Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Chapter IX, Subchapters A and B and Part 944
Monterey Bay National Marine Sanctuary Regulations; Final Rule
DEPARTMENT OF COMMERCE

15 CFR Chapter IX, Subchapter A and B and Part 944

[Docket No. 900122-2020]

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Monterey Bay National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; National Marine Sanctuary Designation; final rule; and summary of final management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), by the Designation Document contained in this document, and as required by section 205(e)(3) of Public Law 100-527, designates an approximately 4,024 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay off the coast of central California as the Monterey Bay National Marine Sanctuary. This document publishes the Designation Document for the Sanctuary and summarizes the final management plan for it. The final management plan details the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the Sanctuary.

Further, NOAA issues final regulations to implement the designation by regulating activities affecting the Sanctuary consistent with the provisions of the Designation Document. The intended effect of these regulations is to protect the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary.

EFFECTIVE DATES: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act, as amended (the "Act" or "MPRSA"), 16 U.S.C. 1431 et seq., authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if, as required by section 303 of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with Congress, a variety of specified officials, and other interested persons, that the designation will fulfill the purposes and policies of the Act (set forth in section 301(b) (16 U.S.C. 1431(b) and: )

1. The area proposed for designation is of special national significance due to its resource or human-use values;
2. Existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research and public education;
3. Designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and
4. The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Before the Secretary may designate an area as a national marine sanctuary, section 303 (16 U.S.C. 1433) requires him or her to make the above described findings and section 304 (16 U.S.C. 1434), setting forth the procedures for designation, requires him or her to publish in the Federal Register regulations implementing the designation and to advise the public of the availability of the FEIS/MPS.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act has been delegated to the Under Secretary of Commerce for Oceans and Atmosphere by DOC Organization Order 10-15, section 3.05(b), January 11, 1988. The authority to administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-58, Directive 05-50, September 21, 1983, as amended.

The State of California nominated the Monterey Bay area in 1977, along with nine other offshore marine areas, for consideration for designation as national marine sanctuaries. In response to these nominations, NOAA selected the Channel Islands, the Point Reyes-Farallon Islands, and the Monterey Bay area for further consideration. In December 1978, NOAA released an issue paper on these three sites, presenting several boundary and regulatory options for each site. Public hearings were held and, based on the responses, NOAA, on August 10, 1979, declared all three sites as active candidates for designation as national marine sanctuaries.

On September 21, 1980, the Channel Islands National Marine Sanctuary was designated and on January 16, 1981, the Point Reyes-Farallon Islands National Marine Sanctuary (later renamed the Gulf of the Farallones National Marine Sanctuary) was designated. On December 14, 1983 (see 48 FR 56253), NOAA removed the Monterey Bay area from the list of active candidates.

On November 7, 1988, Public Law 100-527, which amends and authorizes appropriations for title III of the Act, was signed into law. Section 205(a)(3) of Public Law 100-527 directs that the Secretary of Commerce designate the Monterey Bay National Marine Sanctuary.

On January 6, 1989, NOAA announced (54 FR 448) that the Monterey Bay area had again become an active candidate for designation as a national marine sanctuary. On January 25 and 26, 1989, NOAA sponsored two public scoping meetings in Monterey and Santa Cruz to solicit public comment on the scope and significance of issues involved in designating the Sanctuary. The public response was extremely favorable to proceeding with the evaluation.
On August 3, 1990 NOAA published a proposed Designation Document and proposed implementing regulations and announced the availability of the Draft Environmental Impact Statement Management Plan [DEIS/MP] [55 FR 59511]. Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/MP were held on September 12, 1990 in Monterey; on September 13, 1990 in Santa Cruz; and on September 14, 1990 in Half Moon Bay, California. All comments received by NOAA in response to the Federal Register notice and at the public hearings were considered and, where appropriate, were incorporated. A summary of the significant comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow. The comments are both presented and responded to in greater detail in appendix F of the FEIS/MP.

(1) Comment: NOAA should extend its preferred Boundary Alternative 2 both north and south and choose Boundary Alternative 5. Boundary Alternative 5 would protect critical nesting and migratory paths between Monterey and San Mateo County coasts, create a continuous protected management regime between the Gulf of the Farallones National Marine Sanctuary and the proposed Monterey Bay National Marine Sanctuary, provide a greater buffer to sensitive areas such as Año Nuevo and the Fitzgerald Marine Reserve, and protect a greater area of the southern California sea otter range and habitat.

Response: NOAA agrees. The FEIS/MP-preferred Boundary Alternative 5 incorporates a north and south extension of the DEIS/MP-preferred Boundary Alternative 2. Boundary Alternative 5 received the vast majority of support from the public during the public comment period. Boundary Alternative 5 has been chosen as preferred because it integrates important coastal, nearshore and deepsea canyon resource zones under one management regime. These zones include the Monterey submarine canyon—the focal point of the Sanctuary; Monterey Bay itself; the Big Sur and San Mateo coastal area, including Año Nuevo and the Fitzgerald Marine Reserve; the adjacent continental shelf, slope and rise; certain highly productive shoreline and intertidal areas, such as Pescadero Marsh and Elkhorn Slough; and the deep ocean environments of the Ascension Monterey Bay, Big Sur and Fariburg Canyons Complexes.

The boundary expansion excludes a small area of approximately 71 square nautical miles off the north coast of San Mateo County and the City and County of San Francisco. The excluded area encompasses the anticipated discharge plume of the combined sewer overflow component of the City and County of San Francisco's sewage treatment program, the shipping channel providing access to and from San Francisco Bay, and the Golden Gate dredged material disposal site associated with this channel. NOAA has determined that the nature and level of these activities are not appropriate for inclusion within a national marine sanctuary. By excluding this small area from the Sanctuary, NOAA will be able to focus Sanctuary management on the long-term protection of other areas that contain nationally significant resources and qualities and are less heavily impacted by human activity. By excluding the anticipated discharge plume of the combined sewer overflow from the Sanctuary, a buffer zone has been created protecting Sanctuary resources and qualities from the discharge.

The boundary expansion not only encompasses additional resources but also will provide enhanced protection from potential human threats to the north and south. For example, to the north of the San Mateo coast, potential new dredged material disposal and oil and gas development activities are undertaken consideration within the Sanctuary boundary. To the south, the pristine area of the Big Sur coast and sea otter habitat would be encompassed and protected by the Sanctuary regime.

