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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 170315274-7274-01]

RIN 0648-BG73

**Vessel and Aircraft Discharges from United States Coast Guard
Activities in 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: Proposed rule.

SUMMARY: With this proposed rule, the National Oceanic and Atmospheric Administration (NOAA) considers allowing the United States Coast Guard (USCG or Coast Guard) to carry out certain otherwise prohibited activities within waters of Greater Farallones National Marine Sanctuary (GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) approximately 3 nautical miles (nm) from the shore, in the areas of the sanctuaries that were

expanded in 2015. The discharges under consideration are: untreated vessel sewage, vessel graywater as defined by the Federal Water Pollution Control Act, as amended (FWPCA), that does not meet the definition of "clean" as defined by the GFNMS and CBNMS regulations, and ammunition and pyrotechnic (warning projectile, flare, smoke float and marine marker) materials used in USCG training exercises for use of force (live fire or gunnery) and training exercises for search and rescue (SAR) of vessels or persons in distress. No change is proposed to the regulatory prohibitions or exceptions applicable to the pre-expansion boundaries of the two sanctuaries. A draft environmental assessment (DEA) under the National Environmental Policy Act (NEPA) has been prepared for this proposed action. NOAA is soliciting public comment on the proposed rule and DEA.

DATES: Comments will be considered if received by January 16, 2018. Public hearings will be held on December 5 and 13, 2017, from 6 p.m. to 8 p.m.

ADDRESSES: You may submit comments on this document and/or on the DEA, identified by NOAA-NOS-2017-0140, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go

to <http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2017-0140>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Maria Brown, Superintendent, Greater Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129.

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 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Copies of the DEA and proposed rule can be downloaded or viewed on the internet at www.regulations.gov (search for docket # NOAA-NOS-2017-0140) or at <https://farallones.noaa.gov/manage/regulations.html>. Copies can

also be obtained by contacting the person identified under "For Further Information Contact."

Public hearings will be held in the following locations:

- December 5, 2017. 6-8 p.m. Bay Model, 2100 Bridgeway, Sausalito, CA 94965.
- December 13, 2017. 6-8 p.m. Gualala Community Center, 47950 Center Street, Gualala, CA 95445.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

On March 12, 2015, NOAA expanded the boundaries of GFNMS and CBNMS to an area north and west of their previous boundaries. In that rule, pursuant to a request from the USCG, NOAA announced that it would postpone the effective date for the discharge requirements in both expansion areas (defined as the areas that were added to the existing 1981 and 1989 boundaries for GFNMS and CBNMS, respectively) with regard to USCG activities. NOAA stated the purpose of the postponement was to

look at ways to address Coast Guard's concerns that the discharge regulations would impair the operations of Coast Guard vessels in, and aircraft over, the sanctuaries, and to consider, among other things, whether to exempt Coast Guard activities in both sanctuary expansion areas. This proposed rule considers allowing the USCG to carry out otherwise prohibited discharges within waters of the GFNMS and CBNMS expansion areas seaward of approximately 3 nm from the shore, as described in more detail below. In formulating this proposed rule, NOAA considered a number of factors discussed more fully in the DEA, including the ability of the USCG to complete its mission requirements and the policy of facilitating uses of the sanctuaries to the extent compatible with resource protection.

B. Greater Farallones and Cordell Bank National Marine Sanctuaries

NOAA is charged with managing areas of the marine environment which are of special national significance 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 (System) for this and future generations throughout the nation. This System includes 13 national marine sanctuaries, among them GFNMS and CBNMS, and Papahānaumokuākea and Rose Atoll marine national monuments. 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). NOAA expanded both sanctuaries to their current size on March 12, 2015 (80 FR 13078). When referring to the expansion areas of the sanctuaries, NOAA means the areas that were added to the existing 1981 and 1989 boundaries for GFNMS and CBNMS, respectively.

