

**PACIFIC FISHERY MANAGEMENT COUNCIL**

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December 8, 2004

Mr. Chris Mobley, Manager  
Channel Islands National Marine Sanctuary  
113 Harbor Way  
Santa Barbara, CA 93109

Dear Chris:

Thanks for your continuing efforts to engage with the Pacific Fishery Management Council (Council) in your development of marine reserves and protected areas in the federal waters of Channel Islands National Marine Sanctuary (CINMS). The Council appreciates the cooperative approach used by you and your staff. By this letter, I am forwarding to you a series of recommendations adopted by the Council at the November 2004 meeting in Portland, Oregon.

Based on our review of the CINMS document – *Staff Preliminary Working Draft Document for Consideration of a Network of Marine Reserves and Marine Conservation Areas within the Channel Islands National Marine Sanctuary* – and the recommendations of our advisory bodies, including the Ad Hoc Channel Islands Marine Reserves Committee (CIMRC) and Scientific and Statistical Committee; the Council requests CINMS consider the following recommendations as you develop the Draft Environmental Impact Statement (DEIS) for your proposed actions:

1. Revise the current timeline developed by CINMS to show the Pacific Council considering a preliminary DEIS, prior to the DEIS release to the public, to afford the Council an opportunity to select a preferred alternative and to prepare regulations for implementation.
2. The DEIS should address the recommendations of the Council advisory bodies about additional analyses and clarifications.
3. The Status Quo (No Action) alternative in the DEIS should be updated to reflect fishing regulations (notably, groundfish fishery regulations) expected to be in place for 2005 and 2006.
4. The DEIS should include clear language as to changes to the CINMS Designation Document associated with each proposed alternative.
5. The DEIS should analyze the range of alternatives presented to the CIMRC (status quo, alternatives 1-3, and Miller/Hoeflinger alternative). In addition, the Council recommends:

- (a) Revising the numbering for alternatives 1-3, such that alternatives 1-3 become alternatives 1.a, 1.b, and 1.c and adding new alternatives 2.a, 2.b, and 2.c. Each alternative 2 variation would use the same areas as depicted for each alternative 1, but the areas should be analyzed as marine conservation areas rather than no-take marine reserves. The marine conservation areas would allow commercial and recreational fishing with surface tending gear used to catch pelagic or highly migratory species (using the federal definitions for pelagic and highly migratory species).
  - (b) Adding a new alternative that analyzes how current (and future) state and federal management authorities could be used to accomplish the goals and objectives described in the DEIS Purpose and Needs section.
6. The DEIS should include information about potential fishery benefits and/or impacts that could result from the proposed alternatives.
7. All three options for "implementing alternatives in state waters" should be included in the DEIS.

Thank you for considering these recommendations. As you move forward with development of this information and drafting the DEIS, please coordinate with Council staff. CINMS staff has indicated that they anticipate providing the Council with the analytical documents necessary for drafting National Marine Sanctuary Act fishing regulations at either the March or April 2005 Council meeting. As the first order of business, please coordinate with Council staff and National Marine Fisheries Service to determine the optimal process for Council review of alternative management actions and consideration of a Council-preferred alternative. This coordination will also need to accommodate Council review of proposed changes to the CINMS Designation Document.

Again, thank you for your cooperative approach during this process. Should you have any questions, please contact me or Mr. Mike Burner at your convenience.

Sincerely,



D. O. McIsaac, Ph.D.  
Executive Director

DAW:ckc

Enclosure

c: Mr. Rod McInnis  
Council Members  
Ad Hoc CINMS Marine Reserve Committee



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE  
Silver Spring, Maryland 20910

February 16, 2005

Dr. Donald McIsaac  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384

*Sean said they will be  
coming back to the Council  
at their June meeting.*

Re: Review of Possible Amendments to the Channel Islands National Marine Sanctuary  
(Sanctuary) Designation Document Related to the Consideration of Marine Reserves,  
Marine Parks and Marine Conservation Areas

Dear Dr. McIsaac:

#### OVERVIEW AND PURPOSE OF LETTER

The National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service's, National Marine Sanctuary Program (NMSP) has initiated a process to consider the establishment of a network of marine reserves, marine parks and marine conservation areas in the Sanctuary<sup>1</sup> pursuant to the National Marine Sanctuaries Act, 16 U.S.C. sec. 1431 *et seq.*, (NMSA). This action is being considered to ensure the long-term protection of Sanctuary resources by maintaining natural biological communities, and protecting, restoring, and enhancing natural habitats, populations, and ecological processes in the Sanctuary. The proposed action is also intended to supplement the ecosystem-based protection to Sanctuary resources afforded by the State of California's network of marine reserves and marine conservation areas. The NMSP is conducting this process to help fulfill the purposes and policies of the NMSA.

The terms of designation of a sanctuary include its geographic area, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational and esthetic value, and the types of activities that will be subject to regulation to protect those characteristics. The establishment of marine reserves, marine parks and marine conservation areas would require changes to the terms of designation, specifically the types of activities subject to regulation, for the Sanctuary. Pursuant to section 303(b)(2) of the NMSA, 16 U.S.C. sec. 1433(b)(2), the Secretary of Commerce (Secretary), through the NMSP, is consulting with appropriate Federal and State government agencies, the Pacific Fishery Management Council (PFMC), and other

<sup>1</sup> The Sanctuary is an area of approximately 1,252.5 square nautical miles (NM) and extends seaward to a distance of six NM offshore of the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock. These islands and offshore rocks are located offshore from Santa Barbara and Ventura Counties in California.



interested parties. Therefore, the purpose of this letter is to inform these parties that the NMSP is considering amending the terms of designation, as described below, and to solicit input on possible amendments. Please note that this is a preliminary step in the environmental review process; please see enclosure 1 – the environmental review process timeline.

The NMSP is preparing a draft environmental impact statement, and will provide the PFMC an opportunity to prepare draft Sanctuary fishing regulations for the Exclusive Economic Zone portion of the Sanctuary for any marine reserve, marine park and marine conservation area proposal, pursuant to section 304(a)(5) of the NMSA, 16 U.S.C. sec. 1434(a)(5). Interested parties will also have the opportunity to review and provide comments on the draft environmental impact statement when it is released to the public.

## **INTENT**

As indicated above, as part of this review, the NMSP is considering certain changes to the Sanctuary's terms of designation (as defined by sec. 304(a)(4) of the NMSA; 16 U.S.C. sec. 1434(a)(4)). The potential amendments below are similar to how the NMSP has addressed the issue in the Florida Keys National Marine Sanctuary. The potential amendments are drafted to be compatible with the State of California Marine Managed Areas Improvement Act (MMIA) classifications for designating marine reserves, marine parks and marine conservation areas as established in California Public Resources Code, Section 36700 through 36710; please see enclosure 2 – the MMIA classifications. The potential amendments are intended to be compatible with the joint state/federal recommendation provided to the California Fish and Game Commission in August 2001, the Department of Fish and Game's California Environmental Quality Act Final Document of October 2002 and the state's adoption of marine protected areas within the Sanctuary implemented in April 2003. The potential amendments also reflect input from the PFMC (letter to Sanctuary dated April 24, 2003) regarding the extent of broadening Sanctuary authority:

*As the Sanctuary analyzes changes in its designation document, Council members would like one of the alternatives to provide for extending Sanctuary authority only enough to allow the Sanctuary to create the proposed marine reserves, without extending authority over other types of fishing regulations. (PFMC, 2003)*

## **POTENTIAL AMENDMENTS**

Specifically, in order to establish marine reserves, marine parks and marine conservation areas that prohibit or limit fishing activities in these portions of the Sanctuary, NOAA would need to amend Article 4, Section 1, and Article 5, Section 1 of the Designation Document; please see enclosure 3 - the Channel Islands National Marine Sanctuary Designation Document.

For example, the potential change to Article 4, Scope of Regulation, Section 1 "Activities Subject to Regulation" could include adding the following activities to those that may be

regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and esthetic value of the area:

- *In a marine reserve, marine park and marine conservation area, harvesting, removing, taking, injuring, destroying, possessing, collecting, moving, or causing the loss of any living or dead organism, geological resource, cultural or historical resource or other Sanctuary resource, or attempting any of these activities.*

The potential change to Article 5, Relation to Other Regulatory Programs, is highlighted in bold.

*Section 1. Fishing. The regulation of fishing is not authorized under Article 4, **except in a marine reserve, marine park and marine conservation area.** However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b) and aircraft conducting kelp bed surveys below 1000 feet can be regulated in accordance with Article 4, Section 1, paragraph (e). All regulatory programs pertaining to fishing, including particularly regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery and Conservation Act of 1976, 16 USC 1801 et seq., shall remain in effect. All permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. Fishing as used in this article and in Article 4 includes kelp harvesting.*

Additionally, if marine reserve, marine park or marine conservation areas are designated, minor Sanctuary boundary modifications may be desirable. Specifically, for better management, resource protection and enforcement, it may be desirable to draw boundaries of certain areas on straight lines of latitude and longitude. In some cases these straight-line boundaries would extend slightly beyond the current curved outer boundaries of the Sanctuary (e.g., the proposed Harris Pt. Marine Reserve off San Miguel Island). A preliminary range of alternatives can be viewed in the *Staff Preliminary Working Draft Environmental Document to Consider Marine Reserves and Marine Conservation Areas in the Channel Islands National Marine Sanctuary*. This document was released to the public in May 2004 and is available at [http://www.cinms.nos.noaa.gov/marineres/enviro\\_review.html](http://www.cinms.nos.noaa.gov/marineres/enviro_review.html).

## REVIEW CONSIDERATIONS

In responding to this letter, please take into account the following factors the Secretary is to consider at the time of designation of a Sanctuary, to the extent they are applicable to the potential changes to the Sanctuary's terms of designation as described above (16 U.S.C. sec. 1433(b)(1)):

(A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;

(B) the area's historical, cultural, archeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the NMSA;

(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;

(I) the socioeconomic effects of sanctuary designation;

(J) the area's scientific value and value for monitoring the resources and natural processes that occur there;

(K) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and

(L) the value of the area as an addition to the National Marine Sanctuary System.

To ensure that any information, recommendations, or comments are considered in the preparation of the draft environmental impact statement, I request your response within 60 days of receipt of this letter.

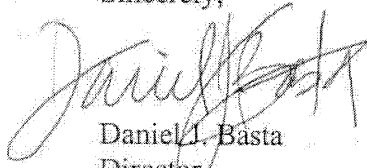
A map of the Sanctuary, including the State of California marine protected areas, is enclosed for your reference; please see enclosure 4. If you have any questions regarding

this process, contact Elizabeth Moore, Acting Chief, NMSP Conservation Policy and Planning Branch at (301) 713-3125x170. Please direct your response to:

Elizabeth Moore  
NOAA- National Marine Sanctuary Program  
1305 East-West Highway, N/ORM-6  
Silver Spring, MD 20910-3281  
Ph: (301) 713-3125x170  
Fax: (301) 713-0404  
Elizabeth.Moore@noaa.gov

We would appreciate your important input and look forward to working with you through this process.

Sincerely,



Daniel L. Basta  
Director  
National Marine Sanctuary Program

Enclosures

- Enclosure 1 – Environmental Review Process timeline
- Enclosure 2 - Excerpt from CA Marine Managed Areas Improvement Act
- Enclosure 3 - Sanctuary Designation Document
- Enclosure 4 - Sanctuary map

## Enclosure 1

### REVISED

#### Proposed Activities and Timeline -

#### Channel Islands National Marine Sanctuary (CINMS)

#### Environmental Review Process to Consider Marine Reserves

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##### 1999-2001

Channel Islands Marine Reserves Community Based Process – Joint Partnership between the State of Calif. and NOAA to consider marine reserves in state and federal waters of the CINMS

##### 2001 – 2002

Fish and Game Commission and Department of Fish and Game State Environmental Review Process and Decision

##### April 2003

Channel Islands Marine Protected Areas implemented in State waters of the CINMS

##### 2003

National Marine Sanctuary Program/CINMS Federal Environmental Review Process

- Sanctuary prepared and released in the Federal Register a Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).
- Briefed Pacific Fishery Management Council (PFMC) on Sanctuary initiation of Environmental Review Process.
- Briefed Sanctuary Advisory Council (SAC) on Sanctuary initiation of Environmental Review Process.
- Sanctuary submitted a letter to PFMC describing Environmental Review Process for discussion at April PFMC meeting.
- Sanctuary hosted public scoping meetings in Ventura and Santa Barbara Counties.
- Sanctuary briefed PFMC, State of CA, and SAC on progress.
- Sanctuary drafted *Staff Preliminary Working Draft Environmental Document to Consider Marine Reserves and Marine Conservation Areas in the Channel Islands National Marine Sanctuary (Preliminary Draft)*.

##### 2004

- Sanctuary released to the public the *Preliminary Draft* at the May SAC and June PFMC meetings and coordinated their review.
- PFMC, SAC and public reviewed *Preliminary Draft* and submitted comments to Sanctuary.

## **CINMS Marine Reserves Environmental Review Process Proposed Activities and Timeline (Continued)**

### **2005**

- Sanctuary will notify 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). (i.e., the letter above).
- Sanctuary will notify 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). Model regulatory language and supporting environmental analysis will be provided to the PFMC.
- PFMC considers preparing draft NMSA fishing regulations and if it chooses prepares draft NMSA regulations. Sanctuary staff will assist PFMC staff as requested.
- Sanctuary releases to the public and Congress the DEIS, proposed regulations and related proposed change to the terms of designation.
- Public review of the DEIS, proposed regulations and related proposed change 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.
- Sanctuary prepares responses to comments.

### **2006**

- Sanctuary drafts Final EIS, and if necessary for chosen action, drafts final regulations and revises terms of designation.
- 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.

## **Enclosure 2**

### **CALIFORNIA CODES PUBLIC RESOURCES CODE SECTION 36700-36900**

#### **Marine Managed Areas Improvement Act**

36700. Six classifications for designating managed areas in the marine and estuarine environments are hereby established as described in this section, to become effective January 1, 2002. Where the term "marine" is used, it refers to both marine and estuarine areas. A geographic area may be designated under more than one classification.

(a) A "state marine reserve" is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(b) A "state marine park" is a nonterrestrial marine or estuarine area that is designated so the managing agency may provide opportunities for spiritual, scientific, educational, and recreational opportunities, as well as one or more of the following:

(1) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(2) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding representative or imperiled marine habitats or ecosystems.

(3) Preserve cultural objects of historical, archaeological, and scientific interest in marine areas.

(4) Preserve outstanding or unique geological features.

(c) A "state marine conservation area" is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(5) Preserve outstanding or unique geological features.

(6) Provide for sustainable living marine resource harvest.

36710. (a) In a state marine reserve, it is unlawful to injure, damage, take, or possess any living geological, or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities including, but not limited to, walking, swimming, boating, and diving may be restricted to protect marine resources. Research, restoration, and monitoring may be permitted by the managing agency. Educational activities and other forms of nonconsumptive human use may be permitted by the designating entity or managing agency in a manner consistent with the protection of all marine resources.

(b) In a state marine park, it is unlawful to injure, damage, take, or possess any living or nonliving marine resource for commercial exploitation purposes. Any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features, may be restricted by the designating entity or managing agency. All other uses are allowed, including scientific collection with a permit, research, monitoring, and public recreation, including recreational harvest, unless otherwise restricted. Public use, enjoyment, and education are encouraged, in a manner consistent with protecting resource values.

(c) In a state marine conservation area, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes, that the designating entity or managing agency determines would compromise protection of the species of interest, natural community, habitat, or geological features. The designating entity or managing agency may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources.

## Enclosure 3

65200 Federal Register / Vol. 45 No. 193 / Thursday, October 2, 1980 / Rules and Regulations

### *Final Designation Document*

### ***Designation of the Channel Islands National Marine Sanctuary***

#### *Preamble*

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972. Pub. L. 92-532 (the Act) the waters surrounding the northern Channel Islands and Santa Barbara Island are hereby designated a Marine Sanctuary for the purpose of preserving and protecting this unique and fragile ecological community.

#### *Article 1. Effect of Designation*

Within the area designated as the Channel Islands National Marine Sanctuary (the Sanctuary), described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of this Designation lists those activities which may require regulation but the listing of any activity does not by itself prohibit or restrict it.

#### *Article 2. Description of the Area*

The Sanctuary consists of an area of the waters off the coast of California, of approximately 1252.5 square nautical miles (nm), adjacent to the northern Channel Islands and Santa Barbara Island seaward to a distance of 6 nm. The precise boundaries are defined by regulation.

#### *Article 3. Characteristics of the Area That Give it Particular Value*

The Sanctuary is located in an area of upwelling and in a transition zone between the cold waters of the California Current and the warmer Southern California Countercurrent. Consequently, the Sanctuary contains an exceptionally rich and diverse biota, including 30 species of marine mammals and several endangered species of marine mammals and sea birds. The Sanctuary will provide recreational experiences and scientific research opportunities and generally will have special value as an ecological, recreational, and esthetic resource.

#### *Article 4. Scope of Regulation*

Section 1. *Activities Subject to Regulation.* In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and esthetic value of the area:

- a. Hydrocarbon operations
- b. Discharging or depositing any substance
- c. Dredging or alteration of, or construction on, the seabed
- d. Navigation of vessels except fishing vessels or vessels traveling within a Vessel Traffic Separation Scheme or Port Access Route designated by the Coast Guard outside of 1 nm from any island
- e. Disturbing marine mammals or birds by overflights below 1000 feet
- f. Removing or otherwise deliberately harming cultural or historical resources

Section 2. *Consistency with International Law.* The regulations governing the activities listed in Section 1 of this article apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law including treaties and international agreements to which the United States is signatory.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this article would be proposed in accordance with the procedures specified in Article 6.

*Article 5. Relation to Other Regulatory Programs*

Section 1. *Fishing.* The regulation of fishing is not authorized under Article 4. However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b) and aircraft conducting kelp bed surveys below 1000 feet can be regulated in accordance with Article 4, Section 1, paragraph (e). All regulatory programs pertaining to fishing, including particularly regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery and Conservation Act of 1976, 16 USC 1801 et seq., shall remain in effect. All permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. Fishing as used in this article and in Article 4 includes kelp harvesting.

Section 2. *Defense Activities.* The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. *Other Programs.* All applicable regulatory programs shall remain in effect and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations set forth any necessary certification procedures.

*Article 6. Alterations to this Designation*

This designation can be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Fishery Management Council, and approval by the President of the United States.

[End of Designation Document]

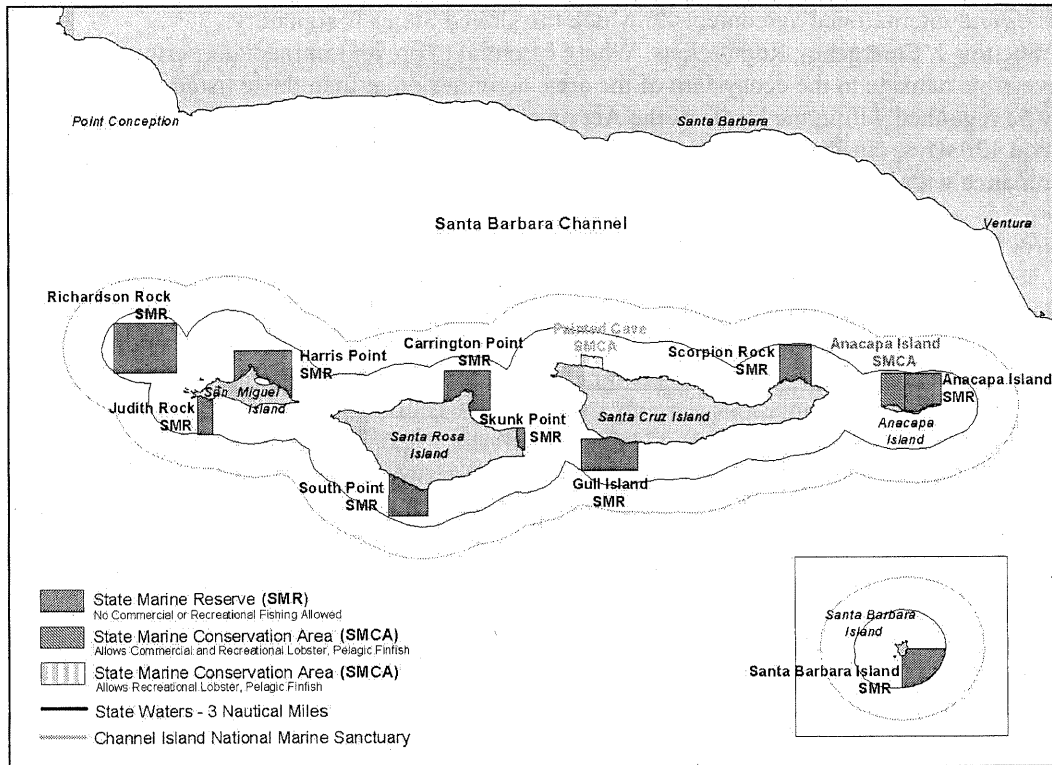
Only those articles listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearings and approval by the President.

*Dated: September 28, 1980.*

*Michael Glazer,*

*Assistant Administrator for Coastal Zone Management*

**Enclosure 4 – Map of the Channel Islands National Marine Sanctuary including State Marine Protected Areas.**



## GROUND FISH ADVISORY SUBPANEL STATEMENT ON CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

The Groundfish Advisory Subpanel (GAP) met with representatives of each of the National Marine Sanctuaries (NMS) to discuss NMS proposals. The GAP also received a report from its ad hoc subcommittee that was established to more fully analyze the NMS proposals. The GAP expresses its appreciation to the members of its volunteer subcommittee and to Mr. Sean Hastings, Mr. Huff McGonigle, and Ms. Anne Walton of the NMS program for the time they spent meeting with the GAP.

The GAP discussions resulted in some overall recommendations that apply across the board to all of the NMS proposals. Those recommendations are included in this statement, but apply equally to all three of the NMS agenda items. Specific recommendations regarding each NMS are included under each agenda item.

### **IN GENERAL**

The GAP strongly opposes amendment of NMS designation documents to allow regulation of fishing. While the NMS have excellent staff, they do not have specific expertise in fisheries conservation and management, a broad familiarity with the coastwide fisheries the Council manages, historical perspective on fisheries management on the West Coast, or a capability to encompass the complexities of fisheries management, including through the use of expert advisory panels. The Council and its advisory bodies does have all of these things and can accommodate the fisheries-related concerns of the NMS through its authority under existing law.

Further, the NMS' approach of establishing localized protective areas and regulations moves us further away from a holistic examination of coastwide fisheries and their habitats. An ecosystem approach to management, cited by the NMS as a rationale for some of their proposals, dictates taking a broad view. Incremental management proposals do not support this approach.

While it is true the Council cannot regulate some things that affect NMS resources, such as land-based pollution, neither can the NMS. What both parties can potentially regulate is human interaction with NMS resources, i.e., fishing. The Council has already shown a willingness to address issues of concern by agreeing to develop a ban on krill fishing. If necessary, similar action could be taken involving other marine organisms to the extent they are not already protected by other laws. The GAP notes, as an example, that the Western Pacific Council has adopted a coral management plan, and the North Pacific Council is addressing coral protection. While we encourage a cooperative working relationship between the Council and the NMS, we believe that retaining management with the body that has both the responsibility and the expertise is the best course of action.

### **CHANNEL ISLANDS NATIONAL MARINE SANCTUARY PROPOSALS**

The Channel Islands National Marine Sanctuary (CINMS) proposal involves changing its designation document to allow creation of marine reserves, thereby at least indirectly regulating fishing. Based on material presented by CINMS, the marine reserves would protect NMS

resources and allow creation of natural areas that could be appropriately studied. Among other things, CINMS cites the decline of several managed fish species as a rationale for needing this protection. CINMS also proposes several boundary changes.

In reference to our general comments, the GAP believes the protections desired can be achieved by the Council using existing tools, including science-based management and the Council's ongoing essential fish habitat process. Species decline is already addressed by the Council through the development of rebuilding plans. In regard to scientific study, there are several marine reserves in the state water portions of CINMS that could serve as an adequate source of data. The GAP recommends that the Council oppose these changes in the designation document.

In regard to boundary changes, the GAP has no comment as the proposals are unfamiliar to most of the GAP members.

HABITAT COMMITTEE REPORT ON  
FEDERAL WATERS PORTION OF THE CHANNEL ISLANDS NATIONAL MARINE  
SANCTUARY

The Habitat Committee (HC) supports the proposed changes in the Channel Islands National Marine Sanctuary (CINMS) designation document as a necessary step in the process of developing marine reserves, marine parks, and/or marine conservation areas in the federal waters of CINMS.

The Council's consideration of new fishing regulations to address the CINMS objectives is a separate step that will precede publication of a draft environmental impact statement (EIS) by CINMS.

There are complex legal and policy considerations related to changing the designation document that are outside the scope of the HC, but we support the process as laid out in the Sanctuaries Act.

PFMC  
03/07/05

**Sumo Sportfishing**  
4151 South Victoria Avenue  
Oxnard, Ca 93035

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*Pacific Fisheries Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384*

PFMC

Mr. Don Hansen

Chairman Hansen and members of the commission,

I am an owner/operator of a sport fishing boat that operates out of Channels Islands Harbor. It has come to my attention that there is yet another proposal to further close the Channel Islands Marine Sanctuary.

When the original closures were enacted the data used and presented was questionable at best. What data is being used to this proposal? Have the existing closures help protect our resources? Do you have data to say if it has or has not? I sure would like to see it. How are you going to monitor these proposed new areas? I urge you to present accurate facts and data before going any further with this issue.

I support a **No Action** on this issue until some of the above questions can be answered and accurate data is presented and accepted by all parties affected.

Sincerely,



Captain Mark Sawa

November 2, 2004

Pacific Fisheries Management Council  
7700 NE Ambassador Place, Suite 200  
Portland OR 97220-1384

RECEIVED

NOV 08 2004

Attn: Don Hansen

PFMC

Dear Mr. Hansen:

I am writing in opposition to the proposed expansion of the Marine Reserves established within the Channel Islands National Marine Sanctuary.

This expansion would directly impact the livelihood of the local fisherman which would result in an incredible loss of jobs in our area at a time when jobs are so extremely valuable. Additionally, this expansion wherein fishing areas were decreased, would also impact tourism which is a major financial component of this area, again, resulting in an undetermined amount of job losses and revenues received by local governing agencies.

Please regard this note as my formal opposition to any expansion plans.

Regards,



Robert Stone  
Captain  
Breakwater Charters  
Channel Islands Sportfishing  
4151 South Victoria Ave  
Oxnard CA 93035

FEDERAL WATERS PORTION OF THE CHANNEL ISLANDS  
NATIONAL MARINE SANCTUARY

The Council is coordinating with Channel Island National Marine Sanctuary (CINMS) in their development of proposed marine reserves and marine conservation areas within CINMS. Their proposed actions seek to complete a network of reserves and conservation areas “to maintain the natural biological communities, and to protect, where appropriate, restore and enhance natural habitats, populations, and ecological processes.” As described by CINMS, the current proposed action builds off of a network of marine reserves and conservation areas established by the State of California within state waters of CINMS. Under the National Marine Sanctuaries Act (NMSA), Regional Fishery Management Councils are to be provided first opportunity to prepare draft NMSA fishing regulations for proposed actions within the Exclusive Economic Zone portion of National Marine Sanctuaries. Thus, CINMS is seeking input from the Council about the Sanctuary’s proposed actions and intends formally to provide the Council with the opportunity to prepare draft fishing regulations under the NMSA authority, at a later date.

Establishment of proposed marine reserves and marine conservation areas would require changes to the CINMS Designation Document. Currently, the CINMS Designation Document does not allow regulation of fisheries by the Sanctuary. Therefore, CINMS has distributed a consultation letter from Mr. Daniel J. Basta, Director, National Ocean Service Office of National Marine Sanctuaries to the Council, state and federal government agencies, and other interested parties requesting input on the proposed changes to the Designation Document within 60 days (Agenda Item H.1.b, CINMS letter). This 60-day review period has been timed by the CINMS to coincide with the Council’s March and April 2005 meetings.

The stated purpose of the February 16, 2005 letter from Mr. Basta to Dr. McIsaac is to solicit input on possible amendments to the CINMS Designation Document. The letter includes a description of the April 2003 Council recommendation that “...one of the alternatives provide for extending Sanctuary authority only enough to allow the Sanctuary to create the proposed marine reserves, without extending authority over other types of fishing regulations.” However, the letter does not list a range of potential adjustments. One potential change is shown for Article 4 and one for Article 5, both that would essentially allow for fishery regulation in “a marine reserve or conservation area”, implying either those under the current proposal or any others adopted at a different time. The letter includes a copy of the current Designation Document, which does not allow for any fishery regulations beyond that adopted under state or Magnuson-Stevens Fishery Conservation and Management Act authority.

The Council, its advisory bodies, and the Ad Hoc Channel Islands Marine Reserves Committee (CIMRC) have reviewed and commented on preliminary draft analyses of marine reserve options provided by CINMS. At the November 2004 meeting, the Council adopted CIMRC recommendations and directed Council staff to convey these recommendations in a letter to CINMS staff (Agenda Item H.1.a, Attachment 1). However, only the proposal to change the Designation Document is the subject of Council action at this meeting. CINMS is reviewing Council recommendations and will provide the analytical documents necessary for drafting NMSA fishing regulations at either the June or September 2005 Council meeting. Council staff

will coordinate with CINMS and NMFS to determine the optimal process for Council review of proposed management actions, consideration of alternatives, and preparation of draft fishing regulations under the NMSA. Following the Council's response CINMS will release a draft Environmental Impact Statement (DEIS) for public review.

