

Alliance of Communities for Sustainable Fisheries
256 Figueroa Street #1, Monterey, CA 93940
(831) 373-5238
www.alliancefisheries.com

May 21, 2008

Donald Hansen, Chair
Pacific Fishery Management Council
7700 NW Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Dear Chairman Hansen and Councilmembers,

On behalf of the Alliance of Communities for Sustainable Fisheries, please find attached several documents relating to the authority (or lack of) of the Monterey Bay National Marine Sanctuary to create zones which regulate fishing, and the scientific and “public opinion” rationales provided by the MBNMS to create such zones. These attachments relate to both the MBNMS’s February 15, 2008 decision letter, and to the further rationale provided by the Sanctuary on April 15, 2008. The ACSF will summarize the attachments below, and we request that this letter and attachments be provided to the SSC and other appropriate committees.

First, please know that the ACSF has deep concerns over this newest “rationale” statement from the National Marine Sanctuary Program. This “rationale” is meant to justify the Monterey Sanctuary’s decision to “move forward with MPA planning.” We find this rationale to be utterly unconvincing about a real need for additional MPAs in the federal waters of the Sanctuary. It also suggests an interpretation of the Sanctuary Act that we believe was never intended by Congress. If the SSC and other PFMC Committees concur that the Sanctuary’s “rationale” is inadequate, the ACSF respectfully suggests that the PFMC voice such a finding to the Office of National Marine Sanctuaries and the MBNMS.

Further legal review of NMSA/Magnuson-Stevens Act

James P. (“Bud”) Walsh of the law firm Davis Wright Tremaine LLP, has provided an additional legal analysis of the question, “What federal law(s) provide authority to create zones wherein fishing is banned or restricted?”

It is Mr. Walsh’s opinion that any fishing designation that would designate zones where, and periods when, fishing may be limited or shall not be permitted, must be issued in accordance with the Magnuson-Stevens Act, given Congress’ express directive on such actions. The rationale behind this is quite clear. Restrictions and bans on fishing will impact overall fishery management goals and plans and, unless integrated using the best available scientific information,

serious conflicts could occur. One obvious negative impact would be to force harvesting from certain areas to other areas, causing local over-harvesting or disruption to carefully balanced allocation rules that were made with local fishing communities in mind. Some Regional Fishery Management Councils have instituted trawling bans in sensitive ocean habitats already. Therefore, with respect to a fishing regulation that would ban or restrict fishing within the Exclusive Economic Zone between 3 and 200 miles, the Magnuson-Stevens Act fishery management process appears to take precedence over the fishing regulation process set forth in Section 304(a)(5) of the NMSA.

Ecosystem Protection of Existing Management: Is there enough protection for the MBNMS?

Dr. Ray Hilborn of the University of Washington has provided comments on the ecosystem needs and levels of protection assertions made by the MBNMS.

Dr. Hilborn points out that the report argues that ONMS does not regulate fishing in the sanctuary and does not consider establishment of MPAs in the MBNMS as tools of fisheries management. This is patently silly. The primary human activity that would be regulated by MPAs is fishing, and any establishment of MPAs modifies the fisheries management regime in the MBNMS. The entire document suggests that the primary ecosystem change that has occurred has been in the groundfish stocks, and that fishing has been the dominant impact on groundfish. It is thus impossible to separate fisheries management from the status of the ecosystem.

The MBNMS report is highly deficient in not recognizing the extent of existing areas closed to fishing, both from trawl bans, rockfish conservation areas, essential fish habitat and existing closed areas such as the Davidson Seamount. The report makes no attempt to determine if the protection from these activities is sufficient to achieve the objectives of the NMSA.

Since the level of protection would be maximized by absolute protection, including protection from non-consumptive recreational use, and there is a clear tradeoff between human use, and level of protection, the MBNMS objective statement provides no basis for determining how much protection is appropriate. Implicit throughout the report is the assertion that the current levels of protection are not sufficient, but there is no basis for making any decisions on how much is enough.

