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JUL 15 2003  
BY:

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July 15, 2003

Sanctuary Advisory Council  
Stephanie Harlan, Chair  
Monterey Bay National Marine Sanctuary  
299 Foam Street  
Monterey, CA 93940

Re: Please support the Monterey Bay National Marine Sanctuary Joint Management Plan Working Group Recommendation for Harbors and Dredging. Please reject the Harbor Position Paper.

Dear Ms. Harlan and SAC Members:

We are writing to encourage your support for the Harbors and Dredging Working Group recommendation to the Monterey Bay National Marine Sanctuary (MBNMS) Joint Management Plan Review. The Working Group recommendation is the result of a three-month stakeholder process involving Sanctuary harbors, US Environmental Protection Agency (USEPA), Army Corps of Engineers and conservation groups. The Working Group recommendations reflect a balanced compromise approach, acknowledges the harbors' need to dredge, while maintaining the current Sanctuary "authorization" authority over dredge spoil disposal sites and volumes to ensure protection of Sanctuary resources.

The MBNMS is mandated to approach resource protection from a broad, ecosystem-based perspective. Under existing law, disposal sites existing before January 1, 1993 were 'grandfathered' into the MBNMS regulatory regime. The MBNMS regulations at 15CFR§922.132 state that dredge disposal is prohibited within the MBNMS except for dredged material deposited at disposal sites authorized by USEPA prior to the effective date of Sanctuary designation. Sites currently exist for dredge spoil disposal.

Individual dredging permits (essentially volume authorizations to specific disposal sites) must be authorized by the MBNMS. These reviews allow MBNMS staff to ensure that impacts to Sanctuary resources are minimized while allowing continued operation of harbors. MBNMS officials have allowed 98% (by volume) of all dredge sediment proposed by local harbors for offshore disposal in the MBNMS since 1992. The current system is working.

The Working Group recommendation, agreed to by consensus, maintains the MBNMS authorization authority.

While agreeing to the Working Group recommendation within the public process, the four harbors within the Sanctuary simultaneously took an alternative proposal (hereinafter referred to as "Harbor Position Paper" directly to NOAA administrator, Conrad Lautenbacher, Undersecretary for Oceans and Atmosphere, US Department of Commerce, in Washington DC. The harbor's "Harbor Position Paper" calls for creation of "Sanctuary Harbor Zones" of an unspecified size "that would allow dredge disposal within that harbor zone." Further, the Harbor Position Paper harbors calls for 15CFR§922.132 to be "relaxed" to better allow for "new dredging." Finally, the harbors ask for recognition of "beach replenishment as a beneficial use and creat[ion of] legislation that does not prohibit such dredging *even if it is new* (emphasis added)."

The broad ecosystem perspective taken by MBNMS in reviewing dredging permits is essential to marine resource conservation and protection. USEPA and the Army Corps of Engineers are not mandated to take such a broad perspective. MBNMS authorization authority is essential to marine resource protection.

The alternative proposal for "harbor zones" advocated by the harbors essentially represents an exclusion zone where Sanctuary regulations would not apply. These 'donuts' have already been proposed by cities, oil exploration companies, and waste water management districts as mechanisms to avoid compliance with Sanctuary protections. We recognize it may be appropriate to include exemptions at the time of Sanctuary designation to reflect existing conditions. Indeed the harbors themselves were "drawn out" of the MBNMS in 1992. However, we strongly oppose the introduction of additional exclusion zones after Sanctuary creation. Such efforts directly undermine the ecosystem protection mandate of the National Marine Sanctuaries Act and represent a slippery slope where any interest group could segregate itself from the marine resource protection mandates of the Sanctuary.

If the measures included in the Harbor Position Paper are approved, the impact could affect not only the MBNMS but all existing and any future Marine Sanctuaries. The harbors acknowledge as much in their Position Paper, stating that "Harbor zones would be a model for new sanctuaries that come to the land at mean high water and involve federal channels."

Our organizations support upholding existing law regarding the role of the MBNMS with respect to harbor dredging and disposal. We believe the MBNMS' broad ecosystem perspective in reviewing dredging permits is essential to marine resource conservation and protection.

