

Issued in Des Moines, Washington, on October 26, 2018.

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[FR Doc. 2018-24394 Filed 11-8-18; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 170315274-7274-01]

RIN 0648-BG73

#### Vessel and Aircraft Discharges From United States Coast Guard in Greater Farallones and Cordell Bank National Marine Sanctuaries

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

**ACTION:** Final rule.

**SUMMARY:** With this final rule, the National Oceanic and Atmospheric Administration (NOAA) is allowing the United States Coast Guard (USCG or Coast Guard) to carry out certain otherwise prohibited activities within waters of Greater Farallones National Marine Sanctuary (GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) beyond approximately 3 nautical miles (nm) from the shore, in the areas of the sanctuaries that were expanded in 2015. This final rule will further the ability of the USCG to complete its mission requirements and NOAA's policy of facilitating uses of the sanctuaries to the extent compatible with resource protection. There is no change to the regulatory prohibitions or exceptions applicable to the pre-expansion boundaries of the two sanctuaries. NOAA published a proposed rule and draft environmental assessment (EA) under the National Environmental Policy Act (NEPA) on November 22, 2017. NOAA received written and oral public comments on the proposed rule and draft EA, and NOAA considers and responds to the comments in this final rule and the final EA.

**DATES:** This final rule is effective on December 10, 2018.

**ADDRESSES:** Copies of the final EA described in this rule and the Finding of No Significant Impact (FONSI) are available upon written request from Maria Brown, Superintendent, Greater

Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129. Copies of the final EA and the final rule can also be viewed or downloaded at <https://farallones.noaa.gov/manage/regulations.html> or at [www.regulations.gov](http://www.regulations.gov) (search for docket NOAA-NOS-2017-0140).

#### FOR FURTHER INFORMATION CONTACT:

Maria Brown, Greater Farallones National Marine Sanctuary Superintendent, at [Maria.Brown@noaa.gov](mailto:Maria.Brown@noaa.gov) or 415-561-6622.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose of Regulatory Change

###### A. Introduction

On March 12, 2015, NOAA expanded the boundaries of GFNMS and CBNMS to an area north and west of their previous boundaries. In that rule, pursuant to a request from the USCG, NOAA announced that it would postpone the effective date for the discharge requirements in both expansion areas (defined as the areas that were added to the existing 1981 and 1989 boundaries for GFNMS and CBNMS, respectively) with regard to USCG activities. The purpose of the postponement was to look at ways to address Coast Guard's concerns that the discharge regulations would impair the operations of Coast Guard vessels in, and aircraft over, the sanctuaries, and to consider, among other things, whether to exempt Coast Guard activities in both sanctuary expansion areas. This final rule allows the USCG to carry out otherwise prohibited discharges within waters of the expansion areas of GFNMS and CBNMS seaward of approximately 3 nm from the shore, as described in more detail below.<sup>1</sup> In formulating this final rule, NOAA considered a number of factors discussed more fully in the final EA, including the ability of the USCG to complete its mission requirements and the policy of facilitating uses of the sanctuaries to the extent compatible with resource protection.

###### B. Greater Farallones and Cordell Bank National Marine Sanctuaries

NOAA is charged with managing areas of the marine environment that are of special national significance as the National Marine Sanctuary System (16 U.S.C. 1431(b)(1)). The Office of National Marine Sanctuaries (ONMS) is

<sup>1</sup> The specific boundary lines that designate the areas where the new discharge exceptions for certain USCG activities applies are identified by coordinates included in appendices to the regulatory text.

the federal office within NOAA that manages the National Marine Sanctuary System (System). The mission of ONMS is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the System for this and future generations throughout the nation. This System includes 13 national marine sanctuaries, among them GFNMS and CBNMS. ONMS also manages Papahānaumokuākea and Rose Atoll marine national monuments. GFNMS was designated in 1981 and protects approximately 3,295 square miles (2,488 square nm). CBNMS was designated in 1989 and protects approximately 1,286 square miles (971 square nm). NOAA expanded both sanctuaries to their current size on March 12, 2015 (80 FR 13078). When referring to the expansion areas of the sanctuaries, NOAA means the areas that were added to the existing 1981 and 1989 boundaries for GFNMS and CBNMS, respectively.

Both GFNMS and CBNMS regulations prohibit discharging or depositing, from within or into the sanctuary, any material or other matter (15 CFR 922.82(a)(2), (3) and 15 CFR 922.112(a)(2)(i) and (ii)). Both GFNMS and CBNMS regulations also prohibit 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 (15 CFR 922.82(a)(4); 15 CFR 922.112(a)(2)(iii)). Most national marine sanctuaries have similar regulatory prohibitions. The discharge prohibitions are aimed at maintaining and improving water quality within national marine sanctuaries to enhance conditions for their living marine resources. The discharge prohibitions include the following exceptions relevant to the final action:

- For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device that is approved in accordance with section 312 of the Federal Water Pollution Control Act,<sup>2</sup> as amended (FWPCA); vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage (15 CFR 922.82(a)(2)(ii) and 922.112(a)(2)(i)(B));
- For a vessel less than 300 GRT, or a vessel 300 GRT or greater without sufficient holding tank capacity to hold

<sup>2</sup> The Federal Water Pollution Control Act is more commonly referred to as the Clean Water Act.

graywater while within the sanctuary, clean graywater as defined by section 312 of the FWPCA (15 CFR

922.82(a)(2)(iv) and 922.112(a)(2)(i)(D));

- Activities necessary to respond to an emergency threatening life, property or the environment (15 CFR 922.82(c) and 922.112(b));

- Activities allowed in accordance with national marine sanctuary permits (15 CFR 922.82(d) and 922.112(d)).

The following definitions apply to these exceptions:

- “Clean” means not containing detectable levels of a harmful matter (15 CFR 922.81 and 922.111); and,

- “Graywater” means galley, bath, and shower water (33 U.S.C. 1322(a)(11)).

The first two existing discharge exceptions listed above apply to all vessels other than cruise ships. Therefore, upon finalization of this rulemaking, they will continue to apply to existing or future USCG vessels with appropriate marine sanitation devices (MSDs) on board.

### C. USCG Activities

The USCG, part of the U.S. Department of Homeland Security, is a military service and a branch of the armed forces (14 U.S.C. 1), charged with carrying out eleven maritime safety, security and stewardship missions (6 U.S.C. 468(a)).

One of the missions of the USCG is to enforce or assist in the enforcement of all applicable federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. As part of this mission, the USCG supports resource protection efforts within GFNMS and CBNMS by providing surveillance of activities within the sanctuaries and enforcement of the National Marine Sanctuaries Act (NMSA) and other laws and their implementing regulations. The USCG has the authority to enforce the NMSA under 14 U.S.C. 2 and 14 U.S.C. 89. Law enforcement activities for the two sanctuaries are also conducted by other agencies, primarily NOAA’s Office of Law Enforcement and the California Department of Fish and Wildlife. In GFNMS, the National Park Service and several local agencies also assist with law enforcement activities.

The USCG also leads incident planning and response activities for oil spills and other incidents in U.S. coastal and ocean waters. These activities are necessary components of GFNMS and CBNMS management. Other USCG missions conducted inside national marine sanctuary boundaries, some of which also support national marine sanctuary management, include

waterways and coastal security; aids to navigation, including tending buoys; search and rescue (SAR); living marine resources; marine safety; and marine environmental protection. The USCG may concurrently conduct activities to support more than one of its missions when operating vessels within or aircraft above GFNMS and CBNMS.

According to the USCG Environmental Vessel Manual, USCG practices allow for discharges of untreated sewage and non-clean graywater from USCG vessels in waters beyond 3 nm from shore. USCG vessels have continued these discharges beyond 3 nm from shore in the expansion areas of GFNMS and CBNMS, due to NOAA’s decision to temporarily delay the effective date of applying sanctuary discharge prohibitions with respect to USCG activities in the expansion areas of GFNMS and CBNMS while NOAA assessed these activities and their potential environmental effects.