Both GFNMS and CBNMS' regulations prohibit discharging or depositing, from within or into the sanctuary, any material or other matter (15 CFR 922.82(a)(2) and (3) and 15 CFR 922.112(a)(2)(i) and (ii)). Both the GFNMS and CBNMS regulations also prohibit 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 (15 CFR 922.82(a)(4); 15 CFR 922.112(a)(2)(iii)). Most national marine sanctuaries also have similar regulatory prohibitions. The discharge prohibitions are aimed at maintaining and improving water quality within national

marine sanctuaries to enhance conditions for their living marine resources. The discharge prohibitions include the following exceptions relevant to the proposed action:

- 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 Act¹, as amended (FWPCA); vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage (15 CFR 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 (15 CFR 922.82(a)(2)(iv) and 922.112(a)(2)(i)(D));

¹ The Federal Water Pollution Control Act is more commonly referred to as the Clean Water Act.

- Activities necessary to respond to an emergency threatening life, property or the environment (15 CFR 922.82(c) and 922.112(b)).

The following definitions apply to these exceptions:

- "Clean" means not containing detectable levels of a harmful matter (15 CFR 922.81 and 922.111); and,
- "Graywater" means galley, bath, and shower water (33 U.S.C 1322(a)(11)).

The first two existing discharge exceptions listed above apply to all vessels other than cruise ships. Therefore, they would apply to USCG vessels and would continue to apply if the regulatory changes proposed in this rulemaking were finalized.

C. USCG Activities

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 (6 U.S.C. 468(a)).

One of the missions 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 and their implementing regulations. The USCG has the 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 are conducted inside NMS boundaries, some of which also support national marine sanctuary management, include waterways and coastal security; aids to navigation, including tending buoys; search and rescue (SAR); 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.

According to the USCG Environmental Vessel Manual, USCG practices allow for discharges of untreated sewage and non-clean graywater from USCG vessels in waters beyond 3 nm from shore. USCG vessels have continued these discharges beyond 3 nm from shore in the expansion areas of GFNMS and CBNMS, due to NOAA's decision to temporarily delay the effective date of applying sanctuary discharge prohibitions with respect to USCG activities in the expansion areas of GFNMS and CBNMS while NOAA assesses these activities and their potential environmental effects.

According to other regulatory requirements and USCG guidance and practices, discharges are not allowed to take place within approximately 3 nm of the shore. The FWPCA requires (in Section 312) that vessels with installed toilets must only discharge sewage through a Type I or II marine sanitation device within three miles² of shore (33 U.S.C. 1322(h)(4); 33 U.S.C. 1362(7)-(8)). The California Harbors and Navigation Code 775 (a)(2) and (b) require compliance with the FWPCA. There is also a U.S. Environmental Protection Agency (USEPA) designated No Discharge Zone (NDZ) prohibiting sewage discharges in the marine waters of the state that applies to specified vessels of 300 gross tons or

² The FWPCA refers to "miles" but the common interpretation is "nautical miles", as statute miles are not used by mariners, and many states use a 3 nm from shore boundary (http://www.gc.noaa.gov/gcil_seaward.html).

greater³, which would apply to several classes of USCG vessels. Further, the USCG Vessel Environmental Manual includes a restriction on discharging raw sewage within 3.5 miles (3 nm) of land.

D. Need for action

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 prohibitions proposed for the GFNMS and CBNMS expansion areas had the potential to impair USCG surface and airborne use of force training activities, SAR training activities, and the ability of Coastal Patrol Boats to conduct any mission within the sanctuaries. Of specific concern to the USCG were the proposed prohibitions on discharges made during these training activities: vessel sewage discharges, particularly with respect to law enforcement and SAR missions, and the ability of the USCG to operate and remain "mission ready."

To accommodate the need for these USCG activities to take place after the expansion rule entered into effect, NOAA postponed, for six months from the effective date of the rule, the applicability of the discharge requirements to Coast Guard

³ Various laws and regulations refer to gross tons or gross registered tons (GRT). NOAA uses the terms in this document exactly as they appear in the specific legal source cited.

activities in both expanded areas. 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). Additional six-month postponements of the effectiveness of the discharge requirements in the expansion areas were published in the Federal Register on December 1, 2015 (80 FR 74985), May 31, 2016 (81 FR 34268), December 6, 2016 (81 FR 87803), and June 7, 2017 (82 FR 26339) to enable completion of the environmental assessment and to determine NOAA's next steps. The effective date for the discharge requirements in the expansion areas for both sanctuaries with regard to USCG activities is currently postponed until December 9, 2017. Accordingly, without further NOAA action, the discharge regulations would become effective with regard to USCG activities on December 9, 2017. Thus, a separate document published in the Federal Register concurrently with this proposed rule extends the postponement of the discharge requirements for the USCG activities in the expansion areas until December 9, 2018 to provide adequate time for completion of a final environmental assessment and final rule, as appropriate. As described in the separate document, the new postponement of these discharge requirements will terminate either on December 9, 2018 or 30 days after publication of a final rule, whichever comes first.

