

Final Designation Document for the Cordell Bank National Marine Sanctuary

Preamble

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

Article 1. Effect of Designation

The Act authorizes the promulgation of such regulations as are necessary and reasonable to protect the characteristics of the Sanctuary that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value. As used in the Act, this Designation Document, and the Sanctuary regulations, the word "historical" includes cultural, archaeological, and paleontological. Article 4 of this Designation Document lists those activities requiring regulation now or which may require regulation in the future in order to protect Sanctuary resources. Listing of an activity authorizes but does not require its regulation. Therefore, the listing of an activity does not imply that the activity will be regulated in the future. However, if an activity is not listed it can not be regulated, except on an emergency basis for no longer than 120 days where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, without amending Article 4 to list the activity. Such an amendment can only be

accomplished by following the same procedures through which the original designation was made.

Article 2. Description of the Area

The Sanctuary consists of a 397.05 square nautical mile area encompassed by a boundary extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northeast along this boundary to the beginning point. The precise boundaries are set forth in the regulations.

Article 3. Characteristics of the Area that Give it Particular Value

Cordell Bank is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. In addition, the Bank and its surrounding waters may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. It lies on a plateau 300-400 feet (91-122 meters) deep and ascends to within about 115 feet (35 meters) of the surface. The seasonal upwelling of nutrient-rich bottom waters to the upper levels of the Bank stimulates the growth of planktonic organisms. These nutrients, combined with high light penetration in Bank waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank includes an exceptional assortment of algae, invertebrates, fishes, marine mammals and seabirds.

Article 4. Scope of Regulation

Section 1.--Activities Subject to Regulation

The following activities may be regulated within the Sanctuary and adjacent waters to the extent necessary and reasonable to ensure the protection of the Sanctuary's conservation, recreational, ecological, historical, research, education or aesthetic values:

- a. Depositing or discharging any material or substance;
- b. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or within the 50 fathom isobath surrounding the Bank;
- c. Hydrocarbon (oil and gas) activities;
- d. Anchoring on the Bank or within the 50 fathom contour surrounding the Bank; and
- e. Removing, taking, or injuring or attempting to remove, take, or injure historical resources.

Section 2.--Consistency with International Law

The regulations governing activities listed in Section 1 of this Article shall apply to foreign flag vessels and foreign persons only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3.--Emergency Regulations

Where necessary to prevent immediate, serious and irreversible damage to a Sanctuary resource, activities, including those not listed in Section 1 of this Article, may be regulated within the limits of the Act on an emergency

basis for a period not to exceed 120 days.

Article 5. Relation to Other Regulatory Programs

Section 1.--Fishing

The regulation of fishing is not authorized under Article 4. Fishing vessels, however, are subject to regulation under Article 4 with respect to discharges and anchoring. All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq. ("Magnuson Act"), shall remain in effect. All permits, licenses, approvals, and other authorizations issued pursuant to the Magnuson Act shall be valid within the Sanctuary subject only to regulations issued pursuant to Article 4.

Section 2.--Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense (DOD) activities that are necessary for national defense. All such activities being carried out by DOD within the Sanctuary on the effective date of designation shall be exempt from any prohibitions contained in the Sanctuary regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, shall be subject to all prohibitions contained in the Sanctuary regulations.

Section 3.--Other Programs

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

pursuant to Article 4.

Article 6. Alterations to this Designation

This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce or his/her designee.

[End of Designation Document]

Accordingly, for the reasons set forth above, 15 CFR is amended as follows:

1. Part 942 is added to read as follows:

Part 942 - Cordell Bank National Marine Sanctuary

Sec.

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

§ 942.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. §§ 1431 et seq. ("Act"). The regulations in this part are issued pursuant to the authority of sections 303, 304, 305, and 307 of the Act.

§ 942.2 Purpose.