**Council Task:**

- 1. Review the CINMS Designation Document consultation letter and consider a response within the 60 day comment period.**

**Reference Materials:**

1. Agenda Item H.1.a, Attachment 1: December 8, 2004 letter to Mr. Mobley from Dr. McIsaac regarding CIMRC recommendations on preliminary draft analyses of marine reserve options.
2. Agenda Item H.1.b, CINMS letter: February 16, 2005 CINMS Designation Document consultation letter from Mr. Basta to Dr. McIsaac.
3. Agenda Item H.1.d, Public Comment.

**Agenda Order:**

- a. Agenda Item Overview
- b. Report of the Sanctuary Staff
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. Council Discussion and Guidance on Channel Islands  
NMS Process

Mike Burner  
Sean Hastings

PFMC  
02/18/05

ENFORCEMENT CONSULTANTS REPORT ON  
FEDERAL WATERS PORTION OF THE CHANNEL ISLANDS NATIONAL MARINE  
SANCTUARY, CORDELL BANK NATIONAL MARINE SANCTUARY, AND MONTEREY  
BAY NATIONAL MARINE SANCTUARY

The Enforcement Consultants (EC) would like to reiterate their comments from the November 2004 Council meeting. Those comments are below.

The Cordell Bank needs to be identified by latitudinal and longitudinal coordinates representing the 50 fathom isobath. This would be consistent with past line enforcement strategies.

In order to eliminate confusion, the EC suggests identifying the specific kinds of gear to be excluded from within the Sanctuary boundary. We believe the Sanctuary should utilize the definitions currently used in the 50 CFR Part 660. We believe their intent is to prohibit the use of bottom trawl and fixed gear with the exception of vertical hook and line.

For the Davidson Seamount within the Monterey Bay Sanctuary, our recommendation is the exclusion of bottom trawl and fixed gear as defined by 50 CFR Part 660. Preferred option one would be a challenge to enforce, due to the restriction of fishing activity below 3,000 feet. It would be the EC's preference to exclude the gear types having potential to impact the bottom. These gear types would be bottom trawl and fixed gear.

PFMC  
03/10/05

GROUNDFISH MANAGEMENT TEAM REPORT ON  
FEDERAL WATERS PORTION OF THE CHANNEL ISLANDS NATIONAL MARINE  
SANCTUARY, CORDELL BANK NATIONAL MARINE SANCTUARY, AND MONTEREY  
BAY NATIONAL MARINE SANCTUARY

The Groundfish Management Team (GMT) only discussed the proposed regulatory measures for fishing activities from the Cordell Bank and Monterey Bay National Marine Sanctuaries (NMS), as the GMT understands that proposals from the Channel Islands NMS will be presented at the Council's June meeting.

In regards to the proposed fishing regulations for these two sanctuaries, the GMT made the following determinations:

1. The preferred fishing regulation alternative for the Cordell Bank NMS proposal excepts only the use of vertical hook-and-line gear within a 50-fm isobath surrounding Cordell Bank, thus excluding some gears (i.e., purse seines) that do not interact with the bottom. However, protection of the bottom habitat could also be accomplished by only prohibiting the use of bottom-tending gears.
2. In regards to the Monterey Bay NMS proposal, the alternatives as proposed by the sanctuary would accomplish their objectives if the fishing regulations were written in a manner that could be enforced.
3. The GMT notes that the proposals from Cordell Bank and Monterey Bay NMS would affect fisheries targeting species other than groundfish (e.g., highly migratory species, coastal pelagic species).

**Marine Protected Area (MPA) Proposals and Essential Fish Habitat (EFH) Environmental Impact Statement (EIS)**

The GMT recommends, if the Council decides to take the lead in drafting the proposed regulations, that it be done in conjunction with the Council's groundfish EFH EIS initiative. We support dovetailing these two ongoing processes for the following reasons:

1. To review the potential areas of overlap of the alternatives in the two processes (i.e., the proposed closures from the sanctuary could be overlaid with the proposed alternatives, specifically the Oceana trawl closure proposal, in the EFH EIS) to determine where there are areas of overlap, as well as areas that would be covered under only one initiative. This would increase efficiency and avoid having two different suites of regulations with potentially minor differences in areas covered. Also, the action taken relative to the sanctuary proposals will likely affect the analyses of the EFH and habitat areas of particular concern (HAPC) alternatives.
2. To not preclude the public comment process on the EFH EIS (i.e., if action were taken to adopt one or more of the sanctuary proposals, it could potentially preclude public comment through the EFH EIS process, which is on a slightly longer track and would result in an approximate six-month delay for implementation of the sanctuary proposals).

3. To reduce confusion on the part of the public about when and how to provide comments on the sanctuary proposals (i.e., with two different, but concurrent public processes occurring, there are individuals who may provide comments during the course of one process who do not realize their concerns won't be considered during the course of the other process).

To accomplish this, the GMT offers the following course of action and timeline for Council consideration:

1. March – Decide whether the Council should take the lead in drafting fishing regulations for the sanctuary proposals and select preferred alternatives for public review; provide formal response to respective sanctuary of action taken.
2. April – Provide opportunity for public comment on preferred alternatives for Cordell Bank and Monterey Bay NMS and opportunity for public comment on EFH and HAPC proposals in draft EIS; adopt final sanctuary alternatives; provide formal response to respective sanctuary confirming final adoption of alternatives.
3. Between March and June – NMFS analyze sanctuary alternatives in conjunction with Oceana trawl closure proposal as a supplement to draft EFH EIS.
4. June – Provide supplement to draft EFH EIS; select final alternatives for EFH and HAPCs; consider draft proposals from Channel Islands NMS (if available).
5. After June – Draft regulations to implement sanctuary alternatives; draft final EFH EIS and EFH and HAPC regulations.

### **GMT Recommendations**

As noted above, the GMT suggests that any proposed fishing regulations be considered in conjunction with the Council's groundfish EFH EIS initiative. However, if the Council decides to draft fishing regulations for either of these sanctuaries outside of the EFH EIS process, then the GMT suggests the regulations for the Cordell Bank NMS be revised to only pertain to bottom tending gear within the 50-fm isobath surrounding Cordell Bank, and the regulations for the Monterey Bay NMS be rewritten, so they are enforceable.

PFMC  
03/10/05

SALMON ADVISORY SUBPANEL REPORT ON  
FEDERAL WATERS PORTION OF THE CHANNEL ISLANDS NATIONAL MARINE  
SANCTUARY, CORDELL BANK NATIONAL MARINE SANCTUARY, AND MONTEREY  
BAY NATIONAL MARINE SANCTUARY

On Wednesday morning, March 9<sup>th</sup>, the Salmon Advisory Subpanel (SAS) heard comments from representatives of the Channel Islands, Monterey, and Cordell Bank National Marine Sanctuaries (NMS) on their future plans that might affect or require fisheries management decisions.

The SAS supports Cordell Bank's intention to continue to allow salmon trolling in that sanctuary.

Channel Islands NMS plans to extend marine reserves into federal waters, Monterey Bay NMS plans to include the Davidson Seamount in the sanctuary and ban bottom-disturbing activities there, and Cordell Bank NMS plans to prohibit bottom-disturbing activities.

Regarding these plans, the SAS notes that:

1. Any proposed fishing regulations should be reviewed by the Groundfish Advisory Subpanel, since they primarily affect groundfish fisheries.
2. The SAS would strongly prefer that any fishing regulations for the sanctuaries be developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act, rather than by the Sanctuaries Act.

PFMC  
03/10/05

**PACIFIC FISHERY MANAGEMENT COUNCIL**

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December 13, 2004

Mr. Daniel J. Basta, Director  
National Marine Sanctuary Program  
National Ocean Service  
Silver Spring, MD 20910

Re: Response to Request for the Pacific Fishery Management Council to Prepare Fishing Regulations

Dear Mr. Basta:

This letter is in response to your letter of October 22, 2004 formally providing the Pacific Fishery Management Council (Council) the opportunity to prepare draft fishing regulations for Monterey Bay National Marine Sanctuary (MBNMS) and Cordell Bank National Marine Sanctuary (CBNMS). As you note, the National Marine Sanctuary Act (NMSA) provides Regional Fishery Management Councils 120 days to respond to a NMSA Section 304(a)(5) request. In a second letter, you also request Council input about proposed changes to Sanctuary Designation Documents for MBNMS, CBNMS, and Gulf of the Farallones National Marine Sanctuary (GFNMS). This NMSA Section 304(e) request identifies a 60-day deadline for a response from the Council. Based on information provided to the Council by Sanctuary staff at our September 2004 and November 2004 meetings, the Council is requesting extension of these deadlines to accommodate the Council's meeting schedule. Specifically, the Council is formally requesting extension of the Designation Document review and fishing regulation drafting timelines to accommodate the March and April 2005 Council meetings. The Council requests these extensions to provide opportunity for the Council and its advisory bodies to review and comment on written analyses of proposed actions, and because the comment periods would end before the next Council meeting.

This past year, the Council worked closely with the three central California coast sanctuaries (GFNMS, CBNMS, and MBNMS) during their joint Sanctuary Management Plan Review process (JMPR process). On several occasions, sanctuary program staff briefed the Council on the JMPR process, including specific actions being contemplated that could require regulation of fishing activities within a Sanctuary. The Council very much appreciates the cooperative spirit of the representatives of these three central coast Sanctuaries; it has resulted in what we view as positive, successful working relationship.

At the September 2004 Council meeting, Sanctuary staff briefly described for the Council and our advisors proposed management measures, and noted that implementation of these measures would require management of fishing activities. Hence, Sanctuary staff indicated a formal consultation package, including requests for Council action would be provided in advance of the November

Council meeting. At the time, the Council was informed that the NMSA mandated a 120-day period for a Council to respond to a request to develop fishing regulations. Sanctuary staff emphasized that the 120-day time line (if it started at the November 2004 meeting) would not match up with the Council meeting schedule. Therefore, Sanctuary staff indicated they would anticipate a response from the Council at the March 2005 Council meeting.

Prior to the November 2004 Council meeting, Sanctuary staff indicated their intent to provide materials to Council staff in time for inclusion in the November Briefing Book. This would allow for the typical Council process, whereby all involved are able to read the material prior to the Council meeting. The advisors are then able to prepare written statements and present them to the Council at the meeting, and the Council considers the advisory body statements and public testimony prior to making an informed decision. However, the materials were not received until after the Briefing Book deadline, which resulted in the Council and its advisors not receiving the material until the start of the Council meeting. This prevented Council advisory bodies and the Council from having a sufficient opportunity to review and consider this information in advance of the meeting.

At the November 2004 Council meeting, the Council again expressed appreciation for the cooperative efforts of the Sanctuaries, but noted the impacts of written analyses not being available in advance of the November meeting and the lengthy time before the next Council meeting. In response to the Council's concerns, Sanctuary staff indicated willingness to accommodate an extension of the 120-day and 60-day deadlines to better fit the Council schedule. These statements comport with Sanctuary staff statements from September 2004.

Specific to each Sanctuaries' requests for Council action, the Council reached different conclusions for the actions proposed by CBNMS and those proposed by MBNMS. For CBNMS, under the extended deadline the Council intends to review the Sanctuary's request for the Council to develop fishing regulations to protect benthic habitat and invertebrates within the 50 fathom isobath surrounding Cordell Bank. To provide this protection, the Sanctuary is proposing to restrict certain fishing activities in this area. The Council is also prepared to review and comment on potential changes to the CBNMS Designation Document, which would be necessary to implement the proposed measures.

For MBNMS, the Council is formally requesting more time for the Council to provide comment on only the Designation Document changes. The Council requests this extension to provide opportunity for the Council and its advisory bodies to review and comment prior to a Council decision. Specific to the request for development of fishing regulations, the Council is aware that under the NMSA a proposed designation (in this case extension of MBNMS boundary to include Davidson Seamount) should be accompanied by proposed regulations to implement the proposal. However, the Council strongly believes it is premature to consider drafting fishing regulations under authority of the NMSA for an area (Davidson Seamount) that is not currently within a National Marine Sanctuary. Notably, many Sanctuary designations (including geographic boundaries and restrictions on activities) have been established without NMSA fishing regulations that go beyond those in place by State or Council action. Specifically, MBNMS was officially designated in 1992; this designation did not include authority to regulate fishing activities. Since effective Sanctuary protection has been in place for a dozen years without NMSA specific fishery regulations, it seems feasible that consideration of the inclusion of Davidson Seamount within MBNMS could proceed absent fishing regulations that go beyond those already in place.

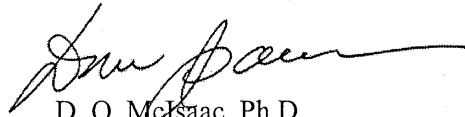
Mr. Daniel J. Basta  
December 13, 2004  
Page 3 of 3

Finally, the Council's request to separately consider the proposed MBNMS boundary change and proposed regulation of fishing activity does not mean the Council is opting out of our NMSA mandated role to develop fishing regulations. The Council welcomes the opportunity to consider development of fishing regulations for the Davidson Seamount area after the area has been added to the Sanctuary.

Thank you for your attention to these matters. To reiterate, the Council is formally requesting extension of the Designation Document review 60-day deadline (for CBNMS, MBNMS, GFNMS) and fishing regulation drafting 120-day deadline (for CBNMS) to accommodate the March and April 2005 Council meetings. The Council requests these extensions to provide opportunity for the Council and its advisory bodies to review and comment on written analyses of proposed actions, and because the comment periods would end before the next Council meeting.

If you have any questions about our request or need additional information, please don't hesitate to contact me.

Sincerely,



D. O. McIsaac, Ph.D.  
Executive Director

DAW:ckc

c: Council Members  
Dr. William Hogarth  
Dr. Rebecca Lent  
Mr. Jack Dunnigan  
Regional Fishery Management Council Executive Directors  
Ms. Stephanie Campbell  
Mr. Dan Howard  
Ms. Holly Price  
Ms. Anne Walton





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE  
Silver Spring, Maryland 20910

JAN -6 2005

D.O. McIsaac, Ph.D.  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384

RECEIVED

JAN 10 2005

PFMC

Dear Dr. McIsaac:

Thank you for your December 13, 2004, letter requesting on behalf of the Pacific Fishery Management Council (Council) an extension of the 60-day period to provide comments on potential changes to the Designation Documents for the Cordell Bank National Marine Sanctuary (CBNMS), Gulf of the Farallones National Marine Sanctuary (GFNMS), and Monterey Bay National Marine Sanctuary (MBNMS). The Council also requests an extension of the 120-day period to prepare draft sanctuary fishing regulations for the CBNMS, pursuant to section 304(a)(5) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1434(a)(5). We are extending the time period to April 22, 2005, for both the 60-day and 120-day time periods. Please note, as explained below, that this extension includes the Council's opportunity to prepare draft NMSA fishing regulations for the proposed addition of the Davidson Seamount area to the MBNMS.

We appreciate the assistance the Council and its staff have provided the National Marine Sanctuary Program (NMSP) as the CBNMS, GFNMS, and MBNMS have moved forward with their Joint Management Plan Review (JMPR). Council staff have provided valuable guidance through participation on working groups and frequent and open communication with NMSP staff, with a desire to overcome the challenges that can accompany such a broad and public programmatic review.

#### Request for Extension

We regret that the materials we provided did not meet the Council's briefing book deadline. We will make every effort to ensure we meet such deadlines in the future. Please understand that the NMSP is aware of the Council meeting schedule and that reference to response periods in the JMPR documents does not reflect indifference to Council time constraints. As your letter points out, NMSP staff have recognized the need for flexibility regarding these response times. As you know, the 120-day period for drafting NMSA fishing regulations is established by regulation (15 C.F.R. § 922.22) and may be waived only upon a showing of good cause. The 60-day time period associated with consultation required pursuant to section 303(b)(2) of the NMSA, 16 U.S.C. § 1433(b)(2), regarding potential Designation Document changes is meant to provide generally sufficient time for the numerous recipients of such letter to respond, but we recognize



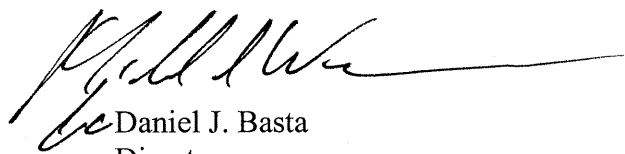
that it may not be well suited to the Council. Given the Council's meeting schedule and the need to ensure adequate time for the Council to get input from its advisory bodies, we agree to the requested extensions until April 22, 2005, two weeks after the close of the April meeting. This will allow sufficient time for two additional meetings for consultation, discussion, and decision making, as well as finalization of any materials and documents the Council intends to provide to the NMSP.

Timeline for Draft Regulations for Addition of Davidson Seamount Area to the MBNMS

Your letter states that the Council believes that considering drafting fishing regulations under the authority of the NMSA for an area (Davidson Seamount) not currently within a national marine sanctuary is premature. Your letter also states that the Council welcomes the opportunity to consider potential fishing regulations for the Davidson Seamount area after it has been added to the MBNMS. As indicated at the Council's November 2004 meeting by the Council legal adviser, expansion of an existing sanctuary triggers the same procedural requirements as designation of a new sanctuary. Protecting the unique and fragile benthic ecosystem of Davidson Seamount from the adverse effects of consumptive or intrusive activities is one of the primary reasons for its proposed incorporation into the MBNMS. Regulations preventing such adverse impacts, including fishing regulations, are integral to achieving the goals and objectives of its designation. Section 304(a)(1)(A) of the NMSA, 16 U.S.C. § 1434(a)(1)(A), requires the NMSP to issue proposed regulations that may be necessary and reasonable to implement the proposed designation simultaneously with the proposed designation. Therefore, this is the time to provide the Council the opportunity to prepare draft NMSA fishing regulations for the proposed addition of Davidson Seamount area as required under section 304(a)(5). As a result, it is necessary for the Council to continue to consider and (if it so chooses) prepare draft sanctuary fishing regulations to fulfill the goals and objectives of adding the Davidson Seamount area to the MBNMS within the time period as extended by this letter.

Thank you again for the time and effort that the Council, you, and your staff continue to allocate to national marine sanctuary initiatives. We appreciate the constructive partnership that we are forging and look forward to continued dialogue on how to best build on this relationship in the future. We look forward to receiving a response on or before April 22, 2005.

Sincerely,



Daniel J. Basta  
Director

cc: Council Members  
Regional Fishery Management Council Executive Directors  
Dr. William Hogarth, Assistant Administrator, NMFS  
Dr. Richard Spinrad, Assistant Administrator, NOS  
Dr. Rebecca Lent, Deputy Assistant Administrator, NMFS  
Jack Dunnigan, Director, Office of Sustainable Fisheries, NMFS  
Dan Howard, Manager, CBNMS  
William Douros, Superintendent, MBNMS  
Maria Brown, Manager, GFNMS



## **PACIFIC FISHERY MANAGEMENT COUNCIL**

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December 20, 2004

Vice Admiral Conrad C. Lautenbacher, Jr.  
Under Secretary of Commerce for Oceans and Atmosphere  
NOAA, HQTR Route: A  
BLDG: HCHB RM: 5128  
14th and Constitution Avenues NW  
Washington, DC 20230-0001

Re: The Process of Establishing Fishing Regulations in Federal Waters of National Marine Sanctuaries

Dear Vice Admiral Lautenbacher:

The Pacific Fishery Management Council (Pacific Council) met November 1-5, 2004 in Portland Oregon to consider, among other matters, establishing fishing regulations in federal waters of the Cordell Bank and Monterey Bay National Marine Sanctuaries. As part of the deliberations on these matters, the Pacific Council received an October 22, 2004 letter from Mr. Daniel Basta informing the Pacific Council of the "National Oceanic and Atmospheric Administration (NOAA) preferred alternative" with regard to a range of alternative fishing regulations. This terminology can be taken as contradictory to what the Pacific Council has understood to be the Regional Fishery Management Council (RFMC) role as described in the National Marine Sanctuaries Act (NMSA), what has been conveyed by senior leadership in the National Ocean Service (NOS) and National Marine Fisheries Service (NMFS), and what we understood during coordination efforts with the staff from the Sanctuaries in question. The Pacific Council tasked me with providing you a letter describing the basis for our concern about this potential contradiction and ask for clarification of the process in determining the NOAA preferred alternative for regulating fishing activities within National Marine Sanctuaries.

As has been noted on several occasions, the Pacific Council appreciates the cooperative partnership with NOAA in the management of our nation's living marine resources, acting on behalf of the Secretary of Commerce as described in the Magnuson-Stevens Fishery Conservation and Management Act. Traditionally, this partnership has focused on conservation and management of U.S. fisheries in conjunction with NMFS. More recently, a growing emphasis on ecosystem management and marine protected areas has broadened the focus of our partnership and added the participation of other NOAA line agencies, principally, the NOS and its National Marine Sanctuary Program (NMSP). I am referring, specifically, to recent proposals to manage federal fisheries within National Marine Sanctuaries.

In this regard, it appears to the Pacific Council the NMSA mandates that RFMCs be provided the opportunity to draft fishing regulations if it is deemed necessary to regulate fishing activities within federal waters of a Sanctuary. Section 304(a)(5) of the NMSA states:

“The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council’s action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301 (a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives for the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination, which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations.”

Further, at the November 2003 Pacific Council meeting in San Diego, California under an agenda item titled “Jurisdiction and Authority Issues for Marine Protected Areas,” Mr. Jamison Hawkins and Dr. Rebecca Lent presented the NOAA perspective on the role of the RFMCs; their presentation was entirely consistent with the concept of initial jurisdiction and authority belonging to the RFMCs in determining fishing regulations in National Marine Sanctuary federal waters. Mr. Michael Weiss (National Marine Sanctuary Program Deputy Director), in response to a direct question on the process, highlighted the unique role of the regional councils. Specific to the regulation of fishing activities, he noted that Congress explicitly directed the NMSP to follow a rigorous process, which includes providing “first opportunity” to the appropriate RFMC to draft fishing regulations (Council Minutes, November 2003).

The Pacific Council received similar reinforcement of this perspective in working closely with the three central California coast sanctuaries (Gulf of the Farallones National Marine Sanctuary [GFNMS], Cordell Bank National Marine Sanctuary [CBNMS], and Monterey Bay National Marine Sanctuary [MBNMS]) over the past year during their joint Sanctuary Management Plan Review process (JMPR process). On several occasions, sanctuary program staff briefed the Council on the JMPR process, including specific actions being contemplated that could require regulation of fishing activities within a Sanctuary. The Council very much appreciates the cooperative spirit of the representatives of these three central coast Sanctuaries; it has resulted in what we view as a positive, successful working relationship.

At the November 2004 meeting, Sanctuary staff formally requested Council action to develop fishing regulations for several proposed management measures at CBNMS and MBNMS (aforementioned October 22 letter from Mr. Daniel Basta to Council Chairman Donald Hansen).

These Sanctuaries also requested Council review and input about proposed changes to Sanctuary Designation Documents, which would be necessary for implementation of proposed measures to regulate fishing activity. The Council has responded to these requests under separate letter to Mr. Basta. In these letters the Council formally requested extension of the Designation Document review and fishing regulation drafting timelines to accommodate the March and April 2005 Council meetings. Specifically, the Council requested these extensions to provide opportunity for the Council and its advisory bodies to review and comment on written analyses of proposed actions, and because the comment periods would end before the next Council meeting.

The purpose of this letter is to highlight the Council's concern about terminology used in the October 22, 2004 letter and the appearance that the Council's recognized and mandated role is being minimized under the current actions proposed by CBNMS and MBNMS. In documents prepared by the Sanctuaries and provided to the Council, specific alternatives are identified as "NOAA preferred alternatives." The Council is very concerned about alternatives being identified as "NOAA preferred" prior to formal Council review, consideration, or input. It is difficult to understand how the Council can have meaningful "opportunity to prepare draft regulations for fishing," as stated in the NMSA, particularly "first opportunity" as stated by NOS leadership, if preferred alternatives have been selected by NOAA prior to Council input. We are also unsure of the process by which a NOAA preferred alternative was determined in these instances. Neither an Environmental Impact Statement (EIS) nor Environmental Assessment (EA) has been prepared to provide a basis for determining a "preferred alternative," either by the Council or NOAA as an agency.

The Pacific Council expressed a very similar concern about the Council role being preempted in a letter to you dated October 22, 2002 regarding the Channel Islands National Marine Sanctuary. The Pacific Council was heartened by your prompt response that did not recognize an *a priori* NOAA preferred alternative and encouraged "meaningful participation by the Council." Based on your October 25, 2002 letter, assurances provided by your senior staff in November 2003 about the "first opportunity" role of the regional councils in development of fishing regulations within federal waters of National Marine Sanctuaries, and our understanding of the NMSA mandate for a significant and consequential role during the developmental stage of such matters, we could presume the use of the term "NOAA preferred alternative" in the case at hand to have been an unintended oversight. If so, the Council requests the term "NOAA preferred alternative" be removed from the current documents and not be included in future documents until after completion of an inclusive National Environmental Policy Act environmental analyses, including formal consultation with the Pacific Council. If not, we ask for further clarification of the role of RFMCs in development, implementation, monitoring, and evaluation of measures to regulate fishing activities within federal waters of a National Marine Sanctuary.

Thank you for your attention to this important matter.

Vice Admiral Conrad C. Lautenbacher, Jr.  
December 20, 2004  
Page 4 of 4

If you have any questions about our request or need additional information, please don't hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. O. McIsaac", followed by a horizontal line.

D. O. McIsaac, Ph.D.  
Executive Director

DAW:kla

c: Dr. William Hogarth  
Dr. Rebecca Lent  
Council Members  
Ad Hoc Marine Protected Areas Committee  
Regional Fishery Management Council Executive Directors  
Mr. Daniel Basta  
Mr. Jamison Hawkins  
Mr. Dan Howard  
Mr. Huff McGonigal  
Ms. Holly Price  
Ms. Anne Walton  
Mr. Michael Weiss

March 2005



UNITED STATES DEPARTMENT OF COMMERCE  
The Under Secretary of Commerce  
for Oceans and Atmosphere  
Washington, D.C. 20230

JAN 28 2005

Donald O. McIsaac, Ph.D.  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, Oregon 97220-1384

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FEB - 3 2005

PFMC

Dear Dr. McIsaac:

Thank you for your letter expressing concern over terminology in a letter from Dan Basta, Director, National Marine Sanctuary Program (NMSP), National Oceanic and Atmospheric Administration (NOAA). Mr. Basta's letter formally provided the Pacific Fishery Management Council (Council) the opportunity to prepare draft Sanctuary Fishing Regulations for the Monterey Bay and Cordell Bank National Marine Sanctuaries, pursuant to section 304(a)(5) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1434(a)(5). Your letter expresses concern with a reference to the "NOAA preferred alternative" for possible new Sanctuary Fishing Regulations for these two sanctuaries.

Please allow me to reaffirm the high value NOAA places on the Council's role in this important process. Under section 304(a)(5) the Council is to be provided the opportunity to prepare draft NMSA fishing regulations (for the Exclusive Economic Zone area) fulfilling the purposes and policies of the NMSA and the goals and objectives of the proposed action being considered by NOAA. In order to assist the Council, NOAA provides the goals and objectives for the proposed action, as they are a benchmark the Council must use in considering, and if it so chooses, preparing draft NMSA fishing regulations.

NOAA also provides a preliminary analysis of various alternatives, including its views of those alternatives appearing to best achieve the goals and objectives of the proposed action. In addition, NOAA provides draft regulatory language that could be used to implement the selected alternative. NOAA believes providing the Council with its preliminary views is critical to the Council being able to fulfill its role, under the NMSA, in a meaningful way.

The identification of one alternative by NOAA, however, was not intended to suggest NOAA had made a final decision on a preferred alternative, or to minimize the Council's role in this

process. To avoid any confusion in the future, we will no longer use the phrase "NOAA preferred alternative" in the context of the section 304(a)(5) process.

We appreciate the Council's continued hard work and support of this important process.

Sincerely,



Conrad C. Lautenbacher, Jr.  
Vice Admiral, U.S. Navy (Ret.)  
Under Secretary of Commerce for  
Oceans and Atmosphere

cc: Council Members

Ad Hoc Marine Protected Areas Committee  
Regional Fishery Management Council Executive Directors  
William Hogarth, Assistant Administrator, NMFS  
Richard Spinrad, Assistant Administrator, NOS  
Rebecca Lent, Deputy Assistant Administrator, NMFS  
Daniel Basta, Director, National Marine Sanctuary Program, NOS  
Jack Dunnigan, Director, Office of Sustainable Fisheries, NMFS  
Regional Fishery Management Council Executive Directors  
Stephanie Campbell, NOAA GCOS  
Dan Howard, Manager, CBNMS  
William Douros, Superintendent, MBNMS  
Maria Brown, Manager, GFNMS



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
Silver Spring, Maryland 20910

OCT 22 2004

Mr. Donald K. Hansen  
Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220

Dear Mr. Hansen:

This letter formally provides the Pacific Fishery Management Council (PFMC) with the opportunity to prepare draft sanctuary fishing regulations for the Monterey Bay National Marine Sanctuary (MBNMS) and Cordell Bank National Marine Sanctuary (CBNMS), pursuant to section 304(a)(5) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.). To assist the PFMC, this letter is accompanied by a document that provides background information, describes more fully the sanctuaries' goals and objectives, reviews action alternatives, and presents preferred actions.

