



Open Public Comment
March 2007

California State Senate

ABEL MALDONADO
FIFTEENTH SENATE DISTRICT

February 5, 2007

Mr. Donald McIssac, Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Place, Ste. 200
Portland, OR 97220

RECEIVED

FEB 08 2007

PFMC

Dear Mr. McIssac:

Enclosed are letters I received from several constituents regarding their ongoing concerns with hardships related to the Klamath Falls salmon.

Thank you for taking the time to review the concerns from my constituents.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Maldonado", written over the word "Sincerely,".

ABEL MALDONADO
Senator, 15th District

AM:cr

Enclosures

LEGISLATIVE CONCERN

Date January 19, 2007

Name Dick Sylvester

Group Morro Bay Fisherman

Address 335 La Jolla Street

City/ST/Zip Morro Bay, CA 93442

Telephone _____

Bill/Issue Fishermen are still hurting from the Klamath Falls
Fallout.

☒

X

SUPPORT

☐

OPPOSE

Comments

"Would like to see more support for fisherman. It was
an awful hit for fishermen in several counties and
many are still struggling. The state of Oregon had
better relief than CA. Please don't forget about the
state of fishermen in site of the new frost crises
farmers are experiencing. Farmer's can buy
insurance, fishermen cannot."

Taken By Danielle

RECEIVED
DEC 04 2006
BY: Daniell

Honorable: Senator Mark Leno

I am writing you in hope that you will be willing to help Central California Fisherman, as a Central California Fisherman, I suffer regulatory injustices routinely. Fishermen have no one protecting them. We are at the mercy of several groups and or agencies. At this time I will only talk about one, Pacific Fishery Management council, (PFMC).

I should point out that agencies like PFMC should have someone in a position of power looking over their shoulder. Because of this lack of checks and balances, we the fishermen get the raw end of the deal every time. Contrary to popular belief, regulatory actions against fishing are not backed by accurate science. Instead regulations are implemented for one and or all of these reasons. #1 the vague fear that "someday" a problem may materialize. #2 public pressure ie: environmental groups, mostly misinformed. #3 money, donations from environmental agencies ECT.

Now let me put this in perspective for you hypothetically. Because I think that "someday" farming will damage the Earth, I try to stop or limit farmers from making their livings. Suppose now that I use public opinion and donation money to achieve my hypothetical goal. Where is the farmer's voice in this? Where are his rights as an American?

Regulatory agencies will cite an endless number of reasons why they must impose their one sided will upon us, the fishermen. Most of these reasons are unproved and unlikely to be proved. Regulatory agencies, environmental groups, and others will misdirect the issue by citing problems from the other oceans, Problems that have nothing to do with our severely regulated fishing industry here in California.

The previous paragraphs have been a limited introduction to problems in the commercial fishing industry. This is only the tip of the iceberg. The whole truth is so all encompassing. That is would take many chapters to describe.

Now I would like to get specific. The 2006/2007 fishing season suffered a major set back statewide; salmon, and a central coast set back; marine protected areas. Both of these set backs are disproportionate to the need. It has left many with grim prospects for the future. With our future lively hood at stake, many, myself included, are gearing up for Black Cod fishing.

Black Cod fishing has never been over fished, does not catch other species, does not destroy habitat. In the past, fishermen on the central coast have not had a developed market for Black Cod. Further more until the nature conservancy buy out of Central Coast drag boats, there was a gear conflict.

With the disappearance of drag boats (Trawl Fishing), towns as well as individuals have suffered economically. The Black Cod fishery has changed that. It has brought business back to the docks.

Without your help, this small shred of good news could disappear. PFMC wants to put a control date of September 16, 2006 on this open access fishery. This effectively creates a limited entry permit that excludes the very people who now need this fishery. Due to reasons already stated, and the fact that this proposed control date fell during Salmon season, most of us will fail to qualify. How could we? We were gone Salmon fishing. We were trying to salvage our season in spite of the out of control regulations.

The help I'm requesting is two part. The first and most immediate would be to use whatever influence you have to make PFMC set this proposed control date after March of 2007. This is paramount. With your help, we could stop PFMC from delivering the "coup de grace." Secondly, I request that you use your influence to put checks and balances into the regulatory process. Give the fishermen a voice, let them be fairly represented. Let us protect our jobs. Make regulatory agencies accountable to prove their dire predictions with bipartisan science.

Any consideration you are willing to give this matter is desperately appreciated. Please respond promptly. Here is my email address.

ClnnSlo@aol.com.

Sincerely: Employed, Tax Paying, Voting Citizen.

Brian Williamson
410 Hischier Lane
Arroyo Grande, California 93420

November 15, 2006

State Senator Abel Maldonado
1356 Marsh Street
San Luis Obispo, CA 93401

RECEIVED
NOV 20 2006
BY: *Daniel*

Honorable Senator Maldonado:

I am writing you in the hope you will be able to assist the fishermen along the Central Coast of California. This past salmon season was cut back, in length and amount of fish that could be harvested, because of the Klamath River return of spawning salmon or the lack thereof. The agency responsible for reducing the salmon season fell on the Northwest Pacific Fishery Management Council (PFMC).

Now the PFMC is trying to impose a "Limited Entry" program for an "Open Access" Sablefish fishery that has never been overharvested. PFMC sets the total amount of fish that can be harvested along the Central Coast (Morro Bay and Port San Luis). This is a "clean" fishery, meaning no other fish are taken other than the targeted fish and no destruction of bottom habitat. Fishing is in deep water (150 fathoms or greater) over muddy bottom. The PFMC has stated that they are looking at a cut off date (September 16, 2006) as the date for qualifying for this "Limited Entry" permit. This date was just announced this month. The problem with this date is that of the salmon fishermen from the Central Coast where still fishing salmon up to the second week of October 2006, preventing them from taking part in this fishery. In years past there was little or no effort because the markets were not developed in Morro Bay or Port San Luis. This year in October that changed. Now fishermen taking part in the "Open Access" fishery for Sablefish, have a chance to earn a small income to off-set the losses from this past salmon season. Likewise it has kept the infrastructure, i.e., fish buyers, ice/fuel docks, bait suppliers, grocery stores, crewmen, ship stores, etc. from going broke. This is by no means a get rich fishery (limited by daily, weekly or bimonthly quotas) but it has provided a steady income if one works hard. Therefore I ask that you will use your influence to intercede on our behalf by making the PFMC set a "cut off date" after March 2007 or later.

Any consideration given this request and your earliest response will be appreciated.

Respectfully Submitted,

Joe Nungaray

Joe Nungaray
426 Shasta Ave.,
Morro Bay, California 93442

RECEIVED

FEB 05 2007

PFMC

Coos Bay Trawlers' Association, Inc.

PO Box 5050

7960 Kingfisher Dr.

Coos Bay, OR 97420

Phone (541)888-8012

Fax (541)888-6165

E-mail ctrawl@mail.coos.or.us

A Non-Profit Organization since 1997

December 6, 2006

As a follow-up on the Council's deliberations of The Nature Conservancy's (TNC) application for an EFP to re-allocate or convert trawl caught fish to line/pot caught fish, I would like to offer the following for consideration:

1. The permits/vessels purchased by TNC were and are vessels subject to the fees charged by the buyback program. Just because these vessels may be allowed to use another gear type in the future does not release them from their obligation to repay the debt created by the buyback program. If gear switching is going to be allowed in the future by anyone, those participants must be held accountable for their obligation to the buyback program.
2. TNC's EFP goal 1 states "to provide an experimental method to reduce the rate of bycatch...through gear switching to hook and line". I contend that hook and line gear is not experimental; hook and line gear has been used for hundreds of years. Data available today from the trawl and hook and line sectors can reveal the differences of these gears already and another EFP to study this difference is needless and redundant. They should study the data available and offer their conclusions to the Council as an argument to allow or not allow gear switching in the future as part of the ITQ program.
3. TNC's EFP states, "The project would also help this fishing community address large local economic losses that have resulted from the higher fuel costs, reduction in fish purchasers, federal trawl buyout, and other regulation and conservation measures." I contend that TNC purposely failed to list TNC's buyout as one of the causes of the "large economic losses" to that community. I would venture to say that TNC's involvement in the purchasing of seven trawl vessels and permits from that area is compounding the "large economic losses" the area is now experiencing, especially the lack of fish processors, buyers and other support services.
4. "This EFP would help increase fishing opportunity in the study area by allowing fishermen to use fixed gear to catch fish currently associated with trawl permit trip limits." TNC's purchasing seven trawl vessels and permits was the cause of the lost fishing opportunities they are now trying to recapture. This EFP is more likely to cause an effort shift to other species of higher value than the traditional trawl sector naturally experiences and the potential value from the soles and many other species will be totally ignored and unharvested upsetting the natural balance of fishing the ocean. This could result in increased discards or could possibly shut down now successful fisheries.

5. TNC's EFP states a direct nexus to the goals of PFMC and NOAA as if both of these agencies have failed to live up to their stated goals.

A. "Prevent overfishing by managing for appropriate harvest levels and prevent any net loss of habitat of living marine resources; specifically, by reducing discard mortality."

While it is nice that they made sure the "Central California Sustainable Groundfish Plan" contained some of the same language of the FMP, this EFP will not create anything new to assure management at appropriate levels nor will it prevent any future lost to habitat "by reducing discard mortality".

B. "Maximize the benefit and value of the groundfish resource as a whole." The EFP claims to maximize the value but the reality is the potential to minimize the value of the groundfish fishery. The most sustainable species, Petrale, Dover, English and Rex soles will be left on the table and their associated values, never achieved. The majority of a trawl catch is the sole factor and this EFP favors an effort switch to Sablefish, a specie already under close management scrutiny. Regulated discards to the trawl fleet are already staggering and this will make it worst by stealing fin trawl caught fish.

C. "Achieve optimum yield of the overall groundfish fishery, promote year-round availability of quality seafood to the consumer, and promote recreational fishing opportunities." As I stated above, I do not believe that this EFP will produce an optimum yield and I contend that it will produce just the opposite effect even though it is presented as a betterment but only for a chosen few. I do not believe this EFP will improve year-round availability of consumer products but may actually reduce the variety of products available to the public. No matter how I try to look at this EFP, I can not fathom how it will promote recreational fishing opportunities unless TNC plans on re-allocating trawl and other permitted fish to the recreational sector.

D. "Protect Essential Fish Habitat." The Council just approved the largest EFH measures in history and the impacts of those measures haven't even had time to be evaluated or justified. How much EFH is needed? How much more will they be asking for next? Will there ever be enough EFH? The Council asked the trawl sector to step up to the plate and work with the environmental groups to set aside EFH. The ink isn't even dry on the EFH documents and ED/TNC are asking for more in California and PMCC and Oceana are asking for more in Oregon. Let's have a five year moratorium on the further spread of EFH until some research can be conducted on the inevitable negative impacts to the industry of what we already are forced to live with. We worked hard for the Council to set the EFH, let's have a little longevity on that agreement before we try to incorporate the rest of our7 ocean.

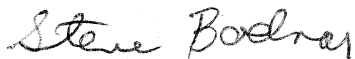
6. Under section D. "Valid justification explaining why issuance of an EFP is warranted." I find many statements misguided and misleading. In the second paragraph they state, "...this EFP should allow fishermen participants to reduce bycatch and discards and to access more fish, reducing threats to fishing infrastructure and livelihoods that have arisen from greatly reduced landings in recent years." I believe their actions to remove the vessels and permits were a direct cause of reduced landings in their area and again demonstrates shortsightedness in the design of TNC buyout. Their actions added to the economic stress in that area and this EFP is an attempt to bail-out.

7. In the third paragraph of the justification section they state, "This EFP would allow these fishermen to demonstrate their ability to target rockfish with minimal bycatch and habitat impact", even though they fish the rocks where the trawlers could never fish due to the rough terrain. As I testified at the last Council meeting, this EFP is talking about a fishermen's ability to fish, not the ability of the gear much like the Kenyon Hanzel EFP for Black rockfish a few years ago. They go on, "Upon successful demonstration of this ability, they would be accorded greater access to the fish resources. Such fishing techniques will be critical for transitioning groundfish fisheries to lower volume, higher value fisheries.", so the healthiest stocks, the soles, the very stock trawlers have fished for decades, will be left in the ocean while they transition to higher value, less abundant stocks, like sablefish and thornyheads..

