UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

OCT 22 2004 PFMC Agenda Item H.2.b & H.3.b
Supplemental CBNMS & MBNMS Report
November 2004

Dr. Donald McIsaac
Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Place, Ste. 200
Portland, Oregon 97220-1384

Dear Dr. McIssac:

The National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service's National Marine Sanctuary Program (NMSP) has initiated a process to jointly review the management plans of Cordell Bank National Marine Sanctuary (CBNMS), Gulf of the Farallones National Marine Sanctuary (GFNMS), and Monterey Bay National Marine Sanctuary (MBNMS). These sanctuaries are located adjacent to each other off the north-central California coast, from Bodega Bay in Sonoma County to Cambria in San Luis Obispo County. The NMSP is conducting this process pursuant to section 304(e) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(e)), which requires the Secretary of Commerce (Secretary) to evaluate at five-year intervals the substantive progress toward implementing the management plan and goals for each sanctuary, and to revise the management plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

Because some of the changes under consideration may require a change to the Designation Document of one or more of the sanctuaries, pursuant to section 303(b)(2) of the NMSA (16 U.S.C. 1433(b)(2)), the NMSP is consulting with appropriate Federal and State government agencies, the Pacific Fishery Management Council, and other interested parties. Therefore, the purpose of this letter is to inform these parties that the NMSP is considering amending the terms of designation for these sanctuaries, as described below, and to solicit input on these possible amendments. Interested parties will also have the opportunity to review and provide comments on the three draft site management plans and draft Environmental Impact Statement when they are released for public comment in Spring 2005.

As required by section 304(e), each review includes a prioritization of management objectives that involve monitoring, educational efforts, collaborative management with other agencies, and developing partnerships to protect sanctuary resources. The NMSP appreciates the valuable support and input that it has received from Federal, State, and local agencies, stakeholders, and the public throughout this review and particularly in helping draft strategies and activities that address priority issues. A summary of the recommendations can be viewed at http://sanctuaries.nos.noaa.gov/jointplan/. The recommendations from these groups will be detailed in the three draft site management plans and supported by a Draft Environmental Impact Statement.

The NMSP expects that regulatory changes will accompany the revised management plans. Some of the regulatory changes under consideration may require a change to the terms of designation for a particular sanctuary as defined by section 304(a)(4) of the NMSA; 16 U.S.C.

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1434(a)(4)); and in the attached Designation Documents for each sanctuary. While the management plan review is being conducted jointly, the sanctuaries as described below, were designated at different times and for different purposes. Therefore, achieving the goals and objectives identified in the review may require different modifications to each sanctuary's Designation Document. While no final decisions have been made, many of these potential changes reflect consideration of comments received from the public and the sanctuary advisory councils on the priority issues identified during this management plan review process.

The changes currently being considered to the Designation Document for each sanctuary are summarized in the following sections.

Cordell Bank National Marine Sanctuary

CBNMS protects an area of 526 square miles (397 square nautical miles) off the northern California coast. The main feature of the Sanctuary is Cordell Bank, an offshore granite bank emerging from the soft sediments of the continental shelf, about 43 nautical miles (nm) northwest of the Golden Gate Bridge and 20 nm west of the Point Reyes lighthouse. CBNMS is located offshore in Federal waters and shares its southern and eastern boundary with GFNMS. The CBNMS eastern boundary is six miles from shore and the western boundary is the 1000-fathom isobath on the edge of the continental slope.

In addition to the non-regulatory strategies and activities developed to address priority issues, there are some specific boundary and regulatory changes under consideration that would require changes to the CBNMS Designation Document. These changes include:

Designation Document Article 2, Description of the Area

Clarify that the submerged lands underlying the Sanctuary waters are legally part of the Sanctuary.

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

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

1. Add authority to prohibit altering Cordell Bank or the submerged lands within the 50-fathom isobath surrounding the Bank; and to prohibit altering the submerged lands for the remainder of the Sanctuary except as incidental to and necessary to anchor a vessel or conduct a lawful fishing activity.

