

## SECTION 2

# PROPOSED ACTION AND ALTERNATIVES DESCRIPTION

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This section is a description of the specific proposed regulatory actions for all three sanctuaries and identifies alternatives to the proposed actions. These include changes to the regulations for CBNMS, GFNMS, and MBNMS and corresponding changes to each sanctuary designation document. The Proposed Action represents NOAA's "preferred alternative" (Section 2.2). Also in this section is a description of the alternatives to the Proposed Action (Section 2.2), a definition of the No Action Alternative (Section 2.3), and a description of the alternatives that were initially considered but screened from full EIS analysis (Section 2.4). Included is a list of proposed changes to sanctuary designation documents (Section 2.5). The administrators of the NMSP have carefully considered 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.

This project description incorporates regulation wording revisions, which resulted from comments on the Draft Proposed Rule and Draft EIS. It also incorporates the revised proposed discharge regulation addressed in the Draft Supplemental EIS, which was issued in March 2008.

### **Background**

As described in Chapter 1, the proposed actions are a result of the JMPR conducted for the three sanctuaries over the past six years. During the JMPR, each sanctuary, through public working groups and internal teams, developed action plans to address priority resource management issues. Some of the action plans propose that the sanctuaries change their regulations to protect sanctuary resources. Certain proposed changes are related to site-specific issues and regulations, which are addressed by the individual sanctuary. Other issues were determined to apply to all three sanctuaries and are addressed in a coordinated fashion as "cross-cutting" measures.

In evaluating alternatives for analysis in the EIS, NOAA considered proposed regulatory changes appropriate for and consistent with achieving increased protection of the sanctuary's natural and cultural resources. With the proposed changes, the regulations would continue to prohibit a relatively narrow range of activities. The focus of this project description is on those components of the proposed regulations that have the potential to result in adverse environmental or socioeconomic effects. It is important to note that the proposed

regulatory changes are intended to further protect and conserve natural resources, thereby minimizing impacts on the environment. As described in Chapter 1, the administrators of the sanctuaries have the responsibility to manage natural resources and uses within their boundaries, with a focus on resource protection. Therefore, proposed regulatory changes as a whole would have little adverse impact on the environment and would generally provide beneficial effects. In addition, these regulatory changes would have minimal impacts on socioeconomics in the region. However, because the proposed regulation changes require modification of the sanctuary designation documents, the NMSA requires analysis of said changes via an EIS.

### **Proposed Action Definition**

Section 1.5 of this FEIS clearly describes the scope of the analysis, which is focused on regulatory changes that are being proposed as part of the JMPR. The FEIS does not include detailed assessment of the individual priority issue-based action plans that are contained in the final management plans. None of the non-regulatory action plans would result in potentially significant adverse impacts on the environment or socioeconomic users. These action plans are summarized in Appendix B and are described in detail in each sanctuary's Final Management Plan (Volumes I through III).

### **2.1 DEVELOPMENT OF PROPOSED AND ALTERNATIVE REGULATORY ACTIONS**

In developing the proposed action and alternatives for analysis in this EIS, NOAA considered possible regulatory changes that would be consistent with achieving increased resource protection and would be appropriate for inclusion in this management plan update. The following screening criteria were used for determining both the proposed actions and a range of reasonable alternatives:

- The alternative must be feasible;
- The alternative must be consistent with the purposes and policies of the NMSA;
- The alternative must be consistent with the purpose and goals of the management plan, which means that it must address resource management issues, generate beneficial environmental effects, and address uses or other activities that have an adverse effect on sanctuary resources;
- The alternatives should allow for the incorporation and consideration of recent or best available data and scientific knowledge;
- The alternative should maximize environmental benefits, while avoiding unnecessary adverse socioeconomic impacts;
- The alternative should remove obsolete requirements and improve the clarity of existing sanctuary regulations; and
- The alternative should, where appropriate, increase the consistency of regulations among the three sanctuaries.

Alternatives that were initially considered but that did not meet the screening criteria above are listed in Section 2.4, Alternatives Identified but Removed from Consideration.

### **2.2 PROPOSED AND ALTERNATIVE REGULATORY CHANGES**

All sanctuaries are governed by NMSP regulations. Within the NMSP regulations, each sanctuary is managed by a set of individual site regulations that establish the sanctuary boundaries, administrative procedures,

definitions, and prohibited activities. Although each sanctuary has unique issues that are addressed by the regulations, there are many issues in common among the three sanctuaries. There also are inconsistencies between the regulations due in part to the fact that the sanctuaries were established at different times and have different resource issues, users, and communities. As part of the JMPR, regulations were reviewed to determine if modifications or clarifications were necessary to meet the original intent of a given regulation, to address new resource threats and changes in resource management issues and priorities, to eliminate inconsistencies between sites (if appropriate), and to make technical corrections. New regulations (or prohibitions) also are proposed by each of the three sanctuaries to provide added protection to sanctuary resources and to address specific resource management issues.

In several issues, the proposed change or new prohibition is the same for all three sanctuaries, but in some cases the proposed regulation may differ among the sanctuaries due to different conditions, circumstances, needs, and language used at the time of original designation. In the process of developing the updated management plans and reviewing the regulations, staff strived to make regulations consistent among the three sanctuaries, to the extent feasible. Many of the regulatory changes are technical and do not change the overall intent or application of a particular regulation.

The following text describes the suite of proposed and alternative substantive regulatory changes for each sanctuary. In some cases, the alternatives to the Proposed Action contain slightly more stringent regulatory language than the Proposed Action. The reader should note that alternative regulatory actions have been developed for some but not all of the proposed actions. In cases where the Proposed Action is very limited in scope and proposed changes are minor or technical clarifications, no suitable alternative exists other than the No Action alternative, which is described in Section 2.3.

Numerous minor or technical changes that do not change the intent of the regulations are not included in the following subsections. Table 2-1 (at the end of this chapter) provides a summary of the proposed and alternative substantive changes for each sanctuary. This table is not intended to compare regulations of the three sanctuaries but is provided as a reference to show proposed new prohibitions and existing regulations that are being modified. The full text of the regulations will be included in the Final Rule, if it is promulgated by NOAA.

### **2.2.1 Proposed Cross-Cutting Regulations in the Sanctuaries**

Cross-cutting refers to regulatory issues that are common to all three sanctuaries. There are several regulatory changes that are proposed for all three sanctuaries. To avoid duplication, these changes are addressed in this section, and any minor differences between the sanctuaries are identified. The proposed cross-cutting actions present relatively minor regulatory changes for each of the three sanctuaries to address introduced species, cruise ship discharges, and other discharges. Table 2-1 is a summary of these cross-cutting regulatory changes. Each sanctuary must amend its own regulations to incorporate specific cross-cutting provisions.

#### ***Introduced Species Regulation***

A priority issue identified during the management plan review was addressing the threat posed by releasing or otherwise allowing introduced species to enter marine ecosystems encompassed by the three sanctuaries. CBNMS, GFNMS, and MBNMS are located near San Francisco Bay, which is considered the most invaded aquatic ecosystem in the world, with over 255 introduced species. One of the recommended strategies from the working groups for addressing this issue was to consider a regulation prohibiting such releases or other introductions.

Introduced species (also known as nonnative or exotic species) in the marine and estuarine environment alter species composition, threaten the abundance and diversity of native marine species (especially threatened and endangered species), interfere with the ecosystem's function, and disrupt commercial and recreational activities. Introduced species may cause local extinction of native species either by preying on them directly or by out-competing them for prey or habitat space. For example, the European green crab, now found in Elkhorn Slough, Tomales Bay, Bodega Bay, Bolinas Lagoon, Estero de San Antonio, and Estero Americano, preys on the young of valuable species (such as oysters and Dungeness crab) and competes with them for prey and suitable habitats. Introduced species may cause changes in physical habitat structure. For example, burrows created by the isopod *Sphaeroma quoyanum*, originally from New Zealand and Australia, are found in banks throughout the Elkhorn Slough and may exacerbate the high rate of tidal erosion in the slough. Introduced species pose a significant threat to the natural biological communities and ecological processes in the sanctuaries and may have a particularly big impact on threatened and endangered species. Introduced species are a major economic and environmental threat to living resources and habitats in the sanctuaries, and once established, they can be extremely difficult to control or to eradicate.

Introduced species could pose significant economic threats by affecting industries, such as water and power utilities, commercial and recreational fishing, and agriculture. Examples from outside of the sanctuaries but around the US include the zebra mussel (\$3.1 billion in nationwide costs annually, primarily to water and power plants that are trying to keep it from clogging their intake pipes), the Asian clam (\$1 billion in costs annually to utilities, the fishing industry, and others), and the European green crab (\$44 million in costs annually to aquaculture, fishing, and other industries). These costs will be ongoing since aquatic introduced species are virtually impossible to eradicate once they become established.

Discharge of ballast water is a common source of introduced species. Many organisms carried in ballast water are in the larval or diapause (dormancy) stage of their life cycle. Once these species are discharged, estuaries and harbors provide optimal environments for their growth. Ballast water may contain adult copepods, as well, that are old enough to reproduce soon after entering the new environment. Viruses, bacteria, and other pathogens have also been identified in ballast water. With over 45,000 commercial cargo ships (6,000 of which enter or exit San Francisco Bay per year) transporting 10 billion tons of ballast water around the globe every year, the rate of introduced species is certain to grow if efforts to prevent introductions do not occur.

Introduced species also may be transported on commercial and recreational vessel hulls, rudders, propellers, intake screens, ballast pumps, fishing gear, and sea chests. Other vectors for spreading introduced species include recreational and research equipment, debris, dredging and drilling equipment, dry docks, and buoys. Organisms transported or used for research, restoration, education, aquariums, live bait, aquaculture, biological control, live seafood, and rehabilitated and released organisms also have the potential for accidental or intentional release into the marine/estuarine environment. Of additional concern are genetically modified species that either escape or are released into the ocean.

A new regulation is proposed to prohibit introducing or releasing introduced species from within or into the three sanctuaries. The sanctuaries intend to further prevent injury to sanctuary resources and to protect the integrity of the marine ecosystem by preventing the introduction of invasive species into the marine environment.

Although this regulation will not be completely effective in preventing the accidental release of introduced species, the regulation will provide a deterrent to deliberate releases and could help prevent unintentional introductions associated with specific planned programs or projects.

The only exceptions to this proposed regulation are: 1) striped bass (*Morone saxatilis*) released during catch and release fishing activity; and 2) (for GFNMS only) species cultivated by existing mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of the final regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species.<sup>1</sup> Striped bass were intentionally introduced in California in 1879, and in 1980 the CDFG initiated a striped bass hatchery program to support the striped bass sport fishery, which according to the CDFG is one of the most important fisheries on the Pacific Coast. The CDFG manages the striped bass fishery through a Striped Bass Management Conservation Plan. The proposed regulation would recognize that striped bass are the focus of an established state-managed sport fishery and may be caught and released within the Sanctuary. Commercial aquaculture has existed in the State of California since the 1850s and in Tomales Bay since the 1890s. There are currently 12 individual leases (6 companies) encompassing 513 acres of state bottomlands in Tomales Bay (Moore 2006). Most of the cultured oyster species are nonnative and have been introduced because they can be more efficiently cultured to produce a marketable product than native species. The nonnative oyster species are normally found in much warmer water than in California and are unable to spawn or reproduce in Tomales Bay. As such they have not “spread” outside of these mariculture areas.

In conjunction with this regulation, the following definition of introduced species is proposed for incorporation into the regulations for each sanctuary.

*Introduced species means: (1) A species (including but not limited to, any of its biological matter capable of propagation) that is nonnative to the ecosystem(s) protected by the Sanctuary; or (2) any organism into which altered genetic matter or genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.*

### **Discharge Regulation Clarifications**

There are several new or modified discharge prohibitions and accompanying definitions that are proposed for the three sanctuaries. However, some wording of the proposed regulations differs among the sanctuaries to reflect their unique circumstances and needs (see Table 2-1). The discharge prohibitions are necessary to protect sanctuary resources and qualities from the effects of pollutants associated with discharges. Discharge prohibitions are already in place for the three sanctuaries, but amendments are necessary to make the prohibitions consistent among the sanctuaries, to the extent possible, and to increase protection from pollutants, particularly waste resulting from food on board vessels and sewage discharge. The general prohibition provides several exceptions, allowing specific types of materials to be discharged. The proposed revised regulations contain language improvements and clarifications in several areas. The modified regulations are not intended to prevent any current uses in the sanctuaries.

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<sup>1</sup>This second provision is intended to limit mariculture to existing leases, not necessarily existing footprints of active areas. If an existing mariculture activity takes place within a footprint smaller than the area allowed by the existing lease, the footprint could be expanded up to the limits of the lease area.

### Vessel Discharges

The following slight wording changes are proposed regarding the discharge prohibition and exceptions, which narrow the range of acceptable discharges:

- All three sanctuaries propose modifying the prohibition to clarify that it applies to discharges from “within or into” the sanctuary (current regulations prohibit discharges only “within” the sanctuary) (“into” is intended to make clear that not only discharges and deposits originating in the Sanctuary [including from vessels in the Sanctuary], but also discharges and deposits from pipes landward of, or aircraft above, the Sanctuary, for example, are included in the prohibition);
- Exceptions for fish parts, chumming materials, or bait are clarified to apply to “lawful fishing activity”;
- Exceptions are no longer provided for meals onboard vessels, thus food and other wastes associated with meals could not be deposited overboard in CBNMS or GFNMS; and
- Engine cooling water and deck wash (applies to both the agent used to wash the deck as well as any material on the deck) exceptions are limited to clean materials; to clarify the meaning of “clean” a new definition is added as follows: “*not containing detectable levels of harmful matter.*”

Making these changes would improve consistency among each of the three sanctuaries and with the State Water Resources Control Board. Having common regulations will help improve understanding and compliance with regulations.

### Vessel Discharge—Sewage, Graywater, and Use of Marine Sanitation Devices

A marine sanitation device (MSD) is equipment designed to receive, retain, treat, control, or discharge sewage and any process to treat such sewage. Pursuant to Section 312 of the Clean Water Act (CWA), all recreational boats with installed toilet facilities must have an operable MSD on board (33 USC § 1322). Vessels 20 meters (65 feet) and under may use a Type I, II, or III MSD. Vessels over 20 meters (65 feet) must have a Type II or III MSD. All installed MSDs must be Coast Guard-certified and must be so labeled, except for some holding tanks, which are certified by definition under Section 312 of the CWA.

The California Clean Coast Act, which became effective on January 1, 2006, prohibits large cruise ships and other oceangoing ships of 300 gross tons or more from releasing hazardous waste, oily bilge water, other waste, and sewage sludge into the marine waters of the state and marine sanctuaries. The Clean Coast Act also prohibits the release of graywater (also known as sullage; graywater under the Coastal Act is non-industrial wastewater generated from either domestic or shipboard processes such as washing dishes, laundry, cooking, bathing, etc.) from cruise ships and oceangoing ships with sufficient holding capacity into the marine waters of the state. Furthermore, the Clean Coast Act requires the State Water Resources Control Board to request the appropriate federal agencies to prohibit the release of wastes from cruise ships and oceangoing ships into state marine waters and the four National Marine Sanctuaries in California.

Based on this new state regulation, the proposed action for vessel discharges in the three sanctuaries was modified following the release of the JMPR Draft EIS. The proposed action is now consistent with the provisions of the California Clean Coast Act.

The proposed action would revise regulations to prohibit sewage discharges/deposits from within or into the CBNMS, GFNMS, and MBNMS from vessels of 300 gross registered tons (GRT) or more. The prohibitions would apply only to vessels with sufficient holding tank capacity to hold sewage while within the Sanctuary.

The proposed discharge exception reads as follows:

*(B) For a vessel less than 300 gross registered tons (GRT) or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (US Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 USC 1322 et seq. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage.*

The proposed action would also amend the exception to the prohibition on discharging or depositing graywater from within or into the MBNMS. The revised regulation would provide an exception for vessels less than 300 GRT and vessels 300 GRT or greater that do not have enough tank capacity to hold graywater while within the MBNMS. Discharging graywater is already prohibited in the CBNMS and GFNMS, so this proposed regulation would apply only to MBNMS (see Table 2-1).

Current regulations require use of MSDs on vessels within the three sanctuaries. (Vessels without MSDs may enter the sanctuaries, but they are not allowed to discharge within sanctuary boundaries.) 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 to this exception requires vessels 300 GRT or greater to hold treated sewage until they are outside of the sanctuary. For vessels less than 300 GRT (or larger vessels without sufficient holding capacity), the exception clarifies that such discharges are allowed only if generated by Type I or II MSDs throughout the waters of all three sanctuaries. The clarification would make it understood that discharge from a Type III MSD (a holding tank of untreated sewage) is prohibited. Additionally, the proposed regulation of requiring locks on valves preventing bypass and direct discharge of untreated sewage is meant to facilitate Coast Guard enforcement of this regulation to prevent accidental discharge and ensure proper function while vessels are in use. By securing the device, compliance with the regulation is easily detectable and unambiguous.

### **Cruise Ship Discharges and Definitions**

#### **Proposed Action**

The proposed discharge regulations distinguish cruise ship discharges from all other vessel discharges. Although there are exceptions to the vessel discharge regulations for miscellaneous matter (see Table 2-1), the only discharges permitted from a cruise ship are clean vessel engine cooling water, vessel generator cooling water, and anchor wash.

