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15 CFR Part 944

Monterey Bay National Marine Sanctuary;
Regulations and Public Hearings on the
Draft Environmental Impact Statement/
Management Plan; Proposed Rule and
Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 900122-0022]

RIN 0648-AC63

Monterey Bay National Marine Sanctuary Regulations

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

ACTION: Proposed rule; notice of proposed designation; summary of draft management plan; and notice of public availability of draft management plan and draft environmental impact statement.

SUMMARY: By this notice, NOAA, as required by section 205(a)(3) of Public Law No. 100-627, is proposing to designate an approximately 2,200 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay off the coast of central California as a National Marine Sanctuary. This notice publishes the proposed Designation Document for the proposed Sanctuary and summarizes the draft management plan for it. The draft management plan details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the proposed Sanctuary. By this notice, NOAA proposes regulations to implement the proposed designation and regulate activities consistent with the provisions of the proposed Designation Document. Finally, this notice announces the public availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) prepared for the proposed designation. The intended effect of this proposed rule is to protect the conservation, recreational, ecological, historical, research, educational, or esthetic qualities of the Monterey Bay area.

DATES: Comments will be considered if received by October 2, 1990.

ADDRESSES: Comments may be submitted to Joseph A. Uravitch, Chief, or Franklin Christhilf, Regional Manager, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National

Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., suite 714, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Franklin Christhilf, Pacific Regional Manager, or Mark Murray-Brown, Program Specialist 202/673-5126.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* ("Act"), authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect their conservation, recreational, ecological, historical, research, educational or esthetic qualities.

Comments are solicited from all interested persons. Holders of, owners of, or future applicants for leases, permits, licenses, approvals, other authorizations, or rights are specifically invited to comment on how they may be affected by the proposed designation of the Sanctuary and particularly §§ 944.8-944.11 of the proposed regulations. Comments are also in particular invited on the adequacy of the regulatory regime to protect Sanctuary resources and Sanctuary qualities including the exclusion of fishing activities from the scope of regulations.

After the comments received during the comment period have been considered, a final environmental impact statement and management plan will be prepared, and a notice of designation together with final regulations implementing the designation will be published in the **Federal Register**. The designation and regulations shall take effect and become final after the close of a 45-day Congressional review period unless a joint resolution disapproving the designation or any of its terms is enacted or the Governor of the State of California certifies to the Secretary of Commerce that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable terms shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State. A notice will be published in the **Federal Register** announcing the effective date.

The State of California nominated the Monterey Bay area in 1977, along with nine other offshore marine areas, for consideration for designation as National Marine Sanctuaries. In response to these nominations, NOAA selected the Channel Islands, the Point Reyes-Farallon Islands, and the Monterey Bay areas for further consideration. In December 1978, NOAA

released an issue paper on these three sites, presenting several boundary and regulatory options for each site. Public hearings were held and, based on the responses, NOAA, on August 10, 1979, declared all three sites as active candidates for designation as National Marine Sanctuaries.

On September 21, 1980, the Channel Islands National Marine Sanctuary was designated and on January 16, 1981, the Point Reyes-Farallon Islands National Marine Sanctuary (later renamed the Gulf of the Farallones National Marine Sanctuary) was designated.

On December 14, 1983 (see 48 FR 56253), NOAA removed the Monterey Bay area from the list of active candidates for three reasons: (1) The existence of the Channel Islands and Gulf of the Farallones National Marine Sanctuaries, which protect similar marine resources, and the policy established in 1980 for the National Marine Sanctuary Program to consider a diverse array of sites and resources; (2) the area's relatively large size and the surveillance and enforcement burdens this would impose; and (3) the wealth of existing marine conservation programs already in place in the Monterey Bay area.

On November 7, 1988, Public Law No. 100-627, which amends and authorizes appropriations for title III of the Act, was signed into law. Section 205(a)(3) of Public Law No. 100-627 directs that the Secretary of Commerce designate the Monterey Bay National Marine Sanctuary no later than December 31, 1989. This directive automatically advances Monterey Bay to active candidate status.

Before an area may be designated as a National Marine Sanctuary, section 303 (16 U.S.C. 1433) of the Act requires the Secretary to find:

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

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

(3) Designation of the area as a National Marine Sanctuary will facilitate coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; and

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

Section 304 (16 U.S.C. 1434) requires the Secretary to issue in the **Federal Register** a notice of the proposal, proposed regulations, and a summary of the draft management plan.

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

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

II. Summary of Draft Environmental Impact Statement/Management Plan

The DEIS/MP for the proposed Monterey Bay National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of the Sanctuary. The DEIS/MP describes the resource protection, research, education and interpretive programs, and details the specific activities to be taken in each program. The DEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities. The goals and objectives for the proposed Sanctuary are:

Resource Protection

The highest priority management goal is to protect the marine environment, resources and qualities of the proposed Sanctuary. The specific objectives of protection efforts are to: (1) Coordinate policies and procedures among the agencies sharing responsibility for protection and management of resources; (2) encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs); (3) develop an effective and coordinated program for the enforcement of Sanctuary regulations; (4) enforce Sanctuary regulations in addition to other regulations already in place; (5) promote

public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use; (6) ensure that the water quality of Monterey Bay is maintained at a level consonant with Sanctuary Designation; (7) establish cooperative agreements and other mechanisms for coordination among all the agencies participating in Sanctuary management; (8) ensure that the appropriate management agency incorporates research results and scientific data into effective resource protection strategies; and (9) reduce threats to Sanctuary resources.

Research Program

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

Specific objectives for the research program are to: (1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary; (2) incorporate research results into the interpretive/education program in a format useful for the general public; (3) focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary; (4) encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes; (5) initiate a monitoring program to assess environmental changes as they occur due to natural and human processes; (6) identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and (7) encourage information exchange among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management.

Education

The goal for education programs is to improve public awareness and understanding of the significance of the

Sanctuary and the need to protect its resources and qualities.

