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October 3, 2008

Via First-Class Mail & Email

Freedom of Information Office
National Oceanic and Atmospheric Administration
Public Reference Facility (OAF56)
1315 East-West Highway (SSMC3)
Room 10730
Silver Spring, MD 20910

RE: Freedom of Information Act Request

Dear Sir or Madam:

This is a Freedom of Information Act Request for copies of all documents, letters, emails, communications, reports, research results, analyses, and other such information (the “documentary record”) in the possession of the Monterey Bay National Marine Sanctuary and the Office of National Marine Sanctuaries with respect to a conclusion by those administrative entities that there is a “need” for Marine Protected Areas (MPAs) to be established within the Monterey Bay National Marine Sanctuary. For your reference, attached is a copy of a letter from Mr. Paul Michel alluding to the conclusion that such a “need” exists. Mr. Michel’s use of the word “need” in this context is unclear. The context is a proposal for developing regulatory restrictions in such MPAs that would be exclusively aimed at restricting fishing activity, in some manner, within the Monterey Bay National Marine Sanctuary. However, the word “need” implies a necessary duty or requirement or a condition requiring relief. Thus, we presume that the agency has come to a “need” conclusion that has some basis in an administrative record.

As further elaboration of this request, we seek any material in the “documentary record” which:

1. Describes in scientific terms (particularly any research published on the “need” for MPAs within the Monterey Sanctuary) the exact environmental problems that have been identified as the basis for this “need” conclusion.



2. Describe the alternatives for addressing the problems (if any) identified as the basis for the “need” conclusion.
3. Identifies the individuals within the agency who made the “need” conclusion.
4. Identifies the “stakeholders” who were consulted by those who made the “need” conclusion, including whether any such “stakeholders” were considered part of the local fishing industry or were entities representing the local fishing industry.
5. Documents discussions, meetings, or correspondence with non-governmental entities claiming to be dedicated to protection of the marine environment that influenced, in any way, the “need” conclusion.
6. Documents discussions, meetings, or correspondence with local Congressional Offices with respect to the “need” conclusion.
7. Documents discussions, meetings, or correspondence with any state government agency or interest group regarding possible connections between MPAs created by the State of California and MPAs that might be created within the Monterey Sanctuary.
8. Documents the cost of the “six years of activity” referenced in paragraph 2 of Mr. Michel’s letter.
9. Documents the possible economic harm to the local fishing communities if MPAs are created that ban or restrict fishing activity to a greater extent that is now allowed under regulations promulgated and enforced under the Magnuson-Stevens Fishery Conservation and Management Act or related statutes.
10. Documents discussions, meetings, or correspondence with the Pacific Fishery Management Council with respect to the “need” conclusion.

If the cost of responding to this request will exceed \$200, please get in touch with me to discuss the estimated cost and the scope of the request. If you have any other questions, please call me at (415) 276-6556.



Thank you for your assistance.

Sincerely,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'J. P. Walsh'. The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

James P. Walsh

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE

Monterey Bay National Marine Sanctuary
289 Foam Street
Monterey, California 93940

September 8, 2008

Stephen B. Scheiblaue
Harbormaster - City of Monterey
Monterey, CA 93940

Dear Steve:

Thank you for your letter of August 22, 2008, requesting clarification of the Monterey Bay National Marine Sanctuary (MBNMS) decision on the need for marine protected areas (MPAs) in federal waters. I welcome the opportunity to provide clarity on this issue.

As you know, in February 2008, the MBNMS and Office of National Marine Sanctuaries (ONMS) concluded that there is a need for MPAs in the federal waters of the sanctuary. The need decision proposes MPAs to address broad ecosystem objectives as per the sanctuary's mission of ecosystem-based management that is derived from the National Marine Sanctuaries Act (NMSA). In April 2008, further explanation of the decision was provided (aka the "decision rationale document"). The need decision was made after six years of analysis with input from the public, an MPA Working Group, the MBNMS Advisory Council, partner agencies, and NOAA management. This decision did not include proposals for location, size, or number of future MPAs. Such specific proposals will be developed after careful consultation with all interested parties and stakeholders.

I realize that for many, the "need" decision is interpreted as meaning the ONMS has made a final decision on a network of future MPAs. However, such an interpretation is premature until a planning process is completed and any proposal(s) analyzed under the National Environment and Policy Act (NEPA). Moreover, depending upon the outcome of the planning process, it is also premature to speculate the authority under which any future action would be implemented (Magnuson-Stevenson Act or NMSA). The need decision was made with the intent that a serious planning process would ensue and that MPAs in federal waters are likely. Any new MPAs may be augmentations of existing management measures, including existing closures, or wholly new areas. The purpose of the planning process is to develop such specifics.

I apologize if there has been any confusion about the intent of the decision. This is a complicated issue, and one that obviously attracts attention to every written and spoken word. I have tried to be clear about the path forward, as well as reflect the good advice I have received from the MBNMS Advisory Council, the Pacific Fishery Management Council (PFMC), NOAA Fisheries, and the public. In explaining the proposed process forward, I have stated that the MPA planning process will include an evaluation of



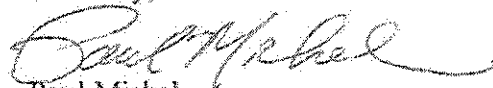
existing management measures to determine how well these are meeting the sanctuary objectives of preservation, restoration, and research per the decision rationale. Any future NEPA review of proposed MPAs in federal waters of the MBNMS will include evaluation of a "no action alternative." I have also stated that evaluation criteria still need to be developed for future MPAs so we can determine how well they would meet the need rationale. These statements alone or taken out of context could be misinterpreted as backing away from the need decision.

Your request for clarification was put into the context of whether or not current management measures suffice in meeting the needs of the MBNMS. While existing measures are important parts of the current resource protection regime within the sanctuary, they were not designed to address the MBNMS's mission of ecosystem protection and preservation in deeper water habitats. For example, fishery management measures, such as Essential Fish Habitat (EFH) and Rockfish Conservation Areas (RCAs) are focused on sustainable fishery objectives, such as rebuilding target species to fishable levels. The ONMS's resource protection mandate is broader than this, as has been pointed out in the April 2008 decision rationale document.

You also asked if MPAs are the only tool being considered to meet the MBNMS needs. The selection of MPAs as a management tool to protect specific sites within the sanctuary is consistent with other zoning strategies that have been used in the MBNMS for the past 16 years, such as restriction zones for motorized personal watercraft and dredge spoil discharge, and prohibition zones for motorized flight and white shark attraction. The MPA planning process will focus on MPAs as a management tool to meet the three goals outlined in our April 2008 decision rationale.

The MBNMS has been working with the MBNMS Advisory Council, PFMC, and NOAA Fisheries to gain input on how best to proceed with the MPA planning process. We are encouraged by the feedback we have received from these groups and we look forward to a renewed MPA working group and planning process in the near future. I appreciate your engagement on this issue, as you have a wealth of knowledge and experience with the MBNMS and the maritime community on the central coast. I hope you will join with me to make this the best effort possible, one that is based on the common belief that fishing is an integral part of the sanctuary's culture and the economic vitality of the region, and that a healthy ecosystem can provide for healthy fisheries.

Sincerely,



Paul Michel
Superintendent

cc: City Manager, Monterey
Public Facilities Director, Monterey
MBNMS Sanctuary Advisory Council
Don McIsaac, PFMC