RESOLUTION NO. 01-58

CITY OF MONTEREY SUPPORT FOR THE ALLIANCE OF COMMUNITIES FOR SUSTAINABLE FISHERIES

WHEREAS, the Alliance of Communities for Sustainable Fisheries was formed, consisting of primarily representatives of the commercial fishing industry, but also including port representatives and businesses which relate to the fishing industry from all harbors between Morro Bay north to Pillar Point and,

WHEREAS, the Alliance expects the Monterey Bay National Marine Sanctuary to keep the clear promise that was made to the fishing community during the designation period for the Monterey Bay Sanctuary, that the Sanctuary would not become involved in fishery issues and,

WHEREAS, the Alliance perceives that there is much work to be done in guaranteeing that our central California fisheries are sustainable in the long run and,

WHEREAS, The Alliance believes fisheries management should continue to be the responsibility of the California Department of Fish and Game and the Pacific Fisheries Management Council.

WHEREAS, the Alliance has announced its intention to formally study several issues critical to fishing and,
WHEREAS, inviting the public and Sanctuary Advisory Council to participate in the Alliance's study process, the Sanctuary and public can have meaningful input into important fishing issues without the Sanctuary breaking its promise to the fishing community.

NOW, BE IS RESOLVED that the Council of the City of Monterey does support the goals of the Alliance of Communities for Sustainable Fisheries, as expressed in the Alliance's February 2, 2001 letter.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 20th day of March, 2001, by the following vote:

AYES: 5 COUNCILMEMBERS: ALBERT, CANEPA, EDGREN, ROBERSON, WREELAND
NOES: 0 COUNCILMEMBERS: NONE
ABSENT: 0 COUNCILMEMBERS: NONE

APPROVED:

/s/ DANIEL ALBERT
Mayor of said City

ATTEST:

/s/ BONNIE GAWF
City Clerk thereof
CITY OF MONTEREY

To: City Manager
From: Public Facilities Director
Date: November 2, 2001
Subject: Recommendations for the Monterey Bay National Marine Sanctuary (MBNMS) Management Plan Review

RECOMMENDATION

Adopt the attached recommendations.

POLICY IMPLICATIONS

The recommendations are consistent with the City of Monterey's past support for the conservation, education, research, and facilitation of use goals of the MBNMS Program.

FISCAL IMPLICATIONS

None.

ALTERNATIVES CONSIDERED

The City Council could choose to amend the recommendations.

DISCUSSION

The MBNMS is one of thirteen Sanctuaries located within the waters of the United States. The Sanctuary Program is Federal, located in the Department of Commerce and under the National Oceanic and Atmospheric Administration (NOAA) and the National Ocean Service (NOS), a branch of NOAA. The Sanctuary Program is authorized nationally by the National Marine Sanctuaries Act, a federal law adopted by Congress. Additionally, each Sanctuary is governed by a Management Plan, which is written by the Sanctuary Program staff with input from the public through formal comment periods and public workshops, and, ultimately approved by the Secretary of Commerce.

Congress does not approve the Management Plans, but is provided an opportunity to comment through a notice in the Federal Register, near the end of the Plan Review Process. It is on the point of Congressional involvement that caused the City Council last May to write to Congressman Sam Farr, asking him to involve himself early and directly in this process.

Federal law requires the periodic review of each Sanctuary’s Management Plan. These individual Plans contain the basic rules
for each Sanctuary, and provides guidance to the Sanctuary staff in administering the Program. For our MBNMS, the original Management Plan, adopted in 1992, was the result of a significant consensus-building effort, spearheaded by then-Congressman Leon Panetta. This consensus effort sought to identify the type of Federal protection sought for the Bay, while reassuring that the Federal Program would respect the needs and regulatory authority of local agencies, and work cooperatively with local communities of interest, such as the agriculture and fishing industries. With the Management Plan Review comes the opportunity to comment formally to the Sanctuary Program. If the Sanctuary Program is like a ship, steaming toward a destination, the Plan Review is a chance to confirm the destination and correct the course accordingly as well as an opportunity to rethink the destination.

As the City Council will recall, at its August 29, 2001 meeting, the Council was requested by the Sanctuary Staff to postpone making any decisions regarding the City's scoping comments until after the "State of the Sanctuary" report was released, which was expected to be mid-October. The City Council set November 6th as the date to reconsider this matter, giving City staff time to prepare this report and everyone time to review the "State of the Sanctuary Report". However, City staff has now been informed that the release of this report will be in early November. Since the Monterey Scoping Meeting for public comment on Sanctuary issues is scheduled for November 29, 2001, it is important that the City Council decide on its recommendations prior to that meeting, if possible. However, additional comments may be submitted until January 31, 2002.

The attached recommendations constitute constructive suggestions for the Program that will keep it on course toward the goal of a balance between the conservation, use and enjoyment of the Sanctuary waters and its resources. Many of the recommendations are similar to those made to the Sanctuary Program by the Business and Tourism Working Group, a sub-set of the SAC. Much has been accomplished by the Program. The recommendations provided will, hopefully, help it avoid some future problems, compliment its accomplishments, and keep the Sanctuary Program in the mainstream of public support.

Carl E. Anderson
CEA: SBS: pt
attachment

c: Bill Douros, Sanctuary Superintendent
Stephanie Harlan, Sanctuary Advisory Council Chair
CITY OF MONTEREY RECOMMENDATIONS
for the Monterey Bay National Marine Sanctuary Management Plan Review

1) **Program Accomplishments**

Recommendation: The positive accomplishments of the program should be lauded and actively supported by the City, such as the Water Quality Protection Program; Education; Research; Offshore Ship Traffic; no Oil or Gas development, etc. The creation of Sanctuary-related signage located in appropriate areas of the Recreation Trail is an example of a way the City could actively support the Sanctuary Educational goal.

2) **Understand And Respect Original Consensus-Building That Created the Sanctuary**

Recommendation: The Management Plan Review needs to include a thorough re-visititation of these commitments to the original communities of interest who supported the formation of the Sanctuary. Time should be spent actually going to the leaders of these communities, asking if their expectations for the Sanctuary Program have been met. If changes are proposed that affect the nature of the original consensus, they should occur only if supported by the community of interest.

3) **Sanctuary Advisory Council (SAC)**

Recommendation: Request that the SAC Charter and Protocols be changed to allow the SAC freedom in setting agendas, drafting correspondence, including to members of Congress, and have SAC appointments made through a community process rather than by the Sanctuary Superintendent. SAC communication to members of Congress should be limited to policy issues, not include “grass roots lobbying” for increased funding, and only occur if representing a majority view of the SAC.

If the SAC Charter and Protocols cannot be changed, then alternatively it is recommended that the SAC be organized not within NOAA, but rather under State law, or through a local joint powers arrangement or MOU. An “arms length” relationship to NOAA would provide for truly independent advice and oversight.

For each of these options, it is also recommended that a conflict of interest disclosure statement be required of SAC members, similar to what is required of public officials throughout California.

It should be clearly noted that this recommendation is aimed at fixing a problem inherent in how the SAC is currently organized and in no way is meant to diminish the good will and expertise that each individual member brings to the SAC.
4) **Fishing**

Recommendation: Clarify that the Department of Fish and Game and the National Marine Fisheries Service (including the Pacific Fisheries Management Council) are the agencies responsible for fishing regulations as per the original intent when the Sanctuary was designated. Any zones or regulations proposed by the Sanctuary which affect fishing would occur only if they are the result of a cooperative effort with the fishing and or aquaculture communities and they have the support of those communities.

5) **Human Impacts**

Recommendation: Clarifying language needs to be added to the Management Plan to allow for human uses as long as there is no significant and sustained impact that permanently damages the resource, (i.e., allow for minor impacts). Include a guidance statement to help Sanctuary staff define major/minor impacts. Create more of a policy balance between conservation and use, with a strong educational program being the key to achieving this balance. Add language to include the concept that “ecosystem” includes an understanding of the socio-economic impact on a business or community of any particular sanctuary permit or regulation.

In making this recommendation, it should be clearly noted that any serious, sustained and permanent environmental degradation that might arise from human use or activities would still be evaluated by the Sanctuary program with regard to future regulations and the Program’s mandate to protect Sanctuary resources. To do otherwise would cause public concern. As previously recommended, the Sanctuary Program should work cooperatively with the appropriate communities of interest in developing any further regulations.

6) **Harbors & Dredging**

Recommendation: Suggest language changes to also acknowledge the positive benefits of open harbors and dredging operations. Clarify that the Sanctuary does not regulate or issue permits for dredging, as it is already highly-regulated by numerous other Federal, State and local agencies. Acknowledge that harbors are the access corridors to the Sanctuary for commerce, education, research and law enforcement. Harbors and the Sanctuary should be partners, allied in the goals of the Program. The Sanctuary Program should be empowered to be more accommodating to the needs of its harbors. Any Sanctuary policy regarding dredging should be no more restrictive than other directly responsible regulatory agencies.

