

REVIEW OF OREGON OCEAN POLICY ADVISORY COUNCIL REPORT

Oregon's Ocean Policy Advisory Council (OPAC) is a marine policy advisory body to Oregon Governor Ted Kulongoski. OPAC was recently asked by the Governor to review his proposal to create a new National Marine Sanctuary along the Oregon Coast. The resulting OPAC report, "*Oregon Coast National Marine Sanctuary Proposal: Status Report*" (Agenda Item I.1.a, Attachment 1) was submitted to Governor Kulongoski on December 15, 2006 and was presented at the January 30, 2007 OPAC meeting in Port Orford, Oregon. Additionally, Mr. Mike Carrier, Director of Governor Kulongoski's Natural Resource Office, sent the OPAC report to the National Marine Sanctuary Program (NMSP) for review and comment. In a January 17, 2007 response letter (Agenda Item I.1.a, Attachment 2), Mr. Daniel Basta, National Marine Sanctuary Director, provided NMSP comments on the OPAC report, but did not provide a position on the proposal.

At the January 2007 OPAC meeting Mr. John Holloway, a Sport Fisheries Representative on the Groundfish Advisory Subpanel, testified in favour of additional review of the OPAC report and volunteered to facilitate a Council review. During the open public testimony period at the March 2007 Council meeting, Mr. Holloway provided a letter (Agenda Item I.2.a, Attachment 3) and oral comments recommending Council review of OPAC's report. The Council concurred and agreed to schedule the matter for the April 2007 Council meeting. Following the March meeting Council staff contacted OPAC staff to help coordinate the review.

The Council is scheduled to review the OPAC report and comments of the NMSP, hear comments from its advisory bodies, and approve Council comments for submission to OPAC as necessary.

Council Action:

Approve Comments for Submission to OPAC

Reference Materials:

1. Agenda Item I.1.a, Attachment 1, December 15, 2006 OPAC Report, *Oregon Coast National Marine Sanctuary Proposal: Status Report*.
2. Agenda Item I.1.a, Attachment 2, January 17, 2007 from Mr. Daniel Basta to Mr. Mike Carrier regarding NMSP comments on the December 15, 2006 OPAC Report.
3. Agenda Item I.1.a, Attachment 3, February 2, 2007 letter from Mr. John Holloway requesting Council review of the December 15, 2006 OPAC Report.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Approve Comments for Submission to OPAC

Mike Burner

PFGC
03/15/07

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.

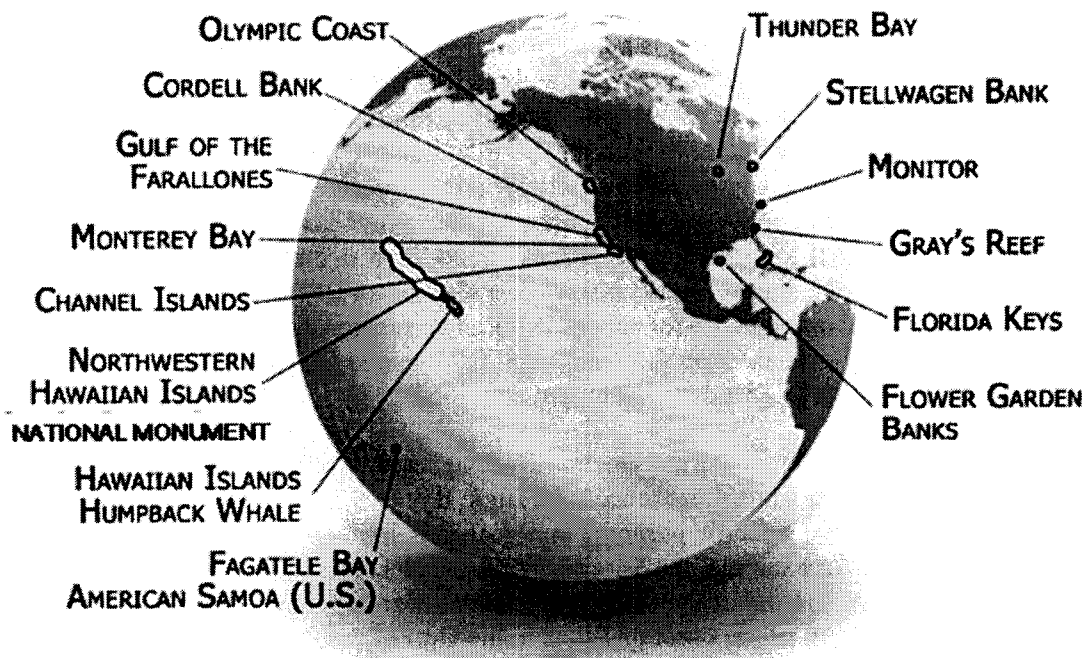


Figure 2. US National Marine Sanctuaries (see <http://www.sanctuaries.nos.noaa.gov/>).

