

1 PETER E. HESS, Esq.
2 300 Delaware Ave.
3 Suite 1130
4 Wilmington, DE 19801
5 ph: (302) 656-1203

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8 ATTORNEY FOR
9 PLAINTIFFS

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CLIFTON B. CRAFT
JACK DEAN FERGUSON
DONALD L. JERNIGAN
MICHAEL PATRICK KING
THOMAS D. STOCKS and
WILLIAM LEE WILSON,

Plaintiffs

-vs.-

C.A. No. CV 92-1769-SVW (Sx)
Summary Judgement Brief

THE NATIONAL PARK SERVICE,
THE NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION,
THE NATIONAL MARINE FISHERIES SERVICE and
THE UNITED STATES OF AMERICA,

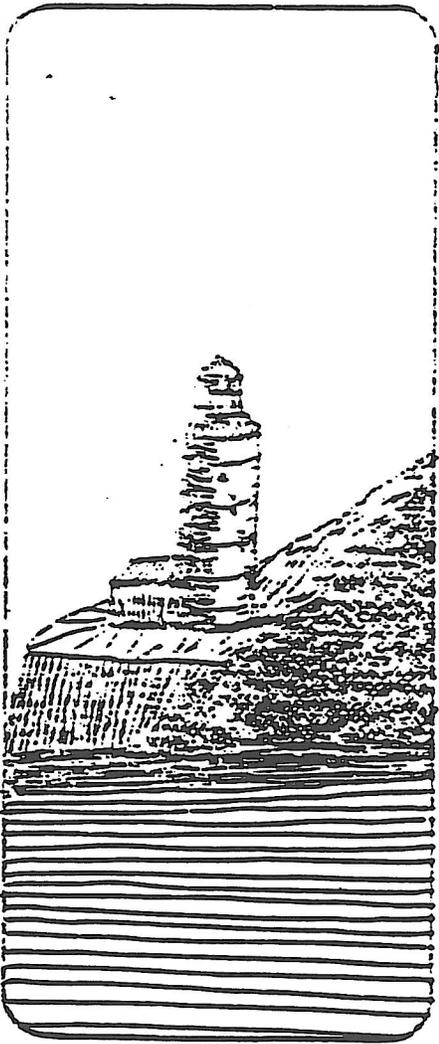
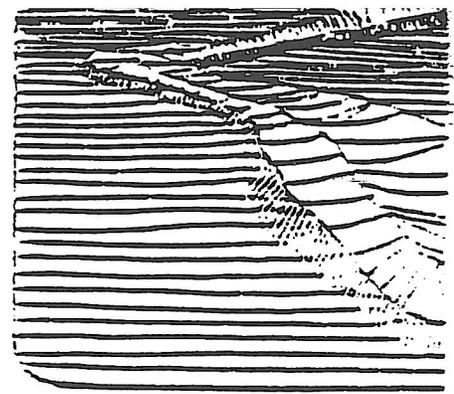
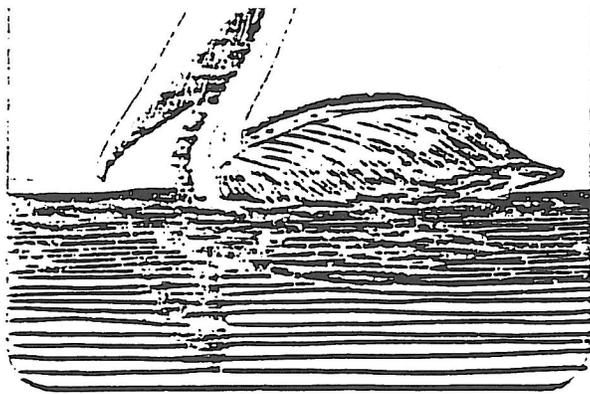
Defendants.