7) **Regulatory and Permit Authority**

Recommendation: Stress in the Management Plan Review that the essential work of the Program is the oil/gas ban, education, research, and the work of the Water Quality Protection Program. Also stress its need to accomplish its goals by working with other agencies and NGO’s rather than by becoming a larger and larger organization itself. Any permit process administered by the Sanctuary Program should be streamlined, coordinated with other agencies, and “user friendly”. An appeal process should be instituted. Generally, the Sanctuary should not add another layer of permit regulation if other Federal/State/Local/permit authorities are already in place. It is important that the Sanctuary Program not be viewed by the public as an onerous Federal bureaucracy.
8) **Water Quality**

Recommendation: The Sanctuary has made a good start on this issue, but more needs to be done in working cooperatively with other agencies to prevent accidental sewage spills and to identify the sources of polluted urban runoff. The City should actively continue with the support it has provided to the Sanctuary Program in this effort.

9) **Facilitation of Human Use**

Recommendation: Sanctuary use and economic opportunities need to be actively promoted. Add a staff position or redirect staff time or contract to develop a Sanctuary marketing plan and facilitate the use of the Sanctuary. Create specific, measurable goals. Conscientious (through education) use of the Sanctuary should be as much of a goal as research and conservation.

10) **Overlapping Jurisdictions**

Recommendation: Request that the Management Plan Review process include an analysis of jurisdictional issues. This analysis should consult with all coastal jurisdictions and property owners, and be available for public comment. The benefits of Sanctuary status for the very near shore urban areas should be weighed against any jurisdictional issues. If jurisdictional problems are evident, a possible solution would be to create an "urban buffer zone", which would still be within the Sanctuary boundary and which would continue to allow for Sanctuary education, conservation and research programs, but which would not be subject to Sanctuary Permit Authority. The Sanctuary does already have the authority to create special zones.

This recommendation should not be construed as an effort to avoid scrutiny for coastal projects. Rather, it reflects the Management Plan Review as an appropriate time to access intergovernmental relationships in an open and honest manner.
Mr. William Douros  
Superintendent  
Monterey Bay National Marine Sanctuary  
299 Foam Street  
Monterey, California 93940-1463  

Dear Mr. Douros:  

As you know I have had an active interest in the Monterey Bay National Marine Sanctuary that dates back to its creation. From my perspective as a long-time supporter of the sanctuary, Member of Congress, and lifetime resident of Monterey, I have tried to remain well informed of the activities surrounding the sanctuary and its management. Having witnessed a decade of impressive accomplishments, I am pleased that the sanctuary has committed to building a strong foundation for continued success through a comprehensive review of the management plan. In the spirit of support for the Sanctuary Program, and with the greatest respect for the contributions that you and your staff have made to its numerous successes, I would like to take this opportunity to suggest several areas that should be given special attention during the review process.  

The establishment of the Monterey Bay National Marine Sanctuary was as significant step for California, the Federal Sanctuary Program, and especially for the coastal communities that came together in support of its creation. I firmly believe that the sanctuary has been a great benefit to the region not only by prohibiting oil exploration and development, but by providing a federally funded mechanism for central coast residents to participate in improving the stewardship of local marine resources. This process has directly resulted in improved water quality, safety, research, monitoring, education, and management. It is no coincidence that the nation’s largest marine sanctuary was designated in an area of the country where public interest and active local involvement are such defining characteristics. The sanctuary could not have been established without the broad base of support from local residents and, ten years after its creation, this support continues to be the sanctuary’s greatest asset.  

The management plan review process that is currently underway represents an extraordinary opportunity for the Sanctuary Program to look back over ten years of success, experimentation, and growth to build on its original mandate and define its role in the future. I feel that this management plan review should place a strong emphasis on strengthening the ties between the sanctuary management and the community of user groups, local governments and agencies that have been involved in the sanctuary since its establishment. The following recommendations suggest several specific ways that this can be achieved.
The Sanctuary Advisory Council (SAC)
The Sanctuary Advisory Council is the primary link between the sanctuary and its broad-based constituency. The SAC serves both as a vehicle for local input into sanctuary management, and as a means for the sanctuary to mobilize community support and involvement in management activities. The local community has clearly demonstrated, through years of extraordinary commitment by many devoted individuals, that there is a strong willingness to invest the time and effort into making the SAC an effective mechanism for public input. This management plan review should examine ways of providing the SAC with greater independence and strengthening its role as a trusted partner in sanctuary management.

The advisory role of the SAC, as defined in its charter, creates a necessary separation between the SAC and the Sanctuary Program by giving the sanctuary management final authority to selectively implement SAC recommendations. The charter, however, is inconsistent in maintaining this separation by also providing sanctuary management with oversight over virtually all SAC activity including its membership, communication, and agenda. Because this organizational structure permits hands-on sanctuary involvement in SAC affairs, it has a tendency to diminish public confidence that there is truly a sanctuary-independent mechanism for community input. This, in turn, opens the door to greater mistrust and criticism of final management decisions.

I strongly encourage the sanctuary management to objectively evaluate their ability, under the current protocols, to maintain a relationship with the SAC that affords it the independence essential to its role as an effective liaison between the sanctuary and the community. In making this evaluation I would encourage sanctuary management to engage in a dialogue with both current and past SAC members as well as influential members of the community, to obtain insights into how the SAC is perceived and how it can be strengthened to more effectively maintain the confidence of its constituency.

Collaborative management
Long-term cooperative relationships with user groups, agencies, and local governments have been and will continue to be the sanctuary’s most effective tool in addressing resource protection issues. The strength of these relationships is also the key to finding a workable balance between the sanctuary’s dual mandates of resource protection and maintaining compatible public use.

It is vitally important that the local Sanctuary Management create the flexibility in their new management plan to work closely with user groups to collaboratively develop common-sense management approaches that meet the goals of the sanctuary’s resource protection mandate. The sanctuary should use this flexibility to avoid assuming the role of an uncompromising regulatory entity. The perception that the sanctuary is needlessly adding to the federal bureaucracy or is becoming an unresponsive or redundant permitting agency, creates frustration among groups that would otherwise be willing to make significant voluntary efforts to help the sanctuary further their goals.
It is always difficult to strike a balance between resource protection and human use, but the sanctuary should strive to maintain a functional equilibrium by working with user groups to develop appropriate regulatory measures based on a clear and common understanding of their scientific necessity. If these groups feel that the sanctuary management is unable to exercise the flexibility to find common ground in policies that impose economic or practical burdens on their activities, they will be less inclined to collaborate in resource protection efforts that would be in the long-term interest of the sanctuary.

The role of the Sanctuary in regulating fisheries
In the process of building support for the designation of the sanctuary, a clear commitment was made to the fishing community that the sanctuary would not impose any regulations directed at fishing activities or fishing vessels. This agreement is based on the understanding that the fisheries within the sanctuary are already being regulated and that there is neither the necessity nor the resources for the National Marine Sanctuary Program to take on this responsibility. This management plan review process should not be used as a means toward altering this basic agreement. The regulation of fishing in the sanctuary should remain under the jurisdiction of the California Department Fish and Game and the Pacific Fisheries Management Council. Any future reexamination of this relationship should be conducted directly with representatives of the fishing community and these two agencies.

An important issue, however, that needs clarification during this review, involves the sanctuary's role in collaborating and consulting with other agencies on matters relevant to fisheries management. There remains a considerable range of disagreement about the extent to which sanctuary staff should avoid indirect influence on fisheries regulation. Misunderstandings surrounding this issue have the potential to jeopardize the working relationship that is evolving between the fishing community and the sanctuary. I hope that sanctuary management will consider the resolution of this issue to be of primary importance during the management plan review.

Given the sanctuary's broad mandate to study and protect resources on an ecosystem-wide basis, along with their obligation to share information and coordinate efforts with other agencies, it is unrealistic to think that they can or should work in absolute isolation from these issues. I consider it a very encouraging sign that the local fishing industry, through the formation of the Alliance of Communities for Sustainable Fisheries, recognizes this reality and has been collaborating with sanctuary staff and working groups on fishing-related issues.

The sanctuary should work with the Alliance during the management plan review to define a reasonable framework within which they can investigate and provide comments on issues related to fishing. I believe that by establishing standards for openness, opportunities for comment, and a common understanding of the scope and limits of sanctuary expertise, such a framework could serve as a foundation for a much stronger working relationship between the sanctuary and the fishing industry.
Finally, I would like to commend the sanctuary staff for their excellent work in organizing the public scoping meetings that have occurred during first phase of the review. I have received a great deal of positive feedback from these meetings and understand that they were well publicized, well attended, and very productive. In the next phase of the process, as you begin to assimilate public comments, conduct issue workshops, and develop action plans, I encourage you maintain this commitment to public input by working closely with the SAC and facilitating the participation of the users, interest groups, and local governments that make up the core sanctuary constituency.

The sanctuary has a great deal to gain by using this process as a way to build a foundation for improved interaction and collaboration with the community. By making a true commitment to a functional, bottom-up management approach that emphasizes local input and outreach, I feel that the National Marine Sanctuary Program has the potential to play a significant role in shaping the future of federal resource management.

Thank you for the opportunity to provide this input, and please feel free to contact me or my staff with information and updates on the management plan review.

