

**§ 721.2 Recordkeeping.**

(a) *Requirements.* Each person, facility, plant site or trading company required to submit a declaration, report, or advance notification under parts 712 through 715 of the CWCR must retain all supporting materials and documentation used by a unit, plant, facility, plant site or trading company to prepare such declaration, report, or advance notification to determine production, processing, consumption, export or import of chemicals. Each facility subject to inspection under part 716 of the CWCR must retain all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. In the event that a declared facility is sold, the previous owner of the facility must retain all such supporting materials and documentation that were not transferred to the current owner of the facility (*e.g.*, as part of the contract involving the sale of the facility)—otherwise, the current owner of the facility is responsible for retaining such supporting materials and documentation. Whenever the previous owner of a declared facility retains such supporting materials and documentation, the owner must inform BIS of any subsequent change in address or other contact information, so that BIS will be able to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to inspection activities involving the facility (*see* § 716.4 of the CWCR).

\* \* \* \* \*

Dated: October 2, 2006.

**Matthew S. Borman,**  
Deputy Assistant Secretary for Export  
Administration.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 0648-AT16: 060810216-6216-01]

RIN 0648-AT16

**Cordell Bank National Marine Sanctuary Regulations**

**AGENCY:** National Marine Sanctuary Program (NMSPP), National Ocean Service (NOS), National Oceanic and

Atmospheric Administration (NOAA), Department of Commerce (DOC).

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

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan and revised regulations for Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary). The proposed set of regulations includes new regulations as well as changes to existing regulations.

The NMSPP is also proposing certain revisions to the Sanctuary's Designation Document.

**DATES:** Public hearings will be held as detailed in the **SUPPLEMENTARY INFORMATION** section.

Comments will be considered if received by January 5, 2007, 2006.

**ADDRESSES:** Written comments should be sent by mail to Brady Phillips, JMPPR Management Plan Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by e-mail to [jointplancomments@noaa.gov](mailto:jointplancomments@noaa.gov), or by fax to (301) 713-0404. Copies of the DMP/DEIS are available from the same address and on the Web at <http://www.sanctuaries.nos.noaa.gov/jointplan>. Comments can also be submitted to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Bizot, National Permit Coordinator, National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, Maryland 20910, by e-mail to [David.Bizot@noaa.gov](mailto:David.Bizot@noaa.gov), or by fax to 301-713-0404; and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Dan Howard at (415) 663-0314, Extension 102 or [Dan.Howard@noaa.gov](mailto:Dan.Howard@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Introduction**

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 (e)), the National Marine Sanctuary Program (NMSPP) has completed its review of the management plan for Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary), located off the coast of northern California. The review has resulted in a proposed new management plan for the

Sanctuary, several proposed revisions to existing regulations and several proposed new regulations. The proposed new regulations include prohibitions on:

- Discharging or depositing from within or into the Sanctuary any material or matter from a cruise ship, except vessel engine cooling water;
- Drilling, dredging or otherwise altering the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank, except incidental and necessary to lawful use of any fishing gear during normal fishing operations;
- Drilling, dredging or otherwise altering the submerged lands beyond the line representing the 50-fathom isobath surrounding the Bank, except for anchoring a vessel or as incidental and necessary to lawful use of any fishing gear during normal fishing operations;
- Taking or possessing marine mammals, birds and sea turtles, except as authorized by the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*), and any regulations, as amended, promulgated under these acts; and
- Introducing or otherwise releasing from within or into the Sanctuary an introduced species except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

These measures would afford better protection to the nationally significant natural resources at CBNMS.

Existing regulations would also be revised to:

- Clarify that the Sanctuary includes the submerged lands within the Sanctuary boundary;
- Correct inaccuracies in the coordinates and description of the Sanctuary's boundary;
- Clarify that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and that all vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
- Specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to lawful fishing activities within the Sanctuary;
- Remove an exception for discharging or depositing food waste resulting from meals on board vessels;
- Revise language for discharging and depositing from beyond the boundary of the Sanctuary.

The permit regulations for the Sanctuary are also being revised and

clarified. The modified permit regulations would specify that the Director may only issue permits for specific activities that would otherwise violate certain prohibitions: discharging and depositing; altering the submerged lands; abandoning structures, material or other matter on the submerged lands; taking any marine mammal, sea turtle or bird within or above the Sanctuary; possessing within the Sanctuary (regardless of from where taken, moved, or removed) any marine mammal, sea turtle, or bird; and taking benthic invertebrates or algae within the line representing the 50 fathom isobath surrounding the Bank except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations. In deciding whether to issue a permit, the Director of the NMSP shall consider such factors as: duration; effects on Sanctuary resources and qualities; potential indirect, secondary, or cumulative effects; and whether it is necessary to conduct the activity in the Sanctuary. In addition, the proposed modifications to the permit procedures and criteria (15 CFR 922.113) would further refine current requirements and procedures found in the general NMSP regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications found in the Office of Management and Budget approved applicant guidelines (OMB approval number 0648-0414). The revised section would add language to the CBNMS permit regulations about procedures and criteria for permit renewal. The proposed modifications to the permit regulations would also expressly require that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

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

This document publishes the proposed new regulations and the proposed changes to existing regulations, publishes the text of the proposed Revised Designation Document for the Sanctuary, and announces the availability of the draft management plan and the draft

environmental impact statement (DMP/DEIS). The existing CBNMS Designation Document was published at the time of Sanctuary designation in 1989 and, pursuant to the NMSA (at 16 U.S.C. 1434 (a)(4)), describes the geographic area included within the Sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that are subject to regulation by the Secretary to protect those characteristics. The NMSP is proposing certain revisions to the Sanctuary's Designation Document, which include changes to the description of the area, an updated and more complete description of characteristics that give the Sanctuary particular value, an updated explanation of the relation to other regulatory programs, and a number of substantive changes to the Sanctuary's scope of regulations.

