

BAIT AND SWITCH?

FISHERMEN'S DIFFICULT RELATIONSHIP WITH THE MONTEREY SANCTUARY

BY: TOM ROFF

With new efforts being made by some community members to gather support for an expanded Monterey Sanctuary (MBNMS), or a new “central coast sanctuary”, claims have been heard that the MBNMS has never broken the well-remembered promise made to us fishermen that it would not create regulations that affect us, or otherwise threaten our livelihoods. Central coast fishermen have always wanted a mutually trusting and respectful relationship with the MBNMS, but we have so far been disappointed. I have researched this issue, have spoken with many fishermen, and located reference documents, the results of which are found below.

First, a little history.

The condition of the central coast just prior to sanctuary designation in 1992 was considered “pristine”. This, and the unique feature of the Monterey Canyon, is why the northern portion was considered for a sanctuary. This was the case even in the context of extensive fisheries having utilized the ocean for the last 100 years. In fact, in 1992 in the central coast, just prior to sanctuary designation, there were a dozen or more bottom trawl vessels, about 30 purse seine (squid/sardine) vessels, and several hundred boats fishing for salmon, crab, albacore, prawns. Now, we have only about one-quarter of that number, and these are even more heavily regulated. The main public interest in creating a sanctuary was to add another layer of regulation to keep oil development out of the region.

During the run up to the creation of the Monterey Bay National Marine Sanctuary (MBNMS), regional communities and stakeholders negotiated with NOAA as to the role that the Federal Agency would play in the coastal and ocean issues. There was great concern over surrendering local control, and the potential for ocean policy issues to essentially be run from Washington, DC. The Association of Monterey Bay Area Governments (AMBAG) played the lead role among the public agencies to sort out these issues. Congressman Leon Panetta also convened a stakeholder leaders group to air out their concerns. Representatives from commercial and recreational fishing were key members of the stakeholder group. In 1991 commercial fishing was several hundred million dollars a year worth of direct income, but also had important cultural roots in several communities. Getting commercial fisherman to support a sanctuary was particularly important because there had been two prior efforts to create a Monterey area sanctuary, which had been defeated by fishermen. We were suspicious of a federal agency called a “sanctuary”—which we felt would imply to some protecting everything from everything everywhere—and among other restrictions, that the sanctuary would create new regulations making our lives more difficult or even putting us out of business. Fishing was already heavily regulated by State and Federal fishery management agencies.

The Designation Document for the sanctuary purposely did not list fishing as an activity subject to regulation, or future regulations. The [Designation Document](#) is essentially the original terms agreed upon by all parties and serves as a foundation for sanctuary management. The Designation Document can be changed, but it must go through the same process of public hearings and environmental impact analysis as did the original designation. This said, there was a past effort on the part of the sanctuary program to get Congress to shortcut this process and allow sanctuaries to change Designation Documents essentially at will. Fortunately, Congress did not do this.

The agreement that was struck between NOAA (parent agency to the future sanctuary) and fishermen was this: If fishermen agreed to support the creation of a sanctuary, the sanctuary would respect the authority of the existing federal and state fishery management agencies. The sanctuary would not manage fisheries, create fishing regulations, or generally take actions that threaten the livelihoods of fishermen. . A powerful statement of this negotiation can be found in the [affidavit of Dave Danbom](#), Leon Panetta's lead representative for fishing issues. It is generally acknowledged that if it had not been for this important agreement made with the fishing community, the sanctuary effort would have failed once again. Congressman Panetta is quoted in the San Jose Mercury News (March 16, 2003), saying "I think the reason we were able to get such a large consensus (to support a sanctuary) was that I made it clear the sanctuary wasn't going to represent a whole new bureaucracy imposing regulations on fishermen." Letters from [Congressman Sam Farr](#), [Anna Eshoo](#), and others, also speak pointedly to this fact. This negotiation and agreement are remembered still by many elected and civic leaders, and serves as the basis for many community leaders' continued involvement in holding the Sanctuary to this promise. Many public agencies, such as the [City of Morro Bay](#), the [Monterey County Board of Supervisors](#), [the Association of Monterey Bay Area Governments](#), which is made up of elected officials from three counties, [the City of Monterey](#), and the Port San Luis, Moss Landing, and San Mateo County Harbor Districts, have all gone on record as asking the MBNMS to keep its promise made to fishermen. Keeping this promise has been a sort of integrity test for the sanctuary through the years.

The Designation Document also contains language that relates to the future for fishing issues: "Should problems arise in the future, NOAA would consult with the State, Pacific Fishery Management Council, the State, the National Marine Fishery Service, as well as Industry, to determine an appropriate course of action." This phrasing opens the door for sanctuary/fishermen discussions on items of mutual interests. Congressman Sam Farr speaks to this point in his thoughtful [letter of January 30, 2002](#). Fishermen were assured by this language and the terms of the Designation Document. We were also assured by our relationship with the older Gulf of the Farallones National Marine Sanctuary. GF Sanctuary Manager Ed Ueber had had a positive relationship with the fishing community. If a problem arose, he knew exactly who to call, take them out for coffee, discuss it, listen to them, and together work out a solution, without the sanctuary imposing fishing regulations or the fishermen feeling threatened.

