



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

MAY 25 2005

Dr. Donald McIsaac
Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

Dear Dr. McIsaac: *Don*

This letter formally provides the Pacific Fishery Management Council (PFMC) with the opportunity to prepare draft sanctuary fishing regulations, pursuant to section 304(a)(5) of the National Marine Sanctuaries Act (NMSA), for the potential establishment of marine reserves and marine conservation areas in federal waters of the Channel Islands National Marine Sanctuary (CINMS). We are providing the NMSA section 304(a)(5) materials at this time to ensure both that the PFMC has sufficient time to review and respond, and that there is no significant delay as NOAA conducts an analysis of the feasibility of implementing marine reserves and marine conservation areas under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Recent and Current Actions

As you know, on April 15, 2005, the PFMC responded to the National Marine Sanctuary Program's (NMSP) section 303 consultation letter regarding possible changes to the CINMS Designation Document to authorize regulation of fishing activities to implement the possible establishment of marine reserves and conservation areas within the CINMS. The PFMC responded that it was supportive of the goals and objectives of the Sanctuary and recognized the ongoing partnership with the State of California with the goal of implementing complementary marine protected areas in federal and state waters in the CINMS. The PFMC also recommended that, at this time in the process, the CINMS not change its Designation Document to allow for the promulgation of fishing regulations necessary for the designation of marine reserves and conservation areas within federal waters of the CINMS. Rather, it suggested that CINMS complete the process "of evaluating the available avenues under existing authorities (i.e., MSA or other California State authorities) to achieve the goal of establishing marine protected areas (MPAs) in the federal waters portion of the sanctuary."

The NMSP has also received a similar letter from the State of California (enclosed), which also requested that NOAA determine if existing authorities (e.g., MSA) may be used to establish MPAs within the federal waters of the CINMS. However, the State also indicated that if the process under existing laws and authorities would not be timely, efficient, or sustainable, then it would support a limited change to the CINMS



Designation Document to establish specifically identified and designed MPAs with no further conveyance of any additional fishery management authority.

Consequently, as requested by the PFMC and the State of California, the NMSP is presently working with NOAA Fisheries and NOAA's Office of General Counsel to evaluate the legal and administrative viability, procedures and timeline necessary to establish and implement restrictions on fishing activities under the MSA necessary to establish marine reserves and marine conservation areas to achieve the CINMS goals and objectives within federal waters of the CINMS. We expect this analysis to take approximately 6-8 weeks. The results of this analysis will be used by NOAA to determine the final course of action regarding whether to continue to move forward under the NMSA or to initiate MSA procedures if they could be used to achieve the CINMS goals and objectives. Once NOAA makes a determination it will inform the Council and the State. The analysis will also be discussed in any draft environmental impact statement for the proposed action.

Need to Avoid Delays

In the interest of avoiding any further delay and to address the State's concern with the "lack of progress to complete the establishment of MPAs in specified locations in federal waters within [the CINMS]", we are providing you these materials for your June meeting to formally initiate the section 304(a)(5) process. Please note that providing the PFMC with this opportunity does not presuppose that regulations will be issued under the NMSA, but the NMSA does require this step in order to complete a DEIS, should we move forward under the NMSA. The NMSA regulations provide Councils with 120 days from the date of section 304(a)(5) notification to make recommendations and, if appropriate, prepare draft NMSA fishing regulations and submit them to NOAA. However, given the pending analysis NOAA is conducting and that the outcome of the analysis may have a bearing on the PFMC's response, we are extending the 120-day review period to allow the PFMC to have three full meetings (June, September and November) to deliberate and prepare a response. We expect to inform the PFMC no later than July 18, 2005 of NOAA's determination whether to proceed under the NMSA or under the MSA based on the results of the internal analysis presently being conducted. Consequently, extending the deadline so the PFMC has 120 days from July 18 would allow the PFMC to respond by November 16, 2005.

