

Alliance of Communities for Sustainable Fisheries

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Maria Brown, Superintendent,
Gulf of the Farallones National Marine Sanctuary
991 Marine Drive
The Presideo
San Francisco, CA 94129

RE: Comments to Federal Register Notice on the Expansion of California NMS's---
OPPOSE

Dear Superintendent Brown,

Our organization, the Alliance of Communities for Sustainable Fisheries (ACSF) was formed in 2000 in part to represent commercial and recreational fishing interests to the Monterey Bay National Marine Sanctuary (MBNMS). We are a federally recognized 501-c-3 organization, with our Board of Directors comprised of the leaders of the central coast's (California) commercial fishing associations, and recognized leaders of recreational fishing organizations, plus representatives of the various port communities. The mission statement of the ACSF is "Connecting fishermen with their communities". The ACSF and its individual members have a proven record of supporting the science-based conservation of marine resources and the sustainability of our fisheries. Our livelihoods depend on a healthy ocean! We also have years of experience in working with the National Marine Sanctuaries in our region.

As you will see below, some of our comments are shared with those submitted by the Pacific Coast Federation of Fishermen's Associations.

At the outset, the ACSF wishes to acknowledge the productive relationship with both sanctuaries. The protection of the marine environment afforded by the sanctuaries has been of some benefit to the fisheries that sustain our member's livelihoods – the food and jobs fishing represents. The sanctuaries have provided another obstacle to the development of oil and gas off our coast. In one program, the sanctuaries have helped to celebrate the bounty of the fisheries within sanctuary waters and worked to educate the public – through programs such as "Fishermen in the Classroom" – about the history and workings of our fishing industry within the sanctuary. Those efforts are appreciated.

The good relationship that the fishing community has enjoyed with these two sanctuaries must, however, be put into the context of the West Coast Regional and National sanctuary programs. One of the stated purposes of the West Coast Regional office is to standardize policies and programs between the five West Coast sanctuaries. The West Coast Sanctuary Director asserted in a letter to the Pacific Fishery Management Council his interest in stopping or limiting bottom trawling from west coast sanctuaries. Moreover, the Monterey Bay National Marine Sanctuary has asserted the National Marine Sanctuaries Act (NMSA) requires it to include “wilderness” type marine protected areas, which brought into question the degree to which this assertion would apply to all West Coast, if not national, sanctuaries. This question remains unresolved and is problematic for our organization. Further, the national program is currently seeking comments on changes to the national regulations for all National Marine Sanctuaries, including such items as broadened definitions of “injury “ to sanctuary resources which could be applied to fishing activity. The sanctuary advisory council charter and protocols have standardized language for all of the nation’s sanctuaries, including new interpretations of the National Marine Sanctuaries Act. Recently, senior NMS officials have announced that one of the new goals for the Program is to “increase protection; however, this protection is not defined, so the consequences of this effort on fisheries is unknown. And, the National Marine Sanctuaries Act is overdue for reauthorization by Congress, so there is no way of knowing if fishing interests will be benefitted or harmed by changes Congress might make to the law, and Program. Because of these programmatic efforts, our organization must also consider what future changes in the administration of our nation’s National Marine Sanctuaries that may, or are likely, to occur.

ACSF members have in the past supported a number of goals and programs of the NMS Program. These include the additional (though not complete) protection from offshore oil and gas development, and hopes for improved water quality and collaborative research. While we continue to support these goals, our experience has shown that many other government and private foundation laws and programs also substantially contribute to these goals, and to other objectives promoting ecosystem health. For example, fishery management agencies are taking important steps towards an ecosystem-based approach to the management of fisheries, and habitats.

Although our industry strongly desires a close and mutually respectful relationship with the sanctuaries, this has too often not been the case.

Because of our past experiences, and future uncertainty about how the Sanctuary Program will evolve, the ACSF must OPPOSE the proposed expansion of sanctuary boundaries.

This said, we also offer the following specific comments to be considered in the scoping review of expansion:

Funding The Sanctuary Program is already strapped for money. For example, sanctuaries have had to drop key programs such as their Spanish language outreach.