(2) Comment: Oil and gas development within the Sanctuary should either be prohibited or regulated. Concerns range from impacts of potential toxic wastes released from oil-drilling platforms, reduced tourism due to diminished scenic views, lack of adequate emergency oil response capabilities, to catastrophic blow outs.

Response: NOAA agrees. The regulations prohibit exploring for, developing, or producing oil or gas through the entire Sanctuary. Such economic development and construction of man-made structures would severely disrupt the natural and aesthetic qualities of the area and be inconsistent with the purposes of the Sanctuary. Although certain man-made structures may be permissible in the future for limited purposes such as research or natural resource protection, the threats from oil and gas activities to Sanctuary resources and qualities warrant prohibition. Threats include not only catastrophic events such as oil spills associated with blow-outs, rupture of pipelines or loading of tankers but also long-term chronic events such as discharge of drilling fluids, cuttings and air emissions. Offshore oil and gas activities have never been conducted in the Monterey Bay area. The area would suffer aesthetic disturbance ranging from the presence of offshore rig structures to building of shore facilities and the necessary transportation of personnel and equipment to and from the offshore rigs.

(3) Comment: NOAA should either regulate or prohibit vessel traffic within the Sanctuary area. Specifically:

(1) Traffic should be prohibited unless vessels are bound for a destination within the Sanctuary;

(2) Size of vessels to be regulated or prohibited from the Sanctuary area should be clarified;

(3) Vessels should either be routed offshore and avoid the Sanctuary area completely, or traffic lanes should be developed along the Sanctuary edges; and

(4) Vessels traveling along the Sanctuary boundary should be limited to specific port access and shipping lanes established by the United States Coast Guard (USCG) and NOAA.

Response: The Designation Document lists vessel operations as being subject to Sanctuary regulation. However, upon designation only the operation of personal water craft is being regulated as part of the Sanctuary regime (see comment responses 18 and 19). There are no Sanctuary regulations planned at this time for the traffic regulation of other vessels. NOAA is currently working with the USCG, the primary source of vessel traffic regulation, to determine the need for additional measures to ensure protection of Sanctuary resources and qualities from vessel traffic. These consultations aim to determine which resources are at risk, which vessel traffic practices are most threatening and which regulations or restrictions would be most appropriate to alleviate potential threats, including those, if any, from foreign vessels. Because the disposal of dredged material outside the Sanctuary (see Comment/Response (9) below) will not necessitate the transport of these materials through the Sanctuary, NOAA will also work closely with the U.S. Army Corps of Engineers (COE) and U.S. Environmental Protection Agency (EPA) on such transport activities.

These ongoing consultations build upon recent Federal and State legislation (since publication of the DEIS/MP in August 1990) that further protects Sanctuary resources and...
qualities from vessel traffic. Specifically, the National Oil Pollution Act of 1990 establishes double hull requirements for tank vessels. Most tank vessels over 5,000 gross tons will be required to have a double hull by 2010, while vessels under 5,000 gross tons will be required to have a double hull or a double containment system by 2015. All newly constructed tankers must contain a double hull [or a double containment system if under 5,000 gross tons], while existing vessels are phased out over a period of years. In addition, SB 204, California’s Oil Spill Prevention and Response Act, requires numerous prevention as well as mitigation measures aimed at protecting marine resources from oil spills particularly from tankers.

Vessel traffic separation zones off San Francisco, implemented by the USCG, also help protect Sanctuary resources and qualities.

If it appears that regulation of vessel traffic as part of the Sanctuary regime may be necessary, NOAA will make such determination in consultation with the USCG, COE, EPA, other affected Federal and State agencies and the International Maritime Organization (IMO) through the USCG. If it is determined that such regulation is necessary, NOAA will develop the necessary regulations, also in coordination with those agencies. Coordination among agencies is intended to focus ongoing efforts to provide adequate protection to the Sanctuary and to emphasize the sensitivity of Sanctuary resources and qualities.

(4) Comment: If spills cannot be prevented entirely, a contingency plan should exist for emergency response and cleanup. To facilitate response action, NOAA should work with, and build upon, the efforts of other organizations and agencies already developing plans for the area.

Response: NOAA agrees and will work with, and build upon, the efforts of others. The FEIS/MP identifies existing oil spill contingency plans and efforts in the Monterey Bay area. The Monterey Bay National Marine Sanctuary requires its own contingency plan to ensure that resources are protected during events that threaten the environment. A prototype sanctuary contingency plan is almost complete, and will be tested at the Channel Islands National Marine Sanctuary. Once implementation experience has been gained, the plan will be adapted to other sanctuary sites, including Monterey Bay.

(5) Comment: Agreements should be established between various local...
environmental oversight by EPA. Any proposed new activities at existing sites, i.e., activities not pursuant to and in compliance with an existing permit or approval, will be subject to the review

cess of § 944.11.

(b) Those activities located at existing sites outside the Sanctuary boundary and at the authorized disposal site that will result from the disposal site study underway on the effective date of Sanctuary designation will be regulated primarily under section 103 of the MPRSA and section 404 of the Clean Water Act and will not be regulated under the Sanctuary regulatory regime. Because of the intensive environmental evaluation of disposal sites and disposal activities by COE and EPA, NOAA does not anticipate that any site designated for disposal of dredged material will impact Sanctuary resources. Therefore, the Sanctuary regulatory prohibition on discharges does not apply to dredged material deposited outside the Sanctuary at existing disposal sites off the Golden Gate (see appendix IV to the regulations) and will not apply to dredged material deposited outside the Sanctuary at the authorized disposal site that will result from the disposal site study underway on 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. The future disposal site will be located within one of the Long-Term Management Strategy Ocean Study Areas described in appendix IV. When that site is authorized, appendix IV will be updated to incorporate its precise location. COE will coordinate closely with NOAA concerning the management of dredged material disposal activities at the new site.

[10] Comment: The regulatory regime for aquaculture and kelp harvesting activities within the Sanctuary remains unclear. Currently, aquaculture development is the responsibility of the California Department of Fish and Game (CDFG), and because of this, aquaculture operations requiring seabed alterations shall be excluded from Sanctuary regulations, and allowed to continue.

Response: Neither kelp harvesting nor aquaculture is being regulated as part of the Sanctuary regime upon designation. Both activities are included in the Designation Document as activities subject to future regulation should need arise. NOAA will coordinate with the CDFG, which is responsible for managing kelp harvesting and aquaculture operations.

