

CALENDAR ITEM

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E. Gillies

**CONSIDER ADOPTION OF A NEGATIVE DECLARATION,
APPROVAL OF THE TOMALES BAY VESSEL MANAGEMENT PLAN (TBVMP),
AND AUTHORIZATION TO COME UNDER A PERMIT WITH THE GULF OF THE
FARALLONES NATIONAL MARINE SANCTUARY FOR LEASING AND MANAGING
THE MOORING BUOYS IN TOMALES BAY, MARIN COUNTY**

PARTIES:

California State Lands Commission
100 Howe Avenue, Suite 100-S
Sacramento, CA 95825

Gulf of the Farallones National Marine Sanctuary
991 Marine Drive, The Presidio
San Francisco, CA 94129

BACKGROUND:

Tomales Bay is a significant biological community that supports a diversity of habitats, including eelgrass beds, intertidal sand, mud flats, and salt and freshwater marshes. Thousands of species of birds, other vertebrates, invertebrates, and plants, including numerous threatened and endangered species, inhabit the bay. The watershed is especially important to approximately 20,000 wintering shorebirds, seabirds, and waterbirds. The waters of Tomales Bay are also important to many fish species, including salmon, eel, sturgeon, halibut, endangered Coho salmon, and the commercially important Pacific Herring that rely on its creeks and extensive eelgrass beds to spawn. Several species of marine mammals have been documented in the bay and a resident harbor seal population breeds there. While Tomales Bay has long been considered a pristine body of water, human activity within the watershed has resulted in some degradation of the bay's habitat, water quality, and special status species.

Vessel use, both recreational and commercial, has played an important role throughout the modern history of Tomales Bay, and boating continues to be a popular activity for residents and visitors to the bay. Boats were identified as one of several pollution

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sources causing Tomales Bay to be listed as an impaired water body under the U.S. Clean Water Act, due to pathogens from discharge of human waste. Consequently a proactive plan to prevent adverse impact, from boating on the bay was developed.

The Tomales Bay Vessel Management Plan (TBVMP) is the result of a long-term multi-agency effort to streamline and coordinate vessel management activities for the benefit of the public. Implementation of the TBVMP is expected to improve water quality, protect wildlife, habitat, and public health, and facilitate recreational opportunities in Tomales Bay. The TBVMP was developed over the past decade by the Gulf of the Farallones National Marine Sanctuary (GFNMS) and the California State Lands Commission (CSLC or Commission) staff in collaboration with nine other local, State, and federal agencies with jurisdiction in Tomales Bay. This group is collectively known as the Tomales Bay Interagency Committee (TBIC).

GFNMS has been vested with the authority, in accordance with the National Marine Sanctuary Act of 1972 (NMSA), to provide comprehensive and coordinated conservation and management of 967.8 nautical square miles of nearshore and offshore waters off California. Since its designation in 1981, GFNMS has the authority to regulate certain activities within its boundaries, pursuant to the NMSA. The primary objective of the NMSA is resource protection, which is carried out by the GFNMS pursuant to regulations (codified at 15 Code of Federal Regulations (CFR) (Part 922), through the issuance of permits, through coordination with other local, State, and federal agencies, and by outreach, education, research, monitoring, and enforcement.

In 1994, a group of local, State, and federal agencies with jurisdiction over water quality and boating in Tomales Bay began meeting periodically to discuss vessel management, moorings, and water quality concerns. Through these discussions, the collaborating agencies recognized the potential impacts caused by vessels and associated facilities to the water quality, public health, safety, wildlife, and natural habitats of Tomales Bay.

The mandates of the agencies involved include maintaining and improving water quality, native wildlife populations, and natural habitats, protecting public health and safety, and providing opportunities for water-dependent commercial and recreational uses.

Over time, the concerns of the participating agencies evolved from focusing on vessel sewage discharge and impacts from moorings and derelict or deserted vessels to include the introduction of invasive species, disturbance to wildlife, and discharge of oil, fuel, and vessel maintenance products. The participating agencies determined that they should act in a coordinated manner to address all of these vessel-related management issues including the consideration of vessel storage needs in Tomales Bay. The GFNMS facilitated this collaborative process throughout the TBIC.

