

The National Oceanic and Atmospheric Administration proposes to amend 15 CFR part 922 through a proposed rule that was published in the Federal Register on April 14, 2014 (79 FR 20982). Changes are proposed for the Gulf of the Farallones National Marine Sanctuary (GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) regulations.

Note underlined text is proposed to be added and ~~lined-through~~ text is proposed to be removed from the current regulations where indicated.

## IMPORTANT DISCLAIMERS

- This document shows the proposed changes to the following sections of 15 CFR part 922: § 922.49, Subpart H § 922.80 - §922.84 and Subpart K § 922.110 - §922.113.
- This document does not include the proposed changes to the following sections: Appendices A - D to Subpart H of Part 922 and Appendices A-B to Subpart K of Part 922. A description of the changes to these appendices, and how they would appear if the rule were finalized can be viewed in proposed rule that was published in the Federal Register on April 14, 2014 (79 FR 20982).
- For a complete list of existing regulations, see 15 CFR, Part 922; Subparts H and K are specific to GFNMS and CBNMS.
- Should there be any discrepancy between this document and the proposed rule that was published in the Federal Register on April 14, 2014 (79 FR 20982), the proposed rule shall take precedence.

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## 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.*

2. Revise § 922.49 to read as follows:

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

(a) A person may conduct an activity prohibited by subpart H, subparts ~~K~~ through P, or subpart R, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P, provided that:

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(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is

intended to be made is prohibited by subpart H, subparts ~~KL~~ through P, or subpart R, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in subpart H, subparts ~~KL~~ through P, or subpart R, as appropriate. A copy of the application must accompany the notification.

3. Revise part 922 Subpart H to read as follows:

## **Part 922 Subpart H – Gulf of the Farallones National Marine Sanctuary**

### **§ 922.80 Boundary.**

~~(a) The Gulf of the Farallones National Marine Sanctuary (Sanctuary) boundary encompasses an total area of approximately 2,490,966 square nautical miles (nmi) (3,297 square miles) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands (and Noonday Rock) along off the northern coast of California. The northernmost extent of the Sanctuary boundary is a geodetic line extending westward from Bodega Head approximately 6 nmi to the northern boundary of the Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then turns southward to a point approximately 6 nmi off Point Reyes, California, where it then turns westward again out towards the 1,000 fathom isobath. The Sanctuary boundary then extends in a southerly direction adjacent to the 1,000-fathom isobath until it intersects the northern extent of the Monterey Bay National Marine Sanctuary (MBNMS). The Sanctuary boundary then follows the MBNMS boundary eastward and northward until it intersects the Mean High Water Line at Rocky Point, California. The Sanctuary boundary then follows the MHWL north until it intersects the Point Reyes National Seashore (PRNS) boundary. The Sanctuary boundary then approximates the PRNS boundary, as established at the time of designation of the Sanctuary, to the intersection of the PRNS boundary and the MHWL in Tomales Bay. The Sanctuary boundary then follows the MHWL up Tomales Bay and Lagunitas Creek to the Route 1 Bridge where the Sanctuary boundary crosses the Lagunitas Creek and follows the MHWL until it intersects its northernmost extent near Bodega Head. The Sanctuary boundary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford Franklin School Road) and Estero Americano (to the bridge at Valley Ford Estero Road), as well as Bodega Bay, but not Bodega Harbor. Where the Sanctuary boundary crosses a waterway, the Sanctuary boundary excludes these waterways shoreward of the Sanctuary boundary line delineated by the coordinates provided. The precise seaward boundary coordinates are listed in Appendix A to this subpart.~~

(b) The western boundary of the Sanctuary extends south from Point 1 approximately 45 nautical miles (52 miles) to Point 2, which is the northwestern corner of Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then extends from Point 2 approximately 38 nautical miles (43 miles) east along the northern boundary of CBNMS to Point 3, which is approximately 7 nautical miles (8 miles) west of Bodega Head. From Point 3 the Sanctuary boundary continues to south and west to Points 4 through Point 19 (in numerical sequence) and is coterminous with the eastern boundary of CBNMS. From Point 19 the Sanctuary boundary continues south and east to Points 20 through 25 (in numerical sequence) until it intersects the