According to other regulatory requirements and USCG guidance and practices, vessel discharges are not allowed to take place within approximately 3 nm of the shore. The FWPCA requires (in section 312) that vessels with installed toilets must only discharge sewage through a Type I or II marine sanitation device within three miles<sup>3</sup> of shore (33 U.S.C. 1322(h)(4); 33 U.S.C. 1362(7)–(8)). The California Harbors and Navigation Code 775(a)(2) and (b) require compliance with the FWPCA. There is also a U.S. Environmental Protection Agency (USEPA) designated No Discharge Zone (NDZ) prohibiting sewage discharges in the marine waters of the state that applies to specified vessels of 300 gross tons or greater,<sup>4</sup> which would apply to several classes of USCG vessels. Further, the USCG Vessel Environmental Manual includes a restriction on discharging raw sewage within 3.5 miles (3 nm) of land.

### D. Need for Action

In the course of the rulemaking to expand GFNMS and CBNMS, NOAA received a letter dated February 4, 2013, from the USCG stating that the then-proposed prohibitions for the GFNMS and CBNMS expansion areas had the potential to jeopardize their ability to stay “mission ready” and would impair

<sup>3</sup> The FWPCA refers to “miles” but the common interpretation is “nautical miles”, as statute miles are not used by mariners, and many states use a 3 nm from shore boundary ([http://www.gc.noaa.gov/gcil\\_seaward.html](http://www.gc.noaa.gov/gcil_seaward.html)).

<sup>4</sup> Various laws and regulations refer to gross tons or gross registered tons (GRT). In this document, NOAA uses the terms exactly as they appear in the specific legal source cited.

USCG surface and airborne use of force training activities, and SAR training activities. Of specific concern to the USCG were the then-proposed prohibitions on vessel sewage discharge and the ability of Coastal Patrol Boats to conduct any mission within the sanctuaries, in particular law enforcement and SAR missions.

Following the publication of the proposed rule for the expansion (79 FR 20981), NOAA and USCG conducted interagency consultation to address the issue brought up during scoping. In a letter dated February 9, 2015, USCG communicated to the Office of Information and Regulatory Affairs at the White House Office of Management and Budget that they were prepared to discuss the possibility of a regulatory exception with NOAA after publication of the final rule to expand the sanctuaries. To accommodate the need for these USCG activities to take place after the expansion rule entered into effect, NOAA postponed, for six months from the effective date of the rule, the applicability of the discharge requirements to Coast Guard activities in both expanded areas. NOAA published the final rule for the expansion of GFNMS and CBNMS on March 12, 2015 (80 FR 13078), in the **Federal Register** and the rule became effective on June 9, 2015 (80 FR 34047). Additional six-month postponements of the effectiveness of the discharge requirements in the expansion areas were published in the **Federal Register** on December 1, 2015 (80 FR 74985), May 31, 2016 (81 FR 34268), December 6, 2016 (81 FR 87803), and June 7, 2017 (82 FR 26339) to enable completion of the environmental assessment and to determine NOAA’s next steps. Another postponement of the effectiveness of the discharge requirements in the expansion areas (82 FR 55502) was published concurrently with the proposed rule (82 FR 55529) and draft environmental assessment, on November 22, 2017. The November 22, 2017 postponement extends the discharge requirements for the USCG activities in the expansion areas until December 9, 2018 or 30 days after this final rule publishes, whichever comes first, to provide adequate time for completion of a final EA and final rule, as appropriate. Therefore, the postponement of the discharge requirements will be superseded on the date this final rule is effective, 30 days after publication in the **Federal Register**.

Of primary concern to USCG, prior to this final rule becoming effective, has been the discharge regulations in both expanded sanctuaries and USCG compliance with these regulations.

USCG vessels have limited capacity to treat sewage and some have limited capacity to hold sewage and graywater, and are without Type I or II marine sanitation devices onboard to treat the wastewater prior to discharge. Accordingly, the discharges from such vessels would not fit within the existing regulatory exemptions for discharge within GFNMS and CBNMS. Training exercises designed to make USCG personnel ready for missions involving use of force and SAR involve discharging live ammunition and pyrotechnic materials. NOAA is concerned with protecting sanctuary resources and habitats, resolving any conflicts that could occur among sanctuary user groups (e.g., fishermen and USCG when conducting live fire training), and ensuring continued USCG enforcement of sanctuary regulations and other mission activities that support sanctuary management.

Prior to the expansion of GFNMS and CBNMS, the USCG was able to comply with the sanctuaries' vessel discharge regulations by discharging untreated vessel sewage and non-clean<sup>5</sup> graywater in ocean waters outside GFNMS and CBNMS or by pumping it out at shoreside pump-out facilities. The expansion of GFNMS and CBNMS, with the resulting larger sizes of the sanctuaries and extension of discharge prohibitions to the expanded portions of the sanctuaries, would have made it difficult for the USCG to both fulfill its missions and comply with the vessel discharge prohibitions. The USCG vessels have constraints for treating and holding sewage and non-clean graywater, and crews would have had to plan for the extra time required to travel from the GFNMS and CBNMS expansion areas to USCG shoreside pump-out facilities in Bodega Bay and San Francisco Bay or to ocean waters outside national marine sanctuary boundaries to discharge vessel holding tanks (where allowed by state and federal regulations).

Similarly, with regard to training activities, prior to the expansion of GFNMS and CBNMS, the USCG planned and conducted these exercises outside the sanctuaries' boundaries and within relatively short distances from USCG stations (e.g., Bodega Bay) without violating sanctuary discharge regulations. Because the USCG maritime enforcement, defense readiness, and SAR capabilities are enhanced by conducting live-fire and SAR exercises

in the areas in which its personnel normally operate, the expansion of GFNMS and CBNMS and extension of discharge prohibitions to the expanded portions of the sanctuaries had the potential to impair the ability of USCG to operate and train to remain "mission ready".

#### *E. History of Action*

Prior to the expansion of the two sanctuaries' boundaries, GFNMS and USCG had been discussing potentially allowing USCG to make discharges within the sanctuary during live fire and SAR training exercises. In 2012 and 2013, USCG District 11 and GFNMS held a series of meetings focused on discharges of flares, ammunition, and targets related to live fire and SAR training. During this time, GFNMS and USCG identified several areas for potentially allowing seasonal training-related discharges, as well as possible operating protocols. The intention was to consider allowing USCG training discharges via a national marine sanctuary permit, if the activities could be conducted in a way that would minimize potential impacts to marine mammals and other living marine resources. The USCG did not submit an application for a permit, and therefore NOAA did not issue a permit.

After receiving the USCG's February 4, 2013 letter, NOAA initiated discussions with the USCG to address the full range of USCG discharges from training activities and untreated vessel sewage and non-clean graywater discharges in both GFNMS and CBNMS. As part of these discussions, the USCG and NOAA reviewed potential environmental effects and various approaches to mitigate potential harm to sanctuary resources from these USCG discharges, including national marine sanctuary permits and best practices for USCG discharge activities. In January 2015, prior to the publication of the final rule to expand GFNMS and CBNMS, NOAA and the USCG entered into interagency consultation to address both agencies' concerns. The details of this consultation are described above under "Need for Action".

From April 21 to May 31, 2016 (81 FR 23445), NOAA accepted public comments and information to determine the relevant scope of issues and range of alternatives for NOAA to address in the environmental assessment and proposed rule. Public and agency comments were received via the Federal e-Rulemaking Portal, by mail, and at three public meetings that were held in Sausalito, Bodega Bay and Gualala on May 10, 11 and 12, 2016, respectively. Comments received are available at

[www.regulations.gov](http://www.regulations.gov) (search for docket NOAA-NOS-2017-0140). NOAA considered these comments in preparing the proposed rule and associated draft EA, which were published on November 22, 2017.

From November 22, 2017 to January 15, 2018 (82 FR 55529), NOAA accepted public comments on the draft EA and proposed rule for this action. Public and agency comments were received via the Federal e-Rulemaking Portal, by mail, and at two public meetings that were held in Sausalito and Gualala, CA on December 5 and 13, 2017, respectively. Comments received are available at [www.regulations.gov](http://www.regulations.gov) (search for docket NOAA-NOS-2017-0140). NOAA considered these comments in preparing this final rule and associated final EA, and NOAA provides responses to these comments in these documents.

