



MAY 29 2001

Exhibit E.1.c  
Public Comment  
PO Box 44 June 2001  
Moss Landing, CA 95039

# Fishermen's Association of Moss Landing

May 29, 2001

Pacific Fisheries Management Council  
2130 SW Fifth Avenue, Suite 224  
Portland, Oregon 97201-4934

Dear Council Members:

## RE: Marine Protected Areas

The Fishermen's Association of Moss Landing, made up of over one-hundred commercial fishermen wish to comment on potential implementation of Marine Reserves, Ocean Parks, and Marine Protected Areas within the Pacific Coast EEZ. Fishermen view closed network areas as a serious concern. The science/environment community committed to "no-take" Marine Reserves could be committed to measuring affects on fisheries from regulatory measures "first" to see if they are working before promoting anything new. The Pacific Ocean is a diverse climate-changing ecosystem and questions remain on the proposed spill over effect to secure a proven benefit to fisheries. There is a growing concern regarding social impacts from MPAs that further restrict commercial fishing.

Develop the art of science to improve knowledge within a culture of the human race, without compromise of individual liberties whereby the public can benefit. This concept is based on the Declaration of Independence, that "all Men ... are endowed by their creator with certain unalienable Rights." The Declaration states, "to secure these Rights, Governments are instituted among Men..." Government's role is not to redistribute the nation's wealth, provide cradle to grave security, nor regulate the activities of citizens; its only function is to "secure" the rights of the people.

1. Through the Council process on MPAs, is the responsibility of socioeconomic guidelines protecting small business from new regulation and closures and economic impacts affecting fishing families. American fishermen are a shadow of our former self.
2. Certification under the (1980) Regulatory Flexibility Act, amended (1996) Small Business Regulatory Enforcement Act, together with the (1993) Executive Order #12866, (Regulatory Planning Review) requires economic impact assessments. Overarching mandates ruled arbitrary or when analytical rigor was held up for scrutiny by courts was found in violation.<sup>1</sup>

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<sup>1</sup> Oral testimony of SBA before the House of Representatives, Committee on Resources, Subcommittee on Fisheries Conservation and Wildlife and Oceans, Oversight Hearing on the Regulatory Flexibility Act, April 29, 1999.  
Midwater Trawlers Cooperative v. Department of Commerce, May 1997, No. C96-1808R (W.D. Wash.). Appealed 9<sup>th</sup> Circuit, April 1999 (Lexis 5953)  
North Carolina Fisheries Association and Georges Seafood Inc. v. Daley, (16F. Supp 2d 647) 1997, US Dist, Lexis 19470 (E.D. Va. 1997); Following Remand, (27 F. Supp. 2d 650) E.D. Va. 1998. & Southern Offshore Fishing Association (et al.) v. Daley, (995 F. Supp. 1411) February 1998 US Dist. Lexis 3478 M.D. Fla. 1998.

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3. According to National Marine Fisheries Service guidelines, an economic impact is significant under the RFA, if at least 20% of the businesses within an effected fishery lose 5% of their annual gross revenue, or 2% or more of the effected parties are driven out of business. Especially any arbitrary or unfair impacts resulting in an industry bought to ruin.
4. Therefore, the Department of Commerce magistrates must consider economic impacts. Fisheries management decisions cannot be merely on a basis of scientific merit, but also on the rigor and timelessness of underlying social science. Fishermen can loose income from this decision making process as they have with regulations.
5. Economic analysis is not limited to MPAs. Endangered Species Act, Marine Mammal Protection Act, Magnuson-Stevens Act fall under provisions of the Regulatory Flexibility Act. NOAA activities such as National Estuarine Research Reserves and Marine Sanctuaries and the Coastal Zone Management also fall under this category.<sup>2</sup>
6. Therefore, there is the burden as a management infrastructure, NOAA/NMFS must increase economists before a planning process. Social and economic interests are not subordinate to the overarching mandates for stewardship and fishermen cannot be responsible for MPAs.
7. Trust and understanding are concerns from fishing dependent communities. There are clear requirements to examine less burdensome regulatory options, including no regulation, a framework for better solutions to any decision making process.
8. A current Senate investigation of significant examples of accountability both under RFA and National Standard 8, of the Magnuson-Stevens Act are underway.<sup>4</sup>
9. The Small Business Regulatory Fairness Act of (1996) enacted into law March 29 1996 has essential aspects of the legislation. (Overview) **Regulatory Compliance simplification:** Federal agencies are required to develop comprehensive guidelines and a well defined process to respond to small business inquires on actions that are required to take or comply with rules established by agencies. **Equal Access to Justice Amendments:** Small businesses are given expanded authority to go to court, to be awarded attorney's fees and costs when an agency has been found to be excessive in it's enforcement of federal regulations.<sup>5</sup>

Establishing an MPA raises serious concern placing more constraints on fishermen, guided by agency framework, may increase jeopardy with the creation of "no-take zones. A large unanswered question exists within the scientific community as to the effectiveness of MPAs (complete no-take zones) on pelagic fish (such as salmon, albacore, squid and swordfish) may be minimal. We believe, proceeding with great caution and only with a proven success or failure method established. Site that MPAs which are proposed, for species effectiveness/impacts and fishing effectiveness/impacts with emphasis on short-term impacts and significant long-term socio-economic impacts on the fishing Community with a mechanism to abandon them in lack of certainty.

Sincerely,



Kathy Fosmark  
Vice-president

<sup>2</sup> Stewardship and Analysis: Preserving Nature and Communities. Report to Commerce, (Page 18).  
*NMFS Guidelines for Regulatory Analysis of Fishery Management Actions* (Revised April 15<sup>th</sup> 1998)

<sup>3</sup> Marine Protection Research and Sanctuaries Act (Sec. 312).

<sup>4</sup> Stewardship and Analysis: Preserving Nature and Communities, (Page 19).

<sup>5</sup> <http://www.sba.gov/regfair/overview.html>