

JURISDICTION AND AUTHORITY ISSUES FOR MARINE PROTECTED AREAS

Situation: National Marine Fisheries Service and the National Ocean Service have requested time on the Council's agenda today to clarify jurisdiction and authority issues for marine protected areas. Dr. Rebecca Lent and Mr. Jamie Hawkins will discuss jurisdiction and authority and will answer questions from Council members and the public on this topic. Dr. Lent is Deputy Assistant Administrator for Fisheries for National Marine Fisheries Service, and Mr. Hawkins is Acting Assistant Administrator for the National Oceans Service.

Unlike typical Council protocol, the public will be afforded the opportunity to ask questions directly of the presenters and expect a response at that time. Also, the Council members will have the opportunity for a direct question and answer period under agendum segment B.1.e.

Council Task:

1. Council discussion (no action required).

Reference Materials:

None.

Agenda Order:

- a. Agendum Overview
- b. Joint Presentation by NMFS and National Ocean Service (NOS)
- c. Reports and Comments of Advisory Bodies
- d. Public Comment, Including Questions to Presenters
- e. Council Discussion, Including Questions to Presenters

Jennifer Gilden

Rebecca Lent/Jamie Hawkins

PFMC
10/20/03

Integrating The Science of Fishery Management and Marine Protected Areas

This statement describes the working relationship between two upcoming efforts to improve the integration between marine protected areas science and fisheries stock assessment and management. The first is a conference organized by the National Fisheries Conservation Center (NFCC) and the second is a longer (up to two years) technical workshop series to be organized by NOAA Fisheries (Santa Cruz Lab) and NOAA's National MPA Center (MPA Science Institute).

Background

Marine protected areas (MPAs), including no-take marine reserves (a no-take MPA) have arrived front and center in discussions about fisheries management. Ocean resource managers at a variety of levels in the U.S. are evaluating MPAs to accomplish targeted objectives, particularly recovery of depleted fish populations and protection of essential fish habitat. However, these discussions have also highlighted basic differences in perspective and analytical approach among scientists engaged in designing and evaluating MPAs for fisheries management versus biodiversity conservation. These differences affect, for example, conclusions and judgments about:

- Whether MPAs will increase yields in ways that existing management tools cannot
- Whether MPAs and existing management are equivalent in terms of controlling fishing effort
- The extent to which larvae and/or adults will spill over MPA boundaries and the impact of such spillover on fishery yields adjacent to and distant from the MPA
- The means for accounting for existing management constraints on fishing efforts in the design of multiple use MPAs that allow fishing
- Dealing with effort displacement and increased fishing pressure outside an MPA boundary.

While there is broad agreement on the need for resolving such issues, there has been little systematic effort focused in this area. Until this gap is bridged, many MPA planning efforts may remain mired in controversy and confusion about the underlying science. It is this need that the parallel initiatives by the NFCC and NOAA are intended to fulfill.

NFCC and NOAA projects

Two distinct but interconnected projects are planned for FY04-06: (a) the NFCC consensus conference; and (b) a longer-term scientific effort to develop new models and analytical approaches to integrating MPA and fisheries science. These efforts will occur sequentially and have been closely coordinated from their inception through representation and liaison by key individuals in both efforts.

NFCC consensus conference

NFCC's conference (<http://nfcc-fisheries.org/index.php>) is modeled after the National Institutes of Health's consensus conference format (<http://consensus.nih.gov/about/process.htm>), and has the related goals of:

- Identifying and prioritizing the key scientific issues
- Determining the present degree of uncertainty and related constraints on decision making
- Reaching agreement on the scientific studies needed to resolve these uncertainties.

The conference's product will be a set of carefully crafted answers to specific questions that will be developed prior to the conference by a broadly representative planning committee. The conference itself will involve presentations by leading scientists, discussion led by a neutral review panel, and drafting of answers to the conference questions by the review panel.

NOAA workshops

The NOAA led effort is modeled after the NCEAS workshop format, in which scientists are convened several times over a two-year period to analyze and synthesize existing data and information. The working group process is aimed at promoting a culture of collaboration and synergy across disciplines to produce integrative research. NOAA has committed significant funds in FY03, and will seek additional outside funding from partners including the NSF-funded National Center for Ecological Analysis and Synthesis at UC Santa Barbara. The overall goal of the working group is to synthesize a rational and comprehensive approach for integration of MPAs with traditional fishery management through review of important concepts within marine population dynamics and management and the development of novel approaches to predicting and evaluating performance in MPAs. The products of the NOAA led effort will include a workshop proceedings to serve as a blueprint for integrating MPAs with existing fishery science and ecosystem management programs, and a series of published papers on specific technical topics addressed by the working group.

