



June 30, 2014

VIA ELECTRONIC SUBMISSION

Maria Brown
Sanctuary Superintendent
Gulf of the Farallones National Marine Sanctuary
991 Marine Drive
The Presidio
San Francisco, CA 94129

Re: Comments on Proposed Rule and Draft EIS re Expansion and Regulatory Revision of Gulf of the Farallones and Cordell Bank National Marine Sanctuaries, RIN 0648-BD18

Dear Superintendent Brown:

The Personal Watercraft Industry Association and its member companies Bombardier Recreational Products Inc. (BRP), Kawasaki Motors Corp., and Yamaha Motor Corp., U.S.A (collectively, "PWIA") appreciate the opportunity to submit these comments in response to the National Oceanic and Atmospheric Administration's ("NOAA") April 2014 proposed rule and Draft Environmental Impact Statement ("Draft EIS") for the "Proposed Expansion and Regulatory Revision of Gulf of the Farallones ["GFNMS"] and Cordell Bank National Marine Sanctuaries ["CBNMS"]."¹ These written comments supplement comments provided by David Dickerson on behalf of the PWIA regarding *Justification for Exclusion of Personal Watercraft* submitted on March 1, 2013. The PWIA's members are manufacturers or distributors of personal watercraft ("PWC"), and have unparalleled experience and institutional knowledge regarding PWC. The PWIA is an affiliate organization of the National Marine Manufacturers Association ("NMMA"), the leading trade association representing the recreational boating industry in North America.

The PWIA was founded in 1987 and is a longtime advocate for safe and responsible PWC operation. The PWIA supports reasonable and fair regulations, strong enforcement of boating and navigation laws, and mandatory boating safety and education for all PWC operators. There are 1.3 million registered PWC in the United States today.² The recent economic downturn in the U.S. economy has had a significant impact on the boating industry, with production and sales volume for PWC decreasing in the past several years. Recent economic trends have altered the nature and trajectory of the PWC market since the GFNMS ban. The overwhelming majority of PWC sold today are three-passenger models, and have undergone significant advancements to the design and improved technology. The modern design and environmental improvements have reduced PWC noise by 70 percent in the past decade, and all

¹ 79 Fed. Reg. 20982 (April 14, 2014).

² National Marine Manufacturers Association, "Recreational Boating Statistical Abstract." 2013.

PWIA member manufacturers meet or exceed National Park Service noise level requirements. Furthermore, PWC have reduced emission levels by 90 percent since 1996.³

NOAA's Office of National Marine Sanctuaries has in place within the existing boundaries of GFNMS a ban of a single type of recreational boat, PWC. This ban, which also extends to exclude boaters from the Monterey Bay National Marine Sanctuary ("MBNMS"), places prejudicial exclusion of a boat that has been proven to present the same or lesser noise, emission, safety and environmental impacts than other recreational vessels – including vessels whose use is permitted in those same areas – according to mandates of the U.S. Environmental Protection Agency ("EPA") and the State of California Air Resources Board ("CARB"), and data collected by the U.S. Coast Guard ("USCG") and individual state governments.

The health of our nation's marine resources is of vital importance to the PWIA, and the PWIA appreciates NOAA's efforts to coordinate and improve the management of the treasured and environmentally significant marine sanctuaries off the coast of California and elsewhere. The PWIA wishes to be clear that PWC manufacturers support NOAA and strongly value the National Marine Sanctuary Program. Yet, PWIA is concerned that the proposed rule, and the accompanying draft Environmental Impact Statement ("Draft EIS"), target and propose banning PWC throughout a huge geographic range without any supported record basis. The fundamental purposes of NEPA are to incorporate "high quality" environmental information into agency decision-making and to enable "public scrutiny" before those decisions are made. 40 C.F.R. §§ 1500.1, 1500.2, 1502.1. Here, NOAA has not offered factual information justifying its drastically expanded PWC ban in the "new" GFNMS beyond token areas under questionable conditions. As a result, NOAA has impaired PWIA and other stakeholders' right to meaningfully comment on NOAA's conclusion to include a wholesale PWC ban within its proposed action.

