

Informational Report 1
Letters Regarding Special Marine Protected Area Workgroup
March 2007

February 2, 2007

Dr. Holly Price
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, CA 93940

RECEIVED

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PFMC

Subject: Structure and Function of the SMPAWG

Dear Holly:

We, the undersigned members of the Special Marine Protected Area Workgroup (SMPAWG), who represent either commercial or recreational fishing, or communities that have an interest in those activities, are writing to voice our strongest concerns about the structure and function of this workgroup. Simply put, we feel as though we are only tokens in this process, and our real concerns are not respected. We also question whether the best available science for the consideration of the utility of MPAs will be utilized. It feels to us as though the only purpose of our presence is so that the MBNMS can claim it has "worked with fishermen."

Although the first part of this letter contains a lengthy complaint, the latter part makes constructive suggestions about how this process can be improved to be a more fair, open, and science-based process.

A Breach of the SMPAWG Process

First, let us tell you in a very straightforward manner that we viewed the way in which MBNMS staff, which included you representing NOAA, participated in the State's Marine Life Protection Act process to be contrary to the ground rules of our SMPAWG, and contrary to the promise made to the fishing community at the time of Sanctuary designation, that the Sanctuary would not impose new fishing regulations on our already heavily regulated industry. At the time of the MLPA stakeholder process, our SMPAWG had only agreed on a general outline to evaluate the need for MPAs in Sanctuary waters. We had not agreed on any sites for MPAs. It would have been therefore, appropriate for the MBNMS to speak to those general guidelines during the State's process. However, MBNMS staff actually advised the State as to which areas that NOAA wanted to see put off-limits to fishing. The Sanctuary was a leader in what became known as "Package #3," that created a network of MPAs. We feel this was highly inappropriate, as the Sanctuary had no position on specific locations because its workgroup had not yet completed its work. It also violates of the goodwill that we brought to this process. We would like to know if you made the decision to represent NOAA and the NMSP in this way yourself, or if you were directed to do so by a superior. If so, who? We hope that the MBNMS will not claim that the public scoping process or the vote of the SAC has given you, NOAA, or the MBNMS a mandate to create new MPAs. Our letter to you of March 6, 2003 is attached and discusses any claims of such a mandate.

Additionally, we have come out of this State Marine Life Protection Act process with a strong sense that an agreement, either verbal or written, informal or formal, has already been made with the State for placing NOAA MPAs adjacent to those adopted by the State, at least in some locations. These two events make it a “fait accompli” that NOAA will have MPAs, and take away more prime fishing grounds. This negates the first and most important question for us in this SMPAWG process...to determine the need, if any, for new MPAs within the Sanctuary Region. Please confirm or deny if any such agreement has been made with State officials.

Workgroup Composition

We have had longstanding concerns about the makeup of the workgroup. The makeup of the group relates to the decision making process, which we will comment on later in this letter. Regarding the makeup, the biggest problem is that it does not contain the right mix of expertise. We think that its fundamental task is confused: is it supposed to be a stakeholder group? Is it supposed to be an expert panel? Is it supposed to be an adaptive management exercise with both science and stakeholder participating? It appears to be none of these things and we wonder what is it supposed to do.

Our answer as an observation about how this process has gone so far, will reveal the depth of our skepticism. It seems to us that the function of this group is to create a token space where stakeholders (us primarily) can participate, but without any real power. We think that the decisions for MPAs will be made by the Sanctuary Advisory Council as advice to the Sanctuary Program, or if they are not unanimous, then it is made by Senior Sanctuary Staff. The Sanctuary will never hear a unified response out of this working group answering the question, “Are additional MPAs needed in the Sanctuary?” Given the current SMPAWG structure, we are also unlikely to agree about the location for new MPAs.

At minimum, one of the three “science” oriented seats should be dropped, and instead a qualified fishery biologist experienced in fish population dynamics, modeling, and existing fishery management measures, should be added to the group. We request that we be able to pick who will fill this role.