The management objectives designed to meet this goal are to: (1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability; (2) broaden support for the Sanctuary management by offering programs suited to visitors with a range of diverse interests; (3) provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and (4) collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

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

Specific management objectives are to: (1) Provide relevant information about Sanctuary regulations, use policies and standards; (2) collaborate with public and private organizations in promoting compatible uses of the Sanctuary; (3) encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities and (4) monitor and assess the levels of use to identify and control potential degradation of resources and qualities and minimize potential user conflicts.

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

III. Proposed Designation Document

Section 304(a)(4) of the Act requires that the proposed designation document include 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 these characteristics. This section also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus the terms of designation serve as a constitution for the Sanctuary.

Proposed Designation Document for the Monterey Bay National Marine Sanctuary

Under the authority of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, Monterey Bay and its surrounding waters offshore central California, and the submerged lands under Monterey Bay and its surrounding waters, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation or at some later date in order to protect Sanctuary resources and qualities. Thus, the act of designation will empower the Secretary of Commerce to regulate the activities listed in section 1. Listing does not necessarily mean that an activity will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended by the same procedures by which the original designation was made.

Article II. Description of the Area

The Monterey Bay National Marine Sanctuary (the "Sanctuary") boundaries encompass a total of approximately 2,200 square nautical miles (approximately 7,550 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California. The boundary encompasses the coastal and ocean waters over the entire Monterey Canyon between the northern boundary of Pescadero Marsh, 2.0 nautical miles north of Pescadero Point, and the southern boundary of Julia Pfeiffer Burns Underwater Park and Area of Special Biological Significance, 2.5 nautical miles south from Partington Point, and extending from the mean high tide line from these sites seaward approximately 18 nautical miles on a

southwesterly heading of 240° and joined by an arc with a radius of 46 nautical miles drawn from Moss Landing over the entire Monterey Canyon complex out to the abyssal plain at 1500 fathoms (approximately 3000 meters). The land-side boundary follows the mean-high tide level but does not include Santa Cruz, Moss Landing, or Monterey Harbors. The precise boundaries are set forth in appendix I to this designation document.

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

The Monterey Bay area is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive ecosystem and a wide variety of marine habitat. The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This submarine canyon, along with adjacent submarine canyons, enriches local waters through strong seasonal upwelling, modifies currents, and provides habitat for pelagic communities. Monterey Bay itself is a rare geological feature, as it is one of the few large bays along the Pacific coast.

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

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

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

Costanoan Indian midden deposits, aboriginal remains and sunken ships and aircraft.

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

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

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

- a. Exploring for, developing, or producing oil, gas or minerals in the Sanctuary;
- b. Discharging or depositing any material or other substance;
- c. Possessing, moving, or injuring, or attempting to possess, move, or injure, a Sanctuary historical resource;
- d. Drilling through, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure or material on the seabed of the Sanctuary;
- e. Taking marine mammals in the Sanctuary or seabirds in or above the Sanctuary;
- f. Flying over the Sanctuary in motorized aircraft at low altitude;
- g. Operating commercial (other than fishing) vessels in the Sanctuary; and
- h. Operating thrill craft (e.g., jet skis, wet bikes, surf jets, hovercraft, speed boats less than 13 feet in length) in the Sanctuary.

Section 2. Consistency with International Law

The regulations governing the activities listed in section 1 of this Article shall apply to United States-flag vessels and to persons who are citizens, nationals or resident aliens of the United States and shall apply to foreign-flag vessels and persons not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any activity, including those not listed in section 1, is subject to immediate temporary regulations, including prohibition, in accordance with the Administrative Procedure Act.

Article V. Defense or Law Enforcement Activities

No prohibition set forth in the Sanctuary regulations shall apply to activities that are necessary for national defense or law enforcement. Whenever an activity necessary for national defense or law enforcement would violate a prohibition set forth in the Sanctuary regulations were it not necessary for national defense or law enforcement, the head of the agency taking the action shall notify the Secretary of Commerce of designate of the proposed activities if there is sufficient time to permit consultation without jeopardizing national defense or law enforcement. Such notification shall be sufficiently in advance of undertaking the activity in order to permit consultations as to how the activity could be conducted to minimize any adverse impact on Sanctuary resources and qualities without compromising national defense or law enforcement. Activities that are not necessary for national defense or law enforcement, such as training exercises and routine vessel operations, are subject to all prohibitions contained in the Sanctuary regulations.

Article VI. Effect on Other Regulations, Leases, Permits, Licenses, and Rights

Section 1. Fishing Regulations, Licenses, and Permits

Fishing in the Sanctuary, including fishing for shellfish and invertebrates and mariculture, shall not be regulated

as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated other than under the Act by Federal and State authorities of competent jurisdiction, and designation of the Sanctuary shall have not effect on any regulation, permit, or license issued thereunder, e.g., regulations promulgated under the the California Fish and Game Code and regulations implementing Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Notwithstanding the above, discharges and deposits from fishing vessels may be regulated pursuant to Article IV, section 1, paragraph (b); drilling through, dredging or otherwise altering the seabed of the Sanctuary or constructing, placing or abandoning any structure of material on the seabed of the Sanctuary in connection with fishing and mariculture activities may be regulated pursuant to Article IV, section 1, paragraph (d); and taking of marine mammals and seabirds may be regulated pursuant to Article IV, section 1, paragraph (e).

Section 2. Other

If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation more protective of Sanctuary resources and qualities shall govern.

