

(January 1, 1993), provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on January 1, 1993.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(2)(i) (A) through (D) of this section and dredged material deposited at the authorized disposal sites described in appendix B to this subpart, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(3) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from kelp harvesting, aquaculture or traditional fishing operations.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

- (i) Anchoring vessels;
  - (ii) Aquaculture, kelp harvesting or traditional fishing operations;
  - (iii) Installation of navigation aids;
  - (iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on January 1, 1993, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties; or
  - (v) Construction, repair, replacement or rehabilitation of docks or piers.
- (5) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1000 feet above any of the four zones within the Sanctuary described in appendix C to this subpart.

(7) Operating motorized personal water craft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix D to this subpart.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, sea turtle or seabird taken in violation of regulations, as amended, promulgated under the MMPA, ESA or MBTA.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(c) (1) All Department of Defense activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940). New activities may be exempted from the prohibitions in paragraphs (a)(2) through (9) of this section by the Director after consultation between the Director and the Department of Defense.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(d) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 1,

1993 and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under § 922.48 and § 922.133 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. Any purported authorizations issued by other authorities after January 1, 1993 for any of these activities within the Sanctuary shall be invalid.

#### **§ 922.113 Permit procedures and criteria.**

(a) A person may conduct an activity prohibited by § 922.132 (a)(2) through (8) if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.132 (a)(2) through (8) if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: Further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in