Several seats should be dropped, such as the diving seat, the “research PRBO” seat, the “coastal businesses and ecotourism”, and “education” seats as we are only concerned with federal waters, three or more miles offshore.

Another problem is in the socioeconomic seat, wherein the Sanctuary has also contracted with this person to provide socioeconomic work. This is a breach of scientific ethics, in our opinion, as the same person should not be in both roles. (This is also a good example of why we think the purpose of this workgroup is confused.)

What is the role of the Sanctuary officials who participate in this workgroup, yourself included, who are managing this workgroup process? It appears that the Sanctuary, who is ultimately a stakeholder in this process, is also in charge of the process. This cannot

lead to an unbiased decision, and certainly is a major factor contributing to virtually all of the complaints that we have identified in this letter. Ideally, this group should be managed by a completely non-aligned person having no connection with and owing nothing to any stakeholder group.

All of these problems and potential solutions are actually band-aids instead of a real solution. We will outline later in this letter how we think this workgroup needs to be comprised and how it should function.

Decision Making Process is Faulty

As touched on in the discussion of the makeup of the stakeholder group, the decision making of this workgroup is not one of required consensus. Instead, the group appears to be designed so the consensus will never be reached, nor will it be reached by the Sanctuary Advisory Council. Therefore the decision will be in the hands of Sanctuary Management, who are non-elected federal staff. This is a major reason why the fishing interests on the working group do not feel as though they have any real say in the outcome of this process. This is true for both the broad question as to whether any additional MPAs are needed within the Sanctuary region, and also for specific questions of the locations of future MPAs, needed or not. What assurance can you provide that if the fishing community strongly objects to additional MPAs in federal waters being placed offshore of points, such as Pigeon Point, Point Sur, Point Purisima, Point Ano Nuevo, and Point Piedras Blancas, that this would have any effect on the outcome of this process? This decision-making needs to be one of consensus with clearly defined goals.

Regarding the goals, we should also remark that we withdraw our support for the workgroup action plan that was brought to the Sanctuary Advisory Council in 2003. This is primarily due to the Sanctuary's advocacy in the State Marine Life Protection Act process, and its failure after four years of meeting, for this process to deal with the question of the need for any future MPAs. This should be the first item of business, and to put it off is to waste taxpayer money. Please communicate the withdrawal of our support for the SMPA Action Plan to those working on the Draft Management Plan.

More Flawed Science?

We have already suffered through some really poorly done science in the development of the Marine Life Protection Act science guidelines and MPA evaluation criteria. These guidelines and criteria have not held up under a professional peer review. We wonder how the information brought forward by the State in their science process, as well as the peer review, will be evaluated in this Sanctuary MPA process? It is our belief that the conclusions found in the Walters/Hilborn/Parrish Peer Review are applicable to federal waters. A group like the PFMC's Science and Statistical Committee needs to reconcile this issue. We note that the Sanctuary program has no such equivalent to the SSC, nor does it have any explicit requirement to base its decisions on the best available science.

Also relevant to this question of good science, is the "secret" science meeting that the Sanctuary and the National MPA Center hosted. We use the term "secret" because the

meeting date and agenda for this meeting were not made available to us, other SMPAWG members, or to the general public. Only selected people were invited. In fact, public members who wished to attend were specifically told they could not.

In your announcement of this meeting to the selected attendees, the purpose of the meeting was “to explore the physical and biological characteristics of offshore habitats and how those characteristics influence the design of MPAs in the deeper portion of the Sanctuary, outside of state waters....” This certainly sounds like the public’s business! Further, it was described to the scientists in your e-mail that “The group has articulated its goals in detail, compiled and reviewed spatial data (both physical and biological data layers), and with the help of a web-based MPA decision support tool, has now identified specific geographic areas of interest in federal waters for further consideration.” This gave the impression that the SMPAWG has reached some agreement on the potential location of federal MPAs, which it has not.