PWIA prefers the "*No Action Alternative*" and offers these comments to support the current condition of the sanctuaries and assert the proposed boundary expansion as unfounded and unnecessary. In the alternative, if the sanctuary boundaries are expanded, PWIA encourages NOAA to fully consider an alternative incorporating regulations that do not automatically exclude PWC. At a minimum, NOAA must take time necessary to obtain, study, and document support for any conclusion to singularly ban PWC.

Concerns Not Addressed in Draft EIS.

The proposed expansion presented an opportunity to thoroughly investigate human activities within the two sanctuaries, and to provide current scientific and socioeconomic data to justify the limits on PWC access. Yet the Draft EIS failed to address, or even acknowledge, the issues raised by the PWIA during the initial scoping process. *Boundary Expansion of Cordell Bank and Gulf of the Farallones National Marine Sanctuaries; Intent to Prepare Draft Environmental Impact Statement; Scoping Meetings*, NOAA-NOS-2012-0228.⁴ As the PWIA noted on March 1, 2013: "The ban of PWC from GFNMS has yet to be supported by data collected from within the GFNMS. Given that no ban of PWC currently exists within the proposed expansion of GFNMS, an Environmental Impact Statement should review should determine the existing impact of PWC within the proposed boundaries to determine its justification both within those boundaries and the proposed expansion of the sanctuary." Instead, the Draft EIS merely restates a preference to exclude PWC based solely on brief, conclusory text.

³ 2013 National Marine Manufacturers Association Statistical Abstract; 40 C.F.R. 1045; SAE-J1970; ISO-14509.

⁴ NOAA-NOS-2012-0228.15 CFR 922.

A. PWC Use Does Not Significantly Affect Sanctuary Resources.

PWC manufacturers have consistently utilized innovative design and technology to minimize the environmental impact of PWC, specifically working to reduce emissions and eliminate sound disturbances. Additionally, studies show that PWC do not adversely impact wildlife or vegetation any more than other forms of boating. NOAA claims that part of the reason for restrictions on PWC is because of alleged negative environmental impact, but NOAA failed to collect and consider data from the several recent years of PWC use within the Sanctuary, including any actually observed air, water, sound, and biological impacts directly attributable to PWC; currently observed or measured discharges from PWC and other boats; actual visitor experiences of PWC and non-PWC Sanctuary users; numbers and models of PWC; origins and usage trends for PWC at the Sanctuary; and other relevant topics. Meanwhile, at least 15 national parks and 2 sanctuaries have conducted environmental assessments of PWC use in recent years, and each and every one of them has reached the conclusion that PWC present no unique impact and should be allowed to operate where all other forms of motorized boating are allowed.

B. Air Quality: PWC Emissions Have Already Declined Substantially And Pose No Threat To Public Health Or Air Quality Even Under The Most Extreme Operating Assumptions.

With respect to air emissions, the Environmental Protection Agency regulates emissions from PWC and other marine outboard engines under the same regulation. 40 C.F.R. Part 1045. EPA promulgated its most recent emissions standard in 2008, applicable to PWC model year 2010 and beyond. PWC are also subject to EPA evaporative emission standards at 40 C.F.R. Part 1060, most recently promulgated in 2009. Since 1998, PWC have achieved a 75% reduction in hydrocarbon and nitrogen oxide emissions. Today, PWC emit 16 gr/KW-hr of hydrocarbon and nitrogen oxides, compared to 300gr/KW-h prior to 1998. All PWC manufacturers also meet the California Air Resource Board (“CARB”) PWC emission requirements. With the implementation of the EPA final rule in 2010, both CARB and EPA emission standards are harmonized. At this time all new PWC engines are certified to meet both CARB Three Star and EPA 2010 standards, making them some of the cleanest engines on the water today.

Anti-PWC groups continue to cite outdated data from the 1990s that do not reflect the current PWC market. PWC emissions neither impair nor significantly impact air quality or human health, and the cumulative emissions will have negligible adverse effects.

C. Water Quality: PWC-Related Contaminants Have Already Declined and Will Not Adversely Affect Human Health or Aquatic Resources.

