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

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

MEMORANDUM

September 29, 2003

TO: MBNMS Advisory Council

FROM: William J. Douros, Superintendent

SUBJECT: Request for Advisory Council Input on NMSA Reauthorization

The National Marine Sanctuaries Act is up for reauthorization in the U.S. Congress in 2005. Our National Marine Sanctuary Program is requesting input from Sanctuary Advisory Councils, should they choose to provide it, on the reauthorization.

Attached you will find a guidance document produced by the National Marine Sanctuary Program for your assistance on this matter. I have also attached a copy of the National Marine Sanctuaries Act from 2000 for your review.

The issue before the Advisory Council at the next meeting (October 3, 2003) in Cambria is whether or not to comment at the December 5, 2003 Advisory Council meeting. If the Advisory Council decides to provide input, it should decide if it wants to designate a sub-committee to work on this question, who could bring a recommendation to the Advisory Council in December, or if it wants the entire Advisory Council together to work on a set of recommendations in December.

Please feel free to call me if you have further questions, and we will be discussing this at the October 3, 2003 meeting in Cambria.

GUIDELINES FOR ADVISORY COUNCIL RECOMMENDATIONS ON NATIONAL MARINE SANCTUARIES ACT REAUTHORIZATION

What is Reauthorization?

In 1972 Congress established the National Marine Sanctuary Program (NMSP) by passage of Title III of the Marine Protection, Research and Sanctuaries Act in 1972 (MPRSA; 16 U.S.C. 1431 et seq.). This statute, which has since been renamed the National Marine Sanctuaries Act (NMSA), describes the purposes and policies of National Marine Sanctuaries, describes how Sanctuaries will be designated, and the authorities that the Department of Commerce (through NOAA) has to manage these special ocean and coastal areas. The NMSA also provides authorization for appropriations for four to five years, which provides guidance to Congress on the amount of money to be appropriated to manage the NMSP. Because Congress is not supposed to appropriate funds for a program for which authorization for appropriations does not exist, the NMSA (like other Federal statutes) must be periodically reauthorized to provide new Authorization for Appropriations. In addition, other changes (i.e., amendments) may be made to the NMSA by Congress during the reauthorization process.

Since the law was enacted, the NMSA has been amended and reauthorized in 1980 (P.L. 96-332), 1984 (P.L. 98-498), 1988 (Title II of P.L. 100-627), 1992 (P.L. 102-587), 1996 (P.L. 104-283), and 2000 (P.L. 106-513). Each of these bills further refined the NMSA to reflect the growth and evolution of the NMSP. On November 13, 2000, " The National Marine Sanctuary Amendments Act of 2000" was signed into law, which authorized the National Marine Sanctuaries Act for the next five years. The last bill, as amended, authorized the NMSA at $30 million in Fiscal Year (FY) 2000 and increased that authorization by $2 million per year to $40 million in FY 2005. The Amendments Act also put limits on the designation of new sanctuaries and strengthened existing enforcement authority, among other changes.

The 2005 Reauthorization

The National Marine Sanctuaries Act (NMSA) is up for reauthorization in FY 2005. Before the Administration begins to focus on re-authorization, the NMSP would like to solicit the thoughts and opinions of the Sanctuary Advisory Councils (Advisory Councils or Councils).

The Advisory Council's Role

The NMSP is seeking input from each site's Advisory Council as it prepares for reauthorization. The NMSP values each council's insight and the depth of group and individual expertise on each council. The Program regards the involvement of communities and the development of a stewardship ethic as vitally important to successfully protect sanctuary resources. One key way to achieve this involvement is through advisory councils. What better way to affect the protection and management of the resources, than by providing input into the process to reauthorize the very act that allows for the creation of sanctuaries?

Councils should reach consensus (or at least provide a majority opinion, with minority opinions noted) on the recommendations, specifically noting the "Top 5" (although there is no limit on the

number of recommendations). Each recommendation should include specific suggested wording changes as well as the rationale for the change. The attached examples of changes to the NMSA during past reauthorizations may provide insight as to the types of changes that could be recommended.

Should an Advisory Council decide to provide input to the NMSP on reauthorization, it must be provided through that site's Sanctuary Manager or Superintendent. It is recommended that this be placed on the agenda for a regularly scheduled council meeting. One option is to create a council subcommittee to do the initial work, presenting it to the council for discussion and agreement at a full council meeting.