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or his or her designate as a result of this designation or as a result of any Sanctuary regulation if such lease, permit, license, approval, other authorization, or right of use or access was issued or in existence as of the effective date of this designation. The Secretary of Commerce or his or her designate, however may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or to any right of subsistence use or access in existence as of the effective date of Sanctuary designation, provided that the owner or

holder of such authorization or right notifies the Secretary or his or her designate of the existence of such authorization or right and requests certification in accordance with the Sanctuary regulations, if the exercise of such authorization or right would otherwise violate a prohibition set forth in the Sanctuary regulations, and complies with any terms and conditions on the exercise of such authorization or right imposed by the Secretary or his or her designate as he or she deems necessary to achieve the purposes for which the Sanctuary was designated. Pending the imposition of terms and conditions by the Secretary or his or her designate, such owner or holder may exercise any such authorization or right without being in violation of any prohibitions set forth in the Sanctuary regulations.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, if the Secretary or his or her designate was notified of the application for such authorization by the applicant in accordance with the Sanctuary regulations and the Secretary or his or her designate did not object to the issuance of such authorization, and such authorization contains, and the owner or holder complies with, such terms and conditions as the Secretary or his or her designate deems necessary to protect Sanctuary resources and qualities.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by a permit issued by the Secretary or his or her designate in accordance with the Sanctuary regulations. Such permits shall only be issued if the Secretary or his or her designate finds that the activity for which the permit is applied will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; have only negligible, short-term adverse effects on Sanctuary resources and qualities; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California.

In addition, the Secretary or his or her designate may issue special used

permits in accordance with section 310 of the Act.

If the Sanctuary regulations prohibit oil, gas, or mineral exploration, development, or production, the Secretary or his or her designate may in no event permit or otherwise approve such activities in the Sanctuary, and any leases, licenses, permits, approvals, or other authorizations issued after the effective date of Sanctuary designation authorizing the exploration, development, or production of oil, gas or minerals in the Sanctuary shall be invalid.

Article VII. Alteration of this Designation

The terms of designation may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, regional, and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or his or her designate.

Appendix I—Proposed Monterey Bay National Marine Sanctuary Boundary Coordinates

(Appendix I will set forth the precise boundaries based on the comments received in the DEIS).
End of Proposed Designation Document

IV. Summary of Proposed Regulations

The proposed regulations would set forth the boundaries of the proposed Sanctuary, prohibit a relatively narrow range of activities, establish procedures for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, establish certification procedures for existing leases, licenses, permits, approvals, other authorizations, or rights authorizing the conduct of a prohibited activity, establish notification procedures for applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity, set forth the maximum per-day penalties for violating Sanctuary regulations, and establish procedures for administrative appeals.

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

Proposed § 944.1 would set forth as the purpose of the regulations to implement the designation of the Monterey Bay National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation,

ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Proposed § 944.2 and proposed appendix I following proposed § 944.11 would set forth the boundaries of the Sanctuary.

Proposed subsection 944.3 would define various terms used in the regulations. Other terms appearing in the proposed regulations are defined at 15 CFR 922.2 or in the Act.

Proposed § 944.4 would allow all activities except those prohibited by § 944.5 to be undertaken subject to any emergency regulation promulgated pursuant to § 944.6 and all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction.

If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation more protective of Sanctuary resources and qualities shall govern.

Proposed § 944.5 would prohibit a variety of activities and thus make it unlawful to conduct them. However, any of the prohibited activities other than exploring for, developing, or producing oil, gas or minerals in the Sanctuary could be conducted lawfully if:

(1) Necessary for national defense or law enforcement; necessary to respond to an emergency threatening life, property, or the environment; or pursuant to a National Marine Sanctuary permit issued under proposed § 944.8;

(2) Pursuant to a certification by the Director of the Office of Ocean and Coastal Resource Management under proposed § 944.9 of a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction as of (or if conducted pursuant to any valid right of subsistence use or access, in existence as of) the effective date of this designation subject to complying with any terms and conditions imposed by the Director as he or she deems necessary to achieve the purposes for which the Sanctuary was designated; or

(3) Pursuant to a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction after the effective date of Sanctuary designation, provided that the Director was notified of the application in accordance with the requirements of proposed § 944.10 and the Director did not object to the issuance of such authorization, and such authorization contains, and the owner or holder complies with, such terms and conditions, as the Director deems

necessary to protect Sanctuary resources and qualities.

The prohibitions would apply to United States-flag vessels and to persons who are citizens, nationals or resident aliens of the United States and to foreign-flag vessels and persons not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

The first activity prohibited would be exploring for, developing, or producing oil, gas or minerals in the Sanctuary. The resources and qualities of the Monterey Bay area, particularly sea otters, sea birds, and pinnipeds that use the haul-out sites, kelp forests and rocks along the Monterey Bay coast, and the high water quality, are especially vulnerable to oil and gas activities in the area. A prohibition on oil and gas activities within the proposed Sanctuary boundaries will provide partial protection from oil and gas activities for the resources and qualities within the proposed boundaries. A prohibition on mineral activities within the proposed Sanctuary is necessary to be consistent with the prohibition on the fifth activity as discussed below.

The second activity prohibited would be depositing or discharging from any location within the boundaries of the Sanctuary materials or other substances except fish, fish parts, chumming materials or bait used in or resulting from normal fishing operations in the Sanctuary; biodegradable effluents incidental to vessel use generated by marine sanitation devices approved by the U.S. Coast Guard; water generated by routine vessel operations (e.g., cooling water and deck washdown) excluding bilge pumping; or engine exhaust. This prohibition is necessary in order to protect the Sanctuary resources and qualities from the effects of pollutants deposited or discharged into the Sanctuary.

The third activity prohibited would be depositing or discharging, from beyond the boundaries of the Sanctuary, materials or other substances, except for the exclusions discussed above for the second activity, that subsequently enter the Sanctuary and injure a Sanctuary resource or quality. The intent of this prohibition is to protect the Sanctuary resources and qualities from the harmful effects of land and sea-generated non-point and point source pollution.

The fourth activity prohibited would be moving, possessing, or injuring or attempting to move, possess, or injure a

Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to accidental moving, possession or injury during normal fishing operations.

The fifth activity prohibited would be drilling through, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure or material on the seabed of the Sanctuary, except as a result of: Anchoring vessels; normal fishing operations; routine harbor maintenance; installation of navigation aids; maintenance of mariculture operations existing as of the effective date of these regulations; and the construction of docks and piers. The intent of this prohibition is to protect the resources of the Sanctuary from the harmful effects of activities such as, but not limited to, excavations for archeological purposes, drilling into the seabed, strip mining, ocean mineral extraction and dumping of dredge spoils.

