

- Centralia, IL, Centralia Muni, RNAV (GPS) RWY 36, Orig
- Minneapolis, MN, Minneapolis-St Paul Intl (Wold-Chamberlain), NDB RWY 4, Amdt 20A
- Minneapolis, MN, Minneapolis-St Paul Intl (Wold-Chamberlain), RNAV (GPS) RWY 4, Orig
- Hazen, ND, Mercer County Regional, RNAV (GPS) RWY 14, Orig
- Hazen, ND, Mercer County Regional, RNAV (GPS) RWY 32, Orig
- Hazen, ND, Mercer County Regional, GPS RWY 14, Orig, CANCELLED
- Hazen, ND, Mercer County Regional, GPS RWY 32, Orig, CANCELLED
- Gordon, NE, Gordon Muni, RNAV (GPS) RWY 22, Orig
- Gordon, NE, Gordon Muni, GPS RWY 22, Orig, CANCELLED
- North Platte, NE, North Platte Regional Lee Bird Field, RNAV (GPS) RWY 30, Orig
- Newark, NJ, Newark Intl, VOR RWY 11, Amdt 2
- Newark, NJ, Newark Intl, RNAV (GPS) RWY 11, Orig
- Newark, NJ, Newark Intl, GPS RWY 11, Orig, CANCELLED
- Boise City, OK, Boise City, RNAV (GPS) RWY 4, Orig
- Boise City, OK, Boise City, GPS RWY 4, Orig, CANCELLED
- Butler, PA, Butler County/K W Scholter Field, ILS RWY 8, Amdt 6
- Collegeville, PA, Perkiomen Valley, VOR OR GPS RWY 9, Amdt 4
- Galeton, PA, Cherry Springs, VOR-A, Amdt 6, CANCELLED
- Galeton, PA, Cherry Springs, VOR/DME-A, Orig
- Lancaster, PA, Lancaster, RNAV (GPS) RWY 8, Orig
- Angleton/Lake Jackson, TX, Brazoria County, NDB RWY 17, Amdt 3
- Angleton/Lake Jackson, TX, Brazoria County, RNAV (GPS) RWY 17, Amdt 1
- Angleton/Lake Jackson, TX, Brazoria County, RNAV (GPS) RWY 35, Amdt 1
- Conroe, TX, Montgomery County, ILS RWY 14, Amdt 2
- Conroe, TX, Montgomery County, NDB RWY 14, Amdt 2
- Conroe, TX, Montgomery County, RNAV (GPS) RWY 32, Orig
- Conroe, TX, Montgomery County, VOR/DME RNAV RWY 32, Amdt 1B, CANCELLED
- Conroe, TX, Montgomery County, GPS RWY 32, Orig-C, CANCELLED
- Hondo, TX, Hondo Muni, RNAV (GPS) RWY 17L, Orig
- Hondo, TX, Hondo Muni, GPS RWY 17L, Amdt 1, CANCELLED
- Houston, TX, Clover Field, VOR-A, Amdt 1
- Houston, TX, Clover Field, GPS RWY 32L, Orig, CANCELLED
- Houston, TX, Clover Field, RNAV (GPS) RWY 32L, Orig
- Houston, TX, David Wayne Hooks Memorial, RNAV (GPS) RWY 17R, Orig
- Houston, TX, David Wayne Hooks Memorial, RNAV (GPS) RWY 35L, Orig
- Houston, TX, Ellington Field, RNAV (GPS) RWY 4, Orig
- Houston, TX, Ellington Field, GPS RWY 4, Orig-A, CANCELLED
- Houston, TX, Ellington Field, GPS RWY 22, Orig, CANCELLED
- Houston, TX, George Bush Intercontinental Arpt/Houston, GPS RWY 15L, Orig-B, CANCELLED
- Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) RWY 15L, Orig
- Houston, TX, George Bush Intercontinental Arpt/Houston, GPS RWY 27, Amdt 1, CANCELLED
- Houston, TX, George Bush Intercontinental Arpt/Houston, GPS RWY 33R, Orig, CANCELLED
- Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) RWY 27, Orig
- Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) RWY 33R, Orig
- Houston, TX, Houston-Southwest, NDB RWY 9, Amdt 5
- Houston, TX, Houston-Southwest, NDB RWY 27, Amdt 4
- Houston, TX, Houston-Southwest, RNAV (GPS) RWY 9, Orig
- Houston, TX, Houston-Southwest, RNAV (GPS) RWY 27, Orig
- Houston, TX, Houston-Southwest, VOR/DME RNAV RWY 9, Amdt 2
- Houston, TX, Houston-Southwest, VOR/DME RNAV RWY 27, Amdt 3
- Houston, TX, Houston-Southwest, GPS RWY 27, Orig, CANCELLED
- Houston, TX, Houston-Southwest, GPS RWY 9, Orig, CANCELLED
- Houston, TX, Sugar Land Muni/Hull Field, VOR/DME-A, Amdt 1
- Houston, TX, Sugar Land Muni/Hull Field, NDB RWY 17, Amdt 9
- Houston, TX, Sugar Land Muni/Hull Field, RNAV (GPS) RWY 17, Orig
- Houston, TX, Sugar Land Muni/Hull Field, RNAV (GPS) RWY 35, Orig
- Houston, TX, Weiser Airpark, RNAV (GPS)-E, Orig
- Houston, TX, William P. Hobby, VOR/DME RWY 22, Amdt 24A, CANCELLED
- La Porte, TX, La Porte Muni, VOR-A, Orig
- La Porte, TX, La Porte Muni, VOR OR GPS-A, Amdt 12, CANCELLED
- La Porte, TX, La Porte Muni, NDB RWY 30, Amdt 2,
- La Porte, TX, La Porte Muni, RNAV (GPS) RWY 30, Orig
- Charlotte Amalie, VI, Cyril E King, ILS RWY 10, Amdt 1
- Madison, WI, Dane County Regional-Truax Field, VOR RWY 13, Orig
- Madison, WI, Dane County Regional-Truax Field, VOR RWY 18, Orig
- Madison, WI, Dane County Regional-Truax Field, VOR RWY 36, Orig
- Madison, WI, Dane County Regional-Truax Field, VOR OR TACAN OR GPS RWY 13, Amdt 23B, CANCELLED
- Madison, WI, Dane County Regional-Truax Field, VOR OR TACAN OR GPS RWY 18, Amdt 20B, CANCELLED
- Madison, WI, Dane County Regional-Truax Field, VOR OR TACAN OR GPS RWY 31, Amdt 24C, CANCELLED
- Madison, WI, Dane County Regional-Truax Field, VOR/DME OR TACAN RWY 13, Orig
- Madison, WI, Dane County Regional-Truax Field, VOR/DME OR TACAN RWY 18, Orig
- Madison, WI, Dane County Regional-Truax Field, VOR/DME OR TACAN RWY 31, Orig
- Madison, WI, Dane County Regional-Truax Field, NDB RWY 36, Amdt 29
- Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 13, Orig
- Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 18, Orig
- Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 21, Orig-A
- Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 31, Orig
- Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 36, Orig
- Oshkosh, WI, Wittman Field, RNAV (GPS) RWY 36, Orig

**Note:** The FAA published the following procedures in Docket No. 30264, Amdt. No. 2065 to Part 97 of the Federal Aviation Administration Regulations (**Federal Register** Vol. 66, No. 164, Page 44301-44302, dated Thursday, August 23, 2001) under Section 97.23 & 97.33 effective October 4, 2001 is hereby amended as follows:

Change the effective on the following procedures to November 1, 2001:

Burbank, CA, Burbank-Glendale-Pasadena, VOR RWY 8, Amdt 10C

Burbank, CA Burbank-Glendale-Pasadena, RNAV (GPS) RWY 8, Orig

[FR Doc. 01-22658 Filed 9-7-01; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 970626156-1021-04]

RIN 0648-AK01

#### Regulation of the Operation of Motorized Personal Watercraft in the Gulf of the Farallones National Marine Sanctuary

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

**ACTION:** Final rule; notice of availability of environmental assessment.

**SUMMARY:** NOAA amends the regulations governing activities in the Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary) to prohibit the operation of motorized personal watercraft (MPWC) within the boundaries of the GFNMS. This regulation is necessary to protect sensitive biological resources, to minimize user conflict, and to protect the ecological, aesthetic, and recreational qualities of the Sanctuary. NOAA also announces the availability of an Environmental Assessment (EA) on the rule.