#### *F. Process*

The process for this action is composed of four major stages: (1) Information collection and characterization and public scoping; (2) preparation and release of a draft environmental assessment under the National Environmental Policy Act (NEPA), and any proposed amendments to the regulations if appropriate; (3) public review and comment of the proposed amendments and the draft environmental assessment; (4) preparation and release of a final environmental review document, and any final amendments to the GFNMS and CBNMS regulations, if appropriate. With the publication of this final rule, NOAA completes the fourth phase of this process.

NOAA fulfilled its responsibilities to complete required consultations and/or receive necessary authorizations under the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*), Section 7 of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 300101), and Federal Consistency review under the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451 *et seq.*), along with its ongoing NEPA (42 U.S.C. 4321 *et seq.*) process including the use of NEPA documents and public meetings, to also meet the requirements of other federal laws (See Section IV below). Together with this final rule, NOAA is releasing a final EA containing more detailed information on the considerations of this action, including assessment of alternatives, analysis of potential environmental impacts, and references. NOAA has prepared a FONSI for this action. The EA can be found on the website and the EA and FONSI can be

<sup>5</sup> Here and thereafter, ONMS intends to refer to graywater that does not meet the definition of "clean", defined as not containing any detectable levels of a harmful matter (15 CFR 922.111), as non-clean graywater.

obtained from the official listed in the **FOR FURTHER INFORMATION CONTACT** section above.

## II. Summary of the Regulatory Change

### A. Sewage and Graywater

With this final rule, NOAA amends the regulations for GFNMS and CBNMS to allow USCG vessels to discharge untreated sewage and non-clean graywater only in the federal waters of the expansion areas of GFNMS and CBNMS, seaward of a line, approximately <sup>6</sup> 3.5 miles (3 nautical miles (nm)) from the shoreline, that is designated in coordinates included in appendices to the regulatory text. USCG discharges of untreated sewage and non-clean graywater from vessels that are not equipped with a Type I or II MSD and without sufficient holding tank capacity will be allowed to continue, as per historic and current routine USCG operational practices in waters of both expansion areas beyond 3 nm from shore. As previously described, these discharges have continued since June 2015 due to NOAA's decision to temporarily delay the effective date of applying sanctuary discharge prohibitions with respect to USCG activities while NOAA assessed these activities, alternatives, and their potential environmental effects.

The existing GFNMS and CBNMS discharge prohibitions provide an exception for clean sewage discharge ("clean effluent") through a Type I or II MSD for: (1) A vessel less than 300 GRT, or (2) a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary (15 CFR 922.82(a)(2)(ii) and 922.112(a)(2)(i)(B)). They also provide an exception for clean graywater to be discharged from: (1) A vessel less than 300 GRT, or (2) a vessel 300 GRT or greater without sufficient holding tank capacity to hold graywater while within

<sup>6</sup> The designated coordinate points reflect the seaward boundary of "state waters", which are herein referred to as approximately 3 nm from the California shoreline. The term "state waters" within GFNMS generally refers to the portion of GFNMS from the California shoreline (including around the Farallon Islands) to approximately 3 nm from shore (California Harbors and Navigation Code 775.5[h]; United States of America v. State of California (135 S.Ct. 563 (Mem) (2014) (establishing the seaward boundary of state submerged lands; [http://www.slc.ca.gov/Info/Water\\_Boundaries.html](http://www.slc.ca.gov/Info/Water_Boundaries.html))). CBNMS is not located within state waters. While this seaward boundary is fixed, the phrase "approximately 3 nm from the shoreline" is used because the exact distance of the coordinate points from the shore may have some slight variation, due to continuing shoreline and sea level changes and different mapping/data conventions. The new regulatory text includes appendices with coordinates to identify the areas where the new discharge exceptions for certain USCG activities apply.

the Sanctuary (15 CFR 922.82(a)(2)(iv) and 922.112(a)(2)(i)(D)). According to the USCG, its vessels operating in GFNMS and CBNMS are without Type I or II MSDs onboard to treat sewage or sewage mixed with graywater, prior to discharge. Some classes of USCG vessels also have limited capacity to hold sewage and non-clean graywater until it may be discharged outside GFNMS and CBNMS, or pumped out at an onshore disposal facility. Thus, if the 2015 regulations had taken effect in the expansion areas of GFNMS and CBNMS, the vessels would not have been able to legally discharge in those portions of the sanctuaries in a manner consistent with these existing regulatory exceptions. The USCG discharge exceptions to the GFNMS and CBNMS prohibitions contained in this final rule are in addition to the existing exceptions noted earlier.

The areas within GFNMS and CBNMS in which these USCG vessel discharges are excepted from the sanctuaries' discharge prohibitions correspond to the waters seaward of approximately 3 nm from shore in the expansion areas of GFNMS and CBNMS (*i.e.*, the areas added when the sanctuaries expanded in 2015). The geographic coordinates of these areas are listed in an appendix to each sanctuary's regulations (appendix G of subpart H for GFNMS and appendix C of subpart K for CBNMS). Aside from the exceptions for USCG training-related discharges (see below), the USCG will be required to continue complying with all other existing prohibitions provided in 15 CFR 922.82 and 922.112 in both the pre-expansion areas and the expanded sanctuaries' boundaries and comply with the prohibitions for vessel discharges within the pre-expansion boundaries of the two sanctuaries.

NOAA has made some minor changes to the exceptions to the GFNMS and CBNMS regulatory prohibitions on discharges proposed on November 22, 2017 (82 FR 55529). In the proposed rule, NOAA considered exceptions for "a United States Coast Guard vessel that is without sufficient holding tank capacity and is without a Type I or II marine sanitation device, and that is operating within the designated area [ . . . ]" (proposed 15 CFR 922.82(a)(2)(vi) and proposed 15 CFR 922.112(a)(2)(i)(F)). NOAA removed the words "that is" in the regulatory text as they were not grammatically necessary. NOAA also clarified in the regulatory text that the "designated area" means the portion of the 2015 expansion area for GFNMS specified in Appendix G to Subpart H of Part 922 and the entire 2015 expansion area for CBNMS as

specified in Appendix C to Subpart K of Part 922. Though the coordinates for the boundaries of the designated area are presented in table form, adding the term "2015 expansion area" in the regulations makes it easier to understand. There are no changes to the regulatory prohibitions or exceptions applicable to the pre-expansion areas of the sanctuaries. Lastly, NOAA is also making a correction to a printing error that inadvertently omitted sub-paragraph 15 CFR 922.82(a)(3) and repeated sub-paragraph 15 CFR 922.82(a)(4) twice in the November 2017 proposed rule.<sup>7</sup> These minor changes to the rule text do not, in practice, expand the exception to cover any additional USCG vessels that currently operate in the expansion areas of GFNMS and CBNMS. Rather, the revision is a minor, technical, and nonsubstantive correction to reduce any confusion about the areas where this new exception would apply. The correction would not substantially change the proposed action, alternatives, or the impact conclusions in a way that would lead to new or different, reasonably foreseeable environmental impacts. For these reasons, NOAA has determined that supplementation of the EA and reissuance of the rule for public comment are not required at this time.

### B. Discharges of Ammunition and Pyrotechnic Materials During Training

NOAA amends the GFNMS and CBNMS regulations to allow USCG discharges of ammunition and pyrotechnic materials (including warning projectiles, flares, smoke floats and marine markers) during live ammunition and search and rescue training exercises only in the federal waters of the expansion areas of GFNMS and CBNMS, seaward of approximately 3.5 miles (3 nautical miles (nm)) from the shoreline. The geographic coordinates of this designated area, where training discharges are excepted from the sanctuary discharge prohibition within GFNMS and CBNMS, are the same as the coordinates for the designated area for USCG vessel discharges and listed in an appendix to each sanctuary's regulations.

Aside from the previously described exceptions for USCG vessel discharges of untreated sewage and graywater, the USCG will be required to continue complying with all other existing

<sup>7</sup> The printing error affected the **Federal Register** formatting of the proposed revised regulation, including duplicating the language of one of the sub-paragraphs, but the printing error did not affect the substance or effect of the proposed regulation as revised. No revisions were proposed within sub-paragraph 15 CFR 922.82(a)(3).

prohibitions—in 15 CFR 922.82 and 922.112 in both the pre-expansion areas and the expanded sanctuaries' boundaries, and will be required to continue complying with the prohibitions for vessel discharges within the pre-expansion boundaries of the two sanctuaries. There are no changes to the regulatory prohibitions or exceptions applicable to the pre-expansion areas of the sanctuaries.

