

COMPLETE STATEMENT
OF
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BEFORE

THE FISHERIES, WILDLIFE AND OCEANS SUBCOMMITTEE
OF THE
COMMITTEE ON NATURAL RESOURCES

UNITED STATES HOUSE OF REPRESENTATIVES

Madame Chair and Distinguished Members of the Subcommittee:

On behalf of California's ports and harbors, thank you for the opportunity to address you on an important coastal and resource program that a number of our members are actively involved with, many of us for years. As an example I remember writing a letter in the late 1980's on the proposed Monterey Bay Sanctuary to my Representative at that time, Mrs. Boxer

CMANC, the California Marine Affairs and Navigation Conference is an association of the ports and harbors in California that have federal navigation projects. This is, essentially all of the ports and harbors in California from Crescent City to San Diego and San Francisco to Stockton. Through these facilities moves over 40% of the nations waterborne trade, provides access to the waters for fishermen and recreational opportunities for all. Our mission is to promote the operation, maintenance and improvement of California harbors, ports and navigation projects that demonstrate responsible stewardship and benefit the regional and national economy.

California's ports and harbors are environmental leaders. Not only are they economic generators they are also environmental defenders. Collectively they have caused the creation or restoration of thousands of acres of wetlands, reduced non-point source pollution, cleaned or remediated contaminated sites, and is working to reduce air pollution generated by our international trade.

First, I want to highlight areas of agreement between our membership and the Sanctuary Program. We agree wholeheartedly that harbors are the gateway to the sanctuaries and that a partnership between us is highly desirable if not essential to the success of all. Second, we are strong supporters of the education function of the sanctuaries, and do all we can to assist in those efforts. Further, we believe in, and actively act on behalf of sustainable use of its resources, and in the preservation of these rich environments for future generations.

To us "Sanctuary" means a marine managed area where the use of Sanctuary resources are balanced with their conservation, accomplished through education, research, and by working cooperatively with agencies of jurisdiction, and industry.

Since 2001 CMANC has been meeting with NOAA officials at all levels from the Administrator to the (now) Office of Marine Sanctuaries, as well as, members of Congress. In our frank conversations we touched upon the issues of trust, transparency of the process, dredging, fishery regulations, sanctuary advisory councils and general concerns relevant to the Channel Islands and Monterey sanctuaries.

Generally we are interested in fostering a dialogue on improved relations between the National Marine Sanctuary Office and coastal communities and ports. This dialogue could focus on the regulatory versus cooperative management role of the National Marine Sanctuary Program, improving the Management Plan Review process, and establishing a well rounded Sanctuary Advisory Council to represent community views.

Some of the topics I wish to address include dredged material disposal, beach nourishment, fishery regulations, marine protected areas, sanctuary advisory councils, use of science, and collaboration.

To quote from the Monterey Bay Sanctuary Designation document on their web site:
Comment: Dredging is essential to maintaining viable working harbors. However, because of potential degradation to the environment, dredging should be prohibited within the Sanctuary. NOAA should clearly state how regulations will affect current dredging activities in the Sanctuary. **Response:** Most harbor areas do not lie within the Sanctuary (see Comment/Response (7) above) and therefore are not affected by the Sanctuary dredging prohibitions. In addition, existing activities relating to the maintenance of the harbors have been exempted from Sanctuary regulation. NOAA will work closely with COE and EPA to ensure that Sanctuary resources and qualities are protected, while allowing essential dredging activities to be conducted.”

The crux of the conflict between the Monterey Bay National Marine Sanctuary (MBNMS) and its adjacent four harbors is the “prohibition against disposal of dredged material within the sanctuary.” This has been interpreted by Sanctuary managers as applying to any harbor dredge disposal that diverges from pre-January 1993 MBNMS designation in:

Volume of sediment;
Character of sediment (grain size);
Placement of sediment.

While this currently impacts these four harbors, as the Sanctuary program expands, there is potential for similar conflicts to arise elsewhere in the nation.

Sanctuary managers have helped harbors to work “around” the prohibition in certain cases, but this is not a stable situation and harbors should not have to count on Sanctuary managers going “out on a limb” to accomplish needed and otherwise permissible dredging. This is tenuous for all parties. Harbors are organic and dynamic and their needs will change over time, especially in light of any predicted climate change. The prohibition is in conflict with these needs, and it will always be.