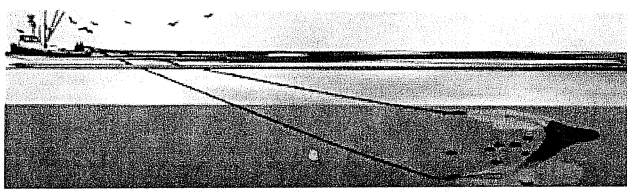
8. In the vessels covered section, eligible vessels will include a mix of hook/line and pot vessels. This is clearly a reallocation without due process. The vessels they are going to allow to fish for our traditional trawl caught, high value fish will be given an advantage over other vessels that are not allowed that same access.

Is the Council going to approve this EFP and help bring a greater financial demise to the participants? Chuck Cook told the GAP that the right to harvest these once caught trawl fish will go to the highest bidder. The observers will be subsidized by an unknown source for at least a year which again provides for a disadvantage to the rest of the sector and all other EFP's. But in reality with greater fuel costs, 100% observer coverage expenses, the 5% buyback payment and other federal and state fees, and no volume sole catch, fishermen will be unable to make a profit nor will this plan save Morro Bay's infrastructure.

Sincerely,

A handwritten signature in cursive script that reads "Steve Bodnar".

Steve Bodnar



Southern California Trawlers Association

January 4, 2007

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

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JAN 08 2007

PFMC

RE: REQUEST FOR COUNCIL MARCH, 2007 AGENDA ITEM RELATED TO "A" & "OPEN ACCESS" TRAWL—ACCESS TO WATERS OF MONTEREY BAY

Dear Dr. McIsaac:

We write you today to 1) alert you to a new regulatory interpretation by the California Department of Fish and Game concerning the definition of "state waters" in the Monterey Bay area and 2) request that the issue be agendized at the appropriate section of the March, 2007 Council meeting. This is of concern to our membership, and probably to any trawler with a Class A Groundfish Trawl permit under the Council's Groundfish Management Plan.

The facts are as follows. Several of our members received a letter from Mr. Sonke Mastrup of the California Department of Fish & Game (CDFG) last fall announcing that trawling "in state waters" of Monterey Bay is prohibited (copy attached). The Department's letter explained that due to the language of the California Halibut Trawl bill enacted in 2004, no trawling except in the California Halibut Trawl Grounds designated by the bill would be permitted. Mr. Mastrup indicated that since the "state waters" line (usually no more than three miles from mean lower low water or the nearest point of land, somewhat ambiguous) in Monterey Bay is actually 3 miles *outside* the "territorial seas boundary line" drawn in a straight line between the two points of headland demarking Monterey Bay, the Halibut Trawl bill language means that no trawling whatsoever may be undertaken in waters of Monterey Bay. On the chart, this state line is nearly 12 miles offshore of Moss Landing.

Researching the history of territorial seas lines, boundary lines and similar subjects with the National Ocean Service's mapping division, we found that much of the territorial seas boundary line debate focused on two subjects, international boundary lines, and offshore oil/gas resources dominion, neither of which had to do with regulating fishing. As it turns out, Monterey Bay is unique in this particular aspect of international and mineral resource law. We can provide you with U.S. Supreme Court cases covering these issues, if you wish. However, over the last half-century at least, fishery regulations related to federal laws have always held sway outside of the three-mile line from shore, and state regulations inside the three-mile line. During the course of the development of the California Halibut Trawl Grounds Permit legislation, none of the proponents or our membership was aware of this unique condition. The focused concern of the Halibut bill was with respect to how trawling for halibut would be conducted in designated state waters (as well as treatment of pink shrimp trawling in N. California state waters).

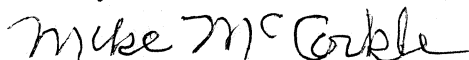


We also discovered that the Fish and Game code is now internally in conflict, with one section dictating that trawling is permissible outside three miles in F&G District 17 (covering Monterey Bay) and another dictating that no trawling is allowed "in state waters" other than that specified in the California Halibut Trawl Permit legislation (copies of relevant code sections attached). The new legislation hands authority over all trawling in state waters to the Fish and Game Commission. Thus, the Commission will have the final word on this internal conflict of CA Fish & Game Code.

However, this Department interpretation and code conflict also engages trawlers licensed under federal Groundfish Management Plan regulations because it prohibits all trawling "in state waters," and in Monterey Bay that is now being interpreted by the CDFG as all waters outside the three-mile line, out to the state waters boundary, three miles seaward of the territorial sea boundary. Thus, we ask that you provide us an opportunity to explain this to the Council and it's relevant Committees and Subcommittees (as appropriate) at the March meeting. It appears to us that the Council would have an express interest in clarifying with the State of California the intent of the State with respect to allowing or prohibiting trawling outside of three miles in Monterey Bay. Until the CDFG letter last fall, the Department has always allowed trawling outside 3 miles from shore in Monterey Bay. And when we all worked on the Essential Fish Habitat closures under the GMP, the areas our members have historically fished in Monterey Bay were allowed to remain open. The Department even assisted us with GPS services to delineate the areas we fished in order to provide consistent information to the Council.

Please advise us as to whether or not this will be agendized for the March Council meeting at your earliest opportunity, since we would prepare an information packet for the Council's consideration at that time. If you would like to discuss any of the specifics noted above or other relevant concerns about this issue with us, please do not hesitate to call our President, Captain Mike McCorkle (805) 886-4239. Thank you for considering this issue.

Sincerely,



Mike McCorkle,
President

c: Mr. Don Hanson, Council Chairman
Mr. Tom Ghio, Chair, Groundfish Advisory Subpanel
Mr. Tom Ancono, Groundfish Advisory Subpanel (CA Trawl)
Mr. Rod Moore, Councilmember
Mr. Ryan Broddrick, Director, CDFG
Mr. Sonke Mastrup, CDFG
Ms. Marija Vojkovich, CDFG Council Representative
Mr. Pete Leipzig, FMA
Mr. Zeke Grader, PCFFA

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

1416 9th Street, 12th Floor
Sacramento, CA 95814
916-653-4207

September 1, 2006

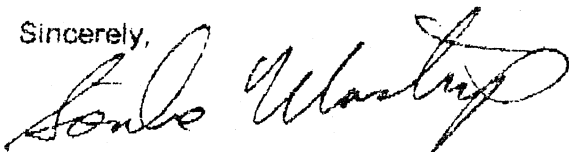
William Ward
616 Cornwall Ave
Arroyo Grande, CA 93420

Dear Mr. Ward,

In 2004, the Legislature enacted SB 1459, which restricted the use of bottom trawls in state waters and imposed related program and enforcement requirements on the Department of Fish and Game (Department). In April 2006, the Department implemented the halibut bottom trawl permit program required by Fish and Game Code Section 8494. As part of its continuing implementation of these program and enforcement requirements, the Department is now notifying fishermen that, except in the California halibut grounds identified in Fish and Game Code Section 8495 or the shrimp and prawn grounds identified in Fish and Game Code Section 8842, it is unlawful to engage in bottom trawling in ocean waters of the state. Neither of Section 8495 nor Section 8842 authorizes the use of bottom trawl nets in state waters off Monterey Bay.

In addition to this notification letter, Department enforcement staff will immediately undertake dockside and at-sea contacts of trawl fishermen to inform and educate them of these changes in the law. Beginning October 1, 2006, the Department will then take enforcement action against any person who continues to use bottom trawl nets in state waters off Monterey Bay. If you have any questions regarding the issues raised in this letter, please contact Assistant Chief Tony Warrington at (916) 657-2355.

Sincerely,



Sonke Mastrup, Deputy Director
Resources Management and Policy Division

cc: Tony Warrington
Law Enforcement Division

Conserving California's Wildlife Since 1870

ATTACHMENT A

FISH AND GAME CODE SECTION 11000-11039 DISTRICT BOUNDARIES

DIVISION 8. DISTRICTS

CHAPTER 1. BOUNDARIES 11000-11039

11025. The following constitutes Fish and Game District 17:

The waters and tidelands to high-water mark of Monterey Bay and the Pacific Ocean, lying between a line extending west from Pigeon Point Lighthouse and a line extending west from Yankee Point, Carmel Highlands in Monterey County, excluding the areas included in District 16, and excluding all rivers, creeks, sloughs and lagoons emptying into the Pacific Ocean and Monterey Bay within the boundaries thus defined.

ATTACHMENT B

FISH AND GAME CODE SECTION 8830-8843 TRAWL NETS

Article 10. Trawl Nets

8830. "Trawl net" means a cone or funnel-shaped net which is towed or drawn through the water by a fishing vessel and includes any gear appurtenant to the net. Except as otherwise provided in this article, the use of trawl nets shall conform to federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.).

8836. In Districts 17, 18, and 118.5, trawl nets may be used in waters not less than three nautical miles from the nearest point of land on the mainland shore, including those portions of Monterey Bay, Estero Bay, and San Luis Obispo Bay which lie within those districts.

Designing Rationalization Plans for the Harvesting Sector

Implications of stranded costs and other impacts for the fish processing industry

An Informal Presentation and Discussion of Preliminary Results with

Dr. Jim Wilen, University of California, Davis

Wednesday, March 7th

5:30 - 7:30 PM

Grand Ballroom, Doubletree Hotel

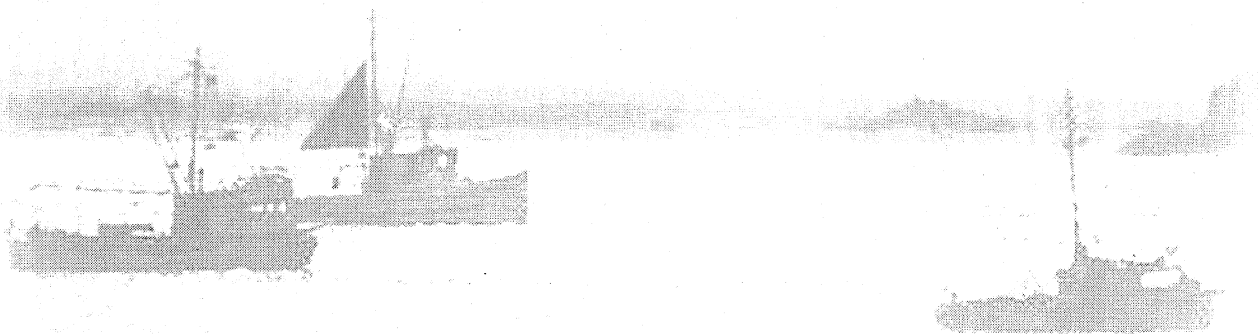
Sacramento CA

Refreshments provided

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ENVIRONMENTAL DEFENSE

finding the ways that work





RECEIVED

FEB 05 2007

PFMC

February 2, 2007

Dr. Donald McIsaac
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

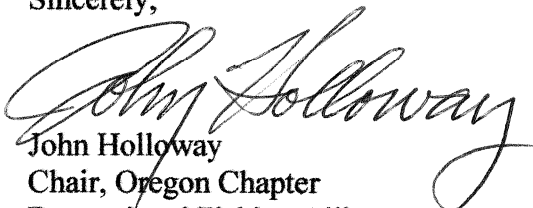
Dear Dr. McIsaac,

I am writing to you in order to make a request that the PFMC do a review of a status report submitted by the Ocean Policy Advisory Council (OPAC) to the Oregon Governor. This status report was done at the request of the Governor regarding his proposal to create a National Marine Sanctuary encompassing federal and state waters off the coast of Oregon. This report was done through a public process of meetings of this council proper and a council sanctuary working group. OPAC is an advisory body to the Governor of the State of Oregon.

One review of this report has been done by Mr. Daniel J. Basta, Director, National Marine Sanctuary Program. This review was done at the request of the Governor. It is encouraging to see a desire to receive outside comment on this report. As I view this as a positive direction, I would like to see more reviews done by agencies with direct involvement in sanctuary management. This is especially true of the PFMC as it would be the fishing regulatory authority over an Oregon Sanctuary as stated in the Governor's proposal.

On January 30, 2007 I provided, through public testimony, a desire for OPAC to have additional reviews of the status report. I personally volunteered to facilitate this action. No council member present expressed any opposition. The Governor's representative on OPAC, Ms. Jessica Hamilton, had no objections to a PFMC review.

Sincerely,


John Holloway
Chair, Oregon Chapter
Recreational Fishing Alliance

Cc: Ms. Jessica Hamilton
Greg McMurray (OPAC)

Enclosure: NMS Status Report Final



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

JAN 17 2007

Mike Carrier, Director
Governor's Natural Resource Office
State Capitol
Salem, Oregon 97301-4047

Dear Mr. Carrier:

I am writing in response to your December 21, 2006 letter requesting our review and comments on the Ocean Policy Advisory Council's (OPAC) status report on the concept of a national marine sanctuary off Oregon's coast. While we do not have a position at this time on the proposal, our comments on the status report are designed to ensure you have the proper facts from which to base any future decisions.

