

The following text contains the regulations of the Gulf of the Farallones National Marine Sanctuary. This text was taken verbatim from the Final Rule which was published in the Federal Register / Vol. 73, No. 225 / Thursday, November 20, 2008 / Rules and Regulations.

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

- 2. Subpart H of part 922 is revised to read as follows:

Subpart H—Gulf of the Farallones National Marine Sanctuary

Sec.

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Subpart H—Gulf of the Farallones National Marine Sanctuary

§ 922.80 Boundary.

The Gulf of the Farallones National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 966 square nautical miles (nmi) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands (and Noonday Rock) off the northern coast of California. The northernmost extent of the Sanctuary boundary is a geodetic line extending westward from Bodega Head approximately 6 nmi to the northern boundary of the Cordell Bank National Marine Sanctuary (CBNMS).

The Sanctuary boundary then turns southward to a point approximately 6 nmi off Point Reyes, California, where it then turns westward again out towards the 1,000-fathom isobath. The Sanctuary boundary then extends in a southerly direction adjacent to the 1,000-fathom isobath until it intersects the northern extent of the Monterey Bay National Marine Sanctuary (MBNMS).

The Sanctuary boundary then follows the MBNMS boundary eastward and northward until it intersects the Mean High Water Line at Rocky Point, California. The Sanctuary boundary then follows the MHWL north until it intersects the Point Reyes National Seashore (PRNS) boundary. The Sanctuary boundary then approximates the PRNS boundary, as established at the time of designation of the Sanctuary, to the intersection of the PRNS boundary and the MHWL in Tomales Bay. The Sanctuary boundary then follows the MHWL up Tomales Bay and Lagunitas Creek to the Route 1 Bridge where the Sanctuary boundary crosses the Lagunitas Creek and

follows the MHWL until it intersects its northernmost extent near Bodega Head.

The Sanctuary boundary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford Franklin School Road) and Estero Americano (to the bridge at Valley Ford Estero Road), as well as Bodega Bay, but not Bodega Harbor. Where the Sanctuary boundary crosses a waterway, the Sanctuary boundary excludes these waterways shoreward of the Sanctuary boundary line delineated by the coordinates provided. The precise seaward boundary coordinates are listed in Appendix A to this subpart.

§ 922.81 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart: *Areas of Special Biological Significance (ASBS)* are those areas designated by California's State Water Resources Control Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 *et seq.*

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).

Clean means not containing detectable levels of harmful matter.

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

Deserting means leaving a vessel aground or adrift 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, after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or 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 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.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or 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 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or 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.

Motorized personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

Routine maintenance means customary and standard procedures for maintaining docks or piers. *Seagrass* means any species of marine angiosperms (flowering plants) that inhabit portions of the submerged lands in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*.

§ 922.82 Prohibited or otherwise regulated activities.

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

(1) Exploring for, developing, or producing oil or gas except that pipelines related to hydrocarbon operations adjacent to the Sanctuary may be placed at a distance greater than 2 nmi 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 § 922.84.

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

(i) 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;

(ii) 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 (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322.

Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(iii) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash; or

(iv) Vessel engine or generator exhaust.

(3) 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.

(4) 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 paragraphs (a)(2)(i) through (iv) and (a)(3) of this section.

(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, 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(a)(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 paragraph (a)(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.

(6) Operating any vessel engaged in the trade of carrying cargo within an area extending 2 nmi from the Farallon Islands, Bolinas Lagoon or any ASBS. This includes but is not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations, except to transport persons or supplies to or from the Islands or mainland areas adjacent to Sanctuary waters or any ASBS. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(7) Operation of motorized personal watercraft, except for the operation of motorized personal watercraft for emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

(8) Disturbing birds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nmi of the Farallon Islands, Bolinas Lagoon, or any ASBS except to transport persons or supplies to or from the Islands or for enforcement purposes.

(9) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

- (i) Striped bass (*Morone saxatilis*) released during catch and release fishing activity; or
- (ii) Species cultivated by 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.

(11) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

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

(13) Attracting a white shark in the Sanctuary; or approaching within 50 meters of any white shark within the line approximating 2 nmi around the Farallon Islands. The coordinates for the line approximating 2 nmi around the Farallon Islands are listed in Appendix B to this subpart.

(14) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(15) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(16) 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 noanchoring seagrass protection zones are listed in Appendix C to this subpart.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.83.

§ 922.83 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 922.82 if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

- (1) Further research or monitoring related to Sanctuary resources and qualities;
- (2) Further the educational value of the Sanctuary;
- (3) Further salvage or recovery operations; or
- (4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider factors such as:

- (1) The applicant is qualified to conduct and complete the proposed activity;
- (2) The applicant has adequate financial resources available to conduct and complete the proposed activity;
- (3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;
- (4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;
- (5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;
- (6) It is necessary to conduct the proposed activity within the Sanctuary;
- (7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and
- (8) Any other factors as the Director deems appropriate.

(d) Applications.

- (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.
- (2) In addition to the information listed in § 922.48(b), all applications must include

information to be considered by the Director in paragraph (b) and (c) of this section.

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

§ 922.84 Certification of other permits.

A permit, license, or other authorization allowing: the laying of any pipeline related to hydrocarbon operations in leases adjacent to the Sanctuary and placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and any ASBS must be certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency. In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate. Any certification called for in this section shall be presumed unless the Director acts to deny or condition certification within 60 days from the date that the Director receives notice of the proposed permit and the necessary supporting data. The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.