The sixth activity prohibited would be taking marine mammals in the Sanctuary or seabirds in or above the Sanctuary, except in accordance with and as permitted by regulations promulgated under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). The term "taking" includes all forms of harassment. The MMPA and the ESA both prohibit the taking of specific species protected under those Acts. Sanctuary enforcement officials may consider harassment cases pursuant to the MMPA and ESA. The proposed prohibition would overlap with the MMPA and ESA but also extend protection for Sanctuary resources on an environmentally holistic basis. It would include all marine mammals in the Sanctuary and seabirds in or above the Sanctuary.

The seventh and final activity prohibited would be flying motorized aircraft at less than 1000 feet above the Sanctuary within three nautical miles of State of California designated reserves, parks, beaches or refuges, or the Los Padres National Forest. This prohibition is intended to protect marine birds and mammals from the disturbance and harassment of low-flying aircraft. For example, seabirds are often congregated near the shoreline and sea otters are distributed among the kelp beds within three nautical miles of the coastline.

Proposed § 944.6 would authorize the regulation, including prohibition, on a

temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Proposed § 944.7 would set forth the maximum statutory civil penalty per day for conducting a prohibited activity—\$50,000. Each day of a continuing violation would constitute a separate violation.

Regulations setting forth the administrative procedures governing the assessment of civil penalties, enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings are governed by part 904, title 15, Code of Federal Regulations.

Proposed § 944.8 would set forth the procedures for applying for a National Marine Sanctuary permit to conduct an otherwise prohibited activity and the criteria governing the issuance, denial, amendment, suspension, and revocation of such permits. Permits would be granted by the Director of the Office for Ocean and Coastal Resource Management if he or she finds that the activity will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in the management of the Sanctuary; have only negligible, short-term adverse effects on Sanctuary resources and qualities; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the end value of the applicant's activity, and such other matters as the Director deems appropriate.

Proposed § 944.9 would set forth procedures for requesting certification of leases, licenses, permits, approvals, other authorizations, or rights authorizing the conduct an activity otherwise prohibited under § 944.5(a)(2)-(7) issued or in existence as of the date of Sanctuary designation. Pursuant to 944.5(f), the prohibitions in

§ 944.5(a)(2)-(7) do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or to any right of subsistence use or access in existence as of the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Director of the existence of such authorization or right in accordance with the requirements of § 944.8 and requests certification of such authorization or right, and provided that the owner or holder complies with any terms or conditions on the exercise of such authorization or right imposed by the Director as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

Proposed § 944.9 would allow the owner or holder 90 days from the effective date of Sanctuary designation to request certification. The owner or holder would be allowed to conduct the activity without being in violation of § 944.5(a)(2)-(7) pending final agency action on a timely certification request.

The Director would be required to certify such authorization or right within 120 days of receipt of a request for certification, unless: If within 30 days of receipt of a request for certification, the Director has requested additional information, the owner or holder shall then have 30 days from receipt of the request to supply the requested additional information. From the date of the receipt of the additional information or data the Director would have either: 120 days to certify such authorization or right; or 60 days to publish a notice in the **Federal Register** of the intent to hold a public hearing on the request for certification. A hearing shall then be held within 30 days of the publication of the notice to hold the public hearing and a decision on the certification will be made 60 days from the close of the public hearing.

As a condition of certification, the Director would impose such terms and conditions on the exercise of such authorization or right as he or she deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 304(c)(2) of the Act.

Either the owner or holder or the issuing agency may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 944.11.

Proposed § 944.10 would state that consistent with § 944.5(g), the prohibitions of § 944.5(a)(2)-(7) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, provided that the Director is notified of the application for such lease, license, permit, approval or other authorization within fifteen days of the date of application or of the effective date of Sanctuary designation, whichever is later, and that the Director does not object to the issuance of such lease, license, permit, or authorization, and provided that such lease, license, permit, or authorization contains, and the owner or holder complies with, such terms and conditions as the Director deems necessary to protect Sanctuary resources and qualities.

Any person applying for a permit, license, approval or other authorization from any Federal, State, or local authority to conduct an activity that would be prohibited under § 944.5(a)(2)-(7) would be required to notify the Director, in writing, within 15 days of the date of application or of the effective date of Sanctuary designation, whichever is later, of the filing of the application.

The Director would be required to notify the agency to which application has been made within the time period allowed for comment on the application of whether he or she has an objection to issuance or what terms and conditions such license, permit, approval, or other authorization must contain in order to protect Sanctuary resources and qualities.

Either the applicant or the issuing agency may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designate in accordance with the procedures set forth in § 944.11.

Proposed § 944.11 would set forth the procedures for appealing to the Assistant Administrator or designate actions of the Director with respect to: (1) The grant, conditioning, amendment, denial, suspension or revocation of a permit under § 944.8; (2) the conditioning, amendment, or revocation of a certification under § 944.9; or (3) the objection to issuance or the imposition of terms and conditions under § 944.10.

Thus, the regulatory regime that the proposed regulations would establish provides for multiple uses of Monterey Bay while at the same time providing for the protection of Sanctuary resources and qualities.

For example, if a city or town were discharging sewage effluents into the

Bay pursuant to a valid National Pollution Discharge Elimination System (NPDES) permit issued prior to the effective date of Sanctuary designation, the city or town could continue to discharge under the permit without being in violation of the discharge prohibition by requesting certification of the permit under proposed § 944.9. The Director would then impose on the exercise of the NPDES permit such terms and conditions as he or she deems necessary to achieve the purposes for which the Sanctuary was designated. Such discharges would remain subject to all prohibitions, restrictions and conditions imposed by any other authority of competent jurisdiction.

For another example, if an entity is dumping dredge spoils in the Bay pursuant to a valid existing permit, the entity could continue to do so by requesting and obtaining certification in accordance with proposed § 944.9.

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

V. Miscellaneous Rulemaking Requirements

Marine Protection, Research, and Sanctuaries Act

Section 304 of the Act requires the Secretary to submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the same day as this notice is published, a prospectus on the proposal, which must contain, among other things, the terms of the proposed designation, the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the area, and a draft environmental impact statement. In accordance with section 304, the required prospectus is being submitted to the specified Congressional Committees.