Has the sanctuary kept this promise over the past 20 years? Most fishermen think that it has not. In recent times senior MBNMS officials have suggested, at public meetings, that fishermen were somehow "confused" by what they heard in the early 90's—that the promise wasn't really a promise. This makes us wonder if NOAA always intended to try and get around the agreement, as soon as the sanctuary was created. Sanctuary officials have also repeatedly claimed that they have never created a fishing regulation, or otherwise harmed the fishing community. Incredibly, this is said during the same time period that the MBNMS called for additional MPAs—fishing closures.

In 2008, a [legal opinion was sought on the authority](#), or lack of, for a sanctuary to create MPAs.

There are many specific examples why fishermen feel that the MBNMS has not acted in good faith, but only several will be discussed here. One comes from the MBNMS revision of its management plan, which began in 2001. Fishermen knew that the sanctuary was very interested in marine protected areas (MPAs), which are various levels of no fishing zones. It would be the epitome of breaking the promise made to fisherman should the sanctuary force MPAs into the region. At the same time, most fishermen knew that there is a place for some MPAs in ecosystem-based management. To constructively engage in this discussion in a way that would not compromise the original agreements, or threaten fishermen,

fishermen organized and created a MPA working group to discuss this with the sanctuary [[ACSF Letter to MBNMS 2.2.01](#)]. This working group was led by the fishermen themselves. They were comfortable with the process and progress was being made in these discussions until sanctuary management decided that it needed to control the process and created its own marine protected area work group, thereby making the fishermen's group ineffective as it had no one to talk to. Fishermen were invited to participate in the sanctuary's MPA working group and did so for nearly five years, but only as a minority voice. Ultimately fishermen were so frustrated with the sanctuary that they withdrew their support for the working group and the MPA element of the sanctuary's new management plan [[MPA Letter to Holly Price MBNMS 2.2.07](#)]. Fishermen felt that the MBNMS lacked a scientific basis for the scope of its MPA ambitions, and we perceived that the sanctuary itself didn't even follow the principles of its own MPA plan. During this process, the MBNMS was formally asked by the City of Monterey if the culture and heritage of fishing in coastal communities were "resources" that the sanctuary was also to protect. The answer: No. [[Letter to Holly Price and SMPA Workgroup 1.21.05](#) & [MBNMS Response to Letter 1.22.05](#)] Fishermen also commissioned a number of scientific studies from respected, independent fisheries scientists, and presented these to the sanctuary. However, fishermen feel that the sanctuary has dismissed these studies out of hand.

When this MPA working group was disbanded in April 2007, without reaching a decision, the MBNMS announced that it would take the question of the need for additional protection, meaning more MPAs in federal waters, directly to its Advisory Council. The MBNMS leadership made statements about how much they needed the SAC's advice to help them make this important protection decision. There were a series of SAC meetings, with scientists and others making presentations on this question. [Congressman Farr wrote to the MBNMS](#) on this issue. Ultimately, in December 2007, the SAC voted (but with substantial dissent) to support creating additional MPAs in federal waters. With that "advice" on the record, the [MBNMS announced on February 15, 2008](#), that it would pursue additional MPAs. [A second letter was published April 15, 2008](#) containing the MBNMS's attempt to create a scientific rationale. In these letters, the MBNMS attempts to make the case that somehow the National Marine Sanctuaries Act requires that the Sanctuary create wilderness areas in the sea---areas where no fishing and many other uses would be allowed. The attorney for the ACSF wrote to the NOAA and Sanctuary leadership, expressing his legal opinion that the MBNMS lacked legal authority to create these MPAs. The City of Monterey also reacted strongly to this MBNMS MPA decision. [[Monterey City Council Letter to MBNMS 3.27.08](#)]

Fishermen who had followed this process smelled, to be frank, a dead fish. The Alliance of Communities for Sustainable Fisheries (ACSF), through its attorney, sent a [Freedom of Information Act request](#) for information on the MBNMS's MPA decision. At first the Sanctuary Program told the ACSF that it would cost at least \$9,000 to supply the requested information [[FOIA Request Response 11.3.08](#)] Eventually, [AMBAG wrote to the Sanctuary program](#), pointing out that the MPA decision was an item of great public interest, and requested a fee waiver. The Sanctuary backed down and agreed to provide the information. The information that came in, nearly a year after the original request, showed some very alarming things.

Perhaps most alarming, the [official minutes of a June 8, 2008 MBNMS staff meeting](#), led by the Director of all West Coast Sanctuaries, Bill Douros, show that the decision to have more MPAs, and generally where they will be placed, is made six months before the MBNMS asks its SAC for its advice to help them make this very decision. In the discussion of the need for additional protection through MPAs, Mr. Douros is quoted as saying "We need to see additional protections and know we need an extension of the state MPAs": It seems clear to us fishermen that the top west coast sanctuary program official is

making a decision and directing his staff. This decision is also made prior to a [July 27, 2007 briefing of Congressman Farr](#) wherein the MBNMS representatives tell the Congressman of their plan to obtain SAC advice in December 2007. So, it seems that the MBNMS used the goodwill of the SAC members for its own purposes, having already decided the issue.