In 2001, MBNMS and CBNMS initiated a joint review of their management plans along with Gulf of the Farallones National Marine Sanctuary. We would like to express our appreciation for the time and energy that the Council and their staff have allocated over the last several years to making this review a success. During this time NMSP staff have regularly met with staff from PFMC, the California Department of Fish and Game, and NMFS Southwest Region on the review process and the evolution of recommendations developed at scoping meetings, workshops, and meetings of MBNMS and CBNMS Advisory Councils. Implementing several of these recommendations will require regulations governing fishing activities in CBNMS and in the proposed inclusion of Davidson Seamount into the MBNMS. Section 304(a)(5) of the NMSA requires that:

*"The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination, which is*



*rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations."*

The response procedures are set forth in section 922.22(b) (15 CFR) and state:

*"If a proposed Sanctuary includes waters within the exclusive economic zone, the Sanctuary shall notify the appropriate Regional Fisheries Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary."*

### **Proposed Actions and Requests**

As required by section 304(a)(5) (16 U.S.C. 1434(a)(5)), the NMSP is now providing the PFMC with the opportunity to prepare draft sanctuary fishing regulations for the Exclusive Economic Zone portions of MBNMS and CBNMS to accomplish the goals and objectives of the proposed actions described below. The opportunity to prepare draft sanctuary fishing regulations for MBNMS and CBNMS is being presented jointly for efficiency. However, if PFMC chooses to prepare draft sanctuary fishing regulations, we request that PFMC prepare draft sanctuary fishing regulations for the proposals specific to each sanctuary. The MBNMS and CBNMS are considering the following actions, respectively:

- (1) MBNMS - prohibit the take of all Sanctuary resources below 3000 feet within the Davidson Seamount area as defined by the area bound by the coordinates West: 123°W; East: 122.5°W; North: 35.9°N; South: 35.5°N
- (2) CBNMS - prohibit the take of all benthic organisms except as incidental and necessary to the use of vertical hook and line fishing gear on Cordell Bank and within the 50 fathom isobath surrounding Cordell Bank,
- (3) CBNMS - prohibit any disturbing of the submerged lands or placing any material or matter on Cordell Bank and within the 50 fathom isobath surrounding Cordell Bank except as incidental and necessary to use of vertical hook and line fishing gear.

In preparing draft sanctuary regulations for fishing in MBNMS and CBNMS, the PFMC would be acting under the authority of the NMSA and may address all species of fishes and invertebrates. The PFMC is therefore not restricted to the species or activities regulated under its current fishery management plans created under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). Proposed regulations for these actions would be analyzed in the Draft Environmental Impact Statement that will be prepared for the revised management plans and regulations of these sanctuaries.

### **Monterey Bay National Marine Sanctuary: Davidson Seamount**

The goals and objectives of the MBNMS in taking this proposed action can be summarized as seeking to protect the unique and fragile benthic ecosystem of the Davidson Seamount by prohibiting activities that adversely affect this vulnerable habitat. The full goals and objectives are listed beginning on page 12 of the attached supporting document. The NMSP has considered various management alternatives for the Davidson Seamount area, as defined by the area bounded by the coordinates referenced above. The analyzed alternatives include:

- Prohibit the take of all sanctuary resources below 3000 feet of the sea surface within the Davidson Seamount area
- Prohibit the take of all sanctuary resources below 200 feet of the sea surface within the Davidson Seamount area
- Prohibit the take of all sanctuary resources within 100 feet of the submerged lands within the Davidson Seamount area
- Prohibit the take of all sanctuary resources from the submerged lands within the Davidson Seamount area
- No action

Based on the complete analysis, NOAA's preferred alternative, which we feel best reflects the goals and objectives of the proposed action, is to include the Davidson Seamount area as part of the MBNMS and prohibit all extractive and consumptive activities below 3000 feet within this area. As part of the section 304(a)(5) process, NMSP requests that PFMC prepare draft fishing regulations to implement the fishery management aspect of this alternative. Since these regulations will be promulgated under the NMSA, to assist the Council we have provided draft regulatory language intended to provide a regulatory model for the Council to consider (see page 18 of the supporting document).

### **Background**

There are a variety of human based threats to the Davidson Seamount. The top of the seamount is too deep for current fish trawling technology, benthic fish density is very low, and the species seen to date in the deep waters just above the seamount are not commercially desirable. The top of the seamount appears nearly pristine because of the abundance of large, fragile species (e.g., corals greater than 8 feet tall and vast fields of sponges) and an apparently undisturbed seafloor. The existing albacore tuna and swordfish/shark fisheries operate in the top 150 feet of water, more than 3000 feet above the seamount. Therefore, threats from fishing are relatively remote; however, the ability to trawl at great depth is increasing and this threat could become more imminent in the future. More immediate threats include the cumulative effects of research collection and bioprospecting, which could be managed effectively and efficiently through the MBNMS's permitting system.

A prohibition against the take of all sanctuary resources below 3000 feet would protect the vulnerable, long-lived, fragile and slow-growing species, which have long recovery times if impacted. It would also safeguard previously undiscovered species and species assemblages (large, adjacent, patches of corals and sponges). The restrictions would also protect the opportunity to discover unique associations (and other ecological processes) between species by keeping them undisturbed. Regulations would also serve to educate the public and fishermen

about the resources on the Davidson Seamount, including the opportunity for public outreach in the form of future media coverage of this unique and nearly pristine environment. The MBNMS and NOAA Fisheries share a common interest in understanding and protecting cold-water corals such as those found at the Davidson Seamount. The MBNMS has had initial discussions with the NOAA Fisheries Northwest Science Center regarding the potential for joint seamount exploration.

The prohibition below 3000 feet would also provide a 1000-foot buffer between the top of the seamount and any fishing activities. This buffer would protect the communities that have direct ecological relationships with the biogenic habitat on the seamount, but that are found in the water column immediately above the seamount. Prohibiting bottom fishing will also reduce the threat on the seamount posed by lost gear and marine debris.

Based on a socioeconomic study contracted by the NMSP, the Sanctuary has determined that the above-proposed action would have no impact on fishermen. Only two commercial fisheries currently operate in the waters above Davidson Seamount—drift gill netting for swordfish and sharks, and trolling for albacore tuna. As noted, these fisheries operate in the top 150 feet of water, far above the seamount, the top of which is 4100 feet below the surface. Recreational fishermen also access the waters above the Davidson Seamount for albacore, again within 150 feet of the sea surface.

From the analysis of trawl logbooks from 1997-2002 it is apparent that very little trawl activity takes place in the area of the seamount. Of the tow set and haulpoints recorded in the logbooks, only two (which are potentially errant) have crossed the Davidson Seamount Area in the five years analyzed. Examining the depths recorded in the logbooks further corroborates the absence of trawling over the seamount. The mean depth of block 1036 (where much of the seamount is located) is 10,496 feet, with a minimum depth of 5,359 feet and a maximum of 15,396 feet. From the trawl logbooks, however, the mean average tow depth recorded in logbooks ranges from 735 to 1122 feet. Again, the summit of the seamount is 4,101 feet below the surface, further indicating that groundfish fishing activity takes place well outside the depth of the seamount.

As the proposed regulation would apply below 3000 feet, this action would have no fishing related socioeconomic impacts.

Please see the attached document for more details on the alternatives and socioeconomic analyses.

#### **Cordell Bank National Marine Sanctuary: Protection of Cordell Bank**

The goals and objectives of the CBNMS in taking this proposed action can be summarized as seeking to protect the fragile benthic invertebrate community on Cordell Bank and where appropriate, restore and enhance its natural habitats, populations and ecological processes by eliminating avoidable adverse impacts to the Bank. The full goals and objectives are listed beginning on page 28 of the attached supporting document.

The CBNMS regulations presently prohibit removing, taking, or injuring benthic invertebrates or algae on Cordell Bank or within the 50 fathom isobath surrounding the Bank, except for accidental removal, injury or takings during "normal fishing operations." Based on the analysis, NOAA's proposed action is to narrow this exception to the above regulation by allowing removal, injury or takings of benthic invertebrates or algae only as incidental and necessary to the use of vertical hook-and-line fishing gear (including trolling gear, but excluding longlines) on Cordell Bank and within the 50 fathom isobath surrounding Cordell Bank. This narrower exception would meet the goal of protecting Cordell Bank and the surrounding area from activities that could injure, cause the loss of, or destroy this sensitive benthic habitat. Related to this, the NMSP is also considering adding a new prohibition to CBNMS which would prohibit drilling into, dredging, or otherwise altering Cordell Bank or the submerged lands within the 50 fathom isobath; or constructing, placing, or abandoning any structure, material or other matter on the Bank or on the submerged lands within the 50 fathom isobath surrounding the Bank; however, vertical hook-and-line gear would also be excepted from this prohibition.

As part of the section 304(a)(5) process, NMSP requests that PFMF prepare draft fishing regulations to implement the fishery management aspect of this alternative. Since these regulations will be promulgated under the NMSA, to assist the Council we have provided draft regulatory language intended to provide a regulatory model for the Council to consider (see page 32 of the supporting document).

#### Background

Cordell Bank is located about 43 nautical miles (nm) northwest of the Golden Gate Bridge and 20 nm west of the Point Reyes lighthouse. Due to the distance from land and unpredictable, and often-rough sea conditions, access to the Bank is limited. Even so, human use activity remains a threat to the health and function of the Bank. Concern remains about the fragile quality of the Bank, particularly the high relief pinnacles and ridges and benthic organisms covering the Bank. Once the granite pinnacles have been compromised, there is no opportunity for recovery and they can and will remain rubble. The pinnacles and ridges of the Bank provide a hard substrate for attachment resulting in the thick coverage on the Bank of sponges, anemones, hydrocorals, gorgonian corals, hydroids, tunicates, and scattered crabs, holothurians, and gastropods. This benthic coverage in turn provides important habitat and food for fishes and other living marine resources. This area is one of complexity, sensitivity and ecological importance.

The proposed actions to protect benthic invertebrates and algae on and near Cordell Bank and prohibit disturbance to the Bank and submerged lands within the 50 fathom isobath surrounding the Bank would protect the vulnerable, long-lived, fragile and slow-growing species, which have long recovery times if impacted. It would also safeguard the fragile high relief on Cordell Bank, particularly the pinnacles and ridges, from the threat of permanent destruction. The restrictions would also protect the opportunity to better understand unique species associations or ecological processes by keeping them undisturbed. Regulations would also provide an outreach opportunity to educate the public about the resources on the Cordell Bank.

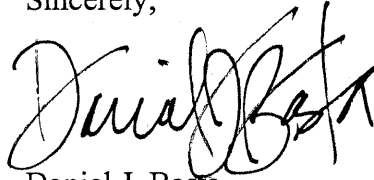
Historically, fisheries have occurred within Sanctuary boundaries for dungeness crab, albacore, salmon and several species of groundfish. Nontrawl sectors such as salmon and pelagic fisheries are only described by landing receipts, not logbooks. The 50 fathom isobath surrounding Cordell

Bank is straddled by two CDF&G fish blocks: 441 and 451. Effort is averaged over these 10-minute fish blocks and therefore is limited in its spatial explicitity. Also, there are known quality issues with the landing receipts data because the reporting relies on the fishermen reporting the block accurately, and the fish buyers in turn accurately recording the blocks. Without observer data or other location information available, the broad geographic range of the blocks and unverified nature of landings data limit our understanding of the types and level of fishing activities taking place on the Bank. CBNMS's data collection efforts have been augmented by personal interviews.

A preliminary analysis of fishing activity indicates that given current types and levels of fishing effort taking place on the Bank, the proposed regulatory actions would impose no additional socioeconomic burden on the fishing community. If the PFMC's groundfish closure were to be lifted, there would be a potential for socioeconomic impacts on longliners. Three factors need to be considered in evaluating socioeconomic impacts on this user group: 1) preliminary information indicates that at least 10 of the 14 known local longliners also participate in other fisheries such as crab and salmon, from which they would continue to derive some income; 2) although this group may be displaced from the Bank, effort could be shifted to other areas adjacent to the CBNMS that would mitigate lost income, although some additional burdens may be realized; and 3) having realized the impact of the groundfish closure, indications are that at least 10 of these 14 boats have already been sold.

Additional background information and analyses of alternatives is enclosed. We appreciate the time and effort of the PFMC and our partner organizations in developing proposals for improved conservation and protection of the resources of MBNMS and CBNMS. We look forward to making a presentation regarding this request at the November PFMC meeting in Portland. In the meantime please feel free to contact either Holly Price, MBNMS at 831-647-4247, or Dan Howard, Manager, CBNMS at 415-663-1456 with questions or for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Basta", with a stylized flourish at the end.

Daniel J. Basta  
Director  
National Marine Sanctuary Program

cc: Don McIsaac, Executive Director, PFMC  
Rod McInnis, Regional Administrator, SWR  
Patty Wolf, Marine Region Director, CDFG  
Holly Price, Acting Superintendent, MBNMS  
Dan Howard, Manager, CBNMS



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
Silver Spring, Maryland 20910

Dr. Donald McIsaac  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Ste. 200  
Portland, Oregon 97220-1384

Dear Dr. McIsaac:

The National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service's National Marine Sanctuary Program (NMSP) has initiated a process to jointly review the management plans of Cordell Bank National Marine Sanctuary (CBNMS), Gulf of the Farallones National Marine Sanctuary (GFNMS), and Monterey Bay National Marine Sanctuary (MBNMS). These sanctuaries are located adjacent to each other off the north-central California coast, from Bodega Bay in Sonoma County to Cambria in San Luis Obispo County. The NMSP is conducting this process pursuant to section 304(e) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(e)), which requires the Secretary of Commerce (Secretary) to evaluate at five-year intervals the substantive progress toward implementing the management plan and goals for each sanctuary, and to revise the management plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

Because some of the changes under consideration may require a change to the Designation Document of one or more of the sanctuaries, pursuant to section 303(b)(2) of the NMSA (16 U.S.C. 1433(b)(2)), the NMSP is consulting with appropriate Federal and State government agencies, the Pacific Fishery Management Council, and other interested parties. Therefore, the purpose of this letter is to inform these parties that the NMSP is considering amending the terms of designation for these sanctuaries, as described below, and to solicit input on these possible amendments. Interested parties will also have the opportunity to review and provide comments on the three draft site management plans and draft Environmental Impact Statement when they are released for public comment in Spring 2005.

As required by section 304(e), each review includes a prioritization of management objectives that involve monitoring, educational efforts, collaborative management with other agencies, and developing partnerships to protect sanctuary resources. The NMSP appreciates the valuable support and input that it has received from Federal, State, and local agencies, stakeholders, and the public throughout this review and particularly in helping draft strategies and activities that address priority issues. A summary of the recommendations can be viewed at <http://sanctuaries.nos.noaa.gov/jointplan/>. The recommendations from these groups will be detailed in the three draft site management plans and supported by a Draft Environmental Impact Statement.

The NMSP expects that regulatory changes will accompany the revised management plans. Some of the regulatory changes under consideration may require a change to the terms of designation for a particular sanctuary as defined by section 304(a)(4) of the NMSA; 16 U.S.C.



1434(a)(4)); and in the attached Designation Documents for each sanctuary. While the management plan review is being conducted jointly, the sanctuaries as described below, were designated at different times and for different purposes. Therefore, achieving the goals and objectives identified in the review may require different modifications to each sanctuary's Designation Document. While no final decisions have been made, many of these potential changes reflect consideration of comments received from the public and the sanctuary advisory councils on the priority issues identified during this management plan review process.

The changes currently being considered to the Designation Document for each sanctuary are summarized in the following sections.

### **Cordell Bank National Marine Sanctuary**

CBNMS protects an area of 526 square miles (397 square nautical miles) off the northern California coast. The main feature of the Sanctuary is Cordell Bank, an offshore granite bank emerging from the soft sediments of the continental shelf, about 43 nautical miles (nm) northwest of the Golden Gate Bridge and 20 nm west of the Point Reyes lighthouse. CBNMS is located offshore in Federal waters and shares its southern and eastern boundary with GFNMS. The CBNMS eastern boundary is six miles from shore and the western boundary is the 1000-fathom isobath on the edge of the continental slope.

In addition to the non-regulatory strategies and activities developed to address priority issues, there are some specific boundary and regulatory changes under consideration that would require changes to the CBNMS Designation Document. These changes include:

#### Designation Document Article 2, Description of the Area

##### **Clarify that the submerged lands underlying the Sanctuary waters are legally part of the Sanctuary.**

The CBNMS Designation Document clearly lists Cordell Bank and its surrounding waters as part of the Sanctuary. There are also existing Sanctuary regulations that protect the submerged lands, and yet the submerged lands were never explicitly mentioned in the description of the area. The NMSP is seeking to clarify that the submerged lands are part of the Sanctuary in order to make it consistent with the current NMSA authority and the Designation Documents of more recent sanctuaries.

#### Designation Document Article 4, Scope of Regulations: Section 1 – Activities Subject to Regulation

##### **1. Add authority to prohibit altering Cordell Bank or the submerged lands within the 50-fathom isobath surrounding the Bank; and to prohibit altering the submerged lands for the remainder of the Sanctuary except as incidental to and necessary to anchor a vessel or conduct a lawful fishing activity.**

This would maximize protection of the core area of and around the Bank from all activities that could impact the fragile relief of the Bank, including drilling, dredging, and construction, placement or abandonment of a structure or other matter. Damage to the areas of the Bank

with high relief would be permanent as this granitic structure is not a renewable resource. For the balance of the Sanctuary outside the 50-fathom isobath surrounding the Bank, exceptions would be made for anchoring and lawful fishing activity so that current activities that may already be taking place on the soft bottom (areas that could more easily recover from impact) would be allowed.

**2. Add authority to prohibit taking any marine mammal, marine reptile, or bird in or above the Sanctuary or possessing any marine mammal, marine reptile, or bird, or part thereof, taken in the Sanctuary.**

The intent of this authority is to bring a special focus to the protection of the diverse marine mammal and bird populations within the Sanctuary. The regulation would be written to complement the existing permit authorities under the Marine Mammal Protection Act, Endangered Species Act and the Migratory bird Treaty Act. This authority already exists in MBNMS and would also provide greater consistency in the regulations across the four sanctuaries in California.

**3. Add authority to regulate the release of or other introductions of introduced species.**

A priority issue identified during the management plan review was addressing the threat posed by releasing or otherwise introducing non-native species to marine ecosystems. One of the recommended strategies from the working groups for addressing this issue was to consider a regulation prohibiting such releases or other introductions.

Designation Document Article 5, Relation to Other Regulatory Programs:

**Revise Section 1 – Fishing to read as follows:**

Under Article 4 fishing gear cannot remove, take, or injure benthic invertebrates or algae on Cordell Bank or within the 50 fathom isobath surrounding the Bank. Fishing gear also cannot alter Cordell Bank or the submerged lands within the 50 fathom isobath surrounding the Bank and cannot be placed or abandoned on Cordell Bank or within the 50 fathom isobath surrounding the Bank. These regulations do not apply to vertical hook-and-line gear (including trolling gear but not longline gear). All other regulatory programs pertaining to fishing, including Fishery Management Plan promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. section 1801 *et seq.* shall remain in effect. All permits, licenses, approvals and other authorizations issued pursuant to the Magnuson-Stevens Act shall be valid within the Sanctuary subject only to regulations issued pursuant to Article 4.

The CBNMS regulations presently prohibit removing, taking, or injuring benthic invertebrates or algae on Cordell Bank or within the 50-fathom isobath surrounding the Bank, except during “normal fishing operations.” The NMSP is considering amending this regulation to narrow the exception to only vertical hook and line fishing gear (which includes trolling, but excludes longlines) to ensure protection of the fragile benthic coverage on the core and immediate surrounding areas of the Bank from all activities, including fishing activities, that directly target or impact the areas of greatest benthic coverage on and around the Bank. The exception for vertical hook and line fishing gear would allow for incidental take as a result of fishing gear that does not directly target or impact the benthos such as

fishing apparatus composed of a single line, terminated by a combination of sinkers and hooks or lures and spooled on a reel.

### **Gulf of the Farallones National Marine Sanctuary**

The GFNMS protects an area of 1,255 sq. miles (948 sq. nautical miles) off the northern California coast. It was designated a National Marine Sanctuary in 1981 to provide comprehensive and coordinated conservation and management of the marine resources extending seaward from the mean high water mark or the seaward boundary of the Point Reyes National Seashore. It was designated a National Marine Sanctuary because it is an area of special significance that provides important marine and nearshore habitats for a diverse array of marine mammals and marine birds, as well as fishery, plant, algae, and benthic resources.

In addition to the non-regulatory strategies and activities developed to address priority issues, there are some specific boundary and regulatory changes under consideration that would require changes to the GFNMS Designation Document. These changes include:

#### Designation Document Article 2, Description of the Area

##### **1. Clarify that the submerged lands underlying the Sanctuary waters are legally part of the Sanctuary.**

The GFNMS Designation Document clearly identifies the area and lists the “intervening waters” as part of the Sanctuary. There are also regulations that protect the submerged lands, and yet the submerged lands were never explicitly mentioned in the description of the area. The NMSP is seeking to clarify that the submerged lands are part of the Sanctuary in order to capture the original intent and to make it consistent with the current NMSA authorities.

##### **2. Permanently fix the shoreward boundary adjacent to Pt. Reyes National Seashore.**

The proposed action is to permanently fix the Sanctuary’s shoreward boundary in relationship to the location of the boundary of Pt. Reyes National Seashore at the time of designation of the Sanctuary in 1981. The purpose of this proposed action is to create a static boundary for the Sanctuary that does not fluctuate as the boundaries of the National Seashore may change overtime. This would create consistency for the benefit of sanctuary users and would facilitate enforcement and resource protection efforts.

#### Designation Document Article 4, Scope of Regulations: Section 1 – Activities Subject to Regulation

##### **1. Add authority to prohibit discharging or depositing from beyond the Sanctuary boundary any material or other matter that subsequently enters and injures a Sanctuary resource or quality.**

Currently, GFNMS regulations include prohibiting discharges from within the sanctuary, but it is one of the only sanctuaries in the system that does not address or regulate discharges outside the sanctuary that subsequently enter and injure a sanctuary resource. Adding this regulation would also improve consistency with the State Waters Resources Control Board and improve water quality throughout GFNMS.

**2. Add authority to regulate the release of or other introductions of introduced species.**

A priority issue identified during the management plan review was addressing the threat posed by releasing or otherwise introducing non-native species to marine ecosystems. One of the recommended strategies from the working groups for addressing this issue was to consider a regulation prohibiting such releases or other introductions.

**3. Add authority to prohibit taking any marine mammal, marine reptile, or bird in or above the Sanctuary or possessing any marine mammal, marine reptile, or bird, or part thereof, taken in the Sanctuary.**

The intent of this authority is to bring a special focus to the protection of the diverse marine mammal and bird populations within the Sanctuary. The regulation would be written to complement the existing permit authorities under the Marine Mammal Protection Act, Endangered Species Act and the Migratory bird Treaty Act. This authority already exists in MBNMS and would also provide greater consistency in the regulations across the four sanctuaries in California.

**4. Add the authority to regulate attracting or approaching a white shark in the Sanctuary.**

This would help resolve an issue related to user conflicts between adventure tourism operators and wildlife biologists and control harmful impacts on white shark behavior.

**5. Modify authority regarding navigation of vessels to read, "Operating a vessel (i.e., water craft of any description) in the Sanctuary."**

This would provide authority to address derelict vessels that could pose harm to sanctuary resources due to damage from direct impact of the settling or colliding of a vessel on habitats, and potential leakage of hazardous or harmful materials from a vessel. This term of designation would be identical to a term in the Designation Document for MBNMS and would provide greater consistency and more uniform authority between these adjacent sanctuaries.

**6. Modify the authority regarding cultural or historical resources.**

The term would be modified to include possessing a cultural or historical resource. This would broaden the authority and would facilitate enforcement of regulations that protect these resources. As modified, this term of designation would provide the same authority as the term in the Designation Document for MBNMS regarding cultural and historical resources, resulting in greater consistency and more uniform resource protection between these two adjacent sanctuaries.

**Monterey Bay National Marine Sanctuary**

MBNMS was established in 1992 and is the largest sanctuary in the system. Stretching from Marin to Cambria, MBNMS encompasses a shoreline length of 276 miles and 5,322 square miles (4,709 square nautical miles) of ocean. Supporting one of the world's most diverse marine ecosystems, it is home to numerous mammals, seabirds, fishes, invertebrates, and plants in a remarkably productive coastal environment. The MBNMS was established for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area.

There are a broad suite of educational, research, and resource protection actions that have been identified during the management plan review that do not involve regulatory changes. These include such actions as developing ecosystem monitoring projects, implementing educational efforts targeting Hispanic populations, and developing regional interagency guidelines for desalination and coastal armoring.

In addition to the non-regulatory strategies and activities developed to address priority issues, there are some specific regulatory or boundary changes that would require changes to the MBNMS Designation Document. These changes include:

Designation Document Article 2, Description of the Area

**Modify the description of the MBNMS boundary to include Davidson Seamount as defined by the area bound by the coordinates West: 123°W; East: 122.5°W; North: 35.9°N; South: 35.5°N.**

The Davidson Seamount is located 75 miles to the southwest of Monterey, due west of San Simeon and is home to a diverse assemblage of deep water organisms. This highly diverse community includes many endemic species and fragile, long-lived cold-water corals and sponges. The MBNMS Sanctuary Advisory Council unanimously recommended that the Davidson Seamount be incorporated into MBNMS so long as existing fishing practices within the area around Davidson Seamount would not be adversely affected by Sanctuary designation (see below).

Designation Document Article 4, Scope of Regulations: Section 1 – Activities Subject to Regulation

**1. Add the authority to prohibit removal, take, harvest, disturbance, or other injury by any means, including fishing, from below 3000 feet of the sea surface in the Davidson Seamount area**

The existing Designation Document for MBNMS allows for the regulation of the removal, harvest, injury or disturbance of all Sanctuary resources. However, fishing activities are currently not treated as included in this MBNMS authority. A regulation that prohibited all removal and other injury of sanctuary resources below 3000 feet would not impact existing fisheries in the area. Currently the only fishing in the area is for pelagic species such as albacore, swordfish and shark, and occurs within 150 feet of the sea surface. The Designation Document would be narrowly amended to allow for such restrictions below 3000 feet in the Davidson Seamount area.

**2. Add the authority to regulate the release or other introduction of introduced species**

A priority issue identified during the management plan review was addressing the threat posed by releasing or introducing non-native species to marine ecosystems. One of the recommended strategies from the working groups for addressing this issue was to consider a regulation prohibiting such releases or other introductions.

**3. Clarify that the authority to regulate possession of a Sanctuary resource applies wherever the resource is found.**

The existing Designation Document currently lists as subject to regulation “possessing within the Sanctuary a Sanctuary resource....” The NMSP would like to make clear that a prohibition against possession of Sanctuary resources may apply outside the Sanctuary boundary (e.g., at a harbor).

**National Marine Sanctuaries Act Factors to Consider**

In responding to this letter, please take into account, as applicable, the following factors the Secretary must consider when designating a Sanctuary (16 U.S.C. 1433(b)(1)):

(A) these areas’ natural resource and ecological qualities, including their contributions to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the sites;

(B) the areas’ historical, cultural, archaeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the areas’ resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

(E) the existing State and Federal regulatory and management authorities applicable to the areas and the adequacy of those authorities to fulfill the purposes and policies of the NMSA;

(F) the manageability of the areas, including such factors as their size, their ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;

(I) the socioeconomic effects of sanctuary designation;

(J) the areas’ scientific value and value for monitoring the resources and natural processes that occur there;

(K) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and

(L) the value of the areas as an addition to the National Marine Sanctuary System.

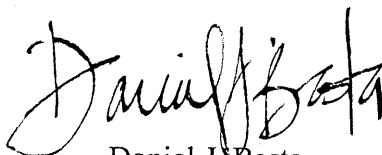
To ensure that any information, recommendations, or comments are considered in the preparation of the draft environmental impact statement, I would appreciate your response within sixty (60) days of receipt of this letter. As these changes relate to fishing activities, the NMSP sent you a separate letter that formally provides the PFMC with the opportunity to prepare draft sanctuary fishing regulations for the MBNMS and CBNMS pursuant to section 304(a)(5) of the NMSA.