The transition to four-stroke and direct injected two-stroke engines to meet the requirements of the EPA 2006 and CARB 2004 and 2008 emissions standards occurred in rapid succession. Sales of these newer cleaner-running models long ago eclipsed sales of conventional carbureted two-stroke PWC. The amount of unburned fuel released into the respective sanctuaries waters will, accordingly, decline even more quickly with the use of newer model PWC. PWC pollutant loads are miniscule, and will become even less perceptible stemmed from mechanical innovation and advanced design of cleaner running engine technologies continues, outpacing the requirements established in prevailing regulations.

D. Sound: Existing PWC Meet Applicable Noise Standards and Newer Models are Quieter.

PWIA recognizes that improper maintenance and discourteous operation of any motorized vessel can lead to sound disturbances. Since 1998, PWC manufacturers have reduced engine sound levels by up to seventy percent (70%). These reductions in sound levels also involve lowering the sound made as the “pitch” of the engine. Pitch is the measurement of the frequency that the wavelength of sound vibrates, and is the aspect of PWC-associated sound that some claim to be “disturbing.” The PWIA’s member companies have not only met, but exceeded, these noise requirements by complying with another sound emission standard, ISO 14509. The ISO 14509 limitation is 75dB, measured 75 feet from shore, at a test speed of 40 miles per hour. ISO 14509 is effectually different from SAE-J1970, which sets a 75dB recommended practice during shoreline testing at wide open throttle with no distance measurement. All PWIA member manufacturers meet the ISO 14509 noise standard. Advances in PWC hull design technology include the following features to achieve reduced sound emissions: engine mount isolation, quieter four-stroke technology engines, advanced water jacketing, water lock boxes/mufflers, and exhaust exits at the air/water interface. NPS studies measuring sound conclude PWC (75 dBA) are only 15dBA greater than conversational speech (60 dBA); 25 dBA less than thunder (100 dBA); and when compared to crickets (40 dBA) are only 35 dBA greater.⁵ Finally, there is no evidence that PWC noise adversely affects aquatic fauna or animals. PWC typically exhaust above the water or at the air/water transition area. Consequently, most PWC sound is transmitted through the air and not the water.

E. Wildlife and Vegetation: PWC Do Not Impact the Natural Resources More than Other Motorized Boats.

The Draft EIS failed to report cases of deliberate harassment or collisions with wildlife by PWC users and there is no evidence that PWC use disturbs wildlife along the shoreline. The suggestion that PWC use may have negligible to minor impacts on wildlife is unfounded, as it lacks an evidentiary basis and overlooks the attributes of the watercraft that minimize the potential for collisions and injuries. Despite the lack of supporting evidence, the proposed rule states “*NOAA’s assessments of MPWC impacts indicate that unrestricted access to all reaches of the sanctuary by such craft are likely to pose a threat to wildlife and other ocean users. Some MPWC operators commonly accelerate and decelerate repeatedly and unpredictably, travel at rapid speeds directly toward shore, and may maneuver close to rocks. Thus wildlife disturbance impacts from MPWC tend to be more likely than those from motorboat use, due to impacts in ecologically sensitive areas, often in nearshore locations.*”⁶ The proposed rule further states “*More detailed information on the impacts of MPWC can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule*”⁷; however NOAA failed to produce in the Draft EIS or any other readily identifiable location in the record any data purportedly providing the foundation of the aforementioned “assessments.”

In contrast to other motorized boats, PWC are highly maneuverable and have a shallow draft, and do not have exposed propellers which could strike submerged or diving animals or entangle in seagrass beds. Based on these characteristics, NPS has properly concluded in other rulemakings that “*it appears that personal watercraft are no more apt to disturb wildlife than are small outboard motorboats.*” 69 Fed. Reg. at 53,636.

⁵ Personal Watercraft Industry Association, “The History, Evolution and Profile of Personal Watercraft. Personal Watercraft: The New Generation.” 2013.

⁶ 79 Fed. Reg. at 20988.

⁷ Ibid.

The suggestion that PWC will disturb shoreline and submerged vegetation lacks a factual basis. NOAA cannot point to any documented instance of vegetation disturbance from PWC, and instead merely states that such disturbance is “possible.” To the extent such impacts occur, they would not be peculiar to PWC. Any shoreline activity would have equal, if not greater, impacts than PWC. The respective sanctuaries are dynamic environments in which sand accretes and erodes naturally. These natural forces have far greater impact on vegetation than PWC use. Because PWC lack an exposed propeller, they are by far less invasive than traditional motor boats in shallow-water environments. Moreover, to prevent potential damage to the jet pump machinery that powers the vessels, manufacturers expressly caution against operation in water less than two and a half feet deep. In the GFNMS, such effects are further unlikely from PWC users given that disturbance of wildlife would undermine the reasons for PWC use in the first instance (e.g., for fishing).