National Marine Sanctuary Program (NMSP) staff, led by our west coast regional director, Bill Douros, have enjoyed working with OPAC and others on your staff to assist in consideration of the Governor's conceptual proposal. Mr. Douros and Jeff Gray, Superintendent of the Thunder Bay National Marine Sanctuary, briefed OPAC directly and we have written a letter to OPAC to provide clarity on some issues. Additionally, Mr. Douros traveled to Oregon to participate in the Heceta Head conference in October, which was attended by many OPAC members and other coastal leaders. Our interests in helping Oregon consider the Governor's conceptual proposal have been to ensure your citizens have accurate information.

The OPAC status report is commendable in that it summarizes a potentially complex subject that covers a large coastal and marine area. As can happen with such summary documents, considerable information that would provide a more complete picture is absent or misunderstood. Upon reading the OPAC summary report, the concerns raised by OPAC members regarding national marine sanctuaries may be due to these incomplete facts and inadequate interaction with our program.

The coastal communities and states where national marine sanctuaries have been designated are all supportive of having a sanctuary off their coast, and many of those same communities were wary, if not opposed, to the initial designation. With time, a familiarity with our programs, our way of doing business and the value of a national marine sanctuary became real to these states and coastal communities. If the Governor's office continues its assessment of the conceptual proposal of a national marine sanctuary off Oregon, I would hope that effort evaluates more completely the benefits of such a designation.

Comments on Purpose and Background Sections

In general, we found the material in this section on the NMSP to be factual, accurate and informative. We do not have an overall opinion on the information that describes the OPAC process to date. However, it is our understanding that to date OPAC has heard from a single



member of one user group (commercial fishing) from one sanctuary community. Thus, I would reiterate a request our program raised earlier that OPAC should hear from multiple members of coastal communities on the west coast where national marine sanctuaries have been designated.

Comments on Fisheries Management Section

1. I would like to correct factual errors or omissions in the published status report that could result in unwarranted concerns about our program as it relates to fishing. About one-half of the 13 national marine sanctuaries have regulations that restrict fishing activity. Unlike conventional fisheries management aimed toward maximizing sustainable commercial or recreational fishing, regulations under the National Marine Sanctuaries Act (NMSA) to restrict a fishing activity are designed to protect ecologically and biologically important areas of nationally significant marine ecosystems or shipwrecks. The NOAA Administrator has recognized that NOAA has two authorities that can be used to regulate a fishing activity in national marine sanctuaries, and that NOAA will consider the use of both the Magnuson-Stevens Act and the NMSA, either exclusively or in conjunction, to meet NOAA's goals.

We realize that from the fishing communities' perspective any regulation of fishing is viewed as "fisheries management," regardless of the purpose for which it is established. Therefore, we coordinate or consult with our sister agency NOAA's National Marine Fisheries Service (NMFS), Regional Fishery Management Councils ("Regional FMCs), state fishery management agencies, and commercial and recreational fishing interests on matters of fishing in sanctuaries. On the west coast, we provide advice and input to the Pacific Fishery Management Council (PFMC) and the NMFS, as well as to California and Washington fishery managers, during their regulatory processes. Our purpose in providing such advice is to ensure nationally significant marine ecosystems and submerged shipwrecks under our responsibility are adequately protected for this and future generations.

2. In the event, through our public processes under the NMSA, we determine a fishing activity should be restricted in a sanctuary to protect sanctuary resources, we must provide the Regional FMC the opportunity to prepare sanctuary regulations. This process entails numerous opportunities to coordinate and discuss these issues and ensure the expertise of these bodies are included in the process. Therefore, prior to providing a formal opportunity for the Regional FMC to prepare sanctuary fishing regulations, much consultation has already been done.

3. The report does not include any discussion of the considerable efforts the NMSP has made to work collaboratively with state and federal fishery managers. For example, we believe their support for the marine protected area network within the Channel Islands National Marine Sanctuary (CINMS) resulted from our commitment to collaborative processes in considering a restriction on fishing activities and finding solutions. Further, as part of the process to update site management plans, the NMSP worked very closely with, and received strong support from, the PFMC to develop new fishing restrictions *under the Magnuson-Stevens Act* to protect the Cordell Bank National Marine Sanctuary and the Davidson Seamount (proposed to be added to the Monterey Bay National Marine Sanctuary). We also proposed a ban on the harvest of krill to protect fish, seabirds and whales within sanctuaries in California. We worked closely with the PFMC and NMFS, who ultimately elected to create a west-coast wide ban on krill harvest,

recognizing it as an action that would not only benefit the ecosystem protection goals of the NMSP but also the goals of federal fishery management. This commitment to stakeholder involvement and joint problem solving is the "way we do business" in the NMSP, regardless of the authority we have.

4. At the bottom of page 6, the report implies that the Secretary of Commerce only receives input from sanctuary superintendents and Sanctuary Advisory Councils before deciding to use the Magnuson-Stevens Act or the NMSA for a potential fishing regulation. In fact, such a decision is made after receiving input from many sources, including the Regional FMCs and NMFS, and public comments in the administrative record.
5. The OPAC status report contains a factual error in that it states that only three of the five west coast national marine sanctuaries do not restrict or regulate trawling (middle of page 6). In fact, in addition to the three sanctuaries referred to in the report, both the Monterey Bay and Channel Islands National Marine Sanctuaries also have no sanctuary regulatory restrictions on trawling.
6. The OPAC status report states that at the CINMS we are engaged in a rulemaking process that could provide the authority to restrict trawling in specific marine protected areas within the sanctuary. It accurately states that the PFMC unanimously endorsed the marine protected area network within the CINMS, as has the state of California, and that the PFMC wants the Department of Commerce to use federal fishery management laws to designate these marine protected areas. The NMSP rulemaking for the CINMS marine reserves proposes to regulate fishing and other activities not covered under the Magnuson-Stevens Act. Presently, NOAA has regulations under the Magnuson-Stevens Act only to prohibit the use of bottom-tending fishing gear within the CINMS marine reserves. Together, the current Magnuson-Stevens Act regulations and NOAA's proposed NMSA regulation will ensure all fishing is restricted within these areas as all have agreed.
7. Table 1 in the report summarizes regulatory authority of existing national marine sanctuaries. As noted above, the column on fishing authority *should not* indicate that the Monterey Bay or Channel Islands National Marine Sanctuaries have authority to regulate fishing. Other changes are also needed to Table 1 that are not related to fisheries issues. The column on fiberoptic cables is misleading in that none of the sanctuaries has specific regulations to restrict such cables. Rather, we suggest that column look like the columns for wave energy generation and alternative energy generation. Note that any structure laid or installed on the seafloor, such as a cable or fixed anchors for a wave generating station, would be governed by a sanctuary's general regulations regarding disturbing the seafloor, where relevant. We would be happy to work with your staff or OPAC members to ensure such a table is complete and accurate.
8. The final paragraph in this section ending at the top of page 9 is misleading. While national marine sanctuary status can lead to some restrictions on fishing activity, in west coast sanctuaries all fishing restrictions to date have been done by fishery managers. Any process the NMSP might initiate to consider or suggest restrictions on fishing would occur only through an open, public, and transparent process.

9. Finally, a national marine sanctuary's efforts and programs on non-fishing matters help fish populations, promote the value of sustainable resource use, and communicate the importance of a healthy sanctuary ecosystem for all marine users including fishermen. I would ask that any future deliberations by OPAC consider how these important management programs works.

Comments on Governance Section

1. The background sections from page 10-14 that summarize several examples of management relationships at existing national marine sanctuaries are accurate. At the top of page 14, beginning with the section on local government and stakeholder roles, the report begins to reflect an unfortunate bias. Our program is recognized across the federal government for its involvement of citizens and stakeholders in management decision-making. Our Sanctuary Advisory Councils, designed to provide a voice for the diverse public users and agencies at each sanctuary, provide a critical link to our managers and vice-versa. The report seems to minimize their role. Similar to how the report treats the role of Regional FMCs, it should more clearly articulate the critical role Sanctuary Advisory Councils play in managing sanctuaries. The NMSP relies heavily on the advice and recommendations we get from Sanctuary Advisory Councils and public participants.

2. That same section incorrectly states that Sanctuary Advisory Council members "are appointed by and serve at the pleasure of the Sanctuary manager". Sanctuary Advisory Council members are appointed by the director of the National Marine Sanctuary Program through a well defined process and serve for three year terms.

3. National marine sanctuaries, especially on the west coast, have very diverse communities of users. Any question of whether or not Sanctuary Advisory Councils are balanced can be put to rest by reviewing the diversity of seats and quality of individuals who have been selected to serve on them (see enclosed SAC membership).

4. As we have suggested in meetings and in writing to OPAC, we believe Oregon would be well served to hear from a diverse cross section of stakeholders and existing Sanctuary Advisory Council members. Such a panel presentation could provide considerable insights from actual community members who have experience working directly with our program and participating in problem solving. It would also make clear that the vast majority of issues and programs at any sanctuary have little to do with fishing activity.

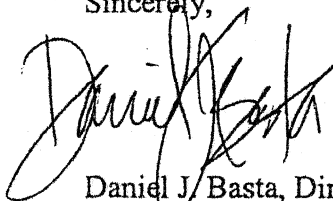
5. On the bottom of page 14, the status report again repeats the error of stating that the Monterey Bay and Channel Islands National Marine Sanctuaries regulate fishing; they do not.

6. Sanctuary permits for activities otherwise prohibited may be issued for various reasons, not just for the benefit to a particular sanctuary (top of page 15). When national marine sanctuaries are designated, the regulatory and NEPA analyses typically include boundary alternatives to avoid potentially harmful existing activities, as well as a regulatory alternative to "grandfather" in existing activities that would otherwise be prohibited. Should an Oregon coast national marine sanctuary be considered in the future, potentially harmful activities would be evaluated as part of the public designation process.

7. The last three sentences of the governance section (page 16) are not substantiated by the facts of sanctuary designations or by the conclusions drawn earlier in the status report. State and local governments have very strong voices in the management of national marine sanctuaries.

Thank you for the opportunity to provide comments on OPAC's status report. For additional assistance, please contact Bill Douros or Matt Brookhart in the west coast regional office.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Basta", written over a horizontal line.

Daniel J. Basta, Director
National Marine Sanctuary Program

Enclosure:

Directory of NMSP Sanctuary Advisory Council members

**Oregon Coast National Marine Sanctuary Proposal:
Status Report**

Oregon Ocean Policy Advisory Council

December 15, 2006

Oregon Coast National Marine Sanctuary Proposal: Status Report

Executive Summary

In December 2005, Governor Kulongoski requested that the Oregon Ocean Policy Advisory Council (OPAC) provide him with advice in developing a proposal for establishing a National Marine Sanctuary (NMS) along the Oregon coast. This status report, requested by the Governor's Natural Resources Office, addresses two of the primary issues that have emerged in OPAC's research on the sanctuary proposal: the potential effects on *fisheries management* policy and processes, and the potential for establishing sanctuary *governance arrangements* favorable to the state, local governments, and ocean stakeholders. After reviewing this status report, the Governor is expected to suggest next steps for OPAC's analysis of the national marine sanctuary proposal.

Background: In his letter to OPAC asking for assistance in evaluating his proposal for a coast-wide national marine sanctuary, the Governor noted the difficult challenges facing marine resource users and managers, and emphasized the need for more integrated ocean policy and ecosystem-based management offshore. In making his proposal, he suggested a number of potential benefits of a marine sanctuary for Oregon: greater state policy influence over ocean activities under federal control; increased protection of marine resources from harmful activities such as oil and gas development; improved management under one coordinated, ecosystem-scale plan; increased research and development of an improved information base for management; and economic opportunities associated with the national and international attention a sanctuary would generate, and the direct federal dollars from sanctuary operations, salaries, and research.

The Governor asked OPAC to focus this report on two issues that were outlined in a September 29, 2006 memo from the Governor's Natural Resources Office:

- (1) What have you learned about fisheries management in national marine sanctuaries? Based on what you have learned, what are the challenges Oregon would face in keeping fisheries management separate from sanctuary management?
- (2) What governance structures exist between federal and state governments within national marine sanctuaries across the country? What is the feasibility of assuring that state and local governments will have a strong voice in sanctuary management?

