Industrie Modification 07716 has been accomplished.

(i) If no cracking is detected, install the second oversize bolt in accordance with the service bulletin.

(ii) If any cracking is detected, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished: Repair in accordance with a method approved by the Manager, International Branch, ANM–116. After repair, repeat the inspections as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph, until the inspection required by paragraph (d)(2)(ii)(B) has been accomplished.

New Requirements of This AD:

New Initial and Repetitive Inspections

(d) Perform an ultrasonic inspection to detect cracks in certain bolt holes where the MLG forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

Note 5: Inspections accomplished prior to the effective date of this AD in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 2, dated January 14, 1997, are considered acceptable for compliance with paragraph (d) of this AD.

(1) For airplanes not inspected prior to the effective date of this AD in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993, or Revision 1 (includes Appendix 1), dated July 25, 1994: Inspect at the time specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this AD, as applicable. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(i) For airplanes that have accumulated 17,300 total landings or fewer as of the effective date of this AD: Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 17,301 total landings or more but fewer than 19,300 total landings as of the effective date of this AD: Inspect within 1,500 landings after the effective date of this AD.

(iii) For airplanes that have accumulated 19,300 total landings or more as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

(2) For airplanes on which an HFEC inspection was performed prior to the effective date of this AD in accordance with paragraph (a) of AD 95–20–02, or in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993: Inspect at the time specified in paragraph (d)(2)(i) or (d)(2)(ii), as applicable.

(i) If no cracking was detected during any HFEC inspection accomplished prior to the effective date of this AD, and if Airbus Industrie Modification 07716 has *not* been accomplished: Inspect at the time specified in paragraph (d)(2)(i)(A) or (d)(2)(i)(B) of this AD, as applicable.

(A) For airplanes having MSN 465 through 553 inclusive: Inspect within 13,000 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1)(i) of this AD.

(B) For airplanes having MSN 252 through 464 inclusive: Inspect within 8,400 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 5,500 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1)(ii) of this AD.

(ii) If any cracking was detected during any HFEC inspection performed prior to the effective date of this AD, regardless of the method of repair, or if Airbus Industrie Modification 07716 *has* been accomplished: Inspect at the time specified in paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD, as applicable.

(A) For airplanes having MSN 465 through 553 inclusive: Inspect within 11,800 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,200 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(B) For airplanes having MSN 252 through 464 inclusive: Inspect within 10,700 landings after the initial inspection in accordance with paragraph (a) of AD 95–20–02, or within 7,500 landings after the most recent HFEC inspection, whichever occurs later, and thereafter at intervals not to exceed 4,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(e) If no cracking is detected during the ultrasonic inspection required by paragraph (d)(1) of this AD, repeat that inspection thereafter at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 8,900 landings.

(2) For airplanes having MSN 232 through 464 inclusive: Repeat the inspection at intervals not to exceed 5,500 landings.

Repair

(f) If any cracking is detected during any inspection performed in accordance with paragraph (d) or (e) of this AD: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Terminating Action

(g) Accomplishment of Airbus Industrie Modification 11440 (Airbus Industrie Service Bulletin A300–57–6073, dated September 30, 1997) constitutes terminating action for the repetitive inspection requirements of paragraphs (d) and (e) of this AD, as applicable.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 7: The subject of this AD is addressed in French airworthiness directive 94–031–155(B)R1, dated May 7, 1997.

Issued in Renton, Washington, on April 19, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10182 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 970626156–9077–02]

RIN No. 0648–AK01

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

AGENCY: Marine Sancturaries 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.

SUMMARY: The National Oceanic and Atmospheric Administration proposes to amend the regulations governing the Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary) to prohibit the operation of motorized personal watercraft (MPWC) in the nearshore waters of the Sanctuary. Specifically, the operation of MPWC would be prohibited from the mean high-tide line seaward to 1,000 yards

(approximately 0.5 nautical mile), including seaward of the Farallon Islands. This proposed action responds to a petition from the Environmental Action Committee of West Marin, California, to ban operation of MPWC in the Sanctuary. This document also responds to comments received in response to a Notice of Inquiry/Request for Information that NOAA published on August 21, 1997, to obtain additional information on the operation and impacts of MPWC. 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.