This would maximize protection of the core area of and around the Bank from all activities that could impact the fragile relief of the Bank, including drilling, dredging, and construction, placement or abandonment of a structure or other matter. Damage to the areas of the Bank

with high relief would be permanent as this granitic structure is not a renewable resource. For the balance of the Sanctuary outside the 50-fathom isobath surrounding the Bank, exceptions would be made for anchoring and lawful fishing activity so that current activities that may already be taking place on the soft bottom (areas that could more easily recover from impact) would be allowed.

2. Add authority to prohibit taking any marine mammal, marine reptile, or bird in or above the Sanctuary or possessing any marine mammal, marine reptile, or bird, or part thereof, taken in the Sanctuary.

The intent of this authority is to bring a special focus to the protection of the diverse marine mammal and bird populations within the Sanctuary. The regulation would be written to complement the existing permit authorities under the Marine Mammal Protection Act, Endangered Species Act and the Migratory bird Treaty Act. This authority already exists in MBNMS and would also provide greater consistency in the regulations across the four sanctuaries in California.

3. Add authority to regulate the release of or other introductions of introduced species.

A priority issue identified during the management plan review was addressing the threat posed by releasing or otherwise introducing non-native species to marine ecosystems. One of the recommended strategies from the working groups for addressing this issue was to consider a regulation prohibiting such releases or other introductions.

Designation Document Article 5, Relation to Other Regulatory Programs:

Revise Section 1 – Fishing to read as follows:

Under Article 4 fishing gear cannot remove, take, or injure benthic invertebrates or algae on Cordell Ban or within the 50 fathom isobath surrounding the Bank. Fishing gear also cannot alter Cordell Bank or the submerged lands within the 50 fathom isobath surrounding the Bank and cannot be places or abandoned on Cordell Bank or within the 50 fathom isobath surrounding the Bank. These regulations do not apply to vertical hook-and-line gear (including trolling gear but not longline gear). All other regulatory programs pertaining to fishing, including Fishery Management Plan promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. section 1801 et seq. shall remain in effect. All permits, licenses, approvals and other authorizations issued pursuant to the Magnuson-Stevens Act shall be valid within the Sanctuary subject only to regulations issued pursuant to Article 4.

The CBNMS regulations presently prohibit removing, taking, or injuring benthic invertebrates or algae on Cordell Bank or within the 50-fathom isobath surrounding the Bank, except during "normal fishing operations." The NMSP is considering amending this regulation to narrow the exception to only vertical hook and line fishing gear (which includes trolling, but excludes longlines) to ensure protection of the fragile benthic coverage on the core and immediate surrounding areas of the Bank from all activities, including fishing activities, that directly target or impact the areas of greatest benthic coverage on and around the Bank. The exception for vertical hook and line fishing gear would allow for incidental take as a result of fishing gear that does not directly target or impact the benthos such as

fishing apparatus composed of a single line, terminated by a combination of sinkers and hooks or lures and spooled on a reel.

Gulf of the Farallones National Marine Sanctuary

The GFNMS protects an area of 1,255 sq. miles (948 sq. nautical miles) off the northern California coast. It was designated a National Marine Sanctuary in 1981 to provide comprehensive and coordinated conservation and management of the marine resources extending seaward from the mean high water mark or the seaward boundary of the Point Reyes National Seashore. It was designated a National Marine Sanctuary because it is an area of special significance that provides important marine and nearshore habitats for a diverse array of marine mammals and marine birds, as well as fishery, plant, algae, and benthic resources.

In addition to the non-regulatory strategies and activities developed to address priority issues, there are some specific boundary and regulatory changes under consideration that would require changes to the GFNMS Designation Document. These changes include:

Designation Document Article 2, Description of the Area

1. Clarify that the submerged lands underlying the Sanctuary waters are legally part of the Sanctuary.

The GFNMS Designation Document clearly identifies the area and lists the "intervening waters" as part of the Sanctuary. There are also regulations that protect the submerged lands, and yet the submerged lands were never explicitly mentioned in the description of the area. The NMSP is seeking to clarify that the submerged lands are part of the Sanctuary in order to capture the original intent and to make it consistent with the current NMSA authorities.

