



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

DEC -7 2005

Ms. Jennifer Hagen
Northwest Indian Fisheries Commission
P.O. Box 1942
Forks, Washington 98331

Dear Ms. Hagen:

Thank you for your cosigned letter regarding the use of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) or the National Marine Sanctuaries Act for fishery management issues within national marine sanctuary (NMS) boundaries.

In my October 19, 2005, letter to the Pacific Fishery Management Council (Pacific Council) (enclosed), I informed the Pacific Council that in all but one instance, the Magnuson-Stevens Act is a viable approach to meet fishing related sanctuary goals and objectives for Cordell Bank, Monterey Bay, and Channel Islands National Marine Sanctuary management plans. However, one aspect of the Channel Islands NMS goals and objectives necessitated a no-take zone in the water column. We determined this fishing exclusion zone could not be implemented in whole under the Magnuson-Stevens Act through the current Pacific Groundfish Fishery Management Plan (FMP) amendment. The National Oceanic and Atmospheric Administration (NOAA) will proceed under the National Marine Sanctuaries Act to propose amending the sanctuary designation document to allow establishment of no-take zones in the Channel Islands NMS. National Marine Sanctuaries Act actions relative to fishing will not be taken for the Monterey Bay NMS, and the Cordell Bank NMS because the goals and objectives can be met using the Magnuson-Stevens Act. NOAA will, on a case-by-case basis, with input from regional fishery management councils, interested Tribes, and sanctuary advisory councils, determine the most appropriate statutory vehicle (Magnuson-Stevens Act, National Marine Sanctuaries Act, or both) to fulfill sanctuary goals and objectives regarding fishing-related actions.

I understand your concerns regarding changes to designation documents for sanctuaries. The National Marine Sanctuaries Act at 16 U.S.C. 1434(e) require a review of management plans every five years that may result in proposals to revise management plans and regulations as necessary to fulfill the purposes and policies for sanctuaries. I encourage the Tribes to work with us in these reviews, especially in sanctuary areas overlapping usual and accustomed fishing grounds.

The review process for the Olympic Coast NMS management plan is in the early stages. It is uncertain whether it will have any implications for fisheries management. I understand tribal representatives have met with Olympic Coast NMS staff and leadership from the National Marine Sanctuary Program to discuss more formal tribal participation in the review process along with other co-managers of marine resources, such as the State of Washington and NOAA's National Marine Fisheries Service (NMFS). I support the consultation of states and tribes as



NOAA addresses resource issues in the Olympic Coast NMS. NOAA takes its trust responsibilities to tribes very seriously, and I have asked my staff to undertake government-to-government discussions on any aspect of this review that may in any way affect treaty Indian fishing and hunting rights.

I want to reiterate my commitment to working with treaty Indian tribes on all of NOAA's actions. We appreciate your interest and involvement in NOAA's activities.

Sincerely,

A handwritten signature in cursive script, reading "Conrad C. Lautenbacher, Jr.", positioned above the typed name.

Conrad C. Lautenbacher, Jr.
Vice Admiral, U.S. Navy (Ret.)
Under Secretary of Commerce for
Oceans and Atmosphere

Enclosure



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Dr. Donald McIsaac
Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220-1384

OCT 19 2005

Mr. Donald Hansen
Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220-1384

Dear Sirs:

Over the past year, the National Oceanic and Atmospheric Administration (NOAA) has made significant progress in its review of management plans governing the Cordell Bank, Monterey Bay, and Channel Islands National Marine Sanctuaries, and in considering establishment of marine reserves and marine conservation areas in the Channel Islands National Marine Sanctuary. As part of the process, we have sought the Council's views, and in particular, the Council's recommendations for regulation of fishing to meet the goals and objectives of each Sanctuary.

