

September 1, 2009

Mayor:
CHUCK DELLA SALA

David Ortmann, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland OR 97220-1384

Councilmembers:
LIBBY DOWNEY
JEFF HAFERMAN
NANCY SELFRIDGE
FRANK SOLLECITO

City Manager:
FRED MEURER

RE: Monterey Bay National Marine Sanctuary MPA Process

Dear Chairman Ortmann:

On behalf of the Monterey City Council, I am writing to provide comments and recommendations to the Pacific Fishery Management Council about the Monterey Bay National Marine Sanctuary (MBNMS) process to meet its stated "need" for additional MPAs in the Federal waters of this Sanctuary.

The City of Monterey has previously provided to the PFMC a copy of our letter of March 27, 2008 (attached), to Sanctuary Superintendent Paul Michel, which outlines a number of significant concerns with the Sanctuary's announcement that it has an "unmet need" for MPAs (attached). In this letter the City provided the following advice to the Sanctuary:

- Respect the promise that was made to fisherman to gain their support for Sanctuary designation, that the Sanctuary would not create regulations that affect them.
- Do not change MBNMS designation document to give the Sanctuary the power to create fishing regulations.
- For any proposed regulation or zone that affects fishing, support from the fishing community is required
- The Sanctuary must have a fair and transparent process to determine the need for additional protection. Fisherman support for the process is also required
- The best available peer-reviewed science should be used in MPA decision making. The MBNMS should work with the Alliance of Communities for Sustainable Fisheries to reconcile the differences between the science products that they have brought forward to inform this issue, and the "need" conclusion of the MBNMS
- The Sanctuary should follow its own Federal regulations and consult with the National Marine Fisheries Service (NMFS), the PFMC, and Industry, before it makes decisions that affect fishermen.

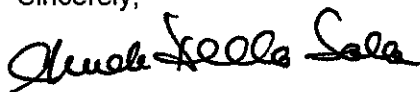
All of these recommendations to the National Marine Sanctuary remain valid recommendations from the City of Monterey. Since writing the March 27, 2008 letter, the Sanctuary has brought forth a "rational document" dated April 15, 2008, as well as having held a number of meetings to develop an MPA planning process. The City of Monterey also understands that very recently the Sanctuary has announced its intention to participate in an Integrated Ecosystem Assessment (IEA) process with a number of other Federal and State agencies. It is unclear at the present how this will relate the recommendations the City has made (above).

Because of the announcement of the potential for an IEA process, and because there remains considerable uncertainty as to what is occurring with regard to the Sanctuary's position on MPAs, the City of Monterey offers the following advice or comments regarding this process.

- In both the MBNMS February 15, 2008 and April 15, 2008 letters, the Sanctuary determined that it has an "unmet need" for MPAs within the Federal waters of the Sanctuary. As clarified by the Sanctuary, this plainly means that the Sanctuary wants to have additional MPAs, or make existing MPAs more restrictive, or otherwise modify existing MPA's. Considering that no scientific analysis has been brought forward to substantiate this claim, the City recommends that the Sanctuary modify its process to be one that begins with a scientific analysis as to whether existing levels of protection, including spatial protection, are sufficient to meet the requirements of the National Marine Sanctuaries Act. This new IEA process should be a process in which the development of data and scientific analysis informs the policy and management decisions; the Sanctuary should not begin this process with the assertion that it "needs MPAs".
- As evidenced in the April 15, 2008 MBNMS letter, a major reason that the Sanctuary is going forward with this MPA effort is to establish wilderness areas within the Sanctuary. A claim is made that this is somehow required by the language of the National Marine Sanctuaries Act. The pertinent language of the Sanctuaries Act is essentially the same since the designation of the Monterey Bay Sanctuary in 1992. Had this claim been made, that the Act requires wilderness areas, fishermen would never have supported it. Further, in 2001 correspondence with the City of Monterey, National Marine Sanctuary Director Dan Basta stated in reference to the MPA issue: "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 must be a certain size". Because of these factors, the City of Monterey cannot support the MBNMS's assertion that the Sanctuaries Act requires it to create wilderness areas, unless such areas are agreed to by the fishing community.
- Also as evidenced by the April 15, 2008 MBNMS letter, the position is taken that sustainable fisheries are not good enough in National Marine Sanctuaries. The City asks that the PFMC provide a review and guidance as to the validity of that claim.