Executive Order 12291

Under Executive Order 12291, the Department must judge whether the regulations proposed in this notice are "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Administrator of NOAA has determined that the regulations proposed in this notice are not major because, if adopted, they are not likely to result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The regulations proposed in this notice would allow all activities to be conducted in the proposed Sanctuary other than a relatively narrow range of prohibited activities. The procedures proposed in these regulations for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, for requesting certifications for existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for licenses, permits, approvals, or other authorizations to conduct a prohibited activity would all act to lessen any adverse economic effect on small entities. The proposed regulations, in total, if adopted in final form as proposed, are not expected to have a significant economic impact on a substantial number of small entities and the General Counsel of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96-511). The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the proposed activities are consistent with the management goals for the Sanctuary. The collection of information requirement contained in

the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.83 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530 (Attn: Paperwork Reduction Act Project 0648-XXXX); and to Richard Roberts, room 305, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

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

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a Draft Environmental Impact Statement (DEIS) has been prepared for the proposed designation and the proposed regulations. As required by section 304(a)(2), the DEIS includes the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. Copies of the DEIS are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

Executive Order 12630

This proposed rule, if issued in final form as proposed, would not have takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on

private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the absolute prohibition on the exploration, development, production of oil, gas and minerals from the Sanctuary might have a takings implication if it abrogated an existing lease for OCS tracts within the proposed Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the proposed Sanctuary and no exploration or production and development plans have been filed or approved.

List of Subjects in 15 CFR Part 944

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 10, 1990.

John J. Carey,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Chapter IX is proposed to be amended as set forth below.

1. Subchapter B heading is added to read as follows:

Subchapter B—Ocean and Coastal Resource Management

2. Parts 921 through 942 are transferred from subchapter A to subchapter B.

3. A new part 944 is added to subchapter B to read as follows:

PART 944—MONTEREY BAY NATIONAL MARINE SANCTUARY

Sec.

- 944.1 Purpose.
- 944.2 Boundaries.
- 944.3 Definitions.
- 944.4 Allowed activities.
- 944.5 Prohibited activities.
- 944.6 Emergency regulations.
- 944.7 Penalties for commission of prohibited acts.
- 944.8 National Marine Sanctuary permits; application procedures and issuance criteria.
- 944.9 Certification of leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity issued or in existence as of the effective date of Sanctuary designation.
- 944.10 Notification of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.
- 944.11 Appeals of administrative action.

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

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

§ 944.1 Purpose.

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

§ 944.2 Boundaries.

The Monterey Bay National Marine Sanctuary consists of an area of approximately 2,200 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California. The boundary encompasses the coastal and ocean waters over the entire Monterey Canyon between the northern boundary of Pescadero Marsh, 2.0 nautical miles north of Pescadero Point, and the southern boundary of Julia Pfeiffer Burns Underwater Park and Area of Special Biological Significance, 2.5 nautical miles south from Partington Point, and extending from the mean high tide line from these sites seaward approximately 18 nautical miles on a southwesterly heading of 240° and joined by an arc with a radius of 46 nautical miles drawn from Moss Landing over the entire Monterey Canyon complex out to the abyssal plain at 1500 fathoms (approximately 3000 meters). The Monterey Bay National Marine Sanctuary does not include Santa Cruz, Moss Landing, or Monterey Harbors. The precise boundaries of the Sanctuary appear in appendix I to this part.

§ 944.3 Definitions.

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

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

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

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

(e) *Commercial vessel* means any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges; vessels used in seismic surveys; and vessels engaged in the trade of servicing offshore installations.

(f) *Effective date of Sanctuary designation* means the date the regulations implementing the designation of the Sanctuary become effective.

(g) *Historical resource* means a resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

(h) *Injure* means to change adversely, either in the long- or short-term, a chemical or physical attribute of, or the viability of.

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

(j) *Sanctuary* means the Monterey Bay National Marine Sanctuary.

(k) *Sanctuary quality* means a particular and essential characteristic of the Sanctuary, including but not limited to water quality and air quality.

(l) *Sanctuary resource* means any living or nonliving resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or aesthetic value, including, but not limited to, the substratum of the Bay, corals and coralline algae, benthic invertebrates and algae, plankton, fish, birds, marine mammals and historical resources.

(m) *Taking any marine mammal or seabird* means harassing, hunting, capturing, collecting, or killing, or attempting to harass, hunt, capture, collect, or kill, any marine mammal or seabird, including, but not limited to, any of the following: Collecting dead marine mammals or seabirds, or parts thereof, restraining or detaining any marine mammal or seabird, no matter how temporary, tagging a marine mammal or seabird, operating an aircraft or vessel or doing any other act that results in the disturbing or molesting of marine mammals or seabirds.

(n) *Thrill craft* means any motorized vessel that is generally less than thirteen feet in length as manufactured, is capable of exceeding a speed of twenty miles per hour, and has the capacity to carry not more than the operator and one other person while in operation. The term includes but is not limited to jet skis, wet bikes, surf jets, miniature speed boats, and hovercraft.

(o) *Vessel* means watercraft of any description capable of being used as a means of transportation in the waters of the Sanctuary.

Other terms appearing in the regulations are defined at 15 CFR 922.2 or in the Act.

§ 944.4 Allowed activities.

All activities except those prohibited by § 944.5 may be undertaken subject to any emergency regulation promulgated pursuant to § 944.6 and all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction. If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation more protective of Sanctuary resources and Sanctuary qualities shall govern.

§ 944.5 Prohibited activities.