Cruise ships will no longer be permitted to release materials listed in the general exceptions for other vessels. The implications of this regulation are that cruise ships will no longer be allowed to discharge biodegradable effluents, deck washdown materials, or fish, fish parts, or chumming materials into the sanctuary waters. Cruise ships will be required to contain their treated wastewater until outside sanctuary waters. In the future, if a pump-out facility is developed in San Francisco Bay, cruise ships could use that facility to discharge treated wastewater. Related to these regulations, a new definition of cruise ship is proposed (see Table 2-1), consistent among all three sanctuaries.

The purpose of regulating cruise ship discharges is to minimize adverse effects on the marine environment as a result of pollutant discharges. The main reason to distinguish cruise ship discharges from those of other vessels is because of the volume and types of discharges. . Despite the fact that cruise ships discharge waste from a single source, they are exempted from regulation under the CWA point source permitting system. The CWA allows the discharge of untreated black water (sewage) anywhere beyond three miles from shore and does not require any treatment of graywater or ballast water. In national marine sanctuaries, additional prohibitions against discharging graywater and sewage are applicable. Cruise ships are regulated by state and federal laws and regulations aimed at reducing air pollution, graywater, sewage, sewage sludge, and hazardous waste. However, despite these laws and regulations, cruise ships are currently still able to discharge large volumes of treated sewage and untreated graywater into the Sanctuaries.

### **Alternative Prohibition**

The alternative to the prohibition on cruise ship discharges is to prohibit discharges or deposits into sanctuary waters that do not meet the minimum effluent water quality standards established by the Coast Guard in Alaska at 33 CFR 159, Subpart E (Discharge of Effluents in Certain Alaska Waters by Cruise Vessel Operations) provided that the owner/operator has satisfactorily demonstrated compliance with these standards to the sanctuary director prior to discharge or deposit. The intent is to ensure that these standards and requirements are adhered to in the three-sanctuary region, providing further protection for waters within and adjacent to the sanctuary. This alternative establishes specific water quality standards and lets the cruise ship industry determine the best and most economical method to achieve those standards and monitoring requirements.<sup>2</sup>

## **2.2.2 Cordell Bank National Marine Sanctuary Regulations**

There are two related proposed regulations regarding protection of the seabed and benthic habitat on Cordell Bank. One regulation addresses protection from seabed disturbance, and the second regulation addresses taking or injuring benthic resources on and near the Bank. There is also a new prohibition regarding wildlife disturbance.

### ***Seabed Protection Regulation***

#### **Proposed Action**

The Bank is the centerpiece of the sanctuary and the primary reason for sanctuary designation. The Bank is roughly elliptical and lies within the 50-fathom (300 feet; 91 meters) depth contour. The Bank is 9.5 miles (15 km) long and 4.5 miles (7 km) wide. The management plan review process identified a need to better protect the fragile benthic invertebrate community living on the upper ridges and pinnacles of Cordell Bank. CBNMS sought to extend maximum protection to the core area of the Bank, within the 50-fathom isobath, to protect both the high relief of the Bank and the exceptional invertebrate assemblage on the Bank. The primary threats to the benthic resources on the Bank come from those activities such as fishing, drilling, dredging, and the placement of structures and materials that can physically alter the benthic structures and habitats.

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<sup>2</sup>Since preparation of the DEIS, conditions have changed in Alaska regarding cruise ship discharge regulations. Rather than relying solely on the provisions of 33 CFR 159, the state of Alaska passed a ballot initiative in 2006, which established additional more restrictive discharge conditions under a new Commercial Passenger Vessel Environmental Compliance Program. The Alaska program is composed of a broad range of compliance measures that are not included in the alternative prohibition analyzed in this FEIS. The costs to the state of Alaska for administering the new program are covered by a berth tax that was part of the ballot initiative.



In order to protect Cordell Bank from activities that could alter the seabed, the NMSP proposes a new regulation that would prohibit any disturbance of the seabed, including construction, drilling, and dredging on or within the line representing the 50-fathom isobath depth contour around the Bank (see Figure 2-1). Lawful fishing would be allowed within this area and an additional exception for any type of vessel anchoring would be provided for the remaining areas of the Sanctuary (outside of the line representing the 50-fathom isobath contour). This regulation would be consistent with the provisions for other sanctuaries and would complement the existing regulation prohibiting the taking of invertebrates and marine algae on the Bank (see below). The proposed prohibition is as follows:

*(i) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or other matter on or in the submerged lands. This prohibition does not apply to bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).*

*(ii) In the Sanctuary beyond the line representing the 50- fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or matter on or in the submerged lands except as incidental and necessary for anchoring any vessel or use of any lawful fishing gear during normal fishing operations. This prohibition does not apply to bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).*

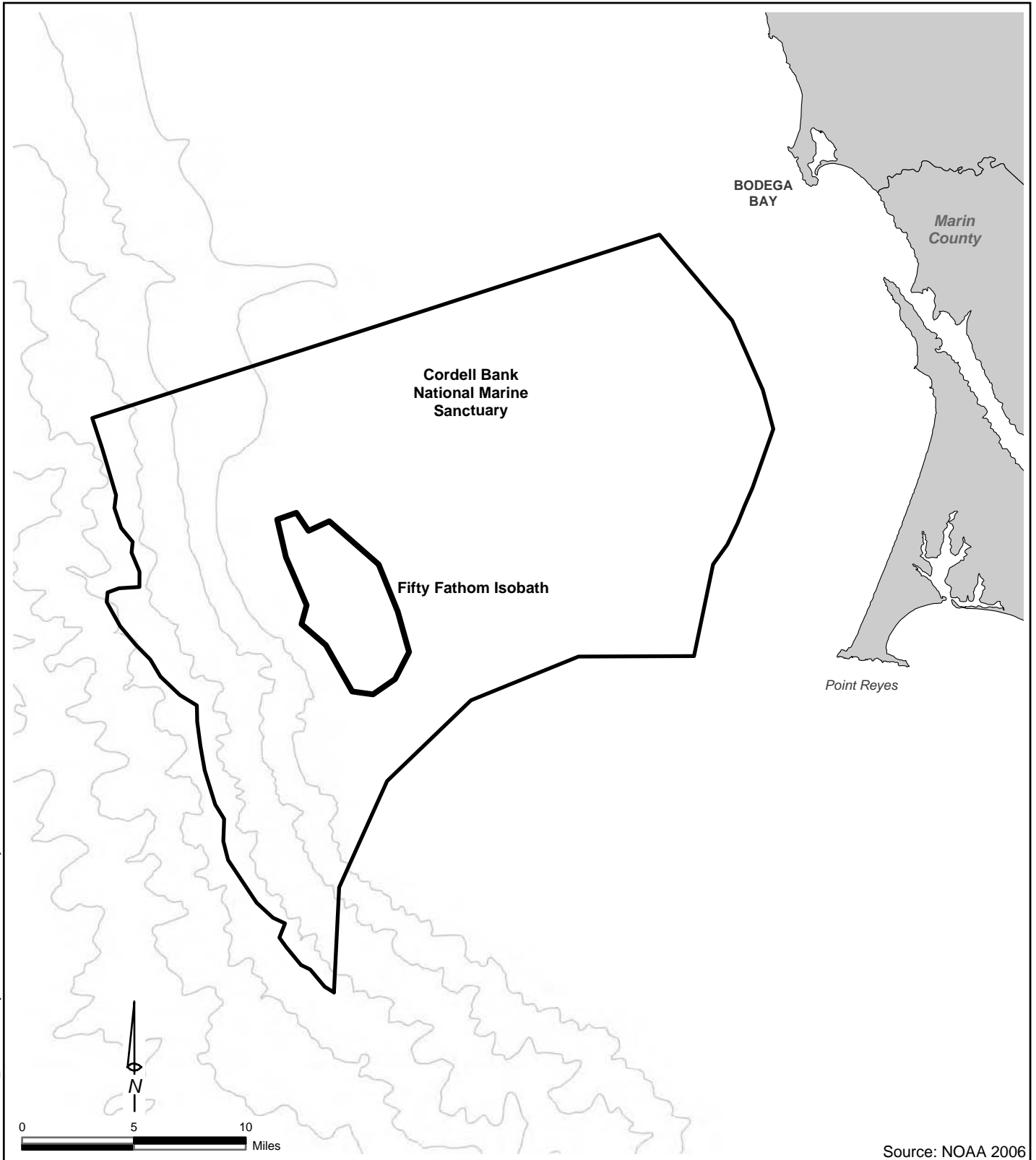
In conjunction with this proposed regulation, impacts on Cordell Bank from fishing activities would continue to be regulated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 USC §§ 1801 et seq.. On May 11, 2006, NOAA published a final rule to implement regulatory provisions of Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan (FMP) (71 FR 27408). This rule designated the area within the 50-fathom isobath of Cordell Bank as EFH, and implemented the following prohibitions as applicable within this area:

- Fishing with dredge gear anywhere in EFH;
- Fishing with beam trawl gear anywhere in EFH;
- Fishing with bottom trawl gear anywhere in EFH; and
- Fishing with bottom contact gear within the 50–fathom isobath surrounding Cordell Bank.

Thus, rather than amend Sanctuary regulations and the Cordell Bank Designation Document to restrict fishing activities that may harm the seabed, the Sanctuary will rely upon the amended MSA regulations for the Groundfish FMP to address fishing related impacts on Cordell Bank and limit its regulations to other non-fishing activities. Therefore, the NMSP is proceeding with a new prohibition against seabed disturbance (as defined above), but the prohibition would not restrict specific types of fishing gear.

As background to this dual proposal, the PFMC prepared a written letter response (April 22, 2005), to the NMSP's request for recommendations on the sanctuary's proposed amendments to its designation document (NMSA Section 303[b][2] consultation) and on recommendations on draft fishing regulations (NMSA Section 304[a][5] consultation). The PFMC indicated it could achieve the sanctuary's resource protection goals for Cordell Bank through the promulgation of regulations to support the Essential Fish Habitat (EFH) designation and associated management measures under Amendment 19 to the Groundfish Fishery

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# ***Cordell Bank National Marine Sanctuary***

Northern California

Management Plan. Implementation of these fishing regulations to protect benthic habitat on Cordell Bank is addressed in the NOAA Fisheries Draft EIS for groundfish EFH, published in February 2005. In summary, the FEIS identifies a range of alternatives that would regulate fishing on Cordell Bank. The alternatives are packaged within a comprehensive suite of measures to identify and conserve EFH for Pacific Coast groundfish. NOAA has determined that there is a credible basis for NOAA Fisheries to pursue prohibiting the use of all bottom-contact fishing gear within the 50-fathom isobath surrounding the Bank, and NOAA Fisheries has proposed this regulation as an amendment to the Groundfish Fishery Management Plan. The proposed regulatory language was determined by the NMSP to meet the intent of protecting the seabed on Cordell Bank from disturbance. A final EIS on the proposed NOAA Fisheries regulations was published in December 2005. The proposed regulations were published on January 12, 2006 (71 FR 1998) and the final regulations were published on May 11, 2006 (71 FR 27408). The effective date of the rule was June 12, 2006.

This proposed sanctuary prohibition, in combination with the NOAA Fisheries proposed prohibition, would maximize protection of the core area on the Bank and within a line representing the 50-fathom isobath around the Bank from activities that could affect the fragile relief of the Bank. This proposed regulation would ensure that the prominent geological features of the Bank, such as the pinnacles and ridges, are protected from permanent destruction from activities such as anchoring or exploration. Damage to the areas of the Bank with high relief would be permanent, as this granitic structure is not a renewable resource. Unlike habitats such as kelp forests and coral reefs, once the granite pinnacles have been compromised, there is no opportunity for recovery, and they will remain rubble. The pinnacles and ridges of the Bank provide a hard substrate for sponges, anemones, hydrocorals, hydroids, and tunicates to attach, as well as for scattered crabs, holothurians, and gastropods. This benthic coverage in turn provides important habitat and food for fishes and other living marine resources. This area is one of biological complexity, sensitivity and ecological importance.

This proposed regulation would specify the types of submerged lands alteration that would not be allowed, such as abandoning unwanted debris, wrecked vessels or seabed research equipment and fishing traps or cages.

For the balance of the Sanctuary outside the 50-fathom isobath surrounding the Bank, exceptions would be made for anchoring and lawful fishing activity so that activities already taking place on the soft bottom (that is, areas that could more easily recover from impact) would be allowed.

The following human use activities, which would be prohibited throughout the Sanctuary by the proposed regulation, may be found incompatible with the Sanctuary's primary purpose of resource protection and would be considered a threat to the sensitive habitat within the 50 fathom isobath surrounding Cordell Bank. Note that none of these activities are known to have occurred to date or are proposed in this area.

- **Salvage of Cultural Resources:** The abundance of shipwrecks along the California coast suggests that future underwater exploration of these resources is likely. Prehistoric use of the island, when the Bank was exposed during the last ice age, may also attract attention. Until recently, Cordell Bank and the surrounding seabed have been inaccessible due to location, depth, and currents. Improving technology, such as sonar, remotely operated vehicles, and manned submersibles, has reduced some constraints to exploration.

- Commercial submerged cables: Rapid expansion of communication technology has created a sudden demand for installing cables on the seafloor. Cable deployment in CBNMS is inappropriate because impacts on the submerged lands, the Bank, the benthic coverage of the Bank and soft bottom fauna are unpredictable.

### Alternative Seabed Protection Regulation

As an alternative to the above proposal, the NMSP has identified regulatory language that could be adopted in the event that regulations protecting the seabed from bottom-contact fishing gear were not implemented through the MSA or were adopted in such a way as they did not meet the Sanctuaries' goals and objectives for protection of the Bank. Therefore, this alternative would meet CBNMS' goals and objectives, but through using the regulatory authority of the NMSA rather than the MSA. This alternative would allow lawful fishing but would exclude bottom contact gear, and thereby protect the Bank from fishing gear that could destroy, damage or injure benthic resources on the Bank.

*(4)(i) Except incidental and necessary to lawful use of any fishing gear (other than bottom contact gear), during normal fishing operations: drilling into, or dredging; or otherwise altering Cordell Bank or the submerged lands within the line representing the 50-fathom isobath; or constructing, placing or abandoning any structure, material or other matter on the Bank or on the submerged lands within the line representing the 50-fathom isobath surrounding the Bank.*

*(ii) Except as is incidental and necessary for anchoring a vessel or use of any lawful fishing gear (other than bottom contact 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 prohibition provides no exceptions within the 50-fathom isobath surrounding the Bank, except as incidental to gear types that do not directly target bottom habitat and disturb or damage the submerged lands. Thus, fishing activities that involved using bottom contact gear or any other activities that involved disturbance of the seabed within the 50-fathom isobath would be prohibited.

A new definition of “bottom contact gear” would be added in conjunction with this alternative prohibition, consistent with the definition for bottom contact gear developed by the Pacific Fisheries Management Council (PFMC) in Amendment 19 (Essential Fish Habitat) of the Pacific Coast Groundfish Fishery Management Plan:

*Bottom contact gear means any fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, pots, traps and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (e.g. by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart. Other gear, midwater trawl gear for example, although it may occasionally make contact with the sea floor during deployment, is not considered a bottom contact gear because the gear is not designed for bottom contact, is not normally deployed so that it makes such contact, nor is such contact normally more than intermittent. Similarly, vertical hook-and-line gear that during normal deployment is not permanently in contact with the bottom, would not be considered bottom-contact gear.*

In order for this regulation to be promulgated by the CBNMS, the NMSP would need to modify Article 5 of the CBNMS Sanctuary Designation Document, which states that “The regulation of fishing is not authorized

under Article IV.” Since modifying the designation document is not part of the preferred action and is not contemplated under the scope of this EIS, the NMSP would need to follow the designation procedures in NMSA section 304, including consulting with affected interests and preparing an environmental impact statement.

The high vertical relief of the Bank discourages trawler operators from fishing on the Bank. Data summaries for trawl sets from 1997 to 2002 indicate that trawl activity in the Sanctuary is on the soft sediments north of the Bank (see Section 3.6 for detailed discussion). The benthic cover and relief of the Bank also tend to entangle long lines. Data from submersible surveys on the Bank document entangled gear on almost all of the 22 habitat survey tracks on the Bank. Most are long lines entangled on the bottom with a few remnant gill nets. What is of even greater concern than existing gear types and fisheries is the development of new gear types or fisheries that could negatively affect the invertebrate community or the reef structure in the high relief areas of the Bank.

### ***Benthic Habitat Protection***

#### **Proposed Action**

In addition to the above proposed seabed protection regulation, the Sanctuary will rely upon an existing benthic habitat protection regulation that prohibits removing, taking, or injuring benthic invertebrates or algae on Cordell Bank or within the 50-fathom isobath surrounding the Bank. (See Table 2-1 for revised wording of this prohibition.) As stated in the text of the proposed regulatory language, this prohibition would not apply to bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR Part 660 (Fisheries off West Coast States and in the Western Pacific). Like the above proposal regarding seabed protection, bottom-contact fishing is restricted by regulations recently promulgated by NOAA Fisheries under the MSA (71 FR 27408) to designate EFH and protect these areas from potentially harmful fishing activities. Therefore, additional protection of benthic resources would be achieved through the MSA. The NMSP would rely on NOAA Fisheries to address specific types of fishing gear through the MSA and the NMSP would proceed with clarifying its existing general prohibition against injury of benthic resources, without specific reference to prohibited fishing gear types. In addition, the reference to 50-fathom isobath will be changed to “a line representing the 50-fathom isobath”, to clarify and assign latitude and longitude coordinates to better define this area.