A map of the sanctuaries is enclosed for your reference. If you have any questions regarding this process, contact Elizabeth Moore, Acting Chief, NMSP Conservation Policy and Planning Branch at (301) 713-3125x170. Please direct your response to:

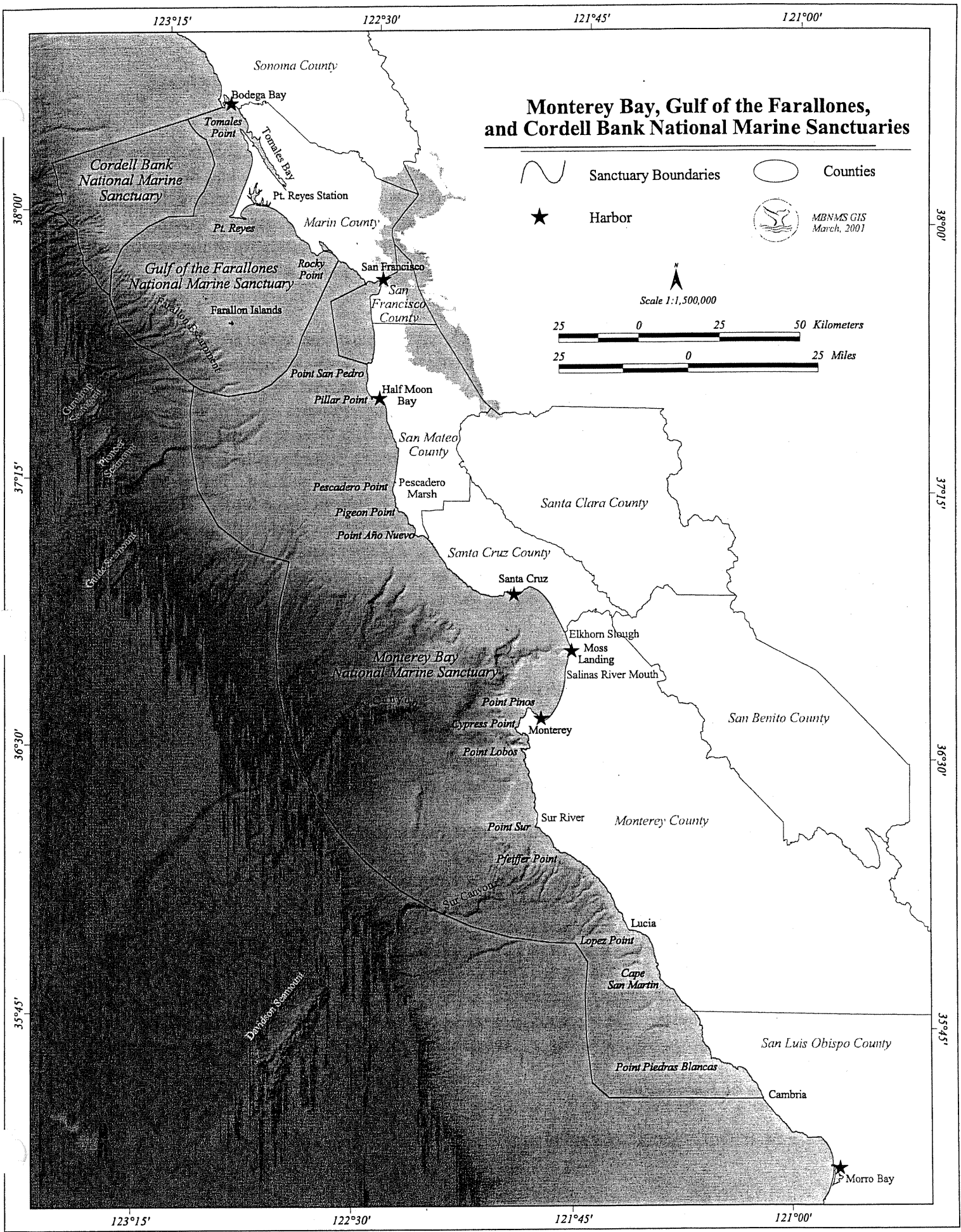
Elizabeth Moore  
NOAA-National Marine Sanctuary Program  
1305 East-West Highway, N/ORM-6  
Silver Spring, MD 20910-3281  
Ph: (301) 713-3125 x170  
Fax: (301) 713-0404  
Elizabeth.Moore@noaa.gov

We appreciate your input on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Basta". The signature is stylized with a large, looped "D" and a cursive "Basta".

Daniel J. Basta  
Director  
National Marine Sanctuary Program



# **1989 Final Designation Document for the Cordell Bank National Marine Sanctuary**

## **Preamble**

Under the authority of Title III of the Marine, Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. §§ 1431 *et seq.* (the "Act"), the Cordell Bank and its surrounding waters offshore northern California, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purpose of protecting and conserving that special, discrete, highly productive marine area and ensuring the continued availability of the ecological, research, educational, aesthetic, historical, and recreational resources therein.

## **Article 1. Effect of Designation**

The Act authorized the promulgation of such regulations as are necessary and reasonable to protect the characteristics of the Sanctuary that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value. As used in the Act, this Designation Document, and the Sanctuary regulations, the word "historical" includes cultural, archaeological, and paleontological. Article 4 of this Designation Document lists those activities requiring regulation now or which may require regulations in the future in order to protect Sanctuary resources. Listing of an activity authorizes but does not require its regulation. Therefore, the listing of an activity does not imply that the activity will be regulated in the future. However, if an activity is not listed it can not be regulated, except on an emergency basis for no longer than 120 days where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, without amending article 4 to list the activity. Such an amendment can only be accomplished by following the same procedures through which the original designation was made.

## **Article 2. Description of the Area**

The Sanctuary consists of a 397.05 square nautical mile area encompassed by a boundary extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northeast along this boundary to the beginning point. The precise boundaries are set forth in the regulations.

## **Article 3. Characteristics of the Area that Give it Particular Value**

Cordell Bank is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. In addition, the Bank and its surrounding waters may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. It lies on a plateau 300-400 feet (91-122 meters) deep and ascends to within about 115 feet (35 meters) of the surface. The seasonal upwelling of nutrient-rich bottom waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank includes an exceptional assortment of algae, invertebrates, fishes, marine mammals and seabirds.

## **Article 4. Scope of Regulation**

### **Section 1. — Activities Subject to Regulation**

The following activities may be regulated within the Sanctuary and adjacent waters to the extent necessary and reasonable to ensure the protection of the Sanctuary's conservation, recreational, ecological, historical, research, education or aesthetic values:

- a. Depositing or discharging any material or substance;
- b. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or within the 50 fathom isobath surrounding the Bank;
- c. Hydrocarbon (oil and gas) activities;
- d. Anchoring on the Bank or within the 50 fathom contour surrounding the bank; and
- e. Removing, taking, or injuring or attempting to remove, take, or injure historical resources.

#### Section 2.—Consistency with International Law

The regulations governing activities listed in Section 1 of this Article shall apply to foreign flag vessels and foreign persons only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

#### Section 3.—Emergency Regulations

Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, activities, including those not listed in Section 1 of this Article, may be regulated within the limits of the Act on an emergency basis for a period not to exceed 120 days.

### **Article 5. Relation to Other Regulatory Programs**

#### Section 1.—Fishing

The regulation of fishing is not authorized under Article 4. Fishing vessels, however, are subject to regulation under Article 4 with respect to discharges and anchoring. All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C §§ 1801 et seq. ("Magnuson Act"), shall remain in effect. All permits, licenses, approvals, and other authorizations issued pursuant to the Magnuson Act shall be valid within the Sanctuary subject only to regulations issued pursuant to Article 4.

#### Section 2.—Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense (DOD) activities that are necessary for national defense. All such activities being carried out by DOD within the Sanctuary on the effective date of designation that are necessary for national defense will be exempted after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, shall be subject to all prohibitions contained in the Sanctuary regulations.

#### Section 3.—Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, approvals, and other authorizations issued pursuant to those programs shall be valid, subject only to the regulation of activities pursuant to Article 4.

**Article 6. Alterations to this Designation**

This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce or his/her designee.

# **1982 Final Designation Document Designation for the Point Reyes/Farallon Islands National Marine Sanctuary**

## **Preamble**

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92-532 (the Act), the waters along the Coast of California north and south of Point Reyes Headlands, between Bodega Head and Rocky Point and surrounding the Farallon Islands, are hereby designated a Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

## **Article I. Effect of Designation**

Within the area designated as The Point Reyes/ Farallon Islands Marine Sanctuary (the Sanctuary) described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

## **Article 2. Description of the Area**

The Sanctuary consists of an area of the waters adjacent to the Coast of California of approximately 948 square nautical miles (nmi), extending seaward to a distance of 6 nmi from the mainland and 12 nmi from the Farallon Islands and Noonday Rock, and including the intervening waters. The precise boundaries are defined by regulation.

## **Article 3. Characteristics of the Area That Give it Particular Value**

The Sanctuary includes a rich and diverse marine ecosystem and a wide variety of marine habitat, including habitat for 20 species of marine mammals. Rookeries for over half of California's nesting marine bird and nesting areas for at least 12 or 16 known U.S. nesting marine bird species are found within the boundaries. Abundant fish and shellfish are harvested in the Sanctuary.

## **Article 4. Scope of Regulation**

Section 1. Activities Subject to Regulation. In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the ecological, recreational, and aesthetic value of the area:

- a. Hydrocarbon operations.
- b. Discharging or depositing any substance.
- c. Dredging or alteration of, or construction on, the seabed.
- d. Navigation of vessels except fishing vessels or vessels traveling within a vessel traffic separation scheme or port access route designated by the Coast Guard outside the area 2

nmi from the Farallon Islands, Bolinas Lagoon or any Area of Biological Significance, other than that surrounding the Farallon Islands, established by the State of California prior to designation.

- e. Disturbing marine mammals and birds by overflights below 1000 feet.
- f. Removing or otherwise harming cultural or historical resources.

Section 2. Consistency with International Law. The regulations governing the activities listed in section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. Emergency Regulations. Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated with the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

## **Article 5. Relation to Other Regulatory Programs.**

Section 1. Fishing and Waterfowl Hunting. The regulation of fishing, including fishing for shellfish and invertebrates, and waterfowl hunting, is not authorized under Article 4. However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, paragraph (b) and mariculture activities involving alterations or construction of the seabed can be regulated in accordance with Article 4 paragraph (c). All regulatory programs pertaining to fishing, and to waterfowl hunting, including regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery Conservation and Management Act of 1976, 16 U.S.C §§ 1801 et seq., will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4.

Fishing as used in this article and in Article 4 includes mariculture.

Section 2. Defense Activities. The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. Other Programs. All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations will set forth any necessary certification procedures.

## **Article 6. Alterations to this Designation**

This Designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies

and the Pacific Regional Fishery Management Council, and approval by the President of the United States.

## **1992 Designation Document For The Monterey Bay National Marine Sanctuary**

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. §§ 1431 et seq., Monterey Bay and its surrounding waters offshore central California, and the submerged lands under Monterey Bay and its surrounding waters, as described in Article II, are hereby designated as the Monterey Bay National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

### **Article I. Effect of Designation**

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that either are to be regulated on the effective date of designation or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

### **Article II. Description of the Area**

The Monterey Bay National Marine Sanctuary (the "Sanctuary") boundary encompass a total of approximately 4,024 square nautical miles (approximately 13,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California. The northern terminus of the boundary is located along the southern boundary of the Gulf of Farallones National Marine Sanctuary and runs westward to approximately 123°07'W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03'N, the boundary arcs south to 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41'W, 35°33'N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the Gulf of Farallones National Marine Sanctuary and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing, and Monterey harbors are all excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge is included within the Sanctuary boundary. Appendix I to this Designation Document sets forth the precise Sanctuary boundary.

### **Article III. Characteristics of the Area That Give It Particular Value**

The Monterey Bay area is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive ecosystem and a wide variety of marine habitat.

The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This canyon system provides habitat for pelagic communities and, along with other distinct

bathymetric features, may modify currents and act to enrich local waters through strong seasonal upwelling. Monterey Bay itself is a rare geological feature, as it is one of the few large embayments along the Pacific coast.

The Monterey Bay area has a highly diverse floral and faunal component. Algal diversity is extremely high and the concentrations of pinnipeds, whales, otters and some seabird species is outstanding. The fish stocks, particularly in Monterey Bay, are abundant and the variety of crustaceans and other invertebrates is high.

In addition there are many direct and indirect human uses of the area. The most important economic activity directly dependent on the resources is commercial fishing, which has played an important role in the history of Monterey Bay and continues to be of great economic value.

The residents of this area as well as the numerous visitors enjoy the diverse resources of the Monterey Bay area. The population of Monterey and Santa Cruz counties is rapidly expanding and is based in large part on the attractiveness of the area's natural beauty. The high water quality and the resulting variety of biota and their proximity to shore is one of the prime reasons for the international renown of the area as a prime tourist location. The quality and abundance of the natural resources has attracted man from the earliest prehistoric times to the present and as a result the area contains significant historical, e.g., archaeological and paleontological, resources, such as Costanoan Indian midden deposits, aboriginal remains and sunken ships and aircraft.

The biological and physical characteristics of the Monterey Bay area combine to provide outstanding opportunities for scientific research on many aspects of marine ecosystems. The diverse habitats are readily accessible to researchers. Thirteen major research and education facilities are found within the Monterey Bay area. These institutions are exceptional resources with a long history of research and large databases possessing a considerable amount of baseline information on the Bay and its resources. Extensive marine and coastal education and interpretive efforts complement Monterey Bay's many research activities. For example, the Monterey Bay Aquarium has attracted millions of visitors who have experienced the interpretive exhibits of the marine environment. Point Lobos Ecological Reserve, Elkhorn Slough National Estuarine Research Reserve, Long Marine Laboratory and Año Nuevo State Reserve all have excellent docent programs serving the public, and marine related programs for school groups and teachers.

The Final Environmental Impact Statement/Management Plan provides more detail on the characteristics of the Monterey Bay area that give it particular value.

#### **Article IV. Scope of Regulations**

##### **Section 1. Activities Subject to Regulation**

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area:

- a. Exploring for, developing or producing oil, gas or minerals (e.g., clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores or any other solid material or other

- matter of commercial value) within the Sanctuary;
- b. Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except dredged material deposited at disposal sites authorized prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation;
  - c. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except dredged material deposited at the authorized disposal sites described in Appendix II of this Designation Document, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval;
  - d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, sea turtle, seabird, historical resource or other Sanctuary resource;
  - e. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;
  - f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found with the Sanctuary, would be a Sanctuary resource;
  - g. Flying a motorized aircraft above the Sanctuary;
  - h. Operating a vessel (i.e., water craft of any description) in the Sanctuary;
  - i. Aquaculture or kelp harvesting within the Sanctuary; and
  - j. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

## Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

## **Article V. Effect on Leases, Permits, Licenses and Rights**

Pursuant to Section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) the exploration for, development of or production of oil, gas or minerals within the Sanctuary; (2) the discharge of primary-treated sewage (except for regulation, pursuant to Section 304(c)(1)

of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

#### **Article VI. Alteration of this Designation**

The terms of designation, as defined under Section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.

**Appendix I.** Monterey Bay National Marine Sanctuary Boundary Coordinates. (Appendix based on North American Datum of 1983.) Approximately 4,024 Square Nautical Miles (see FR, Vol. 57, No. 182, P 43317).

**Appendix II.** Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary. Appendix based on North American Datum of 1983. (see FR, Vol. 57, No. 182, P 43317).



**NATIONAL MARINE SANCTUARY PROGRAM  
ALTERNATIVES ANALYSIS  
OF PROPOSED MANAGEMENT ACTIONS  
FOR DAVIDSON SEAMOUNT AND CORDELL BANK**

**Executive Summary**

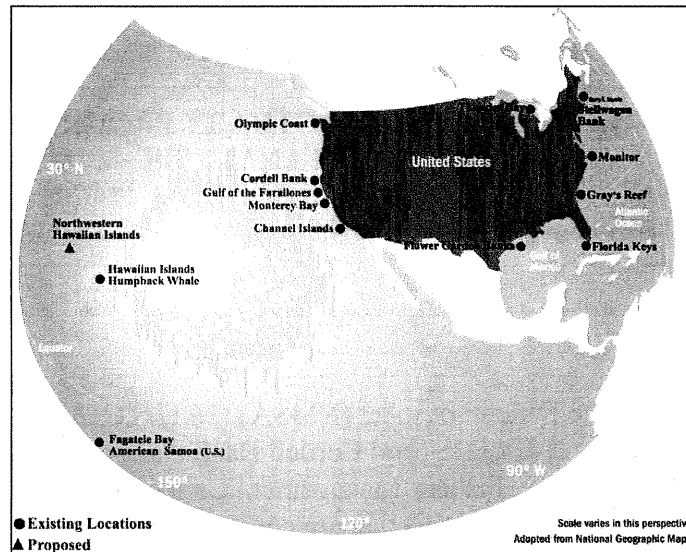
Pursuant to the National Marine Sanctuaries Act (NMSA) (16 U.S.C. § 304(a)(5)), the Monterey Bay National Marine Sanctuary (MBNMS) and Cordell Bank National Marine Sanctuary (CBNMS) are presenting the Pacific Fishery Management Council (PFMC) with the opportunity to prepare draft sanctuary fishing regulations that are consistent with the goals and objectives for each proposed sanctuary action. This document provides background information, describes management alternatives, preferred actions, rationales, and model regulatory language relating to the protection of physical and biological resources on and above the Davidson Seamount and Cordell Bank.

The opportunity to prepare draft sanctuary fishing regulations for MBNMS and CBNMS is being presented jointly for efficiency. However, if the PFMC chooses to prepare draft sanctuary fishing regulations, we request that the PFMC prepare draft sanctuary fishing regulations for the proposals specific to each sanctuary. In preparing draft sanctuary regulations for fishing in MBNMS and CBNMS, the PFMC would be acting under the authority of the NMSA and may address all species of fishes and invertebrates. The PFMC is therefore not restricted to the species or activities regulated under its current fishery management plans. Regulations for these actions would be analyzed in the Draft Environmental Impact Statement that will be prepared for the revised management plans and regulations of these sanctuaries.

**I. INTRODUCTION**

**A. Background**

The National Marine Sanctuary Program (NMSP) consists of a system of 13 National Marine Sanctuaries administered by the National Oceanic and Atmospheric Administration (NOAA). The MBNMS was established in 1992 and is the largest in the system. Stretching from Marin County to the town of Cambria, the MBNMS encompasses a shoreline length of 276 miles and 5,322 square miles (4,709 square nautical miles) of ocean. Supporting a diversity of marine ecosystems, it is home to numerous mammals, seabirds, fishes, invertebrates, and plants in a remarkably productive coastal environment. The MBNMS was established for the purpose of resource protection, research, education, and public use of this national treasure.



**Figure 1: The National Marine Sanctuary System**

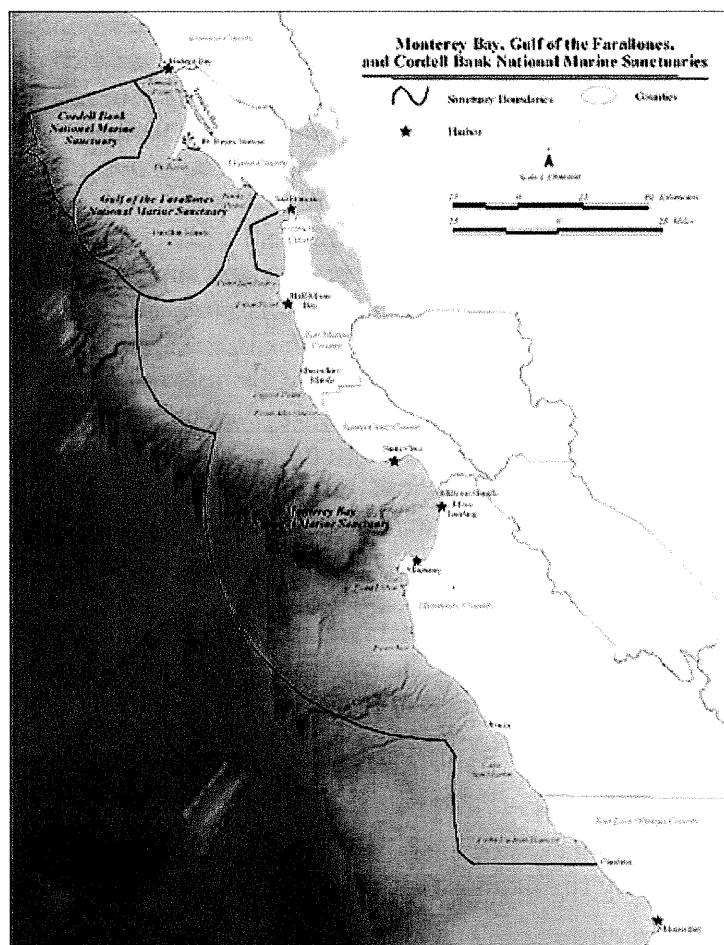
Cordell Bank National Marine Sanctuary is located approximately 50 miles (43 nautical miles) northwest of the Golden Gate Bridge, at the edge of the continental shelf. Cordell Bank rises dramatically from the soft sediments of the seafloor. Along a few ridges and pinnacles, the Bank rises to within 120 feet of the ocean surface. Upwelling of nutrient rich ocean waters and the Bank's topography create an exceptionally productive marine area. Cordell Bank provides critical habitat and is an important feeding area for resident and migratory species of marine mammals, seabirds and fishes and supports a rich benthic invertebrate community. The significant value of this marine habitat was officially recognized in 1989 when 526 square miles (397 square nautical miles) of Pacific Ocean including and surrounding Cordell Bank were designated as a national marine sanctuary.

## **B. Management Plan Review**

The 1992 reauthorization of the National Marine Sanctuaries Act required that each of the national marine sanctuaries engage in a management plan review process every five years to reevaluate site specific goals and objectives, management techniques, and strategies. This management plan review process has provided MBNMS and CBNMS with the opportunity to take a closer look at how their environments have changed over the past twenty years, understand the cause and effect relationship of human activity and natural perturbations on marine resources, and to engage the public in the management decision making process. Management plans are sanctuary-specific documents that describe regulations and boundaries, outline staffing and budget needs, present management actions and performance measures, and guide development of future budgets and management activities.

The management plan review process is based on five fundamental steps: 1) public scoping meetings; 2) the prioritization of issues; 3) creation of working groups to participate in development of action plans; 4) endorsement of the components of draft management plan by Sanctuary Advisory Councils (SAC); and 5) the preparation of draft and final management plans and the relevant National Environmental Policy Act (NEPA) documentation (such as an Environmental Impact Statement or Environmental Assessment). Public hearings on the draft

plan help staff revise the document into a final management plan, which, once approved, will outline a sanctuary's priorities for the next five to ten years. The draft priority issue-based action plans can be viewed at [www.sanctuaries.nos.noaa.gov/jointplan/](http://www.sanctuaries.nos.noaa.gov/jointplan/).



**Figure 2:** Cordell Bank, Gulf of the Farallones, and Monterey Bay National Marine Sanctuaries

### **C. Interaction with the Pacific Fishery Management Council**

The priority issues identified during the management plan process included considering the Davidson Seamount for Sanctuary designation and the appropriate level of accompanying regulatory protection.. The SAC unanimously approved incorporation and protection of the Davidson Seamount. The scope of this section 304(a)(5) interaction with PFMC is limited to potential Sanctuary fishing regulations in the seamount area. It does not involve the consideration of Sanctuary designation of the area or boundary alternatives (There will be other opportunities to comment on those issues). Also addressed during the management plan process was the need to better protect the fragile benthic invertebrate community living on the upper ridges and pinnacles of Cordell Bank. Both of the preferred actions regarding these issues involve fishing regulations and therefore involve engaging in the section 304(a)(5) process with PFMC.

The sanctuaries are guided by the provisions of section 304(a)(5) of the NMSA, (16 U.S.C. 1434(a)(5)). This section states that:

*The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone, as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.*

In drafting regulations pursuant to the requirements of the National Marine Sanctuaries Act, the Council is drafting sanctuary regulations to be promulgated under the National Marine Sanctuaries Act and is therefore not limited to restricting fishing activities for managed species.

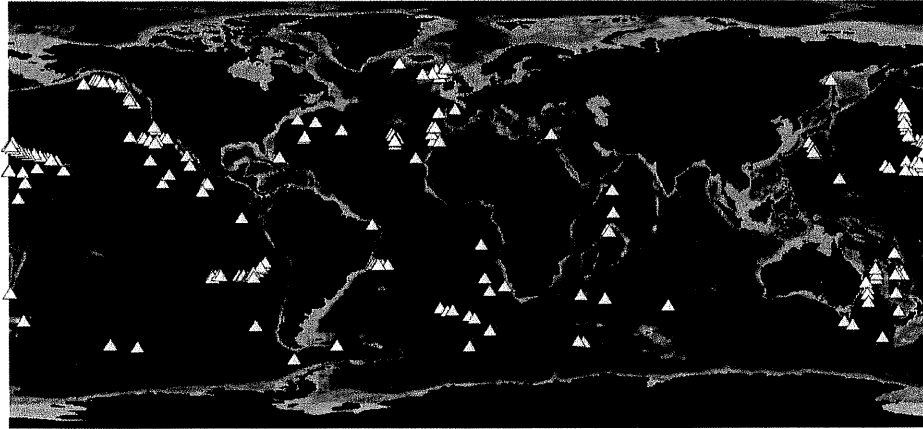
## **II. DAVIDSON SEAMOUNT**

In accordance with section 304(a)(5) of the NMSA, MBNMS is providing PFMC with the opportunity to draft sanctuary regulations that meet the goals and objectives for the preferred alternative listed below.

### **A. Background**

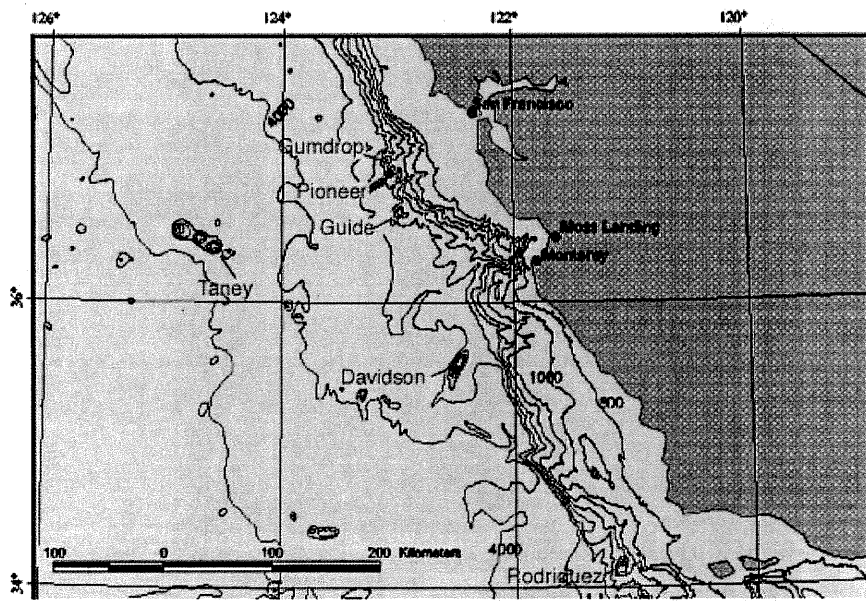
#### **1. Seamounts**

Seamounts have been defined as steep geologic features rising from the seafloor with a minimal elevation of 1,000 meters and with a limited extent across the summit. This definition is not strictly adhered to in the literature, and steep undersea mountains are often referred to as seamounts regardless of size. Seamounts have a variety of shapes, but are most often conical with a circular, elliptical, or more elongate base. They are usually of volcanic origins. It has been estimated that there are more than 30,000 seamounts over 1,000 meters tall in the Pacific Ocean, approximately 800 in the Atlantic Ocean, and an indeterminate number in the Indian Ocean.



**Figure 3:** Sampled Seamounts. K. Stocks. 2003.

Biologists, geologists and oceanographers began examining seamounts over 50 years ago. The methods of biological study over this period consist mostly of examining samples from trawls, dredges, traps, and nets. In the last decade, there have been advances in submersible technology that now allow direct exploration of these unique deep sea environments. However, less than 0.1 percent of the world's seamounts have been explored for what species live on them (de Forges et al., 2000; NOAA Ocean Exploration and Research Initiative, 2000). These studies indicate that seamounts function as deep sea "islands" of localized species distributions, dominated by suspension feeders (e.g., corals) growing on rock, in an otherwise flat, low biomass, sediment-covered abyssal plain.



**Figure 4:** Seamounts off the West coast. D. Clague 2002

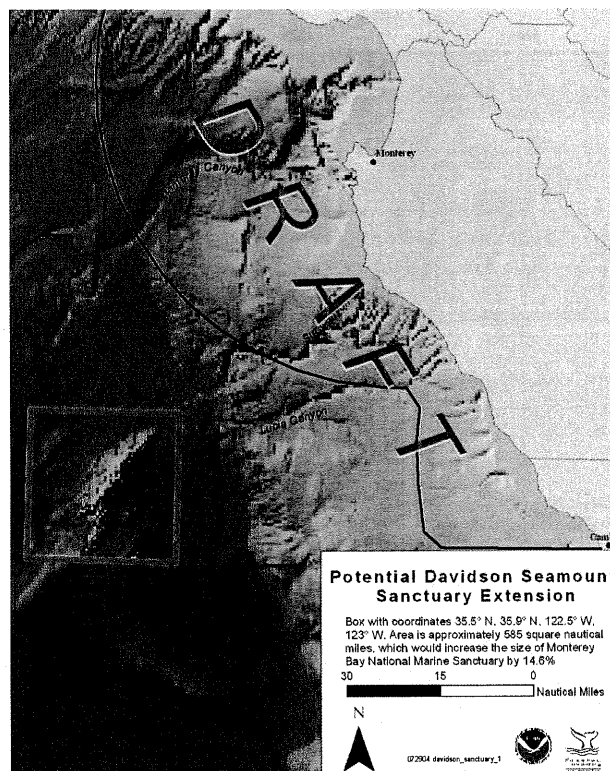
Conservation issues relative to seamounts revolve around endemism (species found on only one seamount), harvest, and low resilience of species. Wilson and Kaufman (1987), in their review of seamount biota and biogeography noted that of the 597 invertebrate species reported from 59 seamounts, 92 were novel species and many were endemic (up to 28% on the Vema Seamount).