A Draft Environmental Assessment (DEA) has been drafted on the proposed rule and is available for comment. The DEA may be obtained from the address below.

DATES: Comments on the proposed rule or DEA must be received by May 24, 1999. A public hearing on this proposed rule will be held at a time and location to be published in a separate document.

ADDRESSES: Comments should be sent to Ed Ueber, Sanctuary Manger, Gulf of the Farallones National Marine Sanctuary, Ft. Mason, Building 201, San Francisco, California 94123; fax: (415) 561–6616; email: ed.ueber@noaa.gov. Comments received will be available for public inspection at the above address.

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. Final regulations became effective April 5, 1981, and March 30, 1982. 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 are 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 percent supported the 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 issues. 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 percent) 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 whom supported the petition. Half of the speakers at the public meeting had previously submitted written comments.

Responses to and investigation of the specific questions in the 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 MPWP 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 percent 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, 9) 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 have been identified throughout 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 uses; (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 and 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; (15) MPWC present a present and potential threat to resources and users of the GFNMS.

The waters of the Sanctuary are home to rich biological diversity. The importance and uniqueness of Sanctuary waters has been internationally recognized by the incorporation of Sanctuary waters in the Golden Gate International Biosphere Reserve, and the designation of Bolinas

Lagoon as a RAMSAR (the Convention for Wetlands of International Significance) site. The Sanctuary provides habitat for hundreds of species of birds, marine mammals, pinnipeds, otters, sea turtles, and marine fauna and algae.

Among the hundreds of bird species that reside in or migrate through the Sanctuary, many are endangered, threatened or of special concern. These include the following species [1], which are found in the nearshore waters of the Sanctuary and 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 erythorhynchos*	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
Hawaiian dark-rumped petrel	*Pterodroma phaeopygia*	FE
Short-tailed albatross	*Diomedea albatrus*	FE
Long-legged waders [herons, cranes, etc.]		
California black rail	*Laterallus jamaicensis corurniculus*	ST
White-faced ibis	*Plegadis chihi*	CSC
Smaller waders [plovers, sandpipers, etc.]		
Long-billed curlew	*Numenius americanus*	CSC
Western snowy plover (coastal)	*Charadrius alexandrinus niv.*	FT/CSC
Birds of prey [hawks, eagles, owls]		
Bald eagle	*Haliaeetus leucocephalus*	FT
Ferruginous hawk	*Buteo regalis*	CSC
Osprey	*Pandion haliaetus*	CSC
Prairie falcon	*Falco mexicanus*	CSC
Passerine birds [perching]		
Saltmarsh common yellowthroat	Geothlypis trichas sinuosa	CSC

There are at least twelve critical marine bird nesting areas along the shoreline of the Sanctuary. More than twelve species of marine birds breed in the Sanctuary. The nesting seabird population of the Farallon Islands comprises the largest concentration of breeding marine birds in the continental U.S.

Thirty-three species of marine mammals have been observed in the Sanctuary including six species of pinnipeds and twenty-five species of cetaceans. More than 20 percent of the state's harbor seals live within the boundaries of the Sanctuary, and Northern Fur seals have pupped here for the first time since the Sanctuary was designated. Of the twenty-six species of cetaceans that occur in Sanctuary waters, nineteen are migratory, and seven are considered resident species. Many of these marine mammals occur in large concentrations and are dependent on the productive and secluded habitat of the Sanctuary's waters and adjacent coastal areas for breeding, pupping, hauling-out, feeding, and resting during migration. Three areas in the Sanctuary have been identified as critical feeding areas for the threatened Steller sea lion, including the nearshore areas around Point Reyes, and the northern half of Tomales Bay. The Harbor seals, elephant seals, California sea lion, Dall's porpoise, harbor porpoise and Gray whales are common in the nearshore waters and protected bays of the Sanctuary. In addition, four species of endangered sea turtles are known to reside in or migrate through Sanctuary waters. A listing of all threatened and endangered marine mammals and sea turtles follows.

