



CORDELL BANK NATIONAL MARINE SANCTUARY SANCTUARY ADVISORY COUNCIL

MEETING MINUTES

December 12, 2017

3:00 PM

Point Reyes National Seashore, Red Barn Classroom, Point Reyes Station, CA

Note: The following meeting notes are an account of discussions at the meeting of the Sanctuary Advisory Council for Cordell Bank National Marine Sanctuary (CBNMS). The council is an advisory body to the sanctuary superintendent. The opinions and findings of this publication do not necessarily reflect the position of CBNMS and the National Oceanic and Atmospheric Administration (NOAA).

Call to Order/Roll Call (Kevin Krick)

Kevin Krick, Advisory Council Chair, called the meeting to order at 3:00 PM and welcomed everyone. Lilli Ferguson, advisory council coordinator, then called roll.

Nongovernmental Members Present:

George Clyde (Community-at-Large – Marin County)
Mike Cummings (Community-at-Large - Marin County)
Sarah Hameed (Community-at-Large – Sonoma County)
Bill Wolpert (Community-at-Large – Sonoma County)
Lance Morgan (Conservation)
Leslie Adler-Ivanbrook (Vice-Chair; Education)
Bec Detrich (Education)
Dick Ogg (Fishing)
Noah Wagner (Fishing)
Kevin Krick (Maritime Activities)

Agency Members and Alternates Present:

None

Members of the CBNMS staff present:

Dan Howard (Sanctuary Superintendent)
Lilli Ferguson (Resource Protection Specialist and advisory council coordinator)

LT Kip Hutchinson represented the United States Coast Guard (USCG), as neither the USCG member nor alternate was able to attend.

Review and Approve Agenda (Kevin)

The advisory council reviewed and unanimously approved the agenda.

Review and Approve November Meeting Minutes (Kevin)

The advisory council reviewed and unanimously approved the November 9, 2017 meeting minutes. Dan Howard made clarifications to some statements made during that meeting. He noted in addition to Matt Brookhart serving as the Acting Director for the Northeast Region, Matt will also serve in this capacity for the Southeast Region when Reed Bohne, the current Regional Director, retires. The two regions will be merging to become the Eastern Region. Also, regarding the information provided about vessel transits, rather than 8,000 over a six month period, the number should have been about 4,000 over that period.

Proposal for Regulation of USCG Discharges in Greater Farallones National Marine Sanctuary (GFNMS) and CBNMS and Advisory Council Discussion (Dan)

- Dan reviewed that two draft documents on the proposal for regulation of certain USCG discharges in GFNMS and CBNMS were recently released and were out for comment. He noted the advisory council could comment at this meeting as a body if it wished. As a review, prior to the expansion of GFNMS and CBNMS becoming effective in June 2015, the USCG requested to NOAA to be able to carry out certain discharges prohibited by the regulations, as otherwise there would be burdens to the USCG to stay mission ready and comply, due to the increase in the sanctuaries' areas. NOAA postponed the effective date of the discharge regulations in the two sanctuaries' expansion areas, currently to December 9, 2018 or 30 days after publication of final rule, whichever comes first.

- The need for action on the discharges include the USCG need to stay mission-ready. Certain USCG vessels have constraints for treating and holding sewage and non-clean graywater; and the USCG has trained its personnel for use of force and search and rescue (SAR) missions (involving ammunition and pyrotechnics discharges) in their area of operation, in the sanctuaries' expansion areas. USCG activities involving these types of discharges occurred in the expansion areas before the GFNMS and CBNMS expanded in 2015. The USCG enforces the National Marine Sanctuaries Act (NMSA), sanctuary regulations, and all applicable federal laws, and many other USCG missions support GFNMS and CBNMS management, including planning and response for oil spills and protecting living marine resources. The USCG also has other missions unrelated to sanctuary management, like defense readiness.

- NOAA and the USCG have been working through trying to find solutions to these issues together.

- The purpose of the proposed action would be to enable the USCG to continue mission operations that entail certain discharges in the expanded portions of GFNMS and CBNMS, including surveillance and upholding the NMSA and its implementing regulations

- Dan then reviewed NOAA's proposed preferred alternative and maps of where it would apply. NOAA proposes regulatory changes to allow (or "except") the following USCG discharges within the expanded portions of GFNMS and CBNMS, beyond approximately 3 nm from shore: untreated vessel sewage (i.e., not discharged through a Type I or II Marine Sanitation Device); vessel graywater (galley, bath and shower water) that does not meet the definition of clean in the GFNMS and CBNMS regulations; and ammunition and pyrotechnic materials used in USCG training exercises--"live fire" and SAR. Already exempt are activities necessary to respond to an emergency threatening life, property or the environment. He reviewed the proposed exceptions language from the proposed rule.

