

## MONTEREY BAY NATIONAL MARINE SANCTUARY (MBNMS) PROPOSED ECOSYSTEM BASED MANAGEMENT INITIATIVE

The Monterey Bay National Marine Sanctuary (MBNMS, Sanctuary) is designated as part of the National Oceanic and Atmospheric Administration's (NOAA) National Marine Sanctuary (NMS) system and has long partnered with the Pacific Fishery Management Council (Council) on marine resource issues including the protection of krill stocks, habitat issues, and ecosystem-based fishery management. Through 2009, the Council and the Sanctuary have also coordinated on a planning process to explore marine protected areas (MPA) within the Sanctuary. Partly in response to national policy directives, both the Council and the Sanctuary are currently exploring ecosystem-based principles in their respective management plans.

The Sanctuary is transitioning from its previous MPA planning process toward its developing Ecosystem-Based Management Initiative (EBM Initiative). The initial goals of the EBM Initiative are to maintain/restore marine ecosystem health and function, ensure protection of unique and rare features of the sanctuary, facilitate research to differentiate between natural variation and human impacts, and facilitate ecologically and economically sustainable uses, including fisheries.

The Council is in the process of developing a Fishery Ecosystem Plan (FEP). At its June meeting, the Council approved the draft purpose and need statement as proposed by the Ecosystem Plan Development Team and moved to develop an ecosystem plan that is primarily advisory in nature with the potential for expanding the plan to include regulatory authority in the future.

Both the Council and the Sanctuary are also aware of NOAA's development of the Integrated Ecosystem Assessment (IEA) analytical tool for the California Current Large Marine Ecosystem and are exploring the IEA's potential use in support of the Council's FEP as well as the Sanctuary's EBM Initiative.

Mr. Paul Michel, MBNMS Superintendant, will brief the Council on the EBM Initiative, including its goals and process, its research and data collection programs, the role of the IEA, and the proposed coordination between the Sanctuary, the Council, the National Marine Fishery Service, fishing communities, and other stakeholders.

### **Council Action:**

#### **Provide Review and Comments.**

#### **Reference Materials:**

1. Agenda Item C.1.b, Attachment 1: Letter from Sanctuary Superintendant Paul Michel regarding the MBNMS EBM Initiative.
2. Agenda Item C.1.b, Attachment 2: Fact Sheet on the MBNMS EBM Initiative.
3. Agenda Item C.1.d, Public Comment.

Agenda Order:

- a. Agenda Item Overview
- b. Report of the MBNMS
- c. Reports and Comments of Advisory Bodies and Management Entities
- d. Public Comment
- e. **Council Action:** Provide Review and Comments

Mike Burner

Paul Michel/Rikki Dunsmore

PFMC

08/24/11



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE

Monterey Bay National Marine Sanctuary  
299 Foam Street  
Monterey, California 93940

August 25, 2011

Mr. Dan Wolford  
Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

Dear Chairman Wolford:

Thank you for the opportunity to inform the Pacific Fishery Management Council (PFMC) about Monterey Bay National Marine Sanctuary's (MBNMS or sanctuary) Ecosystem-based Management (EBM) Initiative. The last time I appeared before PFMC in September 2009, MBNMS was pursuing a marine protected area (MPA) planning process for federal waters. After careful consideration of the feedback we received from federal, state and local partners and stakeholders, MBNMS staff recognized there were promising opportunities to meet the objectives originally articulated for MPAs, as well as complementary objectives important to our partners. In recognition of these opportunities, and the emerging EBM tools available to NOAA, we transitioned in 2010 from a planning process focused solely around MPAs to the EBM Initiative, which will consider multiple tools, including but not limited to MPAs, to achieve the broader goal of improving ecosystem health in the sanctuary.

Within this overarching goal, there are four major objectives of the EBM Initiative:

- 1) Maintain and/or restore marine ecosystem health and function;
- 2) Ensure protection of unique and/or rare features of the sanctuary;
- 3) Facilitate research to differentiate between natural variation and human impacts; and
- 4) Facilitate ecologically and economically sustainable uses, including fisheries, in the sanctuary.

To achieve these objectives, the EBM Initiative will continue to use a transparent, collaborative, science-based approach, following a basic three-step process: 1) Information gathering and analysis through scientific assessments and workshops; 2) Evaluating, proposing, and implementing strategies, policies, and actions with partners; and 3) Monitoring, assessing, and adapting management actions. During all stages of the Initiative, stakeholders will be able to provide input. MBNMS will work closely with partner agencies to develop proposed actions and to integrate with various partner planning processes and management decisions related to the sanctuary.



Over the past year and a half, we have been focused on the information gathering stage of the EBM Initiative (as shown in the timeline below). We have worked closely with scientists from NOAA Fisheries on the California Current Integrated Ecosystem Assessment (with a nested MBNMS IEA); explored sustainable use alternatives such as a proposed halibut trawl area within the Monterey Bay and a Monterey community supported fishery; consulted with the recreational boating community; and hosted one workshop on facilitating research and a separate workshop on protecting unique and/or rare features in the sanctuary. Our information gathering has highlighted the importance of research for understanding how ecosystem processes influence the California Current and the sanctuary. Many of the research questions and data needs that are being identified by the EBM Initiative are likely complementary to those of the PFMC, particularly as you develop a Fishery Ecosystem Plan. Therefore, we seek the PFMC's advice on how to best collaboratively address joint research and information needs related to ecosystem-based management.

#### Timeline for Information Gathering Stage of EBM Initiative

<u>Objective</u>	<u>Primary Tool</u>	<u>Timeline</u>	<u>Lead</u>
Ecosystem Health	IEA/ Expert Groups	2011 - 2013	NMFS
Unique/Rare Features	Workshop / Expert Groups	2011 - 2012	MBNMS
Facilitating Research	Workshop(s) Expert Groups	2010 - 2012	Partners / Collaboration
Sustainable Uses	Collaboration / Expert Groups	2011 - 2013	MBNMS

In the near term, MBNMS will be forming a series of expert working groups to refine research questions and information needs identified in the initial workshop, and develop recommendations to enhance ecosystem protection. I will initiate this by asking the Research Activities Panel of the MBNMS Advisory Council to establish a specific subcommittee. We plan to invite key partners including the PFMC to participate.

The MBNMS is dedicated to a collaborative process to identify potential intersection points of our EBM Initiative with PFMC's programs and initiatives. Additional details on the Initiative will be provided during my presentation to the PFMC in September.

Sincerely,

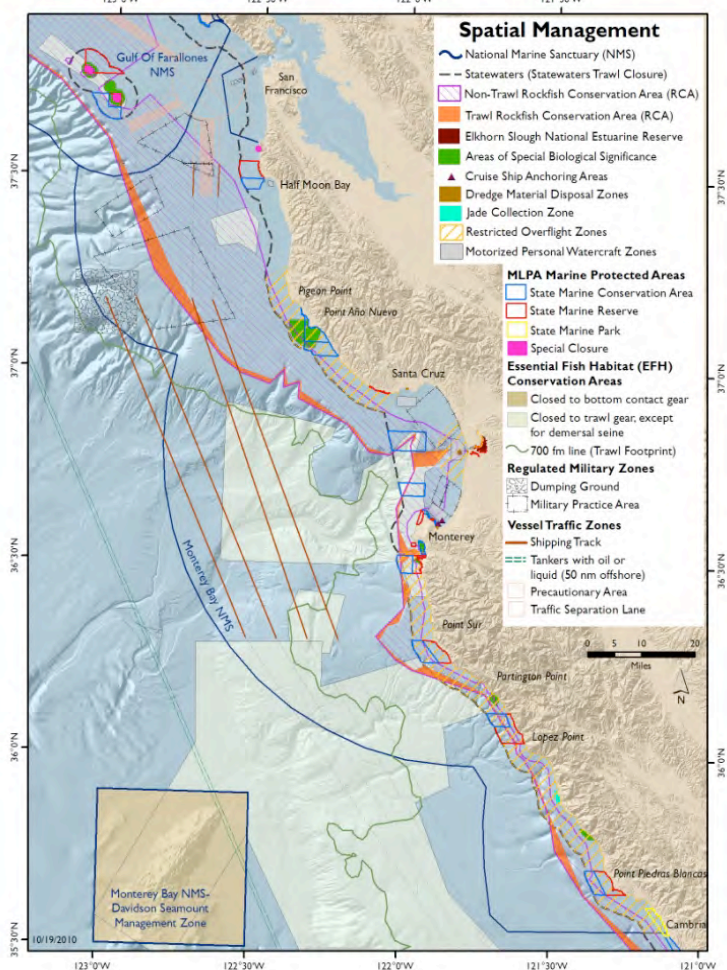


Paul Michel  
Superintendent



MONTEREY BAY NATIONAL MARINE SANCTUARY

# Ecosystem-Based Management (EBM) Initiative



## MBNMS' complex management framework & unique opportunities

**25** different management zones and regulations

**7** different regulatory agencies

**24** locally-based research institutions

**8** million stakeholders with different interests

**Globally**, the ocean is facing increasing demands and impacts on marine life.

**Locally**, MBNMS can benefit from a collaborative multi-sector management approach, to address existing and potential threats.

## Why use EBM?

**Integrate** existing approaches and priorities for protection and sustainable use of marine ecosystems across multiple jurisdictions and stakeholder interests.

**Proactive** measures to prevent harmful impacts and address threats to marine ecosystems within Monterey Bay National Marine Sanctuary.

**Multiple uses** will inform a collaborative planning process to minimize user conflicts, while maximizing synergy and collaboration among different regulatory agencies.

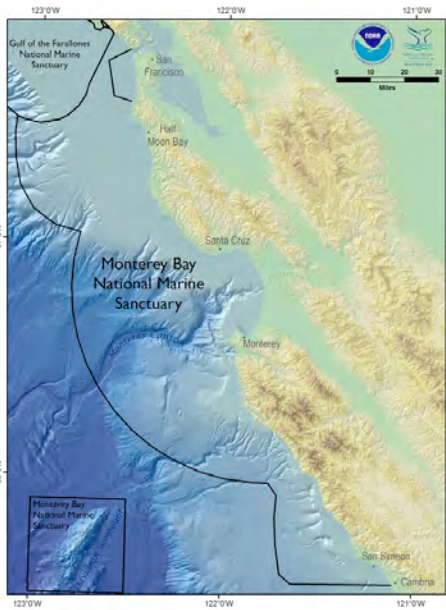


## What is EBM?

**Ecosystem-based management** is an integrated approach to management that considers the entire ecosystem, including humans. The goal of ecosystem-based management is to maintain an ecosystem in a healthy, productive and resilient condition so that it can provide the services humans want and need. Ecosystem-based management differs from current approaches that usually focus on a single species, sector, activity or concern by considering the cumulative impacts of different sectors.

### Our Objectives

- Maintain and restore marine ecosystem health and function in MBNMS.
- Ensure protection of unique and rare features within MBNMS.
- Facilitate research to differentiate between natural variation and human impacts in MBNMS.
- Facilitate ecologically and economically sustainable uses, including fisheries, within MBNMS.



## How does it work?

The MBNMS EBM Initiative is following a rigorous, participatory and transparent process of information gathering, aligned with National Ocean Policy, to help MBNMS staff understand the status of marine resources within sanctuary boundaries, and collect data needed to achieve the EBM Initiative's four objectives. Management strategies will be proposed based on information gathered, identified needs and threats, and evaluation of the effectiveness of current management. Management decisions will be made in collaboration with partner agencies and stakeholders, and consideration across multiple objectives.



### Information

gathering and analysis through scientific assessments and stakeholder workshops



### Planning & implementing

strategies, policies, and actions with partners

### From this process, MBNMS will:

Propose actions to enhance ecosystem health and protection



### Monitoring & evaluating

management actions with partners and stakeholders

### MBNMS will:

Provide well-informed input to coastal & marine management agencies and partners

HABITAT COMMITTEE REPORT ON  
MONTEREY BAY NATIONAL MARINE SANCTUARY PROPOSED ECOSYSTEM-BASED  
MANAGEMENT INITIATIVE

As the Council is aware, the Monterey Bay National Marine Sanctuary (Sanctuary) has transitioned from its previous marine protected area planning process to the ecosystem-based management initiative. The Sanctuary is early in its planning process and there are many uncertainties surrounding its implementation strategies. Therefore, the Habitat Committee (HC) does not have any specific recommendations at this time. However, the HC encourages ongoing engagement between the Council and the Sanctuary in the area of ecosystem-based management.

PFMC  
09/14/11



# Ecosystem-based Management Initiative

## Monterey Bay National Marine Sanctuary

Paul Michel, Superintendent

Rikki Dunsmore, EBM Initiative Coordinator

Pacific Fisheries Management Council

September 14, 2011



# Presentation outline



1. Ecosystem-based management Initiative
2. Progress & findings from information gathering
3. Collaborative approach to facilitate research to inform the EBM Initiative





# The reason why we are here....

1. Identify intersection points between our research needs for the EBM Initiative and PFMC's research needs for the Fishery Ecosystem Plan
2. Participation of PFMC members in our process to identify joint research needs related to ecosystem-based management and ecosystem based fishery management





# 1. Our EBM Initiative





# Background

2000

- Joint Management Plan Review
- MPA planning process
- Agency and stakeholder feedback