Fisheries Management: When making his proposal for an Oregon sanctuary, the Governor emphasized that fisheries management would continue to be the responsibility of the Pacific Fishery Management Council (PFMC) and the Oregon Fish and Wildlife Commission. Even if this does turn out to be the ultimate arrangement, these agencies would still have to respect the principal purpose of sanctuaries, namely resource protection. Fisheries management could not be conducted in a manner inconsistent with this purpose. This could lead to further restrictions on commercial and recreational fishing, albeit imposed by PFMC, National Marine Fisheries Service (NMFS), and the Oregon Department of Fish and Wildlife (ODFW), not the sanctuary,

per se. Not coincidentally, Oregon fishing industry and coastal community opposition to the sanctuary proposal, expressed in oral and written testimony at every OPAC meeting, is based mostly on the specter of this additional regulatory burden. It is also conceivable, even probable, given recent initiatives in the Channel Islands and Florida Keys sanctuaries, that marine reserves could be pursued in federal waters of an Oregon sanctuary. Provisions for state, local, and stakeholder involvement in such a process would need to be included in a sanctuary designation document.

Preliminary Finding: Many existing sanctuaries directly or indirectly get involved with management of commercial and/or recreational fisheries, mainly through gear, take, and bottom-contact restrictions, or through temporary or permanent closures to protect marine habitat, ecosystems, or living sanctuary resources.

Governance Arrangements: In theory, many of the issues and concerns OPAC has about a sanctuary in Oregon waters could be addressed in the development of a sanctuary designation document and, subsequently, a management plan. For example, Oregon could insist on a strong co-management arrangement whereby the state had joint decision-making authority for sanctuary regulations in all sanctuary waters, rather than just state waters. Oregon could also insist on a larger, more influential role for local governments and other stakeholders. However, given that the great majority (~95 percent) of the proposed sanctuary is federal waters, both of these provisions might be difficult to achieve.

The complexity and workability of governance arrangements is highly dependent on sanctuary size and scale. In general, the larger the sanctuary, the greater is the potential for conflicts among federal authorities (NMSA and MSA being a case in point), between state and federal authorities, and between government and the diversity of ocean users and other interests. Based on what OPAC has learned to date, establishing governance arrangements favorable to state, local, ocean users, and conservation interests in Oregon would be especially challenging for the large-area sanctuary now proposed. Further, none of these issues could be resolved except through the approval of a designation document, a process that generally takes 1-3 years (NAPA 2006). Thus, at this point, OPAC knows no way to assure that the state or local governments would have a strong voice in sanctuary management.

Preliminary Findings: Governance arrangements for existing sanctuaries have important similarities and differences. State governments, particularly when a sanctuary includes state waters, usually play important roles in sanctuary management. These are spelled out during the sanctuary designation process and the subsequent development of a management plan. On the other hand, local governments and stakeholders generally have a lesser voice in sanctuary management, generally through a NMSA-mandated Sanctuary Advisory Council (SAC) and through a variety of issue-based working groups. The size and scale of a sanctuary also has significant implications for governance arrangements. Very large sanctuaries, similar to that proposed for Oregon, are understandably more complex than smaller ones and require the harmonizing of diverse interests, jurisdictions, and authorities of many ocean users, coastal communities, and federal, state, local, and tribal agencies.

Oregon Coast National Marine Sanctuary Proposal: Status Report

Purpose

In December 2005, Governor Kulongoski requested that the Oregon Ocean Policy Advisory Council (OPAC) provide him with advice in developing a proposal for establishing a National Marine Sanctuary (NMS) along the Oregon coast. This status report, requested by the Governor's Natural Resources Office, addresses two of the primary issues that have emerged in OPAC's research on the sanctuary proposal: the potential effects on *fisheries management* policy and processes, and the potential for establishing sanctuary *governance arrangements* favorable to the state, local governments, and ocean stakeholders. After reviewing this status report, the Governor is expected to suggest next steps for OPAC's analysis of the national marine sanctuary proposal.

Background

In his letter to OPAC asking for assistance in evaluating his proposal for a coast-wide national marine sanctuary, the Governor noted the difficult challenges facing marine resource users and managers, and emphasized the need for more integrated ocean policy and ecosystem-based management offshore. His sanctuary proposal, he said, was influenced by the findings and recommendations of the US Commission on Ocean Policy's report, *An Ocean Blueprint for the 21st Century* (USCOP 2004). That report documented many threats to marine environments and marine-dependent communities throughout the United States, including over-development of coasts, habitat loss, pollution, depleted fisheries, and climate change. The USCOP report also included more than 100 recommendations, including the establishment of a regional, ecosystem-based approach to ocean management. This and other recommendations are central to the Governor's sanctuary proposal.

In making his proposal, Governor Kulongoski suggested a number of potential benefits of a marine sanctuary for Oregon: greater state policy influence over ocean activities under federal control; increased protection of marine resources from harmful activities such as oil and gas development; improved management under one coordinated, ecosystem-scale plan; increased research and development of an improved information base for management; and economic opportunities associated with the national and international attention a sanctuary would generate, and the direct federal dollars from sanctuary operations, salaries, and research. The Governor also stated that "commercial and recreational fishing would continue within the sanctuary and will be regulated by the Pacific Fishery Management Council (PFMC) and the Oregon Fish and Wildlife Commission based on the management plan for the sanctuary" (Kulongoski 2005).

The proposed sanctuary would include approximately 21,000 square miles of state and federal waters and submerged lands of the continental shelf, slope, and rise, extending to the edge of the continental margin and from Washington State to California (Figure 1). This area corresponds to the *Oregon Ocean Stewardship Area*, the area over which Oregon has asserted its interest in

effective marine resource management and stewardship for more than a decade (*Oregon Ocean Plan 1991*; *Oregon Goal 19: Ocean Resources 2000* amendment). At present, roughly 5 percent of this area is principally under state control (the Territorial Sea); the remainder is under federal control.

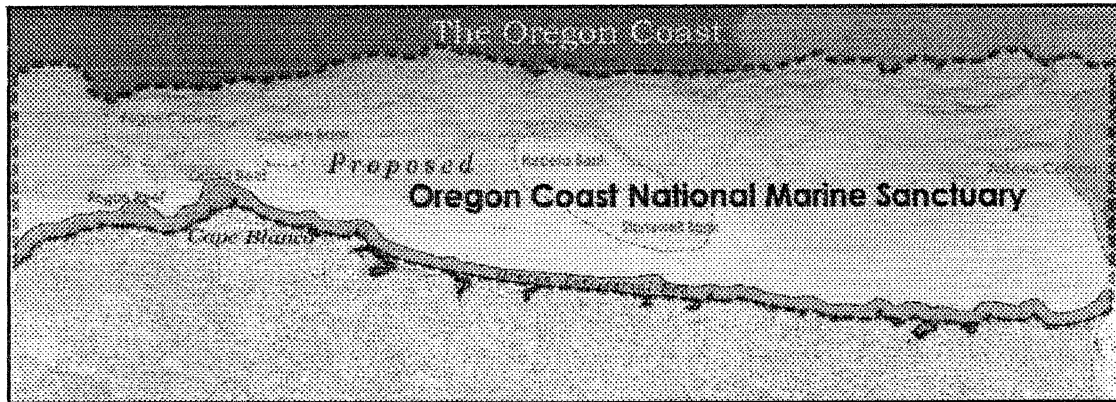


Figure 1. Proposed Oregon Coast National Marine Sanctuary (image courtesy of DLCD).

What is a National Marine Sanctuary?

A National Marine Sanctuary (NMS) is a type of marine protected area¹ (MPA). Sanctuaries are managed to protect and conserve their natural and cultural features and to allow multiple uses that are compatible with resource protection. Under the National Marine Sanctuary Act (NMSA), a sanctuary is "an area of the marine or Great Lakes environment of special national significance that has been designated as a sanctuary and is managed by NOAA²." The NMSA describes the purposes and policies of sanctuaries, outlines procedures for their designation, and provides funding authorization for appropriations. In addition to their primary purpose—resource protection—sanctuaries protect historically significant shipwrecks and artifacts, serve as natural classrooms and laboratories for school children and researchers, promote understanding and stewardship of our oceans, support commercial fishing, and provide valued recreational spots for sport fishing, diving, and other tourism activities.

There are currently 13 national marine sanctuaries designated under the NMSA, varying in size from 0.25 square miles in American Samoa's Fagatele Bay to 5,328 square miles in California's Monterey Bay (Figure 2). Specific purposes and goals are defined for each sanctuary during its designation process. For example, the Monitor NMS off North Carolina was created solely to protect the final resting ground of the Civil War ironclad warship, the U.S.S. *Monitor*, while the Flower Gardens NMS, off of the coast of Texas in the Gulf of Mexico, is intended to protect a unique coral reef habitat. A fourteenth "sanctuary"—the Northwestern Hawaiian Islands Marine National Monument—was designated in 2006 under the Antiquities Act and is managed jointly by NOAA and the US Fish and Wildlife Service.

¹ A MPA is broadly defined in Presidential Executive Order 13158 (Clinton 2000) as "any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein."

² National Oceanic and Atmospheric Administration

The NMS program has been chronically under-funded such that it barely has adequate funds to maintain the existing network of 13 NMSs, let alone expand the system (NOAA-NMSP 2004; NAPA 2006). As a consequence, the 2000 Congressional reauthorization of the NMSA included a moratorium on the designation of new sanctuaries, the lifting of which would be contingent on several factors:

- A study published by the Secretary of Commerce stating that the “addition of a new sanctuary will not have a negative impact on the [existing] system”;
- Sufficient funding for an inventory of new sanctuary resources; and
- Funding in the Commerce Department for site characterization studies of all sanctuaries within ten years.

Sanctuaries may be designated by the Secretary of Commerce, by the Congress directly, or the Congress may direct the Secretary to designate a sanctuary. Given the current moratorium and funding situation, it appears that direct Congressional action would be necessary, should the Governor decide to seek sanctuary designation in the near term. The NMSA is currently up for Congressional reauthorization.

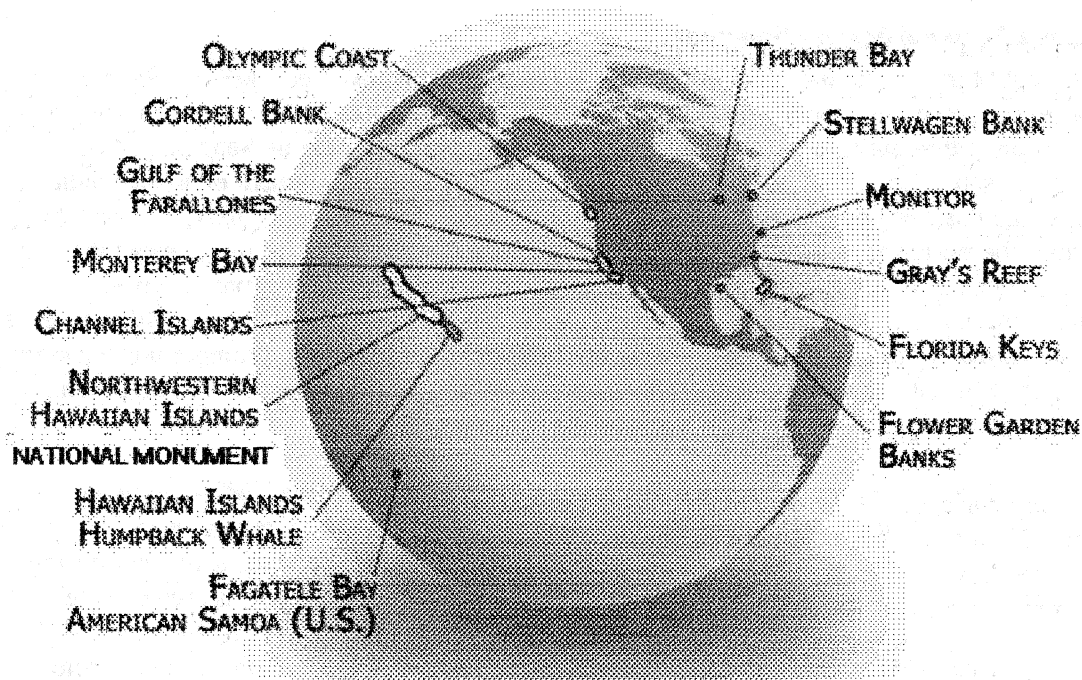


Figure 2. US National Marine Sanctuaries (see <http://www.sanctuaries.nos.noaa.gov/>).