More recently, de Forges et al. (2000) found in excess of 850 species from seamounts in the Tasman Sea and southeast Coral Sea, of which 29 – 34 % are new to science and potential seamount endemics. Though we know very little about the life history of many seamount species, there are clear cases of species susceptible to over harvest because they are long-lived with slow growth rates, they mature at old ages, their fecundity is low, and their successful new recruits occur only sporadically (Grigg, 1986; Boehlert and Sasaki, 1988; Mace et al., 1990; Boehlert and Mundy, 1993; and Rogers, 1994). Because of low species overlap between seamounts, de Forges et al. (2000) suggest that protection of seamount communities should be undertaken at a local scale; however, there are no seamounts protected by any National Marine Sanctuaries.

## 2. Davidson Seamount

### *Location*

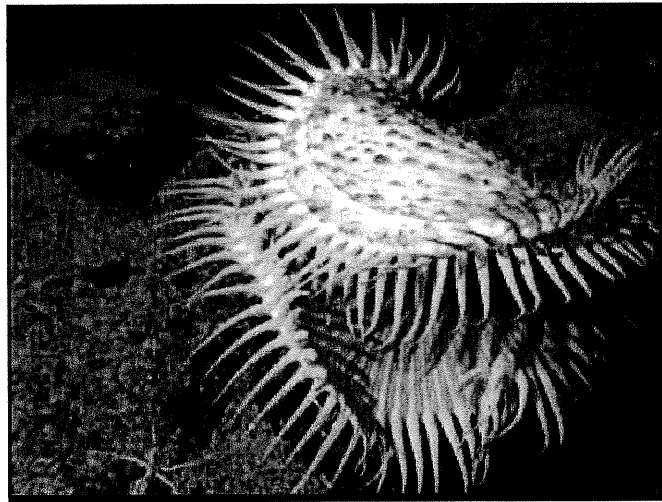
Davidson Seamount is located 75 miles to the southwest of Monterey, due west of San Simeon, and is one of the largest known seamounts in U.S. waters. It is 26 miles long and 8 miles wide. From base to crest, Davidson Seamount is 7546 feet (2,400 meters) tall; yet, it is still 4,130 feet (1,260 meters) below the sea surface. Davidson Seamount has an atypical seamount shape, having a northeast-trending ridges created by a type of volcanism only recently described (Davis et al., 2002); it last erupted about 12 million years ago. This large geographic feature was the first to be characterized as a “seamount” and was named after the Coast and Geodetic Survey (forerunner to the National Ocean Service) scientist George Davidson.



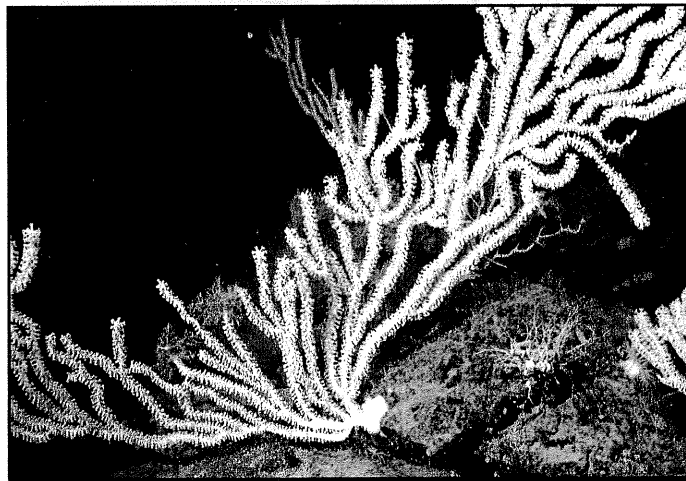
**Figure 5: Proposed Davidson Seamount Management Area**

### *Research*

The history of research at the Davidson Seamount is relatively limited; however, the research has produced dramatic results and Davidson Seamount is now one of the better studied seamounts in the world. Since first mapped in 1933, there have been ongoing NOAA charting efforts. The U.S. Geological Survey dredged rock samples from the Davidson Seamount in 1978/79. In 1998, the Monterey Bay Aquarium Research Institute (MBARI) completed detailed sidescan and multibeam surveys to precisely map the shape and structure of the seamount. In 2000, MBARI lead a remotely operated vehicle (ROV) survey of the geology of Davidson Seamount, while including biological observations at the sea surface, in the midwater, and on the seamount itself. This same year, there was a Presidential announcement designating the Davidson Seamount as one of three important sites to launch a new era of U.S. undersea exploration.



Venus's flytrap anemone (*Hormatiidae*) on the slope of the Davidson Seamount (1874 meters). Credit: NOAA/MBARI 2002



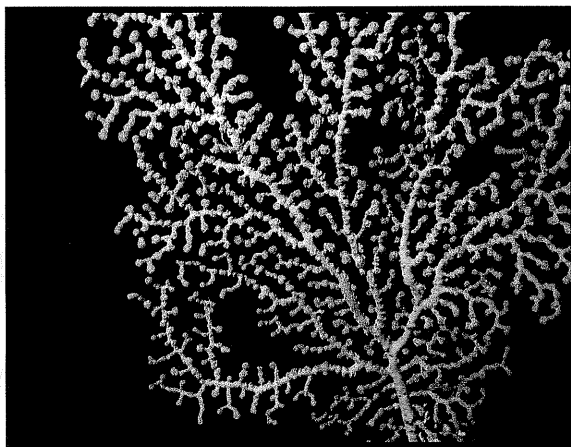
Bamboo coral (*Keratoisis* sp.) on the Davidson Seamount (1455 meters).  
Coral colony age estimates exceed 200 years (Andrews et al. *In press*).  
Credit: NOAA/MBARI 2002

The Sanctuary arranged an airplane survey with NOAA Fisheries in 2001 to begin a more detailed characterization of the region's mammals. Finally, in 2002, the MBNMS led another ROV expedition to explore the seamount at all depths with a primary purpose of characterizing species patterns of distribution and abundance. This last cruise received perhaps unparalleled national media attention for central California marine science. The BBC is working with MBARI and other partners on a follow-up cruise to feature Davidson Seamount's spectacular benthic organisms to an international audience. The Naval Postgraduate School has placed scientific instruments through the 1990's on the Davidson Seamount to measure currents between this offshore location and the coast.

### *Biology*

Species associated with the Davidson Seamount can be divided into habitats including: the sea surface habitat (birds in flight and sea surface), the midwater habitat (0 – 1,250 meters below sea surface), the crest habitat (1,250 – 1,500 meters), the slope habitat (1,500 – 2,500 meters), and the base habitat (2,500 – 3,500 meters) (DeVogelaere et al., in prep.).

The surface habitat hosts a variety of seabirds, marine mammals, and surface fishes, including albatross, shearwaters, jaegers, sperm whales, killer whales, albacore tuna, and ocean sunfish. At this time, there is no published evidence that the species composition in this habitat is different than adjacent areas without a seamount below, though in some years the Davidson Seamount may enhance albacore fishing (Tom Roff, pers. com.). The organisms in the midwater habitat have a patchy distribution with marine snow, organic matter that continually rains down from the sea surface, most likely providing an important food source for deep sea animals.



Bubblegum coral (*Paragorgia* sp.) 2.5 meters (8 feet) in height were not uncommon at the crest of the Davidson Seamount (1257 meters). Credit: NOAA/MBARI 2002



White stalked sponge on the Davidson Seamount (2563 meters). Credit: NOAA/MBARI 2002

Swimming worms, an undescribed mollusk, and a recently described, basketball sized, red jellyfish (Matsumoto et al., 2003) have been seen above Davidson Seamount. The crest habitat is the most diverse, including large gorgonian coral (*Paragorgia* sp.) forests, vast sponge fields (many undescribed species), crabs, deep-sea fishes, shrimp, and basket stars. The slope habitat is composed of cobble and rocky areas interspersed with areas of ash and sediment. This area hosts a diverse assemblage of sessile invertebrates and rare deep-sea fishes. The halosaur (*Aldrovandia* sp.), an eel-like species of fish, has never been recorded in the California Current until the MBNMS's 2002 expedition to the Davidson Seamount. The base habitat is the interface between rocky outcrops and the deep soft bottom. Species here are similar looking to their relatives in the nearshore, including sea cucumbers, urchins, anemones, and sea stars.

## **B. Purpose and Need for Action**

The Davidson Seamount requires protection from the take or other injury to benthic organisms or those living near the sea floor because of the following qualities and threats:

### ***1. Qualities***

#### **CONSERVATION**

- Vulnerability of resource to damage: long-lived species; dominated by large fragile, slow-growing organisms; long recovery time if impacted.
- Special characteristics of resource: The area is pristine; it has large microhabitats of old corals and sponges; and it has relatively high numbers of rare and unidentified benthic species.

#### **ECOLOGICAL**

- Biologically special: Davidson Seamount has previously undiscovered species and species assemblages (large, adjacent, patches of corals and sponges); there is an opportunity to discover unique associations (and other ecological processes) between species. The high biological diversity of these assemblages is not found on other central California seamounts (i.e., Guide, Pioneer, and Gumdrop).

- Geographically special: Davidson Seamount is located in the California Current, which likely provides a larger flux of carbon (food) to the sessile organisms on the seamount surface relative to a majority of other seamounts in the Pacific.
- Physically special: Davidson Seamount is one of the largest seamounts in US waters. It is structurally more complex with northeast-tending ridges. It may have unique links to the nearby Partington and Monterey submarine canyons.

#### SCIENTIFIC

- With high-resolution mapping and 17 long/detailed ROV dives, the Davidson Seamount is one of the best described seamounts in the world.
- Rare or undescribed species (high diversity).
- Proximity to scientific research institutions makes the Davidson Seamount relatively accessible.
- Proximity to fishing fleets would facilitate cooperative research using these vessels.

#### EDUCATIONAL

- Proximity to the Monterey Bay Aquarium and other education institutions would provide excellent educational opportunities (e.g., an education display on seamounts). The proximity of education and research institutions in the Monterey Bay region facilitates interdisciplinary collaborations that would enhance research and education.
- The National Marine Sanctuary Program has the best developed education programs in NOAA, providing an opportunity to educate the public about seamounts as well as cold water corals and sponges

#### AESTHETIC

- Davidson Seamount has clearly captivated the imagination of the public (see media and outreach product list from the May 2002 expedition: national news, BBC, newspaper articles, series of talks, new NOAA visitor center film, NOAA CD, NOS annual accomplishments, 140,000 hits per day web site, etc.).
- Charismatic issue: visually exciting; charismatic creatures like unique fish, large corals, and odd-looking invertebrates; aesthetic qualities of the seafloor are high relative to the rest of the Central California region.

## 2. *Threats*

There are a variety of human threats to the Davidson Seamount. The top of the seamount is too deep for current fish trawling technology, however, technological advances may soon make fishing at that depth commercially viable. Additionally, benthic fish density is very low and the species seen to date are not commercially desirable (Cailliet, pers. com. Monterey, CA.). The top of the seamount appears nearly pristine because of the abundance of large, fragile species (e.g., corals greater than 2.5 meters tall and vast fields of sponges) and an apparently physically undisturbed seafloor. The existing albacore tuna and swordfish/shark fisheries operate in the top 50 meters of water, more than a thousand meters above the seamount (NMFS, 2000; Starr et al., 2002). Therefore, threats from fishing are relatively remote; however, future fishing efforts could target the seamount. More immediate threats include the cumulative effects of research and of bioprospecting. Collection and bioprospecting could be effectively and efficiently managed by the Sanctuary's permitting system.

#### *Cumulative research collecting of long-live species*

Where there are limited populations of slow-growing species, research collection can be detrimental. Over the last two years, there has been increased worldwide interest in studying deep-sea corals (NOAA) such as the large pink, *Paragorgia*, found on the Davidson Seamount and they are often collected (in prep; Nature). This problem is exacerbated on seamounts where there is a high degree of endemism and Davidson Seamount has at least several taxa that are slow-growing and rare. Research is critical to understanding and managing ecosystems, so appropriate scientific collecting is often allowed with permits. Researchers would be required to submit a permit application that describes their project and its value. If appropriate the MBNMS would issue a permit, one that contains conditions designed to ensure strategic use of the resources that minimizes adverse impacts.

#### *New technologies to harvest from the seabed*

Harvesting from the Davidson Seamount is not a known, current commercial activity. With new discoveries of precious corals or other commercial species, in concert with more effective harvest technologies, commercial harvest at the Davidson Seamount could quickly cause severe impacts before mitigating regulations could be enacted. The concerns relative to impacts to the Davidson Seamount are largely for protecting a fragile area before it is severely impacted.

#### *Marine debris/dumping*

Pollutants have been detected in the form of DDT in sediments near the seamount base and trash (e.g., bottles, cans, broom, newspapers, shades, curtain) discarded from the sea surface have been found on the seamount (DeVogelaere et al., in prep).

#### *Bioprospecting*

Some groups of organisms found on the Davidson Seamount have been targeted in other areas of the world for developing medicines. Discovering medicinal uses for natural products can be important for enhancing human health services. However, this type of activity has overexploited some seamounts. There has been a preliminary bioassay of one yellow sponge from Davidson Seamount.

#### *Inadequacy of Existing Protection Measures*

There are several federal management agencies responsible for some activities that may occur at the Davidson Seamount. NOAA Fisheries protects marine mammals through the Marine Mammal Protection Act and regulates fisheries, such as albacore, through the Magnuson-Stevens Fishery Conservation and Management Act. The Minerals Management Service addresses potential oil, gas, and mineral extraction; and the U.S. Coast Guard enforces ocean dumping laws. However, as was the case when the MBNMS was designated in 1992, there is currently no comprehensive protection and management of organisms on the seamount or the surrounding ecosystem. Moreover, there are no coordinated education or research programs addressing Davidson Seamount issues.

### **3. Manageability and Enforcement**

The Davidson Seamount is a distinct geographic unit that is easily recognized. Though deep and relatively far from shore, it is relatively accessible compared to other seamounts. There are many regional research and fishing vessels in the region that can access the water above Davidson Seamount. Moreover, one of the few institutions in the world with equipment able to dive the

depths of Davidson Seamount, MBARI, is located adjacent to and a regular partner of the MBNMS. NOAA has airplanes and large research vessels that are available for use by the MBNMS to survey and monitor the Davidson Seamount. At-sea enforcement of regulations would admittedly be challenging for this offshore area.

### **C. Goals and Objectives for Incorporation of Davidson Seamount into the Monterey Bay National Marine Sanctuary**

The following are the management goals and objectives for incorporating the Davidson Seamount into the Monterey Bay National Marine Sanctuary. The draft regulations that the PFMC prepares will be evaluated on the basis of to what degree they help achieve these goals and objectives.

#### **Goals:**

- To maintain the natural biological communities on the Davidson Seamount, and to protect, and, where appropriate, restore and enhance its natural habitats, populations, and ecological processes;
- To provide authority for comprehensive and coordinated conservation and management of this area, and activities affecting it, in a manner which complements existing regulatory authorities;
- To enhance public awareness, understanding and appreciation of the Davidson Seamount area;
- To support, promote, and coordinate appropriate scientific research on, and long-term monitoring of, the resources of the Davidson Seamount area;

#### **Objectives:**

The following objectives for the inclusion of the Davidson Seamount reflect those identified for the MBNMS at the time of Sanctuary designation as well as the unique characteristics of the seamount.

#### *Resource Protection*

The highest priority management goal for the Davidson Seamount is the protection of its marine environment, resources and qualities.

- Coordinate policies and procedures among the agencies sharing responsibility for protection and management of resources;
- Develop an effective and coordinated program for the enforcement of Sanctuary regulations;
- Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through education and interpretive programs stressing resource protection;

- Ensure that the water quality of the Sanctuary is maintained at a level consonant with Sanctuary designation;
- Ensure that the appropriate management agency incorporates research results and scientific data into effective resource protection strategies;
- Reduce threats to Sanctuary resources and qualities.

### *Research*

The purpose of Sanctuary research activities on the Davidson Seamount would be to improve understanding of the area, its resources and qualities, to resolve specific management problems, and to coordinate and facilitate information flow between the various research institutions, agencies and organizations. A major emphasis of the research program would be to encourage studies that investigate the natural processes on the Seamount. Research results would be used in education programs for visitors and others interested in the Sanctuary, as well as for resource protection. The strategies to be employed in the research program would be to:

- Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the Davidson Seamount area;
- Incorporate research results into the interpretive/education program in a format useful for the general public;
- Focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Seamount; Initiate a monitoring program to assess environmental changes as they occur due to natural and human processes;
- Identify the range of effects on the Seamount that would result from predicted changes in human activity or natural phenomena;
- Encourage information exchange among all the organizations and agencies undertaking management-related research in the area to promote more informed management.

### *Education*

The goals of the education program regarding the Davidson Seamount would be directed to improving public awareness and understanding of its significance and the need to protect its resources and qualities. The management objectives designed to meet this goal would be to:

- Provide the public with information on the Davidson Seamount and these goals and objectives, with an emphasis on the need to use the resources on the seamount wisely to ensure their long-term viability; Broaden support for management of the Davidson Seamount area by offering programs suited to visitors with a range of diverse interests; Provide for public involvement by encouraging feedback on the effectiveness of education programs and collaborate with other organizations to provide interpretive services, including extension and outreach programs and other volunteer projects

complementary to the Sanctuary program;

- Incorporate research results into the interpretive/education program in a format useful for the general public; and
- Use Davidson Seamount as the only seamount in the Sanctuary Program to create public awareness of the entire nation-wide Sanctuary Program, its purposes and intent, and the role of the MBNMS as part of a larger system.

#### **D. Alternative Actions Considered**

The following alternatives have been considered in order to address resource protection concerns on and above Davidson Seamount. The alternative actions were developed through public comment, the Davidson Seamount multi-stakeholder workgroup, discussions with the MBNMS advisory Council, PFMC staff, and NMFS Southwest Region. NMSP is requesting that PFMC draft sanctuary fishing regulations to implement NMSP's preferred alternative. Regulations resulting from the 304(a)(5) process would later be incorporated into an Environmental Impact Statement that considers Sanctuary designation and boundary configurations for the seamount.

##### **1. Prohibit All Fishing Below 3000 Feet of the Sea Surface within the Davidson Seamount Area - (Preferred Alternative)**

###### ***Activities***

Under this alternative, a public awareness campaign would be initiated to educate users and the general public about the new regulations. The MBNMS and its partners would also pursue monitoring and enforcement activities.

###### ***Scientific Research***

Scientific research is critical for understanding ecosystem function and to inform resource management. To date, research is the most common human activity known to "use" the Seamount itself. Research at the Davidson Seamount could be enhanced through a Sanctuary research program. However, research in Sanctuaries can also be appropriately limited through permit processes that consider ecosystem protection by, for example, incorporation of conditions on techniques, frequency and amounts of collection to minimize impacts.

###### ***Bioprospecting***

Similar to scientific research the bioprospecting collection of coral or other resources could be controlled through the MBNMS permitting system. This would ensure that any collection allowed of these resources is conducted appropriately and in a strategic manner. Particularly because this possibility exists, any negative socio-economic impacts on any potential future bioprospectors are extremely speculative.

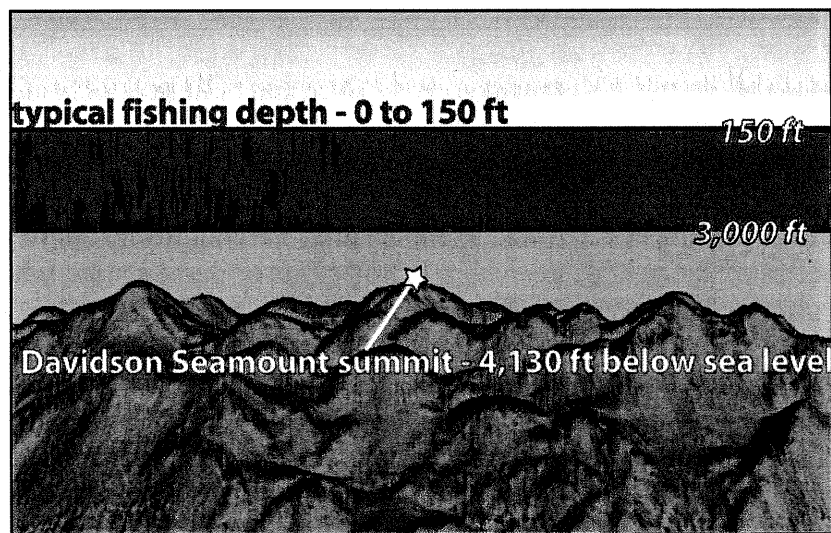
###### ***Conservation Benefits***

This alternative would protect the vulnerable, long-lived, fragile and slow-growing species, which have long recovery times if impacted. It would also safeguard previously undiscovered species and species assemblages (large, adjacent, patches of corals and sponges). The restrictions would also protect the opportunity to discover unique species associations or

ecological processes by keeping them undisturbed. Regulations would also constitute an educational tool to educate the public and fishermen about the resources on the Davidson Seamount. Protection of the long-lived fragile organisms on the seamount would continue to provide public outreach opportunities in the form of future media coverage of this pristine and unique environment. This alternative also provides a buffer of 1000 feet between the top of the seamount and any fishing activities. This buffer protects the ecological communities that have direct relationships with the biogenic habitat on the seamount but can be found in the water column immediately above the seamount. Prohibiting bottom fishing would also reduce the threat posed by lost gear and marine debris that can have lasting impacts to organisms on the seamount.

### ***Socioeconomic Impacts to Fishing***

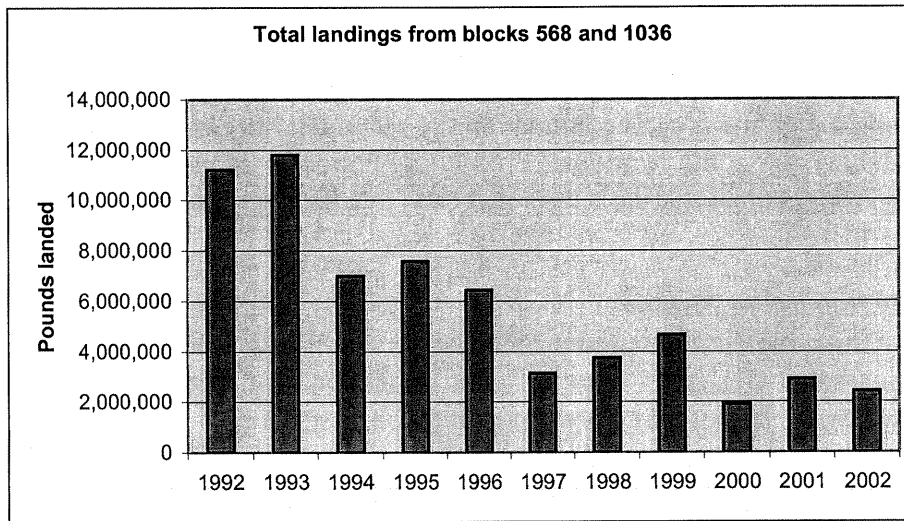
The proposed fishing regulation would prohibit all fishing below 3,000 feet of the sea surface in the Davidson seamount area (see Figure 6). This regulation would prohibit the groundfish trawl fishery and any other fisheries using bottom gear (such as traps, pots, or set lines) from operating within the Davidson Seamount area. To estimate the impacts from the proposed regulation, CDFG landing receipts for the two reporting blocks straddled by the seamount (No's 1036 and 568) were analyzed. The fishing intensity over the seamount was assessed using CDFG trawl logbook data.



**Figure 6:** The proposed regulation would address an area far below the uppermost 150 feet where current pelagic fisheries primarily operate

Summarizing the landing receipts revealed that, between 1992 and 2002 (the most recent year available at the time of analysis), practically 100% of landings reported in the two blocks came from the larger one, No. 1036; It is important to note that the seamount occupies only 2% of the area of block 1036, however, to be comprehensive, landings for the entire block are described below.

Over the 11 years analyzed, total landings from the two blocks show a decreasing trend, from around 11 million pounds in 1992 to just over 2.5 million in 2002.

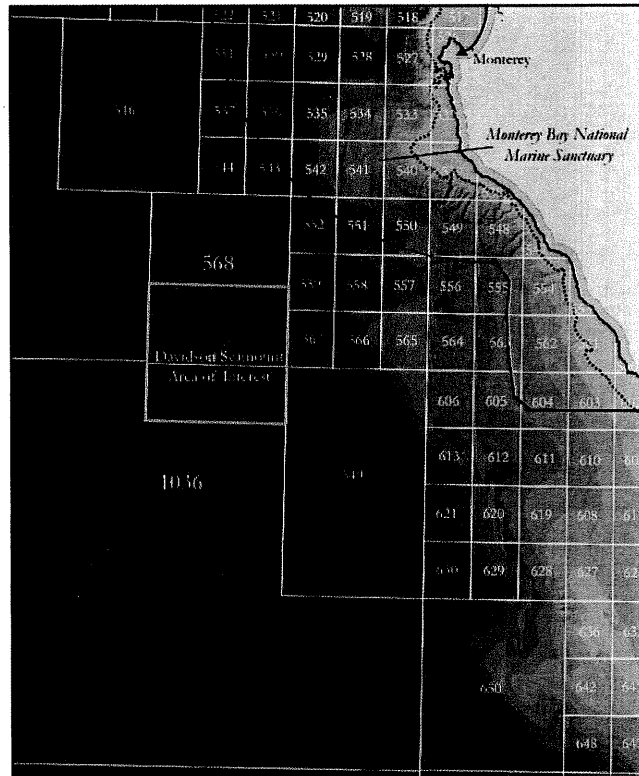


**Figure 7:** Total Landings in the CDFG Blocks Encompassing the Davidson Seamount Area

Of those landings, the following 14 species make up between 92% and 97% of total landings each year: albacore, chinook, dungeness crab, dover sole, halibut, lingcod, petrale sole, rockfish, sablefish, shrimp, sharks, swordfish, thornyheads, and squid. Of these species, the pelagic species fluctuate quite significantly over the time period analyzed, with albacore landings spiking at 1.6 million pounds in 2001, and squid landings varying from zero to 1.8 million in 1999. These fisheries utilize pelagic gear such as troll gears or purse seines, which would not be impacted by the proposed management measure.

More significantly for the management alternative under consideration, a group of groundfish species that are managed as a management complex, the so-called DTS complex of dover sole, thornyheads and sablefish, accounts for between 40% and 65% of total landings, for all years other than the pelagic spikes of 1999 and 2001. In the most recent year available, 2002, the DTS complex accounted for 45% of total landings from the two blocks that straddle the seamount.

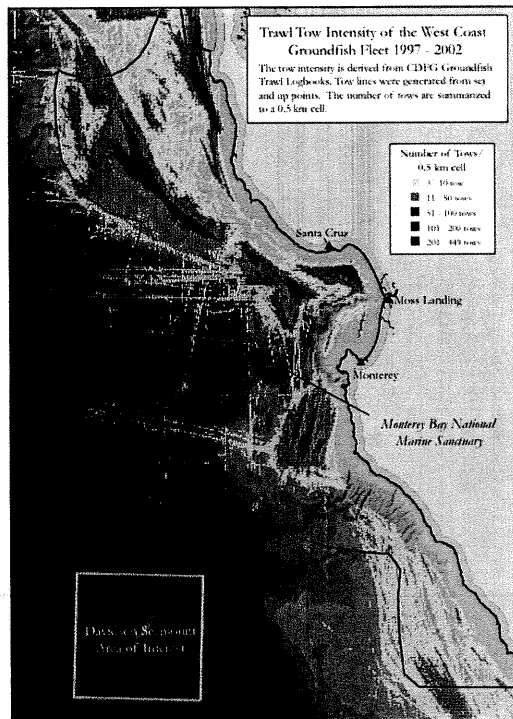
If these landings were spread evenly over the blocks, some proportion of these landings would originate directly over the seamount, and thus would potentially be reduced by the proposed regulation. However, this is not the case. First, there are significant accuracy problems with the landing receipts, which are filled out by processors. Landings data tend to misrepresent the location of catches, and thus need to be compared to other data sets that describe the various fisheries. The DTS complex is fished with benthic trawl gear, and the groundfish fishery is required to record set and haul points in a logbook system administered by the CDFG. Coast wide, there is a good match between landing receipts and logbooks in terms of poundage recorded, but poor overlap in terms of spatial specificity of the records.



**Figure 8:** Location of Davidson Seamount Area over CDFG Reporting Blocks 568 and 1036

Second, from the analysis of trawl logbooks from 1997-2002 it is apparent that very little actual trawl activity takes place in the area of the seamount. Of the tow set and haulpoints recorded in the logbooks, only two (which are potentially errant) cross the area of interest in the five years analyzed. Looking at the depths recorded in the logbooks further corroborates the absence of trawling over the seamount. The mean depth of block 1036 is 10,496 feet, with a minimum depth of 5,359 feet and a maximum of 15,396 feet. From the trawl logbooks, however, which record average tow depth, it is apparent that there are no tows occurring directly on the seamount. For the years 1997-2002, the mean average tow depth recorded in logbooks ranges from 735 to 1122 feet. Again, the summit of the seamount is 4,101 feet below the surface, further indicating that groundfish fishing activity takes place well outside the depth of the seamount.

Given that the fishery activity reported for the area under consideration appears to be taking place in depths less than the seamount, the proposed preferred management alternatives likely to have little adverse impact.