2009

***Transition to EBM Initiative***

# Changes in MBNMS over past 10 years

2000

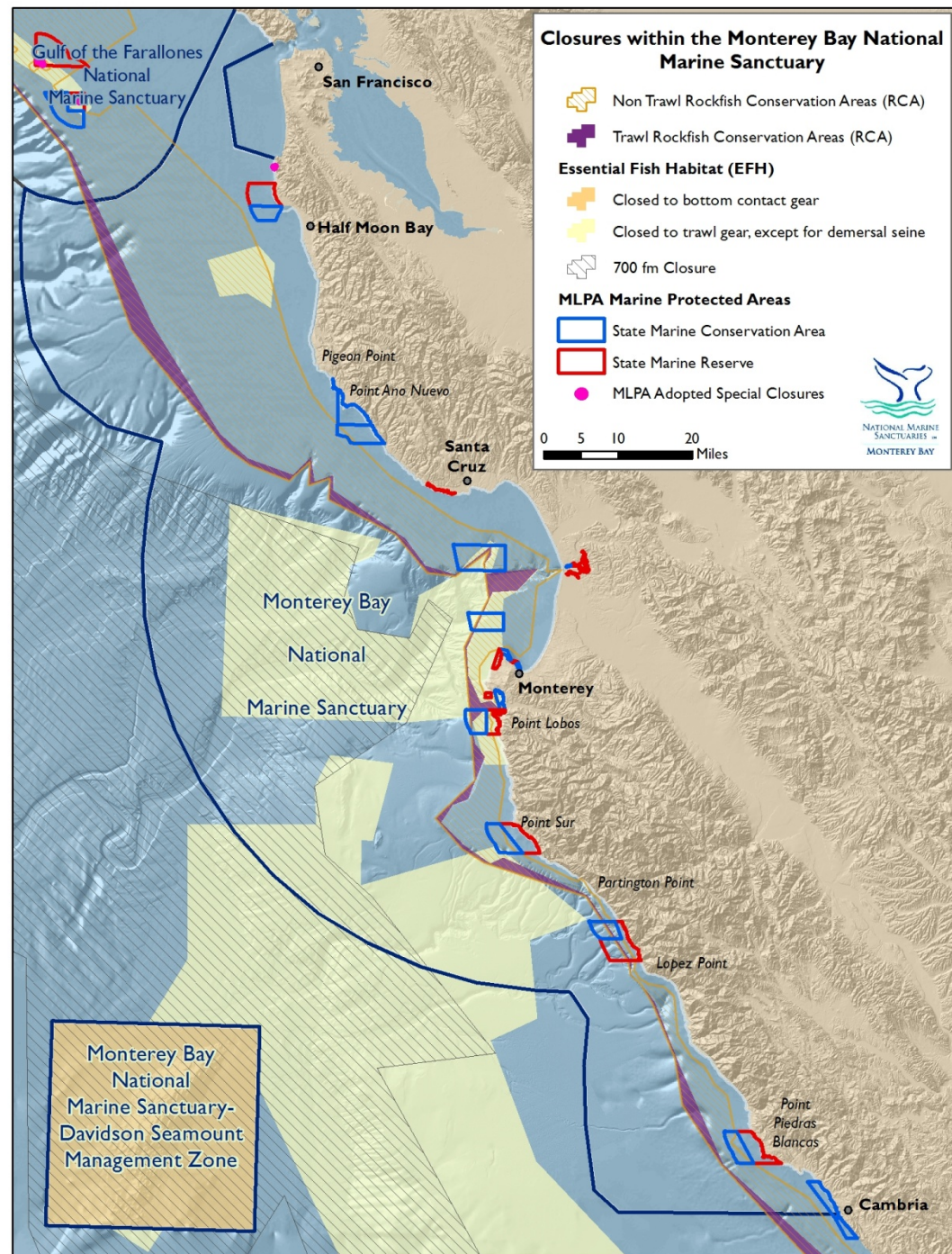
2003

2006

2007

2009

now





# MBNMS *Today*

>25 agencies & authorities

Shipping lanes

Essential Fish Habitat

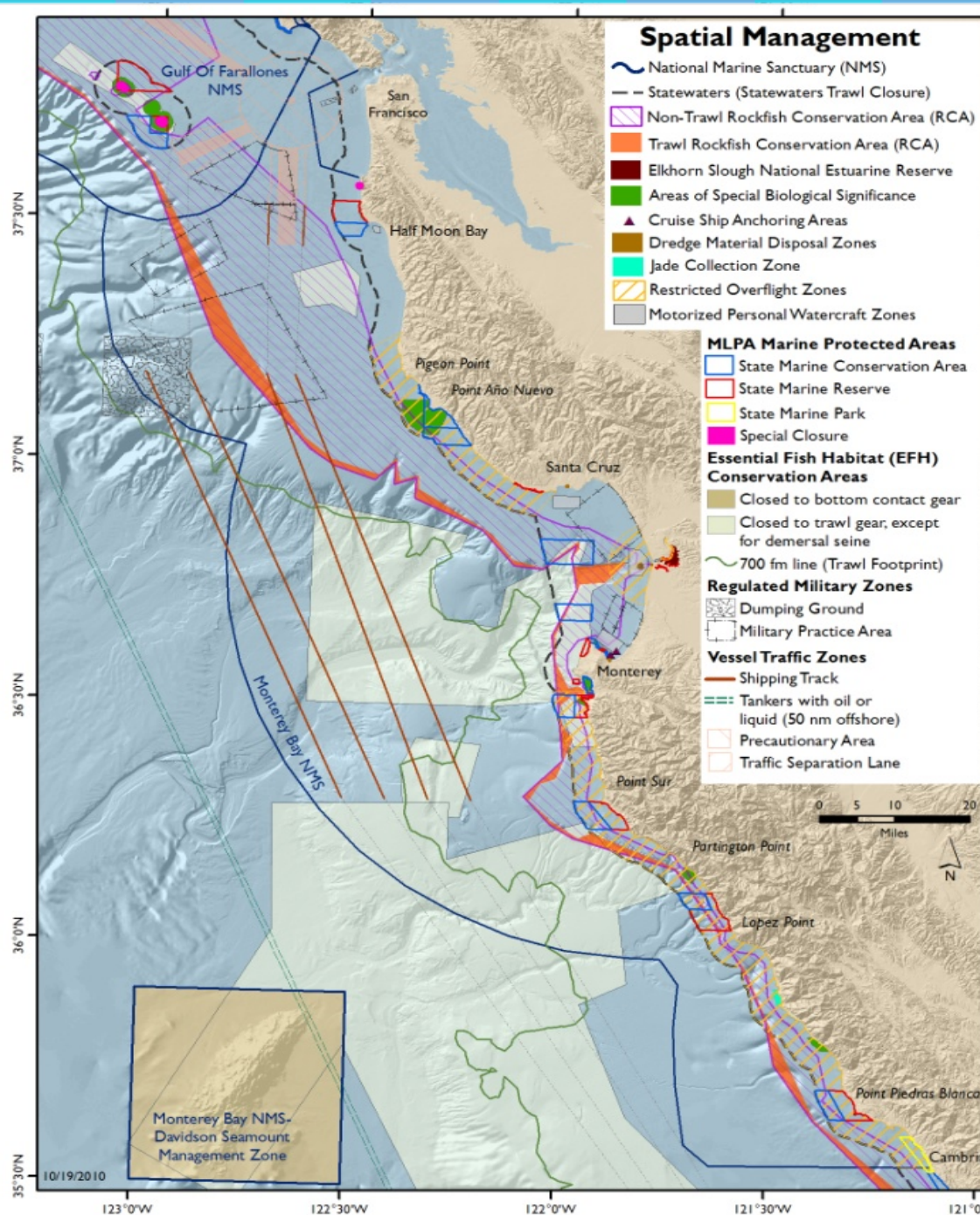
Dredge Disposal areas

Military zones

Areas of Biol Significance

Emerging demands

Global threats



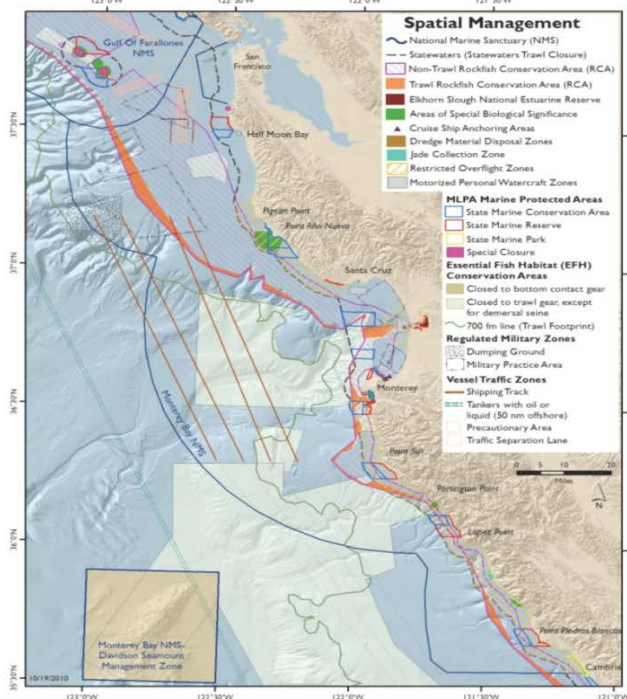
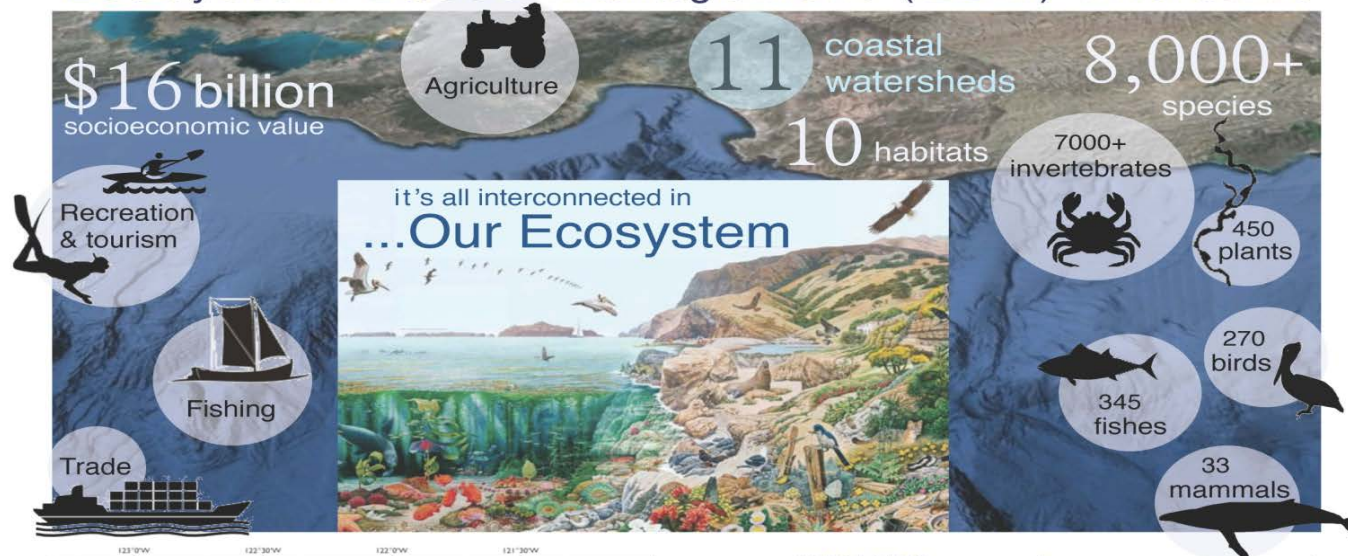




# EBM Initiative Goals

- 1) Maintain/restore marine ecosystem health and function;
- 2) Ensure protection of unique and rare features;
- 3) Facilitate research to differentiate between natural variation versus human impacts;
- 4) Facilitate ecologically and economically sustainable uses, including fisheries.

## Ecosystem-Based Management (EBM) Initiative



### MBNMS' complex management framework & unique opportunities

**25** different management zones and regulations

**7** different regulatory agencies

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### Why use EBM?

**Integrate** existing approaches and priorities for protection and sustainable use of marine ecosystems across multiple jurisdictions and stakeholder interests.

**Proactive** measures to prevent harmful impacts and address threats to marine ecosystems within Monterey Bay National Marine Sanctuary.

**Multiple uses** will inform a collaborative planning process to minimize user conflicts, while maximizing synergy and collaboration among different regulatory agencies.





# Basic steps of EBM Initiative



1. Information gathering

2. Propose & implement strategies with partners

3. Monitor, adapt, assess

2011

2012

2013

2014

2015

# Information Gathering

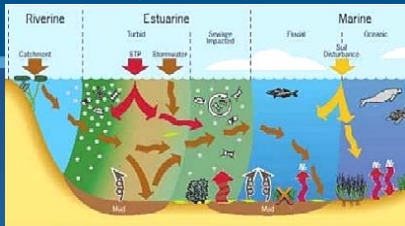
Goals

Primary Tool

Timeline

Lead

## Ecosystem Health



Integrated  
Ecosystem  
Assessment/  
workshop (s)

**2011-2012**

**NOAA Fisheries**

## Unique/Rare Features



Workshop(s) &  
RAP follow-up

**May-Oct 2011**

**MBNMS**

## Facilitating Research



Workshop(s) &  
Conservation  
Series Report

**Oct 2010-2012**

**MBNMS**

## Sustainable Uses



Collaboration  
/Workshops

**2011-2012**

**Partners/  
Collaborations**



# Examples of external processes that influence our EBM Initiative

2011

2012

2013

EBM INITIATIVE  
INFORMATION GATHERING

EFH Review

MLPA Review

Areas of  
Biological  
Significance-  
Water Quality

← Port Access  
Route Study →

Fisheries  
Ecosystem Plan





2. Update on progress & findings from  
information gathering stage

# Goal 1. Maintain/restore ecosystem health

## Integrated Ecosystem Assessment

### **Integrated Ecosystem Assessment**

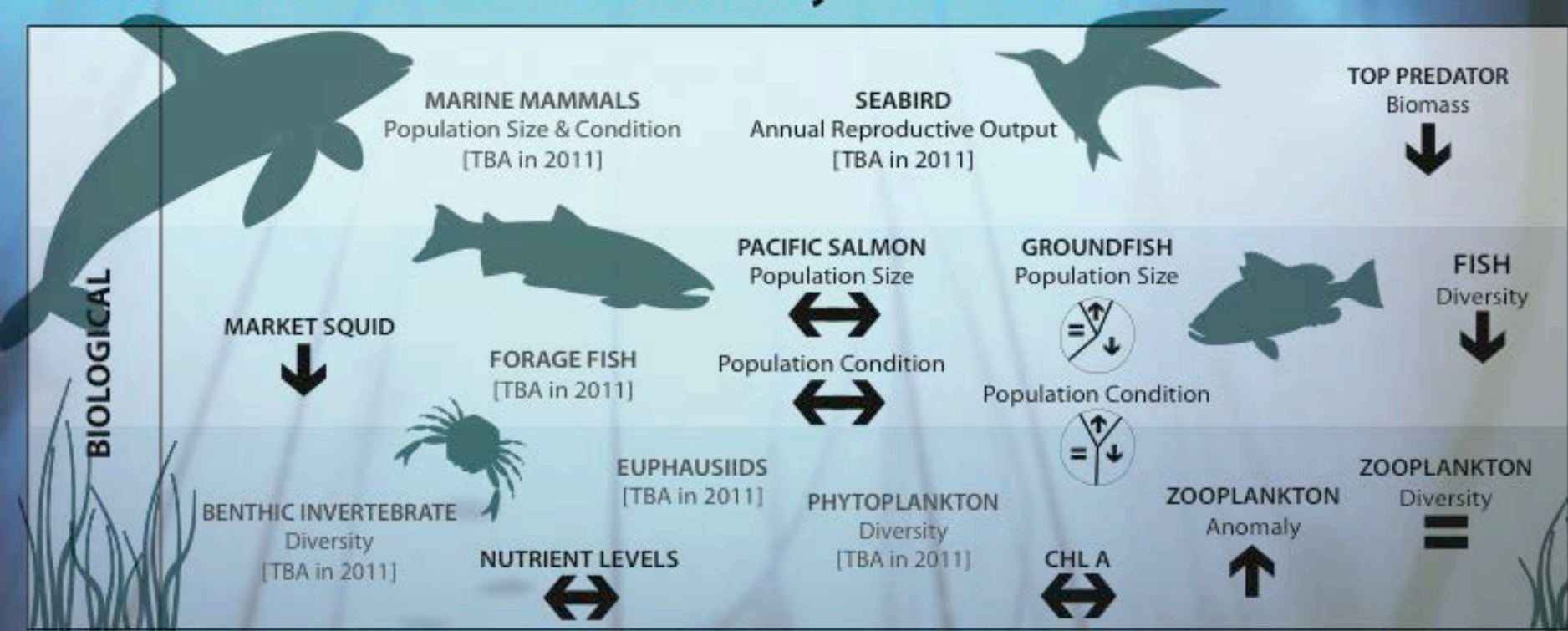
The Science Needed for a Healthy California Current



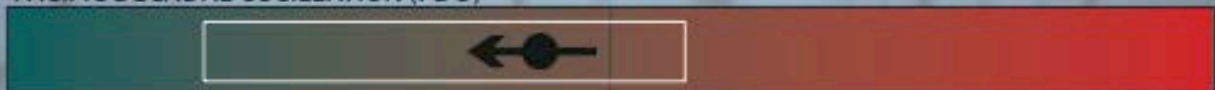
<http://www.nwfsc.noaa.gov/publications/>



# Status of the California Current Ecosystem at a Glance



## PACIFIC DECADAL OSCILLATION (PDO)



Generally MORE  
Productive and COLDER ocean conditions

Average condition

Generally LESS  
Productive and WARMER ocean conditions

## NORTHERN OSCILLATION INDEX (NOI)



Generally MORE  
Upwelling and Productive ocean conditions

Average condition

Generally LESS  
Upwelling and Productive ocean conditions

## SEA SURFACE TEMPERATURE



Generally COLDER  
Ocean conditions

Average condition

Generally WARMER  
Ocean conditions

## KEY

↓ Downward Trend

↑ Upward Trend

= No Trend

↔ Variable Coastwide

● 2010 Value

← Trend

□ Range from Last 5 Yrs

**PHYSICAL**

# Goal 1. Maintain/restore ecosystem health Socio-economic profile

What is the economic  
value of different human  
uses around Monterey  
Bay?