boundary for Monterey Bay National Marine Sanctuary (MBNMS) at Point 26. From Point 26 the Sanctuary boundary extends eastward and northward, coterminous with MBNMS, to Points 27 through 33 (in numerical sequence). From Point 33 the boundary proceeds along a straight line arc towards Point 34 until it intersects the Mean High Water Line at Rocky Point, California. From this intersection the Sanctuary boundary follows the Mean High Water Line northward until it intersects the boundary for Point Reyes National Seashore approximately 0.7 nautical miles (0.8 miles) south and east of Bolinas Point in Marin County, California. The Sanctuary boundary then approximates the boundary for Point Reyes National Seashore, as established at the time of designation of the Sanctuary, to the intersection of the Point Reyes National Seashore boundary and the Mean High Water Line approximately 0.13 nautical miles (0.15 miles) south and east of Duck Cove in Tomales Bay. The Sanctuary boundary then follows the Mean High Water Line along Tomales Bay and Giacomini Wetland and up Lagunitas Creek to the U.S. Highway 1 Bridge. Here the Sanctuary boundary crosses Lagunitas Creek and follows the Mean High Water Line north to the Estero de San Antonio and up the Estero to the tide gate at Valley Ford-Franklin School Road. Here the Sanctuary boundary crosses the Estero de San Antonio and proceeds west and north following the Mean High Water Line to the Estero Americano and up the Estero to the bridge at Valley Ford-Estero Road. Here the Sanctuary boundary crosses the Estero Americano and proceeds west and north following the Mean High Water Line to the Salmon Creek Estuary. At the Salmon Creek Estuary the boundary continues along the Mean High Water Line of the southern shore of the Salmon Creek Estuary until it intersects a straight line arc connecting Point 35 and Point 36. At that intersection the boundary extends across the estuary towards Point 36 until it intersects the Mean High Water Line of the northern shore of the Salmon Creek Estuary. From this intersection the boundary follows the Mean High Water Line to the Russian River. At the Russian River the boundary continues along the Mean High Water Line of the southern shore of the Russian River until it intersects a straight line arc connecting Point 37 and Point 38. At that intersection the boundary extends across the river towards Point 38 until it intersects the Mean High Water Line of the northern shore of the Russian River. From this intersection the boundary follows the Mean High Water Line to the Gualala River. At the Gualala River the boundary continues along the Mean High Water Line of the southern shore of the Gualala River until it intersects a straight line arc between Point 39 and Point 40. At that intersection the boundary extends across the river towards Point 40 until it intersects the Mean High Water Line of the northern shore of the Gualala River. From this intersection the boundary follows the Mean High Water Line to Arena Cove in Mendocino County. At Arena Cove the boundary continues along the Mean High Water Line of the southern shore of Arena Cove until it intersects a straight line arc connecting Point 41 and Point 42. At that intersection the boundary extends across the cove towards Point 42 until it intersects the Mean High Water Line of the northern shore of Arena Cove. From this intersection the boundary follows the Mean High Water Line north to the Garcia River. At the Garcia River the boundary continues along the Mean High Water Line of the southern shore of the Garcia River until it intersects a straight line arc connecting Point 43 and Point 44. At that intersection the boundary extends across the river towards Point 44 until it intersects the Mean High Water Line of the northern shore of the Garcia River. The Sanctuary boundary then continues to follow the Mean High Water Line until it intersects the rhumb line connecting Point 45 at Manchester Beach in Mendocino County, California and Point 46. From this intersection the Sanctuary boundary continues west along its northernmost extent to Point 46. The Sanctuary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford-Franklin School Road) and

Estero Americano (to the bridge at Valley Ford-Estero Road), as well as Bodega Bay, but does not include Bodega Harbor, the Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, the portion of Arena Cove from the end of the pier eastward, or the Garcia River Estuary. Unless otherwise specified, where the Sanctuary boundary crosses a waterway, the Sanctuary excludes this waterway.

## § 922.81 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

~~*Areas of Special Biological Significance (ASBS)* are those areas designated by California's State Water Resources Control Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 *et seq.*~~

*Attract or attracting* means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

*Clean* means not containing detectable levels of harmful matter.

*Cruise ship* means a vessel with 250 or more passenger berths for hire.

*Deserting* means leaving a vessel aground or adrift without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification, after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

*Harmful matter* means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

*Introduced species* means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

*Motorized personal watercraft* means any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel; any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive, which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

*Routine maintenance* means customary and standard procedures for maintaining docks or piers.

*Seagrass* means any species of marine angiosperms (flowering plants) that inhabit portions of the submerged lands in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*.

*Special Wildlife Protection Zones* are areas of high biological diversity and/or abundance of species that are susceptible to disturbance, including federally listed and specially protected species. In particular these areas are white shark, seabird and marine mammal (pinniped) “hotspots”. White shark “hotspots” are where there are globally significant concentrations of white sharks. Seabird “hotspots” are areas with important populations, species diversity, and which support high concentration of nesting and roosting birds. Pinniped “hotspots” provided vital habitat for pupping seals and sea lions. Special Wildlife Protection Zones are established where “hotspots” are susceptible to disturbance and their coordinates are found in Appendix D of this Subpart.