**DATES:** Effective October 10, 2001.

**ADDRESSES:** Copies of the Environmental Assessment are available upon request from the Gulf of the Farallones National Marine Sanctuary, Fort Mason, Building 201, San Francisco, CA 94123 (415) 561-6622.

**FOR FURTHER INFORMATION CONTACT:** Ed Ueber at (415) 561-6622.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In recognition of the national significance of the unique marine environment of the Gulf of the Farallones, California, the GFNMS was designated in January 1981. The GFNMS regulations at 15 CFR part 922, Subpart H prohibit a relatively narrow range of activities to protect Sanctuary resources and qualities. On April 18, 1996, the Environmental Action Committee (EAC) of West Marin, California, petitioned the GFNMS to ban the use of MPWC in the Sanctuary. Operation of MPWC is currently not regulated under GFNMS regulations. The EAC identified a number of concerns regarding the use of MPWC within the Sanctuary. In its petition, the EAC asserted that: MPWC are completely incompatible with the existence of a marine sanctuary; pose a danger to the biological resources of the sanctuary, such as marine mammals, wildfowl, kelp beds, anadromous fish, and other marine life; create noise, water and air pollution; and threaten mariculture and other commerce throughout the Sanctuary. The EAC also stated that MPWC create a hazard for other Sanctuary users, including swimmers, sailboats, windsurfers, open-water rowing shells and kayaks. NOAA also received 195 letters from members of the public in response to media publicity about the petition. Sixty-four percent opposed regulation of MPWC; 33% supported the EAC's requested ban; one percent expressed no clear opinion.

To supplement existing information on the use and impacts of MPWC, NOAA published a Notice of Inquiry/Request for Information in the Federal Register on August 21, 1997, initiating a 45-day comment period that ended October 6, 1997. NOAA requested information on the following: (1) The number of motorized personal watercraft being operated in the Sanctuary; (2) possible future trends in such numbers; (3) the customary launching areas for motorized personal watercraft in or near the Sanctuary; (4) the areas of use of motorized personal watercraft activity in the Sanctuary, including areas of concentrated use; (5) the periods (e.g., time of year, day) of

use of motorized personal watercraft in the Sanctuary, including periods of high incidence of use; (6) studies or technical articles concerning the impacts of motorized personal watercraft on marine resources and other users; (7) first person or documented accounts of impacts of motorized personal watercraft on marine resources and other users; and (8) any other information or other comments that may be pertinent to this issue. NOAA received 160 public comments in response to the notice of inquiry and two signature petitions during the comment period. One hundred fifty-three (96%) supported banning the operation of MPWC within the GFNMS. Two signature petitions were also received; one, with 276 signatures, supported the ban; the second, with 41 signatures, opposed the ban. Forty-four people spoke at a public meeting held to gather information during the comment period, all but one of who supported the petition to ban MPWC operation. Half of the speakers at the public meeting had previously submitted written comments.

Responses to and investigation of the specific questions in the August, 1997 notice revealed that: (1) The number of MPWC currently being operated in Sanctuary waters is believed to be 20 by the proprietors of Lawson's Landing, the primary MPWC launch site in Sanctuary waters, and these users make less than 200 launches per year; (2) the use of MPWC in Sanctuary waters is believed to be increasing; (3) there are two established MPWC launch sites in the Sanctuary, at Bodega Harbor and Lawson's Landing; (4) the areas in the Sanctuary where MPWC are operated are in the vicinity of the mouth of Tomales Bay and the area outside Bodega Harbor-over 95% of MPWC operation that occurs in the Sanctuary occurs in these areas; (5) April through November appear to be the times of highest use of MPWC in Sanctuary waters; (6, 7, and 8) numerous studies, technical articles, and personal documentation such as photos, letters and logs of the impacts of MPWC on marine resources and other users were received and collected.

The following were identified during NOAA's review of this issue: (1) Water-based recreational activity is increasing in the United States; (2) water-based recreational activity has impacted coastal habitats, seabirds, marine mammals and fish; (3) operation of MPWC is a relatively new and increasingly popular water sport; (4) MPWC, are different from other types of motorized watercraft in their structure (smaller size, shallower draft, two-stroke

engine, and exhaust venting to water as opposed to air) and their operational impacts (operated at faster speeds, operated closer to shore, make quicker turns, stay in a limited area, tend to operate in groups, and have more unpredictable movements); (5) MPWC have been operated in such a manner as to create a safety hazard to other resource users in the vicinity; (6) MPWC may interfere with marine commercial users; (7) MPWC have disturbed natural quiet and aesthetic appreciation; (8) MPWC have interfered with other marine recreational uses; (9) MPWC have impacted coastal and marine habitats; (10) MPWC have disturbed waterfowl and seabirds; (11) MPWC have disturbed marine mammals; (12) MPWC may disturb fish; (13) other jurisdictions have had problems with MPWC and have proposed and implemented various means of attempting to solve the problems; (14) the Sanctuary has sensitive areas that were deemed worthy of protection by the designation of a National Marine Sanctuary, including five State designated Areas of Special Biological Significance and four semi-enclosed estuarine areas; and (15) MPWC present a present and potential threat to resources and users of the GFNMS.

Based on this information, the NMSIP published a proposed rule to prohibit operation of MPWC from the mean high tide line seaward to 1000 yards. The proposed rule was designed to protect Sanctuary resources and minimizing user conflict in the nearshore areas. NOAA received 53 public comments on the proposed rule. Fifty-one commenters (96%) supported a full ban on MPWC within the GFNMS and 2 (4%) opposed the proposed regulations. On June 2, 1999, a public hearing to accept comments on the proposed rule was held in Point Reyes, California. Five people spoke at the public hearing. Three people spoke in favor of a complete ban on MPWC within the GFNMS and two people spoke out against the proposed 1000-yard restriction. Comments received on the April 23 rule and NOAA's responses were included in the preamble to the proposed rule that was published in the **Federal Register** on May 22, 2000.

After considering the comments in response to the proposed rule, reviewing new and recent MPWC regulations for agencies with contiguous or overlapping boundaries, and reviewing recent biological information, NOAA concluded that a total prohibition on the operation of MPWC would be necessary to adequately protect Sanctuary resources. On May 22, 2000, NOAA published a notice of

withdrawal of the April 23, 1999 proposed rule, a new proposed rule for the total prohibition of MPWC within the Sanctuary, and a notice of availability of Draft Environmental Assessment (DEA). Comments on the proposed rule and the DEA were accepted until June 21, 2000. In addition, a public hearing was held on June 12, 2000. NOAA received 65 comments on the proposed rule. Fifty commentors (77%) supported a full ban and 15 (23%) were opposed to the full ban. The comments and NOAA's responses to them are provided below.