The two proposed regulations protecting the Bank would virtually eliminate the risk of harmful impacts from commercial activities on the benthos on Cordell Bank and within the 50-fathom isobath surrounding the Bank.

#### **Alternative Benthic Habitat Protection Regulation**

The alternative regulation would achieve the same purpose as the Proposed Action but would involve additional wording to address fishing exceptions under the regulatory authority of the NMSA, in the event that fishing regulations to protect benthic resources were not fully implemented through the MSA or were adopted in such a way as they did not meet the Sanctuary’s goals and objectives for protection on the Bank. The NMSP would narrow the fishing exception by allowing removal, injury, or takings of benthic invertebrates or algae only as incidental and necessary to “the lawful use of any fishing gear (other than non-bottom contact gear) during normal fishing operations” on Cordell Bank and within the 50-fathom isobath surrounding the Bank.

The exception for non-bottom contact fishing gear would allow for incidental take as a result of fishing gear that does not directly target or affect benthic habitat. See above definition of bottom contact gear in the alternative Seabed Protection regulation. This prohibition would not apply to areas other than within a line representing the 50-fathom isobath surrounding the Bank. At present, hook and line fishing is the only type of fishing activity operating around the Bank. There is no other fishing activity on the Bank due to the rockfish closure. Prior to the closure there was a long line fishery on the Bank.

In order for this regulation to be promulgated by the CBNMS, the NMSP would need to modify Article 5 of the CBNMS Sanctuary Designation Document, which states that “The regulation of fishing is not authorized under Article IV.” Since modifying the designation document is not part of the preferred action and is not contemplated under the scope of this EIS, the NMSP would need to follow the designation procedures in NMSA section 304, including consulting with affected interests and preparing an environmental impact statement.

### **Wildlife Disturbance**

Both CBNMS and GFNMS propose a new prohibition (MBNMS already has this prohibition) on the taking of any marine mammal, sea turtle, or bird in the sanctuary. This prohibition mirrors Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and Migratory Bird Treaty Act (MBTA) regulations. The prohibition is proposed as follows:

*(12) 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 USC 1362 et seq., the Endangered Species Act, as amended, (ESA), 16 USC 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 USC 703 et seq.*

*(13) 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, and any regulation, as amended, promulgated under these acts, or as necessary for valid law enforcement purposes.*

This comprehensive prohibition includes all marine mammals, sea turtles and birds in and above the sanctuaries. This prohibition would provide additional protection of marine mammals, sea turtles, and birds consistent with other sanctuaries, including MBNMS. The intent of this regulation is to bring a special focus to the protection of the diverse marine mammal, sea turtle and bird populations within the sanctuaries. The regulation would be written to complement the existing permit authorities under the MMPA, ESA, and the MBTA. This would provide greater consistency in the regulations across the four sanctuaries in California. Also, by incorporating the prohibition into Sanctuary regulations, it would provide a greater deterrent, with civil penalties up to \$130,000 per day per violation.

### **2.2.3 Gulf of the Farallones National Marine Sanctuary Regulations**

Substantive regulatory actions proposed for GFNMS address boundary clarifications, white shark attraction, water quality, seagrass protection, deserted vessels, and wildlife disturbance.

#### **Boundary Change**

A boundary modification is proposed to permanently fix the Sanctuary’s boundary as it relates to the portion adjacent to the Pt. Reyes National Seashore (PRNS) in Tomales Bay. The PRNS boundary along the western shore in Tomales Bay has been changed by the National Park Service since establishment of the Sanctuary in

1981, and thereby removed area from the original designation. The sanctuary proposes to permanently fix the boundary to its location at the time the GFNMS was designated in 1981. This clarification requires amending the Sanctuary designation document (see Section 2.5).

### ***White Shark Attraction and Approaching***

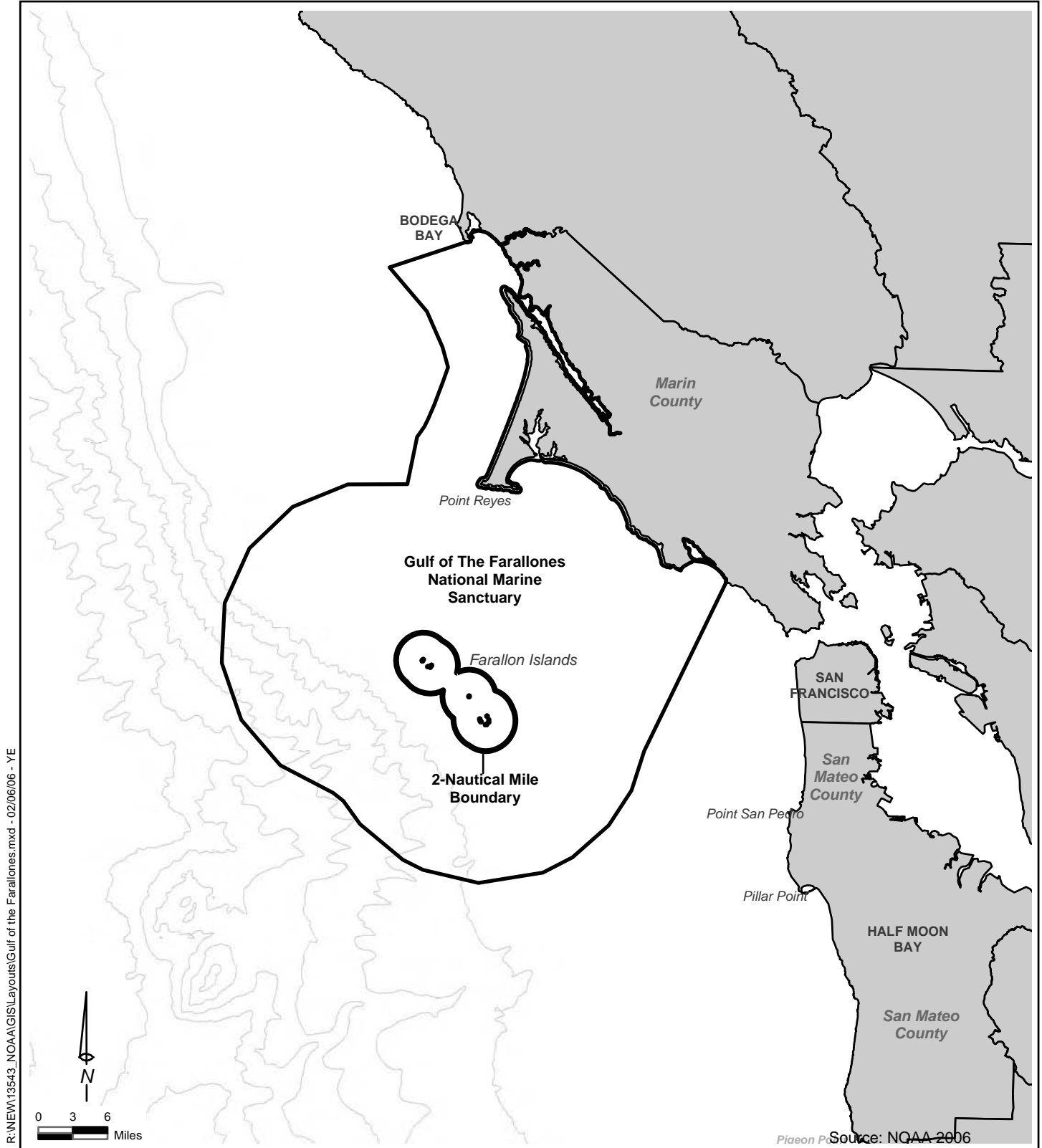
#### **Proposed Prohibition**

GFNMS is proposing a new regulatory prohibition to address wildlife disturbance issues associated with approaching white sharks. This regulation would prohibit attracting white sharks anywhere in the Sanctuary and approaching within 50 meters of any white shark within two nm around the Farallon Islands. The approach prohibition would apply only to marine waters within a line approximating two nm (3.7 km; 2.3 miles) around the islands (see Figure 2-2). Elsewhere in GFNMS, white sharks could be approached but not attracted. To clarify the meaning of “attracting” in the proposed prohibition, a new definition of “attracting” would be added to the regulations (see Table 2-1).

Currently, there is no specific GFNMS regulation regarding attracting white sharks, although there is one in MBNMS. Wildlife disturbance within the sanctuary is governed by a multitude of federal and state laws, including the NMSA, the MMPA, the MBTA, and the California Endangered Species Act (CESA). Site-specific regulations for GFNMS currently address wildlife disturbance through prohibitions such as those against disturbing seabirds or marine mammals by flying motorized aircraft at lower than 304 meters (1,000 feet) (location specific) and discharging or depositing matter into Sanctuary waters (with exceptions). However, none of these regulations specifically address the harassment of white sharks. This proposed prohibition would help resolve user conflicts between adventure tourism operators and wildlife biologists in the vicinity of the Farallon Islands and would control harmful impacts on white sharks throughout the GFNMS. This proposed prohibition would ensure a distinct definition to the term “attracting” a white shark, which would help reduce the amount of potential wildlife disturbance.

#### **Alternative Prohibition**

The alternative to the proposed white shark regulation is to establish a prohibition against approaching a white shark throughout the entire Sanctuary, not just within two nm (2.3 miles; 3.7 km) of the islands, in addition to prohibiting attracting white sharks throughout the Sanctuary. Therefore, no white shark attraction activities or approaching would be permitted within the Sanctuary. This alternative would provide for consistent enforcement throughout the Sanctuary.



## ***Gulf of The Farallones National Marine Sanctuary***

Northern California



### **Water Quality—Deposit and Discharge From Outside the Sanctuary**

In order to strengthen the Sanctuary’s ability to protect water quality and make regulations consistent with those of MBNMS and CBNMS, the following new prohibition is proposed regarding discharges and deposits outside of the Sanctuary boundaries:

*(2) 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 for the exclusions listed in paragraph (2) (A) through (D) and (3) of this section.*

The NMSA defines “injure” as “to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy” (15 CFR 922.3). “Sanctuary resource” is defined at 15 CFR 922.3 as “any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.” “Sanctuary quality” is defined at 15 CFR 922.3 as “any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.”

Existing regulations prohibit discharging or depositing matter within the Sanctuary. This prohibition would apply to activities adjacent to or beyond the Sanctuary, in which matter could be discharged and ultimately enter the Sanctuary and cause harm. Such activities could include coastal land uses as well as offshore uses that occur outside of Sanctuary boundaries. This proposed regulation is in addition to the proposed discharge prohibitions identified for all three sanctuaries (see Section 2.2.1 above). This language is already part of the regulations for the other two sanctuaries.

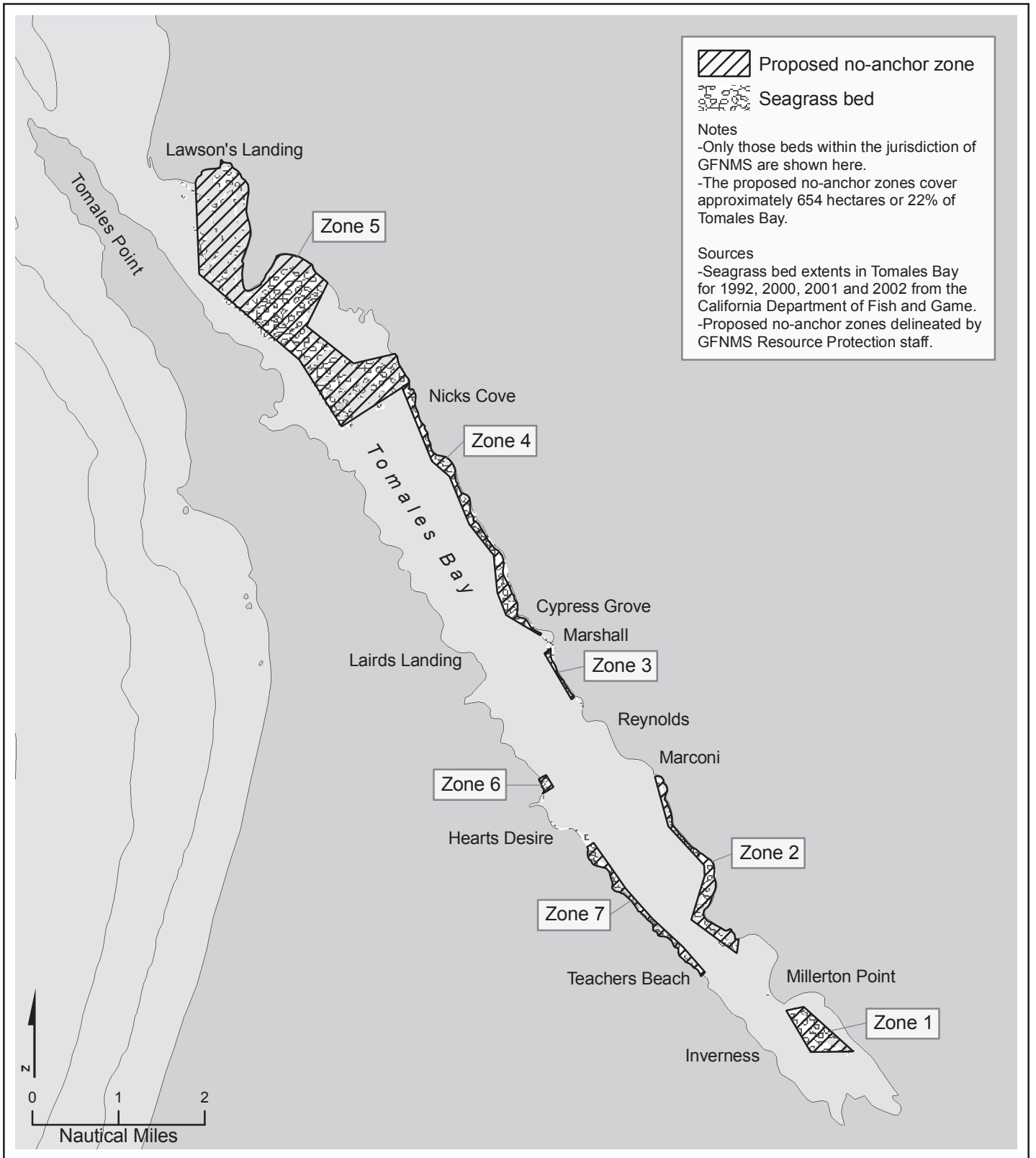
### **Seagrass Protection**

#### **Proposed Action**

GFNMS proposes to add a provision to Sanctuary regulations to prohibit vessels from anchoring in designated seagrass protection zones in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit, or license. There are seven proposed no-anchoring zones that protect known seagrass beds (see Figure 2-3). These seven zones encompass approximately 22% of the surface area of the Bay. In conjunction with this new prohibition, a new definition would be added to the regulations, as follows:

*“Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: Zostera asiatica and Zostera marina.”*

This prohibition is proposed to protect the important and fragile seagrass found in several areas of Tomales Bay directly from the effects of vessel anchor damage. Seagrass is commonly found in tidal and upper subtidal zones in estuaries, bays and lagoons, such as Tomales Bay and Drake’s Estero. Seagrass beds help trap sediments and reduce excess nutrients and pollutants in the water column and thereby contribute



**Seagrass Bed Protection  
Tomales Bay  
Proposed No-Anchor Zones**

Gulf of the Farallones National Marine Sanctuary, California

**Figure 2-3**

towards improving water quality. Seagrass provides breeding and nursery grounds for fish such as Pacific herring, which attach their eggs directly to the seagrass blades. Seagrass provides important habitat for migratory birds, such as shorebirds, who feed upon the abundant fish and invertebrate species associated with the seagrass. Seagrass also serves as buffer zones in protecting coastal erosion. In 2003 a Technical Committee, consisting of ten local, state and federal agencies, was formed to address boating impacts, water quality, and wildlife protection in Tomales Bay. Based on the damage that can occur and the low success of seagrass restoration efforts to date in similar bays and waterways, in 2005, members of the committee discussed the need to create no anchor zones in the seagrass beds. This proposed action would help prevent damage to sensitive and productive wildlife habitat in Tomales Bay and would provide direct and indirect protection of biological resources and habitats and the ecological services they provide.

### ***Deserted Vessels***

To address concerns regarding the potential threats to the marine environment from deserted vessels, GFNMS is proposing regulations to minimize this threat. The proposed regulation would prohibit the following:

*Deserting a vessel aground, at anchor, or adrift in the Sanctuary.*

In conjunction with this proposed prohibition, a new definition of “deserting” would be added to the regulations to clarify the specific applicability of this prohibition (see Table 2-1 for specific wording of definition).

Once a vessel is grounded there is a high risk of discharge of harmful matter in the marine environment. Currently, removal of harmful substances (e.g., motor oil) is not specifically required unless a discharge has occurred. Therefore, GFNMS is proposing an additional regulation that would establish the following prohibition:

*Leaving harmful matter aboard either a grounded or deserted vessel in the Sanctuary.*

Harmful matter is any substance or combination of substances that, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a present or potential threat to Sanctuary resources or qualities. These substances include fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 USC 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) at 40 CFR 302.4.