- Dan also reviewed the other four alternatives NOAA is considering. Sewage/Graywater Alternative 2, if selected would allow USCG vessels to discharge untreated sewage and non-clean graywater throughout CBNMS and GFNMS, beyond approximately three nm from shore. If Sewage/Graywater Alternative 3 were selected, NOAA would take no further action and USCG vessels would no longer be able to discharge untreated sewage and non-clean graywater in the GFNMS and CBNMS expansion areas, after the current postponement of the discharge regulations expired, December 9, 2018. Training Alternative 2, if selected, would allow the USCG to discharge training-related ammunition and pyrotechnic materials in a specific portion of the GFNMS and CBNMS expansion areas, 12 to 20 nm from shore. This area was proposed by the USCG as an area that would work operationally for them to conduct the training activities. If Training Alternative 3 were selected, NOAA would take no further action and the USCG would no longer be able to make training-related discharges of ammunition and pyrotechnic materials in the GFNMS and CBNMS expansion areas, after the current postponement expired.

- Dan then reviewed the other ways to comment and next steps; the comment period ends January 16, 2018. No final decision has been made among the six alternatives NOAA is considering.

- In discussion, there was a question about why Sewage/Graywater Alternative 2 and Training Alternative 2 were different. Both those came from alternatives suggested by the USCG; they are different types of discharges, which means where they might need to be made could differ.

- Where the USCG enforces law was briefly discussed.

- There was question about marine mammals' locations in the two sanctuaries; they may be everywhere.

- Another question was about where the USCG operates and when it trains. LT Hutchinson said training would normally be a one-day exercise, shooting off flares and ammunition to train, then coming back that day. The USCG would not normally stay overnight to train. He noted patrols are often fisheries patrols, which are seasonal.
- The USCG live fire training discharges are estimated to take place up to three to five days per year. The USCG vessel discharges of untreated sewage and non-clean graywater would occur throughout the year.
- A table in the draft environmental assessment that lists the nine classes of USCG vessels operating in GFNMS and CBNMS. Vessels in four of those classes make the discharges, discharging through Type III marine sanitation devices (MSDs). It is mostly the 87-foot vessels [Coastal Patrol Boats] that make those discharges, LT Hutchinson stated.
- There was a question about the USCG working to improve equipment, holding tanks, etc. to reduce those sewage discharges, or if they were making any commitment to make such improvements or just keep discharging, if allowed by the regulations. LT Hutchinson responded the 87s were relatively new, and the USCG did not plan to replace them soon or upgrade them.
- Sometime the USCG gives a period of phase in for its regulations, such as by the next dry docking of a vessel. Was that sort of thing considered for the USCG in this case? Dan noted a number of possibilities were discussed. The outcome of the local discussions were passed up the leadership chain in NOAA and to USCG headquarters.
- USCG live fire exercises and fishermen were of concern of an advisory council member. The commercial fishermen fish sometime around May, anywhere from 10 -15 miles, in the whole area, up to Gualala. Particularly, there was concern for the crab fleet. The member also felt the general vessel discharges were a consideration. Commercial fishing vessels are not allowed to make discharges of untreated sewage and non-clean graywater. The USCG could consider filtration or composting toilets.
- In the past, there was discussion about allowing certain USCG discharges with sanctuary permits, an advisory council member recalled. Dan observed that was past discussion was in the draft environmental assessment with other alternatives that were considered before, but are not now under active consideration.
- A person thought there could be challenges to the sanctuaries' boundaries, and felt the boundaries were expanded for a reason. Dan reminded the advisory council that these USCG discharge activities were not new discharges; they were going on prior to the expansion of GFNMS and CBNMS expansion, and that, with respect to the USCG untreated vessel sewage and non-clean graywater, it was the larger sizes of the GFNMS and CBNMS boundaries after they expanded that made it challenging for the USCG.
- Dan said the USCG commented on the scope of the Monterey Bay National Marine Sanctuary Management Plan, which is in the process of being revised, asking for the same thing.
- A member asked if the USCG would make any effort to retain graywater, or casings. Dan replied he thought the USCG would come back and discharge at the dock if they could.
- The proposed rule does not address increased discharges in the future, someone felt.
- The proposed preferred alternative is NOAA's preferred alternative, arrived at with input from the GFNMS and CBNMS staff. The USCG has also said it prefers NOAA's preferred alternative.
- The No Action Alternatives do not rule out the USCG applying for permits, an advisory council member observed. Dan said there had been past GFNMS staff discussions with USCG District 11 personnel regarding permitting training-related discharges in GFNMS, but those discussions stopped when this process started. He felt if, for whatever reason, these USCG discharges came under consideration for issuing permits, the local sanctuaries' staffs would do much of the work, but likely national staff members would also provide input.

