

## PACIFIC FISHERY MANAGEMENT COUNCIL

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October 23, 2002

VADM Conrad C. Lautenbacher  
U.S. Navy Retired  
Under Secretary of Commerce for Oceans and Atmosphere  
Department of Commerce  
14th and Constitution Avenues  
Washington, DC 20230

RE: Improved coordination in National Oceanic and Atmospheric Administration (NOAA)  
consideration of Marine Protected Areas on the West Coast

Dear VADM Lautenbacher:

We would like to bring to your attention a matter of concern that occurred recently which detracts from the spirit of teamwork and orderliness you have been cultivating within the NOAA organization. The incident involves an August 29, 2002 letter from the Office of the Assistant Secretary for Oceans and Atmosphere sent to the California Department of Fish and Game (CDFG) that compromises and may pre-empt the extensive efforts of the Pacific Fishery Management Council (Council) to provide input into the ongoing consideration for marine reserves in areas in and near the Channel Islands National Marine Sanctuary (CINMS).

Over the past 18 months, the Council has worked closely with the CINMS, CDFG, and California Fish and Game Commission staff in considering marine reserves in the Channel Islands area. The Council's role in this matter was based on the effect the state action would have in limiting the reasonable range of alternatives available to the Council for the implementation of complementary reserves in federal waters of the CINMS, a role designated for the Council under the National Marine Sanctuaries Act (NMSA). Since the beginning, all parties have been up-front and collaborative towards the goal of providing each other's input such that all parties are aware of each other's positions prior to any party formally acting to establish a marine reserve. The Council spent considerable time and resources reviewing the basis for marine reserve alternatives and the California Environmental Quality Act (CEQA) impact analysis document, and was in the final stage of formulating a recommendation on eight alternatives being considered; at each step the Council heard from expert advisory bodies and took public comment on the record.

Then to our surprise, we received without notice or expectation, and conspicuously on the eve of the Council meeting scheduled to adopt a final recommendation, a copy of the aforementioned letter. It contained three elements we considered surprises, (1) a NOAA recommendation for one of the eight alternatives, (2) language inconsistent with a socioeconomic analysis concern we believe to be a significant problem, and (3) it was noticeably omissive of any reference to the role of the Council in the process of establishing marine reserves in this area. The existing bureaucratic chain of command whereby the Council is advisory to the National Marine Fisheries Service, which organizationally reports to the NOAA administration, left the Council with the feeling that our extensive efforts may have been

rendered irrelevant. In that the Regional Fishery Management Councils represent the federal government public interface for offshore fishery management matters with the fishing industry, conservation groups, the general public, and regional state governments, tribal governments, and local governments, the Council is concerned all of these groups participating in our input process were also procedurally neutralized. The Council questioned the NOAA process that lead to the letter in question. Further, the Council was left with a question of whether the sequence of relative policy development designated in the Magnuson-Stevens Act and the NMSA for such matters remains intact.

The Council went ahead with their scheduled deliberations on this matter, and have submitted comments that are not consistent with the position in the NOAA letter as to recommended alternative and certain other matters. After the vote on this matter, the Council members tasked me with providing this letter to you.

An important goal of the current NOAA Strategic Plan is to "Improve NOAA's abilities to serve its customers and forge stronger ties with its partners and stakeholders" (page 1 of the Executive Summary). The Council is in a unique partnership with NOAA under the Magnuson-Stevens Act; many stakeholders interact with federal fishery management primarily through the Council. Prior to the August 29, 2002 letter, the process for mutual consideration of marine reserves on the West Coast between NOAA entities had worked relatively well; the CINMS staff have been very professional and responsible during the Channel Islands marine reserves process, National Ocean Service staff have been a pleasure to work with on various issues since the Council Chairmen's meeting in Sitka, Alaska earlier this year, and managers from other West Coast National Marine Sanctuaries have been cordial in their desire for an open discussion of upcoming matters of mutual concern. However, from the Council's perspective, the August 29, 2002 letter did not further the stated NOAA strategic goal for improved working relationships.

Achieving needed marine reserves is a common goal in both the Pacific Groundfish Strategic Plan "Transition to Sustainability" and the NOAA Strategic Plan "A Vision for 2005." The Council offers this letter in the spirit of improving collaborative processes towards common goals and maximizing our operational efficiency. Please advise if we should alter our approach or role in developing recommendations on marine protected areas on the West Coast.

Thank you for your understanding on this matter, and please don't hesitate to contact me should you have any questions.