PLAINTIFFS' APPENDIX TO
THEIR MOTION FOR SUMMARY JUDGEMENT

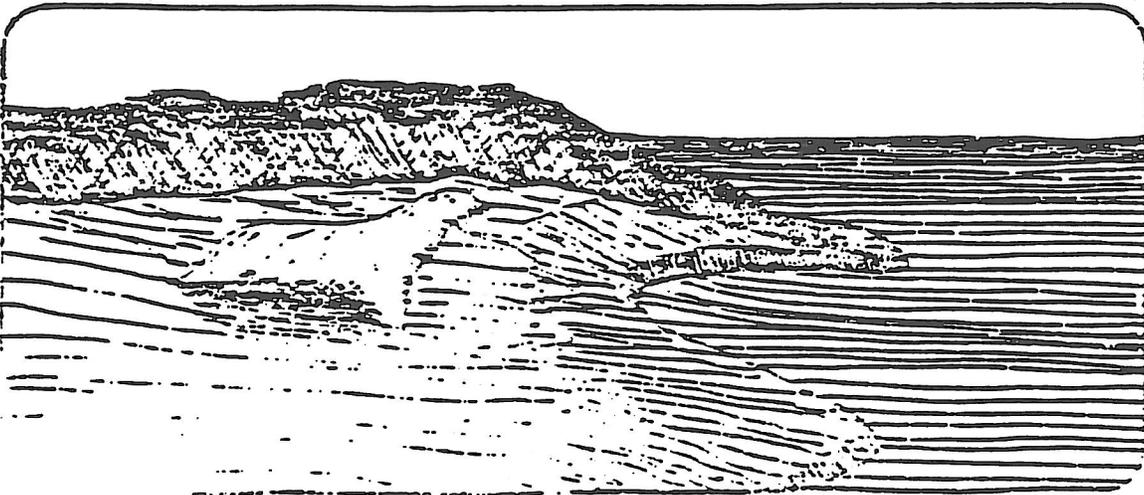
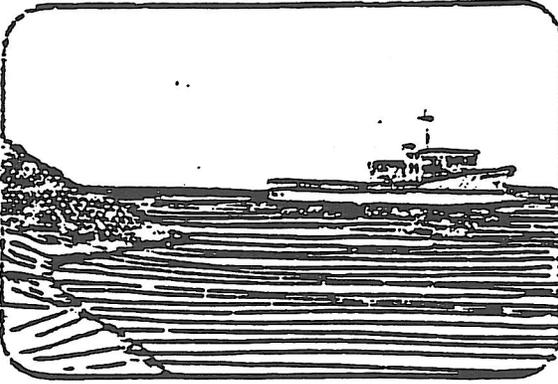
September 9, 1992

OF COUNSEL:
RICHARD BEADA, Esq.
100 Wilshire Blvd.
Santa Monica, California
90401
ph: (310) 393-7536

REC'D SEP 11 1992



FINAL ENVIRONMENTAL
IMPACT STATEMENT
ON THE PROPOSED
CHANNEL ISLANDS
MARINE SANCTUARY



FINAL ENVIRONMENTAL IMPACT STATEMENT

Prepared on the Proposed Channel

Islands Marine Sanctuary

May 1980

U.S. Department of Commerce
National Oceanic and Atmospheric
Administration
Office of Coastal Zone Management
3300 Whitehaven Street, NW
Washington, D.C. 20235

--Disturbing marine birds and mammals by overflights

To insure that sensitive nearshore resources, particularly marine mammals and seabirds, are fully protected, disturbance by overflights at less than 1000 ft (305m) is prohibited within 1 nmi (1.8km) of the islands. Military search and rescue, and enforcement operations, kelp harvesting surveys, and access to the islands are exempted from this regulation.

The Federal Aviation Administration (FAA), which currently regulates air traffic, will indicate some sensitive areas on charts, and will print a request from the concerned agency that pilots maintain a certain altitude in those areas. However, the FAA issues regulations for the safety of air traffic, and not to avoid potentially adverse impacts on ecosystems, species, or habitat. Accordingly, overflights of this area are not currently limited. The California Department of Fish and Game controls overflights directly over San Miguel, Anacapa, and Santa Barbara Islands.

--Historical or cultural resources

California can register sites as either "points of interest" or "landmarks." The latter would afford some protection against harmful activities, but only within State waters. Sites beyond State waters can be registered on the National Register of Historic Sites; however, registration provides protection only against Federal and not private activities. Accordingly, the proposed sanctuary regulations would prohibit removing or damaging historical or cultural resources within the sanctuary.

The impacts of prohibiting seabed alteration and construction are expected to be minor since all current dredging occurs outside the sanctuary.

The regulation prohibiting certain commercial vessels from the waters within 1 nmi (1.8km) of the islands will probably have minimal economic impacts because the affected vessels generally remain in the vessel traffic lanes and thus well away from near-shore areas. Fishing, recreational, kelp harvesting, research, military and enforcement vessels will be allowed in nearshore waters.

Since military and enforcement operations, kelp surveys, and landings on the islands are exempted from the overflight prohibition (and commercial aircraft fly much higher), the prohibition on flying below 1000 ft (305m) within 1 nmi (1.8km) of the islands will primarily affect recreationists observing area resources, especially whales.

The environmental and economic consequences of prohibiting the removal or damage of historical or cultural resources should be minimal. More precise estimates of the consequences will be possible after all identified resources are mapped.

