

MONTEREY BAY NATIONAL MARINE SANCTUARY
ADVISORY COUNCIL

FINAL

Meeting Minutes

April 2, 1999

Doubletree Hotel

Monterey

The Monterey Bay National Marine Sanctuary (MBNMS) Advisory Council met on Friday, April 2, 1999 at the Doubletree Hotel in Monterey. Public categories and government agencies were present as indicated:

Agriculture: Richard Nutter

Diving: Ed Cooper/David Clayton

AMBAG: Katherine Beiers

Education: Patricia Clark-Gray

At Large: Ellen Faurot-Daniels

Enforcement: Doug Huckins

At Large: Karin Strasser Kauffman

Fishing: Dave Danbom

At Large: Chet Forrest

Ports & Harbors: Steve Scheiblaue

Business & Industry: Steve Abbott

Recreation: Sally Smith

CA EPA: VACANT

Research: Greg Cailliet

CA Coastal Commission: Tami Grove - ABSENT

Tourism: Ed Brown

CA Resources Agency: Brian Baird

U.S. Coast Guard: LCDR Phyllis Blanton

Conservation: Rachel Saunders/Vicki Nichols

The following non-voting members were present as indicated:

Monterey Bay NMS: William Douros

Gulf of the Farallones NMS and Cordell Bank NMS: Ed Ueber - ABSENT

Channel Islands NMS: Ed Cassano

Elkhorn Slough NERR: Becky Christensen

I. CALL TO ORDER, ROLL CALL, APPROVAL OF
FEBRUARY 5, 1999 DRAFT MEETING MINUTES

A) Call to Order and Roll Call

The meeting was called to order by Rachel Saunders, Vice Chair, at 9:05 a.m. Lisa de Marignac conducted the roll call - a quorum was present.

B) Approval of Previous Meeting Minutes

The minutes from the February 5, 1999 Advisory Council meeting were approved with modifications.

II. FAREWELL TO OUTGOING MEMBERS, SWEARING-IN OF NEW MEMBERS, ELECTION FOR NEW VICE CHAIR

The Vice Chair announced that two Advisory Council members - Dorris Welch and Ken Lundie - will no longer serve on the Council. Dorris Welch, Education representative, has served on the Council for five years. Ken Lundie, Diving Representative, served on the Council for one year. The Vice Chair presented Dorris with a plaque, who expressed that she has learned a lot while serving on the Council and will miss attending the meetings regularly. Council members thanked Dorris for her dedication while serving on the Council. Ken Lundie was unable to attend the meeting. Rachel Saunders, who has served as the Conservation representative for five years, resigned from her seat due to a career change. However, Rachel has been appointed as the alternate Education representative and thus will continue to serve on the Council. Rachel expressed her pleasure in serving on the Council for the past five years as the Conservation representative, and her eagerness to serve in the future in an education role. Council members commended Rachel for her dedication to the Council and her hard work in helping develop its strategic plan and its charter and protocols.

Marc Del Piero announced that his term on the State Water Resources Control Board expired on April 1, 1999, and that at this time, he has not been reappointed. Because Marc filled a government seat on the Advisory Council for CA EPA, he is not currently serving as an Advisory Council member.

Bill Douros presented Karin Strasser Kauffman with an award from the Marine Sanctuaries Division (MSD) for her service as Chair of the Advisory Council from 1994-1998. Stephanie Thornton, MSD Chief, presented the award to Karin in October 1998, but it had been damaged in transit from Washington, D.C. to California.

Bill announced the appointment of new Advisory Council members to fill three vacancies: Conservation - Vicki Nichols (primary) and Ron Massengill (alternate); Diving - David Clayton (primary) and Ed Cooper (alternate); Education - Patricia Clark-Gray (primary) and Rachel Saunders (alternate). All but two previously served on the Council in different seats. David Clayton and Ron Massengill, new to the Advisory Council, were officially sworn-in by Bill Douros.

Because Rachel Saunders, Vice Chair, is no longer serving as a primary representative, Bill Douros opened the floor for nominations for Vice Chair. Karin Strasser Kauffman nominated Steve Abbott, and the Council unanimously elected Steve Abbott as their new Vice Chair. Steve Abbott chaired the remainder of the meeting.