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

(1) Exploring for, developing, or producing oil, gas or minerals in the Sanctuary;

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

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

(ii) Biodegradable effluents incidental to vessel use generated by marine sanitation devices approved by the U.S. Coast Guard;

(iii) Water generated by routine vessel operations (e.g., cooling water and deck washdown) excluding bilge pumping; or

(iv) Engine exhaust;

(3) Discharging or depositing, from beyond the boundaries of the Sanctuary, materials or other substances, other than those listed in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, that subsequently enter the Sanctuary and injure a Sanctuary resource or Sanctuary quality;

(4) Moving, possessing or injuring, or attempting to move, possess, or injure, a Sanctuary historical resource. This

prohibition does not apply to accidental moving, possession or injury during normal fishing operations;

(5) Drilling through, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure or material on the seabed of the Sanctuary. This prohibition does not apply if any of the above results from: Anchoring vessels; normal fishing operations; routine harbor maintenance; installation of navigation aids; maintenance of mariculture operations existing as of the effective date of these regulations; and the construction of docks and piers;

(6) Taking any marine mammal or seabird in or above the Sanctuary, except in accordance with and as permitted by regulations promulgated under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA); and

(7) Flying motorized aircraft at less than 1000 feet above the Sanctuary within three nautical miles of State of California designated reserves, parks, beaches or refuges, or the Los Padres National forest.

(b) The prohibitions in paragraph (a) of this section apply to United States-flag vessels and to persons who are citizens, nationals or resident aliens of the United States; and to foreign-flag vessels and persons not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a)(2) through (a)(7) of this section do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraphs (a)(2) through (a)(7) of this section do not apply to activities that are necessary for national defense or law enforcement. Whenever an activity necessary for national defense or law enforcement would violate a prohibition set forth in the Sanctuary regulations were it not necessary for national defense or law enforcement, the head of the agency taking the action shall notify the Secretary of Commerce or designate of the proposed activity if there is sufficient time to permit consultation without jeopardizing national defense or law enforcement. Such notification shall be sufficiently in advance of undertaking the activity in order to permit consultations as to how the activity could be conducted to minimize any adverse impact on Sanctuary

resources and qualities without compromising national defense or law enforcement. Activities that are not necessary for national defense or law enforcement, such as training exercises and routine vessel operations, are subject to all prohibitions contained in the Sanctuary regulations.

(e) The prohibitions in paragraphs (a)(2) through (a)(7) of this section do not apply to any activity authorized by a permit issued pursuant to § 944.8.

(f) The prohibitions in paragraphs (a)(2) through (a)(7) of this section do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence as of the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Director of the existence of such authorization or right in accordance with the requirements of § 944.9 and requests certification of such authorization or right, and provided that the owner or holder complies with any terms and conditions on the exercise of such authorization or right imposed by the Director as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(g) The prohibitions in paragraphs (a)(2) through (a)(7) of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, if the Director was notified of the application for such authorization by the applicant in accordance with the requirements of § 944.10 and the Director did not object to the issuance of such authorization, and such authorization contains, and the owner or holder complies with, such terms and conditions as the Director deems necessary to protect Sanctuary resources and Sanctuary qualities.

(h) Notwithstanding paragraphs (e), (f), and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit authorizing, or otherwise approve, the exploration for, development or production of oil, gas or minerals in the Sanctuary, and any leases, licenses, permits, approvals, or other authorizations authorizing the exploration, development, or production of oil, gas or minerals in the Sanctuary issued after the effective date of Sanctuary designation shall be invalid.

§ 944.6 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or

injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities are subject to immediate temporary regulation, including prohibition, in accordance with the Administrative Procedure Act.

§ 944.7 Penalties for commission of prohibited acts.

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

(b) Regulations setting forth the administrative procedures governing the assessment of civil penalties, enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings are governed by 15 CFR part 904.

§ 944.8 National Marine Sanctuary permits; application procedures and issuance criteria.

(a) A person may conduct an activity otherwise prohibited by § 944.5(a)(2) through (a)(7) if authorized by a permit issued under this section.

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

(c) Upon receipt of a complete application, the Director or designate, at his or her discretion, may request such additional information from the applicant as he or she deems necessary to act on the application, may seek the views of any persons and may hold a public hearing.

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity otherwise prohibited by § 944.5

(a)(2) through (a)(7), if the Director finds that the activity will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; have only negligible, short-term adverse effects on Sanctuary resources and Sanctuary qualities; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director may consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the qualities for which the Sanctuary was designated; the end value of the applicant's activity; and such other matters as the Director deems appropriate.

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

(f) The Director may amend, suspend or revoke a permit issued pursuant to this section or deny a permit application pursuant to this section, in whole or in part, for good cause. Any such action shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are governed by subpart D of 15 CFR part 904.

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

(h) It may be a condition of any permit issued that any data or other information obtained under the permit be made available to the public.

§ 944.9 Certification of leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity issued or in existence as of the effective date of Sanctuary designation.

(a) The prohibitions in § 944.5 (a)(2) through (a)(7) do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or by any valid

right of subsistence use or access in existence as of the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right, and simultaneously requests certification of such authorization or right, and provide that the owner or holder complies with any terms and conditions on the exercise of such authorization or right imposed, as a condition of certification, by the Director as necessary to achieve the purposes for which the Sanctuary was designated.

(b) The owner or holder of a valid lease, permit, license, approval or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or of a valid right of subsistence use or access in existence as of the effective date of Sanctuary designation, authorizing an activity otherwise prohibited by § 944.5 (a)(2) through (a)(7) may conduct the activity without being in violation of § 944.5 (a)(2) through (a)(7) pending final agency action on a timely certification request.

(c) Requests for certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. A copy of the lease, permit, license, approval or other authorization must accompany the request.

(d) After receipt of a request for certification, the Director may either issue a decision within 120 days of receipt of the request or, within 30 days of receipt of the request for certification, request additional information from the applicant as he or she deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The applicant then has 30 days to supply the requested information. Failure to supply the requested information within 30 days shall cause the applicant to be immediately subject to the prohibitions in § 944.5 (a)(2) through (a)(7). The Director, in his or her discretion, may seek the views of any persons on the certification request. The Director, at his or her discretion, will then issue a decision within 120 days of receipt of the requested information or may,

within 60 days of receipt of the requested information, issue a notice in the **Federal Register** of the intent to hold a public hearing. The public hearing will then be held within 30 days of the publication of the notice in the **Federal Register**. The Director will then have 60 days to make a decision from the close of the public hearing, if any. As a condition of certification, the Director may impose such terms and conditions on the exercise of such authorization or right as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(e) Any certification called for in this section shall be presumed without the imposition of conditions or terms unless the Director acts on the certification request within 120 days of receipt thereof or, if the Director has requested additional information, within 120 days of receipt thereof, or 60 days from the close of any public hearing held.