Sincerely,

[Signature]

SAM FARR
Member of Congress

CC: Dan Basta, Director, National Marine Sanctuary Program
December 13, 2007

Mr. Paul Michel  
Superintendent  
Monterey Bay National Marine Sanctuary  
299 Foam Street  
Monterey, California 93940-1463

Dear Mr. Michel:

Congress established the National Marine Sanctuary system “to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes.” As such, they were the first application of ecosystem-based management to our oceans. Unlike other laws that focused narrowly on fishing, dumping of waste, or oil development, the Marine Sanctuaries Act allowed the Secretary of Commerce to carve out a discrete area of the ocean for comprehensive management. It is just this type of management that the U.S. Commission on Ocean Policy, the Pew Ocean Commission, and the Joint Ocean Commission Initiative recommend.

The Monterey Bay National Marine Sanctuary (MBNMS) contains our nation’s largest kelp forest, one of North America’s largest underwater canyons, and the closest-to-shore deep ocean environment in the continental United States. It is home to one of the most diverse marine ecosystems in the world, including 33 species of marine mammals, 94 species of seabirds, 345 species of fishes, and numerous invertebrates and plants. These features make it ideally situated for learning about and engaging the public with the marine environment and I believe its establishment has contributed to the health of our coastal economy.

From my perspective as a Member of Congress, long-time supporter of the sanctuary and lifetime resident on its shores, I see the sanctuary’s commitment to building a strong foundation for continued success by actively engaging local residents in what is possibly the most involved citizen advisory group in the system. I believe it is this commitment that has maintained the broad base of support that continues to be the sanctuary’s greatest asset.
In the process of building the initial support for the designation of the sanctuary, a clear commitment was made to the fishing community that the sanctuary would not impose any regulations directed at fishing activities or fishing vessels. This agreement was based on the understanding that the fisheries within the sanctuary are already being regulated and that there is neither the necessity nor the resources for the National Marine Sanctuary Program to take on this responsibility.

Given the sanctuary’s broad mandate to study and protect resources on an ecosystem-wide basis along with their obligation to share information and coordinate efforts with other agencies, it is unrealistic to think that they can or should work in absolute isolation from these issues. I was encouraged that the local fishing industry, through the formation of the Alliance of Communities for Sustainable Fisheries, recognized this reality and has been collaborating with sanctuary staff and working groups on fishing-related issues including the evaluation of the use of Marine Protected Areas within the Sanctuary as an ecosystem-based management tool. If there is a need for this type of management tool, then the sanctuary should continue to work with fishing groups to implement this tool without imposing it on them.

When I first met you, Mr. Michel, I was pleased to hear you say you would move this process forward and ask the working group to finally report their findings. This report is timely, now that the Channel Islands National Marine Sanctuary to the south has established a system of marine protected areas and now that the State has designated 29 marine protected areas along the Central Coast.

A fair process that engages the fishing community, scientists, and other stakeholders is the best possible way to answer this question. I trust the sanctuary’s process has been just that, and eagerly await the Sanctuary’s decision.

Sincerely,

Sam Farr
Member of Congress

SF/lp
CITY OF MONTEREY

To: City Manager
From: Public Facilities Director
Date: September 19, 2005
Subject: City’s Recommendations for the Monterey Bay National Marine Sanctuary Management Plan Review

RECOMMENDATION

Hear a presentation from staff on the attached recommendations first adopted in November 2001. If it is the wish of the City Council, agendize some or all of the recommendations for discussion and action at a later date.

POLICY IMPLICATIONS

The recommendations are consistent with the City of Monterey’s past support for the conservation, education, research, and facilitation of use goals of the Monterey Bay National Marine Sanctuary Program.

FISCAL IMPLICATIONS

None

ALTERNATIVES CONSIDERED

The City Council could choose to not reconfirm or amend individual recommendations. However, this is not recommended.

DISCUSSION

The City Council will hear a brief presentation on Monterey Bay National Marine Sanctuary Programs, followed by a staff review of the recommendations adopted in November 2001 to the MBNMS as they began their Management Plan Review process.

The MBNMS is one of thirteen sanctuaries located within the waters of the United States. The Sanctuary Program is Federal, located within the Department of Commerce, and under the National Oceanic and Atmospheric Administration (NOAA), and the National Ocean Service (NOS), a branch of NOAA. The Sanctuary Program is authorized nationally by the National Marine Sanctuaries Act, a federal law adopted by Congress and reauthorized approximately every five years and amended as needed by Congress. Additionally, each sanctuary is governed by a Designation Document, which contains within it essentially the agreement that is made between the State, local communities, and the Federal Sanctuary Program as to how the Sanctuary would operate within the region. Additionally, each Sanctuary is governed by a Management Plan, which is written by Sanctuary Program Staff with input from the public through formal comment.
periods and public workshops. This Plan is ultimately approved by the Secretary of Commerce.

Federal law requires the periodic review of each Sanctuary’s Management Plan. These individual Plans contain the basic rules for each Sanctuary, and provide guidance to the Sanctuary Staff in administering the Program. Congress does not approve the Management Plans, but is provided an opportunity to comment through a notice in the Federal Register near the end of the Plan Review process.

For our MBNMS, the original Management Plan adopted in September 1992 was the result of a significant consensus building effort, spearheaded by then Congressman Leon Panetta. This consensus effort sought to identify the type of Federal protection sought for the Bay while reassuring that the Federal Program would respect the needs and regulatory authority of local agencies and work cooperatively with local communities of interest, such as the agriculture and fishing industries.

Local agencies and organizations have a long-term relationship with the National Marine Sanctuary Program. Likewise, the Sanctuary Program and its Staff are in a relationship to us as well, and are motivated to have a mutually respectful cooperative and productive relationship with the broad public, as it is from them which they largely derive their authority to govern. The attached recommendations were adopted in November of 2001. Staff has written current comments on each recommendation, but as you can see, these recommendations in whole are still considered to be valid and appropriate. Please note that the first comment on the successes of the National Marine Sanctuary Program contains a long list of successful sanctuary programs, which the City has either been in partnership with, or which we have actively supported in other ways. It should be clearly noted that these successes are all completely consistent with the recommendations adopted by the City of Monterey. In the Staff’s opinion, these are examples of how the Sanctuary can accomplish its conservation goals while still providing human use opportunities, and create a broadening public support for the Program.

There have been some areas of controversy with how the Sanctuary Program has functioned within this community, or related to agencies and organizations. The Sanctuary Advisory Council issue is an example of this as an area in which continuing controversy occurs over to what degree stakeholders themselves and their organizations get to have a meaningful say in the selection process for representatives for their own stakeholder interest group. Also, it appears that the fishing community perceives that the Sanctuary is on a path to create fishing regulations, despite the promise they feel was made to them that it would not. These areas are examples of areas of some controversy for the Sanctuary Program, but in which the advice provided by the City’s recommendations remains, in the Staff opinion, valid advice that would serve the Program well to maintain broad community support.

If, after hearing from representative of the Monterey Bay National Marine Sanctuary, staff, and public comment, the City Council wishes to agendize some or all of these recommendations, a future council meeting can be set for this.

Carl E. Anderson

CEA:pt
CITY OF MONTEREY RECOMMENDATIONS
for the Sanctuary Management Plan Review
2001 Recommendations Adopted November 20, 2001

PROGRAM ACCOMPLISHMENTS

2001 Issue Statement: Much of the public is unaware of the successes of the program.

2001 Adopted Recommendation: The positive accomplishments of the program should be lauded and actively supported by the City, such as the Water Quality Protection Program; Education; Research; Offshore Ship Traffic; no Oil or Gas development, etc. The creation of Sanctuary-related signage located in appropriate areas of the Recreation Trail is an example of a way the City could actively support the Sanctuary Educational goal.

2005 Comment: The list of Sanctuary Program successes, including those done in partnership with the City of Monterey, has grown. These include a partnership between the City and the Sanctuary to obtain Grant funds for the Harbor Oily-Water Bilge Pump-out system; Sanctuary assistance to the City in obtaining a grant to put a pollution catch basin system in the waterfront area; the; “Ag Plan” as part of the Sanctuary’s Water Quality Protection Program, to reduce agricultural runoff done as a cooperative effort between this region’s agricultural community and the Sanctuary; the City and Sanctuary have cooperated implementing the Sanctuary’s Water Quality Protection Plan for such things as monitoring storm water effluent; Monterey Harbor and the Sanctuary cooperated in developing Best Management Plans for Boating activities; the City and the Sanctuary co-sponsored (in addition to the Alliance of Communities for Sustainable Fisheries) an educational event promoting public awareness of sustainable fishing; the City has supported past budget increases for the Sanctuary Program; the City is working with the Sanctuary to provide for a small educational/information center; the Sanctuary and the City worked well together to develop the Cruise Ship Action Plan, and the City and Sanctuary have worked together to attempt to rid Monterey Harbor of the Invasive seaweed “undaria”.

UNDERSTAND AND RESPECT ORIGINAL CONSENSUS-BUILDING THAT CREATED THE SANCTUARY

2001 Issue Statement: With a variety of special interest groups advocating for changes to the Management Plan, consensus-building agreements struck with many local communities of interest (i.e., agriculture, fishing, the Harbors, etc.) may be overturned, which could cause a loss of credibility for the Sanctuary Program.

2001 Adopted Recommendation: The Management Plan Review needs to include a thorough re-visitiation of these commitments to the original communities of interest that supported the formation of the Sanctuary. Time should be spent actually going to the leaders of these communities, asking if their expectations for the Sanctuary Program have been met. If changes are proposed that affect the nature of the original consensus, they should occur only if supported by the community of interest.