F. PWC Bans in National Parks and Marine Sanctuaries Adversely Impact California’s Economy.

An analysis of the economic impact on the state of California conducted in 2006 by The Trade Partnership reports that the state's economy has been adversely impacted by the existing bans and the negative publicity associated with the bans. Since the approval of the Joint Management Plan Review, there has been a significant loss in PWC sales—7,847 units sold in 2007 compared to 1,766 in 2012, California.⁸ The ban and public perception has both directly and indirectly impacted California distributors, suppliers, retailers and other businesses that service PWC and their users. This adverse economic impact will only be further exacerbated by additional restrictions at GFNMS.

The PWC industry has already taken a significant economic hit in California, and an expansion of discriminatory bans and restrictions such as those being proposed within the Draft EIS will severely impair the industry’s ability to rebound and recover. NEPA requires NOAA to properly consider the economic and social impacts interrelated with its environmental analysis. 40 C.F.R. § 1508.14. Accordingly, beyond its unsupported conclusions regarding local PWC impacts in an expanded GFNMS, NOAA should be sure to fully consider the socioeconomic effects of further restricting PWC use.

Recommendations to Consider.

PWIA is highly concerned with the lack of data and/or studies contained within the Draft EIS. As required under NEPA, NOAA must use the best available scientific information. 40 C.F.R. §§ 1500.1(b), 1502.22. Yet, it appears that NOAA considered little if any evidence at all, let alone current information. Since the approval of the Joint Management Plan Review, NOAA has had sufficient time to conduct studies and collect data to justify its prejudicial targeting of PWC. But the PWIA has located no such quantitative evidence in NOAA’s proposed rule or Draft EIS with respect to PWC.

Indeed, the only two PWC-related reports listed among the references (5-2) are outdated (1989⁹ and 1998¹⁰) and do not take into account the vast technological innovation and design advancement to PWC. Therefore, these reports

⁸ National Marine Manufacturers Association, “Recreational Boating Statistical Abstract.” 2013.

⁹ Snow, S. 1989. A Review of Personal Watercraft and Their Potential Impacts of Natural Resources of Everglades National Park. November 3.

¹⁰ U.S. Department of the Interior, National Park Service. 1998. Proposed Rule: Personal Watercraft Use Within the NPS System. Federal Register. Vol. 63, No. 178. September 15.

cannot and should not be the only basis for the discriminatory ban of PWC within GFNMS. Because NOAA has not offered the public sufficient record support to evaluate NOAA's conclusions regarding PWC, the only discernible conclusion is that those conclusions are unfounded and unjust.

To avoid this result, the PWIA recommends that NOAA reexamine and revise its Draft EIS, and republish its proposed rule, at least with respect to the elements of its proposed action specifically implicating PWC. This includes NOAA taking the time necessary to collect and assess data of localized impacts (or the lack thereof), and to include that data with its Draft EIS for public consumption and peer review while public input may still inform NOAA's final rule for GFNMS. As it currently stands, the administrative record is woefully inadequate to support NOAA's proposed action. PWIA respectfully urges NOAA to review and consider the following recommendations when conducting its analysis and selecting its management plan.

A. Fully Consider Alternatives That Do Not Single Out and Ban PWC.

Under NEPA, NOAA must fully consider a reasonable range of alternatives; this is the "heart" of the Draft EIS. 40 C.F.R. § 1502.14. Because the existing record does not support additional PWC restrictions, among the alternatives presented in the Draft EIS, PWIA prefers the No Action Alternative. Other than under the No Action alternative, however, NOAA appears to unjustifiably presume that expanding the GFNMS boundary necessarily means that expanded PWC-specific restrictions are necessary as well.