One grave concern about this science team meeting is the fact that the best available science on MPA processes emphasize that stakeholders must be involved in all phases of MPA design, location, and goal setting. By specifically excluding stakeholders from this group, the science process has been violated. Another concern is that any science team must have a fair balance of disciplines, and it must be recognized that some scientists also are stakeholders, and may not be completely objective about the use of MPAs.

We also have a deep concern regarding the development of socioeconomic products. Just like in the MLPA process, a professional peer review was done on the work products developed by Ecotrust. We note that Ecotrust has been retained by the Sanctuary to use the same methodology as in the State process, but as applied to federal waters. What assurance can the MBNMS give that the insights developed in the professional peer review will be applied to Ecotrust’s work? What kind of peer review does the Sanctuary Program envision for the Ecotrust work products? We think you will find there is great skepticism amongst the fishing community regarding Ecotrust’s methodology and interview practices.

Please don’t expect us to sit on our hands while more alleged science is produced, using the same model as the MLPA.

Ecosystem Protection Mandate

So far this SMPAWG process has heard much about the Sanctuary’s ecosystem protection “mandate.” However, there’s been no discussion about what, if anything, is required that the Sanctuary do with this “mandate”. Our reading of the National Marine Sanctuary Act shows that it does not require the Sanctuary to create MPAs. Nor is there any science that says that fishing necessarily creates harm to habitats. We want the MBNMS to publicly acknowledge that MPAs are not required to fulfill the NMSA. Again, our letter of March 6, 2003 is attached and speaks to this point.

Please Answer the Fundamental Question

As referenced above, the workgroup has never really engaged in a systematic way to answer the fundamental question "Are new MPAs needed within the MBNMS?" This question can probably be addressed as sub questions: Is overfishing occurring? Are there any real threats or is actual damage occurring to marine habitats? Are there any fish stocks or other Sanctuary resources that need further rebuilding or protection efforts? Is the marine ecosystem healthy within the Sanctuary region? What is the degree to which the Sanctuary's other rules, such as in water quality protection, public education, prohibition against oil and gas development, etc., contribute to ecosystem health? These questions have never been addressed by the workgroup, and that is amazing since we've been meeting for over four years. As you know several of us have asked repeatedly that this question be agendized and finally dealt with. Your response has always been that we would deal with it when we got to discussing specific areas. This is not satisfactory. In fact it makes no sense to wait to talk about specific areas because the question of need will be answered on a larger scale.

Related to this is our sense that the significant actions taken by the PFMC, the State, California Legislature, and the Fish and Game Commission, will never be given credit for their conservation/protection value. Certainly in our four years of discussion they have been disregarded.

We also must point out that by our calculations, in excess of 40% of the MBNMS (including the Davidson-Seamount and new State MPAs) already are MPAs with substantial fishing restrictions, if not outright bans. This includes the Federal Essential Fish Habitat areas and the Rockfish Conservation Area, created by the PFMC. 40% of a 5,800 square mile Sanctuary, that is itself an MPA, is an extremely large area.. This certainly gives weight to the question of whether or not there is a need for additional MPAs.

Recommendations for an Improved Process

We believe the best way to deal with these questions, including decisions on specific MPA locations if any, and goals and objectives - should discussion lead to that, would be to create an adaptive management workshop structure. Adaptive management workshops have been used successfully to work through a number of contentious resource management/allocation issues. In this process the workshop would be lead by a skilled independent facilitator. We would like to have significant input into the selection of this facilitator. The make up of the workshop members would be primary stakeholder and scientist based.

Our initial suggestion would be that the workgroup be composed of six marine biological scientists, three of whom would be experienced fisheries biologists knowledgeable in population dynamic modeling and fishery management measures. Additionally five fishermen, three of whom would be commercial and two recreational would be selected. We, and/or the major fishing organizations for this area, should be tasked with selecting these representatives and at least three of these six biologists. We would also choose one representative of the harbor communities. Additionally two competent socio-economists

would also serve; one of whom would have work dedicated to developing information for the consumptive sector. The other would develop information for the non-consumptive sector. We would choose one of these socio-economists. The MBNMS is represented by one staff member who would in turn represent the requirements and language of the National Marine Sanctuary Act. Lastly there would be one or two representatives from the conservation community selected by the conservation-working group to represent other conservation views that might not be represented by the National Marine Sanctuary Act requirements.