Since designation, the area of CBNMS has been described as approximately 397 square nautical miles (nmi). However, as a result of the proposed regulation changes that correct inaccuracies and ambiguities in the coordinates and the description of the Sanctuary's outer and shoreline boundaries, the CBNMS area is now calculated as approximately 399 square nmi. The legal description of CBNMS is proposed to be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather a more precise estimate of its size.

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

## Sanctuary Environment

### *Physical Setting*

#### Location

CBNMS was designated in 1989 and protects an area of 526 square miles (399 square nautical miles) off the northern California coast. The main feature of the Sanctuary is Cordell Bank, an offshore granite bank located on the edge of the continental shelf, about 43 nautical miles (nmi) northwest of the Golden Gate Bridge and 20 nmi west of the Point Reyes lighthouse. CBNMS is entirely offshore and shares its southern and eastern boundary with the Gulf of the Farallones National Marine Sanctuary. The CBNMS eastern boundary is six miles from shore and the western boundary is the 1000

fathom isobath on the edge of the continental slope.

CBNMS is located in one of the world's four major coastal upwelling systems. The combination of oceanic conditions and undersea topography provides for a highly productive environment in a discrete, well-defined area. The vertical relief and hard substrate of the Bank provide benthic habitat with near-shore characteristics in an open ocean environment 20 nmi from shore.

#### Geology

Two distinctive geologic features characterize the geology of CBNMS: The shallow granitic Cordell Bank and the surrounding soft bottom of the continental shelf and slope.

Cordell Bank is composed of a granite block that was created as part of the southern Sierra Nevada range some 93 million years ago. The Bank is one of the few offshore areas where the granite block emerges from the newer sediments that make up most of the continental shelf. The Bank itself is about 4.5 miles wide by 9.5 miles long. The bottom of the Bank slopes gently from depths of 300 to 400 feet (91–122 meters). Jagged ridges and pinnacles rise abruptly from this plain and reach up 140 to 120 feet (43 to 37 meters) below the sea surface. In many places, the sides of the ridges and pinnacles are extremely steep, often with slopes greater than 80 degrees. Six nmi to the west of the Bank, along the sanctuary boundary, the continental slope drops steeply to 6,000 feet and more.

The ocean bottom around the Bank and within the sanctuary contains few distinguishing features and is chiefly composed of mud and sand deposits. Deposits of undifferentiated mud and sand extend in a plume to the south and a fan to the east of Cordell Bank. To the northern and western boundaries, along the Farallon escarpment, the continental shelf is made up entirely of fine sand deposits. The complexity of the underwater topography and sediment distribution increases near the coast within the Gulf of the Farallones National Marine Sanctuary.

#### Climate and Oceanography

The calendar year at Cordell Bank can be broken into three oceanographic seasons: upwelling season, relaxation season, and winter storm season. The upwelling season typically begins with the spring transition, characterized by strong persistent winds from the northwest. This usually occurs sometime in late February or early March, and is the start of the annual productivity cycle along northern and

central California. During this season, upwelling driven by winds from the northwest alternate with periods of calm. These winds generally begin to subside by late July. August through mid-November is the relaxation season. During this time, winds are mostly light and variable, and the seas can be calm for a week or two at a time. This changes abruptly with the arrival of the first winter storms from the Gulf of Alaska. From late November through early February, winter storms create large waves and strong winds along the coast. Ocean conditions can be treacherous all year, but especially during winter storms.

#### *Biological Setting/Living Marine Resources*

##### Marine Birds

The waters around Cordell Bank provide critical foraging habitat for many species of seabirds. Seabird density over Cordell Bank can be among the highest of any area in central and northern California. Fifty-nine seabird species have been identified feeding in or near the sanctuary. The composition of seabirds found at Cordell Bank is a mix of local breeding birds and highly migratory, open-ocean species. While the local representatives use the nearby Farallon Islands and Point Reyes areas to nest, some migrants nest thousands of miles away. A recent study using radio tags documented that black-footed albatross nesting in the Northwestern Hawaiian Islands were "commuting" to Cordell Bank waters to forage before returning to feed chicks on their nests on Midway Atoll.

Other migratory species use the productive waters around the Bank as a stopover on their annual migration route. Hundreds of thousands of sooty shearwaters can be seen on days when they are migrating through the sanctuary. Sanctuary waters are equally important to local breeders. Most of the world's remaining population of ash storm-petrels, which nest on Southeast Farallon Island, can be seen on the water near the Bank. More than 20,000 Cassin's auklets have been counted in a single day.

Some common sanctuary species include the black-footed albatross, northern fulmar, sooty shearwater, storm-petrels, Cassin's auklet, rhinoceros auklet, phalaropes, and many species of gulls.

##### Marine Mammals

Twenty-six species of marine mammals (a combination of resident and migratory species) have been observed within the sanctuary. Gray

whales, for example, pass the Bank on their annual migrations between Arctic feeding grounds and Mexican breeding areas.

The Dall's porpoise is one of the most frequently sighted marine mammals in the sanctuary, along with humpback and blue whales. Individuals of all species use the sanctuary as a destination feeding ground. Large numbers of the eastern Pacific humpback whales and blue whales feed during the summer months within the Cordell Bank-Bodega Canyon area.

The harbor porpoise, a species widely distributed in coastal waters but rarely seen offshore, is regularly observed within the sanctuary's shallow areas. Pacific white-sided dolphins and northern right whale dolphins are abundant. Other cetaceans observed in the Sanctuary include Risso's dolphins and killer whales.

The California sea lion, the most abundant pinniped in California waters, has been observed in CBNMS more frequently and in greater numbers than other pinnipeds. The northern fur seal is also abundant in the area in late fall and winter (most of them use summer breeding grounds in the Channel Islands). Stellar sea lions have decreased drastically in California in recent years, but Cordell Bank remains a feeding area for this species, possibly because of the abundance of rockfish and sardines around the Bank. Nearby rookeries include Ato Nuevo Islands and the Farallon Islands. The sea lions' winter haul-out grounds include Point Reyes and offshore rocks along the Sonoma County coast.

