6 NM Sanctuary boundary, and would include a prohibition on placing any structure, material, or other matter on or in the submerged lands of the Sanctuary. The proposed regulation would modify the exception for "bottom trawling from a commercial vessel" to provide an exception for activities incidental and necessary to "conduct lawful fishing activity." This broadening of the exception would encompass other bottom-touching gear types, such as pots and traps, which the drafters of the original regulations apparently did not realize could alter the seabed. This proposed change would thus remove any uncertainty about the existing regulation's applicability to such gear types. Most other small entity operations do not normally involve, depend upon, or result in alteration of and/or placement of structures, material, or other matter on or in the submerged lands of the Sanctuary, and as such would not be significantly adversely affected by this regulation. Marine salvage companies, when engaged in salvage recovery operations to respond to a recent air or marine casualty, may have the potential to alter submerged lands. Such companies may apply for a Sanctuary permit. For those entities that do occasionally need to temporarily place materials on the submerged lands of the Sanctuary, such as research entities, the Sanctuary permitting process may also be used to potentially allow acceptable activities.

None of the small entities operating within the Sanctuary is expected to incur significant adverse impacts from the proposed prohibition of vessels of 300 gross registered tons or more (excluding fishing and kelp harvesting vessels) from operating within one NM of the Islands. Vessels larger than 300 gross registered tons are not utilized within the Sanctuary by consumptive or non-consumptive recreational charter businesses known to frequent the Sanctuary. Many cruise ships are larger than 300 gross registered tons,

but cruise ships have not been seen within the Sanctuary for more than ten years, and the NMSP is not aware of any nearshore routes near the Islands planned by the cruise line industry. It is unlikely that a marine salvage vessel would ever be large enough to be affected by this prohibition, but if necessary a Sanctuary salvage permit could be applied for. The operations of vessels larger than 300 gross registered tons conducting research or education activities that cannot be conducted without approaching the Islands inside of one NM from shore, an uncommon – less than once per year – but anticipated occurrence, may apply for and potentially be granted a Sanctuary research or education permit to do so. Indirect beneficial effects from this prohibition may result for some small entities that may benefit from a nearshore marine environment that is not subjected to large-scale grounding, collision, hazardous spill, and wildlife disturbance risks that very large vessels can pose.

Significant adverse impacts to small entities are not expected to result from the revision and strengthening of the Sanctuary's regulation protecting historical resources because the regulation would remain essentially the same with regard to how small entities may conduct their activities. For example, non-consumptive recreational charter businesses are expected to continue to operate chartered dive trips in a manner that does not involve the currently unlawful practice of damaging or removing submerged cultural resources. Thus, although the proposed revised regulation would be more comprehensive in the protection provided to these resources (prohibiting moving, possessing, injuring or attempting to move, remove, possess, or injure any Sanctuary historical resource), no significant adverse impact is expected for existing lawful business practices. The proposed regulation may offer an indirect beneficial effect for non-consumptive recreational charter businesses, as it would help ensure that submerged cultural resources remain intact for divers to enjoy.

The proposed modification of permit issuance criteria and procedures is not expected to significantly adversely affect any of the small entities within the Sanctuary as most of their activities do not require a Sanctuary permit. Furthermore, the proposed revised permit regulations not only maintain the status quo scope of activities for which a permit may potentially be issued (research, education, and salvage), but also add one more such activity category (for activities that will assist in managing the Sanctuary), in effect broadening the types of otherwise prohibited activities for which a permit may be granted. On the occasion that a Sanctuary-based research, education, salvage, or other project might require a permit, the proposed modified criteria and procedures are not expected to significantly adversely affect the activities of the requesting entities, because the proposed revised permit regulation in essence merely explicitly clarifies other concepts implicit in the current regulation or a part of agency practice with regard to it.

Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

Paperwork Reduction Act

This proposed rule involves an existing information collection requirement currently approved by OMB (OMB Control Number 0648-0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The proposed revised permit regulations would require the Director of the NMSP to consider the proposed activity for which a permit application has been received in terms of: duration; effects on Sanctuary resources, qualities, and users; indirect, secondary, and cumulative effects; and whether it is necessary to conduct the activity in the Sanctuary. The proposed modifications to the permit procedures and criteria (15 CFR 922.72) would further refine current requirements and procedures of the general National Marine Sanctuary Program regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications found in the Office of Management and Budget approved applicant guidelines (OMB Control Number 0648-0141). The revised permit

regulations would add language about: permit duration, timelines and procedures for permit processing, permit review, permit renewal, and liability.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Request for Comments

In this proposed rule, NOAA is publishing in its entirety 15 CFR Part 922, Subpart G, as it would read with the amendments described above. Those amendments are the subject of this proposed rule and request for comments. NOAA's publishing of the entire body of regulations specifically governing the CINMS, showing the proposed changes, is meant to facilitate the reader's understanding of the regulations and better inform public comments.

List of Subjects in 15 CFR Part 922

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

John H. Dunnigan, Date
 Assistant Administrator
 Ocean Services and Coastal Zone Management
 National Oceanic and Atmospheric Administration

Accordingly, for the reasons set forth above, 15 CFR Part 922 is proposed to be amended as follows:

PART 922--NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for Part 922 continues to read as follows:
 Authority: 16 U.S.C. 1431 et seq.

2. The regulations for CINMS (15 CFR Part 922, Subpart G) are amended to read as follows:

Subpart G--Channel Islands National Marine Sanctuary

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of approximately 1243 square nautical miles (NM) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. The Sanctuary boundary begins at the Mean High Water Line of and extends seaward to a distance of approximately six NM from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands). The seaward boundary coordinates are listed in the Appendix to this subpart.

§ 922.71 Definitions.

In addition to those definitions found at 15 CFR 922.3, the following definitions apply to this subpart:

Introduced species means (1) a species (including but not limited to any of its biological matter capable of propagation) that is non-native to the ecosystems protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Motorized personal watercraft means a vessel, usually less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull. The length is measured from end to end over the deck excluding sheer, meaning a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not included in the measurement. Length is stated in feet and inches.

§ 922.72 Prohibited or otherwise regulated activities.

- (a) Except as specified in paragraphs (b) through (e) of this section, the following activities are prohibited by these regulations and thus unlawful for any person to conduct or cause to be conducted:
- (1) Exploring for, developing, or producing hydrocarbons within the Sanctuary, except pursuant to leases executed prior to March 30, 1981, and except the laying of pipeline pursuant to exploring for, developing, or producing hydrocarbons.
 - (2) Exploring for, developing, or producing minerals within the Sanctuary, except producing by-products incidental to hydrocarbon production allowed by paragraph (a) (1) of this section.
 - (3)(i) Discharging or depositing from within or into the Sanctuary any material or other matter except:
 - (A) Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;
 - (B) Biodegradable effluent incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1321 et seq. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
 - (C) Biodegradable matter from a vessel resulting from deck wash down, vessel engine cooling water, or graywater as defined by section 312 of the FWPCA;
 - (D) Vessel engine or generator exhaust;
 - (E) Effluents routinely and necessarily discharged or deposited incidental to hydrocarbon exploration, development, or production allowed by paragraph (a)(1) of this section;
 - (F) Discharges allowed under section 312(n) of the FWPCA; or
 - (ii) 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 subparagraphs (a)(3)(i)(B) through (F) of this section and fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity beyond the boundary of the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity there.
 - (4) Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing or placing any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental to and necessary to:
 - (i) Anchor a vessel;