Of primary concern to USCG are the discharge regulations in both expanded sanctuaries and USCG compliance with these regulations. USCG vessels have limited capacity to treat sewage and some have limited capacity to hold sewage and graywater, and are without Type I or II marine sanitation devices onboard to treat the wastewater prior to discharge; accordingly, the discharges from such vessels would not fit within the existing regulatory exemptions for discharge within GFNMS and CBNMS. Training exercises designed to make USCG personnel ready for missions involving use of force and SAR involve discharging live ammunition and pyrotechnic materials. 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 and other mission activities that support sanctuary management.

Prior to the expansion of GFNMS and CBNMS, the USCG was able to comply with the sanctuaries' vessel discharge regulations by discharging untreated vessel sewage and non-clean graywater in ocean waters outside GFNMS and CBNMS or by pumping it out at shoreside pump-out facilities. The expansion of GFNMS and CBNMS, with the resulting larger sizes of the sanctuaries and extension of discharge prohibitions to the expanded portions of the

sanctuaries, would make it difficult for the USCG to both fulfill its missions and comply with the vessel discharge prohibitions. The USCG vessels have constraints for treating and holding sewage and non-clean graywater, and crews would have to plan for the extra time required to travel from the GFNMS and CBNMS expansion areas to USCG shoreside pump-out facilities in Bodega and San Francisco bays or to ocean waters outside national marine sanctuary boundaries to discharge vessel holding tanks (where allowed by state and federal regulations).

Similarly, with regard to training activities, prior to the expansion of GFNMS and CBNMS, the USCG planned and conducted these exercises outside the sanctuaries' boundaries and within relatively short distances from USCG stations without violating sanctuary discharge regulations. Because the USCG maritime enforcement, defense readiness, and SAR capabilities are enhanced by conducting live-fire and SAR exercises in the areas in which its personnel normally operate, the expansion of GFNMS and CBNMS and extension of discharge prohibitions to the expanded portions of the sanctuaries have the potential to impair the ability of USCG to operate and train to remain "mission ready."

E. History of Action

Prior to the expansion of the two sanctuaries' boundaries, GFNMS and USCG had been discussing potentially allowing USCG to make discharges within the sanctuary during live fire and SAR training exercises. In 2012 and 2013, USCG District 11 and GFNMS held a series of meetings focused on discharges of flares, ammunition, and targets related to live fire and SAR training. During this time, GFNMS and USCG identified several areas for potentially allowing seasonal training-related discharges as well as possible operating protocols. The intention was to consider allowing USCG training discharges via a national marine sanctuary permit, if the activities could be conducted in a way that would minimize potential impacts to marine mammals and other living marine resources. The USCG did not submit an application for a permit, and therefore NOAA did not issue a permit.

After receiving the USCG's February 4, 2013 letter, the USCG and NOAA initiated discussions to address the full range of USCG discharges from training activities, and untreated vessel sewage and graywater discharges in both GFNMS and CBNMS. As part of these discussions, the USCG and NOAA reviewed potential environmental effects and various approaches to mitigate potential harm to sanctuary resources from these USCG discharges, including NMS permits and best practices for USCG

discharge activities. In January 2015, prior to the publication of the final rule to expand GFNMS and CBNMS, NOAA and the USCG entered into interagency consultations to address both agencies' concerns. The details of this ongoing consultation are described above under "Need for Action."

From April 21 to May 31, 2016 (81 FR 23445), NOAA accepted public comments and information to determine the relevant scope of issues and range of alternatives for NOAA to address in the environmental assessment and proposed rule. Public and agency comments were received via the Federal e-Rulemaking Portal, by mail, and at three public meetings that were held in Sausalito, Bodega Bay and Gualala on May 10, 11 and 12, respectively. Comments received are available at www.regulations.gov (search for docket NOAA-NOS-2017-0140). NOAA considered these comments in preparing this proposed rule and associated DEA.