[11] Comment: The Sanctuary should include all waters in the Elkhorn Slough National Estuarine Research Reserve (ESNERR), and this relationship should be formalized. It is important to create a link between the Monterey Bay Sanctuary and the Reserve, even if this means exempting Moss Landing Harbor. An agreement should be developed between NOAA and the Moss Landing Harbor District to ensure the success of the two programs as well as coordinating the management plans and objectives of both sites.

Response: NOAA agrees it is important to coordinate closely with the ESNERR to ensure the success of both sites. The Sanctuary includes all waters, and submerged lands thereunder, in the Slough up to the ESNERR boundary. NOAA agrees that links should be fostered since missions and goals are similar. NOAA supports the exchange of information, research, education and staff expertise between the two programs. Meeting the objectives for both sites, as well as implementing the management plans, can be coordinated through the Sanctuary Advisory Committee and the ESNERR Advisory Committee. NOAA encourages Sanctuary and ESNERR staff to participate actively in this process. However, regardless of their similarities, the two programs must remain separate because the National Estuarine Reserve System Program regulations prohibit the inclusion of reserves within sanctuaries (15 CFR 921.4(c)). After consultation with the Moss Landing Harbor District, NOAA has determined the most appropriate method of linking the two sites is to exclude from the Sanctuary Moss Landing Harbor east of the Colleges line and west of the Highway One bridge, and to include the waters of Elkhorn Slough east of the Highway One bridge to the boundary of the ESNERR with overlapping jurisdiction with the Moss Landing Harbor District over the Moss Landing Harbor.

[12] Comment: There is a need for landward protection and controls on nearshore development. Adequate protection of the ocean environment must include management of the adjacent coastal and upland zones. NOAA should extend its jurisdiction to include beaches, dunes, uplands, and wetland habitats adjacent to the proposed Sanctuary.

Response: NOAA agrees that protection and management of the land portion of the coastal zones is necessary for adequate protection of the ocean environment. NOAA will coordinate with existing coastal management authorities, such as COE, EPA, the California Coastal Commission, State Water Resources and Regional Water Quality Control Boards and State Lands Commission, regarding potential land- and water-based threats and impacts to the Sanctuary. The physical boundary of this sanctuary encompasses ocean and coastal waters up to the mean highwater line. NOAA intends to protect the Sanctuary from the impacts of coastal development via its regulation of discharges or deposits from beyond the boundary of the Sanctuary that subsequently enter the Sanctuary and injure a Sanctuary resource or quality.

[13] Comment: NOAA should clarify whether it will limit the amount of silt in the sand used for beach nourishment. Even though the sand may be placed above the high tide mark, erosion may move silt into the Bay.

Response: NOAA will work with COE, EPA and other appropriate authorities to determine the impacts of beach nourishment programs. If it should appear that a particular project would injure Sanctuary resources or qualities, NOAA may impose terms and conditions pursuant to 15 CFR 944.10 and 944.11.

[14] Comment: Protection of historical and cultural resources within the Sanctuary is a significant concern. NOAA should prohibit moving, injuring, or possessing historical resources within the Sanctuary. However, Sanctuary regulations should not apply to activities permitted by the State within State waters under the Shipwreck and Historic Maritime Resources Program.

Response: NOAA agrees that it is necessary to protect and manage historical and cultural resources within the Sanctuary boundary. The regulations include a prohibition on moving, removing, possessing or injuring, or attempting to move, remove or injure these resources.

The Abandoned Shipwreck Act of 1987 gives States the title to certain abandoned shipwrecks in State waters. Under the MPRSA, the Sanctuaries and Reserves Division, NOAA, has managerial responsibilities for abandoned shipwrecks within National Marine Sanctuaries, including those located in State waters, for the purpose of protecting them. NOAA will coordinate with State agencies to ensure that historical and cultural resources, as well as living marine resources, within the Sanctuary are protected.

[15] Comment: The prohibition on the taking of marine mammals and seabirds within the Sanctuary is redundant with the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA) and the Migratory Bird Treaty Act (MBTA).
Response: While marine mammals, migratory seabirds and endangered species are protected under these acts, NOAA believes that the higher penalties imposed under the MPRSA will provide a stronger deterrent.

The MPRSA sets maximum criminal fines at either $500 or $2,000 per violation, depending on the violation. The MPA sets maximum civil penalties at $10,000 and maximum criminal fines at $20,000. The ESA sets maximum civil penalties at $500, $12,000 or $25,000 per violation, depending on the violation; maximum criminal fines are set at $35,000. (All three statutes also provide for imprisonment for criminal violations.)

The MPRSA (under section 307) allows NOAA to assess civil penalties as high as $50,000 for each violation. In addition, monies collected under the MPRSA are available to enhance the National Marine Sanctuary Program.

(16) Comment: Many commenters stated fishing should not be prohibited within the Sanctuary. Instead, fisheries resource regulation should remain under the jurisdiction of the State of California, the National Marine Fisheries Service (NMFS) and the Pacific Fisheries Management Council (PFMC). Other commenters requested NOAA to regulate harmful fishing activities such as gill-netting and shark finning. NOAA’s position should be clarified in the FEIS/MP.

Response: Fishing is not being regulated as part of the Sanctuary regime and is not included in the Designation Document as an activity subject to future regulation. Fisheries management will remain under the existing jurisdiction of the State of California, NMFS and PFMC. Sanctuary prohibitions that may indirectly affect fishing activities have been written to explicitly exempt aquaculture, kelp harvesting and traditional fishing activities.

Existing fishery management agencies are primarily concerned with the regulation and management of fish stocks for a healthy fishery. In contrast, the sanctuary program has a different and broader mandate under the MPRSA to protect all sanctuary resources on an ecosystem wide basis. Thus, while fishery agencies may be concerned about certain fishing efforts and techniques in relation to fish stock abundance and distribution the Sanctuary program is also concerned about the potential incidental impacts of specific fishery technique on all sanctuary resources including benthic habitats or marine mammals as well as the role the target species play in the health of the ecosystem. In the case of the Monterey Bay area fish resources are already extensively managed by existing authorities.

(17) Comment: Many commenters requested NOAA to prohibit motorized aircraft from flying over the Sanctuary. Other commenters stated Federal Aviation Regulations (FARs) already adequately protect Sanctuary resources from aircraft impacts, making additional regulations unnecessary. In addition, new regulations may hinder cooperative emergency response plans, routine helicopter operations, and rescue attempts.