The waters of the Sanctuary are home to a rich diversity of organisms and provide critical habitat for seabirds, marine mammals, fishes, invertebrates, sea turtles and marine flora. The biological importance and uniqueness of Sanctuary waters have been internationally recognized by the incorporation of Sanctuary waters into the United Nations' Man in the Biosphere system as part of the Golden Gate Biosphere Reserve, and the designation of Bolinas Lagoon as a RAMSAR (Convention for Wetlands of International Significance) site.

Because of its unique geology and geography, the biological diversity found within the GFNMS rivals any location along the Pacific coast. Fueled by the strongest coastal upwelling in North America (Bakun, 1973), abundant biological resources thrive in the productive waters of the Gulf's broad, shallow continental shelf. A counter-clockwise eddy that swirls south of Point Reyes in the Gulf of the Farallones concentrates the products of upwelling (Wing et al., 1995) and acts like an incubator for small developing animals. These in turn are food for organisms higher on the food web. The result is a marine system that supports some of the most active commercial fisheries on the west coast, provides food and habitat to support the largest concentration of breeding seabirds in the continental United States and supports roughly 20% of the breeding population of California's harbor seals. The offshore

area of the Sanctuary provides important habitat for federally endangered blue, humpback, fin, sei and sperm whales, and provides habitat for up to 50% of all the ashly storm petrels in the world and 90% of all the common murres in their southern range. Harbor porpoise, Steller sea lions, Pacific white sided dolphins, Dall's porpoise, California sea lions, common murres, Cassin's auklets, rhinoceros auklets, three species of cormorants, two species of grebes, tufted puffins, pigeon guillemots, marbled murrelets, black footed albatross, storm petrels, shearwaters, fulmars and many species of seabirds and marine mammals that are less abundant also depend on the offshore areas of the Sanctuary to provide food and shelter.

The Gulf of the Farallones is a destination feeding area for protected white sharks (Klimley and Ainley, 1996) and endangered blue and humpback whales (Kieckhefer, 1992). The sharks aggregate in coastal areas and near the Farallon islands from spring through fall to feed on an abundance of seals and sea lions. The whales travel from Mexico to feed on the concentrations of krill and forage fish found in the Sanctuary. From spring through late summer, krill swarm in the surface layers of the Gulf (Smith and Adams, 1988). It is during these daytime surface swarms that krill are most vulnerable to predators. Endangered whales, seabirds and salmon feed heavily on krill when krill are concentrated in these surface aggregations. Ten percent of California's threatened coho salmon population feed in the outer Sanctuary during the ocean phase of their life history before returning to spawn in Lagaunitas Creek and its tributaries. Recently listed populations of chinook salmon also feed in the Gulf of the Farallones as adults before returning to the Sacramento River drainage to complete their life cycle. Gray whales pass through the Sanctuary twice a year on their migration route between winter calving grounds in Mexico and summertime feeding areas

in Alaska. In recent years, more individual gray whales are remaining in the Gulf of the Farallones throughout the year to feed instead of proceeding to the feeding grounds in Alaska.

The protected bays and coastal wetlands of the Sanctuary, such as Bodega Bay, Tomales Bay, Drakes Bay, Bolinas Lagoon, Estero Americano and Estero de San Antonio, include intertidal mudflats, sand flats, salt marshes, submerged rocky terraces, and shallow subtidal areas. These areas support large populations of benthic fauna and concentrations of burrowing organisms and organisms living on marine plants. Submerged eelgrass (*Zostera marina*) beds are prevalent in the northern portion of Tomales Bay and provide crucial feeding habitat for more than 50 resident, breeding, and migratory bird species. These eelgrass beds are also important for many marine invertebrates and for the developing egg masses of herring and other fishes. It is estimated that approximately 30 million herring spawn annually on the eelgrass beds of Tomales Bay (Fox, 1997). The shallow protected bays and estuaries within the Sanctuary, such as Tomales Bay, Drakes Bay, Bolinas Lagoon, and the esteros, are important habitat for anadromous fish, several species of surfperches, sharks, rays and flatfish. Over 150 species of fish are found in the Sanctuary including the federally endangered winter-run Chinook salmon and the federally threatened coho salmon, spring run Chinook salmon, steelhead trout and tidewater goby.

Among the hundreds of bird species that reside in or migrate through the Sanctuary, many are endangered, threatened or of special concern. These include the following species which are found in the Sanctuary and on the Farallon Islands (Key: FE= Federally listed as endangered; FT= Federally listed as threatened; SE= listed in the State of California as endangered; ST= listed in the State of California as threatened; CSC= California species of concern):

*Swimmers [ducks and duck-like]:*

Aleutian Canada Goose .....	<i>Branta canadensis leucopareia</i> .....	FT
Barrow's Goldeneye .....	<i>Bucephala islandica</i> .....	CSC
Common Loon .....	<i>Gavia immer</i> .....	CSC
Double-crested Cormorant .....	<i>Palacrocorax auritus</i> .....	CSC
Harlequin Duck .....	<i>Histrionicus histrionicus</i> .....	CSC
Marbled Murrelet .....	<i>Brachyramphus marmoratus</i> .....	FT/SE

*Aerialists [gulls and gull-like]:*

American White Pelican .....	<i>Pelecanus erythrorhynchos</i> .....	CSC
Ashy Storm Petrel .....	<i>Oceanodroma homochroa</i> .....	CSC
California Brown Pelican .....	<i>Pelecanus occidentalis californicus</i> .....	FE/SE
California Gull .....	<i>Larus californicus</i> .....	CSC
California Least Tern .....	<i>Sterna antillarum browni</i> .....	FE/SE
Elegant Tern .....	<i>Sterna elegant</i> .....	CSC
Short-tailed Albatross .....	<i>Diomedea albatrus</i> .....	FE

<i>Long-legged waders [herons, cranes, etc.]:</i>		
California Black Rail .....	<i>Laterallus jamaicensis corunniculus</i> .....	ST
<i>Smaller waders [plovers, sandpipers, etc.]:</i>		
Long-billed Curlew .....	<i>Numenius americanus</i> .....	CSC
Western Snowy Plover (coastal) .....	<i>Charadrius alexandrinus niv.</i> .....	FT/CSC
<i>Birds of prey [hawks, eagles, owls]:</i>		
Bald Eagle check status .....	<i>Haliaeetus leucocephalus</i> .....	FT
Ferruginous Hawk .....	<i>Buteo regalis</i> .....	CSC
Osprey .....	<i>Pandion haliaetus</i> .....	CSC
Prairie Falcon .....	<i>Falco mexicanus</i> .....	CSC
Peregrine Falcon .....	<i>Falco peregrinus</i> .....	FE
<i>Passerine birds [perching]:</i>		
Saltmarsh common yellowthroat .....	<i>Geothlypis trichas sinuosa</i> .....	CSC

There are at least twelve critical marine bird nesting areas along the shoreline of the Sanctuary. More than twelve species of marine birds breed within the Sanctuary and the nesting population on the Farallon Islands is the largest concentration of breeding marine birds in the continental United States. During nesting and rearing of young, these sea birds are especially dependent on the Sanctuary waters for food.

Thirty-three species of marine mammals have been observed in the Sanctuary including six species of pinnipeds, one mustelid and twenty-six species of cetaceans. About 20% of the state's breeding population of harbor seals live within the boundaries of the Sanctuary, and northern fur seals are starting to recolonize historic pupping sites within the Sanctuary for the first time since 1820. Of the twenty-six species of cetaceans that occur in Sanctuary waters, nineteen are

migratory, and seven are considered resident species. Many of these marine mammals occur in large concentrations and are dependent on the productive and secluded habitat of the Sanctuary's waters and adjacent coastal areas for breeding, pupping, hauling-out, feeding, and resting during migration. Three areas in the Sanctuary have been identified as critical feeding areas for the threatened Steller sea lion, including the nearshore areas around Point Reyes, the northern half of Tomales Bay and areas adjacent to the Farallon Islands.