Governor's Initial Charge to OPAC

The Governor asked OPAC for assistance on three matters regarding a potential Oregon sanctuary: *first*, to provide information to, and gather input from, local and tribal governments, the fishing industry, other ocean users, and the public; *second*, to assess whether the Ocean

Stewardship Area is an appropriate area for a sanctuary and if not, what area might be appropriate; and *third*, to identify issues or concerns that should be addressed in the designation process or future management.

In providing this assistance, the Governor also asked OPAC to consider three additional requirements for a sanctuary. *First*, a sanctuary must be scaled to be consistent with marine ecosystem processes and dynamics. *Second*, all stakeholders must be involved in designating and managing a sanctuary. *Finally*, the best available science and local user knowledge must be used in sanctuary designation and subsequent management. Initially, the Governor asked OPAC to report its findings by July 1, 2006, and later revised the due date to December 31, 2006, to accommodate the public workshops OPAC was planning.

OPAC Progress

In January 2006, OPAC established a NMS Outreach Committee to develop a work plan for seeking public input on a proposed sanctuary. That group later became OPAC's NMS Working Group, charged with developing and carrying out the public process and developing a draft report to the Governor for OPAC consideration. Initially, public workshops were planned for spring 2006. However, funds to carry out the process were not provided until July 2006, when a contract was issued for facilitation assistance at outreach workshops.

Another contract was issued to Oregon State University to develop a background report on the sanctuary proposal (Connor and others 2006). Other informative input was provided at regular OPAC meetings during public comment periods. In January 2006, OPAC heard from and questioned a member of a fishing group that has had extensive interactions with the NMS in Monterey Bay; in March 2006, OPAC had presentations from and questioned staff from the National Marine Sanctuary Program.

On August 24, 2006, OPAC members participated in a "dry run" of the public process designed by the NMS Working Group. At its regular meeting the following day, OPAC decided that revisions were needed in the public process and asked the NMS Working Group to prepare a revised process for OPAC approval at its October 10, 2006, meeting. Considering the delay in conducting a public input process that had been scheduled to start in October, OPAC also relayed a request to the Governor for an extension through March 31, 2007, for a final report.

Why this Status Report?

Responding to OPAC's request for a second extension to March 31, 2007 to allow time for the public workshops designed to draw extensive, diverse public input on the NMS proposal, the Governor asked OPAC for a formal *status report*, based on what OPAC has learned thus far from its research, from presentations and public testimony at regular OPAC meetings. The Governor asked OPAC to focus this report on two issues that seem to be of central concern: *fisheries* and *governance*. Specific questions the Governor wants addressed were outlined in a September 29, 2006 memo from the Governor's Natural Resources Office:

1. What have you learned about fisheries management in national marine sanctuaries? Based on what you have learned, what are the challenges Oregon would face in keeping fisheries management separate from sanctuary management?
2. What governance structures exist between federal and state governments within national marine sanctuaries across the country? What is the feasibility of assuring that state and local governments will have a strong voice in sanctuary management?

After reviewing OPAC's report on these questions, the Governor will suggest next steps for OPAC's analysis of the national marine sanctuary proposal. This report addresses the above questions based on what we have learned to date.

Although not discussed here in depth, a number of other issues and questions have been identified that we believe need further investigation before considering a sanctuary designation request. Two of these are particularly important.

First, what is the potential for additional regulation of already existing or potential ocean uses? Examples include dredging and dredged material disposal, communication cable routing and landing, wave energy facility siting and operation, and marine aquaculture siting and operation. Answers about potential regulation of these activities within sanctuary boundaries could have significant implications for Oregon, especially for nearshore waters.

Second, what are the ecological, social, economic, and state-level administrative costs and benefits of the proposed sanctuary, and how are they distributed? Who wins and who loses, and to what extent? Our preliminary research indicates that costs and benefits are not well documented for existing sanctuaries and will be difficult to estimate and compare, especially in advance.

This draft report draws mainly on research conducted by the OPAC NMS Working Group and by the OSU research team that prepared a background report on sanctuary issues. Other findings are based on the personal experience of OPAC members, public comments presented at regular OPAC meetings, and special presentations by NMS staff and one California fishing industry representative. No formal outreach meetings have been held to collect public input.

Formal Public Outreach on the Sanctuary Proposal Still Needed

If the Governor moves ahead with a proposal for a NMS, OPAC is committed to reach out to a broad array of ocean users, local governments and ports, tribes, coastal residents, and other Oregonians. As explained earlier, there have been several delays in conducting this public process so public input has been limited to public testimony during formal OPAC meetings. Nevertheless, before issuing a *final report* on the national marine sanctuary proposal, OPAC believes it has a responsibility to these stakeholders to fully explain the sanctuary proposal, identify their issues and concerns, and incorporate their feedback and advice into our report.

Fisheries Management

Two questions related to fisheries management were posed in the Governor's request for a status report. *First*, what has OPAC learned about fisheries management in national marine sanctuaries? *Second*, based on what OPAC has learned, what are the challenges Oregon would face in keeping fisheries management separate from sanctuary management? These questions are addressed below.

Preliminary Findings

Many existing sanctuaries directly or indirectly get involved with management of commercial and/or recreational fisheries, mainly through gear, take, and bottom-contact restrictions, or through temporary or permanent closures to protect marine habitat, ecosystems, or living sanctuary resources.

Experience in other sanctuaries suggests that an Oregon sanctuary would likely become involved directly or indirectly in fisheries management, given the overarching mandate of the Sanctuaries Act for resource protection. For example, sanctuary regulations expressly allow bottom trawling in just three West Coast sanctuaries—Olympic Coast, Gulf of Farallones, and Cordell Bank. The PFMC, however, has designated portions of all five West Coast sanctuaries as essential fish habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Such areas are off limits to bottom trawling. Five other sanctuaries prohibit bottom trawling, and four restrict it to certain areas (Table 1). Other sanctuaries get involved in fisheries management indirectly through other actions, such as the designation of no-take marine reserves within sanctuary boundaries.

The Channel Islands NMS (Figure 3), for example, is proposing changes in its designation document that would give it authority to regulate fisheries in recently-designated no-take marine reserves, marine parks, and marine conservation areas within its boundaries. Although supportive of the CINMS goals and objectives and the proposed MPAs, the PFMC has repeatedly expressed its strong opinion to National Marine Fisheries Service and the Secretary of Commerce that the regulation of fishing in the NMS is best implemented under the existing authorities of the MSA (McIsaac 2006). This disagreement is an example of the kinds of problems that arise due to the separate and conflicting authorities and mandates of the two federal laws: the NMSA and the MSA. It should be noted, however, that while NOAA has developed an elaborate process for resolving disputes such as those currently ongoing between the PFMC and CINMS, that the resolution is ultimately determined by the Secretary of Commerce after input by the relevant sanctuary manager and their Sanctuary Advisory Committee (NOAA 2005). In the case of the proposed CINMS designation document change to allow them fisheries management authority, this process has been underway since June 2006.

Table 1. US National Marine Sanctuary jurisdictions, regulated activities, and general prohibitions, as addressed in designation documents (compiled by NMS Working Group).

MARINE SANCTUARY	SANCTUARY JURISDICTIONS	SPECIFIC REGULATIONS									GENERAL REGULATIONS/PROHIBITIONS ³		
		Fishing	Oil/Gas	Marine Aquaculture	Dredging	Drilling	Maritime Passage	Fiber Optic Cables	Wave Energy Generation	Alternative Energy Generation	Depositing any Material or Matter	Constructing, abandoning or placing any structure on lake/ocean bottom	Damaging, taking or removing any bottom formation
Hawaiian Islands Humpback Whale	FS	-	-	-	Y	Y	-	Y	-	-	Y	Y	-
Florida Keys	FS	Y	Y	-	Y	Y	-	Y	-	-	Y	Y ⁴	Y
Olympic Coast	FS	-	Y	-	Y	Y	-	Y	-	-	Y	Y	-
Gulf of the Farallones	FS	-	Y	-	Y	Y	Y	Y	-	-	Y	Y	-
Fagatele Bay	F	Y	-	-	Y	-	-	Y	-	-	Y	-	Y ⁵
Channel Islands	FS	Y	Y	-	Y	Y	Y	Y	-	-	Y	Y	-
Gray's Reef	F	Y	-	-	Y	Y	-	Y	-	-	Y	-	Y
Cordell Bank	F	-	Y	-	-	-	-	Y	-	-	Y	-	Y
Flower Gardens	F	Y	Y	-	Y	Y	-	Y	-	-	Y	-	Y
Monterey Bay	FS	Y	Y	-	Y	Y	-	Y	-	-	Y	Y	-
Stellwagen	F	-	-	-	Y	Y	-	Y	-	-	Y	Y	-
Thunder Bay	S ⁶	-	-	-	Y ⁷	Y	-	Y	-	-	-	-	Y
Monitor	F	Y ⁸	-	-	Y ⁶	Y	-	Y	-	-	-	-	-

KEY: S-Only state waters part of sanctuary F-Only federal waters part of sanctuary FS-Both state and federal waters part of sanctuary Y-Activity regulated

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³ In addition to the specific prohibitions contained in general regulations. The National Marine Sanctuary Act makes it unlawful for any person to "destroy, causing the loss of, or injure any sanctuary resource managed under law. 16 USC §1436(1).
⁴ Florida Keys NMS regulations prohibit "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 [.] 15 CFR §922.163(a)(3).
⁵ Fagatele NMS regulations prohibit "disturbing the benthic community by dredging, filling . . . or otherwise altering the seabed[.] 15 CFR §922.102(a)(5). The benthic community is made up of organisms that live in and on the bottom of the ocean floor.
⁶ Thunder Bay NMS is only sanctuary entirely within state waters.
⁷ Thunder Bay NMS regulations prohibit "Drilling into, dredging or otherwise altering the lake bottom associated with *underwater cultural resources*["] 15 CFR §922.193(2). "Underwater cultural resources" includes matter like sunken watercraft & artifacts associated with the watercraft. See 15 CFR §922.191(a)(1)-(2).
⁸ Monitor NMS regulations prohibit trawling. 15 CFR §922.61(h)
⁹ Monitor NMS regulations prohibit "lowering below the surface of the water any . . . wrecking device[.] 15 CFR §922.61(d)

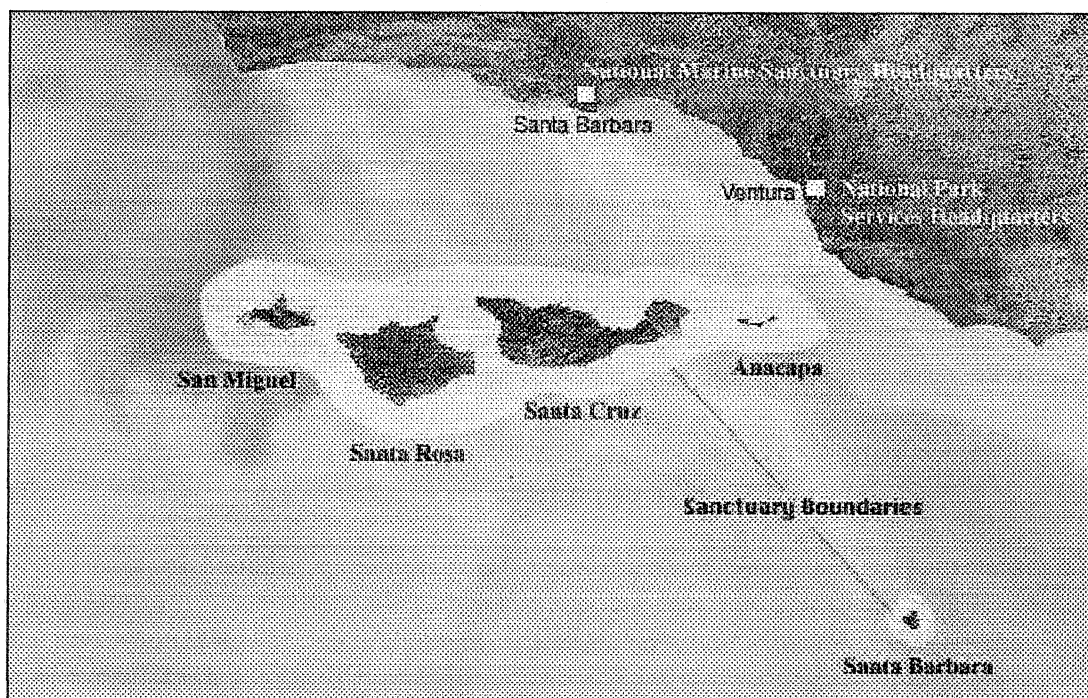


Figure 3. Channel Islands National Marine Sanctuary (NOAA).

