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Sanctuary Advisory Council
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey CA 93940

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299 Foam Street
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Subject: Existing and Proposed Revisions to the Sanctuary Advisory Council Charter and Protocols

I am writing to share my thoughts on the existing and proposed revision to the Sanctuary Advisory Council Charter and Protocols.

The most fundamental question at hand is, "Who does the SAC serve?"

If the SAC is to primarily serve the goals of the Office of National Marine Sanctuaries and the Monterey Bay National Marine Sanctuary, then the provisions for representation and the operating procedures of the SAC make sense. The SAC essentially serves as a sort of "Sanctuary Auxiliary" - at least by its majority votes. The SAC's major role is to help the Sanctuary achieve its goals and objectives and to cheerlead that effort. Certainly if this is the role of the SAC, the Sanctuary and Sanctuary Superintendent have every right to select whoever they want to be their supporters.

However, if the answer to the question of "who does the SAC serve?" is that it is to serve primarily the public by expressing their opinions ("advice") to the Sanctuary Program, then the existing Charter and Protocols and most of the revisions do not make sense at all. It is, I believe, confusion over this question that has caused so much public attention and frankly, skepticism, towards the SAC over the years. As some of you long-time residents may recall, the late Monterey Councilmember Ruth Vreeland and former Monterey Supervisor Karin Strasser Kaufman (both very strong supporters of the creation of the Sanctuary) had long complained that the original 1994 SAC Charter and Protocols was given by the National Office to this community as a "take-it or leave-it" deal. They felt that the role of the SAC, as identified in the Charter and Protocols, was not what had been envisioned by the locals who fought for the Sanctuary, and who wanted to be assured of a strong, independent, local voice in its management.

To make a legitimate claim that the SAC represents the communities, the SAC Charter and Protocols would have to be far more democratically founded. It must include safeguards to

make sure that stakeholders selected actually have strong support, communication abilities, and accountability to the constituencies which they are to serve. For the at-large seats, the question of accountability is particularly germane because the existing at-large seats have essentially no accountability to an identified public. My suggestion is that the three at-large seats be appointed geographically, one each from San Luis Obispo, Monterey and Santa Cruz counties, appointed by those Boards of Supervisors. In that way the elected Supervisors would have ultimate accountability for their appointments. Fundamentally, and with all due respect, far too much power rests in the hands of the Superintendent. The current appointment process is very much like a city where the City Manager has the ability to appoint City Councilmembers. This representation process for SAC seats needs to be re-thought.

Likewise, for the SAC to truly be the voice of the community, it needs to have some independence from the Sanctuary Program. I quote Congressman Sam Farr on this topic, who said regarding his recommendations to our Management Plan Review process (January 31, 2002)

“This Management Plan Review should examine ways for providing the SAC with greater independence and strengthening its role as a trusted partner in Sanctuary management The advisory role of the SAC as defined in its Charter, creates a necessary separation between the SAC and the Sanctuary Program by giving the Sanctuary Management final authority to selectively implement SAC recommendations. The Charter, however, is inconsistent in maintaining the separation by also providing Sanctuary management with oversight over virtually all SAC activity including its membership, communication and agenda. Because of this.... 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.”

The Management Plan Review did not conduct such an examination because the SAC at the time did not prioritize this as an issue. They saw no problems, despite Congressman Farr’s voiced concerns.

There are further concerns regarding the draft revisions. First, it inserts the goals of the Office of National Marine Sanctuaries which are different than the “findings, policies, and purposes” found in the National Marine Sanctuaries Act. I believe that this skews away from the nuances and legislative intent of the National Marine Sanctuaries Act itself. Certainly it would be appropriate if the exact language of the Act was provided in a SAC Charter. I encourage the SAC to compare the language of the Act (“findings, policies and purposes”) with the goals of the National Marine Sanctuary. Later in the document the SAC members are instructed to “recall that the primary objective of the Sanctuary and the Act is resource protection.” However, nowhere in the Act is the term “protection” defined. In fact, the Act also contains numerous references to “wise and sustainable use,” “multiple use,” and “conservation”, but these concepts are not contained in the Office of National Marine Sanctuaries goals.

Second, this revised document speaks of the SAC “formulating such consensus advice.” In fact, the SAC has never operated as a consensus body; and in fact, if it would, it might improve matters because, as it stands now, as long as the Sanctuary can control the makeup and representation of the majority of seats, it will always hear what it wants to hear via a majority vote. “Consensus” is not defined in the new Charter. Does the Sanctuary really mean for the SAC to operate on a consensus basis?

In the “Protocols” section there is a weakening of the notice requirement found in the National Marine Sanctuary Act. The Act requires that the SAC agendas be published in local media in advance. The new SAC Charter simply says that it shall provide the local media with the agendas. Further, there is new language making it clear that the Council may not vote on any item that is not publicly noticed. However, later in the document there is a confusing section that reads, “Every effort shall be made to identify agenda items for possible action, but the agenda may be changed on the day of the meeting by majority vote of the Council.” There follows a struck-out sentence that states, “Any agenda item may become actionable at the request of a councilmember or the Sanctuary Superintendent.” It is unclear who struck this section out. There’s also other verbiage, such as that the Sanctuary shall make “every effort” to provide pertinent information to councilmembers at least three business days prior to the meeting and to update the Sanctuary’s web site for the agendas. I don’t get why “every effort” can’t be changed to “shall,” i.e.; they shall provide proper notice and information to the public and to councilmembers. Also disturbing is the fact that, as proposed by the Monterey Sanctuary, Council work sessions and retreats, including their working groups (like the future MPA workgroup) are not required to be open to the public.

My comments are not meant to be disrespectful to any individual member of the SAC or to the Sanctuary staff. I do not question your good will in trying to be good stewards of the ocean. This is a governance issue, not a personality issue.

Thank you for considering these comments.

Sincerely,

Kathy Fosmark
SAC Commercial Fishing Representative