Under the Proposed Action and MPWC Zones Alternatives, NOAA fails to justify the reason for its disparate treatment of PWC. For example, for Zone 4A under MPWC Zones Alternative 4, NOAA states "To further minimize the potential for nearshore impacts on wildlife..." Yet, NOAA does not take into account the potential nearshore impacts other motorized boats pose upon natural resources. The lack of data-driven justification is unacceptable. PWIA recommends NOAA conduct area-specific study of alleged impacts, uniquely attributable to PWC, on the particular resources in GFNMS, before pursuing any alternative with specialized PWC restrictions.

Moreover, NOAA should rigorously explore and evaluate an alternative that expands the marine sanctuary boundaries but does not include a PWC ban. Based on the public record supplied by NOAA, it does not appear that NOAA considered this reasonable alternative. The very brief discussion of "other alternatives considered and eliminated" also makes no mention of this alternative. This alternative could fulfill the purpose and need of adequately protecting GFNMS.

B. Promote Voluntary Community Programs.

Since 2010, the Personal Water Industry Association (PWIA) and the Florida Keys National Marine Sanctuary have teamed up in the "Blue Rider Ocean Awareness and Stewardship" program. This joint effort promotes the sustainable use and enjoyment of the sanctuary by educating personal watercraft users and liveries. PWIA recommends that NOAA and GFNMS promote such voluntary programs as viable alternatives to new regulations premised on an upfront and unsupported assumption of PWC incompatibility with an expanded GFNMS.

C. Definitions Should be Consistent and Uniform.

PWIA supports efforts to harmonize and consolidate definitions with broad applicability for the Marine Sanctuary System. Definitions have important implications for sanctuary regulations and are key factors in determining access, restricted use, and user burdens. We are concerned, however, that the effort to standardize the definition of a motorized personal watercraft ("MPWC") does not appear to be backed by an assessment of why a 20-foot boat

length was selected, what benefit a length that exceeds all historical and anticipated PWC designs would provide, and why the proposed definition would include every boat up to 20 feet long that is powered by a jet drive when propeller-driven boats of the same length, brand and style are not.

In particular, NOAA's proposal to standardize the definition currently used in MBNMS is extremely troubling. The PWIA does not support the MBNMS definition and further opposes adopting the least frequently used definition as the standard for all marine sanctuaries. The PWIA believes the inconsistency of the proposed definition, its breadth, and seemingly arbitrary limits on length demand a robust environmental assessment of the definitional change, and requests that it include an updated examination of personal watercraft technology and design, economic impact, and environmental advancements.

The term "motorized personal watercraft" is not a widely understood or accepted term in the recreational boating industry, or in the regulations and laws currently in place and enforced by the USCG, NPS, Society of Automotive Engineers ("SAE"), all 50 states and U.S. territories. Personal watercraft ("PWC") is the standardized term used by U.S., state and international regulating bodies. By adding the word "motorized," the term begs the question whether non-motorized personal watercraft exist. Given the importance of definitions to setting access and use rules within sanctuaries, PWIA urges NOAA to adopt the term "personal watercraft" rather than "motorized personal watercraft." The definition provides enough guidance to indicate motorization without including the wording in the terminology as well.

PWIA supports the application of a standard definition of PWC that NOAA can apply to all national marine sanctuaries. However, this standard should be consistent with the definitions developed, adopted and used by the United States Coast Guard ("USCG") and SAE. These regulatory organizations developed their definitions following assessments and reviews by engineers and experts in boating regulation. If NOAA has experts in boat regulation and design that have developed its proposed definition, the process and results of this review should be provided for comment by all interested parties.

The USCG is the regulating body for recreational vessels. Though NOAA plays an important role in regulating recreational uses within sanctuary boundaries, we believe it should defer to the definition used by the USCG, and further reflected in statutes in force in the 50 states and U.S. territories. NOAA should adopt the USCG/SAE standard. Striking out independently with a different definition will undermine what now is a consistent, clear definition under the law. The USCG defines a PWC as "a vessel less than 4.0 meters (13 feet) in length that uses an installed spark-ignition engine powering a water jet pump as its primary source of propulsion and is designed with no open load carrying area that would retain water. The vessel is designed to be operated by a person or persons positioned on, rather than within, the confines of the hull. A vessel using an outboard engine as its primary source of propulsion is not a personal watercraft." 40 C.F.R. § 1045.801. The proposed NOAA definition significantly exceeds the scope by which USCG defines PWC and all exemptions and regulations related to this particular vessel.