The Monterey sanctuary abandoned its Ecosystem Based Management Initiative, among others. How can sanctuaries consider expansion? At what expense to existing programs? We fishermen want the Sanctuary to be focused on collaborative research and water quality improvement. Certainly the national debate occurring over the size and cost of government is relevant to this expansion question. The nation cannot afford to be expanding redundant programs.

On this point, the last reauthorization of the National Marine Sanctuaries Act by Congress prohibited the creation of new sanctuaries until the program could show that it's meeting current goals. It cannot. The issue at hand is the very large expansion (over 2,700 square miles) of existing sanctuaries; we believe that this expansion is contrary to the concern and intent of Congress. The DEIS should examine both the funding available for an expanded sanctuary, and the consistency, or lack of, with existing federal law regarding the intent of Congress in its limit on new NMS's.

Prohibition on Oil and Gas Exploration and Development in Sanctuary Waters

The existing prohibition on oil and gas exploration and development, found in the designation documents and regulations for these sanctuaries, has worked to prevent a form of industrial development that is incompatible with both protection of sanctuary resources and commercial fishing. ACSF requests that this existing prohibition remain in place and be included within the waters of any expansion. This prohibition should apply to exploration (e.g., seismic surveys), drilling, and include the practice of "fracking." Not only is offshore oil and gas a threat to sanctuary resources and fishing, but, as we have learned, the use of oil and gas for energy is a significant contributor to greenhouse gas emissions directly affecting ocean waters from acidification to temperature and sea level rise.

Balance Protections when warranted with the facilitation of multiple use opportunities, as Congress intended

In part our experience reveals a (needless, we believe) clash of values. It seems that the National Marine Sanctuaries Act is being interpreted by senior program staff to prioritize resource protection over resource uses—even if those uses are sustainable. Non-consumptive uses and the "existence valuation" of resources appear to be the new priorities of the Program. We believe that this is not the intent of Congress, and it leads to a lack of support by the Sanctuary Program for commercial fishing. Congress, we believe, intends the Sanctuary Program to balance multiple use opportunities with protection—protection when resources might be irrevocably harmed. It is also evident that, as in the case of the Monterey Sanctuary, commercial fishing was one of the attributes, or resources, that were intended to be protected when that sanctuary was designated.

This prioritization of values even overrode an important direction of Congress, that sanctuaries “provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which compliments existing regulatory authorities...” (NMSA Sec 301(b)(2)). In the case of the Sanctuaries’ role in the California Marine Life Protection Act implementation, the sanctuaries made no effort to engage in ecosystem-based management, which would have required that the need for MPAs must be integrated with other fishery and marine protection laws and programs. Instead, the sanctuaries focused on advocating for the maximum protection of quality habitat, to the detriment of fishermen and their communities. It appeared that the sanctuaries didn’t know how to manage, only how to protect, ocean resources. Importantly, though the sanctuaries did not use its own authority to create these fishing restrictions, they did freely use sanctuary stature to move public opinion and legislative actions.

Restricting Management and Regulation of Fishing to State or Federal Fishery Management Authorities, Respect for the Science-based Management of Those Agencies

There is also confusion within the National Marine Sanctuary Program, and Congress, as to the roles of the National Marine Fisheries Service, the Pacific Fishery Management Council, and the Sanctuaries, for regulations that affect fishing. A wide variety of fishing organizations have requested that Congress make it clear that sanctuaries should not be able to create fishing regulations, or regulations that affect fishing. No action has been taken on this. This lack of current clarity has led to a sort of “mission creep” on the part of some sanctuaries, into areas that should be the domain of science-based fishery agencies. A good example of this is the statement from the sanctuary program that it supports “ecologically sustainable fisheries” in NMS’s. However, this term is not defined, or differentiated from the sustainable fisheries required by existing federal law.

Congress needs to clarify that it is the States and the federal Magnuson-Stevens Fishery Conservation and Management Act that govern fisheries inside NMS’s. Additionally, in the case of the creation of the Channel Islands and Monterey Bay National Marine Sanctuaries, fishermen were promised by federal officials that the new sanctuary would not regulate fisheries, or generally threaten our livelihoods. However, as noted above, the sanctuaries have used their prestige to influence the actions of fishery management agencies, doing this too often without a foundation of peer reviewed science, and without the support of fishermen. While there are new efforts to work collaboratively and improve relationships with fishermen, ACSF cannot support expansion until federal law is clarified, per above, and a substantial history of good relations has been established.