##### Fish Resources

More than 180 species of fish have been identified in the CBNMS. Many species of rockfish (*Sebastes* sp.) can be found at all depths and habitats on and around the bank. The bank provides critically important habitat for young of the year, juvenile, and adult rockfishes. Lingcod are especially numerous in the wintertime, when they move up onto the bank to spawn. Many species of flatfish use the soft-bottom habitat around the bank, and albacore tuna and salmon frequent the sanctuary on a seasonal basis. Albacore and salmon both feed on lanternfish, which migrate nightly into shallow surface layers from deeper daytime haunts. The recovery of Pacific sardine populations is apparent in the waters surrounding Cordell Bank.

##### Benthic Organisms

An abundant cover of benthic organisms can be seen on the upper rock surfaces of Cordell Bank. The high light penetration allows for algal

photosynthesis far deeper than in nearshore coastal waters. The constant food supply washing the bank combined with a hard substrate for attachment provide ideal conditions that support a rich assemblage of benthic invertebrates. Space is the limiting factor on the upper pinnacles and ridges of Cordell Bank. Ridges are thickly covered with sponges, anemones, hydrocorals, hydroids, and tunicates, and scattered crabs, holothurians, and gastropods. In some places, the invertebrate cover is up to one foot thick and very brightly colored, mainly in white, pink, yellow, and red.

#### **Proposed Revised Designation Document**

NOAA is proposing to specify in the Designation Document that the submerged lands at CBNMS are legally part of the Sanctuary and are included in the boundary description. At the time the Sanctuary was designated in 1989, Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the National Marine Sanctuaries Act) characterized national marine sanctuaries as consisting of coastal, marine and ocean waters but did not expressly mention submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98-498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, to be consistent with the NMSA, NOAA is updating the Designation Document and the boundary description, by adding "submerged lands thereunder" to the term "marine waters." Additionally, boundary coordinates in the revised Designation Document and in the Sanctuary regulations will be expressed by coordinates based on the North American Datum of 1983 (NAD 83).

Proposed changes to the Scope of Regulations would authorize Sanctuary regulation of: activities regarding cultural or historic resources; placing or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary; taking or possessing any marine mammal, sea turtle, or bird; introducing or otherwise releasing an introduced species from within or into the Sanctuary; and drilling into, dredging, altering, or constructing on the submerged lands. Additional proposed changes to the Designation Document would provide: an updated and more complete description of characteristics that give

the Sanctuary particular value; an updated explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights; and various minor revisions in order to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries.

In Article V (Relation to Other Regulatory Programs), the "Fishing" section is being revised to clarify the original intent that, although the Sanctuary does not have authority to regulate fishing, fishing vessels may be regulated with respect to discharge and anchoring in accordance with Article IV. No changes are proposed to be made to the "Defense Activities" section of the Designation Document.

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

### **Proposed Revised Designation Document for Cordell Bank National Marine Sanctuary**

#### *Preamble*

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (the "Act"), the Cordell Bank and its surrounding waters offshore northern California, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purpose of protecting and conserving that special, discrete, highly productive marine area and ensuring the continued availability of the ecological, research, educational, aesthetic, historical, and recreational resources therein.

#### *Article I. Effect of Designation*

Cordell Bank National Marine Sanctuary (the Sanctuary) was designated on May 24, 1989 (54 FR 22417). Section 308 of the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.* (NMSA), authorizes the issuance of such regulations as may be necessary to implement the designation, including managing, protecting and conserving the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of the Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary

resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

#### *Article II. Description of the Area*

The Sanctuary consists of a 399 square nautical mile area of marine waters and the submerged lands thereunder encompassed by a boundary extending approximately 250° from the northernmost boundary of Gulf of the Farallones National Marine Sanctuary (GFNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the GFNMS boundary and back to the northeast along this boundary to the beginning point. The precise boundaries are set forth in the regulations.

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

Cordell Bank is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. In addition, the Bank and its surrounding waters may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. It lies on a plateau 300 to 400 feet (91 to 122 meters) deep and ascends to within about 140 to 120 feet (42 to 37 meters) of the surface. The seasonal upwelling of nutrient-rich bottom waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank includes an exceptional assortment of algae, invertebrates, fishes, marine mammals and seabirds.

#### *Article IV. Scope of Regulation*

##### Section 1. Activities Subject to Regulation

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

- a. Depositing or discharging any material or substance;
- b. Removing, taking, or injuring or attempting to remove, take, or injure

benthic invertebrates or algae located on the Bank or within the line representing the 50 fathom isobath surrounding the Bank;

c. Hydrocarbon (oil and gas) activities within the Sanctuary;

d. Anchoring on the Bank or within the line representing the 50 fathom isobath surrounding the Bank;

e. Activities regarding cultural or historical resources;

f. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;

g. Taking or possessing any marine mammal, marine reptile, or bird except as permitted under the Marine Mammal Protection Act, Endangered Species Act or Migratory Bird Treaty Act; and

h. Introducing or otherwise releasing from within or into the Sanctuary an introduced species.

##### Section 2. Consistency With International Law

The regulations governing activities listed in Section 1 of this Article shall apply to foreign flag vessels and foreign persons only 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. Emergency Regulations

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in Section 1 of this Article, are subject to immediate temporary regulation, including prohibition, within the limits of the Act on an emergency basis for a period not to exceed 120 days.

#### *Article V. Relation to Other Regulatory Programs*

##### Section 1. Fishing

The regulation of fishing is not authorized under Article IV. All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C 1801 *et seq.* ("Magnuson-Stevens Act"), shall remain in effect. All permits, licenses, approvals, and other authorizations issued pursuant to the Magnuson-Stevens Act shall be valid within the Sanctuary. However, all

fishing vessels are subject to regulation under Article IV with respect to discharges and anchoring.

