



The Otter Project

July 17, 2002

Members, Sanctuary Advisory Council  
Ms. Stephanie Harlan  
(c/o Karen F. Grimmer, SAC Coordinator)  
Monterey Bay National Marine Sanctuary  
299 Foam St., Suite D  
Monterey, CA 94618

Dear Ms. Harlan and Sanctuary Advisory Council Members:

I apologize for not being able to personally attend the critical Management Plan meetings of August 1 and 2. I hope you will consider these written comments.

The Sanctuary staff, SAC, and general public should be commended for their hard work scoping and distilling the priority issues for the Joint Management Plan Review. This process will take continued dedication and perseverance, especially by staff and SAC members, as it will be long and sometimes arduous.

In preparing our comments, we revisited the MBNMS EIS, Appendix B, Background and Designation Document for guidance; after all, it is this document that defines what we are protecting and what activities are subject to regulation.

We feel, that in an effort to be inclusive, the July 8<sup>th</sup> document, "National Marine Sanctuary Program Selection of Priority Issues to Address in the Joint Management Plan Review" (Priorities Selection Document) has, at times, become too general, vague, and disconnected from the Designation Document.

The Designation Document for Monterey Bay National Marine Sanctuary lists the activities subject to regulation. The list is amazingly short (10 points), but includes:

"Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, sea turtle, seabird, historical resource or other Sanctuary resource"

Several times in the EIS, reference is made to the importance of marine mammal and birds populations. In fact, the Background (response to comment) specifically addresses the redundancy between the Endangered Species Act, Marine Mammal

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Protection Act, Migratory Bird Protection Act, and Sanctuaries Act (MPRSA) and states that, "While marine mammals, migratory seabirds and endangered species are protected under these acts, NOAA believes that the higher penalties afforded under the MPRSA will provide a stronger deterrent."

We believe that any activity that negatively impacts marine bird or mammal populations can, and should, be regulated, including vessel traffic and fishing. We feel the Designation Document specifically calls for this regulation and, in fact, places the Sanctuary in a leadership position.

Second, the 10-point list of activities subject to regulation includes:

"Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary"

We believe that any activity that alters the seabed can, and should, be regulated including fiber-optic cable laying and certain fishing activities, including trawling. We feel the Designation Document specifically calls for this regulation.

There is tremendous anxiety over any hint of regulation of fisheries. We believe this is clarified in the MBNMS Appendix B, Background (response to comment) that states:

"Existing fishery management agencies are primarily concerned with the regulation and management of fish stocks for a healthy fishery. In contrast, the sanctuary program has a different and broader mandate under the MPRSA to protect all sanctuary resources on an ecosystem wide basis. Thus, while fishery agencies may be concerned about certain fishing efforts and techniques in relation to fish stock abundance and distribution the Sanctuary program is also concerned about the potential incidental impacts of specific fishery technique on all sanctuary resources including benthic habitats or marine mammals as well as the role the target species plays in the health of the ecosystem. In the case of the Monterey Bay area fish resources are already extensively managed by existing authorities."

"Should problems arise in the in the future NOAA would consult with the State, PFMC and NMFS as well as the industry to determine an appropriate course of action."

We feel it is clear that while MBNMS does not have the ability to protect or regulate harvested FISH STOCKS, it has a "broader mandate under the MPRSA to protect all sanctuary resources." In our view, marine birds and mammals and "seabed" (habitat) are *specifically called out* as protected resources.

Especially given the recent offshore rockfish closures, it is difficult to predict future conflicts between extractive users and Sanctuary resources. However, it is safe to

assume, that nearshore uses will increase and there is the potential for greater conflict with marine bird and mammal species.

Our specific comments to the Priorities Selection Document are as follows:

Pg 11, 13A (cross-cutting). Fishing, Habitat Alteration, and Biodiversity Protection *should not* be combined into one issue, "Fisheries Resources". Habitat alteration and biodiversity protection *precede* fisheries. Combining these issues under "Fishery Resources" furthers confuses the mandate of National Marine Sanctuaries to protect habitat and all living marine resources.

At least within Monterey National Marine Sanctuary it seems clear that the Sanctuary does not have the regulatory authority to manage harvested fish stocks. But, the Sanctuary does have the regulatory authority - and responsibility - to manage impacts on marine bird and mammal species, and impacts to the seabed.

Placing Habitat Alteration and Biodiversity Protection *under* Fishery Resources diminishes the importance of the two highest priority mandates of a National Marine Sanctuary.

Marine reserves serve a much greater function than fisheries management. Again, by placing marine reserves *within* the context of fisheries confuses the issue and diminishes the importance of biodiversity protection.

Page 11, 13A (same topic) (cross-cutting). The Priorities Selection Document *itself* should offer the clarification between the NMSP and fisheries. It is very clear, the NMSP has the regulatory authority to manage impacts on marine bird and mammal species, and impacts to the seabed regardless of whether the impact is caused by oil drilling, cable laying, or fishing. It is inappropriate to state, "It was determined that this issue warranted further clarification..." and then not offer that clarification when it is directly addressed in the Sanctuaries Act and the Designation Document.

Page 44, 4C (MBNMS). As stated above, fisheries are constantly moving, displaced, and emerging. It is extremely important, *within the context* of Biodiversity Protection to develop a mechanism or process to look ahead to emerging issues.

Page 46, 6A (MBNMS). While the Sanctuary does not directly regulate harbor dredging, it does have a role in regulating dredge spoil discharge. There is growing evidence that dredge spoils containing DDT, PCB, and butyltins may impact sea otters and possibly other marine mammals and resources. It is critically important that the Sanctuary remain engaged in this critical issue. There should be no exemptions for "out-of-sight-out-of-mind" discharges of contaminated dredge spoils into the Monterey Submarine Canyon. US Army Corps of Engineers and US EPA standards for the disposal of dredged materials should be strictly enforced. There is confusion over the exact location of Moss Landing disposal sites. Dredge spoils meeting COE and EPA standards (fine grained and with low levels of chemical contaminants) should be

disposed of *within* the head of the Monterey Canyon, not in shallow waters influenced by waves and alongshore currents.

Thank you for the opportunity to comment on the National Marine Sanctuary Program Selection of Priority Issues to Address in the Joint Management Plan Review. We remain enthusiastic supporters of the National Marine Sanctuary Program and Monterey Bay National Marine Sanctuary. We look forward to continued involvement and constructive dialogue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Shimek', written over a light blue horizontal line.

Steve Shimek  
Executive Director

Cc: Sam Farr  
Dan Basta  
William Douros