Sincerely,



D. O. McIsaac, Ph.D.  
Executive Director

DOM:kla

c: Dr. William T. Hogarth  
Council Members  
Mr. Joe Urovitch  
LCDR Matthew Pickett  
Dr. John Coon  
Council Staff Officers  
Mr. James P. Burgess III

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October 8, 2002

Mr. Robert Treanor, Executive Director  
California Fish and Game Commission  
PO Box 944209  
Sacramento, CA 94244-2090

RE: Marine Reserves in Channel Islands National Marine Sanctuary

Dear Mr. Treanor:

The Pacific Fishery Management Council (Council) appreciates the opportunity to work with the California Fish and Game Commission (Commission), the California Department of Fish and Game (CDFG), and the Channel Islands National Marine Sanctuary (CINMS) on issues associated with the potential development of marine reserves in California's Channel Islands. For the past several months, the Council, the Commission, and CINMS have been working to develop mutual understanding on this issue before any initial regulatory decision is made. This process has been a prime example of multi-agency cooperation, and the Council would like to stress our appreciation to you and the Commission for your attention to interjurisdictional collaboration.

As we noted in our letter of July 15 to the CDFG, the Council would like to provide comments for the Commission's October 23, 2002 deliberations on this matter. On August 14-15, 2002, the Council's ad hoc committee on marine reserves policy met in El Segundo, California to discuss the Council's position on the alternatives being formally considered in the Channel Islands marine reserves process. The full Council considered the committee's recommendations, as well as those of its advisory bodies and the public, at its recent meeting in Portland, Oregon. The Council has developed the following comments.

First, we note that successful marine reserves are built on the basis of strong scientific and expert opinion. Accordingly, we are providing three reports from the Council's Scientific and Statistical Committee (SSC) and eight reports made by the other Council advisory bodies. The first SSC report, which was also sent to you on November 29, 2001, is a critique of the scientific basis for evaluating the size of the marine reserves. The second SSC report addresses shortcomings in the California Environmental Quality Act (CEQA) document, and was submitted to the CDFG during the CEQA comment period. The third SSC report provides specific replies to the memorandum from Dr. Vernon Leeworthy and Mr. Peter Wiley responding to SSC comments on the CEQA economic analysis.

Regarding the eight alternatives before you, we offer the following.

**Guiding philosophy.** The Council primarily manages fisheries in federal waters, and supports the rights of states to make decisions pertaining to state waters without substantial Council involvement unless those decisions pose major problems or benefits to federal management. In this situation,

where the Council will be asked by the Marine Sanctuary Program to take specific actions—the scope of which will depend on the precedent set by the State of California—it is important for the Council and its advisory bodies to review the proposed state actions before they are finalized. This provides the Council an opportunity to identify its concerns, thereby increasing the probability that federal implementation will go smoothly and reducing the possibility of conflict between the state and federal levels. Having reviewed the analysis available at this time, we do not find the marine reserve alternatives for state waters of CINMS, taken by themselves, pose major problems or promise substantial fishery-wide benefits in Council-managed areas.

**Consistency with the Groundfish Strategic Plan.** The Council is concerned that state actions that affect federal waters be consistent with the Council's Groundfish Strategic Plan. The Plan's goal regarding marine reserves is "to use marine reserves as a fishery management tool that contributes to groundfish conservation and management goals, has measurable effects, and is integrated with other fishery management approaches" (Groundfish Strategic Plan 2000:10). Six of the eight alternatives contribute to groundfish and groundfish habitat conservation, albeit in a small way from a total stock perspective. We believe that establishing a statistically valid monitoring and evaluation program in the early planning stages is critical to determining any measurable effects. Coordination to date has contributed to integration of any state action with federal fishery management, although we will note later in this letter that shortcomings in the CEQA document hinder the prospects of full integration with marine reserves in adjacent federal waters.

**Precedence.** The Council is aware that considerations to establish marine reserves are gaining momentum in California, Oregon, and Washington, and views marine reserves as a potential management tool. The Council fully expects to see more proposals for marine reserves along the West Coast and regards the potential reserves in the Channel Islands as a precedent for the future. Please consider adopting clear and distinct objectives, a strong plan for monitoring and evaluation, and a credible enforcement program as prerequisites in order to set a strong precedent for future marine reserves on the West Coast.

**Interaction with fishery management plans.** The Council has reviewed the interaction of the proposed marine reserves with existing and future federal fishery management plans (FMPs). The Council currently has FMPs for groundfish, salmon, and coastal pelagic species, and a draft FMP for highly migratory species. Each of these includes a description of essential fish habitat. At this point, the eight alternatives proposed in the CEQA document appear to offer no substantial impairments or benefits in regard to stock productivity and total harvest opportunities in Council-managed fisheries. This is because the relative area affected by the marine reserves is small, and because Council management is determined by the optimum yield (OY), which takes into account maximum sustained yield (MSY) and rebuilding plans on a stock-specific basis. However, the Council recognizes there will be notable local effects on habitat and resident species, as well as on harvest opportunities in the Channel Islands area. In addition, the importance of marine reserves in the Channel Islands may increase if a broader network of marine reserves is developed.

In the proposed alternative outlined by the CEQA document, fisheries for pelagic species are allowed in some areas otherwise closed to fishing. The CEQA document defines pelagic finfish as northern anchovy, barracudas, billfishes, dolphinfish, Pacific herring, jack mackerel, Pacific mackerel, salmon, Pacific sardine, blue shark, salmon shark, shortfin mako shark, thresher shark, swordfish, tunas, and yellowtail (p. 5-23). The Council feels that should a marine reserves alternative go forward that exempts these species for fisheries, it should also include all pelagic finfish species managed by the Council in its FMPs. In this regard, pelagic and bigeye thresher shark should be added to your list of pelagic species.