#### Section 2. Defense Activities

The regulation of activities listed in Article IV shall not prohibit any Department of Defense (DOD) activities that are necessary for national defense. All such activities being carried out by DOD within the Sanctuary on the effective date of designation shall be exempt from any prohibitions contained in the Sanctuary regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, shall be subject to all prohibitions contained in the Sanctuary regulations.

#### Section 3. Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, approvals, and other authorizations issued pursuant to those programs shall be valid, subject only to the regulation of activities pursuant to Article IV.

#### *Article VI. Alterations to This Designation*

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

#### **Summary of the Proposed Regulatory Amendment**

The proposed regulatory changes would clarify that "submerged lands" are within the Sanctuary boundary, *i.e.*, part of the Sanctuary. This would update the boundary to make it consistent with the NMSA and the revised Designation Document. (See explanation of boundary clarification in preceding discussion of proposed revised Designation Document.) Technical corrections would be made to the Sanctuary boundary and the boundary coordinates would be based on the North American Datum of 1983. Since designation, the area of CBNMS has been described as approximately 397 square nautical miles. However, adjusting for technical corrections and

using updated technologies, the CBNMS area is now more accurately described as approximately 399 square nautical miles. The legal description of CBNMS would be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather a more precise estimate of its size.

The proposed regulations would also clarify and otherwise modify the existing (1989) regulation prohibiting discharging or depositing any material or other matter. Clarifications would be made to make it clear that the regulation applies to discharges and deposits "from within or into the Sanctuary" ("into" is intended to make clear that the prohibition would apply not only to discharges and deposits originating in the Sanctuary (*e.g.*, from vessels in the Sanctuary), but also, for example, from discharges and deposits above the Sanctuary, such as from aircraft). The exception for fish, fish parts, or chumming materials (bait) is clarified so that it applies only to such discharges or deposits made during the conduct of lawful fishing activity within the Sanctuary. The exception for biodegradable effluent discharges from marine sanitation devices is clarified to apply only to operable Type I or II marine sanitation devices approved by the United States Coast Guard in accordance with the Federal Water Pollution Control Act, as amended. Although the existing exception for vessel wastes "generated by marine sanitation devices" was intended to prohibit the discharge of untreated sewage into the Sanctuary, the proposed change would clarify that such discharges are only allowed if generated by Type I or II marine sanitation devices. Type I and Type II marine sanitation devices treat wastes, but Type III marine sanitation devices store waste until it is removed at designated pump-out stations on shore or discharged at sea.

The discharge and deposit regulation would be modified by removing the exception for discharging or depositing food waste resulting from meals onboard vessels. Coast Guard regulations prohibit discharge of food wastes (garbage) within three nmi and prohibit discharge of food wastes unless ground to less than one inch within three to twelve nmi. The proposed Sanctuary regulation modification would provide increased protection to Sanctuary resources and qualities from such marine debris vis-à-vis the Coast Guard regulations in the area of the Sanctuary beyond three nmi.

No other changes are being made to the exceptions that allow discharge of

water (including vessel cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by routine vessel maintenance (*e.g.*, deck wash down) and engine exhaust. These exceptions do not include and, therefore, it continues to be prohibited to discharge, ballast water or oily wastes resulting from bilge pumping. Ballast water is a known vector for introduced species and other contaminants from the source area. The discharge of oily wastes from bilge pumping is interpreted here to mean any waste that produces a visible sheen. The proposed clarifications and modifications are intended to achieve increased protection of Sanctuary resources and qualities. The proposed clarifications and modification are intended to achieve increased protection of Sanctuary resources and qualities.

The proposed exceptions to the revised discharge and deposit regulation would also restrict cruise ships to discharging only vessel cooling water into the Sanctuary. "Cruise ship" is defined to mean: a vessel with 250 or more passenger berths for hire. The prohibition would protect Sanctuary water quality from the potentially large volume of wastewater that may be discharged by cruise ships, while allowing for them to transit the Sanctuary. Currently 643,000 cruise ship passengers embark annually from California ports in San Francisco Bay, Los Angeles, and San Diego. Ninety cruise ship arrivals and departures (Metropolitan Stevedore Company) are estimated at the San Francisco Passenger Terminal in 2006. Many of these cruise ships will be entering and exiting the Bay through the south bound vessel traffic lanes which do not transit the Sanctuary, but are adjacent to the Sanctuary. Although partly constrained by the lack of local docking facilities, cruise ship visits are likely to continue to increase as the fleet shifts from international to domestic cruises and begins using a new cruise ship docking facility planned for San Francisco Bay. Due to their sheer size and passenger capacity, cruise ships can cause serious impacts to the marine environment. The main pollutants generated by a cruise ship are: sewage, also referred to as black water; gray water (shower, sink, and dishwashing water); oily bilge water; hazardous wastes; and solid wastes. Based on EPA estimates, in one week a 3000-passenger cruise ship generates about 210,000 gallons of sewage, 1,000,000 gallons of gray water, 37,000 gallons of oily bilge water, more than 8 tons of solid waste, millions of

gallons of ballast water containing potential invasive species, and toxic wastes from dry cleaning and photo-processing laboratories. Although cruise ships discharge waste from a single source, they are exempt from regulation under the Clean Water Act (CWA) point source permitting system. The CWA allows the discharge of untreated black water anywhere beyond three miles from shore, and does not require any treatment of gray water.

Finally, the discharging or depositing of any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality would be modified to conform its phrasing to other more recently designated sanctuaries' regulatory language. The proposed revision would not change the substance of the regulation.

The proposed regulatory changes would also include a new regulation prohibiting drilling into, dredging or otherwise altering Cordell Bank or the submerged lands on or within the line representing the 50-fathom isobath of the Bank except as incidental and necessary to lawful use of any fishing gear during normal fishing operations. This part of the proposed regulation would ensure the prominent geological features of the Bank, such as the pinnacles and ridges, are protected from permanent destruction from activities such as anchoring or exploratory activity. Another concern has been bottom-contact fishing gear. At present this gear type is regulated to protect the bottom habitat under 50 CFR Part 660. This proposed regulation would also add specificity to the types of submerged lands alteration not allowed by including "abandoning" structures, materials, or other matters as a prohibition. This change will help protect the Sanctuary from unwanted debris (such as wrecked vessels or seabed research equipment) abandoned by Sanctuary visitors.