F. Process

The process for this action is composed of four major stages: (1) information collection and characterization and public scoping (scoping was completed on May 31, 2016); (2) preparation and release of a draft environmental assessment under the National Environmental Policy Act (NEPA), and any proposed amendments to the regulations if appropriate; (3) public review

and comment of the proposed amendments and the draft environmental assessment; (4) preparation and release of a final environmental review document, and any final amendments to the GFNMS and CBNMS regulations, if appropriate. With the publication of this proposed rule, NOAA enters the third phase of this process.

NOAA will fulfill its responsibilities to complete required consultations and/or receive necessary authorizations under the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 et seq.), section 7 of the Endangered Species Act (ESA; 16 U.S.C. 1531 et seq.), Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 300101), and Federal Consistency review under the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451 et seq.), along with its ongoing NEPA (42 U.S.C. 4321 et seq.) process including the use of NEPA documents and public meetings to also meet the requirements of other federal laws. Together with this proposed rule, NOAA is releasing a DEA containing more detailed information on the considerations of this proposal, including assessment of alternatives, analysis of potential environmental impacts, and references. The EA can be found through the website in the FOR FURTHER INFORMATION CONTACT section above.

II. Summary of the Proposed Regulations

A. Sewage and Graywater

With this proposed rule, NOAA would amend the GFNMS and CBNMS regulations to allow USCG vessels to discharge untreated sewage and non-clean graywater only in the waters of the expansion areas of GFNMS and CBNMS seaward of approximately 3.5 miles (3 nautical miles (nm)) from the shoreline. USCG discharges of untreated sewage and non-clean graywater from vessels that are not equipped with a Type I or II marine sanitation device (MSD) and without sufficient holding tank capacity would continue, as per historic and current routine USCG operational practices in waters of both expansion areas beyond 3 nm from shore. As previously described, these discharges have continued since June 2015 due to NOAA's decision to temporarily delay the effective date of applying sanctuary discharge prohibitions with respect to USCG activities while NOAA assesses these activities and their potential environmental effects.

The current GFNMS and CBNMS discharge prohibitions provide an exception for clean sewage discharge ("clean effluent") through a Type I or II MSD for: (1) a vessel less than 300 GRT, or (2) a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary (15 CFR 922.82(a)(2)(ii) and 922.112(a)(2)(i)(B)). They also provide an exception for clean graywater to be discharged : (1) a vessel

less than 300 GRT, or (2) a vessel 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the Sanctuary (15 CFR 922.82(a)(2)(iv) and 922.112(a)(2)(i)(D)). According to the USCG, most of its vessels operating in GFNMS and CBNMS do not have capacity to treat sewage and graywater; they are without Type I or II MSD onboard to treat the wastewater prior to discharge. Some classes of USCG vessels also have limited capacity to hold sewage and non-clean graywater until it may be discharged outside GFNMS and CBNMS. Thus, if the regulations were to take effect in the expansion areas of GFNMS and CBNMS, the vessels would not be able to legally discharge in those portions of the sanctuaries in a manner consistent with these existing regulatory exceptions. The proposed exceptions to the GFNMS and CBNMS prohibitions for the USCG would be in addition to the current exceptions noted earlier.

The areas within GFNMS and CBNMS in which these USCG vessel discharges would be excepted from the sanctuaries' discharge prohibitions correspond to the waters seaward of 3 nm from shore in the expansion areas of GFNMS and CBNMS (i.e., the areas added when the sanctuaries expanded in 2015). The geographic coordinates of these areas would be listed in an appendix to each sanctuary's regulations (appendix G of subpart H and

appendix C of subpart K). Aside from the proposed exceptions for USCG training-related discharges (see below), the USCG would also continue to comply with all other existing prohibitions provided in 15 CFR 922.82 and 922.112 in both the pre-expansion areas and the expanded sanctuaries' boundaries and comply with the prohibitions for vessel discharges within the pre-expansion boundaries of the two sanctuaries. No changes to the regulatory prohibitions or exceptions applicable to the pre-expansion areas of the sanctuaries are proposed.