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In 2007, GFNMS and CSLC staffs produced the document, "Protecting Tomales Bay by Managing Vessel Usage: A Document for Public Input." The document was a result of the multi-agency effort to coordinate current and future vessel-related activities to improve water quality, protect wildlife, habitat, public health, and facilitate recreational opportunities in Tomales Bay. A primary goal of the document was to solicit vessel management recommendations from individuals and organizations in the local community and users of Tomales Bay to protect public health and the Tomales Bay ecosystem. The document was released in 2007 for a 60-day comment period and two workshops were held to solicit public input.

As a result of public comments received on the document, GFNMS committed to continuing to engage boaters and the local community in providing input on the development of a draft vessel management plan for Tomales Bay. Towards that end, the Gulf of the Farallones Sanctuary Advisory Council initiated a Working Group for Tomales Bay Vessel Management. The Working Group consisted of representatives of boating associations, shellfish growers, commercial fishermen, boat services operations, conservation organizations, shore-side property owners, and State and federal agencies with jurisdiction in Tomales Bay. GFNMS facilitated seven Working Group meetings through April 2009. Working Group topics included: vessel sewage and oil waste disposal services; mooring criteria; mooring fields; mooring tackle; mooring permitting process; and boater education. These meetings resulted in a list of recommendations to the GFNMS Advisory Council. In December 2009, the Advisory Council reviewed all of the Working Group recommendations and forwarded a final list of recommendations to GFNMS.

A Draft TBVMP and an Environmental Assessment/Initial Study (EA/IS) were released on August 23, 2012, for a 30-day public comment period. A public meeting was held at Point Reyes Station on September 18, 2012. Approximately 50 comments were received, including oral comments provided at the meeting. The primary areas of concern raised included:

- Mooring Tackle Requirements
 - The mooring tackle requirements proposed in the draft plan are not suitable for Tomales Bay conditions and are experimental and unproven;
 - The plan should require the existing 55-gallon drum moorings long used in Tomales Bay;
 - Helical Anchors and seaflex rodes have failed in other locations;
 - The proposed inspections are more than what is necessary and will be overly burdensome and expensive.

- Public Process and Stakeholder Involvement
 - The TBVMP does not reflect involvement of the Tomales Bay Community and local boaters;

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- Stakeholders were not notified of the meetings;
- The comment period should be extended;
- The plan was developed by bureaucrats with lack of local knowledge and boating experience.
- Siting of Pump-out Station Facility at Sacramento Landing
 - The only feasible location to site a pump-out station is Sacramento Landing;
 - Other proposed sites are too shallow for ideal vessel access.
- Financial cost to boaters of the Tomales Bay Mooring Program (TBMP) is too high
 - The mooring lease program will cost too local boaters too much;
 - Costs required for mooring tackle and annual inspections will be very high.
- A TBVMP is not needed
 - There is no need for the Mooring Program or more regulations on boaters since there are no issues with current mooring practices and no environmental impacts;
 - Impacts to eelgrass beds are overstated in the plan – the beds have expanded and are healthy;
 - The Plan is overly restrictive.
- Language in the Plan is Negative Towards Boaters
 - The plan is accusatory towards boaters and paints boating in a negative light;
 - The plan should acknowledge the importance of the boating tradition on the Bay.

The TBVMP was revised to address the concerns as follows:

- Mooring Tackle Requirements
 - Mooring Tackle Requirements have been updated to allow the 55-gallon drums;
 - Helix anchors and elastic rodes are not required nor allowed;
 - The standard Tomales Bay system is given as an acceptable model in the Plan.
- Public Process and Stakeholder Involvement
 - The plan was developed over the course of five years starting with an extensive scoping period that included three (3) public meetings and a scoping document. The Plan was developed with input from stakeholders through a GFNMS Advisory Council Working Group. The public had multiple opportunities throughout the five-year period to provide additional

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public comments at GFNMS Advisory Council meetings. The GFNMS and CSLC staff provided a 30-day comment period on the draft Plan. GFNMS and CSLC convened a meeting on April 17, 2013 with local stakeholders/mooring experts.