The proposed regulatory changes would also include a new regulation prohibiting drilling into, dredging or otherwise altering the submerged lands within the balance of the Sanctuary, beyond the line representing the 50-fathom isobath surrounding the Bank, except as incidental and necessary to anchoring and to lawful use of any fishing gear during normal fishing operations. This proposed regulation would also add specificity to the types of submerged lands alteration not allowed by including "abandoning" structures, materials, or other matters as a prohibition. This change will help protect the Sanctuary from unwanted

debris (such as wrecked vessels or seabed research equipment and fishing traps). This proposed regulation would add protection to the shallow sand and mud deposits that make up the surrounding soft bottom of the continental shelf and slope, important habitats that provide support for the living resources of the Sanctuary.

The proposed regulatory changes would also include a new prohibition on take of marine mammals, birds, and sea turtles, except as expressly authorized by the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*), Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*), or any regulation promulgated under one of these acts. The intent of this regulation is to bring a special focus to protection of the diverse and vital marine mammal and bird populations and the sea turtles of the Sanctuary. This area-specific focus is complementary to other resource protection agencies, especially given that other Federal and State authorities must spread limited resources over much wider geographic areas. This regulation would be consistent with regulations at several other more recently designated national marine sanctuaries, and would provide additional deterrence per the civil penalties afforded under the NMSA. Further, the prohibition would cover all marine mammals, sea turtles, and birds within or above the Sanctuary. The Sanctuary's proposed regulation would not apply if an activity (including a federally or state-approved fishery) that does or might cause take of marine mammals, birds or sea turtles has been authorized to do so under the MMPA, ESA, or MBTA or an implementing regulation. With this proposed regulation, if National Marine Fisheries Service (NMFS) or the United States Fish and Wildlife Service (USFWS) issues a permit for the take of a marine mammal, bird, or sea turtle, the permitted activity would be allowed under NMSP regulations and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary regulation. "Take" is defined in the NMSP program-wide regulations at 15 CFR 922.3.

The proposed regulatory changes would also prohibit possessing within the Sanctuary (regardless of where taken, moved, or removed from) any marine mammal, sea turtle, or bird, except as expressly authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA. This proposed

regulation would serve to provide a greater deterrent for violations of existing laws protecting marine mammals, birds, and sea turtles than that offered by those other laws alone. This proposed regulation would also be consistent with recent regulations adopted by other national marine sanctuaries and would enhance protection provided by the prohibition on take of marine mammals, seabirds, and sea turtles (see above). With this proposed regulation, if NMFS or the USFWS issues a permit for the possession of a marine mammal, bird, or sea turtle, the permitted activity would be allowed under NMSP regulations and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary regulation.

The proposed regulatory changes would prohibit introducing or otherwise releasing from within or into the Sanctuary an introduced species except striped bass (*Morone saxatilis*) released during catch and release fishing activity. "Introduced species" is defined to mean: (1) a species (including any of its biological matter capable of propagation) that is non-native to the ecosystems protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes. The prohibition would not apply to the release of striped bass (*Morone saxatilis*) during catch and release fishing activity. Striped bass were intentionally introduced in California in 1879, and in 1980 the California Department of Fish and Game initiated a striped bass hatchery program to support the striped bass sport fishery, which according to the California Department of Fish and Game is one of the most important fisheries on the Pacific Coast. The California Department of Fish and Game manages the striped bass fishery through a Striped Bass Management Conservation Plan. This prohibition is designed to help reduce the risk from introduced species, including their seeds, eggs, spores, and other biological material capable of propagating. The intent of the prohibition is to prevent injury to Sanctuary resources and qualities, to protect the biodiversity of the Sanctuary ecosystems, and to preserve the native functional aspects of the Sanctuary ecosystems, which are put at risk by introduced species. Introduced species may become a new form of predator, competitor, disturber, parasite, or disease that can have devastating effects upon ecosystems. For example,

introduced species impacts on native coastal marine species of the Sanctuary could include: replacement of a functionally similar native species through competition; reduction in abundance or elimination of an entire population of a native species, which can affect native species richness; inhibition of normal growth or increased mortality of the host and associated coastal marine species of the Sanctuary could include: replacement of a functionally similar native species through competition; reduction in abundance or elimination of an entire population of a native species, which can affect native species richness; inhibition of normal growth or increased mortality of the host and associated species; increased intra- or interspecies competition with native species; creation or alteration of original substrate and habitat; hybridization with native species; and direct or indirect toxicity (e.g., toxic diatoms). Changes in species interactions can lead to disrupted nutrient cycles and altered energy flows that ripple with unpredictable results through an entire ecosystem. Introduced species may also pose threats to endangered species, and native species diversity.

Another proposed modification is to the permit regulations and would strengthen and augment the requirement that the Director consider certain criteria when evaluating permit applications. Whereas the existing regulation simply indicates that the Director shall evaluate certain matters in deciding whether to grant a permit, the proposed modified regulation would state that the Director may not issue a permit unless the Director first considers certain factors, including but not limited to whether: the duration of the proposed activity is no longer than necessary to achieve its stated purpose; the proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities; considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; any potential indirect, secondary or cumulative effects of the activity; and the duration of such effects; and, it is necessary to conduct the proposed activity within the Sanctuary.

The proposed modifications would also add permit application requirements. Permit applicants would be required to submit information addressing the criteria that the Director must consider in order to issue a permit. Additionally, the permit regulation

would stipulate that Sanctuary permits are nontransferable.

The proposed modifications to the permit regulations would also stipulate that Sanctuary permits must contain certain terms and conditions. These terms and conditions would include information deemed appropriate by the Director of the National Marine Sanctuary Program.