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		
	Federal//State Waters	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
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 ⁹	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

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

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 PFMF 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 PFMF 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, PFMF, 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 PFMF 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



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 work.

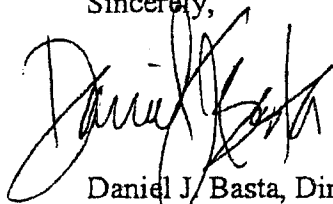
Comments on Governance Section

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



Agenda Item I.1.a
Attachment 3
April 2007

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

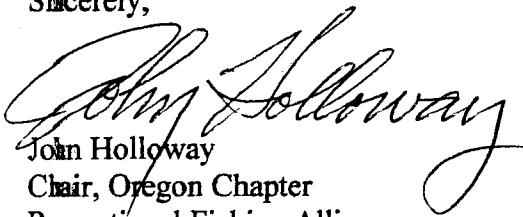
Dear Dr. McIsaac,

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

GROUND FISH ADVISORY SUBPANEL REPORT ON
REVIEW OF OREGON OCEAN POLICY ADVISORY COUNCIL REPORT

The Oregon Ocean Policy Advisory Council (OPAC) Status Report is very thorough and objective. It is an excellent example of using a transparent public process to analyze a proposal. OPAC made every effort to receive input from all sides of this issue. Officials representing the National Marine Sanctuary Program were given ample agenda time to present information favorable to this sanctuary proposal. Somewhat less agenda time was afforded to individuals representing a counter viewpoint. Nonetheless, ample and equal time was religiously provided for public comment during the appropriate periods at each meeting.

OPAC looked at two issues regarding an Oregon National Marine Sanctuary (NMS): (1) fishery management in National Marine Sanctuaries, and (2) sanctuary governance relative to federal vs. state and local control.

1. Fishery management in National Marine Sanctuaries.

On this issue there is complete agreement with the OPAC report statement: *Many existing sanctuaries directly or indirectly get involved with fishery management.*

It is felt that the report statement would have even greater accuracy if the word *indirectly* were omitted. Experience reveals that sanctuaries have a direct de-facto regulatory authority to manage fisheries. A sanctuary can set “goals and objectives” independent of science-based public process, which PFMC must use as required by federal statute. These “goals and objectives” are usually resource protection based and in conflict with mandates of the Magnuson-Stevens Act. The sanctuary can then impose these protection requirements on the PFMC deliberations. Scrutiny of the need for these protections is not an issue open to determination by PFMC through its scientific processes. In this situation the PFMC reluctantly becomes an entity which is expected to “rubber stamp” sanctuary fishery management proposals. PFMC becomes a secondary authority in this situation.

If the PFMC chooses not to “rubber stamp” a proposal it becomes likely the Council will simply be bypassed in the future. A sanctuary can apply to the U.S. Secretary of Commerce for a change in sanctuary designation documents to allow it to regulate fishing directly through the National Marine Sanctuary Act. This application process is ongoing at present.

That the PFMC regulates fishing in a NMS is merely a process perception. It is not, in practice, a reality.

2. Sanctuary governance relative to federal vs. state and local control.

A statement on governance (p. 16) that addresses the primary issue: *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 sanctuary now being proposed.*

Many members of the PFMC and its advisory bodies have been directly involved with sanctuary governance. The West Coast sanctuaries are not structured statutorily or culturally to accommodate local control. The only true authority is the sanctuary manager. All other governance groups of a given sanctuary are selected by the manager and are advisory only. Since the manager is a federal employee with ultimate local authority, it is only by manager's choice that an advisory member with local and/or state interests could have significant influence.

Comment on National Marine Sanctuary Program review of OPAC report.

Several statements in the NMS Program review of the OPAC report by Daniel J. Basta are of concern.

