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Administration**

**15 CFR Part 922
Channel Islands National Marine
Sanctuary Regulations; Final Rule**

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

[Docket No. 080311420-9008-02]

RIN 0648-AT17

Channel Islands National Marine Sanctuary Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) publishes this rule to finalize the regulations for the Channel Islands National Marine Sanctuary (CINMS or Sanctuary). This final rule revises the regulations to implement prohibitions on: Exploring for, developing, or producing minerals within the Sanctuary; abandoning matter on or in Sanctuary submerged lands; taking marine mammals, sea turtles, or seabirds within or above the Sanctuary; possessing within the Sanctuary any marine mammal, sea turtle, or seabird; marking, defacing, damaging, moving, removing, or tampering with Sanctuary signs, monuments, boundary markers, or similar items; introducing or otherwise releasing from within or into the Sanctuary an introduced species; and operating motorized personal watercraft within waters of the Sanctuary that are coextensive with the Channel Islands National Park. NOAA also makes additional changes to the grammar and wording of several sections of the regulations to ensure clarity. Finally, NOAA publishes the Sanctuary's revised terms of designation.

DATES: *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the revised terms of designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on January 16, 2009. Announcement of the effective date of the final regulations will be published in the **Federal Register**.

ADDRESSES: Copies of the final management plan (FMP) and final environmental impact statement (FEIS) are available at Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara,

California and on the Web at <http://channelislands.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Michael Murray at (805) 884-1464.

SUPPLEMENTARY INFORMATION:**I. Introduction**

Pursuant to section 304(e) of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1434(e)), NOAA conducted a review of the management plan and regulations for the Channel Islands National Marine Sanctuary (CINMS or Sanctuary), located off Santa Barbara and Ventura counties in southern California. As a result of the review, NOAA determined that it was necessary to revise the management plan and regulations for the Sanctuary and subsequently published a draft revised management plan, proposed rule, and draft environmental impact statement (71 FR 29096; May 19, 2006). NOAA later published a supplemental proposed rule and supplemental draft environmental impact statement (73 FR 16580; March 28, 2008).

The revised management plan for the Sanctuary contains a series of action plans that outline management, research, education, operational, and evaluation activities for the next five years. The activities are designed to address specific issues facing the Sanctuary and, in doing so, help achieve the mandates of the NMSA and the Sanctuary's designation. NOAA has also revised several sections of the Sanctuary's terms of designation. This final rule publishes these revisions, as well as revisions to Sanctuary regulations. These revisions are described below in the "Terms of Designation" and "Summary of the Regulatory Amendments" sections and are analyzed in the FEIS. The FMP and FEIS are available at <http://channelislands.noaa.gov> or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

A. Marine Reserves and Conservation Areas

In 2002, NOAA considered merging the environmental review processes for management plan review and the consideration of marine zones within the Sanctuary, but subsequently determined that it was more appropriate to proceed with two separate processes for these actions because of differing process needs regarding coordination with the State of California and Pacific Fishery Management Council. Consequently, NOAA prepared a separate DEIS and proposed rule (71 FR 46134; August 11, 2006) and FEIS and

final rule (72 FR 29208; May 24, 2007) to address marine zones in the Sanctuary. As such, that process is outside the scope of this rule.

B. Sanctuary Environment

Designated on October 2, 1980 (45 FR 65200), the Sanctuary consists of an area off the coast of southern California of approximately 1470 square statute miles (1110 square nmi)¹ adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands) extending seaward to a distance of approximately six nmi. The Sanctuary is located within the upper portion of the Southern California Bight (SCB), which is formed by a transition in the California coastline wherein the north-south trending coast begins to trend east to west. The SCB stretches from Point Conception in the north to Punta Eugenia (Mexico) in the south. Due to the oceanographic features of the SCB, its two biogeographic provinces or bioregions (areas characterized by distinct patterns of species abundance and distribution) and a transition zone between them, and the complex bottom topography and diversity of habitats found at the Islands, the Sanctuary has a great diversity of marine life.

Numerous important habitats are represented within the Sanctuary including kelp forests, surfgrass and eelgrass, intertidal, nearshore subtidal, deep-water benthic, and pelagic habitats.

The Sanctuary's cultural values stem largely from its rich array of maritime heritage resources (paleontological remains, prehistoric archaeological sites and their associated artifacts, shipwrecks, aircraft wrecks, and material associated with wharves, piers

¹ From 1980 to 2007, the area of CINMS was described as approximately 1252.5 square nautical miles. However, in 2007 NOAA re-calculated the original CINMS area as approximately 1113 square nautical miles (72 FR 29208). Also in 2007, NOAA designated the federal portion of the Channel Islands MPA network, consisting of eight marine reserves and one marine conservation area within the CINMS (72 FR 29208). The marine reserves are distributed throughout the CINMS and extend slightly beyond the original boundaries of the CINMS in four locations, increasing the overall size of the Sanctuary by approximately 15 square nautical miles. This change allowed the boundary of four of the marine reserves to be defined by straight lines projecting outside the original CINMS boundary, allowing for better enforcement of the marine reserves. Since then, adjusting for technical corrections and using updated technologies, NOAA has re-calculated the CINMS area as approximately 1470 square statute miles (1110 square nmi). This change does not constitute a change in the geographic area of the Sanctuary, but rather an improvement in the estimate of its size.

and landings). Carbon dating indicates that humans were present at the Islands as early as 13,000 years ago. The Islands and surrounding Sanctuary contain an abundance of prehistoric Native American Chumash artifacts and are still revered as part of the traditional homeland by contemporary Chumash. Historical remains may exist from as early as Juan Rodriguez Cabrillo's voyage (1542 to 1543) through modern times. Known historical remains are represented in an inventory of over 140 shipwrecks and aircraft wrecks documented as existing in the Sanctuary since 1853. The uniqueness of the Sanctuary region and its proximity to several major ports and harbors along the mainland coast has made it a popular destination for numerous recreational and commercial activities. Sportfishing, diving, snorkeling, whale watching, pleasure boating, kayaking, surfing, and sightseeing are all popular pastimes within the Sanctuary, which is often referred to as "the Galapagos of the north." Commercial activities include fishing, whale watching, chartered tours, and maritime shipping.

The Sanctuary is located near an area of southern California coastline that has experienced a dramatic increase in population. Whereas the population of southern California (Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura counties) was approximately 13.5 million in 1980, population levels now reach nearly 20 million. This represents a regional increase in population of approximately 43%. Aerial and on-water surveys indicate that visitation to CINMS has increased significantly since 1980. With continued technological innovations such as global positioning systems (GPS) and improved watercraft design, it is likely that there will be continued increasing visitation to the Sanctuary and added pressure on its resources. With its proposed revised management plan and regulations, NOAA continues to protect CINMS for appreciation and appropriate use by current and future generations. For a more detailed description of the Sanctuary environment, please refer to the final environmental impact statement available on the Sanctuary Web site at <http://channelislands.noaa.gov>.

II. Changes to the Sanctuary Terms of Designation

Section 304(a)(4) of the NMSA (16 U.S.C. 1434(a)(4)) requires that, in designating national marine sanctuaries, NOAA specify the sanctuary's "terms of designation." The NMSA requires that

each sanctuary's terms of designation include:

1. The geographic area proposed to be included within the sanctuary;
2. The characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and
3. The types of activities that will be subject to regulation by the Secretary to protect those characteristics.

The CINMS terms of designation were originally published in 1980 upon establishment of the Sanctuary and revised in 2007 (45 FR 65198, published October 2, 1980; and 72 FR 29208, published May 24, 2007, respectively).

NOAA is revising the Sanctuary's terms of designation as follows:

1. Modifying the characteristics that give the Sanctuary particular value (Article III) to clarify that the submerged lands at CINMS are legally part of the Sanctuary and are included in the boundary description. At the time the Sanctuary was designated in 1980, Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the NMSA) characterized national marine sanctuaries as consisting of coastal and ocean waters but did not expressly mention submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98-498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, NOAA is updating the terms of designation and the boundary description, and is also replacing the term "seabed" with "submerged lands of the Sanctuary." In addition, NOAA is clarifying the description of the Sanctuary's shoreline boundary demarcation as the Mean High Water Line (MHWL) of Island shores.

2. Modifying the scope of activities that may be subject to regulation (Article IV) to authorize regulation of:
 - a. Exploring for, developing, or producing minerals within the Sanctuary;

- b. 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;

- c. Placing or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;

- d. Moving, injuring, possessing, or attempting to move, injure, or possess a Sanctuary historical resource;

- e. Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary;

- f. Possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle or seabird;

- g. Marking, defacing, damaging, moving, removing, or tampering with any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary; and

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

These substantive revisions to and addition of new activities subject to Sanctuary regulation enable new and emerging resource management issues to be addressed, and are necessary in order to ensure the protection, preservation, and management of the conservation, recreational, ecological, historical, cultural, educational, archeological, scientific, and esthetic resources and qualities of the Sanctuary.

3. Ensuring consistency of the sections on international law and emergency regulations with the NMSA and ONMS program-wide regulations (sections 2 and 3 of Article IV).

4. Updating the explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights (section 3 of Article V).

5. Updating Article VI, "Alterations to This Designation", to reflect the NMSA as currently written.

6. Making other minor editorial changes in order to conform wording of the Sanctuary's terms of designation, where appropriate, to wording used in the NMSA and for more recently designated sanctuaries.

NOAA is not making any changes to the "Fishing" and "Defense Activities" sections within Article V (Relation to Other Regulatory Programs) of the terms of designation as part of this action.

Revised Terms of Designation for the Channel Islands National Marine Sanctuary

Article I. Effect of Designation

The Channel Islands National Marine Sanctuary was designated on October 2, 1980 (45 FR 65200). Section 308 of the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.*, (NMSA) authorizes the issuance of such regulations as may be necessary to implement the designation, including managing, protecting and preserving the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and esthetic

resources and qualities of the Channel Islands National Marine Sanctuary (Sanctuary). Section 1 of Article IV of this Designation Document lists activities of the types that are to be regulated on the effective date of designation or may be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of an area of approximately 1,110 square nautical miles (nmi) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. The Sanctuary boundary begins at the Mean High Water Line of and extends seaward to a distance of approximately six nmi from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands). The seaward boundary coordinates are listed in an Appendix to 15 CFR 922 subpart G.

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

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

The Islands are located within a 300-mile long oceanographic region known as the Continental Borderland, a unique region of the continental shelf characterized by basins and elevated ridges. Within this region, the confluence of the cool California Current and warm Southern California Countercurrent creates two distinct bioregions in and around the Sanctuary: The cold Oregonian bioregion and the warm Californian bioregion. There is also a transition zone between the two regions. The overlap of these bioregions results in a unique and highly diverse

array of marine life within the Sanctuary, including cold water species at the southern end of their range and warm water species at the northern end of their range. In addition, the Sanctuary is located offshore from Point Conception, the southernmost major upwelling center on the west coast of the United States. Upwelling yields increased primary productivity essential to the marine food web.

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

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

The quality and abundance of natural resources at the Islands and surrounding waters have attracted man from the earliest prehistoric times to the present. As a result, the Sanctuary contains significant prehistoric and historic maritime heritage resources. Prehistoric maritime heritage resources include submerged Native American Chumash sites, the significance of which is underscored by a terrestrial Island site

with human remains dated to 13,000 years ago. Historic maritime heritage resources date back as far as 1542 and include over 140 historic shipwreck and aircraft sites. These wrecks reveal the diverse range of activities and nationalities that have traversed the Santa Barbara Channel. Following the mission era, human occupation of the Islands transitioned from significant Chumash Native American villages, to land grant and ranching settlements, and finally to joint public-private ownership and management aimed at resource conservation and compatible public use. Today's Chumash people continue to value and enjoy the Islands and surrounding Sanctuary waters, working to keep and revitalize their ancient Chumash maritime heritage. Despite this long history of human presence on the Islands, they remain remote yet accessible, and undeveloped relative to the burgeoning populations of nearby mainland southern California.

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

Several special designations recognize the Islands' and surrounding ecosystems' unique value. In 1980, the United States designated both the Channel Islands National Marine Sanctuary, as well as the islands of Anacapa, San Miguel, Santa Barbara, Santa Cruz, and Santa Rosa and 125,000 acres of submerged lands surrounding them as the Channel Islands National Park. In addition, the United Nations

Educational, Scientific and Cultural Organization's (UNESCO) Man and the Biosphere Program designated the Sanctuary as a Biosphere Reserve in 1986.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

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

- a. Exploring for, developing, or producing hydrocarbons or minerals within the Sanctuary;
- b. Discharging or depositing from within or into the Sanctuary any material or other matter;
- c. Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality;
- d. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- e. Operating a vessel (*i.e.*, watercraft of any description) within the Sanctuary except fishing vessels or vessels traveling within a Vessel Traffic Separation Scheme or Port Access Route designated by the Coast Guard outside of 1 nmi from any Island;
- f. Disturbing a marine mammal or seabird by an overflight below 1000 feet;
- g. Within a marine reserve, marine park, or marine conservation area, harvesting, removing, taking, injuring, destroying, possessing, collecting, moving, or causing the loss of any Sanctuary resource, including living or dead organisms or historical resources, or attempting any of these activities;
- h. Within a marine reserve, marine park, or marine conservation area, possessing fishing gear;
- i. Moving, removing, injuring, possessing, or attempting to move, remove, injure, or possess a Sanctuary historical resource;
- j. Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary;
- k. Possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird;
- l. Marking, defacing, damaging, moving, removing, or tampering with

any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary;

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

Section 2. Consistency With International Law

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

Section 3. Emergency Regulations

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition, consistent with the Administrative Procedure Act.

Article V. Relation to Other Regulatory Programs

Section 1. Fishing

The regulation of fishing is not authorized under Article IV, except within portions of the Sanctuary designated as marine reserves, marine parks, or marine conservation areas established pursuant to the goals and objectives of the Sanctuary and within the scope of the State of California's Final Environmental Document "Marine Protected Areas in NOAA's Channel Islands National Marine Sanctuary" (California Department of Fish and Game, October 2002), certified by the California Fish and Game Commission. However, fishing vessels may be regulated with respect to discharges in accordance with Article IV, Section 1, paragraphs (b) and (c), and aircraft conducting kelp bed surveys below 1000 feet can be regulated in accordance with Article IV, Section 1, paragraph (f).

All regulatory programs pertaining to fishing, including particularly regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, shall remain in effect. All permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV. Fishing as used in this article and in Article IV includes kelp harvesting.

Section 2. Defense Activities

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

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

Pursuant to section 304(c) of the NMSA, 16 U.S.C. 1434(c), no valid lease, permit, license, approval, or other authorization issued by any federal, state, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. The Secretary of Commerce, or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Article VI. Alterations to This Designation

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

III. Summary of the Regulatory Amendments

This section describes the changes NOAA is making to the CINMS regulations.

1. Clarify and update Sanctuary boundary.

This rule clarifies that “submerged lands” are within the Sanctuary boundary, i.e., part of the Sanctuary. This updates the boundary regulation to make it consistent with the revised terms of designation. (See discussion above for more information.) This rule also clarifies the description of the shoreline boundary to make clear that the shoreline boundary is the Mean High Water Line (MHWL) of Island shores.

2. Revise oil and gas regulation, and add mineral regulation.

This rule modifies the oil and gas regulation by removing the oil spill contingency equipment requirements and modifying exceptions to this prohibition. The equipment requirements are outdated and unnecessary since Minerals Management Service lease agreement terms prescribe more stringent mandatory oil spill contingency plans.

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

3. Revise regulations on discharge/deposit.

This rule also clarifies and otherwise modifies the regulations prohibiting discharging or depositing any material or other matter as follows:

a. Clarify that the regulation applies to discharges and deposits “from within or into the Sanctuary.” Using the word “into” is intended to make clear that it applies to not only discharges and deposits originating in the Sanctuary (including from vessels in the Sanctuary), but also to, e.g., discharges and deposits from aircraft above the Sanctuary, from docks and piers extending over the Sanctuary, and from cliffs and other land adjacent to the Sanctuary.

b. Clarify that the exception for fish, fish parts, or chumming materials (bait) applies only to such discharges or deposits that were used in or resulting from lawful fishing activity within the Sanctuary and provided that such discharges or deposits are during the conduct of lawful fishing activity in the Sanctuary.

c. Remove the exception for discharging or depositing biodegradable effluents generated by meals onboard vessels. Coast Guard regulations prohibit discharge/deposit of food wastes (garbage) within three nmi and prohibit discharge/deposit of food wastes unless ground to less than one inch within three to twelve nmi. The Sanctuary regulations are modified to mirror the Coast Guard regulations within three nmi and, beyond three nmi, provide increased protection to Sanctuary resources and qualities.

d. Clarify NOAA’s original intent of prohibiting untreated sewage discharge/deposit within the Sanctuary. The exception for biodegradable effluent discharges/deposits from marine sanitation devices is now explicit in its application only to operable Type I or II marine sanitation devices approved by the United States Coast Guard in accordance with the Federal Water Pollution Control Act, as amended.

e. Prohibit discharges/deposits of treated and untreated sewage and graywater from vessels 300 gross registered tons (GRT) or greater, except oceangoing ships without sufficient holding tank capacity to hold sewage and graywater, respectively, while within the Sanctuary. Cruise ships (larger than 300 GRT) are not provided an exception and, therefore, are prohibited from discharging/depositing treated or untreated sewage and graywater in the Sanctuary.

These revisions address NOAA’s concerns about possible impacts from large volumes of sewage discharges in

the Sanctuary, whether treated or not, from large vessels (such as cruise ships). Vessel sewage discharges are more concentrated than domestic land-based sewage. They may introduce disease-causing microorganisms (pathogens), such as bacteria, protozoans, and viruses, into the marine environment (EPA 2007). They may also contain high concentrations of nutrients that can lead to eutrophication (the process that can cause oxygen-depleted “dead zones” in aquatic environments), and may yield unpleasant esthetic impacts to the Sanctuary (diminishing Sanctuary resources and its ecological, conservation, esthetic, recreational and other qualities).

Graywater can contain a variety of substances including (but not limited to) detergents, oil and grease, pesticides and food wastes (Eley 2000). Very little research has been done on the impacts of graywater on the marine environment, but many of the chemicals commonly found in graywater are known to be toxic (Casanova et al. 2001). These chemicals have been implicated in the occurrence of cancerous growths in bottom-dwelling fish (Mix 1986). Furthermore, studies of graywater discharges from large cruise ships in Alaska (prior to strict state effluent standards for cruise ship graywater discharges) found very high levels of fecal coliform in large cruise ship graywater (well exceeding the federal standards for fecal coliform from Type II MSDs). These same studies also found high mean total suspended solids in some graywater sources (exceeding the federal standards for total suspended solids from Type II MSDs). While many older ships have been modified to allow graywater retention, some must still discharge graywater directly as it is produced. Similarly, some older ships have very limited holding tank capacity for sewage. Consequently, given that many older vessels are still in operation, NOAA provides exceptions for sewage and graywater discharge from oceangoing ships without sufficient holding tank capacity to retain sewage or graywater, respectively, while in the Sanctuary.

Treated sewage and graywater discharge from small vessels, and from oceangoing ships without sufficient holding tank capacity to hold sewage and graywater while within the Sanctuary, is anticipated to have a less than significant adverse impact on the Sanctuary’s physical, biological, and esthetic resources. Most oceangoing ships have sufficient holding tank capacity to hold sewage and graywater while within the Sanctuary. As for other oceangoing ships, given the much lower

number of people on oceangoing ships (as noted in the FEIS section 3.0, on average oceangoing ships carry crews of approximately twenty people, but may range from five to fifty people), the treated sewage and graywater generated by such ships is far less in quantity as compared to that from cruise ships, and is therefore not expected to contain the larger volume of possible harmful nutrients, pathogens, and chemicals that can be found in cruise ship treated sewage and graywater.

Additional details on the potential impacts to Sanctuary resources from graywater and treated sewage discharges/deposits are provided in the FEIS.

f. Provide a definition of “graywater” that reads as follows: “Graywater means galley, bath, or shower water.” Other discharges, such as those from laundry facilities, are not included in this definition, which is based on section 312 of the CWA. In May 2006, NOAA’s proposed rule (71 FR 29096; May 19, 2006) referred to the definition of graywater codified by the CWA; however, due to comments received, NOAA added a free-standing definition for graywater, rather than referring to the CWA.

g. Adopt, for consistency purposes, in relevant part, the existing California Clean Coast Act definition of “oceangoing ship” (California Public Resources Code sec. 72410(j)). The definition of “oceangoing ship” is added to the CINMS regulations to read as follows: “Oceangoing ship means a private, commercial, government, or military vessel of 300 gross registered tons or more, not including cruise ships.”

The California Clean Coast Act definition is the same with one additional phrase at the end: “Calling on California ports or places.” The Sanctuary definition excludes this phrase since ships of this general description may traverse the Santa Barbara Channel TSS, and thereby the Sanctuary, without stopping in California ports or places.

h. Adopt a definition of “cruise ship.” The definition of “cruise ship” is added to the CINMS regulations as follows: “Cruise ship means a vessel with 250 or more passenger berths for hire.”

i. Prohibit discharging or depositing any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality. “Sanctuary resource” is defined at 15 CFR 922.3 as “any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological,

historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.” “Sanctuary quality” is defined at 15 CFR 922.3 as “any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.” This modification provides consistency with the regulatory language of other more recently designated sanctuaries, and helps to protect Sanctuary resources and qualities from negative influences originating outside the boundaries of the CINMS.

4. Clarify and update regulation on disturbing Sanctuary areas.

This rule modifies the existing prohibition against altering the seabed of the Sanctuary or constructing a structure thereon. The term “seabed” is replaced with “submerged lands” to be consistent with language used in the NMSA. In addition, this rule expands the geographic extent of this regulation from the first 2 nmi offshore to the entire area of the Sanctuary in order to ensure protection of the diverse accentuated bottom relief, varied substrate, and concomitant benthic habitats of the Sanctuary, and wording is conformed with similar regulations at more recently designated sanctuaries. Another change modifies the exception for “bottom trawling from a commercial vessel” to provide an exception for activities incidental and necessary to “conduct lawful fishing activity.” This exception encompasses other bottom-touching gear types, such as pots and traps. This change removes any uncertainty about the existing exception’s applicability to such gear types.

This rule also specifies that abandoning—by which is meant leaving without intent to remove, any structure, material, or other matter on or in the submerged lands of the Sanctuary—is prohibited. This change makes the CINMS regulations consistent with regulations at more recently designated sanctuaries and helps protect the Sanctuary from, for example, debris abandoned by Sanctuary users.

5. Modify vessel approach regulation.

NOAA also modifies the vessel approach regulation so that the prohibition against vessel operation within 1 nmi of any of the Islands also applies to all vessels 300 gross registered tons or more (excluding fishing and kelp harvesting vessels). The former regulation prohibiting vessel operation within 1 nmi of any of the Islands applied only to vessels engaged in the trade of carrying cargo and those engaged in the trade of servicing offshore installations. The intent of this modification is to protect the sensitive nearshore areas off the Islands, including kelp forests, rocky reefs, and other areas, from the potential impacts of large-vessel groundings and collisions, including, but not limited to, cruise ships. NOAA modified this prohibition to more directly address its concern that large vessels put at risk sensitive nearshore areas of the Sanctuary regardless of their purpose for operating in nearshore Sanctuary waters.

6. Clarify and update regulation on disturbing historical resources.

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

7. Prohibit take and possession of certain species.

This rule implements a new prohibition on take of marine mammals,

sea turtles, and seabirds, except as authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under one of these acts. The intent of this regulation is to bring a special focus to protection of the diverse and vital marine mammal and seabird populations and the sea turtles of the Sanctuary. This area-specific focus is complementary to the prohibitions against taking promulgated by other resource protection agencies, especially given that other federal and state authorities must spread limited resources over much wider geographic areas. This regulation is consistent with regulations for several other more recently designated national marine sanctuaries, and provides a greater deterrent due to the higher civil penalties afforded under the NMSA than the penalties provided by the MMPA, ESA, and MBTA. Further, the prohibition covers all marine mammals, sea turtles, and seabirds within or above the Sanctuary. The Sanctuary's regulations do not apply if an activity (including fishing in a federally or state-approved fishery) that results in the take of marine mammals, sea turtles, or seabirds has been authorized under the MMPA, ESA, or MBTA or an implementing regulation. Therefore, under this rule, if NMFS or the USFWS issues a permit for, or otherwise authorizes, the take of a marine mammal, sea turtle, or seabird, such taking would not be prohibited and therefore would not require a permit from the Sanctuary Superintendent unless the activity would violate another provision of the Sanctuary's regulations.

"Take" is defined in the NMSP program-wide regulations at 15 CFR 922.3.

The prohibition on take of marine mammals, sea turtles, and seabirds complements the regulation already prohibiting disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nmi of any Island. That regulation provides a special focus on a specific type of activity, operation of motorized aircraft, within the particularly sensitive environments of the Sanctuary.

This rule also prohibits possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird, except as authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA. This provision provides a greater deterrent against violations of existing laws protecting marine mammals, sea turtles, and

seabirds than that offered by those other laws alone. This provision is also consistent with NOAA's regulations for other more recently designated national marine sanctuaries and enhances protection provided by the prohibition on the take of marine mammals, sea turtles, and seabirds discussed above.

8. *Prohibit damaging signs and markers.*

This rule also prohibits marking, defacing, damaging, moving, removing, or tampering with any sign, notice or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary. This prohibition is designed to protect Sanctuary property used for purposes including demarcation, enforcement, regulatory information, education, outreach, and research. This new regulation is consistent with NOAA's regulations for other sanctuaries.

9. *Prohibit release of introduced species.*

This rule also prohibits introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity. "Introduced species" is defined to mean: (1) 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 (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. This prohibition is designed to help reduce the risk from introduced species, including but not limited to their seeds, eggs, spores, and other biological matter capable of propagating. The intent of the prohibition is to prevent injury to Sanctuary resources and qualities, to protect the biodiversity of the Sanctuary ecosystems, and to preserve the native functional aspects of the Sanctuary ecosystems, all of which are put at risk by introduced species. Introduced species may become a new form of predator, competitor, disturber, parasite, or disease that can have devastating effects upon ecosystems. For example, introduced species impacts on native coastal marine species of the Sanctuary could include: Replacement of a functionally similar native species through competition; reduction in abundance or elimination of an entire population of a native species, which can affect native species richness; inhibition of normal growth or increased mortality of the host and associated species; increased intra- or

interspecies competition with native species; creation or alteration of original substrate and habitat; hybridization with native species; and direct or indirect toxicity (e.g., toxic diatoms). Changes in species interactions can lead to disrupted nutrient cycles and altered energy flows that ripple with unpredictable results through an entire ecosystem. Exotic species may also pose threats to endangered species, and native species diversity. A number of non-native species now found in the Sanctuary region were introduced elsewhere on the west coast but have spread through accidental introductions, such as hull-fouling and ballast water discharges.

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

10. *Regulate Motorized Personal Watercraft (MPWC).*

This rule also prohibits operating a MPWC within waters of the Sanctuary that are coextensive with the Channel Islands National Park (CINP), established by 16 U.S.C. 410(ff). The CINP includes San Miguel and Prince Islands, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands, including the rocks, islets, submerged lands, and waters within one nmi of each island. For the precise coordinates and a map of the CINP, refer to the FEIS. This provision mirrors an existing National Park Service ban on use of MPWC within waters of the CINP and many other units of the National Park System, and is intended to provide added deterrence for purposes of ensuring protection of the Sanctuary's sensitive nearshore marine wildlife and habitats. The CINP staff have observed an increase in use of MPWC within the park over the last several years, and park staff issue several dozen warnings per year for violation of this ban. For

consistency (including enforcement), this rule adopts the National Park Service definition of MPWC (36 CFR 1.4(a)) for the Sanctuary, which reads as follows:

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

MPWCs operate in a manner unique among recreational vessels and pose a threat to wildlife. Their shallow draft enables them to penetrate areas not available to conventional motorized watercraft (NPS 2000, MOCZM 2002). The high speed and maneuverability of MPWCs, along with the tendency to operate them near the shore and in a repeated fashion within a confined area, results in recurring disturbance to animals and habitats (Rodgers and Smith 1997, Snow 1989). Studies have shown that the use of MPWCs in nearshore areas can increase flushing rates, reduce nesting success of certain bird species, impact spawning fish, and reduce fishing success (Burger 1998, Snow 1989). The National Park Service (2000, 2004) identified several of these impacts along with interruption of normal activity, avoidance and displacement, loss of habitat use, interference with movement, direct mortality, interference with courtship, alteration of behavior, change in community structure, elevated noise levels, and damage to aquatic vegetation. Further, offshore marine mammals or surfacing birds may be unaware of the presence of these vehicles due to their low frequency sound; when the inability to detect the vehicles is combined with their high speed and rapid and unpredictable movements, both animals and operators are at risk (Snow 1989).

MPWC manufacturers have made efforts to reduce emissions and noise through use of more efficient four-stroke engines as well as other technology (e.g., Bombardier Recreational Products, Inc. 2005a, 2005b; Personal Watercraft Industry Association 2005). However, it is not clear that such improvements have rendered MPWC-caused wildlife disturbance impacts insignificant. While

industry sponsored studies indicate that MPWCs are no louder than similar motorized vessels under analogous conditions, other studies indicate that because MPWCs often travel repeatedly in the same area, continually leaving and reentering the water, they can create rapid cycles of noise that disturb humans and wildlife (MOCZM 2002). Industry improvements in noise and other emissions do not address impacts associated with the high speed, maneuverability, shallow draft, and nearshore operation of MPWC.

The area within one nmi of island shores experiences the greatest visitor use and impact to sensitive nearshore Sanctuary marine resources. The new provisions implemented through this final rule serve as an added deterrent to illegal MPWC use within the nearshore area and other waters of the Channel Islands National Park.