- Interested parties are also able to provide public comment at the Commission meeting.
- Siting of Pump-out Station Facility at Sacramento Landing
 - The current landowners, the National Park Service (NPS), raised significant concerns about Sacramento Landing for a pump-out facility.
 - The site is not a public facility and lacks the onsite staffing and supervision necessary for public access;
 - Land-based access to the site to service is limited because the one-lane unpaved road to the site can be impassible for much of the year.
 - Due to the above referenced conditions, the Plan does not consider Sacramento Landing as a feasible site for a pump-out facility.
- Financial Cost to Boaters of TBVMP is too high
 - The cost of mooring is dependent on each application received, however, the Mooring Program involves a streamlined permitting process that minimizes, to the extent possible, staff costs to process an application;
 - Mooring requirements have been changed to allow more economical choices that will lower the overall cost for installation and inspection;
 - Inspection criteria have not yet been finalized.
- A TBMP is not needed
 - The following issues have been identified in Tomales Bay: Pathogen and nutrient impairment of beneficial uses, including aquaculture; decreased water quality from discharges including fuel, oil, and toxic materials; ecological effects of invasive species introductions; disturbance of wildlife; habitat alternation and threats to navigation from anchoring, mooring or deserted vessels that come aground; and public safety threats from improperly moored, grounded, or deserted vessels.
 - There are no new proposed regulations. Because of existing GFNMS regulations there is a need for a plan to allow for legal mooring activity. Without such a legal mechanism to authorize mooring of boats in Tomales Bay, all moorings would continue to be illegal.
- Language in the Plan is Negative Towards Boaters
 - The final draft of the plan was amended to include language highlighting the history and culture of boating in Tomales Bay;

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- Language about mooring as an “illegal” activity was edited to indicate an “unpermitted” use;
- The plan clearly articulates that the intent is not to single out boaters as the sole source of pollution within Tomales Bay.

Upon consultation with the TBIC, GFNMS and CSLC established criteria for the siting of moorings on Tomales Bay to achieve the three goals of the plan: 1) Protect public health and improve water quality; 2) Protect habitat and decrease threats to and disturbance of wildlife; and 3) Ensure safe and enjoyable water-related recreation. All moorings within the Bay, except those used for aquaculture operations within State water-bottom lease areas, will be required to meet the following criteria:

- No vessel moorings shall be allowed in seagrass beds;
- No moorings shall be allowed in areas within 300 feet of seal haul-out areas;
- No moorings shall be allowed on the submerged lands owned by NPS;
- No moorings shall be allowed within 1000 feet offshore of State Parks property;
- No moorings shall be allowed within 100 feet of swimming beaches and boat launch ramps;
- No moorings shall be allowed within areas that fail to meet the California Department of Public Health calculations for safe distances between moorings and aquaculture lease areas pursuant to a valid lease, permit, license, or other authorization issued by the State of California;
- No moorings shall be allowed within navigation channels of Tomales Bay.

TBIC, GFNMS, and CSLC staff identified 10 proposed vessel moorings zones that meet all of the mooring siting criteria and fall within areas that have historically been used for mooring boats on Tomales Bay. All Tomales Bay vessel moorings will be required to be located within the Vessel Mooring Zones with the following exceptions:

- State-permitted aquaculture moorings used for aquaculture operations within state water bottom lease areas;
- Permitted moorings located on sovereign lands adjacent to developed littoral properties in compliance with CSLC requirements;
- Permitted moorings in locations meeting all mooring siting criteria whereby the owner has provided sufficient evidence their mooring has existed in the same location prior to the adoption of the TBVMP;
- Up to 35 moorings at Lawson’s Landing, subject to the terms and conditions of the 25-year commercial lease issued by CSLC in 1998.

Both NPS and GFNMS staff conducted several on-the-water mooring surveys on Tomales Bay to obtain an accurate count of moorings. The first survey was conducted in February 2002 and additional mooring surveys were conducted by vessel in July 2004, October 2004, and February 2006. These surveys generally noted whether the

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mooring had a vessel attached, whether the vessel had valid registration information, and whether the vessel appeared to be derelict or deserted. Staff noted in the October 2004 survey that approximately 30 of the moorings with vessels appeared to be derelict or deserted vessels and documented a total of approximately 165 moorings. The 2006 survey included the use of a hand-held GPS unit, which allowed staff to record the location of each mooring and to indicate the locations of moorings and derelict vessels on a map. This survey recorded the highest known number of moorings on the Bay with 178 moorings (inclusive of aquaculture operations, demarcation, and other unidentified buoys), concentrated in primary mooring areas including: Lawson's Landing, Marshall Boatworks, Reynolds Cove, Marconi (on the east side of the bay); and Teachers Beach (on the western side of the Bay).