This final rule focuses on regulatory exceptions to the GFNMS and CBNMS general discharge prohibitions for the specified USCG discharges. However, NOAA presents in the final EA a variety of alternatives for protecting sanctuary resources while addressing the USCG's request to allow for USCG's routine discharges of untreated sewage and graywater from vessels and training discharges in GFNMS and CBNMS, allowing the USCG to fulfill its missions, including missions of enforcing the NMSA and other resource protection laws, and comply with the sanctuaries' regulations. The final EA also lays out in more detail NOAA's consideration and analysis of factors pertinent to this final rule. These include the ability of USCG to complete its mission operations and, in the expansion areas of the sanctuaries, constraints in certain USCG vessel capabilities to treat and hold sewage and graywater; the role that USCG live fire and search and rescue trainings in the expansion areas of the sanctuaries play in USCG mission readiness; and the extent to which such USCG activities may be conducted, to the maximum extent feasible, in a manner consistent with the sanctuaries' primary objective of resource protection. This final rule was prepared following consideration of the alternatives and potential environmental impacts discussed in the EA; consideration of the extent to which each alternative would meet the purpose and need of allowing USCG to continue discharging certain materials in the expansion areas of GFNMS and CBNMS, while remaining consistent with sanctuary resource protection and other purposes and policies of the NMSA; and consideration of public comments received on the proposed rule and draft EA. The final regulatory amendments are the same as those NOAA presented for public comment in the proposed rule, with no changes other than a correction to a printing error that repeated one sub-paragraph twice.

### III. Response to Comments

NOAA received 13 comments on the proposed rule and draft environmental assessment during the November 22,

2017 to January 16, 2018 public review period, which are available online at <https://www.regulations.gov/docket?D=NOAA-NOS-2017-0140>. NOAA received comments via online submissions to the regulations.gov website and via oral testimony during a public hearing. Some of the comments contain combined input from multiple individuals on several topics (e.g., two individuals provided oral testimony at one public hearing, as indicated in the comment submitted for the hearing). NOAA grouped the comments into five topic areas with subtopics, which are summarized below, along with NOAA's responses. NOAA did not summarize or respond to three comments that were not relevant to the proposed rule and the draft environmental assessment, and therefore not relevant to this final rule.

#### *Support USCG Missions*

*Comment:* Expressed support for USCG missions and activities in GFNMS and CBNMS, particularly activities conducted as part of the cooperative relationship with national marine sanctuaries, including law enforcement, monitoring, interdiction, resource protection, marine navigation support, national security readiness, SAR, and emergency oil spill response.

*Response:* NOAA acknowledges and supports the USCG mission to enforce all applicable federal laws within this region and USCG actions supporting NOAA's activities to protect resources and facilitate public and private uses within national marine sanctuaries, compatible with resource protection. In addition, NOAA recognizes that the USCG is charged with conducting a number of other important missions that are not related to the sanctuaries' management.

#### *Better Justify Necessity of USCG Training Discharges*

*Comment:* NOAA should provide convincing information regarding the necessity to discharge firearms, flares and other training devices within the sanctuaries' expansion areas.

*Response:* The USCG indicated to NOAA that planning and conducting the training exercises involving discharges of ammunition and pyrotechnic materials in the GFNMS and CBNMS expansion areas is logistically and economically preferable to the USCG, allowing USCG personnel to be able to train within relatively short distances from local USCG stations in an environment similar to that of real-life missions. As an example, it would take the 87-foot Coastal Patrol boats based in San Francisco and farther north an average of two to three days to transit

to offshore training areas used by the USCG in Southern California, which would extend the duration of a day-long training exercise to almost a week. SAR/pyrotechnics training is an annual requirement for all boat crew members. The USCG states its maritime enforcement, defense readiness, and SAR capabilities are enhanced by conducting live fire and SAR training exercises in the areas in which their personnel normally operate. The USCG, prior to expansion of GFNMS and CBNMS in 2015 and until the present, has had the ability to conduct training-related discharges in the areas into which the two sanctuaries expanded. Due to the USCG's need to train in the areas in which they would have to conduct actual operations along with other logistical, budgetary, and operational challenges, the USCG has stated that conducting all live fire and SAR trainings in other areas outside the expanded portions of the sanctuaries would affect its ability to maintain mission readiness of its personnel.

#### *Oppose Regulatory Exceptions*

*Comment:* NOAA should not exempt the discharge of harmful pollutants into national marine sanctuaries. A regulatory exemption has the potential to set an undesirable precedent for future national marine sanctuary management decisions.

*Response:* NOAA's action is specific to the expansion areas of GFNMS and CBNMS, and focuses on USCG discharges that have historically been taking place in those areas. For any proposed action, including one involving a proposed sanctuary expansion or other type of rulemaking, NOAA evaluates the purpose and need, according to the particular geography, marine resources, environmental conditions, human uses, anticipated effects and other factors, on a case-by-case basis. In selecting a final action, NOAA further considers and evaluates, on a case-by-case basis, the proposed action and alternatives in light of public comments received. While previous agency actions may serve to inform future decision-making on similar subjects, they do not predetermine future actions NOAA may make.

#### *Support for No Action Alternatives*

*Comment:* NOAA should adopt the No Action alternatives, Sewage/Graywater Alternative 3 and Training Alternative 3, which would prohibit untreated sewage, graywater, projectiles, flares, etc. resulting from USCG operations in national marine sanctuaries.

*Response:* Under the No Action alternatives (Sewage/Graywater Alternative 3 and Training Alternative 3), NOAA would take no further action with respect to USCG discharges, thereby allowing the discharge prohibitions to go into effect for USCG activities. Therefore, adopting the No Action alternatives would result in the USCG no longer being allowed to lawfully discharge in the expanded portions of the sanctuaries. This would negatively affect the USCG's ability to meet its mission requirements, including missions to protect sanctuaries' resources and enforce sanctuaries' regulations, and would negatively affect NOAA's ability to meet the purpose and need for the proposed action. Therefore, NOAA continues to find compelling reasons to adopt the action alternatives to allow the discharges.

#### *Support for Permits for Selection as Final Action*

*Comment:* NOAA should, in conjunction with the No Action alternatives, issue permits to the USCG to allow USCG discharges to continue in order to maintain USCG operations. A permitting approach would not set a precedent; it would allow NOAA to assess conditions periodically and allow for future adaptive management, by inclusion of special terms and conditions in permits to protect the sanctuaries' resources and wildlife. Suggestions for various permitting conditions include issuing multi-year permits, setting specific boundaries for discharges, requiring best management practices and reporting the discharges to NOAA. Issuing permits could be an interim measure until advanced treatment technologies could be installed on USCG vessels.

*Response:* During interagency consultation on the final rule for the boundary expansion for the sanctuaries, USCG requested an exception to regulations as opposed to a permit and indicated to NOAA it does not intend to submit a national marine sanctuary permit application regarding this matter. NOAA cannot issue a permit without first receiving a national marine sanctuary permit application. Since NOAA and USCG are federal agency partners, and USCG supports sanctuary missions, NOAA elected to consider, and propose for public review and comment, the option of creating regulatory exceptions. In the draft EA, NOAA included a discussion of the possibility of issuing permits for USCG discharges under the section for alternatives considered and eliminated from further analysis. As further

discussed in the EA, because a permit alternative may be more disruptive or burdensome to USCG mission operations of protecting sanctuary resources and enforcing sanctuary regulations than would regulatory exceptions, this alternative would be less suited to meeting the purpose and need of the proposed action. Moreover, the impacts on the environment and human uses of discharges allowed by a permit would likely be similar, and in some cases identical, to those that would be allowed by the regulatory exceptions proposed in Sewage/Graywater Alternatives 1 and 2 and Training Alternatives 1 and 2. In the final EA, to clarify that the issuance of national marine permits is not an action NOAA would intend to take as part of the No Action alternatives, NOAA revised the descriptions of the No Action alternatives.