Fishing offshore California is extensively managed and regulated by either the California Fish & Game Commission and the California Department of Fish & Wildlife for state fisheries, or the Pacific Fishery Management Council and the National Marine Fisheries Service for federally-managed fisheries. Overfishing is prohibited under the federal

Magnuson-Stevens Fishery Conservation & Management Act (MSA) and California's Marine Life Management Act (MLMA). The scientific expertise for conserving, managing and regulating fisheries from the beach to the outer edge of the EEZ is found within these two state and federal bodies. The sanctuaries do not have the scientific expertise for managing fisheries. To avoid conflicting, duplicative fishery management decisions or advocacy, the two sanctuaries in their designation documents are directed to defer to the fishery management agencies on issues of fishery management and regulation within the sanctuaries. This does not mean that protection of sanctuary resources, including fish populations, within sanctuary waters are weakened. Rather, when a concern arises that a fishing activity may adversely affect a sanctuary resource (e.g., disturbance of a nesting migratory seabird colony from fishing), the sanctuary, after consultation with the fishing industry and developing a mutually agreed-upon solution, may bring the issue to the appropriate state or federal fishery authority (depending on the area and fishery) for redress. This has worked successfully for both GFNMS and CBNMS; in fact, both sanctuaries have gone to the extra length of consulting the fishing industry beforehand where any conflicts may exist to develop a solution to the problem jointly with the fishing fleet. ACSF requests therefore the issue of the continuing deferral to fishery agencies for management of fishing in sanctuary waters be included in the DEIS to include any expanded sanctuary waters. This deferral would be in addition to the clarifications also needed by Congress.

Prohibition on Expansion of State Marine Reserves or Protected Areas into Federal Waters of the Sanctuary

Vast areas of both state and federal waters along the California coast are currently closed to fishing. California's Marine Life Protection Act set up a series of marine reserves or marine conservation areas curtailing or completely closing commercial fishing in state waters, including some important fishing grounds. Although there has been no mention or proposal by either GFNMS or CBNMS of attempting to expand California's marine reserves into federal waters, that discussion has occurred at two other sanctuaries. Among other things, any such action would be an underhanded means of circumventing the current prohibition on fishery management by the sanctuaries, and clearly violates the spirit, if not the exact language, of deferring the management of fisheries to the state and federal fishery agencies. ACSF requests the issue of extending a prohibition on state reserves in federal waters in the sanctuaries, unless done in consultation with, and the concurrence of, the fishing fleet, based on best available science and approved by the Pacific Fishery Management Council, be included for discussion in the DEIS.

Prohibition on Finfish Aquaculture -- Within Existing and Any Expanded Sanctuary Waters

Open water finfish aquaculture – a form of concentrated fish feeding operations, much like land-based concentrated animal feeding operations, or CAFOs – are a threat to marine ecosystems. These operations have been fraught with problems ranging from escapes of fish from net pens or cages, spread of disease or parasites into the wild, and a proven source of pollution ranging from concentrated amounts of fecal material,

uneaten feed (often times containing antibiotics), pesticides (used to treat sea lice) and herbicides (used to control growth on net pens or cages). Open water finfish aquaculture also poses a threat to navigation when net pens or cages break loose from the moorings as has happened within the past year in both Scotland and Hawaii. Indeed, there is now a movement in much of the world to site finfish aquaculture in onshore, in totally contained facilities. The allowance of finfish aquaculture therefore in sanctuary waters poses a threat to sanctuary waters and is incompatible with the fisheries found within sanctuary waters. ACSF requests the issue of a prohibition on finfish aquaculture be included in the DEIS.

Prohibition on the Use of High Energy Sonar

High energy sonar used by the U.S. Navy, and occasionally in seismic surveys for offshore oil and gas exploration or determining the seismic stability of areas of the seabed (e.g., Pacific Gas & Electric's proposal to use high energy survey equipment offshore its Diablo Canyon nuclear power plant to assess that facilities potential risk from earthquake) are proven to harm both marine mammals and fish populations, as well as disrupt lawful fishing activities. The use of this high energy equipment would place living marine resources of the sanctuary at risk and disrupt or harm fisheries. ACSF requests the issue of a prohibition on the use of high energy sonar activity that harms marine mammals, sea birds or fish, be included in the DEIS.