We encourage your support the Harbors and Dredging Working Group recommendation for the Monterey Bay National Marine Sanctuary Joint Management Plan Review. We ask that you reject the "Harbor Position Paper."

To reply or if you have any questions, please contact: Steve Shimek, Executive Director, The Otter Project, 3098 Stewart Court, Marina, CA 93933, 831/883-4159, [exec@otterproject.org](mailto:exec@otterproject.org).

Thank you.

Sincerely,

*Organizations*

Rod Fujita  
Environmental Defense  
5655 College Avenue  
Oakland, CA 94618

Mike Osmond, Senior Program Officer  
World Wildlife Fund  
171 Forest Ave  
Palo Alto CA 94301

Jim Curland, Marine Program Associate  
Defenders of Wildlife  
California Program Office  
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Sacramento, CA 95814

Kaitilin Gaffney, California Central Coast Program Manager  
The Ocean Conservancy  
55 C Municipal Wharf  
Santa Cruz, CA 95060

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3098 Stewart Court  
Marina, CA 93933

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Vicki Nichols, Policy Director  
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PO Box 340  
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Hillary Hauser, Executive Director  
Heal the Ocean  
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Dan Silver, Executive Director  
Endangered Habitats League  
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Doug Ardley  
Board of Directors  
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John F. Lynch, Director  
League for Coastside Protection  
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Cory Briggs  
Divers' Environmental Conservation Organization  
5663 Balboa Avenue, No. 376  
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Sara Timby  
Santa Clara Valley Chapter  
California Native Plant Society  
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Sierra Club, CNRCC Coast & Ocean Committee  
1077 Pacific Coast Hwy PMB 136  
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San Diego North County Coastal Group  
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Salmon Forever  
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Morro Estuary Greenbelt Alliance - MEGA  
POBox 6801  
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Northcoast Environmental Center  
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Dana Point, CA 92629

Lennie Roberts, Legislative Advocate  
Committee for Green Foothills  
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Palo Alto, CA 94305

Catherine Caufield, Executive Director  
Environmental Action Committee of West Marin  
Box 609  
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*Individuals*

Selma Rubin  
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Carmel, CA 93921

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Mike Ferreira  
Councilmember  
City of Half Moon Bay  
Main & Kelly  
Half Moon Bay, Ca 94019

Zan Henson  
Attorney  
Post Office Box 1381  
Carmel Valley, Calif. 93924

Harriet Mitteldorf  
SAC Alternate at Large  
942 Coral Dr.  
Pebble Beach, 93953

July 24, 2003

Stephanie Harlan, Chair  
Monterey Bay National Marine Sanctuary Advisory Committee  
299 Foam Street, Suite D  
Monterey, CA 93940

**SUBJECT:** Request to have the Harbors and Dredge Disposal working group of the Sanctuary Management Plan Review meet again and review specific proposals which have previously been made by the harbors. Include the results of that deliberation in the final conclusions of the Proposed Action Plan

Dear Chair Harlan:

We want to reiterate that we appreciate the difficult job the staff had in guiding the working group process. It was complex and contentious at times. We support the five consensus conclusions that were presented in the Draft Proposed Action Plan.

But, there are important proposals which were made by the harbor contingent which did not receive deliberative treatment and were omitted from the draft summary. We feel these formal proposals<sup>1</sup> deserve consideration by the Working Group.

In the first subcommittee meeting of January 31, 2003, Peter Grenell reviewed the fact that in 1991, it was understood by the harbors that the Sanctuary would not wield permit authority over harbor sand dredging operations, because the harbors were to be specifically excluded from the Sanctuary boundary. It was understood that the disposal of dredged material within the harbor sphere would continue to be regulated by the Corps of Engineers, Coastal Commission, California Regional Water Quality Control Board, etc. Dredging was, after all, an integral part of harbor operations and the logic of excluding harbors from the Sanctuary boundary in the first place, with their commercial-industrial requirements, would logically include dredging operations within the harbor sphere. Peter Grenell's specific request was for the committee to consider rule changes which would allow the Sanctuary to relinquish its authority on dredging disposal operations.