Response: The regulations prohibit flying motorized aircraft at less than 1,000 feet above the Sanctuary within four zones. Generally, these zones are from Point Santa Cruz north, Carmel Bay south (overlapping the California Sea Otter Game Refuge), and around Moss Landing and Elkhorn Slough (see appendix II for specific zones).

NOAA recognizes that overflights are regulated under the FARs. Unlike the FARs, however, Sanctuary overflight regulations are intended to protect the living marine resources of the Sanctuary from disturbance by low-flying aircraft and in this case require flying at higher altitudes than normally required by the FARs. The prohibition does not apply to overflights that:

1. Are necessary to respond to an emergency threatening life, property or the environment;
2. Are necessary for valid law enforcement purposes; or
3. Conducted by the Department of Defense and specifically exempted by NOAA after consultation with that Department.

(18) Comment: A more precise definition of “thrill craft” is needed.

Response: NOAA has changed the term “thrill craft” in the proposed regulations to “motorized personal watercraft” (MPWC) in the final regulations and revised the definition to include vessels up to fifteen feet. This category of vessel was selected because of the threat posed to Sanctuary resources by their operation.

(19) Comment: Thrill craft should be prohibited throughout the Sanctuary. The danger these craft pose to the biological resources of the area, such as marine mammals and kelp beds, as well as other users such as divers and surfers necessitates a prohibition or regulation of personal watercraft. In addition, MPWC should be prohibited in “areas of biological significance.” Including those with high human-use levels such as beaches, diving, swimming and surfing areas, state parks, and reserves. Besides the potential danger to recreationists, MPWC disrupt low-intensity area uses. In addition, many commenters found the operation of MPWC to be incompatible with the existence of the Sanctuary for reasons unquantifiable.

Response: NOAA recognizes the threat posed by MPWC operation to the conservation, recreational, ecological and aesthetic resources and the quality of the Sanctuary. As a result, the regulations have been revised to prohibit the operation of MPWC within the Sanctuary, except within four zones and access routes (15 CFR 944.5(a)(8)). Generally, these areas are located off the harbors of Pillar Point, Santa Cruz, Moss Landing, and Monterey. They were chosen to avoid injury to kelp beds, sea otters and other marine mammals, seabirds and other marine life and to minimize conflicts with other recreational users and because these areas are accessible from launch areas and encompass areas traditionally used by MPWC. Restriction of MPWC operation to these areas of the Sanctuary will also reduce esthetic disturbance.

A prohibition of MPWC operation in the Sanctuary except in the four areas is designed to increase resource protection while still allowing opportunities for this form of recreation in the Sanctuary. There has been at least one reported collision in the Monterey Bay area between a jet ski and sea otters. Collisions with and other disturbance of marine mammals elsewhere from MPWC have also occurred. The small size, maneuverability and high speed of these craft is what causes these craft to pose a threat to resources. Resources such as sea otters and seabirds are either unable to avoid these craft or are frequently alarmed enough to significantly modify their behavior such as cessation of feeding or abandonment of young. Also other, more benign, uses of the Sanctuary such as sailing, kayaking, surfing and diving are interfered with during the operation of MPWC. Further, as indicated above, restriction of operation of MPWC to the specified zones and access routes will reduce esthetic disturbance. The zones and access routes where the MPWC can still operate allow the MPWC operators to continue this form of recreation albeit in areas away from those other forms of recreation and beyond those areas inhabited by marine mammals and seabirds and other sensitive marine life.

By establishing defined MPWC
hydrocarbon development lease sales in Federal waters, not DOD. While the Sanctuary regulations allow DOD to conduct certain prohibited activities, they do not allow DOD to conduct any oil, gas or mineral activity in the Sanctuary.

II. Designation Document

Section 304(a)(4) of the Act requires that the terms of designation set forth the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. This section also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus the terms of designation serve as a constitution for the Sanctuary.

The Designation Document for the Monterey Bay National Marine Sanctuary follows:

*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 reasonably necessary 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 encompasses 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°00'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 Cabrillo. 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 Cabrillo, 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 the 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 underwater 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 geologic feature, as it is one of the few large embayments along the Pacific coast. The Monterey Bay area has a highly varied floral and faunal component. Algal diversity is extremely high and the concentrations of pinnipeds, whales, otters, and some seabird species are 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 diverse resources of the Monterey Bay area are enjoyed by the residents of this area as well as the numerous visitors. 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, Lovers Point 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, metallic ores, gravel, non-metallic 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 deposition 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 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 hearing, 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

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In addition, the U.S. Environmental Protection Agency, as of the effective date of Sanctuary designation, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary. When that disposal site is authorized, this appendix will be updated to incorporate its precise location. The site will be located outside the Monterey Bay National Marine Sanctuary and any other existing national marine sanctuary and within one of the following Long-Term Management Strategy ocean use study areas:

**Study Area 3**

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

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<td>9</td>
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The portion of the area described by the above points that lies within the Monterey Bay National Marine Sanctuary as described in Appendix I is excluded.

**Study Area 4**

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

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(Appendix based on North American Datum of 1983.)

As of the effective date of Sanctuary designation, the U.S. Army Corps of Engineers operates the following dredged material disposal sites adjacent to the Sanctuary off of the Golden Gate:

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The FEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities. The goals and objectives for the Sanctuary are:

**Resource Protection**

The highest priority management goal is to protect the marine environment, resources, and qualities of the Sanctuary. The specific objectives of protection efforts are:

1. Coordinate policies and procedures among agencies sharing responsibility for protection and management of resources;
2. Encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency response programs);
3. Develop an effective and coordinated program for the enforcement of Sanctuary regulations;
4. Enforce Sanctuary regulations in addition to other regulations already in place;
5. Promote public awareness of and voluntary compliance with Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use;
6. Ensure that the water quality of Monterey Bay is maintained at a level consonant with Sanctuary designation;
7. Establish mechanisms for coordination among all the agencies participating in Sanctuary management;
8. Ensure that the appropriate management agencies incorporate research results and scientific data into effective resource protection strategies; and
9. Reduce threats to Sanctuary resources and qualities.

**Research Program**

Effective management of the Sanctuary requires the initiation of a Sanctuary research program. The purpose of Sanctuary research activities is to improve understanding of the Monterey Bay area environment, resources, and qualities, and to resolve specific management problems, some of which may involve resources common to both the Bay and nearby State parks, refuges, and reserves. Research results will be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for protection and management of resources and qualities.