Public Comment:

There was none.

Continued Discussion of Proposal for Regulation of USCG Discharges in GFNMS and CBNMS

- There has been no discussion of shrinking CBNMS's boundaries, Dan stated. NOAA has provided information that responded to the Executive Order about offshore oil and gas and a review of national marine sanctuaries and national marine monuments designated and expanded since April 28, 2007.
- A member asked if it was realistic to expect the USCG might consider future changes to its vessels, such as composting toilets, or other restrictions related to the resources and their use. Dan stated the proposed regulatory exceptions do not include such restrictions; the USCG does have its own guiding principles it follows, such as protocols to go through prior to discharging ammunition in training. He added the USCG is well aware we would like to see practices that reduce or eliminate sanctuary impacts. The USCG has not applied for or indicated to the GFNMS and CBNMS staffs it would apply for a permit for these discharges, and has stated it cannot retrofit its current vessels that have Type III MSDs with Type I or Type II MSDs. Dan felt the USCG and GFNMS and CBNMS staffs would continue to talk with each other about when, where and how some of the discharges would occur.
- Another consideration for the no action alternatives might be that the USCG might choose not to patrol, one member observed.
- Permits have a specified duration, and may have special conditions. A number of advisory council members favored NOAA issuing permits to the USCG for these types of discharges over the proposed preferred alternative, and several put forward different ideas for permit content and duration, including permits for every time the USCG vessels go out, annual permits, etc.
- LT Hutchinson observed the USCG has been operating for a while now with a "waiver", with the two sanctuaries' discharge prohibitions postponed so they do not apply to the USCG in the GFNMS and CBNMS expansion areas. The USCG does not to ask for a permit every single time they go out. Normally the vessels go out for a couple of days, maximum, and any time they go out, they conduct some missions, such as fisheries enforcement, or SAR, he said.
- An advisory council member supported wanting the USCG to be mission capable, but wondered the reasoning for expanding a national marine sanctuary if that part of the sanctuary was not worthy of the same protections as the rest of the sanctuary.
- A question was asked about the sound data from CBNMS, with respect to the USCG SAR and live fire discharges. Dan said there is two years of sound data, but the analysis of that data is just starting.
- Kevin said there was a sense the advisory council wanted the no action alternative, with discharges allowed by permit. This would allow NOAA to continue to assess the impacts of the USCG discharges. He asked if the group wanted to make a motion to that effect.
- Dan responded by stating the USCG was not in favor of a permitting process.
- Lilli noted that the best attempt to assess the impacts, if the proposed USCG discharges were allowed, is in the draft environmental assessment. So far as could be determined, the environmental effects on the sanctuaries resources and uses from the USCG discharges should be about the same, whether allowed by regulatory exceptions or permits. Based on the information available and summarized in the draft environmental assessment, NOAA does not believe its proposed action would result in any significant impacts.
- The USCG still has to consult with all the relevant agencies on its own actions, making the discharges, and must comply with the relevant environmental laws, etc. If the USCG activities change in the future, beyond what has been analyzed, the USCG would be responsible for complying.
- Or, a member stated, the USCG could choose not to operate in the sanctuaries.
- Several people felt there was an issue of fairness in applying the sanctuaries' regulations.
- The difference for the USCG, compared to other user groups in the two sanctuaries, is it has 11 missions it is mandated to do, and many of those support management of GFNMS and CBNMS, and benefit sanctuary resources.
- One person said the USCG has been there for the fishermen 24/7, which was appreciated. However, what was good for the goose was good for the gander, and permits would make everyone accountable.
- There was an observation the USCG brushed off the issue of retrofitting its vessels too quickly.

- Using statements Kevin made during the discussion, Lilli provided a draft motion for the advisory council's consideration for editing as a group. Several suggestions were offered and several edits were made to the draft language.

The motion on NOAA's proposal for regulation of certain USCG discharges in GFNMS and CBNMS was moved by Lance Morgan and seconded by Sarah Hameed.

The motion passed unanimously. Below is the final text approved by the motion.

The Cordell Bank National Marine Sanctuary Advisory Council recognizes the strong relationship the U.S. Coast Guard has with Cordell Bank and Greater Farallones national marine sanctuaries and the challenges faced by the Coast Guard to meet their missions. The Advisory Council has reviewed NOAA's proposed Coast Guard discharge alternatives, and our recommendation is to support Sewage/Graywater Alternative 3 and Training Alternative 3. We note that permitting would continue to be allowed and would provide the vehicle for the two sanctuaries to assess impacts on the sanctuaries going forward.

Lilli said she would excerpt the motion from the minutes and provide it to the CBNMSAC. She noted she would also post the excerpt with the motion under the docket for this proposal on Regulations.gov.

Kevin adjourned the meeting at 4:46 PM.