

Statement of Kathy Fosmark
Co-Chair, Alliance of Communities for Sustainable Fisheries
Subcommittee on Oceans, Atmosphere, Fisheries
And Coast Guard
Hearing on H.R. 1187
May 6, 2008

Madame Chair, members of the Subcommittee, for the record my name is Kathy Fosmark and I am appearing today to present the views of the Alliance of Communities for Sustainable Fisheries on H.R. 1187, the “Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act.”

The Alliance is a non profit organization representing eighteen commercial and recreational fishing organizations, ports, and harbors along the California Coast. Based in Monterey, California, the Alliance advocates for the heritage and economic value of fishing to California coastal communities by offering a broadly representative educational and promotional voice for waterfront communities to work constructively with interested agencies, individuals, and other marine protection organizations in order to ascertain and guarantee that: the best and most current oceanographic, socio-economic and fisheries science is accurately compiled; that science is readily available to the public for use in crafting and promoting public policy; and that the linkage between healthy sustainable fisheries, marine conservation, and coastal communities is firmly established in the public mind. The Alliance and its members have extensive experience in dealing with the National Marine Sanctuary Program over the past 15 years.

On a personal level, I am part of a multi-generation fishing family that first settled in California in the 1800’s. I fished commercially with my father and my husband over the course of 30 years and our eldest son now has entered the fishery. Our family has fished in the Pacific Ocean, including in the area covered by these Sanctuaries, for tuna, salmon, swordfish, crab, halibut, shrimp, and groundfish using a variety of gear types. I am also a member of the Pacific Fishery Management Council, although the views I am presenting today do not necessarily reflect those of the Council or its other members. However, I have attached to my testimony a letter from the Council to Senator Smith which provides the Council’s views on the bill and ask that it be included in the record.

My comments will address H.R. 1187 as passed by the House, as it is my understanding that this is the language the Subcommittee is considering. While not perfect – as noted below – we believe that substantial progress has been made on the bill and that it more generally addresses many of our concerns than the companion Senate bill, S. 2635.

Fishermen do not oppose the concept of National Marine Sanctuaries. In fact, it was California fishermen who worked hard to have both of these Sanctuaries created. We recognize that Sanctuaries are designed to conserve special areas in the ocean and prevent damage to sensitive resources and habitats.

However, when California fishermen supported creation of these Sanctuaries, they did so under a condition that has become popularly known as the “promise to fishermen”: the Sanctuaries would not manage or otherwise regulate fisheries and fishing activities. Fisheries management in the ocean waters off California is in the hands of the Pacific Fishery

Management Council. Fishermen are familiar and comfortable with the Council's system of management, which is an open and transparent process that is based on the best scientific information available and that solicits and respects diverse views. Without that promise, fishermen would not have supported creation of the Sanctuaries.

This is the focus of our concerns regarding the language of H.R. 1187. We appreciate the statement up front in the bill (section 3(c)) that nothing is intended to "alter any existing authorities" regarding fishing. Those existing authorities rest on the weak foundation of the Sanctuaries' respective designation documents. They are regulations, not law. And as such, they can be changed virtually at any time, as we saw happen over the last few years with the Channel Islands National Marine Sanctuary – an area where the promise to fishermen was broken.

Further reinforcing our concern is the language in sections 5(a)(2)(A)(i) and 5(b)(2)(A) which includes "living marine and other resources within" the expanded boundaries of the Sanctuaries. Fish are living marine resources and these sections give the Sanctuaries clear authority over fish. Because the language regarding fishing in section 3 is not clear, the Sanctuaries could easily change their designation documents during a future management plan review such as the one required under section 7(b).

We believe that our fears of the Sanctuary program taking a bigger role in fisheries management are well founded. For example, last year Mr. William Douros, West Coast Regional Director for the National Marine Sanctuary Program, testified before the House Committee on Natural Resources on reauthorization of the National Marine Sanctuaries Act and emphasized the program's role in resource management, stating that "the System is continually on the cutting edge of resource management." In February of this year, the Monterey Bay Sanctuary announced it was moving forward with designing marine protected areas "in which the removal or alteration of marine life is prohibited or restricted"; in other words a marine reserve. No discussion on this issue was held with the Pacific Fishery Management Council until April, in spite of the fact that designation of marine reserves in ocean waters could have a profound affect on the fisheries managed by the Council. We are not opposed to fisheries conservation and management, or even to time and area closures that are scientifically based and designed to protect important fish stocks and habitat. We are opposed to more and more federal agencies arbitrarily deciding that they don't want anyone to catch fish

Given this background, we are opposed to the language in section 7(e)(2) that mandates establishment of zones "if necessary to ensure protection of sanctuary resources." While we can understand the need for zoning to protect important historical artifacts such as the wreck of the S.S MONITOR off North Carolina, adding this mandate here reinforces the concern about Sanctuary intrusion into the realm of fisheries management through the use of marine protected areas.

In the area of sport fishing, we have been concerned about prohibiting the "deposit or discharge of any introduced species" into Sanctuary waters. The Sanctuaries themselves recognize that there is a thriving catch and release fishery for striped bass (*Morone saxatilis*) within the Sanctuaries and the proposed management plan changes published by the Sanctuaries last October make a clear exception for that fishery. H.R. 1187 acknowledges this by providing simply for appropriate regulations in section 7(d)(2).

Similarly, sport fishermen are concerned about regulation of marine sanitation devices. While they agree with – and already meet - the requirements to use Type I or II devices, they are afraid that having language in a statute governing Sanctuaries will mean that Sanctuary enforcement officers, along with the Coast Guard, will be stopping their fishing operations and boarding their boats to inspect marine sanitation devices. We note that the House removed specific language on marine sanitation devices from H.R. 1187.