We believe that since the prohibition was never meant to restrict beneficial reuse of clean sediment dredged by harbors, that there could be an official National Ocean Service (NOS) clarification of the prohibition, perhaps as follows:

“All existing adjacent MBNMS harbors (Monterey, Moss Landing, Santa Cruz, and Pillar Point) and their adjacent areas are recognized as pre-existing dredging and disposal sites and therefore excluded from the prohibition.

All harbor dredge disposal applications will be evaluated on their respective environmental merits by all appropriate federal and state regulatory agencies, including Monterey Bay National Marine Sanctuary, when applicable.”

We do not believe there is a dangerous precedent here because there is no precedent other than within the Monterey Bay National Marine Sanctuary. No other harbors exist adjacent to other marine sanctuaries. New sanctuaries yet to be designated can certainly deal with this in the future. We believe that an administrative clarification issued by NOS to Sanctuary managers can solve this problem.

The Marine Sanctuary Act of 1976 provides for dredging within sanctuaries as long as there is an environmentally-based management plan. Dredging discharge into the waters of the United States has an existing, extremely strong environmental review process in place under either the Clean Water Act or Ocean Dumping Act.

Some of the current harbor managers did take part in the late-80's Sanctuary development process. Specific letters of concern were written to NOAA about harbor dredging. There was assurance that harbors' dredging needs would not be impinged upon. To that end, the four harbors were geographically lined out of the Sanctuary so that their maintenance needs could be met. Commander Terry Jackson, the first MBNMS manager, stated in 1991, that NOAA had no regulatory authority over harbor dredging, and no desire to have such.

It is our belief that the prohibition against new sites was supposed to be for ocean dumping, because existing federal dumping sites SF-12 and SF-14 adequately provided for that function.

Subsequently, when it was discovered that harbors' dredge disposal occurred below mean high water (within the Sanctuary's boundary), the Sanctuary staff interpretation was that such discharge was prohibited unless the exact same disposal had been performed under permit prior to Sanctuary designation (1991).

We have been struggling with this ever since. We contend that the Sanctuary prohibition is inadvertent, unintended, needlessly legalistic, and that no resource protection emanates from it that is not already provided for by historic regulatory oversight. We would like the Sanctuary Act to clarify the local Sanctuary will continue to have the ability to

comment to the Corps of Engineers and Environmental Protection Agency, but will have no ability to supersede their decisions.

The disposal issue also impinges on using sand dredged from harbors or even trucked into the sanctuary from being used to provide periodic nourishment of beaches that are eroding. In California approximately 85% of the coast line is eroding and beaches need sediment as items outside of the sanctuaries such as urbanization, dams and sand mining prevent material from reaching the coast. Beaches are one of the public's most treasured aspects of sanctuaries as it gives them an opportunity to touch and sense the sanctuary.

With regards to fishery management we would like to offer the following from the Monterey Sanctuary web site: “**Comment:** Many commentators stated fishing should not be prohibited within the Sanctuary. Instead, fisheries resource regulation should remain under the jurisdiction of the State of California, the National Marine Fisheries Service (NMFS) and the Pacific Fisheries Management Council (PFMC). Other commentators requested NOAA to regulate harmful fishing activities such as gill-netting and shark finning. NOAA's position should be clarified in the FEIS/MP.

Response: Fishing is not being regulated as part of the Sanctuary regime and is not included in the Designation Document as an activity subject to future regulation. Fisheries management will remain under the existing jurisdiction of the State of California, NMFS and PFMC. Sanctuary prohibitions that may indirectly affect fishing activities have been written to explicitly exempt aquaculture, kelp harvesting and traditional fishing activities.

Existing fishery management agencies are primarily concerned with the regulation and management of fish stocks for a healthy fishery. In contrast, the sanctuary program has a different and broader mandate under the Sanctuary Act to protect all sanctuary resources on an ecosystem wide basis. Thus, while fishery agencies may be concerned about certain fishing efforts and techniques in relation to fish stock abundance and distribution the Sanctuary program is also concerned about the potential incidental impacts of specific fishery technique on all sanctuary resources including benthic habitats or marine mammals as well as the role the target species plays in the health of the ecosystem. In the case of the Monterey Bay area fish resources are already extensively managed by existing authorities.

Should problems arise in the in the future NOAA would consult with the State, PFMC and NMFS as well as the industry to determine an appropriate course of action. “

As certain commitments were made at the time of the Monterey Bay Sanctuary designation, we believe those commitments should be kept. To that end we would like clarification that the California Department of Fish and Game (including the California Fish and Game Commission) and NOAA's Fisheries Service (including Pacific Fisheries Management Council) are the primary agencies responsible for fishing regulation and ensure that any zones or regulations proposed that affect fishing occur only out of a cooperative dialogue with fishing and/or aquaculture communities and are supported by them. Recognize, in writing, that Sanctuary policies affecting fishing may integrate with

management tools promulgated by the state and federal governments, but are not intended to augment or supersede them.