1. *The communities and states where there are sanctuaries are all supportive of having a sanctuary.*

This statement is misleading in that many local interests have expressed serious concerns over the culture of political manifest destiny exhibited by some sanctuary management regimes. No vote has ever been allowed to terminate the existence of a sanctuary, so support therefore must be assumed. OPAC was presented, through public testimony, over 23 letters from local sanctuary interests expressing serious conflict with sanctuary management.

2. *OPAC has heard from a single member of one user group (commercial fishing) from one sanctuary community.*

This statement is misleading as well. The referenced person is a designated representative of a very large and diverse group of stakeholders and local government entities. This was not an individual representing one person's viewpoint. There was much input from California sanctuary user groups and communities submitted through written and oral testimony in public comment.

3. *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.*

This statement is accurate. It is also a revealing, clear statement of a perceived position of supreme authority over other management entities whose jurisdictions may include land, sea, or air space.

PFMC
04/04/07

HABITAT COMMITTEE REPORT ON
REVIEW OF OREGON OCEAN POLICY ADVISORY COUNCIL (OPAC) REPORT

The Habitat Committee (HC) discussed the OPAC report and possible Council comments on the report. The HC felt that the Council would be best served by moving forward with ecosystem-based fisheries management, which may guide the Council more effectively in dealing with future proposals that affect fishing in Oregon or elsewhere. An ecosystem-based fishery management approach may offer the Council more control in addressing controversies such as regulatory authority over fishing in the water column (as noted by Mr. Frank Warrens on page 8 of the OPAC report), and non-fishing impacts such as liquefied natural gas, alternative energy proposals, etc.

PPMC
04/03/07

LEGISLATIVE COMMITTEE REPORT ON REVIEW OF OREGON OCEAN POLICY
ADVISORY COUNCIL (OPAC) REPORT

The Legislative Committee (Committee) received an update from Council member Frank Warrens on the status of the OPAC's examination of National Marine Sanctuaries and marine reserves. The Committee noted that the letter to Governor Kulongoski from Mr. Daniel Basta of the Sanctuary program (Agenda Item I.1.a, Attachment 2) contains references to the Council's operations.

The Committee recommends that the Council send a letter to the Governor in response to the OPAC report where that report discusses Council jurisdiction. The Council should include with the letter the written public comment received on this agenda item and ask that the Council be a continuing part of State deliberations that affect the Council's jurisdiction.

PFMC
04/05/07



ORGANIZED 1956

**CALIFORNIA
MARINE AFFAIRS AND NAVIGATION CONFERENCE**

20885 REDWOOD ROAD, # 345 ~ CASTRO VALLEY, CALIFORNIA 94546
PHONE: (925) 828-6215 ~ FAX: (925) 396-6005 ~ E-MAIL: Staff@cmanc.com ~ www.cmanc.com

**Public Agency
Members**

*Contra Costa, County of
Crescent City Harbor
Humboldt Bay Harbor
Long Beach, Port of
Los Angeles, County of
Los Angeles, Port of
Monterey, City of
Morro Bay, City of
Moss Landing Harbor
Napa, County of
Newport Beach, City of
Noyo Harbor Dist.
Oakland, Port of
Oceanside, City of
Orange, County of
Oxnard Harbor Dist.
Petaluma, City of
Port Hueneme, City of
Port San Luis Harbor
Redondo Beach, City of
Redwood City, Port of
Richmond, Port of
Sacramento, Port of
San Diego, Port of
San Francisco, Port of
San Leandro, City of
San Mateo Co. Harbor
San Rafael, City of
Santa Barbara, City of
Santa Cruz Port Dist.
Santa Monica, City of
Seal Beach, City of
Sonoma, County of
Stockton, Port of
Suisun City, City of
Ventura, County of
Ventura Port Dist.*

March 30, 2007

Vice Admiral Conrad C. Lautenbacher, Jr., U.S. Navy
(Ret.)
Undersecretary of Commerce for
Oceans and Atmosphere and
NOAA Administrator
14th Street & Constitution Avenue, NW
Washington, DC 20230

Dear Admiral Lautenbacher:

On behalf of the California Marine Affairs and Navigation Conference (CMANC) we submit to you several concepts which we feel would substantially improve the National Marine Sanctuary Act (Act) to benefit all Americans. These recommendations are the result of over 20 years of experience with the National Marine Sanctuary Program (Program) in California. While CMANC represents, primarily, the concerns of public agencies and multiple maritime interests many of these concerns are also shared by more than just the maritime industry. Our comments are aimed at making the Program successful in accomplishing its conservation and multiple use objectives.

