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April 7, 2009

The Honorable Sam Farr  
100 West Alisal Street  
Salinas, CA 93901

Dear Congressman Farr:

We are writing you update you on the status of the Monterey Bay National Marine Sanctuary Marine Protected Area process as we see it, and also to ask for support for certain amendments in the National Marine Sanctuary Act when that Act is re-authorized by Congress. Finally, we want to tell you about a just-released national public opinion poll that provides guidance as to how Americans want the ocean to be managed.

**MBNMS MPA Process Update**

As I think you know, since 2000, our organization has acted constructively with regard to MPAs in the Monterey Bay National Marine Sanctuary. In fact in February of 2001, when the Sanctuary first announced its management plan and review process, our organization pro-actively approached the Sanctuary, suggesting that we create a Marine Protected Area working group that would look at this MPA issue. We would do this in a manner in which the fishermen would feel that the Sanctuary was not breaking the promise made to us that it would not create regulations or in other ways threaten our livelihoods. Such a workgroup was created, and was making progress in the MPA discussion, when the Sanctuary essentially killed it and created its own MPA workgroup of which fishermen became a minority voice. This occurred in 2003. Fishermen continued to participate constructively in this process, but with growing frustrations as no scientific analysis was being conducted over the essential question of whether the MBNMS needs additional protections for eco-system health, for research, or for other purposes.

While the Sanctuary created an "MPA Action Plan" which is included in the final management plan, you should be aware that fishermen went on record, in writing, as not supporting this plan. We communicated this as a comment to the management plan process. The reason that fishermen didn't support it was because it was evident that the Sanctuary itself did not support its own plan because they violated its provisions in numerous ways when the Sanctuary participated in the State's Marine Life Protection Act process. The Sanctuary's MPA workgroup was a frustrating, non-science-based process. This resulted in our organization deciding that it would advance the MPA discussion by retaining some of the best fishery and marine eco-system scientists on the West Coast and ask them to conduct their own independent review of whether or not further protections are needed. These science reports have been previously provided to you and they are available on our web site at [www.alliancefisheries.com](http://www.alliancefisheries.com)

under “reports”. This work, done by Doctors Barbara Walker, Doyle Hanan, Richard Parrish, Ray Hilborn and Carl Walters is top rate work and was peer reviewed by other highly regarded marine scientists. One startling conclusion of the series of reports is that nearly 64% of the Monterey Bay National Marine Sanctuary (MBNMS) is already in fishing restricted Marine Protected Area status. This of course is in addition to the fact that the Sanctuary itself is a Marine Protected Area. As best we can tell, these reports were not even read in advance of the Sanctuary making its February 15, 2008 decision that it had an UNMET need for Marine Protected Areas within the Sanctuary for ecosystem health, research and intrinsic values. We offered to have some of the scientists who authored the reports meet with Sanctuary staff before the Sanctuary made its “need” determination, but the MBNMS was not interested in that.

The Sanctuary subsequently expanded on its February 15<sup>th</sup> decision letter by providing an April 15, 2008 “rationale” letter. This rationale letter is not a scientific analysis of these need questions, but rather is in part a staff interpretation of the National Marine Sanctuary Act (also flawed), and a citation of numerous studies touting the benefits of Marine Protected Areas. However the essential question of “Do we need **more** protection?” was never addressed in this document through any type of scientific analysis. Therefore it is clear that the Sanctuary, in deciding and rationalizing an **unmet need** for additional MPAs did this without basing its action on scientific analysis or allowing its policy making to be informed by science.

This is a very significant point. Whatever process the Sanctuary tries to put together to further evaluate the location or rules for Marine Protected Areas will use as its basis this unsubstantiated unmet need assertion. Our organization and fishermen throughout your District are seeing this development as our worst nightmare coming true, that the Sanctuary would override promises made to us and not even make these decisions on the best available science.

There are other issues at play as the MBNMS develops its Marine Protected Area process. We believe that fishermen should be allowed to select their own representatives on the stakeholders work group. We believe that fishermen should be comfortable with the scientific disciplines and the scientists who comprise whatever science team is developed. On this subject we also think that the types of scientists should be vetted for conflicts of interest and run by the science committee of the Pacific Fishery Management Council for a sort of peer review of the composition to be able to adequately deal with the questions that will arise with an MPA process. We do not feel that the Sanctuary Advisory Council is in any way qualified to make decisions about Marine Protected Areas. They simply do not have the expertise to make these decisions. We also have continuing concerns, as you know, as do other community leaders, with how the Sanctuary Advisory Councils are created and run by the Sanctuary Program. We believe the Monterey Bay Sanctuary needs to respect the judgements of the Pacific Fishery Management Council as final on this MPA process. Whatever solution the Sanctuary comes up with needs to have our support with respect to the promise made to us when the Sanctuary was designated. We are trying to work constructively in this frustrating process and we will not unreasonably withhold our support, but we should not be expected to be silent when faced with an unfair process.