These two new prohibitions would help reduce or avoid harm to Sanctuary resources from derelict vessels as a result of direct impact of the settling or colliding of a vessel on habitats and potential leakage of hazardous or harmful matter from a vessel. The Sanctuary would have the authority to enforce removal of deserted vessels to prevent potential groundings, collisions, or hazardous fuel leaks that could harm Sanctuary resources. Under existing regulations, vessel owners can be held liable for groundings and associated fuel spills that violate seabed disturbance or discharge regulations. The main purpose of the proposed regulations is to make enforcement easier and to require vessel owners to take care of deserted vessels before they become grounded and cause damage.

### **Wildlife Disturbance**

GFNMS proposes the same new prohibition regarding the taking of wildlife, as described above for CBNMS, to be consistent with other marine sanctuaries, including MBNMS.

### **Oil and Gas Pipelines**

The Sanctuary proposes to modify the existing prohibition against oil and gas facilities, which provides an exception for oil and gas pipelines that are related to hydrocarbon operations outside the sanctuary. The revised exception would limit oil and gas pipelines to pipelines that are related to operations adjacent to the Sanctuary, rather than anywhere outside the Sanctuary. This exception is further stated in proposed prohibition (5)(C). The intent of this proposed change is to limit pipelines to only those that necessarily need to cross the Sanctuary. No existing operations or pipelines would be affected by this proposed change, and this proposal is primarily technical in nature.

## **2.2.4 Monterey Bay National Marine Sanctuary Regulations**

Proposed regulations for MBNMS address incorporation of the Davidson Seamount, motorized personal watercraft definitions, white shark attraction in federal waters, deserted vessels, definition of dredge disposal sites, and cultural resources protection.

### **Davidson Seamount**

Seamounts have been defined as steep geologic features rising from the seafloor with a minimal elevation of 1,000 meters (0.6 mile) and with a limited extent across the summit. Steep undersea mountains are often referred to as seamounts regardless of size. Seamounts are usually of volcanic origin and are most often conical with a circular, elliptical, or more elongated base.

The Davidson Seamount is outside of MBNMS, 120 km (75 miles) to the southwest of Monterey, and is one of the largest known seamounts in US waters. It is 42 km (26 miles) long and 13 km (8 miles) wide. From base to crest, Davidson Seamount is 2,280 meters (7,480 feet) tall, yet it is still 1,250 meters (4,101 feet) below the sea surface. It has an atypical seamount shape, having a northeast-trending ridge created by a type of volcanism.

### **Proposed Action**

The NMSP has determined that the Davidson Seamount requires protection from the take of or other injury to benthic organisms or those organisms living near the seafloor because of the seamount's special ecological and fragile qualities and potential future threats that could adversely affect these qualities. Therefore, the Davidson Seamount is proposed for inclusion in the boundary of the MBNMS. A 585-square-nautical-mile area around the seamount would be incorporated into the Sanctuary (see Figure 2-4), approximately 25 nm (46 km; 29 miles) per side. The proposed uniform shape of the boundary offers easy navigation by longitude and latitude even though the seamount is physically disconnected from the MBNMS boundaries.

Within the Davidson Seamount Management Zone (DSMZ), standard MBNMS regulations would apply, except as noted in the proposed regulations (see Table 2-1). Below 3,000 feet (914 meters), the following regulation is proposed to provide added protection to benthic resources in this area:

*(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone (DSMZ). This*

*prohibition does not apply to fishing below 3,000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).*

*(ii) Possessing any Sanctuary resource the source of which is more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone (DSMZ). This prohibition does not apply to possession of fish resulting from fishing below 3,000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).*

The NMSP will rely on the recent NOAA Fisheries designation of Davidson Seamount as EFH, through the authority of the MSA, and its regulatory amendments to the Groundfish FMP to prohibit fishing below 914 meters (3000 feet) (71 FR 27408). The rule effectively provides additional protection for the sanctuary resources below 3000 feet by prohibiting the following fishing related activities in the Davidson Seamount area:

- Fishing with dredge gear anywhere in EFH;
- Fishing with beam trawl gear anywhere in EFH;
- Fishing with bottom trawl gear anywhere in EFH;
- Fishing with bottom contact gear or any other gear that is deployed deeper than 500 fathoms (3000 feet) within the Davidson Seamount.

Thus, rather than amend Sanctuary regulations and the MBNMS Designation Document to restrict fishing activities that may harm the benthic resources on Davidson Seamount, the Sanctuary will rely upon the amended MSA regulations for the Groundfish FMP to address fishing related impacts on Davidson Seamount and limit its own regulatory authority to non-fishing activities.

Seamounts offer unique environments, and the Davidson Seamount has newly discovered species and species assemblages. Conservation issues related to seamounts revolve around endemism (species found on only one seamount), harvest, and low resilience of species to physical disturbance by humans. Existing and potential threats to the Davidson Seamount include bioprospecting (collecting organisms for developing medicines), cumulative collecting of long-lived species for research, new or unknown forms of seafloor disturbance, new technologies to harvest from the seabed, and marine debris/dumping. Although management agencies are responsible for some activities that may occur at the seamount, there is no comprehensive protection and management of organisms on the seamount or the surrounding ecosystem. Also, there are no coordinated education or research programs addressing Davidson Seamount issues. Under the proposed regulations, collecting and bioprospecting could be allowed through the Sanctuary's permitting system. By incorporating the seamount into MBNMS, its resources will be protected and opportunities will be provided for a better understanding of the seamount.

Threats from fishing are relatively remote; the top of the seamount is too deep for most fish trawling technology. However, future fishing efforts could target the seamount. Pursuant to new regulations being established by NOAA Fisheries using the MSA (described above), fishing below 914 meters (3,000 feet) would be prohibited. All lawful fishing activities within 914 meters (3,000 feet) of the sea surface would continue to be allowed.

**Davidson Seamount NMSA Alternative**

This alternative is intended to result in the same degree and geographic area of protection as the Proposed Action but would use the regulatory authority of the NMSA rather than the MSA to regulate fishing below the 914 meters (3,000 feet) ocean depth. This alternative regulation would be the same as the Proposed Action except that it would prohibit all fishing below 914 meters (3,000 feet) of the sea surface in the Davidson Seamount area. This alternative would be pursued in the event that a fishing regulation was not established through NOAA Fisheries under the MSA or that it did not meet the Sanctuary's specific goals and objectives for Davidson Seamount. There are no other differences between it and the Proposed Action, therefore, the physical outcome would be the same as the Proposed Action.

In order for this regulation to be promulgated by the MBNMS, the NMSP would need to modify its Sanctuary Designation Document. Since modifying the designation document is not part of the preferred action and is not contemplated under the scope of this EIS, the NMSP would need to follow the designation procedures in NMSA section 304, including consulting with affected interests and preparing an environmental impact statement.

**Davidson Seamount Circular Boundary Alternative**

In considering incorporation of the Davidson Seamount into the MBNMS boundaries, the JMPR Working Group evaluated several alternatives. One alternative configuration is being carried forward for full analysis in this EIS. Instead of the proposed square boundary around the seamount, the alternative would be a circular boundary encompassing the seamount, including a surface area of 707 square nautical miles. This alternative is shown in Figure 2-4. Other potential alternatives identified in the draft action plan have been screened out (see discussion in Section 2.5).

**Motorized Personal Watercraft**

**Proposed Action**

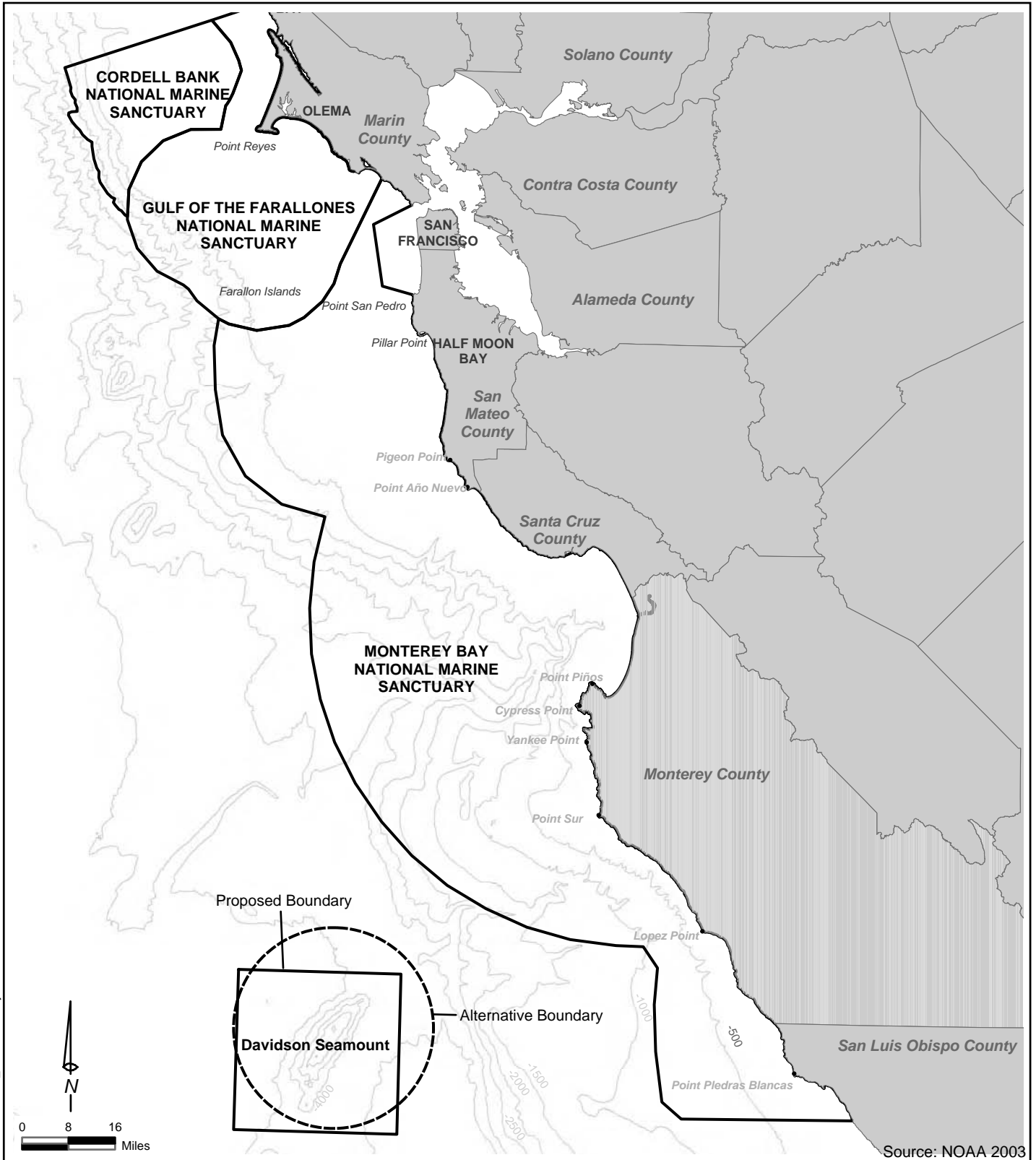
Proposed changes to the definition of motorized personal watercraft (MPWC) would restrict MPWC of concern that fall outside of the current MPWC definition. Implementing this modified definition would implement the original intent of the regulation and zoning restrictions.

This proposed change is intended to minimize MPWC disturbing marine wildlife, to minimize user conflicts between MPWC operators and other recreationists, and to provide opportunities for MPWC use within MBNMS. The proposed change would expand the definition of MPWC to address a broader range of watercraft that would be restricted. In conjunction with this changed definition, a new MPWC zone would be established, as described below.

MPWC are small, fast, and highly maneuverable craft that possess unconventionally high thrust capability and horsepower relative to their size and weight. Their small size, shallow draft, instant thrust, and "quick reflex" enable them to operate closer to shore and in areas that would commonly pose a hazard to conventional craft operating at comparable speeds.

Many assessments of MPWC impacts indicate that unrestricted access to all reaches of MBNMS by such craft would pose an unacceptable threat to wildlife and other ocean users (Burger 1998; Green et al. 2002; Snow 1989). MPWC commonly accelerate and decelerate repeatedly and unpredictably and travel at rapid speeds

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Source: NOAA 2003

The proposed boundary for Davidson Seamount covers 585 square nautical miles.

## Davidson Seamount Proposed and Alternative Boundaries

Monterey Bay National Marine Sanctuary, California

directly toward shore, while motorboats generally slow down as they approach shore. To prevent the disturbance of wildlife and other nearshore users, most MPWC have been prohibited in protected marine areas adjacent to or overlapping MBNMS (e.g., GFNMS and nearshore areas of the Golden Gate National Recreation Area, Marin County, California State Parks, and the city of Santa Cruz). Proposed MBNMS management of MPWC is consistent with actions taken in these jurisdictions.

Current regulations restrict MPWC to specific zones within MBNMS (see Figure 2-5). However, the current definition of MPWC does not cover all types (as described above), although it was intended to do so. MPWCs that are larger and can accommodate three or more persons are not subject to the regulations because they are not included in the current definition. The proposed change to the definition would include these larger MPWCs.

Most MPWC operated within MBNMS are compact water jet-propelled craft that shed water from the passenger spaces. Larger size models are preferred in the high-energy ocean environment for increased power, range, and towing ability. Popular uses are operation within the surf zone, weaving in and out of wave lines, launching off the crest of waves and wakes, and towing surfers into large and/or remote wave breaks. MPWC users often travel in pairs or larger groups for camaraderie and improved safety.

Use of MPWC to tow surfers into waves has been increasing at many traditional surfing locations in MBNMS, regardless of surf conditions. On days with moderate or low surf, MPWC provide ready access and improved flexibility for positioning surfers on wave breaks. On high surf days, MPWC provide access to areas normally considered too dangerous by paddle surfers. MBNMS has received complaints by surfers, beachgoers, and coastal residents that the use of MPWC in traditional surfing areas has produced conflicts with other ocean users and has disturbed wildlife. During the designation of MBNMS, the operation of MPWC in nearshore areas was identified as an activity that should be prohibited to avoid such impacts.

Based on reports from harbor masters and NOAA enforcement personnel, MBNMS estimates that approximately 1,200 MPWC trips were conducted in MBNMS in 2002. This represents repeat trips by an estimated 150 MPWC. MPWC use has increased significantly in some areas since that time due to the growing popularity of tow-in surfing. NOAA estimates that 80 to 90 percent of MPWC operated in the Sanctuary are three or more seats.

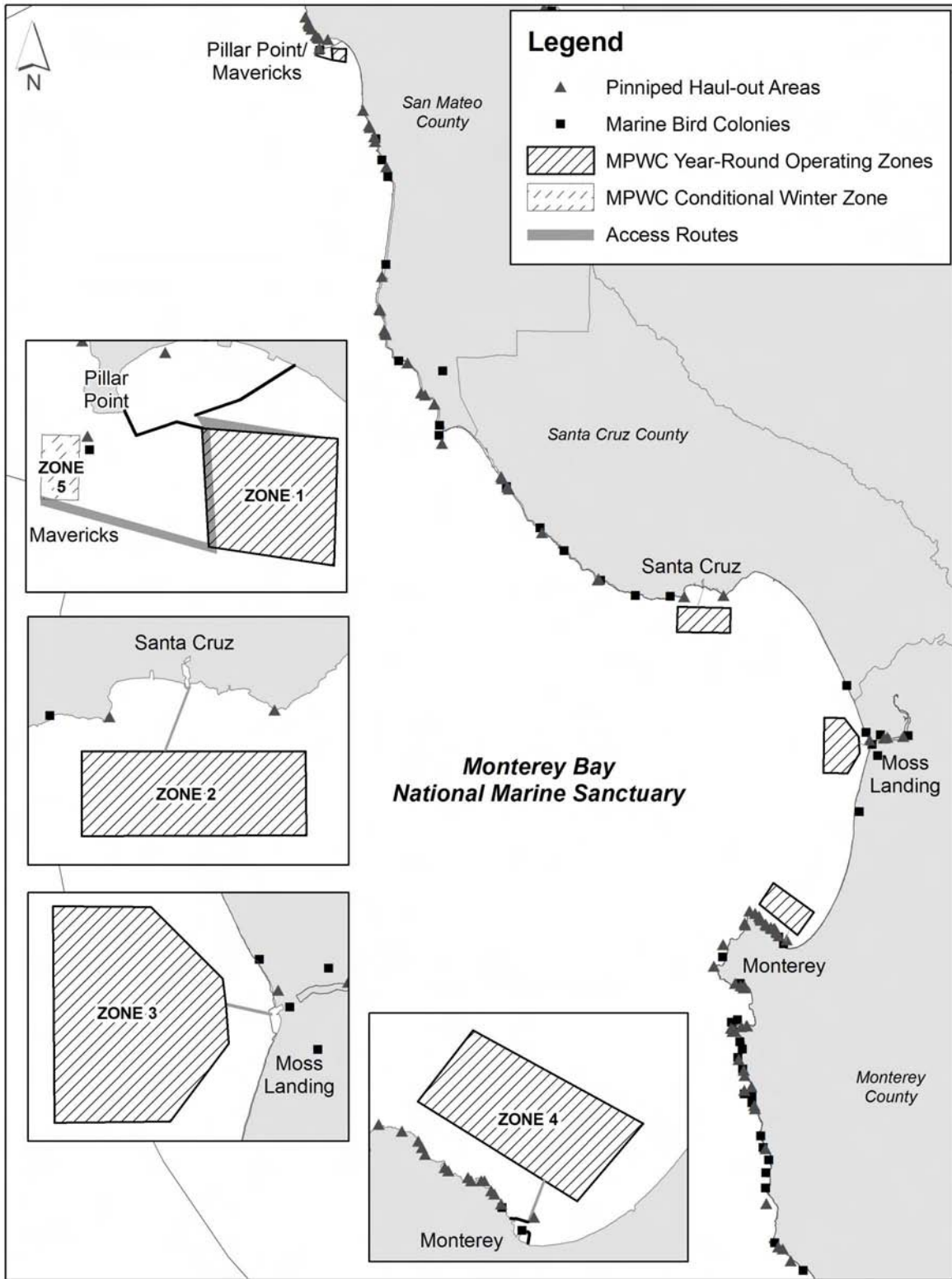
### *Proposed New MPWC Zone*

A change in the definition of MPWC would limit MPWC training by public safety agencies and tow-in surfing activities, a sport that has evolved and expanded since MBNMS designation. At least eight state and local public safety agencies currently operate MPWC for purposes of surf zone rescue within MBNMS. In order to use MPWC for response in critical areas, local response agencies must train their MPWC operators to be familiar with the nearshore areas and ocean dynamics in which they may be called to operate.