Prohibition on the Establishment of Study, Conservation or Wilderness Areas that Close Fisheries

This issue has not been raised, nor proposed, by GFNMS or CBNMS. However, the establishment of "study" areas that would close commercial fishing has been discussed by other sanctuaries and actually proposed by the superintendent at the Stillwagen Bank National Marine Sanctuary. The establishment of "study" or "conservation" areas within sanctuary waters would, in effect, be a circumvention of the long-standing agreement, embodied in the designation documents of both sanctuaries, deferring the management of fisheries to the appropriate state or federal fisheries authority. ACSF requests therefore the issue of a prohibition on the establishment of "study," "conservation," or "wilderness" areas within sanctuary waters for the purpose or effect of closing fishing be addressed in the DEIS. Where a compelling case may be made for the establishment of such areas that may affect fishing, language could be developed requiring it only occur in consultation with, and the concurrence of, the fishing fleet and on approval of either or both (depending on the circumstance) the state and/or federal fishery authority.

Continuation and Expansion of Sanctuary-Fishery Collaborative Education Programs

Programs, such as "Fishermen in the Classroom" have done much to expand the scope of the sanctuaries educational offering providing the public with a better understanding of not just the biology and ecology of the sanctuaries' resources, but their history, culture and multiple uses. ACSF requests the issue of maintaining and expanding this

collaborative educational program - both in existing and any expanded sanctuary waters - be an issue addressed in the DEIS.

Provide an Accounting and Analysis of What Protections Already exist in the Proposed Expansion Area, and Compare with Credible Threats to Resources

We must also point out that many layers of protection and governance for the area in question already exist. In fact, the ocean off the west coast of the US is already one of the most highly regulated areas in the world. Since sanctuary designation would create redundant layers of protection, we question what additional protections would occur, not already within the regulatory purview of other agencies. While a sanctuary ban on oil development would provide a new obstacle; even that can be overridden by a determined congress in times of national emergency. Certainly the national debate occurring over the size and cost of government is relevant to this expansion question. The nation cannot afford to be expanding redundant programs.

Carbon Footprint

There are concerns over the increased carbon footprint that the expansion would likely create. "First and foremost," said NOAA outgoing administrator Jane Lubchenco, "we need to demand that our elected representatives take seriously the need to reduce carbon emissions, and that's true at a national level but also at the local level". This quote from the top of NOAA makes us wonder how well NOAA has done on constraining its own carbon footprint? How does the sanctuary intend to both extend its influence and acreage of federally managed territory and simultaneously reduce its fuel consumption? Examine this question in the DEIS.

Governance Issues

There are also significant governance issues. One is in regard to the use of Sanctuary Advisory Councils (SAC). These SACs are supposed to be the community and stakeholders' voice in relationship to the Federal Sanctuary agency. The original vision and expectations for the SAC were to be one of co-management with the federal agency. The Sanctuaries, however, largely control the make-up of the Sanctuary Advisory Council members, including their selection, control the SAC's agendas, and only allow communication from the Council to Sanctuary Program managers. Further, their role is only one of advice-- that may be ignored. In the case of the Monterey Sanctuary, controversy over the composition of the SAC was such that its Management Plan, a result of seven years of effort, has been weakened for not knowing if it actually represents the will of the public. This control over the SAC structure and function also generally weakens the credibility of the Sanctuary's public decision-making process. Questions have arisen regarding the selection of commercial and recreational fishing representatives on the SAC—as to whether they actually represent their constituencies. This concern applies to all SACs. There has also been public concern about the lack of proper notice for SAC meetings, and a lack of information to the SAC and public as to

the actions that the SACs might consider. This creates a lack of transparency. While this is something that Congress should fix in the next reauthorization of the NMSA, the NMS Program could take important steps towards a fairer and more transparent SAC structure by revising its Charter and Protocols, and is an issue that the DEIS should evaluate.

There have certainly been sanctuary successes too. However, because of the rough spots and weaknesses described above, we conclude that the Sanctuary Program should work out mature solutions to these issues with its communities and stakeholders before it considers expanding.

Kathy Fosmark
Co-Chair

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Co-Chair