

Remarks of Jeremiah O'Brien to the Senate Commerce, Science, and Transportation Committee Subcommittee for Oceans, Atmosphere, Fisheries, and Coast Guard

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Chairman Sullivan and members of the Subcommittee, my name is Jeremiah O'Brien. I am a 40-year commercial fisherman. My home port is Morro Bay, California, and I am the vice-president of the Morro Bay Commercial Fishermen's Organization. I am on the board of directors of the Morro Bay Community Quota Fund, and the regional non-profit, the Alliance of Communities for Sustainable Fisheries. I am also a member of the Harbor Advisory Board. I was intensely involved in the several efforts to create marine reserves and other no or limited fishing areas, and observed the roles that the California Sanctuaries had in those efforts.

When these sanctuaries were proposed, fishermen were understandably suspicious of federal authority being used in proclaiming their fishing grounds a "sanctuary", with all the meanings of that word found in a dictionary.

Also of concern was the section of the National Marine Sanctuaries Act that allows sanctuaries, with the support of the Secretary of Commerce, to over-rule a Regional Fishery Management Council and create a sanctuary fishing regulation. The biggest reason by far, at the time, to support creating a sanctuary, was the belief that it offered additional protection from oil and gas development. Since the Exxon Valdez spill, fishermen were concerned about such development.

Concerns about a "mission-creep" into fisheries were addressed in clear public promises, made by both elected and NOAA officials, that the new sanctuary would not regulate fishing, nor take actions that threaten their livelihoods. Not interfering with fishing was a very large public issue, as our concerns had legitimacy. The promise by sanctuary leaders was represented in the Designation Document that does not list fisheries as an area of future regulation, while also creating a consultation process with the state and federal fisheries agencies, and with fishermen, should problems arise. A similar promise and Designation

Document was created earlier for the Channel Islands NMS. Please note that this process is about consultation—talking--and not about regulating.

Hearing this promise and assurance, and trusting the sanctuary leaders, fishermen actively supported the creation of the Monterey Bay NMS. However, this promise hasn't worked out so well for us. While the relationship with fishermen varies somewhat from sanctuary to sanctuary, a long list of sanctuary management decisions have economically harmed both recreational and commercial fishing people, created lost recreational opportunities, and created an atmosphere of distrust in sanctuary leaders. In short, I see that most fishermen feel betrayed by sanctuary leadership, who failed the basic integrity test of keeping their word, in the spirit it was made.

The problem is in two parts, with a lack of trust in sanctuary management at the core of both.

First are conflicts between the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the National Marine Sanctuaries Act (NMSA). Both contain language to protect and conserve marine resources, including habitats. Both espouse an ecosystem approach to management. Both authorities can lead to regulations, including the management or prohibition of fishing. However, the Sanctuaries Act allows sanctuaries to overrule the Regional Fishery Management Councils (RFMC), setting the stage for suspicion and conflict with fishermen, and fishery managers.

There are also huge differences: the National Marine Fisheries Service/RFMC process is heavily science oriented, with an impressive public process to hear stakeholder and expert advice. Importantly, the MSA requires councils to heed the advice of their science committees.

Conversely, sanctuaries have a weak, self-serving public process, often lack transparency, have limited science capabilities, and are not required by law to follow the best available science, except indirectly through NEPA. In fact, there are significant examples of sanctuaries cherry-picking science. The fact that

RFMC's are required to follow the science poses a pointed question: On what basis would a NMS overrule a RFMC?

For this problem I offer my advice that Congress would do well by removing the section of the NMSA that allows NMS's to overrule the RFMC's and their own create fishing regulations, while strengthening the MSA's ability to manage marine species throughout their range, and protect certain species even if they are not subject to fishing.

As long as the sanctuaries have the ability to create fishing regulations, including zones that prohibit fishing, I believe fishermen, based on experience, will distrust sanctuaries and resist t new designations or expansions. They abuse their power.

The second problem stems from the first. In my experience, sanctuaries are not science, but rather values-based, agencies. The value expressed repeatedly is one of preservation and protection of resources. Thus, any activity that extracts or otherwise uses marine resources may be subject to a determination that that use is not compatible with resource protection—a phrase heard often. Members of the Sanctuary Advisory Councils are admonished to remember that “the primary goal of sanctuaries is resource protection!”

It is my observation that a management culture has developed in the National Marine Sanctuaries program that tilts markedly towards preservation, meaning limiting human use, of marine resources. This is the case, even though the NMSA is written to seek a balance of protections when needed, with the active facilitation of multiple use opportunities, like fishing.

Fishermen feel threatened by the sanctuary authority, its use of the “bully pulpit”, and a poor public process. One fisherman told me: “We don't have a chance, the sanctuary is like a taxpayer funded environmental organization!” Another said, “If you're a fisherman in a sanctuary, you'll always be looking over your shoulder to see what the sanctuary's going to try and do to you”.

