

Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2525.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 00-ACE-10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-22A, which describes the procedures.

##### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Lamoni Municipal Airport, Lamoni, IA. The FAA has developed RNAV RWY 17 and RNAV RWY 35 SIAPs to serve the

Lamoni Municipal Airport, Lamoni, IA. Controlled airspace extending upward from 700 feet AGL is needed to contain aircraft executing these SIAPs. The intended effect of this action is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

##### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

##### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

#### **§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### **ACE IA E5 Lamoni, IA [New]**

Lamoni Municipal Airport, IA  
(Lat. 40°37'59" N., long. 93°54'08" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Lamoni Municipal Airport.

\* \* \* \* \*

Issued in Kansas City, MO, on May 9, 2000.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 00-12822 Filed 5-19-00; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **15 CFR Part 922**

[Docket No. 970626156-0125-03]

**RIN 0648-AK01**

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

**AGENCY:** Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; Notice of withdrawal; Notice of availability of Draft Environmental Assessment.

**SUMMARY:** NOAA proposes to amend 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 proposed action responds to a petition from the Environmental Action Committee (EAC) of West Marin, California.

This document also responds to comments received in response to a proposed rule that NOAA published on April 23, 1999, concerning operation of

MPWC in the Sanctuary and a public hearing held June 2, 1999, on the proposed rule. This document withdraws and replaces that proposed rule that proposed to prohibit the operation of MPWC within the nearshore areas of the Sanctuary. 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 a Draft Environmental Assessment (DEA) on the proposed rule.

**DATES:** Comments on the proposed rule or DEA must be received by June 21, 2000. A public hearing on this proposed rule will be held on June 12, 2000 at 6:30 p.m. at the address listed below.

**ADDRESSES:** Comments should be sent to Ed Ueber, Sanctuary Manager, Gulf of the Farallones National Marine Sanctuary, Ft. Mason, Building 201, San Francisco, California 94123; fax: (415) 561-6616. Comments received will be available for public inspection at the above address. A public hearing on the proposed rule will be held at the Bear Valley Visitor's Center at the Point Reyes National Seashore, Inverness, California, on June 12, 2000 at 6:30 p.m. The DEA may be obtained from the Sanctuary address indicated above.

**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 by the Sanctuary. 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 by the proprietors of Lawson's Landing, the primary MPWC launch site in Sanctuary waters, to be less than 200 launches per year by approximately 20 users; (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 NMSP published a proposed rule to prohibit operation of MPWC from the mean high tide line seaward to 1000 yards. The proposed rule was geared toward protecting Sanctuary resources and minimizing user conflict in the nearshore areas. NOAA received 53

public comments on the proposed rule. Fifty-one commentors (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 are provided below.

The waters of the Sanctuary are home to a rich diversity of marine biota and provide critical habitat for seabirds, marine mammals, fishes, invertebrates, sea turtles and marine flora. The importance and uniqueness of Sanctuary waters has 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 site (the Convention for Wetlands of International Significance). The National Marine Fisheries Service is considering areas within the Sanctuary for designation as Essential Fish Habitat as mandated by the Magnuson-Stevens Fisheries Conservation and Management Act (James Bybee, NOAA, pers. comm., 7 January 2000).

Among the hundreds of bird species that reside in or migrate through the Sanctuary, many species 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, *Branta canadensis leucopareia*, FT  
Barrow's Goldeneye, *Bucephala islandica*, CSC  
Common Loon, *Gavia immer*, CSC  
Double-crested Cormorant, *Palacrocorax auritus*, CSC  
Harlequin Duck, *Histrionicus histrionicus*, CSC  
Marbled Murrelet, *Brachyramphus marmoratus*, FT/SE

#### Aerialists [gulls and gull-like]

American White Pelican, *Pelecanus erythrorhynchos*, CSC  
Ashy Storm Petrel, *Oceanodroma homochroa*, CSC

California Brown, Pelican *Pelecanus occidentalis californicus*, FE/SE  
California Gull, *Larus californicus*, CSC  
California Least Tern, *Sterna antillarum browni*, FE/SE  
Elegant Tern, *Sterna elegant*, CSC  
Short-tailed Albatross, *Diomedea albatrus*, FE