## Goal 2. Protect unique and/or rare features.

1. Expert workshop May 2011
2. Summary of workshop underway
3. Follow up information gathering on unique/rare features



## Goal 2. Protect unique and/or rare features.. Key findings

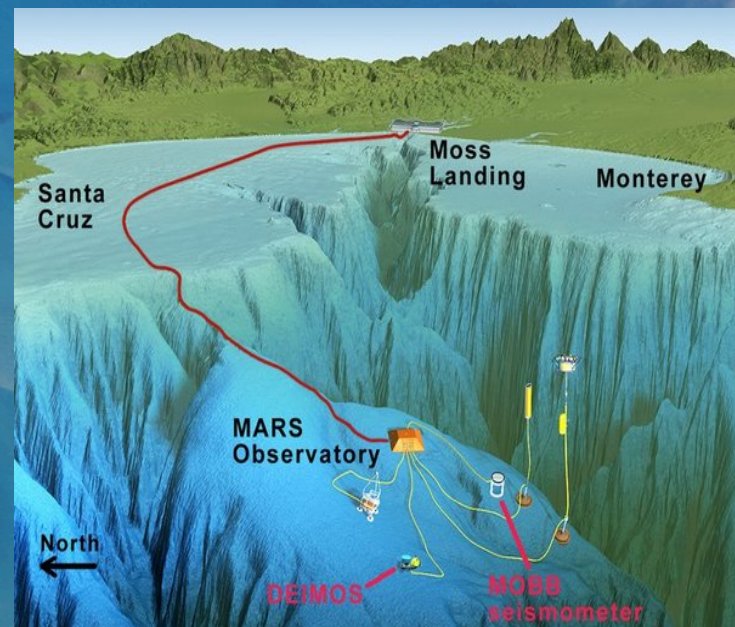


1. Scientists had difficulty applying consistent definitions for unique/rare, since criteria were feature specific
2. Scientists suggested defining features in context of ecosystem health
3. Many features were identified as important for ecosystem health but there wasn't enough information - call for research



## Goal 3. Facilitate research ...

1. Expert workshop October 2010
2. Proceedings will be published in National Marine Sanctuary Conservation Series





## Goal 3. Facilitate research ...

### Key Findings

1. Integrated & transparent system of spatial management would facilitate research
2. Regulations and permitting requirements limit ability to do marine science
3. Many science questions are difficult to pursue given spatial management (e.g., ocean acidification, impact of bottom trawling, impacts of acoustics)
4. Areas are needed to study both applied and basic science questions
5. Long-term cooperative research sites (e.g., sentinel sites) needed
6. Scientists as stakeholders



# Goal 4. Facilitate sustainable uses...

## Participation in Local Catch Monterey



### HOME

Comments Off

24

March  
2011

**Local Catch Monterey is a CSF (Community Supported Fishery).**

**We offer CSA-style weekly shares of fresh local fish to our members.**



# Goal 4. Facilitate sustainable uses...

## Participation in CA Halibut Research Design

1. Evaluate the potential socio-economic and marine ecosystem impacts of trawling and hook-line based fishing for halibut in Monterey Bay
2. Seeking funding for study



Chronicle / Craig Lee

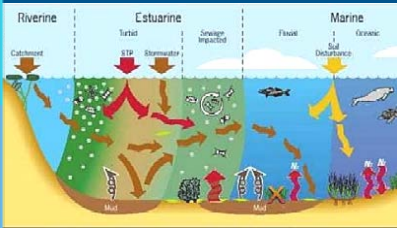


### 3. Approach for facilitating research to inform our EBM Initiative



# Information gathering points to common EBM research needs

## Ecosystem Health



## Unique/Rare Features



## Facilitating Research



## Sustainable Uses



**Research**



# Focal research objectives for the EBM Initiative



1. Identify opportunities to promote long-term cooperative research sites (e.g., sentinel sites)
2. Identify opportunities to address priority science questions which can not be addressed given current spatial management



# Next Steps FY 2012

Continue working with scientists,  
agencies, NGOs, stakeholder groups

Identify potential strategies with partners

Examine feasibility





# Opportunities for collaboration

1. Identify intersection points between our research needs for the EBM Initiative and PFMC's research needs for the Fishery Ecosystem Plan
2. Participation of PFMC members in our process to identify joint research needs related to ecosystem-based management and ecosystem based fishery management



# What are we working toward?

*Improved ecosystem health*





GROUND FISH ADVISORY SUBPANEL REPORT ON  
MONTEREY BAY NATIONAL MARINE SANCTUARY (MBNMS) PROPOSED  
ECOSYSTEM-BASED MANAGEMENT INITIATIVE

The Groundfish Advisory Subpanel (GAP) reviewed the many documents involved with this agenda item. The GAP believes that there are many criteria that should be considered when proposing actions that could constrain any fishery operating within sanctuary boundaries.

It is noted that the MBNMS has brought this matter to the Council for review early in the process. The GAP is grateful for this move and wishes to thank the MBNMS for considering the input of the Council and its advisory bodies.

The GAP believes that the following criteria must be followed when adopting any ecosystem based management actions within the MBNMS.

1. Council involvement. Council authority and involvement is crucial to this process. Fishing regulations are developed by the Council. It is mandated by the Magnuson-Stevens Fishery Conservation and Management Act. This Council is also where fishery expertise resides. If a truly collaborative, transparent and objective approach is desired, then the Council must be involved in every step of the process when fishing issues are involved.

2. Science. It is recommended that the standards and review processes be clearly defined by the Sanctuary. Fishery management standards and processes would be a good example to emulate. What standard will the Sanctuary use to determine ecosystem health?

3. Human needs. Baseline socioeconomic and ecosystem studies must be completed prior to any determinations. Impacts cannot be determined without a reference point. A healthy fishery needs to be considered a Sanctuary asset in need of ongoing protection. The economic health of the fishing industry is vital as is fish stock abundance. A fishery cannot exist without a fishing industry. Conservation includes human needs where preservation does not. Clarification by MBNMS as to the definition of protection would be helpful. I.e.; how much protection is enough and what if protection conflicts with Council management?

4. Goal clarification. A statement of desired status of any select sanctuary site must be made. A scientific and social analysis, including impacted stakeholders, must occur in order to justify this preferred status. A Marine Protected Area, for example, is only a tool to achieve a change in status. Many other tools exist which may be able to provide an acceptable and or identical result. All options need to be considered.

5. Identify exemptions. Any fishing activities under management by Federal and state authorities that will not be subject to implementation of this initiative must be listed. Some examples could be shoreside shellfish gathering or midwater fishing activities.

6. Define EBM. NOAA has an official definition of Ecosystem Based Management which is called "Ecosystem Approach to Management". Adopting this definition would be helpful in providing consistency throughout all of NOAA's ocean management activities.

7. Think globally, act locally. Since NOAA has defined west coast ecosystems as being much larger than the boundaries of the MBNMS, it follows that the Sanctuary is not a separate ecosystem according to the parent agency. MBNMS should coordinate its ecosystem initiative activities with all other management entities within the larger California Current Ecosystem to ensure compatibility and avoid redundancy.

8. Impacted stakeholder buy-in. This could be the most important aspect of any sanctuary action. Crafting policy to include the concerns of impacted users would be very beneficial. A bottom-up approach has proven to be most successful, long term, over any other in policy development. A culture of desire to help impacted stakeholders with compromise and mitigation efforts could lead to positive outcomes for all parties.

PFMC  
09/14/11



HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON  
MONTEREY BAY NATIONAL MARINE SANCTUARY PROPOSED ECOSYSTEM-  
BASED MANAGEMENT INITIATIVE

The Highly Migratory Species Advisory Subpanel (HMSAS) appreciates the Monterey Bay National Marine Sanctuary's (MBNMS) willingness to seek the advice of the Council and Advisory bodies regarding the Sanctuary's Ecosystem Based Management (EBM) Initiative. The HMSAS makes the following observations and recommendations.

- 1.) The Alliance of Communities for Sustainable Fisheries and the City of Monterey have expressed concern for the items that relate to Council management. The Sanctuary should transparently clarify its process.
- 2.) The Sanctuary needs to obtain the support of directly affected stakeholders for its ultimate actions or recommendations.
- 3.) The Sanctuary needs to respect the authority of the Council with regard to potential recommendations for regulations that affect fisheries.
- 4.) The Sanctuary should clarify its position on what standards or matrix will be used to meet the Sanctuary's four stated objectives. The HMSAS highly recommends that the SSC should be involved in this process.
- 5.) It's our recommendation that the Council request a neutral party to assess the cumulative socio-economic effects of state and federal regulations, including MPAs, on the fisheries and the communities found in the MBNMS region.
- 6.) Considering that HMS range far beyond Sanctuary boundaries, HMSAS seriously questions the ability of the Sanctuary to implement an ecosystem approach to HMS management questions.

Finally the HMSAS comments that an outcome of a true EBM process could be increased fishing opportunities. We hope that the MBNMS shares this view.



Hoh Indian Tribe  
2464 Lower Hoh Road  
Forks WA 98331



Makah Tribe  
P.O. Box 115  
Neah Bay, WA 98357



Quileute Tribe  
P.O. Box 279  
LaPush, WA 98350



Quinault Indian Nation  
P.O. Box 189  
Taholah, WA 98587

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### STATEMENT OF THE HOH, MAKAH, AND QUILEUTE TRIBES AND QUINAULT INDIAN NATION ON MONTEREY BAY NATIONAL MARINE SANCTUARY PROPOSED ECOSYSTEM BASED MANAGEMENT INITIATIVE

The Hoh, Makah, and Quileute Tribes and the Quinault Indian Nation (collectively the Coastal Treaty Tribes) have been involved in the Olympic Coast National Marine Sanctuary Management Plan review through the Intergovernmental Policy Council. We have also worked with the Sanctuary Advisory Council through its work groups to develop priorities and actions for the draft Management Plan. Recently we have learned of initiatives under development in at least a couple Sanctuaries that cause us great concern. It appears that there is an effort within the Sanctuaries to close areas to fishing under the guise of ecosystem-based management or ecological research. Updated management plans are being cited as part of the justification for these closures. Our involvement in the Management Plan Review process should not be seen as an endorsement for these types of proposals, nor does it preclude the need for government-to-government consultation on any conservation or management need recognized in our usual and accustomed fishing areas.

The proposals being developed by Stellwagen Banks National Marine Sanctuary (SBNMS) to have National Marine Fisheries Service (NMFS) designate an ecological closure and the effort by Monterey Bay National Marine Sanctuary (MBNMS) to develop an Ecosystem-Based Management Initiative with potential fishery management aspects are troubling for several reasons. First, NMFS should be the federal agency responsible for regulating fishing. The regional fishery management councils (e.g. Pacific Fishery Management Council (PFMC)) are the proper place to identify fisheries issues and concerns and recommend action to the Secretary of Commerce through NMFS. The Sanctuaries do not have the infrastructure, expertise, or engagement of potentially affected public to effectively identify and manage fisheries impacts. Likewise, the Tribes recognize NMFS as the proper office within NOAA to discuss management of our shared fishery resources.

The new National Ocean Policy is meant to harmonize agencies with jurisdiction in the ocean, yet initiatives such as these appear to be prime examples of inconsistency and lack of harmony within NOAA's ocean management goals and regulatory development. The PFMC is currently working with NMFS to develop a Fisheries Ecosystem Plan utilizing tools developed with the Northwest Fishery Science Center. Having Sanctuaries develop their own ecosystem-based



management initiatives on parallel tracks rather than incorporating the findings and tools developed within the larger process are duplicative at best and confusing and contradictory at worst. We have commented in the past<sup>1</sup> on the unnecessary duplication of efforts between NMFS and ONMS regarding regulation of fisheries within Sanctuary boundaries, and the need for Sanctuaries to honor their commitment not to regulate fishing activities, particularly within OCNMS.

Indeed we continue to work with NOAA as resource trustees for our treaty resources both locally and nationally. For example the Coastal Treaty Tribes have had and continue to have representatives serving on bodies such as the Marine Protected Areas and Marine Fisheries Federal Advisory Committees. We are also committed to working with state and federal partners to help enact the National Ocean Policy and ensure that ocean governance is coordinated both nationally and in our region to secure sustainability for our communities. Closer to home we have developed our Ocean Ecosystem Initiative with both state and federal partners such as NOAA, including NMFS and ONMS. This Initiative effort highlights our collective research needs to better inform management by our individual governments and as outlined within the broader PFMC context<sup>2</sup> rather than proposing to craft a management regime to aid ecosystem understanding. We want to continue working together with ONMS to see that this important work gets done.

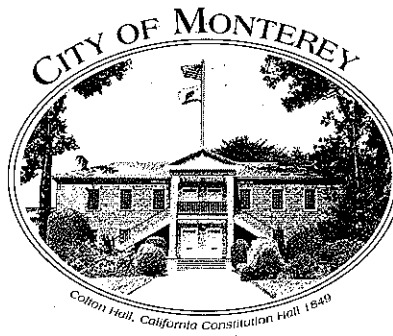
Finally, OCNMS lies entirely within the usual and accustomed areas of the Hoh, Makah, and Quileute Tribes and the Quinault Indian Nation. The fishing rights retained in our treaties are protected under the U.S. Constitution as the supreme law of the land. Further the sovereignty of the tribes in these waters requires that any federal action be developed in consultation with us at the earliest stages. To date we have not heard of such an action being proposed for OCNMS, but the trend that seems to be developing nationally causes us great concern. Closing areas of the ocean as an experiment for their own sake is a solution looking for a problem. In their August 25 letter to PFMC, MBNMS seem to equate lack of human impact with ecosystem health. The Coastal Treaty Tribes have always been an active force within the ecosystem off our coasts and the exercise of our treaty rights is integral to the health of that ecosystem. Closures to measure whether some consider the effects of fishing good or bad for ecosystem health are anathema to our culture, an abrogation of our property rights under the treaties, and will not be allowed in our territories. Under *U.S. v Washington* and other applicable law, no federal agency, including ONMS, can regulate the exercise of treaty rights unless there is a demonstrated need to do so to conserve a species and all other avenues have been exhausted.

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<sup>1</sup> Coastal Treaty Tribes' April 6, 2006 letter to NOAA on the "Draft Flowchart Regarding Fishing Regulations in National Marine Sanctuaries."

<sup>2</sup> PFMC Research and Data Needs 2008:

[http://www.pcouncil.org/wp-content/uploads/Res\\_Data\\_Needs\\_2008\\_Final\\_OCT08.pdf](http://www.pcouncil.org/wp-content/uploads/Res_Data_Needs_2008_Final_OCT08.pdf)



August 23, 2011

Mayor:  
CHUCK DELLA SALA

Councilmembers: Mr. Dan Wolford, Chair  
LIBBY DOWNEY Pacific Fishery Management Council  
JEFF HAFFERMAN 7700 Ambassador Place  
NANCY SELFRIDGE Portland, OR 97220-1384  
FRANK SOLLECITO

City Manager:  
FRED MEURER

RE: The Monterey Bay National Marine Sanctuary's Enhance Ecosystem-based Management Initiative

Chairman Wolford and Council Members:

The City of Monterey lies at the heart of the Monterey Bay National Marine Sanctuary (MBNMS). The City strongly supported the 1992 designation of this region as a National Marine Sanctuary. The primary reason for the public's support was to keep offshore oil and gas development out of the region. It was also hoped that additional federal resources could provide better data to inform management decisions.

Key to the City's work for sanctuary designation was the assurance provided to fishermen by both NOAA and various elected officials, in exchange for fishermen's support for the sanctuary, that it would not represent another regulatory agency creating additional fishing rules, or otherwise threaten their livelihoods. Once this assurance was in place, local fishermen actively supported the creation of the Sanctuary, even including traveling to Washington DC to lobby.

The MBNMS has recently announced that it is undertaking a new initiative called the "Enhance Ecosystem-based Management Initiative" ("Initiative"). As the agreement made with our fishermen constitutes an important social contract within the meaning of ecosystem-based management, the City of Monterey expects the MBNMS to continue to abide by this agreement.

In February 2011, The City Harbormaster, who is tasked by the City Council to understand and comment on these types of matters, wrote to the MBNMS (attached), commenting on the Initiative process, but also asking for a number of clarifications as to what is intended with this Initiative. The Harbormaster's comments and questions go to the heart of community and stakeholder interests and concerns. Since no response was received, on August 8, 2011, I wrote to MBNMS Superintendent Michel, asking for the clarifications, but there still has been no response.



On behalf of the City of Monterey, I hope that the MBNMS appearance before the Pacific Fishery Management Council will clarify the items previously drawn to their attention by the City. Some clarifications, such as regarding coastal erosion, may not be directly relevant to Council managed fisheries; however, many of the key questions, such as what the MBNMS means by "ecologically sustainable fisheries," are square within PFMC interests and authority. Of particular concern is the lack of criteria by which to evaluate the four MBNMS "Objectives". The City of Monterey wants to be supportive of this MBNMS Initiative, but feel that its process and boundaries must be more clearly drawn.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Della Sala".