I appreciate the Council's work in developing a proposal for regulating fishing for all three Sanctuaries, as reflected in the proposal adopted at its June 2005 meeting. NOAA's National Marine Sanctuary Program and NOAA's National Marine Fisheries Service have carefully reviewed and studied the Council's proposal. Based on that review, NOAA finds in all but one limited instance, the Council's proposal to regulate fishing under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) is a viable approach for meeting the Sanctuaries' goals and objectives under the National Marine Sanctuaries Act (NMSA). While any MSA regulatory action must still undergo the administrative process required by the MSA and Administrative Procedure Act and receive final approval from the Department of Commerce, NOAA supports the Council's pursuit of this approach as outlined below.

Cordell Bank National Marine Sanctuary

In its June 2005 action, the Council proposed prohibiting use of all bottom-contact fishing gear within a 50-fathom isobath surrounding the Cordell Bank. Based on our review of the existing factual and scientific evidence, there is a credible basis to propose issuance of these regulatory prohibitions under the MSA. NOAA supports this approach and therefore will not propose amending the Sanctuary's designation document to allow NOAA to regulate fishing under the NMSA.

THE ADMINISTRATOR



Monterey Bay National Marine Sanctuary

As part of its ongoing review of this Sanctuary's management plan, NOAA is considering expansion of the Sanctuary's boundary to include Davidson Seamount. Davidson Seamount is a deep water seamount, the peak of which is at a depth of approximately 670 fathoms (4,000 feet). In order to protect the Seamount, the Council proposed prohibiting use of all fishing gear at depths below 500 fathoms in the Davidson Seamount area (i.e., at depths below 3,000 feet). Based on our review of the existing factual and scientific evidence, there is a credible basis to propose issuance of these regulatory prohibitions under the MSA. NOAA supports this approach and therefore will not propose amending the Sanctuary's designation document to allow NOAA to regulate fishing under the NMSA.

To address scientific collection and monitoring or educational collection not restricted under the MSA, NOAA anticipates proposing an NMSA regulation prohibiting such collection below 500 fathoms in the Davidson Seamount area without an NMSA permit. While the designation document for the Monterey Bay National Marine Sanctuary will need to be amended to include Davidson Seamount within its boundaries, a regulation affecting scientific and educational collection will not require amendment of the designation document.

Channel Islands National Marine Sanctuary

With respect to the Channel Islands National Marine Sanctuary, the Council proposed prohibiting fishing throughout the proposed marine reserves and marine conservation areas identified through the multi-party collaborative process. Based on our review of the existing factual and scientific evidence, there is a credible basis to propose issuance of regulations prohibiting the use of bottom-contact fishing gear in these areas under the MSA. NOAA supports the Council's pursuing these regulatory prohibitions under the MSA.

With respect to regulation of fishing throughout the remainder of the water column, however, there is an insufficient factual and scientific basis to support pursuit of this aspect of the Council's proposal under the MSA. The Council also recommended NOAA explore filling any regulatory gaps with regulations by the State of California. California regulations, however, could not fill the entire gap because California would have no jurisdiction over vessels of other states that fished outside of state waters and did not land in the State of California. Because of these uncertainties, NOAA will pursue regulatory action under the NMSA to establish limited take or no-take zones throughout the remainder of the water column, and will propose amending the sanctuary designation document to allow establishment of no-take zones in the marine reserves and limited take in the marine conservation areas. NOAA therefore invites the Council to prepare draft regulations for fishing under the NMSA for this purpose by the current November 23, 2005, deadline. In order to facilitate the Council's development of proposed regulations, NOAA will make personnel from NOAA's Fisheries Service and National Marine Sanctuary program available to work with the Council. Mark Helvey and Chris Mobley will contact you the week of October 24, 2005, to discuss how NOAA can best support you in this effort.

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I want to again extend my sincere appreciation for the hard work the Council and Council staff have contributed toward the process of review of the sanctuary management plans for the Cordell Bank, Monterey Bay, and Channel Islands National Marine Sanctuaries, and creation of marine reserves and marine conservation areas in the Channel Islands National Marine Sanctuary. We look forward to continuing our collaborative efforts as we complete these processes.

Sincerely,



Conrad C. Lautenbacher, Jr.
Vice Admiral, U.S. Navy (Ret.)
Under Secretary of Commerce for
Oceans and Atmosphere