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

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) ~~Exploring for, developing, or producing oil, or gas or minerals except that pipelines related to hydrocarbon operations adjacent to the Sanctuary may be placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance (ASBS) where certified to have no significant effect on Sanctuary resources in accordance with § 922.84.~~

(2) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(i) Fish, fish parts, ~~or~~ chumming materials or ~~(bait)~~ used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(ii) 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 (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(iii) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash; ~~or~~

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

~~(iv)~~ Vessel engine or generator exhaust.

(3) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(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 exclusions listed in paragraphs (a)(2)(i) through ~~(iv)~~ and (a)(3) of this section.

(5) Constructing any structure other than a navigation aid on or in the submerged lands of the Sanctuary; placing or abandoning any structure on or in the submerged lands of the Sanctuary; or drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary in any way, except:

(i) By anchoring vessels (in a manner not otherwise prohibited by this part (see § 922.82(a)(16)));

(ii) While conducting lawful fishing activities;

~~(iii) The laying of pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary in accordance with paragraph (a)(1) of this section;~~

~~(iii)~~ Routine maintenance and construction of docks and piers on Tomales Bay; or

~~(iv)~~ Mariculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.

~~(7 6)~~ Operating motorized personal watercraft (MPWC), except for: ~~the operation of motorized personal watercraft for~~

~~(i)~~ Emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions; or

(ii) An MPWC equipped with an operable Global Positional System (GPS) unit in working condition within the four designated zones within the Sanctuary described in Appendix C to this subpart.

~~(11 7)~~ Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 et seq., Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq., or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

~~(12 8)~~ Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(9) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species:

***[Changes have been proposed to the introduced species regulation through a separate proposed rule, currently under review by the public. See [www.regulations.gov](http://www.regulations.gov) Docket ID: NOAA-NOS-2012-0113. If made final, that rule would apply within GFNMS. NOAA would ensure consistency between that rule and the proposal for regulation of introduced species within the proposed expansion area.]***

~~(8 11)~~ Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within ~~one nautical mile of the Farallon Islands, Bolinas Lagoon, or any ASBS~~ the seven designated Special Wildlife Protection Zones described in Appendix D to this subpart, except transiting Zone 6 to transport authorized persons or supplies to or from the Islands Southeast Farallon Island or for enforcement purposes. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

~~(6 12)~~ Operating any vessel engaged in the trade of carrying cargo within an area extending ~~2 nmi~~ 1 nautical mile from the Farallon Islands, Bolinas Lagoon, or any ASBS a designated Special Wildlife Protection Zone described in Appendix D to this subpart. This includes but is not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations, except to transport persons or supplies to or from the

Islands or mainland areas adjacent to Sanctuary waters, ~~or any ASBS~~. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(13) Attracting a white shark anywhere in the Sanctuary; or approaching within 50 meters of any white shark within the line approximating ~~2 nmi~~ 1 nautical mile around Special Wildlife Protection Zone 6 and 7 described in Appendix D. ~~The coordinates for the line approximating 2 nmi around the Farallon Islands are listed in appendix B to this subpart.~~

(14) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(15) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(16) Anchoring a vessel in a designated seagrass protection zone in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in ~~a~~Appendix BC to this subpart.

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

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property, or the environment, ~~or except as may be permitted by the Director in accordance with § 922.48 and § 922.83.~~

(d) The prohibitions in paragraphs (a)(2) through (9) and (a)(11) through (16) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.83 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(2) through (9) and (10), for the introduction of a introduced species from shellfish mariculture in state waters determined to be non-invasive, of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation or expansion and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals, and extensions of authorizations in existence on the effective date of designation or expansion constitute authorizations issued after the effective date of Sanctuary designation or expansion.

**§ 922.83 Permit procedures and issuance criteria.**

(a) A person may conduct an activity prohibited by § 922.82 (a)(2) through (9) and (a)(11) through (16) if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

- (1) Further research or monitoring related to Sanctuary resources and qualities;
- (2) Further the educational value of the Sanctuary;
- (3) Further salvage or recovery operations; or
- (4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider factors such as:

- (1) The applicant is qualified to conduct and complete the proposed activity;
- (2) The applicant has adequate financial resources available to conduct and complete the proposed activity;
- (3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;
- (4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;
- (5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;
- (6) It is necessary to conduct the proposed activity within the Sanctuary;
- (7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

~~(8) Any other factors as the Director may consider additional factors as he or she deems appropriate.~~

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

(e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

#### **§ 922.84 Certification of other permits.**

A permit, license, or other authorization allowing: activities prohibited by sanctuary regulations, occurring prior to the effective date of the sanctuary expansion area, laying of any pipeline related to hydrocarbon operations in leases adjacent to the Sanctuary and placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and any ASBS must be certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency. In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate. Any request for certification called for in this section shall ~~must~~ be ~~presumed unless received by the Director acts to deny or condition certification~~ within 60 days ~~from the date that the Director receives notice of the proposed permit and the necessary supporting data~~ effective date of sanctuary expansion. The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