Long-legged waders [e.g., herons, cranes]

California Black Rail, *Laterallus jamaicensis coromaculus*, ST

Smaller waders [e.g., plovers, sandpipers]

Long-billed Curlew, *Numenius americanus*, CSC

Western Snowy Plover, *Charadrius alexandrinus nivalis*, FT/CSC

Birds of prey [hawks, eagles, owls]

Bald Eagle check status, *Haliaeetus leucocephalus*, FT

Ferruginous Hawk, *Buteo regalis*, CSC

Osprey, *Pandion haliaetus*, CSC

Prairie Falcon, *Falco mexicanus*, CSC

Peregrine Falcon, *Falco peregrinus*, FE

Passerine birds [perching]

Saltmarsh common yellowthroat, *Geothlypis trichas sinuosa*, CSC

There are at least twelve critical marine band 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 comprises the largest concentration of breeding marine birds in the continental U.S. During nesting and rearing of young, these sea birds are especially dependent on the Sanctuary's offshore waters for food.

Thirty-free species of marine mammals have been observed in the Sanctuary including one mustelid, six species of pinnipeds 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 Stellar sea lion, including the nearshore areas around

Point Reyes, the northern half of Tomales Bay and areas adjacent to the Farallon Islands. 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. Some individuals have acclimated to conditions in the Sanctuary and are now year round residents. In 1999, unprecedented numbers of gray whales were foraging in Bodega Bay. 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 pers. comm. July 1999). It is imperative that these animals, be protected in an area which may be providing new opportunity for the species survival (Anonymous 1990).

Other populations of marine mammals are also recovering after years of human exploitation. As populations begin to rebound, individuals are expanding the populations distribution back into historic ranges. In many instances, such as the gray whales, sea otters, northern fur seals and elephant seals, animals are using feeding areas and haul outs that have not been utilized for decades. It is important for the Sanctuary to provide habitat that was historically available and allow these populations to return to their natural abundance and distribution levels. 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)

#### Pinnipeds

Guadalupe fur seal, *Arctocephalus townsendi*, FT/ST

Stellar (Northern) sea lion, *Eumetopias jubatus*, FT

#### Mustelids

Southern sea otter, *Enhydra lutris nereis*, FT

#### Cetaceans

Blue whale, *Balaenoptera musculus*, FE

Humpback whale, *Magaptera noveangliae*, FE  
 Sei whale, *Balaenoptera robustus*, FE  
 Sperm whale, *Physeter macrocephalus*, FE  
 Fin whale, *Balaenoptera physalus*, FE

#### Sea Turtles

Green turtle, *Chelonia mydas*, FE  
 Leatherback turtle, *Dermochelys coriacea*, FE  
 Loggerhead turtle, *Caretta caretta*, FE  
 Olive (Pacific) ridley, *Lepidochelys olivacea*, FE

Because of its unique geology and geography, the biological diversity found within the Gulf of the Farallones National Marine Sanctuary 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 up 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 for California's harbor seals. It is a destination feeding area for protected white sharks (Klimley and Ainley 1996) and endangered blue and humpback whales in the summer and fall (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's offshore habitats. From spring through late summer, krill swarm in the surface layers of the ocean (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 they are concentrated in these surface aggregations.

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, provide diverse habitats including 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 annually spawn on the eelgrass beds of Tomales Bay (Fox 1997). The shallow protected bays and estuaries are also important habitat for anadromous fish, 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.

The nearshore coastal waters of the Sanctuary are sensitive biological habitats where myriad marine invertebrates and algae reside, where bird rookeries and pinniped haulout sites are present, where many critical nursery and food source habitats for wildlife are located, and where many nearshore users of the Sanctuary's water tend to concentrate.

The nearshore waters of the Sanctuary are the areas most heavily used for recreation. Areas such as Bodega Bay and Tomales Bay are used for sailing, canoeing, rowing, kayaking and swimming. These activities are often conducted close to shore and may be dependent on calm waters. The ability of MPWC to go very close to shore (due to their shallow draft) and move in unpredictable ways may be detrimental to the safety and aesthetic experience of those conducting these more benign recreational activities.