NOAA's preferred marine sanctuary and the proposed regulations will not prohibit military operations necessary to the national defense or in a national emergency or actions necessary to respond to an emergency threatening life, property, or the environment.

Because the northern Channel Islands are remote and thus, until recently, subject to little human disturbances, the island intertidal areas include some of the best representative areas in southern California. Mainland intertidal areas, which are more easily accessible to the public and used intensively as areas for specimen collecting, are typically in poorer condition than comparable island areas.

E.2.e. Cultural and Historic Resources

Cultural and historic resources located in the marine waters surrounding the northern Channel Islands and Santa Barbara Island include underwater archaeological sites and artifacts and ship and aircraft wrecks. No extensive onsite inventory of the cultural and historic resources of the study area has yet been conducted, although Science Applications, Inc. (1978) conducted a thorough survey of the relevant literature for the Southern California Bight for BLM.

Numerous archaeological and paleontological resources exist on the land areas of the northern Channel Islands and Santa Barbara Island (U.S. Bureau of Land Management, 1978c). It has been determined with an acceptable degree of accuracy that sea levels were as much as 180 ft (55m) lower during previous eras of geologic time (Science Applications, 1978). Since known prehistoric sites on land document the presence of man in the Channel Islands area during these eras, it is generally thought that the exposed areas of the continental shelf were extensively inhabited (Science Applications, 1978). The potential exists, therefore, that undiscovered archaeological sites are present in the submerged

lands of the study areas. The BLM literature survey (U.S. Bureau of Land Management, 1978c) mapped three zones of different probability levels for the presence of cultural resources. The zone of highest probability was the area from 0 to 330 ft. (0 to 100m) in depth, where all known sites have been discovered. Medium and low probability zones 330 to 485 ft (100 to 150m) and deeper than 485 ft (150m) respectively are less likely to contain significant resources.

The discipline of underwater archaeology is relatively new and has not yet been extensively applied in the study area. As a result, most of the information which is currently available concerning underwater sites identified within the study area is based on the reports of amateur collectors and sport divers. The location and value of identified sites are depicted on Table E-12 and Figure E-16.

Due to natural hazards and prevailing current and weather patterns, the seas around the northern Channel Islands have been highly prone to shipwrecks throughout history. Such wrecks are of interest to historians as time capsules representing the period in which they sank and of interest to sport divers as marine habitat and curiosities. Science Applications, Inc. (1978) identifies 573 shipwrecks and 9 aircraft wrecks covering a period from approximately 1540 to the beginning of World War II in the Southern California Bight.

Table E-12. Shipwrecks recorded around the northern Channel Islands and Santa Barbara Island (U.S. Bureau of Land Management, 1979c).

<u>ID NO.</u>	<u>NAME</u>	<u>VESSEL TYPE</u>	<u>CAUSE</u>	<u>DATE OF SINKING</u>
<u>San Miguel Island</u>				
167 1	Comet	Schooner	stranded	8/30/11 Simonton
194 1	Cuba	St. Scr.	stranded	9/8/23
415 1	J. M. Colman	Schooner	stranded	9/3/05
411 a	J. F. West	Schooner	sunk	1898
444 a	Kate & Annie		sunk	1902
661 a	Pectan.			
1029 1	Unk.	Galleon	sunk	1801
1068 a	Watson A. West	Schooner	stranded	2/23/23
<u>Santa Rosa Island</u>				
17 1	Aggi	Steel 4-mast	sunk	5/2/15
199 1	Dora Bluhm	Schooner	stranded	5/25/10
192 1	Crown of England	St. Scr.	sunk	11/7/1894
101 a	Blue Fin	Oil Scr.	stranded	9/3/44
68 a	Aristocratis		sunk	1949
335 a	Goldenhorn	Barkentine	stranded	9/12/1892
1026 1	Unk.	Wreck		
<u>Santa Cruz Island</u>				
99 1	Black Dolphin	Barkentine	stranded	? dynamited
154 1	City of Sausalito	Oil Scr.	burned	12/11/41
82 a	Babina	Gas Scr.	burned	3/3/23
393 a	International No. 1	Barge	stranded	9/13/18
571 a	Nancy Lee		sunk	1946
888 a	Thornton		sunk	1910
1113 a	Yukon	Barge	sunk	1/6/38
<u>Anacapa Island</u>				
671 1	Pinnacle			
760 1	San Francisco	Oil Scr.	burned	10/31/49
86 a	Balboa	Oil Scr.	burned	1/18/49
260 a	Equator	Oil Scr.	sunk	7/2/49
467 a	Labor	Gas Scr.	sunk	10/2/24
1008 1		Diesel	sunk	?
1098 1	Winfield Scott	St. side wheel	stranded	12/2/1853
<u>Santa Barbara Island</u>				
13 a	Adriatic	Oil Scr.	sunk	12/28/30
Fed.207 1	Dante Aleghieri II	Gas Scr.	sunk	11/30/38
253 a	Emperor	Oil Scr.	sunk	7/15/32

public visits as well, relying mostly upon commercial charter services such as the one currently in operation (Grumbine, 1979, personal communication). The management plan which the National Park Service must develop for the Channel Islands National Park may change recreational patterns around the Islands but must by law administer visitor access to the Park on a low-intensity, limited entry basis (Whelen, 1980, personal communication).