The Monterey Sanctuary has started in a Marine Protected Areas process that will impact fishing. We at this point are not certain that the Sanctuary has adequately described the legal authority to proceed, that all stakeholders are supportive, or the necessary specific goals and objectives for each discrete site within the Sanctuary that will be designated an MPA have been developed.

At this time we have not seen clearly defined ecological, economic, and socio-cultural objectives. We believe that this is required to determine if MPAs are the appropriate tool for meeting the objectives. Further, we believe the purpose of each specific site should be identified.

The reality that we live with every day is one where multiple layers of conservation regulation and programs exist, including drastically lower fish quotas and the use of extensive Marine Protected Areas by the State and other federal agencies. We have heard, approximately 64% of the California Central Coast area, from Cambria to Pigeon Point, is already in fishing restricted de-facto MPA status. This area does not include the northern portion of the MBNMS, as the State process has not concluded. Neither does this area include the Davidson Seamount, which will add another 775 square miles in MPAs to the MBNMS.

We also recognize the efforts of the National Academy of Public Administration (NAPA) in their report of February 2000, which recognized that “no-take” zones should only be established if there is substantial support in the local fishing community for doing so.

Similar to the requirement to designate a sanctuary, we believe the sanctuary should provide how the MPA program including designation, research, enforcement, monitoring, evaluation and modification will be funded in out years.

With regards to adaptive management; we believe that any MPA network needs to have monitoring and evaluation systems to determine the effectiveness of management methods in meeting the objectives and refining those management methods.

We are still waiting for the internal operational guidelines that the Administrator has told us and others that we would have an opportunity for consideration and comment on clearly defining the process by which fishing regulations within the sanctuaries will be decided.

Another quite divisive issue for the Sanctuary Program is over the construction and rules concerning the sanctuary advisory councils. We are aware that in the protracted discussions that occurred in the northern San Luis Obispo County area of California regarding the possibility of the Monterey Bay National Marine Sanctuary expanding southwards, one of the central issues was the loss of local control. As best we could tell, local officials down there were simply not impressed that the Sanctuary Advisory

Council, as currently constructed, would ever provide them with a meaningful voice to the Federal Program. We are also aware that similar concerns exist from the public and some current and former SAC members of the Channel Islands and Monterey Bay National Marine Sanctuary. Certainly, our own experience tells us that the rules mandated on the Sanctuary Advisory Council by NOAA need to be fundamentally changed to allow it more of a partnership role with the Sanctuary Program, and insure a strong, independent voice. The fact that the current NMSA exempts the councils from the Federal Advisory Commission Act would indicate that Congress does want councils to operate with more independence. However, we believe NOAA is still not clear enough on this point. Resolving this issue would go a long way toward assuring continuing community support and removing obstacles from the Sanctuary Program's future. It must be clear that the Councils have the freedom to correspond and solicit insight and advice on the working of the program to whomever the Council wishes.

We believe Sanctuary Advisory Council protocols and charter must be changed to empower the Councils and to insure Council appointments are made through a community process rather than solely by the Sanctuary superintendent. We believe this would give local communities far more voice in sanctuary management than has previously existed. In 2000 NAPA recognized the need to improve the relationships between sanctuaries and their councils. We are still waiting for action to take place.

Most Americans support the concept of providing Federal resources to manage areas that are biologically and/or geologically rich to assure their continued existence and use for future generations. The public also supports full protection for unique and discrete sites that are of national importance. Unfortunately, however, what we have seen over the past 20 years of the Marine Sanctuary Program is a gradual, but constant, imbalance in the application of the Program's founding principles. For example, the founding principle of "protection" of Sanctuary resources has no common sense limits in place in the Act, resulting in, for example, public agencies having to go through the full Sanctuary permit process for a permit to remove a few ounces of sand from the inter-tidal beach area for grain size analysis. We believe the law needs some common sense limits to give its administrators a clearer set of marching orders to balance the conservation of Sanctuary resources with the multitude of uses, including those of high economic importance. The two concepts of conservation and use are not mutually exclusive.