The offshore waters of the Sanctuary provide entrance and egress for commercial shipping traffic using ports in San Francisco Bay. Tankers and container ships traverse the Sanctuary in shipping lanes, which funnel traffic in northbound and southbound directions. These offshore waters also support active sport and commercial fisheries. Small skiffs and larger commercial vessels move at constant speeds or drift through the Sanctuary waters fishing for salmon and albacore. Rockfish and urchin boats fish high spots and reefs closer to shore. On the softer sediment of the continental shelf, crab fishermen lay out rows of crab pots each one identified with a buoy at the surface. All of these activities have gear in the water that extends some distance from the boat and the gear is not readily apparent to the casual observer. Most

fishermen are aware of how other 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 operators regularly use the offshore area of the Sanctuary for wildlife viewing opportunities. These offshore areas provide important habitat for feeding blue whales, humpback whales, gray whales, harbor porpoise, Steller sea lions, Pacific white sided dolphins, Dall's porpoise, California sea lions, common murre, 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.

Ten percent of California's threatened coho salmon population use the outer Sanctuary and Tomales Bay during the ocean phase of their life history before returning to Lagaunitas creek and other creeks on the spawning migration which completes their life cycle. Newly listed populations of chinook salmon also use the Gulf of the Farallons as adults before returning to the Sacramento River drainage to spawn. Because of the significant biological diversity found within the Sanctuary including 11 federally endangered and 7 threatened species of birds, fish, turtles, and marine mammals and the importance of Sanctuary habitats for maintaining these populations, NOAA as the public trustee agency for these resources takes a precautionary approach to their protection. The potential for adverse environmental impacts from MPWC operation poses an unacceptable risk to the health of these resources, and because of the high potential for user conflicts, NOAA has decided to prohibit MPWC from operating within the boundaries of the GFNMS, including waters surrounding the Farallon Islands. The restricted areas include Drakes Bay, Tomales Bay, Bolinas Lagoon, Estero Americano, Estero de San Antonio, Bodega Bay, and all other areas within Sanctuary boundary.

As of 1 November 1998, launching MPWC from Point Reyes National Seashore (PRNS) of Golden Gate National Recreation Area (GGNRA) was prohibited (U.S. Dept. of Interior 1998 a & b). On 25 October 1999, after NOAA published its April 23, 1999 proposed rule, Marine County banned the use of MPWC within three statute miles of the ocean shore line as well as all tributaries flowing into the ocean up to seven miles

inland.<sup>1</sup> As a result of these actions, areas of the PRNS, GGNRA and Marin County, which overlap with Sanctuary boundaries are now off limits to MPWC. The PRNS, GGNRA and the county of Marin decided that continued use of this area by MPWC would have resulted in an unacceptable risk to sensitive resources in the area.

Historically, there were four MPWC launch sites used to access Sanctuary waters—Lawson's Landing at Dillon Beach, Millerton Point Park, Inverness, and Bodega Harbor. As of 1 November 1998, launching MPWC from Golden Gate National Recreation Area (GGNRA) or Point Reyes National Seashore (PRNS) is prohibited (U.S. Dept. of Interior, 1998 a & b). Millerton Point Park and Inverness are within GGNRA and PRNS boundaries, respectively, and therefore can no longer be used. As a result of the Marin County ordinance, Lawson's Landing is no longer a legal launch site for MPWC, and Tomales Bay and portions of Bodega Bay are now off limits to MPWC. Also, all coastal waters within three miles of shore in Marin County are off limits to MPWC operation. This area overlays the eastern edge of the GFNMS. The only remaining legal MPWC launch site into the Sanctuary is now from Bodega Harbor in Sonoma County, which is not within the jurisdictional boundary of the Marin County ordinance.