Humpback and blue whales migrate to offshore areas of the Sanctuary each summer to feed. Fin, sei and sperm whales also frequent this area when prey are abundant. Harbor seals, elephant seals, California sea lions, Dall's porpoise, harbor porpoise and gray whales are common residents in Sanctuary waters. Gray whales pass

through the Sanctuary twice a year on their migration route between winter calving grounds in Mexico and summertime feeding areas in Alaska. In recent years, individuals have remained in the Gulf of the Farallones to feed instead of proceeding to the feeding grounds in Alaska. Since 1999, gray whales have been feeding in Bodega Bay and cow-calf pairs have been entering coastal embayments in unprecedented numbers. Some individuals have acclimated to conditions in the Sanctuary and are now year-round residents. Four species of endangered sea turtles are also known to reside in or migrate through Sanctuary waters. A listing of all threatened and endangered marine mammals and sea turtles follows (Key: FE=Federally listed as endangered; FT=Federally listed as threatened; ST=listed in the State of California as threatened).

<i>Pinnipeds:</i>		
Guadalupe fur seal .....	<i>Arctocephalus townsendi</i> .....	FT/ST
Steller (Northern) sea lion .....	<i>Eumetopias jubatus</i> .....	FT
<i>Mustelids:</i>		
Southern sea otter .....	<i>Enhydra lutris nereis</i> .....	FT
<i>Cetaceans:</i>		
Blue whale .....	<i>Balaenoptera musculus</i> .....	FE
Humpback whale .....	<i>Magaptera noveangliae</i> .....	FE
Sei whale .....	<i>Balaenoptera robustus</i> .....	FE
Sperm whale .....	<i>Physeter macrocephalus</i> .....	FE
Fin whale .....	<i>Balaenoptera physalus</i> .....	FE
<i>Sea Turtles:</i>		
Green turtle .....	<i>Chelonia mydas</i> .....	FE
Leatherback turtle .....	<i>Dermochelys coriacea</i> .....	FE
Loggerhead turtle .....	<i>Caretta caretta</i> .....	FE
Olive (Pacific) ridley .....	<i>Lepidochelys olivacea</i> .....	FE

Several populations of marine mammals are starting to recover from near extinction after years of human exploitation. As populations begin to rebound, individuals are expanding the populations' distributions back to historic ranges. In many instances, such as the sea otters, gray whales, northern fur seals and elephant seals, animals are using areas that have not been utilized for decades. It is critical for the Sanctuary to provide habitat that was historically available and allow these

populations to return to their natural levels.

The offshore waters of the Sanctuary also provide entrance and egress for commercial shipping traffic using ports in San Francisco Bay. Tankers and container ships traverse the Sanctuary in three offshore shipping lanes that direct traffic from different directions in and out of San Francisco Bay. These offshore waters also support an active sport and commercial fishery. Small skiffs and larger commercial vessels troll at constant speeds or drift through

the Sanctuary waters fishing for salmon and albacore. Rockfish and urchin boats fish the high spots and reefs closer to shore. On the softer sediment of the continental shelf, crab fishermen lay out their lines of crab pots each one identified with a buoy at the surface. All of these activities have gear in the water that is independent from or is attached but extends some distance from the boat. The gear is not readily apparent to the casual observer. Fishermen are generally aware of how gear types are deployed and operated. In cases where

the potential for conflict arises, most boats operating offshore have navigation equipment and radios to communicate with each other. Commercial whale watching and seabird operations regularly use the offshore area of the Sanctuary for wildlife viewing opportunities. In 1999, 3500 people visited the Sanctuary on one commercial company's whale watching trips (Mary Jane Schramm, Oceanic Society, pers. comm. 10 April 2000).

The nearshore waters of the Sanctuary are the areas most heavily used for recreation. Areas such as Tomales Bay and Dillon Beach in Bodega Bay are used for fishing, sailing, canoeing, rowing, kayaking and swimming. These activities are often conducted very close to shore and may be dependent on calm waters. Other activities conducted in the nearshore area of the Sanctuary that could be affected by MPWC include diving, windsurfing, surfing and bodyboarding.

Several Federal resource agencies have recognized MPWC as a unique type of recreational vessel that is relatively recent in origin (U.S. Fish and Wildlife Service, 1992; NOAA, 1992; U.S. Dept. of Interior, 1998c). MPWC are designed to be operated at high speeds, closer to shore, and to make quicker turns than other types of motorized vessels. MPWC have a disproportional thrust capability and horsepower to vessel length and/or weight, in some cases four times that of conventional vessels (U.S. Dept. of Interior, 1998c). Research indicates that impacts associated with MPWC tend to be locally concentrated, producing effects that are more geographically limited yet potentially more severe than motorboat use, due to repeated disruptions and an accumulation of impacts in a shorter period of time (Snow, 1989). MPWC are generally of smaller size, with a shallower draft (4 to 9 inches), and lower horsepower (around 75, as compared to up to 250 for large pleasure craft) than most other kinds of motorized watercraft (Ballesterio, 1990; Snow, 1989). The smaller size and shallower draft of MPWC means they are more maneuverable, operable closer to shore and in shallower waters than other types of motorized watercraft. This maneuverability greatly increases the potential for MPWC to disturb fragile nearshore habitats and organisms. Although wakes of MPWC may be smaller than wakes of conventional motorboats, they can be more damaging (e.g., flooding of coastal bird nests; erosion of shoreline) because MPWC are often operated faster, closer to shore and repeatedly in the same area (Snow, 1989).

MPWC are powered by a jet-propelled system that typically involves a two-stroke engine with an exhaust expulsion system that vents into the water. The two-stroke engines found on the vast majority of MPWC in the United States discharge more of their fuel (ranging from 10% to more than 50% of the unburned fuel/oil mixture, depending on manufacturing conditions and operating variables) than four-stroke engines (Tahoe Research Group, 1997). These emissions pose a serious threat to the environment, as two-stroke engines introduce more volatile organic compounds (by as much as a factor of 10) into the water than four-stroke engines (Juttner et al., 1995; Tjarnlund et al., 1995). These emissions can have significant adverse impacts in many areas of the Sanctuary, particularly shallow nearshore coastal areas, estuaries, and open ocean surface waters.

Research indicates that MPWC can increase turbidity and may redistribute benthic invertebrates, and these impacts may be prolonged as a result of repeated use by multiple machines in a limited area. Research has shown that MPWC can foul water with their discharge, and increase local erosion rates by launching and beaching repeatedly in the same locations (Snow, 1989). Research in the Everglades National Park indicated that fishing success dropped to zero when fishing occurred in the same waters used by MPWC, and scientists in the Pacific Northwest have been concerned about the effects of MPWC on spawning salmon (Snow, 1989; Sutherland and Ogle, 1975). Research in Florida indicates that MPWC cause wildlife to flush at greater distances, with more complex behavioral responses than observed in disturbances caused by automobiles, all-terrain vehicles, foot approach, or motorboats. This was partially attributed by the scientists to the typical operation of MPWC, where they accelerate and decelerate repeatedly and unpredictably, and travel at fast speeds directly toward shore, while motorboats generally slow down as they approach shore (Rodgers, 1997). Scientific research also indicates that even at slower speeds, MPWC were a significantly stronger source of disturbance to birds than were motorboats. Levels of disturbance were further increased when MPWC were used at high speeds or outside of established boating channels (Burger, 1998). Research notes that declining nesting success of grebes, coots, and moorhens in the Imperial National Wildlife Refuge were due to the noise and physical intrusion of MPWC (Snow,

1989). In addition, MPWC have been observed flushing wading birds and nesting osprey from their habitats, contributing to abnormally high numbers of abandoned osprey nests on certain islands in the Florida Keys (U.S. Fish and Wildlife Service, 1992). The number of active osprey nests in the lower Florida Keys "backcountry" dropped from five to zero between 1986 and 1990. Biologists believe this was due to MPWC flushing parents from the nests (Cuthbert and Suman, 1995). Research suggests that declines in nesting birds in some states occurred simultaneously with MPWC operation.