2. Permanently fix the shoreward boundary adjacent to Pt. Reyes National Seashore.

The proposed action is to permanently fix the Sanctuary's shoreward boundary in relationship to the location of the boundary of Pt. Reyes National Seashore at the time of designation of the Sanctuary in 1981. The purpose of this proposed action is to create a static boundary for the Sanctuary that does not fluctuate as the boundaries of the National Seashore may change overtime. This would create consistency for the benefit of sanctuary users and would facilitate enforcement and resource protection efforts.

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

1. Add authority to prohibit discharging or depositing from beyond the Sanctuary boundary any material or other matter that subsequently enters and injures a Sanctuary resource or quality.

Currently, GFNMS regulations include prohibiting discharges from within the sanctuary, but it is one of the only sanctuaries in the system that does not address or regulate discharges outside the sanctuary that subsequently enter and injure a sanctuary resource. Adding this regulation would also improve consistency with the State Waters Resources Control Board and improve water quality throughout GFNMS.

2. **Add authority to regulate the release of or other introductions of introduced species.**
A priority issue identified during the management plan review was addressing the threat posed by releasing or otherwise introducing non-native species to marine ecosystems. One of the recommended strategies from the working groups for addressing this issue was to consider a regulation prohibiting such releases or other introductions.

3. **Add authority to prohibit taking any marine mammal, marine reptile, or bird in or above the Sanctuary or possessing any marine mammal, marine reptile, or bird, or part thereof, taken in the Sanctuary.**
The intent of this authority is to bring a special focus to the protection of the diverse marine mammal and bird populations within the Sanctuary. The regulation would be written to complement the existing permit authorities under the Marine Mammal Protection Act, Endangered Species Act and the Migratory bird Treaty Act. This authority already exists in MBNMS and would also provide greater consistency in the regulations across the four sanctuaries in California.

4. **Add the authority to regulate attracting or approaching a white shark in the Sanctuary.**
This would help resolve an issue related to user conflicts between adventure tourism operators and wildlife biologists and control harmful impacts on white shark behavior.

5. **Modify authority regarding navigation of vessels to read, "Operating a vessel (i.e., water craft of any description) in the Sanctuary."**
This would provide authority to address derelict vessels that could pose harm to sanctuary resources due to damage from direct impact of the settling or colliding of a vessel on habitats, and potential leakage of hazardous or harmful materials from a vessel. This term of designation would be identical to a term in the Designation Document for MBNMS and would provide greater consistency and more uniform authority between these adjacent sanctuaries.

6. **Modify the authority regarding cultural or historical resources.**
The term would be modified to include possessing a cultural or historical resource. This would broaden the authority and would facilitate enforcement of regulations that protect these resources. As modified, this term of designation would provide the same authority as the term in the Designation Document for MBNMS regarding cultural and historical resources, resulting in greater consistency and more uniform resource protection between these two adjacent sanctuaries.

Monterey Bay National Marine Sanctuary

MBNMS was established in 1992 and is the largest sanctuary in the system. Stretching from Marin to Cambria, MBNMS encompasses a shoreline length of 276 miles and 5,322 square miles (4,709 square nautical miles) of ocean. Supporting one of the world's most diverse marine ecosystems, it is home to numerous mammals, seabirds, fishes, invertebrates, and plants in a remarkably productive coastal environment. The MBNMS was established for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area.

There are a broad suite of educational, research, and resource protection actions that have been identified during the management plan review that do not involve regulatory changes. These include such actions as developing ecosystem monitoring projects, implementing educational efforts targeting Hispanic populations, and developing regional interagency guidelines for desalination and coastal armoring.