Specific objectives for the research program are:

1. Establish a framework and procedures for administering research to ensure that research projects are
(1) Provide relevant information about Sanctuary regulations, use policies and standards;
(2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;
(3) Encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and quality and
(4) Monitor and assess the levels of use to identify and control potential degradation of resources and quality and minimize potential user conflicts.

The Sanctuary will be managed from a headquarters located in the Monterey Bay region.

IV. Summary of Regulations

The regulations set forth the boundary of the Sanctuary; prohibit a relatively narrow range of activities; establish procedures for applying for national marine sanctuary permits to conduct prohibited activities; establish certification procedures for existing leases, licenses, permits, approvals, other authorizations or rights, authorizing the conduct of a prohibited activity; establish notification and review procedures for applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and establish procedures for administrative appeals.

Specifically, the regulations add a new part 944 to title 15, Code of Federal Regulations.

Section 944.2 and appendix I following § 944.12 set forth the boundary of the Sanctuary.

Section 944.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the MPRSA.

Section 944.4 allows all activities except those prohibited by § 944.5 to be undertaken subject to the requirements of any emergency regulation promulgated pursuant to § 944.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 321 of the Act.

Section 944.5 prohibits a variety of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for: (1) The exploration for, development of or production of oil, gas or minerals in the Sanctuary, (2) the discharge of primary-treated sewage within the Sanctuary (except for certification, pursuant to § 944.10, 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 EPA (in consultation with COE) prior to the effective date of designation could be conducted lawfully if one of the following four situations applies:

(1) The activity is necessary to respond to an emergency threatening life, property or the environment authorized by a National Marine Sanctuary permit issued under section 944.9, or authorized by a Special Use permit issued under Section 319 of the Act.

(2) With regard to Department of Defense activities: The activity is an existing military activity, or the activity is a new activity and exempted by the Director of the Office of Ocean and Coastal Resource Management or the Director or designee after consultation between the Director or designee and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that avoids the maximum extent practicable any adverse impact on Sanctuary resources and quality and that it, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by it, promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality. The final regulation regarding Department of Defense activities differs from the proposed regulation principally by:

(i) Making all military activities (as specifically identified in FEIS/MP) currently being carried out by the Department of Defense exempt from the Sanctuary regulatory prohibitions, not just those determined necessary for the national defense;
(ii) Adding the requirement to avoid the maximum extent practicable any adverse impacts; and
(iii) Adding the requirement of prompt coordination, in the event of an
location within the boundary of the Sanctuary materials or other substances except: (1) Fish, fish parts, chewing materials or bait used in or resulting from traditional fishing operations in the Sanctuary; (2) biodegradable incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 et seq.; (3) water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding only wastes from bilge pumping; (4) engine exhaust; and (5) dredged material deposited at disposal sites authorized by COE or EPA 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.

This prohibition is necessary in order to protect Sanctuary resources and qualities from the effects of pollutants deposited or discharged into the Sanctuary.

Disposal activities at the existing sites within the Sanctuary are allowed provided such disposal 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. Once existing permits expire, additional disposals at such previously approved or permitted sites must be approved by NOAA in accordance with § 944.11. All other disposal of dredged material within the Sanctuary is prohibited. Point source discharges, including, but not limited to, desalination plants, are allowed provided such discharge is certified by NOAA in accordance with § 944.10 or approved by NOAA in accordance with § 944.11. After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of § 944.11. At a minimum, secondary treatment will be required. Depending on the risk to Sanctuary resources and qualities, greater treatment may be required.

The third activity prohibited is depositing or discharging, from beyond the boundary of the Sanctuary, materials or other matter that subsequently enter the Sanctuary and injure a Sanctuary resource or quality, except for the first four exclusions discussed above for the second prohibited activity, dredged material deposited outside the Sanctuary at disposal sites, off of the Golden Gate authorized prior to the effective date of Sanctuary designation, and dredged material deposited outside the Sanctuary at the duly authorized disposal site that will result from the disposal site study under way on the effective date of Sanctuary designation. Provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, the valid Federal permit or approval. The future disposal site will be located with a view of the Long-Term Management Strategy Ocean Study Area as described in appendix IV. When that disposal site is authorized, appendix IV will be updated to incorporate its precise location. The intent of this prohibition is to protect the Sanctuary resources and qualities from the harmful effects of land and sea-generated non-point and point source pollution.

The fourth activity prohibited is moving, removing or injuring or attempting to move, remove or injure a Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to moving, removing or injuring resulting incidentally from kerf harvesting, aquaculture or traditional fishing operations.

The fifth activity prohibited is 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, except if any of the above results incidentally from: (1) Anchoring vessels; (2) kelp harvesting, aquaculture or traditional fishing operations; (3) installing or removing navigational aids; (4) harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties; or (5) construction, repair, replacement or rehabilitation of docks or piers. Federal Projects are any water resources development projects conducted by COE or operating under a permit or other authorization issued by COE and authorized by Federal law.

The intent of this prohibition is to protect the resources and qualities of the Sanctuary from the harmful effects of activities such as, but not limited to, archaeological excavations, drilling into the seabed, strip mining, laying of pipelines and outfalls, and offshore commercial development, which may disrupt and/or destroy sensitive marine
benthic habitats, such as kelp beds, vertebrate populations, fish habitats, and estuaries and sloughs.

The sixth activity prohibited is taking marine mammals, sea turtles or seabirds above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq. The term “taking” includes all forms of harassment. The MMPA, ESA and MBTA prohibit the taking of species protected under those Acts. The prohibition overlaps with the MMPA, ESA, and MBTA but also extends protection for Sanctuary resources on an environmentally holistic basis and provides a greater deterrent with civil penalties of up to $50,000 per taking. The prohibition covers all marine mammals, sea turtles and seabirds in or above the Sanctuary.

The seventh activity prohibited is flying motorized aircraft at less than 1,000 feet (305 m) above the Sanctuary within four specified zones (See appendix II for the zones). This area-specific prohibition on overflights below 1,000 feet (305 m) is designed to limit potential noise impacts, particularly those that might startle hauled-out seals and sea lions, sea otters or birds nesting along the shoreline margins of the Sanctuary.

The eighth activity prohibited is the operation of motorized personal water craft within the Sanctuary except in four specified zones and access routes to and from the zones and routes. The operation is intended to provide enhanced resource protection by prohibiting operation of motorized personal water craft in areas of high marine mammal and seabird concentrations, kelp forest areas, river mouths, estuaries, lagoons and other similar areas where sensitive marine resources are concentrated and most vulnerable to disturbance and other injury from personal water craft. The regulation is also intended to allow the continuation of this form of recreation while minimizing conflicts with other recreational users, as well as reducing esthetic disturbance.