[1] Bird classifications from Peterson, R.T. 1990. A field guide to western birds. Houghton Mifflin Company.

[Key: FE=Federally listed as endangered; FT=Federally listed as threatened; ST=listed in the State of California as threatened]

Pinnipeds		
Guadelupe 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 macrocphalus*	FE
Sea Turtles		
Green turtle	*Chelonia mydas*	FE
Leatherback turtle	*Dermochelys coriancea*	FE
Loggerhead turtle	*Caretta caretta*	FE
Olive (Pacific) ridley sea turtle	*Lepidochelys olivacea*	FE

Because of its unique geology and geography, the Sanctuary's marine fauna may be more diverse than in other areas along the Pacific Coast. The protected bays and coastal wetlands of the Sanctuary, such as Tomales Bay, Drakes Bay, Bolinas Lagoon, and the esteros, include intertidal mudflats, sand flats, salt marshes, submerged rocky terraces, and shallow subtidal areas. These areas support large populations of benthic fauna and concentrations of burrowing organisms living on marine plants. Submerged eel grass (*Zostra*) beds are prevalent in the northern portion of Tomales Bay, and support crucial habitat for more than 50 resident, breeding, and migratory bird populations, for a wide array of marine invertebrates, and for the egg masses of herring and other fish. It is estimated that approximately 30 million herring annually spawn in the eelgrass beds of Tomales Bay (Fox, 1997). The shallow protected bays and estuaries within the Sanctuary, such as Tomales Bay, Drakes Bay, Bolinas Lagoon, and the esteros, are important habitat for anadromous fish, several species of surfperches, and flatfish. Numerous and diverse fish and invertebrate species are found in Sanctuary waters. Over 150 species of fish are found in the Sanctuary, and include predator and prey species, and commercial fishing species. Among the fish found in Sanctuary waters are the endangered winter-run chinook salmon and tidewater goby, and coho salmon, Federally listed as a threatened species.

The nearshore waters of the Sanctuary are particularly vulnerable areas 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 also those areas most impacted by the operation of MPWC. Lawson's Landing, a current MPWC launch site, is situated at the largest pinniped haulout in Tomales Bay, and is also within a quarter mile of Walker Creek delta, where the highest concentration of wading and shore birds occurs in the Sanctuary, and where sea otters have been regularly observed.

The nearshore waters of the Sanctuary are the areas most heavily used for recreation. Areas such as Tomales Bay and Dillon Beach are used for sailing, canoeing, rowing, kyaking and swimming. These activities are often conducted very 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. NOAA believes that MPWC operation in nearshore areas creates a user conflict that can be avoided by keeping MPWC offshore.

Because of the biological diversity of the Sanctuary waters, the importance of the nearshore areas of the Sanctuary to that diversity, the potential for adverse environmental impacts that operation of MPWC pose to these nearshore areas, and because the the high potential for user conflicts, NOAA has decided to prohibit their operation from the nearshore waters of the Sanctuary, including waters surrounding the Farallon Islands. After discussions with the National Park Service, the Environmental Action Committee of West Marin, the MPWC industry, the Audubon Canyon Ranch, and individual ornithologists, NOAA is proposing a 1,000-yard buffer as a reasonable area to protect the nearshore waters. Specifically, the proposed rule would prohibit the operation of MPWC from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile). The restricted areas include Drakes Bay, Tomales Bay, Bolinas Lagoon, Estero Americano and Estero de San Antonio, except for an access corridor from the launch site at Bodega Harbor leading into Bodega Bay.