This group would operate in a series of two day all day workshops and begin with evaluating the MPA action plan already developed. From this specific goals would be identified followed by a gap analysis aimed at identifying what areas may be missing from existing protections. As one of its first tasks, the group would fully assess the conservation value of existing State and Federal fishery management measures. It would also fully assess the conservation and ecosystem health protections already provided by the functions of the National Marine Sanctuary. The Sanctuary, of course, already is a 5,800 square mile MPA (including the Davidson Seamount).

If the gap analysis reveals a need for additional MPAs, various locations and regulations for those locations would be modeled to show how on an ecosystem wide basis those MPAs would perform relative to all other protection measures in existence, or likely.

Ultimately any specific locations for new MPAs would be agreed upon by consensus of this group.

If this group performs as outlined above, the Sanctuary would have something to hang its hat on: An MPA plan that has a scientific basis and support of the fishing community, to be presented to the Pacific Fisheries Management Council. This of course would still be a recommendation to the Council. We do not want the Sanctuary to change its Designation Document. The Council would submit the MPA plan to its SSC for analysis and would be free to adopt, modify or reject our MPA recommendation.

What is our alternative?

If we cannot come to terms to make this workgroup a fair and science based process, then our alternative will be to drop out of the MBNMS Workgroup and start our own, based roughly on the adaptive management model described above. This is not our goal, and it would be a lot of work for us, but a science-based MPA assessment/proposal based on the goals of the National Marine Sanctuary Act that has support by the fishing community, might well resonate with the Pacific Fishery Management Council.

Several of us are also Sanctuary Advisory Council Members

Many of us signing this letter are on the SAC, and/or are reapplying for our SAC positions. We are aware that several past SAC members who openly criticized MBNMS actions were not re-appointed to the SAC. We hope this phase of Sanctuary management of the SAC composition is over, and that SAC appointments will be based on the degree

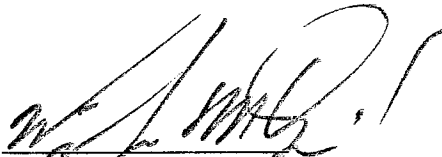
to which constituent support is evident, and not on whether an individual has been outspoken on Sanctuary matters.

Thank you for considering our comments, criticisms, and constructive suggestions. We request that the February 8, 2007 meeting be devoted to resolving these issues and that you provide this letter to all SMPAWG members.

Sincerely,



Tom Canale
SAC Commercial Fishing Rep



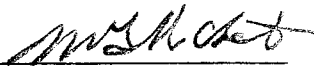
Wilson Quick
Commercial Fisherman



Howard Egan
SAC Recreational Fishing Rep



David Crabbe
SAC Commercial Fishing Rep (Alt)



Mike Ricketts
Commercial Fisherman



Steve Scheiblaue
Coastal Community/Fishing
Infrastructure Rep

C: The Honorable Sam Farr, Representative, 17th Congressional District
John H. Dunnigan, Director NOS
William T. Hogarth, Director, NMFS
Ryan Broddrick, Director, California Dept. Fish & Game
Bill Douros, NMSP West Coast Regional Director
Karen Grimmer, Acting Superintendent, MBNMS
Donald Hansen, Chair, PFMC

March 6, 2003

Holly Price, Ph.D.
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, CA 93940

Dear Holly:

We the undersigned members of the MBNMS MPA Working Group want to communicate in the clearest terms to the Sanctuary Program that we do not support the position that MPA's, including Marine Reserves, are somehow REQUIRED or NECESSARY for the Sanctuary Program to fulfill its legal responsibilities.