**Figure 9:** Lack of Trawling Effort over the Davidson Seamount in .5km blocks

### ***Enforcement***

The preferred alternative would allow all fishing activities within 3000 feet of the sea surface to continue and would have no impact on current fishing activities. Prohibiting fishing below 3000 feet would pose enforcement challenges in that it would be difficult for enforcement personnel to determine from a distance what depth a vessel is fishing at. This is in addition to the challenges associated with the remoteness of the location and limited enforcement capabilities. However, based on effort and landings data along with communications with fishermen, NOAA enforcement staff are sufficiently confident that only pelagic species are being targeted. The fishing regulations that the Council may draft to implement the preferred alternative would be coupled with other sanctuary regulations that would prohibit the possession of biological resources taken from below 3000 feet of the Davidson Seamount area, and would complement enforcement efforts.

For the reasons listed above, this action represents the preferred alternative. Consistent with this, the following language is intended to provide a regulatory model for the PFMC that would prohibit all fishing activities below 3000 feet of the sea surface within the Davidson Seamount Area:

*Fishing is prohibited at depths greater than 3000 feet below the sea surface within the Davidson Seamount Area as defined by the area bound by the coordinates West: 123°W; East: 122.5°W; North: 35.9°N; South: 35.5°N.*

## **2. Prohibit All Fishing Below 200 Feet of the Sea Surface Within the Davidson Seamount Area**

### ***Activities***

Under this alternative, a public awareness campaign would be initiated to educate the public and users about the new regulations. The MBNMS and its partners would also pursue monitoring and enforcement activities.

### ***Conservation Benefits***

This alternative has greater conservation benefits than the preferred alternative. The distinguishing feature of this alternative is its protection of the communities in the water column above the seamount. Additionally, prohibiting all fishing below 200 feet would further reduce the threat posed by lost gear and provides needed protection for a greater proportion of the midwater organisms that may have ecological linkages with the seamount.

### ***Socioeconomic Impacts to Fishing***

This alternative would not allow for the development of any future mid-water trawl fishery, and provides a small buffer between the existing fishing activities and the protected area. There is therefore a potentially greater socioeconomic impact associated with this alternative as compared to the preferred alternative.

### ***Enforcement***

Enforcement challenges would be similar to those associated with the preferred alternative. However, under this action, enforcement personnel would not be as able to rely on the type of gear being utilized as an indication of the depth being fished. Under the preferred alternative, enforcement personnel would primarily be concerned with trawlers in the area with the ability to fish below 3000 feet. Under this alternative, virtually any fishing vessel could be in violation. Additionally, species taken in violation of the preferred alternative (from below 3000 feet) would be physically more distinguishable compared to species taken in violation of this alternative.

For the above reasons, particularly because this option has a greater potential for interaction with fishing activities, this was not selected as the preferred alternative.

## **3. Prohibit All Fishing Within 100 Feet of the Submerged Lands Within the Davidson Seamount Area**

### ***Activities***

Under this alternative, a public awareness campaign would be initiated to educate the public and users about the new regulations. The MBNMS and its partners would also pursue monitoring and enforcement activities.

### ***Conservation Benefits***

The conservation benefits of this alternative are similar to those of the preferred alternative but fewer. The distinguishing feature of this alternative is that it only provides a buffer of 100 feet between the top of the seamount and any fishing activities as opposed to 1000 feet. As discussed, this buffer is critical to protecting the ecological communities that have direct relationships with the biogenic habitat on the seamount but can be found in the water column

immediately above the seamount. Here again, prohibiting bottom fishing would also reduce the threat posed by lost gear and marine debris, which can have lasting impacts to organisms on the seamount. A larger buffer reduces the potential impact from lost fishing gear and provides needed protection for a greater proportion of the benthopelagic and midwater organisms that have direct ecological linkages with the seamount.

#### ***Socioeconomic Impacts to Fishing***

There is no substantial difference between the socioeconomic impacts of this alternative as compared to the preferred alternative. As discussed, existing fisheries take place within 150 feet of the sea surface and whether the proposed regulation begins at 3000 feet or 3900 feet would have no effect on these fisheries.

#### ***Enforcement***

There is a significant difference in the enforceability of this alternative as compared with the preferred alternative. It is easier to comply with and enforce a regulation that is based solely on depth and does not depend on the bathymetry below. In order to comply a fisherman must know not only how deep they are fishing but also how close they are to the bottom. Similarly, an enforcement officer would have to be aware of two variables as opposed to one.

For the above reasons, particularly that this option does not provide adequate resource protection, this was not selected as the preferred alternative.

### **4. Prohibit All Fishing on the Submerged Lands Within the Davidson Seamount Area**

#### ***Activities***

Under this alternative a public awareness campaign would be initiated to educate the public and users about the new regulations. The MBNMS and its partners would also pursue monitoring and enforcement activities.

#### ***Conservation Benefits***

This alternative would provide many of the same protections discussed for the preceding alternatives. However, it would not provide a buffer between the top of the seamount and any fishing activities. This buffer is critical to protecting the ecological communities that have direct relationships with the biogenic habitat on the seamount but can be found in the water column immediately above the seamount.

#### ***Socioeconomic Impacts to Fishing***

There is no substantial difference between the socioeconomic impacts of this alternative as compared to the preferred alternative. As discussed, existing fisheries take place within 150 feet of the sea surface and whether the proposed regulation begins at 3000 feet or begins at the top of the seamount would have no effect on these fisheries.

#### ***Enforcement***

There is no significant difference in the enforceability of this alternative as compared with the preferred alternative.

For these reasons, particularly because this alternative does not provide adequate resource

protection, this was not selected as the preferred alternative.

### **5. No Action Alternative**

Under this alternative no new regulation would be promulgated to address fishing in the Davidson Seamount area, which would then be protected only by existing Sanctuary regulations.

### ***Biological Benefits***

The mission of the NMSP is to comprehensively protect and manage marine areas of special national significance and thereby protect their ecological and cultural integrity for the benefit of current and future generations. In carrying out this mission, NOAA uses ecologically sound principles of resource conservation to develop and implement stewardship, education and research programs that foster public understanding, support and participation. Failing to protect the fragile and rare resources on the Davidson Seamount would not satisfy the mandates of the National Marine Sanctuaries Act.

### ***Socioeconomic Impacts to Fishing***

There is no substantial difference between the socioeconomic impact of the preferred alternative and the status quo. The proposed regulatory action would have no effect on existing fisheries.

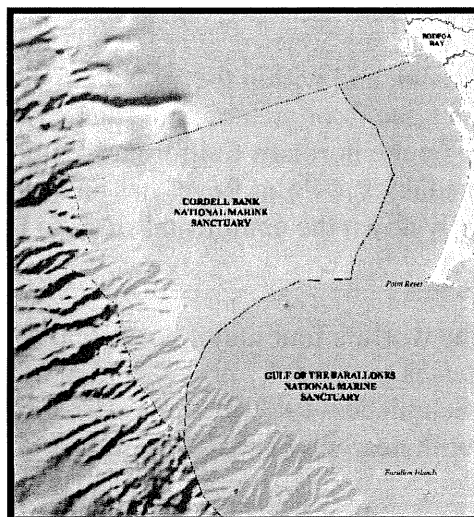
### ***Enforcement***

There would be no enforcement burden without a regulation in place.

For the reason that it does not provide adequate resource protection, this was not selected as the preferred alternative.

## **II. CORDELL BANK**

In accordance with section 304(a)(5) of the NMSA, Cordell Bank National Marine Sanctuary is providing the Pacific Fishery Management Council with the opportunity to draft sanctuary regulations that meet the goals and objectives for the preferred alternative listed below (see Section D., Preferred Alternative).



**Figure 10:** Boundaries of Cordell Bank National Marine Sanctuary

## A. Background

### 1. Location

Cordell Bank National Marine Sanctuary (CBNMS) protects an area of 526 square miles (397 square nautical miles) off the northern California coast. The main feature of the sanctuary is Cordell Bank, an offshore granite bank emerging from the soft sediments of the continental shelf, about 45 nautical miles (nm) northwest of the Golden Gate Bridge and 20 nm west of the Point Reyes lighthouse. CBNMS is entirely offshore and shares its southern and eastern boundary with the Gulf of the Farallones National Marine



**Figure 11:** Bathymetric Image of Cordell Bank

Sanctuary. The CBNMS eastern boundary is six miles from shore and the western boundary is the 1000 fathom isobath on the edge of the continental slope. The combination of oceanic conditions and undersea topography supports a rich and diverse marine community including resident and migratory marine mammals, seabirds, fishes, and invertebrates proliferating on the Bank and surrounding water column.

The Bank itself is roughly elliptical, and within the 50 fathom depth contour it is 9.5 miles long and 4.5 miles wide and rests on a sea floor area of 24.0 square miles. Cordell Bank is the only significant bathymetric feature on the northern California continental shelf. The continental shelf between the Bank and headlands at Point Reyes has an average depth of 60 fathoms. To the west, the bottom falls quickly down the continental slope to the abyssal plain a few miles away.

CBNMS is located in one of the world's four major coastal upwelling systems. The combination of oceanic conditions and undersea topography provides for a highly productive environment in a discrete, well-defined area (Schmieder, 1982a). The vertical relief and hard substrate of the Bank provide benthic habitat with near-shore characteristics in an open ocean environment 20 nm from shore.

## **2. *Geology***

Two distinctive geologic features characterize CBNMS: the shallow granitic Cordell Bank and the surrounding soft bottom of the continental shelf and slope.

Cordell Bank is composed of a granite block that was created as part of the southern Sierra Nevada range some 93 million years ago. The bank is one of the few offshore areas where the granite block emerges from the newer sediments that make up most of the continental shelf. The bank is approximately 4.5 miles wide by 9.5 miles long and consists of a diverse assemblage of habitat types. The eastern side of the Bank is characterized by a gradual transition from the sandy sediments of the continental shelf through cobble sand areas up on to consolidated reef. The northern and western side of the Bank is steeper with a dramatic transition from the soft mud of the continental shelf to steep sided granite walls and boulder fields on the bank. Though generalizations can be used to describe large-scale geomorphology in different areas of the bank, habitat types are very heterogeneous on a smaller scale. For example, in one fifteen minute transect it is not uncommon to have sand, cobble, boulder and reef habitats all represented in some proportion along the transect. This diversity of habitat can be found on most areas of the Bank (habitat figure from delta work). Jagged ridges and pinnacles rise abruptly in different areas of the Bank and reach to within 140 to 120 feet of the sea surface. In many places, the sides of the ridges and pinnacles are extremely steep, often with slopes greater than 80 degrees (Schmieder, 1984a). Six nautical miles to the west of the Bank, along the sanctuary boundary, the continental slope drops steeply to 6,000 feet (1000 fathoms) and more.

The ocean bottom on the continental shelf and slope around the Bank and within the Sanctuary is chiefly composed of mud and sand deposits. Deposits of undifferentiated mud and sand extend in a plume to the south and a fan to the east of Cordell Bank. To the north and western boundary, along the Farallon escarpment, the continental shelf is entirely made up of fine sand deposits.

## **3. *Climate and Oceanography***

The calendar year at Cordell Bank can be broken into three oceanographic seasons: upwelling season, relaxation season, and winter storm season. The upwelling season typically begins with the spring transition, characterized by strong persistent winds from the northwest. This usually occurs sometime in late February or early March, and is the start of the annual productivity cycle along northern and central California. During this season, upwelling driven by winds from the northwest alternate with periods of calm. These winds generally begin to subside by late July. August through mid-November is the relaxation season. During this time, winds are mostly light and variable, and the seas can be calm for a week or two at a time. This changes abruptly with the arrival of the first winter storms from the Gulf of Alaska. From late November through early February, winter storms create large waves and strong winds along the coast. Ocean conditions can be treacherous all year, but especially during winter storms.

Physical processes operating on different temporal and spatial scales drive hydrodynamics on and around the bank. Cordell Bank lies in the path of the California Current, one of four major eastern boundary currents in the world. Current-topography interactions on banks and seamounts include semi-stationary eddies (Taylor columns), internal wave reflection, tidally induced currents eddies, and trapped waves. The relief and position of Cordell Bank also drives localized upwelling as the wind driven south flowing current encounters the granitic relief of

Cordell Bank. This localized flow moving up and over the bank, delivers food to the Bank ecosystem and new recruits to populations if larvae survive the gauntlet of predators waiting their arrival.

The prevailing California Current flows southward along the coast while the upwelling of nutrient-rich, deep ocean waters stimulate the growth of planktonic organisms. These nutrients, combined with high light penetration in Bank waters, and the wide depth ranges in the vicinity, have led to a unique association of sessile, subtidal and oceanic species. Some species at Cordell Bank are deep-water forms, but most are known from nearshore waters and some are even found in the intertidal zone. Most of the flora and fauna live in densely packed masses near the tops of the ridges and pinnacles. However, since the species living on the Bank do not have the same environmental requirements or tolerances, there is a marked variation from one depth to another in the distribution of organisms.

#### ***4. Marine Birds***

The waters around Cordell Bank provide critical foraging habitat for many species of seabirds. Seabird density over Cordell Bank can be among the highest of any area in central and northern California. Fifty-nine seabird species have been identified feeding in or near the sanctuary. The composition of seabirds found at Cordell Bank is a mix of local breeding birds and highly migratory, open-ocean species. While the local representatives use the nearby Farallon Islands and Point Reyes areas to nest, some migrants nest thousands of miles away. A recent study using radio tags documented that Black-footed Albatross nesting in the northwest Hawaiian Islands were "commuting" to Cordell Bank waters to forage before returning to feed chicks on their nests on Midway Atoll.

Other migratory species use the productive waters around the bank as a stopover on their annual migration route. Hundreds of thousands of Sooty Shearwaters can be seen in summer and fall when they are migrating through the sanctuary. Sanctuary waters are equally important to local breeders. Most of the world's small population of Ashy Storm-petrels, which nest on Southeast Farallon Island, can be seen on the water near the Bank. More than 20,000 Cassin's Auklets have been counted in a single day. Other common sanctuary species include Common Murres, several species of Storm-petrels and shearwaters, Rhinoceros Auklets, Phalaropes, Northern Fulmars and many species of gulls. These birds are attracted to high concentrations of food that accumulates around Cordell Bank. Concentrations of krill and juvenile rockfish are directly linked with reproductive success of nesting birds on the Farallon Islands. Years with high juvenile rockfish recruitment were positively correlated with increased reproductive success. Reduced egg production was observed during warm water years when rockfish recruitment failed.

#### ***5. Marine Mammals***

Twenty-six species of marine mammals (a combination of resident and migratory species) have been observed within the sanctuary. Gray whales pass the Bank on their annual migrations between Arctic feeding grounds and Mexican breeding areas. Blue and humpback whales migrate to the sanctuary in summer months to feed on abundant krill and fish. Populations of large cetaceans continue to rebound with protection from commercial harvest.

The Dall's porpoise is one of the most frequently sighted marine mammals in the sanctuary, along with seasonal sightings of humpback and blue whales. Individuals of all species use the

sanctuary as a destination feeding ground. The harbor porpoise, a species widely distributed in coastal waters but rarely seen offshore, is regularly observed within the sanctuary's shallow areas. Pacific white-sided dolphins and northern right whale dolphins are abundant. Other cetaceans observed in the sanctuary include Risso's dolphins and killer whales.

The California sea lion, the most abundant pinniped in California waters, has been observed in CBNMS more frequently and in greater numbers than other pinnipeds. The northern fur seal is also abundant in the area in late fall and winter (most of them use summer breeding grounds in the Channel Islands). Stellar sea lions have decreased drastically in California in recent years, but Cordell Bank remains a feeding area for this species, possibly because of the abundance of rockfish and sardines around the bank. Nearby rookeries include Año Nuevo Islands and the Farallon Islands. The sea lions' winter haul-out grounds include Point Reyes and offshore rocks along the Sonoma County coast.

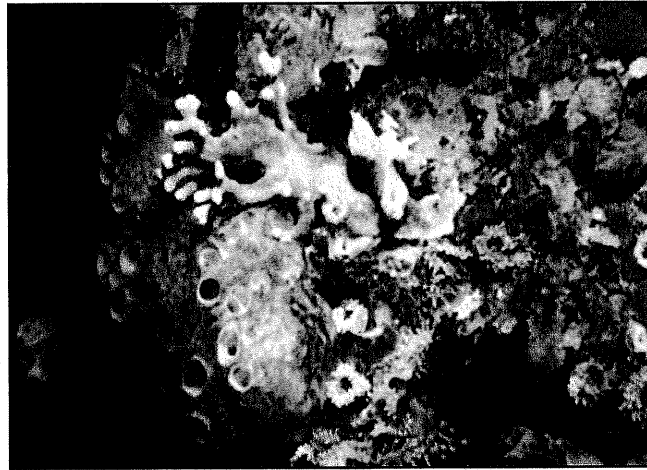
## **6. Fishes**

The structure and position of Cordell Bank make it ideal habitat for many species of fish. More than 180 species of fish have been identified from CBNMS. Many of these species have pelagic larval stages and likely encounter Cordell Bank as the first suitable habitat to settle. The Bank provides critical habitat for all life stages - young of the year, sub-adult and adult rockfishes. Many of the 58 species of rockfish (*Sebastes* spp.) can be found at all depths and habitats on and around the Bank. Mid-water schooling species including blue, yellowtail, widow, and squarespot rockfish aggregate over shallower, reef areas around the bank. Rosy rockfish are commonly found in shallow reeftop habitat. Canary, bocaccio, vermilion, yelloweye and cowcod rockfish are found in the deeper reef and boulder areas. Splitnose, stripetail and greenstripe rockfish can be found on the soft sediment areas adjacent to the rocky bank. And greenspotted rockfish are good indicators of a sand rock interface. Lingcod are found in all areas of the bank and move up onto shallow reef areas on the bank to spawn in winter. The sand, cobble habitat on the bank is an important recruitment area for young of year lingcod. Chilipepper rockfish are commonly caught by fishermen around the Bank, but rarely observed from the submersible. Many species of flatfish use the soft-bottom habitat around the Bank including sanddabs, English sole, dover sole, and rex sole. Albacore and salmon frequent the sanctuary on a seasonal basis, as do ocean sunfish and blue sharks. Many fishes and cetaceans feed on lanternfishes, which migrate nightly into shallow surface layers from deeper daytime haunts. The recovery of Pacific sardine populations is apparent in the waters surrounding Cordell Bank.

## **7. Benthic Organisms**

An abundant cover of benthic organisms lives on the upper rock surfaces of Cordell Bank. The constant food supply washing the bank combined with a hard substrate for attachment provides ideal conditions that support a rich assemblage of benthic invertebrates. Space is the limiting factor on the upper pinnacles and ridges of Cordell Bank. Ridges are densely covered with sponges, anemones, hydrocorals, hydroids, tunicates, and scattered crabs, holothurians, and gastropods. The depth of Cordell Bank and distance from coastal runoff and sedimentation provide favorable conditions for settlement and growth of the branching hydrocoral, *Stylaster californica*. This slow growing species is common on the upper bank. Studies have shown that it can take 20 years for a colony to grow 30 cm tall. Gorgonians or pink corals are also a common

element in the reeftop community. The high light penetration allows for algal photosynthesis far deeper than in nearshore coastal waters. In limited sampling of this benthic community by Cordell Expeditions, three species new to science were described from the upper reef areas of Cordell Bank.



Benthic Coverage on Cordell Bank Pinnacle (NOAA Photo)

## **B. Research on the Bank**

### ***1. Early Hydrographic Surveys***

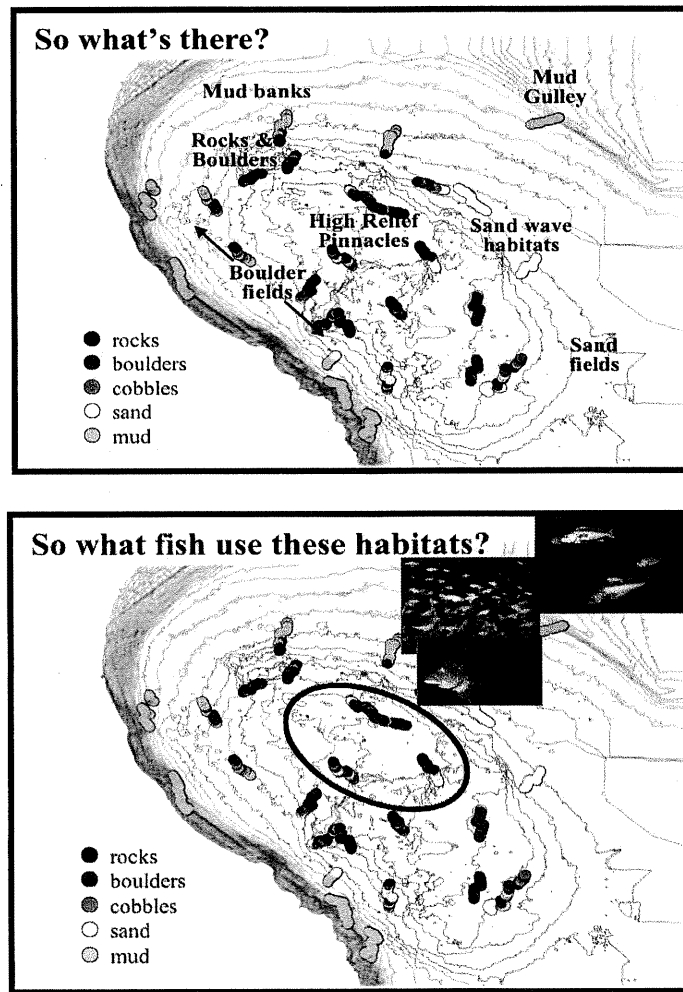
Hydrographic surveys of Cordell Bank were made in 1873, 1911, 1929, 1960-2, and 1985. G. Dallas Hanna of the California Academy of Sciences collected the first significant biological samples. He collected a few invertebrates during a series of dredging expeditions in the Gulf of the Farallones to collect rocks. The invertebrate samples were added to the permanent Academy collections. However, no account of the biota was ever published (Schmieder 1991, p. 27).

### ***2. Seafloor Mapping***

This seafloor mapping study, undertaken earlier this year, surveyed soft bottom habitats and low relief reef areas in Cordell Bank, Monterey Bay and Gulf of the Farallones national marine sanctuaries. Close to 300 miles of seafloor were mapped using side scan sonar. Researchers also used video to ground truth the side scan data and to characterize the soft bottom fish and invertebrate community. Surveys helped to document the diversity of sea life, health of habitat and characteristics of the seafloor, including a first look at many areas.

### ***3. Habitat Characterization and Biological Monitoring***

Since 2001, remotely operated vehicles (ROV) and the delta submersible have been used to characterize benthic habitats and document species distribution and abundance on and around Cordell Bank. The sanctuary plans to continue conducting these studies annually to increase the understanding of this unique environment and to better manage these resources.



Figures 12 & 13 Habitat Typing and Species Affinity, Delta Cruise 2002

#### 4. *Ecosystem Dynamics Study*

The Sanctuary is conducting monthly cruises to monitor primary and secondary production and the distribution and abundance of seabirds and marine mammals. One component of this long-term study is acoustic monitoring of the relative abundance of krill, an important building block in the food chain for this area. Physical parameters are measured with vertical CTD casts and a thermosalinometer that constantly records surface salinity and temperature. Post processing incorporates remotely sensed temperature and chlorophyll in the survey area.

#### C. Purpose and Need for Action

Cordell Bank National Marine Sanctuary protects one of the most productive offshore areas in the United States, supporting healthy resident populations and is a destination feeding ground for many migratory marine mammals, seabirds, and fishes. The sanctuary includes a prolific invertebrate population on the Bank and in the surrounding water column. The combination of oceanic conditions and topography supports this rich and diverse community. CBNMS seeks to

extend maximum protection to the core area of the Bank, within the 50 fathom isobath, to protect both the high relief of the Bank, and the exceptional invertebrate assemblage on the Bank.

The following goals and objectives for the stated proposed actions are consistent with the directives set forth by the National Marine Sanctuaries Act:

#### *Goal*

To maintain the natural biological communities, and where appropriate, restore and enhance it natural habitats, populations and ecological processes by eliminating avoidable adverse impacts to the Bank.

#### *Management Objectives*

- To develop and implement a coordinated plan for the protection and management of Cordell Bank with appropriate Federal agencies, State and local governments, international organizations, and other public and private interests;
- To facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities
- To improve understanding of the Bank, its resources and qualities; and
- To improve public awareness and understanding of the significance and need to protect the Sanctuary's resources and qualities.

#### *Need*

Maximizing protection of the area within the 50 fathom isobath surrounding the Bank is necessary because of the following qualities and threats:

### ***1. Qualities***

#### *Ecological*

- Geologically special: The main feature of the Sanctuary is Cordell Bank, an offshore granite bank emerging from the soft sediments of the continental shelf. This granite bank is the northern most bathymetric feature on the California continental shelf.
- Geographically special: The presence of a high relief, rocky bank on the edge of the continental shelf 20 nautical miles from shore creates a unique and productive marine environment. The prevailing California Current flows southward along the coast while the upwelling of nutrient-rich, deep ocean waters stimulate the growth of planktonic organisms. These nutrients, combined with high light penetration in the waters surrounding the Bank, and the wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. Some species at Cordell Bank are deep-water forms, but most are known from nearshore waters and some are even found in the intertidal zone. One expression of this richness and the unusual conditions on the Bank is the occurrence of many species deeper or farther north or farther south than ever before known (Schiemder 1991).
- Biologically special: The combination of oceanic conditions and undersea topography support a rich and diverse marine community including resident and migratory marine mammals, seabirds, fishes, and invertebrates proliferating on the Bank and surrounding water

column. Limited invertebrate collections by Cordell Expeditions in the early 1980s produced at least three species new to science, two nudibranch gastropods and one sponge.

- Habitat uniqueness: The vertical relief and hard substrate of the Bank provides benthic habitat with near-shore characteristics in an open ocean environment 20 nm from shore. The habitats of the Bank also support an abundance of fishes, seabirds and marine mammals.

#### *Living Resources*

- Fishes: Flatfishes such as sanddabs and several species of sole live on the mud and sandy bottom of the Sanctuary. Solitary bottom fish and schooling fish find refuge among the Bank's granite rocks and pinnacles. The area around Cordell Bank supports more than 44 species of rockfish, ranging in size from the 8-inch pygmy rockfish to the 3-foot yellow-eye rockfish. This info came from the Bio Geo Report
- Benthic organisms: The granite towers and reef areas between 120 ft (36 m) and 165 ft (50m) are a brilliant cascade of life. Space is limiting at these depths as sponges, ascidians, anemones, hydrocorals, and sea stars carpet the hard substrates, often one on top of the other. Many of the bottom dwelling organisms that live on Cordell Bank started life riding the currents of the Pacific Ocean as free floating larvae.
- Marine birds: Cordell Bank's food rich waters make it a major foraging locality for thousands of seabirds. This includes resident species that nest on the nearby Farallon Islands as well as highly migratory and vagabond pelagic birds.
- Marine mammals: Twenty-six species of marine mammals (whales, dolphins, seals, and sea lions) are known to frequent the waters around Cordell Bank. The Sanctuary is one of the most important feeding grounds in the world for the endangered Blue and humpback whales. These whales travel from their breeding areas in Mexico and Central America to feed on the abundant krill and schooling fish that aggregate near the Bank. In late summer, breaching humpbacks are frequently seen around the Bank. Populations of these endangered whales are starting to rebound after years of commercial harvest. Pacific white-sided dolphins are attracted by plentiful food resources and can be seen in large numbers. California sea lions, elephant seals, northern fur seals, and Steller sea lions frequent Sanctuary waters to feed on krill, squid, and juvenile fishes.

#### *Scientific*

- Supports research and monitoring to improve management through: bathymetric and habitat surveys, larval recruitment and krill abundance studies, and marine mammal and seabird surveys.
- Provides opportunity to gather baseline data on the physical, biological, and chemical oceanography of the Sanctuary.
- Provides opportunity to initiate a monitoring program to assess environmental changes over time by: studying the relationship between oceanographic conditions and the distribution and abundance of marine organisms; and initiating visual assessments on the Bank to monitor the reef community.
- Supports research on correlation between habitat types and fish species distribution.

#### *Education*

- Provides opportunity to interpret research findings for the public.
- Provides opportunity for direct interaction with living marine resources

- The sanctuary offers opportunities for the public to learn about the Sanctuary program through community education programs, displays, brochures, classroom visits, student summits, outreach events, lecture series, outings, and teacher trainings.
- Provides opportunity for naturalist guided tours to the sanctuary. Many wildlife watchers make the trip seasonally to experience an open ocean environment and encounter wildlife like seabirds or whales that do not live near shore.

## **2. Threats**

Cordell Bank is located about 43 nautical miles (nm) northwest of the Golden Gate Bridge and 20 nm west of the Point Reyes lighthouse. Due to the distance from land and unpredictable, and often rough sea conditions, access to the Bank is limited. Even so, the human use activity remains a threat to the health and function of the Bank.

Concern remains about the fragile quality of the Bank, particularly the high relief pinnacles and ridges and benthic organisms covering the Bank. Unlike habitats such as kelp forests and coral reefs, once the granite pinnacles have been compromised, there is no opportunity for recovery, they can and will remain rubble. The pinnacles and ridges of the Bank provide a hard substrate for attachment resulting in the thick coverage on the Bank comprised of sponges, anemones, hydrocorals, hydroids, and tunicates, and scattered crabs, holothurians, and gastropods. This benthic coverage in turn provides important habitat and food for fishes and other living marine resources. This area is one of complexity, sensitivity and ecological importance.