The areas of the National Marine Sanctuary Act that should be constructively amended include:

1. The goals of the Act are overly broad, leaving too much up to staff interpretation. The need for credible science for sanctuary regulations (or permit conditions) should be explicitly stated. A definition of "resource protection" needs to be created which defines it in terms of sustainability (i.e., the Program's actions to protect resources would be to take scientifically justified steps to assure the long term sustainable use of resources). Language that creates more of a balance between the sanctuary's mandate of "resource protection" and that of allowing and creating "multiple use opportunities" is also needed. The Act should explicitly challenge the Program to embrace adaptive management for all its programs.
2. The Act should have a new section that clearly identifies the role of the Program in the federal/state/local permit process for harbor dredging and dredged material placement. Considering the multiplicity of permitting/responsible agencies which already exist, including U.S. EPA, U.S. Army Corps of Engineers, U.S. Fish and Wildlife, NOAA Fisheries, and State agencies with federally authorized responsibilities, in California these include the California Coastal Commission, and the California Regional Water Control Boards, the Act should explicitly make it clear that the Program does not have permit or authorization authority over those other regulatory agencies.

DOUG THIESSEN
CHAIR

RICK ALGERT
VICE CHAIR

DAVID HULL
TREASURER

LEROY F. HIEBER
IMMEDIATE PAST CHAIR

JAMES M. HAUSSENER
EXECUTIVE DIRECTOR

The Program's role should be that of coordinating with those agencies. Further, either through an amendment to the Act or to the Monterey Bay National Marine Sanctuary's Management Plan and designation documents, the prohibition against new dredging operations or dredge disposal sites should be amended to allow for this as needed by ports and harbors within Sanctuaries.

3. Regarding the Sanctuary Advisory Councils (SAC), the existing Act already specifically exempts these councils from FACA; however, this should also be clarified, that these councils can either be organized independent of NOAA and the Program, yet be entitled to submit official "advice" to the Program; or, empowered to set their own agendas, write whomever they please, including members of Congress, and create a system for identification of the correct representation on each SAC, including a method to pick constituent representatives that is independent of Sanctuary Management.

4. There exists a lack of clarity in Federal Law as to which law, the National Marine Sanctuary Act or the Magnuson Stevens Sustainable Fishery Conservation Act, will be the overarching law that governs fishing within the National Marine Sanctuaries. We believe that the Program has the right to represent the goals of the Act to regional fishery councils. However any regulatory proposals must be subject to the science standards of the Magnuson Stevens Sustainable Fishery Conservation Act. In other words, subject to review by the Council's Science and Statistical Committees (SSC). With the very recent re-authorization of the Magnuson Stevens Act, Congress unanimously (in both houses) endorsed the idea that Fishery Council actions should be based on the best science. It is therefore incumbent that the Sanctuary Program be held to the same standard. Likewise the Sanctuary Program would not be able to adopt a fishing regulation unless there is science basis for it as supported by a Regional Council's SSC.

We hope that the Administration's version of a reauthorized National Marine Sanctuary Act will include these key concepts, which, in our experience will go a long way towards fostering widespread community support and stewardship of the Sanctuaries.

Respectfully,

James M. Haussener

James M. Haussener
Executive Director

Alliance of Communities for Sustainable Fisheries
256 Figueroa Street #1, Monterey, CA 93940
(831) 373-5238
www.alliancefisheries.org

March 29, 2007

Dear Council Members

On behalf of the Alliance of Communities for Sustainable Fisheries (ACSF), we feel we must comment in some detail on the letter from Dan Basta to Mike Carrier of the Oregon Governor's Natural Resource Office.

Mr. Basta refers to the fact that OPAC heard from "a single member of one user group (commercial fishermen) from one Sanctuary community." Perhaps Mr. Basta is referring to the testimony that Kathy Fosmark, Co-Chair of the Alliance of Communities for Sustainable Fisheries (ACSF) gave to OPAC. Mr. Basta's inference is that concerns over how the MBNMS operates are limited to single persons. However, this is far from being merely one person's opinion. For fishing issues, the ACSF has representatives in all six of the ports that relate to the Sanctuary in Central California, and represents about 900 fishing families throughout the Central Coast. It speaks, therefore, with a very broad voice.