Numerous shoreline roost sites exist within the Sanctuary and research has shown that human disturbance at bird roost sites can force birds to completely abandon an area. Published evidence strongly suggests that estuarine birds may be seriously affected by even occasional disturbance during key parts of their feeding cycle, and when flushed from feeding areas, such as eelgrass beds, will usually abandon the area until the next tidal cycle (Kelly, 1997). Seabirds such as common murres and sooty shearwaters often form large aggregations on the surface of the ocean. Feeding aggregations of sooty shearwaters can often number in the thousands and cover significant offshore areas. These feeding flocks are ephemeral in nature and their movement is dictated by the availability of their prey. These seabirds are especially susceptible during these critical periods and disturbance could have negative impacts on them.

There is a general conclusion that marine mammals are more disturbed by watercraft such as MPWC, which run faster, on varying courses, or often change direction and speed, than they are by boats running parallel to shore with no abrupt course or major speed changes. Researchers note that MPWC may be disruptive to marine mammals because they change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. In addition, because MPWC lack low-frequency long distance sounds underwater, they do not signal surfacing mammals or birds of approaching danger until they are very close to them (Gentry, 1996; Osborne, 1996). Possible disturbance effects of MPWC on marine mammals could include shifts in activity patterns and site abandonment by harbor seals and Steller sea lions; site abandonment by harbor porpoise; injuries from collisions; and avoidance by whales (Gentry, 1996; Richardson et al., 1995).

The offshore area of the Sanctuary is a destination feeding ground for endangered blue and humpback whales. Fin, sei, and sperm whales also frequent offshore areas to forage. The recent MPWC bans implemented by PRNS and GGNRA limit the nearshore areas of the Sanctuary where MPWC can be operated and increase the likelihood that MPWC will be used in the Sanctuary's offshore area. The traffic route from the launch site in Bodega Harbor through Bodega Bay to and from this offshore area would put MPWC in offshore feeding areas for federally listed seabirds, marine mammals, and salmon. It would also cross the migration corridor for gray whales and put MPWC in close proximity to gray whale feeding areas in Bodega Bay. Gray whales pass through the Sanctuary twice a year on their migration route between winter calving grounds in Mexico and summertime feeding areas in Alaska.

In 1995, some gray whales began feeding in the Gulf of the Farallones in lieu of completing their yearly migration to Alaskan feeding grounds and some of these animals are beginning to reside in the Gulf year-round. Since 1999, gray whales have been feeding in Bodega Bay in unprecedented numbers. Some individuals have acclimated to conditions in the Sanctuary and are now year round residents. In early summer, gray whales begin foraging in Bodega Bay with the most recent feeding activity documented in early April, 2000 (Dr. Sarah Allen, Point Reyes National Seashore, pers. comm. April 11, 2000).

Historically, there were four launch sites used by MPWC to access Sanctuary waters: Lawson's Landing at Dillon Beach, Millerton Point Park, Inverness, and Bodega Harbor. Millerton Point Park and Inverness are now closed to launching MPWC as a result of the prohibition against MPWC operation in PRNS and GGNRA. Lawson's Landing is in Marin County and was closed to MPWC by the 1999 County ordinance but can be used at the present time because of the tentative ruling by the Marin Superior Court on September 13, 2000, described above. Currently, the only remaining egress into the Sanctuary is from Lawson's Landing and from Bodega Harbor in Sonoma County. Use by MPWC of an egress corridor from Bodega Harbor in Sonoma County would put MPWC in the same vicinity as the feeding whales. Gray whales have not been observed in Bodega Bay when MPWC are using the area. With site affinity not firmly established for gray whales starting to feed in Bodega Bay, it's important that

these whales be allowed to forage without repeated disturbance.

Endangered blue whales were also observed feeding two miles off of the Point Reyes headlands during July of 1999. This is unusually close to shore for these animals, whose numbers in the area comprise a major concentration for the world, and who normally forage farther offshore. This unpredictable blue whale feeding activity demonstrates the importance of protecting all of the Sanctuary's waters. As marine mammal populations begin to recover from years of harvesting pressure, it is difficult to predict what areas of the Sanctuary will be utilized. Humpback whales regularly feed in areas outside NOAA's previously proposed 1000 yard buffer (Kiekhefer, 1992). During summer and fall more than 100 humpback whales can be observed moving around the Gulf of the Farallones following concentrations of herring, sardines, or krill that are their favorite prey. Humpbacks use bubble nets and other behavioral adaptations during feeding to drive their prey to the surface where they are trapped by the air-sea interface and captured.

Federally listed Southern sea otter populations are also recovering from near extinction and recolonizing areas within their historic range. Sightings of sea otters in the GFNMS have increased from two individuals in 1992 to 20 animals in 1998 (Dr. Sarah Allen, Point Reyes National Seashore, pers. comm. July, 1999). Prior to the designation of the Monterey Bay National Marine Sanctuary, an otter in that area was struck and killed by an MPWC. (NOAA 1990, Volume 1). Operation of MPWC in GFNMS could put these animals at risk in an area that appears to be providing habitat and an opportunity for the species' survival.

In Sanctuary waters beyond three nautical miles are found 11 federally endangered and 7 threatened species of birds, fish, turtles, and marine mammals, and 50% of all the ashy storm petrels in the world and 90% of all the common murrens in their southern range. These waters are a destination feeding area for concentrations of endangered blue and humpback whales, feeding summer resident fin, sei and sperm whales, endangered winter run chinook and coho salmon.

MPWC have significant potential to interfere with a large number of other Sanctuary users. Numerous respondents to the Notice of Inquiry/Request for Information and the April 23, 1999, proposed rule and the subsequent revised proposed rule on May 22, 2000, noted that MPWC were interfering with, and often jeopardizing the well-being of,

swimmers, kayakers, canoeists, and other boaters and users of the Sanctuary. MPWC have been involved in numerous accidents, and thus pose a hazard to other vessels and water users. Although MPWC make up approximately 11% of vessels registered in the country (U.S. Dept. of Interior, 1998c), Coast Guard statistics show that in 1996 MPWC were involved in 36% of all watercraft accidents (U.S. Coast Guard, 1999). In addition, numerous commentors noted that the operation of MPWC diminishes the aesthetic qualities of many coastal and ocean areas, and may interfere with other economic uses, such as tourism.

## II. Summary of Comments and Responses

*Comment 1:* MPWC operation should be prohibited throughout the entire Sanctuary.

*Response:* NOAA agrees. After consideration of all comments, the latest biological information on impacts of MPWC in offshore areas, regulations promulgated by other resource agencies with adjacent or overlapping jurisdiction, and conflicts with other Sanctuary users, NOAA has concluded that a Sanctuary-wide prohibition on the operation of MPWC is necessary and the best way to protect the Sanctuary's resources.

*Comment 2:* MPWC operation should not be prohibited throughout the entire Sanctuary.

*Response:* NOAA disagrees. See response to Comment 1.

