

ACSF Comments About the MBNMS Use of Data to Claim Public Opinion
Supports More MPAs, and Other Socio-economic Considerations
May 2008

The data which the Sanctuary uses or has chosen not to use, seems to the Alliance of Communities for Sustainable Fisheries (ACSF) to be very much open to scientific scrutiny, particularly by the Social Science disciplines of the SSC. The ACSF is asking for a determination to be made as to the adequacy of the Sanctuary's claim that public opinion supports more MPAs be established in the federal waters of the National Marine Sanctuary, based in part on the public's desire to create wilderness-type areas. Pertinent questions include: What is the quality of the data? Has data been manipulated or selectively used? Is there data that has not been included in the MBNMS's decision letters (2/15/08 and 4/15/08)? In asserting a "values" point of view, does the MBNMS also analyze other "values," and provide any relative weight to these?

In both the February 15th and April 15th 2008 Sanctuary MPA decision documents, the MBNMS has asserted that an interpretation of the National Marine Sanctuary Act says they must set aside "Wilderness Areas" for their intrinsic value for future generations, and that there is a body of public opinion behind this need.

The ACSF does not dispute that this is a legitimate human value and that some people hold this value, even in its most extreme form, that all of the ocean should be set aside from human use. We also believe that the legal interpretation of the National Marine Sanctuary Act which the Sanctuary is asserting is not likely to survive a judicial review. This interpretation is exactly contrary to the original MBNMS designation document and EIS which did not assert this opinion. We submit that this interpretation comes directly from culture in the National Marine Sanctuary Program that appears to want to expand the powers of the Act and the Program at every opportunity. A 2004 report in the Environmental Law Review ("The History and Evolution of the National Marine Sanctuaries Act," by Chandler and Gillelan) clearly shows that it was not the intention of Congress that the NMSA be a "wilderness" law, and that multiple use opportunities have always been an important goal of the Act. Even though a copy of this report was provided to the MBNMS in advance of its February 15, 2008 decision letter, this report is not referenced and the MBNMS decision stands in contrast to its findings.

The 2/15 and 4/15 MBNMS documents are also silent about the very broad public support for two statements of concern, and recommendations, made by public agencies (elected officials) and organizations, in the region. These statements are:

1. The MBNMS should not seek to change its Designation Document to override the State F&G Commission or PFMC to create MBNMS fishing regulations or zones which affect fishing.
2. The MBNMS must gain the support of the fishing community for any regulations or zones which affect fishing that the MBNMS takes to the

State or PFMC.

These statements are supported by Congressman Sam Farr, the Association of Monterey Bay Area Governments, the Monterey Peninsula Chamber of Commerce, and numerous other public agencies. While these recommendations do not directly address a public opinion of support, or lack of, for “intrinsic value” MPAs, they do indicate the public’s value of the PFMC process, and of the value of needing fishermen’s support for “wilderness” type areas. These values are not addressed at all in the MBNMS 2/15 and 4/15 documents.

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. At minimum, 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 second survey was completed in January 2008. Also conducted by Responsive Management Inc., this report is titled "California Tourism and Fishing Heritage Assessment." It documents the economic importance of fishing heritage in three coastal communities (Morro Bay, Monterey, and Crescent City, CA) to the tourism economies of these communities, as expressed by local civic and business leaders. It shows a very high appreciation by those civic and business leaders for the fact that people come to visit these communities to eat fresh fish and experience this heritage, and that the spending this creates is a cornerstone of their tourism economies. The MBNMS received a copy of this report, but its findings, and the human values which it expresses, are not addressed by the MBNMS at all.

These polls can be found on the ACSF website, www.alliancefisheries.com, under "reports."

Has the Sanctuary used selective and questionable data to try to justify the need to create intrinsic value or ocean wilderness areas? How much of the public actually supports wilderness areas if they become aware of the levels of protection that already exist? Further, the Sanctuary does not address the significant areas of state waters and the Davidson Seamount that were put aside essentially as either research or intrinsic value areas by the State or by this Council. How will the MBNMS weigh "public opinion" vs. a need for further protection based on scientific analysis? How does the MBNMS view the expression of Congress in the recent reauthorization of the Magnuson-Stevens Act, wherein Congress told the regional councils to base their decisions on good science? The question posed earlier of how much protection or research or intrinsic value is enough is still the guiding question for this discussion. The ACSF wonders if any amount is ever enough for the MBNMS.

We point out that whereas the 2/15 MBNMS document has a brief passage about developing socio-economic information, the 4/15 document is silent on socio-economic considerations. We are also aware that during the State MLPA process, the MBNMS commissioned Ecotrust to develop some spatial use information for the federal waters, along with state waters. A peer review of Ecotrust's methodology in the State process was prepared, coordinated by Dr. Barbara Walker of UCSB. It can also be found on the ACSF website, under "reports." This peer review expresses concerns and a number of suggestions about the Ecotrust methodology. It appears that the MBNMS is continuing to use Ecotrust to develop socio-economic information, yet we have not heard that the methodology concerns were ever addressed.

Moreover, the ACSF must make the point that socio-economic information critical to the MBNMS's "need" decision was either not developed or ignored. Particularly relevant is the landing information found in Dr. Parrish's report. For the MBNMS to have made a decision that it "needs" additional MPAs, despite the fact that it has accurate information that certain regional fisheries are very close to economic collapse, therefore also affecting their communities, seems to the ACSF to reveal a lack of concern by the MBNMS as to the consequences of its

actions.