NFCC/NOAA coordination

The NFCC conference will provide an expert-driven starting point for NOAA's subsequent technical workshop series. In particular, the conference questions, which will be available after the planning committee meeting in late November, 2003, will guide planning for the NOAA working group and external grant proposals. In addition, the conference's consensus statement will act as the conceptual framework around which key aspects of NOAA's in-depth technical effort will be designed. Finally, the broadly representative and public nature of NFCC's conference will help educate important constituencies about the scientific issues involved in integrating marine reserves into the fisheries management system.

There are two major benefits to the close coordination between these related efforts. First, the NFCC project will provide an important degree of legitimacy to the process of identifying and beginning to resolve key issues. This emerges from NFCC's position as a neutral, the use of the widely accepted NIH conference format, the public nature of the conference, and the fact that the NFCC conference will use broadly representative groups to articulate the conference questions, present information, and review the available science. Second, NOAA has the resources and mandate to continue from this starting point with a more sustained effort to develop new science and/or management approaches and to incorporate these into marine resource management and policy. NOAA will bring an exceptional degree of scientific rigor to this effort through its ability to draw staff from the Pacific Fisheries Management Council, NOAA Fisheries, the National Ocean Service, and the National Marine Sanctuaries Program to combine their expertise with that of other scientists outside the agency who have expertise in MPAs and marine ecosystems.

The projected sequence of upcoming events is as follows:

- NFCC planning committee meeting in late November 2003
- NOAA proposal to NCEAS in December 2003
- NOAA proposal to other funders (tbd)
- NFCC consensus conference in early 2004 at the Aquarium of the Pacific in Long Beach
- NOAA working group series begins in early/mid 2004
- Working group research papers and reports mid/late 2005.

NFCC (Brock Bernstein)

NOAA/NMFS (Churchill Grimes / Lisa Wooninck)

NOAA/NMPAC (Charlie Wahle)

UPDATE ON WEST COAST MARINE PROTECTED AREAS ISSUES

Situation: This update on ongoing marine protected areas (MPAs) activities covers the following areas:

1. Scientific and Statistical Committee (SSC) Marine Reserves Subcommittee White Paper
2. Channel Islands National Marine Sanctuary (CINMS) Marine Reserves Process
3. National Fisheries Conservation Center (NFCC) Marine Reserves Science Conference

SSC Marine Reserves Subcommittee White Paper. The SSC Marine Reserves Subcommittee has been developing a white paper to facilitate Council consideration of marine reserve initiatives in relation to West Coast fishery management. The preliminary recommendations of the subcommittee were reviewed by the SSC at the September meeting. At this meeting, a representative of the SSC will brief the Council on the progress of the white paper.

CINMS Marine Reserves Process. At the September Council meeting, CINMS staff updated the Council on the progress of developing the preliminary draft environmental document and provided a summary of scoping comments received during the environmental review process. Mr. Sean Hastings of CINMS will provide another update for the Council at this meeting.

NFCC Marine Reserves Science Conference. In March 2003, the Council received and endorsed a proposal from the NFCC to hold a workshop to bring marine reserve and fisheries scientists together to resolve differences of basic assumptions about ecological fishery management processes. Preparations for this meeting are underway, and a planning committee is convening in November to develop questions regarding the relationship between marine reserves science and fisheries management techniques. A statement explaining the relationship between the NFCC conference and a workshop series to be organized by NMFS (Santa Cruz Lab) and the National MPA Center is provided as Exhibit B.2, Attachment 1.

Council Task:

1. Council discussion (no action required).

Reference Materials:

1. Exhibit B.2, Attachment 1: *Integrating the Science of Fishery Management and Marine Protected Areas*

Agenda Order:

- a. Agendum Overview
- b. Scientific and Statistical Committee (SSC) White Paper
- c. Channel Islands National Marine Sanctuary (CINMS)
Marine Reserves Process
- d. Reports and Comments of Advisory Bodies
- e. Public Comment
- f. Council Discussion

Jennifer Gilden
Tom Jagielo

Sean Hastings

PFMC
10/21/03

GROUND FISH ADVISORY SUBPANEL STATEMENT
ON JURISDICTION AND AUTHORITY ISSUES FOR
MARINE PROTECTED AREAS'S

The Groundfish Advisory Panel (GAP) discussed the authority and jurisdiction of the Council, NMFS and the National Ocean Service (NOS) in regard to fishing regulations in National Marine Sanctuaries (NMS).