B. Discharges of Ammunition and Pyrotechnic Materials during Training

NOAA would amend the GFNMS and CBNMS regulations to allow USCG discharges of ammunition and pyrotechnic materials (including warning projectiles, flares, smoke floats and marine markers) during live ammunition and search and rescue training exercises only in the federal waters of the expansion areas of GFNMS and CBNMS, seaward of approximately 3.5 miles (3 nautical miles (nm)) from the shoreline. The geographic coordinates of this designated area, where training discharges would be excepted from the sanctuary discharge prohibition within GFNMS and CBNMS, would be listed in an appendix to each sanctuary's regulations (appendix G of subpart H and appendix C of subpart K).

The USCG would also continue to comply with all other existing prohibitions, aside from the previously described proposed exceptions for USCG vessel discharges of untreated sewage and graywater, provided in 15 CFR 922.82 and 922.112 in both the pre-expansion areas and the expanded sanctuaries' boundaries and comply with the prohibitions for vessel discharges within the pre-expansion boundaries of the two sanctuaries. No changes to the regulatory prohibitions or exceptions applicable to the pre-expansion areas of the sanctuaries are proposed.

Based on a request by USCG, this proposed rule focuses on a regulatory exception to the GFNMS and CBNMS general discharge prohibition for the specified USCG discharges. However, NOAA presents in the DEA a variety of alternatives for protecting sanctuary resources while addressing the USCG's request to allow for USCG's routine discharges of untreated sewage and graywater from vessels and training discharges in GFNMS and CBNMS, allowing the USCG to fulfill its missions and comply with the sanctuaries' regulations. The DEA also lays out in more detail NOAA's consideration and analysis of factors pertinent to this proposed rule, including the ability of USCG to complete its mission operations and in the expansion areas of the sanctuaries, constraints in certain USCG vessel capabilities to treat and hold sewage and graywater, the role that USCG live

fire and search and rescue trainings in the expansion areas of the sanctuaries play in USCG mission readiness, and the extent to which such USCG activities may be conducted to the maximum extent feasible in a manner consistent with the sanctuaries' primary objective of resource protection. No final decision or final rulemaking will be made until completion of the public comment period, satisfaction of permitting and consultation requirements, and completion of the NEPA analysis process.

III. Classification

A. National Environmental Policy Act

NOAA has prepared a draft environmental assessment (DEA) to evaluate the potential impacts on the human environment of this proposed rulemaking, which is the preferred action analyzed in the DEA, as well as alternative actions. No significant adverse impacts to resources and the human environment are expected, and accordingly, under NEPA (43 U.S.C. 4321 et seq.) a draft environmental assessment is the appropriate document to analyze the potential impacts of this action. Following close of the public comment period and satisfaction of permitting and consultation requirements under applicable natural and cultural resource statutes (described below), NOAA will finalize its NEPA analysis and findings and prepare a final NEPA document. Copies

of the DEA are available at the address and web site listed in the ADDRESSES section of this proposed rule.

B. Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Executive Order 13771: Regulatory Reform

This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

D. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

E. Regulatory Flexibility Act

The purpose of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.) is to fit regulatory requirements to the scale of the businesses, organizations, and governmental jurisdictions

subject to the regulation. The RFA requires that agencies determine, to the extent feasible, the rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their ultimate choice of regulatory approach. The Chief Counsel for Regulation of the Department of Commerce certifies to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that the proposed changes are specifically targeted to the activities of the USCG in CBNMS and GFNMS, and would not have an economic effect on any small businesses. Also, this proposed rule would not substantively alter the rights, responsibilities, or legal obligations pertaining to vessel discharges for the regulated community. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

F. Paperwork Reduction Act

This proposed rule does not create any new information collection requirement, nor does it revise the information collection requirement that was approved by the Office of Management and Budget (OMB Control Number 0648-0141) under the

Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. (PRA). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

G. National Historic Preservation Act

In fulfilling its responsibility under the National Historic Preservation Act (NHPA) and NEPA, NOAA intends to determine whether the proposed rule is the type of activity that could affect historic properties. If so, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; assess potential adverse effects; and resolve adverse effects. If applicable, NOAA will initiate formal consultation with the State Historic Preservation Officer/Tribal 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 the environmental assessment. NOAA will complete applicable NHPA

requirements before finalizing its NEPA analysis. Individuals or organizations who wish to participate as a consulting party should notify NOAA.