(f) The Director may amend, suspend, or revoke any certification made under this section whenever the continued conduct of the activity would violate any terms or conditions of the certification. Any such action shall be communicated in writing to both the holder of the certified lease, permit, license, approval, or other authorization and the issuing agency and shall set forth the reason(s) for the action taken.

(g) Either the holder, owner or the issuing agency may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 944.11.

(h) Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, approval, other authorization or right shall be subject to the provisions of § 944.10.

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

(a) The prohibitions set forth in § 944.5 (a)(2) through (a)(7) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, provided that the Director is notified of the application for such authorization within fifteen days of the date of application or of the effective date of Sanctuary designation, whichever is later, and that the Director or designate does not object to the issuance of such authorization and that such authorization contains, and the owner or holder complies with, such

terms and conditions as the Director deems necessary to protect Sanctuary resources and Sanctuary qualities.

(b) Any person applying for a lease, permit, license, approval or other authorization from any Federal, State, or local authority to conduct an activity that would be prohibited under § 944.5 (a)(2) through (a)(7) must notify the Director in writing, within 15 days of the date of application or of the effective date of Sanctuary designation, whichever is later, of the filing of the application. Any application may request the Director of issue a finding as to whether an activity for which an application to any Federal, State, or local authority of competent jurisdiction for a lease, permit, license, approval, or other authorization is proposed to be made or has been made would be prohibited by § 944.5 (a)(2) through (a)(7) unless the Director is notified and does not object to issuance.

(c) Notification of the filing of an application must be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. A copy of the application must accompany the notification.

(d) Upon receipt of a notification, the Director may request such additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval, or other authorization, or what terms and conditions such authorization must contain in order to protect Sanctuary resources and Sanctuary qualities. The Director, in his or her discretion, may seek the views of any persons and hold a public hearing on the application.

(e) The Director shall notify the agency to which application has been made within the time period allowed for comment on the application of whether he or she has an objection to issuance or what terms and conditions he or she determines such lease, license, permit, approval, or other authorization must contain in order to protect Sanctuary resources and Sanctuary qualities.

(f) If the Director fails to notify the agency to which application has been made within the time period allowed by that agency for comment on the application of his or her objection to issuance or of the terms and conditions he or she has determined such lease, license, permit, approval, other authorization or right must contain, then

his or her concurrence to issuance without terms or conditions to protect Sanctuary resources and Sanctuary qualities shall be presumed.

(g) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designate in accordance with the procedure set forth in § 944.11.

§ 944.11 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for a § 944.8 permit, a § 944.8 permittee, a § 944.9 certification requester, or a § 944.10 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designate:

(1) The grant, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit by the Director under § 944.8;

(2) The conditioning, amendment, or revocation of a certification under § 944.9; or

(3) The objection to issuance or the imposition of terms and conditions under § 944.10.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) appealed and the reason(s) therefor, and be received within 30 days of the action(s) by the Director. Appeals must be addressed to the Assistant Administrator, National Ocean Service; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235.

(c) While the appeal is pending appellants requesting certification

pursuant to and otherwise in adherence with § 944.9 may continue to conduct their activities without being in violation of the prohibitions in § 944.5 (a)(2) through (a)(7). All other appellants may not conduct their activities without being subject to the prohibitions in § 944.5 (a)(2) through (a)(7).

(d) Within 30 days of receipt of an appeal, the Assistant Administrator or his or her designate may request the appellant or any person to submit such information as the Assistant Administrator or his or her designate deems necessary in order for him or her to decide the appeal. The appellant shall then have 30 days from receipt of the request for additional information from the Assistant Administrator or his or her designate to supply the additional information. The Assistant Administrator or his or her designate, at his or her discretion, may hold an informal hearing on the appeal. If the Assistant Administrator or his or her designate determines that an informal hearing should be held, he or she may designate an officer before whom the hearing shall be held. Notice of the time, place, and subject matter of the hearing shall be published in the **Federal Register** within 120 days of receipt of the appeal. Such hearing shall be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons he or she deems equitable. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or his or her designate.

(e) The Assistant Administrator or his or her designate shall decide the appeal based on the record before the Director and the record of the appeal. If a hearing has been held before a hearing officer, the Assistant Administrator or his or her designate may adopt the hearing officer's recommended decision, in whole or in part, or reject or modify it. In any event, if a hearing is held, the Assistant Administrator or his or her designate shall notify the appellant and other interested persons of his or her decision and the reason(s) therefor in writing within 50 days of receipt of the recommended decision of the hearing officer. If an informal hearing is not held, the Assistant Administrator or his or her designate shall notify the appellant and other interested persons of the final decision and the reason(s) therefor in writing, normally within 50 days of the date of the receipt of adequate information to make the decision. The Assistant Administrator's or his or her designate's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in this section may be extended by the Assistant Administrator or his or her designate for good cause for a period not to exceed 30 days, either upon his or her own initiative or upon written request from the appellant stating the reason(s) therefor.

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

Note: Appendix I will set forth the precise boundaries based on the comments received on the DEIS/MP.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Hearings on the Draft Environmental Impact Statement/Management Plan for the Proposed Monterey Bay National Marine Sanctuary

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

ACTION: Notice.

SUMMARY: NOAA, as required by section 205(a)(3) of Public Law No. 100-627, is proposing to designate an approximately 2,200 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the coast of central California, as a National Marine Sanctuary. This notice announces NOAA's intent to hold public hearings on a Draft Environmental Impact Statement/Management Plan (DEIS/MP) for the proposed Monterey Bay National Marine Sanctuary. The purpose of the hearings is to receive the views of interested parties on the proposed designation and the DEIS/MP. The views expressed at these hearings, as well as written comments received on the draft, will be considered in the preparation of the Final Environmental Impact Statement/Management Plan.