With Marin County's recent action banning MPWC operation (Marin County ordinance 3302) within three miles of its shore, if NOAA were to maintain the previously proposed 1000 yard buffer, MPWC would be able to exit Bodega Harbor and operate only in a 0.4 square mile area in Bodega Bay. This area lies in the vessel access route in front of the entrance to Bodega Harbor creating a potential hazard for vessels going in and out of Bodega Harbor. Fog and low visibility are a part of the typical weather pattern for this area during most of the year. If MPWC entered the Sanctuary from a vessel or from a launch site north of the Sanctuary such as the Salmon Creek area (four miles south) they would be operating in the gray whale migration corridor and in important feeding and resting areas for marine mammals and seabirds. This transit from the north into the Sanctuary would also take them through a state marine preserve at Horseshoe Cove which is also

designated an Area of Special Biological Significance (ABS). Through only a small portion of the ABS is in the Sanctuary, within the 1000 yard zone, such activity by MPWC could have negative effects on Sanctuary resources.

If the Sanctuary takes no action, MPWC could depart from Bodega Harbor. After leaving the harbor, they could turn due west, to avoid Marin County's restricted area, and pass over the dangerous Bodega rock shoal to get offshore. Because of the shallow water over the shoal, ocean swells build and break unpredictably in this area. In the past, several boats have capsized and people have died in this unpredictable and dangerous area. Beyond the shoal, MPWC could exit the Sanctuary at Bodega Head by going north or get into the Sanctuary's offshore waters by continuing west. Both require passing in the vicinity of the state's ABS mentioned earlier. MPWC would then be operating in the same biologically rich area including the gray whale migration corridor.

Another option would be for MPWC to use the nearshore shore areas in Bodega Bay. Because of the Marin County ban, MPWC users would be restricted to the northern crescent of Bodega Bay adjacent to the county recreational area at Doran Beach. Doran Beach offers camping and attracts large weekend crowds on hot days. The protected nature of Doran Beach, in the lee of Bodega Head makes it a popular spot for swimming and other water sport activities. Recreational fisherman in small skiffs use this area for sportfishing and crabbing. Two public launch sites in Bodega Harbor offer easy access to these protecting nearshore waters. On windy days, the nearshore area off Doran Beach is a popular spot for windsurfers and sailboats. Operation of MPWC in this area increases the potential for conflict with other recreational users. The ability of MPWC to operate very close to shore (due to the shallow draft) and move in unpredictable ways may be detrimental to the safety and aesthetic experience of those conducting more benign recreational activities. NOAA believes that MPWC operation in offshore and nearshore areas of the Sanctuary creates a user conflict that can be avoided by prohibiting the use of MPWC in the Sanctuary. Operating MPWC in the nearshore area of Bodega Bay also places MPWC in an environmentally sensitive habitat close to observed gray whale feeding areas.

After considering the comments in response to NOAA's April 23, 1999, proposed rule, reviewing new MPWC regulations for agencies with contiguous

and overlapping jurisdictional boundaries, and considering the increased sitings for federally threatened southern sea otters and numbers of gray whales feeding in Bodega Bay, new listings for salmon and steelhead, and requirements for the protection of the Sanctuary's biological resources, the Sanctuary has determined that a total ban on MPWC is necessary to adequately protect Sanctuary resources. This proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users in the Sanctuary. A total ban on MPWC within the GFNMS is the most effective, safe and enforcement regulations that ensures Sanctuary resource protection.

## II. Comments and Responses on Notice of Inquiry/Request for Information

The following is a summary of comments received on the Request for Information, and NOAA's responses.

### Against Regulations:

1. *Comment:* NOAA has mischaracterized the level and pattern of MPWC use in the Sanctuary.

*NOAA Response:* NOAA disagrees. NOAA has solicited from the public and all launchsite owners the amount of use of MPWC in the Sanctuary. MPWC use in the Sanctuary is increasing at a time when marine mammal occurrence is expanding in duration of stay, numbers, species and location. Regulations banning MPWC use in adjoining Marin County, MCOSSD, Point Reyes National Marine Seashore, Golden Gate National Recreation Area, and in the Monterey Bay National Marine Sanctuary leave the GFNMS resources vulnerable to increased interactions among MPWC and marine mammals, sea birds, shore birds, wading birds, and other Sanctuary resources and users.

2. *Comment:* NOAA's attempt to paint MPWCs as the primary source of fuel emissions in air and water in the Sanctuary is based on erroneous and outdated assumptions.

