

~~approximately 6,094 square statute miles (4,602 square nautical miles) of ocean and coastal waters, and the submerged lands thereunder, extending an average distance of 30 statute miles (26 nmi) from shore. Supporting some of the world's most diverse marine ecosystems, it is home to numerous mammals, seabirds, fishes, invertebrates, sea turtles and plants in a remarkably productive coastal environment.~~

II. Revisions to Sanctuary Terms of Designation

Section 304(a)(4) of the NMSA (16 U.S.C. 1434(a)(4)) requires that, in designating national marine sanctuaries, NOAA specify the sanctuary's "terms of designation." The NMSA requires that each sanctuary's terms of designation include:

1. The geographic area proposed to be included within the sanctuary;
2. The characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and
3. The types of activities that will be subject to regulation by the Secretary of Commerce to protect those characteristics.

The NMSA further requires that terms of designation be modified only by following the same procedures for designating the sanctuary.

Following the extensive public process for reviewing the management plans for the sanctuaries, NOAA determined that revisions to all three sanctuaries' terms of designation are necessary to ensure they continue to reflect current management priorities. The sections below describe the changes NOAA is making to each sanctuary's terms of designation and provide a printed version of each (as modified) in its entirety.

A. Revisions to the GFNMS Terms of Designation

NOAA is revising the GFNMS terms of designation to:

- Clarify that submerged lands are part of the GFNMS;
- Revise the description of activities that may be regulated to include additional activities; and
- Make minor updates to ensure the text reflects the current text of the NMSA and to ensure its description of the area is current.

1. Submerged Lands

NOAA is clarifying that the submerged lands of GFNMS are legally part of the sanctuary and included in the boundary description. At the time the sanctuary was designated in 1981,

Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the NMSA) characterized national marine sanctuaries as consisting of coastal and ocean waters but did not expressly mention submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98-498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, NOAA is modifying the GFNMS terms of designation and the boundary description to replace the term "seabed" with "submerged lands." Additionally, boundary coordinates in the revised terms of designation and in the sanctuary regulations are expressed by coordinates based on the North American Datum of 1983 (NAD 83).

2. List of Regulated Activities

NOAA is also revising the GFNMS terms of designation to modify the list of activities that may be regulated. The revised terms of designation now also authorize regulation of: discharging or depositing from beyond the boundary of the sanctuary; activities regarding cultural or historical resources; taking or possessing any marine mammal, sea turtle, or bird within or above the Sanctuary except as authorized by the Marine Mammal Protection Act, Endangered Species Act, and the Migratory Bird Treaty Act; introducing or otherwise releasing from within or into the sanctuary an introduced species; attracting or approaching any animal; and operating a vessel (i.e., watercraft of any description) within the sanctuary, including but not limited to, anchoring or deserting a vessel. These revisions will enable NOAA to more effectively and efficiently address new and emerging resource management issues, and are necessary in order to ensure protection, preservation, and management of the conservation, recreational, ecological, historical, cultural, educational, archeological, scientific, and esthetic resources and qualities of the GFNMS. Finally, a technical correction is being made to Article V to delete the phrase "and in Article IV" from the statement that "fishing" includes mariculture.² The term "fishing" does not appear in Article IV.

²Throughout this document, the term "mariculture" means the same as "marine aquaculture."

3. Updates

NOAA is also modifying the GFNMS terms of designation to provide: an updated and more complete description of characteristics that give the sanctuary particular value; greater clarity on the applicability of sanctuary emergency regulations (and consistency with the National Marine Sanctuary Program regulations of general applicability, 15 CFR Part 922, Subpart E); an updated explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights; and various minor revisions to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries. In Article V (Relation to Other Regulatory Programs), the "Fishing and Waterfowl Hunting" section is revised to clarify the original intent that, although the Sanctuary does not have authority to regulate fishing, fishing vessels may be regulated with respect to activities such as discharge/deposit and anchoring in accordance with Article IV. No changes are made to the "Defense Activities" section of the Designation Document.

An additional change to the terms of designation updates Article VI regarding the process to modify the terms of designation. This change deletes the requirement that modifications must be approved by the President of the United States and replaces it with a requirement that changes be approved by the Secretary of Commerce or his or her designee. This change is consistent with amendments to the NMSA enacted after the sanctuary was designated in 1981.

The revised terms of designation printed below replace the current terms of designation first printed in the **Federal Register** on January 26, 1981 (46 FR 7936).

REVISED DESIGNATION DOCUMENT FOR GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

Preamble

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

Article I. Effect of Designation

Within the area designated in 1981 as The Point Reyes/Farallon Islands

National Marine Sanctuary (the Sanctuary) described in Article II, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of an area of the waters and the submerged lands thereunder adjacent to the coast of California of approximately 966 square nautical miles (nmi), extending seaward to a distance of 6 nmi from the mainland from Point Reyes to Bodega Bay and 12 nmi west from the Farallon Islands and Noonday Rock, and including the intervening waters and submerged lands. The precise boundaries are defined by regulation.