The MBNMS report argues that only a small portion of species are protected under MSFCMA, ESA, MMPA and this implies that exploited species that are well managed are not protected. Further this implies that an ecosystem that is being fished under the guidelines of the MSFCMA is not protected, yet the clear intent of MSFCMA is to protect the productivity of species and ecosystems for sustainable utilization. In short, there is a clear implication in this document that protection means no human impact.

The report argues that the ecosystem needs further protection, and that the

major ecosystem changes have been in the groundfish community. The possibility that all of the ecosystem concerns cited are already addressed by the combination of various management agencies is ignored, and the document implies that the ecosystem has gotten worse since the original designation of the MBNMS. The document totally ignores the fact that the groundfish stocks (not including hake) are now at greater than 50% of the estimated unfished biomass and increasing.

It can be argued that the legal frameworks of the MSFCMA, ESA, MMPA, NEPA etc is to specifically protect the marine ecosystems in Federal waters, and to protect them so that sustainable human use is possible. The EFH provisions of MSFCMA are clearly designed for such provisions. The assertion that the existing legislation does not provide for protection seems to be fallacious.

What are the researches needs, opportunities, and capabilities of the MBNMS?

The ACSF points out that regarding the list of research questions listed in the April 15th letter, the letter does not address specifically how these questions can be answered by existing MPA opportunities. There are now 29 State MPAs within the region. The new State MPAs in our region include some very deep water in and along the edges of Monterey Bay Canyon. Additionally, research could be conducted on the Essential Fish Habitat Area to document the effects of bottom trawling on similar habitats. The RCA also provides research opportunities. And, of course, we should not forget that the National Marine Sanctuary came to the Council with a request that the 775-square-mile Davidson Seamount Area be made essentially a benthic reserve, with no bottom extraction at all within 1000 feet of the top of the Seamount. The Sanctuary gave both research and intrinsic value arguments for asking the Council for this protection. Finally, the new federal waters Channel Islands National Marine Sanctuary MPA was also created to provide research opportunities to the Sanctuary Program

The PFMC should also be aware that there is a credibility issue in a MBNMS claim of “research” needs. The MBNMS never even consulted with its own Research Advisory Panel, a group of approximately 20 respected scientists from all of the Monterey Bay Region’s research institutes. They were never asked for their opinions about research needs in the Sanctuary. Perhaps MBNMS officials should be asked why.

There is little evidence provided in the April 15th MBNMS rationale statement about why additional MPAs are needed for research. There is also no discussion about the MBNMS’s research capabilities. Not only has the MBNMS not answered the question: “How much protection is enough?” - they have also not answered the question: “How many research opportunities are enough, especially if they come at a cost of removing fishing opportunities from struggling local fisheries?”

The MBNMS’s selective use of data to claim a Public Opinion need to create “Intrinsic Value” MPAS

The ACSF has provided extensive comments on this topic. Among the issues we raise is that the large bulk of public comments “for MPAs” was received in 2001 as part of the Sanctuary’s scoping process for its pending Management Plan Review. At this time, there were hardly any MPAs, and generally less protection in place within the Sanctuary Region. Now, extensive fishery management is in place, along with other precautionary management measures, including numerous MPAs. Therefore, for the Sanctuary to be claiming now that thousands of people want MPAs in the Sanctuary, and that’s why they need to propose more, simply is not a credible statement. It must be recognized that the public who made that statement in 2001 is not a currently informed public. Secondly, we point out that, by the MBNMS’s own statements, the public comment received was largely generated electronically from the list-servers of several large environmental organizations that are not necessarily representative of the general public. The MBNMS has done nothing to examine the quality of this data.

