

views of the Advisory Council on Historic Preservation.

(f) The Director may observe any activity permitted by this section; and/or may require the submission of one or more reports of the status or progress of such activity.

Subpart G—Channel Islands National Marine Sanctuary

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of approximately 1,110 square nautical miles (nmi) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. The Sanctuary boundary begins at the Mean High Water Line of and extends seaward to a distance of approximately six nmi from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands). The seaward boundary coordinates are listed in appendix A to this subpart.

[74 FR 3260, Jan. 16, 2009]

§ 922.71 Definitions.

In addition to those definitions found at 15 CFR 922.3, the following definitions apply to this subpart:

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

Graywater means galley, bath, or shower water.

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

Motorized personal watercraft means a vessel, usually less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the

hull. The length is measured from end to end over the deck excluding sheer, meaning a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not included in the measurement. Length is stated in feet and inches.

Oceangoing ship means a private, commercial, government, or military vessel of 300 gross registered tons or more, not including cruise ships.

Pelagic finfish are defined as: Northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena spp.*), billfishes (family *Istiophoridae*), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasii*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus spp.*), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias spp.*), swordfish (*Xiphias gladius*), tunas (family *Scombridae*), and yellowtail (*Seriola lalandi*).

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

[74 FR 3260, Jan. 16, 2009]

§ 922.72 Prohibited or otherwise regulated activities—Sanctuary-wide.

(a) Except as specified in paragraphs (b) through (e) of this section, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Exploring for, developing, or producing hydrocarbons within the Sanctuary, except pursuant to leases executed prior to March 30, 1981, and except the laying of pipeline pursuant to exploring for, developing, or producing hydrocarbons.

(2) Exploring for, developing, or producing minerals within the Sanctuary,

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except producing by-products incidental to hydrocarbon production allowed by paragraph (a)(1) of this section.

(3)(i) Discharging or depositing from within or into the Sanctuary any material or other matter except:

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

(B) For a vessel less than 300 gross registered tons (GRT), or an oceangoing ship without sufficient holding tank capacity to hold sewage while within the Sanctuary, biodegradable effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1321 *et seq.* Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Biodegradable matter from:

(1) Vessel deck wash down;

(2) Vessel engine cooling water;

(3) Graywater from a vessel less than 300 gross registered tons;

(4) Graywater from an oceangoing ship without sufficient holding tank capacity to hold graywater while within the Sanctuary;

(D) Vessel engine or generator exhaust;

(E) Effluent routinely and necessarily discharged or deposited incidental to hydrocarbon exploration, development, or production allowed by paragraph (a)(1) of this section; or

(F) Discharge allowed under section 312(n) of the FWPCA.

(ii) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(3)(i)(B) through (F) of this section and fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity beyond the boundary of the Sanctuary, provided

that such discharge or deposit is during the conduct of lawful fishing activity there.

(4) Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing or placing any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental to and necessary to:

(i) Anchor a vessel;

(ii) Install an authorized navigational aid;

(iii) Conduct lawful fishing activity;

(iv) Lay pipeline pursuant to exploring for, developing, or producing hydrocarbons; or

(v) Explore for, develop, or produce hydrocarbons as allowed by paragraph (a)(1) of this section.

(5) Abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary.

(6) Except to transport persons or supplies to or from any Island, operating within one nmi of any Island any vessel engaged in the trade of carrying cargo, including, but not limited to, tankers and other bulk carriers and barges, any vessel engaged in the trade of servicing offshore installations, or any vessel of three hundred gross registered tons or more, except fishing or kelp harvesting vessels.

(7) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of any Island, except to engage in kelp bed surveys or to transport persons or supplies to or from an Island. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

(8) Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess a Sanctuary historical resource.

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

regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(10) Possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird, except as authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(11) Marking, defacing, damaging, moving, removing, or tampering with any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary.

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

(13) Operating a motorized personal watercraft within waters of the Sanctuary that are coextensive with the Channel Islands National Park, established by 16 U.S.C. 410(ff).

(b)(1) The prohibitions in paragraphs (a)(3) through (13) of this section and in § 922.73 do not apply to military activities carried out by DOD as of the effective date of these regulations and specifically identified in section 3.5.9 (Department of Defense Activities) of the Final Channel Islands National Marine Sanctuary Management Plan/Final Environmental Impact Statement (FMP/FEIS), Volume II: Environmental Impact Statement, 2008, authored and published by NOAA ("pre-existing activities"). Copies of the document are available from the Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109. Other military activities carried out by DOD may be exempted by the Director after consultation between the Director and DOD.

(2) A military activity carried out by DOD as of the effective date of these regulations and specifically identified in the section entitled "Department of Defense Activities" of the FMP/FEIS is not considered a pre-existing activity if:

(i) It is modified in such a way that requires the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act, 42 U.S.C.

4321 *et seq.*, relevant to a Sanctuary resource or quality;

(ii) It is modified, including but not limited to changes in location or frequency, in such a way that its possible adverse effects on Sanctuary resources or qualities are significantly greater than previously considered for the unmodified activity;

(iii) It is modified, including but not limited to changes in location or frequency, in such a way that its possible adverse effects on Sanctuary resources or qualities are significantly different in manner than previously considered for the unmodified activity; or

(iv) There are new circumstances or information relevant to a Sanctuary resource or quality that were not addressed in the FMP/FEIS.

(3) In the event of destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an incident, including, but not limited to, discharges, deposits, and groundings, caused by a DOD activity, DOD, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director.

(4) All DOD activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(c) The prohibitions in paragraphs (a)(3) through (10), (a)(12), and (a)(13) of this section and in § 922.73 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.74.

(d) The prohibitions in paragraphs (a)(3) through (11) and (a)(13) of this section and in § 922.73 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(e) The prohibitions in paragraphs (a)(3) through (11) and (a)(13) of this section and in § 922.73 do not apply to any activity necessary for valid law enforcement purposes in the Sanctuary.

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