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

#### Public Hearings

NOAA is publishing this proposed rule to provide notice to the public and invite advice, recommendations, information, and other comments from interested parties on the proposed rule and Draft Management Plan/Draft Environmental Impact Statement (DMP/DEIS). These are joint public hearings conducted by Cordell Bank, Gulf of the Farallones and Monterey Bay National Marine Sanctuaries and will be held as detailed below:

(1) November 29, 2006, 6:30 p.m. at the Cambria Pines Lodge, 2905 Burton Drive, Cambria, CA 93428.

(2) November 29, 2006, 6:30 p.m. at the Bodega Marine Laboratory, 2099 Westside Road, Bodega Bay, CA 94923.

(3) November 30, 2006, 6:30 p.m. at the Monterey Conference Center, One Portola Plaza, Monterey, CA 93940.

(4) November 30, 2006, 6:30 p.m. at the Dance Palace Community Center, 503 B Street, Point Reyes Station, CA 94956.

(5) December 5, 2006, 6:30 p.m. at the University of California Santa Cruz Inn and Conference Center, 611 Ocean Street, Santa Cruz, CA 95060.

(6) December 5, 2006, 6:30 p.m. at the Fort Mason Center, Firehouse (NE corner of Center), San Francisco, CA 94123.

(7) December 6, 2006, 6:30 p.m. at the Community United Methodist Church, 777 Miramontes Street, Half Moon Bay, CA 94019.

#### Miscellaneous Rulemaking Requirements

##### *National Marine Sanctuaries Act*

Section 304(a)(4) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(4)) requires that the procedures specified in section 304 for designating a national marine sanctuary be followed for modifying any term of designation.

In particular, section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed designation (or in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required documents are being submitted to the Congressional Committees.

##### *National Environmental Policy Act*

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

##### *Executive Order 12866: Regulatory Impact*

This proposed rule has been determined to be not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in:

(1) An annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety;

(2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of such recipients; or

(4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

##### *Executive Order 13132: Federalism Assessment*

NOAA has concluded that this regulatory action does not have



federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The Sanctuary does not include State waters. Furthermore, the proposed changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the Executive Order, however, the NMSP consulted with a number of entities within the State who participated in development of the proposed rule, including but not limited to, the California Department of Boating and Waterways, the California State Lands Commission, the California Department of Fish and Game, and the California Resources Agency.

#### *Regulatory Flexibility Act*

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

Based primarily on recent socioeconomic studies, NOAA has identified the following small businesses and small organizations as defined by the Regulatory Flexibility Act. Small business concerns operating within the Sanctuary include commercial fishermen, consumptive recreational charter businesses, and non-consumptive recreational charter businesses. Small organizations operating within the Sanctuary include non-governmental organizations (NGOs) and/or non-profit organizations (NPOs) dedicated to environmental education, research, restoration and conservation concerning marine and maritime heritage resources. There are no small governmental jurisdictions in the Sanctuary. The Sanctuary lies entirely in federal waters.

#### 1. Small Businesses

Small business concerns operating within the Sanctuary include commercial fishermen which vary in number seasonally and annually from approximately 100 to 300 boats; approximately 5 consumptive recreational charter fishing businesses; and approximately 3 non-consumptive recreational charter businesses engaged in wildlife viewing. The approximately 3 small organizations operating within the Sanctuary include NGOs and/or NPOs dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. There are

no small governmental jurisdictions in or adjacent to the Sanctuary.

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

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

The proposed modification that would prohibit the discharge of meals on board vessels would not result in a significant impact to small entities. Resulting impacts may include additional costs and time potentially involved in traveling the additional distance beyond the Sanctuary's boundary to appropriately dispose of food waste, or such waste can be disposed of on shore.

The proposed prohibition on discharge from cruise ships would have no adverse impacts on any current small entity operations. The Small Business Administration defines the threshold for

a "Scenic and Sightseeing Transportation, Water" small business as an entity that has average annual receipts of \$6.5 million per year or less (NAICS 487210). "Cruise ship" is defined by the Sanctuary to mean a vessel with 250 or more passenger berths for hire. All of the cruise ship entities that operate vessels in the Sanctuary with more than 250 passenger berths are considered large entities. Additionally, cruise ships will not be prevented from transiting the Sanctuary, as indicated by the exception for "vessel cooling water." All other discharge material must be disposed of beyond the Sanctuary boundary, provided that it does not enter and injure a Sanctuary resource.

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

The proposed prohibition on altering the submerged lands on or within the line representing the 50-fathom isobath surrounding Cordell Bank would be applicable but have no adverse impacts on current small entity operations within the Sanctuary. Most small entity operations affected by this prohibition do not normally involve, depend upon, or result in alteration of the submerged lands of the Sanctuary, and as such would not be adversely affected by this regulation. For those entities that do occasionally need to temporarily place materials on the submerged lands of the Sanctuary, such as research entities, the Sanctuary permitting process can be used to allow acceptable activities.

No adverse impact on small entities is expected to result from the proposed regulation change that prohibits the alteration of the submerged lands of the Sanctuary beyond the line representing the 50-fathom isobath surrounding the Bank. Most small entity operations do not normally involve, depend upon, or



result in alteration of the submerged lands of the Sanctuary, and as such would not be adversely affected by this regulation. For those entities that do occasionally need to temporarily place materials on the submerged lands of the Sanctuary, such as research entities, the Sanctuary permitting process can be used to potentially allow acceptable activities.

The proposed prohibitions on take and possession of marine mammals, birds, and sea turtles are not expected to result in a significant adverse impact on small entities because those entities' operations may lawfully involve such takes under authorization granted pursuant to the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), or any regulation promulgated under one of these acts. Additionally, non-consumptive recreational charter businesses may receive indirect beneficial effects from these proposed regulations because the added protection to marine mammals, birds, and sea turtles can complement business activities focused on whale watching, or other marine excursion tours. For example, the additional protection this prohibition affords may potentially result in improved status of such animals at the Farallon Islands. This in turn may lead to the beneficial effect of more consumer interest in services rendered by non-consumptive recreational charter businesses.