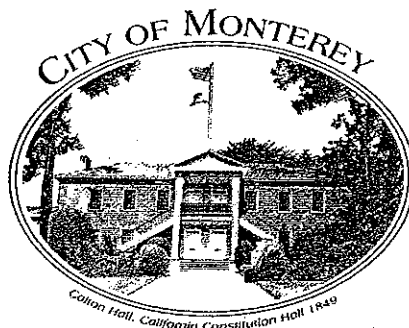
Please be assured that the City of Monterey will support a fair, science based process. It appears that the IEA may also create other management options which could have value to our fishermen, and to our community. If the new IEA process is fair, open, and transparent, is lead by science rather than by policy statements, and will seek and obtain the support of fishermen, then we support the new process.

Sincerely,



Chuck Della Sala
Mayor

c: The Honorable Sam Farr, 100 W. Alisal St., Salinas, CA 93901
Paul Michel, MBNMS, 299 Foam St., Monterey, CA 93940
Don McIssac, PFMC, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384



March 27, 2008

Mayor:
CHUCK DELLA SALA

Councilmembers:
LIBBY DOWNEY
JEFF HAFERMAN
NANCY SELFRIDGE
FRANK SOLLECTO

Paul Michel, Sanctuary Superintendent
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey CA 93940

City Manager:
FRED MEURER

Dear Paul:

On behalf of the Monterey City Council, I am writing in response to the Monterey Bay National Marine Sanctuary (MBNMS) Decision Letter of February 15, 2008 to the Marine Protected Area Workgroup and Sanctuary Advisory Council Members. This Decision Letter announces the decision that the MBNMS will create more Marine Protected Areas (MPAs).

The City of Monterey has gone on record many times to support the wise and sustainable use of our ocean resources and the conservation goals of the Sanctuary Program. Our citizens want assurances that the ocean will be healthy for future generations to enjoy. If there are problems, we want all federal, state, and local agencies to review their management options and to coordinate a response to deal with the problem. MPAs are one of many management options available for marine resource issues. The City of Monterey will be an active partner with the MBNMS in supporting science-based solutions in which the needs of key stakeholders are addressed.

It is not within our expertise to offer an opinion as to the need of the ecosystem for additional protections, including additional MPAs, within this Sanctuary Region. However, the letter of February 15th contains issues of procedure, policy, and best available science, all previously advised by the City of Monterey in the form of a number of different policy statements or recommendations made to the MBNMS.

The February 15th letter contains two major points. The first point asserts that the Sanctuary has determined that there is a need for additional MPAs within the Sanctuary, and offers three justifications in support of that determination. The second major point outlines the legal authority that might be used to create additional MPAs.

Regarding the legal authority to create additional MPAs, several Monterey City Councils, over the past seven years, have gone on record on the question of the Sanctuary's authority, or lack of, to create regulations that affect fishing. During the early 1990's, the City of Monterey was very active in supporting the creation of the Monterey Bay National Marine Sanctuary. A crucial part of the willingness of the City to support the new Sanctuary was the commitment which we heard from both our federal and state elected leaders, and NOAA officials, that the new Sanctuary would not be a threat to fishermen and that they need not worry about the Sanctuary creating regulations that affect them or potentially put them out of business. I believe that this promise is well remembered still by many civic and business leaders in the Sanctuary Region, and is not limited to the City of Monterey.

Beginning in March 2001, after the Management Plan Review process was announced by the Sanctuary Program, the City Council created a series of policy statements on this issue. At their March 20, 2001 meeting, the City Council of Monterey adopted resolution #01-58, which supports the goals of the Alliance of Communities for Sustainable Fisheries. A copy of this resolution is attached, and I quote two brief sections:

“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 believes fishery management should continue to be the responsibility of the California Department of Fish and Game and the Pacific Fishery Management Council,”

The City Council supported this resolution unanimously.

At the Monterey City Council's November 20, 2001 meeting, recommendations were made to the MBNMS regarding the Management Plan Review process and potential issues. A copy of these recommendations is attached. Among them is:

“Understand and respect the original consensus building that created the Sanctuary.”

In his letter to the Monterey Sanctuary of January 31, 2002, Congressman Sam Farr states this consensus effort quite clearly when he says,

“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 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.”

Congressman Farr's position was reiterated to the MBNMS in his letter to you of December 13, 2007 (attached), as the MBNMS considered the MPA issue.

Certainly, the understanding made with the fishing community that the Sanctuary would not regulate fishing is one of the most critical pieces of the consensus building effort.

Also at the November 20, 2001 meeting, the City Council adopted recommendations to the MBNMS specifically about the fishing issue. The adopted policy statement is as follows:

“To clarify that the Department of Fish and Game and the National Marine Fisheries Service (including the Pacific Fishery 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."