The GAP believes that both the language and the intent of the National Marine Sanctuaries Act - not to mention the designation documents under which the west coast sanctuaries were created - are crystal clear in providing the Council and NMFS with exclusive management authority over fisheries in marine sanctuaries. Just because a particular marine sanctuary wants to create a no-take area does not mean that it has carte blanc to do so. Council members are chosen because of their knowledge, by virtue of experience, in the fisheries in their area of jurisdiction. If the Council, after listening to public comment and the advice of its advisory bodies, chooses to close an area to fishing - as it has already done in over 20,000 square miles of ocean - then that is action taken with due consideration of all the facts, the risks, and the benefits. NOS does not have that expertise; indeed, a review of their web site shows no mention of expertise in fisheries management; to quote:

Thus, NOS's mission is to manage society's uses of coastal ecosystems to sustain their natural resources and services.

While resource conservation is a goal that we all share, enacting regulations to accomplish that goal while maintaining a productive society (along with a productive ecosystem) requires particular expertise which NOS doesn't have.

The GAP, therefore, urges the Council to continue to take an active role in asserting fisheries management authority within marine sanctuaries.

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON UPDATE ON WEST
COAST
MARINE PROTECTED AREAS ISSUES

The Scientific and Statistical Committee (SSC) was updated on four ongoing Marine Protected Area (MPA) activities as follows:

SSC Marine Reserves Subcommittee White Paper – The delivery of the white paper has been delayed until the March 2004 Council meeting. One reason for this delay is that examples of National Environmental Protection Act (NEPA) documentation are being added to the paper.

Channel Islands National Marine Sanctuary (CINMS) Marine Reserves Process – The SSC understands the Council will be updated on this process Tuesday, November 4, 2003. The SSC did not receive an update, and, thus, has no comment at this time.

National Fisheries Conservation Center (NFCC) Marine Reserves Science Conference – The SSC was informed that conference planning is currently underway and the workshop is tentatively scheduled for early 2004.

National Marine Fisheries Service (NMFS)/National Oceanic and Atmospheric Administration (NOAA) MPA Science Center Integration Project – As reported to the Council in September 2003, this longer term coordination project is being organized by NMFS (Santa Cruz Lab), NOAA National MPA Center, and the National Center for Ecological Analysis and Synthesis (Santa Barbara, CA). The NFCC conference and NOAA integration project are being coordinated.

The SSC encourages close coordination between the Council and the NFCC and NOAA projects. In this regard, at the direction of the Council, the SSC is willing to participate in the NFCC workshop and the longer term NMFS/MPA Center integration project.

Finally, as the SSC noted in September 2003, MPAs are becoming a major workload item for Council staff. As such, the SSC reemphasizes our September statement that this will likely require reallocation of staff priorities and increased Council and advisory body meeting time to address MPA issues.

PFMC
11/04/03

REVISED
Proposed Activities and Timeline -
Channel Islands National Marine Sanctuary
Environmental Review Process to Consider Marine Reserves

1999-2001 Channel Islands Marine Reserves Community Based Process –
Joint Partnership between the State of Calif. and NOAA to
consider marine reserves in the sanctuary

Aug. 2001 – Fish and Game Commission and Department of Fish and
Oct. 2002 Game State Environmental Review Process and Decision

April 2003 Channel Islands Marine Protected Areas implemented in state
waters of the sanctuary

March 2003

- Sanctuary prepares Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS). *(completed)*
- Brief Pacific Fishery Management Council (PFMC) on Sanctuary initiation of Environmental Review Process. *(completed)*
- Brief Sanctuary Advisory Council (SAC) on Sanctuary initiation of Environmental Review Process. *(completed)*

April 2003

- Sanctuary submits letter to PFMC describing Environmental Review Process for discussion at April PFMC meeting. *(completed)*

May/June 2003

- Sanctuary releases Notice of Intent to prepare DEIS in Federal Register. *(completed)*
- Sanctuary hosts scoping meetings in Ventura and Santa Barbara Counties. *(completed)*

November 2003

- Sanctuary briefs PFMC, State of CA, and Sanctuary Advisory Council on progress.
- Sanctuary begins drafting of Preliminary DEIS.

Early 2004

- Sanctuary sends consultation letters to PFMC, NOAA Fisheries, State of California and other entities regarding a potential change to the terms of designation of the Sanctuary (60 day response period).