Through hard experience, my observation is that fishermen simply have little trust that sanctuary management won't in fact threaten their livelihoods.

Chairman Sullivan and members of the Subcommittee, there are numerous examples that reveal fishermen's distrust to be rational. I will share some of my experiences and observations, in detail:

In the Channel Islands NMS, that sanctuary used its stature in the first phase of California's process to create marine reserves in state waters, actively promoting "no fishing zones". It became a stakeholder in its own process. Later, it is extremely noteworthy that, despite assurances that the sanctuary would not regulate fishing and against our objections, the sanctuary changed its Designation Document to allow it to use the authority found in Section 304 (a) (5), of the National Marine Sanctuaries Act. It then created the Channel Islands NMS Marine Reserve in federal waters. The PFMC is on record as complaining about the lack of consultation, though it is required by law. Fishermen saw in this that the designation document, as originally shaped by our communities, did not guarantee anything.

It is a little known but true fact that during the 1999-2000 Reauthorization of the NMSA, sanctuary leaders tried to get Congress to allow designation documents to be changed administratively, and not by the existing public process. Thankfully Congress did not accept this recommendation.

Later still, Channel Islands sanctuary staff testified to the California Fish and Game Commission in an effort to get the Commission to lower the yearly catch of squid—California's most valuable fishery. This was against the science-based recommendation of the Department. The sanctuary brought no additional science to the discussion. Rather, it just expressed its value of reducing human use of sanctuary resources. Luckily the Commission did not adopt the sanctuary's lower quota, but if it had, it would have cost that fishery @ 112 million dollars over ten years.

In Monterey, that sanctuary used its stature to take a leadership role in further phases of California's marine protected area process. Sanctuary staff was a leader in that process, and actively argued for closing some of our best fishing grounds. It was the sanctuary's recommended array of MPA's, with some changes, that was eventually adopted. Sanctuary staff was asked to work with fishermen to develop

and support an MPA array that minimized our economic and safety costs, but staff would not do that. In this process, the sanctuary used its stature to lead and shape the outcome of the state's efforts to create no fishing zones, and worked against recreational and commercial fishers.

Significantly, at the end of this process, the acting Superintendent of the sanctuary wrote to the Fish and Game Commission, telling the Commission that the state process did not go far enough in its fishing closures. The sanctuary asked that a portion of Monterey Bay be closed to squid and sardine fishing—a fishery that is the cornerstone of Monterey's fishing economy! Luckily again, the Commission did not accept the sanctuary's recommendation.

Ultimately, under sanctuary leadership and recommendations, the state closed 18% of state waters to all or some types of fishing. However, this was actually 45% of the state's hard-bottom quality habitat, and our best fishing areas.

The state estimated the economic loss to fishermen in the region from the new MPA's to be just under one million dollars per year. However, a peer review was performed of the state's economic analysis and found that it likely greatly underestimated losses. These lost fishing opportunities were particularly hard on the area's near-shore fishermen. No estimate was given for economic losses to the recreational fishery, though anglers also lost important and near-to-port fishing opportunity. Even though fishermen were concerned that the sanctuary-proposed MPAs would merely displace the fishing effort, and focus that effort on less productive grounds, the sanctuary did nothing to address this, nor did it ask the state to do so.

The Monterey sanctuary did nothing to demand that the state process integrate with other fishing regulations, a violation of the concept of using an ecosystem approach to management, and a failure of its mandate in the NMSA for coordination between all levels of regulation. It also did nothing to develop better socioeconomic data, and did not require consideration of societal trade-offs, even over fishermen's safety at sea concerns.

Fishermen, myself included, felt bitterly betrayed by the Monterey Sanctuary's leadership in advocating for fishing closures—a violation of the promise made to us. It also failed to live up to the mandates of the NMSA and the principles of an ecosystem approach to management.

As if that was not enough harm to recreational and commercial fishers, the Monterey sanctuary then moved on in an effort to create additional no fishing zones in federal water. In this process, the sanctuary asserted that the NMSA somehow requires sanctuaries to create “wilderness areas”, protected from all uses. We saw this as another betrayal. Imagine if this point of view was on the table in when the sanctuary was proposed!

The sanctuary superintendent claimed a need to get to “sustainable fisheries”, yet when asked how is that defined, and did he mean something different than the management provided by the MSA?—there was never an answer. Never. The sanctuary was also asked if the culture and heritage of fishing in coastal communities were among the resources that the sanctuary was to protect? The answer, in writing: NO.