In addition to the non-regulatory strategies and activities developed to address priority issues, there are some specific regulatory or boundary changes that would require changes to the MBNMS Designation Document. These changes include:

Designation Document Article 2, Description of the Area

Modify the description of the MBNMS boundary to include Davidson Seamount as defined by the area bound by the coordinates West: 123°W; East: 122.5°W; North: 35.9°N; South: 35.5°N.

The Davidson Seamount is located 75 miles to the southwest of Monterey, due west of San Simeon and is home to a diverse assemblage of deep water organisms. This highly diverse community includes many endemic species and fragile, long-lived cold-water corals and sponges. The MBNMS Sanctuary Advisory Council unanimously recommended that the Davidson Seamount be incorporated into MBNMS so long as existing fishing practices within the area around Davidson Seamount would not be adversely affected by Sanctuary designation (see below).

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

1. Add the authority to prohibit removal, take, harvest, disturbance, or other injury by any means, including fishing, from below 3000 feet of the sea surface in the Davidson Seamount area

The existing Designation Document for MBNMS allows for the regulation of the removal, harvest, injury or disturbance of all Sanctuary resources. However, fishing activities are currently not treated as included in this MBNMS authority. A regulation that prohibited all removal and other injury of sanctuary resources below 3000 feet would not impact existing fisheries in the area. Currently the only fishing in the area is for pelagic species such as albacore, swordfish and shark, and occurs within 150 feet of the sea surface. The Designation Document would be narrowly amended to allow for such restrictions below 3000 feet in the Davidson Seamount area.

2. Add the authority to regulate the release or other introduction of introduced species

A priority issue identified during the management plan review was addressing the threat posed by releasing or introducing non-native species to marine ecosystems. One of the recommended strategies from the working groups for addressing this issue was to consider a regulation prohibiting such releases or other introductions.

3. **Clarify that the authority to regulate possession of a Sanctuary resource applies wherever the resource is found.**
   The existing Designation Document currently lists as subject to regulation "possessing within the Sanctuary a Sanctuary resource…." The NMSP would like to make clear that a prohibition against possession of Sanctuary resources may apply outside the Sanctuary boundary (e.g., at a harbor).

National Marine Sanctuaries Act Factors to Consider

In responding to this letter, please take into account, as applicable, the following factors the Secretary must consider when designating a Sanctuary (16 U.S.C. 1433(b)(1)):

(A) these areas' natural resource and ecological qualities, including their contributions to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the sites;

(B) the areas' historical, cultural, archaeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the areas' resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

(E) the existing State and Federal regulatory and management authorities applicable to the areas and the adequacy of those authorities to fulfill the purposes and policies of the NMSA;

(F) the manageability of the areas, including such factors as their size, their ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;

(I) the socioeconomic effects of sanctuary designation;

(J) the areas' scientific value and value for monitoring the resources and natural processes that occur there;

(K) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and

(L) the value of the areas as an addition to the National Marine Sanctuary System.

To ensure that any information, recommendations, or comments are considered in the preparation of the draft environmental impact statement, I would appreciate your response within sixty (60) days of receipt of this letter. As these changes relate to fishing activities, the NMSP sent you a separate letter that formally provides the PFMC with the opportunity to prepare draft sanctuary fishing regulations for the MBNMS and CBNMS pursuant to section 304(a)(5) of the NMSA.

A map of the sanctuaries is enclosed for your reference. If you have any questions regarding this process, contact Elizabeth Moore, Acting Chief, NMSP Conservation Policy and Planning Branch at (301) 713-3125x170. Please direct your response to:

Elizabeth Moore
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1305 East-West Highway, N/ORM-6
Silver Spring, MD 20910-3281
Ph: (301) 713-3125 x170
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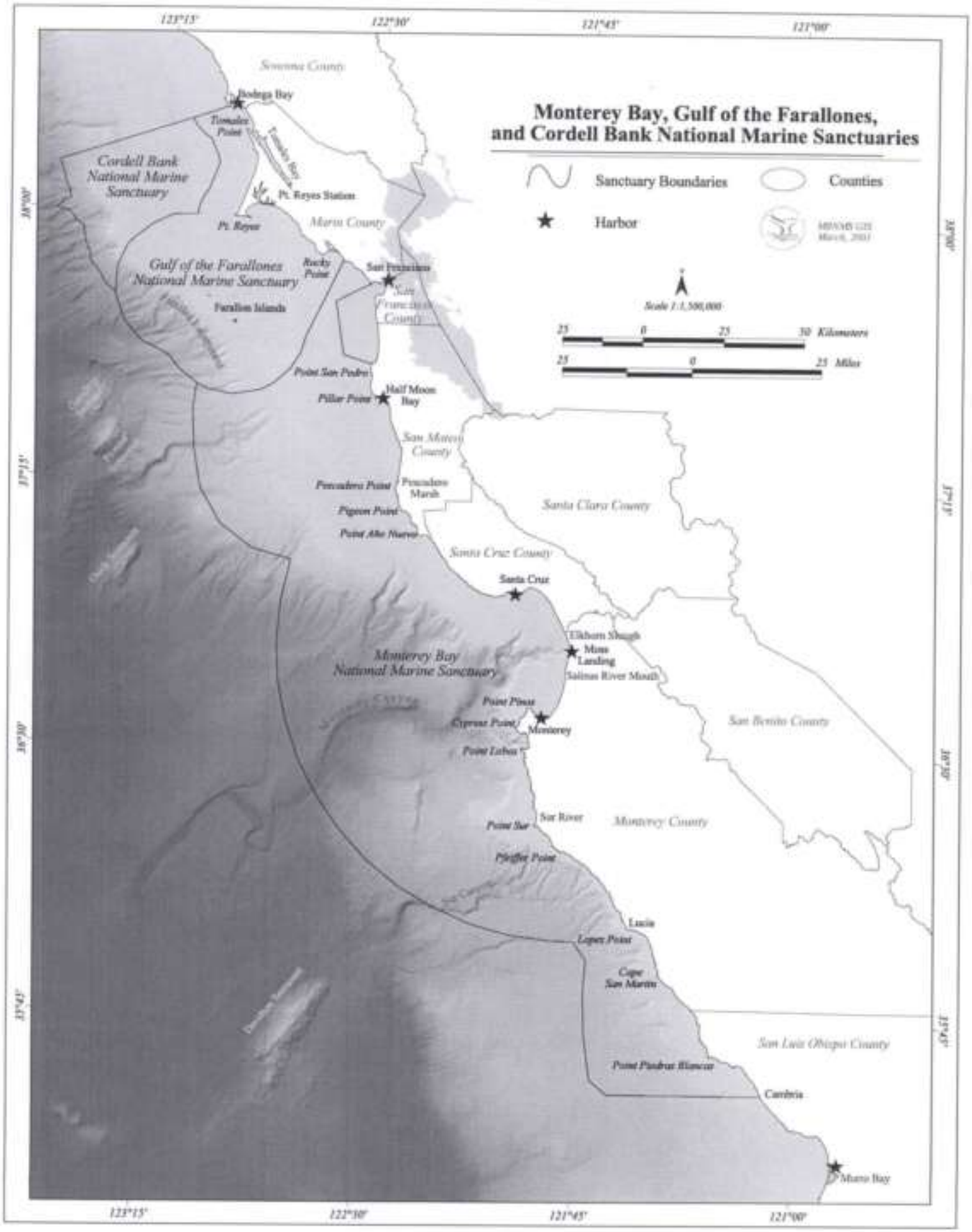
Elizabeth.Moore@noaa.gov

We appreciate your input on this matter.