11. *Revise regulation on military activities.*

This rule modifies regulations stating that all activities currently (*i.e.*, at the time of designation in 1980) carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions contained within the other Sanctuary regulations. As part of this modification, the list of exempt military activities occurring within the Sanctuary is updated to include present military activities if specifically identified in the Final Environmental Impact Statement (FEIS) for this rule. In addition, the rule adds language consistent with the NMSA, stating that mitigation and restoration or replacement of Sanctuary resources and qualities is required when Department of Defense activity results in their injury, destruction, or loss. All Department of Defense activities are required to be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

This rule also adds one exception pertaining to vessels of the Armed Forces to the two discharge/deposit regulations discussed earlier. Namely, an exception is made for discharges allowed under section 312(n) of the Federal Water Pollution Control Act. Section 312(n), which was enacted in 1996, provides for uniform national standards for discharges, other than sewage, incidental to normal operation of vessels of the Armed Forces.

12. *Revise permit regulations.*

This rule also modifies the Sanctuary's permit regulations by: (a) Augmenting and clarifying the list of activities for which the Director of

NOAA's ONMS (Director)² may issue a permit; (b) clarifying which prohibitions are eligible for a permit from the Director for the conduct of a particular activity; (c) expanding and clarifying the criteria the Director must use in reviewing permit applications; (d) clarifying the application requirements for permits; and (e) requiring that all permittees hold the United States government harmless against claims arising from permitted activities.

The modifications clarify that the Director may issue permits for salvage activities pertaining to both abandoned shipwrecks (invoking maritime heritage resource protection concerns) and recent air or marine casualties (invoking prompt response concerns). The modifications also allow the Director to issue permits for activities that would assist Sanctuary management, but that do not fall into the categories of research, education, or salvage. For example, the Director may issue Sanctuary management permits for activities such as repairing or replacing piers that help facilitate Sanctuary operations. The updated list of otherwise prohibited activities that may be conducted pursuant to a permit is necessary given the addition of several new prohibitions and the recent addition of marine reserves and conservation area regulations, and given the need to specify those activities for which a permit may in no circumstances be granted.

The modifications to the permit regulations also strengthen and augment the criteria that the Director must consider when evaluating permit applications. The modifications now expressly indicate to prospective permit applicants what type of information they are required to include in their application. The modifications also modernize the permit regulations by expressly requiring that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

In summary, the overall intent of the revised permit regulations is: To clarify, standardize, and make express the permit requirements and procedures, rendering them easier for permit applicants to comply with and for the Director and Sanctuary staff to implement; to ensure that permitted projects are appropriate for the Sanctuary; and to provide a mechanism for issuing permits for activities that

² The Director has delegated the responsibility for the review of most permit applications and the decision making for most permits to the Sanctuary Superintendents.

may further Sanctuary management but would otherwise be prohibited.

13. Make non-substantive revisions to regulations on marine reserves and conservation areas.

This rule makes non-substantive revisions to the regulations on marine reserves and conservation areas to remove some unnecessary language and to better integrate the regulations with the rest of the CINMS regulations.

IV. Response to Comments

This section provides NOAA's response to comments received between May and July 2006 on the proposed rule and during two hearings on the proposed rule and associated DEIS, and to comments received between March and May 2008 on a second proposed rule and associated supplemental DEIS (or SDEIS). NOAA received over 700 comments on the DEIS, SDEIS, and proposed rules. NOAA summarized the comments according to the content of the statement or question put forward in the letters, emails, and written and oral testimony at the public hearings on this action because many of the comments touched upon the same or similar issue and could be answered with one response.

Abandoning Matter

Abandoning Matter—Fishing Gear

1. Comment: The proposed prohibition on abandoning is too broad and may cause an unnecessary burden on existing lawful fishing activities by appearing to render illegal the inadvertent loss of fishing gear. The proposed regulation should clarify the specific materials and situations prohibited, or exempt fishing gear lost during lawful fishing operations—if the owner or operator attempts to recover the gear with the equipment available to them at the time of the loss.

Response: In the rule's summary of regulatory amendments, NOAA has stated that "abandoning" refers to "leaving without intent to remove." NOAA is not providing an exception for lost fishing gear. However, NOAA would consider the efforts made by fishermen to retrieve any deployed fishing gear in determining whether the loss of fishing gear constituted the abandonment of matter on or in the submerged lands of the Sanctuary.

Abandoning Material—General

2. Comment: The abandoning prohibition is overly broad and could be a detriment to safety of life at sea in that the threat of penalty may cause a master to delay abandonment of his sinking vessel beyond what is prudent and

which could result in unnecessary loss of life. This section of the regulations should be much more narrowly drafted to allow for a master's judgment in extremis.

Response: The regulation includes an exception for "an activity necessary to respond to an emergency threatening life, property, or the environment."

Abandoning Matter—Abandoned Vessels vs. Historical Resources

3. Comment: The proposed abandoning prohibition eliminates continuation of a historic record by making it illegal to leave historic vessels in the Sanctuary after they have sunk. NOAA should establish guidelines delineating the difference between an abandoned vessel and an historical or archaeological resource.

Response: NOAA does not automatically consider newly sunken vessels as historical resources to be protected. The extent to which removal of a sunken vessel would be required is based on several factors, including guidelines set by National Historic Preservation Act (NHPA) criteria (16 U.S.C. 470 *et seq.*) for determining historical significance.

Acoustic Impacts

Acoustic Impacts—General Action Recommendations

4. Comment: The FMP's Resource Protection Action Plan should include an acoustics strategy that identifies underwater noise as an issue, explains potential sources of noise (*e.g.*, seismic testing and sonar) and their effects on marine life, and explains NOAA's plans for noise evaluation and response in the Sanctuary.

Response: The FMP's Resource Protection Action Plan identifies human-induced acoustic impacts as a resource protection issue, explains potential sources of noise and their potential effects on marine life, and explains how NOAA is evaluating and responding to this issue in the Sanctuary.

5. Comment: Given increasing shipping traffic and its associated noise in the CINMS region, the FMP's Conservation Science Action Plan should provide strategies for tracking and/or quantifying vessel traffic through the Sanctuary and, if needed, mitigating or minimizing ship noise.

Response: NOAA has added to the FMP's Conservation Science Action Plan a new Strategy CS.8 on Automated Identification System (AIS) Vessel Tracking. This strategy explains NOAA's long-term plan for large vessel tracking within and around the

Sanctuary. See also FMP Strategy CS.3 for related information on acoustic monitoring in the Sanctuary, and the FMP's Resource Protection Action Plan (Description of the Issues) for related information on addressing human-induced acoustic impacts.

6. Comment: CINMS should formally consider energetic discharges from human activities as pollutants in the same manner in which organic and chemical discharges are considered. Several precedents for this already exist, including California state law (the California Thermal Plan), federal law (the Clean Water Act), and international law (UN Convention on the Law of the Sea).

Response: While NOAA does not consider noise discharge as a "pollutant," any impacts resulting from noise on marine mammals and other endangered species are regulated under the Marine Mammal Protection Act and the Endangered Species Act. At this time, NOAA believes these measures are sufficient to address the threat of human-induced sound on these sensitive species.

7. Comment: NOAA should establish a voluntary "speed limit" for commercial ship traffic passing through or near the Sanctuary during blue and fin whale inhabitation to reduce the noise impacts on these species.

Response: Since 2007, NOAA and the U.S. Coast Guard have issued Local Notices to Mariners containing a request that large vessels transiting the Santa Barbara Channel voluntarily reduce their speed to ten knots or less when aggregations of large cetaceans are present. NOAA and the U.S. Coast Guard may issue future notices as conditions warrant them. Although the rationale for these notices is to help reduce the risk of ship strikes on whales, ancillary benefits of reduced ship speeds generally include reduced vessel noise.

8. Comment: NOAA should consult with the Minerals Management Service (MMS) on future proposed seismic survey activities in the Channel and with the Navy to ascertain the likelihood of any active sonar exercises in range of the CINMS to ensure they cause minimal disruption to the migration or reproduction of Sanctuary species.

Response: Section 304(d) of the NMSA requires any federal agency to consult with the NMSP on activities that are likely to destroy, cause the loss of, or injure any Sanctuary resource (whether or not those activities are conducted within a national marine sanctuary). This would of course apply to both seismic and sonar activities.

Furthermore, regarding seismic activities within the Sanctuary, CINMS regulations prohibit exploring for, developing, or producing hydrocarbons.

Acoustic Impacts—Regulations

9. *Comment:* NOAA should create CINMS noise regulations and/or ban sonar testing to help protect Sanctuary wildlife, and/or make the enter-injure clause of the discharge regulation applicable to noise pollution.

Response: NOAA and its partners are researching underwater noise in the Sanctuary. Currently, the available site-specific acoustic data is insufficient to justify the need for more stringent regulations on underwater noise than those promulgated by NMFS pursuant to the Marine Mammal Protection Act (MMPA; 50 CFR 216.101–216.108 *et seq.*). Except in a small grandfathered lease area, CINMS regulations preclude seismic exploration for hydrocarbons within the Sanctuary, as they prohibit exploring for, developing, or producing hydrocarbons within the Sanctuary. Any activities that may exceed a certain noise threshold are subject to rigorous review under NMFS' MMPA authority, which includes mitigation measures when deemed necessary.

While NOAA is not pursuing special noise regulations for CINMS at this time, NOAA will continue to use its authority under section 304(d) of the NMSA (16 U.S.C. 1434(d)) to help protect marine mammals from the impacts of noise. Section 304(d) of the NMSA requires any federal agency to consult with the NMSP on activities that are likely to destroy, cause the loss of, or injure any Sanctuary resource. This consultation requirement requires NOAA to provide recommendations to these agencies to protect Sanctuary resources, including marine mammals. If an agency fails to follow a recommendation and its action results in injury to a Sanctuary resource, the agency must restore or replace the Sanctuary resource. In addition, if a noise-producing project is not authorized by NMFS under its MMPA authority and harms marine mammals within the Sanctuary, the CINMS's new regulation prohibiting the take of marine mammals, sea turtles, and seabirds would apply.

10. *Comment:* NOAA staff should advocate for domestic and international attention to and action on the current gaps in understanding and regulation of underwater noise.

Response: As a federal agency, under federal law NOAA staff may not advocate for legislative action. However, research and monitoring on underwater noise in the Sanctuary is shared within

NOAA and as such can influence Executive Branch actions and decision-making related to this issue. NOAA staff also help raise international attention to noise impacts by participating in and sharing knowledge at conferences on this issue. For example, NOAA sponsored a symposium with the shipping industry on the topic of ship-quieting technology in 2004, and again in May 2007.

Acoustic Impacts—Research and Monitoring

11. *Comment:* The FMP should explain NOAA's plans for noise research and monitoring in the Sanctuary, which should include: Promoting research on anthropogenic noise impacts on Sanctuary resources; documenting and improving understanding of Sanctuary baseline and new acoustic conditions; identifying significant sources and levels of noise within the Sanctuary; and promoting dialogue and collaboration between the Sanctuary, the shipping industry, and other relevant regional and national agencies.

Response: Increasing research efforts, such as those recommended within the National Academies' National Research Council's recent reports on the impacts of noise on marine mammals, will assist NOAA in continuing to evaluate the agency's management responses to this issue. NOAA has revised the FMP's Conservation Science Action Plan to include details on current and potential future acoustic research and monitoring plans in the CINMS. In addition, NOAA has addressed promoting dialogue and collaboration between relevant agencies and the shipping industry in the Resource Protection Action Plan (see the Description of the Issues section on Human-induced Acoustic Impacts). NOAA's Acoustics Program, based at the NOAA Headquarters Office, is investigating all aspects of marine animal acoustic communication, hearing, and the effects of sound on behavior and hearing in protected marine species. For additional information, see <http://www.nmfs.noaa.gov/pr/acoustics/>.

12. *Comment:* The FMP's Conservation Science Action Plan should include a "stranding strategy" for addressing potential noise induced marine mammal stranding events. It should address: Funding, monitoring, data reporting (including from stranding, necropsies, and noise events), and public involvement.

Response: NOAA has not added a stranding strategy to the Conservation Science Action Plan. However, the Resource Protection Action Plan

(Description of the Issues section on Marine Mammal Strikes) describes CINMS's role in responding to and reducing the risk of future stranding events (e.g., those caused by ship strikes) in the Sanctuary. The Action Plan reflects that in 2008, CINMS, NMFS, and the U.S. Coast Guard, with input from the Sanctuary Advisory Council, developed a Prevention and Emergency Response Plan for Reducing Ship Strikes on Blue Whales and Other Large Cetaceans in the CINMS and Santa Barbara Channel. This prevention and response plan helps NOAA and the U.S. Coast Guard respond to stranding events and helps the agencies coordinate with partners authorized to assist including the Santa Barbara Museum of Natural History, and the Santa Barbara Marine Mammal Center. NMFS manages marine mammal stranding events and administers the Marine Mammal Stranding Network program. This program addresses funding for stranding teams, monitoring marine mammal stranding events, reporting on stranding causes (including those from acoustics), and managing public involvement in necropsies. In addition, NMFS administers the Marine Mammal Protection Act and Endangered Species Act, and would be responsible for acquiring information on all possible causes of stranding events. With regard to monitoring for stranding events, the Sanctuary's Aerial Monitoring and Spatial Analysis Program (SAMSAP) provides an important stranding detection capability that provides important information for estimating time and location of a large whale mortality. SAMSAP also provides details that can be used by NMFS to coordinate a stranding response, including a necropsy, if possible and appropriate, to determine the cause of death.

13. *Comment:* NOAA should incorporate into the Conservation Science Action Plan the Advisory Council acoustic report's research and monitoring recommendations.

Response: NOAA has incorporated the report by referencing it and a summary of its findings in the FMP Resource Protection Action Plan's Description of the Issues section. Additionally, a description of acoustic monitoring, which was recommended in the report, has been added to the Conservation Science Action Plan's list of monitoring activities CINMS intends to support (Strategy CS.3). NOAA has also referred to specific research and monitoring recommendations within relevant activities in strategies CS.3, and CS.8.

Aerial Monitoring

14. *Comment:* The Sanctuary Aerial Monitoring and Spatial Analysis Program (SAMSAP) program should be explicitly linked to the Conservation Science Program so that SAMSAP's capabilities can be analyzed with respect to more specific science and monitoring needs. For example, SAMSAP could provide a current spatial dataset depicting marine mammal and bird hotspots, and areas of concentrated use of large vessels, personal watercraft, squid boat lighting, sources of major acoustic emanations, etc.

Response: In the past, due to limited resources, SAMSAP has been predominantly a data collection program with only limited analyses taking place on an as-needed and time allowed basis. Since the draft management plan was released, NOAA has devoted more resources to SAMSAP and in depth analyses are taking place with both recently collected data and the full SAMSAP historical database. For example, NOAA analyzed SAMSAP vessel traffic data used in socioeconomic impact studies related to marine zoning. NOAA is also analyzing changes in visitor use patterns, and in partnership with the Scripps Institute of Oceanography is combining data from SAMSAP, acoustic monitoring, and the regional Automated Identification System (which tracks vessel traffic) to study the impacts of vessel traffic noise on large cetaceans. Given available funding and resources, SAMSAP will continue to be increasingly used as a tool to assist in implementation of the strategies in the FMP's Conservation Science Action Plan.

Aircraft

15. *Comment:* NOAA should remove the language regarding disturbing seabirds or marine mammals from the prohibition on disturbing seabirds or marine mammals via operating aircraft below 1000 ft within one nmi of the Islands, thereby prohibiting the activity itself without the enforcement challenge of proving disturbance.

Response: NOAA is currently consulting with the Federal Aviation Administration, the primary agency of the U.S. Government with authority to regulate safe and efficient use of U.S. airspace, to determine the best approach to regulating impacts of aircraft on Sanctuary resources. If removing the language in the referenced prohibition is determined to be appropriate, NOAA will revise its regulations accordingly.

16. *Comment:* NOAA should justify the one nmi limitation for the overflight

disturbance regulation based on information about the location and seabird and marine mammal concentrated use areas within the Sanctuary (such as emergent rocks). If one of the purposes of limiting overflights is to protect seabirds and marine mammals, it would seem that they will be impacted beyond one nmi of the Islands and the regulation should apply to the entire Sanctuary.

Response: Some small offshore rocks beyond one nmi from San Miguel Island and Santa Rosa Island are emergent during lower periods of the tidal cycle. However, the presence of these rocks is ephemeral because most are submerged during the remainder of the tidal cycle, some are consistently awash from wave action, and others may be completely submerged during neap tide cycles when tides are relatively weak. Hence, the role of such rocks as nesting, breeding, or permanent haul out habitat is limited. Low aircraft overflights (below 1000 feet) within these more remote offshore areas is limited, and NOAA does not at this time regard these areas as needing the specific protection provided by this regulation. However, all aircraft flight is also subject to the prohibition on unauthorized take of marine mammals, sea turtles and seabirds (Prohibition 7), which applies throughout the entire Sanctuary.

Alternative Energy

17. *Comment:* NOAA should include in the FEIS a description of the Energy Policy Act of 2005.

Response: NOAA has added information about the Energy Policy Act of 2005 to the FEIS cumulative effects section, and to the FEIS discussion of federal law pertaining to offshore energy sources and mineral exploration and development.

Aquaculture

18. *Comment:* The FMP must provide clear, specific, strategic guidelines to CINMS staff to carry out resource protection responsibilities with regard to open finfish aquaculture, including consulting with prospective fish farm operators and permitting agencies, and maintaining adequate enforcement effort to ensure that offshore aquaculture activities, even if located outside Sanctuary boundaries, do not violate CINMS regulations such as the discharge prohibition's "enter-and-injure" clause, and the prohibition on introduction of species.

Response: The FMP does not contain guidelines dedicated to aquaculture. However, a number of management tools already in place, such as the permit process and consultation

requirements, provide CINMS staff with a robust means of addressing any potential issues regarding open ocean finfish aquaculture in the Sanctuary. In addition, CINMS existing regulations prohibit, for example, discharges in the Sanctuary, and the new regulations prohibit introduced species into the Sanctuary. If offshore aquaculture activities are proposed in the Sanctuary region, NOAA's ONMS and NMFS would work closely with the California Coastal Commission, California Department of Fish and Game, and other relevant regulatory agencies on analyzing the associated potential impacts and their effects on the Sanctuary. NOAA will also use the Sanctuary Advisory Council's 2007 report and recommendations on open ocean aquaculture, in support of any future management decisions on this issue in the Sanctuary. Regarding maintaining enforcement effort, see the responses to comments 118 and 120.

19. *Comment:* NOAA should develop management strategies for addressing and mitigating potential impacts from aquaculture on the Sanctuary's marine resources. NOAA should also analyze the adverse impacts to marine resources and water quality from finfish aquaculture farms, including genetic pollution from escaped fish, the introduction and propagation of fish diseases and parasites, the discharge of nutrients, antibiotics and other chemicals, the use of anti-predation devices and the potential for space conflicts with existing commercial and recreational activities.

Response: NOAA will continue to track the wide range of research projects (and their associated results) currently underway along the west coast of the United States and elsewhere analyzing the impacts of aquaculture. NOAA would apply the results from these research efforts, as necessary and appropriate, in decisions it may make regarding any future aquaculture activities in the Sanctuary. Regarding management strategies for addressing potential impacts from aquaculture, see the response to comment 18.

Artificial Reefs

20. *Comment:* The prohibition on altering the seafloor may conflict with existing artificial reef programs if the Sanctuary is extended to the mainland coast.

Response: NOAA is not making any changes to the CINMS boundary at this time. The prohibition on altering submerged lands of the Sanctuary precludes installation of an artificial reef without a CINMS permit. Proposals to construct artificial reefs in CINMS

will be considered, as before, in accordance with the "Policy Statement of the National Marine Sanctuary Program: Artificial Reef Permitting Guidelines." CINMS permit regulations would require an NMSP determination that any proposed artificial reef: (a) furthers the understanding of Sanctuary resources and qualities; (b) furthers the educational value of the Sanctuary; (c) furthers salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; (d) assists in the management of the Sanctuary; or (e) furthers salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary. For more information on the procedures and issuance criteria for Sanctuary permits, see 15 CFR part 922.

21. *Comment:* NOAA should prohibit rigs-to-reefs projects within Sanctuary waters, and should consult with project applicants and permitting agencies before such projects are allowed outside Sanctuary boundaries if they have any potential to negatively affect Sanctuary resources.

Response: Because there are both a national policy guiding the consideration of artificial reefs and other CINMS regulations relevant to artificial reefs in the Sanctuary (see the response to comment 20), NOAA is not specifically addressing rigs-to-reefs projects in the CINMS regulations. In addition, there are currently no oil platforms in the Sanctuary. If in the future an applicant proposes a rigs-to-reefs project outside the Sanctuary, CINMS staff would consult with all relevant permitting agencies as part of the process to best understand any potential impacts to the Sanctuary from such a proposal. Federal agency actions, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure a Sanctuary resource are subject to consultation with NOAA per section 304(d) of the NMSA.

22. *Comment:* NOAA should provide an exception to the abandoning prohibition for materials intended to be used for artificial reefs, especially if subsequent Sanctuary boundary changes cause an existing platform(s) on the Pacific OCS to be included within the Sanctuary.

Response: As explained in the response to comment 20, NOAA has developed Artificial Reef Permitting Guidelines. At this time, NOAA is not adding a reef materials exception to the regulation on abandoning matter in the Sanctuary because NOAA prefers to evaluate the efficacy of artificial reef proposals on a case-by-case basis rather than to provide a blanket exception that

would allow any artificial reef project anywhere within the Sanctuary.

Boundary Evaluation

23. *Comment:* The FMP/FEIS should be updated to note that the Biogeographic Assessment has been completed, and should also explain that the assessment ranked boundary concept 1 first for ecological significance, and boundary concept 2 second.

Response: Text on the completion of the Sanctuary's biogeographic assessment has been added to the FMP's Boundary Evaluation Action Plan, the FMP's Appendix D, and the Introduction of the FEIS. For details about the findings of the assessment, including details about the various boundary concepts and their rankings, see <http://ccma.nos.noaa.gov/products/biogeography/cinms/>.

24. *Comment:* Boundary Concept 1 best meets the goals and objectives of the National Marine Sanctuaries Act and the CINMS, is the only one that truly meets the ecosystem protection goals of the Act, provides clear and effective management, facilitates increased public participation and support for the Sanctuary, provides more meaningful education and research about marine resources and habitats, ensures greater protection from harmful impacts, provides a coastal interface that is part of the Channel Islands ecosystem, provides additional protection from offshore oil and gas development, and will result in partnerships that will increase marine resource and water quality protection.

Response: As stated in the FMP's Appendix D ("Supporting Information on Boundary Evaluation"), NOAA is not considering any changes to the CINMS boundary as part of this management plan review. However, NOAA will further analyze the boundary concepts in a separate process sometime in the future. This process will include public review and comment in accordance with legal requirements.

25. *Comment:* NOAA should begin the environmental review process for boundary change alternatives now or as soon as the management plan process is finalized.

Response: As indicated in the FMP's Boundary Evaluation Action Plan, NOAA will further analyze the boundary concepts in a future environmental review process.

26. *Comment:* NOAA might garner a lot more support for Sanctuary boundary expansion by proposing to limit oil and gas activities while supporting pre-existing, sustainable, commercial and recreational uses, as

opposed to re-allocating the natural resources within the Sanctuary.

Response: When NOAA considers Sanctuary boundary expansion, it will evaluate a wide variety of potential threats to and uses of Sanctuary resources, as well as various management measures that best address these issues. When designating new or expanding existing sanctuaries, NOAA will evaluate oil and gas development, as well as other commercial and recreational uses. NOAA will consider the impacts of these uses on Sanctuary resources, as well as the impacts of CINMS management measures on users.

27. *Comment:* During the future consideration of CINMS boundary expansion, NOAA should allow for enough public review of this action to encompass two meetings of the Pacific Fishery Management Council (PFMC) and allow for full PFMC deliberation and comment development.

Response: NOAA is aware of the PFMC decision-making process and will consider providing a public review period that encompasses two PFMC meetings.

28. *Comment:* NOAA should address the fact that industrialized uses could have the prospect of limiting boundary expansion.

Response: NOAA believes it is premature to include in the FMP and FEIS conclusive statements about how CINMS boundary alternatives and industrialized uses may relate to one another. NOAA will analyze the relationship between industrialized uses and Sanctuary boundary alternatives in a future environmental review process.

29. *Comment:* NOAA should indicate the number of comments received that were not in favor of boundary expansion.

Response: NOAA has revised text in the FMP to indicate the number of scoping comments received that did not support an expanded Sanctuary boundary.

30. *Comment:* The NCCOS Biogeographic study should not be described as providing any new information about marine species because it using existing information.

Response: Although new data was not collected for the NCCOS biogeographic study, it integrated data sets from various sources and provided new statistical and spatial analyses that characterize biological and oceanographic patterns of the Channel Islands marine region.

31. *Comment:* If incorporation of biodiversity and protection of entire ecosystems is a goal in boundary reformulation, then the boundaries should be extended because they do not

correspond well to existing marine ecosystem extents.

Response: Once NOAA determines that an evaluation of the CINMS boundary is appropriate, several factors will be incorporated into the associated environmental analysis, including the spatial extent of regional ecosystems and areas of complex biodiversity.

Chumash

Chumash—General

32. *Comment:* NOAA should add to the management plan information about the spirituality and spiritual energy of the Channel Islands, and the Chumash connection to surrounding waters.

Response: NOAA has added text to the FMP Human Setting section, the FMP Maritime Heritage Resources Action Plan, and the FEIS Affected Environment/Maritime Heritage Resources section to emphasize the spiritual significance of the Channel Islands to Chumash people.

33. *Comment:* Members of the Chumash community, not NOAA, should initiate any joint paddling excursions directly with the Makah Nation.

Response: NOAA has revised the FMP's Maritime Heritage Action Plan to clarify that NOAA's intent is not to initiate paddling excursions, but rather to support such excursions initiated by Chumash and other partners.

34. *Comment:* Information about submerged Chumash cultural resources should be referenced to and provided by Chumash scholars and Chumash people.

Response: In the FMP and FEIS, NOAA has upheld the standard of using the best available scientific information, including the best available anthropological and archeological information regarding submerged Chumash cultural resources. CINMS staff consulted with a Chumash community member and expert to improve referencing and ensure accuracy.

35. *Comment:* It is important that DMP p. 28 states that, "Archaeologists suggest the Sanctuary may have once been the site of Chumash villages * * *," because there are sites now submerged due to changing sea level.

Response: Comment noted.

36. *Comment:* The management plan should explain how Chumash people are involved in monitoring artifacts, and what federal, state and local regulations pertain to Chumash monitoring of artifacts.

Response: NOAA has added an activity to FMP Strategy MH.4 that describes how the NOAA will consult with the Sanctuary Advisory Council

and ask for the assistance of its Chumash Community Working Group in clarifying existing requirements and discussing best practices regarding protection and handling of Chumash artifacts.

37. *Comment:* NOAA should increase funding and planned efforts for Strategy MHR.6 on Promoting Public Education of Chumash Native American History.

Response: NOAA will continue to contribute staff time and vessel support toward the implementation of this Strategy (now referred to as MH.6), and will continue to support the Sanctuary Advisory Council's Chumash Community Working Group. NOAA will allocate additional resources as funding allows.

38. *Comment:* NOAA should hire Chumash staff to properly implement the Maritime Heritage Resources Action Plan.

Response: Should NOAA add any new staff positions at CINMS, such positions must be open to all qualified individuals. In addition, NOAA encourages individuals from all local communities to participate in the Sanctuary's Maritime Heritage Resources Volunteer Program (see strategy MH.2).

39. *Comment:* NOAA should establish an internship for Chumash high school and/or college students.

Response: NOAA initiated a Chumash internship at the Sanctuary in 2008. NOAA values this internship for improving coordination and partnership building between CINMS and the Chumash community, and as a means to introduce Chumash students to marine conservation education and resource protection professions. NOAA looks forward to continuing the internship as resources allow.

40. *Comment:* NOAA should separate shipwreck information from Chumash cultural information in the Maritime Heritage Resources Action Plan.

Response: The majority of the strategies contained in this action plan bear relevance to researching, protecting, and conducting outreach and education not only on shipwrecks, but also on Chumash cultural sites and artifacts. However, given that NOAA regards Chumash culture, past and present, as a special part of the Sanctuary's maritime heritage, the FMP's planned activities to support education about Chumash heritage are contained in a separate strategy.

41. *Comment:* A cave in Oregon has been recently determined to house the oldest human remains found in North America; therefore the reference to Santa Rosa Island as such should be revised.

Response: NOAA has revised FMP and FEIS text accordingly.

Chumash—Inclusion Across Tribal, Political, and Social Groupings

42. *Comment:* The documents should reflect that there are many Chumash tribal, political and social groupings. The Chumash Maritime Association should not be the only Chumash group considered in DMP Strategy MHR.6 activities on Promoting Public Education of Chumash Native American History.

Response: NOAA has added information about various Chumash bands, tribal, political, and social groupings to the FMP Human Setting section, and elsewhere within the FMP/FEIS documents. NOAA has listed the Sanctuary Advisory Council's Chumash Community Working Group as the Chumash community partner in Strategy MH.6 activities. The Chumash Community Working Group is open to membership from the entire Chumash community, and its purpose is to advise the Sanctuary Advisory Council, and in turn the Sanctuary, regarding matters related to the Chumash community. NOAA has also replaced the detailed activity and program ideas within MH.6 with a new activity that outlines a plan to work with the Chumash community (via the Chumash Community Working Group) to identify mutual objectives for supporting public education about Chumash heritage.

43. *Comment:* NOAA should explore a government-to-government relationship with the Chumash.

