

modification at an average labor rate of \$60 per work hours. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be \$7,260 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### **PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 95-NM-188-AD.

*Applicability:* Model DC-9-80 series airplanes and Model MD-88 airplanes, having manufacturer's fuselage numbers 924 through 1094 inclusive, and 1095 through 2113 inclusive; and Model MD-90 airplanes, having manufacturer's fuselage numbers 2094 through 2098 inclusive, and 2100; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure that oxygen mask lanyards of the PSU are not too long in length; excessive length lanyards may not activate the oxygen canister and could render the oxygen mask inoperative during an emergency, accomplish the following:

(a) For Model DC-9-80 series airplanes and Model MD-88 airplanes, having manufacturer's fuselage numbers 1095 through 2113 inclusive; and Model MD-90 airplanes: Within 2 years after the effective date of this AD, perform a one-time measurement of the length of the oxygen mask lanyards of the passenger service unit (PSU) from the loop on the firing pin or aluminum ring to the mask, in accordance with McDonnell Douglas Service Bulletin MD80-35-022, dated August 29, 1995 (for Model DC-9-80 series airplanes and Model MD-88 airplanes), or McDonnell Douglas Service Bulletin MD90-35-001, dated August 29, 1995 (for Model MD-90 airplanes), as applicable.

(1) If the length of all oxygen mask lanyards is found to be within the limits specified in the applicable service bulletin, no further action is required by this paragraph.

(2) If the length of any oxygen mask lanyard is found to exceed the limits specified in the applicable service bulletin, prior to further flight, modify that oxygen mask lanyard of the PSU in accordance with the applicable service bulletin.

(b) For Model DC-9-80 series airplanes having manufacturer's fuselage numbers 924 through 1094 inclusive: Within 2 years after the effective date of this AD, modify the oxygen mask lanyards of the PSU in accordance with McDonnell Douglas Service Bulletin MD80-35-022, dated August 29, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 6, 1996.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 96-2999 Filed 2-9-96; 8:45 am]

**BILLING CODE 4910-13-U**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **15 CFR Part 922**

[Docket No. 950222055-5294-02]

#### **Regulation To Prohibit the Attraction of White Sharks in the Monterey Bay National Marine Sanctuary; Clarification of Exception To Discharge Prohibition**

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration proposes to amend the regulations governing the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to prohibit the attraction of white sharks in the nearshore (seaward to three miles) areas of the Sanctuary. This proposed rule responds to the comments received in response to an Advance Notice of Proposed Rulemaking on the subject of attracting sharks in the Sanctuary. The proposed prohibition is to ensure that Sanctuary resources and qualities are not adversely impacted and to avoid conflicts among various users of the Sanctuary. The proposed rule would also clarify the "traditional fishing" exemption to the discharge prohibition in the existing regulations, and add definitions of "fishing" and "traditional fishing."

**DATES:** Comments must be received by March 13, 1996. A public hearing on this proposed rule will be held at a time and location which will be published in a separate document.

**ADDRESSES:** Comments should be sent to Ed Ueber, Sanctuary Manager, Gulf of the Farallones and northern portion of the Monterey Bay National Marine

Sanctuaries, Ft. Mason, Building 201, San Francisco, California 94123, or Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland 20910. Comments received will be available for public inspection at both addresses.

**FOR FURTHER INFORMATION CONTACT:** Ed Ueber at (415) 556-3509 or Elizabeth Moore at (301) 713-3141.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the MBNMS was designated on September 18, 1992. SRD issued final regulations, effective January 1, 1993, to implement the Sanctuary designation (15 CFR Part 922 Subpart M; previously cited as 15 CFR Part 944). The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities to protect Sanctuary resources and qualities.