The total number of moorings allowed in Tomales Bay under the proposed program, will be subject to a cap of 165, including littoral landowner moorings, and the 35 moorings associated with Lawson's Landing. This cap does not include moorings permitted for use by aquaculture operations solely within State water bottom lease areas.

The TBVMP is not intended to be a static plan, but rather a living document based on an adaptive management approach, allowing flexibility for the plan to adapt to changing circumstances. To ensure that it is still meeting its goals and objectives, the TBVMP will be reviewed and evaluated as needed.

OTHER PERTINENT INFORMATION:

1. Moorings installed in Tomales Bay after the GFNMS designation, except those used for State permitted aquaculture, are illegal pursuant to the (NMSA), 16 United States Code Section 1431 et seq. and regulations thereunder (15 CFR Part 922). Under GFNMS regulations, a prohibited activity, such as mooring, can be conducted within the sanctuary if it is specifically authorized by, and conducted in accordance with, the scope, purpose, terms, and conditions of an issued sanctuary permit (or other legally supportable mechanism). Any permit or legally supportable mechanism will only be issued by GFNMS for the TBVMP if the benefits to the sanctuary outweigh the disadvantages or environmental consequences in both the short and long term.
2. Moorings located within State water bottom lease areas for aquaculture must be directly associated with aquaculture pursuant to a valid lease, permit, license or other authorization issued by the California Department of Fish and Wildlife (CDFW). Moorings used in conjunction with aquaculture activities conducted pursuant to a valid lease, permit, license, or other authorization issued by the CDFW are exempt from the GFNMS seabed disturbance regulations in Tomales Bay and are therefore not addressed as part of the TBVMP.

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3. The TBVMP is consistent with a San Francisco Bay Regional Water Quality Control Board (RWQCB) requirement to develop a multi-agency precautionary plan addressing pollution from pathogens due to discharge of human waste from boats.
4. On December 16, 1998, the Commission authorized issuance of a General Lease – Commercial Use to Lawson’s Landing, Inc. for an existing commercial marina with 35 moorings, pier, boat launch facility, and seawall, for a term of 25 years, beginning January 1, 1999.
5. On October 29, 2010, the Commission authorized the Executive Officer on their behalf to sign, the Letter of Intent to collaborate with the GFNMS to jointly determine what environmental documentation is necessary for the proposed TBVMP and to collaborate with the GFNMS in preparation of the TBVMP and EA/IS.
6. The Commission is the lead agency for the TBVMP pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and conducted an Initial Study to determine if implementing the TBVMP may have a significant effect on the environment (State CEQA Guidelines, § 15063). Although the Initial Study identified potentially significant impacts to Biological Resources and Hydrology and Water Quality, the impacts were determined to be less than significant. Consequently, the Initial Study concluded that “there is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment” (State CEQA Guidelines, § 15070, subd. (b)(2)), and a Negative Declaration (ND) was prepared.
7. Pursuant to the Commission’s delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15025), the staff has prepared a Proposed ND identified as CSLC ND No. 749, State Clearinghouse No. 2012082074. Such Proposed ND was circulated for public review pursuant to the provisions of CEQA.

Based upon the Initial Study, the Proposed ND, and the comments received in response thereto, staff has determined that revisions to the TBVMP do not constitute a “substantial revision” to the ND as defined in section 15073.5, subdivision (b) of the State CEQA Guidelines, and as such, concluded recirculation of the ND prior to Commission consideration is not required; and there is no substantial evidence that implementation of the TBVMP will have a significant effect on the environment; California Code of Regulations, Title 14, section 15074, subdivision (b).

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8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBIT:

- A. Site and Location

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

1. Certify that the Proposed ND, CSLC ND No. 749, State Clearinghouse No. 2012082074, was prepared for this Project pursuant to the provisions of CEQA, that the Commission has reviewed and considered the information contained therein and in the comments received in response thereto and that the Proposed ND reflects the Commission's independent judgment and analysis.
2. Adopt the Proposed ND and determine that the Project, as approved, will not have a significant effect on the environment.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Approve the Tomales Bay Vessel Management Plan (in substantially the form on file at the Commission's Sacramento Office), and authorize the Commission to be subject to a permit (or some other legally supportable mechanism) from the Gulf of the Farallones National Marine Sanctuary for leasing and managing the moorings buoys in Tomales Bay, Marin County, consistent with the Tomales Bay Vessel Management Plan.