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<sup>1</sup> Communications from harbors dated March 17, April 15 and April 18 (attached).

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On March 20, we presented a harbor consensus document captioned "solutions." In it, the harbors articulated several options which we felt could bring the system close to what we believe the original intent of the Monterey Sanctuary initiative was meant to be in regard to dredging regulations. The proposal included the concept of:

- A. Harbor zones;
- B. Relaxing of Section 922.132 prohibitions on new harbor dredge disposal sites;
- C. Beneficial uses of dredged material.

Clarification of our proposal followed in written communications of April 15 and April 18.

The concept of "beneficial use" did end up in the consensus document, but the reality is that "beneficial use" can not be implemented in a meaningful way when there is a prohibition against new dredging disposal sites.

The concepts of harbor zones and amending Section 922.132 were presented by harbor representatives, and there were some negative comments from some members; but, the concepts never received an agenda place where they could pass or fail or be modified to some mutual acceptability. The consensus process did not provide for a deliberation or conclusion.

We believe the concept of harbor zones which allow dredging to be considered on its merits under standards set by historic regulatory authorities should be deliberated and put to a vote by Harbors and Dredge Disposal Working Group.

Additionally, the concept of amending Section 922.132, to allow harbor dredging disposal to be evaluated on its environmental merits, as opposed to a blanket prohibition, is only reasonable. It would provide for a science-based decision on dredging applications.

Again, we believe the staff did an excellent job on the 5 consensus items that are published. Our positive comments made at the Sanctuary meeting and made again now, stand. But, the slate is incomplete, and we have the opportunity to correct it. Monterey Bay National Marine Sanctuary is the only marine sanctuary in the nation which is coterminous with operational harbors. We have had fundamental conflicts of law over the past 10 years, and while we acknowledge the significant efforts by the



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Sanctuary staff to accommodate harbor needs within the constricts of the current law, such effort does not obviate the need to change the law in the first place. We now have the opportunity to eliminate legal conflicts and be a model for sanctuaries to come. We believe the Working Group has the responsibility to work toward that end.

Accordingly, we urge the Advisory Committee to direct the Harbors and Dredge Disposal Working Group to deliberate on the concepts of creating harbor zones and amending Section 922.132.

Sincerely,

*Harbor Representatives on the  
Harbors and Dredge Disposal Working Group*

Brian Foss, Santa Cruz Port District  
Peter Grenell, San Mateo County Harbor District  
Linda Horning, Moss Landing Harbor District

cc: Bill Douros, Superintendent, MBNMS  
BEF:mo corres/dredgingSMR.doc

## Monterey Bay National Marine Sanctuary Dredging Issues

### *What do we want?*

#### Consensus of Harbors

(Pillar Point, Santa Cruz Harbor, Moss Landing Harbor, Monterey Harbor)

March 17, 2003

### SOLUTIONS

#### A. *Sanctuary Harbor Zones*

- Create a functional harbor zone around federal navigation channels, that would allow dredge disposal within that harbor zone. Each harbor's zone would be custom designed.
- All sanctuary rules and prohibitions remain in place.
- NOAA can still comment and weigh in on permits through the Corps of Engineers' CWA Section 404 process. Monterey Bay National Marine Sanctuary would have same status as US Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency.
- NOAA retains full authority to violate any deleterious flows into the Sanctuary.
- Harbor zones would be a model for new sanctuaries that come to the land at mean high water and involve federal channels.
- Harbor zones would not be precedential since they would apply only to existing federal navigation channels
- This would solve most all administrative and jurisdictional problems that exist at:
  - Pillar Point;
  - Moss Landing;
  - Santa Cruz;
  - Monterey.

and at the same time, would not dilute any authentic environmental issue.

Harbor zones would recognize the special relationship between operational federal channels and provide access to the Sanctuary for research and sustainable recreational and commercial uses. They would recognize harbors as "gateways" to the Sanctuary.

#### B. *Relax the restrictive interpretation of "new dredging" in Section 922.132*

Pipe placement, volume, grain size all change over time. Within reason, these changes should be recognized as normal and that reasonable adjustments do not violate the "no new dredging" prohibition.