The fact is that the Sanctuary's relationship with the fishing community in Central California could hardly get any worse. There are many reasons for this, but one of the most recent relates to the Marine Protected Area (MPA) movement in California. Fishermen view the Sanctuary's leadership in this California process in recommending to the state that specific productive fishing areas be placed off-limits to fishing, as a breach of trust. It is well known that a promise was made to fishermen, in exchange for their support for sanctuary designation, that the Sanctuary would not create fishing regulations or be an additional agency that would try and put fishing families out of business. There is a deep level of anger within the fishing community about this. Fishermen are also concerned that the MBNMS's MPA Work Group process is not fair to them and not scientifically based. Fishermen feel like they're being used by the Sanctuary Program just so the Sanctuary can say they've worked with fishermen. Our members have attended a number of these Sanctuary MPA Workgroup Meetings, and it's our impression that if they seriously objected to some part of the process, or a specific potential MPA, that it really wouldn't matter. We sense that the MBNMS is on a path to change our Designation Document to give them the power to regulate fishing. It's our opinion that the people of Oregon should know that if

they get a Sanctuary, there is a very high likelihood that it will impose federal no-fishing zones offshore of the Oregon coast. Oregon fishermen will have little say in this decision.

The promise made to the fishing community that the Sanctuary would not create fishing regulations is very well known in this region. It is so well known that the Association of Monterey Bay Area Governments, the Cities of Monterey and Morro Bay, the Monterey County Board of Supervisors, the Moss Landing and San Mateo County Harbor Districts, the Santa Cruz Port District, the Monterey Peninsula Chamber of Commerce, and numerous other associations, have all gone on record that the MBNMS should not change its designation document to grant it the authority to create fishing regulations.

Regarding Dan Basta's letter, he states:

"unlike conventional fisheries management aimed towards maximizing sustainable commercial and recreational fishing, the National Marine Sanctuary Act regulations are designed to protect ecologically and biologically important areas of nationally significant marine ecosystems, or shipwrecks."

This is a common fallacy we keep hearing over and over again. The Sanctuary Program is claiming that they have a superior role to manage the ecosystem, as opposed to the actions of NOAA Fisheries or the Pacific Fishery Management Council (PFMC). That may have been true to some degree in 1992 when the Monterey Sanctuary was founded, and before the Magnuson-Stevens Act (MSSFCA) was substantially upgraded. However, NOAA Fisheries and the regional Councils have been steadily moving towards ecosystem-based management when they create regulations. Admiral Lautenbacher, head of NOAA, has directed all NOAA agencies, not just the Sanctuary Program, that they all will embrace ecosystem-based management. Further, ecosystem health cannot be considered without considering the impacts of rules on the entire ecosystem. If the Sanctuary puts in no-fishing zones or other regulations, it will have all kinds of effects on the ecosystem, as fishermen change behavior, displace their effort, and so forth, in response to it. The claim that there's a difference between the NMSA and MSSFCA, we think, is not founded on fact. The fact is, for ecosystem based management to occur, the goals of both the NMSA and the MSSFCA must be considered in Sanctuary waters. Proposed action must be based on the best science, and the action proposed by the NMSP must be concurred with by the regional Fishery Management Council. If there is no concurrence, there should be no action

Mr. Basta also continues on page two by saying that the NMSP realizes that from the fishing community's perspective, any regulation of fishing is viewed as fisheries management, regardless of its purpose. He's right about that, because it is. This has been a great frustration with the NMSP, as we hear "We're not doing fishery management, but, well, we might not let you fish in these areas." The promise that was made to us in 1992 was unequivocal – we weren't going to have to worry about the Sanctuary as yet another agency creating rules that

affect fishing. That's why the Sanctuary was not given the authority to regulate fishing in its Designation Document. However it is our perception that the NMSA is preparing to change our Designation Document to get this authority. Further, we believe that the best science on ecosystem-based management will show that any regulation that affects fishing or the behavior of fishermen is a form of fishery management, no matter if it has other stated goals.

Mr. Dan Basta also states:

"In the event through a public process under the National Marine Sanctuary Act, we determine that a fishing activity should be restricted in a Sanctuary, to protect Sanctuary resources..."

Contrast this with the way in which the PFMC must reach its decisions. Please notice that Mr. Basta says "through our public process", and not through a science-based process. The Sanctuary Program does not have a Science and Statistical Committee (SSC), as does the PFMC. The NMSP appears to base what it wants on how it feels about things, whether the Sanctuary Staff feels like something is going to be a threat or not. If they can imagine a threat, they might regulate it. This sets up a very interesting dynamic: What if the Sanctuary brings a regulation to this Council, and, as required by law, the SSC reviews it and says that there is no scientific justification for the regulation they proposed? Is the Sanctuary really going to override that? The Council cannot legally override its advice from the SSC, but the Sanctuary Program can?