Tow-in surfing debuted in MBNMS at “Mavericks,” a surf break at Pillar Point in San Mateo County, to enable experienced surfers to ride in to large 15-meter (50-foot) or greater wave crests considered too powerful or fast for traditional paddle-in surfing. The Mavericks surf break is outside of the existing MBNMS MPWC operating zones.



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Source: NOAA 2008

## Motorized Personal Watercraft Zones

Northern/Central California

To address the concern about restrictions on safety training in high surf areas and on tow-in surfing at Mavericks, which is outside of current MPWC zones, NOAA proposes adding a new zone designation to allow use of MPWC at Pillar Point (Mavericks) due to the unique geographic, oceanographic, and seasonal characteristics of that site. The zone would be in effect during National Weather Service high surf warnings issued for San Mateo County in December, January, and February.

Furthermore, to accommodate the need for MPWC training, the MBNMS Management Plan contains the following measures as part of the MPWC action plan:

- Activity 2.1: Identify and Implement Official Protocols For Training of Public Safety Personnel—NMS staff will consult with public safety agencies assigned jurisdictional authority within the MBNMS area to identify MPWC training needs and develop environmental protection protocols that minimize the risk of training impacts upon wildlife and habitats in the Sanctuary. At a minimum, the protocols will limit training to official government public safety personnel assigned to local units exercising jurisdictional authority within the MBNMS. Training shall not occur in sensitive habitat areas, disturb marine wildlife, or interfere with other ocean users. Trainees shall use only agency authorized equipment that is marked for ready identification by the public to avoid a misperception of unauthorized use of an MPWC in the MBNMS.
- Activity 2.2: Permit or Authorization for Training of Public Safety Personnel—NOAA will authorize or permit public safety agencies operating MPWC within the MBNMS to conduct MPWC training for locally assigned personnel.

### **Motorized Personal Watercraft Alternative**

As an alternative to continuing to permit MPWC in four designated zones in MBNMS, this alternative would eliminate MPWC zones and prohibit all MPWC from MBNMS. The alternative would include revising the definition of MPWC to more adequately identify all MPWC of concern, as described for the Proposed Action.

### **White Shark Attraction**

White sharks have been harassed from cage diving operations, filming, and other wildlife watching operations. MBNMS regulations currently prohibit white shark attraction activities within specific areas of the sanctuary, including the area out to the seaward limit of state waters (three nautical miles from the coastline). The proposed change to the regulation would apply this prohibition to the entire Sanctuary.

The purpose of this prohibition is to protect white sharks from intrusive activities during their critical feeding life cycle in all areas of the Sanctuary. The prohibition would resolve user conflicts between researchers and adventure tourism and would prevent intervention with feeding behavior of white sharks. This prohibition is consistent with the proposed regulation for GFNMS.

In addition to this prohibition, the regulatory definition of “attract or attracting” would be modified to include “decoys” as an attraction mechanism that would be prohibited under the above regulation. Also, while the scope of the regulation would apply only to white sharks, the Sanctuary proposes to modify the definition of attract or attracting to apply to all animals to be consistent with definitions for other national marine sanctuaries.

### ***Deserted Vessels***

The proposed regulation and definition for MBNMS is the same as the proposed GFNMS regulation and definition regarding deserted vessels and leaving harmful matter aboard a deserted vessel. See discussion above in Section 2.2.3 and specific wording in Table 2-1.

### ***Historical Resources***

The existing regulations for MBNMS include prohibitions against “moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource.” The Sanctuary proposes modifying this regulation to include a prohibition against possessing a Sanctuary historical resource anywhere. The proposed regulatory change would clarify that existing regulations prohibit possessing, either within or outside the Sanctuary (regardless of where taken, moved, or removed from) any Sanctuary historical resource. The proposed clarification would increase protection of Sanctuary resources by clearly making it illegal to possess historical resources in any geographic location, such as harbors.

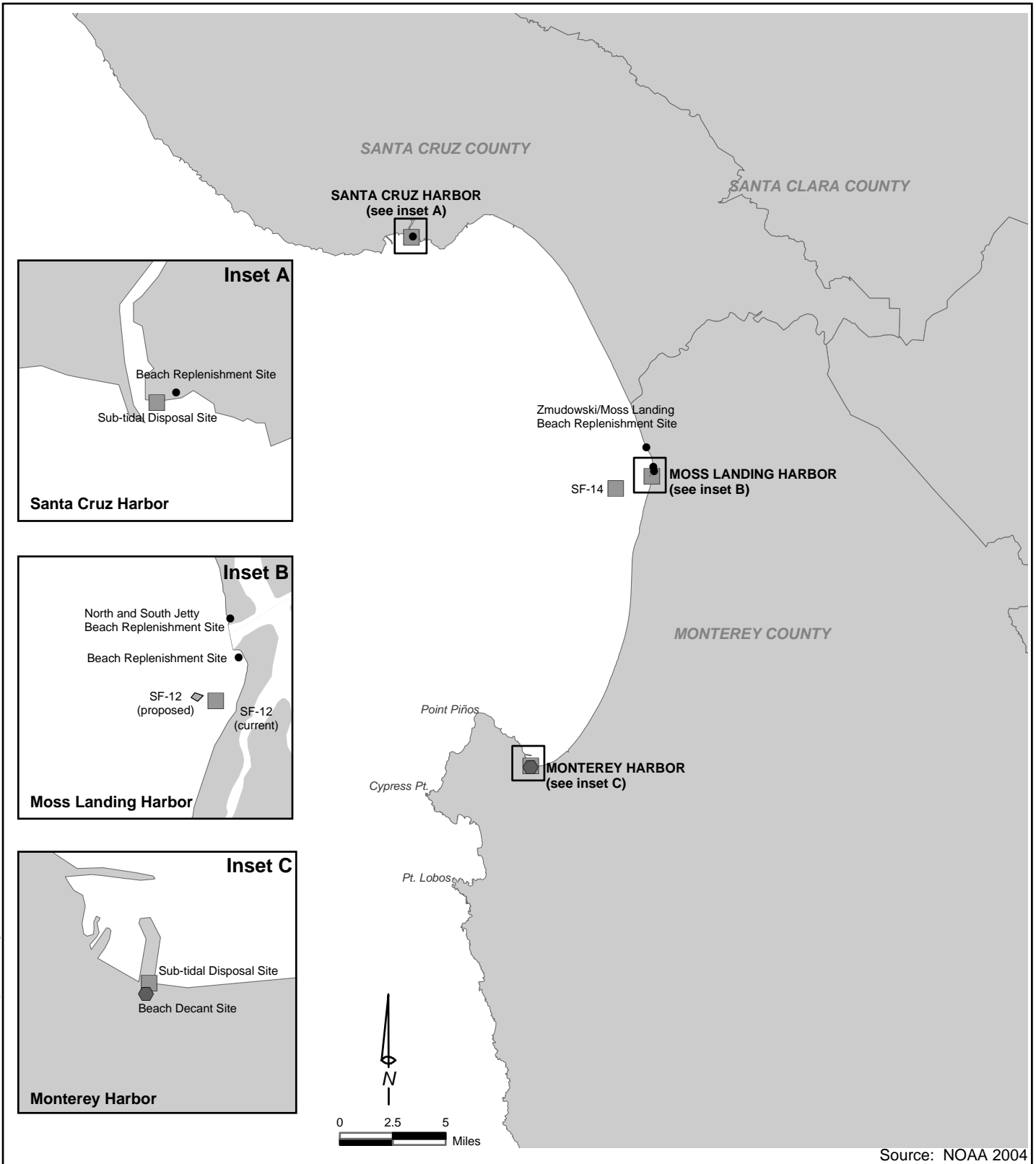
### ***Dredge Disposal Site SF-12, Moss Landing***

MBNMS will define and codify a location of dredge disposal site SF-12 (see Figure 2-6), which is necessary to clarify its exact location and to allow dredge material to be disposed of at the head of Monterey Canyon. The main reason for this correction is that the existing disposal location was ambiguously defined and did not remain in the originally-designated location. This corrected location will allow sediment to flow into the Monterey Canyon, as originally intended. The location of dredge material disposal site SF-12 has been described in agency permits in various manners, which has led to confusion about the area designated for disposal of dredge material off Moss Landing. For example, MBNMS records describe the point of disposal as “400 feet from shore,” some records describe it as “46 meters seaward of the Sandholdt Pier,” and other records describe a point of disposal at a certain depth. The Sandholdt Pier no longer exists, and the shoreline is known to change in that area. Defining and codifying an area of disposal for SF-12 in MBNMS’s regulations will provide exact coordinates and eliminate multiple descriptions of various points of disposal, while ensuring that the relocation is consistent with the original intent of the project. No increase in the volume of dredge material is a part of this action. The US Army Corps of Engineers (USACE) and Environmental Protection Agency approved this change in location in 2005.

The center of the corrected location for SF-12 is approximately 1100 feet (335 meters) west northwest of the Moss Landing Marine Lab pier abutment. The designated site is an irregular quadrangle (see Figure 2-6), and its coordinates are provided in the proposed regulations. The corrected location is approximately 900 feet (300 meters) farther offshore than the historic location. It is also in deeper waters ranging from 100-150 feet (30-45 meters) deep, as opposed to the original depth of 40-50 feet (12-15 meters).

The primary purpose of this proposal is to reduce environmental impacts on local beaches caused by disposal in the nearshore subtidal area. Disposal in this area has caused material to be washed onshore, resulting in adverse aesthetic and recreational impacts on beachgoers. Relocation will also reduce effects on the intake system at Moss Landing Marine Lab (MLML), will reduce fine silts and mud in the nearshore region, and will aid in the construction of the pier for use by the MLML. Reconstructing Sandholdt Pier, which was damaged in the Loma Prieta earthquake and subsequent storms, would conflict with the dredge disposal site at the location currently designated by MBNMS coordinates.

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Dredge site SF-12 is being moved further offshore.

## Current and Proposed Dredge Disposal Sites

### Legend

- Beach Decant Site
- Beach Replenishment Site (not within MBNMS jurisdiction)
- Sub-tidal Disposal Site

Monterey Bay National Marine Sanctuary, California

### ***Formalize existing Santa Cruz and Monterey Dredge Disposal Sites***

Santa Cruz and Monterey Harbor administrators have identified additional dredge disposal sites, which were in historic use prior to MBNMS designation. These sites were not recognized in the MBNMS regulations at the time of designation. These sites have since been authorized for use by the NMSP. This body recognized the surf zone area off Twin Lakes State Beach as a legal disposal site in 1997, whereby disposal activities must be conducted under a valid permit issued by the USACE prior to January 1, 1993, or a valid permit issued by the USACE after that date and authorized by MBNMS. On May 26, 2000, the NMSP recognized a historical dredge material disposal site east of Municipal Wharf II next to Monterey Harbor. Defining and codifying these areas of disposal in MBNMS's regulations will provide exact coordinates for the disposal area and will formally recognize historic sites used prior to the designation of MBNMS.

### **2.3 NO ACTION ALTERNATIVE**

No new regulations would be adopted, and no changes to the Sanctuary Designation Documents would be made. This scenario is equivalent to the status quo, with regard to regulation. All management practices currently occurring would continue, and the current regulations would remain in place. The No Action alternative would involve maintaining the current management plans and regulations for the three sanctuaries. However, action plans and other policies and provisions of the proposed management plans not requiring regulatory or designation document changes could also be implemented.

### **2.4 ALTERNATIVES IDENTIFIED BUT REMOVED FROM CONSIDERATION**

The Sanctuary action plans considered many alternatives for addressing individual issues. The alternatives analysis began with the working groups, who provided input to the action plans. Many strategies, activities, and regulatory modifications were considered but dismissed as the working groups or internal teams made their recommendations, during the Sanctuary Advisory Council's deliberation of the proposed action plans, or from further staff analysis.

Regulatory alternatives considered but dismissed during the working group or SAC deliberation and recommendation phase of the JMPR are listed below, by sanctuary. These alternatives were proposed by the public, working group members, SAC members, or staff. These alternatives were rejected for various reasons, including lack of feasibility, the need for more analysis beyond the current scope of the JMPR, the ability to address the particular issue within the scope of existing regulations, or the lack of consensus by the SAC for recommendation to NOAA. For these reasons, these regulations or boundary alternatives were dismissed from further consideration for this joint management plan update.

### ***Cross-Cutting Alternatives***

#### **Discharge Regulations (Exceptions)**

The JMPR team and working groups considered revising regulations to eliminate some of the discharge exceptions (for example, fish parts, chumming materials, deck wash) to improve water quality in the sanctuaries, but these revisions would effectively eliminate all commercial and recreational boating and fishing in the sanctuaries. This would not allow the NMSP to "facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities," NMSA Section 301(b)(6).

### Cruise Ship

Various definitions of cruise ships were discussed, as well as types of allowable discharges.

### Prohibiting Krill Harvesting

Several marine scientists recommended that MBNMS prohibit the harvest of krill. Krill is a critical source of food for marine mammals and fish and krill fisheries have been established in other parts of the world. Scientists were concerned that the harvest of krill and subsequent removal of a food source could have negative impacts on the food chain, cetacean feeding patterns, and commercial fisheries, such as groundfish, salmonids, and squid which all feed on krill. The MBNMS Krill harvesting Working Group and Sanctuary Advisory Council recommended prohibiting any future harvest in MBNMS. Similar recommendations from the CBNMS and GFNMS Advisory Councils initiated a recommendation to the PFMC to take the necessary action to prohibit krill harvesting in all California national marine sanctuaries. In 2005, the PFMC adopted a recommendation to ban krill harvesting for the entire West Coast Exclusive Economic Zone (EEZ), which extends 200 miles (320 km) offshore, under the MSA. The NMSP continues to work with the Council and NOAA Fisheries to ensure that this action gets fully implemented in the three sanctuaries in northern-central California, and along the entire West Coast EEZ.

### **CBNMS Alternatives**

#### Cordell Bank Seabed and Benthic Habitat Protection

The Sanctuary initially considered, as an alternative to the proposed actions identified in Section 2.2, regulatory provisions that would prohibit all seabed disturbance within the 50-fathom isobath around the Bank and would prohibit all seabed disturbance except fishing in the remainder of the Sanctuary. Compared to the Proposed Action, this alternative would prohibit fishing within the 50-fathom isobath and would eliminate the exception for anchoring in areas outside it, thus further minimizing seabed disturbance within the Sanctuary. Similarly, a benthic habitat provision was considered in which the current regulation, which prohibits removing, taking, or injuring or attempting to remove benthic invertebrates or algae on the Bank or within the 50-fathom isobath surrounding the Bank would be modified to delete the exception for fishing. Both of these potential alternatives were eliminated from further consideration because NOAA staff determined that in order to achieve specific Sanctuary goals and objectives it was not necessary to eliminate all fishing either within the 50-fathom isobath or elsewhere in the Sanctuary. Further the NMSP, through consultations with the PFMC, determined that its benthic habitat protection goals could be met by pursuing regulatory actions under the MSA. In addition, socioeconomic consequences related to fishing were considered too substantial compared to the benefits of the intended action.

#### Prohibiting Lightering

With the increase of liquefied natural gas (LNG) imports into the US and the interest in building LNG storage facilities along the coast of California, CBNMS was concerned that LNG would be transferred between vessels or between vessels and at-sea transfer stations (a process known as lightering) in the Sanctuary. To be shipped across the ocean, natural gas is chilled to minus 260 degrees Fahrenheit. That turns the gas to liquid and shrinks it to 1/600<sup>th</sup> of its original gaseous volume. Then it can be loaded into a double-hulled tanker ship. Ships carrying the fuel contain energy much more concentrated than crude oil. To pump it to shore, the liquid is warmed at offshore transfer sites, turned back to gas, and then pumped to shore. LNG is highly volatile, and although an explosion is unlikely, like an oil spill, a single incident could be devastating to the marine resources. With further review, agency staff realized that the sea conditions and distance from shore makes CBNMS an unlikely location for lightering of LNG or other matter.