- (ii) Install an authorized navigational aid;
 - (iii) Conduct lawful fishing activity;
 - (iv) Lay pipeline pursuant to exploring for, developing, or producing hydrocarbons; or
 - (v) Explore for, develop, or produce hydrocarbons as allowed by subparagraph (a)(1) of this section.
- (5) Abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary.
- (6) Except to transport persons or supplies to or from any Island, operating within one NM of any Island any vessel engaged in the trade of carrying cargo, including, but not limited to, tankers and other bulk carriers and barges, any vessel engaged in the trade of servicing offshore installations, or any vessel of three hundred gross registered tons or more, except fishing or kelp harvesting vessels.
- (7) Disturbing a seabird or marine mammal by flying a motorized aircraft at less than 1000 feet over the waters within one NM of any Island, except, if allowed under subparagraph (a)(9) of this section:
- (i) to engage in kelp bed surveys; or
 - (ii) to transport persons or supplies to or from an Island.
- (8) Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess a Sanctuary historical resource.
- (9) Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary, except as expressly authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq., or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.
- (10) Possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird, except as expressly authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.
- (11) Marking, defacing, damaging, moving, removing, or tampering with any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary.
- (12) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Roccus saxatilis*) released during catch and release fishing activity.
- (13) Operating a motorized personal watercraft within waters of the Channel Islands National Park, established by 16 U.S.C. 410(ff).
- (b)(1) The prohibitions in paragraphs (a)(3) through (13) do not apply to military activities carried out by DOD as of the effective date of these regulations and specifically identified in section 3.5.9 (Department of Defense Activities) of the Final Channel Islands National Marine Sanctuary Management Plan/Final Environmental Impact Statement (FMP/FEIS), Volume II: Environmental Impact Statement, 200_, authored and published by NOAA ("pre-existing activities"). Copies of the document are available from the Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109. Other military activities carried out by DOD may be exempted by the Director after consultation between the Director and DOD.
- (2) A military activity carried out by DOD as of the effective date of these regulations and specifically identified in the section entitled "Department of Defense Activities" of the FMP/FEIS is not considered a pre-existing activity if:
- (A) it is modified in such a way that requires the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4321 et seq., relevant to a Sanctuary resource or quality;
 - (B) it is modified, including but not limited to changes in location or frequency, in such a way that its possible adverse effects on Sanctuary resources or qualities are significantly greater than previously considered for the unmodified activity;

(C) it is modified, including but not limited to changes in location or frequency, in such a way that its possible adverse effects on Sanctuary resources or qualities are significantly different in manner than previously considered for the unmodified activity; or

(D) there are new circumstances or information relevant to a Sanctuary resource or quality that were not addressed in the FMP/FEIS.

(3) In the event of destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an incident, including, but not limited to, discharges, deposits, and groundings, caused by a DOD activity, DOD, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director.

(4) All DOD activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(c) The prohibitions in subparagraphs (a)(3) through (10), (a)(12), and (a)(13) of this section do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.73.

(d) The prohibitions in subparagraphs (a)(3) through (11) and (a)(13) of this section do not apply to an activity necessary to respond to an emergency threatening life, property, or the environment.

(e) The prohibitions in subparagraphs (a)(3) through (11) and (a)(13) of this section do not apply to an activity necessary for valid law enforcement purposes in the Sanctuary.

§ 922.73 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by sec. 922.72(a)(3) through (10), (a)(12), and (a)(13) if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a permit issued under sec. 922.48 and this section.

(b) The Director, at his or her sole discretion, may issue a permit, subject to terms and conditions as he or she deems appropriate, to conduct an activity prohibited by sec. 922.72(a)(3) through (10), (a)(12), and (a)(13) if the Director finds that the activity:

(1) Is appropriate research designed to further understanding of Sanctuary resources and qualities;

(2) Will further the educational value of the Sanctuary;

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

(4) Will assist in managing the Sanctuary; or

(5) Will further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California.

(c) The Director may not issue a permit under sec. 922.48 and this section unless the Director also finds that:

(1) The proposed activity will have at most short-term and negligible adverse effects on Sanctuary resources and qualities;

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

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

(4) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

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

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

(7) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary as a source of recreation and as a source of educational and scientific information, considering the

- extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary and the duration of such effects;
- (8) It is necessary to conduct the proposed activity within the Sanctuary;
 - (9) The reasonably expected end value of the proposed activity furthers Sanctuary goals and purposes and outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and
 - (10) Any other matters the Director deems appropriate do not make the issuance of a permit for the proposed activity inappropriate.
- (d) Applications.
- (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Manager, Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109.
 - (2) In addition to the information listed in sec. 922.48(b), all applications must include information the Director needs to make the findings in paragraphs (b) and (c) of this section.
- (e) In addition to any other terms and conditions that the Director deems appropriate, a permit issued pursuant to this section must require that the permittee agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

