PACIFIC FISHERY MANAGEMENT COUNCIL

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Mr. Daniel J. Basta, Director
C/O Ms. Elizabeth Moore
Acting Chief, Conservation Policy and Planning Branch
NOAA – National Marine Sanctuary Program
1305 East-West Highway, N/ORM-6
Silver Spring, MD 20910-3281

Re: Pacific Fishery Management Council Response to Possible Amendments to the Designation Documents of the Cordell Bank, Monterey Bay, and Gulf of the Farallones National Marine Sanctuaries and the Opportunity to Prepare Draft Fishing Regulations for Cordell Bank and Monterey Bay National Marine Sanctuaries.

Dear Mr. Basta:

The Pacific Fishery Management Council (Council) appreciates the opportunity to provide recommendations on proposed amendments to the Designation Documents of the Cordell Bank National Marine Sanctuary (CBNMS), the Monterey Bay National Marine Sanctuary (MBNMS), and the Gulf of the Farallones National Marine Sanctuary (GFNMS) under 303 (b)(2) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C sec. 1433(b)(2), as per your letter presented to the Council at its November 2004 meeting. The Council also appreciates the opportunity to prepare recommendations on draft fishing regulations pursuant to section 304(a)(5) of the NMSA, (16 U.S. C. 1431 et seq.), as per your October 22, 2004 letter. By this letter, I am conveying the recommendations of the Council as adopted at their April 4-8, 2005 meeting in Tacoma, Washington, as well as decision rationale and information on regulatory processes.

Let me begin by thanking the Sanctuary staff for their effective and cooperative approach to working with the Council on the joint review of the CBNMS, MBNMS, and GFNMS management plans. The Council appreciates the extension of both the 60-day review period for Council comments on Designation Document changes as well as the 120-day review period for the opportunity to prepare draft fishing regulations. The extension of the response deadline to April 22, 2005, as granted in your January 6, 2005 letter, better accommodated the Council's March and April 2005 Council meeting schedule and allowed the Council and its advisory bodies the necessary time to review the written analyses of proposed actions.

The Council spent a considerable amount of time at both the March and April Council meetings seriously deliberating the decision as to a recommendation on changes to the three Sanctuary Designation Documents and proposed fishing regulations for the CBNMS and MBNMS. We received numerous written statements from the Council advisory bodies and substantial public comment. The Council made recommendations that are specific to a particular Sanctuary and recommendations that apply to for all three Sanctuaries undergoing the joint review process.

Council Recommendations Regarding Cordell Bank National Marine Sanctuary

The Council does not at this time support the CBNMS's proposed Designation Document amendment to allow for the promulgation of fishery regulations restricting fishing activities within the 50-fathom isobath surrounding Cordell bank to vertical hook and line gear under the NMSA.

The Council feels that the tradition of National Marine Sanctuaries not regulating fishing should be continued unless there is a compelling reason to change. The Council believes the stated Sanctuary goals can be both comprehensively and specifically achieved through existing authority under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) without modification of the Sanctuary Designation Document. This authority has been exercised in the current regulations and can be further reinforced via MSA authority for essential fish habitat (EFH) protection from fishing effects under the Pacific Coast Groundfish Fishery Management Plan (FMP), a matter that will come before the Council at their June 13-17, 2005 meeting in Foster City, California. The following paragraphs describe the mechanisms and detail the timing of how existing authority can achieve stated Sanctuary goals without a change to Sanctuary Designation Documents to allow the regulation of fishing.

The Council notes Cordell Bank is currently closed to bottom-tending trawl and non-trawl gear through the implementation of Rockfish Conservation Areas under the authority of the MSA for the protection of overfished groundfish species. Rebuilding plans have been adopted by the Council and National Marine Fisheries Service (NMFS) that are expected to require decades of protection to recover several overfished groundfish species. Rockfish Conservation Areas are a cornerstone of these long-term rebuilding efforts.

The Council, in cooperation with NMFS, has recently published a Draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act that, among others, evaluates three preliminary preferred alternatives for regulating fishing on Cordell Bank. The first of these alternatives would prohibit all bottom trawling in these areas; the second would prohibit all fishing with gear that contacts the bottom; and the third would prohibit all fishing activity (including gear types that do not contact the bottom). The alternatives are packaged within a comprehensive suite of measures to identify and conserve EFH for Pacific Coast groundfish.