Pending the outcome of the MSA and NMSA analysis, the PFMC may determine that its formal response is the same as provided in response to the NMSA section 303 letter, i.e., that it recommends implementing MPAs in federal waters of the CINMS under the MSA. If this is the case, then the PFMC can simply send a written response to this effect which would satisfy the section 304(a)(5) requirement.

About NMSA Section 304(a)(5) Requirements

Specifically, the PFMC is being given the opportunity to prepare draft NMSA regulations under section 304(a)(5) of the NMSA (enclosed) to achieve the goals and objectives for a spatial network of marine reserves and marine conservation areas within the CINMS. In

the supporting document described below we have identified two individual spatial alternatives that at this time appear to achieve the stated goals and objectives, and request the Council focus on these as a starting point in considering the preparation of draft NMSA regulations. These and other alternatives will be fully analyzed in a draft environmental impact statement. The supporting document provides the CINMS goals and objectives (also described below), as well as background information, draft alternatives, summary ecological and economic information and model regulatory language to assist the PFM. The background information also addresses comments received from the PFM on the NMSP's *Staff Preliminary Working Draft Document for Consideration of a Network of Marine Reserves and Marine Conservation Areas within the Channel Islands National Marine Sanctuary* provided to the Council May, 2004.

Goals and Objectives

The NMSP is considering the establishment of a network of reserves and marine conservation areas within CINMS to complement the ecosystem based protection to Sanctuary resources afforded by the State of California's marine protected areas within CINMS and to further the purposes and policies of the NMSA. The goals for this proposed action are:

- To provide long-term protection of CINMS resources including natural habitats, populations of interest and ecological processes;
- To restore and enhance natural habitats and the abundance, density, population age structure and diversity of natural biological communities in the CINMS;
- To provide, for research and education, undisturbed reference areas that include the full spectrum of CINMS habitats where local populations exhibit a more natural abundance, density, diversity, and age structure;
- To set aside, for intrinsic and heritage value, representative habitats and natural biological communities; and
- To create models of and incentives for ways to conserve and manage the resources of the CINMS.

These goals are consonant with goals and objectives for marine reserves identified by the Marine Reserves Working Group and goals identified by the State of California for the Marine Life Protection Act and the Marine Managed Areas Improvement Act.

Support Document

To assist the PFM, this letter is accompanied by a summary document that provides the following information:

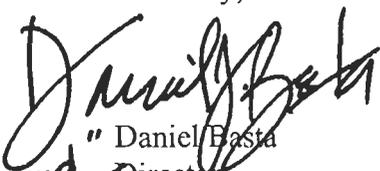
- Executive Summary
- Section 1: Background and Context
- Section 2: The Federal Regulatory Phase
- Section 3: Alternatives
- Section 4: Overview of Ecological Attributes

- Section 5: Comparison of Alternatives
- Appendices
- References

We look forward to meeting with the PFMC and, as necessary, its advisory bodies, as well as any other special meetings that the PFMC may wish to convene in order to consider this matter. We look forward to receiving initial feedback from the PFMC following your June and September 2005 meetings, and the formal response after the November 2005 meeting.

We appreciate greatly the time and energy that the PFMC, California Department of Fish and Game, CINMS Advisory Council and the general public continue to invest in the CINMS marine reserves process. Please call Chris Mobley, CINMS Manager, or Sean Hastings, CINMS Marine Reserves Coordinator, at 805-966-7107, if you have any questions.

Don,
I want you to know how much we appreciate the Council's effort on this matter. Our joint work is leading the way to find "common ground" among many divergent commitments.

Sincerely,

 Daniel Basta
 Director
 National Marine Sanctuary Program

- cc: Donald Hansen, Chair, PFMC
 Rod McInnis, Regional Administrator, SWR
 Michael Chrisman, Secretary of Resources, State of California
 Ryan Broderick, Director, CDFG
 William Hogarth, Assistant Administrator, NOAA Fisheries
 Richard Spinrad, Assistant Administrator, National Ocean Service