#### C. *Beneficial Use*

Recognize beach replenishment as a beneficial use and create legislation that does not prohibit, such dredging, even if it's "new."

April 15, 2003

Management Plan Review  
Subcommittee on Dredging  
Monterey Bay National Marine Sanctuary  
299 Foam Street, Suite D  
Monterey, CA 93940

SUBJECT: Amplifying Information on Dredging

Dear Committee Members:

Our March 17 communiqué, which was regrettably labeled "position" paper, elicited much negative response. We want to convey that the points that were brought up are not non-negotiable positions at all. They are concepts that we wish to bring to the table. We have felt that through the process, the harbors' needs were not being articulated by us and that we needed to be more specific. We offered "solutions." These are not intractable positions.

Some of the response that we received indicated we were trying to avoid environmental scrutiny. Nothing in our paper was meant to facilitate getting an environmental "free pass." There is no suggestion that dredging not be subject to all rigorous protocols, including chemical, physical and biological testing. Our purpose here is to streamline dredging administration for all parties, not sidestep real environmental analysis.

**Harbor Zones:**

This is an idea which had not received any review whatsoever, but it is a valid concept. Just as the Sanctuary is promoting MPA's and PWC zones, there could be harbor zones. The zone may facilitate the Sanctuary dealing with specific issues unique to harbors. We are, after all, the only harbors located within a sanctuary throughout the system, and we see that there is no harm, and there could be real benefit, in talking about a harbor zone which can facilitate not only existing harbors but future harbors in future sanctuaries. Such zones do not have to entail a Sanctuary boundary change, but simply a designation of a special use area. The zones could keep intact fully, the Sanctuary's regulatory authority over activities. But, zones could be beneficial in facilitating activities that are otherwise not allowed in the Sanctuary, such as dredging. It could give Sanctuary staff a legal mechanism to loosen what is now a system which lacks flexibility.

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**Section 922.123**

This is a fundamental issue. Some flexibility to this section is necessary to allow harbors to meet their future dredging needs. We believe this is being dealt with through the committee work. We do have genuine concern that no matter what the committee does, the final decisions will be left to NOAA attorneys in Silver Springs. This is a frustrating reality.

**Beneficial Use of Dredged Material**

This was included in our paper because it is an important issue. We believe the committee and NOAA staff are dealing with this concept, and we're satisfied that it's being heard.

**Summary**

Our purpose is to air what we feel are significant facets of the issues facing dredging. We felt we would be remiss to our own constituents and to harbors up and down the coast, if we did not discuss these concepts.

Sincerely,

Brian E. Foss  
*Santa Cruz Port District*

Peter Grenell  
*San Mateo County Harbor District*

Linda Horning  
*Moss Landing Harbor District*

Steve Scheiblaue  
*Monterey Harbor*

TO: Deirdre Hall  
Monterey Bay National Marine  
Sanctuary

FROM: Brian Foss, Port Director

DATE: April 18, 2003

SUBJECT: Further Thoughts on Sanctuary  
Dredging Issue

Here's the bottom line. For the future of harbors / Sanctuary administration relationships on dredging, we need flexibility in the law. We do not want the Sanctuary staff's hands to be tied by existing prohibitions. There will be future dredging projects that come before the Sanctuary that have acceptable (even beneficial) environmental characteristics. We believe those projects should have the right to be reviewed on their merits, and not be summarily rejected because they are new operations not conducted prior to January 1992.

Flexibility in the law can be accomplished in several ways:

**1. Harbor Zones**

Create harbor zones that allows dredging project applications to come before all regulatory agencies which can then approve or disapprove. This includes Monterey Bay National Marine Sanctuary (MBNMS), which has "certification" primacy over dredging as set forth in Title III of the 1972 MPRSA.

Harbor zones would simply be areas in which current prohibitions under Section 922.123 would not apply, yet there would be full regulatory authority by the MBNMS.