The hearings will be held on September 12, 1990, from 7 to 10 p.m. at Monterey City Hall, Council Chambers, Pacific and Madison, Monterey, California; on September 13, 1990, from 7 to 10 p.m. at Veterans Hall Auditorium, 846 Front Street, Santa Cruz, California; and on September 14, 1990, from 7 to 10 p.m. at Half Moon Bay—Community Seniors Center, 535 Kelly Street, Half Moon Bay, California. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: Frank Christhill, Regional Manager, or Mark Murray-Brown, Program Specialist, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., suite 714, Washington, DC 20235, (202/673-5126). Copies of the DEIS/MP are available for review at: Half Moon Bay City Hall, 501 Main Street, Half Moon Bay, California; Half Moon Bay Library, 620 Correas Street, Half Moon Bay, California; Harrison Memorial Library, Carmel,

California; Castroville Branch of the Monterey County Library, 11266 Merritt Street, Castroville, California; Aptos Library, 7695 Soquel Drive, Aptos, California; Santa Cruz City Library, 224 Church Street, Santa Cruz, California; Association of Monterey Bay Area Governments, 977 Pacific Street, Monterey, California; Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, California; California Coastal Commission Offices, 640 Capitola Road Extension, Santa Cruz, California. Copies of the DEIS/MP are also available upon request to the Marine and Estuarine Management Division.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on January 6, 1989, NOAA announced Monterey Bay, CA, as an active candidate for National Marine Sanctuary Designation and the intent to prepare a DEIS/MP and to hold public scoping meetings on the proposal to designate Monterey Bay as a National Marine Sanctuary (54 FR 448). This announcement described the selection procedures and past history of the proposed Monterey Bay National Marine Sanctuary. The announcement also described the study area, the natural resources, human uses, existing protection of marine resources and the designation process for the proposed Sanctuary.

NOAA has prepared the DEIS/MP in accordance with the National Marine Sanctuary Program Regulations (15 CFR part 922); and published in the **Federal Register** on August 3, 1990, a Notice of Public Availability of the DEIS/MP; and a Notice of Proposed Rule Making, Notice of Proposed Designation and Summary of Draft Management Plan. Based on the analysis of information collected from the public scoping meetings, consultations with Federal, State and local agencies and research scientists, amongst others, and literature review, NOAA intends to designate an approximately 2,200 square nautical mile (sq. nmi) area of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay off the coast of central California as a National Marine Sanctuary. The preferred boundary alternative encompasses the coastal and ocean waters over the entire Monterey Canyon between a point 2.0 nmi north of Pescadero Point and a point 2.5 nmi south of Partington Point and extending seaward from these points approximately 18.5 nmi.

Seven boundary alternatives (including the preferred alternative) are presented in the DEIS/MP. The first boundary alternative is the smallest

(approximately 460 sq. nmi) and encompasses only the coastal waters of Monterey Bay from Pigeon Point to Partington Point. The second alternative is the preferred alternative described above. The third alternative (approximately 2,900 sq. nmi) includes the preferred alternative with a southern boundary extension to Cambria. The fourth alternative (approximately 3,100 sq. min) also includes the preferred alternative with a northern boundary extension to the Gulf of the Farallones National Marine Sanctuary. The fifth alternative would establish the largest Sanctuary area (approximately 3,800 sq. nmi) and includes the preferred alternative and in addition, both the southern and northern extensions described above. The sixth boundary alternative (approximately 1,800 sq. nmi) extends from Pescadero Point to Partington Point and extends seaward approximately 46 nmi over the Monterey Canyon but excludes an area to the northwest that contains potential Lease Sale tracts identified by the Minerals Management Service for proposed Lease Sale 119. The seventh boundary alternative (approximately 880 sq. nmi) includes the first boundary alternative with a seaward extension over the Monterey Bay Canyon and also excludes all potential Lease Sale tracts for proposed Lease Sale 119. The President on June 26 instructed the Secretary of the Department of the Interior to allow no development in the Lease Sale 119 area outside the Sanctuary until the year 2000. The environmental consequences of each of these seven boundary alternatives are described in the DEIS/MP.

The designation of the Monterey Bay area as a National Marine Sanctuary would provide an integrated program of resource protection, research and education to assist in the long-term management and protection of its resources. Resource protection will involve cooperation with other agencies in formulating comprehensive resource protection policies and procedures including the enforcement of regulations.

Seven regulations are proposed governing: Hydrocarbon and mineral activities; discharges and deposits (both from within and outside of Sanctuary boundaries); overflights; alteration of or construction on the seabed (including, but not limited to drilling through the seabed); historical resources; and marine mammals and seabirds. Two other activities are potentially subject to regulations: Commercial vessel traffic (other than fishing) and operation of "thrill craft". Alternatives to the

proposed regulations includes status quo and non-regulatory options.

Research planned for the Sanctuary will include conducting baseline studies, as well as monitoring, analysis and prediction projects to provide information needed to further our understanding of marine ecosystems and in resolving management issues. Education programs planned for the Sanctuary will be directed to improving public awareness of the Sanctuary's resources and the need to manage them as wisely as possible to ensure their

viability. The Marine and Estuarine Management Division (MEMD) is responsible for the overall management of the proposed Sanctuary. The MEMD, represented by an on-site Sanctuary Manager, will coordinate its on-site activities through cooperative agreements with the State, regional local and other Federal agencies. A Sanctuary Advisory Committee (SAC) will be established to assist the interested groups and agencies in participating in Sanctuary management. The MEMD will determine the structure, composition

and functions of the SAC. The general administrative framework and specific roles of each agency in Sanctuary management are described in the DEIS/MP.

Federal Domestic Assistance Catalog
Number 11.429 Marine Sanctuary Program

Dated: July 27, 1990.

Virginia K. Tippie,

*Assistant Administrator for Ocean Services
and Coastal Zone Management.*

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