Sincerely,

Daniel J. Basta
Director
National Marine Sanctuary Program


Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries
Sanctuary Boundaries
Counties
Harbor
Scale 1:1,500,000
25 0 25 50 Kilometers
25 0 25 Miles
123°15'
122°30'
121°45'
121°00'
38°00'
37°15'
36°30'
35°45'
Sonoma County
Bodega Bay
Tomales Point
Tomales Bay
Pt. Reyes Station
Pt. Reyes
Marin County
Cordell Bank National Marine Sanctuary
Gulf of the Farallones National Marine Sanctuary
Rocky Point
San Francisco
San Francisco County
Farallon Islands
Point San Pedro
Half Moon Bay
Pillar Point
San Mateo County
Pescadero Point
Pescadero Marsh
Pigeon Point
Point Año Nuevo
Santa Clara County
Santa Cruz County
Santa Cruz
Elkhorn Slough
Moss Landing
Salinas River Mouth
Monterey Bay National Marine Sanctuary
Point Pinos
Cypress Point
Monterey
Point Lobos
San Benito County
Sur River
Point Sur
Monterey County
Pfeiffer Point
Lucia
Lopez Point
Cape San Martin
San Luis Obispo County
Point Piedras Blancas
Cambria
Morro Bay

1989 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 authorized the promulgation of such regulations as are necessary and reasonable to protect the characteristics of the Sanctuary that five 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 regulations 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 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 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.

1982 Final Designation Document Designation for the Point Reyes/Farallon Islands National Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92-532 (the Act), the waters along the Coast of California north and south of Point Reyes Headlands, between Bodega Head and Rocky Point and surrounding the Farallon Islands, are hereby designated a Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

Article I. Effect of Designation

Within the area designated as The Point Reyes/ Farallon Islands Marine Sanctuary (the Sanctuary) described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of an area of the waters adjacent to the Coast of California of approximately 948 square nautical miles (nmi), extending seaward to a distance of 6 nmi from the mainland and 12 nmi from the Farallon Islands and Noonday Rock, and including the intervening waters. The precise boundaries are defined by regulation.

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

The Sanctuary includes a rich and diverse marine ecosystem and a wide variety of marine habitat, including habitat for 20 species of marine mammals. Rookeries for over half of California's nesting marine bird and nesting areas for at least 12 or 16 known U.S. nesting marine bird species are found within the boundaries. Abundant fish and shellfish are harvested in the Sanctuary.

Article 4. Scope of Regulation

Section 1. Activities Subject to Regulation. In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and aesthetic value of the area:

a. Hydrocarbon operations.
b. Discharging or depositing any substance.
c. Dredging or alteration of, or construction on, the seabed.
d. Navigation of vessels except fishing vessels or vessels traveling within a vessel traffic separation scheme or port access route designated by the Coast Guard outside the area 2

nmi from the Farallon Islands, Bolinas Lagoon or any Area of Biological Significance, other than that surrounding the Farallon Islands, established by the State of California prior to designation.

e. Disturbing marine mammals and birds by overflights below 1000 feet.
f. Removing or otherwise harming cultural or historical resources.

Section 2. Consistency with International Law. The regulations governing the activities listed in section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. Emergency Regulations. Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated with the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs.

Section 1. Fishing and Waterfowl Hunting. The regulation of fishing, including fishing for shellfish and invertebrates, and waterfowl hunting, is not authorized under Article 4. However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, paragraph (b) and mariculture activities involving alterations or construction of the seabed can be regulated in accordance with Article 4 paragraph (c). All regulatory programs pertaining to fishing, and to waterfowl hunting, including regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery Conservation and Management Act of 1976, 16 U.S.C §§ 1801 et seq., will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4.

Fishing as used in this article and in Article 4 includes mariculture.

Section 2. Defense Activities. The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. Other Programs. All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations will set forth any necessary certification procedures.

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 Regional Fishery Management Council, and approval by the President of the United States.

1992 Designation Document For The Monterey Bay National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. §§ 1431 et seq., Monterey Bay and its surrounding waters offshore central California, and the submerged lands under Monterey Bay and its surrounding waters, as described in Article II, are hereby designated as the Monterey Bay National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that either are to be regulated on the effective date of designation or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Monterey Bay National Marine Sanctuary (the "Sanctuary") boundary encompass a total of approximately 4,024 square nautical miles (approximately 13,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California. The northern terminus of the boundary is located along the southern boundary of the Gulf of Farallones National Marine Sanctuary and runs westward to approximately 123°07'W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03'N, the boundary arcs south to 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41'W, 35°33'N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the Gulf of Farallones National Marine Sanctuary and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing, and Monterey harbors are all excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge is included within the Sanctuary boundary. Appendix I to this Designation Document sets forth the precise Sanctuary boundary.

