

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

RIN 0648-BF99

**Intent to Conduct Scoping and Prepare a Draft Environmental Assessment for Changes in Regulations for Greater Farallones and Cordell Bank National Marine Sanctuaries**

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

**ACTION:** Notice of intent to conduct scoping, hold public scoping meetings, and prepare an environmental assessment.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) expanded the boundaries of Gulf of the Farallones National Marine Sanctuary (now renamed Greater Farallones National Marine Sanctuary or GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their previous boundaries with a final rule published on March 12, 2015. The final rule entered into effect on June 9, 2015.

Pursuant to a request from USCG, NOAA is considering developing future rulemaking to allow the following USCG discharges within part or all of GFNMS and CBNMS: 1. Untreated vessel sewage, 2. vessel graywater that does not meet the definition of clean as defined by the Federal Water Pollution Control Act (FWPCA), and 3. ammunition and pyrotechnics (flare) materials used in USCG training exercises for use of force and search and rescue. NOAA will conduct public scoping meetings to gather information and other comments to determine the relevant scope of issues and range of alternatives to be addressed in the environmental process from individuals, organizations, tribes, and government agencies on this topic. The scoping meetings are scheduled as detailed below.

**DATES:** Written comments should be received on or before May 31, 2016.

Scoping meetings will be held on:

1. May 10, 2016, 6 p.m.
2. May 11, 2016, 6 p.m.
3. May 12, 2016, 6 p.m.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NOS-2016-0043, by any of the following methods:

•Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NOS-2016-0043](http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2016-0043), click

the ``Comment Now!`` icon, complete the required fields, and enter or attach your comments.

•Mail: Maria Brown, Superintendent, Greater Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129.

•In Person: At any of the following scoping meetings:

1. San Francisco Bay Area – U.S. Army Corps of Engineers, Bay Model Visitor Center, 2100 Bridgeway, Blvd., Sausalito, CA 94965 (May 10, 2016).

2. Bodega Bay Fire Protection District, 510 Highway One, Bodega Bay, CA 94923 (May 11, 2016).

3. Gualala Community Center, 47950 Center Street, Gualala, CA 95445 (May 12, 2016).

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

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

**SUPPLEMENTARY INFORMATION:**

Background

NOAA is charged with managing marine protected areas as the National Marine Sanctuary System (16 U.S.C. 1431 (b) (1)). The Office of National Marine Sanctuaries (ONMS) is the federal office within NOAA that manages the National Marine Sanctuary System. The mission of ONMS is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the National Marine Sanctuary System for this and future generations throughout the nation. ONMS serves as the trustee for 15 marine protected areas, among them GFNMS and CBNMS. GFNMS was designated in 1981 and protects approximately 3,295 square miles (2,488 square nautical miles). CBNMS was designated in 1989 and protects approximately 1,286 square miles (971 square nautical miles). The final rule entered into effect on June 9, 2015 (80 FR 34047).

At that time, NOAA postponed the effectiveness of the discharge requirements in both sanctuaries' regulations with regard to U.S. Coast Guard activities for six months. An additional six

month postponement of the effectiveness of the discharge requirements was published in the Federal Register on December 1, 2015, to provide adequate time for completion of an environmental assessment and to determine NOAA's next steps. Without further NOAA action, the discharge regulations would become effective with regard to USCG activities June 9, 2016.

Both sanctuaries' regulations prohibit discharging or depositing, from within or into the sanctuary, any material or other matter (15 CFR 922.82(a)(2-3) and 15 CFR 922.112(a)(2)(i-ii)). Several other national marine sanctuaries also have these regulatory prohibitions. The discharge prohibitions are aimed at maintaining and improving water quality within national marine sanctuaries to enhance conditions for the living marine resources within the sanctuaries. The discharge regulations have exemptions; those relevant for the proposed action include:

- for a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA); marine sanitation devices must be locked in a manner that prevents discharge or deposit

of untreated sewage (§922.82(a)(2)(ii) and §922.112(a)(2)(i)(B));

- for a vessel less than 300 GRT, or a vessel 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the sanctuary, clean graywater as defined by section 312 of the FWPCA (§922.82(a)(2)(iv) and §922.112(a)(2)(i)(D)); and

- activities necessary to respond to an emergency threatening life, property or the environment (§922.82(c) and §922.112(b)).

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

One key mission of the USCG is to enforce or assist in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. As part of this mission, the USCG supports resource protection efforts within GFNMS and CBNMS by providing surveillance of activities within the sanctuaries and enforcement of the National Marine Sanctuaries Act (NMSA) and other laws. The USCG has authority to enforce the NMSA under 14

U.S.C. 2 and 14 U.S.C. 89. Law enforcement activities for the two sanctuaries are also conducted by other agencies, primarily NOAA's Office of Law Enforcement and the California Department of Fish and Wildlife. In GFNMS the National Park Service and several local agencies also conduct law enforcement activities.