2005 Comment: This recommendation is still wise advice provided to the Sanctuary Program. The Sanctuary should give great consideration to the consensus effort that occurred to gain support for sanctuary designation and the understanding of those leaders as to how the Sanctuary would accomplish its goals. The MBNMS did a good job
in seeking public and agency comment during its scoping phase of the Management Plan Review and involved hundreds of community members in developing action plans for the proposed, revised management plan. The MBNMS did not conduct a targeted outreach campaign to those community leaders who were involved in the 1991-92 run-up to sanctuary designation, and where some of those leaders were involved in scoping meetings and working groups, it appears that no special weight was given to those peoples' comments.

SANCTUARY ADVISORY COUNCIL (SAC)

2001 Issue Statement: The SAC is organized within NOAA and is subject to Federal Law. The Sanctuary Superintendent appoints SAC members. All SAC correspondence and agendas must have the concurrence of the Superintendent. The SAC can offer advice when asked, but cannot exercise the oversight of the program that was originally expected. The SAC is sometimes not consulted or asked to offer advice on important Sanctuary issues, and sometimes its advice is not taken, with little consequence. The SAC cannot write to Congress if concerned about the direction of the Sanctuary Program from either a national or local perspective. Generally, there is no formal structure or process that makes the Sanctuary Program accountable for its decisions to the local communities and the SAC has been unable to fulfill this role.

2001 Adopted Recommendation: Request that the SAC Charter and Protocols be changed to allow the SAC freedom in setting agendas, drafting correspondence, including to members of Congress, and have SAC appointments made through a community process rather than by the Sanctuary Superintendent. SAC communication to members of Congress should be limited to policy issues, not include "grass roots lobbying" for increased funding, and only occur if representing a majority view of the SAC.

If the SAC Charter and Protocols cannot be changed, then alternatively it is recommended that the SAC be organized not within NOAA, but rather under State law, or through a local joint powers arrangement or MOU. An "arms length" relationship to NOAA would provide for truly independent advice and oversight.

For each of these options, it is also recommended that a conflict of interest disclosure statement be required of SAC members, similar to what is required of public officials throughout California.

It should be clearly noted that this recommendation is aimed at fixing a problem inherent in how the SAC is currently organized and in no way is meant to diminish the good will and expertise that each individual member brings to the SAC.

2005 Comment: Even though the SAC is only advisory to the Sanctuary Program, it is widely promoted as the "voice of the community" and numerous Management Plan revisions are attributed to the advice of the SAC. The fact that senior Sanctuary Staff is able to choose who will represent the various stakeholder groups, and even reject individuals who have clear support from major stakeholder organizations, has been quite controversial. Generally there is no formal structure or process that makes the Sanctuary Program accountable for its decisions to the local communities and the SAC continues to be unable to fill this role. The AMBAG Board of Directors reviewed the rules governing the SAC during 2004. That Board adopted several very moderate recommendations. In the most recent recruitment for new SAC members, the MBNMS implemented the AMBAG recommendations, like greater outreach for SAC openings, allowing outside parties to make recommendations for the seats in question, allowing
Interested parties to testify to the review committee, and requiring "conflict of Interest" statement by SAC members, to the credit of the Program. However, Senior Sanctuary Management still has the power to nominate and appoint whomever it wants, despite what stakeholder organizations may want, so this remains a public issue and the 2001 advice remains valid.

FISHING

2001 Issue Statement: The Current Management Plan mostly reflects promises made to the fishing community and states that the Sanctuary will not regulate fisheries; however, other language which calls for "habitat protection" and "ecosystem management" could be interpreted to create "no fishing zones". This appears contradictory.

2001 Adopted Recommendation: Clarify that the Department of Fish and Game and the National Marine Fisheries Service (including the Pacific Fisheries Management Council) are the agencies responsible for fishing regulations as per the original intent when the Sanctuary was designated. Any zones or regulations proposed by the Sanctuary which affect fishing would occur only if they are the result of a cooperative effort with the fishing and or aquaculture communities and they have the support of those communities.

2005 Comment: This is a very high profile issue. The "promise" made to fishermen is reflected in the MBNMS Designation Document, and the existing Management Plan, which do not give the Sanctuary the authority to create fishery regulations. Many public agencies and organizations have asked that the Sanctuary keep its promise and look to the State Department of Fish & Game and the Federal Pacific Fisheries Management Council for fishing regulations. Most recently the Monterey County Board of Supervisors voted 5 - 0 to pass a resolution to this effect, and the AMBAG Board of Directors passed a similar motion by an overwhelming majority.

The MBNMS properly worked with the fishing community and the State and Federal Council to make a recommendation on krill fishing, and has looked to those agencies to create regulations. Similarly, the MBNMS sought advice from selected fishermen and went before the Pacific Fisheries Management Council (PFMC) on the proposed Davidson Seamount designation, where the MBNMS would like to see fishing prohibited on the seafloor of the seamount.

Although not specifically solicited by the MBNMS, a strong recommendation was provided by virtually all of the major recreational and commercial fishing organizations to not change the Designation Document or attempt to write a Sanctuary non-fishing regulation. The PFMC acted to unanimously endorse the objectives of the Sanctuary Program but asked NOAA to adopt the fishing regulation under federal fishery management laws rather than endorse the MBNMS wish to change the Designation Document and use the Sanctuaries Act. In the MBNMS efforts to consider the need for MPAs, which has involved four years of meetings with fishermen and other affected parties, the MBNMS has not made a decision on the need for, or siting of, marine protected areas, or which law any might be adopted under. This has caused considerable anxiety within the fishing community. As part of the Management Plan Review process, the MBNMS is not seeking broad regulatory authority over fishing activity in the Sanctuary, but seems to be still considering the adoption of specific regulations under the authority of the Sanctuaries Act.

Therefore, it remains valid advice to the Sanctuary, to keep the promise and to keep the fishing community supportive.
HUMAN IMPACTS

2001 Issue Statement: The Current Management Plan calls for Sanctuary resources to be conserved and protected, but also allows for "multiple uses" as long as they are consistent with the above. Under existing language, conflicts between use and protection are resolved in favor of protection. Since it is nearly impossible for human activity not to create some impact on Sanctuary resources, there is a concern that this situation will lead to more and more restrictions on human use of the Sanctuary, affecting fishermen, divers, surfers, kayakers, etc., and in turn dilute the broad public support which the program should enjoy.

2001 Adopted Recommendation: Clarifying language needs to be added to the Management Plan to allow for human uses as long as there is no significant and sustained impact that permanently damages the resource, (i.e., allow for minor impacts). Include a guidance statement to help Sanctuary staff define major/minor impacts. Create more of a policy balance between conservation and use, with a strong educational program being the key to achieving this balance. Add language to include the concept that "ecosystem" includes an understanding of the socio-economic impact on a business or community of any particular sanctuary permit or regulation.

In making this recommendation, it should be clearly noted that any serious, sustained and permanent environmental degradation that might arise from human use or activities would still be evaluated by the Sanctuary program with regard to future regulations and the Program's mandate to protect Sanctuary resources. To do otherwise would cause public concern. As previously recommended, the Sanctuary Program should work cooperatively with the appropriate communities of interest in developing any further regulations.

2005 Comment: The Sanctuary continues to need either deminimus-waiver authority or to create broad categorical exemptions for common human impacts which could technically violate a sanctuary rule.

HARBORS & DREDGING

2001 Issue Statement: The existing language characterizes all dredging as bad, and does not allow for minor impacts. When the Sanctuary was being negotiated, Harbors were told that the Sanctuary would not have permit authority over dredging, but it does. Many businesses and recreational users are dependent on open harbors. The existing language seems to constrain the Sanctuary staff from being as helpful to harbors as they could be.

2001 Adopted Recommendation: Suggest language changes to also acknowledge the positive benefits of open harbors and dredging operations. Clarify that the Sanctuary does not regulate or issue permits for dredging, as it is already highly-regulated by numerous other Federal, State and local agencies. Acknowledge that harbors are the access corridors to the Sanctuary for commerce, education, research and law enforcement. Harbors and the Sanctuary should be partners, allied in the goals of the Program. The Sanctuary Program should be empowered to be more accommodating to the needs of its harbors. Any Sanctuary policy regarding dredging should be no more restrictive than other directly responsible regulatory agencies.

2005 Comment: It should be noted that the Sanctuary Staff has worked to be as accommodating as possible for the Harbor's dredging needs, not just in Monterey but in other Sanctuary area harbors. It is believed however, that the language of the National Marine Sanctuary Act and the existing Management Plan ties the hands of the Sanctuary
staff in some situations. The Draft Management plan has addressed some, but not all, issues of importance to harbors. This remains valid advice.

REGULATORY AND PERMIT AUTHORITY

2001 Issue Statement: The vast majority of early public support for the idea of forming a Sanctuary came from seeking an oil and gas development ban. Education, research, the work that has been accomplished by the Water Quality Protection Program were added dividends. The program does involve itself in a regulatory and enforcement role already. It is likely that certain special interest groups will seek even greater Sanctuary regulatory and enforcement roles in the future.

