

Follow-up Witness Questions
House Subcommittee on Fisheries, Wildlife and Oceans
October 24, 2007

**Legislative Hearing on H.R. 1187, the Gulf of the Farallones and Cordell Bank
National Marine Sanctuaries Boundary Modification and Protection Act; H.R. 1907,
the Coastal and Estuarine Land Protection Act; and H.R. 3352, the Hydrographic
Services Improvement Act Amendments of 2007**

Follow-up Questions for Ms. Fosmark

Questions from Mr. Brown (R-SC)

- 1. Since the legislation contains provisions regarding prohibited activities and allowable activities, should the authorization for commercial and recreational fishing be spelled out in the legislation to remove any confusion? Why are you not comfortable leaving this authorization in the regulations rather than statute if this legislation were to become law?**

We believe that the authorization should be spelled out in legislation, just as it was when the sanctuaries were created. Regulations can be changed too easily, as we have seen with the Channel Islands NMS where the “promise to fishermen” was broken.

- 2. The Magnuson-Stevens Fishery Conservation and Management Act states in National Standard #3 that “to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.” The Act also gives this management authority to the regional fishery management councils. Do you believe this language gives the councils priority to manage fisheries, even in sanctuaries unless specifically exempted? Are you aware of any attempts by sanctuary managers to develop fishery management regimes different than those passed by one of the councils or without council input?**

While we believe that the Councils should – and do – have priority, apparently neither NOAA nor its National Ocean Service (NOS) agree. Testimony presented to the Pacific Fishery Management Council by NOS attorneys made clear their belief that a simple change in the designation document can clarify their authority over fisheries management. While they profess willingness to come to the Council first and give the Council an opportunity to recommend regulations, those recommendations will only be followed if the Council does what the sanctuary asks for.

Further, in a letter to the Pacific Council from VADM Lautenbacher in regard to Council actions to restrict fishing in the Channel Islands NMS (as requested by the sanctuary), it was made clear that NOAA interprets the law as giving the Council no authority over the water column (only over the bottom and over specific fishing activities) and thus the

Council could not simply establish regulations under its various fishery management plans to accomplish the Sanctuary's objectives.

We also believe that the Secretary has an obligation to comply with the amended section 303(b)(2) of the Magnuson-Stevens Act, which stipulates criteria for closures of areas to fishing, and that these criteria must be met before any additional marine reserves are established in National Marine Sanctuaries.

- 3. The Councils are required to follow the Science and Statistical Committees' - which are made up of fishery scientists - advice on fishery management decisions. In addition, councils are bound by the 10 National Standards. Do sanctuary managers have either of these requirements under the National Marine Sanctuaries Act?**

No. Neither does the National Marine Sanctuaries Act provide the extensive peer review, public review, and public comment process used by the Councils under the Magnuson-Stevens Act.

- 4. There is currently a public review process for changing the management of the three National Marine Sanctuaries off the coast of California. Are all of the issues addressed in H.R. 1187 also addressed in this public process? Since the public process has almost been completed, isn't it unnecessary to enact legislation at this time?**

HR 1187 provides for expansion of the two sanctuaries referenced in the bill, while the regulatory process does not. HR 1187 also does not address all of the issues – including expansion – that are being considered by the Monterey Bay National Marine Sanctuary. Regardless, we are unaware of any need for a fast track approach through legislation. However, we have no objection to such an approach as long as the concerns expressed in my testimony are answered.

- 5. While the regulations governing the allowable activities within the sanctuaries can be changed through an open, public process, if this legislation were to be enacted, all changes to the statute would have to be made by Congress. Is this a process that we should consider?**

With all due respect to the Congress, experience in natural resource management throughout history – especially in regard to dynamic resources such as fish stocks – has shown that regionalized control provides better results. Like the Sanctuaries, the Congress has no Scientific and Statistical Committee and no body of managers and advisors with the local knowledge necessary to properly establish regulations that balance the need for resource conservation and the need for economic protection of local coastal communities.

We note that several Sanctuaries around the nation have gone through a Congressional creation process. Generally, that process provides for creation of the Sanctuary, some stipulations on very specific issues (such as the fisheries management issue on the west coast), and then gives flexibility to the Secretary to promulgate regulations. If the

legislation becomes too specific on too many issues, that ability to adapt to local and regional conditions is lost.

6. **You raised concerns in your testimony that the language in the bill extending the Sanctuary jurisdiction to the mean high tide in combination with the proposed prohibition on dredging and discharge would prevent the dredging of navigation channels. What impact would this have on any ports, marinas, or other local and State activities that provide shelter or moorage for commercial and recreational fishing vessels or any other type of recreational vessel? How many ports are you aware of that are either within the boundaries of the Sanctuaries or that would be affected by this expansion of the Sanctuaries' boundaries?**

Kathy, you and Steve need to answer this one

7. **H.R. 1187 appears to add new prohibitions on the discharge of anything that might harm a sanctuary resource. With the expansion of the boundary up to the mean high tide level, do you believe this prohibition will affect currently-allowable activities in state waters and could these prohibitions now affect on-land activities (that might be viewed as affecting sanctuary resources)? Does the scope of this provision concern you?**

Kathy, you and Steve need to answer this one

8. **In your testimony, you mention that the “promise” to fishermen was broken. Can you elaborate on what the “promise” was and when you believe it was broken? Because you feel the “promise” not to affect commercial fishing in the Sanctuaries has been broken before, do you believe it is that much more important to protect commercial fishing opportunities in this legislation?**

You can answer the first one. Answer to the second is “yes”

9. **One of the other witnesses at the hearing testified that the area included in the expanded boundary area would protect a unique upwelling area – one of only four in the United States. Can you comment on this? Is this a unique area? The witness also testified that this is an important area for commercial fishing. Can you comment on this as well?**

Upwelling occurs along the entire west coast and is an important part of productivity for all forms of marine life. In El Nino years when upwelling is reduced because of warmer sea surface temperatures and less wind, our fish stocks generally suffer. **(You can answer the question on important fishing area; you might mention – if it is such an area – that this is precisely the reason we want the people with fisheries expertise to be in charge of management).**

10. **How much research has been done or is currently on-going in the Sanctuaries? More specifically, are you aware of any research being funded by the sanctuary program on fisheries or fisheries habitat in either of the two sanctuaries affected by this legislation? Is there available funding for new**

research projects? Are any research projects being done in conjunction with the Pacific Fishery Management Council?

I don't know of any and certainly none in conjunction with the Council; do you?