The USCG also leads incident planning and response activities for oil spills and other incidents in U.S. coastal and ocean waters. These activities are necessary components of GFNMS and CBNMS management. Other USCG missions that support national marine sanctuary management include ports, waterways and coastal security; aids to navigation, including tending buoys; search and rescue; living marine resources; marine safety; and marine environmental protection. The USCG may concurrently conduct activities to support more than one of its missions when operating vessels within or aircraft above GFNMS and CBNMS.

In the course of the rulemaking to expand GFNMS and CBNMS, NOAA received a letter dated February 4, 2013, from the USCG stating that the sewage and graywater discharge prohibitions proposed for the GFNMS and CBNMS expansion areas had the potential to impair the ability of USCG vessels to conduct operational missions in the proposed enlarged sanctuaries and to stay "mission ready". In 2014, USCG and NOAA re-initiated discussions to try to address all types of discharges from the training

activities and the sewage and graywater discharges from other missions and routine patrols in both GFNMS and CBNMS.

Subsequently, NOAA and the USCG entered into interagency consultations in January 2015 to address both agencies' concerns. NOAA published the final rule for the expansion of GFNMS and CBNMS on March 12, 2015 (80 FR 13078), in the Federal Register and the rule became effective on June 9, 2015 (80 FR 34047).

At issue are the discharge regulations in both sanctuaries and USCG compliance with these regulations during routine vessel operations and during training exercises designed to make USCG personnel ready for search and rescue missions and use of force missions using live fire exercises. NOAA is concerned with protecting sanctuary resources and habitats, resolving any conflicts that could occur among sanctuary user groups (e.g., fishing and USCG live fire training), and ensuring continued USCG enforcement of sanctuary regulations.

To ensure the rule did not impair USCG operations necessary to fulfill its multi-purpose missions while the agencies were in consultation, the document postponed for six months the effective date for the discharge requirements in the expansion areas for both sanctuaries with regard to USCG activities. NOAA committed to considering exempting certain USCG discharge

activities from the GFNMS and CBNMS regulations. An additional six month postponement of the effectiveness of the discharge requirements was published in the Federal Register December 1, 2015, to provide adequate time for completion of an environmental assessment and to determine NOAA's action. Without further NOAA action, the discharge regulations would become effective with regard to USCG activities on June 9, 2016.

### Potential Options

NOAA is exploring a variety of options on how to best protect sanctuary resources while ensuring the operational capacity for USCG to conduct mission-essential activities. NOAA has identified two options for this: 1. Changing the regulations to allow USCG discharges; and 2. issuing a national marine sanctuary general permit, if the activity is eligible for a permit and is conducted in accordance with the terms and conditions in the permit (see <http://sanctuaries.noaa.gov/management/permits/>). In either case, discharges could be allowed in all waters of the sanctuaries; only in Federal waters (further than 3 nautical miles from shore); in certain zones delineated based on biological factors (such as oceanographic features or density of significant species) and other factors (such as high use for recreation, shipping, or other human activities); in the

expanded waters of CBNMS and GFNMS based on the March 12, 2015 rulemaking; or not at all. NOAA is interested in receiving public comment on the best way to address the need for continued USCG operations in CBNMS and GFNMS while fulfilling its primary objective of resource protection in national marine sanctuaries.

#### Request for information

NOAA anticipates that these changes, whether regulatory or non-regulatory will require preparation of an environmental assessment under the National Environmental Policy Act (NEPA). Therefore, NOAA is also interested in receiving public comment that could contribute to the environmental analysis that will be prepared for this action; specifically, information related to the potential impacts of Coast Guard operational vessel discharges of sewage and graywater and training discharges within GFNMS and CBNMS on biological, physical and oceanographic features of the sanctuaries as well as on human activities taking place in the sanctuaries.

#### Timeline

The process for this action is composed of four major stages: 1. Information collection and characterization (scoping); 2. preparation and release of a draft environmental assessment under NEPA, and any proposed amendments to the regulations if

appropriate; 3. public review and comment; 4. preparation and release of a final environmental assessment, and any final amendments to the regulations if appropriate. This document also advises the public that NOAA will coordinate any consultation responsibilities under section 7 of the Endangered Species Act (ESA), Essential Fish Habitat (EFH) under the Magnuson Stevens Fishery Conservation and Management Act (MSA), section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470), and Federal Consistency review under the Coastal Zone Management Act (CZMA), along with its ongoing NEPA process including the use of NEPA documents and public and stakeholder meetings to also meet the requirements of other federal laws.

In fulfilling its responsibility under the NHPA and NEPA, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the State Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties as appropriate; involve the public in accordance with NOAA's NEPA procedures, and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties as

appropriate and describe them in any environmental assessment or draft environmental impact statement.

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

Dated: April 15, 2016.

**John Armor,**

*Acting Director for the Office of National  
Marine Sanctuaries.*

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