2001 Adopted Recommendation: Stress in the Management Plan Review that the essential work of the Program is the oil/gas ban, education, research, and the work of the Water Quality Protection Program. Also stress its need to accomplish its goals by working with other agencies and NGO’s rather than by becoming a larger and larger organization itself. Any permit process administered by the Sanctuary Program should be streamlined, coordinated with other agencies, and “user friendly”. An appeal process should be instituted. Generally, the Sanctuary should not add another layer of permit regulation if other Federal/State/Local/permit authorities are already in place. It is important that the Sanctuary Program not be viewed by the public as an onerous Federal bureaucracy.

2005 Comment: This remains wise advice to the Sanctuary Program. The MBNMS has been open about the regulatory modifications being considered. The conceptual language for all have been shared in public and reviewed by the Sanctuary Advisory Council; most of the new or modified regulations came directly out of the stakeholder working group process. Regulations proposed by the Sanctuary should also be justified by the ability to scientifically document that a significant problem exists and that the regulatory solution is also supported by good science. Per the 2001 recommendation, if a proposed regulation is within the authority of a state or local Jurisdiction, the Sanctuary would take its concern to that agency.

WATER QUALITY

2001 Issue Statement: Both point and non-point pollution continues to plague our Bay.

2001 Adopted Recommendation: The Sanctuary has made a good start on this issue, but more needs to be done in working cooperatively with other agencies to prevent accidental sewage spills and to identify the sources of polluted urban runoff. The City should actively continue with the support it has provided to the Sanctuary Program in this effort.

2005 Comment: The Sanctuary and the City have worked well together on this issue. The MBNMS Staff has worked with the City in refining our stormwater “Best Management Practices,” provided test results and helpful recommendations, and worked well to coordinate an approach to respond to the Cease and Desist Order for the Area of Special Biological Significance.

FACILITATION OF HUMAN USE
2001 Issue Statement: The facilitation of human use of the Sanctuary is a stated program goal, yet very little has been done to promote this goal.

2001 Adopted Recommendation: Sanctuary use and economic opportunities need to be actively promoted. Add a staff position or redirect staff time or contract to develop a Sanctuary marketing plan and facilitate the use of the Sanctuary. Create specific, measurable goals. Conscientious (through education) use of the Sanctuary should be as much of a goal as research and conservation.

2005 Comment: This remains a valid issue and wise advice. The MBNMS is doing a number of things to facilitate human uses. The Sanctuary is working with restaurants in a new pilot project throughout the Sanctuary and have started a partnership with hotels on the Monterey Peninsula. In addition, the MBNMS has held various workshops as part of the Management Plan Review process involving whale watching businesses, has produced numerous outreach products related to human uses and using the Sanctuary wisely, and the Team OCEAN kayak program occurs right off Cannery Row where contact with thousand of kayakers actively using the Sanctuary is made.

OVERLAPPING JURISDICTIONS

2001 Issue Statement: Does it make sense for a highly protected area to immediately adjoin a highly urbanized area? Activities such as harbor management, fireworks shows, maintenance, desalination facilities, etc. can be more complicated and difficult to accomplish. Each of these activities already have numerous levels of environmental review in place.

2001 Adopted Recommendation: Request that the Management Plan Review process include an analysis of jurisdictional issues. This analysis should consult with all coastal jurisdictions and property owners, and be available for public comment. The benefits of Sanctuary status for the very near shore urban areas should be weighed against any jurisdictional issues. If jurisdictional problems are evident, a possible solution would be to create an "urban buffer zone", which would still be within the Sanctuary boundary and which would continue to allow for Sanctuary education, conservation and research programs, but which would not be subject to Sanctuary Permit Authority. The Sanctuary does already have the authority to create special zones.

This recommendation should not be construed as an effort to avoid scrutiny for coastal projects. Rather, it reflects the Management Plan Review as an appropriate time to access intergovernmental relationships in an open and honest manner.

2005 Comment: Generally this remains wise advice. It should be noted that the City did request a 2,000-foot buffer zone around the harbor in 1992, before the Sanctuary boundary was set. This being said, City staff has not advocated a City position for such a buffer zone since this recommendation was adopted in 2001.
CITY OF MONTEREY

To: City Manager
From: Public Facilities Director  
Director of Plans, Engineering, & Environmental Compliance
Date: December 13, 2006
Subject: City's Comments on Monterey Bay National Marine Sanctuary Draft Management Plan and Environmental Impact Statement

RECOMMENDATION

Authorize the Mayor to sign the attached letter with comments.

POLICY IMPLICATIONS

These comments are consistent with the City of Monterey's past support for the conservation, education, and research and facilitation of use goals of the Monterey Bay National Marine Sanctuary Program. They are also consistent with recommendations which have been adopted by the City Council in November of 2001, and reviewed again by the City Council in September of 2005.

FISCAL IMPLICATIONS

Unknown.

ALTERNATIVES CONSIDERED

The Council can choose to eliminate, or modify some or all of the attached recommendations; however, this is not recommended.

DISCUSSION

The City Council will hear a brief staff presentation on the Monterey Bay National Marine Sanctuary Draft Management Plan. This will be followed by a very brief staff review of the MBNMS recommendations adopted in November 2001 as the Management Plan Review Process began. Staff will conclude with a more in-depth presentation on the recommended comments on the MBNMS Draft Management Plan.

The MBNMS is one of thirteen sanctuaries located within the waters of the United States. The Sanctuary Program is Federal, located within the Department of Commerce, and under the National Oceanic and Atmospheric Administration (NOAA), and the National Ocean Service (NOS), a branch of NOAA. The Sanctuary Program is authorized nationally by the National Marine Sanctuaries Act, a federal law adopted by Congress and reauthorized approximately every five years and amended as needed by Congress. Additionally, each sanctuary is governed by a
Designation Document, which contains within it essentially the agreement that is made between the State, local communities, and the Federal Sanctuary Program as to how the Sanctuary would operate within the region. Additionally, each Sanctuary is governed by a Management Plan, which is written by Sanctuary Program Staff with input from the public through formal comment periods and public workshops. This Plan is ultimately approved by the Secretary of Commerce.

Federal law requires the periodic review of each Sanctuary's Management Plan. These individual Plans contain the basic rules for each Sanctuary, and provide guidance to the Sanctuary Staff in administering the Program. Congress does not approve the Management Plans, but is provided an opportunity to comment through a notice in the Federal Register near the end of the Plan Review process.

For our MBNMS, the original Management Plan adopted in September 1992 was the result of a significant consensus building effort, spearheaded by then Congressman Leon Panetta. This consensus effort sought to identify the type of Federal protection sought for the Bay while reassuring that the Federal Program would respect the needs and regulatory authority of local agencies and work cooperatively with local communities of interest, such as the agriculture and fishing industries.

The City of Monterey has long sought to be a good steward to our coast and ocean and strongly supported the creation of the Sanctuary in 1992. It is fair to say that if compelling arguments are brought forward to the City that certain actions are needed to preserve the health of the ocean, that the City would support those actions. To this degree, the City has been supportive over the past fourteen years of the broad goals of the Sanctuary Program. There does exist, however, considerable latitude in how the Sanctuary accomplishes its broad ecosystem protection goals. Generally, the City has strongly supported the Sanctuary's work in education, research, and in working cooperatively with other agencies and organizations to accomplish these goals. The attached cover letter to the City's comments contains a lengthy paragraph praising the Sanctuary for the elements of the Draft Management Plan that emphasize these three roles.

The Sanctuary Staff made a tremendous effort to hear public comment on the Plan as it developed, and the Plan as now presented represents many thousands of hours of time from the MBNMS Staff, the Sanctuary Advisory Council, and the public. The Plan contains many thoughtful sections that will advance the care of our Bay. The Sanctuary Staff is to be congratulated for their efforts.

The question of the Sanctuary taking on a greater regulatory role and applying increasing restrictions through enforcement actions or permit conditions is one which has generated considerable discussion throughout the Monterey Bay Region. The City of Monterey adopted a set of recommendations in November of 2001 (attatched). These recommendations were publicly reviewed again in September 2005, and remain unchanged. One of the key recommendations is that the Sanctuary should view itself not primarily as a regulatory agency, but one that works to solve problems through cooperative efforts among different agencies and constituencies. Additionally, the Sanctuary should look to state and local agencies who have jurisdiction and authority to solve problems, even regulatory problems, rather than creating new authorities for itself.

These recommendations clearly parallel the concerns of other agencies and organizations within
the region. In 2001 and 2002, the City of Morro Bay, the Moss Landing Harbor District, the Santa Cruz Port District, the San Mateo County Harbor District, the Monterey Peninsula Chamber of Commerce, the California Marine Affairs and Navigation Conference, the Alliance of Communities for Sustainable Fisheries, and others, adopted similar recommendations to the Sanctuary Program. In August 2005, the Monterey County Board of Supervisors unanimously adopted a resolution which requests the Sanctuary to not duplicate the authority to regulate fishing, but to look to the Pacific Fishery Management Council and the State of California for any needed change to fishing regulations. A year ago, the Association of Monterey Bay Area Governments (AMBAG) adopted a recommendation similar to the Board of Supervisors. Recently, AMBAG adopted a set of recommendations for the Draft Management Plan that embrace the recommendations provided by the City of Monterey as adopted in 2001.