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

Significant adverse impacts to small entities are not expected to result from the revision and strengthening of the Sanctuary's regulation protecting historical resources because the regulation would remain essentially the same with regard to how small entities may conduct their activities. For example, non-consumptive recreational

charter businesses are expected to continue to operate chartered dive trips in a manner that does not involve the unlawful practice of injuring or removing submerged cultural resources. Thus, although the proposed revised regulation would be more comprehensive in the protection provided to these resources (prohibiting moving, removing, possessing, injuring or attempting to move, remove, possess, or injure any Sanctuary historical resource), no significant adverse impact is expected for existing lawful business practices. The proposed regulation may offer an indirect beneficial effect for non-consumptive recreational charter businesses, as it would help ensure that submerged cultural resources remain intact for divers to enjoy.

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

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

#### *Paperwork Reduction Act*

This proposed rule involves an existing information collection requirement currently approved by OMB (OMB approval number 0648-0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The proposed rule will not require any change to the currently approved OMB approval and would not result in any change in the public burden in applying for and complying with NMSP permitting requirements.

The public reporting burden for these permit application requirements is estimated to average 1.00 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to David Bizot, National Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by e-mail to [David.Bizot@noaa.gov](mailto:David.Bizot@noaa.gov), by fax to (301) 713-0404,; or by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

The proposed revised permit regulations would require the Director of the NMSP to consider the proposed activity for which a permit application has been received. The proposed modifications to the permit procedures and criteria (15 CFR 922.113) would further refine current requirements and procedures of the general National Marine Sanctuary Program regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications found in the Office of Management and Budget approved applicant guidelines (OMB Control Number 0648-0141). The revised permit regulations would add language about: the qualifications, finances, and proposed methods of the applicant; the compatibility of the proposed method with the value of the Sanctuary and the primary objective of protection of Sanctuary resources and qualities; the necessity of the proposed activity; and the reasonably expected end value of the proposed activity.

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

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

#### **List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural

resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife, Incorporation by reference.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 29, 2006.

**Elizabeth R. Scheffler,**

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

## **PART 922—[AMENDED]**

1. The authority citation for Part 922 continues to read as follows:

**Authority** 16 U.S.C. 1431 et seq.

2. Subpart G is revised to read as follows:

### **Subpart G—Cordell Bank National Marine Sanctuary**

Sec.

922.110 Boundary.

922.111 Definitions.

922.112 Prohibited or otherwise regulated activities.

922.113 Permit procedures and issuance criteria.

#### **Appendix A to Subpart G of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates**

#### **Appendix B to Subpart G of Part 922—Line Representing the 50-Fathom Isobath Surrounding Cordell Bank**

### **Subpart G—Cordell Bank National Marine Sanctuary**

#### **§ 922.110 Boundary.**

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 399 square nautical miles (nmi) of ocean waters, and submerged lands thereunder, off the northern coast of California approximately 50 miles west-northwest of San Francisco, California. The Sanctuary boundary extends westward (approximately 250 degrees) from the northwestern most point of the Gulf of the Farallones National Marine Sanctuary (GFNMS) towards the 1,000 fathom isobath northwest of Cordell Bank. The Sanctuary boundary then generally follows this isobath in a southerly direction to the southwestern-most point of the GFNMS boundary. The Sanctuary boundary then follows the GFNMS boundary again to the northwestern-most point of the GFNMS. The exact boundary coordinates are listed in Appendix A to this subpart.

#### **§ 922.111 Definitions.**

In addition to the definitions found in § 922.3, the following definitions apply to this subpart:

*Cruise ship* means a vessel with 250 or more passenger berths for hire.

*Introduced Species means:*

(1) A species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Sanctuary; or

(2) Any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

#### **§ 922.112 Prohibited or otherwise regulated activities.**

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1)(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(A) Fish, fish parts, or chumming materials (bait), used in or resulting from lawful fishing activity within the Sanctuary and discharged or deposited while conducting lawful fishing activity within the Sanctuary;

(B) Biodegradable effluents incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;

(C) Biodegradable material or other matter from a vessel resulting from deck wash down or vessel engine cooling water; or

(D) Vessel engine exhaust.

(ii) Discharging or depositing, from within or into the Sanctuary, any material or other matter from a cruise ship except vessel engine cooling water.

(iii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as listed in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) Except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations: removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or on or within the line representing the 50-fathom isobath surrounding the Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart. There is a rebuttable

presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person.

(3) Exploring for, or developing or producing, oil, gas, or minerals in any area of the Sanctuary.

(4)(i) Except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations: drilling into, dredging, or otherwise altering Cordell Bank or the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank; or constructing, placing, or abandoning any structure, material or other matter on the Bank or on the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart.

(ii) Except as incidental and necessary for anchoring a vessel or lawful use of any fishing gear during normal fishing operations: drilling into, dredging, or otherwise altering the submerged lands in the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank; or constructing, placing, or abandoning any structure, material or matter on the submerged lands in the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank. The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1362 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle or bird taken, except as authorized under the MMPA, ESA, MBTA, under any regulation, as amended, promulgated under these acts, or as necessary for valid law enforcement purposes.

(7) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be

permitted by the Director in accordance with § 922.48 and § 922.113.

(c) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation that are necessary for national defense are exempt from the prohibitions contained in the regulations in this subpart. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(d) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

**§ 922.113 Permit procedures and issuance criteria.**

(a) A person may conduct an activity prohibited by § 922.112 if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a national marine sanctuary permit under this section, subject to terms and conditions, as he or

she deems appropriate, if the Director finds that the activity will:

- (1) Further research or monitoring related to Sanctuary resources and qualities;
  - (2) Further the educational value of the Sanctuary;
  - (3) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or
  - (4) Assist in managing the Sanctuary.
- (c) In deciding whether to issue a permit, the Director shall consider such factors as:
- (1) The applicant is qualified to conduct and complete the proposed activity;
  - (2) The applicant has adequate financial resources available to conduct and complete the proposed activity;
  - (3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;
  - (4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;
  - (5) The proposed activity will be conducted in a manner compatible with

the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

- (6) It is necessary to conduct the proposed activity within the Sanctuary;
- (7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(8) Any other factors as the Director deems appropriate.