**Prohibiting Intentionally Feeding or Attracting a Living Resource (For Example, Chumming)**

The concern was operators of wildlife viewing vessels attracting wildlife, primarily seabirds, with fish oil. The intent of this alternative was also to be consistent with GFNMS, to the extent there is a need. After further consideration, agency staff determined that this is adequately covered and prohibited under the discharge regulation, and if there were a misunderstanding about the intent of the discharge regulation that outreach would be a more effective tool than an additional prohibition.

**Inclusion of Bodega Canyon and Additional Areas to the North and West in the Sanctuary**

During the JMPR scoping process, a priority issue identified for CBNMS was the expansion of CBNMS to include Bodega Canyon, which is thought to provide ecological support services to CBNMS and, like the Bank, to be an important area for marine mammals and seabirds. Additional areas to the north and west of CBNMS are areas of concern to the public due to the potential for offshore oil and gas development. Rather than propose regulatory action at this time, CBNMS's management plan includes a strategy to develop a framework for evaluating additional areas to be considered for sanctuary designation and a community-based process to evaluate and make recommendations on boundary options.

**GFNMS Alternatives**

**Prohibiting Lightering**

As described above for CBNMS, there was concern that LNG would be transferred from vessel to vessel or from vessel to shore facility in the Sanctuary. After further consideration, GFNMS determined that essential components of the LNG transfer from ship to shore are pipelines. With the laying of pipelines in GFNMS restricted to those oil and gas leases directly adjacent to the Sanctuary, the Sanctuary manager has no means to permit pipelines to be laid to support LNG transfer from ship to shore. Thus this alternative was rendered unnecessary.

**Prohibiting Intentionally Feeding or Attracting a Living Resource**

Of specific concern to GFNMS is wildlife disturbance associated with feeding or attracting a living resource, such as marine mammals or birds. Wildlife can be viewed from a boat, by paddling nearshore, or from the shore. The Sanctuary is home to many federally listed species, such as blue and humpback whales, marbled murrelets, and the short-tailed albatross. After further consideration, the Sanctuary determined that this issue is adequately covered and prohibited under the discharge regulation, and if there were a misunderstanding about the intent of the discharge regulation, that outreach would be a more effective tool than an additional prohibition. The Sanctuary will monitor the effectiveness of this approach and will review the need to take regulatory action. The specific issue of attracting white sharks is addressed separately in the proposed new regulations, described above in Section 2.2.

**Prohibiting Mariculture in the Sanctuary**

The coastal waters of the Sanctuary, particularly the estuarine habitats of Bolinas Lagoon, Tomales Bay, Estero Americano, and Estero de San Antonio are vulnerable to impacts from mariculture. Estero Americano, Estero de San Antonio, and Tomales Bay are already listed as impaired under Section 303(d) of the Clean Water Act, meaning they do not meet water quality standards for specific pollutants. The potential prohibition on mariculture was designed to protect Sanctuary resources from eutrophication, habitat impacts, disease and parasite introduction, accumulation of antibiotics, the introduction of nonnative species (including genetically altered species), and escape of hatchery stocks that may lead to interbreeding with native wild populations, which would alter genetic makeup. Intensive cage, floating pen, and other systems that are

relatively open to the natural waters have the greatest potential to cause environmental degradation from waste charges. Ocean water circulatory systems used for pools and tanks often discharge pulses of highly concentrated wastes during cleaning and harvesting. Offshore mariculture activities may have significant impacts on trophic interactions due to the extensive harvesting of krill as feed for pen-raised finfish. Currently, the CDFG manages mariculture activities in the Sanctuary in state waters and there are no mariculture activities in federal waters. NOAA will coordinate with relevant agencies on proposed new mariculture facilities in or adjacent to the Sanctuary.

**Prohibiting Renewal of a Preexisting Lease or Exercise of a New Mariculture Lease Option in Tomales Bay without the Approval of the Sanctuary Director**

Bays and estuaries are among the most productive natural systems yet are highly susceptible to impacts due to the generally poor circulation, particularly in the case of Tomales Bay. The eelgrass beds there support a diverse invertebrate community. Pacific herring use them for spawning, and salmon, steelhead, halibut, skates, and rays use them for parts of their life history. The members of the Water Quality Working Group found no issue with the current bivalve mariculture uses of Tomales Bay. But they were concerned about future uses and recommended the Sanctuary Director take responsibility for approving any changes to existing mariculture leases or new mariculture activities. According to the CDFG, the agencies have come to a mutually acceptable agreement on how to address this issue, outside of proposing regulatory action.

**Restricting Lights from Vessels**

The Wildlife Disturbance Working Group identified light impacts as an issue, particularly in regard to vessels and nesting seabirds along the coast. In the summer of 2003, night market squid (*Loligo opalescens*) fishing was observed around the Farallon Islands, disturbing the behavior of nesting and feeding Ashy Storm-Petrels and Cassin's Auklets. A working group of agency, nongovernmental organizations, and fishing representatives was formed to address the issue of light impacts from fishing vessels, which agreed to nonregulatory solutions, including developing an outreach program, working with industry to add shields to lights, and working with the fishing community to educate one another. The GFNMS Sanctuary Advisory Council fishing representative and chair, a salmon fisherman, activated a communication system among the fishing community in the region to monitor and enforce compliance. To date, these efforts have been successful, although the sanctuary will continue to monitor the effectiveness of this approach. In addition, in 2004, the California Fish and Game Commission approved a specific prohibition on fishing for market squid using attracting lights in all waters of the Gulf of the Farallones National Marine Sanctuary at any time.

**Restricting Acoustic Impacts on Living Marine Resources**

The Wildlife Disturbance Working Group identified acoustic impacts from motorized aircraft and vessels as a potential threat to wildlife. Close vessel passes and low-flying aircraft are known to create behavioral changes in wildlife, including flushing, stampeding, and abandonment. The working group realized that the types and frequency of impacts, particularly on seabirds and marine mammals in the sanctuary, is not well understood. The working group members changed their recommendation into a strategy in the management plan to coordinate with other agencies on field observations and creating a standardized reporting system. Once better information is obtained, the need for acoustic restrictions will be reevaluated.

**Prohibiting Any Vessel Discharge in an ASBS in the Sanctuary**

The State Water Quality Resources Board designed ASBSs to protect marine species or biological communities from an "undesirable alteration in natural water quality." There are five ASBSs in GFNMS. Within ASBSs, point source waste and thermal discharges are prohibited or limited by special conditions, and



nonpoint source pollution is controlled to the extent practicable. Under California law, discharges of vessel wastes are not currently restricted, although most vessel discharges would be regulated under the proposed new sanctuary regulations. The Water Quality Working Group recommended this alternative, which has since been modified and included in the water quality strategies in the management plan. It will be used to determine if there is a need to prohibit vessel discharge in ASBs in the Sanctuary to protect its resources.

**Restricting Materials Used in the Maintenance or Construction of Docks in Piers and within the Footprint in Tomales Bay**

This recommendation came from Sanctuary management, the concern stemming from the observed compromised condition of many docks and piers in Tomales Bay requiring maintenance or construction and the possible range of building materials that could be used for repair and replacement. Due to the corrosive nature of the marine environment, few dock or pier materials survive over time in this harsh environment. Many woods are vulnerable to marine invertebrate borers, ultraviolet light, and water logging, so they are treated with chemical compounds wood preservatives, such as creosote, chromated copper arsenate, and alkaline copper quat. These compounds leach into the marine environment, particularly copper. Concrete, on the other hand, is not harmful, except during the setting process when it can reduce the pH of the surrounding water. The primary environmental concerns with plastics are potential leachates into surrounding waters, although the impacts are considered minor. Common metals, such as aluminum, stainless steel, and galvanized steel, are harmless if left untreated or painted. The California Coastal Commission has set comparable environmental standards for marine construction materials, and the Sanctuary will defer to its expertise.

**Inclusion of Pioneer Seamount in the Sanctuary**

Seamounts are considered highly productive geological features, providing hard substrate for benthic invertebrates and algae to settle on, important habitat for fish, and feeding grounds for marine mammals and seabirds. Pioneer Seamount is near the southwest boundary of GFNMS. Because Pioneer Seamount is both a significant geological feature and one with high biological diversity, there has been interest for many years, including during the scoping process, to include it in the Sanctuary. Rather than propose regulatory action at this time, GFNMS's proposed management plan includes a strategy to develop a framework for evaluating additional areas to be considered for Sanctuary designation and a community-based process to evaluate and recommend options.

**Inclusion of the Nearshore Waters off the Sonoma Coast in the Sanctuary**

During the JMPR scoping process, a priority issue identified for GFNMS was the expansion of GFNMS to include additional areas to the north. These are considered areas of concern due to the potential for offshore oil and gas development. Rather than propose regulatory action at this time, GFNMS's management plan includes a strategy to develop a framework for evaluating additional areas to be considered for sanctuary designation, and a community-based process to evaluate and make recommendations on options.

**Prohibit Discharge Through Air**

There is concern that discharge such as wastewater from sources above the mean high water mark (such as outfall pipes), fuel dumping from aircraft, and airborne particulate matter that enter Sanctuary waters may injure or harm Sanctuary resources. After further review, Sanctuary staff determined that adding to the discharge regulation the proposed "enter and injure" component addresses GFNMS concerns.

**Adding to Prohibition on Exploring for, Developing, and Producing Oil and Gas to Include Developing and Producing Minerals**

There is concern that areas identified as potential leases for oil and gas development in GFNMS may be developed for other extractive purposes. The Sanctuary will not be addressing this concern at this time, as this issue was not identified as a priority.

**Remove from the Oil and Gas Prohibition the Exception for Pipelines Related to Hydrocarbon Operations Outside the Sanctuary**

Since the designation of the Sanctuary in 1981, no adjacent oil and gas leases have been developed, so no interest has been expressed in laying pipelines across the submerged lands of the Sanctuary. Sanctuary staff felt this was relic language and should be removed to simplify and streamline the regulatory language. The Sanctuary will not be addressing this at this time, as this issue was not identified as a priority.

***MBNMS Alternatives***

**Boundary Modification to Include the SS Montebello Shipwreck**

The Maritime Heritage Working Group and MBNMS Sanctuary Advisory Council recommended that MBNMS consider the appropriateness of expanding the southern MBNMS boundary by 1.6 miles (2.5 km) to include the USS Montebello, which was sunk in 1941 by a Japanese submarine. The USS Montebello contains significant amounts of crude oil in its cargo hold, and increasing structural corrosion may result in release of the crude oil into the marine environment. The Montebello is a significant cultural resource, as well as a potential threat to marine resources. MBNMS has also led research cruises to the site for investigation. MBNMS considered this boundary modification and rejected this alternative. Inclusion of the Montebello should be considered as part of a larger discussion of the southern extension of MBNMS that is occurring within the San Luis Obispo Marine Interests Group. MBNMS staff also concluded that adequate education and mapping efforts have been completed to inform the public about the resource, its history, and the potential threat. Future expeditions may check the integrity of the hull structure, and this can occur with MBNMS support without incorporation into MBNMS.

**Eliminating the Monterey and Moss Landing MPWC Zone**

The MPWC Working Group discussed several options regarding the regulation of MPWC, including criteria to possibly eliminate certain MPWC zones that are not traditionally used due to their location. This alternative was rejected since an alternative to consider complete elimination of the MPWC zones would be analyzed in this FEIS. Retaining these areas will also allow for the possibility of their use by MPWC riders in the southern Monterey Bay when all MPWCs are restricted to the zones. Variations of zone elimination would not result in any substantive decrease in wildlife disturbance, so they were not brought forward for further consideration.

**Eliminate the Prohibition on New Dredge Disposal Sites and Regulation of Dredge Disposal in MBNMS**

Members of the Harbors and Dredge Disposal Working Group requested that MBNMS no longer regulate dredge disposal in MBNMS. After some discussion, this request was discontinued due to lack of support, and the Working Group unanimously recommended an action plan without this alternative. During subsequent deliberations, the harbor representatives of the Sanctuary Advisory Council also proposed eliminating MBNMS's authority to regulate and exempt dredge disposal from the discharge prohibition. The proposal did not include a justification for increasing the amount of dredge material disposal or number of dredge disposal locations. Both actions would require modifying the designation document, which states that regulation of the

dredge disposal is a significant reason MBNMS was designated in the first place, along with restrictions on oil and gas development and discharge of sewage. No alternatives were substituted other than continued coordination with the various harbors in their dredge disposal and maintenance operations.

**Eliminating MBNMS Prohibitions in a Buffer Zone Around the Four Harbors of MBNMS**

This proposal was also offered by the harbor representatives in an effort to reduce MBNMS regulation of harbor activities. Currently, anchoring vessels, installing navigation aides, maintaining the harbor, including dredging entrance channels and making repairs, replacing breakwaters and jetties, or rehabilitating docks or piers are all activities exempt from MBNMS regulation. The Sanctuary Advisory Council subsequently could not find adequate reason for providing less regulation of harbor-related activities. No alternatives were substituted other than continued coordination with the various harbors in their dredge disposal and maintenance operations.

**Designating an Overflight Restriction Zone in the Vicinity of Devil's Slide in San Mateo County**

The Wildlife Disturbance Working Group discussed additional regulations to protect sensitive bird roosting sites at the Devil's Slide area of the San Mateo coast. Designating an overflight restriction zone would increase the mandatory ceiling for aircraft in the area and reduce the disturbance of the nesting and roosting activities of the Common Murre. This alternative was not forwarded to the Sanctuary Advisory Council due the potential conflicts with two airports in the immediate vicinity. In order to provide additional protections for that area, increased outreach and education of pilots was inserted into the action plans.

**Extending the MBNMS Boundary to Include the Davidson Seamount, Sur Canyon, and Lucia Canyon**

The Davidson Seamount Working Group considered various boundary configurations to protect the Davidson Seamount including a boundary alternative to extend the boundary wholly to include the Davidson Seamount as well as two canyons that extend out from the Big Sur Coast. This alternative was rejected since the alternative did not provide additional protection for the Davidson Seamount beyond the current proposal. Also, a significant portion of central California's submarine canyon habitat is currently protected by MBNMS.

**Alternative Configurations for MBNMS Boundary Around Davidson Seamount**

The Davidson Seamount Working Group considered several boundary options to protect the Davidson Seamount. The ellipse option provided protection of the Davidson Seamount, but the proposal did not offer the same benefits in ease of understanding for ocean users and enforcement as a boundary option with four known points (square) or being equidistant from a known point (circle). Therefore, the alternative was not further considered.

**Prohibit All Fishing Below 200 Feet of the Sea Surface Within the Davidson Seamount Area**

Prohibiting all fishing below 200 feet (60 meters) would further reduce the threat posed by lost gear and provide needed protection for a greater proportion of the mid-water organisms that may have ecological links to the seamount. This alternative has greater conservation benefits than the preferred alternative since the distinguishing feature of this alternative is its protection of additional communities in the water column above the seamount. This alternative was rejected since it would not allow for the development of any future mid-water trawl fishery and provides a small buffer between the existing fishing activities and the protected area. MBNMS may want a new mid-water trawl fishery to develop as long as there is no impact on the benthic habitats and surrounding water column. In addition, enforcement personnel would not be as able to

distinguish the type of gear being used as an indication of the depth being fished, and virtually any fishing vessel could be in violation.

***Include Davidson Seamount Management Zone in MBNMS (only standard regulations apply)***

This alternative would apply only the standard MBNMS regulations to the Davidson Seamount area and would allow activities such as anchoring, aquaculture, and lawful fishing operations, which could damage the fragile corals, rare sponge communities, and other pristine habitat in the same manner as unrestricted collection or construction of a submerged cable. This alternative was rejected since it does not meet the goals and objectives of comprehensively protecting the Davidson Seamount for its high resource qualities.

***Extension of the Southern Boundary of MBNMS to Include the Entire San Luis Obispo Coastline***

Early in the JMPP, MBNMS considered forming a working group to evaluate the extension of the southern boundary south to include the San Luis Obispo County coastline. Members of the community discussed various options and presented to the Sanctuary Advisory Council a proposal to form an independent group that would analyze the issues associated with threats and protective measures and return to MBNMS with recommendations. The community formed the Marine Interest Group that discussed the various issues affecting the local marine region but did not return to MBNMS with a consensus request to move the southern boundary. MBNMS will continue to coordinate with the Marine Interests Group on current and future initiatives to address concerns raised by the community.

***Expanding the MBNMS Boundary by Closing the “Donut Hole” or “Exemption Zone” off the Coastline of the City of San Francisco and the Entire San Mateo Coastline***

This boundary alternative was raised during the scoping phase and was to be investigated by the Cross-Cutting Working Group. It was not feasible to adequately investigate all of the issues and provide an informed recommendation regarding incorporating the exemption zone. This issue was therefore identified as a future activity to be investigated during implementation of the management plans.

