specifically to inform the public of the issue and course of action under consideration by SRD, and to invite submission of written information, advice, recommendations and other comments.

DATES: Comments must be received by March 30, 1995.

ADDRESSES: Comments should be sent to Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Comments will be available for public inspection at the same address and at the Monterey Bay National Marine Sanctuary office at 299 Foam Street, Suite D, Monterey, California, 93940.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION: In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the MBNMS was designated on September 18, 1992. SRD issued final regulations, effective January, 1993, to implement the Sanctuary designation (15 CFR Part 944). The MBNMS regulations at 15 CFR 944.5(a) prohibit a relatively narrow range of activities to protect Sanctuary resources and qualities.

In January of 1994, SRD became aware that chum was being used to attract white sharks for viewing by SCUBA divers while in underwater cages. This activity occurred in the nearshore area off of Año Nuevo in the MBNMS, during the time of year white sharks come to feed. While California state law generally makes it unlawful to "take" (e.g., catch, capture, or kill) white sharks in state waters, it does not appear to address attracting sharks for other purposes, nor does it prohibit the taking of sharks in those portions of the MBNMS outside of state waters. SRD has also received expressions of concern over this activity and inquiries as to whether attracting sharks for viewing and other purposes is allowed in the

There is currently no MBNMS regulation specifically addressing the attracting of sharks in the MBNMS. There is a general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary. 15 CFR 944.5(a)(2). The discharge and deposit prohibition contains an exemption for, *inter alia*, the discharge or deposit of "fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary". While fishing activities in the Sanctuary are

subject to various Federal and state regulations, traditional fishing activities are not regulated as part of the Sanctuary regulatory regime. Sanctuary regulations that could indirectly regulate traditional fishing operations were specifically crafted to avoid doing so. Thus, while fishing vessels are subject to the general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary, the exemption for the discharge or deposit of "fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary" was designed to prevent the prohibition from indirectly regulating the conduct of traditional fishing operations. However, an argument has been raised that the phrase in the regulatory exemption "used in or resulting from" could be interpreted to allow the discharge or deposit of "fish, fish parts, chumming materials or bait" at any time or in conjunction with any activity, as long as the discharge or deposit is of the same material used by or generated during traditional fishing operations in the Sanctuary. As one option, SRD could amend the exemption for the discharge of "fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary" to clarify that it applies only to such discharges if they are incidental to and during the conduct of traditional fishing operations.

SRD, with input from its MBNMS Advisory Council, and a number of interested parties, has identified a number of concerns regarding the issue of attracting sharks within the MBNMS: (1) Attracting sharks by chum or other means may cause behavioral changes in the attracted species (e.g., feeding, migration); (2) attracting sharks by chum or other means may cause behavioral changes in the attracted species resulting in increased predation on prey or non-prey marine species; and (3) attracting sharks by chum or other means may increase the risk of attack to other Sanctuary users, or otherwise create user conflict in the area of the activity. Consequently, along with considering amending the regulatory exemption to the discharge and deposit prohibition as discussed above, SRD is considering specifically restricting or prohibiting attracting sharks in the

The Designation Document for the MBNMS, the constitution for the Sanctuary, contains a list of activities subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation,

ecological, recreational, research, educational, historical and esthetic resources and qualities of the area. Included as an activity subject to regulation is the following:

d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of a marine mammal, sea turtle, seabird, historical resource or other Sanctuary resource.

See 57 FR 43310, 43316 (September 18, 1992) (emphasis added). Therefore, amending the Sanctuary regulations to restrict or prohibit the taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of sharks within the MBNMS, or attempt thereto, is authorized by the Designation Document. "Take or taking" is defined broadly in the Sanctuary regulations (15 CFR 944.3), and includes harassment of the species it currently addresses (marine mammals, seabirds and sea turtles).

To amend the regulations, SRD must follow the appropriate procedures of notice and comment rulemaking under the Administrative Procedure Act. Further, SRD is required by the National Marine Sanctuaries Act at 16 U.S.C. 1434(a)(5) to consult with the appropriate Regional Fishery Management Council before it issues any Sanctuary regulations "for fishing". SRD has sent a letter to the Pacific Fishery Management Council for its input regarding the issues identified in this ANPR.

This ANPR is an optional preliminary step to notice and comment rulemaking. SRD is issuing this ANPR specifically to inform the public of the issue and that it is considering restricting or prohibiting attracting sharks within the MBNMS, and to invite submission of written information, advice, recommendations and other comments. In particular, SRD requests comments on:

- (1) What methods are used to attract sharks in the MBNMS;
- (2) What methods are used to attract sharks in other areas;
- (3) Whether attracting sharks by chum or other means is necessary if they are known to be naturally present in a given area:
- (4) Whether attracting sharks by chum or other means causes short- or long-term behavioral changes in the attracted species or associated species that are disruptive to their normal behavior (e.g., feeding, migration, predation);

(5) Whether attracting sharks by chum or other means has adverse impacts on other MBNMS resources;