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

(e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

**Appendix A to Subpart G of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates**

Coordinates listed in this Appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

**SANCTUARY BOUNDARY COORDINATES**

Point ID #	Latitude	Longitude	Point ID #	Latitude	Longitude
1	38.26390	-123.18138	26	37.84988	-123.51749
2	38.13219	-123.64265	27	37.82296	-123.49280
3	38.11256	-123.63344	28	37.81365	-123.47906
4	38.08289	-123.62065	29	37.81026	-123.46897
5	38.07451	-123.62162	30	37.80094	-123.47313
6	38.06188	-123.61546	31	37.79487	-123.46721
7	38.05308	-123.60549	32	37.78383	-123.45466
8	38.04614	-123.60611	33	37.78109	-123.44694
9	38.03409	-123.59904	34	37.77033	-123.43466
10	38.02419	-123.59864	35	37.76687	-123.42694
11	38.02286	-123.61531	36	37.83480	-123.42579
12	38.01987	-123.62450	37	37.90464	-123.38958
13	38.01366	-123.62494	38	37.95880	-123.32312
14	37.99847	-123.61331	39	37.98947	-123.23615
15	37.98678	-123.59988	40	37.99227	-123.14137
16	37.97761	-123.58746	41	38.05202	-123.12827
17	37.96683	-123.57859	42	38.06505	-123.11711
18	37.95528	-123.56199	43	38.07898	-123.10924
19	37.94901	-123.54777	44	38.09069	-123.10387
20	37.93858	-123.54701	45	38.10215	-123.09804
21	37.92288	-123.54360	46	38.12829	-123.08742
22	37.90725	-123.53937	47	38.14072	-123.08237
23	37.88541	-123.52967	48	38.16576	-123.09207
24	37.87637	-123.52192	49	38.21001	-123.11913
25	37.86189	-123.52197	50	38.26390	-123.18138

**Appendix B to Subpart G of Part 922—  
Line Representing the 50-Fathom  
Isobath Surrounding Cordell Bank**

Coordinates listed in this Appendix are unprojected (Geographic Coordinate System)

and based on the North American Datum of 1983 (NAD83).

**CORDELL BANK FIFTY FATHOM LINE**

Point ID #	Latitude	Longitude	Point ID #	Latitude	Longitude
1 .....	37.96034	-123.40371	8 .....	38.07588	-123.47195
2 .....	37.96172	-123.42081	9 .....	38.06451	-123.46146
3 .....	37.99110	-123.44379	10 .....	38.07123	-123.44467
4 .....	38.00406	-123.46443	11 .....	38.04446	-123.40286
5 .....	38.01637	-123.46076	12 .....	38.01442	-123.38588
6 .....	38.04684	-123.47920	13 .....	37.98859	-123.37533
7 .....	38.07106	-123.48754	14 .....	37.97071	-123.38605

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**

[Docket No. 0648-AT15: 060809215-6215-01]

RIN 0648-AT15

**Monterey Bay National Marine Sanctuary Regulations**

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

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

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan, revised Designation Document, and revised regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary). Changes to the Designation Document include expanding the boundaries to include the Davidson Seamount, changing the scope of regulations to include possession of a Sanctuary historical resource outside of the Sanctuary, and introduction of introduced species. The proposed regulations would revise and provide greater clarity to existing regulations.

**DATES:** Public hearings will be held as detailed in the **SUPPLEMENTARY INFORMATION** section.

Comments will be considered if received by January 5, 2007.

**ADDRESSES:** Written comments should be sent by mail to: Brady Phillips, JMPR

Management Plan Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by e-mail to [jointplancomments@noaa.gov](mailto:jointplancomments@noaa.gov), or by fax to (301) 713-0404. Copies of the DMP/DEIS are available from the same address and on the Web at <http://www.sanctuaries.nos.noaa.gov/jointplan>. Comments can also be submitted to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Bizot, National Permit Coordinator, National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, Maryland 20910, by e-mail to [David.Bizot@noaa.gov](mailto:David.Bizot@noaa.gov), or by fax to 301-713-0404; and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Huff McGonigal, Environmental Policy Specialist, 831-647-4254 or [huff.mcgonigal@noaa.gov](mailto:huff.mcgonigal@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 *et seq.*) (NSMA), the National Marine Sanctuary Program (NMSP) has conducted a review of the management plan for Monterey Bay National Marine Sanctuary. The review has resulted in a proposed new management plan for the Sanctuary, some proposed revisions to existing regulations, and some proposed new regulations. The proposed new regulations include prohibitions on:

- discharging or depositing any matter from a cruise ship other than

vessel engine cooling water, vessel generator cooling water, or anchor wash;

- releasing or otherwise introducing from within or into the Sanctuary an introduced species;

- disturbing or taking a Sanctuary resource below 3000 feet of the sea surface in the Davidson Seamount Management Zone;

- deserting a vessel aground, at anchor, or adrift within the Sanctuary; and

- leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary.

These measures would afford better protection to the nationally significant natural and historical resources of the MBNMS.

Existing regulations would also be revised to:

- replace the term “seabed” with “submerged lands”, the term used in the NMSA;

- correct inaccuracies in the coordinates and description of the Sanctuary’s seaward and shoreline boundaries;

- clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and that vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;

- specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to such discharge/deposits during the conduct of traditional fishing activities within the Sanctuary;

- make the prohibition on possession of Sanctuary historical resources apply both within and outside the Sanctuary;

- clarify that the exceptions from the prohibition against altering the submerged lands within the Sanctuary only apply to the extent necessary to accomplish the excepted activities;