## **2.5 PROPOSED CHANGES TO SANCTUARY DESIGNATION DOCUMENTS**

In addition to and in conjunction with the revisions to the individual sanctuary regulations described in Section 2.2, there are some specific boundary and regulatory changes under consideration that would require changes to the sanctuary designation documents, as described in Section 1.4. These revisions are necessary to establish the authority for certain regulatory activities that are being proposed in the regulation changes (identified in Section 2.2). The analysis of the proposed designation document changes is incorporated in the analysis of related proposed regulatory changes since it is the regulatory changes that could result in changes in the environment.

### **2.5.1 Cordell Bank National Marine Sanctuary**

***Designation Document Article 2, Description of the Area***

- Clarify that the submerged lands underlying the Sanctuary waters are legally part of the Sanctuary. The CBNMS Designation Document clearly lists Cordell Bank and its surrounding waters as part of the Sanctuary. There are existing Sanctuary regulations that protect the submerged lands, and yet the submerged lands were never explicitly mentioned in the description of the area. The NMSP is seeking to clarify that the submerged lands are part of the Sanctuary in order to make it consistent with the current NMSA authority and the Designation Documents of more recent sanctuaries.

- Modifications to the Description of the Area in the Designation document defining the Sanctuary are proposed in order to ensure accuracy and consistency in the boundary delineation. Boundary coordinates are updated to be based upon the North American Datum of 1983 (NAD 83) and adjust boundaries for technical corrections and using updated technologies. The CBNMS area will be more accurately described as approximately 399 square nm (rather than 397).

***Designation Document Article 4, Scope of Regulations: Section 1—Activities Subject to Regulation***

- Add authority to prohibit 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.
- Add authority to prohibit taking any marine mammal, sea turtle, or bird in or above the Sanctuary or possessing any marine mammal, sea turtle, or bird, or part thereof, taken in the Sanctuary.
- Add authority to regulate introducing or otherwise releasing from within or into the Sanctuary an introduced species..

These proposed revisions are based on the proposed regulatory changes described above in Section 2.2.

Additional proposed changes to the Designation Document would provide: an updated and more complete description of characteristics that give the Sanctuary particular value; clarification that fishing vessels are subject to Sanctuary regulations with respect to discharges and anchoring; and minor revision in order to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries.

**2.5.2 Gulf of the Farallones National Marine Sanctuary**

***Designation Document Article 2, Description of the Area***

- Clarify that the submerged lands underlying the Sanctuary waters are legally part of the Sanctuary. The GFNMS Designation Document clearly identifies the area and lists the “intervening waters” as part of the Sanctuary. There are also regulations that protect the submerged lands, and yet the submerged lands were never explicitly mentioned in the description of the area. The NMSP is seeking to clarify that the submerged lands are part of the Sanctuary in order to capture the original intent and to make it consistent with the current NMSA authorities.
- Permanently fix the shoreward boundary adjacent to Pt. Reyes National Seashore to the location of the boundary of Pt. Reyes National Seashore as established at the time of designation of GFNMS in 1981. The purpose of this proposed action is to create a static boundary for the Sanctuary that does not fluctuate, as the boundaries of the National Seashore may change overtime. This would create consistency for the benefit of sanctuary users and would facilitate enforcement and resource protection efforts.
- Modifications to the Description of the Area in the Designation document defining the Sanctuary are proposed in order to ensure accuracy and consistency in the boundary delineation. Boundary coordinates are updated to be based upon the North American Datum of 1983 (NAD 83) and adjust boundaries for technical corrections and using updated technologies.

***Designation Document Article 4, Scope of Regulations: Section 1—Activities Subject to Regulation***

- Add authority to prohibit discharging or depositing from beyond the Sanctuary boundary any material or other matter that subsequently enters and injures a Sanctuary resource or quality. Currently, GFNMS regulations include prohibiting discharges from within the sanctuary, but the regulations do not address or regulate discharges outside the sanctuary that subsequently enter and injure a sanctuary resource.
- Add authority for 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.
- Add authority to regulate the introduction or release of introduced species.
- Add authority to prohibit taking any marine mammal, sea turtle or bird in or above the Sanctuary or possessing any marine mammal, sea turtle or bird, or part thereof, taken in the Sanctuary, consistent with proposed regulations described in Section 2.1.
- Add the authority to regulate attracting or approaching animals in the Sanctuary.
- Modify authority for operating a vessel in the Sanctuary, including but not limited to, anchoring or deserting.
- Modify the authority regarding possession of a cultural or historical resource to broaden the regulation and facilitate enforcement of regulations that protect these resources.

These proposed revisions to the Sanctuary’s authority are based on the proposed regulatory changes described above in Section 2.1.

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 minor wording fine-tuning in order to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries.

**2.5.3 Monterey Bay National Marine Sanctuary**

In addition to the proposed changes listed below, the MBNMS Designation Document is proposed to be modified to replace the term “seabed” with the term “submerged lands” to appropriately acknowledge the existing Sanctuary lands in estuarine environments and reflect consistency with the terminology in the NMSA.

***Designation Document Article 2, Description of the Area***

- Modify the description of the MBNMS boundary to include the Davidson Seamount Management Zone.
- Modify the Description of the Area in the Designation Document defining the Sanctuary to ensure accuracy and consistency in the boundary delineation and to include the Davidson Seamount area. Boundary coordinates are updated to be based upon the North American Datum of 1983 (NAD 83); to include the Davidson Seamount; and to adjust boundaries for technical corrections and using updated technologies.

***Designation Document Article 3, Characteristics of the Area that Give it Particular Value***

This section is also proposed to be amended to update information on the characteristics of the area and to add discussion of the Davidson Seamount characteristics.

***Designation Document Article 4, Scope of Regulations: Section 1—Activities Subject to Regulation***

- Add the authority to regulate the release or other introduction of introduced species. This authority would be consistent with proposed revisions in both CBNMS and GFNMS.
- Clarify that the authority to regulate possession of a Sanctuary historical resource applies wherever the resource is found [i.e., inside or outside of the Sanctuary]. The existing Designation Document lists as subject to regulation “possessing within the Sanctuary a Sanctuary resource...” The NMSP proposes to clarify that a prohibition against possession of Sanctuary resources may apply outside the Sanctuary boundary (for example, at a harbor).

***Designation Document, Appendix I and II***

Appendix I and II contained tables of coordinates for the Sanctuary boundary and dredge disposal sites. These coordinate tables were removed from this section since the boundary is sufficiently described in Article II, Description of the Area and reference is made in that section to the boundary coordinates in the regulations.

The proposed changes in authority for all of these provisions are reflected in the proposed regulatory changes outlined above in Section 2.2.

**2.6 TECHNICAL REGULATORY CHANGES**

There are several proposed technical changes that would not result in adverse impacts and therefore are not subject to detailed environmental analysis in each issue area in Chapter 3. These technical changes are summarized below.

***Cross-Cutting Terminology***

The term “traditional fishing” will be replaced with “lawful fishing” in the regulations of all three Sanctuaries.

***CBNMS***

***CBNMS Boundaries***

The proposed regulatory changes would clarify that “submerged lands” are within the Sanctuary boundary, that is, part of the Sanctuary. This would update the boundary regulation to make it consistent with the revised Designation Document (see Section 2.5). Technical corrections to the textual boundary description and the list of defining coordinates for the Sanctuary are proposed in order to ensure accuracy and consistency in the boundary delineation. The Sanctuary’s outer boundary coordinates and description of the shoreline boundary demarcation are also proposed for technical corrections using the North American Datum of 1983. 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. This update would not constitute a change in the geographic area of the Sanctuary but rather a more precise estimate of its size.

### **CBNMS Permit Requirements**

A proposed modification 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 and must contain certain terms and conditions. These terms and conditions would include information deemed appropriate by the Director of the National Marine Sanctuary Program. Furthermore, the regulation would require that the permittee agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

### **GFNMS**

#### **Boundaries**

Technical corrections to the textual boundary description and the list of defining coordinates for the Sanctuary are proposed in order to ensure accuracy and consistency in the boundary delineation.

#### **Submerged Lands Protection**

The Sanctuary proposes to modify the regulation prohibiting disturbance to the submerged lands in order to clarify the regulation. Proposed changes are shown on Table 2-1.

Revising the regulation results in a clear statement of the exceptions. The proposed regulation would delete the exception for “construction of an outfall.” This exception is considered relic language since no outfall pipes have been proposed in the Sanctuary in over 20 years. This provision has also been removed from the certification of permits section. The proposed reference to oil and gas pipelines is consistent with proposed technical modifications to the Sanctuary’s oil and gas regulation (see below), which would allow pipelines only in relation to leases adjacent to the Sanctuary. The new language prohibiting “placing or abandoning any structure” provides clarification that structures are not allowed, regardless of whether they are constructed on, transported to, or abandoned on the submerged lands. The proposed regulation would delete the exception for “ecological maintenance” as this term has never been defined or exercised as an exception to the disturbance to the submerged lands regulation. The exception for fishing would be changed from “bottom trawling from a commercial fishing vessel” to “conducting lawful fishing operations,” consistent with other references to lawful fishing.

#### **GFNMS Cultural Resources Protection**

The NMSA and site regulations mandate the management and protection of Sanctuary cultural and historical resources. Cultural resources are defined as any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts. Historical resources are defined as any resource possessing historical, cultural, archaeological, or paleontological significance, including sites, contextual information,



structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include “submerged cultural resources” and “historical properties,” as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended.

The area encompassed by GFNMS is rich in cultural and historical resources, and has a long and interesting maritime history. The seafloor preserves remnants of the sites where people lived and of the vessels in which they conducted trade and fought wars. Ships, boats, wharves, prehistoric sites, and other heritage treasures lie covered by water, sand, and time. The primary cultural resources in GFNMS consist of submerged ships and aircraft. Current Sanctuary regulations prohibit disturbance of these resources. However, the following modification is proposed to the regulatory prohibition regarding historical or cultural resources to provide additional protection:

*(7) ~~Removing or damaging any historical or cultural resource~~ Possessing, moving, removing, or injuring, or attempting to move, remove or injure a Sanctuary historical resource.*

Overall, the proposed changes to the language of this regulation are marginal and primarily serve the purpose of being consistent with newer regulation language for other sanctuaries, reflecting a greater emphasis by the NMSP to protect cultural sanctuary resources, as mandated by the NMSA. The proposed regulatory language differs from the original regulation by adding prohibitions on “possessing, moving or injuring” or “attempting to move, remove or injure” a Sanctuary historical resource. The addition of the prohibition on “possessing” a cultural resource applies to possessing a resource inside or outside the Sanctuary. This would broaden the authority and would facilitate enforcement of regulations that protect these historical and cultural resources. The term “injure” is defined in the program-wide regulations.

Historical resources in the marine environment are fragile, finite, and nonrenewable. This prohibition is designed to protect these resources so they may be researched and information about their contents and type made available for the benefit of the public. The Sanctuary would be able to ensure that all parties affecting historical resources within the Sanctuary conduct their activities in a systematic fashion according to recognized archaeological procedures and consistent with the National Historic Preservation Act, California State Penal Code Section 622.5 (Objects of Archaeological or Historical Interest), and the Abandoned Shipwreck Act of 1987. Since cultural resources are already protected under state and federal law, this proposed change would not cause additional impacts.

### **Administrative Technical Changes (Vessel Regulation)**

The existing GFNMS regulations prohibit cargo vessels within an area extending two nm (3.7 km; 2.3 miles) from the Farallon Islands, Bolinas Lagoon, or any ASBS). Historically, the number of spills from transiting vessels is small, but the potential impacts are significant, given the number and volume of vessels and the hazardous cargo lane’s proximity to the Farallon Islands and major seabird and marine mammal populations.

A minor change is proposed to clarify vessel regulation language in the current prohibition #4. The proposed change is considered a technical change, as the language in the current regulation has been restructured by putting the prohibition first, followed by the exceptions to the prohibition. Neither the content nor the intent of the regulation has been altered in any way. The proposed change is not intended to pose any additional burden on user groups in the Sanctuary. The structure of this regulation is consistent with new and revised Sanctuary regulations throughout the NMSP.

### **GFNMS Manager Permit and Modifications to Permit Regulations**

GFNMS proposed modifications to their regulations on permit procedures and issuance criteria include a provision to establish a manager permit. Establishing a manager permit is considered a technical change, without implications for environmental effects.

Additionally, in deciding whether to issue a permit, the Director of the NMSP would be required to consider the proposed activity in terms of duration, effects on Sanctuary resources and qualities, potential indirect, secondary, or cumulative effects, and whether it is necessary to conduct the activity in the Sanctuary. In addition, the proposed modifications to the permit procedures and criteria (15 CFR 922.72) would further refine current requirements and procedures found in the general NMSP regulations (15 CFR 922.48[a] and [c]). The revised section would also add language to the GFNMS permit regulations about permit duration. 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.

### ***MBNMS***

#### **MBNMS Boundaries**

Technical corrections to the textual boundary description and the list of defining coordinates for the Sanctuary are proposed in order to ensure accuracy and consistency in the boundary delineation. The Sanctuary has proposed technical changes to its boundaries, which are minor for purposes of clarifying existing boundaries. For example, NOAA has redefined the shoreline boundary at Santa Cruz Harbor as a virtual line extending from the tip of the east breakwater to the center of the west breakwater light at the entrance to the small craft harbor. The area between the west breakwater light and the Pt. Santa Cruz lighthouse is now part of the MBNMS, which is consistent with the original intent of MBNMS designation.

#### **Submerged Lands**

The proposed regulatory changes would modify the prohibition against altering the seabed of the Sanctuary. The term “seabed” would be replaced with “submerged lands” to be consistent with the NMSA. Additionally, the submerged lands in estuarine areas within the Sanctuary, such as Elkhorn Slough, are not accurately described as “seabed.” The proposed regulatory changes would also clarify that activities currently excepted from the prohibition against altering the submerged lands or constructing, placing or abandoning any matter on them are only excepted to the extent that disturbing the submerged lands is necessary to their completion.

#### **Wildlife Protection**

The slight modifications to MBNMS prohibitions regarding the taking of wildlife (prohibition 5) are technical in nature and have no physical or environmental effect.

**Table 2-1  
Proposed and Alternative Regulatory Changes**

CBNMS	GFNMS	MBNMS
<b><i>Introduced Species—Cross-Cutting</i></b>		
<p><b>Existing:</b> None</p> <p><b>Proposed:</b> Prohibits introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (<i>Morone saxatilis</i>) released during catch and release fishing activity. (GFNMS also exempts species cultivated by existing mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of the final regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species).</p> <p>Defines “introduced species” as (1) a species (including, but not limited to, any of its biological matter capable of propagation) that is nonnative to the ecosystem(s) protected by the Sanctuary; or (2) any organism into which altered genetic matter or genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.</p> <p><b>Alternative:</b> None</p>		
<b><i>Discharge Regulations Clarifications &amp; Exceptions—Cross-Cutting</i></b>		
<p><b>Existing:</b> Prohibits (1)(1) Depositing or discharging, from any location within the boundary of the Sanctuary, material or other matter of any kind except: [Existing language also prohibits discharge from outside the Sanctuary—see below under Water Quality.]</p> <p><b>Proposed:</b> Prohibits (1)(1) Discharging or depositing, from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:</p> <p><b>Alternative:</b> None</p>	<p><b>Existing:</b> Prohibits Discharging or depositing any material or other matter except:</p> <p><b>Proposed:</b> Same as CBNMS</p> <p><b>Alternative:</b> None</p>	<p><b>Existing:</b> Prohibits (1)(1) Depositing or discharging, from any location within the boundary of the Sanctuary, material or other matter of any kind except: [Existing language also prohibits discharge from outside the sanctuary—see below under Water Quality.]</p> <p><b>Proposed:</b> Same as CBNMS</p> <p><b>Alternative:</b> None</p>
<p><b>Existing:</b> Exception for (A) Fish, fish parts, chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary;</p> <p><b>Proposed:</b> Exception for (A) Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;</p> <p><b>Alternative:</b> None</p>	<p><b>Existing:</b> Exception for Fish or fish parts and chumming materials (bait)</p> <p><b>Proposed:</b> Same as CBNMS</p> <p><b>Alternative:</b> None</p>	<p><b>Existing:</b> Exception for Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;</p> <p><b>Proposed:</b> Exception for Fish, fish parts, or chumming materials, or bait used in or resulting from lawful fishing operations within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing operations within the Sanctuary;</p> <p><b>Alternative:</b> None</p>
<b><i>Marine Sanitation Devices &amp; Graywater—Cross-Cutting</i></b>		
<p><b>Existing:</b> Exception for (B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by: Marine sanitation devices approved by the United States Coast Guard; routine vessel maintenance, e.g., deck wash down; engine exhaust; or meals on board vessels.</p> <p><b>Proposed:</b> Exception for (B) For a vessel less than 300 gross registered tons (GRT) or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use and generated by: an operable Type I or II marine sanitation device (US Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 USC 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage; (C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash; or (D) Vessel engine or generator exhaust.</p> <p>Proposed Definition of “clean”: Clean means not containing detectable levels of harmful matter.</p> <p><b>Proposed New Definition of “Harmful Matter”:</b> Harmful matter means any substance, or combination of substances, which because of its quantity, concentration, or</p>	<p><b>Existing:</b> Exception for (ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by: (A) Marine sanitation devices; (B) Routine vessel maintenance, e.g., deck wash down; (C) Engine exhaust; or (D) Meals on board vessels.</p> <p><b>Proposed:</b> Same as CBNMS</p>	<p><b>Existing:</b> Exception for (B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 USC 1322 et seq.; (C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping; (D) Engine exhaust;</p> <p><b>Proposed:</b> B same as CBNMS; New definitions of “clean” and “harmful matter” same as CBNMS.</p> <p>(C) Clean vessel deck wash down, vessel engine cooling water, vessel generator cooling water, anchor wash, or bilge water (D) For a vessel less than 300 gross registered tons (GRT) or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA; (E) Vessel engine or generator exhaust; (F) (remains the same as existing regulation)</p>