*NOAA Response:* NOAA disagrees. NOAA has not tried to paint MPWC as the primary source of fuel emissions in air and water in the Sanctuary, however MPWC are a source of fuel emissions. 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 and respected in their fields, and have knowledge and experience in the Gulf of Farallones National Marine Sanctuary.

3. *Comment:* NOAA's suggestion that MPWC are operated at "fast" speed,

<sup>1</sup> On 14 January 2000 the California Coastal Commission (CCC) approved, on a 90-day emergency basis, the Marin County ban, which the CCC subsequently extended for an additional 90 days on 17 March 2000. The CCC will likely vote on whether to permanently approve the Marin County rule in May, 2000.

"close" to shore does not support the proposed 1000 yard restriction.

*NOAA Response:* NOAA disagrees. NOAA believes that these activities are not only detrimental to marine life in the 1000 yard zone, but to the entire Sanctuary as well. This was arrived at after a review of the literature, consideration of all comments, review of regulations of areas with contiguous boundaries, and the latest biological information. Therefore, NOAA agrees that the 1000 yard restriction be changed to a prohibition within the Sanctuary as the only way to adequately protect all sea birds, marine mammals and other resources within this marine ecosystem.

4. *Comment:* NOAA's assertion that MPWCs have disturbed the natural quiet and aesthetic appreciation in the "nearshore" does not support the proposed restriction on MPWC use.

*NOAA Response:* NOAA disagrees. Noises from MPWC have been noted in many comments and have detrimentally affected the enjoyment of other Sanctuary users. The MPWC Industry cites other vessels which make similar or greater noise than MPWC. However, 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. 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 have had mufflers removed which greatly changes their noise output.

5. *Comment:* NOAA's description of recreational use patterns in the Sanctuary belies its assertion that MPWCs have interfered with other recreational uses.

*NOAA Response:* NOAA disagrees. After consideration of public comment on this issue, including testimony at public hearings relative to MPWC use in or adjacent to the Sanctuary, NOAA has determined that MPWC conflict or pose the potential to conflict with other recreational uses such as swimming, kayaking, recreational fishing, boating and wildlife viewing.

6. *Comment:* The referenced studies regarding disturbance of water fowl and seabirds do not support NOAA's proposed restriction on MPWC use.

*NOAA Response:* NOAA disagrees. Scientific research indicates that even at slower speeds, MPWC are a significantly stronger source of disturbance to birds than more conventional motorboats. Levels of disturbance can be further increased when MPWC are used at high speeds or outside of established boating channels. Seabirds such as common murre 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 area. These feeding flocks are ephemeral in nature and their movement is dictated by the availability of their prey. After review of the literature, consideration of all comments, review of regulations of areas with contiguous boundaries, and the latest biological information, NOAA believes that the proposed restriction of MPWCs from coming within 1,000 yards of shore would be inadequate to protect all sea birds and marine mammals. Therefore, NOAA has proposed a prohibition on the operation of MPWC in the Sanctuary.

7. *Comment:* The proposed MPWC restriction is not necessary to protect marine mammals.

*NOAA Response:* As identified in numerous comments on NOAA's proposed rule, as well as in response to NOAA's notice of inquiry/request for information (8/21/97), there are significant concerns regarding the effects of MPWCs on living resources dependent upon the vitality of Sanctuary resources. Marine mammals currently at risk from MPWCs include southern sea otter (*Enhydra lutris*), blue whales (*Balaenoptera musculus*), humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrichtius robustus*), Guadalupe fur seal (*Arctocephalus townsendi*), northern fur seal (*Callorhinus ursinus*), Steller sea lions (*Eumetopias jubatus*), and harbor porpoise (*Phocoena phocoena*). All of these animals move freely through the Sanctuary, four are listed as threatened or endangered.

Another recent change (1997, 1998, & 1999) has been that gray whales are staying in GFNMS during the summer and feeding in Bodega Bay and around the Farallon Islands. This new behavior in Bodega has increased from zero (0) in 1994 to at least 12 animals in 1999. Gray whales and MPWCs use the same areas, but whales have not been seen when MPWCs are using the area. Other animals of concern are Guadalupe fur seals (threatened) which have been seen on the Farallon Islands since 1993. This is a new species for this area. Steller sea lions (threatened) haul out and use the

Farallon Islands and Point Reyes area transit all areas of the Sanctuary.