Current indications are that this management authority will be granted to the CINMS. Until such time as the PFMC develops and implements an "ecosystem-based fishery management plan," under which they would manage all species and organisms throughout the water column in addition to existing fishery management plans, regulatory authority for fisheries management will likely be handed to the NMS programs. Because of this controversy, the PFMC has begun dialog for the planning and future implementation of ecosystem-based fishery management plans in order to prevail in its fishery management authority within the NMS system on the West Coast (F. Warrens, PFMC, personal communication, November 19, 2006).

On the other hand, the NMSA and resulting sanctuaries have also been criticized for their limited ability to adequately meet their resource protection mandate, including prohibition of fishing when sanctuary resources or habitat are threatened (Chandler and Gillelan 2005). Critics conclude that the NMSA suffers from structural flaws that make protection difficult, notably the Act's multiple-use provisions. These provisions require exhaustive consultation and can be employed by politically powerful lobby groups to challenge scientifically sound regulations. The recent review of the sanctuary program by the National Academy of Public Administration (NAPA 2006), however, states that it is clear that Congress never intended sanctuaries to be ocean "wilderness" areas.

Challenges and Implications for Fisheries Management

When making his proposal for an Oregon sanctuary, the Governor emphasized that fisheries management would continue to be the responsibility of the PFMC and the Oregon Fish and

Wildlife Commission. Even if this does turn out to be the ultimate arrangement, these agencies would still have to respect the principal purpose of sanctuaries, namely resource protection. Fisheries management could not be conducted in a manner inconsistent with this purpose. This could lead to further restrictions on commercial and recreational fishing, albeit imposed by PFMC, NMFS, and ODFW, not the sanctuary, *per se*. Not coincidentally, Oregon fishing industry and coastal community opposition to the sanctuary proposal, expressed in oral and written testimony at every OPAC meeting, is based mostly on the anticipation of this additional regulatory burden. It is also conceivable, even probable, given recent initiatives in the Channel Islands and Florida Keys sanctuaries, that marine reserves could be pursued in federal waters of an Oregon sanctuary. Provisions for state, local, and stakeholder involvement in such a process would need to be included in a sanctuary designation document.

Governance

Questions the Governor posed about governance are these. *First*, what governance structures exist between federal and state governments within national marine sanctuaries across the country? *Second*, what is the feasibility of assuring that state and local governments will have a strong voice in sanctuary management? Some background and answers to these are below.

Background

The term “*governance*” refers to the use of public policies, institutions, and structures of authority, coordination, and collaboration to allocate resources, control uses and activities, and manage society’s problems and affairs. *Ocean governance*, then, involves intergovernmental relations and problem-solving across marine jurisdictional boundaries; the management and protection of living resources such as fisheries and marine mammals; the exploitation of nonliving resources like oil and gas; the disposal and management of waste; the placement of objects and structures in the sea; the prevention and clean-up of oil and other spills; and the protection and coordinated management of special areas of the marine environment, such as cultural artifacts, reefs, rocky shores, or even whole ecosystems.

A variety of laws and associated management regimes presently exists to address specific uses and activities in marine environments. However, the separate and sectoral nature of these policies and programs has led to a variety of resource and jurisdictional conflicts over the last several decades (Lester 1996; NRC 1997; Juda 1999; Cicin-Sain and Knecht 2000). Summarizing this situation, Cicin-Sain (2002) noted that “U.S. ocean policy today is less than the sum of its parts, given the many instances of conflicting, overlapping, or duplicative policies, and lack of vision of how the various parts may be harmonized.” This in turn has led to proposals for a more integrated, national ocean policy, implemented regionally at ecosystem scales (NRC 1997; POC 2003; USCOP 2004; JOCI 2006).

For the west coast of the United States, the largest ecosystem scale of interest is the highly-productive *California Current Large Marine Ecosystem*, stretching from Washington State south

to California and into Mexico (Bottom et al. 1993). Establishing an Oregon sanctuary encompassing a significant portion of this regional ecosystem—the Oregon Ocean Stewardship Area (Figure 1)—is one of the principal reasons the Governor has given for his proposal.

Preliminary Findings

Governance arrangements for existing sanctuaries have important similarities and differences. State governments, particularly when a sanctuary includes mostly state waters, usually play important roles in sanctuary management. These are spelled out during the sanctuary designation process and the subsequent development of a management plan. On the other hand, local governments and stakeholders generally have a lesser voice in sanctuary management, generally through a NMSA-mandated Sanctuary Advisory Council (SAC) and through a variety of issue-based working groups. The size and scale of a sanctuary also has significant implications for governance arrangements. Very large sanctuaries, similar to that proposed for Oregon, are understandably more complex than smaller ones and require the harmonizing of diverse interests, jurisdictions, and authorities of many ocean users, coastal communities, and federal, state, local, and tribal agencies.

State versus Federal Roles in Sanctuary Management. The roles and authorities of NOAA and States in the management of existing sanctuaries vary. The most important determinant of governance structures and arrangements is whether a sanctuary includes state waters only, federal waters only, or both (Table 1). For example, one sanctuary (Thunder Bay) includes only state waters, so the state plays a strong co-management role with NOAA. Six sanctuaries include state and federal waters, similar to the proposed Oregon sanctuary (Table 1). These have a variety of shared federal-state management, administrative, and decision-making arrangements. Generally, states must approve regulations within state waters; in federal waters, states are consulted, with the goal of achieving consensus, but NOAA's authority is paramount. Sanctuaries comprised only of federal waters are managed principally by NOAA, with state involvement on the SAC, working groups, and other forums, particularly for activities that affect state waters and the coastal zone. Specific examples of power-sharing arrangements for three sanctuaries that may be particularly relevant to the Oregon situation are described below.

Florida Keys National Marine Sanctuary (FKNMS). The FKNMS (Figure 4) operates under a formal Interagency Compact Agreement that officially joins federal, state, and local agencies and institutions to support implementation of the sanctuary's management plan (NOAA-NMSP 1996). Since state lands and waters make up the majority of the FKNMS, the participation of state and local agencies is considered critical to the "continuous management" approach outlined in the plan.

The Compact forms the foundation for interagency and intergovernmental cooperative agreements, protocols, and other less formal interagency work efforts, and reflects the federal/state co-trustee management of the region's resources, reiterating the goals of the *Florida Keys National Marine Sanctuary and Protection Act* designating the sanctuary in 1990. In addition to the co-trustee agreement, cooperative agreements have been executed for submerged

cultural resources, water quality, enforcement, fisheries management, emergency response, Federal/State permit review, and other key issues (NOAA-NMSP 1996).

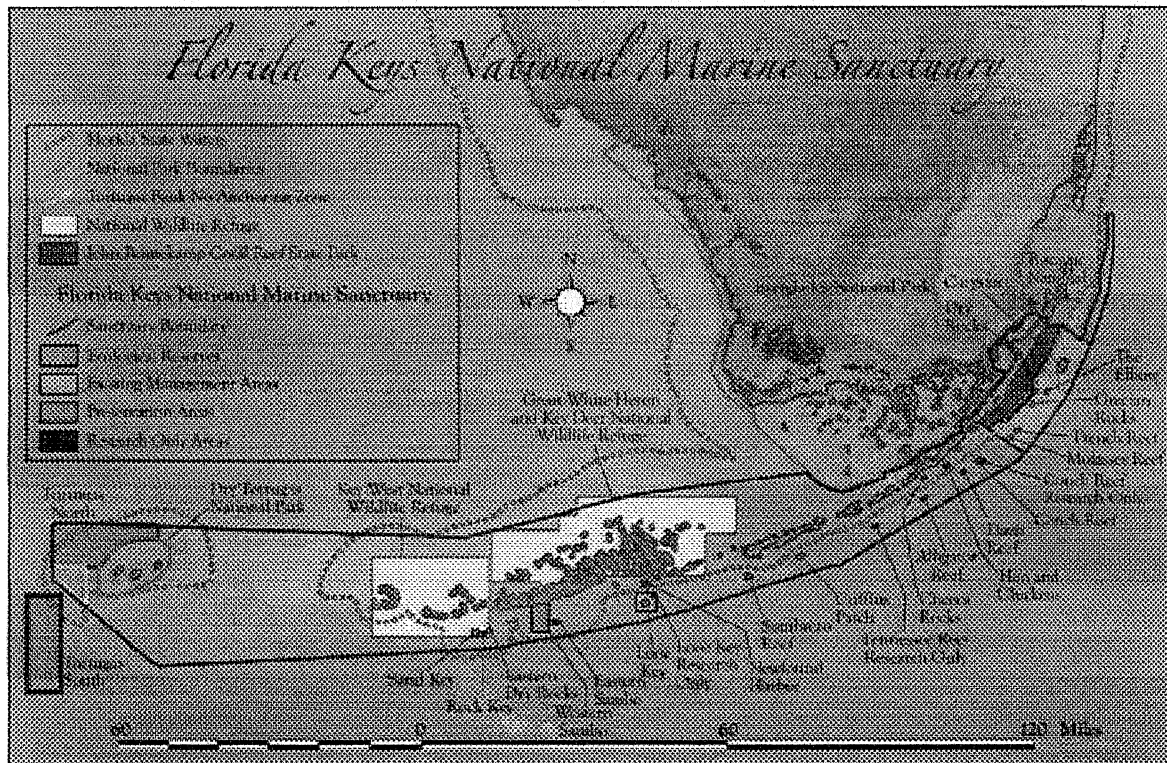


Figure 4. Florida Keys National Marine Sanctuary (NOAA).

The FKNMS' overall management team is comprised of an interagency group and a larger field staff level "Resource Management Team". The management team represents agencies actively involved in some aspect of resource management in the Florida Keys—federal, state, and local. The management team identifies and recommends sanctuary actions, based in part on advice from a Sanctuary Advisory Council (SAC). The SAC also identifies gaps in sanctuary management, serves as liaison to communities regarding the impact of implementation on the public interest, and assists in resolving difficult and controversial issues by providing its expertise and advice in recommendations to the Resource Management Team and Sanctuary staff (NOAA-NMSP 1996).

Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS). This sanctuary, like the FKNMS, operates under an Interagency Compact Agreement and a Memorandum of Understanding (MOU) that integrates the roles of federal and state agencies with various responsibilities for management in the sanctuary area (NOAA-NMSP 2002). The sanctuary is jointly administered by a federal sanctuary manager, a State of Hawaii co-manager, and other field staff via a cooperative federal-state partnership. Approximately 65% of sanctuary waters fall under state jurisdiction; thus, the sanctuary works closely with state agencies to ensure the coordinated management of sanctuary resources and habitats. In addition, the sanctuary consults

with other federal agencies and the State of Hawaii to review all permit requests for activities that may affect humpback whale habitats (NOAA-NMSP 2002).

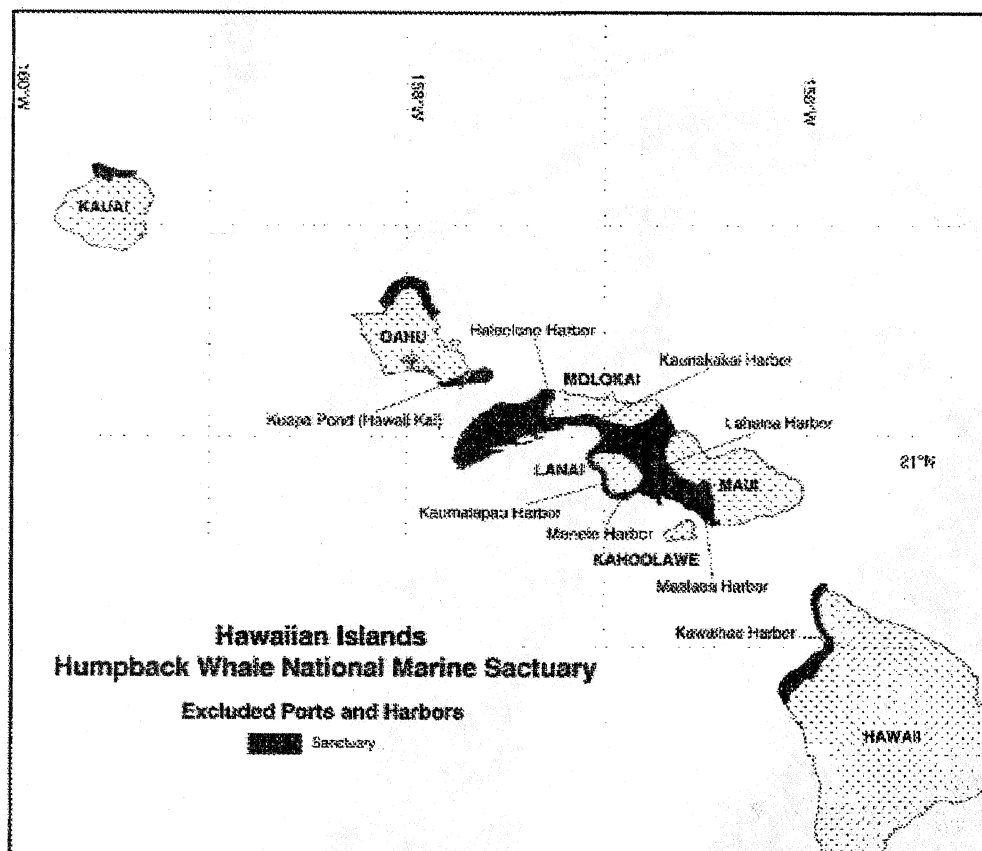


Figure 5. Hawaiian Islands Humpback Whale National Marine Sanctuary (NOAA).

