the MBNMS and, if so, what restrictions might be necessary.

DATES: Comments must be received by September 8, 1995.

ADDRESSES: Comments should be sent to Scott Kathey, Monterey Bay National Marine Sanctuary office, 299 Foam Street, Suite D, Monterey, California, 93940, or 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 addresses. FOR FURTHER INFORMATION CONTACT: Scott Kathev at (408) 647-4251 or 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 Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) 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 and thus makes it unlawful for any person to conduct them or cause them to be conducted.

The leasing, exploration, development or production of oil or gas in the Sanctuary is statutorily prohibited (Section 2203 of Pub. L. 102-587). As such, the final MBNMS implementing regulations absolutely prohibited exploration, production or development of oil, gas or minerals in the MBNMS (57 FR 43310, 43315-43317; 15 CFR 944.5(a)(1)). Further, the regulations and Designation Document (the constitution for the Sanctuary) prohibit NOAA from issuing a permit or other approval for this activity in the Sanctuary (15 CFR 944.5(h); Designation Document, Article V).

There is a region within the Sanctuary known as the Jade Cove area. Jade Cove consists of a series of small coves located south of Big Sur, near the town of Gorda. Jade (also called nephrite) occurs in veins in the serpentine bedrock formation, extending down the cliffs and into the seabed. The area is very dynamic, subject to strong waves and tides, which erode the veins and sometimes free the jade. Jade is found primarily as pebbles or larger stones on the shore and seabed, and as revealed deposits in the seafloor.

For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade. Even prior to the designation of the MBNMS, extraction of minerals from State submerged lands was prohibited by State law, unless permitted by the State. The National Forest Service also prohibits the removal without a lease of any rocks or minerals within the Los Padres National Forest, which abuts the inshore boundary of the Sanctuary in the Jade Cove area.

NOAA is considering amending the regulations for the MBNMS to allow small-scale, non-intrusive collection of jade from the Sanctuary. NOAA is considering this action for a variety of reasons, foremost of which is that preliminary indications suggest that small scale, non-intrusive collection of loose pieces of jade may not destroy, cause the loss of, or injure resources or qualities of the MBNMS. Further, the MBNMS Sanctuary Advisory Council (Council) has recommended to SRD that the regulations be amended to allow jade collection. The Council has devoted several of its meetings to obtain information and public testimony, and convened a work group to review this issue. There has also been consistent public support for the proposed course of action.

It may be possible to allow people to "beach comb" or dive for loose pieces of jade, much like what already occurs in this Sanctuary for items such as driftwood, without any resulting harm to Sanctuary resources or qualities. Jade is a non-living resource of the MBNMS. See 15 CFR 944.3. However, allowing small-scale, non-intrusive collection of small pieces already loose ("in float") and that would otherwise naturally disintegrate or be washed out to sea would not seem to pose a risk of harm to this resource. Further, it appears that collection of loose pieces of jade from the Sanctuary could be conducted without creating a risk of harm to other Sanctuary resources or qualities or the MBNMS ecosystem. NOAA will likely limit collection to hand picking pebbles or small stones already "in float" and devoid of any marine life, including algae and benthic organisms. If collection were allowed, no tools would be permitted that could injure Sanctuary resources or qualities, such as wedges, crowbars, picks, chisels and other tools used for digging, excavating, boring, breaking, prying, drilling, piercing, scraping, wedging, or other intrusive activities. No vehicles, winches, carts or other removal equipment would be permitted to be used in the Sanctuary to collect jade. However, NOAA may consider allowing the use of lift bags to float loose submerged jade to the shore. Any regulatory exception for the smallscale, non-intrusive collection of loose pieces of jade would not extend to oil or gas. As indicated earlier, there is a statutory prohibition against leasing, exploration, development, or production of oil or gas in the Sanctuary.

The prohibition against permitting or otherwise approving the exploration, development, or production of oil, gas, or minerals in the Sanctuary is a term of the Designation Document. Therefore, to allow small-scale, non-intrusive jade collection in the Sanctuary NOAA must comply with the procedures for altering a term of designation for a National Marine Sanctuary. As provided by section 304(a)(4) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. §1434(a)(4), the terms of designation may be modified only by the same procedures by which the original designation is made. Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. §§ 1433, 1434. Section 304 requires the preparation of an environmental impact statement, state consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to state waters within the Sanctuary.

Although NOAA is considering providing a limited exception for smallscale, non-intrusive jade collection from the regulatory prohibition against exploring for, producing or developing oil, gas or minerals, any jade collection that alters the seabed of the Sanctuary (e.g., digging into the seabed) would remain subject to the prohibition against alteration of the seabed (15 CFR 944.5(a)(5)). NOAA would not allow jade collection that alters the seabed of the Sanctuary. Further, any collection in California State waters would require a State permit because of the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands.

NOAA is seeking advice, recommendations, information and other comments, with reasons, on whether NOAA should amend the MBNMS regulations to allow smallscale, non-intrusive jade collection in the MBNMS. If NOAA allows jade collection, comments are requested on: (1) whether collection should be limited to loose pebbles or small stones; (2) whether the use of tools should be permitted to collect jade from the Sanctuary; (3) whether there should be limits on the amount of jade allowed to be taken from the Sanctuary and, if so, what limits; (4) what conditions or restrictions should be placed on jade collection; and (5) any other information