

## SALMON ADVISORY SUBPANEL REPORT ON GULF OF THE FARALLONES AND CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY EXPANSION

The Salmon Advisory Subpanel (SAS) appreciates the benefits that National Marine Sanctuaries (NMS) can offer to fisheries through the protection of habitat and the exclusion of harmful activities. Commercial and recreational anglers rely on healthy and vibrant ecosystems. Therefore, the SAS believes that the goals of the NMS should be complementary to those of anglers. The SAS does not believe that NMS ought to burden or otherwise interfere with lawful fishing practices that substantially predate the creation of the Sanctuaries and do not pose harm to the ecosystem in any demonstrable way.

To our knowledge, the Cordell Bank and Gulf of the Farallones NMS have not adopted regulations that expressly regulate the take of fish and invertebrates in the waters of the Sanctuaries. However, the SAS notes that the Sanctuaries have expressly regulated fishing *activities*, which is an indirect path to regulating fishing. These regulations, if enforced as plainly written, would severely curtail if not eliminate fishing in the waters of the Sanctuaries.

To date, enforcement discretion and the grace of the Sanctuary Superintendent has allowed fishing activities to continue without interference. However, discretion and grace can be ephemeral. The appropriate solution is to amend the regulations to permit longstanding fishing practices to continue without threat of substantial civil fines and adverse court judgments. Absent such amendments, the SAS strongly objects to the proposed boundary expansion of the Cordell Bank and Gulf of the Farallones NMS.

It is poor public policy to promulgate overbroad and unnecessary regulations that the agency charged with enforcement purportedly intends not to enforce, at least for today.

Example 1: Fishing gear expressly defined as “harmful matter” along with fuel, oil and other contaminants.

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Nobody wants to see Sanctuaries treated as a toxic waste dump. Reasonable regulations are needed to protect the ecosystem. Reasonable regulations would also distinguish between a fuel spill, on the one hand, and the incidental loss of fishing gear, on the other hand.

Fishing necessarily involves the placement of line, sinkers, and hooks into the Sanctuary ecosystem with the hope of extracting part of that ecosystem for the dinner plate. In the course of every fishing effort, there is a real risk of the loss of line, sinkers and hooks (or crab gear). Sometimes hooks snag on bottom structure. Other times a strong fish breaks off, retaining the hook and a length of line. Salmon fishing in the Sanctuary, in particular, involves the loss of sinkers. Propellers of passing boats can cut lines attached to crab traps.

Under the present Sanctuary regulations, each deposit of harmful matter, i.e. fishing gear, in the Sanctuary exposes the angler to significant civil penalties and legal costs. Enforcement of the present regulations would comprise a *de facto* fishing ban in Sanctuary waters. This risk of a fishing ban should not be enlarged through an expansion of Sanctuary boundaries.

Example 2: Sanctuary Regulations Require All Vessels, Regardless of Size, to Have Sewage Holding Tanks (Even Kayaks)

Federal and state regulations already restrict the discharge of sewage into coastal waters. The regulations are particularly strict with regard to solid waste. Sanctuary regulations, however, prohibit the discharge of any waste, even liquids. This means that every vessel, even kayaks, must contain wastes with holding tanks. This is hardly practical nor is there any demonstration of genuine harm to the Sanctuary ecosystem.

Example 3: Restrictions on Fish Cleaning are Arbitrary and Unnecessary

As a general matter, fish cleaning is not permitted in Sanctuary waters. There is an exception, however, for the cleaning of fish caught in Sanctuary waters. However, pelagic fish do not respect Sanctuary borders. A fishing trip in pursuit of albacore tuna, for example, will necessarily transit the Sanctuary, but the fish may be caught within or without the Sanctuary boundaries. It is typical for fish to be cleaned while returning to port. While all of the fish may be albacore tuna, some are lawful to clean while the cleaning of others is expressly prohibited may result in substantial civil fines and legal fees.

This distinction is without a meaningful difference. The regulation seeks to address a harm that simply does not exist. If the goal is to prevent the discharge of fish parts from a factory processing vessel, then the regulations can be drafted accordingly. Otherwise, this is simply an unenforceable and unnecessary dictate that burdens recreational and small-scale commercial fishing activities in California.

Example 4: Overbroad definition of “introduced species” bars the use of many baits typically used in recreational crabbing.

The Sanctuary Management Plan defines “introduced species” as “a species (including any of its biological material capable of propagation) that is non-native to the ecosystem(s) protected by the sanctuary.” Note that biological material *incapable* of propagation is not included in this definition. Under this definition, anglers could continue to use common crab baits such as poultry parts and carcasses of fish taken elsewhere in California, such as yellowfin or skipjack tuna.

However, the regulations have subtly reworded the definition of introduced species to “any species (including but *not limited to* any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary.” (Emphasis added). Under this revised definition, any and all biological material of non-native species, irrespective of its capability to propagate the species, is deemed an “introduced specie.” It is unlawful under this regulation to use a striped bass carcass as crab bait even though striped bass are found in the Sanctuary ecosystem. This overbroad definition of introduced species appears unique to the Sanctuaries and is not found elsewhere in state or federal laws or regulations. (California law defines invasive species as “any species, including, but not limited to, the seeds, eggs, spores, or other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its historic range.”)

While the issue may seem trivial to some, it is emblematic of the Sanctuaries' overreach in regulations. There is no demonstrable harm from the longstanding use of poultry parts and other "non-native" baits in recreational crabbing. While anglers could switch to other baits, where is the need to do so?

#### Conclusion

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Current Sanctuary regulations substantially burden fishing activities within the Sanctuary without any apparent benefit to the ecosystem. So far, current Sanctuary management has elected not to enforce the regulations as written. However, recreational and commercial anglers ought not be dependent on the beneficence of management, which is subject to change. Unless and until current Sanctuary regulations are amended to remove these burdens on fishing activities, the SAS is compelled to oppose any expansion of the Sanctuary boundaries.

PFMC  
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