**2. Amend Section 922.123**

Amend the language of Section 922.123:

- a. Eliminate the blanket dredging prohibition for activities which did not have a federal permit prior to 1992;

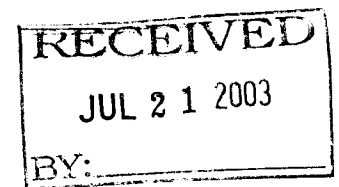
- b. Allow harbor dredging project applications to come before all regulatory agencies which can then approve or disapprove. This includes the MBNMS which has "certification" primacy over dredging activities as set forth in Title III of the 1972 MPRSA.

These two options get to the same point. One may be easier to attain than the other, i.e., less of a legal problem for NOAA attorneys. In either case, it is the flexibility needed for future harbor operations.

BEF:mo

memos/dredgingmbnmsrecc.doc

**EAST CLIFF PROPERTY OWNERS ASSOCIATION**  
500 41<sup>st</sup> Avenue, Santa Cruz, CA 95062 831.479.4200



July 18, 2003

Stephanie Harlan, Chair  
Monterey Bay NMS Advisory Council  
299 Foam Street  
Monterey, CA 93940

Re: Monterey Bay National Marine Sanctuary -Proposed Action Plans

Dear Ms. Harlan:

The Board of Directors of the East Cliff Property Owners Association of Santa Cruz County represents 236 members whose properties are located between the Santa Cruz Small Craft Harbor and the City of Capitola and are directly impacted by the erosive forces of the ocean.

We appreciate the opportunity to comment on the Proposed Action Plans (PAP) and respectfully submit the following comments for your consideration and inclusion in the Plan.

The Sanctuary Advisory Council includes a variety of government and private members but appears not to include representation from the thousands of Monterey Bay National Marine Sanctuary (MBNMS) coastal property owners. The inclusion of coastal property owner representatives on the Sanctuary Advisory Council, in the working groups and as potential partners to assist in implementations of strategy or activity would contribute to the PAP in a number of areas yielding a more comprehensive and balanced solution to the health of the sanctuary. It is also important that the PAP acknowledge that a significant portion of the MBNMS must co-exist with existing urban development and that solutions which might make sense in rural or undeveloped settings would not be practical or beneficial in urban settings.

We are very concerned that the PAP is biased against coastal armoring and does not address mitigation opportunities or benefits derived from protection of public access, public utilities, and private property including homes. Although a balanced approach is evident in some areas, in general the PAP does not present current best practices in coastal armoring and instead describes problems of poor and outdated practices as if this is the best that can be done today. A few examples of less than objective analysis are as follows.

The PAP (page 14) mentions the starvation of sediment materials, loss of beach and intertidal areas when an armoring structure is present. On the other hand, a report prepared for Santa Cruz County, *Coastal Geology In The Vicinity Of Pleasure Point, Santa Cruz County, California* dated November 2000 by G.E. Weber and John Gilchrist & Associates states that the proposed East Cliff Drive seawall between 33<sup>rd</sup> and 36<sup>th</sup> Avenues in Santa Cruz would result in an insignificant loss of sand sized sediment or 1/10th of one percent of the yearly littoral drift (page 17).

The *Draft East Cliff Bluff Protection and Parkway Environmental Impact Statement and Environmental Impact Report* (EIR) prepared for the US Army Corps of Engineers, San Francisco District and the County of Santa Cruz Planning Department dated March 2003 discusses other concerns mentioned in the PAP. Examples include the PAP (page 14) claim that coastal armoring accelerates erosion of nearby sites which in reality can be avoided with a properly engineered structure as stated in the EIR (page 6-20). This dispels the cliché or unscientific assertion that installing coastal armoring begets more coastal armoring.

The PAP (page 14) states that seawalls can block both vertical and lateral access to beaches and alter wave patterns which can negatively impact surfing conditions. This might be true in situations where rip rap seawalls are installed or when a vertical wall is placed on a dune. The statements are somewhat misleading because vertical seawalls serve to improve both vertical and lateral access. And according to the EIR (page 6-7) waves do not discern between a vertical concrete wall and a vertical cliff face, yielding a reflection process which is the same and therefore would not impact surfing conditions.