Consultation requirements for the effects of the actual USCG training activities and vessel discharges on historic properties remain the responsibility of USCG, as USCG would be the lead agency performing these activities.

H. Endangered Species Act

The Endangered Species Act (ESA) of 1973 as amended (16 USC 1531, et seq.), provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Federal agencies have an affirmative mandate to conserve ESA-listed species. Section 7(a)(2) of the ESA requires federal agencies to, in consultation with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of designated critical habitat. NOAA's ONMS intends to begin informal consultation under the ESA with NOAA's NMFS Office of Protected Resources (OPR) upon publication of this proposed rule and

complete consultation prior to the publication of the final rule or finalization of the NEPA analysis. NOAA's consultation will focus on any potential adverse effects of providing a regulatory exception to its discharge prohibition in CBNMS and GFNMS on threatened and endangered species. NOAA will complete ESA consultation before finalizing its NEPA analysis.

Consultation requirements for the effects of the actual USCG training activities and vessel discharges on threatened and endangered species remain the responsibility of USCG, as USCG would be the lead agency performing the training activities. USCG communicated to NOAA its intent to fulfil the consultation requirements under the ESA, specific to their training activities and vessel discharges, with (OPR).

I. Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 et seq.), as amended, prohibits the "take"⁴ of marine mammals in U.S. waters. Section 101(a)(5)(A-D) of the MMPA provides a mechanism for allowing, upon request, the "incidental," but not intentional, taking, of small numbers of marine mammals by U.S.

⁴ The MMPA defines take as: "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal." Harassment means any act of pursuit, torment, or annoyance which, 1) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or 2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B Harassment).

citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. ONMS intends to request technical assistance from NMFS upon publication of this proposed rule on ONMS's preliminary assessment that this action is not likely to result in take of marine mammals. If NMFS recommends that ONMS seek an Incidental Harassment Authorization or Letter of Authorization, then ONMS will submit an application for any incidental taking of small numbers of marine mammals that ONMS and NMFS conclude could occur as a result of the discharges allowed by this proposed rulemaking. NOAA's request for technical assistance will focus on the effects of providing a regulatory exception to its discharge prohibitions in CBNMS and GFNMS on marine mammals. NOAA will complete any MMPA requirements before finalizing its NEPA analysis.

Satisfying MMPA requirements for the effects of the actual training activities and vessel discharges on marine mammals remain the responsibility of USCG, as USCG would be the federal agency performing these activities. Moreover, USCG communicated to NOAA its intent to fulfill the consultation requirements under the MMPA, specific to their training activities and vessel discharges, with OPR.

J. Coastal Zone Management Act (CZMA)

The principal objective of the CZMA is to encourage and assist states in developing coastal management programs, to coordinate State activities, and to preserve, protect, develop and, where possible, to restore or enhance the resources of the nation's coastal zone. Section 307(c) of the CZMA requires federal activity affecting the land or water uses or natural resources of a state's coastal zone to be consistent with that state's approved coastal management program, to the maximum extent practicable. NOAA will provide a copy of this proposed rule, the DEA, and a consistency determination to the California Coastal Commission (Commission) upon publication. NOAA will wait for concurrence from the Commission prior to publication of the final rule.

Consultation requirements for the effects of the actual USCG training activities and vessel discharges on land or water uses or natural resources of California's coastal zone remain the responsibility of USCG, as USCG would be the lead agency performing these activities.

IV. Request for Comments

NOAA requests comments on this proposed rule and the DEA. The comment period will remain open until January 16, 2018.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 14, 2017.

Nicole R. LeBoeuf,
Deputy Assistant Administrator
for Ocean Services and Coastal Zone Management,
National Ocean Service.

Accordingly, for the reasons set forth above, NOAA proposes amending part 922, title 15 of the Code of Federal Regulations as follows:

Part 922 - NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

Subpart H – Greater Farallones National Marine Sanctuary

2. Amend § 922.82 by revising paragraphs (a) (2) (iv) and (v), adding paragraph (a) (2) (vi), and revising paragraph (a) (4) to read as follows:

§922.82 Prohibited or otherwise regulated activities.