At the AMBAG meeting, it was clear that the question of how the use of federal authority relates to the role of local governments was one in which the AMBAG Directors had strong opinions. The letter sent by AMBAG to the Sanctuary Program commenting on the Draft Management Plan is attached. It also contains comments of individual AMBAG Board Members.

The attached comments, therefore, are consistent with prior City Council reviewed recommendations made to the National Marine Sanctuary Program.

The City Council will note that the 2001 City Council recommendations are purposely very general to enable them to be applied to proposed Sanctuary regulations or action plans as they were developed. This is why the Council will not see items like "Coastal Armoring," "Personal Watercraft," "Marine Protected Areas," or "Introduced Species" in the 2001 Council guidance.

We believe that these comments on the Draft Management Plan are consistent with the City's past support of sound conservation and protection measures for our Bay, yet at the same time, provide advice and guidance to the Sanctuary Program about the best way of accomplishing those goals. Comments are provided only for those Action Plans which we believe need further work. It should be noted that the debate over federal authority and responsibility versus states' rights (local authority and responsibility) is as old as the development of the U. S. Constitution. Inherent in the City's recommendations and recommendations of other agencies, such as AMBAG, is the message that the federal role in managing our Bay must be balanced with respect for the authorities and concerns of local communities.

It is our recommendation that the City Council adopt the attached list of comments and authorize Mayor Della Sala to sign the accompanying letter.

Carl E. Anderson

Bill Reichmuth

CEA:pt

attachments

c: MEBNMS
November 10, 2006

Brady Phillips
JMPR Management Plan Coordinator
1305 East-West Highway, N/ORM-6
Silver Spring, MD 20910

Dear Mr. Phillips:

Please accept the attached comments to the Draft Monterey Bay National Marine Sanctuary Management Plan and accompanying Environmental Impact Statement. The development of this plan represents many thousands of hours of time on the part of Sanctuary Staff, the Sanctuary Advisory Council, agencies, and the public. The Sanctuary has done a very good job of soliciting public comment as the plan has gone through its various stages, including this Draft Management Plan process.

The Plan contains many thoughtful and effective proposed actions that will further the health of our bay, and its sustainable use. Particularly regarding the Water Quality Action Plan, the City continues to value the practical and constructive working relationship we have had with the staff of the Monterey Bay National Marine Sanctuary. The Action Plans for desalination, coastal erosion, education (including a Spanish language outreach), “wildlife disturbance” outreach to the whale watching and kayaking communities, and others, all highlight the Sanctuary’s critical and constructive role in coordinating between local, state, and other federal agencies to resolve resource management issues. The City of Monterey congratulates the Monterey Bay National Marine Sanctuary for its efforts, and these Action Plans, which are based on the Sanctuary taking a leadership role in working cooperatively with the public and other agencies. These plans stress research and education as primary tools for sound decision making and to help the public be good stewards of our ocean.

There is one significant shortcoming, however, in the Sanctuary’s Plan Review process that must be acknowledged. Congressman Sam Farr, the City of Monterey, and a number of other local agencies and organizations, all commented at the beginning of the Management Plan Review that there were problems in the structure and representativeness of the Sanctuary Advisory
Council, and that those problems should be addressed early in this process. This is a crucial issue because the Sanctuary, by its own statements, has relied extensively on the advice of the SAC to prioritize issues. Because the Sanctuary Advisory Council is appointed largely by Sanctuary Management, "it has a tendency to diminish public confidence that there is truly a Sanctuary - independent mechanism for community input" (quote from Congressman Farr's January 31, 2002 letter to NOAA). It should also be further noted that late in this Plan Review process this issue went to the Association of Monterey Bay Area Governments for resolution. However, the outcome of the AMBAG process did not substantially resolve the fundamental questions of who the SAC represents and how its members are accurately selected. Therefore, this issue continues to remain unresolved, and the public is left to wonder if the Management Plan truly represents the public's priorities.

The attached comments regarding the Management Plan are aimed at those Action Plans that the City feels need to be modified. They are meant to be taken in the spirit of assuring long-term public support for this important program. Many of the City's comments reflect what appears to be a fundamental difference of opinion as to the way in which the Sanctuary will be most effective in managing these resources. The City's comments are largely aimed at the Sanctuary playing a cooperative and collaborative role with other agencies, utilizing the authority of other agencies, unless a significant problem is shown with no other agency being willing or able to address that problem. It should be noted that the Sanctuary is proposing only a modest number of regulations. We applaud that, and believe that in part the City of Monterey's early comments to that effect may have influenced this decision. However, as you will see in the specific Plan Review Comments, even some of these proposed regulations appear not to be based on facts or the best available science, or could well be addressed by other state or local agencies with authority.

Again we hope that the City of Monterey's comments will be taken in the spirit of advancing stewardship of our ocean, and we look forward to a positive and continuing relationship with the Monterey Bay National Marine Sanctuary and its staff.

Sincerely,

Chuck Della Sala
Mayor
City of Monterey
Comments to the MBNMS Sanctuary Management Plan

Davidson Seamount Action Plan

The City of Monterey had previously commented on this Action Plan indicating that it could not support the Plan if it involves changing the Sanctuary Designation Document to let the Sanctuary use its authority to create fishing regulations. However, since that comment letter was sent, the Pacific Fishery Management Council acted to utilize the authority found in the Magnuson-Stevens Act to protect the habitat below 3,000 feet from all extraction. The City of Monterey therefore supports the inclusion of the Davidson Seamount within the boundaries of the Monterey Bay National Marine Sanctuary with fishing restrictions as adopted by the PFMC.

Bottom Trawling Effects on Benthic Habitats Action Plan

The information-gathering sections of this Action Plan are consistent with City of Monterey recommendations against the Sanctuary creating its own fishery regulations. The first part of this Action Plan describes a process of fact finding about the effects of bottom trawling on the Sanctuary. It is hard not to note that the language used to describe bottom trawling is entirely negative. It would be good if this language could be put into more neutral terms to identify the effects of bottom trawling. It is possible that a scientific assessment of certain trawling methods over soft bottom habitat could show that no long-term harm is occurring. There may also be a set of benefits, particularly economic, depending on one’s perspective. Without a neutral tone, the public might conclude that the Sanctuary has already made up its mind on this issue.

There are also proposed actions including the potential for the Sanctuary to propose regulatory changes. On one hand the Sanctuary’s strategy (BH-6) states that “the MBNMS will present potential management measures to the relevant fishery management agency”. However, the same strategy continues (BH6.4) “if and when the MBNMS determines it may need to restrict trawling activities or consider other measures ...” This certainly appears that the Sanctuary sees itself as potentially creating its own regulations. The City recommendation would be that any good data that the Sanctuary develops be presented to the appropriate fishery management agencies for their consideration and action. The Sanctuary should also give full respect to the fact that other federal laws apply to this area, specifically the Magnuson-Stevens Act. The City would not support the Sanctuary changing its Designation Document to regulate this fishery even in the event that the appropriate fishery management agencies, after their scientific review, decline to act on the Sanctuary’s behalf.

Harbors and Dredge Disposal Action Plan

For harbors to remain usable and economically viable, great flexibility must exist in maintaining the harbor to keep pace with natural forces. The Sanctuary’s
Action Plan contains some encouraging concepts to address the real-life needs of harbors, but it still falls far short of creating the assurances that harbor needs are going to be met. Specifically, the City recommendation is to clarify that the Sanctuary does not regulate or issue permits for dredging and dredge material disposal. This recommendation is completely absent from the Sanctuary's draft Action Plan. Also absent from the Sanctuary Action Plan is any statement per the City recommendation that dredging and dredge material disposal permit conditions be no more restrictive from the Sanctuary than as proposed by other directly responsible regulatory agencies. It should be noted that the other responsible agencies, i.e. the Regional Water Board and US Army Corp of Engineers/USEPA, have published science standards to evaluate dredging activities.

**Motorized Personal Watercraft Action Plan**

The Sanctuary's proposed Action Plan for modern jet-powered vessels has been extremely controversial. The main City recommendation that applies to this Action Plan is the recommendation that the Sanctuary should work with State and Local jurisdictions that have authority to regulate any uses or activities which cause concern, rather than creating new authorities for the Sanctuary. These modern jet-powered craft operate entirely within the waters of the State of California. They are, therefore, subject to the State boating law as well as laws and permits imposed by counties and municipalities and even special districts in some cases. The Sanctuary did not look to these agencies to resolve any problems that they perceived; rather, the MBNMS went straight to the use of their own authority.

If a real problem exists with these modern jet-pump craft the City of Monterey could well support local regulations or educational efforts regarding their use to mitigate these problems. However, the City cannot endorse this Action Plan as written because it did not utilize obvious local agencies of authority and jurisdiction. For the City, which has two launch ramps utilized by modern jet-pump powered craft, there has been no real problem with their use regarding the disturbance of wildlife or any other issue during the past 14 years. In fact, the City has received far more complaints about kayakers getting too close to wildlife than any similar problem with jet powered craft. If the City had been having problems with modern jet-pump powered craft, the City has the legal authority to create a very slow speed zone within our City waters.

A reasonable alternative would be for the MBNMS to approach the State to request a 5-knot speed zone for all motorized vessels operating within 300 yards of the shore.