Olympic Coast National Marine Sanctuary (OCNMS). The OCNMS is somewhat more like the proposed Oregon coast sanctuary in terms of its ecology and the fact that the great majority of sanctuary waters are under federal, not state jurisdiction. The Olympic sanctuary is administered by a federal NOAA superintendent and staff, with advice from other federal and state agencies and many different stakeholders, including Indian tribes. State involvement in sanctuary occurs through a series of cooperative agreements with state agencies and through participation in the SAC. Similarly, a number of federal agencies also use cooperative agreements to coordinate with the sanctuary in carrying out their respective responsibilities, including the Department of Defense, which has important operational areas in sanctuary waters.

The following activities are prohibited within Olympic Coast National Marine Sanctuary, as noted in Table 1: exploring for, developing or producing oil, gas or minerals within the Sanctuary; discharging or depositing, from within the boundary of the Sanctuary, any material or other matter; moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource; drilling into, dredging or otherwise altering the seabed of the Sanctuary; taking any marine mammal, sea turtle or seabird in or above the Sanctuary; flying motorized aircraft at less than 2,000 feet both above the Sanctuary within one nautical mile of various rocky

islands: possessing within the Sanctuary any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the Marine Mammal Protection Act, the Endangered

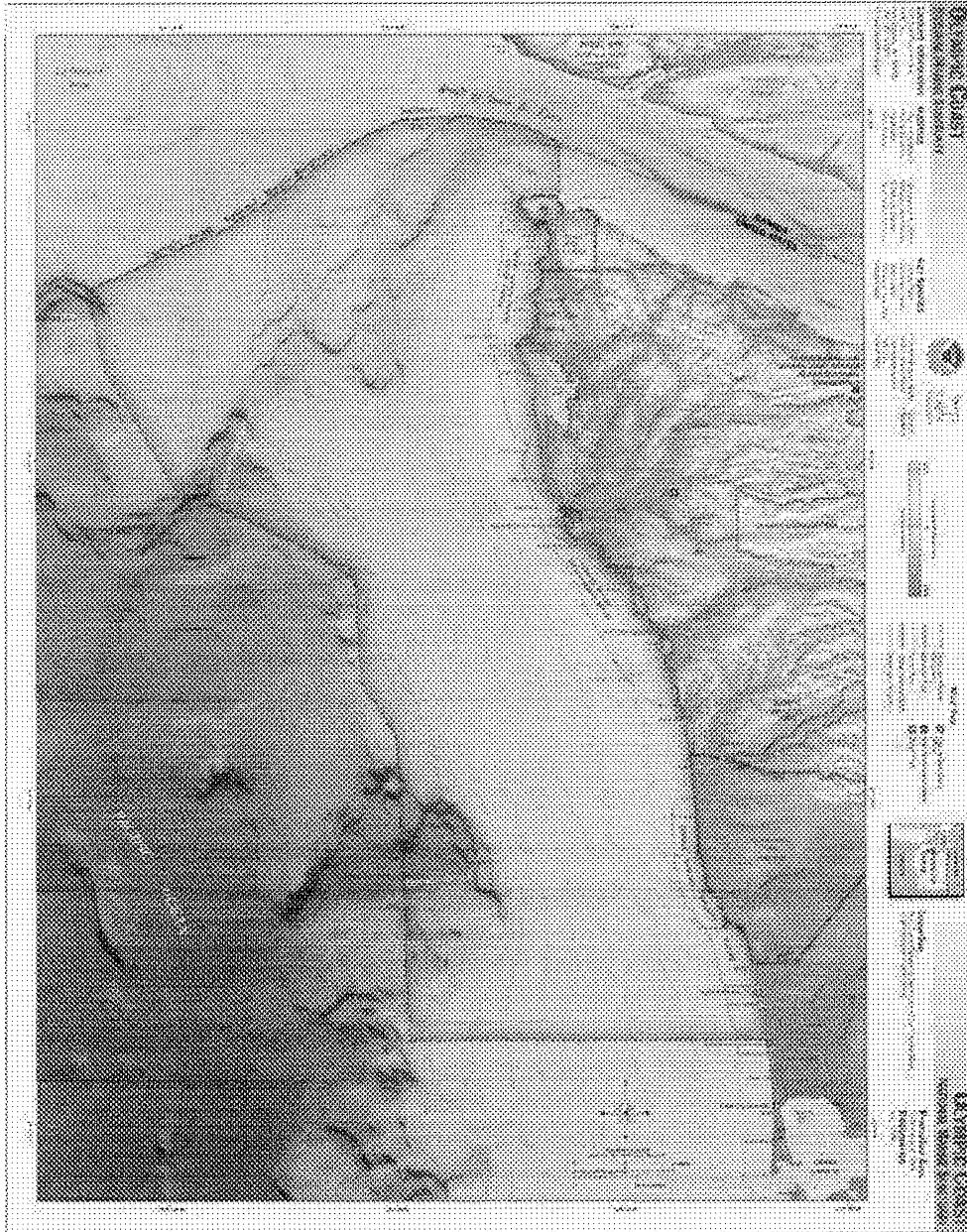


Figure 5. Olympic Coast National Marine Sanctuary.

Species Act, or the Migratory Bird Treaty Act; 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; and finally, the Department of Defense is prohibited from conducting bombing activities within the Sanctuary. Other Tribal, State and Federal Agencies regulate specific activities within or adjacent to Olympic Coast National Marine Sanctuary, including commercial fishing, sport fishing, shellfish

gathering, shoreline development, access, parking, backcountry travel and camping. Such regulations are likely similar to those that might be put in place for an Oregon sanctuary.

Local Government and Stakeholder Roles. Local governments, tribes, ocean users, nongovernmental organizations, and other stakeholders have a mandated voice in sanctuary management through a Sanctuary Advisory Council (SAC). SACs provide advice and recommendations to NOAA, through the Sanctuary Manager, regarding resource protection initiatives, research priorities, education and outreach needs, and administration. Their role, while important and influential, is strictly advisory in nature. SAC members have no authority to perform operational or management functions, or to represent or make decisions on behalf of a sanctuary or NOAA, unless specified as part of separately-executed cooperative agreements. Further, SAC members are appointed by, and serve at the pleasure of, the Sanctuary manager. Some on OPAC question whether or not SAC representation is always adequately balanced and reflective of all key interests.

Local governments and stakeholders are also involved in sanctuary management through more issue-focused working groups, an avenue that a recent NMSP review characterized as especially constructive in negotiating agreements about how to best protect sanctuary resources (NAPA 2006). In at least one sanctuary, the Florida Keys, local governments are an important part of the overall sanctuary management team, playing an expanded role as compared to other sanctuaries (NOAA-NMSP 1996).

Regulation of Activities Within Sanctuaries. Non-regulatory approaches to problem solving, including education, are generally the first-choice mechanism for protection resources in national marine sanctuaries. According to NAPA (2006), these efforts have been quite successful, effectively employing voluntary, community-based, bottom-up approaches to resource protection. Nevertheless, given their overarching resource protection mandate, sanctuaries do regulate a variety of activities, based on their potential to impact ecological, historical, recreational, or other resources. Table 1 provides a general summary of the regulated activities and prohibitions across the 13 national marine sanctuaries, as reflected in their designation documents.

National marine sanctuary regulations are codified at 15 Code of Federal Regulations (CFR) Part 922. Each NMS has its own unique set of regulations within 15 CFR Part 922 that is designed to protect its resources. These are developed initially as part of sanctuary designation and management plan preparation. Certain regulatory provisions and prohibitions are applicable in most sanctuaries, including (1) discharging material or other matter into the sanctuary, (2) disturbance of, construction on, or alteration of the seabed, (3) disturbance of cultural resources, and (4) exploring for, developing, or producing oil, gas, or minerals (Table 1). These prohibitions would likely be applicable to an Oregon sanctuary as well, and would seem to have implications for the siting and installation of anticipated new uses off Oregon, such as wave energy conversion, as well as for possible future uses, such as marine aquaculture.

Other activities are regulated by certain sanctuaries but not others. For example, seven sanctuaries [Florida Keys (FL), Fagatele Bay (AS), Channel Islands (CA), Gray's Reef (GA), Flower Gardens (FL), Monterey Bay (CA), Monitor (NC)] regulate fishing, although Regional

Fishery Management Councils take the lead, as discussed earlier. Maritime passage is regulated in two sanctuaries: Gulf of the Farallones (CA) and Channel Islands (CA). Permits may be issued for certain activities that would normally be prohibited, if they would be beneficial to a sanctuary and consistent with its goals. Examples include research or education projects.

Some sanctuaries have other regulatory provisions, for example, overflight limitations (designed to prevent disturbance of seabirds or marine mammals) (NOAA-NMSP 2006a). Other activities are regulated through "special use permits," including the "continued presence of submarine cables beneath or on the seabed" (NOAA-NMSP 2006b). Further, this same regulation states that new cable installation and the maintenance of existing cables would require a regular NMS permit. This regulation would seem to make maintenance of existing cables highly problematic and, in effect, prohibit new cables from landing in an Oregon coast national marine sanctuary.

Sanctuary Size and Scale. The size and scale of a sanctuary have a dramatic effect on the complexity and workability of potential governance arrangements. A sanctuary encompassing the Oregon Ocean Stewardship Area would include both state waters (~5 percent) and federal waters (~95 percent). At roughly 20,000 square miles, it would be the largest sanctuary designated under the Sanctuaries Act by a factor of four. One of the rationales for proposing such a large sanctuary is that it comprises the entire Oregon portion of the *California Current Large Marine Ecosystem*. Indeed, such an area would provide an opportunity for Oregon to participate in the development and implementation of a single, coordinated management plan for a part of this large marine ecosystem, an outcome that the recent ocean commission reports and their subsequent joint initiative have encouraged (POC 2003; USCOP 2004; JOCI 2006). The NAPA (2006) sanctuary review lends additional support to this finding, stating that "the sanctuary program is unique among marine agencies—or very nearly so—in having authorizing legislation and active programs along the lines suggested by the commissions." That said, the proposed Oregon Sanctuary would cover only a fraction of the *California Current Large Marine Ecosystem*, and begs the question of whether or not a regional, whole-West Coast approach to harmonizing ocean policy might be useful, particularly in light of the recent tri-state agreement on ocean health (Gregoire, Kulongoski and Schwarzenegger 2006).

Designating and developing a management plan and regulations for a sanctuary encompassing the entire Ocean Stewardship Area would be a huge, complex task with many uncertainties. These include the adequacy of scientific information available to help make management decisions and justify regulatory and non-regulatory programs; the sheer number and diversity of state and federal agencies and authorities, existing and potential ocean users, and other stakeholders that would need to be engaged; the large array of issues such a sanctuary would face; and the significant initial and ongoing resources that would be required to undertake the needed planning, research, monitoring, enforcement, and performance evaluation.

In contrast to the present sanctuary proposal, the much smaller Heceta-Stonewall Banks complex was included by NOAA on a list of potential sanctuaries in 1979. Although that site never advanced to active candidacy, it does represent an actual example of a proposal for a much smaller Oregon sanctuary. The question of sanctuary size is relevant to one of the Governor's requirements, namely that "a sanctuary must be scaled to be consistent with marine ecosystem processes and dynamics." A legitimate question is whether or not smaller marine ecosystems,

such as that encompassed in the 1979 proposal or other discrete areas along the coast, might be viable for sanctuary consideration and less complex to develop. This question has not been examined by OPAC, but may warrant further investigation through OPAC's Sanctuary Working Group and the Scientific and Technical Advisory Committee (STAC).