Chuck Della Sala  
Mayor

Attachment

c: Paul Michel, MBNMS, 299 Foam St., Monterey, CA 93940



August 8, 2011

Mayor:  
CHUCK DELLA SALA

Councilmembers:  
LIBBY DOWNEY  
JEFF HAFFERMAN  
NANCY SELFRIE  
FRANK SOLLECITO

City Manager:  
FRED MEURER

Paul Michel, Superintendent  
Monterey Bay National Marine Sanctuary  
299 Foam St.  
Monterey, CA 93940

—Dear Paul:

I am aware that the Pacific Fishery Management Council will be hearing a presentation from the Monterey Bay National Marine Sanctuary on its Enhanced Eco-System Based Management Initiative in September. In light of this, I draw your attention to the City of Monterey letter (attached) sent by the City Harbormaster to you on February 24, 2011, which makes comments and requests significant clarifications about the Sanctuary's Initiative. To the best of my knowledge the Monterey Bay National Marine Sanctuary has not answered this letter, although a written response was requested.

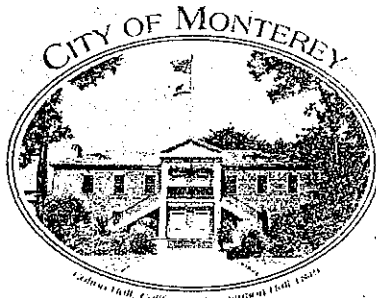
I urge you to provide the clarifications and response to comments so requested in this letter.

Sincerely,

Chuck Della Sala  
Mayor

Attachment





HARBOR/MARINA DIVISION

February 24, 2011

Paul Michel, Superintendent  
Monterey Bay National Marine Sanctuary  
299 Foam Street  
Monterey, California 93940

Dear Paul:

At the February, 2002 Sanctuary Advisory Council (SAC) meeting, former Congressman Leon Panetta made remarks to the SAC, telling members that citizens of our region must work to make the Monterey Bay National Marine Sanctuary (MBNMS) the kind of Sanctuary that we want it to be. The MBNMS has now announced a new initiative, in part to reframe its interest in creating Marine Protected Areas (MPAs) in the Sanctuary's offshore waters, but more broadly to engage in an ecosystem-based approach to the management of Sanctuary resources. This new effort is called the Enhanced Ecosystem-Based Management Initiative ("Initiative"). The City welcomes an ecosystem-based management (EBM) approach, while noting that the results of the Initiative could have significant consequences on public agencies and stakeholders (not just fishermen); therefore, it must be well founded. It is impossible to tell, however, from the information provided whether it is actually founded on the principles of ecosystem-based management as defined by NOAA<sup>1</sup>, whether or not it will lead to further restrictions on sustainable uses of sanctuary resources, and generally what the outcomes might be.

To help the MBNMS establish a foundation for its Initiative, and in the spirit of Mr. Panetta's remarks, the City of Monterey offers recommendations on how the MBNMS can adopt an ecosystem-based management approach to resource issues, and otherwise clarify the Initiative process.

**Use the NOAA definition of EBM** (attached) – the MBNMS provides no definition of EBM, even though it asserts its Initiative will provide "Enhanced" EBM. A literature search reveals no universally accepted definition. NOAA (parent agency to the MBNMS) has a definition of EBM that is holistic, adaptive, inclusive of human needs, and should be used for potential management measures that affect fisheries and other living resources, including humans. Although the term "Ecosystem-based management" is used by the MBNMS and in this letter, please be aware that NOAA has actually adopted the phrase "Ecosystem Approach to Management" (EAM) as being more accurate to the process.

**Use the appropriate NOAA-delineated ecosystem** – NOAA has defined and delineated large marine ecosystems for use in developing ecosystem-based management in the report cited above. The relevant ecosystem encompassing MBNMS is the California Current Ecosystem as depicted by the map on p. 10 of the Report. Thus, it is possible, even likely, that this entire EBM Initiative should be framed across all West Coast Sanctuaries, not simply MBNMS, for appropriate consideration of ecosystem components, drivers and human influences. The MBNMS boundary was set for political reasons, and does not

<sup>1</sup> NOAA. 2004. Report on the delineation of regional ecosystems. NOAA Regional Ecosystem Delineation Workgroup.

represent an ecosystem. Verbal information provided by the MBNMS also indicates that only part of the Sanctuary will be included in the Initiative, thereby undermining further its ability to do EBM.

**Identify areas and activities** that are within or outside the scope of the Initiative. Will activities such as desalinization, beach nourishment, State Marine Protected Areas (MPAs), agricultural practices, fishing, diver and recreational impacts, the West Coast Governors Agreement (under development), etc, be in or out of this Initiative? It is especially important to know if the MBNMS will include the State MPAs in the Initiative effort. Since the State failed to use EBM principles when it developed its MPA network (by its failure to integrate benefits to the ecosystem of other relevant State and Federal fisheries and marine protection regulations, or conduct adequate socioeconomic analysis) it would be a significant problem in the credibility of its EBM Initiative if the MBNMS fails to include the State MPAs. In fact, the National Marine Sanctuaries Act is explicit in directing sanctuaries to provide for "comprehensive and coordinated management among local, state, and other federal agencies".

**Define "Protection"**, as in the context of the often repeated MBNMS statement: "The primary mandate of the MBNMS is resource protection." The MBNMS states the goal of EBM for the MBNMS is to have a plan that "optimizes resource protection with sustainable uses." How the MBNMS defines "protection" and the guidance provided as to how much protection is enough will define what human uses are allowed, and what are not. Given the example of the Sanctuary's near complete ban on certain watercraft use, it appears that the MBNMS has an unstated but strict standard for what constitutes enough protection. In the February and April, 2008 MBNMS MPA process letters, which the new Initiative is "building on", there is a clear implication that protection means no human impact. How will impacts from desalinization, Ag practices, etc, be balanced and integrated with the protection of resources?

**Recommendations:** Define "protection" and disconnect the new Initiative from the past MBNMS MPA processes.

**Clarify: Preservation or Conservation?** Related to the above protection discussion, the degree to which the MBNMS embraces preservationist limits on human caused effects is the same degree that it is unlikely that it can ever do EBM. This is because EBM includes human needs and actions, including food production, cultural, recreational, and economic considerations, all of which can change the natural world. "Protection" or "Preservation" and EBM are not equivalent. EBM inherently seeks to balance protection with use and is more aligned with the goals of conservation and sustainable use.

**Clarify the goal.** There are several goal-like statements in the letters describing the Initiative, plus a set of "Objectives". Is the goal to identify and implement an ecosystem approach to management problems? Or, is the MBNMS saying that realizing one or more stated Objectives means that it has done EBM?

**Clarify the origin and purpose of the four MBNMS "Objectives".** Management Objectives might emerge from an ecosystem approach to management. However, the MBNMS has asserted four "main" Objectives (are there others?) at the outset of this Initiative. These objectives have not come from a community discussion, as would be expected from an EBM process, but appear to be directly related to the MBNMS's MPA process, which failed for lack of key stakeholder support, and which was not supported by scientific analysis. NOAA EBM guidelines are clear that important decisions such as creating objectives come out of a collaborative approach. **Recommendation:** Reframe the Objectives as questions, apply an ecosystem approach, and let recommendations for actions develop out of the collaborative process.



**Avoid redundancy.** The Pacific Fishery Management Council (PFMC) has already started an "Ecosystem-based Fishery Management Plan" planning process, with participation from West Coast Sanctuaries. An EBM approach to fisheries will include such things as seabird and marine mammal interactions, food webs, and predator/prey relationships...all items of interest to the MBNMS. The Initiative should not create a redundant and fiscally wasteful federal process, as specifically singled out in President Obama's recent State of the Union comments. It will be important for the MBNMS to define what it means by a "sustainable fishery", and if the MBNMS definition differs from what is achieved for fisheries through the Magnuson Act and the PFMC process. If it does not differ, then the MBNMS effort will be duplicative. If it does differ, significant confusion will result as many fishermen and living marine resources are highly mobile and are already subject to complex regulations. Overall, the MBNMS does not have the authority, the scientific capability, or the public processes to create regulations that affect fishing, but the PFMC does. Recommendation: the MBNMS should participate in, but defer to, the PFMC process, for issues that affect fisheries.

**EBM takes into account human needs and social contracts.** The "redundancy" comment above relates to the potential for the MBNMS to make regulations or recommendations that affect fishing activities. If the MBNMS considers zones that affect fishing, or other fishing-related recommendations, EBM will require that it fully take into account the important agreement made during the creation of the Sanctuary, that it would not create rules that affect fishermen or fishing operations. This constitutes a "social contract" within the meaning of EBM, is well-documented, remembered still by civic leaders, and is supported by the public. Recommendations: respect this social contract and avoid claiming that zones created for research or for complete habitat preservation are not fishery management actions, as they clearly affect fisheries.

**The Integrated Ecosystem Assessment (IEA) is a helpful, but not a complete tool.** Consistent with NOAA's stated intentions, this process must be adaptive, iterative, evolutionary (not revolutionary) and conducted collaboratively in a joint strategy planning manner with stakeholders, based on NOAA's 10 regional ecosystems<sup>2</sup>. The IEA modeling exercise, led by NOAA Fisheries, is only as good as the information that is put into it, and is further constrained by the fact that the MBNMS is not an ecosystem. The lack of socioeconomic baseline data will also limit the IEA output. Public participation and transparency in the IEA process are needed, and robust peer review of its findings. Recommendation: Make the IEA findings available for public discussion before the MBNMS embarks on defining its "Objectives", as the IEA results are meant to stimulate adaptive management.

**Transparency and Science.** The MBNMS states that a high degree of transparency and the use of science to inform decision making represent its core values. The MBNMS does not describe how it will acquire, interpret, or manage data, or how scientific conclusions will be subject to credible peer review. While pointing out that important MBNMS decisions have not been transparent or based on science in the past, the City will welcome such a process. The MBNMS needs to provide specifics to show how its stated commitment to these core values will occur.

**Public participation and buy-in.** The MBNMS must involve stakeholders and agencies at every step of the initiative. This is NOAA's own recommended process as noted in the referenced ecosystem delineation report. Support for ultimate Initiative actions must occur from affected groups. Because the

<sup>2</sup> [http://celebration200years.noaa.gov/magazine/chesapeake\\_fish\\_mgmt/side1.html](http://celebration200years.noaa.gov/magazine/chesapeake_fish_mgmt/side1.html)

Sanctuary Advisory Council's organizational structure permits hands-on involvement in SAC affairs, it has a tendency to diminish public confidence that there is truly a sanctuary-independent mechanism for community input. Therefore, the MBNMS, and the public, must not rely solely on SAC advice.

**Seek advice from the PFMC on the Initiative process.** The MBNMS would be wise to brief the PFMC and ask for a review of the proposed Initiative process by the PFMC's Science and Statistical Committee.

In conclusion, the MBNMS has announced an ambitious Initiative to take an ecosystem-based approach to the management of the Sanctuary. Significant questions arise from the documents put forth describing this new Initiative, including whether the Initiative actually represents an EBM approach. There are also questions as to whether the MBNMS is adequately resourced to undertake such a project. The City has raised questions and made recommendations, and requests a written response to these questions and comments. Recognizing that the MBNMS's EBM approach, coupled with its Federal authority, may well affect desalinization projects, Ag practices, coastal erosion, storm water runoff, extractive and recreational uses of sanctuary resources, and more, public agencies and stakeholders will want a credible and truly joint and collaborative MBNMS process, and for the Sanctuary to be, in Mr. Panetta's words, the kind of Sanctuary its citizens want it to be. The City of Monterey welcomes the opportunity to work with the MBNMS to implement an ecosystem-base approach to the management of Sanctuary resources.

Thank you for considering these comments. I look forward to your written response.

Sincerely,



Steve Scheiblaue  
Harbormaster  
City of Monterey

C: Mayor and City Council  
City Manager  
Donald McIsaac, Executive Director, PFMC  
Stephany Aguilar, President, AMBAG



## What Is Ecosystem-based Management?

The traditional management strategy for fisheries and other living resources has been to focus on one species of fish and shellfish in isolation. For example, if there were a decline in the number of a certain kind of fish in the Bay, authorities might decide to decrease the number of that species that could be removed by fishing in a given year. The problem with this approach is that the impact of fishing on a single species is only one variable that affects the health of its population. Additional elements come in to play such as interactions with other species and the effects of pollution and other stresses on habitat and water quality. To more effectively assess the health of any given fishery and to determine the best way to maintain it, the entire ecosystem must be taken into account.

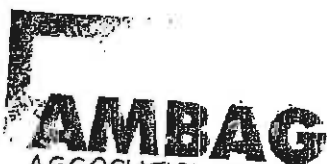
An ecosystem is a geographically specified system of organisms (including humans), the environment, and the processes that control its dynamics. Ecosystem approaches to management use integrated approaches to study and manage the resources of an entire ecosystem. This approach considers the cumulative impacts from various sources and the balance of conflicting uses. Using an ecosystem approach to manage aquatic resources, including fisheries, includes multiple factors such as pollution, coastal development, harvest pressure, predator/prey and other ecological interactions, and watershed management.

### NOAA's Approach

NOAA is taking an ecosystem approach to management that is:

- **Adaptive:** Collaboratively developed management strategies are tailored to unique conditions and issues, and strategies are adapted and combined for an integrated approach.
- **Collaborative and voluntary:** Mechanisms are in place to share information and receive feedback from others, and stakeholders are included in decision making within joint strategies.
- **Incremental:** Ecosystem-scale information is improving as techniques and tools are developed in research, observations, forecasting, and management.
- **Regionally directed:** A joint strategy plan with stakeholders is based on NOAA's 10 regional ecosystems to meet desired ecosystem productivity and benefits.
- **Adaptable given ecosystem knowledge and uncertainty:** Our marine resources are complex and dynamic; ecosystem approaches to management recognize that individual resources are better managed by addressing ecosystem components and processes while looking at cumulative impacts.
- **Inclusive of multiple external influences:** Ecosystem approaches to management encourage decisions based on environmental, social, and political factors.





**ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS**

December 8, 2006

Mr. Brady Phillips  
JMPR Management Plan Coordinator  
NOAA National Marine Sanctuary  
1305 East-West Highway  
N/ORM-6  
Silver Spring, MD 20910

Dear Mr. Phillips:

At its November 8, 2006 meeting the Association of Monterey Bay Area Governments (AMBAG) Board of Directors voted to forward the following comments on the Joint Management Plan. The Board's comments are presented in three parts:

**Part I: Formal Board of Directors Adopted Comments.**

- 1.) Davidson Seamount Action Plan: AMBAG supports the inclusion of the Davidson Seamount within the Boundaries of the Monterey Bay National Marine Sanctuary with fishing restrictions as adopted by the PFMC.
- 2.) Bottom Trawling Effects on Benthic Habitats Action Plan: AMBAG recommends that any data that the Sanctuary develops be presented to the appropriate fishery management agencies for their consideration and action. AMBAG would not support the Sanctuary changing its Designation Document to regulate this fishery even in the event that the appropriate fishery management agencies decline to act on the Sanctuary's behalf.
- 3.) Marine Protected Areas Action Plan: AMBAG recommends for Sanctuary actions which effect fishing include the statement: "any zones or regulations proposed by the Sanctuary which affect fishing would occur only if they are the result of a cooperative effort with the fishing and/or aquaculture communities and they have the support of those communities".
- 4.) Harbors and Dredges Disposal Action Plan: AMBAG would like to clarify that the Sanctuary does not regulate or issue permits for dredging and dredge material disposals. In the event the Sanctuary does have a permit or authorization role, AMBAG recommends that dredging and dredged material disposal permit conditions be no more restrictive from the Sanctuary than as proposed by other directly responsible regulatory agencies.
- 5.) Motorized Personal Watercraft Action Plan: AMBAG recommends that the Sanctuary should work with State and Local jurisdictions that have authority to regulate any uses or activities which cause concern, rather than creating new authorities for the Sanctuary.

- 6.) Cruise Ship Discharges Action Plan: AMBAG recommends that the word "harmful" be reinserted back into the proposed new regulation to make it clear that the Sanctuary is regulating and prohibiting the discharge of harmful materials, and not preventing the discharge to benign and otherwise legal materials.
- 7.) Introduced Species Action Plan: AMBAG supports this Action Plan, with the caveat that the regulations, permit requirements, or other enforcement oriented actions that will effect public agencies be coordinated with, and agreed to by those agencies before they become federal law.
- 8.) AMBAG would like to reiterate its position on fisheries taken on September 2005 to support the original promise made to the fishing community, as found in the 1992 Designation Document, that fishing regulations will be made by the appropriate state and federal fishery management agencies.
- 9.) AMBAG will work with the Sanctuary office to implement programs relevant to desalination.
- 10.) AMBAG will work with the Sanctuary office to implement programs relevant to armoring.