It should be noted that there are additional problems with this Action Plan that others more directly affected may comment on.

**Cruise Ship Discharges Action Plan**

For this Action Plan, the stated goal is "to prevent impacts to the Monterey Bay
National Marine Sanctuary Resources from cruise ship discharges" does not appear to be consistent with the proposed regulations.

The proposed regulation states that the Sanctuary will prohibit the discharge or depositing from within or into the Sanctuary any material or any other matter from a cruise ship except vessel engine cooling water, vessel generator cooling water, or anchor wash. It must be pointed out that during the discussions by the Sanctuary Advisory Council on these proposed regulations, there was substantial discussion about using the word "harmful" in the regulation, i.e. harmful materials would be illegal. This was specifically done because there has been an evolution in cruise ship management that has included the expenditure of substantial funds on individual ships to outfit them with processor units that convert all black and gray water into potable water, which can then be discharged. This was done for the expressed purpose of not creating any real or perceived issue with the discharge of gray water or treated sewage, or sewage treated to a lesser degree. The several ships that visited Monterey with this system spent approximately 5 million dollars per ship to install such a system. We can think of no reason why this material could not be discharged into the Sanctuary or elsewhere. It is the City's recommendation therefore, that the word "harmful" be reinserted back into the proposed new regulation to make it clear the Sanctuary is regulating and prohibiting the discharge of harmful materials, and not preventing the discharge of benign materials.

The language suggested in the EIS as an "alternative", to meet Alaska standards, would also be acceptable.

Marine Protected Areas Action Plan

This work plan is designed to assess the need, if any, for additional closed areas to fishing (Marine Protected Areas). The City's recommendation for Sanctuary actions which affect fishing include the statement "any zones or regulations proposed by the Sanctuary which affect fishing would occur only if they are the result of a cooperative effort with the fishing and/or aquaculture communities and they have the support of those communities."

If the Sanctuary's MPA Work Group process is designed to fully assess the support of the fishing community for potential MPAs and fishermen give their support, then the City will support recommendations from the Sanctuary to create MPAs in those areas. However, also per the City's recommendation, the City does not support changing the Sanctuary's Designation Document to give itself the authority to create such rules. Rather, the Sanctuary should work through the Pacific Fishery Management Council and the State of California for actual regulations. Those agencies would in turn be free to agree, disagree, or modify Sanctuary proposals based on their scientific analysis.

It also should be noted that the Monterey County Board of Supervisors voted unanimously to ask the Sanctuary not to change its Designation Document and create fishery rules under its own authority. Likewise, the Association of Monterey Bay Area Governments, made up of elected officials from Monterey/Santa Cruz/San Benito Counties, also voted overwhelmingly to ask the
Sanctuary not to create their own fishing regulations. Many other local jurisdictions and organizations have also passed similar motions. While there may be some community support for establishing additional Marine Protected Areas within the Sanctuary, there is little political support for the Sanctuary to get into the business of making rules that affect fisheries.

Since the City's recommendations to the Sanctuary requires the fishermen's support for MPA recommendations, attention should be given that the MPA workgroup structure and process will be open, fair, and representative, and based on the best science.

The Introduced Species Action Plan

The goal of this Plan is to detect, prevent, control and possibly eradicate harmful species that are introduced into MBNMS waters.

There is little doubt that introduced species could pose a significant threat to Monterey Harbor and other Sanctuary resources. The City strongly supports education efforts to prevent and manage the spread of introduced species. It does appear however, that the Sanctuary wishes to grant itself great authority with no obvious limits inherent to this authority to accomplish this task. This would be through regulation, enforcement, and/or perhaps the permit process. The City of Monterey's comment here is to largely support this Action Plan, with the caveat that regulations, permit requirements, or other enforcement oriented actions that will affect public agencies be coordinated with, and agreed to by, those agencies before they become federal law.

Coastal Armoring

The goal of this Action Plan is to reduce the expansion of hard coastal armoring in the coastal areas of the Sanctuary region by developing collaborative approaches to address the issues of erosion and the demand for coastal armoring, including improved guidance to better enable decision making. The MBNMS sees itself in a crucial role in the developing of these guidance and enforcement strategies.

The MBNMS describes numerous negative environmental consequences to coastal armoring projects, and strategies are proposed such as incorporation of a "no-hard-arming" policy for new developments, the realignment of coastal roads and highways, and new setback requirements to be established for demolition or rebuilding projects in urbanized areas. Some of these alternatives propose enormous economic consequences to both private and public owners, i.e., the realignment of a highway. This Action Plan should include a guidance statement which acknowledges that many of the goals of this Action Plan may involve costs which are not feasible for the landowner.

Likewise, there is no mention of economic impacts of not allowing armoring, such as condemnation, loss of infrastructure, etc. Also not addressed are the economic impacts of the creation of, for example, new setbacks for coastal
property, or agreements which will bind the owner to never proposing coastal armoring. This could have tremendous impact on land value, especially when we cannot foresee over the course of 100 years or more what might happen.

Also missing from the Sanctuary discussion is any mention of positive benefits of armoring projects. It should be noted that both the San Carlos Beach Project and the Monterey Bay Aquarium have hardened structures. The public benefits of education and the recreational/educational opportunities of scuba diving are enormous. This Action Plan should be more neutral in tone and discuss the circumstances in which the benefits of projects might outweigh potential environmental impacts.

While the need for a coordinated approach to the multitude of armoring projects is obvious, it should be recognized that the Sanctuary is utilizing its authority found in the existing Sanctuary regulation that prohibits the “alteration of the sea bed,” and establishes Sanctuary authority over any project that occurs below the mean high water line. What is not clear is whether the Sanctuary will assert authority for projects above the mean high tide line if they are subject to California Coastal Commission permits. It is recommended, therefore, that the Sanctuary be very mindful of the needs of coastal jurisdictions and property owners as they coordinate these coastal armoring efforts.

Beach Closure & Microbial Contamination Action Plan

The City is generally highly supportive of Sanctuary efforts to improve water quality within the City and throughout the region. City and Sanctuary Staff have worked cooperatively together on numerous projects. The following comments are provided in the spirit of clarifying this Action Plan for the benefit of Sanctuary Staff and the affected communities.

The stated goal of this Action Plan is to “eliminate beach closures by reducing microbial contamination in the MBNMS waters.” It is recommended that this goal be modified to state that it is to “eliminate beach closures caused by human activities...” The reason for this is because there are numerous and significant sources of natural microbial pollution, such as marine birds and mammals. The language which describes the sources of contaminated water in this Action Plan need to be expanded to include the forms of natural pollution caused by marine birds and mammals. Indeed, in many nearshore areas, where there is an abundance of these animals, this could be a greater factor than human caused activity. The Plan should reflect this.

It would be good if the Action Plan could reflect the strides that have been made by Monterey. Monterey has the best stormwater management system in the region. In part, this can be attributed to the increased public awareness of problems with stormwater, and the Sanctuary has done a good job of making this stewardship issue well known to the public. In fact, at least for the City of Monterey, there are now very few beach closures related to sewage releases.

It is recommended that the Sanctuary develop a science-based system to differentiate between human caused and other warm-blooded animal caused...
bacterial contamination. The only way that this Action Plan can be effective is to properly attribute the source.

The City of Monterey currently reports all spills to the State Regional Water Quality Control Board. The Sanctuary should work through the State to get notifications via the State's notification system. The majority of sewage spills never make it to the water body, let alone the ocean. Therefore, notifying the Sanctuary of all spills appears overly burdensome, especially if the Sanctuary's going to expect its own individual notification.

As an overarching recommendation, the Sanctuary should utilize the authority of the Regional Water Quality Control Board, and work closely and cooperatively with that agency to make any of Sanctuary concerns known.

City of Monterey Public Works Department Specific Comments

Attached are additional, very specific comments provided by the City's Public Works Department on several of these same Action Plans. These additional comments are consistent with existing City recommendations to the MBNMS, and should also be provided to NOAA.
Responses:

While marine mammals, migratory seabirds and endangered species are protected under these acts, NOAA believes that the higher penalties afforded under the MPRSA will provide a stronger deterrent.

The MBTA sets maximum criminal fines at either $500 or $2,000 per violation, depending on the violation. The MPPA sets maximum civil penalties at $10,000 and maximum criminal fines at $20,000. The ESA sets maximum civil penalties at $500, $12,000 - $25,000 per violation, depending on the violation: maximum criminal fines are set at $50,000. (All three statutes also provide for imprisonment for criminal violations.)

The MPRSA (under section 307) allows NOAA to assess civil penalties as high as $50,000 for each violation. In addition, monies collected under the MPRSA are available to enhance the National Marine Sanctuary Program.

16 Comment: Many commenters stated fishing should not be prohibited within the Sanctuary. Instead, fishery resource regulation should remain under the jurisdiction of the State of California, the National Marine Fisheries Service (NMFS) and the Pacific Fisheries Management Council (PFMC). Other commenters requested NOAA to regulate harmful fishing activities such as gill-netting and shark finning. NOAA's position should be clarified in the FEIS/MP.