Similarly, SAE J2608 defines PWC as "[a] craft less than 4m (13ft) in length, which uses an internal combustion engine powering a water jet pump as its primary source of propulsion, and is designed to be operated by a person or persons sitting, standing or kneeling on the craft rather than in the confines of the hull." All PWC manufacturers certify their craft to the SAE J2608 standard. There is no need for NOAA to develop a definition inconsistent with the manufacturing certification parameters or the regulations imposed by USCG.

Since the PWC was first developed by Kawasaki in the 1970s, PWC length has remained beneath the 13 foot definitional maximum. There is no reason to believe, based on input from the three current PWC manufacturers that new design and technology advancements will necessitate the need to design the vessel beyond 13 feet. According to the specialized marine engineers who design PWC, any design greater than 13 feet would lose significant maneuverability, which would remove one of the key performance standards sought by consumers. If a PWC longer than 13 feet was brought to market, the design would not meet USCG and SAE standards before coming to market. According to USCG officials, a PWC longer than 13 feet would likely lose its 40 CFR 1045.801 designation, thus requiring a redesign that would sacrifice the characteristics that appeal to consumer. Therefore, proper controls on PWC design are already in place by regulating recreational bodies, negating the need for an expanded NOAA definition of length. Furthermore, if NOAA ties its definition to the USCG standard, it would necessarily continue to have control over PWC use regardless of changes in design because, before the newly-designed PWC could go to market, the USCG would have to change its definition of PWC. This requirement undermines concerns that the proposed MPWC definition must be so expansive as to accommodate any design change, despite that fact that such design changes are not likely according to PWC manufacturers.

Additionally, the proposed definition to include vessels up to 20 feet in length is not supported by any engineering basis and is arbitrary. On what basis has NOAA concluded the maximum feet for PWC should be 20 feet? The assumption that technological advancement will result in expanded PWC length is unfounded and not contemplated by the industry. By broadening the definition of PWC to include three qualifying instances, NOAA is removing the critical characteristic of PWC, which is to “sit on the craft” rather than in the confines of the hull, as characterized by other recreational vessels. Across the marine sanctuary system, there exist several regulations specific to PWC which concern vessel access and usage within sanctuary waters. By expanding the definition of PWC to other recreational boats, the proposed changes would also expand those restrictions of usage and access to vessels beyond originally intended.

The docket openly admits the definitional change of PWC could cover a broader range of vessels and directly references “jet bikes, hovercraft, air boats, and race boats.” This proposed definition would expand PWC regulations to include jet-driven boats up to 20 feet. Any boat under 20 feet long was not originally contemplated for the type of access restrictions applied to PWC in sanctuary boundaries, and since jet drives have recently been placed on the market for use by all boat manufacturers, it is quite foreseeable that any number of typical boats under 20 feet will be powered by jet drive engines. Jet-driven boats under 20 feet that are identical to other boats with gunwales and transoms that are meant to be ridden in, and not on, already exist and are selling briskly in the marketplace.

Furthermore, the breadth of the definition implicates any vessel that is “machine driven,” which as we understand it would include any propulsion system that is an intrinsic part of the boat and used to propel it. The proposed definition under (3) would also include machine-propelled vessels like the Mirage Kat by Hobie Cat. By creating an overbroad definition like the one proposed, the marine sanctuary system would greatly expand the scope of vessels that can be banned or face access restrictions in sanctuary waters. This definition also may lead NOAA to exaggerate or misapprehend the actual impacts of PWC baldly alleged in the Draft EIS.

PWIA offers its expertise, studies, and data to NOAA and the sanctuary to assist it in collecting and determining the answers to the questions posed in these comments. PWIA appreciates the opportunity to submit these comments. If

you have any questions or concerns, please do not hesitate to contact me at (202) 737-9761 or ddickerson@mma.org.

Respectfully Submitted,

A handwritten signature in cursive script that reads "David Dickerson".

David Dickerson
Executive Director
Personal Watercraft Industry Association
650 Massachusetts Avenue, NW
Suite 520
Washington, D.C. 20001