The Council and SSC should be aware that a recent (April 2007) public opinion poll conducted by Responsive Management Inc. of Virginia asked Californians in every county, in a statistically valid study, a set of questions about how the public views protection and ocean management. One key question asked: “When you hear the word “protect,” as in “We should protect the ocean,” do you think it means that ocean resources should be used in a sustainable way, or do you think it means that ocean resources should not be used at all?” Eighty-seven percent of the public responded that what they mean by protection is “manage for sustainable use.” Only eight percent stated that ocean resources should not be used at all. The public was also asked which they thought was the better management option for California’s coastal fisheries. One choice was to fully protect some areas from fishing, even if it means the fishermen would then concentrate their fishing in the remaining open areas. Only 24% of the public favored this option. However, 68% of the public favored the option that said “through the use of science-based limits on the amount of fish that can be taken, allow fishing in all areas.” An additional 8% did not choose an answer. These factors tell us that the Sanctuary is either misinterpreting or misusing data to support a position that the Sanctuary Program itself favors, as opposed to looking at this question objectively as to the opinions of all Californians. We do recognize, incidentally, that the Sanctuary Program represents all of the nation, not just California, but we believe that the poll results would not be substantially different in any other parts of the country. A copy of the poll is attached, and can be found at the ACSF website.

Lack of Coordinated Action a Problem; Recommendations

The ACSF has previously pointed out that the Sanctuary Program has failed in its legal mandate to “provide coordinated and comprehensive management between all Federal, State, and Local jurisdictions”. A large current example of this is the MBNMS’s silence in California’s Marine Life Protection Act process, while the State asserted that it didn’t need to consider or integrate other management measures as it designed its system of MPAs. It seems clear in the MBNMS documents that the Sanctuary sees itself in a superior role to the Council or the

requirements of the Magnuson-Stevens Act, because the ONMS sees itself in a role as being the only agency with a responsibility to protect the ecosystem as a whole. Because of this agency self-view, it also seems clear that the Sanctuary Program will layer Sanctuary MPAs upon all the management that already exists. To further a true coordinated effort, the ACSF recommends that the Council request that the MBNMS and the ONMS:

- 1) Withdraw its two “decision” letters and re-structure the task of an MPA work group to be one of evaluating the utility and consequences of additional MPAs or other protection measures. A rational, science-based network of state and federal MPAs, or other management measures, should be the goal.
- 2) Include State waters in its review of protection, understanding that this might entail suggesting to the State a re-design of State MPAs.
- 3) Publicly state if the ONMS or the Sanctuary sites intend, in the future, to push for MPAs in the neighboring Gulf of the Farallones and Cordell Bank NMS’s (given the “rationale” provided by the MBNMS, it would be illogical for the Sanctuary Program to NOT try to create MPAs in these NMS’s). New MPAs in this region must be coordinated with the MBNMS, the State and PFMC actions.
- 4) The MBNMS, the State, and the Council are encouraged to consider “tradeoff” proposals that might come out of this process; i.e., in exchange for the MBNMS getting an area it wants, other areas are re-opened.
- 5) Given the economic crisis that is unfolding to fisheries and Coastal Communities, a goal of the MPA process should be that there be no further loss of economic opportunity.
- 6) This process should occur as part of the Council’s Ecosystem Based Fishery Management Plan, perhaps funded in part by the MBNMS. Conducting an evaluation of the need for, and/or siting of, additional MPAs in the MBNMS region in the context of a PFMC process would be consistent with the legal opinion we have provided about the lack of authority in the National Marine Sanctuaries Act to create zones which regulate fishing.

The ACSF and fishermen throughout the region would like nothing better than to have a constructive relationship with the Sanctuary Program. The recommendations suggested above are intended to be constructive and practical.

Thank you for considering these comments on behalf of the Alliance of Communities for Sustainable Fisheries.

Sincerely,

Frank Emerson
Co-Chair, ACSF

Supporting Associations & Organizations

Pacific Coast Federation of Fishermen's Association
Port San Luis Commercial Fishermen's Association
Morro Bay Commercial Fishermen's Association
Monterey Commercial Fishermen's Association
Fishermen's Association of Moss Landing
Santa Cruz Commercial Fishermen's Marketing Association
Half Moon Bay Fishermen's Marketing Association
Fishermen's Alliance
Western Fishboat Owners Association
Ventura County Commercial Fishermen's Association
Federation of Independent Seafood Harvesters
Golden Gate Fishermen's Association
Port San Luis Harbor District
City of Morro Bay Harbor
City of Monterey Harbor
Moss Landing Harbor District
Santa Cruz Port District
Pillar Pt. Harbor, San Mateo County Harbor District

C: Paul Michel, Superintendent, MBNMS

Attachments