Response: Fishing is being regulated as part of the Sanctuary regime and is not included in the Designation Document as an activity subject to future regulation. Fishery management will remain under the existing jurisdiction of the State of California, NMFS and PFMC. Sanctuary prohibitions that may indirectly affect fishing activities have been written to explicitly exempt aquaculture, kelp harvesting and traditional fishing activities.

Existing fishery management agencies are primarily concerned with the regulation and management of fish stocks for a healthy fishery. In contrast, the sanctuary program has a different and broader mandate under the MPRSA to protect all sanctuary resources on an ecosystem-wide basis. Thus, while fishery agencies may be concerned about certain fishing efforts and techniques in relation to fish stock abundance and distribution, the Sanctuary program is also concerned about the potential incidental impacts of specific fishery technique on all sanctuary resources including benthic habitats or marine mammals as well as the role the target species plays in the health of the ecosystem. In the case of

the Monterey Bay area fish resources are already extensively managed by existing authorities.

17 Comment: Many commenters requested NOAA to prohibit motorized aircraft from flying over the Sanctuary. Other commenters stated Federal Aviation Regulations (FARs) already adequately protect Sanctuary resources from aircraft impacts, making additional regulations unnecessary. In addition, new regulations may hinder cooperative emergency response plans, routine helicopter operations, and rescue attempts.

Response: The regulations prohibit flying motorized aircraft at less than 1,000 feet above the Sanctuary within four zones. Generally, these zones are from Point Santa Cruz north. Carmel Bay south (overlapping the California Sea Otter Game Refuge), and around Moss Landing and Elkhorn Slough (see appendix II for specific zones).

NOAA recognizes that overflights are regulated under the FARs. Unlike the FARs, however, Sanctuary overflight regulations are intended to protect the living marine resources of the Sanctuary from disturbance by low-flying aircraft and in this case require flying at higher altitudes than normally required by the FARs. The prohibition does not apply to overflights that:

1. Are necessary to respond to an emergency threatening life, property or the environment;
2. Are necessary for valid law enforcement purposes;
3. Conducted by the Department of Defense and specifically exempted by NOAA after consultation with that Department.

18 Comment: A more precise definition of "thrill craft" is needed.

Response: NOAA has changed the term "thrill craft" in the proposed regulations to "motorized personal watercraft (MPWC)" in the final regulations and revised the definition to include vessels up to fifteen feet. This category of vessels was selected because of the threat posed to Sanctuary resources by their operation.

19 Comment: Thrill craft should be prohibited throughout the Sanctuary. The danger these craft pose to the biological resources of the area, such as marine mammals and kelp beds, as well as other users of the area such as divers and surfers necessitates a prohibition or regulation of personal watercraft. In addition, MPWC should be prohibited in "areas of biological significance." including those with high human-use levels such as beaches; diving, swimming and surfing areas; state parks and reserves. Besides the potential danger to recreationists, MPWC disrupt low-intensity area uses.

In addition, many commenters found the operation of MPWC to be incompatible with the existence of the Sanctuary for reasons unquantifiable.

Response: NOAA recognizes the threat posed by MPWC operation to the conservational, recreational, ecological and aesthetic resources and qualities of the Sanctuary. As a result, the regulations have been revised to prohibit the operation of MPWC within the Sanctuary, except within four zones and access routes (15 CFR 944.5(e)(8)). Generally, these areas are located off the harbors of Pillar Point, Santa Cruz, Moss Landing, and Monterey. They were chosen to avoid injury to kelp beds, sea otters and other marine mammals, seabirds and other marine life and to minimize conflicts with other recreational users and because these areas are accessible from launch areas and encompass areas traditionally used by MPWC. Restriction of MPWC operation to these areas of the Sanctuary will also reduce esthetic disturbance.

A prohibition of MPWC operation in the Sanctuary except in the four areas is designed to increase resource protection while still allowing opportunities for this form of recreation in the Sanctuary. There has been at least one reported collision in the Monterey Bay area between a jet ski and sea otters. Collisions with other disturbance of marine mammals elsewhere from MPWC have also occurred. The small size, maneuverability and high speed of these craft is what causes these craft to pose a threat to resources. Resources such as sea otters and seabirds are either unable to avoid these craft or are frequently alarmed enough to significantly modify their behavior such as cessation of feeding or abandonment of young. Also other, more benign uses of the Sanctuary such as sailing, kayaking, surfing and diving are interfered with during the operation of MPWC. Further, as indicated above, restriction of operation of MPWC to the specified zones and access routes will reduce esthetic disturbance. The zones and access routes where the MPWC can still operate allow the MPWC operators to continue this form of recreation albeit in areas away from those other forms of recreation that are beyond those areas inhabited by marine mammals and seabirds and other sensitive marine life. By establishing defined MPWC
Mr. Stephen B. Scheiblauer  
Harbormaster  
Monterey City Hall  
City of Monterey Harbor  
Pacific and Madison Street  
Monterey, CA 93940

Dear Steve:

I was pleased to have the opportunity to meet with you and the other members of the California Marine Affairs and Navigation Conference (CMANC). I want to thank you for your quick response and suggested language on a statement regarding the relationship between the Monterey Bay National Marine Sanctuary (MBNMS) and the commercial and recreational fishers. Our frank discussion and exchange of views has led me to a better understanding of your concerns and fears about the upcoming management plan review and any potential ecological reserves in the Monterey Bay area. Let me reiterate that the ports and harbors and fishing industries are important constituents of the MBNMS, and that we take very seriously our obligation to treat these groups fairly and equitably. Similarly, I trust you also came away with a more complete understanding of both how the National Marine Sanctuary System (NMSS) conducts the reviews, and the process we use when reviewing the efficacy of establishing ecological reserves. As I agreed at our meeting, I want to provide to you in writing an explanation of how the Alliance of Communities for Sustainable Fisheries (the Alliance) and CMANC will be included in the decisions regarding the establishment of ecological reserves in the Monterey Bay area.

It is important to note that the NMSS has made no decision to establish ecological reserves within the MBNMS. While it is my position that each management plan review will assess whether ecological reserves are appropriate, there is no policy that they must be established or that they be a certain size. As you know, our purpose for assessing the potential need for...
ecological reserves is to protect bio-diversity and sensitive ecological features. This decision will be a product of the management plan review and reached through a community-based and science-driven process.

Community-based process means that there will be numerous opportunities for the Alliance and CMANC members to participate and make their views known. In addition to public meetings and hearings, there will be workshops on key issues and I hope that members will be willing to participate in key working groups. In correspondence to Bill Douros, ACSF has outlined a proposal to set up a study group to review no-take zones. The proposal involves industry representatives and MBNMS Advisory Council members. I have spoken with Bill Douros, and he will be working directly with ACSF and consulting with the Sanctuary Advisory Council, to explore this proposal.

Science-driven process means that we will be using the best available information to make resource management decisions. This includes not only natural resource data, but socioeconomic information as well. We will be collecting important data on the nature and location of both commercial and recreational fishing and the value of the landings. It is our normal practice to work with the local fishing community and economists to gather information and we will be doing this in the MBNMS as well. It is important to note that one of our objectives in considering any ecological reserve is to minimize the adverse economic impact of restrictions on fishers. As we have done with the Florida Keys National Marine Sanctuary (FKNMS) in the late 1990s, and the more recently designated Tortugas Ecological Reserve in the FKNMS, we seek to minimize adverse impacts to the fishers while providing maximum protection for the resource. The Florida Keys fishers who participated in the working group acknowledged the fairness of the process and supported the establishment of the ecological reserve.

In addition, I think that it is important to point out that this type of process already has been successfully applied at the MBNMS in addressing complex water quality issues and has led to outcomes acceptable to most, if not all, stakeholders. The Sanctuary’s water quality protection program, including a component on harbors and marinas, is based on this type of stakeholder process. The Agricultural and Rural Lands plan, which took several years to develop jointly with the agricultural community, is another example. I think that the NMSA and the MBNMS already has a proven track record of working with all stakeholders in good faith to develop the best and fairest possible solutions to difficult marine resource management issues. I expect this to be the case with the management plan review as well.
I hope that this letter clarifies the way in which the NMSS intends to work with the harbor and fishing industries through the course of the upcoming Monterey management plan review. Please feel free to call Bill Douros or me with any further questions or concerns.

Sincerely,

[Signature]

Daniel J. Basta
Director
Office of National Marine Sanctuaries
December 1, 2004

Dan Basta, Director
Office of National Marine Sanctuaries
1305 East-West Highway, Room 11523
Silver Spring, Maryland 20910

Dear Director Basta:

Thank you for your letter received October 27, 2004, asking for comments regarding MBNMS Management Plan Review Program changes. I'm writing to comment specifically about the Monterey Bay National Marine Sanctuary and the addition of the Davidson-Seamount to the Sanctuary, which would require that the Sanctuary Designation Document be changed to give the Sanctuary the authority to regulate fishing.

The City of Monterey has twice gone on record supporting that the promise made to fishermen, that the Sanctuary would not create fishing regulations, should be upheld. Therefore, as City policy, the City cannot support any such change in the Designation Document.

Thank you for requesting our view on this matter.

Sincerely,

Dan Albert
Mayor

Attachments: 1. City of Monterey Recommendations for the Sanctuary Management Plan Review
2. Resolution 01-58 re Alliance of Communities for Sustainable Fisheries