California ports are worried about the effect of extending the Sanctuary boundaries to the mean high water line as described in section 5. The dynamic nature of our west coast currents requires frequent dredging of navigation channels and berthing areas to accommodate commercial and recreational vessel traffic. Prohibitions on discharge in Sanctuaries could effectively override the authority and scientific standards of the Environmental Protection Agency and the Corps of Engineers, making it difficult to keep our ports open. The House removed such language from H.R. 1187 during Committee mark-up and we believe this to be the best approach.

Madame Chair, we appreciate the Congress's efforts to expedite changes in the Sanctuary boundaries through legislation and that some of our suggestions for changes in the original version of the bill have been adopted by the House. But unless our concerns about keeping the promise to fishermen are met, we cannot support the bill. We would rather take our chances with the existing administrative process; even the proposed regulations changing the management plans for these Sanctuaries are explicit in protecting our commercial and recreational fisheries.

I have attached to my written testimony some suggested changes to H.R. 1187 that we think would provide continued protection for our fisheries. We would be happy to work with you and your staff to further refine the language in the bill.

Again, thank you for the opportunity to present the Alliance's views on H.R. 1187. I would be happy to answer any questions.

**Proposed changes to H.R. 1187 (as passed by the House) offered by the Alliance of
Communities for Sustainable Fisheries**

1. Strike subsection 3(c)
2. Redesignate sections 6 through 8 as sections 7 through 9
3. Insert a new section 6 as follows:

“SEC.6.REGULATION OF FISHING—The regulation of commercial and sport fishing within the Sanctuaries shall be exclusively under the jurisdiction of the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(F)) and for those portions within State waters the applicable laws and regulations of the State of California.”

4. In the first sentence of subsection 8(e) as redesignated, strike “shall” and insert “may”
5. Strike paragraph 8(e)(2) as redesignated and renumber the following paragraphs appropriately.

April 24, 2008

Senator Gordon H. Smith
404 Russell Building
Washington, DC 20510-3704

Re: Pacific Fishery Management Council Comments on S. 2635

Dear Senator Smith:

Thank you for your continued interest in west coast fishery issues and your request for Pacific Fishery Management Council (Pacific Council) comments on legislative matters of interest to the Pacific Council.

At its April 2008 meeting, the Pacific Council and its Legislative Committee reviewed a variety of legislative matters including H.R. 1187, the *Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act*, as passed by the U.S. House of Representatives on March 31, 2008 and referred to the U.S. Senate. Additionally, on February 13, 2008, U.S. Senator Barbara Boxer (D-CA) introduced the bill in the U.S. Senate as S.2635. Given these bills are now matters for U.S. Senate consideration, the Pacific Council requested I reiterate the following comments of the Pacific Council on H.R. 1187 originally conveyed to you in my letter of October 9, 2007.

- It is unclear why these proposed boundary expansions and protective measures were not adopted and implemented under the recently completed Joint Management Plan Review (JMPR) process for the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries. The Pacific Council believes some of the expansion alternatives and prohibitions may have been considered and rejected during the JMPR, and questions why these provisions are being proposed for implementation through legislation rather than the public JMPR process.
- Section 2 of H.R. 1187 and S. 2635 find the areas within these sanctuaries “include some of the Nation’s richest fishing grounds” and that “Cordell Bank is at the nexus of an ocean upwelling system, which produces the highest biomass concentrations on the west coast of the United States.” While the Pacific Council agrees these areas are productive and are likely to be ecologically important to the west coast, these findings would benefit from independent verification.
- Section 3 of H.R. 1187 and S. 2635 states that “nothing in this Act is intended to alter any existing authorities regarding the conduct and location of fishing activities in the Sanctuaries.” The Pacific Council recommends this stated intent be accompanied by a statutory mandate that fishery management authority in Federal waters of the Sanctuaries is retained by the Pacific Council and the National Marine Fisheries Service.
- Section 6 of H.R. 1187 and S. 2635 further clarifies that these bills do not intend to prohibit the discharge of biodegradable effluents or the discharge of fish, fish parts, and chumming materials while legally fishing. The Pacific Council is concerned about the

regulation of waste water discharges and would like to confirm that the United States Coast Guard retains its current level of authority on these matters.

Perhaps central to the Pacific Council's interest in these matters is achieving legislative clarity on the authority to regulate fishing within National Marine Sanctuaries. The Pacific Council is in the early stages of initiating an Ecosystem Fishery Management Plan (EFMP) that is intended to serve as an "umbrella" plan that would advance fishery management under our four existing fishery management plans by introducing new science and new authorities to the current Pacific Council process. The Pacific Council has successfully employed spatial management concepts for years and has recommended closed areas to rebuild overfished species, minimize bycatch, and preserve essential fish habitat. The Pacific Council believes an EFMP will be an effective tool in achieving shared ecosystem-based management goals and objectives of the Pacific Council, National Marine Fisheries Service and the National Ocean Service within and outside National Marine Sanctuaries.

Thank you again for providing the Pacific Council an opportunity to provide comments on H.R. 1187 and S. 2635. If you or your staff have any questions about this letter, please contact me or Mr. Mike Burner, the lead Staff Officer on this matter at 503-820-2280.

Sincerely,

D.O. McIsaac, Ph.D.
Executive Director

MDB:kam

c: U.S. Senator Barbara Boxer, (D-CA)
U.S. Senator Maria Cantwell, (D-WA)
U.S. Senator Larry Craig (R-ID)
U.S. Senator Mike Crapo (R-ID)
U.S. Senator Dianne Feinstein, (D-CA)
U.S. Senator Patty Murray, (D-WA)
U.S. Senator Ron Wyden, (D-OR)
Pacific Fishery Management Council Members