REVISED

Proposed Activities and Timeline - Channel Islands National Marine Sanctuary Environmental Review Process to Consider Marine Reserves

Early 2004 (continued)

- Sanctuary notifies PFMC of opportunity to prepare draft National Marine Sanctuaries Act (NMSA) fishing regulations for the Exclusive Economic Zone portion of the Sanctuary (NMSA regulations allow for 120 days for PFMC response)

Spring/Summer 2004

- PFMC considers preparing draft NMSA fishing regulations and if it chooses prepares draft NMSA regulations (March/April 2004 PFMC meetings).
- Sanctuary, in cooperation with PFMC, State of Calif. and SAC, finalizes DEIS, appropriate proposed regulatory changes and related proposed change to the terms of designation.
- Sanctuary releases to the public and Congress the DEIS, proposed regulations and related proposed change to the terms of designation
- Conduct public review of the DEIS, and proposed regulations and related proposed changes to the terms of designation. This will include an opportunity for public comment of at least 45 days and must include at least one public hearing if the rulemaking necessitates a change in a term of designation

Fall 2004

- Sanctuary prepares responses to comments
- Sanctuary drafts Final EIS, and if necessary for chosen action, drafts final regulations and revises terms of designation

Winter 2004

- Sanctuary releases the Final EIS by publishing a notice of availability in the Federal Register and by providing copies to interested parties.

After a 30-day "cooling off" period, the final regulations appear in the Federal Register and the Sanctuary sends the final regulations and revised terms of designation to Congress and to the governor's office, if State waters are involved. The final regulations will take effect after the close of a review period of 45 days of continuous session of Congress. If State waters are involved, and the governor certifies that the change in terms of designation (and therefore the final regulations or portions thereof) is unacceptable, the affected final regulations will not take effect in State waters.

STATEMENT OF THE GROUND FISH ADVISORY SUBPANEL
ON WEST COAST MPA ISSUES

The Groundfish Advisory Subpanel (GAP) received a presentation from Mr. Sean Hastings of the National Ocean Service (NOS) regarding development of marine protected areas and marine reserves within the Channel Islands National Marine Sanctuary (CINMS).

The GAP is exceedingly concerned that CINMS is contemplating changing the designation document for the sanctuary in order to create closed areas that may not be agreed to by the Council or its constituent bodies.

The position of the GAP is clear, has been expressed on several previous occasions, and is reiterated here: if the Council, which has the knowledge and expertise to manage fisheries, believes that closed areas should be instituted and develops recommendations after public comment and reports from statutorily constituted advisory bodies, then those are the recommendations which should be adhered to. NOS does not have the expertise to manage fisheries and should not be trying to assume such authority through regulatory end-runs.

President Lincoln spoke of government of the people, by the people, and for the people. NOS should heed his words.

PFMC
11/04/03

Stuart Ellis

Exhibit B.2.d
Supplemental HC Report
November 2003

HABITAT COMMITTEE COMMENTS ON
UPDATE ON WEST COAST MARINE PROTECTED AREAS ISSUES

The Habitat Committee (HC) recommends a dialogue between the Channel Islands National Marine Sanctuary staff drafting alternatives for the MPA process and staff developing the groundfish essential fish habitat environmental impact statement (EFH EIS), habitat areas of particular concern, and the groundfish bycatch EIS. While the timelines and scales for these efforts are different, there may be opportunities to share information and integrate these efforts.

In addition, the Scientific and Statistical Committee Marine Reserves white paper is critically important to our deliberations on this issue. The HC requests this document at the SSC's earliest convenience, preferably well before the March 2004 Council meeting.

PFMC
11/03/03

RECEIVED

OCT 28 2003

PFMC

Rita Whalen

13700 Gulf Blvd. Apt 2 , Madeira Beach, Florida 33708

October 17, 2003 12:04 PM

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220

Subject: Support for Preferred Alternative Marine Reserve Network at the Channel Islands

Dear Pacific Fishery Management Council:

I write to encourage your support for the establishment of a network of fully protected marine reserves within the federal waters of the Channel Islands National Marine Sanctuary. The preferred alternative is fully supported by the CEQA document and by the California Fish and Game Commission.

Fully protecting portions of the waters around the Channel Islands within a network of marine reserves is the only real way to help the once thriving marine life around the Islands rebound and thrive. The islands receive important protections as a National Marine Sanctuary, however new measures are needed to restore declining fisheries and preserve habitat.

There is now compelling scientific evidence that an appropriately designed system of marine reserves can help restore damaged rockfish and invertebrate populations. To ignore these problems at this time simply invites a more severe crisis in the future. Our Channel Islands support diverse marine habitats and a unique ocean ecosystem. I strongly urge that you support a configuration of fully protected marine reserves, which protects the Islands' many habitats, including rocky reefs, sandy seafloor, and subsea canyons. By leaving a portion of our coastal waters undisturbed, marine reserves can restore biological diversity and prevent the extinction of individual species. The resulting protected areas can also provide tangible, long-term benefits to commercial and recreational fishermen.

Please finish the marine reserve network recently approved by the California State Fish and Game Commission, by completing the federal portion of this carefully-negotiated, science-based protection for key ecosystems at the Channel Islands.

Thank you for your attention to this pressing matter.

Sincerely,

Rita Whalen