The following human use activities may be found incompatible with the Sanctuary's primary purpose of resource protection and would be considered a threat to the sensitive habit within the 50 fathom isobath surrounding Cordell Bank:

### *Marine Bioprospecting*

Plants and invertebrates have historically provided a source for medicinal treatments, and pharmaceutical research has expanded into the marine environment. Recent inquiries about collecting Sanctuary resources for biochemical analysis are an indication of expansion in the field. Marine bioprospecting may include either sampling or continuous extraction of a living marine resource for commercial purposes. What differentiates marine bioprospecting from commercial fishing or kelp harvesting, for example, which are both extraction of living resources for commercial purposes, is the genetic value of the bioprospected resource. The Sanctuary may permit sampling under a research permit, but would prohibit continuous extraction to prevent injury to Sanctuary resources, to protect the biodiversity of the Sanctuary, and to preserve the natural functional aspects of the ecosystem.

### *Salvage of cultural resources*

The abundance of shipwrecks along the California coast suggests that future underwater exploration of these resources is likely. Prehistoric use of the island, when the Bank was exposed during the last ice age, may also attract attention. Until recently, Cordell Bank and the surrounding seabed have been inaccessible due to location, depth, and currents. Improving technology, such as sonar, remotely operated vehicles, and manned submersibles, has reduced some constraints to exploration.

### *Commercial submerged cables*

Rapid expansion of communication technology has created a sudden demand for installation of cables on the seafloor. Cable deployment in Cordell Bank National Marine Sanctuary is inappropriate given the nature of the bathymetry. Impacts to the submerged lands, the Bank, and the benthic coverage of the Bank, are unpredictable.

### *Fishing gear*

The high vertical relief of the Bank discourages trawlers from fishing on the Bank. Data summaries for trawl sets from 1997 to 2002 indicate that trawl activity in the Sanctuary is on the soft sediments north of the Bank (trawl figure). The benthic cover and relief of the Bank also tend to entangle longlines. Data from submersible surveys on the Bank documents entangled gear on almost all of the 22 habitat survey tracks on the Bank. Most are long lines entangled on the bottom with a few remnant gill nets. What is of even greater concern than existing gear types and fisheries is the development of new gear types or fisheries that could negatively impact the invertebrate community or the reef structure in the high relief areas of the Bank. Historically, significant impacts can occur from developing fisheries faster than management can respond.

### **3. Manageability and enforcement**

Due to the distance from land, and prevailing sea conditions at Cordell Bank NMS, regular and consistent on the water enforcement is not feasible. A strategy within the new 5-year management plan is to develop an enforcement plan in coordination with other agencies. The United States Coast Guard has expressed interest in cooperative overflight enforcement efforts. Other potential partners include NMFS and CDFG. The enforcement plan will recommend taking a closer look at vessel tracking systems and increased observer presence.

In addition to a law enforcement presence, CBNMS will develop an interpretive enforcement plan. The Sanctuary's outreach program will target the recreational and commercial boating community in an effort to educate user groups about sanctuary regulations and the role of sanctuary management in resource protection. Experience in other sanctuaries has shown that voluntary compliance levels are high once user groups are informed about the unique characteristics of the sanctuary and the accompanying regulations.

### **D. Preferred Alternative**

#### **Cordell Bank National Marine Sanctuary: Protection of Cordell Bank and the Surrounding Area**

The CBNMS regulations presently prohibit removing, taking, or injuring benthic invertebrates or algae on Cordell Bank or within the 50 fathom isobath surrounding the Bank, except for accidental removal, injury or takings during "normal fishing operations." After reviewing various management alternatives, the NMSP is considering narrowing this exception by allowing removal, injury or takings of benthic invertebrates or algae only as incidental and necessary to use of vertical hook-and-line fishing gear (including trolling gear, but excluding longlines) on Cordell Bank and within the 50 fathom isobath surrounding Cordell Bank. This would virtually eliminate the risk of impacts from fishing gear to the benthos on Cordell Bank and within the 50 fathom isobath. Related to this, the NMSP is also considering adding a new prohibition to CBNMS which would prohibit drilling into, dredging, or otherwise altering Cordell Bank or the

submerged lands within the 50 fathom isobath; or constructing, placing, or abandoning any structure, material or other matter on the Bank or on the submerged lands within the 50 fathom isobath surrounding the Bank; however, vertical hook-and-line gear would also be excepted from this prohibition.

Consistent with this management alternative, the NMSP is requesting the PFMC to prepare draft sanctuary regulations that would except only vertical hook-and-line gear from the prohibition against removing, taking, or injuring benthic invertebrates or algae on Cordell Bank or within the 50 fathom isobath surrounding Cordell Bank. In addition, NMSP requests PFMC to prepare draft sanctuary regulations that would except only hook-and-line gear from the prohibition against drilling into, dredging, or otherwise altering Cordell Bank or the submerged lands within the 50 fathom isobath; or constructing, placing, or abandoning any structure, material or other matter on the Bank or on the submerged lands within the 50 fathom isobath surrounding the Bank. With this narrower exception, this prohibition would meet the goal of protecting Cordell Bank and the surrounding area from activities that could injure, cause the loss of, or destroy this sensitive benthic habitat. Bottom trawling, longlines, traps and all other fishing gear that could alter the submerged lands of these areas would be subject to this prohibition. The following language in bold text is intended to provide a regulatory model for the PFMC in modifying the exception to the current prohibition regarding the take of benthic invertebrates and algae:

*Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to **accidental** removal, injury or takings **as incidental and necessary to use of vertical hook-and-line gear during normal fishing operations.***

The following language in bold text is intended to provide a regulatory model for the PFMC in drafting an exception for vertical hook-and-line fishing gear to the prohibition against altering the submerged lands of the Bank or within the surrounding 50-fathom isobath, or constructing, placing, or abandoning any structure or material or other matter on them:

***Except as incidental and necessary to use of vertical hook-and-line fishing gear during normal fishing operations: drilling into, dredging, or otherwise altering Cordell Bank or the submerged lands within the 50 fathom isobath; or constructing, placing, or abandoning any structure, material or other matter on the Bank or on the submerged lands within the 50 fathom isobath surrounding the Bank.***

## E. Socioeconomic Impacts

### **Bioprospecting**

Similar to scientific research, the bioprospecting for benthic invertebrates or other resources, could be controlled through the CBNMS research permit system. This would ensure that any collection allowed of these resources is conducted appropriately and in a strategic manner,

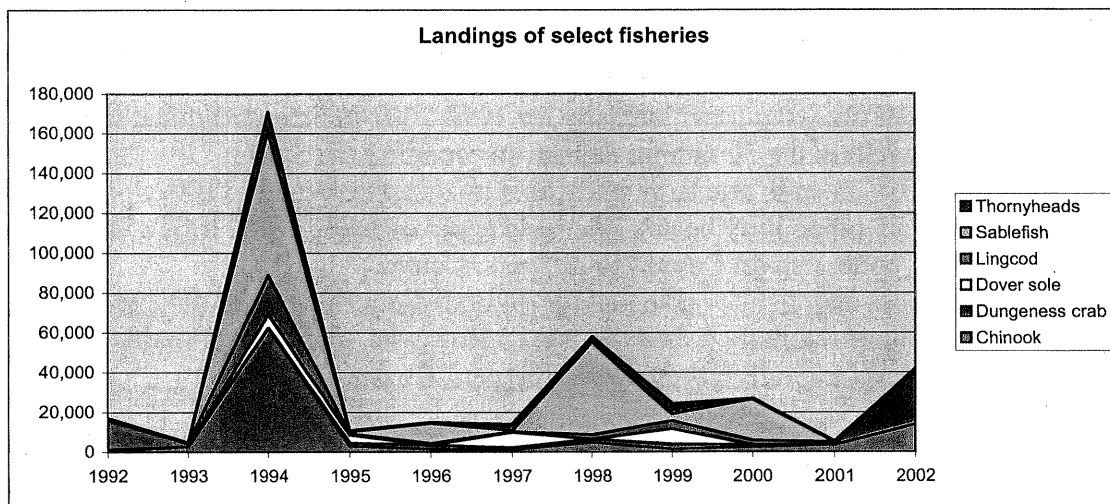
accounting for cumulative impacts to the marine resources. Particularly that this possibility exists, any negative socio-economic impacts on any potential future bioprospectors are extremely speculative. CBNMS has received only one inquiry in the last 7 years regarding bioprospecting on Cordell Bank.

### ***Cultural resources***

CBNMS is already offered limited protection from the taking, moving or removing of historical resources under the National Historic Preservation Act, California State Penal Code Section 622.5 (Objects of Archaeological or Historical Interest), and the Abandoned Shipwreck Act of 1987. Since no explicit interest in taking, moving or removing historical resources has been expressed, the socioeconomic impacts from prohibiting disturbance to the submerged lands of the sanctuary will be negligible.

### ***Submerged cables***

Due to the high relief of the Bank, the laying of submerged cables would most likely be impractical. The limited size of the Sanctuary would make alternative routing of any cable a viable option. Socioeconomic impacts from the prohibition of laying cable, and disturbing of the submerged lands, is negligible.



**Figure 14.** Landings of Select Fisheries in Fishing Blocks 441 and 451

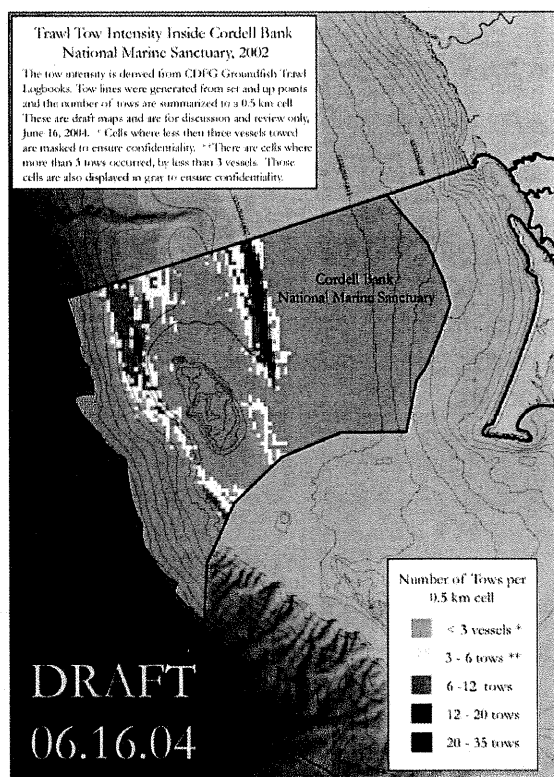
### ***Fishing***

In the past, the Cordell Bank area has supported an active commercial and recreational fishery. Commercial fisheries have generally targeted rockfish, flatfish, salmonids, roundfish and albacore tuna. Recreational fisheries have generally focused on rockfish, lingcod, salmon, and albacore tuna.

Four fisheries have occurred throughout the range of the entire Sanctuary: Dungeness crab, highly migratory, groundfish and salmon. Nontrawl sectors such as salmon and pelagic fisheries are only described by landing receipts and not logbooks. The 50 fathom isobath surrounding

Cordell bank is straddled by two CDFG fish blocks: 441 and 451. Effort is averaged over these 10 minute fish blocks, therefore is limited in its spatial explicity. Also, there are known quality issues with the veracity of the landing receipts data because the reporting relies on the fisherman reporting the block accurately, and the fish buyers accurately recording the blocks. Without observer data or other location information available, the broad geographic range of the blocks and questionable accuracy of landings data limits our understanding of the types and level of fishing activities taking place on the Bank. The Sanctuary's data collection efforts have been augmented by personal interviews some of which has been included below. The following information summarizes what is known about fishing activities taking place on Cordell Bank:

- Total catch within blocks 441 and 451 for 2002 for all fisheries (last year for which we have data) is 65,000 pounds.
- The highly migratory species fishery takes place in open water, to the west of the Bank, and the vast majority of landings are albacore. The total catch for 2002 was 7,000 pounds (we have processed landings for the last 11 years).
- Salmon landings are exclusively Chinook, with up to 40-50 trollers (pers. Com) known to fish on the Bank during a season. The total catch for 2002 was 14,000 pounds.
- There is no coastal pelagic fishery in CBNMS.
- The Dungeness crab fishery takes place on the shelf, not on the Bank.
- There are no squid landings reported for these blocks, confirmed by visual inspection of logbooks over the last three years.
- A groundfish closure is currently in place for both commercial and recreational fishing on the Bank.
- Mapping of trawl sets showing trawl intensity for 1997-2002 indicates minimal to no trawling took place within the 50 fathom isobath surrounding the Bank.
- Before the groundfish closure, one large party boat made approximately 100 trips annually to Cordell Bank, and six other party boats each made approximately 30-40 trips annually. Currently, no party boats fish on Cordell Bank (pers. Comm.).
- Ten longliners (whom also fish for crab and /or salmon) from Bodega Harbor, and two longliners from Bolinas regularly fished the Bank. However, since the groundfish closure all no boats out of Bodega are currently in operation (pers. Comm.)



**Figure 15.** 2002 Trawl Tow Intensity Surrounding Cordell Bank

In conclusion, a preliminary simplified analysis of fishing activity indicates that, given current types and levels of fishing effort taking place on the Bank, the proposed regulatory actions would impose no additional socioeconomic burden on the fishing community. If the groundfish closure were to be lifted, there is the potential for socioeconomic impacts on longliners. Three factors need to be considered in evaluating socioeconomic impacts on this user group: 1) preliminary information indicates that at least 10 of the 14 known local longliners also participate in other fisheries (crab and/or salmon), from which they could presumably derive some income; 2) although this group may be displaced from the Bank, effort could be shifted to other areas both within and surrounding the Sanctuary so there would not be a total loss of income, although some additional burdens may be realized; and 3) having realized the impact of the groundfish closure, indications are that at least 10 of these 14 boats have already been sold.

## **F. Conservation Benefits**

The proposed actions to protect benthic invertebrates on the Bank and prohibit disturbance to the submerged lands within the 50 fathom isobath surrounding the Bank would protect the vulnerable, long-lived, fragile and slow-growing species which have long recovery times if impacted. It would also safeguard the fragile high relief on the Bank, particularly the pinnacles and ridges, from the threat of permanent destruction. The relief and benthic cover on the Bank supply food and shelter for many species of fishes. The restrictions would also protect the opportunity to better understand unique species associations or ecological processes by keeping

them undisturbed. Regulations would also constitute an educational opportunity to educate the public about the resources on the Cordell Bank.

#### IV. CONCLUSION

We appreciate the time and effort of the Council and our partner organizations in developing these proposals for improved conservation in MBNMS and CBNMS. As indicated in the cover letter, we are looking forward to making a presentation regarding this request at the October/November Council meeting in Portland, OR. If we can be of assistance in any way please do not hesitate to contact us.

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Bob Black, Bodega Bay Harbor Master (personal communication, October 5, 2004)

GROUND FISH ADVISORY SUBPANEL STATEMENT ON  
CORDELL BANKS NATIONAL MARINE SANCTUARY

In reference to our general comments on National Marine Sanctuaries (NMS) presented under Agenda Item H.1, the Groundfish Advisory Subpanel (GAP) makes the following recommendations regarding the Cordell Banks National Marine Sanctuary (CBNMS).

CBNMS is proposing a change in its designation document which would remove an exception prohibiting the taking of NMS resources other than “in the course of normal fishing.” CBNMS is particularly concerned about the effects of fishing operations on geographic features and associated bottom-dwelling organisms in a particular area of the NMS. There appear to be no fishing activities in the area other than salmon trolling.

The GAP recommends the Council consider this area for inclusion as a Habitat Area of Particular Concern under the proposed essential fish habitat plan amendment. As part of that process, the Council should also examine closure of the area to bottom-tending gear. This approach, using existing Council authority, would address the concerns of CBNMS and preclude any need to change the CBNMS designation document to allow regulation of fishing.

PFMC  
03/10/05

HABITAT COMMITTEE REPORT ON  
CORDELL BANK NATIONAL MARINE SANCTUARY

The Habitat Committee (HC) supports the proposed changes in the Cordell Bank National Marine Sanctuary's designation document as a necessary step in the process of meeting Sanctuary objectives.

Following presentations received by the Council and HC about the fragile nature of the bank and the damage caused by certain types of fishing gear, the HC agrees with moving ahead with the changes to the designation document as outlined, which will allow the Council to proceed with drafting appropriate regulations.

If unanticipated fishing gear impacts occur in the future, we welcome the opportunity to revisit this issue.

We also support the proposed changes to Article 4, No. 1 that would minimize non-fishing impacts to habitat and the change to Article 4, No. 3 regarding authority to regulate the introduction of non-native species.

PFMC  
03/07/05

January 21, 2005

Holly Price, Ph.D.  
Monterey Bay National Marine Sanctuary  
299 Foam Street  
Monterey, CA 93940

Dear Holly and SMPA Workgroup Members,

During the December 13, 2004 Special Marine Protected Area Workgroup (SMPA) meeting, there occurred a conversation about the meaning of the words "protection" and "resources" as found in the National Marine Sanctuary Act (NMSA). Distinctions between "cultural" and "biological" qualities or resources of the Sanctuary were discussed as the workgroup tried to develop its conservation goal statement.

Most of our discussions centered around the last goal statement, derived from the NMSA, which is:

"To facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities."

Standing alone, it would seem that there is a hierarchy of protection over use in the National Marine Sanctuary Act. But, does the rest of the law bear this out?

The concept of protection is nowhere defined in the National Marine Sanctuary Act. Because of this, I decided to investigate the legislative intent behind the concept. "Protection" also relates to the concept of "multiple use" found in many places in the NMSA. Although each reauthorization of the NMSA apparently has a legislative report to serve as guidance, I found that much of this research has already been done by the Environmental Law Institute of Washington, D.C. Their paper, released in June of 2004, is entitled "The History and Evolution of the National Marine Sanctuaries Act." The web site to view this paper can be found at: [http://www.mcbl.org/marineprotected/NMSA\\_Leg\\_History.pdf](http://www.mcbl.org/marineprotected/NMSA_Leg_History.pdf)

### **Preservation vs. Multiple Use**

This paper is written from a conservationist/environmentalist legal viewpoint. From best I can tell, it accurately portrays the evolution of the Act. It does editorialize about some Congressional actions, stating that some actions, or failures to act, are in the problem box; certainly not all readers (nor would, apparently, most members of Congress) agree with the authors. The paper tracks what is called the "Preservation versus Multiple Use focus." To quote from the Executive Summary of this paper:

"...the Sanctuaries Program did not follow the model of the National Wilderness Preserve System, and proved to be highly unstable. For much of its history, the MPRSA has been a work in progress. A fundamental reason for the law's plasticity has been the ambiguity surrounding the Act's intent. Is the overriding purpose of the Act the preservation and protection of marine areas, or is it the creation of multiple use management areas in which preservation use has to contend with every other use, even exploitive ones like oil and gas extraction?

Congress failed to clearly and definitively answer this question at the outset, and in fact gave conflicting signals...This ambiguity produced confusion and led

to implementation difficulties, which in turn triggered periodic efforts by NOAA and Congress to clarify the Act's purposes and provisions.

Over time, Congress confirmed multiple use as a significant purpose of the Act and diminished the Act's preservation mission. Although amended numerous times over 30 years, the statute remains incongruous, calling for both preservation and multiple use."

I also quote from this paper's conclusions:

"The Act is now so constrained by its own architecture that it stands little chance of ever producing the comprehensive system of marine preservation areas envisioned by early visionaries, who hoped to create a system of marine wilderness preserves analogous to the terrestrial wilderness system. The blueprint of a permanent marine sanctuary system with the singular purpose of preservation was rejected in favor of a law that required preservation to be balanced with other uses within a sanctuary...

In order to be capable of establishing a system of marine preservation areas that only allows uses that are truly compatible with preservation, the Sanctuaries Act would have to undergo substantial amendment."

This paper, by quoting individual members of Congress over a 35 year period, outlines the intent of Congress for each reauthorization of the National Marine Sanctuary Act since its precursor bill was first proposed in 1966. What can be seen clearly is Congress' intent that the preservation or protections afforded by the Act to biological resources and habitats be balanced by the preservation of multiple use opportunities, including extractive measures. Neither trumps the other. There must be a balance. The authors of the paper, who are environmental attorneys, are obviously not happy with the intent of Congress, but it is what it is. What I heard from some in the Workgroup was that protection trumps multiple use; however, this does not seem to be borne out by the history of Congressional intent.

### **What are the Resources the Act protects?**

Also discussed in the workgroup were questions as to whether "historical", "recreational", and "cultural" resources and qualities were on an equal footing with biological resources and qualities. Again, what was heard in the workgroup from some is that clearly there is a hierarchy of importance in protecting biological resources, qualities, and habitats.

This does not seem to be borne out by the exact language of the Act. Numerous sections of the National Marine Sanctuary Act speak to this issue. Title 16, chapter 32, section 1431, the Findings of the Act, says:

"Certain areas of the marine environment possess conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological, or aesthetic qualities which give them special national, and in some cases, international significance."

Please note all of these items listed are on the same footing.

Continuing:

"A Federal program which establishes areas of the marine environment which have special conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational, or aesthetic qualities as national marine sanctuaries... will improve the conservation, understanding, management, and wise and sustainable use of marine resources."

Again, there is no distinction or hierarchy made between these resources. Wise and sustainable use of marine resources is on the same footing as conservation.

Continuing:

"Maintain for future generations the habitat and ecological services, of a natural assemblage of living resources that inhabit these areas."

This section is interesting because there is no distinction made about what type of life inhabits or provides ecological services to these areas. There is also no distinction between humans and any other form of life that comprise "the natural assemblage of living resources."

In fact, section 1432 of the NMSA contains the following definition of "sanctuary resource":

"any living or non-living resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archaeological, scientific or aesthetic value of the sanctuary"

Again, there is nothing to indicate in this definition that humans and human activity are not part of the definition of "sanctuary resource." Indeed, what other living organism "contributes to the conservation...value of the sanctuary?" It is humans who do this.

Section 1431 continues with its purposes and policies, listing nine items. Section 4 reads:

"to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment and the natural, historical, cultural, and archaeological resources of the national marine sanctuary system"

Again, all of these items, including the words "natural" and "cultural" are given equal footing.

Number 6 of this section begins:

"Facilitate to the extent compatible with the primary objective of resource protection..."

This section, which is the first part of the goal statement that caused our discussion, has been to some degree dealt with in the above discussion regarding multiple use versus protection and preservation. Still, the term "resource" is in question. The definition of "sanctuary resource" found in the Act and cited above indicates that it includes human activities, qualities, and values. A SMPA member pointed out that, if human uses are resources to be protected, this would amount to circular logic. That is true. The Act is circular.

Further, section 1433, which talks about the sanctuary designation standards, makes the following distinction between:

"...(B) "the communities of living marine resources it harbors; or  
(C) its resource or human values"

It is interesting to note that "communities of living marine resources" is set apart from "resource or human values." This suggests that the word "resource" is not synonymous in the National Marine Sanctuary Act with "living marine resources."

Section 1433 continues by describing things that the Secretary must consider in the designation of a sanctuary. These include:

"(b) the area's historical, cultural, archaeological, or paleontological significance."

Again, there is no order of importance or hierarchy given to any other type of quality or resource in this section. In fact, Section (I) also lists the fact that the Secretary must consider "the socioeconomic effect of sanctuary designation." There are a number of other sections in the Act which suggest that the protections of the Act apply equally to cultural, historic, etc., resources.

There are other areas of the Sanctuary Act, however, that muddy the water as to what is meant by a sanctuary resource. Section 1433 reads that:

"The Secretary will consider for a sanctuary designation..."

- (C) The present and potential uses of the area that depend on maintenance of that area's resources, including commercial and recreational fishing..." and
- (K) The feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and the value of the area as an addition to the system."

These two sections suggest that there is a distinction made between sanctuary resources and compatible uses. This being said, it appears that the argument that historical, cultural, and recreational qualities or values should be included in the meaning of the term "sanctuary resources" is strong. It's harder to make a case, within the full context of the National Marine Sanctuary Act, and regulations, including looking to legislative intent, that they are not to be included.

### **National Marine Sanctuary Program Regulations**

15CFR922.3, the National Marine Sanctuary Program Regulations, also contain policy guidance. "Cultural Resources" are defined as:

"any historical or cultural feature, including archaeological sites, historical structures, shipwrecks, and artifacts."

The term "feature" is not defined further, and might suggest only a static object, except for the further guidance found as the regulation continues, defining "Historical Resource" as:

"Any resource possessing historical, cultural, archaeological, or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representation of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include "submerged cultural resources", and also include "historical properties," as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended."

The National Historic Act, cited above, includes the concepts of cultural dynamics, and history, as resources.

Section 922.2 of the Sanctuary Regulations speaks to the treatment of historical resources:

"...The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended to, to the extent practical, to historical resources in the marine environment within the boundaries of the designated National Marine Sanctuaries..."

As a related footnote, on January 4, 2005, the City of Monterey was honored when Mrs. Laura Bush designated it among the Nation's newest *Preserve America* communities. The goals of the *Preserve America* Initiative include: a greater shared knowledge about the Nation's past; strengthened regional identities and local pride; increased local participation in preserving the country's cultural and natural heritage assets; and, support for the economic vitality of our communities. I don't think anyone could argue that the history and culture of Monterey as a fishing community is not worthy of acknowledgement and protection.

### **The 1992 MBNMS Designation Document**

As we well know, each sanctuary has its set of founding documents that set forth its purpose. In our case, the Monterey Sanctuary's Designation Document proclaims its purposes in protecting and managing its resources, as follows:

"Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. sections 1431 et seq., Monterey Bay and its surrounding waters offshore central California, and the submerged lands under Monterey Bay and its surrounding waters, as described in Article II, are hereby designated as the Monterey Bay National

Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area."

As you can see, all of these resources are once again on an equal footing for protection. An argument could be put forth, that says that the MBNMS protects historical, or cultural resources, through other sanctuary programs than the MPA program. However, that argument has no weight when set alongside the Sanctuary's "ecosystem based management" mandate.

### NOAA's Ecosystem Approach

If this were not enough to prove both the legal meaning and legislative intent, I also draw your attention to the document entitled "New Priorities for the 21<sup>st</sup> Century – NOAA's Strategic Plan – Updated for FY 2005-2010." This document was prepared at the direction of the Undersecretary for Oceans and Atmosphere, Conrad C. Lautenbacher, Jr. To quote from the Strategic Plan (page 4):

#### "NOAA's Ecosystem Approach to Management

- An **ecosystem** is a geographically specified system of organisms, the environment, and the processes that control its dynamics. Humans are an integral part of an ecosystem.
- The **environment** is the biological, chemical, physical, and social conditions that surround organisms.
- An **ecosystem approach to management** is management that is adaptive, specified geographically, takes into account ecosystem knowledge and uncertainties, considers multiple external influences, and strives to balance diverse social objectives."

### Conclusion

What does this mean for the SMPA workgroup? I believe that it means that in drafting our conservation goals statement and for our entire consideration of the subject of MPAs and marine reserves within the Sanctuary, that we must conserve and protect cultural, historical and recreational resources, qualities, and values to the same degree that we attempt to protect biological resources and habitats. There can be no doubt but that in this area, one of the greatest cultural and historic qualities that this area possesses is its heritage of fishing activities. We can't do harm to that. It also means that the social and economic science of the consequences of any MPA plan we develop must be as thorough, and weighted equally with, the consequences to marine life and habitats.

This balance is hard to articulate and hard to achieve, but a worthy goal, in my opinion. I would appreciate it if you would distribute this letter to all SMPA Workgroup members, and to the SAC.

Sincerely,



Stephen B. Scheiblaue  
MBNMS SMPA Workgroup Member  
Monterey Harbormaster

SBS/mv

C: Alliance of Communities for Sustainable Fisheries

## Sanctuary Resources and Their Use

The NMSA defines "sanctuary resource" as: *any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary;*

**Question:** Given that the NMSA definition of "sanctuary resource" incorporates "cultural" and "historical" resources, is human use of the marine environment therefore considered to be a "resource" as used in the following legislative purpose?

*to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities*

**Answer:** No. While the Sanctuary and the SMPA plan's goal statement<sup>1</sup> recognize the importance of the fishing community to the local economy and culture, this section of the NMSA clearly creates a distinction between Sanctuary resources and their respective uses.

### 1) Statutory Construction

A statute cannot be read in a manner that renders it meaningless. If "*all public and private uses of the resources...*" are themselves considered to be resources, the section would be nonsensical. If interpreted this way the section would literally legislate protecting resources to the extent it's compatible with resource protection. It would nullify the deliberate distinction the phrase draws between *resources* and their *public and private uses*.

### 2) Regulatory Definitions

In the National Marine Sanctuary Program programmatic regulations, the terms "sanctuary resources", "cultural resources", and "historical resources" refer to objects and physical qualities as opposed to uses of the environment.

From 15 CFR §922.3:

*Sanctuary resource* means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brinoseep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.

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<sup>1</sup> "...If additional MPAs are to be created, provide for the design of MPAs that are compatible with the continuation of long-term sustainable fishing in the Sanctuary, as fishing is a key cultural and economic component of the region."

*Cultural resource* means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

*Historical resource* means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include "submerged cultural resources", and also include "historical properties," as defined in the National Historic Preservation Act<sup>2</sup>, as amended, and its implementing regulations, as amended.

### 3) Legislative Intent

Legislative history may only be relevant when a statute is ambiguous. Here the section can and should be interpreted according to its plain meaning.

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<sup>2</sup> From the NHPA: "*Historic property*" or "*historic resource*" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.