III. NEW MEMBER INTRODUCTIONS

Ron Massengill, alternate Conservation representative, thanked the Sanctuary office for selecting him as an alternate Advisory Council member, and provided a brief overview of his background. Ron has lived on the central California coast for 23 years. He has a background as a field biologist and worked for ten years in enforcement and resource protection for the Channel Islands National Park. Currently, he is retired and is eager to actively work with the Sanctuary in his new conservation role.

David Clayton, Diving representative, thanked Bill Douros and headquarters staff for selecting him as the Diving representative, and also provided a brief overview of his background. David was certified as a diver by NASDS in 1967, as a head instructor of the Aqua Tutus Diving Club in 1975, and as a PADI Open Water Instructor in 1976. He served as the executive vice president and president of the Central California

Council of Diving Clubs in 1976 and 1977, and served continuously as chairman of the Conference of California Councils from 1976 to 1998. David explained that he is committed to being open-minded and will listen to the public before making decisions.

IV. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Geoff Wheat, RAP member, announced that he is requesting political support for a proposal to establish a west coast observatory/laboratory. This prototype observatory, Coastal Observatory and Oceanic Laboratory (COOL), would track changes in oceanic and ecological conditions along the coastline of the Sanctuary, to better understand the cause of these changes, to provide valuable data for the protection and stewardship of the Sanctuary, and to mitigate the financial and emotional destruction that may result from changing oceanic and ecological conditions. Greg Cailliet will keep the Advisory Council informed about the progress of the COOL proposal.

Marc Del Piero, former member of the State Water Resources Control Board (SWRCB), advised the Council of several issues on the horizon: the discovery of significant amounts of the highly carcinogenic substance, MTBE, as a result of the Guadalupe Oil Spill, which may be leaching into the surf area just south of the MBNMS boundary; the development of an Environmental Impact Statement (EIS) for a drain in San Luis Obispo County that would discharge into the ocean; there will be \$1 billion funding from gasoline taxes for underground storage tanks; and the SWRCB has rejected an appeal by the Morgan Hill discharge proponents, however, Marc warned that there will continue to be requests for discharges in the Pajaro River and that his replacement on the SWRCB will probably not represent the Pajaro River area.

V. UPDATE: FY2000 BUDGET

Bill Douros reviewed the budget for fiscal year (FY) 1999 (see 2/5/99 minutes for details) as well as President Clinton's proposal to fund the National Marine Sanctuary Program at \$29 million for FY2000 under his Lands Legacy Initiative. While the outlook that Congress will pass the Lands Legacy Initiative does not look promising, there are indications that President's budget proposal for the sanctuaries has a good chance of being approved by Congress. Rachel Saunders and Chet Forrest have asked Bill how they can help, and he has provided them written information on how to support or oppose the President's proposal.

Karin Strasser Kauffman made a motion requesting that Bill Douros keep the Council informed on the budget process and important dates for FY2000. Ed Brown seconded and the motion passed unanimously.

Discussion ensued regarding writing letters to Congress in support of Clinton's budget proposal.

David Clayton made a motion that the Council write a letter to the appropriate official supporting the \$29 million budget proposal by President Clinton. Karin Strasser Kauffman seconded and the motion passed unanimously.

Chet Forrest is the lead contact on this motion

VI. PRESENTATION & DISCUSSION: FISHERIES ISSUES & REAUTHORIZATION

Bill Douros gave a presentation on the MBNMS authority to regulate fishing, first

providing a background on the current the regulation of fisheries. The National Marine Sanctuaries Act (NMSA) gives the National Marine Sanctuary Program (NMSP) regulatory authority for resource protection, which includes the authority to establish marine zones and reserves. United States fisheries are regulated under the Magnuson-Stevens Fishery Conservation and Management Act. Under this Act, management plans are drafted by the Regional Fishery Management Councils, and regulations are implemented by the NOAA's National Marine Fisheries Service (NMFS).