We believe that you need to be informed as to the progress and issues involved in this extremely sensitive subject. The support that you provided in your letter of December 13, 2007 is deeply appreciated. If we reach impasses with the Sanctuary program we

may call upon you to assist. We would value briefing you and your staff in greater detail on the Sanctuary MPA issue.

### **Reauthorization of the National Marine Sanctuaries Act**

Regarding the National Marine Sanctuaries Act, we've remained supportive of the main conservation principles of the Act and of the process outlined for designation of Sanctuaries. However, as you know, there have been many community issues with regard to the way in which the Sanctuary Act is being interpreted and the way the program is being administered, particularly with the Monterey Bay National Marine Sanctuary.

First and of the most importance to our members is that Sanctuaries should not have the authority to create fishing regulations or zones which effect fishing. The Act should be clarified that Sanctuaries must work cooperatively with the regional Fishery Management Councils and should not have the authority to supersede them. We believe this is just good governance. The Fishery Management Councils who are tasked now by the revised Magnuson-Stevens Act with creating eco-system based fishery management plans, have the science capability and the solid public participation process to manage our resources. Sanctuaries should be able to fully engage the councils and express their points of view. However Sanctuaries, by our clear experience, do not have the science capability and have an extremely weak public participation process that is too easily subject to manipulation by senior Sanctuary management. Further, if the Sanctuary Program is given the ability to overrule or bypass the regional Fishery Management Council, this will open the door to the MBNMS breaking the promise made to us that it would not regulate us.

One of the most troubling aspects of the Sanctuary Program's administration is the tendency of the staff at the highest levels to interpret the Act as being primarily about preservation, meaning no or very little human uses of Sanctuary resources. If a Sanctuary were defined as a very discrete area, such as a particular reef or historic shipwreck, then such preservation language and interpretation would be appropriate. However the Monterey Bay National Marine Sanctuary is now approximately 7,000 square miles and includes historic and economically important uses, such as fishing.

The goals and purposes of the National Marine Sanctuary Act should be clarified that the sustainable use of resources is a primary goal, and that resources should be fully protected (as in no human uses) only in circumstances where any human usage, even sustainable uses, can significantly damage the resource. As you know the Sanctuary has interpreted the existing language of the Act to say that is somehow required to create wilderness type areas, to preserve marine resources for future generations. We believe that this is a misinterpretation of the law but that the law could be, and should be, clarified and strengthened as we have suggested above.

Our second point relates to the above, in that the National Marine Sanctuaries Act must be explicitly charged with using the best available peer reviewed science in decision making. In circumstances where there is a difference of scientific opinion the Sanctuaries must be charged to make a credible effort to reconcile those differences. This recommendation comes from our observation that the Sanctuaries have too often "cherry picked" their science, if any, in their decision making.

The Sanctuaries Advisory Councils need to have some independence from Sanctuary management. Currently the Sanctuaries management can control the agendas,

membership of the councils and with whom the councils can communicate. To quote your letter to the Monterey Bay National Marine Sanctuary of January 31, 2002: "Because this organizational structure permits hands-on sanctuary involvement in SAC affairs, it has a tendency to diminish public confidence that there is truly a sanctuary-independent mechanism for community input. This, in turn, opens the door to greater mistrust and criticism of final management decisions." We hope that the re-authorized National Marine Sanctuary Act can create the structure for Advisory Councils that will allow them to operate with enough independence to give credible community advice to this Federal Agency.

We know that you are a leader in the House for ocean issues, and particularly for National Marine Sanctuary issues. We hope that you will provide your leadership in these issues as we have outlined above that will help correct these problem areas that have made the Monterey Bay National Marine Sanctuary not nearly as effective an agency as it could be for ocean health. We would value speaking to you or your staff in more detail about our points of view.

### **National Public Opinion Poll**

Finally, we have provided an executive summary of a new, national opinion poll on the public's attitudes toward ocean management issues. This poll asks a key question: When the public says it wants to "protect" the ocean, what do they mean by "protect"? As you can see, the public overwhelmingly chooses a moderate answer of managing for sustainable use.

Thank you for considering these thoughts.

Sincerely,

Kathy Fosmark  
Co-Chair, ACSF

Frank Emerson  
Co-Chair, ACSF

### **Supporting Associations & Organizations**

Pacific Coast Federation of Fishermen's Association  
Ventura County Commercial Fishermen's Association  
Port San Luis Commercial Fishermen's Association  
Morro Bay Commercial Fishermen's Association  
Monterey Commercial Fishermen's Association  
Fishermen's Association of Moss Landing  
Fishermen's Marketing Association  
Santa Cruz Commercial Fishermen's Marketing Association  
Half Moon Bay Fishermen's Marketing Association  
Western Fishboat Owners Association  
West Coast Seafood Processors Association  
Federation of Independent Seafood Harvesters  
Golden Gate Fishermen's Association  
California Fisheries Coalition  
California Wetfish Producers Association  
Recreational Fishing Alliance  
Carmel River Steelhead Association  
Port San Luis Harbor District

City of Morro Bay Harbor  
City of Monterey Harbor  
Moss Landing Harbor District  
Santa Cruz Port District  
Pillar Pt. Harbor, San Mateo County Harbor District