**Table 2-1  
Proposed and Alternative Regulatory Changes**

CBNMS	GFNMS	MBNMS
<p><i>physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 USC 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4</i></p> <p><b>Alternative:</b> None</p>	<p><b>Alternative:</b> None</p>	<p><b>Alternative:</b> None</p>
<b>Cruise Ship Discharge &amp; Definition- Cross-Cutting</b>		
<p><b>Existing:</b> None</p> <p><b>Proposed:</b> Prohibits <i>Discharging or depositing, from within or into the Sanctuary, any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash.</i> Definition: <i>Cruise ship means a vessel of 250 or more passenger berths for hire.</i></p> <p><b>Alternative:</b> <i>Discharging or depositing, from within or into the Sanctuary, any material or other matter from a cruise ship except clean vessel engine cooling water, vessel generator cooling water, or anchor wash and water treated to a level not to exceed the standards set forth by the Coast Guard in Alaska at 33 CFR 159, Subpart E (Discharge of Effluents in Certain Alaska Waters by Cruise Vessel Operations), provided that the owner/operator has satisfactorily demonstrated compliance with these standards to the Director prior to discharge or deposit.</i></p>	<p><b>Existing:</b> None</p> <p><b>Proposed:</b> Same as CBNMS</p> <p><b>Alternative:</b> Same as CBNMS</p>	<p><b>Existing:</b> None</p> <p><b>Proposed:</b> Same as CBNMS</p> <p><b>Alternative:</b> Same as CBNMS</p>
<b>Water Quality—Discharges from Outside Sanctuary (GFNMS)</b>		
<p><b>Existing:</b> Prohibits <i>Depositing or discharging, from any location beyond the boundaries of the Sanctuary, material or other matter of any kind, except for the exclusions listed in paragraph (a)(1)(i) of this section, which enter the Sanctuary and injure a Sanctuary resource.</i></p> <p><b>Proposed:</b> (no substantive change, only minor changes so the language mirrors other sites) <i>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 for the exclusions listed in paragraph (a)(1)(i) through (a)(1)(ii) of this section.</i></p> <p><b>Alternative:</b> None</p>	<p><b>Existing:</b> none</p> <p><b>Proposed:</b> <i>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 for the exclusions listed in paragraph (a)(2)(i) through (iv) and (a)(3) of this section.</i></p> <p><b>Alternative:</b> None</p>	<p><b>Existing:</b> (no change) Prohibits <i>(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(2)(i) (A) through (D) of this section and dredged material deposited at the authorized disposal sites described in appendix B to this subpart, ...</i></p> <p><b>Proposed:</b> None</p> <p><b>Alternative:</b> None</p>
<b>Vessels Adrift and Deserted (GFNMS)</b>		
<p><b>No existing or proposed language</b></p>	<p><b>Existing:</b> None</p> <p><b>Proposed:</b> <i>Deserting a vessel aground, at anchor, or adrift in the Sanctuary.</i></p> <p><i>Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.</i> [See Marine Sanitation Devices &amp; Graywater—Cross-Cutting (above) for new definition of “Harmful Matter.”] USC</p> <p><b>Proposed New Definition of “Deserting”:</b> <i>a) leaving a vessel aground or adrift: (1) without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification; (2) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or (3) when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or b) leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner."</i></p> <p><b>Alternative:</b> None</p>	<p><b>Existing:</b> None</p> <p><b>Proposed:</b> Same as GFNMS</p> <p><b>Proposed New Definition of “Harmful Matter”:</b> Same as GFNMS</p> <p><b>Proposed New Definition of “Deserting”:</b> Same as GFNMS</p> <p><b>Alternative:</b> None</p>

**Table 2-1  
Proposed and Alternative Regulatory Changes**

CBNMS	GFNMS	MBNMS
<b>Wildlife Disturbance (GFNMS and CBNMS)</b>		
<p><b>Existing:</b> None</p> <p><b>Proposed:</b> Prohibits (11) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by Marine Mammal Protection Act, as amended, (MMPA), 16 USC 1362 et seq., the Endangered Species Act, as amended, (ESA), 16 USC 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 USC 703 et seq., or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.</p> <p>(12) Possessing within the Sanctuary (regardless of where taken, moved or removed from) except as necessary for valid law enforcement purposes, 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.</p> <p><b>Alternative:</b> None</p>	<p><b>Existing:</b> None</p> <p><b>Proposed:</b> Same as CBNMS</p> <p><b>Alternative:</b> None</p>	<p><b>Existing:</b> Prohibits (5) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 USC 1361 et seq., the Endangered Species Act, as amended, (ESA), 16 USC 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 USC 703 et seq.</p> <p><b>Proposed:</b> Technical Change (5): seabird changed to birds to clarify applicability and to be consistent with CB and GF; and existing language conformed to proposed CB and GF language.</p> <p><b>Existing:</b> Prohibits (8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, sea turtle or seabird taken in violation of regulations, as amended, promulgated under the MMPA, ESA or MBTA.</p> <p><b>Proposed:</b> Technical Change only, Prohibits (8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle or bird, except as authorized under the MMPA, ESA, MBTA, under any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes. [Deleted reference to historical resource - possession of historical resource is now covered in prohibition #3—see historical resources change below.]</p> <p><b>Alternative:</b> None</p>
<b>Historical Resources (MBNMS)</b>		
<p><b>No changes.</b></p>	<p><b>No substantive changes</b></p>	<p><b>Existing:</b> Prohibits (3) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource.</p> <p><b>Proposed:</b> (3) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to possession, moving, removing, or injury resulting incidentally from kelp harvesting, aquaculture, or lawful fishing operations. [Makes possession outside of a sanctuary prohibited.] The same exceptions will continue to apply.</p> <p><b>Alternative:</b> None</p>
<b>Seabed Protection</b>		
<p><b>Existing:</b> None</p> <p><b>Proposed:</b> 4(i) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or other matter on or in the submerged lands. This prohibition does not apply to bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisberies off West Coast States and in the Western Pacific).</p> <p>(ii) In the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or matter on or in the submerged lands, except as incidental and necessary for anchoring any vessel or use of any lawful fishing gear during normal fishing operations. This prohibition does not apply to bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisberies off West Coast States and in the Western Pacific). The coordinates for the line representing the 50-</p>	<p><b>Existing:</b> Prohibits (3) Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with Sec. 922.84: (i) Constructing any structure other than a navigation aid, (ii) Drilling through the seabed, and (iii) Dredging or otherwise altering the seabed in any way other than by anchoring vessels or bottom trawling from a commercial fishing vessel, except for routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers in Tomales Bay.</p> <p><b>Proposed:</b> (no substantive changes) Prohibits (5) Constructing any structure other than a navigation aid on or in the submerged lands of the Sanctuary; placing or abandoning any structure on or in the submerged lands of the Sanctuary; or drilling into or dredging, or otherwise altering the submerged lands of the Sanctuary in any way, except: (i) By anchoring vessels (in a manner not otherwise prohibited by this part (see § 922.82 (16))); (ii) While conducting lawful fishing activities; (iii) The laying of pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary in accordance with (1) of this section; (iv) Routine maintenance and construction of docks and piers on Tomales Bay; or (v) Mariculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.</p>	<p>No substantive changes to existing regulations, except that exception added for lawful fishing operations and exceptions listed in (a) (4) (ii) through (a) (4) (vii) do not apply in the Davidson Seamount Management Zone.</p>

**Table 2-1  
Proposed and Alternative Regulatory Changes**

CBNMS	GFNMS	MBNMS
<p><i>fathom isobath are listed in Appendix B to this subpart.</i></p> <p>[The Proposed Action exempts lawful fishing activities and defers the regulation of bottom contact fishing gear to recent NOAA Fisheries amendments to the Groundfish Fishery Management Plan (71 FR 27408). The impacts of Proposed Action and Alternative would the same.]</p> <p><b>Alternative: 4(i)</b> <i>Except incidental and necessary to lawful use of any fishing gear (other than bottom contact gear), during normal fishing operations: drilling into, or dredging; or otherwise altering Cordell Bank or the submerged lands within the line representing the 50-fathom isobath; or constructing, placing or abandoning any structure, material or other matter on the Bank or on the submerged lands 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.</i></p> <p><i>(ii) Except as is incidental and necessary for anchoring a vessel or use of any lawful fishing gear (other than bottom contact 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.</i></p> <p>Alternative would include a new definition for “bottom contact gear”: <i>fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (e.g. by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart.</i></p>	<p><b>Alternative:</b> None</p>	<p><b>Alternative:</b> None</p>
<b>White Shark Attraction and Approaching (GFNMS and MBNMS)</b>		
<p><b>No existing or proposed language</b></p>	<p><b>Existing:</b> None</p> <p><b>Proposed:</b> Prohibits <i>Attracting a white shark in the sanctuary; or approaching within 50 meters of any white shark within the line approximating 2 nm around the Farallon Islands. The coordinates for the line approximating 2 nm around the Farallon Islands are listed in Appendix B to this subpart.</i></p> <p><b>Proposed New Definition:</b> <i>Attract or attracting means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).</i></p> <p><b>Alternative:</b> Prohibits <i>attracting or approaching white sharks anywhere within the Sanctuary.</i> [Alternative would include proposed new definition, above]</p>	<p><b>Existing:</b> Prohibits <i>(10) Attracting any white shark in that part of the Sanctuary out to the seaward limit of State waters. For the purposes of this prohibition, the seaward limit of State waters is a line three nm distant from the coastline of the State, where the coastline is the line of ordinary low water along the portion of the coast in direct contact with the open sea. The coastline for Monterey Bay, which is inland waters, is the straight line marking the seaward limit of the Bay, determined by connecting the following two points: 36°57'6"N, 122°01'45"W and 36°38'16"N, 121°56'3"W.</i></p> <p><b>Existing Definition:</b> <i>Attract or attracting means the conduct of any activity that lures or may lure white sharks by using food, bait, chum, dyes, acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).</i></p> <p><b>Proposed:</b> Prohibits <i>Attracting any white shark within the Sanctuary.</i></p> <p><b>Proposed Definition:</b> Same as GFNMS. (white sharks changed to “any animal” and decoys added.) <i>Attract or attracting means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys, acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).</i></p> <p><b>Alternative:</b> none</p>

**Table 2-1  
Proposed and Alternative Regulatory Changes**

CBNMS	GFNMS	MBNMS
<b>Benthic Habitat Protection (CBNMS)</b>		
<p><b>Existing:</b> Prohibits (2) Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. 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. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.</p> <p><b>Proposed:</b> Prohibits (2) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae. This prohibition does not apply to bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific). 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.</p> <p>[The Proposed Action defers the regulation of bottom contact fishing gear to recent NOAA Fisheries amendments to the Groundfish Fishery Management Plan (71 FR 27408). The impacts of Proposed Action and Alternative would be the same.]</p> <p><b>Alternative:</b> Prohibits Except incidental and necessary to lawful use of any fishing gear (other than bottom contact 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 within or on 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.</p> <p>[Alternative would add same definition of “bottom-contact gear” as described for Seabed Protection alternative.]</p>	<p>No existing or proposed regulation.</p>	<p>No existing or proposed regulation.</p>
<b>Seagrass Beds (GFNMS)</b>		
<p>No existing or proposed regulation</p>	<p><b>Existing:</b> none</p> <p><b>Proposed:</b> New prohibition: Anchoring a vessel in a designated seagrass protection zone in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in Appendix B to this subpart.</p> <p><b>New definition:</b> Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to <i>Zostera asiatica</i> and <i>Zostera marina</i>.</p>	<p>No existing or proposed regulation</p>
<b>Oil and Gas Pipelines (GFNMS)</b>		
<p>No changes</p>	<p><b>Existing:</b> Prohibition on: Exploring for, developing and producing oil or gas except that pipelines related to hydrocarbon operations outside the Sanctuary may be placed at a distance greater than 2 NM from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance (ASBS) where certified to have no significant effect on Sanctuary resources in accordance with Section 922.84.</p> <p><b>Proposed:</b> Exploring for, developing and producing oil or gas except that pipelines related to hydrocarbon operations adjacent to the Sanctuary may be placed at a distance greater than 2 NM from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance (ASBS) where certified to have no significant effect on Sanctuary resources in accordance with Section 922.84.</p>	<p>No changes</p>

**Table 2-1  
Proposed and Alternative Regulatory Changes**

CBNMS	GFNMS	MBNMS
	Alternative: None	
<b>Boundary Changes (MBNMS &amp; GFNMS)</b>		
<p><b>No substantive changes</b></p>	<p><b>Existing:</b> The western shoreward boundary adjacent to the Pt. Reyes National Seashore in Tomales Bay currently changes every time the National Park Service modifies the boundary for the Pt. Reyes National Seashore.</p> <p><b>Proposed:</b> Permanently fix the shoreward boundary adjacent to Pt. Reyes National Seashore to the location of the boundary of Pt. Reyes National Seashore as established at the time of designation of GFNMS in 1981. The Sanctuary boundary, as described in Sec. 922.80 and Appendix A of the proposed rule, “fixes” the GFNMS boundary to the boundary that was in place at the time of sanctuary designation.</p> <p>Alternative: None</p>	<p><b>Existing:</b> Davidson Seamount is not included in MBNMS.</p> <p><b>Proposed:</b> Adds Davidson Seamount Management Zone (DSMZ) to the Sanctuary: <i>This area, bounded by a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square NM of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 NM off the coast of San Simeon in San Luis Obispo County.</i></p> <p><i>Definitions: The Davidson Seamount Management Zone means the ocean waters and submerged lands thereunder, bounded by coordinates West: 123°W; East: 122.5°W; North: 35.9°N; South: 35.5°N</i></p> <p><i>The exceptions listed in subparagraphs (a)(4)(ii) through (a)(4)(vii) of this section do not apply in the Davidson Seamount Management Zone.</i></p> <p><i>(11) (i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone (DSMZ). This prohibition does not apply to fishing below 3,000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).</i></p> <p><i>(ii) Possessing any Sanctuary resource the source of which is more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to possession of fish resulting from fishing below 3,000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).</i></p> <p>[The Proposed Action exempt fishing activities and defers the regulation of bottom contact fishing gear to recent NOAA Fisheries amendments to the Groundfish Fishery Management Plan (71 FR 27408). The impacts of Proposed Action and Alternative would be the same.]</p> <p><b>Alternative 1:</b> Restrictions on fishing below 3000 feet would be applied and no exception for disturbing the submerged lands for lawful fishing operations would be provided.</p> <p><b>Alternative 2:</b> Circular boundary encompassing 707 sq. miles with same regulations as proposed.</p>
<b>Personal Watercraft (MBNMS)</b>		
<p><b>No existing or proposed regulations</b></p>	<p><b>Existing:</b> (no change) Prohibits: (7) <i>Operation of motorized personal watercraft, except for the operation of motorized personal watercraft for emergency search and rescue mission or law enforcement operations (other than routine training activities) carried out by National Park Service, US Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.</i></p> <p><b>Proposed:</b> None</p>	<p><b>Existing:</b> Definition: <i>Motorized personal watercraft means any motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, 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, surfjets, miniature speed boats, air boats, and hovercraft.</i></p> <p>Prohibits: (7) <i>Operating motorized personal watercraft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix E to this subpart.</i></p> <p><b>Proposed:</b> Redefines MPWC as: (1) <i>any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel; or (2) any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the US Coast Guard’s Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183 (except submarines); or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.</i></p>



Table 2-1  
Proposed and Alternative Regulatory Changes

CBNMS	GFNMS	MBNMS
		<p>Revised Prohibition: (7) <i>Operating motorized personal watercraft within the Sanctuary except within the five designated zones and access routes within the Sanctuary described in appendix E to this subpart. Zone Five (at Pillar Point) exists only when a high surf warning has been issued by the National Weather Service and is in effect for San Mateo County, and only during December, January, and February.</i></p> <p><b>Alternative:</b> Prohibits: <i>Operating motorized personal watercraft within the Sanctuary.</i> Same definition as proposed.</p>
<b><i>Dredge Disposal (MBNMS)</i></b>		
<p>No existing or proposed regulation</p>	<p>No existing or proposed regulation</p>	<p><b>Existing:</b> Allows disposal of <i>dredged material deposited at the authorized disposal sites described in appendix B to this subpart, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.</i></p> <p><b>Proposed:</b> MBNMS will define and recognize a location of dredge disposal site SF-12. Redefinition of the SF-12 site is needed to clarify its exact location and to allow disposal of dredge material to occur at the intended location, at the head of the Monterey Canyon. Also will define and codify Santa Cruz and Monterey Disposal Sites.</p> <p><b>Alternative:</b> None</p>