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Dear Council Members

On behalf of the Alliance of Communities for Sustainable Fisheries (ACSF), we feel we must comment in some detail on the letter from Dan Basta to Mike Carrier of the Oregon Governor's Natural Resource Office.

Mr. Basta refers to the fact that OPAC heard from "a single member of one user group (commercial fishermen) from one Sanctuary community." Perhaps Mr. Basta is referring to the testimony that Kathy Fosmark, Co-Chair of the Alliance of Communities for Sustainable Fisheries (ACSF) gave to OPAC. Mr. Basta's inference is that concerns over how the MBNMS operates are limited to single persons. However, this is far from being merely one person's opinion. For fishing issues, the ACSF has representatives in all six of the ports that relate to the Sanctuary in Central California, and represents about 900 fishing families throughout the Central Coast. It speaks, therefore, with a very broad voice.

The fact is that the Sanctuary's relationship with the fishing community in Central California could hardly get any worse. There are many reasons for this, but one of the most recent relates to the Marine Protected Area (MPA) movement in California. Fishermen view the Sanctuary's leadership in this California process in recommending to the state that specific productive fishing areas be placed off-limits to fishing, as a breach of trust. It is well known that a promise was made to fishermen, in exchange for their support for sanctuary designation, that the Sanctuary would not create fishing regulations or be an additional agency that would try and put fishing families out of business. There is a deep level of anger within the fishing community about this. Fishermen are also concerned that the MBNMS's MPA Work Group process is not fair to them and not scientifically based. Fishermen feel like they're being used by the Sanctuary Program just so the Sanctuary can say they've worked with fishermen. Our members have attended a number of these Sanctuary MPA Workgroup Meetings, and it's our impression that if they seriously objected to some part of the process, or a specific potential MPA, that it really wouldn't matter. We sense that the MBNMS is on a path to change our Designation Document to give them the power to regulate fishing. It's our opinion that the people of Oregon should know that if

they get a Sanctuary, there is a very high likelihood that it will impose federal no-fishing zones offshore of the Oregon coast. Oregon fishermen will have little say in this decision.

The promise made to the fishing community that the Sanctuary would not create fishing regulations is very well known in this region. It is so well known that the Association of Monterey Bay Area Governments, the Cities of Monterey and Morro Bay, the Monterey County Board of Supervisors, the Moss Landing and San Mateo County Harbor Districts, the Santa Cruz Port District, the Monterey Peninsula Chamber of Commerce, and numerous other associations, have all gone on record that the MBNMS should not change its designation document to grant it the authority to create fishing regulations.

Regarding Dan Basta's letter, he states:

*"unlike conventional fisheries management aimed towards maximizing sustainable commercial and recreational fishing, the National Marine Sanctuary Act regulations are designed to protect ecologically and biologically important areas of nationally significant marine ecosystems, or shipwrecks."*

This is a common fallacy we keep hearing over and over again. The Sanctuary Program is claiming that they have a superior role to manage the ecosystem, as opposed to the actions of NOAA Fisheries or the Pacific Fishery Management Council (PFMC). That may have been true to some degree in 1992 when the Monterey Sanctuary was founded, and before the Magnuson-Stevens Act (MSSFCA) was substantially upgraded. However, NOAA Fisheries and the regional Councils have been steadily moving towards ecosystem-based management when they create regulations. Admiral Lautenbacher, head of NOAA, has directed all NOAA agencies, not just the Sanctuary Program, that they all will embrace ecosystem-based management. Further, ecosystem health cannot be considered without considering the impacts of rules on the entire ecosystem. If the Sanctuary puts in no-fishing zones or other regulations, it will have all kinds of effects on the ecosystem, as fishermen change behavior, displace their effort, and so forth, in response to it. The claim that there's a difference between the NMSA and MSSFCA, we think, is not founded on fact. The fact is, for ecosystem based management to occur, the goals of both the NMSA and the MSSFCA must be considered in Sanctuary waters. Proposed action must be based on the best science, and the action proposed by the NMSP must be concurred with by the regional Fishery Management Council. If there is no concurrence, there should be no action

Mr. Basta also continues on page two by saying that the NMSP realizes that from the fishing community's perspective, any regulation of fishing is viewed as fisheries management, regardless of its purpose. He's right about that, because it is. This has been a great frustration with the NMSP, as we hear "We're not doing fishery management, but, well, we might not let you fish in these areas." The promise that was made to us in 1992 was unequivocal – we weren't going to have to worry about the Sanctuary as yet another agency creating rules that

affect fishing. That's why the Sanctuary was not given the authority to regulate fishing in its Designation Document. However it is our perception that the NMSA is preparing to change our Designation Document to get this authority. Further, we believe that the best science on ecosystem-based management will show that any regulation that affects fishing or the behavior of fishermen is a form of fishery management, no matter if it has other stated goals.