Response: As the Santa Ynez Band of Chumash Indians is a federally recognized tribe, any interaction between the Santa Ynez Band and NOAA occurs in the context of a relationship between two government entities, and within the limits of the Santa Ynez Band's and the Sanctuary's respective jurisdictions and authorities.

Chumash—Language Revisions

44. *Comment:* Portions of the Draft Management Plan should be rewritten, especially under the Maritime Heritage Resources Action Plan, because the text contains many examples of "word and meaning biases and conflicts." NOAA should work collaboratively with the Chumash before developing the final versions of the documents.

Response: Although the Sanctuary Advisory Council's Chumash Community Working Group was not available for meetings during the time the final text was being prepared, CINMS staff consulted with a Chumash community member and expert and have worked to fully respond to the

Chumash community comments received. NOAA looks forward to continuing to partner with the Chumash community on implementation of activities described within the FMP.

45. *Comment:* The Draft Management Plan contains several examples of culturally biased language creating the perception of diminished Native Chumash history, presence, participation and responsibility, and some of the language conveys a patriarchal nature of the relationship between the NOAA and the wider Chumash community. It brings an otherwise unaware reader to the conclusion that the Sanctuary is in the role of a necessary savior of native Chumash traditions and teachings.

Response: Text in the DMP was crafted to indicate that NOAA's role will be one of assisting, supporting, and helping in Chumash efforts aimed at cultural revitalization that also align with the mission of the CINMS. NOAA staff have consulted with a Chumash community member and expert and have worked to fully respond to the Chumash community comments received, including by clarifying CINMS's intended role as a supporter of Chumash initiated efforts in supporting public awareness and understanding of Chumash heritage. NOAA looks forward to continuing to partner with the Chumash community on implementation of activities described within the FMP.

46. *Comment:* A reference to educating Chumash community members on such topics as respectful gathering skills reflects a sense of arrogance and difference in world view. No matter who NOAA partners with, it cannot teach me to be respectful.

Response: Text in the DMP (strategy MHR.6, activity 3) indicated that the CINMS role in this activity would be to help the Chumash Maritime Association and Chumash Community Working Group provide education and outreach opportunities for the larger regional community regarding Chumash and environmental issues. The text also indicated that this program would be designed primarily for Chumash people to educate their fellow Chumash and others about Chumash heritage. However, in an effort to ensure broader Chumash community input NOAA has replaced this specific activity in FMP strategy MH.6 with activities that now describe a process for working together to identify mutual education and outreach objectives.

47. *Comment:* NOAA should revise text that refers to "descendants of" Chumash, since such people identify

themselves as Chumash, not descendants.

Response: NOAA has replaced references to "descendants of Chumash" with "Chumash."

48. *Comment:* The DMP's description (at Part II-C, The Human Setting) of the importance of the Channel Islands and surrounding waters to humans for thousands of years is confusing and unclear.

Response: NOAA has revised this text within the FMP's section II-C. See also the response to comment 44 for information on NOAA's efforts to develop Chumash related text.

49. *Comment:* NOAA should add information about the forced relocation of Island Chumash people.

Response: NOAA has added information to the FMP Human Setting section, the Maritime Heritage Resources Action Plan's Description of the Issues section, and the FEIS Affected Environment/Maritime Heritage Resources section about forced relocation of island Chumash to the mainland. See also the response to comment 44 for information on NOAA's efforts to develop Chumash related text.

50. *Comment:* The MHR Action Plan refers to "Native American Artifacts," but the artifacts are specific to the Chumash people.

Response: NOAA has changed the text referring specifically to Native American artifacts found in the Channel Islands to refer to such artifacts as Chumash Native American artifacts.

51. *Comment:* Text about Juan Rodriguez Cabrillo's voyage of discovery (1542-1543) improperly suggests that Cabrillo "discovered" the already inhabited Channel Islands.

Response: Although the text did not state that Cabrillo discovered the Channel Islands, NOAA recognizes that the reference to Cabrillo's "voyage of discovery" could be construed to mean this, and as such NOAA has revised the text accordingly.

52. *Comment:* NOAA should revise text that refers to Chumash people in the past tense, because there has been no discontinuation of the Chumash people. NOAA should also revise Strategy MHR.6 title, "Promoting Public Education of Chumash Native American History," by removing the word "history."

Response: NOAA made a directed effort to refer to contemporary Chumash in the DMP and DEIS, and to ensure that there are no improper references to Chumash people in the past tense within the FMP and FEIS. See also the response to comment 44 for information on NOAA's efforts to develop Chumash related text. Regarding the title of

Strategy MH.6, NOAA has changed the strategy title and text, which now describe the Sanctuary's efforts to support public education of Chumash Native American maritime heritage.

Civil Penalties

53. *Comment:* The NMSP is positioning itself for growth in any way that it can, including by gaining the ability to assess new civil penalties. Current law prohibiting certain activities does not provide the potential of financial benefit for the CINMS.

Response: NOAA has maintained the authority to assess civil penalties for violations of CINMS regulations since those regulations took effect in the early 1980s. Congress defines the parameters of civil penalties during the authorization and subsequent reauthorization of the NMSA. The actual penalties levied for violations vary in proportion to the severity of the incident and other case-specific factors. NOAA is issuing this final rule to provide NOAA enforcement officers and enforcement partners with enhanced regulatory tools designed to improve protection of Sanctuary resources.

Designation TERMS

54. *Comment:* NOAA should not make the proposed changes to the Sanctuary's designation document, because they are unnecessary and NOAA has not followed the procedures required for granting CINMS new regulatory authority.

Response: In accordance with section 304(a)(4) of the NMSA (16 U.S.C. 1434(a)(4)), the terms of designation of a sanctuary include: (1) The geographic area included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and (3) the types of activities that will be subject to regulation by the Secretary to protect those characteristics. Under the National Marine Sanctuaries Act, a sanctuary's terms of designation may only be modified by following the same procedures by which the sanctuary was designated. NOAA has followed this process to modify the CINMS terms of designation, including the publication of a draft environmental impact statement, proposed regulations, and draft terms of designation. NOAA also explained why the proposed changes are necessary and analyzed each change thoroughly in the EIS.

55. *Comment:* NOAA's ability to protect Sanctuary resources is overly limited by the CINMS Designation Document. Identifying and proposing regulations to protect Sanctuary

resources, including by extending the CINMS scope of authority is required to fulfill the duty Congress assigned to the National Marine Sanctuary Program.

Response: National marine sanctuary terms of designation typically express the types of activities subject to sanctuary regulation in general terms. Recognizing that environmental conditions in a sanctuary change over time, this is necessary to allow NOAA to make appropriate modifications to existing regulations or to regulate additional activities that are impacting or may impact sanctuary resources (*i.e.*, to allow for adaptive management). NOAA is revising the CINMS terms of designation as necessary to provide the authority to implement its revised proposed regulations.

Discharge

Discharge—Bilge Water

56. *Comment:* NOAA should include an explicit ban on dumping oily bilge water (treated or not).

Response: Although NOAA provides certain exceptions to the CINMS discharge regulation, the discharge of oily bilge water is prohibited by existing regulations and is also prohibited under the new regulations. See the FEIS for additional information on and revisions to the discharge regulation.

Discharge—Chumming

57. *Comment:* NOAA should clarify that the discharge regulation allows for the common practice of filleting fish during the trip back to port.

Response: NOAA considers tossing scraps overboard from filleting fish caught in the Sanctuary during the trip back to port to be part of the exception for fish, fish parts, or chumming materials (bait).

58. *Comment:* Several commenters expressed support for the proposed exception for fish, fish parts, or chumming materials (bait) to the CINMS discharge regulation.

Response: Comment noted.

59. *Comment:* Commenter is concerned about compliance with the discharge regulation (*e.g.*, feeding wildlife food scraps).

Response: In an effort to increase compliance with CINMS regulations, NOAA will use an educational approach to raise awareness of the regulation and the problems associated with feeding wildlife. An educational approach to the issue can also be implemented through the Public Awareness and Understanding Action Plan strategy AU.3 (Team OCEAN) activities, including those pertaining to ocean etiquette. See also the response to

comment 120 for an explanation of how Sanctuary regulations are enforced.

60. *Comment:* The exception to the enter-and-injure regulation as it relates to discharge of fish and fish parts and chumming materials is unnecessary, and could potentially undermine the effect, perception, and credibility of this otherwise sound and necessary measure.

Response: NOAA is not considering removing the exception to the CINMS discharge regulation for fish, fish parts, or chumming material (bait) used in or resulting from lawful fishing activity beyond the boundary of the Sanctuary. NOAA believes that such activities do not currently pose a threat to Sanctuary resources; if in the future such activities were to harm Sanctuary resources, then NOAA would re-evaluate the scope of this exception.

Discharge—Enter/Injure

61. *Comment:* A number of commenters expressed support for the proposed prohibition on 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.

Response: Comments noted.

62. *Comment:* The proposed prohibition on discharging or depositing from beyond the boundary of the Sanctuary is problematic because it enables the Sanctuary to regulate activities outside its jurisdiction; is an unwarranted and improper extension of the Sanctuary boundaries; the term “injury” is not defined, thus inviting numerous interpretations and the potential for litigation; and the process by which injury would be determined is not described.

Response: In order for a violation to occur of the regulation prohibiting discharge or deposit from beyond the Sanctuary, the matter that is discharged or deposited from beyond the Sanctuary must also injure a Sanctuary resource or quality, except for the exceptions listed in the regulations. Thus, operations and activities taking place beyond the Sanctuary are only subject to this regulation if the discharge or deposit of the matter is shown to injure a Sanctuary resource or quality within the Sanctuary, and this regulation is not an extension of the Sanctuary’s boundary.

Injure, as defined at 15 CFR 922.3, means 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.

Discharge—General

63. *Comment:* NOAA should apply heightened restrictions on polluting vessels, including large vessels, watercraft and cruise ships, in the Santa Barbara Channel, or tighten the exceptions to the discharge and deposit prohibition with the goal of better protecting Sanctuary waters from pollution.

Response: NOAA’s revised Sanctuary regulations strengthen protections against pollution from vessels by clarifying that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices, and by limiting graywater and treated sewage exceptions to apply only to vessels less than 300 gross registered tons (GRT), and oceangoing ships (not including cruise ships) without sufficient holding tank capacity to hold graywater or sewage while within the CINMS.

64. *Comment:* To best protect Sanctuary resources, the new CINMS regulations should ban dumping hazardous waste into the Sanctuary.

Response: CINMS regulations prohibit discharging or depositing from within or into the Sanctuary any material or other matter, with a list of exceptions. Discharging or depositing any material or other matter that is not included in the list of exceptions, including hazardous waste, is prohibited.

Discharge—Meals

65. *Comment:* Several commenters expressed support for NOAA’s proposal to prohibit discharging or depositing from within or into the Sanctuary meals on board vessels.

Response: Comments noted.

Discharge—Sewage/Graywater

66. *Comment:* The discharge and deposit regulation requires that vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage, without defining what is meant by “lock.”

Response: Locking means securing the device such that removal of a locking mechanism (*e.g.*, padlock, combination lock, or cable tie) is required to enable the system to discharge raw sewage overboard. In the case of a Y valve that toggles toilet bowl discharge between a treatment system/holding tank and an overboard outlet, the valve handle would need to be in the closed position for overboard discharge and locked to prevent inadvertent and unopposed opening of the valve.

67. *Comment:* A number of commenters indicated that the proposed

discharge and deposit regulation does not provide the same level of protection as California Clean Coast Act.

Response: NOAA revised the proposed CINMS discharge/deposit regulation to prohibit the discharge of sewage from all vessels 300 GRT or more, and the discharge of graywater from vessels 300 GRT or more, except for oceangoing ships without sufficient holding tank capacity for graywater. This is consistent with the Clean Coast Act. These regulatory changes were analyzed in a Supplemental EIS (March 2008).

68. *Comment:* A number of commenters, including the U.S. EPA and the California State Water Resources Control Board, expressed support for the revised proposed discharge regulation as analyzed in the SDEIS.

Response: Comment noted.

69. *Comment:* One commenter supported CINMS for not providing a sewage discharge exemption for ships greater than 300 GRT, as has been proposed by the Northern California sanctuaries, but objected to the revised proposed discharge regulation exceptions for graywater and treated sewage from vessels less than 300 GRT, and graywater from oceangoing ships without sufficient holding tank capacity to hold graywater within the Sanctuary.

Response: NOAA acknowledges support for the revised proposed discharge/deposit regulation as analyzed in the SDEIS; however, NOAA has concluded that an exception for treated sewage discharge/deposit from oceangoing ships without sufficient holding tank capacity (excluding cruise ships) is warranted at this time. See the response to comment 72 for more information. CINMS is maintaining the treated sewage exception for vessels less than 300 GRT. The rationale for the treated sewage exceptions is provided in the response to comment 70. The exception for oceangoing ships without sufficient holding tank capacity to hold graywater while within the Sanctuary is implemented because, unlike cruise ships and newer oceangoing ships, some older oceangoing ships are designed without the ability to retain graywater, and, as such, must discharge graywater directly as it is produced. As explained in FEIS section 4, graywater discharge from small vessels, and from oceangoing ships without sufficient holding tank capacity to hold graywater while within the Sanctuary, is anticipated to have a less than significant adverse impact on the Sanctuary's physical, biological, and esthetic resources.

70. *Comment:* NOAA should phase-in a total wastewater discharge ban for all ocean-going vessels in CINMS.

Response: NOAA is not planning to phase in a total wastewater discharge ban for all oceangoing vessels in the Sanctuary at this time because available data do not suggest that the excepted sewage and graywater discharges within the Sanctuary pose an unacceptable risk to Sanctuary resources and qualities. Should information to the contrary become available, NOAA may consider further regulation.

71. *Comment:* Regulations applying to large vessels should also apply to vessels servicing those larger vessels (e.g., barges that may be used to transfer sewage from an anchored vessel to outside of the 3-mile limit).

Response: The regulations prohibit discharging from within or into the Sanctuary sewage (treated and untreated) and graywater from vessels 300 GRT or more (unless the vessel is an oceangoing ship without sufficient holding tank capacity—this does not apply to cruise ships). NOAA interprets this regulation to prohibit the discharge of such sewage or graywater even if the sewage or graywater were transferred to a second vessel, regardless of the second vessel's size. Furthermore, transferring sewage from an anchored large vessel seems implausible since vessels 300 GRT or more are not known to anchor within the Sanctuary.

72. *Comment:* The proposed revisions of the Sanctuary's discharge prohibition should be consistent with the California Clean Coast Act and include the exception for ocean going vessels without sufficient holding tank capacity to hold treated blackwater (sewage) while within the Sanctuary.

Response: To be consistent with the California Clean Coast Act, as well as with regulations for the Monterey Bay, Cordell Bank, and Gulf of the Farallones national marine sanctuaries, NOAA is providing an exception for treated sewage discharges from oceangoing ships that do not have sufficient holding tank capacity while within the CINMS.

73. *Comment:* Adequate education on the proposed discharge restrictions will ensure that oceangoing ships retain all discharges to the greatest extent possible within the Sanctuary.

Response: Outreach and education to the shipping industry about the Sanctuary's revised regulations is important, and NOAA will apply educational resources toward that purpose, including outreach to the Pacific Merchant Shipping Association.

74. *Comment:* The management plan fails to recognize or provide an incentive for the use and further

development of advanced wastewater treatment systems currently installed on cruise ships, and instead, encourages ships to construct and utilize large holding tanks and discharge elsewhere. The targeting of cruise ships and ban on discharges promotes older, cheaper, less advanced technology and the use of holding tanks. The proposed discharge regulations amount to a wholesale ban on discharges creating a disincentive to further research, development and installation of systems that produce clean and scientifically acceptable effluent. If discharges are harmful, transferring them to another location would simply be transferring the problem.

Response: The management plan recognizes the use of advanced wastewater treatment systems by cruise ships. The SDEIS and FEIS both acknowledge the use of these systems and their ability to dramatically improve the quality of effluent discharged in Alaska. Currently, however, advanced wastewater treatment systems on cruise ships do not always function properly and even when they do, they do not always effectively remove all contaminants. NOAA encourages the development of new technologies to address these issues.

Similarly, the management plan does not encourage or promote retrenchment to older, cheaper, less advanced technology. The regulations prohibit cruise ships from discharging sewage and graywater from within or into a particular area afforded special protection due to its nationally significant resources. NOAA believes that transferring discharges outside of the Sanctuary is an appropriate resource protection measure.

75. *Comment:* There is no credible reason to ban cruise ship discharges from Type II MSDs and advanced wastewater treatment systems, and such discharges should be allowed in general, or when discharged while the vessel is moving at or above six knots. Cruise ship Type II MSDs meet or exceed U.S. Coast Guard standards and pose little or no threat to the environment. The revised proposed discharge regulation assumes that any sewage and gray water discharges, no matter the quality, are likely to have adverse environmental impacts on the receiving water and ambient air based on their sheer volume. NOAA should consult with the EPA and Alaska Department of Environmental Conservation since they have done an exceptional amount of work regarding cruise ship effluent discharges.

Response: NOAA is not aware of any EPA or other reports showing that treated sewage discharges from cruise ships would not pose any discernable effect within the Sanctuary. As discussed in the SDEIS (p. 22), it is important to note that many dilution studies only consider effluent from properly functioning MSDs, which is not necessarily the condition of MSDs on all or most vessels. The revised regulation addresses NOAA's concerns about failure of conventional MSDs on large vessels to adequately treat sewage waste streams, and lack of monitoring of those waste streams.

Regarding use of Coast Guard approved Type II MSDs, Coast Guard standards for MSDs pertain to the design and construction of MSDs, and procedures for certifying MSDs prior to sale, introduction or delivery into interstate commerce, or import into the United States for sale or resale. The Coast Guard does not test the effluent from certified MSDs once installed onboard a vessel (except in Alaska). Simply having a Coast Guard approved MSD on board a ship does not guarantee that a ship's sewage discharges meet EPA discharge requirements, as demonstrated by cruise ship sampling data in Alaska prior to institution of more stringent discharge standards, monitoring, inspection, and reporting requirements there.

The SDEIS and FEIS analysis of the potential impacts of cruise ship discharges is based on both the quality and volume of sewage and graywater discharges. Even when sewage and graywater discharges meet MSD Type II standards for fecal coliform and total suspended solids, there are other qualities of sewage and graywater discharges that may be harmful, such as chemicals used to treat sewage and graywater, and high nutrient levels, especially when discharged in large volumes. As noted in the SDEIS and FEIS, results of cruise ship graywater sampling in Alaska indicate that in the absence of water quality standards and monitoring, graywater is similar to sewage in terms of fecal coliform and total suspended solids. The SDEIS and FEIS do not analyze cruise ship sewage and graywater discharge impacts on ambient air.

Regarding cruise ships that transit Alaska, and that use advanced wastewater treatment systems, see the response to comment 76.

76. *Comment:* Rather than a ban, NOAA should consider drafting regulations that mirror requirements in other jurisdictions, such as Alaska, which permit sewage and gray water

discharges at levels scientifically acceptable through discharge criteria.

Response: As stated in the SDEIS and FEIS, the results of cruise ship blackwater samples taken in Alaska indicate that blackwater from vessels without advanced treatment systems (and not subject to mandatory monitoring, inspection, and reporting) may contain levels of fecal coliform and total suspended solids that exceed federal standards for MSDs, as well as a variety of other pollutants. Unlike Alaska, NOAA is not planning on instituting a CINMS cruise ship sewage and graywater discharge monitoring, inspection, and reporting program. Effluent monitoring would be cost prohibitive and infeasible, particularly for vessels underway (large vessels do not customarily stop in the Sanctuary). Additionally, ship discharge audits often reveal that a discharge occurred but do not contain information on contaminant levels. Currently, advanced waste water treatment systems on cruise ships do not always function properly and even when they do, they do not always effectively remove all contaminants. Therefore NOAA believes that prohibiting cruise ship sewage and graywater discharges is the most effective and enforceable regulation. The SDEIS and FEIS both acknowledge the use of advanced wastewater treatment systems and their ability to improve the quality of effluent discharged in Alaska. However, the program adopted in Alaska is a complex arrangement requiring issuance of a permit, prior demonstration that the ships can meet water quality standards based on independent contractor evaluation, environmental compliance fees, wastewater sampling and testing protocols, record keeping and reporting protocols, on-board observers, and a tax per passenger to fund the administration of the program. Such a program is inherently difficult to monitor and enforce and the NMSP has no mechanism in place for recouping the necessary funds needed to administer it. Also, the EPA studies indicate that although advanced wastewater treatment systems remove most of the priority pollutants of concern they do not adequately reduce discharge of ammonia and metals. For these reasons, the CINMS regulations prohibit discharges from advanced wastewater treatment systems. Cruise ships have sufficient holding tank capacity to hold their discharge as they transit the Sanctuary.

77. *Comment:* CINMS should not implement new sewage discharge regulations for small vessels because (1) existing laws prohibit the discharge of

untreated sewage from small vessels within three nautical miles of shore; (2) existing requirements should be better enforced instead of adding new requirements; (3) no significant water quality issues have been noted for discharges by vessels under 150 GRT with certified MSDs Type I, II, or III; (4) requiring untreated sewage to be discharged further offshore would turn "good guys" into "bad guys"; (5) using the Coast Guard regulations as the standard for sewage discharges from vessels less than 300 GRT would facilitate Channel Islands National Park operations (i.e., kelp forest monitoring, submerged cultural resources monitoring); (6) Coast Guard regulations are easier to enforce since most boaters are familiar with them; (7) prohibiting untreated sewage discharge within the entire Sanctuary would present a trade-off between having untreated sewage discharged further from shore and environmental impacts such as pollution costs (including from fuel production and transportation) and energy waste from the fuel burned to get there; and (8) a requirement to discharge untreated sewage further offshore presents time and fuel costs to boaters.

Response: NOAA recognizes that other federal regulations prohibit the discharge of untreated sewage within three nmi from shore; however, CINMS regulations have prohibited the discharge of untreated sewage within the entire Sanctuary since 1981 (the FEIS clarifies this existing regulation). NOAA is concerned about the pathogens, nutrients, and esthetic impacts that untreated sewage could introduce if discharged within the Sanctuary. To date, untreated sewage discharges have not been definitively linked to significant water quality problems in the Sanctuary; however, this rule will ensure that such problems do not occur in the future.

CINMS partners closely with Channel Islands National Park (CINP) on marine operations including research, monitoring, and enforcement. Based on NOAA's analysis of Park and CINMS vessel operations, NOAA does not expect the clarifications to the sewage discharge regulation to significantly impede Park operations.

Enforcement of regulations, including discharge regulations, is important to ensure their effectiveness. NOAA intends to consider enforcement needs during the development of the Sanctuary's water quality protection program (see FMP strategy WQ.2). Additional outreach and education regarding Sanctuary discharge regulations is warranted, and NOAA intends to work with the Coast Guard,

CINP, and other key agencies to develop effective outreach tools.

NOAA believes all boaters can reasonably adapt to comply with this regulation and practice clean boating within the Sanctuary, as was the case when similar or more stringent regulations were adopted in other large areas of U.S. waters (e.g., the Great Lakes, state marine waters in the Florida Keys, and Chesapeake Bay). With proper trip planning, necessary equipment and maintenance, and attention to sewage holding capacity and needs, NOAA expects that boaters can take steps to avoid special trips beyond the Sanctuary's six nmi boundary solely to discharge sewage (after which they would continue boating within the Sanctuary). For example, there are compact commode and portable sewage storage systems widely available on the market.

78. *Comment:* NOAA should prohibit sewage sludge from large vessels because it is produced in large quantities by cruise ships and included in the California Clean Coast Act's prohibitions.

Response: Sewage sludge discharges/deposits are prohibited throughout the Sanctuary.

79. *Comment:* CINMS should revise the discharge regulation to mirror existing law pertaining to vessel sewage and graywater discharges and fully prohibit graywater, sewage (untreated and treated) and sewage sludge discharges from cruise ships and other large oceangoing vessels throughout the Sanctuary.

Response: Regarding mirroring existing laws on vessel sewage and graywater discharges, see the response to comment 67. The revised discharge and deposit regulation now prohibits graywater discharges from vessels 300 GRT or more (except oceangoing ships without sufficient holding tank capacity to hold graywater while within the Sanctuary); it also prohibits treated sewage discharges from all vessels 300 GRT or more throughout the Sanctuary (except oceangoing ships without sufficient holding tank capacity to hold sewage while within the Sanctuary), and prohibits untreated sewage from all vessels within the Sanctuary. The Sanctuary's discharge regulation does not provide an exception for sewage sludge discharges.

80. *Comment:* The Sanctuary should not exempt military vessels from the discharge and deposit prohibition, as they are included in the California Clean Coast Act's sewage and sewage sludge prohibitions.

Response: NOAA believes the DOD discharge requirements under CWA

section 312(n) are sufficient to protect Sanctuary resources.

81. *Comment:* NOAA should delete the discharge regulation's graywater exception.

Response: NOAA believes there is no need to prohibit graywater discharges from vessels less than 300 GRT within the Sanctuary at this time. However, Sanctuary regulations would now prohibit graywater discharges from vessels 300 GRT or more, except from oceangoing ships without sufficient holding tank capacity to hold graywater while within the Sanctuary.

82. *Comment:* NOAA's discharge regulation should reflect the California Coastal Commission's recommendation to prohibit vessels of 300 GRT or more from discharging sewage or graywater into the waters of the Sanctuary.

Response: NOAA has revised the CINMS discharge regulation to reflect the California Coastal Commission's recommendation and prohibit the discharge of sewage from all vessels 300 GRT or more, as well as the discharge of graywater from vessels 300 GRT or more. Exceptions would be consistent with the California Clean Coast Act, allowing graywater and treated sewage from oceangoing ships without sufficient holding tank capacity to hold these discharges while within the Sanctuary.

83. *Comment:* Due to the volume of their discharges, cruise ships should be directed around the Sanctuary.

Response: Rather than direct cruise ships around the Sanctuary, NOAA is excluding cruise ships from the CINMS sewage and graywater exceptions, thereby prohibiting their discharge within the Sanctuary.

84. *Comment:* Unless NOAA is able to institute a rigorous monitoring and sampling program for sewage effluent from ships as Alaska has done, it is prudent to adopt a no-discharge policy that mirrors the state of California's laws.

Response: Although NOAA may implement some discharge monitoring in partnership with other agencies, NOAA is not currently planning to institute a comprehensive sewage effluent monitoring and sampling program in the Sanctuary similar to Alaska's program (see also the response to comment 75). Regarding adopting a policy that mirrors California's law, see the response to comment 67.

85. *Comment:* All vessels, ships, or large vessels should hold either all waste or sewage until they can discharge it into pump out stations for disposal or treatment on land.

Response: The revised CINMS discharge regulation prohibits

discharging untreated sewage within the Sanctuary from vessels less than 300 GRT, and prohibits discharging sewage (whether treated or untreated) within the Sanctuary from vessels 300 GRT or more, except for oceangoing ships that do not have sufficient holding tank capacity to hold sewage while within the Sanctuary.

86. *Comment:* NOAA should either include sewage sludge in the definition of "sewage" or explicitly prohibit sewage sludge in the discharge regulation.

Response: Existing CINMS regulations do not provide an exception for sewage sludge discharge/deposit; as such, these discharges/deposits are prohibited.

87. *Comment:* The prohibition of sewage sludge should be incorporated in outreach documents.

Response: CINMS staff will consider this comment when developing outreach products about the revised Sanctuary regulations.

88. *Comment:* Commenter supports the marine sanitation device clarification in the revised proposed discharge regulation.

Response: Comment noted.

89. *Comment:* Commenter supports the proposed definitions of "graywater," "oceangoing ship," and "cruise ship," as well as the Sanctuary's effort to provide greater regulatory consistency and clarity by establishing formal definitions for important concepts relevant to CINMS resource conservation and management.

Response: Comment noted.

Ecosystem Based Management

90. *Comment:* The Management Plan refers to Ecosystem Based Management, but there is no mention of Ecosystem Based Management in the NMSA.

Response: The Management Plan Introduction section refers to ecosystem-based management and the NMSA, and it specifies the sections of the NMSA that NOAA believes support the use of ecosystem-based management. As stated therein, NOAA believes that ecosystem-based management is in keeping with the NMSA's primary objective of resource protection. Section 301(b) of the NMSA, which provides the purposes and policies of the national marine sanctuary system, provides CINMS and the other national marine sanctuaries with a solid framework for ecosystem-based management. Section 301 provides that it is the purpose of the NMSA to, among other things: (a) Maintain the natural biological communities of the national marine sanctuaries, and to protect, and where appropriate, restore and enhance natural habitats, populations, and ecological

processes; (b) develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of the sanctuaries; and (c) to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques. Maintaining biological communities, and protecting, restoring, and enhancing habitats, populations, and ecological processes (see clause a above), along with addressing the health and resiliency of national marine sanctuaries (see clause b above), are endeavors best suited to an ecosystem-based approach. Such an approach is consistent with applying innovative management techniques (see clause c above).

91. *Comment:* NOAA should replace the management plan's Grumbine (1994) definition of Ecosystem Based Management with the definition from the Scientific Consensus Statement on Marine Ecosystem Based Management released in March 2005 (by authors including Jenn Casselle, Jennie Dugan, Ben Halpern, Jeremy Jackson, Satie Airame, and Hunter Lenihan).

Response: Text in the FMP has been revised to reflect the definition of marine ecosystem-based management from NOAA's New Priorities for the 21st Century (NOAA's strategic plan for 2006–2011), rather than the definition provided by Grumbine (1994). NOAA's definition of an ecosystem approach to management is consistent with the 2005 Scientific Consensus Statement on Marine Ecosystem-Based Management, which is available on line at http://www.compassonline.org/marinescience/solutions_ecosystem.asp.

Education and Outreach

92. *Comment:* Commenters indicated support for the management plan's education and outreach goals and objectives and the Public Awareness and Understanding Action Plan.

Response: Comment noted.

93. *Comment:* Through the Public Awareness and Understanding Action Plan NOAA should ensure that all employees and crew of Channel Islands National Park concessionaires who bring visitors to the Sanctuary are aware of and understand CINMS regulations and resource conservation issues. Anecdotal evidence suggests that even major concessionaires are not aware of CINMS regulations on matters such as vessel sewage and wastewater

discharge. NOAA should also provide an incentive for concessionaires to participate in an education program.

Response: CINMS staff work directly with Channel Islands National Park staff responsible for educating concessionaires through the strategic plan mentioned in the FMP Public Awareness & Understanding Action Plan (Strategy AU.2 activity 3). As part of the Ocean Etiquette Outreach program (AU.3, activity 4), which promotes communication and coordination between California ocean users and Federal and State agencies, CINMS staff plan to engage concessionaires and other boaters in Ocean Etiquette workshops. As the Park reviews and awards concessionaire licenses to various operators, CINMS staff will continue to communicate with the Park on interests and concerns regarding concessionaire compliance with Sanctuary regulations, such as those pertaining to clean boating practices, as well as possible compliance incentives.

94. *Comment:* NOAA should work with the City of Santa Barbara to increase opportunities for effective signage and publicity.

Response: NOAA worked with the City of Santa Barbara (City) in the mid-1990s on several CINMS interpretive signs that are located in Santa Barbara's Shoreline Park. NOAA also works with the City each year by participating in the annual Harbor and Seafood Festival, and serving alongside the City, U.S. Forest Service, National Park Service and Santa Barbara Maritime Museum as a partner in the Outdoors Santa Barbara Visitor Center in the Santa Barbara Harbor (see the Public Awareness and Understanding Action Plan strategy AU.7—Visitor Center Support & Development for more information).

NOAA is currently working with the City Waterfront Department to place signs at the Santa Barbara Harbor fuel dock and along the Santa Barbara Harbor Fish Walk. These signs focus on CINMS, CINP, and marine zoning, and are part of a larger NMSP sponsored initiative called the California Signage Plan. Sanctuary interactive kiosks, like signs, are also an important outreach tool that can help provide CINMS publicity at various locations, such as at the City Waterfront Department office. For information about interactive kiosks, see Public Awareness and Understanding strategy AU.7.

95. *Comment:* The management plan did not indicate how NOAA would assess the effectiveness of strategies AU.1 through AU.8.

Response: NOAA understands the importance of evaluating the

effectiveness of its programs. FMP Strategy EV.1 (Measuring Sanctuary Performance Over Time) details how each education program or product will be evaluated, and FMP Table 16 shows specific strategies, objectives, performance measures and metrics for measuring effectiveness of the Public Awareness and Understanding Action Plan. Also, NOAA is working at CINMS to meet the NMSP's system-wide performance measure related to education, which states that "By 2010 all education programs implemented in national marine sanctuaries will be assessed for effectiveness against stated program goals and objectives and appropriate National and State education standards."

96. *Comment:* NOAA should clarify for each program whether there are plans to assure that strategies AU.1, and AU.3–AU.9 are reaching a diverse audience.

Response: NOAA strives to reach diverse audiences with its CINMS education and outreach programs and materials. FMP Strategy AU.9 describes how CINMS will build multicultural elements into existing education programs and materials, and activity 5 describes in detail the implementation of a comprehensive multicultural education strategic plan for Santa Barbara and Ventura Counties.

97. *Comment:* NOAA should consider best education practices in the development of Strategy AU.1.

Response: NOAA education staff at CINMS use best practices when developing educational programming. CINMS educators stay abreast of current issues and changes in science and environmental education content standards by participating in annual education conferences and workshops put on by leaders in science education.

98. *Comment:* Given the changing make-up of our population, NOAA should create strategies to create a diverse pool of interns and volunteers, and should create career paths for interns from ethnic groups under-represented in resource sciences. The latter would help create a pool of qualified future resource scientists, technicians, managers and leaders.

Response: As mentioned in Strategy AU.9 of the FMP's Public Awareness & Understanding Action Plan, CINMS implements the MERITO Hispanic Students Internship Program. Text in FMP Strategy AU.2 has been changed to reflect these CINMS internship strategies for under-represented youth as defined in Strategy AU.9.

99. *Comment:* The management plan refers to the Los Marineros education

program, without explaining that this program is now defunct.

Response: NOAA and the Santa Barbara Museum of Natural History (Museum) started the Los Marineros Program in 1987. The Museum took over administration of the program in the mid 1990s. The Museum decided not to continue the program after 2005, which is now reflected in the FMP. NOAA is now working to build Sanctuary stewardship and increase understanding of ocean related threats within the Hispanic community of Santa Barbara and Ventura counties through strategy AU.9, Multicultural Education. A component of this strategy is the MERITO Academy which targets 5th–8th grade teachers and students and provides a meaningful watershed experience through field trips to the beach and Sanctuary.

100. *Comment:* NOAA should mention a shift to a philosophy of sustainability in its CINMS education programs.

Response: Since its designation in 1980, CINMS staff has been educating the community about human impacts on the ocean environment and working to foster a sense of personal ownership and responsibility for care of Sanctuary resources.

101. *Comment:* NOAA should incorporate into education and outreach action plans some specific programs directly facilitating compatible use, such as brochures with simple charts indicating best places to scuba dive, fish, kayak, view wildlife, and so forth.

Response: NOAA's "Protecting Your Channel Islands" brochure shows popular anchorages, diving spots and wildlife areas (for pinnipeds and seabirds), and provides tips for watching wildlife and a synopsis of sanctuary and park regulations. Members of the boating and fishing communities participated in the development of this brochure through the Sanctuary Advisory Council and the Sanctuary Education Team. NOAA will continue to work with boaters, fishers, and other interested community members to develop useful brochures and other education materials regarding responsible ways to enjoy Sanctuary resources.

102. *Comment:* NOAA should support or sponsor contests or festivals that celebrate use of the Sanctuary, such as photo contests, harbor seafood festivals, sailing regattas, and whale festivals.

Response: As indicated in FMP Public Awareness & Understanding Action Plan Strategy AU.6, CINMS staff participation in outreach events is identified as a tool to provide Sanctuary information to a widely diverse

audience. CINMS staff and volunteers participate in over 30 regional outreach events annually, spanning from Santa Barbara County to Los Angeles County, serving a diverse number of constituents. Events include whale festivals, harbor festivals, boat shows, fishing conventions, and dive industry events.

103. *Comment:* NOAA education staff at CINMS should establish closer contact with researchers whose work forms the information base used by Sanctuary education programs.

Response: NOAA education and research program staff at CINMS work closely together on many different Sanctuary management issues. One example is the ongoing "From Shore to Sea" lecture series sponsored by CINMS and CINP, which brings scientists studying the Channel Islands to venues in Santa Barbara and Ventura one night per month for a public presentation about their research. CINMS research and education staff also collaborate on other programs and products including interpreting research data for presentation on the CINMS Web site, annual research summaries, and the CINMS Teacher at Sea program.

104. *Comment:* The management plan should mention the 'Follow That Fish!' curriculum and aquarium exhibit, which is a program that highlights the results of fish movement studies in the Sanctuary conducted by the Pflieger Institute of Environmental Research (PIER) using an acoustic received array.

Response: In 2006, PIER removed its acoustic receivers and discontinued its fish movement study project. Consequently, NOAA is not highlighting this project in the FMP's description of educational activities.

Emergency Response

105. *Comment:* NOAA should develop a means for more timely response to oil spills within the Sanctuary by: (1) Identifying vessels (e.g., local or Sanctuary vessels) capable of boom deployment and skimming systems, (2) investigating the feasibility of the Sanctuary becoming a Clean Seas client, and (3) providing spill cleanup/response equipment cached at various locations in the Channel Islands.

Response: NOAA staff take an active role in spill response preparation by representing CINMS on the Area Contingency Plan (ACP) committee for U.S. Coast Guard Region IX. CINMS staff are also instrumental in helping to revise the ACP to create more effective response to spills, specifically in the area of resource protection. The ACP is a "cookbook" for oil spill response that includes contact information for

responders, agencies, cleanup contractors, and vessel and equipment resources. This information is constantly updated. Clean Seas LLC has response vessels in place that can quickly respond to spills within the Sanctuary. Another regional organization with vessels and trained crew capable of responding to spills is the Ventura County Commercial Fishermen's Association's Fishermen's Oil Response Team, or FORT. Equipment caches kept on the islands would need to be authorized by the National Park Service. Obtaining and placing any spill equipment would be best done through an agency/responder partnership with those organizations, such as the USCG and Clean Seas LLC, that have dedicated staff with expertise in spill response and all associated equipment and assets. For more information about how CINMS is involved in and addresses emergencies such as oil spills, see FMP Strategy EE.1.

106. *Comment:* NOAA should look into whether oil facilities can store cleanup equipment, inventory equipment already there, and consider whether it can develop an agreement between oil companies and sanctuaries to use that equipment.

Response: Currently oil platforms in the Santa Barbara Channel store various quantities of booming and skimming equipment and dispersants. Full inventory lists are kept and supplied to various Federal, State, and local agencies involved in oil spill response, and these lists are accessible by CINMS staff as needed. Equipment use requires specialized training, and oil companies work with spill response co-ops such as Clean Seas LLC, to provide equipment and personnel for cleanup.

Additionally, agencies such as the U.S. Coast Guard can "federalize" (place a spill under the jurisdiction of the Federal government if the responsible party is not responding appropriately) an oil spill and then call in authorized, trained contractors to help respond to the spill.

107. *Comment:* NOAA should look towards the future of emergency response and find funding for Clean Seas. Currently oil spill response is paid for by oil companies, so if oil and gas facilities are decommissioned then Clean Seas is not likely to be here.

Response: Although CINMS staff could contribute to planning ideas for maintaining oil spill response capabilities provided by Clean Seas, such an effort would most likely be spearheaded by other NOAA offices (such as NOAA HAZMAT) as well as

Federal, State, and local agencies whose primary mission is oil spill response.

Emerging Issues

108. *Comment:* Commenter expressed support for the management plan review addressing emerging issues.

Response: Comment noted.

109. *Comment:* The management plan should provide a stronger link between the Emerging Issues and Conservation Science action plans by directing research towards evaluating emerging issues.

Response: Research coordination and integration are very important to the evaluation of emerging issues. Within the Conservation Science Action Plan, NOAA has added details about the link between emerging issues and conservation science within the Conservation Science Action Plan Overview and Strategy CS.3, as well as in Strategy RP.1. As explained in RP.1, input from the Advisory Council, the science community, and the public informs CINMS efforts at identifying and assessing current and emerging issues at all stages, including identification of issues, assessment of threats, and tracking and responding to issues.

110. *Comment:* The management plan should clarify whether each emerging issue is: (a) Forecasted to, but not presently harming Sanctuary resources; or (b) already causing harm to Sanctuary resources. NOAA should also develop criteria to determine when an issue is emerging vs. when it has emerged.

Response: The FMP includes a Resource Protection Action Plan in which NOAA has clarified and augmented information on the status of each issue previously listed as an "emerging issue." The Resource Protection Action Plan also articulates how CINMS addresses current issues and how it will address emerging issues. Since NOAA has outlined how it plans to identify, assess, prioritize, and address both current and emerging resource protection issues, it is not necessary to develop criteria for determining when an issue has "emerged." Rather, it is NOAA's intent that CINMS track, assess, prioritize, and determine how best to respond to all issues relevant to protecting Sanctuary resources.

111. *Comment:* Strategy EI.1 could be sufficient for "emerging issues"—issues that have yet to cause significant harm to Sanctuary resources.

Response: NOAA will implement Strategies RP.1 and RP.2 in identifying, assessing, and responding to all current and emerging issues.

112. *Comment:* NOAA should dedicate funding to emerging issues so as not to depend on volunteers to research such issues, and should specify who is responsible for implementing Strategy EI.1.

Response: The NMSF dedicates and funds policy analysts, an advisory council coordinator, a team of research and monitoring staff, a boat crew, and education and outreach staff to identify, assess, and respond to emerging issues. The implementation of the Resource Protection Action Plan relies on this existing staff structure, as noted in the implementation section of Strategy RP.1. When an emerging issue requires community input and/or is beyond CINMS's capabilities either technically or fiscally, staff rely on the expertise and knowledge of the Sanctuary Advisory Council and agency partners. For complex emerging issues that require a CINMS response, staff have in the past and can in the future reallocate staff time and budget, as well as leverage other agency resources to adequately address an issue.

113. *Comment:* The Track Emerging Issues activity of strategy EI.1 should require that CINMS staff relay the findings of their issue tracking activities to the Advisory Council, with whom they collaboratively identified and prioritized the issues.

Response: CINMS staff have provided and will continue to provide regular updates to the Advisory Council on emerging issues.

114. *Comment:* NOAA should define how it will "track" emerging issues.

Response: The Resource Protection Action Plan identifies the ways in which CINMS will identify and track emerging issues in the Sanctuary.

115. *Comment:* NOAA should include marine bioprospecting, offshore energy projects (e.g., wind and wave energy), global greenhouse gas emissions, global warming, and squid boat lights in its list of emerging issues.

Response: NOAA has included marine bioprospecting, offshore energy projects, climate change, and wildlife disturbance caused by artificial lighting as emerging issues in the FMP's Resource Protection Action Plan.

116. *Comment:* The DMP's Emerging Issues Action Plan defers Sanctuary resource protection to a bureaucratic process with no allocated funding, and offers minimal specificity as to when or how management effort will be deployed to mitigate or eliminate impacts from emerging issues.

Response: All CINMS activities ultimately contribute to resource protection, which is the primary purpose of the National Marine

Sanctuaries Act. The FMP's Resource Protection Action Plan outlines processes for tracking, assessing, prioritizing, and determining how to respond to current and emerging resource protection issues (processes previously contained in an Emerging Issues Action Plan). These processes are essential to determining how to respond to a given issue at a given point in time, based on the best available information, and depending on available funding and the level of risk or priority for a given issue. Unfortunately, NOAA cannot predict when an issue will become a high priority and what the appropriate response at that time might be. Should, for example, NOAA determine that a given issue warrants development of a new action plan strategy, or perhaps even a new action plan, NOAA's plan for action would be articulated in those documents.

Regarding funding, while the Resource Protection Action Plan's estimated cost table does not reflect potential future investments in CINMS resource protection issues, CINMS does request additional funds to address high priority resource protection issues in a given year as part of its annual budget planning process. Further, the budget table does not show base budget funding (e.g., staff salaries) which is critical to tracking, assessing, prioritizing, and determining how to respond to current and emerging resource protection issues.

117. *Comment:* DMP Strategy EI.2 includes several constructive options for addressing resource protection issues, which if implemented could reduce impacts to Sanctuary resources from resource protection issues.

Response: Comment noted.

Enforcement

118. *Comment:* NOAA should ensure that sufficient funds/resources are available for enforcement and increase available funding for enforcement.

Response: NOAA recognizes resource limitations and necessary program and partner developments may limit implementation of all of the activities in the management plan. NOAA will continue to work with the Department of Commerce, Office of Management and Budget, and Congress in developing supporting justifications when preparing budget submissions. NOAA allocates funds provided by Congress through annual appropriations for national marine sanctuaries and from other sources of funding (e.g., settlement funds) to enforcement of the NMSA and implementing regulations. In doing so, however, NOAA must balance the need for increased enforcement with other

management needs (e.g., science and monitoring, education). NOAA uses these funds to leverage additional investments in enforcement by partner agencies (CDFG, NPS, USCG) to have an effective on-the-water presence in the Sanctuary. NOAA's Office for Law Enforcement, which is funded separately from the Sanctuary budget, also assigns a law enforcement agent to the Sanctuary region.

119. *Comment:* Team OCEAN should be deleted from the Expanding Enforcement Efforts section, Strategy EE.2 and included in the Public Awareness and Understanding Action Plan.

Response: In addition to traditional enforcement, NOAA employs interpretive enforcement through Team OCEAN, a program that reaches out to boaters to help them understand and comply with CINMS regulations. Team OCEAN will not be administered as a substitute for law enforcement, but can complement those efforts. Team OCEAN will remain in the Emergency Response and Enforcement Action Plan because it is an important tool for both emergency response and enforcement. While Team Ocean is mentioned briefly as an activity within strategy EE.2, it is explained in detail in the Public Awareness and Understanding Action Plan (Strategy AU.3).

120. *Comment:* NOAA must ensure the regulations for CINMS are legally binding and enforceable, must have a dedicated/exclusive enforcement program for the CINMS, and/or must establish formal partnerships with as many enforcement agencies as possible.

Response: Primary law enforcement responsibilities for NOAA regulations are carried out by the NOAA Office for Law Enforcement (OLE). An enforcement officer stationed in Long Beach conducts investigations into violations of the National Marine Sanctuaries Act and regulatory prohibitions in coordination with State, local and other Federal law enforcement counterparts. In addition, NOAA signed agreements with the State of California, the National Park Service, and the U.S. Coast Guard that provide authorization for local enforcement personnel from these agencies to enforce Sanctuary regulations. They work with NOAA to conduct patrols and investigate potential violations. For example, the U.S. Coast Guard conducts air and sea surveillance within the sanctuary and has broad Federal enforcement authority. NOAA OLE also works with the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, and the Federal Bureau of Investigation (FBI) to investigate violations of

environmental laws within national marine sanctuaries. More information about enforcement of NOAA regulations can be found at <http://www.nmfs.noaa.gov/ole/index.html>.

The CINMS regulations are legally binding and enforceable. They were drafted with extensive input from NOAA's Office of General Counsel, NOAA Office of Law Enforcement, and our enforcement partners—CDFG, NPS and USCG. NOAA's Office of General Counsel for Enforcement and Litigation also establishes a penalty schedule that outlines recommended penalties for violations under the NMSA. This penalty schedule provides notice to the public and provides guidance to the prosecutors as to a general range of penalties for specific violations. The penalty schedule reflects sanctions that NOAA believes will encourage compliance and deter violations; however, in every case, NOAA retains the ability to assess a penalty up to the statutory maximum of \$130,000. The NMSA penalty schedule is publicly available and can be accessed through this link: <http://www.gc.noaa.gov/schedules/58-NMSA%20Penalty%20Schedule%209-06.pdf>.

121. *Comment:* NOAA should not issue the new regulations for CINMS and should instead rely on existing regulations and authorities for additional protection.

Response: NOAA carefully examined existing CINMS and other relevant regulations as part of the management plan review, and determined that in some cases strengthening of Sanctuary regulations was warranted, as described in section 2 of the FEIS. NOAA often relies on other agencies' regulations to help protect sanctuary resources. However, sometimes the scope of these regulations is not broad enough to protect sanctuary resources, or may need to be reinforced with parallel sanctuary regulations, which allow for additional enforcement options. NOAA always works very closely with other agencies to minimize potential management conflicts and to promote compliance with sanctuary regulations and the regulations of other agencies.

122. *Comment:* NOAA should increase, rather than maintain at current levels, vessel and aircraft surveillance operations.

Response: NOAA will pursue opportunities to expand vessel and aircraft based surveillance, but will first focus efforts on maintaining access to existing opportunities and platforms for this activity. To better reflect this NOAA has changed the activity title to

“Maintain Effective Vessel and Aircraft Surveillance Operations.”

123. *Comment:* To ensure that CINMS discharge regulations are being complied with, NOAA should conduct snapshot water quality monitoring, perhaps immediately following cruise ship transits through the CINMS, as well as at other key times of high vessel traffic.

Response: CINMS will consider snapshot water quality monitoring during implementation of FMP Strategy WQ.2—Water Quality Protection Planning.

124. *Comment:* Commenter strongly supports additional efforts by CINMS to expand enforcement efforts in order to ensure compliance with new and existing Sanctuary regulations, as well as other federal and state laws and regulations.

Response: Comment noted.

Fishing

125. *Comment:* Several commenters expressed concern about regulating fishing activities under the CINMS regulations and NMSA, making one or more of the following points: There is no connection between the overall management of CINMS as both a Sanctuary under the NMSP and an EFH designation under NMFS.

NOAA should utilize the Magnuson-Stevens process for fishery management, and the Pacific Fishery Management Council should be the body to adopt fishery regulations within the Sanctuary and to ratify any marine reserves designation.

NOAA has no functional MOU between the NMSP and NMFS concerning marine zoning, fishery management planning, and ecosystem based adaptive co-management.

NOAA should revise each of the CINMS prohibitions to provide exemptions for all lawfully conducted state and federal fisheries.

The CINMS has no need or the resources necessary to be involved in fisheries management.

Response: NOAA considers both the National Marine Sanctuaries Act (NMSA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to be tools that can be used exclusively or in conjunction to regulate fishing activities to meet Sanctuary goals and objectives. NOAA evaluates regulatory options on a case by case basis to determine the most appropriate regulatory approach to meet the stated goals and objectives of a sanctuary. If NOAA determines additional regulations on fishing within CINMS are necessary, NOAA will follow the process for developing such regulations

in consultation with the PFMC and State, and as directed under section 304(a)(5) of the NMSA.

For example, the recently designated marine reserves in the CINMS resulted from a coordinated regulatory effort among the Pacific Fishery Management Council, NMFS and NMSP. Under the MSA, bottom contact gear is prohibited in these zones. The NMSA was used to create no take zones and complement the bottom contact gear prohibition by prohibiting all other extractive activities, including fishing.

NOAA strives for cooperative and adaptive management among its various offices including NMFS and the NMSP, and does not typically establish MOUs for this purpose. The NMSP and NMFS regularly collaborate to integrate zoning and fishery management by jointly participating in Sanctuary Advisory Council and Regional Fishery Management Council meetings, information and data exchanges, and cooperative enforcement of zoning and fishery regulations within national marine sanctuaries.

Where NOAA has deemed it appropriate, the CINMS regulations provide exceptions for lawful fishing activities.

NOAA has the expertise to determine the goals and objectives necessary to protect the nationally significant resources of national marine sanctuaries. This responsibility extends beyond fishery resources to conservation, recreational ecological, historical, cultural archeological, scientific, educational and esthetic qualities of national marine sanctuaries. If NOAA, in consultation with advisory councils and other stakeholders, determines that fishing regulations are needed to further sanctuary goals and objectives, section 304(a)(5) of the NMSA requires that the Sanctuary provide the appropriate Fishery Management Council the opportunity to prepare draft sanctuary fishing regulations for the Exclusive Economic Zone that will fulfill the Sanctuary's goals and objectives.

126. *Comment:* NOAA should add wording to protect rights to fish and recreate in Sanctuary waters in the emergency regulations.

Response: NOAA is not modifying the emergency regulations section of the terms of designation for the purpose mentioned. In the case of an emergency within the Sanctuary, fishing or recreating may temporarily not be appropriate or possible in certain areas. For example, when Alaska Airlines Flight 261 crashed in the Sanctuary in January 2000, a temporary navigational closure was established around the

crash site. These emergency provisions are not used lightly, can only be in place temporarily (as long as necessary to respond to the emergency), and are subject to extensive administrative review. Many federal and state agencies have authority to issue temporary emergency regulations in response to emergency situations, such as natural or man-made disasters.

127. *Comment:* NOAA has completely ignored its commitment to the fishing community at CINMS from the public awareness goal.

Response: NOAA continues to carry out its education and outreach commitment to the fishing community at CINMS. NOAA has engaged the fishing community in the development and delivery of several outreach tools, for example: Regulatory brochures, signage at harbors, and guest speaking opportunities to the Sanctuary Advisory Council and general public.

128. *Comment:* NOAA should recognize the CINMS fishing community as a cultural resource.

Response: NOAA recognizes the importance of the fishing community and provides opportunities for its involvement in Sanctuary research, education, and resource protection activities, such as in development of outreach tools (see also the response to comment 127), and in advising CINMS through the Commercial Fishing and Recreational Fishing seats on the Sanctuary Advisory Council. Moreover, NOAA believes healthy fisheries within a national marine sanctuary are an indication of a healthy ecosystem protected by that sanctuary. NOAA has already incorporated, and will continue to incorporate, fishing themes into CINMS education and outreach efforts, such as public lectures and weather kiosks. CINMS staff will also continue to work with the fishing community to develop additional fishing-related programs and products.

129. *Comment:* Reductions in commercial and recreational fishing vessels can result in economic impacts, including impacts on boat owners, the fuel dock, boatyard, and Port District.

Response: In the FEIS, NOAA has concluded that recreational and commercial fishing should experience no significant adverse impacts from implementation of the revised CINMS regulations. Furthermore, these regulations would not result in a "reduction" in commercial and recreational fishing vessels. A number of the regulations provide specific exceptions to accommodate lawful fishing activities. In addition, the management plan includes a number of programs that support boating in general

(e.g., safe boating brochure, the Protecting Your Channel Islands brochure), and that should also be helpful to boaters engaged in fishing.

General Comments

130. *Comment:* General support expressed for the changes and updates proposed in the management plan, and the associated background information and environmental analysis.

Response: Comment noted.

131. *Comment:* Broad support expressed for resource conservation and protection, and acknowledgement that the Sanctuary is "moving in the right direction." NOAA should not, however, over-regulate or adopt regulations that are inconsistent with other agencies.

Response: Comment noted.

132. *Comment:* General support indicated for DEIS Alternative 1 due to concern about increased use of the Santa Barbara channel by cruise ships, interest in long-term protection of resources and existing Sanctuary uses, and concern about protection against predicted future increases in industrialization of the Santa Barbara Channel area.

Response: Comments noted. For additional context, see the responses to comment 283 regarding support for Alternative 1 as it relates to water quality, comment 78 regarding support for the Alternative 1 discharge regulation, comment 176 regarding support for the Alternative 1 lightering regulation, and comment 221 regarding support for the Alternative 1 nearshore vessel approach regulation.

133. *Comment:* Support expressed for CINMS to retain its current role focusing on and facilitating public and scientific attention on the Channel Islands area, and prohibiting certain industrial extractive activities within the Sanctuary.

Response: Comments noted.

134. *Comment:* The DMP and DEIS are so large and burdensome that they prohibit real public input.

Response: NOAA believes that the length of the documents is appropriate and necessary to explain the justification for, and analyze alternatives to, the revisions to the Management Plan and associated regulations, as required by the NMSA, the National Environmental Policy Act (NEPA), and other relevant authorities including the Administrative Procedure Act. NOAA believes the organizational structure should allow readers to find information pertinent to their specific interests.

135. *Comment:* NOAA must update the current policies and programs at CINMS to develop a plan that will

enhance protection of Sanctuary resources for future generations, and succeed in achieving the goals and objectives of the National Marine Sanctuaries Act.

Response: NOAA implemented changes that will update current CINMS policies and programs, and enhance protection of Sanctuary resources.

136. *Comment:* Commenters indicated that they would like to incorporate by reference, and/or support all or a subset of the Sanctuary Advisory Council's Conservation Working Group comments.

Response: Please refer to responses to the Conservation Working Group's comments, listed in the table at the beginning of the FEIS response-to-comments appendix under "Krop, Linda" and dated July 7, 2006.

137. *Comment:* NOAA should invest (fiscally or through dedicated personnel) in the National Park Service's long-term kelp forest monitoring program or other marine-based resource monitoring programs to further knowledge of the ecosystem.

Response: NOAA values the kelp forest monitoring program implemented by the National Park Service, and intends to continue providing vessel and staff support to this important program as resources allow. NOAA strongly supports cooperative management of Sanctuary resources by promoting and coordinating the efforts of outside research groups whose work increases understanding of Channel Islands biological and cultural resources. Enforcement, monitoring, education, and outreach efforts are achieved through partnerships with various state and federal agencies, universities, private institutions and non-profit organizations. CINMS provides its partners with opportunities onboard its research platforms, including the R/V *Shearwater* and, historically, the *Seawolf* aircraft. In 2006, CINMS research vessels were at sea for more than 200 days conducting projects on seabirds, marine mammals, kelp forests, oceanography, intertidal monitoring, and geology in and around the Sanctuary. Further, a proportion of the CINMS annual budget has been and continues to support partner research, monitoring and enforcement activities.

138. *Comment:* NOAA should consider and be guided by the special and unique nature of the islands and surrounding waters in crafting the Management Plan, regulations, and programs.

Response: The special and unique characteristics of the Islands and surrounding waters were significant factors in the decision to designate the

waters surrounding the Islands as a national marine sanctuary, and remain the overarching reason for revising CINMS regulations and implementing a variety of programs.

139. *Comment:* NOAA should provide adequate resources and funding levels to implement the management plan, especially given increased requirements from the recently designated Channel Islands MPA Network.

Response: NOAA recognizes that resource limitations as well as the necessary program and partner developments may limit implementation of all of the activities in the various management plans. NOAA will continue to work with the Department of Commerce, Office of Management and Budget, and Congress in developing supporting justifications when preparing budget submissions. The Management Plan articulates the full suite of potential CINMS actions for the next five to ten years. However, CINMS's budget may not allow for a high level of implementation of every planned activity. NOAA has described the planned implementation level of each activity in various future funding scenarios (see the FMP Action Plan Summary Table). Regarding funding and marine protected areas see the response to comment 118.

140. *Comment:* Language in the management plan is subjective and vague.

Response: NOAA has been as specific and transparent as possible in describing planned actions in the CINMS management plan and EIS. As a federal resource management agency, NOAA must meet federal standards of objectivity and transparency in describing the actions and rationale for planned management actions within national marine sanctuaries.

141. *Comment:* NOAA does not identify the new threats used to justify regulation changes.

Response: NOAA has described threats to Sanctuary resources and qualities that warrant new and revised CINMS actions in the beginning of each action plan under the header "Description of the Issues," as well as throughout the Sanctuary's FEIS and in this preamble to the final rule.

142. *Comment:* NOAA should focus on practical, precise, and prudent CINMS management actions and enforcement, rather than expanding Sanctuary authority beyond its means. Additional changes should only be seriously discussed or considered if these efforts indicate further need of beneficial adjustment.

Response: NOAA considered such concepts prior to proposing the CINMS

revised management plan, revised authority and regulations. Per the National Marine Sanctuaries Act, NOAA is required to evaluate sanctuary management plans and regulations at regular intervals. During the course of management plan reviews, NOAA solicits public and agency input to help determine the extent to which sanctuary management plan changes may be warranted, as well as to help determine the nature of any such changes.

143. *Comment:* Despite a new Sanctuary office building to be built on the campus of UCSB, NOAA should continue to maintain a public CINMS presence at the waterfront, which is heavily used by both residents and visitors. Most members of the public will not be exposed to the offices at UCSB, because they do not travel there regularly, because of high parking fees, and for various other reasons.

Response: NOAA plans to keep a CINMS office in the Santa Barbara Harbor to support operations of the R/V *Shearwater*, and to maintain a public access contact point at the Santa Barbara Harbor through educational signage and a brochure rack (currently part of Santa Barbara Harbor office). NOAA has also installed a Sanctuary interactive kiosk at the Santa Barbara Harbor and plans to continue a partnership with the Harbor's Outdoors Santa Barbara Visitor Center. In partnership with the Santa Barbara Maritime Museum at the Santa Barbara Harbor, NOAA also intends to maintain and develop public education exhibits relating to maritime heritage.

144. *Comment:* Support expressed for NOAA's development and support of on-going CINMS partnerships with a variety of local institutions, as well as a focus on water quality and teacher training, all of which is a benefit to the community.

Response: Comment noted.

145. *Comment:* NOAA should explain how a subset of the NMSA purposes and policies were selected and listed in the management plan's Introduction section, as opposed to listing all of the NMSA's purposes and policies.

Response: The list of purposes and policies provided in the FMP is a complete, verbatim list of the purposes and policies of the NMSA. NOAA has revised the text introducing the list to clarify that it is a complete and verbatim list.

146. *Comment:* Did NOAA review the original management plan, did it work, and why or why not?

Response: Sanctuary staff thoroughly reviewed the 1983 management plan's goals and objectives, and assessed the extent to which they were

accomplished, as well as the continuing relevancy of each. Staff then engaged in a similar discussion with the Sanctuary Advisory Council in 1999. In general, NOAA has made progress towards accomplishing the broad goal areas of the original CINMS plan: Resource protection, research, interpretation, and visitor use. Through enforcement of regulations and collaboration with other agencies and constituents NOAA has enhanced protection of Sanctuary resources. NOAA has made strides towards directing research efforts to resolving management concerns and increasing understanding of the Sanctuary environment and resources, including through use of the Sanctuary's research vessels. NOAA has developed interpretative programs that enhance public awareness and understanding of the significance of the Sanctuary and the need to protect its resources. NOAA has encouraged commercial and recreational use of the Sanctuary that is compatible with protection of its significant resources, such as placing trained naturalists on board commercial whale watching vessels. Within the Introduction to the FMP, NOAA has added text to describe the review of the 1983 CINMS management plan.

147. *Comment:* NOAA has used science to support the notion of new threats in CINMS that is so selective it does not meet basic ethical standards for science. NOAA should provide data to support new threats such as: Declines in bird populations, evidence that nutrient cycles are disrupted relative to humans visiting, kelp forests being in decline in fished areas, and showing that predator prey relationships govern ecosystem functions and are compromised with any size frequency data on harvested populations.

Response: NOAA must comply with all federal standards, such as the National Environmental Policy Act, the Administrative Procedure Act, and the Data Quality Act, regarding the use of science. NOAA did not make any of the statements mentioned about Sanctuary resources (declines in bird populations, etc.) in the CINMS management plan. Similarly, NOAA has not made statements in the management plan about a new threat from evidence that nutrient cycles are disrupted relative to humans visiting. However, in the FEIS NOAA does discuss and provide references for information indicating that sewage and graywater discharges have the potential to disrupt nutrient cycles. Finally, NOAA has not made statements in the management plan indicating that predator prey relationships govern ecosystem functions and are compromised with

any size frequency data on harvested populations.

148. *Comment:* NOAA should develop a Man in the Biosphere program working group.

Response: The Sanctuary Advisory Council is the body that develops working groups to discuss Sanctuary issues. NOAA recommends that the commenter provide this suggestion directly to the Sanctuary Advisory Council.

149. *Comment:* NOAA should create a budget for an independent community GIS program to foster social justice and oppose NMSP neocolonialism.

Response: The NMSA does not direct NOAA to develop social justice programs, and such efforts would be outside the scope of actions proposed in the CINMS management plan. NOAA disagrees with the commenter's assertion that the NMSP is engaged in "neocolonialism."

150. *Comment:* NOAA should not refer to life forms as "resources" in the text of the management plan.

Response: "Resource" is a broadly defined term in the Office of National Marine Sanctuaries' program wide regulations (15 CFR 922.3) to include all components within a sanctuary that contribute to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary (15 CFR 922.3). The use of this term does not intend to connote that sanctuary components are valued solely on the basis of their potential for human use or exploitation.

151. *Comment:* Since people go to the islands to enjoy them, NOAA should regulate without excluding the public, such as dive charter vessels, and without restricting where vessels moor.

Response: Consistent with purposes and policies of the NMSA, NOAA facilitates public and private uses of the national marine sanctuaries to the extent that such uses are compatible with the primary goal of resource protection, and not prohibited by other authorities. The revised CINMS regulations prohibit most vessels 300 GRT or more from approaching within one nmi of island shores. Such vessels are consequently precluded from mooring at the Islands. Sanctuary users must also comply with all applicable regulations while in the Sanctuary, not only with CINMS regulations. The California Department of Fish and Game and Channel Islands National Park seasonally limit access to certain nearshore areas of the Islands during seabird nesting.

152. *Comment:* NOAA should use forward thinking and the best environmental protections to protect the

Channel Islands from an array of new threats and pressures, especially since new threats may emerge before the next management plan review.

Response: Strong environmental protections are necessary for the Sanctuary, and the management plan should be forward thinking. The NMSA requires NOAA to review national marine sanctuary management plans at regular intervals. Should any threats to Sanctuary resources arise between management plan review cycles, NOAA can take action to address such threats without engaging in a management plan review process, consistent with applicable authorities (see Resource Protection Action Plan Strategy RP.2).

153. *Comment:* The CINMS management plan should connect management of coastal resources with the Sanctuary, recognizing that there is connectedness between a lot of pelagic fish species and the Sanctuary. NOAA should not manage the Sanctuary as if it is isolated from these other areas.

Response: NOAA manages CINMS resources with the understanding that the Sanctuary exists in a coastal ocean environment within which administrative boundaries do not provide a barrier between resources inside and outside of the Sanctuary. Pelagic fisheries in the Sanctuary region are managed by NMFS (with recommendations from the Pacific Fishery Management Council) under the MSA, as well as by the California Department of Fish and Game. CINMS consults with these and other partner resource agencies regarding any implications for Sanctuary resources that may result from management actions both within and outside of the Sanctuary. In addition, the NMSP West Coast Region works to integrate strategies and programs across west coast national marine sanctuary sites, and also to coordinate efforts with other federal, state, local, and regional ocean management agencies. See also the response to comment 31 for information about marine ecosystem extents and expanding the Sanctuary.

154. *Comment:* NOAA should demonstrate, through specific CINMS programs, that it encourages compatible use. This is an important component in boosting CINMS's image as being friendly to local interests.

Response: NOAA encourages compatible use through several CINMS program areas. Education and outreach programs, for example, develop and distribute the "Protecting Your Channel Islands," "Boating & Safety," and "Protecting Our Seabirds" brochures with this purpose in mind (see also the response to comment 101). These

brochures provide information and helpful tips about various activities people may enjoy in the Sanctuary, such as diving and fishing, and how to do so in a safe and responsible manner. In addition, several pages on the CINMS Web site provide information about how to get to the islands, as well as information about the best times of year to engage in certain activities. The CINMS Maritime Heritage Program provides information to divers about recommended shipwreck dive sites, while Research and Monitoring Program staff work closely with researchers from all over the world to facilitate appropriate research within the Sanctuary. The Sanctuary Advisory Council includes members from diverse user groups, several of which have active working groups.

155. *Comment:* Frustration expressed that NOAA, at the time the DMP/DEIS was released, was still only at the stage of developing a process for dealing with marine reserves and boundary expansion issues, both of which have received strong public support in the Ventura and Santa Barbara communities.

Response: NOAA believes in ensuring that the best available science is used in national marine sanctuary decision making, and in dedicating sufficient resources to each environmental review project. NOAA values the public support for processes to consider establishing marine reserves within the Sanctuary, and to evaluate the Sanctuary boundary. NOAA has since completed implementation of a network of marine reserves and marine conservation areas within the Sanctuary (72 FR 29208). NOAA determined that the best manner in which to evaluate the CINMS boundary was to first conduct a comprehensive biogeographic assessment of the Sanctuary and surrounding environment. Now that the biogeographic assessment is complete, given sufficient resources, NOAA plans to initiate the environmental review process for boundary evaluation at an appropriate time in the future.

156. *Comment:* The management plan update process that started in 1999 has been very lengthy and the remaining steps of converting the draft plan to final should be completed as expeditiously as possible.

Response: NOAA values the efforts of everyone involved in the CINMS management plan review to date. The length of this review is due to many factors, including that the CINMS management plan review was the first comprehensive management plan review the NMSP initiated for the national marine sanctuaries designated

prior to 1995. The CINMS management plan review was also lengthened in order to address issues concerning large vessel discharge raised by the California Coastal Commission and others during the public comment period on the DMP/DEIS. NOAA determined that addressing such issues required development of an SDEIS, and providing a supplemental public comment period.

157. *Comment:* The management plan's action plans should be both well funded and adequately staffed, perhaps with the assistance of the NMSP's West Coast Region, to carry out the Sanctuary's programs and objectives.

Response: As part of the management plan review process, CINMS staff worked to prioritize the strategies and activities in the management plan's action plans (see Appendix A1 of the FMP for a table identifying how each activity will be maintained or implemented in the future). Staff from the West Coast Regional Office (WCRO) work on management issues that are primarily regional in scope; they also work with individual sanctuaries on priority management activities that would benefit from the WCR staffs' expertise.

158. *Comment:* The management plan should include a Memorandum of Understanding (MOU) between various Federal and State agencies, including the Coastal Commission, to better respond to current water quality issues and conditions. The MOU should reflect the Plan for California's Nonpoint Source Pollution Control Program.

Response: Although NOAA does not envision drafting an MOU among various Federal and State agencies as a direct activity associated with this CINMS management plan review, the agency recognizes the important role of MOUs in better articulating roles and responsibilities among the multitude of management authorities that typically exist within national marine sanctuary regions (see Strategy OP.3 in the FMP for a description of how the NMSP formalizes relationships with other authorities). The NMSP has implemented several MOUs across the sanctuary system (including several at CINMS) and, if appropriate, may do so again in the CINMS region sometime in the future. This could involve MOUs related to water quality protection. NOAA recognizes the importance of state agency partners, and the value of consistency among respective programs to the extent practicable.

159. *Comment:* The management plan's Action Plan activity "status" descriptions should be explained in more detail to include specific dates, if

possible, or at least be revised to include some definition of the phrase "years 1–5."

Response: NOAA has included specific dates, where possible, to describe the status of activities in the FMP. NOAA has added information to explain the meaning of years 1–5, which now appears in the FMP's Action Plan Background section entitled, "How Are Action Plans Organized?"

160. *Comment:* The DMP's description of the Sanctuary Setting could be augmented by recent information that has been recently made available through the NCCOS Biogeographic Assessment report.

Response: NOAA has revised FMP text to reference the biogeographic assessment (NCCOS 2005).

161. *Comment:* The islands are special, unique, and Congressionally recognized as a place for extra protections, whereas there are other areas to take large vessels and personal watercraft.

Response: Comment noted.

Global Climate Change

162. *Comment:* NOAA should address climate change/global warming and its effects on Sanctuary resources. NOAA should: (1) Formally acknowledge the threat of global warming and work to better understand how global warming may affect Sanctuary resources, (2) reduce greenhouse gas emissions associated with CINMS operations, and (3) advocate, through appropriate administrative channels, for the deployment of a national response to global warming to reduce its impacts on the climate, and thus on CINMS resources.

Response: NOAA has added language to the FMP's Resource Protection Action Plan that explains how the NMSP and NOAA are assessing potential climate change impacts on national marine sanctuaries and how such impacts may be mitigated. NOAA has also added a strategy to the FMP's Operations Action Plan that discusses how CINMS is working to green its operations. Finally, NOAA has added information to the FMP's Conservation Science Action Plan strategy CS.3, about pursuing development and future monitoring of a carbon budget for the Sanctuary. NOAA would consider data and findings from this work as part of its collective scientific efforts to inform climate policy.

Goals

163. *Comment:* NOAA should explain why the old and new CINMS goals are so different.

Response: In general, goals from the 1983 CINMS management plan are encompassed within the new goals articulated in this FMP. NOAA revised the CINMS management plan to better explain that the original goals are missing several important concepts and nuances encompassed in the National Marine Sanctuaries Act and reflected in the new goals for the Sanctuary (as revised for the FMP).

164. *Comment:* NOAA should clarify if the CINMS goals presented in the management plan are new, and who decided upon them.

Response: NOAA determined that CINMS goals should directly reflect the overarching mission of the ONMS and be derived from the purposes and policies of the NMSA, as enacted by Congress. All of the seven goals provided in the DMP were paraphrased from section 301 of the NMSA. NOAA has since decided to use language taken directly from NMSA section 301, rather than to paraphrase it. NOAA has also added two goals that contain concepts from NMSA section 301 that were previously missing from the CINMS goals, and additional explanation regarding goal development.

165. *Comment:* CINMS goal four (i.e., provide comprehensive and coordinated conservation and management of these marine areas, as well as the activities affecting them, in a manner complementing existing regulatory authorities) has yielded new prohibitions that are vague and enabling, duplicate other regulations, and are inconsistent with the CINMS charter. NOAA should rewrite the goal to state “* * * complementing, but not duplicating * * *.”

Response: The new prohibitions are not inconsistent with the CINMS terms of designation (referred to above as the “charter”). Furthermore, the NMSA provides authority for, among other things, “* * * comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities.” The CINMS terms of designation acknowledge that the NMSA “authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary.” As evidenced by the analysis in the FEIS, the new prohibitions meet this criterion.

While CINMS may have similar regulatory prohibitions as another agency, NOAA has crafted CINMS regulations to be complementary. Further, the NMSA provides a different suite of penalties than available under another regulatory authority.

166. *Comment:* Ecosystem-based management is adaptive, but given that it has been 25 years since the last management plan, it is not clear whether Sanctuary goals are adaptive.

Response: CINMS goals directly reflect the findings and purposes and policies of the NMSA. These findings, purposes and policies are very broad, encompass all of the actions identified in the FMP, and have been adapted several times during reauthorization of the NMSA by Congress. In turn, the CINMS goals are broad enough that CINMS can adapt its management actions as necessary.

167. *Comment:* NOAA should make the CINMS goals more consistent with the NMSA by using the word “facilitate” instead of “allow” in goal six, by encouraging compatible public and private commercial and recreational use, and by adding goals for science and monitoring.

Response: NOAA has revised the CINMS goals to make them more consistent with the NMSA. A new goal three regarding support for science and monitoring has also been included.

168. *Comment:* CINMS has not honored its commitments to programs and stonewalled basic data management. CINMS goals five, six, and seven are empty promises with no budget.

Response: FMP Strategy CS.2 is dedicated to comprehensive data management. Regarding goal five (now six), NOAA believes the CINMS marine zoning process demonstrates strong models for conserving and managing national marine sanctuaries and applying innovative management techniques. Regarding goal six (now seven), CINMS provides education and outreach materials aimed at facilitating public and private uses of resources that are compatible with resource protection. These materials help Sanctuary users understand and learn about activities they may enjoy within the Sanctuary, and where certain types of activities are prohibited. Regarding goal seven (now eight), CINMS cooperates regularly with national and international programs encouraging conservation of marine resources. CINMS frequently hosts international delegates interested in learning about Sanctuary issues and how CINMS is addressing them. CINMS staff also represent the ONMS and NOAA in exchanges with marine resource management agencies in other countries, and participate in international conferences focused on marine conservation. CINMS staff also often cooperate with national programs encouraging conservation of marine resources (see the FMP for specific

examples). The FMP does not describe a budget for each goal. Budgets are developed for action plans, which are designed to meet CINMS goals.

Introduced Species

169. *Comment:* Commenters support the Sanctuary’s new introduced species prohibition, efforts to prevent the release of introduced species in the Sanctuary, and the exemption under this prohibition for striped bass released during catch and release fishing.

Response: Comment noted.

170. *Comment:* The prohibition on releasing introduced species may conceivably put an angler in a position of non-compliance with regulations from other entities if the angler catches an introduced species that is not legal to catch (per such other entities), but the angler cannot release it due to the CINMS prohibition. The final regulation should leave an angler with a safe and legal course of action.

Response: NOAA is not aware of any state or federal fishing regulations that would require an angler to release an introduced species caught in the Sanctuary. Thus, complying with this regulation on releasing introduced species would not place an angler in a position of non-compliance with regulations from other entities. Furthermore, NOAA encourages recreational anglers to assist in collecting information about introduced species by keeping specimens and sharing them with NOAA and other resource management agencies, such as the California Department of Fish and Game.

171. *Comment:* The regulation prohibiting the introduction of introduced species should have an exemption for aquaculture or mariculture activities pursuant to a valid lease, permit, license, or other authorization.

Response: Intentionally introducing species or experimenting with new introduced species is not an appropriate activity in national marine sanctuaries because introduced species may threaten the diversity or abundance of native species or the ecological stability of waters in which they occur. They may also threaten commercial or recreational activities dependent on sanctuary waters. The California Department of Fish and Game (CDFG) asserts “invasive species are the number two threat to rare, threatened or endangered species nationwide, second only to habitat destruction,” (Leet *et al.* 2001). Although national marine sanctuaries retain authority to address this threat to sanctuary resources, the NMSP would work very closely with the

State of California regarding any aquaculture proposals that might arise in the Sanctuary area.

172. *Comment:* NOAA should add a specific action plan in the Education and Outreach area to educate Sanctuary users how to comply with the prohibition on introduced species, such as a “Keep your boat bottom clean!” information brochure.

Response: Education, especially boater education, about introduced species is important. Introduced species in the Sanctuary are an emerging resource protection issue. The FMP action plans are meant to be living documents that incorporate the most current resource issues in the Sanctuary into our plans and programs. NOAA has not added a separate action plan on introduced species; however, CINMS plans to incorporate education about introduced/invasive species into education programs and materials. The Long-term Monitoring and Experiential Training for Students (LiMPETs) program (Strategy AU.1, activity 5) monitors algal and invertebrate species on the Channel Islands and may be a program where invasive species education can be incorporated. CINMS staff also participate in annual efforts sponsored by the Santa Barbara Waterfront Department and California Department of Fish and Game to remove the invasive Japanese kelp, *Undaria*.

FMP Strategy AU.6, activity 1 (Boater Safety Tips Brochure) also addresses introduced species by including information related to boating safety, regulations on discharge in the ocean and sanctuary, clean boating practices, and local marine refuse stations. Additionally, as explained in Strategy AU.6, activity 5, CINMS participates in a variety of outreach events each year including whale festivals, harbor festivals, boat shows, and dive industry events. These events include boater outreach where education about a variety of CINMS regulations and issues, including aquatic nuisance/invasive species, is shared with the public and boaters. Any tool or product mentioned under Strategy AU.6 will be updated to reflect any changes to CINMS regulations.

173. *Comment:* NOAA should explain how Sanctuary research vessels are going to comply with the new prohibition on introduced species, especially given that they are docked in a port containing invasive species.

Response: CINMS regularly inspects and cleans its vessels and equipment in order to minimize the risk of our activities being a vector for introduction of invasive species. CINMS is also working with the Santa Barbara

Waterfront Department to assess and mitigate the threat of invasive Japanese kelp in Santa Barbara Harbor.

174. *Comment:* Given that the proposed Sanctuary prohibition on introduced species is largely redundant of State regulation, the Sanctuary should support the existing, spatially comprehensive authorities that are addressing the invasive species problem, especially where the Sanctuary is at risk.

Response: NOAA supports existing regulatory authorities on introduced species. However, the CINMS regulation for introduced species differs from similar laws and regulations in that it: (1) Provides place-based protections specifically for CINMS; (2) prohibits transgenic species introductions in both state and federal waters of the Sanctuary; and (3) prohibits introducing or otherwise releasing species beyond the one nmi offshore Channel Islands National Park boundary. Furthermore, the introduced species regulation establishes a deterrent against intentional and unintentional introductions or other releases of introduced species into the Sanctuary through civil penalty (up to \$130,000 per incident, per day) under the NMSA. Finally, this regulation prohibits introductions of species native to California but not native to the ecosystems of the Sanctuary.

175. *Comment:* NOAA should clarify the burden of proof for enforcing the prohibition on introducing introduced species by adding an “intent to release” provision.

Response: NOAA enforcement personnel maintain prosecutorial discretion in determining whether or not to prosecute violators of CINMS regulations. NOAA is not incorporating “intent to release” into the language of the prohibition because it does not think there should be a requirement of intent in the regulation.

Lightering

176. *Comment:* NOAA should adopt the prohibition on lightering included in Alternative 1 to further Sanctuary resource protection, protect against lightering related oil spill impacts, and further protect water quality.

Response: NOAA has decided not to include the lightering prohibition in the CINMS regulations at this time because large scale vessel lightering does not occur in the Sanctuary, and NOAA does not believe it is likely to become a common practice given the Sanctuary’s geographic location (i.e., its distance from major ports), the Area to Be Avoided that advises large vessels to avoid the majority of the Sanctuary

(excluding the TSS), and the established traffic patterns within the Sanctuary (e.g., large vessels typically transit the Sanctuary through the TSS). Regarding smaller vessels, NOAA understands that the occasional practice of sharing fuel between boats (also a form of lightering) may occur, and that this practice may help prevent other possible problems such as vessel groundings. For now, existing prohibitions against discharges into the Sanctuary will be used to address spills associated with small-boat to small-boat fuel transfers. Should lightering become an issue that NOAA deems necessary to regulate in the future, NOAA may consider proposing a Sanctuary lightering regulation. Although NOAA is not prohibiting lightering activities at this time, all vessels must still comply with the CINMS discharge and deposit regulation.

177. *Comment:* The lightering prohibition in Alternative 1 should include an exception for emergencies. For example, if a vessel loses power, drifts into and becomes embedded in the islands, it would need to be lightered.

Response: NOAA is not including the lightering prohibition in the CINMS regulations at this time (see the response to comment 176). However, note that the lightering prohibition described in Alternative 1, as with most Sanctuary regulations, includes an exception for “an activity necessary to respond to an emergency threatening life, property, or the environment.”

Liquefied Natural Gas

178. *Comment:* NOAA should prohibit Liquid Natural Gas projects within CINMS boundaries. NOAA should also address impacts from LNG projects outside the Sanctuary boundary through early consultation with project applicants and permitting agencies. If such projects would harm Sanctuary resources, they should not be permitted. NOAA should also maintain adequate enforcement effort so that if LNG projects violate CINMS regulations, such as the discharge regulation’s “enter and injure” clause, or the introduced species regulation, the violations are prosecuted and properly mitigated.

Response: CINMS regulations include prohibitions on disturbing the seabed, and discharging or depositing within the Sanctuary in the absence of a Sanctuary permit. Installing and operating LNG terminals within CINMS would likely involve such activities. If an LNG project applicant were to seek permits for activities that would otherwise be prohibited by CINMS regulations, it is unlikely that such a

project could meet the criteria for issuance of a CINMS permit.

The presence of the Sanctuary is recognized as important in decisions regarding permits for LNG projects in the region, and was recently cited by the Governor of California as part of his rationale for denying the Cabrillo Port LNG proposal. Any LNG project proposed outside the Sanctuary, but in the Sanctuary region, would likely be subject to consultation per section 304(d) of the NMSA, which requires that federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any Sanctuary resource, are subject to consultation with the NMSP. This provision of the NMSA provides NOAA with the opportunity to formally recommend alternative courses of action for the applicant. NEPA, the APA, and the Deepwater Ports Act also provide opportunity for inter-agency consultation. In addition, the Sanctuary prohibition on 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 would apply to discharges/deposits from LNG projects located outside the Sanctuary.

NOAA law enforcement efforts for CINMS will continue per the cooperative mechanisms currently implemented in the Sanctuary. For more detail on cooperative enforcement efforts, see the response to comment 120.

Marine Bioprospecting

179. *Comment:* In the DMP, NOAA inappropriately identified as "marine bioprospecting" a research project that was funded by MMS in conjunction with the University of California at Santa Barbara (UCSB) This term as used in the DMP implies a sustained removal or harvesting of a marine resource. However, the UCSB project was a limited time sampling of marine organisms on oil and gas platforms, the purpose of which was to isolate compounds with anti-cancer and anti-inflammatory potential for further research. Ultimately, the goal of any such successful compounds would be synthesis of the new drugs in laboratories rather than purification of these from collecting.

Response: The referenced project was appropriately identified as marine bioprospecting. As stated in the DMP and in the FMP, marine bioprospecting is the activity of seeking a useful application, process, or product in

nature. However, NOAA has added further explanation of the MMS-UCSB research project to the FMP.

Marine Debris

180. *Comment:* The FMP's Offshore Water Quality Monitoring Strategy should include systematic monitoring of anthropogenic marine debris, per a recommendation in the Sanctuary Advisory Council's 2005 report: *A Water Quality Needs Assessment for the Channel Islands National Marine Sanctuary*.

Response: NOAA has been working and will continue to work in partnership with the marine debris researchers from the University of California Davis and the Algalita Marine Research Foundation to conduct surveys of and remove marine debris from the Sanctuary. The NOAA Marine Debris Program has supported some of this work, and CINMS staff look forward to pursuing additional opportunities to work with this Program. For more information about CINMS's future plans to address water quality issues, including marine debris, see the response to comment 303.

181. *Comment:* The impact of marine debris and derelict fishing gear on natural and cultural resources in the CINMS is not well understood and deserves to be investigated.

Response: As mentioned in the FMP's Maritime Heritage Action Plan (Strategy MH.1, Activity 2), during regular monitoring of cultural resource sites, divers will remove marine debris and derelict fishing gear when it is feasible and safe to do so. With regard to understanding impacts on natural resources, NOAA is supporting marine debris removal work within CINMS (see the response to comment 180) that is improving our understanding of the extent and potential impacts of lost fishing gear.

Marine Reserves

182. *Comment:* General support expressed for NOAA's efforts to complete the establishment of the Channel Islands MPA network.

Response: Comment noted.

183. *Comment:* A crucial data gap exists for marine reserve monitoring in that a spatially explicit data set of commercial and recreational fishing does not exist, or is poor. NOAA should analyze the potential of the Sanctuary's aerial survey program for filling this gap by providing all or part of a spatial depiction of current fishing effort.

Response: NOAA has analyzed the Sanctuary's aerial survey data, in conjunction with other spatially explicit relevant information to depict current

fishing effort. NOAA provided this analysis in the FEIS on marine reserves (<http://channelislands.noaa.gov/marineres/main.html>).

184. *Comment:* NOAA should aggressively defend the NMSP's jurisdiction over the establishment and management of marine reserves within the existing Sanctuary boundaries.

Response: In 2007, NOAA completed a Final EIS and Final Rule that established a network of marine zones, including marine reserves, in the federal waters of the Sanctuary (three nmi to six nmi) (72 FR 29208).

185. *Comment:* The management plan indicates a bias toward area closures over other forms of management (see DMP strategies CS.6 and MZ.2). Closures purported to be precautionary are questionable. In addition to area closures, NOAA should consider the effectiveness of methods to attain resource protection goals, improve and recover habitat and fisheries, such as: Restricting trawling and other bottom tending gear, restricting fishing during spawning seasons, size/slot limits, bag limits, catch and release, and closure of a particular fishery for a period of time (successful with Atlantic striped bass, and Gulf of Mexico Red Drum). NOAA should also take a more comprehensive management based approach, which would protect all areas within the Sanctuary. This could include integrating the results of various research components to assist all management strategies, not just marine reserves.

Response: NOAA considered a wide range of management measures in developing the FMP and associated regulations. Marine zoning is an important and effective marine management tool that, when coupled with other management tools, provides the Sanctuary and its resource management partners a wide range of management approaches. The NMSP action related to marine reserves is addressed in a separate NEPA action, see <http://channelislands.noaa.gov/marineres/main.html>. Full consideration and review was given to existing and traditional fishery management approaches to marine resource management. NOAA determined that existing and traditional fishery management approaches are not sufficient to meet the Sanctuary's goals. The State of California reached a similar conclusion in adopting the state waters portions of the network.

186. *Comment:* Regarding strategy CS.6 (Marine Reserves Monitoring), the Pacific Fishery Management Council would be a valuable source of information on management measures

that have been successful in protection of both habitat and fisheries.

Response: Comment noted. The NMSP has consulted with the PFMC extensively and will continue to engage the PFMC for their fishery management information and expertise. The NMSP also formally consults with the PFMC on matters concerning fishing regulations and Sanctuary resources through NMSA sections 304(d) and 304(a)(5).

187. *Comment:* Regarding strategy CS.6 (Marine Reserves Monitoring), the intent of the activity entitled, "Utilize Existing CINMS Research and Monitoring Programs in Support of Marine Reserves," is unclear. The programs listed in the activity are programs to document the status of all of the sanctuary. It is difficult to see how such activities "support" marine reserves. It also seems to imply that CINMS, prior to completing the marine reserves designation process in federal waters, expects to promote such reserves as a means to address habitat, seabird and kelp preservation.

Response: Marine reserves are expected to have both direct and indirect effects within and outside their borders. Many of the existing CINMS research and monitoring programs were originally designed to broadly measure change and gauge the overall health of Sanctuary resources. However, in some cases they can be adjusted to specifically monitor marine reserve performance as well as the sanctuary as a whole. For example, the Channel Island National Park's and PISCO's kelp forest ecosystem monitoring programs' sampling designs have been modified to increase their ability to measure change over time in marine reserves in comparison to nearby control areas.

188. *Comment:* DMP Strategy MZ.2 (Consideration of Marine Reserves and Conservation Areas) contains language in the activity that is unclear regarding the purpose of Pacific Fishery Management Council (PFMC) regulations because it seems to suggest that a marine reserve determination has already been made.

Response: Language in the DMP was not intended to suggest that a final determination about federal marine reserves designation within CINMS had been made prior to conclusion of the consultative process with the PFMC. In May 2005, NOAA presented the PFMC, per section 304(a)(5) of the NMSA, with an opportunity to prepare draft fishing regulations to meet the goals of the CINMS marine zones. Section 304(a)(5) requires that the relevant Fishery Management Council be given the opportunity to prepare draft fishing

regulations within the Exclusive Economic Zone (EEZ) of the sanctuary (the CINMS EEZ is from 3 to 6 nm offshore the northern Channel Islands). The PFMC responded and recommended that fishing regulations for the CINMS marine zones in federal waters be implemented through the existing authorities of the MSA and the State of California. In November 2005, the PFMC directed its staff to work with NMFS to implement fishery closures within the CINMS zones consistent with California law.

In 2006, to mitigate fishing impacts to groundfish essential fish habitat (EFH), the PFMC approved Amendment 19 of the Pacific Coast Groundfish Fishery Management Plan that, in part, recommended designation of the CINMS as EFH and the existing and proposed CINMS marine zones as Habitat Areas of Particular Concern (which have corresponding regulations to prohibit fishing). Based on a review of the existing factual and scientific evidence, NOAA promulgated regulations prohibiting the use of bottom-contact fishing gear in these areas under the MSA.

The NMSA was used to complement the bottom contact gear prohibition and create no take zones that prohibit all other extractive activities, including fishing. The FMP has been updated to reflect the conclusion of the designation process for the Channel Islands MPA Network.

Marine Zoning

189. *Comment:* Commenter supports both activities outlined under the DMP's General Marine Zoning Strategy (MZ.1).

Response: Comment noted. This strategy is now RP.3 in the FMP's Resource Protection Action Plan.

190. *Comment:* The management plan's Marine Zoning Action Plan should provide a spatial representation of all restrictions/zones, and regulations with a spatial feature in the Sanctuary.

Response: NOAA has augmented the discussion of existing zones within the Sanctuary in the FMP's Resource Protection Action Plan (Strategy RP.3 background section). Although NOAA agrees that a spatial database of various marine zones, data, and features is important and useful for Sanctuary management, a map that attempts to show the complex spatial management and regulatory regimes within CINMS would be overwhelming and complicated to display, and may not prove useful for coastal managers or the general public. NOAA has been developing a spatial database of management zones within and adjacent

to CINMS, as well as biological and socioeconomic monitoring activities.

191. *Comment:* NOAA should consider using marine zoning for: Derelict/abandoned fishing gear, vessel traffic, light pollution, corals and structure-forming organisms, and bottom-tending fishing gear.

Response: Bottom-tending fishing gear is now prohibited within the marine zones designated as marine reserves and marine conservation areas in the Sanctuary. NOAA is not establishing additional marine zones to address the remainder of the issues mentioned at this time for reasons including insufficient information available to support such action, non-zoning measures already in place, or pre-existing zones. NOAA does, however, regard marine zoning as an important tool for consideration and application where appropriate. As described in the FMP's Resource Protection Action Plan, NOAA will identify, track, and where appropriate, respond to Sanctuary resource protection issues. For some issues, the evaluation process may include consideration of marine zoning, where appropriate.

Military Activities

192. *Comment:* The Department of Defense should not continue to be exempt from CINMS rules because it has a bad record of disturbing, harming, and killing endangered species with underwater sonar, which should not happen in the Sanctuary.

Response: The NMSP works closely with NMFS regarding assessment of the potential impacts of DOD activities on Sanctuary resources, and how DOD should address such potential impacts. As the revised CINMS regulations state, in the event of destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an incident, including, but not limited to, discharges, deposits, and groundings, caused by a DOD activity, DOD, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director. Furthermore, all DOD activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

193. *Comment:* NOAA should remove the exception for military vessel discharge of sewage and sewage sludge from the discharge prohibition.

Response: NOAA has determined that the regulation of DOD vessel discharges by section 312(n) of the FWPCA (Clean Water Act) is sufficient at this time.

Mineral Activities

194. *Comment:* Commenter supports the proposed prohibition on mining activities within the Sanctuary.

Response: Comment noted.

Motorized Personal Watercraft (MPWC)

MPWC—Inappropriate Use of Studies

195. *Comment:* Studies cited and information used to support the proposed MPWC prohibition were outdated, inaccurate, of poor quality, biased, and/or from locations other than the Channel Islands.

Response: NOAA consulted a variety of sources in developing the prohibition on MPWC operation within one nmi of the Channel Islands. The sources comprise available literature on MPWC impacts, as well as existing enforcement data from CINP Rangers and other enforcement agencies. NOAA is not aware of any MPWC impact studies conducted in the Channel Islands. This is not surprising, given that the National Park Service has banned the use of MPWC in the Channel Islands since 2000. Given this lack of site-specific data for MPWC impacts, the data and observations from other locations (including the Monterey Bay National Marine Sanctuary) are relevant to CINMS, especially data on flushing of nesting birds and disturbance of marine mammals. NOAA has received written and oral reports of MPWC users disturbing sea otters, harbor seals, porpoises, dolphins and other wildlife in various areas of the Monterey Bay National Marine Sanctuary since implementation of the regulation in 1993. Sometimes, due to high surf conditions, operators are unaware of their disturbance of wildlife.

196. *Comment:* In citing information from the Massachusetts Office of Coastal Zone Management Personal Watercraft Management Guide (MOCZM 2002), CINMS irresponsibly selected particular passages that support a PWC ban, from a document that advocates managing PWC use and provides much data to support management tactics short of bans. In addition, the MOCZM document was published in 2002 and could not, at that time, include the most up-to-date technological innovations. CINMS should seek the most current, accurate and peer reviewed data.

Response: Regarding the MOCZM document advocating managing MPWC use, this document proposed a variety of different management techniques regarding MPWCs, including an outright ban for particularly sensitive or difficult enforcement areas. CINMS fits both of these criteria, with many rare, endangered or sensitive species and a

remote environment which makes behavior-based enforcement impossible without extensive enforcement resources. Moreover, CINMS is not banning MPWC throughout the Sanctuary, but only in the sensitive nearshore zone from zero to one nmi offshore. The amount of scientific research conducted on the topic of MPWCs and wildlife disturbance has not increased significantly since 2002. However, additional information on MPWC use was added to the FEIS Affected Environment, Human Uses, Nonconsumptive Recreation and Tourism section on Motorized Personal Watercraft for revisions.

MPWC—Against Ban

197. *Comment:* NOAA should not prohibit MPWC from operating within one nautical mile of the Channel Islands.

Response: As explained in the response to comment 200 NOAA believes that the Sanctuary prohibition on MPWCs within one nautical mile of the Channel Islands will assist in achieving the NMSP's primary mandate of resource protection. Because the NPS already prohibited MPWC operation within one nautical mile of the islands in 2000, the Sanctuary MPWC prohibition will not result in adverse socioeconomic impacts. NOAA does not prohibit any individuals from visiting the Sanctuary or the Islands, and this prohibition is not designed to keep some members of the public from doing so.

198. *Comment:* NOAA should not ban MPWC use beyond one nmi in the Sanctuary because this would prohibit MPWC use at a known tow-in surfing location.

Response: NOAA is not prohibiting MPWC use beyond one nmi. NOAA is aware of tow-in surfing activities off San Miguel Island; however, the tow-in surfing location is beyond one nmi and as such would not be affected by the Sanctuary prohibition.

MPWC—Behavior

199. *Comment:* NOAA should address/prohibit unacceptable MPWC operator behavior, and/or wildlife disturbance (except for fishing) rather than prohibit MPWC use.

Response: NOAA is not considering the ideas suggested as an alternative to the prohibition on MPWC use within one nmi of the Channel Islands because the use of MPWC in this zone has already been prohibited by the NPS since 2000.

MPWC—Duplicative Regulation

200. *Comment:* NOAA should not duplicate the existing NPS regulation that prohibits MPWC operation within one nmi of the Channel Islands.

Response: The use of MPWC within one nmi of the Channel Islands has been prohibited by the NPS since 2000. NOAA is mirroring the existing MPWC prohibition to provide an added deterrent to illegal MPWC use within the nearshore areas of the CINMS and CINP (the CINMS regulation carries a maximum civil penalty of \$130,000 per incident, per day). The CINMS MPWC prohibition provides an additional legal authority through which to prosecute violators of the MPWC prohibition.

MPWC—Environmental Impacts

201. *Comment:* NOAA's characterization of MPWCs as producing high emissions, being noisy, and/or being hazardous to the ocean and environment is incorrect. New MPWC designs are clean and quiet.

Response: The MPWC industry has reduced noise and emissions with 4-stroke engines, and NOAA has revised the description of MPWC in the DEIS. See the updated FEIS Affected Environment, Human Uses, Nonconsumptive Recreation and Tourism section on Motorized Personal Watercraft for revisions. However, NOAA is not aware of studies that have demonstrated the extent to which these improvements have reduced wildlife disturbance. NOAA's prohibition on the operation of MPWC within one mile of the islands is due primarily to the potential for wildlife disturbance rather than concerns about emissions. While emissions and noise from MPWC have been reduced, it is not clear that they are now insignificant. NOAA is still concerned about the effects of oscillating sound caused by persistent throttling of the engine during repeated acceleration/deceleration within the surf zone, which is often necessary to avoid capsizing and rolling. Research and observations have shown that this frequent oscillating sound pattern is particularly disruptive to wildlife. Finally, NOAA is unaware of information indicating the immediate breakdown of oil from MPWCs.

202. *Comment:* MPWCs have less of an impact on kelp and aquatic vegetation than do other vessel types, as discussed in the Massachusetts Office of Coastal Zone Management Personal Watercraft Management Guide (MOCZM 2002).

Response: The potential for damage to aquatic vegetation is reduced in MPWCs as compared with that for propeller

driven vessels. However, the referenced document (MOCZM 2002) also makes the following statement about PWC operation: "However, PWC are frequently operated in ways that enhance their capacity to damage seagrass communities. For example, PWC are often used in shallow water areas, where their jet wash is more likely to kick up sediments. PWC also tend to kick up more sediment when operators are performing acrobatic maneuvers, traveling at slower speeds or rapidly accelerating. These activities tilt PWC back into the water column and direct their jet wash downward into underlying sediments and seagrass beds. PWC-related seagrass damage may also be exacerbated if PWC operation is spatially and/or temporally concentrated. Multiple PWC circling about in that same vicinity may have a greater impact than a single PWC traveling through the same area." With respect to MPWC impacts on kelp beds, the enclosed propulsion system of MPWC will not cut through kelp as will vessels with conventional outboard motors. The EIS text referring to impacts on kelp has been revised to reflect this information.

203. *Comment:* The National Park Service EIS's on personal watercraft use found that these craft cause no adverse or lasting impact. NOAA's EIS did not discuss the National Park Service's findings.

Response: There are 21 units in the national park system (generally national recreation areas or national sea/lakeshores) where the legislative purpose of the unit may permit use of MPWCs. In those units which have considered authorization of MPWC use, impacts were identified and requirements identified to mitigate the impacts to acceptable levels for those units. These findings were site-specific and generally included substantial limits on the operation of MPWCs.

However, the NPS, via regulation, has determined that MPWC use is generally inappropriate in units of the National Park system due to likely ecological or visitor impacts. Under NPS regulations finalized in 2000 and revised in March 2007 (36 CFR sec. 3.9(a)), Channel Islands National Park is closed to MPWC use.

MPWC—Extend Ban Beyond 1 Nmi Offshore

204. *Comment:* NOAA should extend the prohibition beyond one nmi to include the entirety of CINMS waters (i.e., six nmi from the Islands), consider prohibiting MPWC use in certain sensitive areas outside the one nmi limit, such as near emergent rocks or

other resource-attracting features, or consider a temporal ban on MPWC outside of one nmi to protect pinnipeds and birds.

Response: NOAA is not extending the prohibition on MPWC beyond one nmi of the Islands (defined in the CINMS terms of designation as San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock) at this time, and believes that the one nmi ban provides the appropriate level of compatible use consistent with the protection of Sanctuary resources. The new prohibition on taking a marine mammal, sea turtle or seabird allows sufficient enforcement flexibility for activities occurring outside the one nmi MPWC ban area. Additionally, overlaying the existing CINP ban provides important benefits for cooperative enforcement. NOAA, in conjunction with the CDFG and other partners, will continue to monitor the use of MPWC within other areas of the Sanctuary. If this monitoring indicates adverse impacts to wildlife or other Sanctuary resources, NOAA could consider additional management actions as part of an adaptive approach to managing the Sanctuary. Any future regulatory actions taken by NOAA would be subject to the appropriate environmental analysis under the National Environmental Policy Act (NEPA) and public review and comment per the requirement of the Administrative Procedure Act.

MPWC—Other

205. *Comment:* NOAA is focusing too much on the semantics of the definition of a Motorized Personal Watercraft.

Response: As explained in the FEIS, the CINMS regulations provide a definition of MPWC that is the same as that used by the NPS. This is important so that the CINMS regulation is consistent with the NPS ban on MPWC use in effect in the Channel Islands.

206. *Comment:* The process leading to the creation of the MPWC prohibition did not allow for public input, and/or NOAA should consult with more state officials, emissions experts, manufacturers, and actual users, before committing to such a ban.

Response: Per requirements of the National Marine Sanctuaries Act, the National Environmental Policy Act, and the Administrative Procedure Act, NOAA has followed federal requirements for notifying, and soliciting input from, the public, along with relevant state and federal agencies about the MPWC prohibition and all other actions that are part of the CINMS management plan review. Public input

on the management plan has been extensive through the Sanctuary Advisory Council, public hearings, and the public comment period.

207. *Comment:* MPWC owners are cautious, use good judgment, and are considerate of the environment, and/or the demographics of MPWC owners have shifted to "a little older, more affluent and more responsible person."

Response: Despite the changes in MPWC user demographics described by the commenters, NOAA believes that the prohibition will assist CINMS in achieving its primary mandate of resource protection. Furthermore, the use of MPWC within one nmi of the Channel Islands has been prohibited by the NPS since 2000.

208. *Comment:* The plan does not mention that as of 2004 the California Air Resource Board (CARB) has prohibited the sale of two-stroke marine engines. There are no two-stroke engines being sold of any kind for marine use.

Response: NOAA is not aware of any CARB regulation banning the sale of two-stroke engines. CARB did restrict the type of two-stroke engine to only direct injection as of 2001. In addition there are many pre-2001 two-stroke powered MPWC in operation and there are no prohibitions on the use, replacement, or resale of the older carbureted or non-direct injected two-stroke engines in these craft.

209. *Comment:* NOAA should explain why it is prohibiting Personal Watercraft, when the agency seems to realize the benefits of these type of boats for emergency response and law enforcement.

Response: NOAA notes a distinction between recreational use and emergency response/enforcement. There is a tradeoff between potential environmental impacts and the benefit of emergency response and enforcement. The prohibition on MPWC use does not apply to (1) an activity necessary to respond to an emergency threatening life, property, or the environment; and (2) an activity necessary for valid law enforcement purposes in the Sanctuary. For a response to commenters who indicated that they are opposed to the Sanctuary's MPWC regulation, see the response to comment 197.

210. *Comment:* NOAA should have reasonable boating regulations such as the generally applicable access restrictions, closures and boating rules set forth in existing Sanctuary regulations, and/or regulations that require an age limit, educational program, and a licensing system for MPWC use; or NOAA should establish

best management practices to resolve problems with MPWC use.

Response: Given that the use of MPWC within one nmi of the Channel Islands has been prohibited by the NPS since 2000, NOAA is not considering the ideas suggested as an alternative to the prohibition on MPWC use in this zone. Regarding rider age limits and licensing systems, these are boating safety and registration issues more appropriately managed by State and Federal boat licensing agencies.

211. *Comment:* Based on the definition of personal watercraft in the DEIS, it appears that the intent of the MPWC prohibition is not to regulate fishing. If this is correct, the prohibition does not directly affect fishing, fishing vessels, fish stocks, or fish habitat.

Response: While the intent of this regulation is not to regulate fishing per se, it does prohibit the use of MPWC within one nmi of the islands, even if the MPWC were being used to conduct an otherwise lawful fishing activity.

212. *Comment:* NOAA should implement boater education programs to reduce MPWC accidents and injuries, which would render the ban on MPWC unnecessary.

Response: Education and safety regulations can increase MPWC safety. However, the intent of the one nmi prohibition is primarily to protect wildlife, and the existing NPS ban eliminates the utility of an educational program for MPWC operators in that zone. NOAA would consider partnering with another agency or organization for the purposes of developing educational programs to address MPWC use from one nmi to six nmi offshore in the sanctuary, should circumstances warrant it. NOAA welcomes input from the California Department of Boating and Waterways and the California Boating and Waterways Commission on education and outreach for MPWC users and all boaters regarding the Sanctuary.

213. *Comment:* NOAA should explain how the one mile limit for the MPWC prohibition was determined.

Response: NOAA believes that the one nmi limit is reasonable for preventing wildlife disturbance from MPWC in the sensitive nearshore area of the Sanctuary, especially considering the number of emergent rocks within the one nmi offshore zone of the islands. Additionally, this zone directly overlays the existing National Park Service ban on MPWC within Channel Islands National Park, facilitating cooperative enforcement of both the NPS and NOAA MPWC regulations.

214. *Comment:* The California Department of Boating and Waterways (CDBW) commented that they would be

happy to help CINMS staff in delivering a message to the boaters that they come into contact with.

Response: NOAA looks forward to working with the CDBW on boater and MPWC education and outreach and has benefitted from partnering with the CDBW and others involved in the California Ocean Communicators Alliance "Thank You Ocean" campaign. The CDBW featured this campaign in an article in its April 2007 Changing Tide newsletter, including campaign advertisements and logos on the front and back cover of the issue. In recognition that 8,200 copies of this newsletter are circulated to marinas, yacht clubs, boat supply stores, boat repair facilities, other state agencies, clean boating network members, boat shows and events, NOAA greatly appreciates opportunities to partner with CDBW to conduct outreach to boaters. NOAA also appreciates the CDBW assistance with distribution of a CINMS boater safety brochure to registered boat owners throughout Ventura County, and looks forward to partnering on future boater outreach.

215. *Comment:* NOAA should keep the waterways open for responsible public use.

Response: This action keeps the Sanctuary open for all public uses compatible with the CINMS's primary objective of resource protection, and not prohibited pursuant to other authorities.

MPWC—Other Agencies Regulate Boating

216. *Comment:* The CDBW was not consulted or asked to participate during the planning process. NOAA should have also consulted with the U.S. Coast Guard because they have the authority to promulgate regulations regarding recreational boats in federal waters.

Response: NOAA provided scoping and noticing of this action in accordance with NEPA, APA, and NMSA requirements. The U.S. Coast Guard and the California Resources Agency (the parent agency of the CDBW) each hold seats on the CINMS Sanctuary Advisory Council, and as such have been aware of and involved in this management plan development since its inception. In addition, prior to release of the DMP and DEIS, the NMSA's West Coast Region informed the California Boating and Waterways Commission of plans to consider an MPWC regulation at CINMS. NOAA remains open to working with the CDBW in the Channel Islands on topics of mutual interest in the future. Regarding consultation with the U.S. Coast Guard and enforcement, in addition to its involvement throughout

the management plan review as an agency member of the Advisory Council, the USCG is also a Sanctuary cooperative enforcement partner. NOAA believes that the USCG is well suited to help enforce CINMS regulations, including the prohibition on MPWC, and as such CINMS coordinates enforcement with the USCG and other enforcement agencies.

217. *Comment:* The California Department of Boating and Waterways and the U.S. Coast Guard have the authority to regulate boating. Any federal regulations related to recreational boating (i.e., MPWC use) proposed in the management plan should be adopted, if needed, by the U.S. Coast Guard, the federal agency with historical boating expertise and appropriate enforcement responsibilities.

Response: Although boating regulations could be developed by another agency, such as the USCG, NOAA thinks that in this case using Sanctuary authority would be the most efficient and logical means of achieving enhanced Sanctuary protection. Additionally, this regulation is an overlay of an existing National Park Service ban. NOAA works cooperatively with the NPS, USCG, and CDFG to enforce Sanctuary regulations, including regulations pertaining to recreational boaters that have been in effect for over twenty-five years. NOAA is interested in exploring opportunities for CDBW to assist with marine enforcement within the state waters portion of the Sanctuary.

MPWC—Penalty

218. *Comment:* The maximum penalty of \$130,000 for violation of the Sanctuary's MPWC prohibition is too high. Given this high fine, NOAA should mark the one nmi boundary with buoys and signs about the prohibition.

Response: The penalty of \$130,000 is a maximum penalty for any violation as decided upon by Congress during the authorization and subsequent reauthorizations of the National Marine Sanctuaries Act. The actual penalties levied for NMSA violations vary in proportion to the severity of the incident and other case-specific factors. NOAA's Office of General Counsel for Enforcement and Litigation establishes a penalty schedule that outlines recommended penalties for violations under the NMSA. This penalty schedule provides notice to the public and provides guidance to the prosecutors as to a general range of penalties for specific violations. The penalty schedule reflects sanctions that NOAA believes will encourage compliance and

deter violations; however, in every case, NOAA retains the ability to assess a penalty up to the statutory maximum of \$130,000. The NMSA penalty schedule is publicly available and can be accessed through this link: <http://www.gc.noaa.gov/schedules/58-NMSA%20Penalty%20Schedule%209-06.pdf>.

It is the responsibility of Sanctuary users to know where they are within the Sanctuary, and what laws and regulations apply in a given area. CINMS education and outreach materials are designed to help users understand regulations. Physical signs can enhance awareness and compliance, but it is neither logistically nor financially feasible for NOAA to install a system of signs along the one nmi boundary warning of the MPWC ban.

MPWC—Relation to Other Boats

219. *Comment:* The MPWC prohibition unfairly singles out and/or discriminates against MPWC, especially in terms of described environmental impacts, and/or access rights or regulations.

Response: NOAA has already established a precedent for regulating some users, such as large vessels and aircraft, differently than others in the one nmi offshore zone due to concerns about their potential impacts. NOAA acknowledges that MPWC are not alone in their potential for wildlife disturbance. However, scientific research and studies across the United States (e.g. California, New Jersey, Florida) have produced strong evidence that MPWC present a significant and unique disturbance to marine mammals and birds different from other watercraft. Though some other studies have found few differences between MPWC and small motor-powered boats, they have not presented evidence to invalidate the studies detecting significant impacts. In 1994, NOAA commissioned a review of recreational boating activity in the Monterey Bay NMS. The review provided statistics on MPWC use and operating patterns in the Sanctuary at the time and identified issues of debate from the research community regarding MPWC impacts on wildlife, but it made no formal conclusion or recommendation. At this time, NOAA has determined that the unique properties and operating characteristics of MPWC (which allow for high speed, repetitive nearshore operations, and are further described in the FEIS) make them prone to present a significantly higher risk of wildlife disturbance than other vessel types. As such, NOAA thinks that MPWC are incompatible with resource protection

within the one nmi offshore zone of the Sanctuary. Operation of MPWC in the CINMS is still allowed outside of the one nmi offshore area.

Regarding comments asserting that MPWC should be regulated in the same manner as other boats, NOAA believes that for other types of boaters, and for MPWC operating beyond the one nmi offshore zone, enforcement of the restrictions presented in Prohibition 9 (Taking a Marine Mammal, Sea Turtle or Seabird) provide for sufficient resource protection at this time. However, NOAA could in the future propose additional restrictions on other Sanctuary users, with public input and review, should protecting Sanctuary resources warrant such action. With regard to MPWC rights to access, please note that the MPWC regulation overlays an existing NPS ban on MPWC use within one nmi of the islands that has been in place since 2000. Neither the NPS nor CINMS regulations ban MPWCs for a six mile area surrounding the park. Rather, both ban MPWC use only in the one nmi offshore zone. Concerning emissions and water quality issues among MPWC and other boats, NOAA's objection to the operation of MPWC within one mile of the islands is due more to their potential for wildlife disturbance than concerns about emissions (see also the response to comment 201). In terms of whether or not there are differences in engine types between MPWC and other craft, the justification for the prohibition is not related to the engine type, but rather to the craft's unique capabilities and use patterns.

For information about NOAA's use of the best available information as it relates to the rationale for this prohibition, see response to comment 195.

MPWC—Support Ban

220. *Comment:* NOAA should prohibit the use of MPWC within one nmi from the islands, as proposed in the preferred alternative.

Response: NOAA is implementing the preferred alternative MPWC regulation.

Nearshore Vessel Approach

221. *Comment:* NOAA should adopt the nearshore vessel approach prohibition in Alternative 1 in order to: Reduce the risk of grounding and collision accidents; to provide additional protection for sensitive nearshore areas; exclude a greater number of potentially harmful large vessels (those 150 GRT or more) than the Proposed Action (those 300 GRT or more); and reduce the likelihood of discharges and other impacts from relatively large vessels, including cruise ships.

Additionally, NOAA should provide an exception allowing large vessels to operate in the shipping lanes.

Response: Like Alternative 1, the Proposed Action directly addresses the NOAA's concern that, with limited exceptions, large vessels should not approach and put at risk sensitive nearshore areas of the Sanctuary. NOAA is not aware of more than a few vessels between 150 to 299 GRT that occasionally visit the Sanctuary area within one nmi of the Islands. Using Automated Identification System (AIS) data, which will soon be available for the entire Sanctuary, NOAA plans to enhance vessel traffic monitoring in the nearshore area. If the number of vessels between 150 to 299 GRT increases significantly, and/or the incident of vessel accidents increases, NOAA can revisit this regulatory issue. Cruise ships are typically much larger than 300 GRT, and industry trends show increasing vessel sizes. The shipping lanes do not come within one nmi of Island shores, and thus an exception allowing large vessels to operate in the shipping lanes is not necessary.

222. *Comment:* NOAA should remove the fishing vessel exception to the nearshore vessel approach regulation under both the Proposed Action and Alternative 1. Additionally, NOAA should assess the costs and benefits of removing the exception for fishing vessels of these sizes, including the regulatory burden of gaining a permit for such activity, and the rationale for the exception.

Response: NOAA is not removing the nearshore vessel approach regulation's exception for fishing vessels at this time. NOAA is not aware of fishing vessels greater than 150 GRT using Sanctuary waters, including within one nmi of the Islands, nor aware of any emerging fisheries trends suggesting that vessels of this size are planning to use Sanctuary waters. Using AIS data, which will soon be available for the entire Sanctuary, NOAA will enhance vessel monitoring in the nearshore area. NOAA also monitors vessel use of the Sanctuary via aerial surveys. Should fishing vessels 150 GRT begin to use the Sanctuary, NOAA can revisit the associated risks and determine how to address them.

NOAA does not believe that the requirements for obtaining a permit are burdensome. Sanctuary staff regularly process a variety of permits and work to maintain an efficient and streamlined process. Furthermore, few vessels that routinely visit the Channel Islands nearshore area are 300 GRT or more.

223. *Comment:* Support is expressed for the Proposed Action alternative's

modification of the nearshore vessel approach regulation to prevent large (300 GRT or more) non-fishing vessels from traveling within one nmi of island shores in the Sanctuary.

Response: Comment noted.

224. *Comment:* NOAA should not limit the large vessel nearshore approach prohibition to one nautical mile from island shores, but instead should expand it to the Sanctuary's outer boundary.

Response: The International Maritime Organization has already designated the majority of the Sanctuary, excluding the portion that overlaps the TSS, as an Area To Be Avoided (ATBA). NOAA seldom observes large vessels within the ATBA, and as such NOAA has not deemed it necessary at this time to prohibit large vessel use beyond one nmi from the Islands.

225. *Comment:* NOAA should completely ban cruise ships inside the Sanctuary's six nautical mile boundary because of poor dumping practices.

Response: CINMS regulations prohibit cruise ships 300 GRT or more (cruise ships are typically much larger than 300 GRT) from approaching within one nmi of the Islands, and prohibit them from discharging sewage and graywater in the Sanctuary. Based upon the best available information, NOAA has determined that it is not necessary to ban cruise ships within the entire Sanctuary at this time.

Oil and Gas

226. *Comment:* NOAA should continue to prohibit any oil and gas development within the Sanctuary given the short- and long-term human and environmental impacts from oil spills, and the relatively high probability that they will occur. NOAA should also take necessary measures to protect Sanctuary resources from oil development in the surrounding region.

Response: NOAA is maintaining the prohibition on exploring for, developing, or producing hydrocarbons within the Sanctuary. NOAA also comments on oil and gas related projects in the region that have the potential to affect Sanctuary resources.

227. *Comment:* Commenter supports the Proposed Action Alternative's prohibition 1 on oil and gas that maintains current prohibitions on oil and gas development while removing outdated exemptions.

Response: Comment noted.

Performance Evaluation

228. *Comment:* The Conservation Science Action Plan's performance measures should include not only funding levels and quantitative

measures of monitoring and research efforts, but metrics of a given activity's completeness, efficiency and quality.

Response: The FMP's Performance Evaluation Action Plan contains performance targets for all eight of the Conservation Science Action Plan's strategies, all of which address at least one of the criteria identified by the commenter (completeness, efficiency, and quality). As CINMS staff implement the management plan, these targets may be updated or modified to more clearly articulate these criteria, and to more closely align the specific CINMS performance targets with those identified for the national program (there are currently 21 program performance measures for the NMSP).

229. *Comment:* Requirements for specific quantitative performance measures may impede CINMS's ability to implement programmatic and regulatory improvements that may have more qualitative benefits.

Response: CINMS staff have developed both quantitative and qualitative performance targets for the strategies in each of the FMP's action plans. Quantitative performance targets are typically used to track outputs (or products), but may also be used to identify certain qualitative achievements (such as the percentage of increased knowledge within a particular user group). Performance targets are developed in response to, rather than as an impetus for, identification of a management activity. In other words, sanctuary-specific performance targets do not "drive" the development of management activities; rather, they are the means by which a sanctuary tracks its progress towards the achievement of sanctuary-specific and NMSP goals and objectives. As such, NOAA does not believe that quantitative performance targets will impede development of any regulatory or non-regulatory management actions that may have qualitative benefits for CINMS.

230. *Comment:* The management plan should include a baseline water quality characterization, and its Performance Evaluation Action Plan should include a performance metric that actually measures whether Sanctuary water quality is being improved via physical measurements of pollution levels and environmental health.

Response: Strategy WQ.2 includes an activity to complete a CINMS water quality characterization report. Regarding water quality performance metrics, since revision of the CINMS management plan began, the NMSP has developed a set of program level performance measures that set management targets for the sanctuary

system. One of these targets is the "Number of sites in which water quality, based on long-term monitoring data, is being maintained or improved." Criteria for measuring this target have been developed through the NMSP's conservation science program, and a tracking plan for how each sanctuary will meet these criteria has been implemented across the system. CINMS staff are currently working to provide Sanctuary-specific data on these criteria, which will eventually be included in a system-wide report on the status of NMSP performance targets.

231. *Comment:* Sanctuary goals are lacking an MOU for procedural review of the protection at CINMS that defines data gaps, survey design and data streams connected to budgets that facilitate management decisions. CINMS has no functional management culture that can assess the status of the resources to use as a foundation for working with the fishing community. It is not bound by any peer review protocol or data management performance criteria.

Response: The FMP's Conservation Science Action Plan identifies the myriad ways in which NOAA and its partners have collected, and continue to collect, assess, and apply, information on the status of CINMS resources. Although no general MOU exists between CINMS and its partners on research in the Sanctuary, there are a variety of MOUs planned or in place for specific research and management activities (such as implementation of the marine reserves). In addition, MOUs are often not needed for collaboration on management and monitoring of marine resources with many agencies and organizations—for example, CINMS collaborates extensively with NMFS, and existing statutes allow for extensive coordination with the Pacific Fishery Management Council. Identifying data gaps and survey design are an inherent part of nearly all CINMS research initiatives and decisions to implement any research project are always linked to budgetary considerations. With regard to performance criteria, see the response to comment 230 for an example of how the NMSP is moving forward on this issue.

Permits

232. *Comment:* NOAA has recently dramatically improved the scientific research permitting process. The process is straightforward and reasonably quick, much improved over the past.

Response: Comment noted.

233. *Comment:* NOAA should provide transparency for the CINMS permit

process, including provisions for public notice, review and comment on issuance and monitoring of Sanctuary permits.

Response: NOAA does not currently envision a public notification and review provision for all CINMS permits. Existing NMSP regulations (15 CFR 922.48) identify the permit issuance criteria for all national marine sanctuaries, which provide a rigorous set of parameters under which NOAA can permit an activity that is otherwise prohibited. It should be noted that when receiving a permit application, the CINMS Superintendent may request additional information from the applicant and, if appropriate, may hold a public hearing to obtain more information. If a permit holder acts in violation of the terms and conditions of any permit, NOAA may amend, suspend, or revoke the permit. Projects that would result in the preparation of an environmental impact statement under the National Environmental Policy Act would be subject to public review and comment.

234. *Comment:* If a permit applicant will be using vessels for hire or soliciting related assistance for his/her proposed project, NOAA should require the applicants to use appropriately licensed vessels and operators.

Response: Individuals or entities conducting activities under a CINMS permit must still comply with all federal, state and local laws and regulations that are applicable to that activity.

235. *Comment:* In the FMP NOAA should provide an explanation or examples of what types of research would and would not require a permit.

Response: NOAA has updated FMP Strategy OP.2 (Permitting and Activity Tracking) with examples of the types of research and other activities that do and do not require a Sanctuary permit.

Research and Monitoring

236. *Comment:* The Channel Islands National Marine Sanctuary has an admirable scientific research program, primarily in partnership with colleges and universities in the area. This scientific research should be continued and expanded to increase understanding of the unique ecosystem of the Santa Barbara Channel and Channel Islands.

Response: CINMS research staff continue to look for opportunities to build partnerships and collaborate on research. Through research outreach efforts, such as presentations at conferences and workshops, publication of scientific papers, and distribution of reports, staff inform the research community of our efforts and needs.

CINMS staff also solicit research projects in the Sanctuary through our request-for-vessel process while continuing to identify funding opportunities through grants and partnerships.

237. *Comment:* The management plan properly identifies the importance of data management and dissemination to the overall effectiveness of the Conservation Science Action Plan. It also addresses the highly collaborative and partnership-based nature of the biological research process and the need for extensive collaboration with partners at other agencies and entities.

Response: Comment noted.

238. *Comment:* NOAA should find additional funding for monitoring programs so that the scientific community does not lose its integrity by not being able to fulfill monitoring requirements. The funding amount for Conservation Science Action Plan should be increased at least two-fold, to match the level of funding dedicated to Education and Outreach. NOAA should also fund structural support for the cooperative research program.

Response: NOAA recognizes that resource limitations as well as the necessary program and partner developments may limit implementation of all of the activities in the management plan, including the Conservation Science Action Plan. NOAA will continue to work with the Department of Commerce, Office of Management and Budget, and Congress in developing supporting justifications when preparing budget submissions. Sanctuary staff will continue to look for opportunities for funding through other federal programs, private grants, and partnerships with agencies, universities, and private and non-profit organizations. NOAA supports the cooperative research program and will fund it as the CINMS budget allows, including through the funding opportunities listed above. Estimated costs shown for the Conservation Science Action Plan and the Public Awareness and Understanding Action Plan are not directly comparable. The Conservation Science Action Plan budget does not include contributions from partners and collaborators, nor does it include the large amount of funding to staff and operate vessels, which is estimated in the FMP's Operations Action Plan. In addition to these contributions, NOAA continues to seek additional funding opportunities as listed above. NOAA has also revised some of the cost estimates for Conservation Science Action Plan strategies.

239. *Comment:* NOAA should prioritize science relevant to management and apply it to existing and emerging resource protection issues. The Conservation Science Action Plan should include an explicit goal for the application of scientific research to the understanding and mitigation of identified or emerging threats. NOAA should consider how it can best orient its scientific research programs to better translate research results to management decisions.

Response: NOAA recognizes that sanctuaries should ensure that their research and monitoring programs are effectively prioritized to produce scientific information that can be applied to the understanding, mitigation, and management of identified or emerging threats. Through the NMSP's System-Wide Monitoring Program (SWiM) reports, CINMS staff will provide status updates on the condition of Sanctuary resources to local, regional, and national policy makers. The NMSP holds an annual research coordinators' meeting at which research staff discuss research issues and needs across the program. The ONMS West Coast Region coordinates research and monitoring efforts within the region to address regional management and resource protection issues.

The purpose of the research department at CINMS is to support management decision making with conservation science. NOAA has emphasized this point in the FMP's revised Overview to the Conservation Science Action Plan. CINMS research staff regularly collaborate with partners, including other federal and state agencies, universities, private institutions, and non-profit agencies. The Research Activities Panel, a working group of the Sanctuary Advisory Council, provides oversight to the monitoring programs in the Sanctuary. The status of monitoring programs is reported to regional and national offices through internal documents.

240. *Comment:* Overall research/science coordination and data management are important, necessary, and the greatest conservation science needs within the Sanctuary.

Response: CINMS research staff coordinate conservation science by being in close contact with researchers, tracking and requiring updates on their research activities, and working with joint-jurisdiction agencies. Staff also develop research partnerships to address research gaps, and receive input from the RAP on research and monitoring activities.

CINMS staff continue to strive towards better research coordination and comprehensive data management as funding and staffing allows.

241. *Comment:* Sanctuary Aerial Monitoring Spatial Analysis Program (SAMSAP) graphical data must be included in the online database architecture proposed in DMP Strategy CS.2, and become publicly available.

Response: SAMSAP data have been, and continue to be, analyzed and used in a wide variety of spatial and statistical projects ranging from marine zoning to emergency response applications. The majority of SAMSAP data are already in a format easily importable into a variety of common database formats. As noted in the revised Strategy CS.2, rather than developing a new online database, CINMS will work with regional partners already running established web-based data warehouses to identify the most appropriate data warehouses to best disseminate particular data types. The end result will make SAMSAP data available and integrated with the publicly-accessible Sanctuary Integrated Monitoring Network (SIMoN, <http://www.sanctuariesimon.org>) that will be expanded to CINMS.

242. *Comment:* Many existing programs (e.g., SAMSAP) could be used to meet a greater variety of research needs. The CINMS Research Coordinator should take an active role in expanding or redirecting internal CINMS research activity and make strategic decisions about the allocation of Sanctuary support among existing external research programs.

Response: CINMS research staff use the Management Plan and other annual research prioritization documents to set priorities and direct and fund CINMS research activities. In recent years SAMSAP data have been analyzed and are now being used, among other things, in socioeconomic impact studies related to marine zoning.

243. *Comment:* The Conservation Science Action Plan's Comprehensive Data Management strategy does not include enough analysis and synthesis to help formulate a general research plan. Data management must be more than a simple means to provide information to the public and others; it should reveal important gaps and trends, and can be used strategically to guide future research and to answer specific questions mandated by reviewing agencies.

Response: Data management can be used strategically to guide future research and to answer specific questions. The FMP's comprehensive data management strategy is focused on

integrating CINMS data into existing regional and national data management programs to facilitate enhanced conservation science-based decision-making. While this strategy focuses on data management, inherent in the Resource Protection Action Plan is a need to analyze data. Complementing the data management strategy, the FMP's Resource Protection Action Plan identifies a variety of current and emerging resource protection issues and it is expected that for each issue a number of science-based questions may emerge. Answers to these questions will guide and drive data analysis activities and research planning in a manner consistent with the comment. Thus, data analysis and synthesis occur as part of management plan implementation, and are also manifested in Sanctuary annual operating plans, as well as through annual research vessel allocation decisions.

244. *Comment:* Strategy CS.2 (Comprehensive Data Management) should be elevated to a high level of planned implementation as shown in the management plan's Appendix A1. If CINMS could serve as a clearinghouse for data, such as through the Sanctuary Integrated Monitoring Network (SIMoN), interested researchers would be able to assist the Sanctuary even in the absence of a comprehensive research and monitoring plan.

Response: NOAA has elevated the planned implementation level of activities within Strategy CS.2 to high. See revised Strategy CS.2 for updated information on how CINMS staff plans to use existing data management tools, like SIMoN.

245. *Comment:* Support expressed for the Collaborative Marine Research Program as a highly innovative effort to bring potential resources, knowledge and cost savings to bear on the process of biological marine research and monitoring. The Collaborative Marine Research Program is also: Uniquely capable of monitoring species not easily detected by traditional monitoring techniques; an excellent example of applying limited Sanctuary resources to known gaps and limitations that should be routinely assessed; an important outreach and research program.

Response: The Collaborative Marine Research Project is a valuable program. NOAA will continue to support this program as funding allows. For additional information about funding see the response to comment 238.

246. *Comment:* Support expressed for development of collaborative research programs coupled with socioeconomic monitoring programs, and as part of an

integrated research plan, rather than developing in isolation.

Response: Collaborative marine research projects need to be integrated into the overall research and monitoring plan. As noted in the background of Strategy CS.4, efforts will be made to ensure that collaborative marine research does not duplicate existing research efforts, but rather complements them by filling research gaps and building new knowledge to assist resource managers. NOAA believes that the Sanctuary Advisory Council's Research Activities Panel (RAP) is a key player in providing Sanctuary management with advice to help ensure that research programs are integrated.

247. *Comment:* NOAA should donate R/V Shearwater vessel time to support the National Audubon Society's Christmas Bird Count.

Response: Written proposals must be submitted in order for NOAA to consider any vessel undertaking. NOAA will assign priority to those proposals that take place within Sanctuary boundaries and address various management plan priorities. See the response to comment 249 for additional information about the vessel allocation process.

248. *Comment:* The support of the R/V Shearwater to the local research community has been invaluable and CINMS should continue this support.

Response: The R/V Shearwater will continue to support those efforts that address various FMP action plan strategies, to the greatest extent allowable given financial and logistical constraints inherent to field operations.

249. *Comment:* Regarding the management plan's Operations Action Plan, the process by which CINMS research vessel time is allocated remains obscure, and research operations would benefit from an open and transparent set of rules by which allocation decisions are reached.

Response: NOAA has revised text in the FMP's Operations Action Plan, Strategy OP.4 to include clarification of the annual sea-day allocation and scheduling processes that occur each autumn.

250. *Comment:* NOAA should include a plan for deepwater site characterization and deepwater MPA monitoring in Strategy CS.3—Support Existing Site Characterization and Monitoring Programs.

Response: NOAA has updated text in Strategy CS. 3 of the FMP to include an activity on deep water monitoring for the CINMS MPA network.

251. *Comment:* SAMSAP surveys should be expanded (provided increased funding). There is an unmet

need to quantify fishing pressure in and around Sanctuary waters. Additionally, SAMSAP surveys would benefit from review by statisticians to optimize their design and usefulness.

Response: NOAA is actively working to increase SAMSAP funding at CINMS. Reduced availability of NOAA aircraft requires CINMS staff to seek alternative aircraft options, such as contract aircraft, which cost much more to fund than NOAA aircraft, and partner agency aircraft. CINMS has been working with socioeconomic statisticians and economists since 2007 to analyze and improve SAMSAP survey methodology and analysis.

252. *Comment:* NOAA should continue supporting seafloor mapping within the Sanctuary, which has uses for education and outreach, research and monitoring, and historical resources (finding shipwrecks).

Response: Comment noted.

253. *Comment:* Existing ongoing research activities in the CINMS are described in varying amounts of detail in the Conservation Science Action Plan; many are mentioned in passing or not mentioned at all.

Response: NOAA describes projects in varying amounts of detail and has elected not to describe every research project in great detail. There are some small, short-term projects (for example, graduate student work, or projects that may last three years or less), that while important, NOAA concluded did not warrant detailed descriptions in the plan. Programs that fall within Sanctuary priorities, but are not described, are not necessarily precluded from Sanctuary support. Likewise, the Sanctuary remains open to supporting new projects that may emerge.

254. *Comment:* The management plan's Conservation Science Action Plan information on marine reserves monitoring does not mention the large acoustic receiver array maintained by the Pflieger Institute of Environmental Research (PIER). PIER's monitoring of fish movement relative to the reserve boundaries is one of very few projects that are specifically designed to investigate questions of reserve efficacy.

Response: NOAA acknowledges important contributions the PIER project has brought to marine reserves research. Although this project ended in 2006, Sanctuary staff look forward to the analysis of existing data and are interested in seeing this project or similar acoustic tagging projects return, should funding allow. As mentioned in the Conservation Science Action Plan at CS.6, specific marine reserves biological monitoring programs are described in the Channel Islands Marine Protected

Area Monitoring Plan, a multi-agency document developed by the California Department of Fish and Game (California Resources Agency, CDFG 2004).

255. *Comment:* The CINMS Conservation Science Action Plan should do more than simply track external programs. Importantly, as programs grow and research activity intensifies, a policy of generally supporting all existing programs will not suffice.

Response: The Conservation Science Action Plan is not limited to tracking external programs. The Sanctuary is directly involved in a number of research programs (e.g., SAMSAP, and seabird monitoring), explained in the Conservation Science Action Plan, and for which the Sanctuary provides support in the form of staff, vessel time, and/or funding. NOAA does not have a policy of "supporting all existing programs" at the CINMS. There are limits to the amount of support the Sanctuary can provide, and NOAA uses a strategic approach to planning Sanctuary research and monitoring, allocating resources in accordance with Sanctuary research priorities that are determined on an annual basis.

256. *Comment:* The Conservation Science Action Plan's performance evaluation criteria are not satisfactory, including the performance targets for the marine reserves monitoring strategy (CS.6). By specifying very narrow performance targets without an integrated research plan, CINMS staff effort is focused too quickly on small steps. NOAA should identify: (1) What the Sanctuary specifically wants to monitor, (2) what the targets for management are, and (3) whether those targets are being met.

Response: NOAA acknowledges that the Conservation Science Action Plan's performance evaluation criteria, while tangible and able to be quantifiably tracked, are not alone fully informative for overall management effectiveness. NOAA understands that a variety of assessment methods will be needed to ensure that the Conservation Science Action Plan is effective. Additional specific performance measures have been developed and are listed in the Description of the Issues section of the Performance Evaluation Action Plan within the FMP. These performance measures establish targets for understanding the status and trends of Sanctuary water quality, habitats and living marine resources, and will help guide prioritization and implementation of strategies and activities within the Conservation Science Action Plan. NOAA will work with the Research

Activities Panel and other partners to refine assessment methods during management plan implementation, and will refine these methods over time.

257. *Comment:* CINMS staff should partner with ongoing research and coordination efforts via California Sea Grant, the *Southern California Coastal Ocean Observing System* (SCCOOS), and the California North Coast Ocean Observing System (CNCOOS).

Response: The NMSP's West Coast Region has been the lead on coordinating ocean observing systems within west coast national marine sanctuaries. With its support, CINMS staff continue to work with the Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO) to help fund their oceanographic buoys.

258. *Comment:* NOAA should initiate an ecosystem based co-management seat on the research activities panel.

Response: As is the case with all Sanctuary Advisory Council working groups, the Research Activities Panel decides upon its membership, and does not at this time have seats dedicated to specific ideologies or user groups. NOAA recommends that the commenter make this general suggestion directly to the Research Activities Panel.

259. *Comment:* Success of the Comprehensive Data Management strategy will rely heavily on identifying a highly capable CINMS Research Coordinator.

Response: In 2007, NOAA hired Dr. Steve Katz as the Sanctuary's new Research Coordinator.

260. *Comment:* NOAA should initiate research on the impacts of increasing CO₂ and ocean acidification on Sanctuary resources.

Response: CINMS staff and the Sanctuary Advisory Council have begun to examine increasing CO₂, ocean acidification, and related climate change issues. For example, CINMS staff and the Sanctuary Advisory Council are collaborating on a carbon budget and greening project that aims to raise awareness and understanding of the Sanctuary's carbon cycle and carbon inputs from human activity in the Sanctuary and surrounding environment. The NMSP is working with the NOAA Climate Office to pursue funding for detecting climate change impacts in each national marine sanctuary, including the Channel Islands. With regard to ocean acidification and its potential effects on Sanctuary resources, the Advisory Council's Conservation and Commercial Fishing working groups are collaborating on development of a comprehensive report on ocean acidification, and related

recommendations for the Sanctuary and NMSP. (See also new information added to the FMP's Resource Protection Action Plan). The results of this work are anticipated in 2008, and will include review and comments from the Advisory Council and its Research Activities Panel.

261. *Comment:* Commenter concurred with the comments offered by the Research Activities Panel.

Response: Please refer to responses to the Research Activities Panel's comments, listed in the table at the beginning of the FEIS response-to-comments appendix under "Warner, Robert."

Resource Protection

262. *Comment:* NOAA should develop a Resource Protection Action Plan within the management plan, to incorporate but go beyond the Emerging Issues Action Plan. A resource protection action plan should: link resource protection issues with management responses; require funding for staff time dedicated to issue-response measures; and articulate that CINMS may play a leadership role in, rather than relying excessively on other parties for, scientific and resource protection efforts. Resource protection issues could include: LNG, aquaculture, sea otter migration, artificial lighting (e.g. from squid boats), ship strikes, introduced and invasive species, artificial reefs, plumes of non-point source pollution from mainland rivers during storm events, and atmospheric deposition of air pollutants into Sanctuary waters.

Response: NOAA has revised several strategies and background information from the DMP to develop a new Resource Protection Action Plan in the FMP. This action plan articulates how NOAA addresses existing CINMS resource protection issues, as well as how emerging issues will be addressed. Each of the issues suggested as resource protection issues are noted in either the FMP's Resource Protection or Water Quality action plans. NOAA has explained the various steps it may take in responding to Sanctuary resource protection issues within Strategy RP.2 ("Responding to Identified Issues"). Due to the complexity and evolving nature of resource protection issues, NOAA maintains that it would be inappropriate to link specific "triggers" with specific "responses" in advance. The CINMS Resource Protection Coordinator and Sanctuary Advisory Council Coordinator are primarily responsible for implementing the activities in this action plan (with assistance from other staff). As permanent, full-time positions,

each is allocated specific funding. NOAA also leverages and maximizes resources available through collaborative partnerships.

263. *Comment:* NOAA should take additional, or in some cases, immediate management measures to address critical resource management issues including: Underwater noise, aquaculture, artificial reefs, oil and gas development, wildlife protection, fisheries management, global warming and liquefied natural gas proposals. NOAA should establish a specific process to address these CINMS issues as part of the management plan review.

Response: The CINMS staff work closely with fishery management agencies (NMFS and the California Department of Fish and Game) to address Sanctuary concerns about fisheries impacts. The Sanctuary has expanded its discussion of wildlife protection, oil and gas development, and global warming in the FMP's Resource Protection Action Plan, which also discusses aquaculture and artificial reefs. This action plan describes a process for addressing resource protection issues. Threats from oil and gas development, and activities to address them, are discussed in the FMP's Emergency Response and Enforcement Action Plan, as well as the Water Quality Action Plan (which outlines a process for developing a comprehensive Water Quality Management Program to address all Sanctuary water quality issues).

264. *Comment:* NOAA should consider placing permanent moorings at popular island anchorages to prevent seafloor damage and protect resources from boaters who possess poor anchoring skills.

Response: NOAA has supported and permitted the installation and maintenance of permanent moorings at Santa Rosa, Santa Cruz and Anacapa islands anchorages, which are used by the NPS and its concessionaire vessels. The Sanctuary Advisory Council has discussed, and NOAA has considered the possible need for and appropriateness of additional moorings; however, at this time, NOAA has not reached a decision on this issue as it is still gathering information. NOAA will continue discussing this with the NPS, the Sanctuary Advisory Council and others. NOAA will use the activities in the Resource Protection Action Plan to track, assess, and determine how to address seafloor damage from anchoring.

Sanctuary Advisory Council Involvement

265. *Comment:* NOAA's federalism assessment statement within the proposed rule improperly and inaccurately suggested that the current Sanctuary Advisory Council supports the regulatory action.

Response: NOAA's intent was to provide information explaining that NOAA has consulted with various entities, including the Sanctuary Advisory Council, throughout the development of the regulatory action. The Sanctuary Advisory Council was very closely involved from 1999 through 2002, at which point the proposed regulatory action entered NOAA's internal review process. NOAA acknowledges that individuals who joined the Advisory Council since 2002 were not as closely involved in the development of the proposed regulatory action, and as such NOAA has revised the statement accordingly.

Sea Otters

266. *Comment:* The FMP and FEIS should discuss the connection between water quality, sea otter health, nearshore marine ecosystem health, and human health.

Response: Text in FEIS Appendix C now includes discussion about research on the connection between these concerns.

267. *Comment:* In the FEIS, NOAA should acknowledge and support the reality of future sea otter migration into Sanctuary habitats and not identify this as a potential "issue," "conflict," or "problem" to be dealt with. Also, it should be acknowledged in the FEIS that NOAA has taken a position on the expanding range of the sea otter by commenting in support of Alternative 3C in the U.S. Fish and Wildlife Service (2006) DSEIS.

Response: NOAA does consider future sea otter migration into Sanctuary habitats as an "issue" to be addressed. NOAA has not equated issues with problems, but rather issues constitute the range of topics that must be addressed by Sanctuary actions. Because sea otters have not been present in significant numbers within the Sanctuary since its designation, the expansion of their current range to include the Sanctuary is a change in Sanctuary conditions. NOAA believes that this change would warrant Sanctuary attention and may potentially warrant future actions by Sanctuary staff (e.g., in the Resource Protection, Research, and Education programs). NOAA has updated and augmented information on this issue in the FMP's

Resource Protection Action Plan, Description of the Issues, under the sub-header *Termination of the Sea Otter Translocation Program*. The NMSP has taken a position on the expansion of the sea otter range in southern California, and this is a matter of public record.

268. *Comment:* The documents should not use the phrase “possible future sea otter migration into Sanctuary habitats,” since sea otters are currently found within the Sanctuary, albeit not in large numbers (both at San Nicolas Island and in other parts of the Sanctuary) or necessarily as permanent residents. However, at some unknown time, sea otters will probably reoccupy this historic habitat as permanent residents again.

Response: NOAA has updated the management plan text in the FMP’s Resource Protection Action Plan with information about the status of sea otters in the Sanctuary and surrounding region, using information from the USFWS 2005 Draft Supplemental Environmental Impact Statement on translocation of southern sea otters. San Nicolas Island is one of the Channel Islands, but is not part of the Sanctuary.

269. *Comment:* NOAA should consult with researchers at USGS (Brian Hatfield) and FWS (Lilian Carswell) to revise the mention of “rare sightings” of sea otters in the FEIS.

Response: NOAA has revised text in the FEIS based on the USFWS (2005) Draft Supplemental Environmental Impact Statement, which includes current information on the presence of sea otters in Sanctuary waters and the study area. Based on USFWS (2005) information on the abundance and distribution of California sea otters, sea otters are not expected to have any effect on CINMS resources within 10 years, and while there are rare sightings, they have yet to recolonize the CINMS.

Submerged Lands Disturbance

270. *Comment:* Commenters indicated their support for the proposed modification of the prohibition on altering submerged lands of the Sanctuary, which extends this protection of the seabed to the entire Sanctuary.

Response: Comment noted.

271. *Comment:* If bottom trawling occurs in a sanctuary, it should not be called a sanctuary.

Response: The purposes and policies of the NMSA provide for facilitating public and private use of national marine sanctuaries compatible with their primary goal of resource protection. Pursuant to existing federal and state regulations, bottom trawling is highly restricted in existing Sanctuary

waters. It is prohibited inside one nmi of the islands, throughout the network of ten marine reserves and two conservation areas, and in several fisheries.

Take and Possession of Marine Mammals, Sea Turtles and Seabirds

272. *Comment:* Support expressed for prohibitions 9 and 10 (taking and possessing, respectively, any marine mammal, sea turtle, or seabird), but recommend that the regulation include or reference language specifically stating that commercial fishing or certain research activities which may involve the occasional take of these species may lawfully operate as such under authorizations granted pursuant to the Marine Mammal Protection Act, Endangered Species Act, or Migratory Bird Treaty Act.

Response: NOAA has not added the specifically requested language to these regulations. These prohibitions already include an exception for authorizations granted by the Marine Mammal Protection Act, Endangered Species Act, or Migratory Bird Treaty Act. As the DEIS (sections 2.1.10 and 2.1.11, 4.1.9 and 4.1.10) explained, the Sanctuary’s proposed regulation would not apply if an activity (including a federally or state-approved fishery) that does or might cause take of marine mammals, sea turtles or seabirds has been authorized to do so under the MMPA, ESA, or MBTA or any implementing regulation promulgated under these acts. NOAA believes it has clearly described and helped the reader understand the nature, extent, applicability and intent of the exception to prohibitions 9 and 10.

273. *Comment:* Sanctuary prohibitions 9 and 10 (taking and possessing, respectively, any marine mammal, sea turtle, or seabird) are duplicative of existing regulations, unnecessary, confusing as to whether the intent is to track other laws, and could unnecessarily prohibit certain fisheries in the Sanctuary. NOAA should add language specifically acknowledging take exemptions found in other existing authorities, including PFMC Fishery Management Plans.

Response: NOAA has carefully crafted these regulations to be complementary in nature, with an area-specific focus on marine mammals, sea turtles, and seabirds in the Sanctuary, and to provide a different suite of penalties than available under other regulatory agencies’ authority. The regulations as written acknowledge take and possession exemptions found in the Marine Mammal Protection Act (MMPA), Endangered Species Act

(ESA), Migratory Bird Treaty Act (MBTA) or any regulation promulgated under the MMPA, ESA, or MBTA. NOAA understands that lawful fishing operations that are likely to take a marine mammal, sea turtle, or seabird are typically provided with exemptions for such take, and therefore would be excepted from this Sanctuary regulation. NOAA believes that the NMSA civil penalty schedule provides a valuable deterrent to illegal take and possession of these species. In addition, this regulation is consistent with those in place at the Monterey Bay, Stellwagen Bank, Olympic Coast, and Florida Keys national marine sanctuaries.

274. *Comment:* Concern expressed about the Sanctuary’s prohibition on take of marine mammals, sea turtles, and seabirds, as it might apply to unintentional hooking of these animals while lawfully fishing. The regulation would impede a fisherman’s ability to release, remove, unhook, or untangle any marine mammal that is inadvertently caught or snagged during lawful fishing operations in the CINMS. NOAA should revise the regulation to provide an exception for unintentional hooking. NOAA should also consider if USFWS and CDFG regulations have such an exception.

Response: NOAA understands that lawful fishing operations that are likely to take a marine mammal, sea turtle, or seabird are typically provided with exemptions for such take, and therefore are excepted from this regulation.

275. *Comment:* NOAA should improve NMSP enforcement of the Marine Mammal Protection Act with respect to emissions of underwater noise, especially now that NOAA is proposing to add a CINMS prohibition on marine mammal “take” within Sanctuary boundaries.

Response: The NMSP does not have enforcement authority with regard to the Marine Mammal Protection Act. Should NOAA conclude that unauthorized take has occurred within the Sanctuary, NOAA would ensure that appropriate enforcement actions are taken by NOAA’s Office for Law Enforcement, the branch of NOAA charged with enforcing both the NMSA and MMPA.

276. *Comment:* Why is NOAA only now proposing a regulation to prohibit take of a turtle or marine mammal, when that is one of the basic protections that people expect?

Response: Take of these species has always been prohibited in the Sanctuary, and in U.S. waters in general, under the protections afforded by the Marine Mammal Protection Act, and the Endangered Species Act. At this time NOAA has determined that

overlaying these regulations with Sanctuary regulations is warranted to provide an added civil penalty deterrent against such already illegal take.

Vessel Traffic

277. *Comment:* NOAA should explain why CINMS Designation Document Article IV indicates that operating a vessel (i.e., watercraft of any description) within the Sanctuary is subject to regulation, including prohibition. At an Advisory Council meeting CINMS staff discussed regulation of MPWCs, but this language makes it possible for the Sanctuary to prohibit all vessels and NOAA should remove it.

Response: NOAA is not removing this language because since its inception, CINMS has had general authority to regulate the navigation of vessels. To date, NOAA has utilized this authority to regulate the operation of cargo vessels and vessels servicing offshore installations within one nmi of the Islands, and now, to regulate motorized personal watercraft within that same area. While a given activity may be within the Sanctuary's scope of regulations, any new Sanctuary action (including regulation) that could significantly affect the environment (including the human environment) would be subject to legal requirements under the National Environmental Policy Act, and Administrative Procedure Act, which ensure an open public review process regardless of the scope of regulations within the CINMS terms of designation.

278. *Comment:* NOAA should prohibit cruise ships and industrial activities such as LNG and associated traffic within the entire Sanctuary to protect the Sanctuary from noise impacts and discharges.

Response: At this time, NOAA's primary concerns with cruise ships pertain to nearshore approach and waste discharge/deposit in the Sanctuary. The new CINMS regulations prohibit cruise ships 300 GRT or more (cruise ships are typically much larger than 300 GRT, and industry trends show increasing vessel sizes) from approaching within one nmi of the Islands, and prohibit them from discharging sewage and graywater anywhere in the Sanctuary. Based upon the best available information, NOAA has determined that it is not necessary to ban cruise ships within the entire Sanctuary at this time.

The Sanctuary is already protected from industrial activities through regulations protecting the seabed and water quality, and a prohibition on hydrocarbon activities. The regulation changes add a prohibition on mineral

activities. The International Maritime Organization designated the majority of the Sanctuary, excluding the portion that overlaps the Traffic Separation Scheme, as an Area To Be Avoided (ATBA). NOAA seldom observes large vessels within the ATBA, and as such has not deemed it necessary at this time to prohibit large vessel use beyond one nmi from the Islands. NOAA has been actively involved in commenting on proposed LNG projects adjacent to the Sanctuary. Regarding discharges from industrial traffic, Sanctuary regulations provide strong protections against pollution and discharges. Regarding noise impacts, see the response to comment 9.

279. *Comment:* DMP Strategy CS.2—Comprehensive Data Management must include data on commercial shipping dynamics via the Automated Identification System, and CINMS staff must consider taking a leadership role in bringing this system online.

Response: CINMS staff have taken a lead role in working with the Navy, U.S. Coast Guard, and The Marine Exchange of Southern California to install an AIS transceiver station on Santa Cruz Island or Anacapa Island and integrate the data with an AIS transceiver station on San Nicolas Island. Once completed, NOAA will work with partners to facilitate the distribution and management of incoming AIS data. For more information about CINMS AIS activities see FMP Strategy CS.8 (Automated Identification System (AIS) Vessel Tracking).

280. *Comment:* On SDEIS pages five and seven, 6,980 and 7,000 are both used to present the same information about ship transits, but one number should be used consistently.

Response: NOAA did not use two different numbers to present the same information about ship transits. One number presents a general statement about yearly ship transits through the Santa Barbara Channel being "nearly 7,000," while the other number presents a statistic about Santa Barbara Channel ship transits in 2006 being "an estimated 6,980."

281. *Comment:* NOAA should incorporate the Santa Barbara Channel into the Sanctuary and reroute commercial ship traffic west of the Channel Islands.

Response: NOAA is not changing the CINMS boundary as part of this management plan review. However, NOAA will further analyze the boundary concepts in a separate environmental review process sometime in the future.

The shipping lanes were designated by the International Maritime

Organization (IMO) and any modification of these lanes would be decided by this international body, not unilaterally by the United States or its executive branch agencies such as NOAA. Should the United States determine that the placement of the shipping lanes warrants reconsideration (for example, to reduce the risk of ship strikes on whales), the appropriate federal representatives would bring this information to the IMO.

Water Quality

Water Quality—Enhanced Protection

282. *Comment:* The final management plan and sanctuary regulations should make certain that the sanctuary is protected beyond minimum state and Federal pollution requirements.

Response: Both the existing and modified Sanctuary regulations go beyond state and other federal standards for the prohibition of waterborne pollution.

283. *Comment:* The EPA recommends the selection of NOAA's Alternative 1, which provides additional protections for water quality, including prohibiting the discharge of treated sewage from larger vessels and the at-sea transfer of petroleum-based products, materials or other matter ('lightering') within CINMS.

Response: Certain aspects of Alternative 1 are more protective to CINMS resources and qualities. However, at this time, in order to be consistent with the California Clean Coast Act, as well as with regulations proposed by the Monterey Bay, Cordell Bank, and Gulf of the Farallones national marine sanctuaries, NOAA is providing an exception for treated sewage discharges from oceangoing ships that do not have sufficient holding tank capacity to hold sewage while within the CINMS. See the FEIS for additional text and analysis on large vessel sewage discharge in the Sanctuary. With regard to the prohibition of lightering, NOAA maintains that such a prohibition is not warranted at this time (see the response to comment 176). Regarding Alternative 1, see the response to comment 132.

Water Quality—Funding

284. *Comment:* \$20,000 per year, as indicated in the DMP, will not be commensurate with the workload associated with the Water Quality Protection Planning Strategy.

Response: The estimated costs for this strategy do not include staff time, which will be the principal cost of water quality program development. This strategy is focused on developing a plan

for water quality protection, rather than implementation of specific tasks. Furthermore, as explained in the strategy's background text, the NMSP's West Coast Regional Office is playing a significant role in helping to develop a CINMS water quality protection plan (and is not reflected in estimated site costs for implementing this strategy). CINMS will continue to work to leverage partner resources, including funds, as appropriate.

Water Quality—Incorporate SAC Recommendations

285. *Comment:* The management plan should be updated to indicate that the CINMS Advisory Council adopted the water quality needs assessment report in 2005, and that it is thus a product of the full Advisory Council rather than just the Conservation Working Group.

Response: NOAA has updated the FMP to note and describe the Sanctuary Advisory Council's adopted *Water Quality Needs Assessment for the Channel Islands National Marine Sanctuary*.

286. *Comment:* NOAA should incorporate the Advisory Council's water quality report recommendations into the management plan.

Response: NOAA has updated the FMP's Water Quality Action Plan, which now refers to the Sanctuary Advisory Council's 2005 report *A Water Quality Needs Assessment for the Channel Islands National Marine Sanctuary*, and the recommendations it contains. NOAA will work with the CINMS Advisory Council, its working groups, and other partners to implement the water quality strategy in the management plan, and to develop a detailed Sanctuary water quality protection plan that will describe knowledge and management gaps and how they may be addressed.

Water Quality—Other

287. *Comment:* Comments support: CINMS' continued efforts to address water quality concerns in the Sanctuary; the heightened attention to specific threats to Sanctuary water quality; the management plan placing a high value on monitoring and improving water quality; and the regulations providing needed enhancements to CINMS water quality protection. Support also expressed for evaluating and understanding localized and large-scale spatial and temporal impacts from oceanographic and climatic changes, and coastal and offshore impacts from human population increases.

Response: Comment noted.

288. *Comment:* The Central Coast Water Board implements programs that

address many of the priority sub-issues identified in the DMP and welcomes the opportunity to work cooperatively and proactively with the Sanctuary on water quality issues.

Response: NOAA appreciates the Central Coast Water Board's support on Sanctuary water quality issues.

289. *Comment:* The DMP/DEIS should incorporate a broad-based approach and goals of the Ocean and Coastal Water Quality section of the five-year strategic plan of the California Ocean Protection Council (COPC).

Response: The CINMS Water Quality Action Plan provides the foundation for a broad based approach and outlines the process for developing a Sanctuary water quality protection plan. Sanctuary water quality goals will be developed as part of this process, and may include some of the goals identified in the OPC's five-year strategic plan.

290. *Comment:* Water quality conservation is one of the most critical issues facing Sanctuary managers in the coming five years and beyond. While the three activities and updated regulations proposed in Strategy WQ.2 are a good start toward meeting this objective, growing threats to Sanctuary water quality warrant a much more proactive and aggressive approach by CINMS.

Response: Once strategy WQ.2 is implemented and CINMS has a water quality protection plan, NOAA will consider the future actions it will need to take to best implement the activities identified in the plan to address threats to Sanctuary water quality.

291. *Comment:* CINMS should convene a conference of Santa Barbara Channel-area water quality experts to catalyze the action planning process and facilitate the identification of issues that drive water quality action planning.

Response: As described in the background to Strategy WQ.2 in the FMP, CINMS will consult with area water quality experts as part of the process to develop a water quality protection plan.

292. *Comment:* The Water Quality Protection Planning strategy should explicitly assign a greater level of responsibility and leadership on initiating short term water quality protection to the Sanctuary managers.

Response: The NMSP and its managers have a responsibility to address Sanctuary water quality. NMSP and CINMS leadership are also accountable to NMSP performance measures, one of which calls for sanctuaries to maintain or improve water quality based on long term monitoring data.

293. *Comment:* There are way too many people on this coastline, the ocean is affected, and I'm sure it's going to affect the Sanctuary.

Response: Implementing the management plan's Water Quality Action Plan will enable CINMS, by working in close coordination with other area water quality managers, to better identify and address water quality threats to the Sanctuary.

294. *Comment:* The DMP should include discharges from ship accidents, and natural oil and gas seeps as important possible sources affecting Sanctuary water quality.

Response: NOAA has revised the FMP's Water Quality Action Plan to incorporate natural oil and gas seeps and discharges from vessel accidents in the discussion of possible sources of pollution affecting Sanctuary water quality.

295. *Comment:* Two commenters indicated that they agreed with or supported the water quality comments submitted by the Sanctuary Advisory Council's Conservation Working Group.

Response: Please refer to responses to the Conservation Working Group's comments, listed in the table at the beginning of the FEIS response-to-comments appendix under "Krop, Linda."

Water Quality—Research and Monitoring

296. *Comment:* Commenter encourages continued CINMS support for Plumes and Blooms project and an assessment of its management implications, and continued CINMS support for the Southern California Bight Regional Monitoring surveys.

Response: Comment noted. NOAA plans to continue support for these programs as described in the FMP.

297. *Comment:* NOAA should process and analyze water quality samples from the Bight '03 survey and the Pac Baroness shipwreck exploration.

Response: ACINMS samples taken during the Bight '03 survey have been lab processed, and the results are publicly available on the Web site of the Southern California Coastal Water Research Project. In addition, lab tests on sediment samples taken from the wreck site of the Pac Baroness have been completed and some preliminary analysis work was done in 2007, yielding no striking results.

298. *Comment:* CINMS research effort should aim to determine the issues that will drive Sanctuary water quality action planning, and this should be included in the water quality monitoring strategy.

Response: CINMS staff will work with water quality experts and researchers, as appropriate, to identify and assess water quality issues during the process of developing a water quality protection program. These assessments will help set priorities for water quality research and monitoring efforts.

299. *Comment:* Water quality sampling of anchorage areas within the Sanctuary should be continued beyond the current pilot phase in order to provide a more comprehensive picture of potential water quality impacts associated with recreational boating around the Channel Islands. The sampling should be expanded to better assess high-use conditions by sampling more often during weekends and holidays. In addition, the monitoring protocol should be adapted based on results from the pilot phase. The management plan should reflect a commitment to this continued monitoring, and specify the subsequent research and management steps CINMS staff will take based on monitoring results.

Response: Monitoring of select anchorages and other sites within the Sanctuary took place in 2006, with Santa Barbara Channel Keeper performing the work under agreement with CINMS. In 2007, a report was produced by Santa Barbara Channel Keeper detailing the results of this monitoring effort. In the future, CINMS may continue and potentially expand this type of monitoring within the Sanctuary, as resources allow and upon further consideration of the efficacy of this approach. See activity 3 of Strategy WQ.1 for a description of CINMS water quality monitoring initiatives.

300. *Comment:* The management plan's Water Quality Action Plan Strategy WQ.1 should provide additional specificity to identify or at least propose specific measures CINMS staff can take to physically or institutionally support storm water plume researchers, such as with vessel time, lab space, human resources, etc. As written, the activity is too general with respect to existing information, SAC consensus, CINMS participation, and resource protection needs. The management plan should also articulate CINMS support for future Bight Surveys by first allocating specific funding to analyze existing samples (and organize that data for public availability), and then by planning funding and human resources for extensive sampling, processing and water quality data management in upcoming Bight Surveys.

Response: Strategy WQ.1 now notes the importance of better understanding

stormwater plumes and how they may affect Sanctuary water quality and living resources. Additional details with regard to specific new monitoring measures to be taken have not yet been developed, but are expected to result from implementation of the broader strategy to develop a water quality protection plan (WQ.2). Regarding the Bight '03 survey data, all CINMS samples taken during that project have been lab processed, and the results are publicly available on the Web site of the Southern California Coastal Water Research Project. Furthermore, as the Water Quality Action Plan states, CINMS intends to continue support for future Bight Surveys.

301. *Comment:* NOAA should provide for systematic monitoring of anthropogenic marine debris.

Response: Marine debris is included in the description of water quality issues to be addressed through the Water Quality Action Plan, and NOAA may consider the suggestion of a systematic monitoring program for marine debris during the water quality protection planning process.

302. *Comment:* The Matilija Dam (Ventura County) is scheduled to be removed, potentially impacting CINMS resources through increased sedimentation. Monitoring should be implemented to understand the impact of this dam removal.

Response: The Matilija Dam is scheduled to be gradually removed starting in 2012. According to recent environmental assessments of dam removal, short term sediment stabilization will result in approximately 30% increase in coarse (sand and bigger) sediment at the associated beach over 50 years, which will be released gradually over 20–30 years, depending upon climate and hydrology. Fine sediments removed from the reservoir will be slurried downstream and placed within the 100 year floodplain. There is an estimate of potential increase in fine sediment plume from the river, but quantitatively this will be insignificant since the dam currently passes 100% of the fine sediment. At this time, NOAA will rely on the relevant federal and state authorities to monitor and report on increased sedimentation from dam removal, while also continuing to support related water quality, sediment and plume studies (see the response to comment 300).

Water Quality—Specify Plans in More Detail

303. *Comment:* The management plan needs more specificity regarding corrective actions for managing water

quality impacts in the Sanctuary. The Water Quality Action Plan is relying almost entirely on a long-term bureaucratic process subject to Congressional funding, and the success or failure of Staff recruitment at the NMSP's regional level. This is particularly troubling given the array of documented water quality threats facing Channel Islands today, and the suite of relatively low-cost, actionable water quality conservation recommendations delivered from the Advisory Council to the Sanctuary Superintendent in 2005.

Response: The Water Quality Action Plan describes a future process that will build on the best available information, engage stakeholders and experts, identify and prioritize gaps in Sanctuary water quality protection, and propose management actions to address threats. NOAA understands that there are known issues and many specific recommendations that have been put forth by various individuals and the Sanctuary Advisory Council, and intends to build on those ideas. CINMS staff have added recent information to the Water Quality Action Plan, drawing on documents such as the water quality needs assessment endorsed by the Sanctuary Advisory Council. At this time, however, full details of what the water quality protection program would entail have not yet been decided upon, and will be determined through the process described in the Water Quality Action Plan.

Water Quality—Staffing

304. *Comment:* NOAA should expeditiously hire a new West Coast Region Water Quality Coordinator.

Response: The hiring of a regional water quality coordinator or other positions related to CINMS water quality protection planning will be considered as appropriate, and as resources allow. NOAA recognizes that resource limitations as well as the necessary program and partner developments may limit implementation of all of the activities in the various action plans. NOAA will continue to work with the Department of Commerce, Office of Management and Budget, and Congress in developing supporting justifications when preparing budget submissions.

305. *Comment:* NOAA should consider creating a water quality specialist position at CINMS.

Response: As CINMS water quality protection program continues to evolve, NOAA will consider a new staff position. Any new position would, however, be contingent upon the availability of resources and the staffing

needs required for addressing identified issues and actions.

Water Quality—Watershed Approach

306. *Comment:* Given that land-based activities can have a dramatic effect on water quality, the Sanctuary should take a watershed approach in coordination with other agencies and groups involved in water quality management.

Response: A watershed approach and coordination with other agencies is important when addressing CINMS water quality issues. NOAA will work in close collaboration with area water quality partners in the development of the CINMS water quality protection plan, and will consider the task force suggestion.

Water Quality—Working Group

307. *Comment:* The management plan should establish a Water Quality Working Group within the SAC. Any Water Quality Protection Program the working group develops should be similar to that at the Monterey Bay National Marine Sanctuary.

Response: CINMS staff and Advisory Council members have been discussing the potential formation of a Water Quality Working Group for several years. As CINMS implements Strategy WQ.2, staff will revisit this idea with the Advisory Council. Process approaches, such as the possible formation of a Working Group, will be defined at that point. Stakeholder and expert participation is a hallmark of the Sanctuary's management approach, and will be part of the overall process to develop a water quality protection program. As Strategy WQ.2 notes, CINMS will use, to the extent appropriate, the existing Monterey Bay National Marine Sanctuary Water Quality Protection Program as a model.

V. Changes From the Proposed Rule

NOAA published a proposed rule for this action on May 19, 2006 (71 FR 29096). This final rule incorporates changes to the 2006 proposed rule based on comments received during the 2006 public comment period, comments received during the 2008 public comment period (regarding large vessel sewage and graywater discharge), and NOAA's subsequent analysis.

Between May and July of 2006, NOAA received public comment and held two hearings on the proposed rule and associated DEIS. Between March and May 2008, NOAA received public comment on a supplemental proposed rule for discharges/deposits from within or into the Sanctuary and associated supplemental DEIS (SDEIS). NOAA

received over 700 comments on the DEIS, SDEIS, and proposed rules.

Regulation changes between the proposed and final rules include the following:

- Discharge and deposit regulation: Modified graywater exception applies to vessels less than 300 gross registered tons (GRT), and oceangoing ships 300 GRT or more without sufficient holding tank capacity to hold graywater while within the CINMS.

- Discharge and deposit regulation: Modified treated sewage exception applies to vessels less than 300 GRT, as well as to oceangoing ships without sufficient holding tank capacity to hold treated sewage while within the Sanctuary.

- Added definitions for "cruise ship," "oceangoing ship," and "graywater".

- Discharge and deposit regulation: Modified the exception for fish, fish parts and chumming materials to clarify that it applies to the lawful practice of discarding fish scraps used in or resulting from lawful fishing.

- Removed the proposed outer boundary coordinate corrections, and removed the proposed corrections to the legal description of the Sanctuary area based on recalculations of the Sanctuary's size.

As NOAA explained in the March 2008 proposed rule and SDEIS, after receiving comments on the 2006 proposed rule and DEIS, NOAA modified the Sanctuary's proposed discharge regulation to better address potential impacts of sewage and graywater discharges from large vessels. In addition, based on comments received on the 2008 proposed rule and SDEIS, NOAA further modified the discharge regulation as it pertains to treated sewage discharges from large vessels. The final rule's discharge regulation provides that the exception for treated sewage is applicable to small vessels (less than 300 GRT), as well as to oceangoing ships (defined in the regulations as private, commercial, government, or military vessels of 300 gross registered tons or more, not including cruise ships) without sufficient holding tank capacity to hold sewage while within the Sanctuary. The final rule's discharge regulation as it pertains to graywater provides that the exception for graywater is only applicable to small vessels (less than 300 GRT), and to oceangoing ships without sufficient holding tank capacity to hold graywater while within the Sanctuary.

In 2007, NOAA made technical corrections to the CINMS boundary coordinates, re-calculated the original CINMS area as approximately 1,113

square nautical miles (72 FR 29208), and increased the Sanctuary area by approximately 15 square nautical miles to allow the boundary of four marine reserves to be defined by straight lines projecting outside the original CINMS boundary, allowing for better enforcement of the marine reserves. This change did not constitute a significant change in the geographic area of the Sanctuary (other than the approximately 15 square nautical miles referred to above) but rather an improvement in the estimate of its size. NOAA originally intended to make technical corrections to the Sanctuary boundary coordinates and re-calculate the CINMS area (provided at 15 CFR 922.70) as part of this rule. However, since NOAA made the technical corrections to Sanctuary boundary coordinates and re-calculated the CINMS area in 2007 as part of the FEIS and final rule to establish marine reserves and conservation areas within the Sanctuary, these aspects of clarifying the Sanctuary boundary description are reflected in, but not established by this final rule.

VI. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the NMSA (16 U.S.C. 1434(a)(4)) requires that the procedures specified in section 304 for designating a National Marine Sanctuary be followed in modifying any term of designation. Because this action revises the terms of designation, NOAA must comply with the requirements of section 304(a)(5). All requirements have been completed.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA (16 U.S.C. 1434(a)(2)(A)) requires the preparation of an environmental impact statement (EIS), as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and that the draft EIS be made available to the public. NOAA prepared a draft EIS (DEIS) and supplemental DEIS (SDEIS) on the proposal, and copies are available at the address and Web site listed in the Address section of this final rule. Responses to comments received on the DEIS, SDEIS and proposed rule were published in the final EIS and are also provided in this final rule.

Coastal Zone Management Act

The California Coastal Commission has concurred that this action is consistent to the maximum extent

practicable with the California Coastal Management Program.

Executive Order 12866: Regulatory Impact

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

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications, as that term is defined in Executive Order 13132, to warrant preparation of a federalism assessment. Through the course of the development of the management plan and regulatory changes NOAA consulted with members of the Sanctuary Advisory Council, the California Resources Agency, California Department of Fish and Game, and the California Coastal Commission, California Department of Boating and Waterways, California Department of Fish and Game, California State Lands Commission, and California Resources Agency. Also, in 2003, NOAA consulted in writing with the above mentioned state agencies in addition to: The Office of the Governor of California, the California Department of Parks and Recreation, the California Department of Water Resources, the California Department of Conservation, the California Environmental Protection Agency, the California State Water Resources Control Board, and the California Assembly Committee on Natural Resources.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification appears in the proposed rule and is not repeated here. There were no comments received on the certification, and comments related to the economic impacts of this rule do not change the basis of the certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

Paperwork Reduction Act

This rule does not contain any new information collection requirements or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648-0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

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

References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

Dated: January 9, 2009.

Christopher Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.

List of Subjects in 15 CFR Part 922

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

■ Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

■ 2. Sections 922.70 through 922.74 are revised to read as follows:

Sec.

922.70 Boundary.

922.71 Definitions.

922.72 Prohibited or otherwise regulated activities—Sanctuary-wide.

922.73 Additional prohibited or otherwise regulated activities—marine reserves and marine conservation area.

922.74 Permit procedures and issuance criteria.

§922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of approximately 1,110 square nautical miles (nmi) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. The Sanctuary boundary begins at the Mean High Water Line of and extends seaward to a distance of approximately six nmi from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands). The seaward boundary coordinates are listed in Appendix A to this subpart.

§922.71 Definitions.

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

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

Graywater means galley, bath, or shower water.

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

Oceangoing ship means a private, commercial, government, or military vessel of 300 gross registered tons or more, not including cruise ships.

Pelagic finfish are defined as: Northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena spp.*), billfishes (family *Istiophoridae*), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasii*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus spp.*), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias spp.*), swordfish (*Xiphias gladius*), tunas (family *Scombridae*), and yellowtail (*Seriola lalandi*).

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

§ 922.72 Prohibited or otherwise regulated activities—Sanctuary-wide.

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

(1) Exploring for, developing, or producing hydrocarbons within the Sanctuary, except pursuant to leases executed prior to March 30, 1981, and except the laying of pipeline pursuant to exploring for, developing, or producing hydrocarbons.

(2) Exploring for, developing, or producing minerals within the Sanctuary, except producing by-products incidental to hydrocarbon production allowed by paragraph (a)(1) of this section.

(3)(i) Discharging or depositing from within or into the Sanctuary any material or other matter except:

(A) Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or an oceangoing ship without sufficient holding tank capacity to hold sewage while within the Sanctuary, biodegradable effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1321 *et seq.* Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Biodegradable matter from:

(1) Vessel deck wash down;

(2) Vessel engine cooling water;

(3) Graywater from a vessel less than 300 gross registered tons;

(4) Graywater from an oceangoing ship without sufficient holding tank capacity to hold graywater while within the Sanctuary;

(D) Vessel engine or generator exhaust;

(E) Effluent routinely and necessarily discharged or deposited incidental to hydrocarbon exploration, development, or production allowed by paragraph (a)(1) of this section; or

(F) Discharge allowed under section 312(n) of the FWPCA.

(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)(3)(i)(B) through (F) of this section and fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity beyond the boundary of the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity there.

(4) Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing or placing any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental to and necessary to:

(i) Anchor a vessel;

(ii) Install an authorized navigational aid;

(iii) Conduct lawful fishing activity;

(iv) Lay pipeline pursuant to exploring for, developing, or producing hydrocarbons; or

(v) Explore for, develop, or produce hydrocarbons as allowed by paragraph (a)(1) of this section.

(5) Abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary.

(6) Except to transport persons or supplies to or from any Island, operating within one nmi of any Island any vessel engaged in the trade of carrying cargo, including, but not limited to, tankers and other bulk carriers and barges, any vessel engaged in the trade of servicing offshore installations, or any vessel of three hundred gross registered tons or more, except fishing or kelp harvesting vessels.

(7) Disturbing a seabird or marine mammal by flying a motorized aircraft at less than 1,000 feet over the waters within one nmi of any Island, except (if allowed under paragraph (a)(9) of this section):

(i) To engage in kelp bed surveys; or

(ii) to transport persons or supplies to or from an Island.

(8) Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess a Sanctuary historical resource.

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

(10) Possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird, except as authorized by the MMPA, ESA, MBTA, or any regulation, as amended,

promulgated under the MMPA, ESA, or MBTA.

(11) Marking, defacing, damaging, moving, removing, or tampering with any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary.

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

(13) Operating a motorized personal watercraft within waters of the Sanctuary that are coextensive with the Channel Islands National Park, established by 16 U.S.C. 410(ff).

(b)(1) The prohibitions in paragraphs (a)(3) through (13) of this section and in § 922.73 do not apply to military activities carried out by DOD as of the effective date of these regulations and specifically identified in section 3.5.9 (Department of Defense Activities) of the Final Channel Islands National Marine Sanctuary Management Plan/Final Environmental Impact Statement (FMP/FEIS), Volume II: Environmental Impact Statement, 2008, authored and published by NOAA (“pre-existing activities”). Copies of the document are available from the Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109. Other military activities carried out by DOD may be exempted by the Director after consultation between the Director and DOD.

(2) A military activity carried out by DOD as of the effective date of these regulations and specifically identified in the section entitled “Department of Defense Activities” of the FMP/FEIS is not considered a pre-existing activity if:

(i) It is modified in such a way that requires the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, relevant to a Sanctuary resource or quality;

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

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

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

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

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

(c) The prohibitions in paragraphs (a)(3) through (10), (a)(12), and (a)(13) of this section and in § 922.73 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.74.

(d) The prohibitions in paragraphs (a)(3) through (11) and (a)(13) of this section and in § 922.73 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(e) The prohibitions in paragraphs (a)(3) through (11) and (a)(13) of this section and in § 922.73 do not apply to any activity necessary for valid law enforcement purposes in the Sanctuary.

§ 922.73 Additional prohibited or otherwise regulated activities—marine reserves and marine conservation area.

(a) Marine reserves. Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within a marine reserve described in Appendix B to this subpart, except as specified in paragraphs (b) through (e) of § 922.72:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, or attempting any of these activities.

(2) Possessing fishing gear on board a vessel unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish on board a vessel at anchor or in transit.

(b) Marine conservation area. Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the

marine conservation area described in Appendix C to this subpart, except as specified in paragraphs (b) through (e) of § 922.72:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, or attempting any of these activities, except:

(i) Recreational fishing for pelagic finfish; or

(ii) Commercial and recreational fishing for lobster.

(2) Possessing fishing gear on board a vessel, except legal fishing gear used to fish for lobster or pelagic finfish, unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish.

§ 922.74 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 922.72(a)(3) through (10), (a)(12), and (a)(13), and § 922.73, 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 sole discretion, may issue a permit, subject to terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.72(a)(3) through (10), (a)(12), and (a)(13), and § 922.73, if the Director finds that the activity:

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

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

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

(4) Will assist in managing the Sanctuary; or

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

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

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

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

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

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

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

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

(7) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary as a source of recreation and as a source of educational and scientific information, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary and the duration of such effects;

(8) It is necessary to conduct the proposed activity within the Sanctuary;

(9) The reasonably expected end value of the proposed activity furthers Sanctuary goals and purposes and outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(10) Any other matters the Director deems appropriate do not make the issuance of a permit for the proposed activity inappropriate.

(d) Applications. (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Manager, Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109.

(2) In addition to the information listed in § 922.48(b), all applications must include information the Director needs to make the findings in paragraphs (b) and (c) of this section.

(e) In addition to any other terms and conditions that the Director deems appropriate, a permit issued pursuant to this section must require that the permittee agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

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