## Part II: Public Comments.

- 1.) **Mr. Brian Foss**, Harbor Master, Santa Cruz Harbor District, commented on the Harbors and Dredge Disposal Action Plan. He recommends that if the Sanctuary utilizes it's dredging authorization powers to limit any harbor dredging disposal practice in a more restrictive manner than all the other regulatory permit agencies, then the Sanctuary should justify such restrictions using scientific methodology.
- 2.) **Mr. Steve Scheiblaue**r, Harbor Master, City of Monterey represented the Sanctuary Advisory Council - Harbors Representative commented on the following:
  - a) Dredging issues had been covered by Mr. Brian Foss;
  - b) Three issues related to fishing (Davidson Seamount, Marine Protected Areas plan, Benthic Plan);
  - c) He recommended for AMBAG to include comments adopted a year ago on September 2005 regarding the sanctuary's role in fishing;
  - d) Introduced species he recommended to get concurrence with local jurisdictions that would be affected by the regulations;
  - e) Personal Watercraft there is no track record demonstrating disturbance to wildlife;
  - f) He suggested that this issue should be regulated by local authorities;
  - g) He commented on the Personal Watercrafts and that local jurisdictions were never approached for their input.
- 3.) **Mr. John Donaldson**, Santa Ana, made the following comments on the Motorized Personal Watercraft Action Plan:
  - a) Alternative recommendation for the communities to be the ones to regulate jet skies and to consider a minimum distance from shore;
  - b) He had previously proposed changes to the regulation from a zone system to a minimum distance to shore; the Sanctuary did not consider his response because no one in the public had ever commented on the issue;

- c) He commented that NOAA had not spent any money on the study regarding the jet skis and did not consult with the appropriate State agencies regarding the regulation.
- 4.) Mr. Scott Frazier, Executive Director of the International Jet Sports Boating Association, made the following comments regarding the Motorized Personal Watercraft Action Plan:
  - a) Personal Watercrafts had saved numerous lives;
  - b) Strongly discourage any policies which reduce the ability to use a motorized personal watercraft;
  - c) Personal Watercrafts are the most environmentally friendly water and surf rescue devices available;
  - d) Do not implement any Personal Watercraft regulations which reduce the use of the watercraft for rescue;
  - e) Demand NOAA to provide factual data and proof that diminish the value of Personal Watercraft as a rescue device.
- 5.) Ms. Shawn Alladio, K38 Water Safety, made the following comments regarding the Motorized Personal Watercraft Action Plan:
  - a) NOAA is not going to permit mutual aid training in the sanctuary waters using personal watercraft vehicles;
  - b) NOAA does not have the right to regulate surfing activities;
  - c) NOAA will eliminate livelihood of surfers.
- 6.) Mr. Ken Collins, Pro Surfer, made the following comment regarding the Motorized Personal Watercraft Action Plan:
  - a) Surfing will become outlawed;
  - b) These types of vehicles are the best surviving tool;
  - c) The vehicles do not damage the environment.
- 7.) Ms. Kathy Fosmark, Alliance for Community Sustainable Fisheries commented on the following:
  - a) Davidson Seamount and recommended to adopt policies that were given to them;
  - b) Marine Protected Areas Action Plan and provided the September 05 motion that AMBAG adopted;
  - c) Vessel Discharge recommended to prohibit any discharge;
  - d) Introduced Species Action Plan and recommended that AMBAG should ask for some local saying on any sanctuary proposed rules.

### Part III: Individual Boardmembers Comments.

- 1.) R. Rubio, City of Seaside:  
Directors Rubio biggest concern was not to add an extra layer of regulations.
- 2.) J. Barnes, City of Salinas:  
Director Barnes agreed with Director Rubio not to add another layer of regulations. She commented on desal (what kind of regulations), urban runoff (regulated to the max



already), personal water craft; extraction (what is that we are extracting?); coastal armoring. (where do we draw the line).

**3.) I. Downey, City of Monterey:**

Director Downey commented that the City of Monterey is involved in these issues with the Sanctuary office. She introduced her recommendations and does not want to see more layers of regulations.

**4.) E. Reilly, City of Santa Cruz:**

Director Reilly would not like for AMBAG to make statements because the cities and counties do not necessarily share the same concerns. She would like for the individual cities and jurisdictions to make their concerns to the sanctuary.

**5.) J. Beautz, County of Santa Cruz:**

Director Beautz commented on the Santa Cruz County ordinance on personal water crafts. She commented that we need to be careful on what we regulate.

**6.) R. Rubio, City of Seaside:**

Director Rubio felt it was AMBAG's job to comment. The document was available for comment and is appropriate to comment and to take a stand on these issues.

**7.) S. Aguilar, City of Scotts Valley:**

Director Aguilar stated that she disagreed on the issue of the personal water craft and that this issue needed to be addressed in light of how recreation and livelihoods would be effected.

**8.) J. Barnes, City of Salinas:**

Director Barnes agreed and supported Director Downey's seven recommendations and added the following:

Davidson Seamount - She commented to not change designation.

Introduced Species - She commented that local jurisdictions need to be taken into account

Personal Water Craft - She does not agree with the regulation; believes that local jurisdiction needed to be approached.

**9.) E. Reilly, City of Santa Cruz:**

Director Reilly agreed not to add more layers of regulations. She would like to go to a simpler route saying something like, "Always communicate with local jurisdictions."

**10.) R. Rubio, City of Seaside:**

Director Rubio agreed with Director Reilly's concept of simplicity.

**11.) S. Miller, City of Pacific Grove:**

Director Miller supported Director's Reilly comments on how AMBAG should approach this issue.

- 12.) **S. Miller, City of Pacific Grove:**  
Director Miller commented that if it came to a weighted vote process, cities like King City, Greenfield, and San Benito County should not be able to negate the vote of coastal cities.
- 13.) **J. Russell, City of Del Rey Oaks:**  
Director Russell commented that it was not improper to comment. He does not want to see more layers of regulations.
- 14.) **R. Rubio, City of Seaside:**  
Director Rubio commented that King City, Greenfield, San Benito County people should have some voice on how they access the Monterey Bay.
- 15.) **A. Botelho, County of San Benito:**  
Director Botelho agreed that the upper watershed cities and counties have a right to vote on this issue.
- 16.) **E. Reilly, City of Santa Cruz:**  
Director Reilly supported the idea that everyone should get to vote. Would not like to see AMBAG get too much in detail in recommendations because of the consequences it might cause other cities.
- 17.) **J. Smith, County of Monterey:**  
Director Smith thought it would be appropriate for AMBAG to have some input related to the draft. He commented that our concerns are important and that the public should be considered. He commented that we needed local input before we allow another layer of regulations.
- 18.) **J. Beautz, County of Santa Cruz:**  
Director Beautz commented that there were benefits by going through each one individually. She would oppose the motion if it means to accept all seven recommendations. Director Beautz would like to see a least one presentation to the Santa Cruz County Board of Supervisors.
- 19.) **J. Barnes, City of Salinas:**  
Director Barnes wanted to include all comments by public and board membership in a letter to the Sanctuary. She felt that the Sanctuary should have all the information.
- 20.) **D. Pendergrass, City of Sand City:**  
Director Pendergrass agreed that it was important for AMBAG to comment on the draft plan and EIR.
- 21.) **S. Aguilar, City of Scotts Valley:**  
Director Aguilar commented that the only way to challenge an EIR was to have the comments stated.

22.) S. Miller, City of Pacific Grove:

Director Miller stated that he would not vote to approve all the recommendation that the City of Monterey has brought forward.

Thank you for your attention to these comments.

Sincerely,



Nicolas Papadakis  
Executive Director



**Alliance of Communities for Sustainable Fisheries**  
**256 Figueroa Street #1, Monterey, CA 93940**  
**(831) 373-5238**  
**[www.alliancefisheries.co](http://www.alliancefisheries.co)**

Mr. Dan Wolford, Chair  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

August 25, 2011

Chair Wolford and Council members,

The Alliance of Communities for Sustainable Fisheries ("Alliance") is a 501c-3 organization representing fishing families from Port San Luis to Pillar Point Harbors in Central California. Founded in 2001, the ACSF mission statement is "Connecting Fishermen with their Communities". The Alliance Board of Directors is comprised of the leaders of commercial fishing associations from each harbor community area, plus port/community and recreational fishing representatives. A purpose in founding the Alliance was to represent regional fishermen in the California Marine Life Protection Act and the Monterey Bay National Marine Sanctuary (MBNMS) Plan Review processes. The MBNMS's "Enhanced Ecosystem-based Management Initiative" ("Initiative") is an extension of the Sanctuary's Management Plan Review. The Alliance appreciates the opportunity to summarize the central coast fishing community's relationship with the MBNMS and to make comments on the Initiative.

As the Sanctuary is proposing no specific action in this Initiative, nor does it provide any criteria or metrics by which actions are developed, it is hard to know what level of support, concern, or even involvement the public should have with the Initiative. The fact the Initiative contains no criteria, other than that the "best available science" will be used, also undermines the transparency of the process. How can it be transparent when the public has no idea how decisions will be made? An example of this is the MBNMS objective to "Ensure protection of unique and rare features in the sanctuary". How will the need for protection be determined?

The Council should be aware that there is an important social contract within the meaning of an ecosystem-based approach to management that the MBNMS must honor. This is the agreement made with the region's fishermen that the Sanctuary would not create fishing regulations or otherwise threaten their livelihoods. This agreement was made in exchange for fishermen's support for the creation of the Sanctuary. This is well documented in the attached letters from Representative's Sam Farr and Ana Eshoo, as well as in former PFMC member Dave Danbom's affidavit, also attached. This is not just a historical artifact; rather current public opinion shows that by a wide margin both elected officials and the public believe that the Sanctuary must respect this agreement. A copy of the letter from the regional Association of Monterey Bay Area Governments is attached. Also, please find attached a section of a recent public opinion poll showing the public's view that the Sanctuary must work to obtain agreement from the fishing community before it proposes regulations that affect fisheries. One question that emerges from the Initiative is whether the MBNMS will claim that if it uses National Marine Sanctuaries Act (NMSA) authority to close zones to fishing in the name of scientific research or to protect areas for their intrinsic value, that this will not violate the agreement. The Alliance hopes this is not the case, we do not think that it would pass the straight face test. It would be helpful if the MBNMS could provide clarification on this point to the Council and public.

For the Council's information, there is also an important legal foundation for this agreement made with the fishing community. The Designation Document for the MBNMS purposely does not list fishing as an activity subject to current or future regulation. Because of this, the MBNMS has no legal ability to utilize authority found in the NMSA to create a fishing regulation, including

for the purposes of creating a Marine Protected Area. To ever do so, the Designation Document would have to be changed, which is unlikely as there would be significant community opposition. Alternately, the MBNMS could ask the PFMC to create a fishing regulation under the authority of the Magnuson-Stevens Act. However, if this is done without fishing community support, it will be viewed by the community as a breach of the MBNMS agreement with fishermen. It is important that the MBNMS be seen as constructively engaged with the fishing community, and not as an agency which breaks its word.

A legal review of the authorities of the National Marine Sanctuary Act, the MBNMS Designation Document and Regulations, and the Magnuson-Stevens Act, is attached. This review was provided by the Alliance attorney, James P. Walsh.

The Initiative is unclear as to whether the Sanctuary intends to play a regulatory role. Some language in Sanctuary documents infers that it will; in other places it infers that its role will be to provide information to others. It would be helpful if the MBNMS could clarify its role to the Council.

The MBNMS states that it is "building on" its past effort to create Marine Protected Areas within its federal waters. One view put forward by the MBNMS is that it has the legal obligation from the NMSA to create wilderness-type areas within the sanctuary for their intrinsic value. In fact, the NMSA creates no such obligation, or authority. Further, similar to this new Initiative, the MPA effort contained no criteria to define how much protection is "enough". For the Council's review, Dr. Ray Hilborn prepared an analysis of the MBNMS MPA effort for the SSC, which is attached. The Alliance also notes that the four "Objectives" provided in the Initiative are similar to those found in the failed federal waters MPA effort.

We are encouraged that the MBNMS is interested in the Integrated Ecosystem Assessment, (IEA) for questions regarding the overall health of the eco-system. We believe, however, that there is much work to do in improving modeling design and including sufficient data before conclusions can be made. For example, the model now stops at Pt. Conception and excludes the Southern California Bight, which sharply limits information on numerous coastal pelagic species such as sardine, mackerel and market squid (southern CA represents about 80 percent of the squid resource and fishery.)

A review of the early model indicates that it may be useful to predict trends for sedentary sea life, but will have great difficulty making predictions for moderate to highly pelagic species. This presents a problem, as the California Current ecosystem is dominated by highly migratory and coastal pelagic species. Further confounding the complexities of this is the desire of the sanctuary to create an assessment within the IEA of the MBNMS area. Considering that the dominant organisms of the California Current eco-system are highly mobile, we wonder how the health of the Monterey Bay Region can be analyzed separate from the eco-system as a whole.

The ACSF has provided several scientific reports and independent public opinion polls to the Monterey Sanctuary and the PFMC. We have not discerned how the Sanctuary will use these documents, if at all. Several of them are directly relevant to this Initiative process. A listing of the relevant reports is attached. Several of these, and the public opinion polls, have been judged useful by the PFMC and its advisory bodies in management issues that arise regarding the MBNMS. A copy of the titles of these reports and polls is attached. In the event that the MBNMS proposes actions which entail Council review, the Alliance requests that the SSC and other advisory bodies fully utilize these reports.

Regarding the MBNMS objective to "facilitate research within the sanctuary as to human caused effects on the ecosystem", there also exists a lack of clarity and criteria. For example, the MBNMS uses the term "sentinel sites" repeatedly, but this is not defined. The Alliance commissioned two reports by former SSC member Tom Jagielo to evaluate the existing research opportunities found within the many MPA's that exist within the sanctuary. (64% of the

six-thousand square mile MBNMS is already in fishing restricted or banned MPA status.) These opportunities are in reference to six research questions which the sanctuary posed during its Marine Protected Area effort. A copy of the executive summary of these reports is attached for the Council's information. Briefly, the reports conclude that existing state and federal MPA's afford research opportunities that can address all of the questions the MBNMS has posed. However, in some cases cooperation from the agency of authority will be required to allow for the research. The Council and the MBNMS should expect a healthy amount of skepticism towards new MPAs proposed for research purposes.

The Council may recall the proposal by the Channel Islands National Marine Sanctuary (CINMS) and lengthy process that ensued to change the CINMS designation document to manage marine resources in federal waters MPAs of the Sanctuary under the National Marine Sanctuary Act, rather than under the Magnuson Act and Pacific Council. The rationale, in part, was to conduct ecosystem research. NOAA's Admiral Lautenbacher ultimately allowed that the Sanctuary could have limited authority over the water column, until such time as the Council had an ecosystem plan in place. However, to the best of our knowledge, little or no ecosystem research has been conducted by the CINMS in these federal-water MPAs. For the central coast, fishermen will be extremely concerned about losing any more fishing opportunity, in light of substantial ecosystem protections already in place in the Sanctuary, including State waters marine reserves implemented under the Marine Life Protection Act.

Within the MBNMS's research objective, it is possible that the Council may hear a call for an MPA to protect the Monterey Accelerated Research System (MARS) cable and science node. This will be controversial, as the Alliance and the Monterey Bay Aquarium Research Institute already have a written agreement that accommodates mutual concerns. Further, no additional site-specific MPAs should be considered until NOAA advances its marine spatial planning process.

It would be helpful if the MBNMS would clarify to the Council and public what process to develop socio-economic information for the region will be used. There needs to be stakeholder participation and a high level of acceptance of this information.

In summary, the Council should know that the fishing people of the central coast want to work collaboratively with the Sanctuary. We have been involved with this Initiative process at every stage and will continue to participate. However, there is a frustrating lack of transparency when we don't even know what criteria and metrics will be used to evaluate objectives. The Council can help, at least as it applies to Council managed species. We have also not heard any commitment from the MBNMS that the agreement not to regulate fishermen will be honored. Any Sanctuary proposals must be developed with our cooperation and support.