The ninth and tenth prohibitions serve to facilitate enforcement actions for violations of Sanctuary regulations. The ninth prohibition has the possession within the Sanctuary of any historical resource or marine mammal, sea turtle or seabird, regardless of where the resource was taken, except in compliance with the ESA, MMPA and MBTA and the tenth prohibition is interfering with, obstructing, delaying or preventing investigations, searches, seizures of disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 944.8 authorizes the regulation, including prohibition, on a temporary basis of any activity 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.

Section 944.7 sets forth the maximum statutory civil penalty for violating a regulation—$50,000. Each day of a continuing violation constitutes a separate violation. Section 944.8 repeats the provision in section 312 of the Act that any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury. The purpose of these sections is to notify the public of the liability for violating a Sanctuary regulation or the Act.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

Section 944.9 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A permit may be granted by the Director of the Office for Ocean and Coastal Resource Management or designee if he or she finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in the management of the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director or designee is required to consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and the duration of its effects, 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 Sanctuary resources and qualities, the cumulative effects of the activity, and the end value of the activity. In addition, the Director or designee is authorized to consider any other factors she or he deems appropriate.

Section 944.10 sets forth procedures for requesting certification of leases, licenses, permits, approvals, other authorizations or rights in existence on the date of Sanctuary designation authorizing the conduct of an activity prohibited under paragraphs (a)(2)-(9) of § 944.5. Pursuant to paragraph (f) of § 944.5, the prohibitions in paragraphs (a)(2)-(9) of § 944.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 944.10 (e.g., notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed by the Director or designee as she or he deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 944.10 allows the holder 90 days from the effective date of Sanctuary designation to request certification. The holder is allowed to conduct the activity without being in violation of paragraphs (a)(2)-(9) of § 944.5 pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 944.10.

Section 944.10 also allows the Director or designee to request additional information from the holder and to seek the views of other persons. As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, approval, other authorization or right as she or he
deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 3(c)(2) of the Act. Section 944.10 has application to oil, gas or mineral activities as there is no existing lease, permit, license, approval, other authorization or right for any of these activities within the Sanctuary. The MOA entered into by NOAA, the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary (discussed under Comment/Response (6) under section I). Background of this notice specifies how the process of § 944.10 will be administered within State waters within the Sanctuary in coordination with the State permit program. The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 944.12. Any amendment, renewal or extension not in existence as of the date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary designation, whichever is later, that the applicant is in compliance with the other provisions of § 944.11. Section 944.11 states that consistent with paragraph (g) of § 944.4, the prohibitions of paragraphs (a)(2)-(9) of § 944.5 do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary designation, whichever is later, that the applicant is in compliance with the other provisions of § 944.11. The Director or designee notifies the applicant and the authorizing agency that the holder does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. In order to ensure maintenance of program-wide consistency regarding these activities, which may address issues of a highly sensitive nature on the local level, the authority granted the Director under § 944.11 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authority issued after the effective date of Sanctuary designation will not be delegated or otherwise assigned to other Federal officials below the Director's level.

Section 944.11 allows the Director or designee to request additional information from the applicant and to seek the views of other persons. An application for amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 944.11.

The MOA entered into by NOAA, the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary specifies how the process of § 944.11 will be administered within State waters within the Sanctuary in coordination with the State permit program.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the procedures set forth in § 944.12.

Section 944.12 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to: (1) The granting, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit under § 944.4 or a Special Use permit under section 310 of the Act; (2) The granting, denial, conditioning, amendment, suspension or revocation of a certification under § 944.10 or (3) The objection to issuance or the imposition of terms and conditions under § 944.11.

Prior to conditioning the exercise of existing leases, permits, licenses, approvals, other authorizations or rights or conditioning or objecting to proposed authorizations, NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants. NOAA's policy is to encourage best available management practices to minimize nonpoint source pollution entering the Sanctuary and, for municipal sewage discharge, to require, at a minimum, secondary treatment and sometimes tertiary treatment or more, depending on predicted effects on Sanctuary resources and qualities.

v. Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department must judge whether the regulations in this notice are "major," within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Administrator of NOAA has determined that the regulations in this notice are not major because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;
(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or
(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The regulations in this notice allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct prohibited activities, for requesting certifications for pre-existing leases, permits, approval, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity will all act to lessen any adverse economic effect on small entities. The regulations, in total, will not have a significant economic impact on a substantial number of small entities, and when they were proposed the General Counsel of the Department of Commerce so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-511). The collection of information requirements contained in the rule have been reviewed by the Office of Management and Budget under section 3501(h) of the Paperwork Reduction Act and have been approved under OMB Control No. 0648-0141. Comments from the public on the collection of information requirements contained in this rule are invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (attention: Desk Officer for NOAA) and to Richard Roberts, room 305, 6010 Executive Boulevard, Rockville, MD 20852.
Executive Order 12612

Federalism Assessment (FA) was prepared for the proposed designation, management plan and proposed venting regulations. The FA concluded all were fully consistent with the principles, criteria and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41689, Oct. 26, 1987). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with Section 304(a)(2) of the Act (39 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370a), a DEIS/MP was prepared for the designation and the proposed regulations. As required by section 304(a)(2) of the Act, the DEIS/MP included the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundary of the area proposed to be designated, and the existing and potential uses and resources of the area. Copies of the EIS/MP were made available for public review on August 3, 1990, with comments due on October 3, 1990. Public meetings were held in Monterey, Santa Cruz and Half Moon Bay, California from September 12 to 14, 1990. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations. Copies of the FEIS/MP are available upon request (see address section).