Each National Marine Sanctuary has a Management Plan which provides for long-term purposes and planning. Some sanctuaries' management plans protect historical resources or individual species, while others, such as MBNMS, protect entire ecosystems. These management plans establish regulations for each sanctuary, and some sanctuaries restrict fishing activities, usually in the form of gear restrictions. Those sanctuaries that restrict fishing activities are the Monitor NMS, Flower Garden Banks NMS, Florida Keys NMS, Gray's Reef NMS, and Fagatele Bay NMS. The authority to regulate fishing must be established in the management plan.

Bill overviewed the process to establish a National Marine Sanctuary:

1. Notice of Intent to prepare an EIS - includes solicitation of written comments and public scoping meetings
2. Draft EIS - includes the draft management plan, solicitation of written comments, and public hearings
3. Final EIS - contains the final management plan
4. Designation - includes the Federal Register Final Rule and Preamble: Designation Document, Management Plan summary, Sanctuary regulations, and response to comments

According to the NMSA, when a Sanctuary is proposed for designation, the Secretary of Commerce is to provide the appropriate Regional Fishery Management Council with an opportunity to prepare draft regulations for fishing within the Sanctuary, as the Council may deem necessary, to implement the proposed Sanctuary designation. Draft regulations prepared by the Council, or a Council's determination that regulations are not necessary, shall be accepted and issued as proposed regulations by the Secretary, with the following exception: If the Secretary finds that the Council's action fails to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation, the Secretary may put forward the needed regulations.

For the MBNMS, instituting fishing regulations under the NMSA would require amending the MBNMS Management Plan and Designation Document. This process would be identical to the Sanctuary's designation process, above. Concurrent with, or after amending the Management Plan/Designation Document, the Sanctuary would then draft specific regulations, reviewed by the public, explaining what fishing activities or areas are being regulated. Regarding state waters, the Sanctuary must consult with the appropriate state agency in drafting any Sanctuary fishing regulations, and the Governor's consent must be sought for revisions to the Sanctuary's Management Plan/Designation Document for state waters or fisheries regulated by the state (except aquaculture and kelp harvesting in MBNMS).

The existing MBNMS Management Plan/Designation Document reflects the fact that most fishing issues are not within the direct regulatory authority of the MBNMS. Nonetheless, the MBNMS Management Plan does discuss the effect and influence the Sanctuary can achieve on these issues through its habitat protection, research and education authorities and programs. The MBNMS Research Program is directed to

conduct research on "fisheries management issues" and "fishery stock assessments", and has helped fund fishery-related studies. The Sanctuary also helps resolve conflicts on fishery issues, such as kelp harvesting and pinniped-salmon interactions.

Bill cited several statistics from Fishery Resources of the "Monterey Bay National Marine Sanctuary" by Starr et al (1998) which placed an economic value on the fishing industry as well as other ocean-dependent industries. Bill then explained how marine zoning may be used as a resource management tool, reviewed existing marine reserves within MBNMS, listed purposes for establishing marine reserves, and discussed advantages that Sanctuaries offer regarding the establishment of marine reserves.

Bill wrapped up his presentation by explaining that the upcoming reauthorization of the NMSA will not affect the MBNMS authority to adopt marine reserves. MBNMS will participate in the Channel Islands NMS (CINMS) evaluation of marine reserves as part of their management plan review. Bill introduced Ed Cassano, CINMS manager, who gave a presentation on CINMS and the state of California's current process to consider marine reserves in CINMS.

The CINMS marine reserve process is a broad-based, community approach based on the best available biological and socio-economic information, and will involve three phases: Phase 1 - information gathering, data synthesis and criteria development; Phase 2 - applying criteria and developing reserve proposal; Phase 3 - decision making. Phase 1 and 2 will heavily involve CINMS' newly established Advisory Council and working groups. Ed reviewed the seats and representatives on his Advisory Council, whose make-up is similar the MBNMS Advisory Council. The CINMS Council has set up a Marine Reserve Working Group which is chaired by the Advisory Council's Department of Fish and Game representative. Other representatives include NMFS, NPS, Conservation and Fishing. This working group will develop a marine reserve proposal for review by the Advisory Council, who will then provide advice to Ed.