In response to this, fishermen commissioned two independent scientific studies to examine the question: does the sanctuary portion of the ecosystem “need” more spatial protection? The first study was commissioned before the sanctuary made its public “need” claim, and was offered as scientific information to be considered. This study was led by Dr. Ray Hilborn of the University of Washington. It found that the main drivers of the health of the California Current Large Ecosystem are highly migratory forage species, which will receive little, if any, benefit from MPA's. A subsequent examination of internal sanctuary documents indicates that the Hilborn study was not considered by the sanctuary in making its decision.

The other study was lead by Dr. Tom Jagielo, a respected independent fisheries consultant. This study examined the six research “needs” claimed by the Monterey NMS, asking the question: Do the existing MPA's in the sanctuary region provide the research opportunities the sanctuary needs? The answer was

YES they do. However, this study was also dismissed out of hand by the Monterey NMS.

Fishermen, smelling a very dead fish, did a Freedom of Information Act request for information about the Monterey sanctuary's federal waters MPA decision process. The information provided publically discovered an acute lack of transparency and science. The FOIA revealed that the NMS decision to add federal waters MPAs was made prior to the public process. Further, the official minutes of a sanctuary staff meeting quotes the West Coast Regional Director, in reference to helping enforce the state's MPA's: "We can trick the fishermen...because they won't know how fast our new sanctuary boat is".

Documents were also produced that confirmed that the sanctuary did not do the required consultation with the PFMC in advance of their MPA decision. Further, and deeply troubling, the FOIA information suggests that senior sanctuary staff did not reveal that the decision to have more MPAs had already been made by sanctuary leadership when they briefed US Representative Sam Farr about the proposed MPA decision-making process.

There was such disappointing information revealed that the sanctuary abandoned this effort, but not before fishermen felt once-again burned by sanctuary actions. It also cost fishermen over \$19,000 in legal fees to get compliance with the FOIA request, of which the information was not provided for 13 months!

The Monterey NMS leadership then moved on to create an initiative they called the "Enhanced Ecosystem Management Initiative". When fishermen and others questioned how EBM is "enhanced", the sanctuary dropped this term. Fishermen believed that it was yet another effort to involve itself in fisheries issues. The sanctuary eventually abandoned this Initiative, due to both a lack of funding, as well as their difficulty in answering some pesky questions raised by fishermen and others.

In yet another example, the West Coast Regional NMS Director wrote to the PFMC, expressing the intention of the west coast NMS's to "reduce or eliminate bottom trawling" from those sanctuaries.

The Subcommittee should know that the promise made to fishermen at the time of designation has been repeatedly defended by numerous elected officials and their agencies over the years. The Monterey County Board of Supervisors, the City of Monterey, the Association of Monterey Bay Area Governments, the San Mateo County, Moss Landing, and Port San Luis Harbor Districts, among others, have all sent letters to the Monterey Sanctuary, paraphrasing: "Keep the promise made to fishermen in the spirit in which it was made!"

As a related concern, be aware that fishermen have struggled with sanctuary managers to get representatives on the Advisory Councils who truly represent our interests. There is a track record of sanctuaries selecting individuals for stakeholder seats, including fishing, who are inclined to vote the ways sanctuary management wishes rather than what's good for the constituency. I have direct experience with this. At this very moment, the individual selected by sanctuary management to represent recreational fishermen on the Monterey Sanctuary Advisory Council is not supported by the major—or any!—recreational fishing organizations.

Please be aware that difficulties in the NMS Program/fishermen relationship appear to exist beyond the California NMS's. In a letter signed by the leaders of four sovereign-nation Pacific Northwest Tribes to the head of the NMS program, the tribal leaders express concern and alarm in hearing of the Office of National Marine Sanctuaries' plans for no fishing areas in NMS's, possibly including the Olympic Coast NMS. Fishermen have been resisting the Stellwagen Bank NMS's efforts to close areas to fishing, in the name of research. A Fisherman from that area is quoted in the media, saying "We were promised when the sanctuary was created that they wouldn't interfere with fishing!"

As new or expanded NMS's are being proposed, they are encountering stiff and well-organized resistance from fishermen and other stakeholders who relate closely to the marine environment, including growers. In 2015, Oregon's Ocean

Policy Advisory Council, appointed by the Governor, after hearing the pro's and con's of having a sanctuary, determined that having an Oregon NMS was not needed at that time. A recent large expansion of the Gulf of the Farallones and Cordell Bank NMS's, was opposed by numerous recreational and commercial fishing organizations, including the Pacific Coast Federation of Fishermen's Associations. Currently, a proposed Chumash Heritage NMS is experiencing massive resistance in Central California, lead by a coalition of fishermen, growers, ranchers, and business organizations.

The resistance to new NMS designations comes, in part, from long and hard experience that fishermen have had with the NMS Program.