Sincerely,



Kathy Fosmark  
Co-Chair  
attachments



Frank Emerson  
Co-Chair

#### Supporting Associations & Organizations

Ventura County Commercial Fishermen's Association  
Port San Luis Commercial Fishermen's Association  
Morro Bay Commercial Fishermen's Association  
Monterey Commercial Fishermen's Association  
Fishermen's Association of Moss Landing  
Fishermen's Marketing Association



Santa Cruz Commercial Fishermen's Marketing Association  
Half Moon Bay Fishermen's Marketing Association  
Western Fishboat Owners Association  
West Coast Seafood Processors Association  
Federation of Independent Seafood Harvesters  
Golden Gate Fishermen's Association  
California Fisheries Coalition  
California Wetfish Producers Association  
Recreational Fishing Alliance  
Carmel River Steelhead Association  
Port San Luis Harbor District  
City of Morro Bay Harbor  
City of Monterey Harbor  
Moss Landing Harbor District  
Santa Cruz Port District  
Pillar Pt. Harbor, San Mateo County Harbor District

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Anna G. Eshoo  
14th District, California

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0514

COMMITTEE ON COMMERCE  
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DEMOCRATIC ADVISORY GROUP  
ON HIGH TECHNOLOGY

March 16, 2001

Mr. Daniel J. Basta, Director  
National Marine Sanctuary System  
1305 East-West Highway  
Room 11523  
Silver Spring, Maryland 20910

Dear Mr. Basta,

As I'm sure you're aware, the Monterey National Marine Sanctuary will soon be undergoing its mandated review process. As this review proceeds, I encourage you to ensure that all stakeholders in the Sanctuary have a voice in the review, as the original intentions of the creation of the Sanctuary in 1991 call for.

The National Marine Sanctuary Program was created to protect against damage from offshore drilling, mining, dumping and dredging, as well as from point- and non-point-source pollution. Beside providing an ecologically diverse haven for many significant concentrations of living resources, the waters also support a number of socially beneficial human activities. Both resources and users were to derive benefits from the creation of the Monterey National Marine Sanctuary.

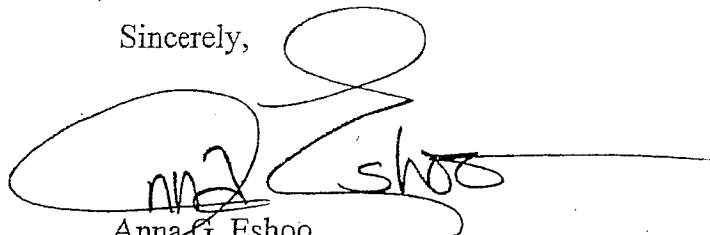
The Sanctuary Program was, in part, an attempt to preserve existing commercial fishing activities. Were it not for the input and support of local fishermen, the NMS would never have been born. Fishermen need to be included in the review process in more than just an advisory role. Commercial fishermen supported the creation of the Monterey NMS in large part because it promised to have a beneficial effect on maintaining healthy and productive fish stocks.

The review process must take into account the socioeconomic impact of management decisions. The Sanctuaries are supported, are upheld, and impact - in a very real way - local fishermen, harbors, and our communities.

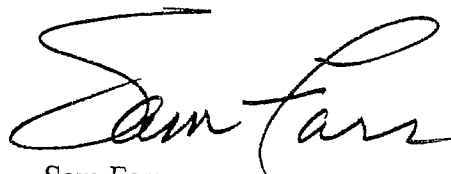
The review of the Monterey National Marine Sanctuary must be a legitimate and measured process. It needs to have the input and support of all participants in the Sanctuary. This is a long and important procedure, and it would be a tragedy if we were to miss a step or turn a deaf ear to

a knowledgeable voice. The outcome of the review process needs to be acceptable to all stakeholders in the Sanctuary Program.

Sincerely,



Anna G. Eshoo  
Member of Congress



Sam Farr  
Member of Congress

cc: Scott B. Gudes, Acting Under Secretary of Commerce for Oceans and Atmosphere



## **Statement of Dave Danbom on the potential for the Monterey Bay National Marine Sanctuary to regulate fishing**

Dave Danbom is a retired Monterey Bay fisherman who led local fishermen in their original negotiations with NOAA representatives during the establishment of the MBNMS. His statement summarizes the perceptions, attitudes, and beliefs about the potential for MPAs in the Sanctuary:

Concerns from the fishing industry about a Federal program that would call the Central Coast a “Sanctuary”, leading to possible new regulations of fishing by this agency, mobilized fishermen to work against and defeat Sanctuary designation in the mid 1980’s. Then a proposal for a Monterey Sanctuary surfaced again in the early 90’s. At this time, as a leader in local and state fisheries, and a member of the Pacific Fishery Management Council (holding the obligatory seat for the State of California) I was asked by our Congressional Representative to assist him in bringing the commercial and recreational fishermen together in support of the proposed Sanctuary. Early on, fishermen were clearly promised that the new Sanctuary would not regulate fishermen or fishing activities. If the Sanctuary had any concerns, they would work with us for a mutually acceptable solution. This promise was made both by elected officials, and also NOAA representatives. It was unequivocal: we wouldn’t have to worry about this new agency. We would get benefits, like the ban on oil development, a water quality program, and enhanced and collaborative research with us for better knowledge on fish populations. These are all things fishermen value. Fishermen had had a positive working relationship with Gulf of the Farallones National Marine Sanctuary Manager Ed Uber. With the promise in place, we anticipated that we would have that kind of relationship with the new Sanctuary. Now, the reality is frustrating and disappointing. Fishermen perceive the Sanctuary as working to find ways to break this promise, especially over the MPA issue. Fishermen were deeply angered to see the MBNMS go on record as wanting a State MPA network that was even more extreme than what the State wanted, and which had zero support from the fishing community. Because of my deep involvement in bringing the fishing industry, elected officials and NOAA together in reaching the agreement that led to the creation of the MBNMS, I feel personally responsible for any adverse consequences now facing the fishing industry. If this Sanctuary breaks its promise made to fishermen by changing the Designation Document to regulate fishing, I will go to my grave regretting my support of the new Sanctuary, and regret my role in getting other fishermen to go along. (Dave Danbom, personal communication, October 2007)



Davis Wright Tremaine LLP  
SAN FRANCISCO OFFICE  
MEMORANDUM

**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT AND ATTORNEY  
WORK PRODUCT COMMUNICATION**

**TO:** Alliance of Communities for Sustainable Fisheries

**FROM:** Bud Walsh

**DATE:** October 10, 2007

**RE:** Consideration of Marine Protected Areas by the Monterey Bay National Marine Sanctuary: Can Fishing Activity be Regulated by the Sanctuary And, If So, How?

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I. Introduction and Summary

You have asked for legal guidance with respect to activities being undertaken by the Monterey Bay National Marine Sanctuary Program (“Monterey Sanctuary”) to examine the creation of “marine protected areas” within the boundaries of the Sanctuary outside three nautical miles. The activities of the Monterey Sanctuary are governed by the National Marine Sanctuaries Act, 16 U.S.C. § 1431 et seq.

One of the purposes of the National Marine Sanctuaries Act (“NMSA”) is to establish areas to be managed that will improve the conservation, understanding, management, and wise and sustainable use of marine resources and maintain for future generations the habitat and ecological services of the natural assemblage of living resources that inhabit these areas. Any such activities undertaken in a marine sanctuary for these purposes must “complement existing regulatory authorities.” The NMSA also states that all public and private uses are to be facilitated, to the extent compatible with the primary objective of “resource protection,” a term that is not defined.

We understand that the Monterey Sanctuary is considering creating marine protected areas within the borders of the Sanctuary that would restrict and/or limit fishing activity, thereby possibly overriding existing federal fishery management regulations within the affected geographic area. It is stated that the purpose is to “protect” resources within the Sanctuary by limiting extraction activities from fishing. Presumably, the scientific argument is that “protection” of certain resources can only be achieved by completely banning fishing in a particular area.

A “marine protected area” or MPA is not defined in any Federal statute.<sup>1</sup> On May 26, 2000, President Clinton issued Executive Order 13158 on Marine Protected Areas. In that Order, he defined MPAs as follows:

“Marine protected area” means any area of the marine environment that has been reserved by the Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein. [Sec. 2.a]

However, this Executive Order did not create new legal authority or change in any way any existing legal authority with regard to the management of the marine environment. Any effort by the Secretary of Commerce to implement the Order must proceed in a manner consistent with all applicable law, including the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens Act”), which applies to any act of “fishing” in any area subject to a marine sanctuary within the U.S. 200-mile exclusive economic zone (“EEZ”), and the NMSA, 16 U.S.C. § 1434(5) (fishing regulation within marine sanctuaries).

Fishing, under the Magnuson-Stevens Act, is defined as—

- (A) the catching, taking, or harvesting of fish;
- (B) the attempted catching, taking, or harvesting of fish;
- (C) any other activity which can be reasonably be expected to result in the catching, taking, or harvesting of fish; or
- (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

It is my conclusion that the Monterey Sanctuary does not have legal authority to consider any MPA that would regulate fishing, directly or indirectly, as that term is defined in the Magnuson-Stevens Act.

The primary reason is that its Designation Document does not authorize that Sanctuary to regulate fishing activity, except for “aquaculture and kelp harvesting within the Sanctuary.” Lacking such authority, it is questionable that it may expend federal funds that would primarily be aimed at regulating fishing activity or ask the Secretary to issue regulations that would regulate fishing activity. Of course, the Sanctuary may go forward with an MPA that would restrict any other ocean activity for which it does have clear authority to regulate. Until the Sanctuary is given authority to regulate fishing in the manner prescribed in the NMSA, it has no authority to restrict fishing, including by creating an MPA that would do just that.

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<sup>1</sup> In fact, the only reference in Federal statutes to “marine protected areas” is found in the Coral Reef Conservation Act, 16 U.S.C. §§ 6402, 6409, but the term is not defined.



## II. What if the Monterey Sanctuary's Designation Document is amended?

If the Monterey Sanctuary's Designation Document is amended, to include the regulation of fishing, the question becomes how to interpret the competing provisions in the NMSA and the Magnuson-Stevens Act with respect to creation of an MPA that would restrict or prohibit fishing. As a general rule, each provision in each statute that is administered by the Secretary of Commerce must be given effect. *Traynor v. Turnage*, 485 U.S. 535, 548 (1988). The NMSA and the Magnuson-Stevens Act create concomitant duties and obligations for the Secretary of Commerce<sup>2</sup> to regulate fishing within a marine sanctuary. A proposed MPA that would restrict or prohibit fishing would fall within the definition of "fishing" used in the two Acts. Therefore, both statutes, to the extent possible, must be given effect.

First, the NMSA is written in a broad general fashion and does not focus simply on the fishing aspects of a marine sanctuary. And Congress authorized the Secretary of Commerce in that Act to adopt fishing regulations in a sanctuary if they "complement" existing fishery management regulations and are compatible with the primary objective of resource protection. The relevant fishing regulation portion of that Act reads as follows:

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

The meaning of this provision has never been the subject of judicial review and may be susceptible to varying interpretations. Several questions arise in considering the meaning of this provision: (1) Did Congress intend only to apply the national standards of the Magnuson-Stevens Act to sanctuary fishing regulations? (2) Does this provision only apply to the original "proposed" designation of a marine sanctuary and not to any later amendments to the

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<sup>2</sup> The duties of the Secretary for both statutes have been delegated to the Administrator of NOAA. Thus, "Secretary" means the NOAA Administrator.

Designation Document? (3) Is the Secretary bound by the entire Magnuson-Stevens Act when taking action, in lieu of the Council acting, to implement fishing regulations in a sanctuary given the general nature of the NMSA and the duty to “complement” existing fishing regulations? (4) What is the meaning of the language requiring uses to be “compatible” with the primary objective of “resource protection?” The uncertainty of the answers to these questions is a qualifying factor with regard to the views expressed in this memorandum.

Second, Congress recently amended the Magnuson-Stevens Act to authorize the Regional Fishery Management Councils and the Secretary of Commerce to “designate zones where, and periods when, fishing may be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessel or with specified types and quantities of fishing gear.” 16 U.S.C. § 1853(b)(2)(A). The specificity of this provision leads to the conclusion that its terms, rather than any other more general regulatory authority governing fishing (directly or indirectly), or MPAs that restrict or prohibit fishing, would control the manner of regulating fishing in an MPA, such as the general authorities under the NMSA.<sup>3</sup> Congress expressed no intent, direct or indirect, that either law was to preempt or override the other. Both laws must be given effect, if at all possible. Thus, the MPA standards in the amended Magnuson-Stevens Act can be met by the Secretary in issuing any sanctuary fishing regulations by simply using the conditions specified in the relevant provisions when developing sanctuary fishing regulations.

Third, Congress made clear in the amended Magnuson-Stevens Act that, should there be any area in which all fishing is prohibited, any such closure of fishing must comply with the following standards: (1) be based on the best scientific information available; (2) include criteria to assess the conservation benefit of the closure; (3) establish a timetable for review of the closed area’s performance that is consistent with the purposes of the closed area; and (4) be based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to users of the area, overall fishing activity, fishery science, and fishery conservation and management.

Thus, it would be contrary to Congressional intent if the NOAA Marine Sanctuary Program ignored these detailed directives in the Magnuson-Stevens Act and sought to issue a regulation creating an MPA that restricted fishing activity, in whole or in part, directly or indirectly without complying with the stated specific directives in the amended Magnuson-Stevens Act.

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<sup>3</sup> This may be referred to as “back-door regulation.” In California, even though the creation of new MPAs only regulated fishing activity, the Department of Fish and Game claimed the purpose was protecting other natural and cultural resources and, therefore, MPAs were not fishery management regulations. As a consequence, the agency refused to ensure that these MPAs were consistent with existing California fishery management regulations and plans. Federal law does not allow this kind of regulatory slight of hand.

### III. The Sanctuary's Investigation of MPAs

We do not conclude that the Monterey Sanctuary may not investigate the possible benefits of MPAs within the sanctuary boundaries. However, such investigation must be a neutral undertaking, based on available science, which does not target fishing activity. Nor can the Sanctuary claim, contrary to logic, that protection of the natural and cultural resources of the Sanctuary authorizes the regulation of fishing activity. In statutory interpretation, general authority may not override specific authority. *Santiago Salgado v. Garcia*, 384 F.3d 769, 774 (9<sup>th</sup> Cir. 2004)(it is an elementary tenet of statutory construction that where there is no indication otherwise, a specific statute will control a general one). Any MPA proposal by the Sanctuary must be based on a clearly established scientific need to “provide lasting protection of all or part of the natural and cultural resources therein” and must be limited to regulating those ocean uses within its legal sphere of authority, and no others.

### IV. Conclusion

The Monterey Marine Sanctuary currently has no authority to create an MPA that would restrict or prohibit fishing, except for aquaculture and kelp harvesting. All regulations issued under the Magnuson-Stevens Act as fishing regulations take precedence within the EEZ areas that fall within the boundaries of that Sanctuary.

If the Monterey Sanctuary's Designation Document is amended to include the regulation of fishing generally, then the Sanctuary could create an MPA that restricts or prohibits fishing within its boundaries. However, before any such regulations are adopted, the Secretary of Commerce would, in addition to following the requirements in the NMSA in adopting fishing regulations, have to satisfy the conditions for instituting areas closures set forth in the amended Magnuson-Stevens Act, including basing the MPA restrictions on the best available scientific information, using criteria to assess the conservation benefit of the closure, instituting a timetable for reviewing the performance of the closure, and conducting an assessment of the benefits and impacts of the closure.