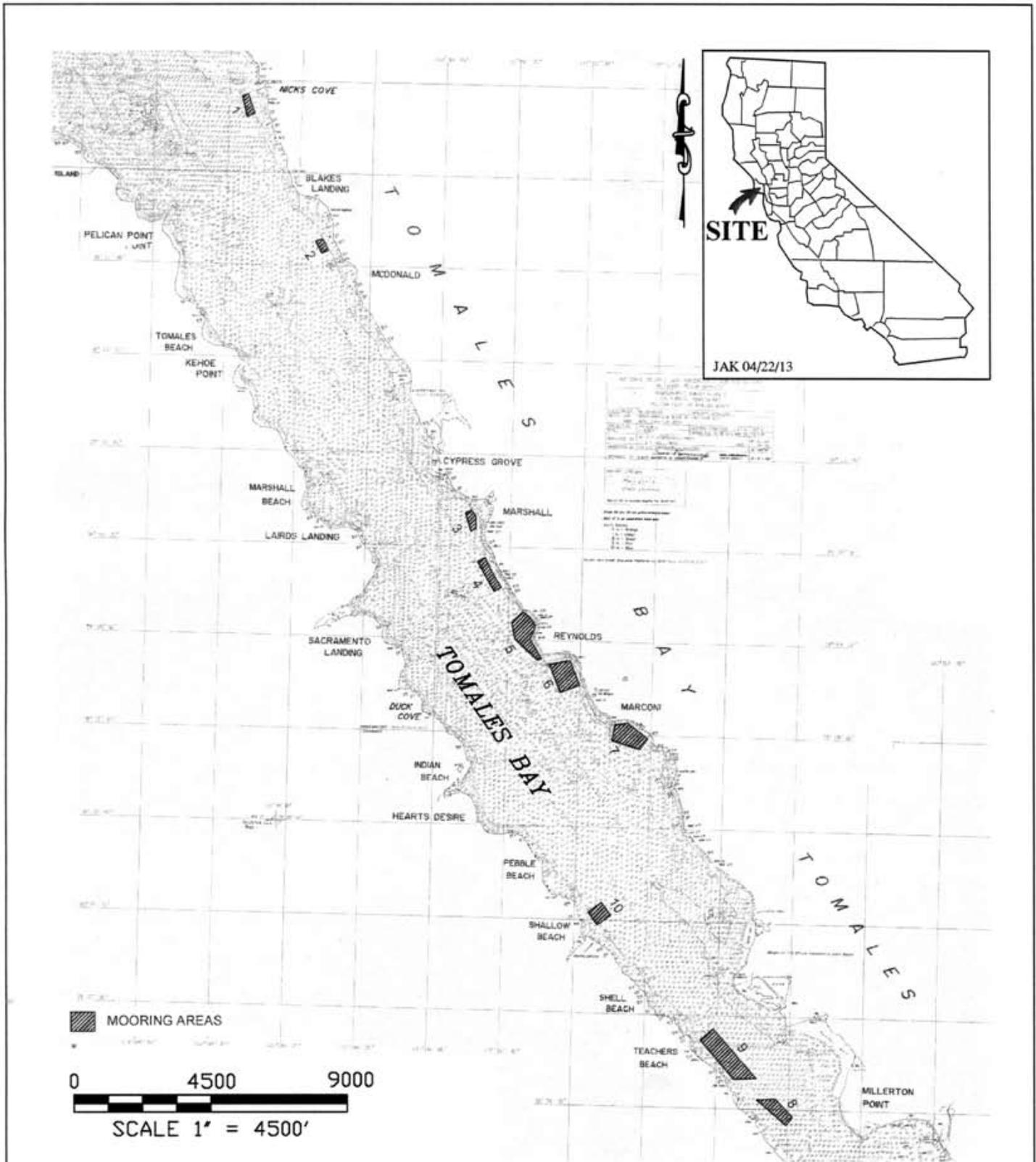


EXHIBIT A
TOMALES BAY VESSEL MANAGEMENT PLAN

JAK 4/22/13

ADOPTION OF NEGATIVE DECLARATION,
 APPROVAL OF TBVM PLAN, &
 ENTER INTO PERMIT WITH THE SANCTUARY
 MARIN COUNTY

**CALIFORNIA STATE
 LANDS COMMISSION**