Along the passive pleasure boating and nature observation, near-shore water zones around the northern Channel Islands and Santa Barbara Island are frequented by divers and spearfishing enthusiasts. Despite rather cold year-round water temperatures (normally necessitating wet suits), visual clarity is of such good quality, and protected cove shallows and kelp beds so numerous, that both SCUBA and limited snorkeling activities thrive here. The presence of substantial stocks of lobsters and abalone also serves to attract many participants to this recreational use sector (Duthie, 1979, personal communication).

As inventoried by the California Governor's Office Task Force on the Offshore Continental Shelf, some 25 skin and SCUBA diving sites are evident in the northern Channel Islands, including 7 off Santa Cruz, 3 off Santa Barbara and 5 off each of Anacapa, Santa Rosa, and San Miguel (California Office of Planning and Research, 1977) (see Figure E-25).

Both party boaters and commercial charter operators engage in or facilitate diving activities, but there is as yet little information on their proportional contributions to total user demand or quantified areal concentrations. One "open" charter boat operator from Santa Barbara, for example, regularly transports paying SCUBA divers to San Miguel (Wilson Rock, Richardson Rock and Prince

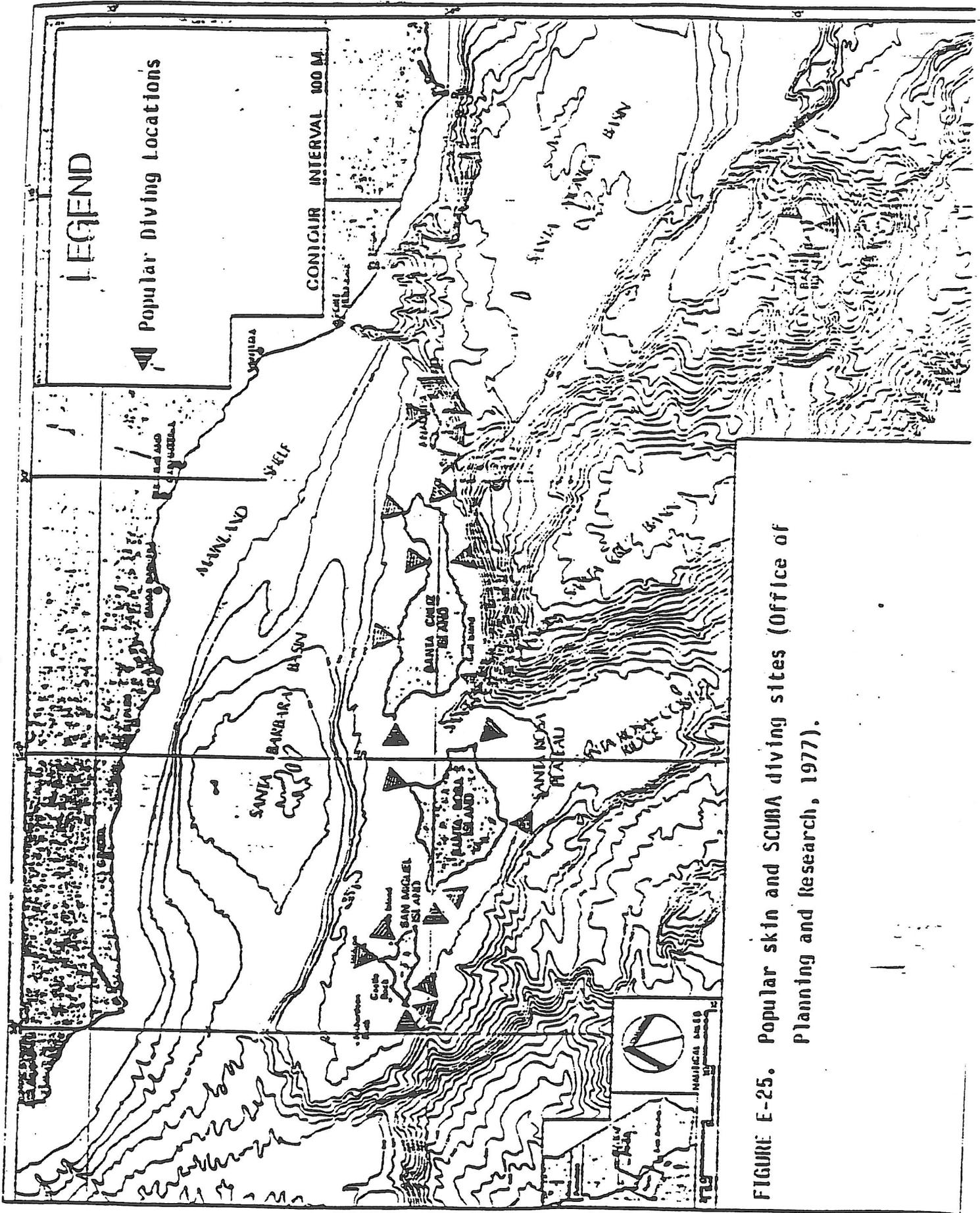


FIGURE E-25. Popular skin and SCUBA diving sites (Office of Planning and Research, 1977).

Island), Santa Rosa (Talcott Shoals), and Santa Cruz (Gull Island and Smuggler's Cove) (Duthie, 1979, personal communication). In these areas, most dives occur well within one-quarter mile of shore, and frequently in kelp beds. An estimated 50 percent of these recreationists carry spear guns on board and take both lobster and abalone. This particular operator indicated few, if any, concerns about user congestion, again highlighting the abundance of both open water space available in general and quality diving sites. Local diving clubs from communities along the mainland coast and elsewhere generate most of this operator's business (Duthie, 1979, personal communication).

Although not strictly marine-based, recreational flying is also a growing leisure pastime in the Santa Barbara Channel (Coffin, 1979, personal communication). Airports such as a county facility situated in Santa Barbara function as the primary staging points for this activity. Presently, two charter firms in the nearby mainland coastal region offer offshore overflights. Nature-watching during the gray whale's north and southward migration season is reportedly the most popular motive (90 percent) behind the demand for plane trips; a much smaller proportion of users charter aircraft purely to enjoy the unique scenic vistas provided by the offshore area's marine/island environment (Coffin, 1979, personal communication).