Preparation of this DEIS stems from a 2000 court order in American Oceans Campaign v. Daley, 183 F.Supp. 2d 1 (D.D.C. 2000), which required the preparation of an Environmental Impact Statement to evaluate the effects of fishing on EFH and identify measures to minimize those impacts, to the extent practicable. A joint stipulation pursuant to the aforementioned court order specified the date on which the DEIS was published (February 11, 2005) and the end of the public comment period (May 11, 2005). The Council will consider the full DEIS, DEIS comments received by May 11, 2005, and input at the June 13-17, 2005 Council meeting, and make a recommendation for a single preferred option to NMFS. NMFS will then prepare a Final Environmental Impact Statement (FEIS) that includes responses to comments and appropriate revisions to the draft document. The stipulation requires the FEIS to be published by December 9, 2005. After the FEIS is completed, the required 30-day "cooling off" period ensues before the responsible official may sign a record of decision (ROD) and implement the proposed action. The stipulation requires the ROD to be signed by February 28, 2006. NMFS must approve an FMP amendment and implement regulations by May 6, 2006, which includes meeting the requirements of the Administrative Procedures Act and other applicable law.

In addition to the protection from existing MSA regulations and those pursuant to the Council's final choice of a preferred alternative for groundfish EFH, the Council currently has the authority and regulatory mechanisms in place to address any new fishing gear types that may be developed in the future. The Pacific Coast Groundfish FMP specifically defines the legal gear types authorized for the commercial harvest of groundfish. If a new gear type comes into use, and poses a potential threat to EFH, a habitat area of particular concern, or any marine protected area, the Council's "Points of Concern" process, described in the Groundfish FMP, allows the Council to respond quickly and directly. As stated in Chapter 6 of the FMP, a point of concern occurs when an unexpected resource threat emerges, including, if "impacts of fishing gear on EFH are discovered and modification to gear or fishing regulations could reduce those impacts." Once a point of concern is identified, the Council can react at their next scheduled meeting with a decision to reduce or eliminate the causes of the new resource conservation threats.

Council Recommendations Regarding Monterey Bay National Marine Sanctuary

The Council supports the MBNMS's proposed Designation Document amendment to include the Davidson Seamount within the boundaries of the MBNMS but does not at this time support the proposed Designation Document amendment to allow for the promulgation of fishery regulations in the proposed Davidson Seamount area under the NMSA.

The Council understands inclusion of Davidson Seamount within the MBNMS boundaries would allow the Davidson Seamount to be protected from generalized research exploration and extraction, as well as oil and gas exploration and development subject to the existing authority of the NMSA.

As stated above for CBMNS, the Council feels that the tradition of National Marine Sanctuaries not regulating fishing should be continued unless there is a compelling reason to change. The Council feels the promulgation of fishing regulations under the NMSA is not an immediate need because fishing activity that could pose a threat to the benthic habitat and corals of the Davidson Seamount is currently not occurring and is not anticipated to occur in the reasonably predictable future. Notably, the Davidson Seamount area is included in the previously-discussed groundfish EFH process and the Council's preliminary preferred alternative for the protection of groundfish habitat. The three alternatives discussed above would prohibit bottom trawl gear, prohibit all bottom-tending gear, or all fishing activities on Davidson Seamount. Previously alluded to mechanisms and timing relative to MSA regulation protecting Groundfish EFH apply to the Davidson Seamount issues as well. Since there is no immediate or near-term threat to the Sanctuary goal with regard to fishing impacts, and long-term threats can be addressed under EFH protection processes, the Council does not find a compelling reason to alter the Designation Document to allow for the promulgation of fishing regulations under the NMSA.

Council Recommendations Regarding the Gulf of the Farallones National Marine Sanctuary

The Council supports the GFNMS's proposed Designation Document amendment to add the authority to regulate the release of introduced species. Additionally, the Council supports this Designation Document change for the CBNMS and the MBNMS.

The Council shares the goal of addressing the threats posed by the release or introduction of non-native species. The Council understands the State of California expressed concerns about the potential for this Sanctuary authority to regulate fishing activity if applied to certain situations; such as an angler catching and releasing a striped bass within a Sanctuary or the use of non-native live bait within a Sanctuary. The Council also understands the State of California is currently working with the CBNMS, the MBNMS, and the GFNMS and has reached a satisfactory agreement with the Sanctuaries in this matter. Provided the State of California and the Sanctuaries have reached such an agreement, the Council supports the addition of this authority for the CBNMS, the MBNMS, and the GFNMS.

Lastly, on another matter relative to all three sanctuaries, the Council requests an exemption from these proposed changes and resulting regulations for research activities conducted by the National Marine Fisheries Service in pursuit of better information for the management of Pacific coast fisheries.

Again, I want to thank you for the opportunity to provide input and the Sanctuary staff for their continued efforts to foster a cooperative and productive relationship between the Sanctuary and the Council. If you have questions, please contact the Council's Executive Director, Dr. Donald McIsaac, or Mr. Mike Burner, the lead Staff Officer on this matter at 503-820-2280.

Sincerely,

Donald K. Hansen
Chairman

MDB:rdd

c: Mr. Daniel J. Basta
Council Members
Dr. William Hogarth
Council Advisory Bodies
Mr. William Douros
Mr. Daniel Howard
Mr. Christopher Mobley
Ms. Anne Walton
Mr. Huff McGonigal