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

The Monterey Bay area is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive ecosystem and a wide variety of marine habitat.

The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This canyon system provides habitat for pelagic communities and, along with other distinct

bathymetric features, may modify currents and act to enrich local waters through strong seasonal upwelling. Monterey Bay itself is a rare geological feature, as it is one of the few large embayments along the Pacific coast.

The Monterey Bay area has a highly diverse floral and faunal component. Algal diversity is extremely high and the concentrations of pinnipeds, whales, otters and some seabird species is outstanding. The fish stocks, particularly in Monterey Bay, are abundant and the variety of crustaceans and other invertebrates is high.

In addition there are many direct and indirect human uses of the area. The most important economic activity directly dependent on the resources is commercial fishing, which has played an important role in the history of Monterey Bay and continues to be of great economic value.

The residents of this area as well as the numerous visitors enjoy the diverse resources of the Monterey Bay area. The population of Monterey and Santa Cruz counties is rapidly expanding and is based in large part on the attractiveness of the area's natural beauty. The high water quality and the resulting variety of biota and their proximity to shore is one of the prime reasons for the international renown of the area as a prime tourist location. The quality and abundance of the natural resources has attracted man from the earliest prehistoric times to the present and as a result the area contains significant historical, e.g., archaeological and paleontological, resources, such as Costanoan Indian midden deposits, aboriginal remains and sunken ships and aircraft.

The biological and physical characteristics of the Monterey Bay area combine to provide outstanding opportunities for scientific research on many aspects of marine ecosystems. The diverse habitats are readily accessible to researchers. Thirteen major research and education facilities are found within the Monterey Bay area. These institutions are exceptional resources with a long history of research and large databases possessing a considerable amount of baseline information on the Bay and its resources. Extensive marine and coastal education and interpretive efforts complement Monterey Bay's many research activities. For example, the Monterey Bay Aquarium has attracted millions of visitors who have experienced the interpretive exhibits of the marine environment. Point Lobos Ecological Reserve, Elkhorn Slough National Estuarine Research Reserve, Long Marine Laboratory and Año Nuevo State Reserve all have excellent docent programs serving the public, and marine related programs for school groups and teachers.

The Final Environmental Impact Statement/Management Plan provides more detail on the characteristics of the Monterey Bay area that give it particular value.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area:

a. Exploring for, developing or producing oil, gas or minerals (e.g., clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores or any other solid material or other

matter of commercial value) within the Sanctuary;

b. Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except dredged material deposited at disposal sites authorized prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation;

c. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except dredged material deposited at the authorized disposal sites described in Appendix II of this Designation Document, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval;

d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, sea turtle, seabird, historical resource or other Sanctuary resource;

e. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;

f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found with the Sanctuary, would be a Sanctuary resource;

g. Flying a motorized aircraft above the Sanctuary;

h. Operating a vessel (i.e., water craft of any description) in the Sanctuary;

i. Aquaculture or kelp harvesting within the Sanctuary; and

j. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 2. Emergencies

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.

Article V. Effect on Leases, Permits, Licenses and Rights

Pursuant to Section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), 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.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) the exploration for, development of or production of oil, gas or minerals within the Sanctuary; (2) the discharge of primary-treated sewage (except for regulation, pursuant to Section 304(c)(1)

of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of this Designation

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

Appendix I. Monterey Bay National Marine Sanctuary Boundary Coordinates. (Appendix based on North American Datum of 1983.) Approximately 4,024 Square Nautical Miles (see FR, Vol. 57, No. 182, P 43317).

Appendix II. Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary. Appendix based on North American Datum of 1983. (see FR, Vol. 57, No. 182, P 43317).