The question of a Sanctuary creating fishing regulation needs to be set in the context of how the NMSP interprets the "resource protection" language of the NMS Act. Though the goals of the NMSA include a "multiple use" goal, the NMSP relegates human use to a clear second place behind its ideas of resource protection. One would think that the Sanctuary Program should be able to assert a credible threat to resources if it is going to disallow human uses—particularly historic, and or economically or socially important uses. To protect something is from a defined threat, right? Credible threats certainly ought to have a fact, or science basis behind them. However, this is not how the NMSP acts. In reality, they feel no need to conduct a credible scientific assessment as they propose rules or impose permit conditions. In the absence of this are assertions that either staff determined "policy" decisions, or the weight of public opinion, are enough to create rules that disallow human use of public waters.

Further, this must once again be contrasted with the way that Congress has mandated its regional Fishery Councils to operate. In unanimous bi-partisan votes of both the House and Senate, the MSSFCA was amended and reauthorized, with language that strengthens the role of science in the Council decision-making. In fact, the Councils must follow the recommendations of their science and statistical committees. How is it then, that the NMSP can make decisions, create rules, and ban or change human use patterns with the commensurate consequences on the ecosystem of which the NMSP purports to be the primary guardian?

Regarding Mr. Basta's "Comments on Governments" section, discussion of the Sanctuary Advisory Council is needed. The fact is, there's a proven track record that the Monterey Sanctuary, by some very pointed examples, has not selected representatives who actually have ties to the constituency group they are supposed to represent. There has been a lot of public discussion about this, not limited to those in the fishing community. Indeed, one person who was a former founding chair of the Monterey Sanctuary Advisory Council has been very outspoken about her disappointment in the way the SACs have been, in her opinion, manipulated by Sanctuary Management. A copy of an op-ed piece, and correspondence, co-written by her, is attached. The SACs are designed to serve the Sanctuary site managers, and not the communities.

To understand the Sanctuary Program, and how they receive their advice and take action, it's important to understand how the SAC works. It appears that it is designed to make sure that a majority of the SAC members will give the Sanctuary the kind of advice that they want to hear. As an example, a fisherman applied to be the alternate commercial fishing representative two years ago. She had endorsements from all of the major fishing organizations on the West Coast, including each of the six ports' individual fishermen's associations. She was not selected, and we heard that it was because she was not considered to be actually "a fishing person". A person was selected who did not have anything close to the same level of support from the fishing industry.

It is also important to recognize that sanctuary managers control all functions of its advisory councils. This includes controls over agendas, and correspondence. So in the NMSP, the SAC will be able only to communicate through the Sanctuary Manager. Should an issue arise that requires direct communication with Oregon Congressional or State representatives regarding concerns, or support, for sanctuary actions, this would not be allowed. Further, should Oregon want to create their own organization to provide independent advice to the Sanctuary Program, senior Sanctuary Program staff have indicated that the Program cannot legally "accept" such advice. Therefore, Oregon must recognize that it will lose local control over its ocean resources. Again, the SACs purpose is not to represent the communities, but rather to support Sanctuary programs.

Mr. Basta has also asserted widespread community support for the NMSP. We are in complete agreement that Californians want their ocean resources properly cared for. However, we also observe that the core value of Californians is not "protection" in the sense of disallowing an increasing set of human uses, but "protection" in the sense of requiring careful and sustainable use of our resources. A recent scientifically valid public opinion poll has been commissioned by our organization, and the results are attached. Although it surveys people throughout California, we can't help but believe the results would be the same for Oregonians and Americans everywhere. This is relevant because the NMSP clearly interprets the law in such a way that "sustainability" is not the core value of the Program.

Fishermen have had high hopes for the Sanctuary Program. We wanted to see good water quality occur; we did not want to see the ocean harmed. We wanted to have a lot of collaborative research done with the fishing community on such things as fish stocks, to make management recommendations which could be supported by the fishing community. The MBNMS has done some good things for water quality, some public education, and is at its best when working in a non-regulatory collaborative role. Despite how tough our comments have been on the Sanctuary, we want to make it clear that the door is still open, as far as fishermen are concerned, to have a constructive relationship.

Sincerely,

Frank Emerson
Co-Chair, ACSF

Enc.