When we pressed this point at our recent MPA workgroup meeting, the response from you and several other panel members was twofold. First, that some 7000 scoping process comments supporting that there be MPA's within the Sanctuary somehow made it required that the Sanctuary adopt this position. Secondly, you stated that the Sanctuary Advisory Council in voting to move the issue of Marine Reserves forward as an issue to be worked on during the Plan Review Process, had also mandated that MPA's and/or Marine Reserves would now be required to be created within the Sanctuary boundaries.

We believe that both of these rationales are seriously flawed. Regarding the 7000 responses, we all recall very well the numerous times Sanctuary Management was questioned as to whether they would value quality responses over quantity. We were told that the Program would value quality over quantity comments. The very issue that caused this question to be raised was concern that the general public, who has no particular expertise in this issue, would be used to generate an electronic or form-type letters to "save the ocean through MPA's". We also know that quality comments were heard from multiple public agencies and by a petition by 1400 direct users of the Sanctuary Program, that the Sanctuary Program should not enter into new regulations or zones that had an effect on fishing unless the Program worked cooperatively and knew that it had the support of the fishing community. It should be noted that the comments did not say that the fishing community would not embrace certain types of MPA's to solve identified problems. Lastly, and most importantly, we do not see anywhere in the National Marine Sanctuary Act, nor in our Management Plan, any provision that allows the Sanctuary Program to make important decisions like this based on public opinion or for other than scientifically valid reasons.

The second rationale provided to attempt to justify the Sanctuary decision to require MPA's in the Sanctuary is based on a vote of the Sanctuary Advisory Council. This is also gravely flawed. Numerous times Sanctuary Management has been queried about the Plan Review issues, and when we would be notified as to the recommendations Sanctuary Management would make. Consistently during this process, we were told that the SAC and the Sanctuary were simply identifying issues and creating issue statements to move forward, and that the actual product of the working groups would be to develop actions to address the identified issue. We do not believe that the Sanctuary Advisory Council, as a whole, understood in any way that they were voting to mandate MPA's within the Sanctuary when

they prioritized the SAC issues. Indeed, two of the members of the SAC are among the signers of this letter who did not have that understanding. We have attached the Issue Statement that the SAC voted to prioritize the marine reserves question and move it forward in the process. To quote: *"The MBNMS will also develop a framework to address the need for, and if necessary, location, and type of marine reserves in the federal waters of the Sanctuary"*. Further, as you well know, some of us have great concerns over the composition of the SAC and the representation selection process, which might well affect such a vote. But even more importantly, we would submit that the topic of MPA's and their benefits, limitations, and unintended consequences, is highly complex, and the SAC as it is presently constituted is simply not qualified to make this decision.

It is our position that the question of creating MPA's, including full Marine Reserves, within the Sanctuary is certainly one which deserves consideration; however, what needs to occur are very clear condition statements that will then put into context what problem it is that we are trying to solve. Otherwise, the quote that has been batted around for several years regarding Marine Reserves remains true – "Marine Reserves are a solution looking for a problem." The problem is not one of public opinion. The problem needs to be what exact fishery or habitat issues exist, (i.e., real damage, real impacts, etc.,) that have not and cannot be been addressed by traditional fishery management measures. With a complete and unbiased assessment of the state of the resources in place, our process could then unfold as identifying MPA or other strategies that would solve these problems. Fishermen are more than willing to help the Sanctuary Program with that part of it; however, fishermen are not willing to have MPA's shoved down our throats based on vague concepts and public opinion. "Ecosystem Protection" is an example of a vague concept. Could not any action to exclude the public from the Sanctuary be justified as "ecosystem protection"? Again, we believe that the Sanctuary Program needs to identify specific problems and be open to a full discussion of ALL options as to how to solve them.

The Sanctuary has often referred to its expertise in "multiple-stakeholder consensus processes". Please don't start our process with a statement requiring MPA's when there is no stakeholder consensus for this. We want this letter to stand in the record of these proceedings, so that there is no illusion of what is supported or not supported during this process.

Sincerely,

Tom Canale

Mike Ricketts

David Crabbe

Howard Egan

Peter Grenell

Steve Scheiblaue

Don Dodson