CINMS is in the process of finalizing working group memberships and will convene a joint meeting between the Reserve Working Group and the Reserve Science Group on May 18. In June, CINMS will host a public workshop on reserve goals and objectives.

The agenda topic was opened to discussion and comments by Advisory Council members, followed by public comment.

Advisory Council discussion focused on the position that promises were made to the fishing community by NOAA officials and former US Congressman Leon Panetta during Sanctuary designation that the Sanctuary would not restrict or regulate fishing. Many Council members felt that changing the Sanctuary's regulatory authority over fishing would contradict these commitments which were important in gaining the support for the Sanctuary by the fishing community. Advisory Council members also discussed marine reserves on a national and global scale, and CINMS's process looking at reserves.

Many members of the public supported Advisory Council members comments on the promises made by Leon Panetta and explained that their support of the Sanctuary was based on the belief that the Sanctuary would not restrict fishing. Many others commented that the fishing industry was over regulated and that there was no need for further regulations. Others feared that because fisheries management is so complicated, no-take zones may be an "easy way out." Members of the public also questioned how reauthorization may affect the Sanctuary's authority, and Bill Douros stated that he did not believe any changes were proposed nor had he recommended any

language changes. Many fishermen commented that they are responsible and good stewards of the ocean, because their livelihoods depend on healthy fisheries. Discussion also focused on what the Sanctuary has done for fishermen; and Bill Douros responded by giving a brief overview of the Sanctuary's Water Quality Protection Program, and the work being done on vessel traffic to reduce oil spill risk, as only two examples of work done to date to help the fishing community. He also asked fishermen to give suggestions on ways the Sanctuary could help.

Steve Scheiblauber made a motion that was seconded by Dave Danbom. The motion was amended to read as follows, at the suggestion of Bill Douros, and passed unanimously:

The MBNMS Advisory Council supports the continued management of fisheries by the California Department of Fish and Game, the National Marine Fisheries Service, and the Pacific Fisheries Management Council, as provided for in the designation documents for the MBNMS. Furthermore, we ask that reauthorization of the National Marine Sanctuaries Act not change the prohibition against the MBNMS regulating fishing.

VII. PRESENTATION: CANNERY ROW MARKETPLACE

Patrick Cotter, MBNMS, provided an overview of the Sanctuary's involvement in the proposed Cannery Row Marketplace. The issue relates to the Sanctuary because of potential impacts on Sanctuary resources from desalination plant brine discharges, intake and discharge pipeline construction, and stormwater discharges. The Sanctuary began evaluating the Cannery Row Marketplace project in January 1998 and is continuing to work with state and local agencies to assess this project. Sanctuary concerns regarding the Cannery Row Marketplace Draft Environmental Impact Report (DEIR) are as follows:

- ... DEIR is inadequate and deficient in its discussion about impacts, mitigation measures and analyses of alternatives
- ... An environmentally preferred alternative is not identified
- ... DEIR contains no information on plume and inconsistent salinity concentrations
- ... DEIR contains no information on sensitive biological habitats

As a result of these concerns, the Sanctuary requested a revised DEIR for public review and comment. The San Luis Obispo Regional Water Quality Control Board (RWQCB), the California Coastal Commission, and CDFG have expressed similar concerns in their comment letters. The Sanctuary is now assessing the applicant's responses to Sanctuary and Coastal Commission comments, and the City of Monterey is evaluating the next step in the EIR process.

Discussion and comments ensued among Council members and the public regarding the potential environmental impacts of the project, public access issues, and the need for a second DEIR.

Karin Strasser Kauffman made a motion that the Council send a letter to the City of Monterey, supporting the MBNMS staff letter and requesting a revised DEIR. David Clayton seconded and the motion passed, with seven votes in favor, six opposed, two abstentions.

Karin Strasser Kauffman is the lead contact on this motion.

Karin Strasser Kauffman requested that the MBNMS staff keep the Advisory Council informed on this issue, and that Advisory Council review the issue again at a future meeting.

VIII. PRESENTATION & DISCUSSION: DRAFT SECTION 7 OPINION RE: SEA OTTERS

Bill Douros provided an update on the status of the Southern Sea Otter Translocation Program, explaining that the U.S. Fish and Wildlife Service (USFWS) has just released a draft biological opinion and draft evaluation of the translocation program, recommending that the program be declared a failure. According to Bill, he plans to send a comment letter to USFWS on behalf of the MBNMS. Discussion ensued among Council members regarding whether or not to send a comment letter to USFWS on behalf of the Council. Many Council members expressed concern about the short comment period.

Ellen Faurot-Daniels made a motion that the Advisory Council send a letter to the USFWS requesting an extension of the comment period deadline to the end of April, and include wording about the need to wait for results from the sea otter mortality meetings scheduled for April 8-10. Karin Strasser Kauffman seconded and the motion passed unanimously.

IX. PRESENTATION & DISCUSSION: TIDAL SCOUR IN ELKHORN SLOUGH

Mark Silberstein, Elkhorn Slough Foundation, gave a presentation on the tidal scour problem in Elkhorn Slough. The hydrology of Elkhorn Slough has been modified significantly since the mid 1800's. Different agencies, institutions and individuals have proposed a variety of further modifications as a means to protect various natural resources. Hydrologic modifications that have occurred within the slough include:

- ... Railroad construction in the 1880's that isolated marshes and reduced tidal exchange
- ... Conversion of wetland areas to salt ponds near the mouth of the slough during the late 1800s and early 1900s
- ... Diversion of the Salinas River and diking and draining of wetlands for agricultural purposes between 1900-1940s
- ... Changes in land use in the form of increasing acreage of cultivated row crops, leading to changes in sediment supply
- ... Creation of Moss Landing Harbor in 1946
- ... Restoration of wetlands in 1980s; many dikes were removed or breached increasing the tidal exchange with the slough
- ... Introduction of exotic species during the 1980s.

These changes, along with natural changes in the system, have had an effect on the circulation and sediment budget within Elkhorn Slough. Tangible problems associated with these changes include loss of marsh habitat and an undermining of roads, bridges and railway embankment. Unclear ramifications include changes in productivity of the slough and changing plant and animal communities. Whether or not these changes are "good" or "bad" is unclear.

The Elkhorn Slough National Estuarine Research Reserve (ESNERR) Research Subcommittee has developed an action plan for the tidal scour/wetland loss issue. The following recommendations have been developed by the subcommittee:

1. Re-survey the marsh plain elevation first surveyed in 1980 and incorporate GPS or LIDAR into an ongoing monitoring program. Attempt to tease apart changes wrought by harbor opening and scour, tectonic subsidence, ground water overdraft and other factors that may affect the marshes of the slough.
2. Continue monitoring of channel width at existing stations and initiate multibeam bathymetric mapping including the tidal creeks of Elkhorn Slough as proposed by Dr. Rikk Kvitek.
3. Monitor regional marsh cover with aerial photography using techniques developed by Trish Lowe. Expand this monitoring to the eastern slough.
4. Implement wetland restoration in Moro Cojo Slough as outlined in the Monterey County Plan. Hundreds of acres of wetlands can be restored in Moro Cojo Slough which may help offset incremental losses in Elkhorn Slough.
5. Address scour and marsh erosion affects on the Union Pacific Rail Line through Elkhorn Slough. Weakening of bridge abutments and railroad levees could increase potential for rail car spills. We recommend a meeting with railroad officials to develop a plan for examining this concern.
6. Work with the Moss Landing Harbor and boating interests to diminish boat wake erosion impacts in the slough.

Mark, on behalf of the Elkhorn Slough Foundation, is seeking the Advisory Council's support and assistance in:

- ... Requesting NOAA funding to incorporate items #1-3 into a joint ESNERR/MBNMS ecosystem monitoring effort;
- ... Cooperating with the ESNERR in hosting a meeting, with Union Pacific and CDFG Oil Spill Prevention and Research, to address concerns of train spills in the slough;
- ... Encouraging implementation of the Moro Cojo Slough Wetlands Management and Enhancement Plan adopted by Monterey County;
- ... Requesting assistance from Moss Landing Harbor Commissioners to work with the Advisory Council and Elkhorn Slough RAC on boat wake erosion.

Discussion ensued among Council members regarding mechanisms to support the research subcommittees recommendations.

Greg Cailliet made a motion that the Advisory Council endorse the Elkhorn Slough Foundation's requests for support and assistance (see four bullet items above). Ruth Vreeland seconded and the motion passed unanimously.

Greg Cailliet is the lead contact on this motion.

Discussion ensued among Council members and the public regarding the wetland restoration of the Moro Cojo Slough.

X. REPORT: URBAN WARRIOR EXERCISE

Bill Douros provided a report on the Urban Warrior Exercises held on March 13. On March 11, the California Coastal Commission issued a unanimous vote against the scheduled amphibious landings within the Sanctuary by the U.S. Marine Corps. The Corps replaced the planned amphibious landing with a helicopter landing at the Monterey airport. Sanctuary staff monitored Marine Corps air activity over the Sanctuary and detected no significant environmental disturbance or impacts to otters, harbor seals, sea lions (which were not observed), or whales. The military agreed to fly the helicopters no lower than 1500 feet within the Sanctuary.

XI. UPDATE: PILLAR POINT AQUACULTURE PERMIT APPLICATIONS

Patrick Cotter, MBNMS, provided an update on the Pillar Point Harbor Mariculture projects. Four companies have submitted permits for abalone mariculture projects in Pillar Point Harbor. At this time, Pillar Point Harbor has issued leases, the Oakland RWQCB issued point source discharge permits (NPDES), and the Coastal Commission is reviewing Coastal Development Permits (CDP). A Coastal Commission hearing on the proposed projects is scheduled for May 1999 in Santa Rosa. Sanctuary staff will review the Coastal Commission's staff report.

Sanctuary issues related to these projects include: discharges outside the Sanctuary that may enter and injure resources; sabellid worm parasites may infect wild abalone or snail communities; withering foot disease may spread to wild abalone; adequate monitoring program must be designed to assess environmental impacts - debris buildup below rafts may change benthic community, lower dissolved oxygen concentrations in harbor may affect Sanctuary resources, sabellid worm or withering foot disease infestations; kelp resource use conflicts in Monterey, Santa Cruz and San Mateo kelp beds - full buildout could require more than 1,500 tons of kelp per year to feed the abalone, while present harvest of kelp in Monterey Bay is about 1,300 tons per year for existing abalone mariculture facilities; phased increase in number of abalone.

Dr. David Ebert, US Abalone, addressed the Council regarding this issue. See Council correspondence packet.

XII. ACTION ITEM: SPRING STAFF/SAC RETREAT

Lisa de Marignac proposed June 3 for a Staff/SAC workshop, and possibly dedicating a half day of the June 4 Advisory Council meeting to a follow-up SAC workshop. Advisory Council members agreed to set the retreat dates for June 3 - 4 and suggested pulling in the working groups chairs to help plan the retreat.

XIII. UPDATE: DIVER EDUCATION AND OUTREACH IN THE SANCTUARY

Patrick Cotter provided an update on the Sanctuary diver education and outreach program for diving activities in kelp forests. Representatives of MBNMS and NOAA's Marine Sanctuaries Division met with educators working for national diver certifying agencies and other diving industry representatives at the DEMA annual trade show to discuss this program. Discussion points included: diving industry - a strong supporter of the NMSP and some the best environmental stewards for the Sanctuary program; kelp forest environmental interaction protocols; generic educational video for diving in kelp forests; diver disturbance report.

The Sanctuary is planning a May 1 planning meeting for the kelp forest diving education and outreach program, and a June 13 workshop. The Sanctuary will develop a mailing list for comments and a timeline for the proposed program and will develop a diver information and comment section on the Sanctuary website.

XIV. COUNCIL MEMBER ANNOUNCEMENTS

Steve Abbott announced the Duke Energy Open House at the Moss Landing power plant on April 22.

The meeting adjourned a 4:50 p.m.

Respectfully submitted,

Lisa de Marignac
Advisory Council Coordinator