4. Revise part 922 Subpart K to read as follows:

### **Part 922 Subpart K – Cordell Bank National Marine Sanctuary**

#### **§ 922.110 Boundary.**

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately ~~971,399~~ square nautical miles (1,286 square miles) ~~(nmi)~~ of offshore ocean waters, and submerged lands thereunder, surrounding the submarine plateau known as Cordell Bank along the northern coast of California, approximately 450 nautical miles west-northwest of San Francisco, California. The precise boundary coordinates are listed in Appendix A to this subpart. The northern boundary of the Sanctuary is a rhumb line that begins approximately 6 nautical miles (8 miles) west of Bodega Head in Sonoma County, California at Point 1 and extends west approximately 38 nautical miles (44 miles) to Point 2. This line is part of a shared boundary between the Sanctuary and boundary extends westward (approximately 250 degrees) from the northwestern most point of the Gulf of the Farallones National Marine Sanctuary (GFNMS) to the 1,000 fathom isobath northwest of Cordell Bank. The western boundary of the Sanctuary extends south from Point 2 approximately 34 nautical miles (39 miles) to Point 3. From Point 3 the Sanctuary boundary continues east 15 nautical miles (17 miles) to Point 4 where it intersects the GFNMS boundary again. The line from Point 3 to Point 4 forms the southernmost boundary of the Sanctuary. The eastern boundary of the Sanctuary is a series of straight line arcs connecting Points 4 through 20 in numerical sequence. The Sanctuary is coterminous with GFNMS along both its (the Sanctuary's) eastern and northern boundaries. The Sanctuary boundary then generally follows this isobath in a southerly direction to the westernmost point of the GFNMS boundary. The Sanctuary boundary then follows the GFNMS boundary again to the northwestern corner of the GFNMS. The exact boundary coordinates are listed in appendix A to this subpart.

#### **§ 922.111 Definitions.**

In addition to the definitions found in § 922.3, the following definitions apply to this subpart:

*Clean* means not containing detectable levels of harmful matter.

*Cruise ship* means a vessel with 250 or more passenger berths for hire.

*Harmful matter* means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C.

*Introduced species* means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any

organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

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

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

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

~~(2)~~(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(A) Fish, fish parts, ~~or~~ chumming materials, ~~or~~ (bait), used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(B) 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 and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash; ~~or~~

(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; or

~~(E)~~ Vessel engine or generator exhaust.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) 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 as listed in paragraphs (a)(~~2~~)~~(i)~~ and (a)(~~2~~)~~(ii)~~ of this section.

~~(3)~~ On or within the line representing the 50-fathom isobath surrounding Cordell Bank, removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off

West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person.

~~(3) Exploring for, or developing, or producing, oil, gas, or minerals in any area of the Sanctuary.~~

(4)(i) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or other matter on or in the submerged lands. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart.

(ii) In the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or matter on the submerged lands except as incidental and necessary for anchoring any vessel or lawful use of any fishing gear during normal fishing activities. The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(6) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle or bird taken, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

~~(7) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.~~

~~(8) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.~~

~~(9) Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.~~

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, ~~or except as may be permitted by the Director in accordance with § 922.48 and § 922.113.~~

(c) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation or expansion of the Sanctuary that are necessary for national defense are exempt from the prohibitions contained in the regulations in this subpart. Additional DOD activities initiated after the effective date of designation or expansion that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(d) The prohibitions in paragraphs (a)(2), (a)(3), and (a)(4)(ii) through (a)(7) of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation or expansion and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals, and extensions of authorizations in existence on the effective date of designation or expansion constitute authorizations issued after the effective date of Sanctuary designation or expansion.

(e) The prohibitions in paragraph (a)(2) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.113 or a Special Use permit issued pursuant to section 310 of the Act.

~~(f)~~ Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

### **§ 922.113 Permit procedures and issuance criteria.**

(a) A person may conduct an activity prohibited by § 922.112, (a)(2), through (a)(7), if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a national marine sanctuary permit under this section, subject to terms and conditions, as he or she deems appropriate, if the Director finds that the activity will:

- (1) Further research or monitoring related to Sanctuary resources and qualities;
- (2) Further the educational value the Sanctuary;
- (3) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or

(4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider such factors as:

(1) The applicant is qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

(4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(6) It is necessary to conduct the proposed activity within the Sanctuary;

(7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(8) ~~Any other factors as~~ The Director may consider additional factors as he or she deems appropriate.

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

(e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.