Historically, there have been 4 (four) launch sites in the area—Lawson's Landing at Dillion Beach, Millerton Point Park, Inverness, and Bodega Harbor. As of 1 November 1998, launching MPWC from Point Reyes National Seashore (PRNS) or Golden Gate National Recreation Areas (GGNRA) is prohibited (U.S. Dept. of Interior, 1998a & b). Millerton Point Park and Inverness are within GGNRA and PRNS boundaries, respectively, and therefore can no longer be used. Lawson's Landing is situated at the most critical Harbor seal and shore bird area in Tomales Bay (Walker Creek Delta). Continued use of Lawson's Landing would result in unacceptable disturbance of these sensitive resources. Therefore, NOAA is proposing Bodega Harbor as the most appropriate launch site, and the access corridor proposed in designed to facilitate access by MPWC

to the GFNMS from this site. This change in primary launch site should not cause a significant inconvenience for any of the customary users of MPWC within the GFNMS as Bodega Harbor is within five (5) miles of Lawson's Landing and is easier to access.

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.

(1) Comment: Prohibiting operation of MPWC in the Sanctuary would unfairly single out one type of vessel.

Response: NOAA disagrees. Several Federal resource agencies have recognized MPWC as a unique type of recreational vessel that is relatively recent in origin (U.S. Fish and Wildlife Service, 1992; NOAA, 1992; U.S. Dept. of Interior, 1998c). MPWC are designed to be operated at high speeds, closer to shore, and to make quicker turns than other types of motorized vessels. MPWC have a disproportional thrust capability and horsepower to vessel length and/or weight, in some cases four times that of conventional vessels (U.S. Dept. of Interior, 1998c). Research indicates that impacts associated with MPWC tend to be locally concentrated, producing effects that are more geographically limited yet potentially more severe than motorboat use, due to repeated disruptions and an accumulation of impacts in a shorter period of time (Snow, 1989). The Washington, D.C., Circuit Court of Appeals agreed with NOAA that there was a difference between MPWC and other kinds of watercraft: ''personal watercraft were small, highly maneuverable, and fast, and * * * they operated close to shore, in areas of high concentrations of kelp forests, marine mammals, and sea birds. That differentiated all larger craft, all slower craft, all less maneuverable craft, and all craft that did not tend to use the same areas in the same manner.'' (PWIA v. Dept of Commerce, 1995) There are at least five salient differences between the use of MPWC and other types of watercraft: (1) MPWC operators rarely engage in sedentary activities such as fishing; (2) MPWC operators often travel in groups of more than two vessels; (3) MPWC operators generally run their craft at high speeds and drive in patterns of repeated circuitous trips; (4) MPWC operators repeatedly circumnavigate small islands in shallow waters, and/or may repeatedly jump nearshore waves; and (5) because of MPWC size, speed and maneuverability, MPWC operators may run unpredictable transits, and can access shallow, nearshore areas that other types of motorized watercraft cannot.

(2) Comment: MPWC impact the environment less that other boats, primarily due to their smaller size and jet propulsion system.

Response: NOAA disagrees. MPWC are generally of smaller size, with a shallower draft (4 to 9 inches), and lower horsepower (around 75, as compared to up to 250 for large pleasure craft) than most other kinds of motorized watercraft (Ballestero, 1990; Snow, 1989). The smaller size and shallower draft of MPWC means they are more maneuverable, operable closer to shore and in shallower waters than other types of motorized watercraft. This maneuverability greatly increases the potential for MPWC to disturb fragile nearshore habitats and organisms. Although wakes of MPWC may be smaller than wakes of conventional motor boats, they can be more damaging (e.g., flooding of coastal bird nests; erosion of shoreline) because MPWC are often operated faster, closer to shore and repeatedly in the same area (Snow, 1989). Also, equipment can be installed on MPWC to create more and higher spray, which exacerbates the effects of MPWC wake.

Research indicates that MPWC increase turbidity and may redistribute benthic invertebrates, and these impacts may be prolonged as a result of repeated use by multiple machines in a limited area. Research has shown that MPWC can foul water with their discharge, and increase local erosion rates by launching and beaching repeatedly in the same locations (Snow, 1989). The Bodega Bay access route proposed in this regulation is an established corridor from an active launch ramp, and would not result in unreasonable additional environmental impacts.