## **ALLIANCE REPORTS**

- Nationwide Survey of Public Opinion on the Management of Ocean Resources
- California Residents Responses to Selected Questions in the Nationwide Survey of Public Opinion on the Management of Ocean Resources
- Peer Review of Ecotrust Methodology in Developing Socioeconomic Information in the Marine Life Protection Act Process, South Central Region
- Public Opinion Poll on the Attitudes of Californians Towards Fishermen, Problems Facing Marine Resources, and Marine Protected Areas
- Peer Review of the State of California's Science Guidelines for MPA Networks as Part of the MLPA Process. FINAL
- California Tourism and Fishing Heritage Assessment Part I: Survey of businesses, community leaders, and tourism professional's
- Scientific Analysis of the Need, if any, for Additional Marine Protected Areas in the Monterey Bay National Sanctuary \*
- California Tourism and Fishing Heritage Assessment
- Monterey Bay Area Residents' Opinions on the Management of the Monterey Bay National Marine Sanctuary
- Compendium of Three Reports Regarding the Monterey Bay area Fisheries



**\* Report Transmittal Letter**

**• Report Summary**

**• NMSA & M-S Act Legal Opinion**

**• Guidance on the Scope and Methods That Should be Used in a Socioeconomic analysis of the need for, and potential designation of, Marine Protected Areas in the Monterey Bay National Marine Sanctuary. FINAL**

**• MPAs and Research Needs within the Monterey Bay National Marine Sanctuary. FINAL**

**• Ecosystem-Based Fishery Management in the MBNMS. FINAL**

**• Other State and Federal Regulations and Programs that Contribute to the Conservation of the MBNMS**

**• Ecosystem consequences of MPAs for the Monterey Bay National Marine Sanctuary. FINAL**

**Curriculum Vitae**

# Responsive Management



## **MONTEREY BAY AREA RESIDENTS' OPINIONS ON THE MANAGEMENT OF THE MONTEREY BAY NATIONAL MARINE SANCTUARY**

**Conducted for the Alliance of Communities for Sustainable Fisheries**

**by Responsive Management**

**2009**

## OPINIONS ON THE MANAGEMENT OF THE MONTEREY BAY NATIONAL MARINE SANCTUARY

### MANAGEMENT OPTIONS

- Monterey Bay area residents were asked to choose among two management options for the Monterey Bay Sanctuary, and they are fairly evenly split: 47% chose “sustainable use of ocean resources” and 45% chose “preserving ocean resources.” This was paired with an analogous question about sanctuaries in general, previously reported, in which a greater amount (52%) chose “sustainable use of ocean resources” and a lower amount (34%) chose “preserving ocean resources—in summary, there was more support for preserving ocean resources in the Monterey Bay Sanctuary than in sanctuaries in general.
  
- Four questions in the survey asked about respondents’ trust in Sanctuary managers under four options for making additional fishing regulations. The survey asked respondents if they would have more, the same, or less trust in Sanctuary managers under the four options (the four options were: changed the agreement and made additional fishing regulations; changed the agreement and made additional regulations *with* the support of local fishing groups and organizations; changed the agreement and made additional regulations *without* the support of local fishing groups and organizations; and honored the agreement and did not make any additional fishing regulations).

  - One of the four options has a majority of Monterey Bay area residents saying that they would have *more* trust in Sanctuary managers: changed the agreement and made additional regulations *with* the support of local fishing groups and organizations (51%). No other option has any greater than 24% saying that the option would engender *more* trust in Sanctuary managers.
  - One of the four options has a majority of Monterey Bay area residents saying that they would have *less* trust in Sanctuary managers: changed the agreement and made additional regulations *without* the support of local fishing groups and organizations (67%). Note that a substantial percentage (40%) also say that they would have *less* trust if Sanctuary managers changed the agreement and made additional fishing regulations.

**Consideration of Sanctuary Research Needs with Respect to Existing MPAs  
Situated in the Monterey Bay National Marine Sanctuary**

Prepared for

Alliance of Communities for Sustainable Fisheries  
256 Figueroa #1  
Monterey, California 93940

By

Tom Jagielo, Consulting

September 16, 2010



## **Introduction**

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) is moving forward with a process to propose Marine Protected Areas (MPAs) in the federal waters of the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary). One of the three principal management objectives for moving forward with MPAs as additional marine zones in the federal waters of the sanctuary is: “Designation of research areas to differentiate between natural variation versus human impacts to ecological processes and components” (MBNMS 2008).

The Sanctuary has noted that research studies designed to differentiate between natural variation vs. human impacts to ecological processes and components could employ MPAs as control areas, with minimal extractive activity. The purpose of such studies would be to determine the responses to human influence by comparing changes in key resources in the MPAs to other areas of the Sanctuary (MBNMS 2008).

In a letter to the Sanctuary Advisory Council Members (MBNMS 2008), the Sanctuary provided a list of the types of questions that can be addressed by establishing MPAs for research purposes, which include (but are not limited to): 1) what variability is inherent in the natural ecosystem components and what changes may be the result of human influence, 2) what are the effects of extractive activities on ecosystem components, 3) how would benthic communities change in response to a further reduction in human activity, 4) what are the recovery trajectories in disturbed habitats, 5) where along the continuum of community structure does the protected area fall compared to unprotected or heavily used areas, and 6) what is the functional role of deep-sea biogenic habitats, such as deepwater corals, sponges, and chemosynthetic biological communities in regulating community structure.

The Alliance of Communities for Sustainable Fisheries has asked the question: To what extent do the presently existing MPAs situated in the MBNMS, including State of California MPAs and Pacific Fishery Management Council (PFMC or Council) “fishery-based” MPAs -- such as Essential Fish Habitat (EFH) and Rockfish Conservation Areas (RCAs) already meet some if not all of the stated MBNMS-MPA research needs?

The purpose of this paper is to 1) review the goals and objectives of MPAs presently existing in the MBNMS, 2) compare these goals and objectives with the MPA research needs identified by the MBNMS, and 3) evaluate whether the existing MPAs could, in principle, address the types of research questions identified by the MBNMS.

## **Approach**

For the purposes of this paper, the MPAs presently existing within the MBNMS are considered under two general categories: 1) State of California MPAs -- established under the California Marine Life Protection Act (MLPA) (CDFG 2006, 2007, 2010), and 2) PFMC fishery-based MPAs -- which include areas designated as groundfish EFH Conservation Areas and Rockfish Conservation Areas (RCAs) (PFMC 2008). Information describing the goals and objectives for

both of these types of MPAs was compiled from published sources and summarized in tabular form for cross comparison with the six MBNMS research needs (MBNMS 2008).

## **Results**

### **Evaluation of Existing MPAs and MBNMS Research Needs**

*State of California MPAs.* A substantial body of information regarding the development of MPAs along the Central California coast is available as a consequence of the MLPA process (<http://www.dfg.ca.gov/mlpa>). Under this process, the planning for and implementation of MPAs has been conducted regionally, and in stages over time. Of the twenty-five state MPAs located within the MBNMS, two were developed through the MLPA North Central Coast regional project (Montara SMR and Pillar Point SMCA), and the remaining twenty-three were developed through the MLPA Central Coast regional project (Figure 1; Tables 1a-1d). These twenty-five MPAs collectively comprise 165.61 sq. mi. and span a diverse range of mostly nearshore habitats, although some are inclusive of deepwater environs as well (Jagiello 2010). Commercial fishing for groundfish is prohibited in all of the state MPAs. All groundfish take is prohibited in 19 of the state MPAs (144.2 sq mi) and limited recreational fishing is permitted in six of the state MPAs (21.46 sq. mi.) (CDFG 2007; CDFG 2010) (Table 5).

While the objectives for the North Central and Central coast regions vary (albeit only slightly), the state MPAs in the MBNMS share a common set of six goals established by the MLPA, namely: 1) to protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems, 2) to help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted, 3) to improve recreational, educational, and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity, 4) to protect marine natural heritage, including protection of representative and unique marine life habitats in California waters for their intrinsic value, 5) to ensure that California's MPAs have clearly defined objectives, effective management measures, and adequate enforcement, and are based on sound scientific guidelines and 6) to ensure that the state's MPAs are designed and managed, to the extent possible, as a network.

Considering all six of the state MPA goals, it is evident that goals one through four could apply to MPAs in general, while goals five and six pertain more specifically to particular MPLA objectives. Therefore, for the purposes of this paper, the focus will be on goals one through four. The individual goals and objectives for each one of the twenty-five state MPAs situated in the MBNMS was identified from MLPA documents (MPLA 2005; MPLA 2008) and is summarized in Tables 2 and 3. Examination of Tables 2 and 3 reveals that all twenty-five of the state MPAs situated in the MBNMS are consistent with substantial portions of goals one through four; all of the MPAs have identified at least one of the four goals, and over twenty of the MPAs fall under any given one of the four goals.

Since the state MPAs situated in the MBNMS clearly embody MLPA goals one through four, one way to evaluate whether they could address the six Sanctuary research needs is to consider to what extent each of these four state MPA goals is consistent with respect to each of the six

research needs. A matrix comparing the state MPA goals with the MBNMS research needs is given in Table 4. As noted above, goals five and six are specific to state MPA objectives, and thus are not considered useful to address the MBNMS research needs. A case can be made, however, that each of the state MPA goals one through four is consistent with each of the six MBNMS research needs. The reasoning for this is that each of the first four state MPA goals speaks directly to the ecosystem components identified by the MBNMS targeted for research, namely: 1) the structure, function and integrity of marine ecosystems (goal 1), 2) rebuilding depleted populations (goal 2), 3) biodiversity (goal 3), and 4) representative and unique habitats (goal 4). An MPA-specific comparison with each of the MBNMS research needs is given in Table 5. In Table 5, all twenty-five of the state MPAs (Montara SMR through Cambria SMP) was assigned a “Y” indicating consistency with each of the MBNMS research needs one through five; because of the goals these twenty-five MPAs embody, they could in principal serve as control areas for research studies to address these MBNMS research needs. Only four of the twenty-five state MPAs (Soquel Canyon SMCA, Portuguese Ledge SMCA, Pt. Lobos SMCA, and Big Creek SMR), were deemed consistent with research need six, which pertains specifically to deepwater habitats (Table 5).

*Fishery-Based MPAs.* Essential Fish Habitat Conservation Areas (EFH) and Rockfish Conservation Areas (RCAs), are two types of large-scale, coastwide MPAs established by the PFMC that afford resource and habitat protection for much of the MBNMS (PFMC 2008). Collectively, these MPAs cover a substantial portion of the MBNMS and span a wide variety of both nearshore and deepwater habitats (Figure 2). Parrish (2007) analyzed the spatial coverage of these fishing area closures in the MBNMS. When combined with other closed areas (including state waters closed to groundfish fishing, and federal waters greater than 700 fm) he reported that “no-trawling” areas in the MBNMS (including the Davidson Seamount) totaled 3,479.9 sq mi. and “no bottomfish take” areas totaled 1,023.0 sq mi. (69.7% and 20.5% of the MBNMS, respectively). The specific locations of closed EFH and RCA areas in the MBNMS are posted on <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Groundfish-Closed-Areas>.

On June 12, 2006, the area shoreward of 100 fm off the West Coast States of Washington, Oregon, and California was designated as EFH for Pacific Coast groundfish (NMFS 2006). The objectives of the PFMC and the National Marine Fisheries Service (NMFS) in designating EFH are to 1) describe and identify EFH for the fishery, 2) designate Habitat Areas of Particular Concern (HAPC), 3) minimize to the extent practicable the adverse effects of fishing on EFH, and 4) identify other actions to encourage the conservation and enhancement of EFH (PFMC 2008). Three types of EFH Conservation Area closures are utilized, including areas where 1) no trawling is allowed, 2) no bottom contact of fishing gear is allowed, and 3) no-bottom-contact gear is allowed - within an additional off-bottom buffer. While essentially permanent, EFH designations are scheduled to be reviewed at least every five years (PFMC 2008). When implementing EFH Conservation Areas, the Council noted that establishing research sites, unaffected by fishing, could be used in comparative studies to better understand the effects of fishing on habitat; over time these sites could be compared with sites where fishing is ongoing and such research sites should include a representative sample of habitat types in order to allow comparison of the effects of fishing across these different types (PFMC 2005; PFMC 2008).

Three EFH no trawl areas within the MBNMS span a total of 1,435.0 sq. mi. and include 1) the Monterey Bay/Canyon (831.3 sq. mi.), 2) the Point Sur Deep (84.4 sq. mi.), and 3) a portion of the Big Sur Coast/Port San Luis area (519.3 sq mi. within the MBNMS) (Parrish 2007). In view of the EFH mandate for habitat protection, and the stated intent for these areas to serve as research sites for ecosystem components (PFMC 2005; PFMC 2008), it is reasonable to assign these MPAs a “Y” for being consistent with the MBNMS research goals one through six (Table 5). Also part of the MBNMS, the Davidson Seamount (775.5 sq mi.) is a no-bottom-contact area with an off-bottom buffer. For this analysis, it was assigned a “Y” for being consistent with the MBNMS research needs one, two, five, and six; however, in view of its pristine nature, it would not appear to fit research needs three and four -- which pertain to the recovery of impacted benthic areas (Table 5).

Rockfish Conservation Areas (RCAs) were established along the entire US West Coast by NMFS and the PFMC in 2003 (PFMC 2008). The specific objective of these spatial closures is to rebuild overfished rockfish populations; RCA boundaries are intended to approximate particular depth contours and vary by region depending upon fishing gear types and the particular species targeted for rebuilding locally. Fishing is prohibited for groundfish in RCAs but the closures do not apply to pelagic fisheries for salmon, coastal pelagic species, highly migratory species, or invertebrates taken in traps or pots. These spatial closures can have a seasonal component, have not been declared permanent, and are expected to be lifted when the resources sufficiently recover (Parrish 2007).

Fishing closures designated as RCAs in the MBNMS include 1) a recreational fishing RCA that extends from 30 fathoms (55 m) to 200 miles offshore from June to November and from the shoreline to 200 miles from December to May, 2) a year-round commercial non-trawl gear RCA that extends from 30 to 150 fathoms (55-274 m), and 3) a year-round commercial trawl gear RCA that extends from 100 to 150 fathoms (183-274 m) (Parrish 2007). Considering the mandate for resource protection under which they were established, RCAs could be considered consistent with the research needs of the MBNMS. Although RCAs are intended specifically to rebuild overfished rockfish species, they also offer collateral protection for other benthic marine life and can afford opportunities to study recovering ecosystem components. However, because these spatial closures can have a seasonal component and they are not deemed to be permanent, they were assigned only a conditional “(Y)” for this analysis (Table 5).

Parrish (2007) also pointed out that federal regulations enacted along with the EFH closures, in June 2006, prohibit all trawling between 700 (1280 m) and 3500 fathoms (6400 m) and trawling is also prohibited in state waters. When combined, the no-trawl areas occupy 64% of the area of the MBNMS (69.7% when the Davidson Seamount is included) which leaves trawling allowed in only three areas on the upper and lower slope and one large and two small areas on the inner shelf break and outer shelf (i.e. between State waters and the RCA).

## **Discussion**

The value of MPAs as control areas for anthropogenic-impact research studies is well documented (Allison et al 1998; Guenette et al 1998; Botsford et al 2003; Gerber et al 2003). Most commonly, such studies have focused on the effects of extractive activities (i.e. fishing)



(Guenette et al 1998). Studies of this type typically employ habitat-specific comparative experimental designs and are structured to incorporate bottom depth and benthic habitat diversity as parameters to insure representativeness of the target study area (Smith et al 1993; Guidetti 2002). Thus, in order for MPAs to serve as useful control areas for evaluation of extractive impacts in the MBNMS, it follows that they should 1) contain depth specific habitats representative of the MBNMS, and 2) be paired in experiments with comparable depth specific habitats where the extractive impact under evaluation is not regulated (i.e. areas open to fishing).

Habitat diversity is clearly evident in the state MPAs of the MBNMS, as can be seen by the wide range of nearshore benthic habitats protected (Tables 1a -1d); however, deepwater habitats are relatively less well represented (with noteworthy exceptions: Soquel Canyon SMCA, Portuguese Ledge SMCA, Pt. Lobos SMCA, and Big Creek SMR). Both types of fishery-based MPAs of the MBNMS (EFH and RCAs) span diverse habitats in both nearshore and offshore zones. In protecting groundfish habitats, EFH Conservation Areas afford year-round, ancillary protection to a wide range of marine life, and are essentially permanent closures. Extensive marine life protection is also provided by RCAs, but they are intended to be species specific, and are potentially more variable temporally and spatially – although it is conceivable that creative experimental designs could be put in place now to address research needs regarding the recovery of ecosystem components within these areas in the MBNMS. Work of this type in RCAs could potentially demonstrate the utility of “adaptive management” within the bounds of the MBNMS.

Aside from the “research needs” management objective for MPAs in the MBNMS, another stated objective is “Preservation of unique and rare areas in their natural state for the benefit of future generations” (MBNMS 2008). Recently added to the MBNMS (designated on March 9, 2009), the Davidson Seamount Management Zone (DSMZ) also affords a large area of unique deepwater habitat for research operations in the MBNMS. Lacking a set of defining criteria for the “unique and rare” objective, it is not clear if the Davidson Seamount would qualify, or what kinds of other areas in the MBNMS might be considered for this purpose.

Considering the broad extent to which MBNMS habitats are represented in the currently existing MPAs, it is apparent that ample control areas presently exist for studies to differentiate between natural variation and human impacts to ecological processes and components. With regard to evaluating extractive impacts, because of extensive fishing restrictions (cf. Parrish 2007), it may actually be more challenging to identify representative habitat-specific *experimental sites* for comparative studies where fishing (especially groundfish trawling) is permissible in the MBNMS. Researchers could find it difficult to get authorization for such work in this setting. For example, the very productive and diverse shelf break habitat (i.e. 100-150 fathoms) is closed to all fishing for bottomfishes over the entire MBNMS, and any evaluation of the effects of fishing in this habitat will be impossible until the RCA is opened to fishing.

