



Draft Pacific Fishery Management Council Position Statement on National Marine Sanctuary Act Reauthorization and related Ecosystem-Based Fishery Management

Prepared for the May 2008 meeting of the Council Coordination Committee

April 29, 2008

The Pacific Fishery Management Council (Pacific Council) continues to support the position that the regulation of fisheries within National Marine Sanctuaries (NMSs) be accomplished under authorities of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and State jurisdictions rather than initiating new fishing regulation authority for individual sanctuaries. Although the Pacific Council is supportive of and shares many of the goals and objectives of the National Marine Sanctuary Program, the Pacific Council has experienced mixed results over the past seven years when coordinating with the National Oceanic and Atmospheric Administration (NOAA) and West Coast NMSs on implementing MSA fishery restrictions to meet these goals.

The Pacific Council has proposed development of an Ecosystem Fishery Management Plan (EFMP) and believes an EFMP will be an effective tool in achieving shared ecosystem-based management goals and objectives of the Pacific Council, National Marine Fisheries Service, and the National Ocean Service within and outside NMS. Initiation of the EFMP awaits dedicated funding.

At its April 2008 meeting, the Pacific Council discussed Federal legislative matters including the reauthorization of the National Marine Sanctuaries Act (NMSA), began a coordination effort with the Monterey Bay National Marine Sanctuary to consider the need for marine protected areas (MPA) within the Sanctuary, and reviewed a draft report on the condition of resources within the Olympic Coast National Marine Sanctuary. During these deliberations, the Pacific Council directed its staff to draft this paper to help forward the issues and positions of the Pacific Council during the Council Coordinating Committee meeting, May 6-9, 2008 in St. Thomas, U.S. Virgin Islands.

National Marine Sanctuaries Act Reauthorization.

Reauthorization of the NMSA is anticipated in the near future and was the subject of a House Subcommittee on Fisheries, Wildlife, and Oceans hearing on November 3, 2007. It is anticipated that NMSA reauthorization bill will be introduced in the near future and the Pacific Council feels a central matter for this reauthorization effort is providing clarification on the authority to regulate fisheries in Federal waters of NMSs.

Pacific Fishery Management Council remains supportive of the position adopted by all eight Regional Fishery Management Councils (RFMCs) at the April 2005 CCC Meeting and feels this position represents a good starting point when addressing future reauthorization of the NMSA.

The Pacific Council believes the essence of the collective Councils' position is that; (1) the infrastructure and expertise for effective fishery management¹ exists in the Council forum and (2) the ecological inter-connections between resources within and outside NMSs necessitates a holistic approach that can be provided by the Council process.

Eight Regional Fishery Management Council Position, April 2005 CCC Meeting

MSA and National Marine Sanctuary Act

Fishery management authority in national marine sanctuaries (NMS), for all species of fish as defined in the current MSA, should be under the jurisdiction of the RFMCs and the Secretarial approval process described in the current MSA. This authority should not be limited to species of fish covered by approved fishery management plans (FMPs), but should include all species of fish as defined in the current MSA and should cover the full range of the species in the marine environment. Prior to reaching decisions on the management regulations affecting fishing in NMS waters, a RFMC should give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.

In addition to the proposed changes in the MSA above, the RFMCs also recommend the National Marine Sanctuaries Act be amended to achieve jurisdictional clarity as follows:

NATIONAL MARINE SANCTUARIES ACT SEC. 302. [16 U.S.C. § 1432] DEFINITIONS

¹ *e.g.* a sound scientific foundation for fishery regulation via the Scientific and Statistical Committee (SSC) and other scientific Advisory Bodies, expert stakeholder advice from defined Advisory Bodies, ample public input opportunity, and transparent final policy decision making in a public arena.

As used in this chapter, the term-

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(8)"sanctuary resource" means any living or nonliving resource of a national marine sanctuary, **excluding fish and Continental Shelf fishery resources under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1811)**, that contributes to the conservation, recreational, ecological, historical, education, cultural, archaeological, scientific, or aesthetic value of the sanctuary; and

SEC. 304. [16 U.S.C. § 1434] PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

(a) Sanctuary Proposal

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(5) FISHING REGULATIONS-**The appropriate Regional Fishery Management Council shall prepare fishing regulations for any fish and Continental Shelf fishery resources within a sanctuary in accordance with section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852). The Secretary shall review the proposed fishing regulations in accordance with section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1854), and other applicable statutes. Regional Fishery Management Councils shall cooperate with the Secretary and other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practical stage in drafting any sanctuary fishing regulations. Preparation of fishing regulations under this section shall constitute compliance with section 304(d) of this Act. Fishing in compliance with regulations prepared under this section shall not constitute a violation of this Act.**

Examples where fishery regulation within NMS worked well.

The Pacific Council participated in the Joint Management Plan Review process for the three NMSs in Central California during 2001 to 2006. During this process, the Cordell Bank National Marine Sanctuary and the Monterey Bay National Marine Sanctuary proposed additional protective measures from fishing activities in Federal waters either within the sanctuaries or within areas proposed for Sanctuary expansion. These marine protected areas were primarily designed to address impacts to benthic habitats from bottom-tending fishing gear and other disturbances. The Pacific Council concurred with the NMSs that these areas were ecologically significant and in 2005, under the sole authority of the MSA, the Pacific Council and NMFS implemented fishery closures for the protection of essential fish habitat that met or exceeded the goals and objectives of the sanctuaries.