MPWC are powered by a jet-propelled system that typically involves a two-stroke engine with an exhaust expulsion system that vents into the water. Most conventional recreational boats use a four-stroke engine. The two-stroke engines found on the vast majority of MPWC in the United States discharge more of their fuel (ranging from 10 percent to more than 50 percent 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 emission can have significant adverse impacts in many areas of the Sanctuary, particularly shallow nearshore coastal areas and estuaries.

In addition, the gasoline additive MTBE (methyl tert-butyl ether) is being found to contaiminate various water bodies (National Research Council, 1996). When discharged into water, MTBE tends to float on the surface microlayer of the water. Research has indicated that chromosomal damage, malformation, reduced growth, and high mortality rates of fish larvae may occur at extremely low levels of surface layer hydrocarbon pollution (Long, 1997). MTBE, classified as a possible human carcinogen, has been implicated in human complaints of headaches, coughs, and nausea, and may also have detrimental effects on wildlife (National Research Council 1996). MTBE is more soluble in water than other hydrocarbons, is not readily biodegradable, is not subject to photolysis, and does not readily absorb to organic or inorganic particles. It is expected to volatilize approximately 10 times slower than other compounds (Miller and Fiore, 1997; Squillace et al., 1996). Since two-stroke engines emit more exhaust into the water, they therefore emit more MTBE into the water, posing a more serious ecological threat than do four-stroke engines.

(3) Comment: MPWC may disturb fish, waterfowl and seabirds.

Response: NOAA agrees. Research in the Everglades National Park indicated that fishing success dropped to zero when fishing occurred in the same waters used by MPWC, and scientists in the Pacific Northwest have been concerned about the effects of MPWC on spawning salmon (Snow, 1989; Sutherland and Ogle, 1975). Research in Florida indicates that MPWC cause wildlife to flush at greater distances, with more complex behavioral responses than observed in disturbances caused by automobiles, all-terrain vehicles, foot approach, or motorboats. This was partially attributed by the scientists to the typical operation of MPWC, where they accelerate and decelerate repeatedly and unpredictably, and travel at fast speeds directly toward shore, while motorboats generally slow down as they approach shore (Rodgers, 1997). Scientific research also indicates that even at slower speeds, MPWC were a significantly stronger source of disturbance to birds than were motorboats. Levels of disturbance were further increased when MPWC were used at high speeds or outside of established boating channels (Burger, 1998). Research notes that declining

nesting success of grebes, coots, and moorhens in the Imperial National Wildlife Refuge were due to the noise and physical intrusion of MPWC (Snow, 1989). In addition, MPWC have been observed flushing wading birds and nesting osprey from their habitats, contributing to abnormally high numbers of abandoned osprey nests on certain islands in the Florida Keys (U.S. Fish and Wildlife Service, 1992). The number of active osprey nests in the lower Florida Keys ''backcountry'' dropped from five to zero between 1986 and 1990. Biologists believe this was due to MPWC flushing parents from the nests (Cuthbert and Suman, 1995). Research suggests that declines in nesting birds in some states occurred simultaneous with MPWC operation. Numerous shoreline roost sites exist within the Sanctuary, and research has shown that human disturbance at bird roost sites can force birds to completely abandon an estuary. 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).

(4) Comment: MPWC disturb marine mammals.

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).

Comment: MPWC are excessively noisy, and disturb the peace of other users of the Sanctuary.

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) (Wooley, 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).

(6) Comment: MPWC may interfere with other recreational uses of the Sanctuary.

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 Notice of Inquiry/Request for Information noted that MPWC were interfering with, and often jeopardizing the well-being of, swimmers, kayakers, canoeists, and other recreational boaters and users of nearshore areas in the Sanctuary. MPWC have been involved in numerous accidents, and thus pose a hazard to other water users. Although MPWC make up approximately 11 percent of vessels registered in the country (U.S. Dept. of Interior, 1998c), Coast Guard statistics show that in 1996, 36 percent of all watercraft involved in accidents were MPWC (U.S. Coast Guard, 1999). In addition, numerous commentors noted that the operation of MPWC in nearshore areas diminishes the aesthetic qualities of many beach and recreational areas, and may interfere with other economic uses of the areas based upon these aesthetic qualities.