*Comment 3:* MPWC should be regulated by a seasonal ban because the presence of whales in the Sanctuary is seasonal.

*Response:* NOAA disagrees. A seasonal ban will not provide adequate year-round protection to whales in the GFNMS. NOAA believes that a seasonal ban will not give adequate protection to Gray whales because Gray whales have been observed in the Sanctuary every month of the year since 1995. Prior to that, Gray whales were commonly seen from March 1–December 1 and often seen in February. As indicated in the final EA, researchers have indicated that MPWC may disrupt marine mammals because MPWC change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. Although MPWC lack low-frequency long distance sounds underwater this does not mean that marine mammals are not adversely impacted by MPWC noise. Whether the noise is heard at close range or farther away, it still will disturb marine mammals which may cause shifts in activity patterns, site abandonment, or avoidance. Since

marine mammals are limited to close range detection of MPWC noise and activity there is a greater chance of collision.

In addition, whales are not the only wildlife that inhabit the Sanctuary that are disturbed and negatively impacted by the use of MPWC. A seasonal closure may only offer protection to one or two specific species, but not to the other 33-marine mammals or the hundreds of bird and fish species found throughout the Sanctuary on a year-around basis. Although the concentration of certain species does occur on a seasonal basis, the seasonal overlay among species is continuous throughout the year and a seasonal prohibition would not provide full protection.

A seasonal ban will also not adequately address the other concerns related to MPWC use in the Sanctuary such as noise, conflicts with other Sanctuary users, turbidity, and water quality concerns related to 2-stroke engines. A more detailed explanation of these concerns is found in response to comment numbers 7, 8, and 6.

*Comment 4:* MPWC threaten and disturb wildlife in the Sanctuary.

*Response:* NOAA agrees. Research in Florida indicates that MPWC cause wildlife to flush at greater distances, with more complex behavioral responses than observed in disturbances caused by automobiles, all-terrain vehicles, foot approach, or motorboats. This was partially attributed by the scientists to the typical operation of MPWC, where they accelerate and decelerate repeatedly and unpredictably, and travel at fast speeds directly toward shore, while motor boats generally slow down as they approach shore (Rodgers, 1997). Scientific research also indicates that even at slower speeds, MPWC were a significantly stronger source of disturbance to birds than were motor boats. Levels of disturbance were further increased when MPWC were used at high speeds or outside of established boating channels (Burger, 1998).

There is a general conclusion that marine mammals are more disturbed by watercraft such as MPWC, which run faster, on varying courses, or often change direction and speed, than they are by boats running parallel to shore with no abrupt course or major speed change. In addition, because MPWC lack low-frequency long distance sounds underwater, they do not signal surfacing mammals or birds of approaching danger until they are very close to them (Gentry, 1996; Osborne, 1996). Documented disturbance effects of MPWC on marine mammals could include shifts in activity patterns and

site abandonment by harbor seals and Steller sea lions; site abandonment by harbor porpoise; injuries from collisions; and avoidance by whales (Gentry, 1996; Richardson et al., 1995).

*Comment 5:* MPWC disturb the tranquility of the Sanctuary.

*Response:* NOAA agrees. The use of MPWC can conflict with other users of the Sanctuary who use it solely for aesthetic purposes.

*Comment 6:* MPWC cause "unacceptable" pollution as a result of their two-stroke engines.

*Response:* NOAA agrees. MPWC are powered by a jet-propelled system that typically involves a two-stroke engine with an exhaust expulsion system that vents directly into the water. The two-stroke engines found on the vast majority of MPWC in the United States discharge more of their fuel (ranging from 10% to more than 50% of the unburned fuel/oil mixture, depending on manufacturing conditions and operating variables) than four-stroke engines found on many conventional recreational boats (Tahoe Research Group, 1997). These emissions pose a serious threat to the environment, as two-stroke engines introduce more volatile organic compounds (VOCs) (by as much as a factor of 10) into the water than four-stroke engines (Juttner et al., 1995; Tjarnlund et al., 1995). These emissions can have significant adverse impacts in many areas of the Sanctuary, particularly shallow nearshore coastal areas and estuaries.

*Comment 7:* NOAA proposes to ban MPWC because their two-stroke engines release pollutants into the water even though other recreational vessels with two-stroke engines are free to operate throughout the Sanctuary.

*Response:* NOAA disagrees. NOAA acknowledges that motorized watercraft with two-stroke engines other than MPWC are not restricted in the Sanctuary but, as indicated in response to comment 6, there are negative water quality impacts associated with MPWC's engine exhaust and subsequent discharge of VOCs into the water column. However, the proposed ban on MPWC two-stroke engines is not the sole reason why NOAA proposes a complete ban of MPWC throughout the Sanctuary. There are several factors NOAA has taken into consideration while proposing this ban of MPWC that cumulatively, indicate that a total ban is necessary including wildlife disturbance, user conflicts, and safety concerns (as detailed in the responses to comments 4, 8, 9, and 17). Other watercraft that are propelled by two-stroke engines do not have the same level of cumulative adverse impacts to

Sanctuary resources as that of MPWC, therefore NOAA is not proposing a total ban of their use in Sanctuary waters.

*Comment 8:* MPWC cause "unacceptable" noise levels, that disturb marine wildlife (marine mammals, seabirds) as well as human visitors to the Sanctuary.

*Response:* NOAA agrees. In general, unless modified by the operator (i.e., removal or alteration of the muffler), MPWC do not appear to be any louder in the air than similarly powered conventional motorized watercraft (MPWC and conventional watercraft both registered between 74 and 84 decibels in tests conducted in 1990) (Woolley, 1996) and appear to be quieter underwater (Gentry, 1996). MPWC may be perceived as being louder than other boats because they can travel faster, closer to shore, often travel in groups, tend to frequently accelerate and decelerate, and "wake-jump." These characteristics create uneven, persistent noise apparently more bothersome to people and potentially to wildlife. In addition, research indicates that the constancy of speed figures into noise generation, as most people adjust to a constant drone and cease to be disturbed by it, even at elevated levels, but the changes in loudness and pitch of MPWC are more disturbing to people than other watercraft (Wagner, 1994). In addition, many MPWC operators alter or remove the mufflers to enhance craft performance, thus increasing the noise generated by their craft.

*Comment 9:* MPWC operation presents a user conflict with other Sanctuary users and poses a threat to anyone engaging in other recreational activities.

*Response:* NOAA agrees. The Sanctuary encourages multiple uses of its waters that are compatible with resource protection. When used as designed and in the current manner, MPWC have significant potential to interfere with a large number of other Sanctuary users. Numerous respondents to the proposed rule noted that MPWC were interfering with, and often jeopardizing the well-being of, swimmers, kayakers, canoeists, and other recreational boaters and users of the Sanctuary. MPWC have been involved in numerous accidents, and thus pose a hazard to other water users. Although MPWC make up approximately 11% of vessels registered in the country (U.S. Dept. of Interior, 1998c), Coast Guard statistics show that in 1996, 36% of all watercraft involved in accidents were MPWC (U.S. Coast Guard, 1999). While this accident data is not site specific to the Sanctuary, it does demonstrate that the potential for

accidents does exist and that MPWC have a higher ratio of accidents than other motorized watercraft.

Additional comments received noted that the operation of MPWC in nearshore areas diminishes the aesthetic qualities of many beach and recreational areas, and may interfere with other economic uses of the areas based upon these aesthetic qualities.

*Comment 10:* A partial ban on MPWC use would be impossible to enforce.

*Response:* NOAA agrees. A partial ban at 100 yards, 1000 yards, or even three nautical miles would be difficult to enforce. In a tentative ruling issued September 13, 2000, the Superior Court in Marin County rejected the County's ordinance prohibiting MPWC operation was rejected by the Marin for being vague, in part because of the difficulty in knowing where MPWC could be operated in the County's jurisdiction out to three-miles. Before the Marin County ban, there was difficulty enforcing the Point Reyes National Seashore's one quarter mile restriction.

Despite local rider's attempt at self-policing and their efforts to create no ride zones, violations were chronic and regulations were hard to enforce. A total prohibition will provide a clear and simple enforcement rule within the GFNMS, will avoid confusion and will avoid the cost of installation and maintenance of a delineation system.

Delineation of MPWC zones with buoys is in place at the Monterey Bay National Marine Sanctuary (MBNMS) and it is needed for enforcement because MPWC lack standard navigational equipment and chart storage. MBNMS's regulation delineates four near harbor areas and bouys are in place to mark the boundary. The Florida Keys National Marine Sanctuary (FKNMS) does not have a specific MPWC regulation, however there are a number of small areas that are closed to motorized vessels. These areas are delineated by spar buoys or 30 inch buoys every 400 to 600 feet. The annual cost of maintenance and placement of each buoy is \$250-\$500 respectively (Upper Keys Manager, Lt.Cdr. David Savage, pers.com. October 3, 2000). These buoys are placed in shallow (1-2 fathoms maximum 12 feet) water. Because of weather and sea conditions, the GFNMS would require a 48 inch or larger buoys placed at a depth of 15-41 fathoms (90-246 feet) at a cost of \$2,000 to \$5,000 each. These larger buoys are needed because of ground tackle requirements for sea conditions. In addition, if the GFNMS were to place buoys 1,200 feet apart (double the width of the FKNMS placement), a minimum of 4,000 buoys would be required to

indicate channels and closed areas (5 buoys per nautical mile to mark 80 nautical miles).

*Comment 11:* NOAA denied commentors due process because public comment meetings were in remote locations and electronic comments were not accepted.

*Response:* NOAA disagrees. As part of this process, NOAA held one public scoping meeting and two public hearings. All of the meetings were held at the Bear Valley Visitor Center of the Point Reyes National Seashore. This is a central location for the GFNMS and one visited by over 1,300,000 people annually. It is well known and easy to find. In addition, maps to the Center were provided upon request. A private meeting with the industry representatives was also held. Over three months of time was provided for written comments in this and the previous proposed rule.

NOAA believes that it has provided sufficient opportunities for members of the public to comment on this issue and has fulfilled all public notice requirements. NOAA is not required to accept electronic comments and does not yet have a formal policy on this issue.

*Comment 12:* NOAA's conclusions are based on inaccurate and outdated information.

*Response:* NOAA has considered the most current information available in its deliberations regarding the regulation of MPWC in the Sanctuary. Much of the information is from 1997 and 1998 data. The sources are reliable, well-known and respected in their fields, and have knowledge and experience in the Gulf of Farallones National Marine Sanctuary. Please refer to source citations located in the Bibliography of the Environmental Assessment.

*Comment 13:* Prohibiting MPWC operation without prohibiting operation of other motorized craft is unfair discrimination.

*Response:* NOAA disagrees. No other vessel type has demonstrated so many wide and varied detrimental aspects as MPWC. These aspects include: noise disturbance to wildlife and humans; discharge of VOC pollution and water quality impacts; physical disturbance to marine mammal, bird, and fish from frequent and erratic movement and fast speeds; and interference with other Sanctuary users (swimmers, kayakers, canoeists, other boaters, sailors, hikers, beach goers, whale and bird watchers, and people looking for a wilderness experience and aesthetic appreciation). These impacts are supported by scientific information data and provide justification as to why a ban is

necessary. NOAA has not received comments or complaints on these types of cumulative disturbances caused by other vessel types.

*Comment 14:* NOAA failed to address the current regulations in the Hawaiian Islands Humpback Whale and Florida Keys National Marine Sanctuaries.

*Response:* NOAA disagrees. NOAA believes that an accurate comparison between the Gulf of the Farallones and the Hawaiian Islands Humpback Whale and Florida Keys National Marine Sanctuaries cannot be made because none of these three Sanctuaries have similar climates, hydrodynamics, boundary and shoreline delineation, or species composition.

The Hawaiian Islands Humpback Whale National Marine Sanctuary protects a single species and it is not required to address the complexity of the species composition at GFNMS, which has 33 marine mammal, 400 bird, and hundreds of fish species. The Florida Keys National Marine Sanctuary (FKNMS) does have a current restriction on MPWC use within 100 yards of residential shoreline to a no-wake speed (including other motorized vessels). However, in October 1999, the FKNMS Sanctuary Advisory Council decided that these strategies had been ineffective and voted to advise the Sanctuary managers to consider new regulations that could result in additional restrictions to MPWC in Florida.

NOAA believes regulations for each National Marine Sanctuary must be considered on a case-by-case basis, taking into account the unique features of each location, including living resources, physical characteristics, and use.

*Comment 15:* NOAA has changed the regulations as a result of pressure from MPWC opponents.

*Response:* NOAA disagrees. NOAA has considered all information carefully and in an unbiased manner based on the information found in the scientific literature, public documents, and comments by MPWC users and nonusers alike. Based upon new and recent regulations for areas with contiguous and overlapping boundaries, the latest biological information on impacts of MPWC in offshore areas, as well as conflicts with other Sanctuary users, NOAA has determined that a Sanctuary-wide prohibition on the operation of MPWC is necessary and the best way to adequately protect the Sanctuary's resources. NOAA's initial proposal of a 1,000 yard buffer would have only protected 5% of the Sanctuary from the impacts of MPWC operation, leaving the remaining 95% of the Sanctuary at risk. The complete ban



of MPWC in GFNMS will ensure full protection to marine resource that could otherwise be affected.

The May 22, 2000, **Federal Register** notice for GFNMS withdrawal and notice of proposed rule, specifically states that the action was taken in response to the petition from the Environmental Action Committee of West Marin and to comments received in response to a proposed rule that NOAA published on April 23, 1999. Additional information on effects of MPWC to wildlife in GFNMS has been gathered since the original proposed ban of 1,000 yards from shore. As outlined in the May 22, 2000 notice, observations in July 1999 indicate that blue whales which had previously only been seen offshore at depths of 100 fathoms or more, were observed closer to shore at 40 to 50 fathoms and one sighting at 20 fathoms. These offshore observations of Gray whales and other species such as blue whales, guadalupe fur seals, and humpback whales, all indicate that if the ban were restricted to 1,000 yards the potential for impacts at these offshore distances would not be decreased.

Other reasons as to why NOAA has proposed a complete ban are delineation and enforcement. As discussed in response to comment 10, NOAA's initial proposed ban of 1,000 yards from shore would be difficult and costly to enforce in terms of personnel and buoy installation and maintenance.

*Comment 16:* NOAA has failed to consider alternatives to a total ban of MPWC in the Sanctuary.

*Response:* NOAA disagrees. NOAA considered all alternatives described in the Environmental Assessment, which includes a description of the alternative, a discussion of its environmental and socioeconomic impacts, and an analysis of the alternative. The alternatives found in the Environmental Assessment include: no action; creation of zones for the operation of MPWC; banning operation of MPWC from the nearshore area of the Sanctuary; prohibition of operation of MPWC in the entire Sanctuary; and regulation of all recreational vessel traffic in the Sanctuary. NOAA believes that it has developed its regulations fairly and without bias based upon scientific literature, public documents, and comments from MPWC users, nonusers, local citizens, and the MPWC industry.

*Comment 17:* NOAA cannot rationally prohibit operation of MPWC use throughout GFNMS on the basis of potential conflicts with recreational users concentrated in "nearshore waters."

*Response:* NOAA is not prohibiting MPWC use solely because of user conflicts. As explained in response to comments 4, 6, and 18, other concerns associated with the use of MPWC in the Sanctuary support NOAA's conclusion that operation of MPWC should be prohibited throughout the Sanctuary. While MPWC do interfere with nearshore uses such as swimming, canoeing, and kayaking and cause adverse impacts to nearshore wildlife and habitats, the impacts that MPWC can have on wildlife and water quality in offshore areas is also part of the basis for this action.

*Comment 18:* NOAA's own data from the National Marine Fisheries Service indicate that MPWC operation does not pose a risk to marine mammals.

*Response:* NOAA disagrees. The data cited from the Southwest Region of the National Marine Fisheries Service is based only on animals that have washed ashore in a dead or dying state and do not address negative impacts aside from mortality. Morbidity is not the only measure of effects on a marine mammal. It is detrimental to marine mammals, many of which are endangered or threatened, to alter their behavior (their feeding activities and subsequently their survivability) in a significant manner. A comment in support of the prohibition indicated that in one area Gray whales are seen frequently in proximity of other vessels and human activity but are never seen when MPWCs are present. A comment opposed to the prohibition indicated that MPWCs have been operated in the same area and whales have never been observed. Both statements support the contention that Gray whales alter their behavior to avoid MPWCs. Altering animal behavior is contrary to the goals and objectives of the Sanctuary.

As indicated in the EA, researchers have reported that MPWC may be disruptive to marine mammals because MPWC change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. It is true that MPWC lack low-frequency long distance sounds underwater. However, this does not mean that marine mammals are not adversely impacted by the MPWC noise. Whether the noise is heard at close range or farther away, it still will disturb marine mammals which may cause shifts in activity patterns, site abandonment, or avoidance. Since marine mammals are limited to close range detection of MPWC noise and activity there is a greater chance of collision.

*Comment 19:* NOAA's reference to Coast Guard statistics regarding boating

accidents nationally has little relevance given the absence of any reported MPWC accidents in the GFNMS.

*Response:* NOAA disagrees. MPWC have been involved in numerous accidents, and thus pose a hazard to other water users. Although MPWC make up approximately 11 percent of vessels registered in the country (U.S. Dept. of Interior, 1998c), Coast Guard statistics show that in 1996, 36 percent of all watercraft involved in accidents were MPWC (U.S. Coast Guard, 1999). While this accident data is not site specific to the Sanctuary, it does demonstrate that the potential for accidents does exist and that MPWC have a higher ratio of accidents than other motorized watercraft.

*Comment 20:* NOAA is unconvincing in its attempt to suggest that the recent efforts by Marin County to ban MPWC use within three miles of shore necessitate a ban by NOAA throughout the Sanctuary. No-wake zones could be established.

*Response:* As explained in the response to comment 10, the Marin County prohibition was recently overturned in a tentative ruling by the Marin Superior Court. The County is not enforcing the ordinance at this time. Whether the County's ordinance is implemented or not, NOAA is required to protect the marine resources in the GFNMS. NOAA believes that a total ban throughout the Sanctuary is necessary to ensure marine resource protection.

No-wake zones would only provide protection in limited areas but would be very expensive because they would require marker buoys. Sanctuary resources outside of these zones would still be at risk from the effects of MPWC operation.

*Comment 21:* NOAA continues to advance factual inaccuracies, unfounded assertions, illogical conclusions to support the prohibition. NOAA references studies regarding disturbance of waterfowl and seabirds as a reason to ban MPWC use throughout the entire Sanctuary even though these sources recommend creation of a "buffer zone." NOAA's assertion that MPWC may be perceived as being louder than other boats provides no potential basis for a ban extending throughout the entire Sanctuary.

*Response:* NOAA disagrees. NOAA's decision to prohibit MPWC was carefully considered and is scientifically defensible. Specifically, NOAA has referenced numerous studies related to MPWC impacts to all types of wildlife (marine mammals, birds, and pinnepeds) found within the Sanctuary's boundaries, not just

waterfowl and seabirds. While studies on waterfowl and seabird recommend the creation of a buffer to reconcile the impacts of MPWC, buffer zones will not sufficiently address the other concerns related to MPWC use throughout the sanctuary such as water pollution, user conflicts, and other wildlife and human disturbance outside of the zones.

*Comment 22:* MPWC use in the Sanctuary is decreasing.

*Response:* NOAA disagrees. With the closure of other areas within and around the Sanctuary, such as GGNRA and PRNS, it is unlikely that use in the Sanctuary will decrease. NOAA is not aware of any data indicating that MPWC use is decreasing in GFNMS, other than statements from MPWC users and use trends nationally, which are documented in the United States Coast Guard report (1999).

*Comment 23:* NOAA's proposed regulation is arbitrary because it would prohibit MPWC operation because of their speed.

*Response:* NOAA disagrees. As stated in earlier responses, MPWCs have not been proposed to be banned in the Sanctuary because of any single reason such as speed. Speed is one of many aspects of MPWCs, including water quality effects, noise disturbance to humans and wildlife, and user conflicts, that NOAA considered.

### III. Summary of Regulations

The regulations for the GFNMS are amended as follows:

The addition to 15 CFR 922.82(a) prohibits operation of MPWC in the Sanctuary. The prohibition includes an exception for the use of MPWC for emergency search and rescue and law enforcement (other than training activities) by Federal, State and local jurisdictions.

The addition to 15 CFR 922.81 provides a definition of "motorized personal watercraft." "Motorized personal watercraft" will be defined as "a vessel 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".

### IV. Miscellaneous Rulemaking Requirements

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

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

#### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that if it was adopted as proposed it would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impact of the proposed rule on small entities and, therefore, the basis for the certification has not changed.

Accordingly, a Regulatory Flexibility Analysis was not prepared.

#### *Paperwork Reduction Act*

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

#### *National Environmental Policy Act*

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A draft environmental assessment has been prepared. It is available for comment from the address listed at the beginning of this notice.

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

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

#### **Alan Neuschatz,**

*Chief Financial Officer/Chief Administrative Officer, Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, 15 CFR Part 922, Subpart H, is amended 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.*

2. Section 922.81 is amended by adding the following definition, in the appropriate alphabetical order.

#### **§ 922.81 Definitions.**

\* \* \* \* \*

*Motorized personal watercraft* means a vessel 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.

3. Section 922.82 is amended by adding new paragraph (a)(7) as follows:

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

(a) \* \* \*

(7) Operation of motorized personal watercraft, except for the operation of motorized personal watercraft for emergency search and rescue mission or law enforcement operations (other than routine training activities) carried out by National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

\* \* \* \* \*

[FR Doc. 01-22637 Filed 9-7-01; 8:45 am]

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

#### **21 CFR Parts 872, 878, 880, 882, 884, and 892**

[Docket No. 01N-0073]

#### **Medical Devices; Exemption From Premarket Notification Requirements; Class I Devices**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** In the *Federal Register* of July 25, 2001 (66 FR 38786), the Food and Drug Administration (FDA) amended its medical device classification regulations for class I devices to specifically add a reference to the general limitations on exemptions from premarket notification requirements from each generic device classified as exempt in each section. As published, an exemption from the premarket notification requirements and a reference to the general limitations language was inadvertently added to 12 device classifications that should not include the reference. These devices are not exempt from the requirements of premarket notification. This document corrects those errors.

**DATES:** This rule is effective September 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ-404), 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190.