#### *Effects of USCG Untreated Vessel Sewage and Non-Clean Vessel Graywater Discharges*

*Comment:* NOAA should not allow untreated sewage and graywater discharges because they pose risks to or may cause harmful impacts to the local marine ecosystem, including the death of marine species found in GFNMS and CBNMS. Raw sewage in the ocean may transmit dangerous pathogens and intensify future harmful algal blooms and may cause or contribute to eutrophication, localized ocean acidification, or hypoxic or anoxic conditions. Raw sewage contains high levels of harmful microbes, which can be transferred to marine mammals and cause disease or injury. Sewage dumping is known to increase the occurrence and intensity of harmful algal blooms that regularly occur off of the California coast, including within the sanctuaries, which can cause a variety of impacts to or death of marine species.

*Response:* NOAA shares concerns with discharge of untreated sewage and non-clean graywater into national marine sanctuary waters. However, as described in the EA, NOAA expects the infrequent, minor and limited amount of untreated sewage and non-clean graywater discharges from the USCG vessels to quickly disperse and thereby reduce or eliminate any adverse effects on the marine environment. For the reasons explained in the EA, NOAA's preferred alternative for the sewage and graywater discharges is not likely to cause significant adverse impacts on existing water quality conditions in offshore waters, and thus no significant adverse impact beyond the status quo in these portions of the sanctuaries.

Additionally, the USCG vessel discharges are already occurring and have been taking place historically, with no observed adverse impacts on environmental conditions. NOAA emphasizes that this analysis is specific to the action evaluated here—regulatory exceptions for certain USCG vessel discharges—and does not predetermine or control any evaluation of potential impacts of other vessel discharges within the sanctuaries.

#### *Effects of USCG Training Discharges of Ammunition and Pyrotechnic Materials*

*Comment:* NOAA should not allow the USCG to discharge materials incidental to training activities within GFNMS and CBNMS that may poison wildlife or harm human health. For example, various ammunition components may contain dangerous metals, such as arsenic, cadmium, lead, or mercury. In many states, the use of lead products during hunting and fishing has been banned to preserve the health of fish and wildlife. NOAA should work with local communities of biologists to try to avoid or lessen conflict with animal migrations, such as those of whales and seabirds.

*Response:* NOAA does not have any evidence to indicate the USCG live ammunition and SAR training-related discharges in the GFNMS and CBNMS expansion areas have been resulting or in the future would result in any significant adverse impacts to water quality, wildlife or human health. Two of the types of ammunition used during training the USCG characterized as copper-jacketed and the third was uncharacterized by the USCG. The USCG has not indicated it plans to discharge any toxic or hazardous materials or substances in quantities or locations that would be expected to cause significant adverse effects in living resource or humans. Under this final rule, the GFNMS and CBNMS regulations exclude sensitive areas for both marine mammals and seabirds typically found along shorelines, beaches, and rocky outcroppings in nearshore waters. While trace amounts of chemical constituents discharged from weapons and pyrotechnic devices mostly burn up above the surface of the water, some constituents may fall into the water. In general, in the areas within GFNMS and CBNMS in which training discharges are allowed under this final rule, the dynamic oceanic conditions would be expected to disperse these trace amounts of any residual chemical constituents that enter the water as they sink through the water column. There is some risk of fish and wildlife ingestion of the training discharges materials, but

the risk is low due to the very infrequent occurrence of these exercises and the rapid sinking and dispersal of residual components of the discharges. Some residual constituents could sink and persist in marine sediments. Training on a given day normally does not take more than 12 hours, including transit times, and is completed in the same day. The USCG generally conducts live fire and SAR trainings 3–5 days per year (up to 6–10 during a worst case scenario). More information on USCG training activities can be found in the EA. NOAA would not expect significant adverse effects to benthic habitat to occur given the small number of training days and limited number of discharges.

*Comment:* NOAA should not allow USCG-training related discharges in GFNMS and CBNMS in areas that could interfere with recreational and commercial fishing vessels or conflict with human activities near harbor mouths (such as in Bodega Bay or Point Arena). NOAA should work with local communities of biologists and fishermen to try to avoid or lessen conflicts with human activities that may occur as a result of the training-related discharges, and should consider limiting the size and location of the training area.

*Response:* NOAA found no documentation of significant adverse impacts on human uses from past USCG discharges in the GFNMS and CBNMS expansion areas. Under the final rule, the GFNMS and CBNMS discharge prohibitions apply to USCG discharges from the shoreline out to about 3.5 miles (3 nm) in the expanded portions of the two sanctuaries. Thus, the USCG will not be making any discharges adjacent to harbor mouths or by shoreline areas where humans might gather mussels or other resources known to bioaccumulate hazardous or toxic substances. Furthermore, NOAA will continue to actively manage both national marine sanctuaries, including working closely with all the users of the sanctuaries. If concerns arise in the future about interference between USCG discharges and other users, NOAA will discuss those with the USCG and may complete further reviews as needed.

#### *Endangered Species Act (ESA) Consultation on Effects of Discharges*

*Comment:* Because the proposed exceptions for untreated sewage, graywater and other toxic materials may result in the take of species listed under the ESA, NOAA's ESA section 7 consultation must ensure that granting exceptions for those discharges do not

jeopardize the continued existence of any listed species.

*Response:* Upon release of the draft environmental assessment and proposed rule, NOAA informally consulted with NMFS and the USFWS on the proposed action, pursuant to section 7 of the ESA. NMFS responded to NOAA that it concurred with NOAA's determination that the proposed action may affect, but is not likely to adversely affect species and critical habitat. As of June 5, 2018, the USFWS did not provide a response to NOAA's consultation request, at which point NOAA presumed concurrence for the reasons provided in the *Classification* section below. Like NOAA, the USCG is required to follow all relevant federal and state laws, including compliance with environmental statutes, for USCG activities that may affect the environment. The USCG is responsible for complying with ESA section 7 consultation requirements for the effects of the actual USCG activities on threatened and endangered species, as the USCG would be the federal agency performing these activities.

#### *Retrofit Vessels*

*Comment:* NOAA did not fully consider, and dismissed as infeasible, the alternative of installation of MSDs and graywater treatment facilities on all USCG vessels. The USCG has not explained why it cannot retrofit its vessels and has not explained the costs of doing so. The USCG should be able to make improvements so its vessels do not discharge untreated sewage, by installing Type I or II MSDs and larger holding tanks for untreated sewage and graywater or find other solutions. Retrofitting vessels would be the best solution and would eliminate the need to discharge untreated sewage and graywater at sea. NOAA should encourage the USCG to retrofit vessels over time.

*Response:* NOAA has encouraged the USCG to consider retrofitting its vessels with equipment to eliminate the need for discharging untreated sewage and non-clean graywater. However, implementation of this alternative would be beyond the scope of NOAA's authority and jurisdiction under current and reasonably foreseeable circumstances. Moreover, as discussed in the EA section on alternatives considered but eliminated from further analysis, analyzing this alternative would be speculative in the absence of objective information on the status of USCG plans and funding for future vessel designs and acquisition to replace its current fleet of vessels used in GFNMS and CBNMS, or on the

feasibility of implementing this alternative 20 years in the future. Moreover, the information needed to conduct a full analysis of this potential alternative is not relevant to a reasonably foreseeable significant adverse impact, as the EA concludes that the effects of the proposed action and alternatives would be less than significant, and is not essential to a reasoned choice among alternatives.

#### *New Vessels*

*Comment:* NOAA should encourage the USCG to include sewage and graywater treatment or larger holding tanks in any new vessels expected to operate in these marine sanctuaries, rather than permanently allowing discharges of pollutants into sensitive marine environments. Improved technologies and advanced treatment on modern vessels should become available to the USCG.

*Response:* NOAA has encouraged the USCG to consider purchasing new vessels outfitted with Type I or II MSDs (as pertinent to vessel sizes), larger holding tanks or other equipment to prevent discharge of untreated sewage and non-clean graywater. However, the purpose and need of the proposed action reflects the need for existing USCG vessels with Type III MSDs currently to make untreated sewage and non-clean graywater discharges in the expansion areas of GFNMS and CBNMS. NOAA's discussions with USCG on the lifecycles of their vessels indicate that the existing vessels typically operating in GFNMS and CBNMS have at least another 20 years of lifespan before new vessels would replace them. NOAA previously considered having the USCG purchase new vessels as an alternative, but dismissed it from further consideration, because analysis of this alternative would be speculative and implementation of this alternative would also be beyond the scope of NOAA's authority and jurisdiction under current and reasonably foreseeable circumstances.