The latest (July 1999) uncommon behavior observed was for the endangered blue whales. These animals have almost always been observed offshore over depths greater than 100 fathoms. This year blue whales have been consistently seen within the area east of the Farallon Islands over depths of 40 to 50 fathoms and in July 1999 blue whales were seen one nautical mile off Chimney Rock over a depth of 20 fathoms.

Humpback whales have also been present one to two miles off Pt. Reyes. The observations of all these marine mammals (four are threatened and endangered species) were in areas outside of 1,000 yards. These animals require protection from MPWC in order to allow alternatives for them as populations move or increase and other areas are abandoned or become fully utilized.

As stated clearly by the MPWC industry in their comments, existing laws are not being followed by all MPWC operators and are also not enforced. Interactions of MPWCs with marine mammals, as well as with shore birds, wading birds and swimmers, are already illegal under federal, state or local statute, but still occur. A total prohibition will provide a clear and simple enforceable rule within the GFNMS.

Research has demonstrated that impacts resulting from MPWC use tend to be concentrated locally, producing more geographically limited, yet potentially more severe effects than would occur with other motorboats which are less maneuverable than MPWC [See DEA, Section III, Summary of Effects of MPWC on Marine Resources, for an expanded discussion (Snow, 1989).]

8. *Comment:* NOAA is mistaken in assuming MPWCs are predominantly used in an "aggressive" manner and points to no specific accidents or injuries involving other sanctuary users.

*NOAA Response:* NOAA did not use the term "aggressive" in the preamble to the proposed regulation.

9. *Comment:* NOAA's assertion that MPWCs pose a hazard to other water users because of a disproportionate risk of accidents is unreliable.

*NOAA Response:* NOAA reviewed published reports (U.S. Coast Guard, 1999) and considered various accident data and statistics that showed MPWCs are involved in a higher percentage of accidents than other types of watercraft.

10. *Comment:* NOAA cannot reasonably base its proposed prohibition of MPWC use within 1000 yards of

shore on unconfirmed, and in some cases unwritten, personal "documentation" and "communication" regarding interference with swimmers, kayakers and other recreational users of "nearshore" areas.

**NOAA Response:** NOAA disagrees. NOAA's decision to ban MPWC use within the Sanctuary is not solely based on interference with swimmers, kayakers and other recreational users of nearshore area. Evidence of MPWC's negative impact on marine resources in the Sanctuary is the primary concern to NOAA. However, because of U.S. Coast Guard statistics and reports of MPWC jeopardizing the well-being of swimmers, kayakers, canoeists, and other recreational boaters and users of nearshore areas of the Sanctuary, NOAA has determined that a prohibition on the operation of MPWC is the most prudent alternative to adopt for this sanctuary.

**11. Comment:** Responsible users do not chase or harass marine life; do not disrupt residents or businesses on the shore-line with high speed cruising; support restrictions on speed [and all watercraft] within 100–200 ft. of shore. MPWC operate within EPA noise and emissions requirements.

**NOAA response:** NOAA disagrees. Responsible users may not intentionally harass wildlife, but unintentional disturbance to wildlife from MPWC operation has the same negative impacts. See responses above for MPWC effects—intentional or unintentional. Testimony and comments from local residents contend that MPWC are disruptive. See response to comment 11 regarding enforcement and response to comment 4 addressing noise.

For Regulation:

**12. Comment:** MPWC should be completely prohibited throughout all of the Sanctuary. Do not establish an access corridor to launch at Bodega Harbor.

**NOAA response:** NOAA agrees. As discussed earlier, based on 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. The GFNMS agrees with the concern that although restricting MPWC from coming within 1,000 yards of the shore would protect shore birds and wading birds, the Sanctuary resources that lie outside of this zone would remain at risk.

**13. Comment:** Golden Gate National Recreation Area (Park) has banned use

of MPWC; Sanctuary (NOAA) should do the same.

