



Pacific Fishery Management Council

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Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

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Maria Brown, Superintendent
Gulf of the Farallones National Marine Sanctuary
991 Marine Drive, the Presidio
San Francisco, CA 94129
Ph. (415) 561 6622 x301

Dear Ms. Brown,

Please accept the comments below from the Pacific Fishery Management Council regarding the proposed expansion of the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries. The Council appreciates the extended comment period allowed to accommodate the Council's meeting schedule.

Essential Fish Habitat

As you know, the Magnuson-Stevenson Fishery Conservation and Management Act (MSA) includes provisions to identify, conserve, and enhance essential fish habitat (EFH) for species managed under a Council fishery management plan. Its provisions deal with both fishing impacts and non-fishing impacts to EFH. The MSA requires the Council to identify and describe EFH and recommends designating habitat areas of particular concern (HAPCs) for its managed species. EFH is the habitat necessary for each Council-managed species to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, while HAPCs are high priority areas for conservation, management, or research because they are rare, sensitive, stressed by development, or important to ecosystem function. Each Council is authorized under the MSA to comment on any Federal or state activity that, in the view of the Council, may affect the habitat, including EFH, of a fishery resource under its authority. In the region of the proposed sanctuary expansion, EFH for groundfish exists from the shore to the 3500 meter line. Thus, it encompasses the entire proposed expansion area.

Sanctuary management of the expanded area may add to existing habitat and ecosystem knowledge, and the Council welcomes the new information, research and mapping that Sanctuaries may provide, as it will help inform fisheries management, including periodic updates to EFH for Council-managed species.

Existing Regulations

The Council is encouraged that the Office of National Marine Sanctuaries (ONMS) has incorporated regulatory and non-regulatory programs in the proposed management plans that

may advance protections and public knowledge of ecosystem and habitat science, such as water quality education and outreach and invasive species awareness. The protections within these programs are similar to those implemented by the Gulf of Farallones and the Monterey Bay National Marine Sanctuary programs. Since there are numerous existing regulatory protections in place by other Federal and state agencies, as noted in the draft environmental impact statement (DEIS) (Sections 4.3.2 and 4.7-3), it is not clear how Sanctuary designation will improve on existing protection measures. It would be useful to include a table that summarizes all the existing and proposed protective measures and regulations for the expansion area, with an explanation of how additional protective measures benefit the resources, and the feasibility of funding these measures.

Additional Permitted Uses in the Sanctuaries

The Council notices that there is a regulation change proposed giving the Gulf of the Farallones and the Cordell Bank National Marine Sanctuaries “Authorization” capability, similar to existing regulation in the Monterey Bay National Marine Sanctuary. It appears that additional uses and discharges in the existing Sanctuary that have been prohibited in the past, as well as in the proposed expansion area, could be allowed if a proposed use or activity is approved by another Federal, state or local agency. In order for ONMS to authorize an otherwise prohibited activity that was permitted, licensed or otherwise authorized by another Federal, state or local agency, ONMS would need to make a finding that the activity would have at most short-term and negligible adverse effects on Sanctuary resources and qualities. ONMS may also require the applicant to comply with any terms and conditions deemed necessary to protect Sanctuary resources and qualities. This change may allow a welcome flexibility in considering discharges with minimum impacts, such as allowing the discharge of grey water from fishing boats. It also may allow consultation with the Council and state agencies in analyzing whether an activity is appropriate and if so, what conditions to impose to protect Sanctuary resources and qualities.

Upwelling Zone Protection

A primary stated purpose for Sanctuary expansion is to protect the resources of the important upwelling zone off Point Arena. Sections 4.2, 4.3, and 4.4 of the DEIS provide a general analysis of the environmental consequences of this action on physical and biological resources. However, it is unclear how Sanctuary expansion would protect or benefit this upwelling zone. The Council requests additional information on the benefits of the expansion with respect to protection of the upwelling zone and associated resources. The Council is pleased to see that there is a comprehensive monitoring plan proposed, the Council recommends an analysis in the final EIS regarding how the monitoring plan will further protection of the upwelling waters. This is an essential part of habitat conservation efforts in light of impacts such as ocean acidification.

Oil and Gas Development

The Council welcomes the prohibition of oil and gas development in the area of Sanctuary expansion, while noting that it is unclear that such a threat exists in the area. Since the public generally believes that Sanctuary designation would bring permanent protection from such

development, it is important that the DEIS clearly note that there are exceptions to this, and that the current prohibition is not necessarily permanent. The Council also recommends making note of what protections and prohibitions are already in place by other state and Federal agencies.

Alternative Offshore Energy

The proposal does not prohibit offshore hydrokinetic energy development as it does oil and gas development. It would be helpful to understand the Sanctuaries' policy and criteria for hydrokinetic energy development in Sanctuaries. The Council supports a comprehensive marine spatial planning effort to analyze existing uses, including fishing and habitat conservation uses, and recommends the DEIS incorporate clear direction on how Sanctuaries will evaluate wave and wind energy proposals, and what role the Council will have in this evaluation.

Department of Defense Activities

The DEIS states that ongoing Department of Defense activities occurring at the time of expansion would be exempt from the prohibitions listed in the proposed regulations, although there would be consultation with the Sanctuaries. The Council suggests that Sanctuaries develop a formal consultation process with the Department of Defense to minimize impacts and include Council and NMFS notification within this process so that impacts to EFH in the Sanctuaries can be minimized.

Fishing regulations

The Council notes that the terms of designation for this proposed action are not changed and do not propose to regulate fishing. Fishing practices, under the control of the Council, include provisions for protecting EFH from fishing. Sanctuary provisions prohibiting seabed disturbance exempt lawful fishing practices, so do not conflict with Council control.

As the proposed rule change includes only those articles proposed for amendment, and given that the "Terms of Designation" are not changed, there is no section stating that the regulation of fishing is under the Council's control. Given the sensitivity of this topic to the fishing community, the Council recommends including additional language and referencing existing laws to explain this point in the final EIS. The Council further recommends that the final EIS clearly state that the Sanctuaries' intent is to respect the Council process and authority on fishing activities, including timely advance consultations for Sanctuary actions that may affect fishing.

Wildlife Protection Zones

The DEIS and revised Management Plans describe a resource protection plan and regulations that might include designating Special Wildlife Protection Zones. The Council understands the intent is to protect areas from cargo vessels and aircraft, and that these zones were previously named "Cargo Vessel Restriction Zones" and "Overflight Restriction Zones." To avoid misunderstanding of the intended restrictions, the names and definitions of these zones should be

clearly articulated in the final EIS. Are there limitations on the types of activities that can be regulated in such a zone? The final EIS should clearly articulate under what circumstances and for what purposes these Special Wildlife Protection Zones can be used in the future. The Council further requests that the Final Rule and Management Plan clarify that these zones will not affect fishing activities.

Management and Enforcement Resources

Given the current uncertainties in Federal funding, the Council has concerns that the resources required to manage this large new area could detract from the protection of existing resources in already designated Sanctuaries. The final EIS should identify what additional enforcement capabilities—beyond existing state and federal law enforcement agencies—will come with Sanctuary designation. An analysis of these questions would be appreciated, with an assurance that the management of existing Sanctuaries will not be compromised.

The Council appreciates the opportunity to comment on the proposed expansion of the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries. The Council looks forward to other opportunities to comment on Sanctuary proposals, and to coordinate and collaborate on shared goals for ocean resource management.

Sincerely,

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