#### *Inadequacy of Environmental Impact Analysis*

*Comment:* The environmental assessment is inadequate. NOAA should develop a full environmental impact statement (EIS) for this proposed action.

*Response:* After reviewing the available information on the proposed action, the information provided during the public comment period, and the results of consultations as required under applicable natural and cultural resource statutes, NOAA determined that no significant impacts to resources or the quality of the human



environment are expected to result from the final rule. Accordingly, under NEPA (43 U.S.C. 4321 *et seq.*) an environmental impact statement is not required to analyze the potential impacts of this action.

#### *Maintain High Conservation Standards*

*Comment:* NOAA should maintain the high conservation standards in the sanctuaries' expansion areas that have been in place in the original sanctuary areas [prior to expansion]. The present discharge prohibitions have proven critical to maintaining and improving water quality and living marine resources. The proposed exceptions for USCG discharges of raw sewage, dirty graywater and other toxic materials such as ammunition go against the primary policies of the NMSA (16 U.S.C. 1431(b)(3, 4)), the history of management of sanctuaries, sound stewardship of ecological resources, the rules designating the sanctuaries, and the sanctuaries' regulations that prohibit discharging untreated vessel waste. The final rule designating GFNMS (then the Point Reyes-Farallon Islands National Marine Sanctuary; 46 FR 7936) listed "discharges incidental to vessel use" as one of the chief threats facing the sanctuary; the proposed rule for designating CBNMS (52 FR 32563) determined that limiting human-caused discharges of "any material or substance" was a primary conservation management goal. Also, the 2008 GFNMS and CBNMS management plans cite the need to continue efforts to control dumping and other discharges.

*Response:* In evaluating the proposed and final action, NOAA considered the purpose and need for the action, the area potentially affected, the purposes and policies of the NMSA, the GFNMS and CBNMS regulations, and the management plans (from 2008 and 2014), among other factors. The action supports the purposes and policies of the NMSA, particularly: "(2) to provide for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing authorities; . . . (6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of these marine areas not prohibited pursuant to other authorities; . . . [and] (7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies . . . ." (16 U.S.C. 1431(b)). In addition, NOAA's regulatory and management framework for GFNMS and CBNMS do contemplate limited allowances of discharges as

compatible with the purposes and policies of the NMSA: The existing regulatory discharge prohibitions in GFNMS and CBNMS contain limited exceptions for certain discharges, including some discharges incidental to vessel use. (15 CFR 922.82(a)(2), 922.112(a)(2)(i)). In the EA and analysis for this rule, NOAA has determined that water quality in the GFNMS and CBNMS expansion areas is relatively good, and that the action is not expected to result in significant adverse impacts on water quality or on living marine resources. Further, the number of USCG vessels that will discharge limited amounts of untreated sewage and non-clean graywater is small and training-related discharges of limited quantities of ammunition and pyrotechnic materials will occur only a few days per year (estimated to average 3–5 days, or a maximum of 6–10 days should a serious national security event happen and the USCG needed to expand its normal training program to address it). Therefore, NOAA finds this action appropriate under the NMSA, because it is compatible with the primary objective of resource protection of the sanctuaries and would facilitate the management and enforcement actions of an important federal partner within the GFNMS and CBNMS expansion areas. For additional information on the analyses and alternatives considered and NOAA's rationale for finalizing this action, please see the preamble of the final rule and the final EA.

#### *Other Alternatives Not Fully Considered*

*Comment:* NOAA did not fully consider or dismissed any alternatives that would eliminate the need for allowing the USCG to dump untreated pollutants and therefore the need for regulatory exception.

*Response:* NOAA described the alternatives it considered to implement the action. For each alternative eliminated from further consideration, NOAA provided the reasons why it did not consider further consideration to be appropriate or feasible, or within the scope of NOAA's authority and jurisdiction under current and reasonably foreseeable circumstances.

*Comment:* A possible alternative NOAA should consider is installing pump-out stations at key locations along the coast, a recommended action in the 2008 GFNMS and CBNMS management plans. NOAA should consider requiring the USCG to use the pump-out stations at Bodega Bay, Eureka, and San Francisco Bay. NOAA should foster the development, accessibility, and use of coastal pump-out stations.

*Response:* The four classes of USCG vessels with Type III MSDs operating in the GFNMS and CBNMS expansion areas already use non-public USCG pump-out stations at Bodega Bay and San Francisco Bay, and a non-public facility in Eureka. NOAA understands that these USCG vessels occasionally reach holding tank capacities while conducting operations, and it could be detrimental to mission objectives for USCG personnel to break off their missions to travel outside the sanctuaries' boundaries to discharge (where permitted) or to return to discharge at the shoreside facilities. The final rule is intended to address discharges from USCG vessels without sufficient holding tank capacities, Type I MSDs or Type II MSDs. NOAA did not consider an alternative of immediate installation of additional pump-out stations along the coast adjacent to the GFNMS and CBNMS expansion areas and then requiring USCG vessels to pump out at such stations because implementation of such actions is beyond the scope of NOAA's authority. Planning for, installation and continued operation of new shoreside pump-out facilities in counties adjacent to the expansion areas that would be able to accommodate USCG vessels 87 to 418 feet in length would be dependent upon the availability of suitable geographic locations and subject to the approval of state and relevant local harbor management entities.

*Comment:* A possible alternative NOAA should consider is restricting the discharges to waters a safe distance away from the sanctuaries and state waters. NOAA should not allow the discharges in state waters, especially in waters used for commercial and recreational purposes, such as Tomales Bay.

*Response:* The action does not allow discharges in state waters. NOAA considered and evaluated not allowing USCG to discharge in all waters of the expanded portions of GFNMS and CBNMS by analyzing Sewage/Graywater Alternative 3 (No Action), and rejected this alternative as not feasible for allowing the USCG to meet its mission requirements in the expansion areas, and thus not feasible for meeting the purpose and need of the proposed action.

#### *Public Process*

*Comment:* NOAA's amendment of the regulations to allow the USCG to discharge in the expansion areas would undermine the strength and purpose of the public process and adoption of the regulations in the 2015 final rule. This proposed regulation could invite future



legal, legislative or political challenges to the protections of the sanctuaries.

*Response:* NOAA has properly followed the relevant procedures for its action and for its final rule to expand GFNMS and CBNMS, including obtaining comments from interested parties during public comment periods as part of scoping and after release of the draft environmental analysis documents and proposed rules. NOAA determines proposed actions based on analyses of available information and on the factors discussed in the relevant environmental analysis documents, in conjunction with public comments received. Public support or opposition may help guide important public policies or other decisions. Future challenges to management and protection of GFNMS and CBNMS are not currently known and therefore would be speculative to analyze.

#### *Changing Regulations*

*Comment:* Amending the approved regulations would lock in unique exceptions for the USCG that could not easily be modified, as evidenced by the difficulty and lengthy time in considering the current proposals.

*Response:* NOAA acknowledges that the process to amend federal regulations may be lengthy. However, if in the future, the need for the USCG to continue making the discharges in the GFNMS and CBNMS expansion areas should substantively decrease or cease, causing any part of the regulatory exceptions to become obsolete, NOAA could consider initiating a subsequent rulemaking process to alter the regulations.

#### *Consideration of Sanctuary Advisory Councils' Advice*

*Comment:* NOAA should give great consideration to the fact that both sanctuary advisory councils have unanimously passed resolutions opposing any changes in the regulations, supporting Sewage/Graywater Alternative 3 and Training Alternative 3.

*Response:* NOAA appreciates the advice provided by the two sanctuary advisory councils in this instance and on an ongoing basis. While advisory council recommendations are a valuable source of input from stakeholders and experts on sanctuary management issues, they are not determinative of agency action: Rather, the agency must propose and evaluate actions and alternatives under the established public regulatory and environmental review process. NOAA has carefully considered the input of both sanctuary advisory councils, along with the other

comments received, information presented in the environmental assessment and the results of consultations with other agencies and public comment. Based on the stated purpose and need for the action and the environmental analysis conducted, as well as the fact that the USCG is one of NOAA's partners in sanctuary resource protection, requested a regulatory exception during interagency consultation, and has not applied for a national marine sanctuary permit, NOAA continues to find compelling reasons to implement the final rule.