**NOAA response:** NOAA agrees. The GFNMS boundaries are contiguous and overlap with the Point Reyes National Seashore (PRNS) and the Golden Gate National Recreation Area (GGNRA) which both prohibit MPWC use in their waters. The Marin County Open Space District (MCOSD) also shares management authority with GFNMS on Bolinas Lagoon where MPWC operation is also prohibited by the MCOSD. As of 25 October 1999, the County of Marin enacted an ordinance for the total ban of MPWC within three statute miles (15,840 ft.) of the ocean shore and all tributaries flowing into the ocean up to seven miles inland. This precludes MPWC operation in a large portion of the new shore area where County and Sanctuary jurisdictional boundaries overlap. NOAA concurs with and supports the other agencies assessment of resource impacts and user concerns created by the operation of MPWC in the marine environment of this area.

**14. Comment:** MPWC cause unacceptable pollution in the Sanctuary, particularly because propulsion by two-stroke engine results in oil exhaust direct to water.

**NOAA 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 the four-stroke engines found on 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 (by 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 all areas of the Sanctuary.

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

**NOAA response:** 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). However, many MPWC operators alter or remove the mufflers to enhance craft performance, thus increasing the noise generated by their craft. Also, 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).

**16. Comment:** Speed and mobility of MPWC cause negative effects on marine mammals and aquatic birds. Wildlife are not able to anticipate movement and may also cause susceptibility to disease and injury.

**NOAA 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.

Researchers note that MPWC may be disruptive to marine mammals when 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 1966). 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; avoidance by whales and mortality of endangered southern sea otters (Gentry 1996; Richardson et al. 1995, Anonymous 1990).

*17. Comment:* MPWC cause the disturbance of wildlife in the Sanctuary.

*NOAA response:* NOAA agrees. Many seabirds and marine mammals use the surface layer of the ocean within the GFNMS for resting and feeding opportunities. Common murrelets, loons, cormorants, grebes, auklets, and phalaropes are some of the seabirds that float on the surface of the ocean while resting or before diving and pursuing prey. These seabirds are at an increased risk from MPWC because MPWC operation causes disturbance and more complex behavioral responses from seabirds and at greater distances than that observed for motorboats (Rodgers 1997). One speaker at the public hearing testified that he and others observed six gray whales one afternoon loitering near the mouth of Tomales Bay for the afternoon. The next day, six MPWC were operating in the exact area where the gray whales had been. The gray whales had left the area. While this information is anecdotal, it is an indication that the presence of whales and MPWC operation are not compatible. When viewed in light of Gentry's (1996) work, MPWC activity may prevent wildlife from using necessary habitat.

*18. Comment:* MPWC will cause disruption of nesting, breeding, and feeding areas of seabirds.

*NOAA response:* NOAA agrees. 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 habitat, 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 1999. 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 a nesting 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). Nearshore areas in Bodega Bay, Sonoma County, provide important foraging habitat for shorebirds and waterfowl along the Pacific flyway. The Farallon Islands, located in San Francisco County, support the largest concentration of breeding seabirds in the continental United States. Several species of diving birds that nest on the Farallon Islands use the offshore areas of the Sanctuary to forage. These animals float on the surface of the water between repeated dives for food. MPWC operating in this offshore habitat would certainly disrupt seabirds foraging for prey to bring back to their young in nests.

*19. Comment:* MPWC will cause disruption of marine mammals; will allow jet skis to be used in part of gray whale migration route.

*NOAA response:* NOAA agrees. 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. Researchers note that MPWC may be disruptive to marine mammals when 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 gray whale migration corridor passes directly through the GFNMS. Twice a year gray whales pass through the Sanctuary on their migration between wintertime calving grounds in Mexico and summer feeding grounds in Alaska. In spring, mothers and calves travel in pairs close to shore. Since the whale migration corridor passes through

the entire Sanctuary in a north-south direction, but varies in distance from shore, there is no way to distance MPWC from the migrating whales. In addition, the GFNMS is a destination feeding area for the endangered blue and humpback whales. Each summer these whales migrate to the GFNMS to feed on abundant swarms of krill found in the surface layers in the Gulf of the Farallones. It is critical that these whales feed enough in the summer and fall to sustain them through their migration and winter reproductive season. Disturbance from MPWC could reduce feeding opportunities and have serious consequences for these endangered populations. Endangered blue whales were 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 necessity for protecting all of the Sanctuary's waters. Other jurisdictions have regulated MPWC specifically to protect marine mammals (e.g., Hawaii).