One of the charter companies, Santa Barbara Aviation, reports that they receive approximately 6 or 8 requests per month for flights in and around the Channel for nature observation (Glendinning, 1979, personal communication).

ever, there has been no evidence of contamination to date within the study area.

The impacts of this regulation on sanctuary users is expected to be minor; trash will have to be kept on boats and disposed of at proper facilities, most likely on the mainland. The prohibition on locating dredge disposal or ocean dumping sites in the sanctuary could conceivably impose costs on future development in or near the Santa Barbara Channel by requiring more expensive disposal methods.

3. Alteration of or Construction on the Seabed

Within 2 nmi (3.7km) of any island, no person shall dredge, drill, or otherwise alter the seabed in any way, nor construct any structure, except for a navigation aid or except in connection with the laying of any pipeline associated with petroleum development.

Dredging and dredge disposal activities, while not ongoing within the proposed sanctuary area, represent a potential threat to particularly sensitive marine resources. Foremost among these potentially adverse impacts would be increased turbidity levels, disruption/displacement of benthic communities, and human intrusions near seabird and marine mammal concentrations. A 2-nmi (3.7km) offshore buffer area will help ensure that these impacts do not affect breeding grounds, haulout areas, and adjacent foraging areas.

Dredging for pipeline construction (i.e., for oil, water, and gas) is allowed subject to authorization by the California Coastal Commission and all other regulating agencies.

This regulation will enhance resource protection by prohibiting the presence of large, and often noisy, dredging machinery within 2 nmi (3.7km) of the shore. Thus, both over the short and long-term, human intrusion upon marine wildlife along with potentially adverse impacts on their food supplies (e.g., benthic and pelagic fish resources) will be minimized. Dredging for pipeline placement is exempted because over the long run pipelines often have less impact on wildlife and pose a smaller risk of oil spills than barge traffic. This is particularly important in a high use area such as the Channel.

No economic impacts upon commercial firms are expected because current dredging operations are located outside of the sanctuary's boundaries and no zone within the 6 nmi (11.1km) boundary is used for dredge spoil disposal. Dredging restrictions may limit the harbor facilities of the Channel Islands if expansions are proposed in the future.

4. Operation of Commercial Vessels

Except to transport persons or supplies to or from an Island, no person shall operate within one nautical mile of an Island any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing (including kelp harvesting), recreational, or research vessels.