Regarding the need to strengthen current policies and improve guidance to enable better decision-making raises a good point. Currently property owners face a very difficult and often times impossible bureaucratic task to protect their homes from the ocean's erosive forces. This has resulted from broad legislative terminology which has been interpreted and used to prevent property owners from reasonably protecting their homes at every opportunity. We welcome clearly defined and balanced policies which will allow property owners the opportunity to prudently protect their homes without incurring financially draining encounters with government agencies.

In reference to the Harbors & Dredge Disposal Action Plan it is important that the effects of dredge disposal practices consider impacts on coastal erosion. Moving dredge disposal pipes to a deeper location would adversely affect beach nourishment and lessen sand deposits which serve as a buffer to erosion. Increased erosion to coastal properties down coast from the Santa Cruz Small Craft Harbor has already occurred because dredged sand has not consistently been put back into the system where it can naturally protect the down coast bluffs.

We are hopeful that these comments are received in the positive spirit intended and will foster better, more balanced and objective action plans for the MBNMS. We welcome the opportunity to have coastal property owners be part of the solution for the MBNMS and look forward to a reply to this letter.

Thank you.

Sincerely,



Keith Adams  
President

cc: Sean Morton  
Management Plan Coordinator  
Monterey Bay National Marine Sanctuary  
299 Foam Street  
Monterey, CA 93940

President: Keith Adams, Vice President/Treasurer: James Marshall, Secretary: Bill Osberg  
Directors: James Becket, Richard Berg, Bill Geisreiter, Christine Hooper, August Motmans



**From:** <Shcapitola@aol.com>  
**Date:** Thu Jul 24, 2003 9:53:39 AM US/Pacific  
**To:** Nicole.Capps@noaa.gov  
**Subject:** Fwd: Monterey Bay NMS Advisory Council

Hi, did you already receive this? Thanks, Stephanie

**From:** ginger good <villavis@ix.netcom.com>  
**Date:** Sat Jul 19, 2003 4:51:45 PM US/Pacific  
**To:** shcapitola@aol.com, sean.morton@noaa.gov, keithadams@hotmail.com  
**Subject:** Monterey Bay NMS Advisory Council

Dear Stephanie,

We are unable to attend your meeting on Wednesday, July 30. We would like the group to address solutions for protecting the coastal homes in the urban areas of the Sanctuary.

If you do this, the community will support you and your efforts.

Yours sincerely,  
Robert & Virginia Good  
2-2800 East Cliff Drive  
Santa Cruz 95062

--  
<http://www.villavista.com>

**From:** "Sean Morton" <Sean.Morton@noaa.gov>  
**Date:** Fri Jul 25, 2003 10:52:45 AM US/Pacific  
**To:** Stephanie Harlan <Shcapitola@aol.com>, Nicole Capps <Nicole.Capps@noaa.gov>, Saunders Rachel <rachel.saunders@noaa.gov>  
**Cc:** Deirdre Hall <deirdre.hall@noaa.gov>, Brad Damitz <brad.damitz@noaa.gov>  
**Subject:** Fwd: MBNMS Proposed Action Plans

Forwarding comment on coastal armoring, dredge disposal.

Begin forwarded message:

From: "George Powers" <George@packeteer.com>  
Date: Mon Jul 21, 2003 07:58:10 US/Pacific  
To: <sean.morton@noaa.gov>  
Subject: MBNMS Proposed Action Plans

Dear Mr. Morton,

I own a beach house in Santa Cruz and would like to comment on the Proposed Action Plans.

There must be reasonable provision for homeowners to protect their property from erosion, at least in urban areas. We are already faced with great expense and steep bureaucratic obstacles in maintaining rip-rap and other measures. Further complications will doom many homes and ultimately whole streets and neighborhoods.

I am further concerned with the recommendation to deposit dredged sand from the Santa Cruz harbor in deeper water. This would worsen the problems created down-coast by creation of the harbor.

Regards,

George Powers

21968 Gillette Drive  
Los Gatos, CA 95033  
408 873-4507 (work)

Sean Morton  
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Monterey Bay National Marine Sanctuary  
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[www.sanctuaries.nos.noaa.gov/jointplan](http://www.sanctuaries.nos.noaa.gov/jointplan)