(7) Comment: MPWC are incompatible with the purposes of the Sanctuary.

Response: The Sanctuary was designated 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.'' When used as designed and in the current manner, the combined attributes of MPWC interfere with resource protection, multiple compatible use of Sanctuary resources, and the long-term ecological integrity of the nearshore Sanctuary waters. While use of MPWC in certain areas of the GFNMS could adversely impact resources and create conflicts, uses outside these areas may not be incompatible with the Sanctuary's purposes. For the reasons outlined in responses 1 through 7, NOAA believes that operation of MPWC are incompatible with the protection and preservation of the sensitive natural resources of the nearshore waters of the Sanctuary.

III. Summary of Regulations

Due to the many bird, pinniped, mustelid, cetacean and fish species, dependent solely or in the part on the Sanctuary's nearshore waters, some of which are listed by the State of California and/or the Federal Government as endangered, threatened, or of concern, and the effects the operation of MPWC has on these species and other human users of the Sanctuary's waters (as detailed above), NOAA proposes to restrict the operation so MPWC within Sanctuary waters to those areas outside a 1,000-yard nearshore zone, including around the Farallon Islands. In proposing this rule, NOAA is responding to the April 1996 petition of the Environmental Action Committee of West Marin, California and to the agency's constituents, including the public, marine commercial interests, and other governments agencies. In responding, the agency has taken into account all expressed viewpoints, and has attempted to balance these fully and in accordance with the Gulf of the Farallones National Marine Sanctuary's stated mission to ''protect and preserve the extraordinary ecosystem, 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.'' In responding thus, the agency also aims to proactivity carry out the mission of the MFNMS by addressing the operation of a unique type of vessel in sensitive marine and estuarine habitats.

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

The proposed amendment is the addition to 15 CFR 922.82(a) of a prohibition against operation of motorized personal watercraft in the nearshore waters of the Sanctuary. Specifically, the operation of MPWC would be prohibited from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile), including seaward of the Farallon Islands. The restricted areas include Drakes Bay, Tomales Bay, Bolinas Lagoon, Estero Americano and Estero de San Antonio, except for an access corridor in Bodega Bay, as described in Appendix B of Subpart H of 15 CFR Part 922. 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.

Section 922.81 would also be amended by adding a definition of ''motorized personal watercraft'' 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.''

As discussed in detail above, this regulation is necessary to protect sensitive biological resources and important, to minimize user conflict, and to protect the ecological, aesthetic, and recreational qualities of the nearshore area of the Sanctuary.

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.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have federal implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration 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 nearshore areas of the Sanctuary. Specifically, the operation of MPWC would be prohibited from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile). 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 are currently two established launch sites for MPWC operation in the Sanctuary; Lawson's Landing and Bodega Harbor. The proposed regulation would remove Lawson's Landing as a MPWC launch site due to its proximity to critical harbor seal and shore bird areas. Lawson's Landing, on the eastern shore at the mouth of Tomales Bay, had 169 MPWC launches in 1997 at $5/launch. According to the owner of Lawson's Landing, the total annual value of MPWC launch business was under $800, because some of the launches were free. Neither launch site rents MPWC. The Bodega Harbor launch site will still be available for MPWC, and is less than 5 miles north of Lawson's Landing. The owner of Lawson's Landing says that this is a minor portion of the total revenues. The majority of the Sanctuary (over 95 percent) will still be available to MPWC, so rentals should not be affected by the 1,000-yard prohibited buffer. Consequently, the rule is not expected to significantly impact a substantial number of small business 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.

Bibliography

Ballestero, T.P. 1990. Impact of motor boat and personal watercraft on the environment: bibliography. Environmental Research Group, University of New Hampshire. Durham, New Hampshire. 25pp.

Burger, J. 1998. Effects of motorboats and personal watercraft on flight behavior over a colony of Common Terns. *Condor,* 100 (3): 528–534.