As control areas for differentiating between natural variation and anthropogenic forcing, MPAs could also conceivably be used to evaluate some types of non-fishing impacts. While some non-fishing impacts can reasonably be controlled for, others cannot, including certain cumulative impacts. Examples of non-fishing cumulative impacts include various kinds of physical disturbance, sedimentation, chemical alteration of the seawater, and many other things; the cumulative and synergistic effects of multiple threats can include the effects of natural stresses

such as storm damage or climate-based environmental shifts (Hanson et al 2003). In recent years, investigators have become increasingly aware of large-scale oceanic processes that can potentially impact the ecosystem components of the California Current Ecosystem; examples include ocean acidification (Hauri et al 1999) and global climate change (NOAA 2009). Such potentially confounding factors can have the effect of “re-defining” what we would call “natural variation” in the context of comparative studies intended to assess human impacts to ecological processes and components.

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## California Wetfish Producers Association

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Mr. Dan Wolford, Chair  
And Members of the Pacific Fishery Management Council  
7700 NE Ambassador Place #200  
Portland OR 97220-1384

RE: Agenda Item C.1.d: MBNMS Proposed Ecosystem-Based Management Initiative

Dear Mr. Wolford and Council members,

The California Wetfish Producers Association (CWPA) represents the majority of coastal pelagic 'wetfish' fishermen and processors in both Monterey and Southern California. Coastal pelagic species comprise 96 percent of the volume and 60 percent of dockside value of all commercial fishery landings in Monterey harbor, and an even higher percentage in Moss Landing. CWPA works closely with the City of Monterey and regional harbor districts to ensure access to and sustainable management of these species, in light of their critical importance to the economic vitality of these fishing communities.

We have followed with interest (and concern) the progress of the Monterey Bay Sanctuary Ecosystem-based Management (EBM) planning process, which began with what appeared to be a unilateral campaign to implement marine protected areas (no-take marine reserves) in federal waters of the Sanctuary, and now "builds on" those efforts in their current EBM Initiative.

We have read both the description of the Sanctuary's Initiative and the February 24, 2011 letter to MBNMS Superintendent Paul Michel from the City of Monterey, and we concur with the issues raised, as well as the comments and recommendations made by the City.

In particular, I reference the comment that the definition of ecosystem-based management proposed by the Sanctuary differs from NOAA's published definition (NOAA 200<sup>th</sup>: What is Ecosystem-based Management?). We concur with the recommendation that the Sanctuary adopt the NOAA definition for consistency. I have included a copy of that definition as an attachment to this letter.

I also call to the Council's attention comments submitted by the City of Monterey and Alliance of Communities for Sustainable Fisheries (ACSF), noting strong community support to perpetuate "the fishermen's promise", the promise made to fishermen during the Sanctuary's creation that the Sanctuary would not create rules affecting fishermen or fishing operations. Sanctuary actions that restrict fisheries currently are not permitted under the Sanctuary's designation document. Moreover, the MBNMS does not have the scientific capability or public processes in place to create regulations affecting fishing. Rather, the National Marine Sanctuaries Act explicitly directs sanctuaries to

provide for “comprehensive and coordinated management among local, state and other federal agencies”. We concur with the City’s recommendation that the Sanctuary coordinate with but defer to the Pacific Fishery Management Council, which does have authority to implement management measures to govern fisheries. And in that regard, I would again call to the Council’s attention the recognition given to the management of California Current fisheries in the 2009 *Science* magazine article “Rebuilding Global Fisheries”, by internationally recognized scientists including Boris Worm and Ray Hilborn. This study reviewed all the large marine ecosystems worldwide and found the California Current fisheries to have the lowest harvest rate: one of only a few areas in the world that met the authors’ conservation objective, or definition of “sustainability”.

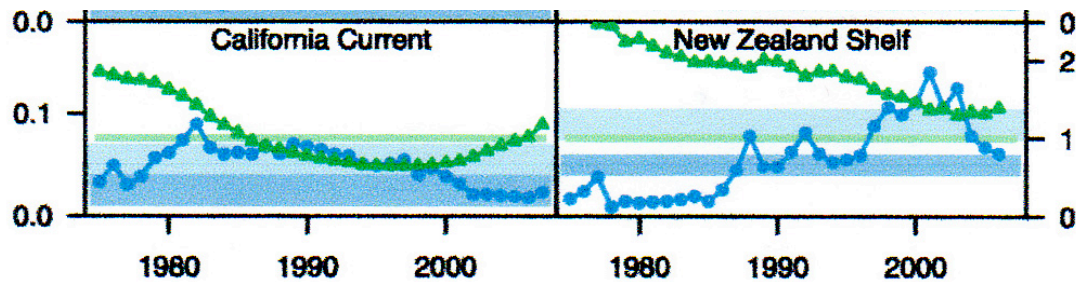


Figure 3. Green triangular line represents biomass trend; blue dotted line represents exploitation rate. Dark blue bar represents the conservation target.

I also point out that the California Current Large Marine Ecosystem encompasses the entire west coast. The Monterey Bay National Marine Sanctuary represents a small sliver of the larger ecosystem, and EBM cannot be effective if only considering Sanctuary waters.

We also question what the Sanctuary means by and intends to do with the four objectives of this initiative, in light of the substantial protections already in place throughout the Sanctuary, including the MPA network implemented in the State Marine Life Protection Act, which protects key nearshore habitats and marine life. Both state and federal marine resource management policies employ an ecosystem focus and best available science. Ecosystem protections include the Rockfish Conservation Area (RCA) and Essential Fish Habitat (EFH) areas designated in federal waters of the Sanctuary. What has been lacking, to date, is acknowledgement and integration of state and federal protections, and we suggest the Monterey Sanctuary can play a valuable role by serving as a catalyst to provide this integration and coordination, rather than adding even more layers of redundant regulation.

We note the comments and questions put forward in the City’s February 2011 letter, as well as the letter from the ACSF, regarding requests for clarification of objectives, definitions of terms, methods of evaluation and decision-making processes. The Sanctuary’s Initiative, at least as posted on the MBNMS website, proposes no specific action per se, but the tenor and vagueness of terms is worrisome in light of earlier attempts to implement MPAs, directly impacting fisheries in violation of the ‘fishermen’s promise’, and without the support and concurrence of the community.

Regarding strategies for Implementation, we note the Sanctuary points to the NOAA Integrated Ecosystem Assessment. We again point out that this document and companion Atlantis model are incomplete. The draft IEA presented to the Council as an example of the type of information generated in the EBM process extends only to Point Conception, and excludes the Southern California Bight, where as much as 80 percent of the market squid harvest is typically produced. In light of the importance of coastal pelagic species to the Monterey Bay area, and particularly market squid and sardines, it is imperative to include southern CA in the model and IEA to gain a more accurate picture of resource status and trends.



In concluding this letter, I recall closing comments from our June 2011 testimony on the Council's Ecosystem Planning process:

The EBM planning process is unfolding at a time when the ocean exhibits amazing productivity! There is no crisis or emerging threat requiring immediate action to prevent ecosystem collapse. To the contrary, in 2010 CA experienced the most productive market squid fishery in a decade. PacOOS reports noted increasing abundance in species favoring cool oceanic conditions, including juvenile rockfish, hake, market squid and krill. Recent grey whale counts reported the highest northern migration on record. Marine mammal populations are trending upward, a clear sign of ecosystem health.

Existing laws under the Magnuson Act provide authority to address future fishery development that might emerge. Fishery management in the CCE is acknowledged as among the most precautionary in the world.

We encourage the Monterey Sanctuary to coordinate with the Pacific Fishery Management Council in its California Current Ecosystem Plan development process, but to defer to the Council and Magnuson Act on matters requiring regulation of fisheries within the Sanctuary.

Thanks very much for considering these comments.

Best regards,

A handwritten signature in black ink, reading "Diane Pleschner-Steele". The signature is fluid and cursive, with the first name "Diane" being more prominent.

Diane Pleschner-Steele  
Executive Director.

Attachment: NOAA 200<sup>th</sup>: What is Ecosystem-based Management? (excerpt)

# What Is Ecosystem-based Management?

An ecosystem is a geographically specified system of organisms (including humans), the environment, and the processes that control its dynamics. Ecosystem approaches to management use integrated approaches to study and manage the resources of an entire ecosystem. This approach considers the cumulative impacts from various sources and the balance of conflicting uses. Using an ecosystem approach to manage aquatic resources, including fisheries, includes multiple factors such as pollution, coastal development, harvest pressure, predator/prey and other ecological interactions, and watershed management.

## NOAA's Approach

NOAA is taking an ecosystem approach to management that is:

- **Adaptive:** Collaboratively developed management strategies are tailored to unique conditions and issues, and strategies are adapted and combined for an integrated approach.
- **Collaborative and voluntary:** Mechanisms are in place to share information and receive feedback from others, and stakeholders are included in decision making within joint strategies.
- **Incremental:** Ecosystem-scale information is improving as techniques and tools are developed in research, observations, forecasting, and management.
- **Regionally directed:** A joint strategy plan with stakeholders is based on NOAA's 10 regional ecosystems to meet desired ecosystem productivity and benefits.
- **Adaptable given ecosystem knowledge and uncertainty:** Our marine resources are complex and dynamic; ecosystem approaches to management recognize that individual resources are better managed by addressing ecosystem components and processes while looking at cumulative impacts.
- **Inclusive of multiple external influences:** Ecosystem approaches to management encourage decisions based on environmental, social, and political factors.

Comments on the proposal for MPAs within the MBNMS.

MBNMS Decision and Rationale Documents of 2/15/08 and 4/15/08.

Ray Hilborn May 2008

When examining any management action I ask first, "What is the objective?" How would we evaluate any specific proposal? The MBNMS proposal begins with the following statement:

"the primary purpose of this action is to protect biodiversity and protect natural habitats, populations, biological communities and ecological processes"

Since the level of protection would be maximized by absolute protection, including protection from non-consumptive recreational use, and there is a clear tradeoff between human use, and level of protection, this objective statement provides no basis for determining how much protection is appropriate. Implicit throughout the report is the assertion that the current levels of protection are not sufficient, but there is no basis for making any decisions on how much is enough.

The report argues that only a small portion of species are protected under MSFCMA, ESA, MMPA and this implies that exploited species that are well managed are not protected. Further this implies that an ecosystem that is being fished under the guidelines of the MSFCMA is not protected, yet the clear intent of MSFCMA is to protect the productivity of species and ecosystems for sustainable utilization. In short, there is a clear implication in this document that protection means no human impact.

I believe it can be argued that the legal frameworks of the MSFCMA, ESA, MMPA, NEPA etc is to specifically protect the marine ecosystems in Federal waters, and to protect them so that sustainable human use is possible. The EFH provisions of MSFCMA are clearly designed for such provisions. The assertion that the existing legislation does not provide for protection seems to be fallacious.

The literature review is highly biased. For instance the Myers and Worm 2003 paper arguing that all the big fish of the ocean had declined by 90% by 1980, has repeatedly been shown to be wrong (Sibert et al 2006). The authors discuss the status of California grey whales, and cite a highly controversial genetics paper suggesting that the stock is not fully rebuilt, while ignoring the extensive work by NOAA and the Scientific Committee of the International Whaling Commission which suggest the stock has returned to its unfished abundance. In short the authors of this report have made no attempt to make a balanced analysis of the evidence on any of the issues but have been highly selective in their choice of literature to discuss. The literature review of MPA's is similarly highly biased, and (among other things) makes no attempt to recognize (1) the historically low exploitation rates on fishes in the system, (2) the fact that bottom contact gear historically covered only a small portion of the total habitat, (3) the recovery of the groundfish

community in recent years to greater than 50% of its unfished abundance and (4) the extensive portion of the MBNMS that is closed to trawling.

The report is highly deficient in not recognizing the extent of existing areas closed to fishing, both from trawl bans, rockfish conservation areas, essential fish habitat and existing closed areas such as the Davidson Seamount. The report makes no attempt to determine if the protection from these activities is sufficient to achieve the objectives of the NMSA.

The document argues that the ecosystem needs further protection, and that the major ecosystem changes have been in the groundfish community. While admitting that some of the overexploited groundfish have begun to recover, the possibility that all of the ecosystem concerns cited are already addressed by the combination of various management agencies is ignored, and the document implies that the ecosystem has gotten worse since the original designation of the MBNMS. The document totally ignores the fact that the groundfish stocks (not including hake) are now at greater than 50% of the estimated unfished biomass and increasing.

The report argues that ONMS does not regulate fishing in the sanctuary and does not consider establishment of MPAs in the MBNMS as tools of fisheries management. This is patently silly. The primary human activity that would be regulated by MPAs is fishing, and any establishment of MPAs modifies the fisheries management regime in the MBNMS. The entire document suggest that the primary ecosystem change that has occurred has been in the groundfish stocks, and that fishing has been the dominant impact on groundfish. It is thus impossible to separate fisheries management from the status of the ecosystem.

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Recommendations adopted August 13, 2008 by the  
Association of Monterey Bay Area Governments to Improve the National Marine Sanctuaries Act

<received 09/14/2011> At meeting

1. Clarify the role and purpose of the Sanctuary Advisory Councils. If these councils are intended to provide community advice to the Sanctuary Program, then the Sanctuaries Act should provide clear direction that council members accurately reflect the makeup of the community, including stakeholders, and that some method of accountability from the council representatives to their constituency groups, whom they are to represent, must be in place. Sanctuary Managers should not be in the position of having full control over not only the types of seats, but also who occupies those seats on the Advisory Councils, if community representation is meant to be accurate.
2. The National Marine Sanctuaries Act should explicitly require the Sanctuary Program to use the best available, peer-reviewed science in its decision making. These would be decisions for both permit conditions and also for potential regulations. The sanctuaries must be tasked with making credible efforts to reconcile any competing or conflicting scientific opinions.
3. Provide direction to the Sanctuary Program that it must work in coordination with state fishery agencies or the regional federal fishery management councils as appropriate. The Sanctuary Program should not be able to override the opinion of these agencies. If the Sanctuary Program has the ability to override the opinions of fishery management agencies, then it will demonstrate a considerable irony in implementing true ecosystem-based management if the concerns and effects of the proposed fishing rule is not agreed to by those agencies that have that direct responsibility. This should include the creation of any zones that affect fishing operations.
4. Clarify that the 1972 Marine Protection, Research, and Sanctuaries Act did not envision Sanctuaries to be regulatory agencies in regard to dredging and dredge material disposal, relative to harbors that may be in or adjacent to a Sanctuary. Rather the Act, in Titles I and II, specifically gave to the EPA and the Army Corps of Engineers that primary responsibility. The reauthorization of the current version of this law, the National Marine Sanctuaries Act, should clarify that existing federal, state and local authorities shall be the agencies to evaluate dredging and dredged material disposal projects, and issue permit conditions as warranted. The local Sanctuary will continue to have the ability to comment to those agencies but will have no ability to supercede their decisions.
5. Generally, the Act should clarify the role of the National Marine Sanctuary Program as being one of primarily research, education, and cooperative work with existing authorities and agencies, utilizing the existing authorities, rather than attempting to be primarily a new regulatory agency. These roles of the Sanctuary Program should be stressed in the Act.
6. Add "economic" quality to "Finding (2)." This finding acknowledges that certain areas of the marine environment possess conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or esthetic qualities which give them special national, and in some cases, international, significance. The addition of "economic" to the list of qualities will acknowledge that these areas may have significant economic value as well.
7. The use of the word "natural" in the Act's purposes and policies (#3) is highly problematic, as there is no scientific agreement on the definition of this term.
8. "Resource Protection" for the purposes of the Act should be defined in terms of management for long term sustainability except for physical features or assets of the Sanctuary which are identified in the Sanctuary's designation document which may require increased limits or even a ban on any human use. The cultural resources of coastal communities that are dependent on sustainable ocean use should be among the resources protected by the Sanctuary Program.
9. Strengthen the public process required to change a Sanctuary designation document. Concurrence for any language or boundary changes, or new authorities, should be required from both the member(s) of Congress representing the District(s) that adjoin the Sanctuary, as well as concurrence from whatever regional association of governments served as the lead local agency for Sanctuary Designation.