National Marine Manufacturers Association

March 28, 2013

Meredith Walz
Office of National Marine Sanctuaries
1305 East-West Highway
11th Floor
Silver Spring, MD 20910

RE: Proposed Amendments to National Marine Sanctuary Regulations Docket NOAA-NOS-2011-0120

Dear Ms. Walz:

The National Marine Manufacturers Association (NMMA) is pleased that the National Oceanic and Atmospheric Administration (NOAA) is seeking input on proposed regulatory changes to streamline regulations pertaining to the National Marine Sanctuary System (NOAA-NOS-2011-0120).

By way of background, NMMA is the leading national recreational marine trade association, with nearly 1,400 members involved in every aspect of the boating industry. NMMA members manufacture over 80 percent of recreational boats, engines, trailers, accessories, and gear used in the United States.

We offer the following substantive comments on the proposed rule.

Site Evaluation List

NMMA has concerns regarding the proposal to modify section 922.10 pertaining to Site Evaluation Lists (SEL). By removing the SEL as the primary means to identify new marine sanctuary sites, this has the potential to greatly expand the opportunity for marine sanctuary development. NMMA believes the SEL provides a regulated framework for site consideration as well as ample opportunity for additions to be made to the qualified site list. Consideration of new sites should not be done on an ad hoc basis, but rather with complete consideration of stakeholder involvement and backed by sound science, legitimate environmental concern, and clearly identifiable objectives for site creation.

We further feel the proposal to allow public "petitions" for the consideration of new marine sites will improperly engage opinion rather than sound science and environmental management considerations into the selection process. Only upon strict evaluation, backed by environmental,

economic, and operational considerations should a new site be considered. The process should not be triggered by an unregulated internal agency action or simple public petitions.

Amend Definitions of Existing Terms

1. "Motorized Personal Watercraft"

NMMA 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 (MPW) 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 NOAA, 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 are not.

In particular, NOAA's proposal to standardize the definition currently used in Monterey Bay NMS is extremely troubling. NMMA, and its affiliate organization the Personal Watercraft Industry Association, does not support the Monterey definition and further opposes adopting the least frequently used definition as the standard for all marine sanctuaries.

The term "motorized personal watercraft" is not a widely understood or accepted term in the recreational boating industry as regulated by the United States Coast Guard, National Park Service, Society of Automotive Engineers, 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, NMMA 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.

NMMA supports the creation 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 Society of Automotive Engineers (SAE). These regulatory organizations developed their definitions following assessments and reviews by engineers and experts in boating regulation. If NOAA has had experts in boat regulation and design to develop its proposed definition, the process and results of this review should be provided for comment by all interested parties.

The United States Coast Guard 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 CFR 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 1970's, 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 loose 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.

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 were 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 a broad 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.

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NMMA has significant concerns with the existing definition of PWC as used at Monterey Bay NMS, and strongly opposes applying it to the entire marine sanctuary system. We believe the inconsistency of the proposed definition, its breadth and seemingly arbitrary limits on length demand a robust environmental assessment of the definitional change and request that it include an updated examination of personal watercraft technology and design, economic impact, and environmental advancements.

2. "Injure"

   NOAA's proposal to update the definition of "injure" raises significant concerns as to the applicability and reach of its authority. The proposed revision would extend injury to resources as being both direct and indirect harm. There is no clear guidance on what constitutes an indirect harm to a resource. How significant or slight would an indirect harm have to be to trigger agency action? NMMA supports efforts to conserve valuable sanctuary resources, however, by broadening the definition of "injure' to include indirect harms, almost any human-induced action would qualify. What specific metrics will NOAA implement to guide law enforcement to determine an indirect injury to sanctuary resources?

3. "Take"

   The proposal suggests expanding the definition of "take" to include impacts to every sanctuary resource, not just marine mammals, birds, and sea turtles. This establishes a low threshold, and would seem define any consumption of the resource as a "take." Would recreational fishing, which removes a species from a sanctuary's waters, qualify as a take? Is NOAA therefore proposing to prohibit all recreational fishing that is not catch and release? And should a fish that is released subsequently die, would this unintended aftermath be considered a "take."

NMMA welcomes the opportunity to further discuss our comments. Should you have any questions or require additional information, please do not hesitate to contact me at 202-737-9763 or nvasilaros@nmma.org

Sincerely,

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