Regarding the need for the MBNMS to gain the support of the fishing community before it proposes fishing regulations or zones, this was certainly a part of the understanding that the fishing community had with NOAA as the Sanctuary was being proposed. Additionally, the best available science on successful MPA processes is unanimous in concluding that stakeholder/community support for MPAs is needed.

At the City Council's October 4, 2005 meeting, the Council again reviewed their 2001 set of recommendations (attached). The City Council heard the perspective of the Monterey Sanctuary Staff and also received an update on the relevancy of these recommendations from Monterey City Staff. The Monterey City Council took no action on this update, thereby consciously leaving in place existing City Council policy.

When the Draft Management Plan was released, the City of Monterey formally commented on this Plan by sending a copy of the attached letter of January 2, 2007. As you can see, the City Council has confirmed each time its recommendation that the Monterey Sanctuary keep this important promise made to the fishing community. It is evident when we read the Sanctuary's February 15th Decision Letter, that the Sanctuary Program is preparing us for the possibility that the Sanctuary Document will be changed and the Sanctuary may create regulations affecting fishing via creating MPAs, including complete no-fishing zones, or that the Sanctuary will bring an MPA proposal to the Pacific Fishery Management Council which is not supported by fishermen. On this point the Monterey City Council is concerned that it is likely that if the Sanctuary does break this promise, there will be a reaction of deep concern toward the Sanctuary from civic and business leaders, and fishermen, throughout this region. This reaction and dismay may make it harder for the MBNMS to work with communities and stakeholders in a spirit of mutual trust.

It also must be pointed out that Monterey Sanctuary Regulations (15CFR, Chapter IX, Subchapter A and B, and Part 944) calls for a consultation to occur between the PFMC and the National Marine Fisheries Service, as well as the fishing industry, to determine an appropriate course of action if problems arise that might be caused by fishing activities. However, no consultation on issues of substance occurred with the three listed entities before the Sanctuary issued its Decision Letter.

The City of Monterey also has a longstanding policy of supporting the use of the "best available science" to inform or resolve resource management issues. With regard to the Sanctuary's Decision Letter, the first assertion made for the need for additional MPAs is that there are ecological concerns with any level of fishing activity, at least in certain areas. It is not within the expertise of the City Council to know whether or not this is a valid assertion. However, we do point out that the local organization, the Alliance of Communities for Sustainable Fisheries, has brought forth a detailed scientific analysis that deals with the question of the need for additional MPAs in this region. Staff at the MBNMS and the National Marine Sanctuary Program had this scientific analysis for some time prior to the creation of the Decision Letter, yet the

analysis and its conclusions are nowhere mentioned in the Decision Letter. We hope and expect that the Monterey Sanctuary will engage in a scientific discussion of the merits of this analysis through the Science and Statistical Committee of the Pacific Fishery Management Council (PFMC). As you know, the PFMC (as are all fishery councils in the United States) is now charged by the latest reauthorization of the Magnuson-Stevens Act, to utilize the best available science in their decision making, and to listen to the advice of their Science and Statistical Committees. It's clear with this recent reauthorization of the Magnuson-Stevens Act that Congress wants thorough science and not merely personal or even agency opinion to dictate the use and conservation of our marine resources.

The City of Monterey has also gone on record twice (in the context of the State's MPA process) asking for a thorough socio-economic analysis to be developed early-on in any MPA process. The MBNMS MPA Decision Letter does briefly mention that the Sanctuary will seek to "adequately understand the ... socio-economic impacts of any proposed action". While the City of Monterey understands that a complete socio-economic analysis cannot be done until the specific MPA locations are identified, the City wishes that key baseline socio-economic information would have been developed before the Sanctuary made the decision that additional MPAs are needed. Such information would have been relevant to the level of fishing activity that currently exists and relevant to a MBNMS decision on "need".

The Monterey City Council is also well aware that our robust tourism economy, which is the dominant economic engine of our community, is reliant to a large degree on the visiting public's desire to eat fresh local seafood and to experience the culture and heritage of our historic fishing community. A recent study conducted by Responsive Management Inc., has shown a very high correlation between fishing heritage and our tourism economy as recorded by local tourism professionals and civic leaders. One of the "Vision Statements" recently adopted by the City Council speaks directly to this point:

"Appropriately preserve, promote, and maintain our historic, cultural, and environmental assets"

On this very point the City of Monterey was proud to receive from First Lady Laura Bush a 2005 "Preserve America Award" for our efforts to preserve our historic and cultural assets, our fishing heritage being among those.