#### *USCG Enforcement of Discharge Regulations and Uniform Application of Discharge Prohibitions*

*Comment:* The USCG is getting a pass (or "bye") for discharges that others, including fishermen, are not allowed to make in the sanctuaries. NOAA should fairly apply regulations and procedures to government organizations and the public alike. Moreover, the USCG is tasked with enforcing the sanctuaries' discharge regulations. Any regulation allowing one group (e.g., the USCG) to undertake otherwise prohibited discharges of pollutants anywhere in GFNMS and CBNMS weakens the protections established under the NMSA.

*Response:* NOAA acknowledges that the USCG, as part of its portfolio of missions, has a law enforcement mission and enforcing the sanctuaries' regulations is one of the USCG's responsibilities. NOAA has detailed the reasons for the USCG's need to continue making the discharges in the GFNMS and CBNMS expansion areas, as it has done prior to the expansion of the sanctuaries in 2015. NOAA has described the purpose for this action and how the USCG assists NOAA with management of the sanctuaries, which is consistent with the purposes and policies of the NMSA, particularly: "(2) to provide for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing authorities; . . . (6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of these marine areas not prohibited pursuant to other authorities; . . . [and] (7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies. . . ." As described in detail in the EA, NOAA expects that the minor and limited volumes of USCG discharges will not cause any significant adverse impacts on sanctuary resources

or human uses. The number of other vessels that operate in the national marine sanctuaries is extremely large compared to the number of vessels used for USCG missions, resulting in the potential for cumulative vessel discharge from those vessels vastly greater than that from the USCG. Additionally, NOAA finds that the functions and activities the USCG performs to assist management of GFNMS and CBNMS are beneficial to NOAA, and they could not be easily replaced, if at all, if the USCG had to curtail or cease them in the expanded portions of the sanctuaries.

## **IV. Classification**

### *A. National Environmental Policy Act*

NOAA has prepared a final environmental assessment (EA) to evaluate the potential impacts on the human environment of this rulemaking, including the preferred action analyzed in the final EA, as well as alternative actions. No significant adverse impacts to resources and the human environment are expected, and accordingly, under NEPA (43 U.S.C. 4321 *et seq.*) an environmental assessment is the appropriate document to analyze the potential impacts of this action. NOAA finalized its NEPA analysis and findings and prepared a final EA document and Finding of No significant Impact. Copies of the final EA are available at the address and website listed in the **ADDRESSES** section of this final rule.

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

This final rule has been determined to be not significant within the meaning of Executive Order 12866.

### *C. Executive Order 13771: Regulatory Reform*

This final rule is not an Executive Order 13771 regulatory action because this final rule is not significant under Executive Order 12866.

### *D. Executive Order 13132: Federalism Assessment*

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

### *E. Regulatory Flexibility Act*

The purpose of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) is to fit regulatory requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation. The RFA requires that agencies

determine, to the extent feasible, the rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their ultimate choice of regulatory approach. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that the final rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that the changes are specifically targeted to the activities of the USCG in CBNMS and GFNMS, and will not have an economic effect on any small businesses. Also, this final rule will not substantively alter the rights, responsibilities, or legal obligations pertaining to vessel discharges for the regulated community. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

#### F. Paperwork Reduction Act

This final rule does not create any new information collection requirement, nor does it revise the information collection requirement that was approved by the Office of Management and Budget (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980 (PRA; 44 U.S.C. 3501 *et seq.*). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### G. National Historic Preservation Act

In fulfilling its responsibility under the National Historic Preservation Act (NHPA; 54 U.S.C. 300101 *et seq.*), and NEPA, NOAA determined the proposed action was not the type of activity that would affect historic properties and communicated to the California State Historic Preservation Officer (SHPO) upon publication of the proposed rule that it expected no adverse effect to historic properties resulting from this undertaking. On December 20, 2017, the California SHPO responded with no objection to NOAA's determination, thereby completing NHPA requirements. No individuals or organizations notified NOAA after publication of the proposed rule that they wished to participate as a consulting party.

Satisfying consultation requirements for the effects of the actual USCG activities, including vessel discharges of untreated sewage and non-clean graywater and training-related discharges, on historic properties remain the responsibility of USCG, as USCG will be the federal agency performing these activities.

#### H. Endangered Species Act

The Endangered Species Act (ESA) of 1973 as amended (16 U.S.C. 1531, *et seq.*), provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Federal agencies have an affirmative mandate to conserve ESA-listed species. Section 7(a)(2) of the ESA requires federal agencies to, in consultation with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of designated critical habitat. NOAA's ONMS initiated informal consultation under the ESA with NOAA's NMFS Office of Protected Resources (OPR) and the United States Fish and Wildlife Service (USFWS) upon publication of the proposed rule and draft EA. The ONMS consultations focused on potential adverse effects to threatened and endangered species by providing regulatory exceptions to its discharge prohibitions within waters of the GFNMS and CBNMS expansion areas seaward of approximately 3 nm from the shore. ONMS provided the proposed rule, the draft environmental assessment, a biological evaluation, and additional information to staff of NMFS and USFWS. NMFS responded that it concurred with ONMS's determination of no adverse impacts to species listed as threatened or endangered and critical habitat designated under the ESA from the proposed action. The USFWS did not provide a response to NOAA's consultation request dated November 22, 2017. Subsequently, NOAA submitted a follow-up request to USFWS on May 22, 2018, stating that if NOAA did not receive a response by June 5, 2018, NOAA would assume USFWS concurrence with the determination that the proposed action may affect but is not likely to adversely affect listed species. No response was received by June 5, 2018, at which point NOAA presumed USFWS concurrence.

Satisfying consultation requirements for the effects of the actual USCG vessel discharges of untreated sewage and non-clean graywater, and training-related discharges, on threatened and

endangered species remain the responsibility of USCG, as USCG will be the lead agency performing these activities.

#### I. Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et seq.*), as amended, prohibits the "take"<sup>8</sup> of marine mammals in U.S. waters. Section 101(a)(5)(A–D) of the MMPA provides a mechanism for allowing, upon request, the "incidental," but not intentional, taking, of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. ONMS requested technical assistance from NMFS on October 16, 2017, with ONMS's preliminary assessment that this action was not likely to result in take of marine mammals. ONMS' request for technical assistance focused on the effects on marine mammals of providing regulatory exceptions to its discharge prohibitions in CBNMS and GFNMS beyond 3 nm from the shore in the GFNMS and CBNMS expansion areas. On October 24, 2017, NMFS deemed that the proposed action would not likely result in the take of marine mammals, thereby completing MMPA requirements for this action. Satisfying consultation requirements for the effects on marine mammals of the actual USCG activities, including vessel discharges of untreated sewage and non-clean graywater and training-related discharges, remain the responsibility of USCG, as USCG will be the federal agency performing these activities.

#### J. Coastal Zone Management Act (CZMA)

The principal objective of the CZMA is to encourage and assist states in developing coastal management programs, to coordinate state activities, and to preserve, protect, develop and, where possible, to restore or enhance the resources of the nation's coastal zone. Section 307(c) of the CZMA requires federal activity affecting the land or water uses or natural resources of a state's coastal zone to be consistent with that state's approved coastal

<sup>8</sup> The MMPA defines take as: "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal." Harassment means any act of pursuit, torment, or annoyance which, (1) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B Harassment).

management program, to the maximum extent practicable. NOAA provided to the California Coastal Commission copies of the proposed rule and the draft EA upon publication, and a statement that NOAA's proposed action, providing regulatory exceptions to its discharge prohibitions in CBNMS and GFNMS beyond 3 nm from the shoreline in the GFNMS and CBNMS expansion areas, would not affect the land or water uses of the coastal zone beyond what is currently occurring under the status quo, and did not require a consistency determination. On December 8, 2017, the California Coastal Commission staff agreed with NOAA's negative determination and concluded that this action would not constitute a change in existing conditions and would not adversely affect coastal zone resources, thereby completing the CZMA requirements.