Executive Order 12630

This rule does not have takings implications within the meaning of Executive Order 12630 sufficient to require preparation of a Takings Implications Assessment under that order. It would not appear to have an effect on private property sufficiently severe as to effectively deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the prohibition on the exploration, development and production of oil, gas and minerals from the Sanctuary might have a takings implication if it abrogated an existing lease for OCS tracts within the Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)


W. Stanley Wilson,
Assistant Administrator for Ocean Services and Coastal Zone Management.

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

SUBCHAPTER B—OCEAN AND COASTAL RESOURCE MANAGEMENT

Parts 921-943 (Transferred to Subchapter B)

1. Subchapter B heading is added to read as set forth above.

2. Parts 921 through 943 are transferred from subchapter A to subchapter B.

3. Part 944—is added to subchapter B to read as follows:

PART 944—MONTEREY BAY NATIONAL MARINE SANCTUARY

Sec.
944.1 Purpose.
944.2 Boundary.
944.3 Definitions.
944.4 Allowed activities.
944.5 Prohibited activities.
944.6 Emergency regulations.
944.7 Penalties for violations of regulations.
944.8 Response costs and damages.
944.9 National Marine Sanctuary permits—application procedures and issuance criteria.
944.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.
944.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.
944.12 Appeals of administrative action.

Appendix I to Part 944—Monterey Bay National Marine Sanctuary Boundary Coordinates

Appendix II to Part 944—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited

Appendix III to part 944—Zones and Access Routes Within the Sanctuary Where the Operation of Personal Water Craft Is Allowed

Appendix IV to Part 944—Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary


§ 944.1 Purpose.

The purpose of the regulations in this part is to implement the designation of the Monterey Bay National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

§ 944.2 Boundary.

(a) The Monterey Bay National Marine Sanctuary consists of an area of approximately 4,024 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California.

(b) 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°17' W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°36'N, the boundary arcs south to 122°23'W, 36°10'N due west of Point Partington. 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 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
Sanctuary boundary. The precise boundary of the Sanctuary appears in appendix I to this part.

3 Definitions.
The following definitions apply to this part:


Administrator or Under Secretary means the Administrator of the National Oceanic and Atmospheric Administration or the Under Secretary of Commerce for Oceans and Atmosphere.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Director means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

Effective date of Sanctuary designation means the date the regulations in this part implementing the designation of the Sanctuary become effective.

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or otherwise under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures and human activities and events. Historical resources include historical properties as defined in the National Historic Preservation Act as amended, and implementing regulations, as amended.

Injure means to change adversely, either in the long or short term, a chemical, biological or physical attribute of, or the viability of, a "resource" that includes, but is not limited to, to cause the loss of and to destroy.

Mineral means clay, stone, sand, gravel, metamorphic rock, nonmetallic ore or any other solid material or other matter of commercial value.

Motorized personal water craft means any motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis.

Personal means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Sanctuary means the Monterey Bay National Marine Sanctuary.

Sanctuary quality means any particular and essential characteristic of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or aesthetic value, including, but not limited to, the substratum of the Monterey Bay area, bottom formations, coralline algae, marine plants and algae, invertebrates, plankton, fish, birds, sea turtles, marine mammals and historical resources.

Take or taking means the following:

(i) For any sea turtle, marine mammal or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, the term means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, injure, or to attempt to engage in any such conduct.

(ii) For any other sea turtle, marine mammal or seabird, the term means to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(2) For the purpose of both paragraphs (1) and (2), of this definition the term includes, but is not limited to, any of the following activities: Collecting any dead or injured sea turtle, marine mammal or seabird, or any part thereof; restraining or detaining any sea turtle, marine mammal or seabird, or any part thereof, no matter how temporarily; tagging any sea turtle, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any sea turtle, marine mammal or seabird.

Vessel means a watercraft of any description capable of being used as a means of transportation in/on the waters of the Sanctuary.

§ 944.4 Allowed activities.

All activities except those prohibited by § 944.5 may be undertaken subject to any emergency regulations promulgated pursuant to § 944.5, subject to all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act (see § 944.8).

§ 944.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (h) of this § 944.5, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary.

(ii) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended. (FWPCA), 33 U.S.C. 1322 et seq.

(iii) Water generated by routine vessel operations (e.g., cooling water, deck washdown and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping.

(iv) Engine exhaust or

(v) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) 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.

(3) 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.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally...
from kelp harvesting, aquaculture or traditional fishing operations.

(5) 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, except as an incident to activities necessary to respond to emergencies threatening life, property, or the environment.

(6) All Department of Defense activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and quality. The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, N.W., suite 714, Washington, DC 20235.) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (9) of this § 944.5 by the Director or designee after consultation between the Director or designee and the Department of Defense.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director or designee the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 944.9 or a Special Use permit issued pursuant to section 310 of the Act.

(f) The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, provided the holder of such authorization or right complies with § 944.10 and with any terms and conditions on the exercise of such authorization or right imposed by the Director or designee as a condition of certification as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(g) The prohibitions in paragraphs (a)(2) through (9) of this § 944.5 do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction provided the applicant complies with § 944.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions that the Director or designee deems necessary to protect Sanctuary resources and quality. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this § 944.5, in no event may the Director or designee issue a National Marine Sanctuary permit under § 944.9 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 944.10, of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA [in consultation with COE] prior to the effective date of Sanctuary 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.

§ 944.6 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 are subject to immediate temporary regulation, including prohibition.

§ 944.7 Penalties for violations of regulations.

(a) Each violation of the Act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $50,000. Each day of a continuing violation constitutes a separate violation.
§ 944.8 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

§ 944.9 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 944.5(a)(2) through (9) if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this § 944.9.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management, Attention: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Washington, DC 20235.

An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed. The qualifications and experience of all personnel must be set forth in the application. The application must set forth the potential effects of the activity, if any, on Sanctuary resources and qualities. Copies of all other required licenses, permits, approvals or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons.

(d) The Director or designee, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 944.5(a)(2) through (9) if the Director or designee finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: Further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director or designee shall consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; 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 Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director or designee may consider such other factors as he or she deems appropriate.

(e) A permit issued pursuant to this § 944.9 is nontransferable.

(f) The Director or designee may amend, suspend or revoke a permit issued pursuant to this § 944.9 for good cause. The Director or designee may deny a permit application pursuant to this § 944.9, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of the regulations in this part or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denial or revocation of permits are set forth in subpart D of 15 CFR part 904.

(g) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(h) The Director or designee may, inter alia, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(i) The Director or designee may, inter alia, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

(j) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 944.12.

§ 944.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations and rights to conduct a prohibited activity.

(a) The prohibitions set forth in § 944.5(a)(2) through (9) do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that:

(1) The holder of such authorization or right notifies the Director or designee, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 944.10; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director or designee, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 944.5(a)(2) through (9) may conduct the activity without being in violation of § 944.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 944.10.

(c) Any holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited under § 944.5(a)(2) through (9).