Cuthbert, A. and D. Suman. 1995. To jet ski or not to jet ski: personal watercraft conflicts in the lower Florida Keys, *in* Suman, D., Shivlani, and M. Villanueva, eds. Urban growth and sustainable habitats, Division of Marine Affairs and Policy, Rosenstiel School of Marine and Atmospheric Science, University of Miami, Miami, Florida.

Fox, K.J., President, Tomales Bay Association, Point Reyes Station, California. Personal communication, Sept. 25, 1997.

Gentry, R. 1996. Motorized Personal Water Craft and Marine Mammal Populations in Washington Sound, Washington. Technical paper.

Juttner, F., D. Backhaus, U. Matthias, U. Essers, R. Greiner, and B. Mahr. 1995. Emissions of Two- and Four-Stroke Outboard Engines—I. Quantifications of Gases and VOC. *Wat. Res.* Vol. 29, No. 8, 1976–1982.

Kelly, J., Resident Biologist, Audubon Canyon Ranch, Marshall, California. Personal communication, Sept. 25, 1997.

Long, R., 1997. Polluting for Pleasure: Part II. *Sail,* January 1997.

Miller, G. and M. Fiore. 1997. Preliminary Study on Gasoline Constitutents in Lake Tahoe, Summer, 1997. Environmental and Resources Sciences Department, University of Nevada, Reno.

National Oceanic and Atmospheric Administration. 1992. Monterey Bay National Marine Sanctuary Final Environmental Impact Statement and Final Regulations. 57 FR 43310 (Sept. 18, 1992).

National Research Council. 1996. Toxicological and Performance Aspects of Oxygenated Motor Vehicle Fuels. National Academy Press.

Osborne, R. 1996. ''Testimony and Exhibits Submitted to Board of County Commissioners Regarding Restrictions on Use of Jet Skis in San Juan County.'' *Superior Court of Washington, for Whatcom County.*

Richardson, J.W., C.R. Greene, Jr., C.I. Malme, and D.H. Thomson, 1995. Marine Mammals and Noise. Academic Press, San Diego, CA.

Rodgers, J.A. and H.T. Smith. 1997. Buffer zone distances to protect foraging and loafing waterbirds from human disturbance in Florida. *Wildlife Soc.* Bull., 25(1):139–145.

Snow, S. 1989. A Review of Personal Watercraft and Their Potential Impact on the Natural Resources of Everglades National Park. Technical paper.

Squillace, P.J., J.F. Pankow, N.E. Korte, and J.S. Zogorski. 1996. Environmental Behavior and Fate of Meth tert-Butyl Ether (MTBE). U.S. Geological Survey Fact Sheet F5–203–96.

Sutherland, A.J. and D.G. Ogle. 1975. Effect of jet boats on salmon eggs. *N.Z. Journal of Marine and Freshwater Research,* 9(3):273–82.

Tahoe Research Group. 1997. The Use of 2-Cycle Engine Watercraft on Lake Tahoe: Water Quality and Limnological Considerations. University of California, Davis.

Tjarnlund, U., G. Ericson, E. Lindesjoo, I. Petterson, and L. Balk. 1995. Investigation of the Biological Effects of 2-Cycle Outboard Engines' Exhaust on Fish. *Marine Environmental Research.* 39, 313–316.

U.S. Coast Guard. 1999. Recreational Boating Accident Statistics 1995 and 1996. www.uscgboating.org/stats.html. Accessed Feb. 1999.

PWIA vs. Department of Commerce, 48 F.3d 540 (D.C. Cir. 1995).

U.S. Department of the Interior. 1998a. Golden Gate National Recreation Area. Code of Federal Regulations, Title 36, Chapter 1, compendium amendment and Administrative Record.

U.S. Department of the Interior. 1998b. Point Reyes National Seashore. Code of Federal Regulations, Title 36, Chapter 1, compendium.

U.S. Department of the Interior. 1998c. Proposed Rule: Personal Watercraft Use Within the NPS System. 63 FR 49312 (Sept. 15, 1998).

U.S. Fish and Wildlife Service. 1992. Management Agreement for the Florida Keys Refuges—Monore County, Florida.