Satisfying consultation requirements for the effects on land or water uses or natural resources of California's coastal zone of the actual USCG activities, including vessel discharges of untreated sewage and non-clean graywater and training-related discharges, remain the responsibility of the USCG, as the USCG will be the federal agency performing these activities.

*K. Magnuson-Stevens Fishery Conservation and Management Act (MSA)*

In 1976, Congress passed the MSA (16 U.S.C. 1801, *et seq.*). The MSA fosters long-term biological and economic sustainability of the nation's marine fisheries out to 200 nautical miles from shore. Key objectives of the MSA are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood. The MSA promotes domestic commercial and recreational fishing under sound conservation and management principles and provides for the preparation and implementation, in accordance with national standards, of fishery management plans (FMPs). Essential fish habitat (EFH [50 CFR 600.10]) describes all waters and substrate necessary for fish for spawning, breeding, feeding, or growth to maturity. Section 305(b) of the MSA (16 U.S.C. 1855(b)) outlines the consultation requirements for EFH for federal agencies.

NOAA's ONMS initiated consultation with NMFS on EFH concurrently with the informal consultation with NMFS under the ESA upon publication of the draft environmental assessment and proposed rule. For the EFH consultations ONMS provided NMFS

with a list of species assemblages for which EFH has been designated, the proposed rule, and the draft environmental assessment. NOAA's consultation focused on the effects on EFH of providing regulatory exceptions to its discharge prohibitions in CBNMS and GFNMS beyond 3 nm from the shoreline in the GFNMS and CBNMS expansion areas.

ONMS determined that the proposed action would not adversely affect EFH, therefore no EFH consultation was required. The ONMS determination of "not adversely affect EFH" completes the EFH consultation.

Satisfying consultation requirements for the effects of the actual USCG activities, including vessel discharges of untreated sewage and non-clean graywater training-related discharges, on EFH remain the responsibility of the USCG, as the USCG would be the federal agency performing these activities.

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

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

**Paul M. Scholz,**

*Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, NOAA is amending part 922, title 15 of the Code of Federal Regulations as follows:

**PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS**

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

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

**Subpart H—Greater Farallones National Marine Sanctuary**

■ 2. Amend § 922.82 by revising paragraphs (a)(2)(iv) and (v), adding paragraph (a)(2)(vi), and revising paragraph (a)(4) to read as follows:

**§ 922.82 Prohibited or otherwise regulated activities.**

(a) \* \* \*

(2) \* \* \*

(iv) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(v) Vessel engine or generator exhaust; or

(vi) For a United States Coast Guard vessel without sufficient holding tank capacity and without a Type I or II marine sanitation device, and operating within the designated area [2015 expansion area] defined in appendix G of this subpart, sewage and non-clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined in appendix G of this subpart.

\* \* \* \* \*

(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the material or other matter excepted in paragraphs (a)(2)(i) through (vi) and (a)(3) of this section.

\* \* \* \* \*

■ 3. Add appendix G to subpart H to read as follows:

**Appendix G to Subpart H of Part 922— Designated Area for Certain United States Coast Guard Discharges**

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Greater Farallones National Marine Sanctuary area [2015 expansion area] where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1 identified in the coordinate table in this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc, and continues from Point 2 to Point 3 in a straight line arc, and from Point 3 to Point 4 in a straight line arc. From Point 4 the boundary extends east and north along a straight line arc towards Point 5 until it intersects the fixed offshore boundary between the United States and California (approximately 3 NM seaward of the coast as defined in *United States vs. California*, 135 S. Ct. 563 (2014)). The boundary then extends northward following the fixed offshore boundary between the United States and California until it intersects the line segment formed between Point 6 and Point 7. From this intersection, the boundary extends west along the northern boundary of Greater Farallones National Marine Sanctuary to Point 7 where it ends.

Point No.	Latitude	Longitude
1 .....	39.00000	- 124.33350
2 .....	38.29989	- 123.99988
3 .....	38.29989	- 123.20005
4 .....	38.26390	- 123.18138

Point No.	Latitude	Longitude
5 <sup>1</sup> .....	38.29896	- 123.05989
6 <sup>1</sup> .....	39.00000	- 123.75777
7 .....	39.00000	- 124.33350

<sup>1</sup> These coordinates are not a part of the boundary for the Designated Area for Certain United States Coast Guard Discharges. These coordinates are reference points used to draw line segments that intersect with the fixed off-shore boundary between the United States and California.

**Subpart K—Cordell Bank National Marine Sanctuary**

■ 4. Amend § 922.112 by revising paragraphs (a)(2)(i)(D) and (E) and adding paragraph (a)(2)(i)(F) to read as follows:

**§ 922.112 Prohibited or otherwise regulated activities.**

- (a) \* \* \*
- (2)(i) \* \* \*

(D) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust; or

(F) For a United States Coast Guard vessel without sufficient holding tank capacity and without a Type I or II marine sanitation device, and operating within the designated area [2015 expansion area] defined in appendix C of this subpart, sewage and non-clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined in appendix C of this subpart.

\* \* \* \* \*

■ 5. Add appendix C to subpart K to read as follows:

**Appendix C to Subpart K of Part 922—Designated Area for Certain United States Coast Guard Discharges**

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Cordell Bank National Marine Sanctuary area [2015 expansion area] where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1, identified in the coordinate table in this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc and continues in numerical order through each subsequent point to Point 38. From Point 38

the boundary extends west along the northern boundary of Cordell Bank National Marine Sanctuary to Point 39 where it ends.

Point No.	Latitude	Longitude
1 .....	38.29989	- 123.99988
2 .....	37.76687	- 123.75143
3 .....	37.76716	- 123.42758
4 .....	37.77033	- 123.43466
5 .....	37.78109	- 123.44694
6 .....	37.78383	- 123.45466
7 .....	37.79487	- 123.46721
8 .....	37.80094	- 123.47313
9 .....	37.81026	- 123.46897
10 .....	37.81365	- 123.47906
11 .....	37.82296	- 123.49280
12 .....	37.84988	- 123.51749
13 .....	37.86189	- 123.52197
14 .....	37.87637	- 123.52192
15 .....	37.88541	- 123.52967
16 .....	37.90725	- 123.53937
17 .....	37.92288	- 123.54360
18 .....	37.93858	- 123.54701
19 .....	37.94901	- 123.54777
20 .....	37.95528	- 123.56199
21 .....	37.96683	- 123.57859
22 .....	37.97761	- 123.58746
23 .....	37.98678	- 123.59988
24 .....	37.99847	- 123.61331
25 .....	38.01366	- 123.62494
26 .....	38.01987	- 123.62450
27 .....	38.02286	- 123.61531
28 .....	38.02419	- 123.59864
29 .....	38.03409	- 123.59904
30 .....	38.04614	- 123.60611
31 .....	38.05308	- 123.60549
32 .....	38.06188	- 123.61546
33 .....	38.07451	- 123.62162
34 .....	38.08289	- 123.62065
35 .....	38.11256	- 123.63344
36 .....	38.13219	- 123.64265
37 .....	38.26390	- 123.18138
38 .....	38.29989	- 123.20005
39 .....	38.29989	- 123.99988

[FR Doc. 2018–24200 Filed 11–8–18; 8:45 am]

BILLING CODE 3510–NK–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 100, 117, 147, and 165**

[USCG–2018–0983]

**2018 Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of expired temporary rules issued.

**SUMMARY:** This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal**

**Register.** This document lists temporary safety zones, security zones, special local regulations, drawbridge operation regulations and regulated navigation areas, all of limited duration and for which timely publication in the **Federal Register** was not possible.

**DATES:** This document lists temporary Coast Guard rules that became effective, primarily between July 2018 to September 2018, unless otherwise indicated, and were terminated before they could be published in the **Federal Register.**

**ADDRESSES:** Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this document contact Yeoman First Class David Hager, Office of Regulations and Administrative Law, telephone (202) 372–3862.

**SUPPLEMENTARY INFORMATION:** Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. *Regulated Navigation Areas* are water areas within a defined boundary for which regulations for vessels navigating within the area have been established by the regional Coast Guard District Commander.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, Coast Guard patrol vessels provide actual notification when enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the end of the effective period, mariners