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

The Sanctuary includes a rich and diverse marine ecosystem and a wide variety of marine habitats, including habitat for over 36 species of marine mammals. Rookeries for over half of California's nesting marine bird populations and nesting areas for at least 12 of 16 known U.S. nesting marine bird species are found within the boundaries. Abundant populations of fish and shellfish are also found within the Sanctuary. The Sanctuary also has one of the largest seasonal concentrations of white sharks (*Carcharodon carcharias*) in the world.

Article IV. Scope of Regulation

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- a. Hydrocarbon operations;
- b. Discharging or depositing any substance within or from beyond the boundary of the Sanctuary;

- c. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;

- d. Activities regarding cultural or historical resources;

- e. Introducing or otherwise releasing from within or into the Sanctuary an introduced species;

- f. Taking or possessing any marine mammal, marine reptile, or bird within or above the Sanctuary except as permitted by the Marine Mammal Protection Act, Endangered Species Act and Migratory Bird Treaty Act;

- g. Attracting or approaching any animal; and

- h. Operating a vessel (i.e., watercraft of any description) within the Sanctuary.

Section 2. Consistency With International Law

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

Section 3. Emergency Regulations

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Relation to Other Regulatory Programs

Section 1. Fishing and Waterfowl Hunting

The regulation of fishing, including fishing for shellfish and invertebrates, and waterfowl hunting, is not authorized under Article IV. However, fishing vessels may be regulated with respect to vessel operations in accordance with Article IV, section 1, paragraphs (b) and (h), and mariculture activities involving alterations of or construction on the seabed, or release of introduced species by mariculture activities not covered by a valid lease from the State of California and in effect on the effective date of the final regulation, can be regulated in accordance with Article IV, section 1, paragraph (c) and (e). All regulatory programs pertaining to fishing, and to

waterfowl hunting, including regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV.

The term "fishing" as used in this Article includes mariculture.

Section 2. Defense Activities

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

Section 3. Other Programs

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

Article VI. Alterations to This Designation

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

[END OF DESIGNATION DOCUMENT]

B. Revisions to the CBNMS Terms of Designation

NOAA is revising the CBNMS terms of designation to:

- Clarify that submerged lands are a part of the CBNMS;
- Revise the description of activities that may be regulated to include additional activities;
- Make minor updates to ensure the text reflects the current text of the NMSA and to ensure its description of the area is current.

1. Submerged Lands

NOAA is clarifying that the submerged lands of the CBNMS are legally part of the sanctuary and are included in the boundary description.

At the time the sanctuary was designated in 1989, Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the National Marine Sanctuaries Act) characterized national marine sanctuaries as consisting of coastal, marine and ocean waters but did not expressly mention submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98-498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, to be consistent with the NMSA, NOAA is updating the terms of designation and the boundary description, by adding "submerged lands thereunder" to the term "marine waters." Additionally, boundary coordinates in the revised Designation Document and in the sanctuary regulations will be expressed by coordinates based on the North American Datum of 1983 (NAD 83).

2. List of Regulated Activities

NOAA is revising the CBNMS terms of designation to modify the list of activities that may be regulated. The revised terms of designation now also authorize regulation of: activities regarding cultural or historic resources; placing or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary; taking or possessing any marine mammal, sea turtle, or bird; introducing or otherwise releasing an introduced species from within or into the Sanctuary; and drilling into, dredging, altering, or constructing on the submerged lands.

3. Updates

NOAA is also modifying the CBNMS terms of designation to provide: an updated and more complete description of characteristics that give the Sanctuary particular value; an updated explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights; and various minor revisions in order to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries.

In Article V (Relation to Other Regulatory Programs), the "Fishing" section is revised to clarify the original intent that, although the Sanctuary does not have authority to regulate fishing, fishing vessels may be regulated with respect to discharge/deposit and anchoring in accordance with Article IV. No changes are being made to the

"Defense Activities" section of the Designation Document.

Revised Designation Document for the Cordell Bank National Marine Sanctuary

Preamble

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

Article I. Effect of Designation

The Sanctuary was designated on May 24, 1989 (54 FR 22417). Section 308 of the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.* (NMSA), authorizes the issuance of such regulations as are necessary to implement the designation, including managing, protecting and conserving the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of the Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of a 399 square nautical mile area of marine waters and the submerged lands thereunder encompassed by a boundary extending approximately 250° from the northernmost boundary of Gulf of the Farallones National Marine Sanctuary (GFNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the GFNMS boundary and back to the northeast along this boundary to the beginning point. The precise boundaries are set forth in the regulations.

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

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

Article IV. Scope of Regulation

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- a. Depositing or discharging any material or substance;
- b. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or on or within the line representing the 50 fathom isobath surrounding the Bank;
- c. Hydrocarbon (oil and gas) activities within the Sanctuary;
- d. Anchoring on the Bank or on or within the line representing the 50 fathom isobath surrounding the Bank;
- e. Activities regarding cultural or historical resources;
- f. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- g. Taking or possessing any marine mammal, marine reptile, or bird except as permitted under the Marine Mammal Protection Act, Endangered Species Act or Migratory Bird Treaty Act; and
- h. Introducing or otherwise releasing from within or into the Sanctuary an introduced species.