**Alliance of Communities for Sustainable Fisheries**  
**P O Box 1309, Carmel Valley, CA 93924 (831) 659-2838**

January 25, 2005

Dan Basta, Director  
Office of National Marine Sanctuaries  
1305 East-West Highway, Room 11523  
Silver Spring, Maryland 20910

**Re: What are the resources that the Sanctuary Program protects?**

Dear Director Basta,

A number of members of the Alliance of Communities for Sustainable Fisheries participate in the Monterey Bay National Marine Sanctuary's Special Marine Protected Area Working Group (SMPAWG). A key question that has arisen within the group is the question: "What are the resources that the National Marine Sanctuary Program is to protect?" We think that this question is not important just to issues within Monterey Bay, but is of national importance throughout the National Marine Sanctuary system. The question is so important that we are attaching a letter written by Steve Scheiblaue, who represents "harbor communities" on the Board of Directors of our Association. He is also a member of the SMPA Workgroup. This letter explores both legislative intent, and the letter of the law of the National Marine Sanctuary Act to answer this question. The Alliance of Communities of Sustainable Fisheries hopes that you will give this letter a very careful reading and consideration of its analysis.

Thank you for your attention to this matter.

Sincerely,

Kathy Fosmark  
Co-Chair, ACSF

Frank Emerson  
Co-Chair, ACSF

Attachment

**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

**Alliance of Communities for Sustainable Fisheries**  
**P O Box 1309, Carmel Valley, CA 93924 (831) 659-2838**

February 1, 2005

RECEIVED

FEB - 7 2005

PFMC

Admiral Conrad Lautenbacher, USN (ret.)  
Undersecretary for Oceans and Atmosphere  
Department of Commerce  
1401 Constitution Ave., N.W.  
Washington, D.C. 20230

**Re: What are the resources that the Sanctuary Program protects?**

Dear Admiral Lautenbacher,

A number of members of the Alliance of Communities for Sustainable Fisheries participate in the Monterey Bay National Marine Sanctuary's Special Marine Protected Area Working Group (SMPAWG). Two important questions have arisen within the group:

**Does the National Marine Sanctuary Act seek to  
balance protection with multiple uses?**  
and,  
**What are the resources that the National Marine  
Sanctuary Program is to protect?**

We think that these questions are important issues not just within Monterey Bay, but are of national importance throughout the National Marine Sanctuary system. The questions are so important that we are attaching a letter written by Steve Scheiblaue, who represents "harbor communities" on the Board of Directors of our Association. He is also a member of the SMPA Workgroup. This letter explores both legislative intent, and the letter of the law of the National Marine Sanctuary Act, and Regulations, to seek answers to these questions.

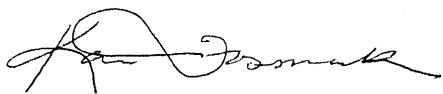
Also, please find attached an unsigned "rebuttal" prepared by NMS Program Staff. Frankly, we do not think the rebuttal addresses the fundamental questions that Mr. Scheiblaue's letter raises about the legislative intent and letter of the law of the NMS Act. The claim that the NMSA is clear, and therefore the intent of Congress when they passed and reauthorized the NMSA is unimportant, is especially puzzling to us.

The Monterey region's historic fisheries are a precious cultural resource. Are they not to be valued, and protected under the National Marine Sanctuary Act, just as are ecological resources? We value our relationship with the MBNMS, and respect its Staff. To more resolve this question, our Association hopes that you will give this material a very careful consideration of its analysis, and, if you deem

it appropriate, that you request a legal opinion from outside the National Ocean Service.

Thank you for your attention to this matter. We look forward to hearing your view.

Sincerely,



Kathy Fosmark  
Co-Chair, ACSF



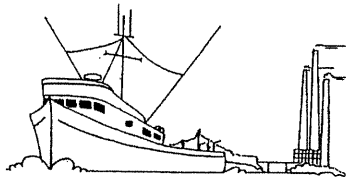
Frank Emerson  
Co-Chair, ACSF

#### 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  
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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

#### Attachments

C: Dr. William Hogarth, Assistant Administrator, NMFS  
Dan Basta, Director, Office of National Marine Sanctuaries  
Donald L. Evans, Secretary of Commerce, U S Dept. of Commerce  
Donald McIsaac, Executive Director, PFMC  
Don Hanson, Chair, PFMC  
Ralph Rubio, President, AMBAG Board  
Bill Douros, Superintendent, MBNMS  
Monterey Bay NMS Sanctuary Advisory Council  
Channel Islands NMS Sanctuary Advisory Council  
Gulf of the Farallones NMS Sanctuary Advisory Council



PO Box 44  
Moss Landing, CA 95039

# Fishermen's Association of Moss Landing

Mr. Dan Basta, Director of the Sanctuaries  
National Marine Sanctuary Program, NOAA  
1305 East-West Highway, 11th Floor  
Silver Spring, MD 20910  
August 17, 2003

Dear Director Basta,

## RE: Sanctuary designation of the Davidson Seamount

I am writing to express our concern regarding the Management Plan and related recommendations in the plan that fishermen do not support. I participated in the Davidson seamount working-group in good faith where we did not reach a consensus.

I was disappointed to see that the Davidson seamount is part of the management plan. Our concerns relate directly to fishing. The Sanctuary does not have support from the fishing community to create a new Sanctuary around the Davidson seamount or add the seamount to the existing Monterey Sanctuary for many reasons. There is not a problem in that area to justify designation nor does science support a cause. Most importantly, the fishing community expects the Sanctuary Program to keep the promise made to us in the early 1990's. The Fishermen's Association of Moss Landing will not support any new Sanctuary designation until the Sanctuary Program comes out with language saying that the Sanctuary will not indirectly or directly affect fishing in any way. This language represents the promise in numerous sections of the original designation document.

### It is clear that:

"Fishing is not being regulated as part of the Sanctuary regime and is not included in the designation document as an activity subject to future regulation. Fisheries management will remain under the existing jurisdiction of the State of California, the National Marine Fisheries Service, and the Pacific Fishery Management Council.

### This section concludes:

Sanctuary prohibitions that may indirectly affect fishing activities have been written to explicitly exempt traditional fishing activities."

### And continues with the following:

" Should problems arise in the future

*Fishermen feed America!*

February 17, 2005

Page 2

**And by this we understand this to mean fisheries problems:**

NOAA would consult with the State, PFMC, and National Marine Fisheries Service, as well as the industry, to find a proper course of action.”

Removing this language known as the promise, the fishermen will never trust the Sanctuary Program to keep an agreement and that includes designation of Marine Protected Areas and Marine Reserves. The Sanctuary could break the back of fishing communities already struggling under harsh restrictions and constraints, even while our nation’s fisheries are successfully rebuilding as reported in the 2002 Status of the Stocks Report from the National Marine Fisheries Service. This could be devastating to many fishing communities and the industries that depend upon them all around our country.

The Sanctuary appropriately can reserve the right to comment to the regional fishery management agencies who have the authority to make decisions about what types of fishing gear to employ in given areas, and not arbitrarily disrupt the livelihoods of thousand of U.S. fishermen while maintaining our commitment to conservation, we urge you to support the fish and the fishermen to work within the framework of the Pacific Fishery Management Council science and peer review, recognizing environmental changes in the oceans, and requiring cumulative economic analyses.

The Sanctuary does not have our support for Sanctuary designation of the Davidson seamount for the above listed number of reasons, including the promulgation of Marine Protected Areas and Marine Reserves.

Regards,

Kathy Fosmark

Vice President  
Fishermen’s Association of Moss Landing  
California, USA

C:  
Donald Evans, U.S. Commerce Secretary  
VADM Conrad Lautenbacher, USN (ret.)  
Congress Member Anna Eshoo  
Congressman Sam Farr  
William Douros, Manager  
Stephanie Harlan, MBNMS SAC Chair

**Alliance of Communities for Sustainable Fisheries**  
**P O Box 1309, Carmel Valley, CA 93924 (831) 659-2838**

October 13, 2003

Dan Basta, Director  
Office of National Marine Sanctuaries  
1305 East-West Highway, Room 11523  
Silver Spring, Maryland 20910

Bill Douros, Superintendent  
Monterey Bay National Marine Sanctuary  
299 Foam Street  
Monterey, CA 93940

Dear Director Basta and Superintendent Douros:

We are writing to advise you that the fishing community does not support the inclusion of the Davidson Seamount into the boundaries of the Monterey Bay National Marine Sanctuary, or any other sanctuary.

We continue to believe that there are mechanisms available through the Pacific Fishery Management Council to assure that any destructive extractive practices on the bottom of the seamount may be prevented. We are convinced that the Program has no ability to provide the guarantees that we need into the future that sanctuary status will not be used as a justification to lead to ever-increasing restrictions on fishing, including fishing at or near the surface. We further observe that the problems which we have experienced in the management of the Monterey Bay National Marine Sanctuary, which really stem from a lack of clarity in the Management Plan and the National Marine Sanctuary Act, must be substantially addressed before the Sanctuary Program could credibly entertain the idea of expanding its territory. Lastly, at some 5300 square miles, the Monterey Bay National Marine Sanctuary is already too large by many measures for thorough management.

If the Sanctuary Program is looking for more to do, may we respectfully suggest that there is significant work to be done on resource abundance assessments, which we hope the Monterey Bay National Marine Sanctuary will do in partnership with the fishing industry. This information could be provided to the fishery management agencies, providing a basis for improved decision-making - a goal we all share.

In addition to the Alliance of Communities for Sustainable Fisheries, we want to point out the list of supporting members of our organization. In addition to this general support, this letter has been specifically endorsed by:

- Western Fishboat Owners Association
- Ventura County Commercial Fishermen's Association
- Santa Barbara Commercial Fishermen's Association, Inc.
- 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

- Federation of Independent Seafood Harvesters
- The Fishermen's Alliance
- Coastside Fishing Club (recreational)
- Recreational Fishermen's Alliance
- Pacific Coast Federation of Fishermen's Associations (PCFFA)
- United Anglers of California, Inc.

Please be very clear that recreational and commercial fishermen do not support the inclusion of the Davidson Seamount into the Monterey Bay National Marine Sanctuary.

Sincerely,

Mike Ricketts  
Co-Chair, ACSF

Kathy Fosmark  
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  
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 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: The Honorable Richard Pombo  
 The Honorable Sam Farr  
 The Honorable Anna Eshoo  
 The Honorable Lois Capps  
 The Honorable Elton Gallegly  
 The Honorable Bruce McPherson  
 Admiral Conrad Lautenbacher, USN (ret.)  
 Don Hanson, Chair, PFMC  
 SAC for Monterey Bay National Marine Sanctuary  
 SAC for Channel Islands National Marine Sanctuary  
 SAC for Gulf of the Farallones National Marine Sanctuary

# WESTERN FISHBOAT OWNERS ASSOCIATION®



P.O. Box 138  
Eureka, CA 95502

Ph. (707) 443-1098  
Fax (707) 443-1074

e-mail <[wfoa@cox.net](mailto:wfoa@cox.net)>  
website: <<http://www.wfoa-tuna.org>>

February 6, 2003

Chairperson Stephanie Harlan  
MBNMS Advisory Committee  
299 Foam Street  
Monterey, CA 93940

Superintendent William Douros  
MBMNS  
299 Foam Street  
Monterey, CA 93940

Dear Ms. Harlan and Mr. Douros:

Western Fishboat Owners Association represents nearly 500 albacore tuna trollers based on the U.S. west coast and fishes for albacore tuna from approximately June through October of every year. We fish in a very environmentally friendly manner and annually supply nearly 120 million servings of albacore to consumers worldwide. We also contribute to albacore research over the past 30 years and work with NMFS/NOAA on joint tagging and other projects to enhance our knowledge of our fish and fishery.

Most of the fishery is located off the west coast from 40 - 200 miles offshore. For many of our members this is their main source of income annually and many are displaced from other fisheries due to regulation and precautionary management. Our organization has been involved and very proactive in both international and federal conservation conventions, treaties, and fisheries' management plans. Unfortunately well meaning measures at all levels have become something they never intended to be. Most management regimes and regulations even if originally implemented and proposed by industry itself have become bureaucratic safe havens, over spending and wasteful projects for NGO's and government officials, and have not done a thing to enhance the role of U.S. fishermen. While we have been "examples" to the world, other nations that recognize the ocean as a source to feed people and supply the consumer with a reasonably priced healthful product continue unfettered while our fishermen watch the bureaucracy grow ever larger under the name of conservation.

It was brought to my attention that MBNMS is entering a review process of its sanctuary plan. We encourage a very transparent process, and the inclusion of all who actually live and make a living from the ocean and area that have become sanctuaries and those that may potentially become.

Our fleet has not seen economic effects or ocean access limitations in regards to MPA's and sanctuary status of given areas. This is because we fish highly migratory species in offshore areas, beyond the continental shelf. The potential encroachment of the Monterey Marine Sanctuary to the Davidson Seamount is very troubling. This area is very productive for our albacore trollers. Albacore seem to congregate around sea mounts. Although our vessels use hook and line methods directly on the surface, bottom formations and currents that are a half mile below them draw the fish. These vessels would have absolutely no effect on the region except for displacing a few tons of water temporarily. This is one area where haste could be extremely damaging to the fishing community and families.

Another menacing aspect is the willingness to use the "precautionary approach" as a tool. As we all may know, this theory has never been defined, and any attempts by regulators at defining the term usually means zero effort or a very conservative management regime. Arguments I hear are MPA's are needed as an area for a species to repopulate, area for research, or bio diversity management. This argument cannot be applied to albacore tuna. Being highly migratory, albacore travel in a period of a few months from the western pacific to this coast and back again, and may congregate in an area like the Davidson Seamount and other places. There are so many unknowns and terms used loosely it is very dangerous to move except with the utmost precaution in applying another series of marine reserve as well as haste in modifying existing ones. WFOA feels that a conglomeration of small closed areas of the ocean only drive legitimate fishermen into tighter areas which totally defeat any purpose these area designations may have had.

WFOA would like to ask those who may see an immediate and pressing need for additions or modifications under this plan how they will benefit either in a physical way or monetary way. To close areas to dedicated fishermen to make a job site for others that do not feed the consumer, without ample evidence a problem exists is common sense taken to the absurd.

Sincerely,

*Wayne Heikkila*

Wayne Heikkila  
Executive Director

cc: WFOA Board of Directors



**Alliance of Communities for Sustainable Fisheries**  
**P O Box 1309, Carmel Valley, CA 93924 (831) 659-2838**

February 17, 2005

RECEIVED

FEB 22 2005

Mr. Donald Hansen, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384

PPMC

Dear Chairman Hansen and members of the Council:

We are writing to advise you that the fishing community has concerns about the inclusion of the Davidson Seamount into the boundaries of the Monterey Bay National Marine Sanctuary, or any other Sanctuary. We also must advise you that we strongly object to any change in the Designation Document of the MBNMS – or any other – which will make “fishing” an activity subject to further regulation by a Sanctuary. And of course, we oppose granting the authority to the Sanctuary Program to create a specific fishery regulation.

We continue to believe that there are mechanisms available through the Pacific Fishery Management Council to provide reasonable protection to any unique sponges or corals found in this area. We are convinced that the Sanctuary Program has no ability to provide the guarantees that we need into the future that sanctuary status will not be used as a justification to lead to ever-increasing restrictions on fishing, including fishing at or near the surface. We further observe that the problems which we have experienced in the management of the Monterey Bay National Marine Sanctuary, which really stem from a lack of clarity in the Management Plan and the National Marine Sanctuary Act. Must be substantially addressed before the Sanctuary Program could credibly entertain the idea of expanding its territory. Lastly, at some 5300 square miles, the Monterey Bay National Marine Sanctuary is already too large by many measures for thorough management.

If the Sanctuary Program is looking for more to do, may we respectfully suggest that there is significant work to be done on resource abundance assessments, which we hope the Monterey Bay National Marine Sanctuary will do in partnership with the fishing industry. This information could be provided to the fishery management agencies, providing a basis for improved decision-making – a goal we all share.

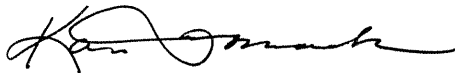
In addition to the Alliance of Communities for Sustainable Fisheries, we want to point out the list of supporting members of our organization. In addition to this general support, **this letter has been specifically endorsed by:**

- Western Fishboat Owners Association
- Ventura County Commercial Fishermen's Association
- Santa Barbara Commercial Fishermen's Association, Inc.
- Port San Luis Commercial Fishermen's Association
- Morro Bay Commercial Fishermen's Association

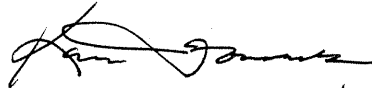
- Monterey Commercial Fishermen's Association
- Fishermen's Association of Moss Landing
- Santa Cruz Commercial Fishermen's Marketing Association
- Half Moon Bay Fishermen's Marketing Association
- Federation of Independent Seafood Harvesters
- The Fishermen's Alliance
- Coastside Fishing Club (recreational)
- Pacific Coast Federation of Fishermen's Associations (PCFFA)
- United Anglers of California, Inc.

Thank you for considering our position on this matter.

Sincerely,



Kathy Fosmark  
Co-Chair, ACSF



Frank Emerson  
Co-Chair, ACSF

*for Frank Emerson*

#### 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  
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 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: Dan Basta  
 Bill Douros

*Advocates for Wild, Healthy Oceans*

55 C Municipal Wharf  
Santa Cruz, CA 95060  
831.425.1363 Telephone  
831.425-5604 Facsimile  
[www.oceanconservancy.org](http://www.oceanconservancy.org)

Formerly the Center for  
Marine Conservation

March 10, 2005

Chairman Donald Hansen and Members of the  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384



**RE: Support for Protection of Cordell Bank**

Dear Chairman Hansen and Members of the Pacific Fisheries Management Council:

Please accept the following comments on behalf of The Ocean Conservancy and our more than 500,000 members and volunteers nationwide. The Ocean Conservancy urges the Council to adopt draft designation document comments and sanctuary fishery regulations in support of closing the Cordell Bank to fishing activities that could adversely impact the benthic habitat and invertebrates within the 50-fathom isobaths surrounding Cordell Bank.

As noted in your briefing materials, Cordell Bank is a unique underwater habitat that supports a wide range of species. Located at the edge of the continental shelf, Cordell Bank is a submerged granitic island featuring ridges and pinnacles that reach to within 120 feet of the ocean's surface. Upwellings of nutrient rich ocean waters and Cordell Bank's topography combine to create one of the most biologically productive areas on the West Coast. Both the nature of the Bank's high relief structure and the long-lived and slow growing benthic invertebrate community that inhabits the Bank contribute to the area's vulnerability to damage from bottom tending fishing gear.

Given the ecological importance of Cordell Bank and the fragility of the Bank's habitat and benthic communities, The Ocean Conservancy supports the proposed limitation on fishing above the Bank. We urge the Pacific Fisheries Management Council to work cooperatively with the National Marine Sanctuary Program to insure timely adoption of such regulations.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Kaitilin Gaffney".

Kaitilin Gaffney  
California Central Coast Program Manager

## CORDELL BANK NATIONAL MARINE SANCTUARY

The Cordell Bank National Marine Sanctuary (CBNMS) is coordinating with the Pacific Fishery Management Council (Council) as they develop management measures to further protect benthic invertebrates and submerged lands within CBNMS. The CBNMS is consulting with the Council as required under the National Marine Sanctuary Act (NMSA). The CBNMS is requesting the Council consider changes to their Designation Document, as well as the submission of proposed regulations. The current CBNMS Designation Document exempts “normal fishing operations” from regulatory restrictions to protect benthic habitat and invertebrates within the 50-fathom isobaths surrounding Cordell Bank. CBNMS is proposing to change this exception such that it would only apply to “vertical hook and line” gear.

At the November 2004 meeting, the Council directed staff to draft a letter to the National Marine Sanctuary Program formally requesting extension of the Designation Document review and fishing regulation drafting timelines to accommodate the March and April 2005 Council meetings (Agenda Item H.2.a, Attachment 1), since the requested materials were not received in time for the Briefing Book (Agenda Item H.2.b, Reports 1, 2, and 3). In response, Mr. Daniel J. Basta, Director, National Ocean Service Office of National Marine Sanctuaries, sent a letter extending the time period to April 22, 2005, for both the 120-day period for drafting regulations and the 60-day period for comments on proposed designation document changes (Agenda Item H.2.a).

The Council was also concerned with the original request letter (Agenda Item H.2.a, Report 1) informing the Council of the “National Oceanic and Atmospheric Administration (NOAA) preferred alternative” with regard to a range of fishing regulations. The Council believed it was premature to label an alternative as “preferred” without formal Council review, consideration, or input as required by the NMSA. The Council directed staff to draft a letter to Vice Admiral Conrad C. Lautenbacher, Under Secretary of Commerce of Oceans and Atmosphere, requesting clarification of the process of determining the NOAA preferred alternative (Agenda Item H.2.a, Attachment 3). Vice Admiral Lautenbacher’s response letter reaffirmed the high value NOAA places on the Council’s role in the process and clarified that the intent of the phrase was not to suggest a final decision had been made; he also stated that NOAA would no longer use this phrase in the context of the process whereby Council considers drafting NMSA fishing regulations (Agenda Item H.2.a, Attachment 4).

Extension of the time period for comments on the CBNMS Designation Document and draft NMS fishing regulations to April 22, 2005 affords the Council a two-meeting process for considering a response. Under this schedule, the Council may adopt draft designation document comments and proposed draft CBNMS fishing regulations at the March meeting with final Council comments and draft CBNMS fishing regulations adopted at the April meeting.

The CBNMS has offered draft regulation language for Council consideration. It can be found on page 32 of Agenda Item H.2.b, CBNMS and MBNMS Report 3).

## **Council Action:**

### **1. Consider Adopting Draft Designation Document Comments and Proposed CBNMS Fishery Regulations**

#### **Reference Materials:**

1. Agenda Item H.2.a, Attachment 1: December 13, 2004 letter from Dr. Donald Misact to Mr. Daniel Baste regarding request to prepare fishing regulations.
2. Agenda Item H.2.a, Attachment 2: January 6, 2005 response letter from Mr. Basta.
3. Agenda Item H.2.a, Attachment 3: December 20, 2004 letter from Dr. McIsaac to Vice Admiral Lautenbacher regarding the process of establishing fishing regulations in federal waters of NMSs.
4. Agenda Item H.2.a, Attachment 4: January 23, 2005 response letter from Vice Admiral Lautenbacher.
5. Agenda Item H.2.b, November 2004 CBNMS and MBNMS Report 1.
6. Agenda Item H.2.b, November 2004 CBNMS and MBNMS Report 2.
7. Agenda Item H.2.b, November 2004 CBNMS and MBNMS Report 3.
8. Agenda Item H.2.d, Public Comment.

#### **Agenda Order:**

- a. Agenda Item Overview
  - b. Report of the Sanctuary Staff
  - c. Reports and Comments of Advisory Bodies
  - d. Public Comment
  - e. **Council Action:** Consider Adopting Draft Designation Document Comments and Proposed CBNMS Fishery Regulations
- Mike Burner

PFMC

02/22/05

GROUND FISH ADVISORY SUBPANEL STATEMENT ON  
MONTEREY BAY NATIONAL MARINE SANCTUARY

The Monterey Bay National Marine Sanctuary (MBNMS) is proposing a change in its designation document to incorporate within its boundaries the area of Davidson Seamount and to prohibit taking of marine resources within that area below a depth of 3,000 feet. Although no fishing is conducted at that depth, MBNMS is concerned about potential deep-water harvest of organisms such as sponges and corals.

The Groundfish Advisory Subpanel (GAP) opposes the MBNMS proposal as presented. As noted in our general comments under Agenda Item H.1, there are other means using existing authority to provide any necessary protection to NMS resources without either increasing the size of the existing MBNMS by nearly ten percent or giving fisheries management authority to MBNMS.

The GAP recommends the Council consider Davidson Seamount as a candidate for designation as a Habitat Area of Particular Concern (HAPC), with an allowance for continued surface fishing, especially albacore trolling and swordfish drift netting. If necessary, the Council should consider protection of sponges and coral either through the HAPC designation or by including these organisms under an existing fishery management plan, as is being done for krill.

A minority of the GAP agrees with the overall recommendations but believes that inclusion of Davidson Seamount within the boundaries of MBNMS should be supported.

PFMC  
03/10/05

## HABITAT COMMITTEE REPORT ON MONTEREY BAY NATIONAL MARINE SANCTUARY

The Habitat Committee (HC) supports the change in Monterey Bay National Marine Sanctuary's designation document to include Davison Seamount as part of the Sanctuary because of the Sanctuary's ability to protect this area from non-fishing impacts. Davidson Seamount has been identified as potential essential fish habitat and is known to have a diverse community of long-lived corals and sponges.

The HC has previously indicated that it is desirable to prevent fishing impacts to the Seamount. The proposed prohibition of fishing activities below 3,000 feet will not affect any current commercial or recreational fisheries. If preventing fishing impacts can be best accomplished by the proposed changes in the designation document, the HC is supportive of this. If there are other mechanisms that can achieve this, the HC would also be supportive.

We also support the proposed changes to Article 4, No. 2 regarding authority to regulate the introduction of non-native species.

Further, the HC endorses the Gulf of the Farallones National Marine Sanctuary's proposal to regulate ocean dumping and the introduction of non-native species.

PFMC  
03/07/05

## MONTEREY BAY NATIONAL MARINE SANCTUARY

Similar to Cordell Bank National Marine Sanctuary, Agenda Item H.2, Monterey Bay National Marine Sanctuary (MBNMS) is consulting with the Council as required under the National Marine Sanctuary Act (NMSA). Reference materials for this agenda item are found under Agenda Item H.2, as they refer to both the CBNMS and MBNMS. This includes original NMS materials from the November 2004 Council meeting, letters about an extension of the relevant deadlines, and the use of the phrase “NOAA preferred alternative.”

As part of their management plan review, the Sanctuary is proposing to include Davidson Seamount within the boundaries of MBNMS. To protect benthic habitat on the seamount, the Sanctuary is also proposing regulations to prohibit all “extractive and consumptive activities”, including fishing, below 3,000 feet within the area above the seamount. Both of these proposals require changes to the MBNMS Designation Document.

In response to the information presented by MBNMS at the November Council meeting about both changes to the Designation Document and fishing regulations, the Council directed staff to draft a letter to the National Marine Sanctuary Program formally requesting extension for only the Designation Document timeline. The Council rationale was that it was premature to consider drafting regulations under authority of the NMSA for an area (Davidson Seamount) that is not currently within a NMS. In response, Mr. Daniel J. Basta, Director, National Ocean Service Office of National Marine Sanctuaries, provided for an extension to April 22, 2005, for both the 120-day period for drafting regulations and the 60-day period for comments on proposed designation document changes (Agenda Item H.2.a, Attachment 2). In the letter, Mr. Basta reiterated the National Marine Sanctuary Program’s position that issuing proposed fishing regulations should be considered at the same time as consideration of adding the new area and consideration of protective regulations for activities other than fishing. He states, “As a result, it is necessary for the Council to continue to consider and (if it so chooses) prepare draft sanctuary fishing regulations to fulfill the goals and objectives of adding the Davidson Seamount area to the MBNMS within the time period as extended by this letter.”

Extension of the time period for comments on the MBNMS Designation Document and draft NMS fishing regulations to April 22, 2005 affords the Council a two-meeting process for considering a response. Under this schedule, the Council may adopt draft designation document comments and proposed draft MBNMS fishing regulations at the March meeting with final Council comments and draft MBNMS fishing regulations adopted at the April meeting.

The MBNMS has offered draft fishing regulation language for Council consideration. It is shown on page 18 of Agenda Item H.2.b, CBNMS and MBNMS Report 3.

### **Council Action:**

- 1. Consider Adopting Draft Designation Document Comments and Proposed MBNMS Fishery Regulations.**

Reference Materials:

*Reference materials for this Agenda Item can be found in the briefing book under Agenda Item H.2, Cordell Bank National Marine Sanctuary.*

Agenda Order:

- a. Agenda Item Overview
  - b. Report of the Sanctuary Staff
  - c. Reports and Comments of Advisory Bodies
  - d. Public Comment
  - e. **Council Action:** Consider Adopting Draft Designation Document Comments and Proposed MBNMS Fishery Regulations
- Mike Burner

PFMC  
02/18/05

*Advocates for Wild, Healthy Oceans*

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Formerly the Center for  
Marine Conservation



## The Ocean Conservancy

March 10, 2005

Chairman Donald Hansen and Members of the  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384

**RE: Support for Protection of Davidson Seamount**

Dear Chairman Hansen and Members of the Pacific Fisheries Management Council:

Please accept the following comments on behalf of The Ocean Conservancy and our more than 500,000 members and volunteers nationwide. The Ocean Conservancy urges the Council to adopt draft designation document comments and draft sanctuary fishery regulations in support of protecting the Davidson Seamount from activities that could affect the fragile bottom habitat and benthic communities.

Video collected during the 2000 and 2002 scientific expeditions to the Davidson Seamount show portions of the Seamount covered in thick forests of ancient gorgonian corals hundreds-of-years old and dense sponge fields up to three meters high. Scientists on the 2002 Davidson Seamount expedition catalogued fish and invertebrate species that had never been previously identified. Because many of the species that inhabit the Davidson Seamount are slow growing, and long-lived, they are extremely vulnerable to disruption.

The Ocean Conservancy urges the Pacific Fisheries Management Council to work cooperatively with the National Marine Sanctuary Program to insure timely adoption of regulations to comprehensively protect the habitat and benthic communities of the Davidson Seamount.

Thank you for your consideration of these comments.

Sincerely,

Kaitilin Gaffney  
California Central Coast Program Manager