The purpose of designating the Sanctuary is to protect and conserve the special, discrete, highly productive marine area of Cordell Bank and its surrounding waters and to ensure the continued availability of the ecological, research, educational, aesthetic, historical and recreational resources therein.

§ 942.3 Boundary.

The Sanctuary consists of an area of marine waters approximately 50 miles west-northwest of San Francisco, California. The Sanctuary consists of a 397.05 square nautical mile area extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northwest along this boundary to the beginning point. The boundary coordinates are listed in Appendix I following subsection 942.10.

§ 942.4 Definitions.

- (a) "Act" means Title III of the Marine Protection, Research, and

Sanctuaries Act of 1972, as amended, 16 U.S.C. § 1431 et seq.

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, or designee.

(c) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, NOAA, or designee.

(d) "Injure" means to change adversely, either in the long-or short-term, a chemical or physical quality of, or the viability of, a Sanctuary resource.

(e) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, any state or local government, or any foreign government.

(f) "Sanctuary" means the Cordell Bank National Marine Sanctuary.

(g) "Sanctuary resource" means a living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational, or aesthetic value.

Other terms appearing in these regulations are defined in 15 CFR § 922.2.

§ 942.5 Allowed Activities.

All activities except those prohibited by subsection 942.6 may be conducted within the Sanctuary subject to all other prohibitions, restrictions, and conditions imposed by any other authority.

§ 942.6 Prohibited Activities.

(a) Except as necessary for national defense, as necessary to respond to an emergency threatening life, property or the environment, or as

permitted by the Assistant Administrator in accordance with subsection 942.8, the following activities are prohibited and thus are unlawful for any person to conduct:

(1) Depositing or Discharging Materials or Substances.

(i) Depositing or discharging, from any location within the boundary of the Sanctuary, materials or substances of any kind except:

(A) Fish, fish parts and chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary; and

(B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by: marine sanitation devices approved by the United States Coast Guard; routine vessel maintenance, e.g., deck wash down; engine exhaust; or meals on board vessels.

(ii) Depositing or discharging, from any location beyond the boundary of the Sanctuary, materials or substances of any kind, except for the exclusions listed in (i) above, which enter the Sanctuary and injure a Sanctuary resource.

(2) Removing, Taking, or Injuring Sanctuary Resources. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.

(b) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation that are necessary for national defense are exempt from the prohibitions contained in these

regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted by the Assistant Administrator after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in these regulations.

(c) The prohibitions in this section are applicable to foreign persons and foreign flag vessels only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

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

§ 942.7 Penalties.

(a) Section 307(c) of the Act authorizes the assessment of a civil penalty of not more than \$50,000 for each violation of the Act or any regulation or permit issued pursuant to the Act. Each day of a continuing violation constitutes a separate violation. Section 307(c)(3) further authorizes a proceeding in rem against any vessel used in such violation and for which a civil penalty has been assessed.

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

§ 942.8 Permit Applications - Procedures and Criteria.

(a) If a person wishes to conduct an activity prohibited under subsection 942.6, that person must apply for, receive, and have in possession on board any vessel used a valid permit issued pursuant to this Part authorizing that person to conduct that activity.

(b) Permit applications shall be addressed to the Assistant Administrator, Ocean Services and Coastal Zone Management; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, N.W., Washington, D.C. 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required permits, licenses, approvals, and other authorizations shall be attached.

(c) Upon receipt of a complete application, the Assistant Administrator may seek the views of any person, within or outside the Federal Government, and may hold a public hearing, at his or her discretion.

(d) The Assistant Administrator, at his or her discretion, may issue a permit subject to such terms and conditions as deemed appropriate, to conduct an activity otherwise prohibited by subsection 942.6, if the Assistant Administrator finds that the activity will further research related to Sanctuary resources; further the educational or historical value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Assistant Administrator may consider such factors as the professional

qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.