Timeline

Councils must provide input to the Program to your Sanctuary Manager or Superintendent before December 20, 2003. Program staff will collate staff and council input. It is important to note that any proposed legislation that the Administration may put forth will ultimately reflect the NMSP's and the Administration's position. As such, changes proposed by the Councils may or may not all be adopted and reflected in any proposals.

If an Administration bill is cleared by the Office of Management and Budget (OMB) it would likely be presented to Congress in January or February, 2005 (sometime after the new Congress has been sworn in). Any Administration bill that is submitted to Congress would be shared with the Councils.

Following the submission of an Administration bill, members of Congress may choose to submit their own versions of an NMSA reauthorization or the Administration bill for consideration by the appropriate committees. NOAA, through OMB, may submit "Views Letters" on any bills introduced by individual members of Congress. Final views letters would be shared with Councils after they are cleared through the Administration and submitted to Congress.

Limitations

Due to the deliberative nature of internal Administration working products, and the fact that information that goes to Councils is considered public information, the Program cannot share any draft bill with the Councils.

There is no authority for a Council to advise persons or groups other than the Director of the National Marine Sanctuary Program (delegated down from the Secretary) through their Sanctuary Manager or Superintendent on legislation affecting Sanctuaries. Therefore, at no time may Advisory Councils directly contact (i.e., lobby) Congress to make their views on any Administration bill known. Council members are not prohibited from contacting Congress as private citizens on their concerns as private citizens. Finally, Councils shall not ask the public to contact Congress on the Councils' or NOAA's behalf.

EXAMPLES OF CHANGES TO THE NMSA DURING PAST REAUTHORIZATIONS

Changes to the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*; NMSA) can be generally classified into two groups: (1) substantive and (2) technical changes. Substantive changes are more conceptual in nature, whereas technical changes are directed at specific language in the act usually in an attempt to clarify the original intent.

The following are some examples of substantive changes to the NMSA that have been made by Congress in the past:

1. Section 304(d) of the NMSA (16 U.S.C. § 1434(d). Interagency cooperation) requires federal agencies to consult with the NMSP on any action that destroys, causes the loss of, or injures any sanctuary resource. The NMSP submits non-binding recommendations to consulting federal agencies when consultation is initiated. Until 2000 the agency could then disregard the NMSP's recommendations at their discretion without any consequences. The 2000 reauthorization of the NMSA (P.L. 106-513) made it a requirement of federal agencies that choose not to implement NMSP recommendations to "promptly prevent and mitigate further damage and restore or replace" any sanctuary resource that is damaged by the agency's action. This change was made to hold Federal agencies to the same standards as the public regarding responsibility for damage to sanctuary resources.
2. The 1992 reauthorization of the NMSA (P.L. 102-587) inserted a requirement that the NMSP review each management plan developed during sanctuary designation every five years, beginning five years after designation. The new requirement requires the NMSP to "evaluate the substantive progress toward implementing the management plan goals for the sanctuary... and to revise the management plan and regulations as necessary to fulfill the purposes and policies of [the NMSA]."
3. The 1988 reauthorization of the NMSA (P.L. 100-627) gave the Secretary of Commerce the authority to issue "special use permits" for specific activities that "establish conditions of access to and use of any sanctuary resources" or "promote public use and understanding of a sanctuary resource." The new authority also allows the Secretary (later delegated through NOAA to NMS managers) to charge fees for the issuance of these permits. This change was made to address a recent growth in commercial and public uses of the National Marine Sanctuaries.

The following are examples of technical changes made to the NMSA in the 2000 amendments:

1. Section 301(a) of the NMSA lists several "Findings" made by Congress that essentially present the rationale for passing the legislation. Prior to 2000, the second finding stated that "certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national, and in some cases international, significance." The 2000 amendments replaced "research" with the broader "scientific" and inserted "archeological and cultural" to augment "historical". These changes were made to clarify the intent of the language with words that more accurately address the breadth of significance factors.

2. Prior to 2000, section 303 of the NMSA required the drafting of a "Resource Assessment Report" to be included with the environmental impact statement for a proposed sanctuary designation. The 2000 reauthorization bill clarified this requirement by moving it to section 304 of the NMSA, stipulating that all of the items that were previously required components of the report to be part of the "Designation Documents."
3. Section 302 of the NMSA lists and defines several terms used through the Act. The 2000 amendments replaced "Magnuson Act" with "Magnuson-Stevens Act" to reflect the recently changed name of that law.