Generally the changes we offer seek to make constructive changes in the Act, based on practical considerations, to accomplish the following goals: focus the Sanctuary Program on the concept of conservation rather than the protection of resources; give local communities more voice in sanctuary management; clarify explicitly that the Program is not involved in any way in fishery regulation; clarify that the Sanctuary's role in the Federal process for permitting dredging operations is strictly as a commentator; for future sanctuaries, move them away from key harbor facilities and operational areas; and, focus the program on identification of unique and special areas of biological or geological importance to the Nation. In all, these suggested changes are intended to assure that the Sanctuary Program will be viewed as a good responsive neighbor to the communities that relate to it, and therefore assure the support of those communities far into the future.

1. Clarify that the 1972 Marine Protection, Research, and Sanctuaries Act did not envision Sanctuaries to be regulatory agencies in regard to dredging and dredge material disposal, relative to harbors that may be in or adjacent to a Sanctuary. Rather the Act, in Titles I and II, specifically gave to the EPA and the Army Corps of Engineers that primary responsibility. The reauthorization of the current version of this law, the National Marine Sanctuaries Act, should clarify that existing federal, state and local authorities shall be the agencies to evaluate dredging and dredged material disposal projects, and issue permit conditions as warranted. The local Sanctuary will continue to have the ability to comment to those agencies, but will have no ability to supersede their decisions.
2. Provide direction to the Sanctuary Program that it must work in coordination with state fishery agencies or the regional federal fishery management councils as appropriate. The Sanctuary Program should not be able to override the opinion of these agencies. If the Sanctuary Program has the ability to override the opinions of fishery management agencies, then it will demonstrate a considerable irony in implementing true ecosystem-based management if the concerns and effects of the proposed fishing rule are not agreed to by those agencies that have that direct responsibility. This should include the creation of any zones which affect fishing operations.
3. Clarify the role and purpose of the Sanctuary Advisory Councils. If these councils are intended to provide community advice to the Sanctuary Program, then the Sanctuaries Act should provide clear direction that council members accurately reflect the makeup of the community, including stakeholders, and that some method of accountability from the council representatives to their constituency groups, whom they are to represent, must be in place. Sanctuary Managers should not be in the position of having full control over not only the types of seats, but who occupies those seats on the Advisory Councils, if community representation is meant to be accurate.
4. Generally, the Act should clarify the role of the National Marine Sanctuary Program as being one of primarily research, education, and cooperative work with existing authorities and agencies, utilizing the existing authorities, rather than attempting to be primarily a new regulatory agency. These roles of the Sanctuary Program should be stressed in the Act.
5. The National Marine Sanctuaries Act should explicitly require the Sanctuary Program to use the best available, peer-reviewed science in its decision making. These would be decisions for both permit conditions and also for potential regulations. The sanctuaries must be tasked with making credible efforts to reconcile any competing or conflicting scientific opinions.
6. Add “economic” quality to “Finding (a) (2) of Section 301.” This finding acknowledges that certain areas of the marine environment possess conservation,

recreational, ecological, historical, scientific, educational, cultural, archeological, or esthetic qualities which give them special national, and in some cases, international, significance. The addition of “economic” to the list of qualities will acknowledge that these areas may have significant economic value as well.

7. “Resource Protection” for the purposes of the Act should be defined in terms of management for long term sustainability except for physical features or assets of the Sanctuary which are identified in the Sanctuary’s designation document which may require increased limits or even a ban on any human use. The cultural resources of coastal communities that are dependent on sustainable ocean use should be among the resources protected by the Sanctuary Program.
8. Strengthen the public process required to change a Sanctuary designation document. Concurrence for any language or boundary changes, or new authorities, should be required from both the member(s) of Congress representing the District(s) that adjoin the Sanctuary, as well as concurrence from whatever regional association of governments served as the lead local agency for Sanctuary Designation.
9. For ourselves and other ports and harbors along the Pacific Coast, we don't want rules changed that currently allow for safe navigation and fishing in existing sanctuaries.
10. Local jurisdictions and stakeholders should be given the opportunity to work with the federal agencies to address demonstrated environmental needs prior to beginning a federal designation process. This was successful in Northern Puget Sound, but required the intervention of Congress to allow it to happen.
11. Any process for designation of new marine sanctuaries must include potentially affected stakeholders in both the designation and the development of rules governing activities within the proposed sanctuary. Designation must include a consideration of economic impact and select an alternative that minimizes economic impact while meeting scientifically demonstrated environmental needs.

Again, Madam Chair, on behalf of California’s ports and harbors, I am extremely appreciative of this opportunity to address you and the Subcommittee so that we can engage each other and collaboratively work to the benefit of all including future generations.