Appendix--Channel Islands National Marine Sanctuary Boundary Coordinates

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

Point Number	ID	Latitude North	Longitude West
1		33.94138	-119.27422
2		33.96776	-119.25010
3		34.02607	-119.23642
4		34.07339	-119.25686
5		34.10185	-119.29178
6		34.11523	-119.33040
7		34.11611	-119.39120
8		34.11434	-119.40212
9		34.11712	-119.42896
10		34.11664	-119.44844
11		34.13389	-119.48081
12		34.13825	-119.49198
13		34.14784	-119.51194
14		34.15466	-119.59059
15		34.15142	-119.61254
16		34.13411	-119.66024
17		34.14635	-119.69780
18		34.15988	-119.76688
19		34.15906	-119.77800
20		34.15928	-119.79327
21		34.16213	-119.80347
22		34.16962	-119.83643
23		34.17266	-119.85240
24		34.17588	-119.88903

Point Number	ID	Latitude North	Longitude West
25		34.17682	-119.93357
26		34.17258	-119.95830
27		34.13535	-120.01964
28		34.13698	-120.04206
29		34.12994	-120.08582
30		34.12481	-120.11104
31		34.12519	-120.16076
32		34.11008	-120.21190
33		34.11128	-120.22707
34		34.13632	-120.25292
35		34.15341	-120.28627
36		34.16408	-120.29310
37		34.18231	-120.31224
38		34.19117	-120.32576
39		34.20224	-120.35122
40		34.20707	-120.41801
41		34.20520	-120.42859
42		34.19254	-120.46041
43		34.20540	-120.50728
44		34.20486	-120.53987
45		34.18182	-120.60041
46		34.10208	-120.64208
47		34.08151	-120.63894
48		34.05848	-120.62862
49		34.01940	-120.58567
50		34.01349	-120.57464
51		33.98698	-120.56582
52		33.95039	-120.53282
53		33.92694	-120.46132
54		33.92501	-120.42170
55		33.91403	-120.37585
56		33.91712	-120.32506
57		33.90956	-120.30857
58		33.88976	-120.29540
59		33.84444	-120.25482
60		33.83146	-120.22927
61		33.81763	-120.20284
62		33.81003	-120.18731
63		33.79425	-120.13422
64		33.79379	-120.10207
65		33.79983	-120.06995
66		33.81076	-120.04351
67		33.81450	-120.03158
68		33.84125	-119.96508
69		33.84865	-119.92316
70		33.87038	-119.88247

Point Number	ID	Latitude North	Longitude West
71		33.86804	-119.87060
72		33.86110	-119.79017
73		33.86351	-119.77130
74		33.85995	-119.74390
75		33.86233	-119.68783
76		33.87330	-119.65504
77		33.88594	-119.62617
78		33.88688	-119.59423
79		33.88809	-119.58278
80		33.89414	-119.54861
81		33.90064	-119.51936
82		33.91569	-119.48263
83		33.91094	-119.46137
84		33.90424	-119.42422
85		33.90219	-119.40730
86		33.90131	-119.38373
87		33.90398	-119.36333
88		33.90635	-119.35345
89		33.91304	-119.33280
90		33.91829	-119.32206
91		33.48250	-119.16874
92		33.44235	-119.16797
93		33.40555	-119.14878
94		33.39059	-119.13283
95		33.36804	-119.08891
96		33.36375	-119.06803
97		33.36241	-119.04812
98		33.36379	-119.02811
99		33.36879	-118.99797
100		33.37441	-118.98194
101		33.38001	-118.96972
102		33.38914	-118.95492
103		33.40515	-118.93661
104		33.44006	-118.91519
105		33.48414	-118.90712
106		33.52444	-118.91492
107		33.53834	-118.92271
108		33.58616	-118.99540
109		33.59018	-119.02374
110		33.58516	-119.06745
111		33.58011	-119.08521
112		33.54367	-119.14460
113		33.51161	-119.16367