(d) Requests for findings or certifications should be addressed to the
Director, Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Washington, DC 20235. A copy of the lease, permit, license, approval or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as or he deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this § 944.10 whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this § 944.10 in writing to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 944.10 may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 944.12.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 944.11.

(k)(1) The National Oceanic and Atmospheric Administration (NOAA) has entered into a Memorandum of Agreement (MOA) with the State of California, EPA and the Association of Monterey Bay Areas Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section 13277 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under section 13239 of the California Water Code.

(2) The MOA specifies how the certification process of this § 944.10 will be administered within State waters within the Sanctuary in coordination with the State permit program.

(3) The MOA may be obtained from the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Washington, DC 20235.

§ 944.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.

(a)(1) The prohibitions set forth in § 944.5(a) through (g) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that:

(i) The applicant notifies the Director or designee, in writing, the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later;

(ii) The applicant complies with the other provisions of this § 944.11;

(iii) The Director or designee notifies the applicant and the authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(iv) The applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(2) The authority granted the Director under this § 944.11 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation may not be delegated or otherwise assigned to other Federal officials below the Director's level.

(b) Any potential applicant for a lease, permit, license, approval or other authorization from any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) may require the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by § 944.5(a)(2) through (9).

(c) Notifications of filings of applications and requests for findings should be addressed to the Director, Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, Washington, DC 20235. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as or he deems necessary to determine whether to object to issuance of such lease, license, permit, approval or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director or designee, if there are no objections, terms or conditions, shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director, or designee if there are no objections, terms or conditions, shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities.

(f) The Director may amend the terms and conditions deemed necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this § 944.11 may be extended by the Director or designee for good cause.

(h) The applicant may appeal any objection by, or terms of conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the procedures set forth in § 944.12.

(i)(1) NOAA has entered into a Memorandum of Agreement (MOA) with...
the State of California. EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section 13377 of the California Water Code; and


(2) The MOA specifies how the process of this § 944.11 will be administered within State waters within the Sanctuary in coordination with the State permit program.

§ 944.12 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a § 944.9 National Marine Sanctuary permit, an applicant for, or a holder of, a section 310 of the Act Special Use permit, a § 944.30 certification requester or a § 944.11 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The grant, denial, conditioning, amendment, suspension or revocation by the Director or designee of a National Marine Sanctuary or Special Use permit;

(2) The conditioning, amendment, suspension or revocation of a certification under § 944.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 944.11.

(b) An appeal under paragraph (a) of this § 944.12 must be in writing, state the action(s) by the Director or designee appealed and the reasons(s) for the appeal, and be received within 30 days of notice of receipt of the appeal by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1225 Connecticut Avenue, NW, Washington, DC 20235.

(c) While the appeal is pending, appellants requesting certification pursuant to § 944.10 who are in compliance with such section may continue to conduct their activities without being subject to the prohibitions in § 944.5(a)(1) through (10).

(d) The Assistant Administrator or designee may require the appellant to submit such information as the Assistant Administrator or designee deems necessary in order for him or her to decide the appeal. The information required must be received by the Assistant Administrator or designee within 45 days of the postmark date of the request. The Assistant Administrator or designee may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the Federal Register of the time, place and subject matter of the hearing. The applicant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall render a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefor in writing. The Assistant Administrator or designee's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this § 944.12 other than the 30 day limit for filing an appeal may be extended by the Assistant Administrator, designee or hearing officer for good cause.

Appendix I to Part 944—Monterey Bay National Marine Sanctuary Boundary Coordinates

(Appendix Based on North American Datum of 1983.)

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Appendix II to Part 944—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited

The four zones are:

[1] From mean high water out to three nautical miles between a line extending from Point Santa Cruz on a southerly heading of 220° and a line extending from 0.0 nautical miles north of Pescadero Point on a southerly heading of 240°.

[2] From mean high water out to three nautical miles between a line extending from the Carmel River mouth on a westerly heading of 270° and a line extending due west along latitude 35° 33' 17.5612' off of Cambria;

[3] From mean high water and within a five nautical mile area drawn from a center point at the end of Moss Landing Pier; and

[4] Over the waters of Elkhorn Slough east of the Highway One bridge to Elkhorn Road.

Appendix III to Part 944—Zones and Access Routes Within the Sanctuary Where the Operation of Motorized Personal Water Craft Is Allowed

The four zones and access routes are:

[1] The approximately one [1.0] square nautical mile area off Pillar Point Harbor from launch ramp (37°02'00"N, 122°29'W) through harbor entrance to the northern

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The boundary of Zone One is bounded by:
- 37°28'6" N (breakwater buoy), 123°29'5" W;
- 37°28'6" N (breakwater buoy), 123°29'5" W;
- 37°28'6" N, 123°29'5" W; and 37°28'6" N, 123°29'5" W.

The approximately three square nautical mile area off of Santa Cruz Small Craft Harbor is bounded by:
- 36°57'4" N, 123°21'6" W; and 36°57'4" N, 123°21'6" W.

The approximate three square nautical mile area off of Moss Landing Harbor is bounded by:
- 36°56'5" N, 123°21'5" W; and 36°56'5" N, 123°21'5" W.

The approximate five square nautical mile area of the U.S. Coast Guard Pier is bounded by:
- 36°56'5" N, 123°21'5" W; and 36°56'5" N, 123°21'5" W.

The boundary of Zone Three is bounded by:
- 36°56'5" N, 123°21'5" W; and 36°56'5" N, 123°21'5" W.

The approximate five square nautical mile area off of the U.S. Coast Guard Pier is bounded by:
- 36°56'5" N, 123°21'5" W; and 36°56'5" N, 123°21'5" W.

The boundary of Zone Four is bounded by:
- 36°56'5" N, 123°21'5" W; and 36°56'5" N, 123°21'5" W.

Appendix IV to Part 944—Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary

(Appendix based on North American Datum of 1983)

As of the effective date of this designation, the U.S. Army Corps of Engineers operates the following dredged material disposal sites adjacent to the Monterey Bay National Marine Sanctuary:

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In addition, the U.S. Environmental Protection Agency, as of the effective date of this designation, is engaged in consultations with the U.S. Army Corps of Engineers in the process of establishing a new disposal site on the northern boundary of the Monterey Bay National Marine Sanctuary. When this disposal site is authorized, this section will be updated to incorporate its location. The site will be located outside the Monterey Bay National Marine Sanctuary and will be located in the following Long-Term Management Strategy ocean study areas:

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### Study Area 5

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary that area:

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