In January 1994, SRD became aware that chum was being used to attract white sharks for viewing by SCUBA divers while in underwater cages. This activity occurred in the nearshore area off of Año Nuevo in the MBNMS during the time of year white sharks come to feed. SRD received expressions of concern over this activity and inquiries as to whether attracting sharks for viewing and other purposes is allowed in the MBNMS. NOAA's Sanctuaries and Reserves Division (SRD), with assistance from the MBNMS Advisory Council, and a number of interested parties, identified a number of concerns regarding the subject of attracting white sharks within the MBNMS. NOAA subsequently issued an advance notice of proposed rulemaking on this issue to invite submission of written information, advice, recommendations and other comments. The following concerns have been identified throughout NOAA's review of this issued: (1) Behavioral changes in the attracted species (e.g., feeding and migration); (2) increased risk of attack to other Sanctuary users (e.g., surfers, windsurfers, and swimmers), increased user conflicts in the area of the activity, and potential health hazards of the activity; and (3) adverse impacts to other Sanctuary resources and qualities (e.g., disruption of the ecosystem, aesthetic impacts). While California state law makes it unlawful to directly take (e.g., catch, capture, or kill) white sharks in state waters, it does not address attraction of white sharks. Nor

does any Federal law or regulation address attracting white sharks in the waters off California.

There is currently no MBNMS regulation specifically addressing attracting white sharks in the MBNMS. There is a general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary (15 CFR 922.132(a) (2)). The discharge and deposit prohibition contains an exception for, *inter alia*, the discharge or deposit of "fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary." While fishing activities in the Sanctuary are subject to various Federal and state regulations, traditional fishing activities are not regulated as part of the Sanctuary regulatory regime. Sanctuary regulations that could indirectly restrict traditional fishing operations were specifically crafted to avoid doing so. Thus, while fishing vessels are subject to the general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary, the exception for the discharge or deposit of "fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary" was designed to prevent the prohibition from indirectly restricting the conduct of traditional fishing operations. However, it was not intended to allow the discharge or deposit of "fish, fish parts, chumming materials or bait" at any time or in conjunction with any activity, as long as the discharge or deposit is of the same material "used in or resulting from" traditional fishing operations in the Sanctuary. Rather, it was intended solely to allow such discharges or deposits in the course of traditional fishing operations. Accordingly, NOAA proposes to amend this exception to make it explicitly clear that it applies only to such discharges or deposits in the conduct of traditional fishing activities.

On February 28, 1995, SRD issued an Advance Notice of Proposed Rulemaking (ANPR; 60 FR 10812), an optional step in the rulemaking process, to inform the public that the MBNMS was considering restricting or prohibiting attracting sharks within the Sanctuary and to invite submission of written information, advice, recommendations and other comments. The comment period for the ANPR ended on April 14, 1995. SRD received 302 letters and several petitions. Further, SRD held a public hearing in Santa Cruz, California on March 22, 1995, where 35 oral comments were received. Most comments (over 90%)

avored restricting or prohibiting chumming for or otherwise attracting white sharks in some fashion in the MBNMS.

Based on available information, including that received in response to the ANPR, SRD is proposing to prohibit attracting white sharks in the nearshore areas of the MBNMS.

**II. Comments and Responses**

The following is a summary of comments received on the ANPR and NOAA's responses.

(1) *Comment:* White sharks are already present in the Año Nuevo region and other areas of the Sanctuary and shark attraction activities make no difference to their presence.

*Response:* NOAA agrees that white sharks are present in the Año Nuevo region and other nearshore areas of the MBNMS in the autumn and winter seasons. However, NOAA is concerned that artificial (i.e., human induced) attraction activities may draw more white sharks to a specific location than might be present naturally and also cause them to remain in the area longer. Researchers have documented that chumming can draw sharks from up to 5 km (3.1 miles) away and cause them to remain up to twelve hours after chumming has ceased.

(2) *Comment:* Artificially attracting white sharks causes short-term behavioral changes in the attracted or associated species, and may cause long-term changes.

*Response:* NOAA agrees. Research clearly supports that using attractants (e.g., chum) causes short-term behavioral changes in white sharks. This is further evidence by the fact that artificial shark attraction methods have been successful in bringing sharks into a targeted area for divers in cages to view. Both direct and indirect (e.g., more white sharks remain in a particular area longer; a situation which could alter predator-prey relationships) behavioral changes can result from attracting white sharks in nearshore waters of the Sanctuary. In addition, while few studies have been conducted on the long-term impacts of artificial attraction on white sharks, scientific studies and observations indicate that using human manipulation to attract other species of wild organisms has resulted in behavioral changes.