It also appears that when the MBNMS made its “need for MPAs” decision public on February 15, 2008, it failed to consult with the Pacific Fishery Management Council in advance of this decision, as required by the Sanctuary Designation Document and its own regulations.

To us fishermen, not only is all of this a profoundly disappointing misuse of a public process, but it’s also a waste of taxpayer money, and since MPAs are aimed to stop fishing in areas, directly harmful to us. This is more than a fishing issue, and if public members are concerned about the loss of local control that might come with sanctuary designation, they should pay attention to this.

Another example relates to this in that the State of California began its own MPA process in 2005. This was called the Marine Life Protection Act Initiative. Fishermen again organized themselves to constructively engage in this process with the state and committed themselves to following the science guidelines developed by the state, and to have a proposal that met all the goals and objectives required by law. The MBNMS was represented during this process. Despite repeated requests from the fishermen for the sanctuary to join the fishermen to create an MPA network together [[Letter to Bill Douros 11.30.05](#)], the sanctuary led a group of conservation organizations in creating an alternative proposal, which, after some changes, was adopted by the State. Fishermen witnessed sanctuary representatives pointing at maps and stating which areas the sanctuary wanted to close to fishing. At the end of the State process it got even worse when Dr. Holly Price, the Sanctuary official in charge of its MPA Workgroup, spoke in front of approximately 300 people, 150 of whom were recreational and commercial fishermen, and told the Fish and Game Commission that the state had not gone far enough in its efforts to close areas to fishing [[Letter to Michael Flores of CFGC 1.31.07](#)]. This was in spite of the fact that the new closed areas were seriously hurting fishermen, and even creating new safety at sea issues. The superintendent made a specific written proposal to close additional areas in Monterey Bay to fishermen. Later, when senior sanctuary staff were discussing the enforcement of the new state MPAs, the West Coast Sanctuary Director commented on how the sanctuary could “trick fishermen”, who would not realize how fast a new sanctuary boat was. Even though it was not the Sanctuary that created the ultimate regulation to close these areas to fishing, fishermen felt utterly betrayed by the Sanctuary. The Sanctuary in turn lost a tremendous opportunity to work constructively with the fishing community.

In 2008 the [Regional Director of the West Coast Sanctuaries wrote to the Pacific Fishery Management Council](#) expressing his agency’s view that it would seek to “reduce or eliminate” bottom trawling from west coast sanctuaries. This is in spite of the fact that bottom trawling is heavily regulated and constrained spatially. In fact, approximately 4,000 square miles of the MBNMS is already closed to bottom trawling. Bottom trawling exists primarily over soft-bottom habitats and does not cause extensive sea floor damage as once was believed. [The fishing community responded to the sanctuary in writing](#), taking to task what was felt was a reckless and ill-informed statement of policy from a senior Sanctuary official. This also feels like a clear breach of the agreement made with fishermen.

Fishermen have also had to fight with sanctuary officials as they have tried to dictate who will represent fishermen; that’s another reason why fishermen have formally banded together in the regional organization, The Alliance of Communities for Sustainable Fisheries.

The Sanctuary has currently involved itself in a fishery management- related issue by the fact that the National Marine Fishery Service and the Pacific Fishery Management Council (PFMC) are beginning a required five-year review of Essential Fish Habitat (EFH) areas along the West Coast. EFH are areas of good habitat, considered to be “essential” in certain life stages of fishes. There already exists extensive EFH areas. 3.8 million acres along the central coast are already set aside by these agencies as essential fish habitat wherein all bottom trawling is prohibited. Additionally, in 2007 the Monterey Bay National Sanctuary was able to close 775 square miles along the Davidson Sea Mount off shore Moro Bay to bottom trawling and all other bottom contact gear.

The [Monterey Sanctuary expressed its intent to develop a proposal to the PFMC for boundary changes to Essential Fish Habitat](#). During this process the MBNMS representatives identified the directly-affected stakeholders—the five surviving bottom trawl fishermen in the region—and committed to work constructively and collaboratively with these fishermen to gain their support for such a proposal. The outcome of this process was a set of recommended changes, including additional trawl closures and also some presently closed areas that would be reopened. While the MBNMS, to its credit, worked well with the trawlers, there exists concern from other fishermen using different types of bottom-contacting gears, that the boundary changes could affect them negatively. This issue is unresolved as of this writing.

The fishing community very much hopes that the MBNMS will abide by its promise both to the letter and in the spirit in which it was made, create constructive relationships with the fishing community, and move forward in a truly cooperative manner. Fishermen from the west coast and in other parts of the nation have observed what has unfolded, especially in the State MPA process, with the Monterey Sanctuary’s relationship with the fishing community. It is safe to say that a great majority are extremely suspicious and resistive of sanctuary designations for their areas. The MBNMS is widely seen as an agency that either doesn’t base its decisions on science, or cherry-picks the science, has significant issues in its public processes, and has broken its promise made to us, in the spirit it was made. The recent effort to work collaboratively on Essential Fish Habitat issues is a step in the right direction, but with more needed.

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