**Essential fish habitat.** Six of the eight marine reserve alternatives would contribute to meeting the Council's federal mandate to protect essential fish habitat for Council-managed species.

**Cumulative impacts.** Should marine reserves be established in the Channel Islands, there are likely to be substantial cumulative impacts for both commercial and recreational fisheries when the reserves are combined with the closures on the continental shelf recently adopted by the Council, the closure of the Cowcod Conservation Areas, and possible future state actions to establish additional closures. Seasonal fishing area closures to protect birds are also under consideration for the Channel Islands. These combined impacts will undoubtedly result in shifts in fishing effort, resulting in increased interactions with both the nearshore fish stocks in the remaining open fishing areas and the current participants in those fisheries. It is possible the OY for some Council-managed fisheries may need to be reconsidered.

We would also note the significance of these reserves for Council-managed fisheries might increase if a network of reserves is created along the coast. While a single reserve within a network might have a small effect, the collective impacts of multiple reserves on federal fisheries could be significant. Incremental consideration of marine reserves should not lose sight of synergistic impacts, either adverse or beneficial.

**Recommendations.** The Council offers no recommendation for a particular alternative, as the eight alternatives do not appear to substantially harm or benefit Council interests in the long term. However, with regard to reopening part of the Cowcod Conservation Area (recommended under the proposed project), we would like to reiterate the need to keep that area closed in order to protect overfished groundfish stocks, particularly cowcod and bocaccio; please also note our recommendation regarding exclusion for pelagic and bigeye thresher shark should pelagic species exemptions be granted.

Although we have not recommended a Council preferred alternative within state waters, we must note that due to the analytical shortcomings in the CEQA document identified by the SSC and other Council advisory bodies, we cannot definitively evaluate the suite of proposals to develop a preferred alternative for the federal water areas from 3-6 miles and beyond. We continue to be troubled by the shortcomings the SSC identified in the socioeconomic analysis included in the CEQA document. In order to improve the analysis, it is important that errors and misinterpretations of the literature be corrected, that sources of uncertainty in the analysis be explicitly identified, that all conclusions be carefully substantiated, and that monitoring, evaluation and enforcement costs be estimated. These inadequacies need to be satisfactorily addressed before the Council can consider the federal waters portion of the Channel Islands reserves. It is possible a National Environmental Policy Act (NEPA) analysis may identify impacts not covered in the CEQA analysis. Therefore, we cannot state with certainty that if the state implements a particular marine reserve alternative in state waters, we will recommend the accompanying closure of areas in adjacent federal waters.

Regarding the implementation process, we would like to outline two options regarding the staged implementation of reserves in this area for your consideration. Under both, marine reserves would be implemented in a two-step process, in which the first step would be for the state to implement marine reserves in the 0-3 mile zone and the second step would involve federal areas outside 3 miles. In the first option, we recommend conducting a thorough monitoring, research and evaluation program for five years after state and federal implementation of some *initial stage* of a selected alternative is completed, then proceeding to *full implementation of the selected alternative* guided by the knowledge gained during the first stage of the process. The second option is the approach recommended in the CEQA document. This approach would fully implement a particular alternative in state water areas. The complimentary marine reserves in federal waters would follow, in a process that would take approximately two years.

Finally, we would like to reiterate that from the Council's perspective, monitoring, evaluation, and enforcement are critical aspects of both of these alternatives, and of marine reserve efforts in general. Only through monitoring and evaluation will we understand the effects of marine reserves on fish populations and fisheries. The Council's Scientific and Statistical Committee emphasizes that proper monitoring and evaluation plan should be developed before marine reserves are established. The plan should incorporate monitoring requirements into reserve design; should include specific criteria tailored to the goals of the marine reserve; and should provide a statistically valid basis for evaluating whether these criteria are being met. Clearly, these efforts will require sufficient funding and staffing. This knowledge is vital if marine reserves are to gain momentum and acceptance as a fisheries management tool.

Again, thank you for the opportunity to comment. Our Executive Director, Dr. Donald McIsaac, is available to speak to the Commission about the Council's views regarding marine reserves in the Channel Islands and other related issues, such as the Council's actions to protect overfished rockfish. Please coordinate with him regarding appropriate scheduling.

Sincerely,



Hans Radtke  
Chairman

c: Council members  
Dr. Donald McIsaac  
Council staff officers  
Council committee chairs  
Mr. Orlando Amoroso  
Ms. Kathy Fosmark  
Mr. Duncan MacLean  
Dr. Robert Lea  
Mr. Sean Hastings  
Mr. Matthew Pickett  
Dr. Robert Leeworthy  
Mr. Peter Wiley

JDG:rdh

Enclosures