*20. Comment:* Proposed rule will leave 95% of the Sanctuary unprotected [from the effects of jet skis]

*NOAA response:* NOAA agrees. NOAA's initial proposal of a 1000 yd. buffer would leave 95% of the Sanctuary open for MPWC operation. The Sanctuary was created in 1981 to protect and preserve the extraordinary ecosystems, including marine birds, mammals, and other natural resources of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource. As discussed throughout this document, information supports a need to address the impacts of MPWC operation throughout the Sanctuary. As the public trustee for these important resources, it would be inadequate for the Sanctuary to leave resources at risk in 95% of the GFNMS and therefore NOAA has proposed a prohibition of the operation of MPWC in the entire Sanctuary.

*21. Comment:* MPWC use disturbs others using the Sanctuary and would cause danger to individual swimmers [and other boaters] in the Sanctuary.

*NOAA 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 accident were MPWC (U.S. Coast Guard 1999). In addition, numerous commentors noted that the operation of MPWC in the Sanctuary 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.

**22. Comment:** A partial ban would be too hard to enforce; covering all of the Sanctuary would be more clear to jet ski users and to enforcement personnel.

**NOAA response:** NOAA agrees. With the implementation of the Marin County ban that regulates MPWC three miles shore, enforcing boundary violations would be difficult. Because the Sanctuary does not have enforcement personnel to staff a boat patrol at the three mile boundary and MPWC are not equipped with navigational equipment it would be impossible to enforce boundary violations. Before the Marin County ban, there was difficulty enforcing the Point Reyes National Seashore's (PRNS) quarter mile restriction. Despite local riders attempt at self-policing and creating no ride zones, violations were chronic and regulations were hard to enforce. This occurred in PRNS that has enforcement personnel on staff. A total prohibition will provide a clear and simple enforcement rule within the GFNMS.

### III. Summary of Proposed Regulations

Amendments to the GFNMS regulations are proposed in this rulemaking as follows:

The addition to 15 CFR 922.82(a) of a prohibition against operation of MPWC in the Sanctuary. The prohibition would include 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.

An amendment to 15 CFR 922.81 to add a definition of "motorized personal watercraft." "Motorized personal watercraft" would 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 proposed 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 that the proposed rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities, as follows:

The proposed rule would amend the Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary) regulations to prohibit the operation of motorized personal watercraft in the Sanctuary. The proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users of the Sanctuary.

There is currently one legal launch location for MPWC operation in the Sanctuary at Bodega Harbor in Sonoma County. Combined data from Marin County and Sonoma County estimates 20 MPWC users and approximately 200 launches per year. With the Marin County ban issued in October of 1999, it's estimated the Sonoma County parks would lose a launch fee of \$5 dollars per launch for an estimated 100 launches form Bodega Harbor for a total loss of \$500 dollars. This is a minor portion of the total revenues for the County park at Doran Beach. Consequently, the rule is not expected to have a significant economic impact on a substantial number of small entities.

Accordingly, a Regulatory Flexibility Analysis was not prepared.

#### *Paperwork Reduction Act*

This proposed 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.

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#### 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.

Dated: May 16, 2000.

**Ted Lillestolen,**

*Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, 15 CFR Part 922, Subpart H, is proposed to be amended as follows:

#### PART 922, SUBPART H—THE GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

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

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

2. Section 922.18 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. 00–12797 Filed 5–19–00; 8:45 am]

BILLING CODE 3510–08–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MN60–01–7285b; FRL–6703–2]

### Approval and Promulgation of Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to approve a site specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for LTV Steel Mining Company, formerly known as Erie Mining Company, located in St. Louis County, Minnesota. In its submittal, the State has requested that we remove the Stipulation Agreement for Erie Mining Company from the Minnesota SIP. In the final rules section of this **Federal Register**, we are conditionally approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received by June 21, 2000.

**ADDRESSES:** Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson