

May 29, 2003

Holly Price, Ph.D.
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, CA 93940

Dear Holly,

We the undersigned members of the Monterey Bay National Marine Sanctuary special MPA Work Group (MPAWG) want to go on record as stating clearly what we will and will not support in the way of Sanctuary endorsed or created "special" MPAs within our Sanctuary, and why. We will also propose a roadmap that outlines the steps it will take to get our support for MPAs. We also want to state up-front that we appreciate the largely constructive tone of the MPAWG.

The Problem

The MPAWG spent its time discussing potential criteria for establishing MPAs within the Sanctuary. Despite much discussion and some good work, what remains missing is a problem statement that justifies Sanctuary action. Sanctuary action could be either advocacy/comment (including the idea of "partnering" with the State Department of Fish and Game, or the Pacific Fisheries Management Council) or the direct use of the regulation/zoning authority found in the National Marine Sanctuary Act. We think this point is a showstopper that will not allow our MPAWG to ever reach full consensus, nor produce a quality product. When weighed against the moral and ethical issues inherent in the promise of a non-regulating Sanctuary originally made to the fishing community, and the language found in our existing Management Plan, we do not see that the Sanctuary has a clear legal basis for establishing or advocating for MPAs, unless significant problems within our fisheries can be shown that were not anticipated in the 1992 Designation documents, and which are not being addressed by authorized fishery management agencies. However, if the MBNMS or the Sanctuary Headquarters folks intend on seeking new authority by changing the designation documents, we would like to be told that.

We must go into some detail on this point. To quote from the existing designation documents:

"No fishing regulations are proposed. Fisheries management will remain under the existing jurisdiction of the State of California, the National Marines Fishery Service, and the Pacific Fisheries Management Council. In the case of the Monterey Bay, area fish resources are already extensively managed by existing authorities. Sanctuary prohibitions that may indirectly affect fishing activities have been written to explicitly exempt traditional fishing activities, mariculture, and kelp harvesting." (Sec I – 24), and,

"The proposed designation should have no negative effects on the fishing industry.

Net effects of preserving habitat and water quality by controlling pollutants and disturbance of the sea bed should be very positive for maintaining healthy and productive fish stocks. No regulations are proposed governing fishing activities." (Sec I - 25), and,

"During consultation, NOAA requested that the PFMC determine if additional fishery regulations were necessary with Sanctuary designation in accordance with section 304(b)(5). PFMC responded that no additional regulations were necessary and that management responsibilities regarding fishing activities should remain with existing authorities." (Sec I - 31), and,

"Fishing in the Sanctuary will be regulated other than under the Sanctuary regulatory regime by Federal and State authorities of competent jurisdiction." ("Fishing regulation" means a regulation that is directed specifically at fishing activities or fishing vessels. This does not include a regulation that is applicable to all types of vessels or activities.)

Under the status quo, (the preferred alternative) fishing would continue without any additional regulation under the Sanctuary regulatory regime. As a result of other Sanctuary regulations aimed at improving water quality and fish habitat, it is expected that the Sanctuary would have a positive impact on fishing activities.

The proposed final Sanctuary regulations include four regulations (if written without the exemption) that could potentially indirectly affect fishing activities. However, each of the four regulations specifically exempts traditional fishing activities from the scope of the prohibitions to the extent consistent with existing other State and Federal regulations."(Sec III - 79), and,

"There are many existing regulations and restrictions on fishing activities in the Monterey Bay area that are designed to protect the long-term health of the fisheries, as well as other resources and qualities of the Monterey Bay area. Therefore, NOAA does not believe it is necessary to promulgate any additional regulations." (Sec III - 80), and,

"In its evaluation of this issue, NOAA considered whether under the present regulatory structure sufficient protection for Sanctuary resources existed. NOAA has determined ...that fishing in the Sanctuary, including fishing for shellfish and invertebrates shall not be regulated as part of the Sanctuary management regime. Monterey Bay fish resources are already extensively managed by existing authorities and NOAA does not envision a fishery management role for the Sanctuary at this time. Instead, the Sanctuary will provide research results and recommendations to existing fishery management agencies in order to enhance the protection of fishery and other Sanctuary resources."(Sec III - 80), and,

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

It is this last quotation that provides the basis for the Sanctuary to consult with Fishery Management Agencies and potentially adopt fishing restrictions. Many times during the MPAWG process we challenged the Sanctuary and MPA advocates to state what fishery problems have arisen that are not being dealt with by the authorized fishery management

agencies. Without such a clear problem statement, the Sanctuary has no authority, legal or moral, to advocate for or promulgate a regulation or use its zoning authority, to exclude fishing from any area. No such problem statement has been heard during the MPAWG process. In fact, it can be shown that there are far fewer commercial vessels, and about an equal number of recreational vessels, as existed ten years ago. And, even a cursory review of fishery regulations will show a far more restrictive fishing structure than existed at the time of Sanctuary designation. It is only for a few species of rockfish that limited data suggests there may be a problem. However, this has been decisively dealt with by the CDFG and the PFMC, in part through very large areas being set off limits to certain types of bottom fishing.

There have been numerous statements regarding the "mandate" of the Sanctuary Program to protect habitats and nurture increased biodiversity. No doubt that this language exists within the National Marine Sanctuary Act and our designation document. However, these concepts do not supercede the designation document's language that so clearly states that the Sanctuary will not be in the fishery management business. In fact, there are many references in designation documents that suggest that the way in which habitat is preserved is by controlling pollutants and the disturbance of the sea bed. Some might make an argument regarding bottom trawling with reference to disturbing the sea bed, but that itself is a complex issue (please refer to Section III - 79, above), and not the topic of the MPAWG or this letter. We believe, in fact, that the Sanctuary cannot use "enhancing biodiversity" or "habitat protection" as justification for fishing restrictions, when all of the language in the designation document is considered. The role that is clearly spelled out for the Sanctuary in fishery management issues is for the Sanctuary to "provide research results and recommendations" to the proper fishery agencies – a role that we want to offer our active assistance and which we support. The indirect role for the Sanctuary Program is to provide good water quality and prevent the disturbance of the sea bed (i.e., oil drilling)

There are other areas of Federal law, including but not limited to the 1980 Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement Act, and Executive Order #12866 (Regulatory Planning Review), that require economic impact assessments of federal actions. Additionally, National Marine Fisheries Service guidelines state that economic impact is significant under the RFA if at least 20% of the businesses within an affected fishery lose 5% of their annual gross revenue, or 2% or more of the affected parties are driven out of business, which is quite likely to be the case with any large scale use of MPAs. Various safeguards are in place to mitigate significant impacts. The Sanctuary Program cannot arbitrarily make MPA decisions. Not only will a thorough economic analysis need to occur, (a point on which there appeared to be agreement on the MPAWG), but this information must be given a very high priority in the decision making for any potential MPAs.

These concerns over Federal law are still only side issues compared to the importance that the Sanctuary Program not be perceived in this community as an indifferent Federal agency which will break its promise to fishermen. We hope by now the Sanctuary Program understands there is widespread community awareness of and appreciation for this promise, and likewise there will be widespread community dismay should the Sanctuary Program break the understanding that created the Sanctuary. The fact that the support of the fishing community was required for the

Sanctuary to come into existence is well established. If the Sanctuary Program disputes this, or has decided to break its promise, we would like to hear that clearly and publicly.

We have also heard that the Sanctuary Program will not regulate fishing, but rather will partner with CDFG and the PFMC to address fishery issues. This feels like an effort to wordsmith around the promise made to us. The role for the Sanctuary is as a stakeholder in the fishery management process. We would hope that any partnership that develops will be with the fishing community, to enable the Sanctuary Program to provide quality comments to the agencies in a way that does not feel like it is breaking its promise to us. There is no doubt but that those agencies would welcome working or coordinating with the Sanctuary Program on that basis.

The Solution

With all this being said, we do recognize that certain types of MPAs may assist the program in realizing its conservation ambitions, as well as assist the science community in their research on issues that affect fishing and other extractive activities. We also recognize that some of the public would like to see some areas set aside as being off-limits to all human activity, as long as it does not negatively affect them.

We are, therefore, still willing to partner with the Sanctuary Program and other stakeholders, to determine if MPAs may be needed, or, to determine that placing an MPA in a given area will not have adverse effects on fishery management, or create an economic hardship or safety issues that we cannot live with. If and when these determinations are made, we will support strong comments from the Sanctuary Program to the CDFG and /or PFMC, advocating for these MPAs.

What is the roadmap to get to this? Although the MPAWG did some good work on the criteria for establishing MPAs, we do not feel that it is enough. To comply with the language of our MBNMS Designation Document, the spirit in which it was written, and the principles of good science, we believe that MPA evaluation must include the following steps:

1. Develop a thorough and science-based condition report must be developed to document the existing conditions of the fishery and habitat.
2. Analyze the information in item1 with the most current understanding of natural multi-year fish population swings.
3. Develop a site specific draft problem statement based on the results of items 1 and 2 above.
4. Apply the criteria analysis developed by the MPAWG, including the socio-economic review discussed above.
5. Work with the fishing community to identify sites that we can support. We would look at all areas in good faith.
6. Has the problem that has been identified been addressed (or can be addressed) by traditional management measures? If so, is it still a problem?
7. If there is a problem that existing management cannot address, is an MPA the answer? What type of an MPA (if any) is the right tool for the problem?

8. Be patient. Identify just one, or a few, MPA sites that can be established as experimental areas and not as final solutions. Provide thorough monitoring and evaluation as to whether or not it is meeting its goals before any new MPAs are placed. This should be able to occur if items 1 through 7 have been done.
9. Accept the possibility that MPAs may cause unintended harm, or imbalance, in our ecosystem. Maintain a flexible, adaptive management attitude; do not commit to the permanency of any particular MPA if there is evidence of negative consequences.
10. Add additional MPAs only if warranted by the results of items 1 – 9.
11. For all of these steps, including the development of the science, the fishing community's knowledge and advice must be respected and used.

Any MPA that might be created under this guideline would be considered for support and respect by the fishing community.

We understand that other members of the Sanctuary's MPA Work Group may have more ambitious goals for MPAs. We do, however, hope that every person on the MPA work group can agree that AT MINIMUM, MPAs may be placed within the guidelines stated above. We respect the right of other work group members to continue to advocate for broader uses of MPAs, but again, we do hope that we can have consensus on this minimal statement.

What is Consensus?

We would also like to express concern about the definition of "consensus" that has been provided by the Program. First let us point out that we observed that despite lots of discussion, the MPAWG was never asked to reach consensus regarding MPAs or even the criteria for MPAs. We hope that the MPAWG and the Program will embrace a traditional definition of consensus, wherein all parties must agree on fundamental principles, and if there is not agreement, then the issue is either dead or there is further negotiation. The Sanctuary should **NOT** use the definition of consensus that it has put forth that if agreement is not reached, then the decision-making is simply elevated to a higher level. This would make a mockery of "stakeholder" participation. ("Stakeholder", incidentally, is defined in the dictionary as someone who has an economic interest in a position, issue, or resource.) If the decision making were elevated, the next decision would come from the Sanctuary Advisory Council.

We further respectfully submit that the topic of MPAs and marine reserves is highly complex, involving a multitude of scientific disciplines and legal issues, and therefore is really beyond the expertise of a great majority of SAC members to make an informed recommendation. This is not a topic that can be decided on by presenting a series of "sound bytes" on either side for pros and cons of this issue. We do hope the decision making will occur from highly informed stakeholders, and that the Sanctuary Program will not settle for less.

To conclude, we believe that the problem faced by MPA/Marine Reserve advocates may well be that the very quality of resources present that enabled this area to become a National Marine Sanctuary still exists, if not even to a greater degree. This presents a quandary for MPA

advocates, as sufficient problems, or even threats, do not exist to justify closing areas off to fishing. There is also a growing body of science that suggests that much of the rhetoric and energy related to MPA promotion and use is not only missing the point, but also is being misdirected toward potentially dangerous outcomes for conservation and in-the-water practitioners. We refer you to the pending publication in "Aquatic Conservation" of an article titled "Dangerous targets? Unresolved issues and ideological clashes around Marine Protected Areas", by T. Agardy, et al. Two of the authors are stated to be on the Federal MPA Advisory Committee. The report is also published online at www.interscience.wiley.com

We request that a copy of this letter, and a copy of our February 27, 2003 letter to you, be forwarded with whatever recommendations come out of the Sanctuary MPA Work Group, for all those who may be in a future decision making role for this issue.

Sincerely,

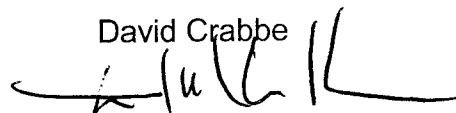
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Stephanie Harlan, Chair, Monterey Bay National Marine Sanctuary SAC
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