A report prepared by the Research Activity Panel (RAP Report), a working group of the Sanctuary Advisory Council, indicates that sharks are known to be drawn to a specific area based on sensory (hearing and olfactory) changes in their environment. Some sharks have been trained to respond to

both of these stimuli, but the success of that training depends on sufficient frequency. Evidence strongly indicates white shark affinity to the Farallon Islands and Año Nuevo Island areas due to the frequency that they are found in these areas and the continued seasonality of their use of these areas. It has been found that individual white sharks often feed at the same location at similar times during successive years.

It has also been found that white sharks at Dangerous Reef in Southern Australia show a clear tendency to revisit the places where they were previously observed, suggesting a relatively high degree of site attachment. The white sharks exhibited an "island patrolling" pattern which may represent a home-ranging pattern. Shark feeding behavior seems to be indiscriminate; white sharks may take learned "prey-shaped" items as long as the target "matches" a known prey item (e.g., a surfer lying prone on a surfboard has a silhouette similar to a seal). Other findings from studies at Dangerous Reef suggest that white sharks select their prey by shape. However, at the Farallon Islands, it has been documented that white sharks select prey of various shapes and sizes.

The RAP Report found that sharks have been observed to alter their feeding behavior based on external clues (e.g., learned behavior). The Fisheries Division of the South Australia Department of Primary Industries has recommended that legislation be enacted to prohibit chumming at Dangerous Reef because of changes in the white shark's behavior resulting from chumming activities. Moreover, the Great Barrier Reef Marine Park Authority (Authority) has a policy that permits will not be issued for the feeding or attracting of sharks, identifying reasons similar to those NOAA has regarding its proposal to prohibit attraction of white sharks in the nearshore areas of the Sanctuary, including change in behavior caused by the activity.

The California legislature enacted a law prohibiting the direct take of white sharks in California waters due to their importance to the marine ecosystem. Further, research indicates that the California population of white sharks is small, that the white sharks have low reproductive rates, and that they have a slow rate of growth to maturity. Consequently, any disruption to the species can have a profound long-term adverse impact. This was evidenced in 1982, when a fisherman killed four adult white sharks off of the Farallon Islands. Researchers documented a significant decline in the occurrence of

white sharks attacks on prey species (e.g., seals and sea lions) in that area between 1983-1985. This is significant because research indicates that white shark predation takes approximately 8-10% of the local elephant seal populations and an unknown percentage of California sea lion populations; this is enough of a predation rate to maintain a natural balance in fish and seabird populations.

Concern about the feeding of or attracting of other species of wild organisms has been addressed in other areas. Dolphin-feeding cruises in the Gulf of Mexico is one example of the use of attractants that has been determined to cause significant negative behavioral changes in marine mammals. NOAA's National Marine Fisheries Service (NMFS) banned dolphin-feeding cruises in 1991 based on the scientific risks to both dolphins and humans. The ban was imposed based on evidence that feeding cruises exposed wild animals to disease and physical danger, and could alter their migratory and feeding behavior. The U.S. Court of Appeals for the Fifth Circuit upheld the ban in 1993, *Strong v. U.S.*, 5 F.3d 905 (5th Cir. 1993). The Court agreed with NMFS that scientific evidence supported that feeding activities disturbs normal behavior and, therefore, it was reasonable for the agency to restrict or prohibit the feeding of wild dolphins.

Other changes in animal behavior, resulting from people altering the natural feeding methods or locations, have been documented, including changes in prey items, location of feeding, and changes in behavioral patterns. Examples include feeding of bison in Yellowstone National Park, feeding of bear and deer in Parks, polar bears at Churchill, Canada, and feeding of fish in Hawaii. In all cases, the ensuing behavioral changes forced regulators to prohibit feeding activities to protect the animals and the people feeding them. In the Hawaii example, the feeding resulted in increases in selected fish species and thus affected natural community structure on the reefs. While not directly applicable to white sharks, these examples show that longer-term behavioral changes can and do result from using human-manipulated means to attract (in these instances, feed) wild organisms.

(3) *Comment:* Artificially attracting white sharks has adverse impacts on Sanctuary resources in general.

*Response:* NOAA agrees that the potential exists to cause harm to Sanctuary resources and qualities from white shark attraction activities. Altering white shark behavior can result

in disruption of the local population and the associated ecosystem. Further, attraction of white sharks in nearshore areas can result in adverse impacts to the aesthetic and recreational qualities for which the Sanctuary was designated.

(4) *Comment:* Chum material is composed of the same natural products already present in the waters and, therefore, will have no adverse impacts.