Wagner, K.J. 1994. Of hammacks and horsepower: the noise issue at lakes. Lakeline, June 1994, pp. 24–28.

Woolley, T. 1996. Testimony prepared for the Superior Court of Washington for Whatcom County.

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.

Authority: 16 U.S.C. Section 1431 *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

April 3, 1999.

Ted Lillestolen,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

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

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

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

§ 922.81 Definitions.

* * * * *

Motorized personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

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

§ 922.82 Prohibited or otherwise regulated activities.

(a) * * *

(7)(i) Except for transit through an established access corridor described in Appendix B to this subpart, operation of any motorized personal watercraft from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile), including 1,000 yards seaward from the Farallon Islands. The restricted areas include Drakes Bay, Tomales Bay, Bolinas Lagoon, Estero Americano and Estero de San Antonio.

(ii) This prohibition shall not apply to the use of personal watercraft for emergency search and rescue missions or law enforcement operations carried out by National Park Service, U.S. Coast Guard, San Francisco Fire or Police Departments or other Federal, State or local jurisdictions.

* * * * *

3. A new appendix is added to subpart H, as follows:

Appendix B to Subpart H of Part 922—Access Corridor Within the Sanctuary Where the Operation of Motorized Personal Watercraft Is Allowed

There shall be an access corridor at Bodega Bay where MPWC can launch and motor out to waters that are outside the 1,000 yard buffer where operation of MPWC are prohibited. This access corridor shall be between the following coordinates at Bodega Harbor: South Jetty: 38__ 18′18″ N, 123__ 02′54″ W; North Jetty: 38__ 18′22″ N, 123__ 02′56″ W; and out 1,000 yards into the Bay on a 090__ T bearing.

[FR Doc. 99–9981 Filed 4–22–99; 8:45 am]

BILLING CODE 3510–08–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Waivers of Rights and Claims: Tender Back of Consideration

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is publishing this notice of proposed rulemaking (NPRM) to address issues related to the United States Supreme Court's decision in *Oubre* v. *Entergy Operations, Inc.,* 522 U.S. 422 (1998).

DATES: To be assured of consideration by EEOC, comments must be in writing and must be received on or before June 22, 1999.

ADDRESSES: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, or Paul E. Boymel, Senior Attorney-Advisor, 202–663–4689 (voice), 202–663–7026 (TDD).

SUPPLEMENTARY INFORMATION:

A. Background

1. Introduction

In *Oubre* v. *Entergy Operations, Inc.,* 522 U.S. 422 (1998), the Supreme Court held that an individual was not required to return (''tender back'') consideration for a waiver in order to allege a violation of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, as amended by the Older Workers Benefit Protection Act of 1990 (OWBPA). The Court explained that, because the release did not comply with the ADEA, plaintiff's retention of the consideration did not constitute a ratification that made the release valid. Moreover, the employer could not invoke the employee's failure to tender back consideration as a way of excusing its own failure to comply with the statute.

EEOC is issuing proposed legislative regulations to address issues raised by the *Oubre* decision. In summary, EEOC's position is that: (1) an individual alleging that a waiver agreement was not knowing and voluntary under the ADEA is not required to tender back the consideration as a precondition for challenging that waiver agreement; (2) a covenant not to sue or any other condition precedent, penalty, or other limitation adversely affecting any individual's right to challenge a waiver agreement is invalid under the ADEA; (3) although in some cases an employer may be entitled to setoff, recoupment, or restitution against an individual who has successfully challenged the validity of a waiver agreement, such setoff, recoupment, or restitution cannot be greater than the consideration paid to the individual or the damages awarded to the individual, whichever is less; and (4) no employer may unilaterally abrogate its duties under a waiver agreement, even if one or more of the signatories to the agreement successfully challenges the validity of that agreement under the ADEA.

2. The Older Workers Benefit Protection Act of 1990

Title II of OWBPA amended the ADEA to set out rules governing the validity of a waiver agreement. Section 7(f)(1) of the ADEA provides that ''[a]n