(a)***

(2)***

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

(v) Vessel engine or generator exhaust; or

(vi) For a United States Coast Guard vessel that is without sufficient holding tank capacity and is without a Type I or II marine sanitation device, and that is operating within the designated area defined in appendix G of this subpart, sewage and non clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined

in appendix G of this subpart. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the material or other matter excepted in paragraphs (a) (2) (i) through (vi) and (a) (3) of this section.

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(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the material or other matter excepted in paragraphs (a) (2) (i) through (vi) and (a) (3) of this section.

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3. Amend subpart H by adding appendix G to read as follows:

Appendix G to Subpart H of Part 922 – Designated Area for Certain United States Coast Guard Discharges

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Greater Farallones National Marine Sanctuary area where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1 identified in the coordinate table in

this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc, and continues from Point 2 to Point 3 in a straight line arc, and from Point 3 to Point 4 in a straight line arc. From Point 4 the boundary extends east and north along a straight line arc towards Point 5 until it intersects the fixed offshore boundary between the United States and California (approximately 3 NM seaward of the coast as defined in United States vs. California, 135 S. Ct. 563 (2014)). The boundary then extends northward following the fixed offshore boundary between the United States and California until it intersects the line segment formed between Point 6 and Point 7. From this intersection, the boundary extends west along the northern boundary of Greater Farallones National Marine Sanctuary to Point 7 where it ends.

Point No.	Latitude	Longitude
1	39.00000	-124.33350
2	38.29989	-123.99988
3	38.29989	-123.20005
4	38.26390	-123.18138
5 ¹	38.29896	-123.05989
6 ¹	39.00000	-123.75777
7	39.00000	-124.33350

¹These coordinates are not a part of the boundary for the Designated Area for Certain United States Coast Guard Discharges. These coordinates are reference points used to draw line segments that intersect with the fixed offshore boundary between the United States and California.

Subpart K - Cordell Bank National Marine Sanctuary

4. Amend § 922.112 by revising paragraphs (a) (2) (i) (D) and (E) and adding paragraph (a) (2) (i) (F) to read as follows:

§922.112 Prohibited or otherwise regulated activities.

(a)***

(2) (i)***

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

(E) Vessel engine or generator exhaust; or

(F) For a United States Coast Guard vessel that is without sufficient holding tank capacity and is without a Type I or II marine sanitation device, and that is operating within the designated area defined in appendix C of this subpart, sewage and non clean graywater as defined by section 312 of the FWPCA

generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined in appendix C of this subpart.

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5. Amend subpart K by adding appendix C to read as follows:

Appendix C to Subpart K of Part 922 – Designated Area for Certain United States Coast Guard Discharges

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Cordell Bank National Marine Sanctuary area where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1, identified in the coordinate table in this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc and continues in numerical order through each subsequent point to Point 38. From Point 38 the boundary extends west along the northern boundary of Cordell Bank National Marine Sanctuary to Point 39 where it ends.

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Point No.	Latitude	Longitude
1	38.29989	-123.99988
2	37.76687	-123.75143
3	37.76716	-123.42758
4	37.77033	-123.43466
5	37.78109	-123.44694
6	37.78383	-123.45466
7	37.79487	-123.46721
8	37.80094	-123.47313
9	37.81026	-123.46897
10	37.81365	-123.47906
11	37.82296	-123.49280
12	37.84988	-123.51749
13	37.86189	-123.52197
14	37.87637	-123.52192
15	37.88541	-123.52967
16	37.90725	-123.53937
17	37.92288	-123.54360
18	37.93858	-123.54701
19	37.94901	-123.54777
20	37.95528	-123.56199
21	37.96683	-123.57859

22	37.97761	-123.58746
23	37.98678	-123.59988
24	37.99847	-123.61331
25	38.01366	-123.62494
26	38.01987	-123.62450
27	38.02286	-123.61531
28	38.02419	-123.59864
29	38.03409	-123.59904
30	38.04614	-123.60611
31	38.05308	-123.60549
32	38.06188	-123.61546
33	38.07451	-123.62162
34	38.08289	-123.62065
35	38.11256	-123.63344
36	38.13219	-123.64265
37	38.26390	-123.18138
38	38.29989	-123.20005
39	38.29989	-123.99988

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