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

(f) The Assistant Administrator may amend, suspend or revoke a permit issued pursuant to this subsection, in whole or in part, if the Assistant Administrator determines that the permittee has acted in violation of the terms or conditions of the permit or of these regulations or that other good cause exists for amending, suspending or revoking the permit. Any such action shall be communicated in writing to the permittee, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

§ 942.9 Certification of other authorizations.

(a) All permits, licenses, approvals, and other authorizations issued pursuant to any authority are valid within the Sanctuary subject only to the prohibitions set forth in subsection 942.6. All applicable regulatory programs remain in effect.

(b) A permit, license, approval, or other authorization allowing the discharge or deposit of materials or substances otherwise prohibited under subsection 942.6(a)(1), or the removal, taking, or injury of, or an attempt to remove, take, or injure benthic invertebrates or algae otherwise prohibited under subsection 942.6(a)(2) shall be valid if certified by the

Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(c) In considering whether to make the certifications called for in this section, the Assistant Administrator may seek and consider the views of any other person, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(d) Any certification called for in this section shall be presumed unless the Assistant Administrator acts to deny or condition the certification within 60 days from the date that the Assistant Administrator receives notice of the permit, license, approval, or other authorization, and the supporting data deemed necessary by the Assistant Administrator in order to make a decision on the certification.

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

(f) Either the holder or the issuing agency may appeal any action conditioning, denying, amending, suspending, or revoking any certification in accordance with the procedure provided for in subsection 942.10.

§ 942.10 Appeals of Administrative Action.

(a) Except for permit actions taken for enforcement reasons and therefore covered by the procedures at Subpart D of 15 CFR Part 904, an applicant for a permit, a permittee, or any other interested person

(hereinafter appellant) may appeal the grant, denial, conditioning, amendment, suspension, or revocation of any permit under subsection 942.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed and the reason(s) therefor, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Administrator, in his or her discretion, may hold an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the appellant, the permit applicant or permittee, if other than the appellant, or any person, within or outside the Federal government, to submit such information as the Administrator may deem appropriate in order to decide the appeal. The Administrator shall decide the appeal based on the record before the Assistant Administrator and the record of the appeal. The Administrator shall notify the appellant and other interested persons of the final decision and the reason(s) therefor in writing, normally within 30 days of the date of the receipt of adequate information to make the decision.

(c) If the Administrator determines that an informal hearing should be held, the Administrator may designate an officer before whom the hearing shall be held. Notice of the time, place, and subject matter of the hearing shall be published in the Federal Register. Such hearing shall be held no later than 30 days following publication of the notice in the Federal Register, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant or permittee and other interested persons may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing

officer. Within 30 days of the conclusion of the hearing, the hearing officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the appellant and other interested persons of his/her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

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

Appendix I: Proposed Cordell Bank National Marine Sanctuary Boundary Coordinates

Point No.	Latitude	Longitude	Point No.	Latitude	Longitude
1	38°15'51.72"	123°10'52.44"	25	37°51'42.81"	123°31'19.10"
2	38°07'55.88"	123°38'33.53"	26	37°50'59.58"	123°31'02.96"
3	38°06'45.21"	123°38'00.40"	27	37°48'49.14"	123°28'44.61"
4	38°04'58.41"	123°37'14.34"	28	37°49'22.64"	123°29'34.07"
5	38°04'28.22"	123°37'17.83"	29	37°48'49.14"	123°28'44.61"
6	38°03'42.75"	123°36'55.66"	30	37°48'36.95"	123°28'08.29"
7	38°03'11.10"	123°36'19.78"	31	37°48'03.37"	123°28'23.27"
8	38°02'46.12"	123°36'21.98"	32	37°47'41.54"	123°28'01.97"
9	38°02'02.74"	123°35'56.56"	33	37°47'01.78"	123°27'16.78"
10	38°01'27.10"	123°35'55.12"	34	37°46'51.92"	123°26'48.98"
11	38°01'22.28"	123°36'55.13"	35	37°46'13.20"	123°26'04.79"
12	38°01'11.54"	123°37'28.21"	36	37°46'00.73"	123°25'36.99"
13	38°00'49.16"	123°37'29.77"	37	37°50'25.31"	123°25'26.53"
14	37°59'54.49"	123°36'47.90"	38	37°54'32.28"	123°23'16.49"
15	37°59'12.39"	123°35'59.55"	39	37°57'45.71"	123°19'17.72"
16	37°58'39.40"	123°35'14.85"	40	37°59'29.27"	123°14'12.16"
17	37°58'00.57"	123°34'42.93"	41	37°59'43.71"	123°08'27.55"
18	37°57'18.99"	123°33'43.15"	42	38°03'10.20"	123°07'44.35"
19	37°56'56.42"	123°32'51.97"	43	38°04'01.64"	123°06'58.92"
20	37°56'18.90"	123°32'49.24"	44	38°08'33.32"	123°04'56.24"
21	37°55'22.37"	123°32'36.96"	45	38°12'42.06"	123°07'10.21"
22	37°54'26.10"	123°32'21.73"			
23	37°53'07.46"	123°31'46.81"			
24	37°52'34.93"	123°31'13.90"			

APPENDIX 2: STATE AND FEDERAL AUTHORITIES APPLICABLE TO CORDELL BANK

State and Federal Authorities Applicable to Cordell Bank

Introduction

This appendix is designed to provide reviewers additional information beyond that provided in the status quo section of the environmental impact statement (Part III, Section I) on the existing state and Federal authorities with jurisdiction applicable to the proposed Cordell Bank National Marine Sanctuary. This information serves as a basic reference to the status quo and the environmental consequences sections of the DEIS/MP.

State

1. California Department of Fish and Game

The California Department of Fish and Game (CF&G), under the Fish and Game Code (and Chapter 14 of the Administrative Code), regulates and manages a wide variety of activities affecting the living marine resources found in the territorial sea and in the 200-mile wide exclusive economic zone. The focus of the Department's activities in Cordell Bank waters consists of the enforcement of state laws in areas that are not administered under federal regulations such as those Federal authorities listed below. The CF&G also enforces Federal regulations established under the Magnuson Fishery Conservation and Management Act.

Federal

1. Magnuson Fishery Conservation and Management Act (MFCMA) (16 USC 1801 et seq.)

The MFCMA provides for the conservation and management of all fishery resources in the zone between 3 and 200 nmi offshore. The National Marine Fisheries Service (NMFS), within NOAA, is charged with establishing guidelines for, and approving, fishery management plans (FMP's) prepared by

Regional Fishery Management Councils for selected fisheries. These plans determine the levels of commercial and sport fishing, consistent with the goal of achieving and maintaining an optimum yield for each fishery. The Pacific Fishery Management Council is responsible for preparing FMP's for west coast fisheries, including those in the area of Cordell Bank.

The MFCMA is enforced by the U.S. Coast Guard (USCG) and the NMFS. The Act also empowers the Secretary of Commerce to enter into agreements with any state agency for enforcement purposes. Such an agreement exists between the California Department of Fish and Game (CF&G) and the Department of Commerce. Under this cooperative agreement, signed December 3, 1978, the CF&G and NMFS are deputized to enforce each other's laws. NMFS personnel can enforce State law within three nautical miles of the coast and state officers can enforce Federal laws in waters between three and 200 nautical miles off the coast. The USCG also has agreements with NMFS and CF&G under which it provides transportation and other facilities for law enforcement.

The Pacific Coast groundfish FMP, prepared by the Pacific Fishery Management Council, went into effect in September, 1980. The regulations established by this FMP govern recreational and commercial fishing for a variety of groundfish, among them rockfish and lingcod, the two most abundant stocks in Cordell Bank waters. The FMP sets daily bag limits on the number of rockfish and lingcod that can be taken by recreational fishermen. The commercial harvest of rockfish is managed by gear regulations and catch limits adopted by the Council.

Catch statistics indicate that jack mackerel and salmon are the third and fourth most abundant fish stocks in Bank waters. However, the jack mackerel FMP covers only that part of the fishery that extends north of 39°

N. latitude. It thus does not apply to Cordell Bank, which is one degree to the south. The salmon FMP on the other hand does govern fishing at the Bank.

The Pacific salmon FMP was prepared by the Council in 1978 and has since been amended annually. Under the terms of the 1983 amendment, Cordell Bank waters are included in a fishery management unit that extends from Cape Vizcaino to the Mexican border. In this unit, all species of salmon may be caught by recreational fishermen. The fishing season in this unit, as well as bag and size limits, is established by the Council in the FMP. The FMP also regulates commercial fishing by gear limitations and catch and size limits.

2. Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.)

The ESA provides protection for listed species of plants and animals in both state and Federal waters. The Fish and Wildlife Service (FWS), in the Department of the Interior, and NMFS determine which species need protection and maintain the lists of endangered and threatened species. The most significant protection provided by the ESA is the prohibition on taking. The term "take" is defined broadly to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in such conduct" (16 USC 1532(19)). The FWS regulations interpret the term "harm" to include acts that cause significant environmental modification or degradation or that annoy listed species to such an extent that they significantly disrupt essential behavior patterns (50 CFR 17.3).

The ESA also provides some protection to endangered species and their habitat from less direct threats. This is accomplished by means of a consultation process (known as Section 7) designed to insure that projects authorized, funded, or carried out by Federal agencies do not jeopardize the

continued existence of endangered or threatened species or "result in the destruction or modification of habitat of such species which is determined by the Secretary (of the Interior or Commerce) to be critical" (16 USC 1536). Critical habitat areas for endangered species are designated by the FWS and NMFS depending on the species. No critical habitats have been designated in marine areas.

3. Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361 et seq.)

The MMPA applies to U.S. citizens and foreign nationals subject to U.S. jurisdiction; and it is designed to protect all species of marine mammals. The MMPA is jointly implemented by the NMFS, which is responsible for whales, porpoises, and pinnipeds other than walruses, and the FWS, which is responsible for all other marine mammals. The Marine Mammal Commission advises these implementing agencies and sponsors relevant scientific research. The primary management features of the Act include: (1) a moratorium on the "taking" of marine mammals; (2) the development of a management approach designed to achieve an "optimum sustainable population" for all stocks of marine mammal species, and (3) protection of populations determined to be "depleted."

Marine mammal species whose populations have been determined to be depleted receive additional protection (16 USC 1362). No permit may be issued for the taking of any marine mammal determined to be depleted except for scientific research purposes. The fin, humpback, gray, sperm, sei, and blue whales are treated as "depleted" based on their listing as endangered or threatened species under the ESA.

4. Clean Water Act (CWA) (33 U.S.C. 1251 et seq.)

The CWA establishes the basic scheme for restoring and maintaining the

chemical, physical, and biological integrity of the Nation's waters. The CWA contains two basic mechanisms for preventing water pollution: (1) the regulation of discharges from known sources, and (2) the regulation of oil and hazardous substance discharges. The Act also regulates the disposal of vessel sewage and dredged material.

(a) Discharges

The CWA's chief mechanism for preventing or reducing water pollution is the National Pollutant Discharge Elimination System (NPDES), administered by the Environmental Protection Agency (EPA). Under the NPDES program, a permit is required for the discharge of any pollutant from a point source into the navigable waters of a state, the contiguous zone, or the ocean.

(b) Oil and Hazardous Substance Pollution

The CWA prohibits discharges of oil and hazardous substances in such quantities as may be harmful to public health or to the environment, except for discharges outside the territorial sea permitted by the Act to Prevent Pollution from Ships (APPS), 1987 (33 USC 1901 *et seq*) (See Act to Prevent Pollution from Ships, below). When such discharges do occur, the National Contingency Plan for the removal of oil and hazardous substance discharges will take effect. The USCG, in cooperation with EPA, administers the plan, which establishes the organizational framework for cleaning up all discharges of oil in the contiguous zone and oil spills resulting from activities under the Outer Continental Shelf Lands Act, discussed below.

(c) Recreational Vessels

The CWA (33 U.S.C. 1322) requires recreational vessels with toilet facilities to contain operable marine sanitation devices. The regulations state that boats, 65 feet in length and under, may use either type I, II, or

III sanitation devices which must be certified by the USCG. Types I and II are chemical treatment devices and type III is a holding tank. The CWA requires non-commercial craft to comply with marine sanitation device regulations issued by EPA and enforced by the USCG.

(d) Dredging and Discharging Dredged Materials

Section 404 permits from the Army Corps of Engineers, based on EPA-developed guidelines, are required prior to filling or discharging dredged materials within three miles of shore. Such operations include the discharge of wetloads or the transportation of dredged material for the purpose of dumping it into ocean waters.

5. The River and Harbor Act (33 USC 401 et seq.)

Section 10 (33 USC 403) prohibits the unauthorized obstruction of navigable waters of the United States. The construction of any structure in the territorial sea or on the outer continental shelf is prohibited without a permit from the Army Corps of Engineers. Section 13 (33 USC 407) prohibits the discharge of refuse and other substances into navigable waters, but has been largely superseded by the CWA, discussed above. In effect, such discharges are regulated under this section only insofar as they affect navigation or anchoring.

6. Ports and Waterways Safety Act (PWSA) (33 USC 1221 et seq)

The PWSA, as amended by the Port and Tanker Safety Act of 1978, is designed to promote navigation and vessel safety and the protection of the marine environment. The PWSA authorizes the USCG to establish vessel traffic services and systems for ports, harbors, and other waters subject to congested vessel traffic. Vessel Traffic Separation Schemes (VISS's) are applicable to commercial ships other than fishing vessels weighing 300 gross tons (270

gross metric tons) or more. The USCG has established a VTSS for ship traffic approaching San Francisco Bay from the north or departing in that direction. It consists of two, mile-wide inbound and outbound vessel traffic lanes with a separation zone between them. The separation zone is not to be used by vessels except for crossing between inbound and outbound lanes. Vessel traffic in the approaches to San Francisco Bay is discussed in Part II, Section II.C of the FEIS/MP.

In addition to vessel traffic control, the USCG regulates other navigational and shipping activities and has promulgated numerous regulations relating to vessel design, construction, and operation designed to minimize the likelihood of accidents and to reduce vessel source pollution. Finally, the USCG is vested with the primary responsibility for maintaining boater safety, including the conduct of routine vessel inspections and coordination of rescue operations.

7. Act to Prevent Pollution from Ships (APPS), 1987 (33 USC 1901 et seq.)

The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, and the Oil Pollution Act of 1961 have been superseded by the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78) and implemented by the Act to Prevent Pollution from Ships, 1980 as amended 1982, 1987. The APPS regulates discharges of oil or oily mixtures from vessels with the exception of tankers of less than 150 gross tons and other vessels of less than 500 gross tons. Enforcement of the Act is the responsibility of the USCG.

Except for discharges from machinery space bilges, tankers subject to the Act may not discharge oil or oily mixtures unless they are 50 nautical

miles from the nearest land; the total quantity of oil discharged cannot exceed one part in 15,000 of the total cargo capacity. Discharges from other vessels regulated by the Act, and discharges from the machinery bilges of tankers, must be made as far as practicable from land and may not have an oil content of more than 100 parts per million. In addition to these requirements, discharges by any vessel regulated by the Act must be made while the vessel is en route. The instantaneous discharge rate must not exceed sixty liters per mile.