Mr. Dan Basta also states:

*"In the event through a public process under the National Marine Sanctuary Act, we determine that a fishing activity should be restricted in a Sanctuary, to protect Sanctuary resources..."*

Contrast this with the way in which the PFMC must reach its decisions. Please notice that Mr. Basta says "through our public process", and not through a science-based process. The Sanctuary Program does not have a Science and Statistical Committee (SSC), as does the PFMC. The NMSP appears to base what it wants on how it feels about things, whether the Sanctuary Staff feels like something is going to be a threat or not. If they can imagine a threat, they might regulate it. This sets up a very interesting dynamic: What if the Sanctuary brings a regulation to this Council, and, as required by law, the SSC reviews it and says that there is no scientific justification for the regulation they proposed? Is the Sanctuary really going to override that? The Council cannot legally override its advice from the SSC, but the Sanctuary Program can?

The question of a Sanctuary creating fishing regulation needs to be set in the context of how the NMSP interprets the "resource protection" language of the NMS Act. Though the goals of the NMSA include a "multiple use" goal, the NMSP relegates human use to a clear second place behind its ideas of resource protection. One would think that the Sanctuary Program should be able to assert a credible threat to resources if it is going to disallow human uses—particularly historic, and or economically or socially important uses. To protect something is from a defined threat, right? Credible threats certainly ought to have a fact, or science basis behind them. However, this is not how the NMSP acts. In reality, they feel no need to conduct a credible scientific assessment as they propose rules or impose permit conditions. In the absence of this are assertions that either staff determined "policy" decisions, or the weight of public opinion, are enough to create rules that disallow human use of public waters.

Further, this must once again be contrasted with the way that Congress has mandated its regional Fishery Councils to operate. In unanimous bi-partisan votes of both the House and Senate, the MSSFCA was amended and reauthorized, with language that strengthens the role of science in the Council decision-making. In fact, the Councils must follow the recommendations of their science and statistical committees. How is it then, that the NMSP can make decisions, create rules, and ban or change human use patterns with the commensurate consequences on the ecosystem of which the NMSP purports to be the primary guardian?

Regarding Mr. Basta's "Comments on Governments" section, discussion of the Sanctuary Advisory Council is needed. The fact is, there's a proven track record that the Monterey Sanctuary, by some very pointed examples, has not selected representatives who actually have ties to the constituency group they are supposed to represent. There has been a lot of public discussion about this, not limited to those in the fishing community. Indeed, one person who was a former founding chair of the Monterey Sanctuary Advisory Council has been very outspoken about her disappointment in the way the SACs have been, in her opinion, manipulated by Sanctuary Management. A copy of an op-ed piece, and correspondence, co-written by her, is attached. The SACs are designed to serve the Sanctuary site managers, and not the communities.

To understand the Sanctuary Program, and how they receive their advice and take action, it's important to understand how the SAC works. It appears that it is designed to make sure that a majority of the SAC members will give the Sanctuary the kind of advice that they want to hear. As an example, a fisherman applied to be the alternate commercial fishing representative two years ago. She had endorsements from all of the major fishing organizations on the West Coast, including each of the six ports' individual fishermen's associations. She was not selected, and we heard that it was because she was not considered to be actually "a fishing person". A person was selected who did not have anything close to the same level of support from the fishing industry.

It is also important to recognize that sanctuary managers control all functions of its advisory councils. This includes controls over agendas, and correspondence. So in the NMSP, the SAC will be able only to communicate through the Sanctuary Manager. Should an issue arise that requires direct communication with Oregon Congressional or State representatives regarding concerns, or support, for sanctuary actions, this would not be allowed. Further, should Oregon want to create their own organization to provide independent advice to the Sanctuary Program, senior Sanctuary Program staff have indicated that the Program cannot legally "accept" such advice. Therefore, Oregon must recognize that it will lose local control over its ocean resources. Again, the SACs purpose is not to represent the communities, but rather to support Sanctuary programs.

Mr. Basta has also asserted widespread community support for the NMSP. We are in complete agreement that Californians want their ocean resources properly cared for. However, we also observe that the core value of Californians is not "protection" in the sense of disallowing an increasing set of human uses, but "protection" in the sense of requiring careful and sustainable use of our resources. A recent scientifically valid public opinion poll has been commissioned by our organization, and the results are attached. Although it surveys people throughout California, we can't help but believe the results would be the same for Oregonians and Americans everywhere. This is relevant because the NMSP clearly interprets the law in such a way that "sustainability" is not the core value of the Program.

Fishermen have had high hopes for the Sanctuary Program. We wanted to see good water quality occur; we did not want to see the ocean harmed. We wanted to have a lot of collaborative research done with the fishing community on such things as fish stocks, to make management recommendations which could be supported by the fishing community. The MBNMS has done some good things for water quality, some public education, and is at its best when working in a non-regulatory collaborative role. Despite how tough our comments have been on the Sanctuary, we want to make it clear that the door is still open, as far as fishermen are concerned, to have a constructive relationship.

Sincerely,

Frank Emerson  
Co-Chair, ACSF

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