Challenges and Implications for Governance

In theory, many of the issues and concerns OPAC has about a sanctuary in Oregon waters could be addressed in the development of a sanctuary designation document and, subsequently, a management plan. For example, Oregon could insist on a strong co-management arrangement whereby the state had joint decision-making authority for sanctuary regulations in all sanctuary waters, rather than just state waters. Oregon could also insist on a larger, more influential role for local governments and other stakeholders. However, given that the great majority (~95 percent) of the proposed sanctuary is federal waters, both of these provisions might be difficult to achieve.

The complexity and workability of governance arrangements is highly dependent on sanctuary size and scale. In general, the larger the sanctuary, the greater is the potential for conflicts among federal authorities (NMSA and MSA being a case in point), between state and federal authorities, and between government and the diversity of ocean users and other interests. Based on what OPAC has learned to date, establishing governance arrangements favorable to state, local, ocean user, and conservation interests in Oregon would be especially challenging for the large-area sanctuary now proposed. Further, none of these issues could be resolved except through the approval of a designation document, a process that generally takes 1-3 years (NAPA 2006). Thus, at this point, OPAC knows no way to assure that the state or local governments would have a strong voice in sanctuary management.

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Appendix A

List of Acronyms

CINMS – Channel Islands National Marine Sanctuary

FKNMS – Florida Keys National Marine Sanctuary

HIHWNMS – Hawaiian Islands Humpback Whale National Marine Sanctuary

JOCI – Joint Ocean Commission Initiative

MPA – marine protected area

MSA – Magnuson-Stevens Fishery conservation and Management Act

NAPA – National Academy of Public Administration

NMFS – National Marine Fisheries Service

NMS – National Marine Sanctuary

NMSA – National Marine Sanctuaries Act

NMSP – National Marine Sanctuaries Program

NOAA – National Oceanic and Atmospheric Administration

NOAA-NMSP – NOAA–National Marine Sanctuary Program

NRC – National Research Council

ODFW – Oregon Department of Fish and Wildlife

OPAC – [Oregon] Ocean Policy Advisory Council

PFMC – Pacific Fishery Management Council

POC – Pew Oceans Commission

SAC – Sanctuary Advisory Council

STAC – [OPAC] Scientific and Technical Advisory Committee

USCOP – US Commission on Ocean Policy

Appendix B

Fishery Management Role Overview

Oregon Department of Fish And Wildlife

The Oregon Department of Fish and Wildlife, including the Oregon Fish and Wildlife Commission, is responsible for the management and conservation of commercial and recreational fisheries in Oregon's state waters. The ODF&W also has a seat on the Pacific Fishery Management Council.

Pacific Fishery Management Council -- The Pacific Fishery Management Council is one of eight regional fishery management councils established by the Magnuson Fishery Conservation and Management Act of 1976 for the purpose of managing fisheries 3-200 miles offshore of the United States of America coastline. The Pacific Council is responsible for fisheries off the coasts of California, Oregon, and Washington. The PFM Council is an advisory body that recommends fishing regulations that are passed through National Marine Fisheries Service to the Secretary of Commerce.

National Marine Fisheries Service -- NOAA's National Marine Fisheries Service (also referred to as NOAA Fisheries) is the federal agency, a division of the Department of Commerce, responsible for the stewardship of the nation's living marine resources and their habitat. NOAA's National Marine Fisheries Service is responsible for the management, conservation and protection of living marine resources within the United States' Exclusive Economic Zone (water three to 200 mile offshore). Using the tools provided by the Magnuson-Stevens Act, NOAA's National Marine Fisheries Service assesses and predicts the status of fish stocks and ensures compliance with fisheries regulations established by the Secretary of Commerce.

Glossary

Ecosystem – the living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist. All the components of an ecosystem are interrelated.

Habitat – the environment in which an organism, species, or community lives.

Marine protected area – A marine protected area is broadly defined in Presidential Executive Order 13158 (Clinton 2000) as “any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.”

Marine reserve – A marine reserve is an area of the sea which is completely protected from all extractive activities. Within a reserve, biological resources are generally protected through prohibitions on fishing and the removal or disturbance of living and non-living marine resources, except as necessary for monitoring or research to evaluate reserve effectiveness. *Marine reserves are a special category of marine protected areas* (National Research Council 2001)

National Marine Sanctuary – A National Marine Sanctuary is a specific type of marine protected area established by Congress and codified in federal statute. Under the National Marine Sanctuary Act (NMSA), a sanctuary is “an area of the marine or Great Lakes environment of special national significance that has been designated as a sanctuary and is managed by NOAA.” The NMSA describes the purposes and policies of sanctuaries, outlines procedures for their designation, and provides funding authorization for appropriations.

Ocean Stewardship Area – The Ocean Stewardship Area is Oregon's area of direct concern and responsibility for ocean resource management. It was established in the Oregon Ocean Resources Management Plan (1990), and includes the entire continental margin from mean high water, across the continental shelf, and down to the bottom of the continental slope. The stewardship area covers approximately 21,000 square miles.

Special use permit – A special use permit is generally a permit or license to conduct an activity that is not included in a list of approved activities under a specific authority. Whereas a designation document for a national marine sanctuary would establish the conditions under which approved activities could occur and the conditions of their implementation, those activities not specified in the designation document would require special use permits. The conditions of use under special use permit would be negotiated under the direct authority of the sanctuary manager, having not been specified in the designation document.

December 5, 2006

Mr. Robert Lohn, Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way NE, BIN C15700
Seattle, WA 98115-0070

RE: Request Explanation for NOAA Fisheries Denial of CCA Modification

Dear Mr. Lohn,

My name is Gerry Richter. As you know I sit on the Pacific Fishery Management Council's (PFMC) Groundfish Advisory Panel (GAP). I am Vice President of the Point Conception Groundfisherman's Association.

I am writing you for two purposes.

First I am respectfully requesting a written explanation, detailing the specific reasons why NOAA Fisheries decided to overturn the PFMC's June 16, 2006 decision to modify the Cow Cod Conservation Area (CCA) boundaries. The purpose and reason for modifying the CCA was to provide regulatory relief for economically impacted fishermen in southern California.

The Cow Cod Conservation Area (CCA) was implemented in 2001. It is a 4600 square mile closed area allowing no ground fishing deeper than 20 fathoms. 70% of the CCA area is located in waters deeper than 150 fathoms. The maximum preferred depth of Cow Cod is 150 fathoms, so 70% of the closed area takes place in water that exceeds the Cow Cod's known range and depth limitations.

The hastily conceived and enacted CCA inadvertently, and unnecessarily, eliminated prime historically productive fishing areas for Blackgill rockfish, thornyheads, and sablefish, without providing additional protection to overfished cow cod.

According to the PFMCS Groundfish Strategic Plan "Transition To Sustainability", "the building blocks for scientific understanding from which Council and NOAA Fisheries base fishery management decisions are: **data collection, analytical evaluation of data, interpretation of results, and application of information for management decisions.**"

Following these scientific building blocks, we have worked to propose a scientifically sound plan to modify the CCA in a way that provides additional fishing opportunity without jeopardizing efforts to protect overfished cowcod.

Data collection includes: West Coast Groundfish Observer Program which shows in 6,285 observed sets, there have been ZERO occurrences of Cow Cod in the limited entry and open access fixed gear fisheries outside of 150 fathoms, south of 40 deg. 10 min. N Lat. between August 2001 and April 2006.

Analytical evaluation of data:

Includes California Department of Fish and Game (CDFG) Supplemental Analysis CCA comment; Amendment 16-4 2007-2008 Pacific Groundfish Specifications authored by Mr. Tom Barnes and Ms. Susan Ashcraft.

Specific pages to note within the comment are:

Page 5, Item #6 which speaks to health of Blackgill, talks of minimal Bocaccio impacts, and supports our claim on the Black coral depth distributions. Attachment (1) below.

Page 7, Item #7 which supports the observer data

Page 7, Item #8 which shows estimated Cow Cod bycatch rates (Safely within the margin) and also the highly restrictive VMS 15 minute ping rate mandated by NOAA enforcement.

Interpretation of results:

Resulted in four alternatives put before the Council

- 1) Status Quo
- 2) Outer boundary line to be set at 175 fathoms (PCGA's preferred option)
- 3) Much smaller areas set at 175 fathoms (Compromise with enforcement)
- 4) Five very small block type areas (enforcement option)

Application of information for management decisions:

Resulted in the PFMC approving alternative (2) On June 16, 2006

NOAA Fisheries overturned the Council's decision without providing any reason or justification for this action.

Please provide me with a written explanation, detailing the specific reasons why NOAA Fisheries decided to overturn the PFMC June 16, 2006 decision to modify the Cowcod Conservation Area, and provide needed regulatory and economic relief to the Pacific groundfish fishery.

Please send your response to:

Gerry Richter
217 Calle Manzanita
Santa Barbara, CA 93105
gdrfish@msn.com

Secondly, I am respectfully requesting that NOAA Fisheries provide me with an accounting of what additional data, information, or processes that NOAA Fisheries would require in order reconsider this decision. Please send your response to the above address.

Attachment (1) below provides a historic overview of the consideration process.

Thank you,

Gerry Richter
GAP Fixed Gear Representative
VP Point Conception Groundfisherman's Association
President B&G Seafoods
CDFG Groundfish Task Force member

Attachment One

Cow Cod Conservation Area (CCA) implemented in 2001, a 4600 square mile closed area allowing no groundfishing deeper than 20 fathoms. 70% of the CCA closed area deeper than 150 fathoms, which is the maximum preferred depth of Cow Cod. Closure eliminated prime historically productive areas for Blackgill rockfish, thornyheads, and sablefish.

Tim Athens went before the California Fish and Game Commission May 2005 and asked that the Commission request CDFG to examine creating an outer boundary line depth of 175 fathoms for limited entry fixed gear vessels equipped with VMS. Commission unanimously approved and directed the Dept. to work with the Point Conception Groundfisherman's Association (PCGA) to develop a suite of CCA options to be presented to the Council June 2006.

PCGA meets with CDFG October 6, 2005 to develop options.

PCGA meets again with CDFG February 17, 2006 to refine options.

Several conference calls and e-mails follow before final slate of options submitted to the Council June 2006.

Four options put before the Council

- 1) Status Quo
- 2) Outer boundary line to be set at 175 fathoms (PCGA's preferred option)
- 3) Much smaller areas set at 175 fathoms (Compromise with enforcement)
- 4) Five very small block type areas (enforcement option)

June Council: PCGA testifies numerous times in front of the Council supporting the 175 fm lines.

Supporting testimony includes the following:

1) West Coast Groundfish Observer Program which shows in 6,285 observed sets, there have been ZERO occurrences of Cow Cod in the limited entry and open access fixed gear fisheries outside of 150 fathoms, south of 40 deg. 10 min. N Lat. between August 2001 and April 2006.

2) Conservationists try to use newly discovered Black Coral found in the CCA. We find in The Journal of Marine Education: Volume 21, Number 4 of 2005 that the deepest those Corals were seen was 300 meters with most found shallower than 225 meters. That's around 152 fathoms at the deepest and we informed the Council that we studied the charted observations of the Corals and assured the Council that with the 175 fathom proposals those said Corals would be protected.

3) Conservationists try to suggest targeted species within the CCA are depleted. We tell the Council that new assessment on Blackgill comes in at

52.3% depletion, which is very healthy stock. Thornyhead assessment comes in at 63% depletion, which is outstanding. Sablefish is at 35.2%, which is precautionary rate but has been very consistently near that level for several years.

Council adopts PCGA preferred option 2 and puts out to public comment.

Supporting public comment found in the DEIS is: CDFG Supplemental Analysis CCA comment; Amendment 16-4 2007-2008 Pacific Groundfish Specifications authored by Mr. Tom Barnes and Ms. Susan Ashcraft.

Specific pages to note within the comment are:

Page 5, Item #6 which speaks to health of Blackgill, talks of minimal Bocaccio impacts, and supports our claim on the Black coral depth distributions.

Page 7, Item #7, which supports the observer data

Page 7, Item #8 which shows estimated Cow Cod bycatch rates (Safely within the margin) and also the highly restrictive VMS 15 minute ping rate mandated by NOAA enforcement.