8. Outer Continental Shelf Lands Act, (OCSLA) (43 USC 1331 et seq.)

The OCSLA, as amended in 1978 and 1985, establishes Federal jurisdiction over the natural resources of the Outer Continental Shelf (OCS) beyond 3 nautical miles, and gives the Secretary of the Interior primary responsibility for managing OCS mineral exploration and development. The Secretary's responsibility has been delegated to the Minerals Management Service (MMS).

The MMS has overall responsibility for leasing OCS lands. In unique or special areas, MMS may impose special lease stipulations designed to protect specific geological and biological phenomena. These stipulations may vary among lease tracts and sales.

Secretarial Order No. 2974 of August 1978 (655.DMI) establishes a framework for interagency coordination during the OCS leasing process. Pursuant to this order, other Department of the Interior agencies, including the FWS and the National Park Service, are consulted on the potentially adverse impacts of OCS development and on the development of stipulations necessary to control them.

The MMS is also charged with supervising OCS operations, including the

approval of plans for exploration and development drilling and applications for pipeline rights-of-way on the OCS. Several types of regulatory authority are used in carrying out its supervisory role. Such authority includes the enforcement of regulations made pursuant to the OCSLA (30 CFR Part 250 and 256) and the enforcement of stipulations applicable to particular leases and OCS orders.

9. Title I of the Marine Protection, Research, and Sanctuaries Act (33 USC 1401 et seq.)

Title I of the Marine Protection, Research, and Sanctuaries Act (MPRSA), also known as the Ocean Dumping Act, prohibits the transportation of any materials from the United States for the purpose of dumping them into the territorial sea, the contiguous zone, and the ocean beyond, without a permit from EPA. The dumping of dredged materials is controlled by the Army Corps of Engineers. No materials are presently transported to Cordell Bank for the purpose of dumping and no such operations are likely in the future.

APPENDIX 3: ABBREVIATIONS

Abbreviations

- APPS - Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.)
- BLM - Bureau of Land Management, Department of the Interior
- CBNMS - Cordell Bank National Marine Sanctuary
- CERCLA - Comprehensive Environmental Response, Compensation and Liability Act
- CF&G - California Department of Fish and Game
- CWA - Clean Water Act (33 U.S.C. 1251 et seq.)
- EPA - Environmental Protection Agency
- ESA - Endangered Species Act (16 U.S.C. 1531 et seq.)
- FMP - Fishery Management Plan
- FWS - Fish and Wildlife Service, Department of the Interior
- GGNRA - Golden Gate National Recreation Area
- LRA - List of Recommended Areas
- MEMD - Marine and Estuarine Management Division, NOAA, Department of Commerce
Formerly called Sanctuary Programs Division (SPD)
- MFCMA - Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)
- MMS - Minerals Management Service, Department of the Interior
- MMPA - Marine Mammal Protection Act (16 U.S.C. 1361 et seq.)
- MPRSA - Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 et seq.)
- NMFS - National Marine Fisheries Service, NOAA, Department of Commerce
- NOAA - National Oceanic and Atmospheric Administration, Department of Commerce
- NPDES - National Pollutant Discharge Elimination System
- NPS - National Park Service, Department of the Interior
- NRP - National Research Plan (MEMD)
- OCS - Outer Continental Shelf
- OCSLA - Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.)

PRBO - Point Reyes Bird Observatory

PRNMS - Point Reyes-Farallon Islands National Marine Sanctuary

PRNS - Point Reyes National Seashore

PWSA - Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.)

RFP - Request for proposals

SEL - Site Evaluation List

SPD - Sanctuary Programs Division, NOAA, Department of Commerce
Now called Marine and Estuarine Management Division (MEMD)

SRP - Sanctuary Research Plan

USCG - United States Coast Guard, Department of Transportation

VTSS - Vessel Traffic Separation Scheme (USCG)