Recently, the Pacific Council is encouraged by early coordination efforts with the Monterey Bay National Marine Sanctuary and the Olympic Coast National Marine Sanctuary. At its April 2008 meeting, the Pacific Council and these sanctuaries discussed plans for improved coordination as the Monterey Bay National Marine Sanctuary considers the need for additional marine protected areas and the Olympic Coast Sanctuary completes a status report and begins the early stages of reviewing its Management Plan. The Monterey Bay National Marine Sanctuary indicated they will take into account SSC review of MPA need criteria as well as Pacific Council suggestions for analysis of MPA location considerations. The Olympic Coast National Marine Sanctuary benefitted from SSC and other Advisory Body comments on their status report on the condition of Sanctuary fish resources and habitat.

These examples are considered successes in that the NMSs and the Pacific Council are working closely at early, fundamental stages, fully utilizing the Pacific Council's fishery management infrastructure towards potential consideration of fishery regulations.

An example where fishery regulation within NMS has not worked well.

Beginning in 2001, the Pacific Council coordinated with the State of California and the Channel Islands National Marine Sanctuary (CINMS) on an extension of State MPAs into Federal waters of the Sanctuary. This included both no-take marine reserves and limited-take marine conservation areas within the Channel Islands National Marine Sanctuary (CINMS).

In 2005, under provisions of the NMSA, the Council reviewed the proposed changes to the CINMS Designation Document and considered preparing draft fishing regulations under NMSA for the proposed MPAs. At that time the Council recommended no changes to the CINMS Designation Document preferring to achieve CINMS goals and creating MPAs through the MSA and elected not to forward any proposed fishing regulations for the CINMS under the regulatory authority of the NMSA. In response, NOAA informed the Council of their intent to pursue the proposed MPAs at the CINMS through the NMSA but, encouraged the Council to continue efforts to achieve the same results through its existing MSA authority.

In an effort to protect benthic habitats essential to Pacific Council managed stocks and to meet the goals and objectives of the CINMS, the Council recommended fishery restrictions that would extend the State MPAs into Federal waters creating the desired marine reserves and marine conservation areas. In a letter dated October 19, 2005 the Undersecretary of Commerce for Oceans and Atmosphere, Vice Admiral Conrad Lautenbacher informed the Pacific Council that NOAA was moving forward with the Pacific Council's recommended regulations under MSA to restrict fishing gears that contact the bottom, but NOAA found "no scientific or factual basis" for restricting fisheries in the water column under the authority of the MSA and the Pacific Council's Pacific Coast Groundfish Fishery Management Plan. Closures of the water column fishery were ultimately achieved by adding limited fishery management authority to the CINMS Designation Document and implementing fishery closures through the NMSA.

This action effectively provided fishery regulation authority to the CINMS where none existed previously and where full fishery management infrastructure, expertise and process currently do not exist for active fishery management.

At this time, regulations implementing the no-take marine reserves in the Federal waters of the CINMS are promulgated under both the authority of the MSA (restrictions on bottom fisheries) and the NMSA (fishery closures in the water column). The Pacific Council understands that the fishing regulations promulgated under the NMSA would be rescinded should the Council and NMFS implement regulations under the MSA to restrict both bottom and water column fisheries creating no-take marine reserves. The Pacific Council has initiated the development of an Ecosystem Fishery Management Plan in part to better address the Pacific Council's ecosystem protection goals and to broaden its authority to fishery impacts to all living marine resources (see the next section).

Ecosystem Fishery Management Plan

The Pacific Council has implemented ecosystem-based principles through several existing fishery management actions including a proposed harvest ban on krill fishing, conservative harvest control rules on forage species, implementation of extensive area closures and marine protected areas, and the used of ocean survival indicators in the determination of allowable fishery impacts to coho salmon. The Pacific Council remains supportive of the April 2005 CCC position on ecosystem-based fishery management.

In November 2006, the Pacific Council initiated development of an EFMP. The EFMP is intended to serve as an "umbrella" plan over the four existing fishery management plans (FMPs), helping with coastwide research planning and policy guidance and creating a framework for status reports on the health of the West Coast's California Current Ecosystem. The plan envisioned by the Pacific Council would not replace the existing FMPs, but would advance fishery management under these FMPs by introducing new science and new authorities to the current Pacific Council process.

The authority to manage fishery related impacts across all living marine resources is fundamental to achieving broad ecosystem-based protective measures. It is thought that an EFMP could play an important, long-term role in coordinating the Pacific Council's efforts to protect habitat, regulate fisheries, establish marine protected areas and marine reserves, and minimize bycatch, with the shared goal of preserving the health and productivity of the California Current Ecosystem.

The Pacific Council is currently pursuing the necessary funds to develop an EFMP and believes an EFMP will be an effective tool in achieving shared ecosystem-based management goals and objectives of the Pacific Council, National Marine Fisheries Service, and the National Ocean Service within and outside NMSs.