I would be remiss if I did not also point out to the Subcommittee that there are some bright spots in this relationship. Several sanctuaries have regulations prohibiting oil and gas development, something that, post Exxon-Valdez, fishermen in our area largely valued. The Monterey sanctuary sometimes has a "Fishermen in the Classroom" program that is a good thing. Also, that sanctuary made a recent effort to work with the region's bottom trawl fishermen to strike a deal for a mutual recommendation to the PFMC for closing and reopening certain areas of Trawl Essential Fish Habitat. In this process, the sanctuary officials were respectful in addressing the bottom-trawl fishermen's concerns, though other fixed gear fishermen remained skeptical. I think for the few bottom-trawl guys who are left, the negotiation with the sanctuary was just a business deal: each side got something and gave something up. Had the sanctuary always conducted itself in this manner, the relationship might not be as it is. I do think that there has been a lot of bridge-burning by sanctuaries, so it will take years of good-faith efforts for fishermen not to feel burned and wary of NMS management.

There may well be other positive outcomes for fishermen in other NMS's, or other problem areas, of which I am not knowledgeable.

Chairman Sullivan and members of the Subcommittee, to summarize:

For the general public, who only see sanctuaries as helping to preserve ocean health, but who have little knowledge of sanctuary management actions, sanctuaries are a positive, and their support is high. To their credit, sanctuaries are good at inspiring care of the ocean, a worthwhile goal.

However, for those who are engaged directly with sanctuary managers over resource management, sanctuaries have a mixed scorecard, at best. By their actions Sanctuaries have created a difficult relationship with recreational and commercial fishermen, in particular.

Difficulties arise in part from a lack of clarity between the Magnuson-Stevens Conservation and Fisheries Management Act, and the National Marine Sanctuaries Act, both of which allow for the creation of fishing regulations. For sanctuaries, this power has emboldened them, particularly over habitat issues. For fishermen and fishery managers, the fact that sanctuaries can overrule the Regional Fishery Management Councils, with eight National Standards serving as the council's guide, is disconcerting, and not in the best interest of ocean health. Sanctuaries, on the other hand, have weak science capabilities, and a poor, self-serving public process. I wonder: On what basis will a sanctuary overrule the science-based management of a Regional Fisheries Council? I hope Congress will make it clear that the Magnuson-Stevens Act is the nation's law for fisheries and habitat management.

Another major problem are the interpretations, by Sanctuary program leaders, of the terms "sanctuary" and "protection"--interpreted to mean: steadily limiting human uses of the marine resources. One only needs to look to the charter for the sanctuaries' Advisory Councils, mandated for use by the Office of National Marine Sanctuaries, to see how the bent towards the preservation-- not conservation--of resources, occurs. This lean towards preservation directly caused the Monterey and Channel Islands National Marine Sanctuaries to lead efforts to create no-fishing zones, taking the finest fishing grounds away from historic users. Sanctuary managers are so driven to limit human uses that they violated the principles of ecosystem-based management, as well as the Sanctuaries Act mandate to provide for comprehensive and coordinated management. They

ignored our safety at sea concerns, the effects of displacing fishing efforts, and they refused to consider other fishing and habitat regulations, as the no-fishing zones were proposed.

Fisheries in California currently are managed by the Pacific Fishery Management Council, the National Marine Fisheries Service, and for state fisheries, our Department of Fish and Wildlife. It seems that many EGO's, with their own agendas, already seek to go-around our normal fisheries management. If we add sanctuaries as yet another entity with regulatory powers to contend with, how will it be possible to do business or attract others in such an uncertain business environ? Sanctuaries only bring their values to the table, and not science.

In California we have four national marine sanctuaries, with two more being proposed. Despite their original Designation Documents, each one has areas closed to fishing because of sanctuary efforts. Commercial fishermen wonder, is it really the intention of Congress that over 12,000 square miles of the California coast, with another 5,000 proposed, be deemed of national importance? What is special if everything is special?

Finally, there is the trust issue. Sanctuary managers have cast-aside the good will of the recreational and commercial fishing communities by violating the promises made to us by NOAA officials and elected leaders, that sanctuaries will not threaten our livelihoods. Through years of cherry-picked science, a lack of transparency, and favoring a preservationist (and inaccurate) interpretation of the Sanctuaries Act, fishermen have rationally concluded that sanctuaries are not to be trusted. Sanctuary management actions have economically harmed the commercial and recreational fishing industries. In my home-port area, the Monterey Sanctuary led an effort that closed almost half of our best fishing areas in state waters. This is why proposals for new or expanded sanctuaries are being vigorously opposed by fishermen and anglers. The actions of the sanctuaries are not helping US Commerce Secretary Ross in meeting his goal of reducing the nation's dependence on imported seafood.

Chairman Sullivan and members of the Subcommittee, my written testimony provides numerous examples of the concerns I express today. In addition to this written testimony, I can make available to the subcommittee documentation in support of the events I have described.

Thank you for considering my experiences with the National Marine Sanctuaries program.