The City of Monterey has also gone on record several times to express concern and to suggest constructive changes in the MBNMS public decision-making process. Most notable have been concerns about the structure and function of the Sanctuary Advisory Council. These concerns are expressed in the Monterey City comments made to the MBNMS during the Management Plan Review process. Because of the ability of the MBNMS to control the selection of most members of the SAC, the public is left to wonder if SAC advice truly represents the public, including on this MPA issue. I also point out that the Sanctuary Program timeline states that by January 8, 2008, a consultation had occurred with the Pacific Fishery Management Council and NOAA Fisheries. However, no such consultation on issues of substance occurred. These events may serve to make some of the public question the National Marine Sanctuary

decision-making process.

I want to comment on the assertion in the Decision Letter that the National Marine Sanctuary Act mandates mean that the MBNMS has a "need" to create wilderness areas in the ocean. First, let me note that this assertion is the antithesis of the promise made to fishermen, that the Sanctuary would not create regulations. Had this assertion been made during the run up to the sanctuary designation, I do not believe that a sanctuary would exist today. Secondly, this interpretation may be legally challenged. Third, may I point out that in an April 5, 2001 letter to the City of Monterey (copy attached), National Marine Sanctuary Program Director Dan Basta states, "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 must be a certain size." From this quote, I do not perceive that Director Basta is asserting the same mandate that the Sanctuary must create wilderness areas.

It appears that a strong difference of opinion exists between fishermen and the MBNMS regarding the fundamental question of the need for additional MPAs. This question, in our opinion, does need to be resolved before the Sanctuary goes ahead with an MPA design process. It has been previously pointed out that Monterey City Council adopted policy recommends to the Sanctuary that no fishing regulation or zone be adopted unless it has the support of the fishing community. This is not merely a City of Monterey policy and it does not confer "veto" power to fishermen. The Decision Letter presented by the Sanctuary refers to the 2003 National Research Council report on the use of Marine Reserves. However, the Decision Letter fails to mention key conclusions of the NRC report:

"Local people must be deeply involved from the earliest possible stage in any MPA effort for it to be successful, and socio-economic considerations usually determine the success or failure of MPAs".

and

"Actions taken in the context of incomplete information require agreement among stakeholders, managers, and scientific researchers that regulatory actions are necessary and beneficial despite information gaps and conflicting perceptions of resource status."

On behalf of the Monterey City Council I strongly urge the MBNMS to reconcile the science which has been brought forth by the fishermen (including their own anecdotal knowledge) with what appears to be a top-down decision from the National Marine Sanctuary Program that additional MPAs are needed. Without such reconciliation it appears that there will not be support for an MPA network from the key stakeholders, as recognized even by the National Research Council. I further urge the MBNMS to not change the Designation Document for this Sanctuary or attempt to create its own MBNMS fishing regulations.

The City of Monterey always wants to be a working partner with the MBNMS for programs that support the wise and sustainable use of the ocean. It is our observation that the Sanctuary Program needs to take actions to assure the public that there is a strong, science-based rationale for determining that there is a need for additional MPAs in the federal waters of the MBNMS. The City will work with and support a

process to assure that the best available science, including socio-economics, is used to evaluate the need for additional protections, understanding that MPAs are one tool of many for preserving ocean health. As a constructive recommendation to the MBNMS, the City suggests that the Sanctuary seek to resolve this MPA issue by working with the Pacific Fishery Management Council in their new process to develop an "Ecosystem Fishery Management Plan". This would be a great opportunity to work with the PFMC, which is the Agency with the authority to create MPAs, to resolve the ""need" issue and/or even identify areas that should be made into MPAs if that is what the best science determines.

We well know that sometimes the advice of a community like Monterey to the Sanctuary Program may not be in agreement with actions proposed by the senior management of the National Marine Sanctuary Program. However, please know that City of Monterey advice is well-considered and aimed at assuring long-term community support for the Sanctuary.

Thank you for considering these observations and comments. The City of Monterey has been a key partner with the MBNMS on many issues and we look forward to working through the issues and concerns expressed above.

Sincerely,



Chuck Della Sala, Mayor
City of Monterey

Attachments

- C: Vice Admiral Conrad Lautenbacher, USN (ret.), Undersecretary for Oceans and Atmosphere,
Department of Commerce, 1401 Constitution Ave. N.W., Washington, D.C. 20230
Anthony Botelho, President, AMBAG, P O Box 809, Marina, CA 93933
Representative Sam Farr, 1221 Longworth House Office Bldg, Washington, DC 20515
The Honorable Leon Panetta, 100 Campus Center, Bldg 86E, Seaside, CA 93955
Don Hansen, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 101, Portland, OR 97220-1384