*Response:* NOAA disagrees. While chum has traditionally been documented to consist of live fish, fish blocks, and fish blood, there have been some instances where the use of pinniped parts, tuna oil, sheep parts and blood, pig parts and blood, and horse parts and blood have been used to take sharks and, in a few instances, to attract sharks for photography and viewing by caged divers (especially white sharks). It has been suggested that chum, especially non-marine chum, could act as a vector for potentially harmful bacteria and viruses to both marine mammals and humans. Regardless of the content of the chum or type of attractant, however, SRD has concerns about the conduct of activities to attract white sharks in the nearshore areas of the Sanctuary due to the resulting change in behavior of the white shark, the user conflict created by the activity, and impact to associated Sanctuary resources and qualities (e.g., ecological, aesthetic, recreational).

(5) *Comment:* Methods other than chumming have been used to attract sharks, and therefore, need also to be considered in the rulemaking.

*Response:* NOAA agrees. It has been reported to NOAA that some researchers and commercial entrepreneurs have experimented (with some success) using sound as a means of artificially attracting sharks. Other researchers have also experimented with electrical fields and visual cues as a means of attracting sharks. While such methods may reduce the adverse aesthetic impacts (e.g., a slick produced by chumming), and eliminate any risk of introduction of pathogens into the marine environment, other risks created by artificially attracting white sharks in nearshore areas remain (e.g., behavior modification and user conflict). Therefore, NOAA believes that its regulation must be broad enough to encompass means of attraction other than the use of chum.

(6) *Comment:* Artificially attracting sharks in nearshore areas creates a risk to other users of those areas.

*Response:* NOAA agrees. NOAA considers that even a single instance of white shark attraction conducted near an area where other people are recreating in the water can increase the

risk of harm to those individuals from white shark attack. While the exact potential for increased risk is difficult to assess, and may be an area for further research, most experts on shark biology agree that enhanced risk is probable where attraction is occurring. The American Elasmobranch Society, whose members include professional researchers studying sharks and rays, conducted a survey of its members in 1994 which included questions on shark baiting and the protection of sharks. One of the questions asked was "In regard to shark-diving operations which involve regular baiting, is there a cause for concern (re: shark attack) if such shark diving operations are conducted relatively close to bathing or surfing beaches?" The response resulted in 46 percent yes, 48 percent it depends, and 5 percent no answer. The Great Barrier Marine Park Authority also cited risks to other users as one of the reasons it adopted a policy not to issue permits for the feeding or attracting of sharks. The Authority indicated that if the policy had not been adopted, then shark attracting activities would have been prohibited through regulation.

Therefore, while people that spend time in the water in areas near those known to be inhabited by white sharks are exposed to the possibility of dangerous interactions, the use of attractants in areas frequented by people may increase the likelihood of these interactions.

(7) *Comment:* Anyone who surfs or dives near areas with high concentrations of white sharks such as Año Nuevo is doing so in a dangerous environment to begin with, and attracting white sharks will not make it any more dangerous.

*Response:* NOAA recognizes that nearshore areas such as Año Nuevo have a higher incidence of white shark attacks than other areas of the coast. As discussed previously, however, NOAA believes that artificially attracting white sharks has the potential to increase the threat beyond that which may naturally exist within a given area.

(8) *Comment:* Artificial attraction of white sharks disrupts established recreation and human use patterns and is therefore an incompatible use.

*Response:* NOAA agrees. The use of attractants such as chum to attract white sharks in the nearshore areas of the Sanctuary adversely impacts the aesthetic and recreational qualities for which, in part, the Sanctuary was designed, and creates a conflict among other users of the area. For example, regardless of the method used to attract white sharks, users of the nearshore areas are subject to greater potential risk

of harm as a result of the conduct of this activity. Further, the chum slick may cause not only a potential health hazard, but also adversely impacts the aesthetics of the area. Consequently, NOAA has determined that white shark attraction in the nearshore areas of the Sanctuary is generally incompatible with other uses of these areas.

(9) *Comment:* Exposure to white sharks through cage diving promotes better conservation of sharks in general and improves the public's attitude towards (and perception of) sharks.

*Response:* NOAA does not believe that attracting white sharks for viewing purposes without an associated, permitted research protocol provides a public benefit for the species, the participants, or other Sanctuary resources or qualities. NOAA also believes promotion of shark conservation is effectively addressed, in part, by retaining some sharks in aquaria for viewing. Within the area of the MBNMS, two aquaria exist (Steinhart Aquarium in San Francisco and the Monterey Bay Aquarium in Monterey), both of which are renowned for their skill and research in captive shark husbandry. Therefore, sufficient opportunity exists for members of the public who wish to view live sharks. SRD recognizes that there are few, if any, white sharks in captivity. For individuals that wish to observe live white sharks, therefore, one of the only ways to do so is to observe them in their natural environment. The regulation SRD is proposing does not restrict persons from SCUBA diving using shark cages in the Sanctuary. The regulation prohibits only the use of attractants that can artificially alter white shark behavior, create user conflict, and adversely impact other Sanctuary resources and qualities. This is the primary reason the proposed regulation is tailored specifically to attraction, and is not a broader prohibition against the "taking" (broadly defined in the existing Sanctuary regulations) of white sharks that could encompass non-attraction viewing.

(10) *Comment:* Artificial shark attraction is the only viable means for viewing white sharks in the wild. If a regulatory ban is promulgated, it would mean the end of commercial white shark viewing in the Sanctuary.

*Response:* NOAA agrees that white sharks may essentially only be seen live in the wild. However, there are other means by which the majority of the non-diving public can learn about white sharks (e.g., research and educational media). While banning white shark attraction in nearshore areas of the Sanctuary would impact commercial

white shark viewing activities, NOAA believes that in assessing the potential risks to the Sanctuary resources and qualities, and to Sanctuary users, such a restriction is necessary. Further, by restricting only attraction of white sharks in the nearshore areas, NOAA believes the regulation is reasonable in relation to the risks and concerns created by the activity. While a prohibition of white shark attraction in the nearshore areas of the Sanctuary would impact commercial shark attraction operations, the number of commercial operators presently engaging in this activity is small. Further, white shark attraction is not likely the sole source of business for such commercial operators because white sharks only inhabit the nearshore areas during the fall-winter season. Moreover, as discussed in the previous response, commercial operators would not be prohibited from bringing divers to dive in cages to observe white sharks in their natural state without the use of attractants. Finally, many of the concerns about the impact of attracting white sharks in the nearshore areas do not appear to apply in deeper waters outside three miles where other species of shark (e.g., blue) are found because: other species of shark appear to not be as susceptible as white sharks to disruption from adverse impacts; and white sharks, their prey species, and people are not localized or concentrated outside nearshore waters of the MBNMS.

(11) *Comment:* Shark chumming has been taking place in the Monterey Bay area for quite some time, and should therefore be considered a "traditional fishing" method.

*Response:* NOAA disagrees. There is evidence that a number of fisheries, including certain shark fisheries, used chumming methods for at least the past twenty years, though not in any sustained or continuous fashion. However, the white shark attraction activities conducted in the nearshore areas for recreational purposes are not traditional fishing operations. In fact, such activities are not any type of fishing operation. Moreover, white sharks have no significant commercial value, and there is no and there never has been a commercial white shark fishery in the Monterey Bay area waters. In addition, California state law now generally prohibits fishing for, or retention of, white sharks within California waters. NOAA believes that a regulation which would effectively prohibit the attraction of white sharks is a logical extension of, and consistent with, the State law.

(12) *Comment:* The definition of traditional fishing needs to be clarified.

*Response:* NOAA agrees. The term was not defined in the existing regulations and NOAA is proposing to amend the regulations to define the term.

(13) *Comment:* If a ban on white shark attraction is put in place, legitimate scientific research on white sharks using artificial attraction will not be allowed in the sanctuary.

*Response:* The MBNMS regulations provide that permits may be issued to conduct certain activities, including those that will further research related to Sanctuary resources and qualities. In assessing whether to issue a research permit, the MBNMS/SRD considers a number of factors including: the end value of the activity; the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and duration of its effects; and the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity. Further, in order to issue a permit, the MBNMS/SRD must find that the activity will have only negligible short-term effects on Sanctuary resources and qualities. Sections 922.48 and 922.133 of 15 CFR provide the application procedures and issuance criteria for Sanctuary permits. Under 15 CFR 922.49 and 922.134, NOAA may also authorize a research permit issued by the California Department of Fish and Game.

Should SRD allow, via permit or authorization, the conduct of white shark attraction for legitimate scientific research, stringent conditions will be required to protect Sanctuary resources and qualities and to minimize user conflict. For example, SRF would likely require that any physical attractants be free of infectious pathogens and be restricted to naturally occurring oceanic substances (e.g., no parts of terrestrial organisms), and be limited to no more than necessary to conduct the research; that the researcher fly the internationally designated danger flag, the U or Uniform Flag, along with the NOAA research flag while conducting research activities; that the researcher make radio contact with any vessel coming within the vicinity of the activity; and that the researcher provide local public notice prior to the conduct of research activities.

(14) *Comment:* A restriction or prohibition against attracting white sharks should not be Sanctuary-wide, but rather should apply only to certain areas.

*Response:* NOAA agrees. The concerns raised by this activity are

unique to nearshore areas due to the combined concentration of white sharks, associated species (e.g., pinnipeds), and people who also use and enjoy the nearshore areas of the Sanctuary. These concerns are not present in offshore areas of the MBNMS where this combination of factors does not exist. Consequently, NOAA believes that by prohibiting the attraction of white sharks within three miles from the coast (i.e., state waters; 16% of the Sanctuary), the identified concerns and risks will be fully addressed.

### III. Summary of Regulations

Three amendments to the MBNMS regulations are proposed in this rulemaking.

#### 1. Attraction of White Sharks

The first amendment is the addition to 15 CFR 922.132(a) of a prohibition against attracting, or attempting to attract, any white shark in California State waters (three miles seaward of mean high tide) in the Sanctuary. Section 922.131 would also be amended by adding a definition of "attract or attracting," defined as the conduct of any activity that lures by using food, bait, chum or any other means. As discussed above in the response to comments on the ANPR, this regulation is necessary to protect the white shark and other Sanctuary resources (e.g., pinnipeds); to minimize user conflict in the nearshore areas of the Sanctuary; and to protect the ecological, aesthetic, and recreational qualities of the Sanctuary. Concentration of white sharks, associated species, and people make nearshore areas of the Sanctuary uniquely susceptible to adverse impacts from attracting white sharks in such areas. The proposed regulation is narrowly tailored to attraction of white sharks in order to complement existing California law that prohibits the direct take of white sharks in California waters, and so as not to prohibit divers from viewing white sharks in their natural state without the use of attractants.

#### 2. Discharge Regulations

Section 922.132(a)(2)(i) prohibits the discharging or depositing, from within the boundary of the Sanctuary, any material or other matter. Section 922.132(a)(2)(ii) prohibits the 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. There are five exceptions to these discharge prohibitions, one of which is the discharge of "fish, fish parts,

chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary" (15 CFR 922.132(a)(2)(i)(A)). This exception is proposed to be amended to make it explicitly clear that it applies only to such discharges in the actual conduct of traditional fishing activities in the Sanctuary. Accordingly, the exemption would be amended to read "fish, fish parts, chumming materials or bait produced and discarded incidental to and during traditional fishing operations conducted in the Sanctuary." Thus, it will be clear that the use of identical materials during the conduct of other activities does not fall within the exception to the discharge regulations and is prohibited.

#### 3. Traditional Fishing

There is presently no definition of traditional fishing in the MBNMS regulations. This term appears in four of the regulatory prohibitions. It was intended and has always been interpreted by NOAA to mean fishing using lawful commercial or recreational methods used within the Sanctuary prior to its designation. In order to ensure that there are no uncertainties as to the meaning of the term, NOAA is proposing to add to 15 CFR 922.131 definitions of "fishing" and "traditional fishing" to the Sanctuary regulations. The term "fishing" is proposed to be defined as: (i) The catching or harvesting of fish; or (ii) the attempted catching or harvesting of fish. The term "traditional fishing" is proposed to be defined as: "fishing using a lawful commercial or recreational fishing method used within the Sanctuary prior to its designation (September 18, 1992)." Addition of these definitions would provide clear understanding of the scope of certain exceptions to the regulatory prohibitions.

### IV. Miscellaneous Rulemaking Requirements

#### *Executive Order 12866: Regulatory Impact*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

#### *Executive Order 12612: Federalism Assessment*

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

#### *Regulatory Flexibility Act*

NOAA has concluded that this regulatory action is not expected to have

a significant economic impact on a substantial number of small entities, and the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. A prohibition against white shark attraction in the nearshore areas of the Sanctuary would not have a significant economic impact on a substantial number of small entities because: the number of commercial operators presently engaging in this activity is small; white shark attraction is not likely the sole source of business for such commercial operators because white sharks only inhabit the nearshore areas during the fall-winter season; and commercial operators would not be prohibited from bringing divers to dive in cages to observe white sharks in their natural state without the use of attractants. Accordingly, an initial Regulatory Flexibility Analysis was not prepared.

#### *Paperwork Reduction Act*

This proposed rule would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

#### *National Environmental Policy Act*

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

#### List of Subjects in 15 CFR Part 922

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)

Dated: February 1, 1996.

David L. Evans,

*Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, 15 CFR Part 922 is proposed to be amended as follows:

#### **PART 922—[AMENDED]**

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

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

#### **Subpart—Monterey Bay National Marine Sanctuary**

2. Section 922.131 is amended by adding three definitions in alphabetical order to read as follows:

##### **§ 922.131 Definitions.**

\* \* \* \* \*

*Attract or attracting* means the conduct of any activity that lures by using food, bait, chum or any other means.

\* \* \* \* \*

*Fishing* means: (1) The catching or harvesting of fish; or (2) The attempted catching or harvesting of fish.

\* \* \* \* \*

*Traditional fishing* means fishing using a lawful commercial or recreational fishing method used within the Sanctuary prior to its designation (September 18, 1992).

3. Section 922.132 is amended by revising paragraph (a)(2)(i)(A), and adding new paragraph (a)(10) to read as follows:

##### **§ 922.132 Prohibited or otherwise regulated activities.**

(a) \* \* \*

(2)(i) \* \* \*

(A) Fish, fish parts, chumming materials or bait produced and discarded incidental to and during traditional fishing operations in the Sanctuary.

\* \* \* \* \*

(10) Attracting or attempting to attract any white shark in California state waters (3 miles seaward of mean high tide) in the Sanctuary.

\* \* \* \* \*

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#### **FEDERAL TRADE COMMISSION**

##### **16 CFR Part 303**

##### **Rules and Regulations Under the Textile Fiber Products Identification Act**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Trade Commission (Commission or FTC) has completed its regulatory review of the Rules and Regulations under the Textile Fiber Products Identification Act (Textile Rules). Pursuant to that review, the Commission concludes that the Rules continue to be valuable to both consumers and firms. The regulatory review comments suggested various substantive amendments to the Rules.

The Commission has considered these proposals and other proposals that it believes merit further inquiry. The Commission seeks comment on whether it should amend the Textile Rules to: (1) allow the listing of generic fiber names for fibers that have a functional significance and are present in the amount of less than 5% of the total fiber weight of a textile product, without requiring disclosure of the functional significance of the fiber, as presently required by Textile Rule 3(b); (2) eliminate the requirement of Textile Rule 16(b) that the front side of a cloth label, which is sewn to the product so that both sides of the label are readily accessible to the prospective purchaser, bear the wording "Fiber Content on Reverse Side" when the fiber content disclosure is listed on the reverse side of the label; (3) allow for a system of shared information for manufacturer or importer identification among the North American Free Trade Agreement (NAFTA) countries; (4) add a provision to Textile Rule 20 specifying that a Commission registered identification number (RN) will be subject to cancellation if, after a change in the material information contained on the RN application, a new application that reflects current business information is not promptly submitted; (5) allow the use of abbreviations for generic fiber names; (6) allow the use of abbreviations and symbols in country of origin labeling; and (7) allow the use of new generic names for manufactured fibers if the name and fiber are recognized by an international standards-setting organization. In addition, the Commission seeks comment on the possible resolution of apparent conflict between the Commission's country of origin disclosure requirements and new U.S. Customs Service regulations pursuant to the Uruguay Round Agreements Act of 1994.

**DATES:** Written comments will be accepted until May 13, 1996.

**ADDRESSES:** Comments should be submitted to: Office of the Secretary, Federal Trade Commission, Room H-159, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580. Submissions should be marked "Rules and Regulations under the Textile Act, 16 CFR Part 303—Comment." If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.