

## **Monterey Bay National Marine Sanctuary Advisory Council Working Groups and Subcommittee Recommendations**

Subcommittee and working groups will present recommendations to advisory council for deliberation. The Advisory council will then forward recommendations to the superintendent for consideration.

1. MPWC Subcommittee
2. Wildlife Disturbance – Ocean Noise Working Group
3. Wildlife Disturbance – Whale Disturbance Working Group
4. Seabird Protection Working Group

## 1. Motorized Personal Water Craft Subcommittee Recommendations / Comments

### **Sub-Committee Members:**

Gary Pezzi (Chair)

Dan Haifley

Steve Scheiblauber

John Hunt

Special thanks to Sanctuary staff, Karen Grimmer and Scott Kathey, who provided the Sub-Committee direction and insight regarding MPWC use and history in the MBNMS.

**Task:** The Sub-Committee was formed to address public concerns over safety in the use of Motorized Personal Water Craft (MPWC, i.e. jet skis) in the MBNMS. We began addressing their regulated use within MBNMS waters. The concerns were centered on safety issues in big wave conditions and where MPWC could be used legally.

### **Sub-Committee Recommendations**

1. The subcommittee recommends that the Management Plan and regulations be changed to allow MPWC use at Mavericks during High Surf Advisory conditions (replacing High Surf Warning conditions)
2. The subcommittee recommends consideration of training areas where MPWC teams can train to prepare themselves for operation at Mavericks. These training areas would be a replacement for the current use zones around harbors. All MPWC use could be allowed in the training zones during High Surf Warning conditions. It was agreed for the scope of this Management Plan Review that there is more information required to come to any decision on where these training zones would be and how they would be accessed.

### **Background**

Our group reviewed and discussed areas of operation outside the legal MPWC use zones. Some big wave riders were looking for an expansion of those areas. Because of potential wildlife and habitat conflicts in these areas (ex. Ghost Trees, Salinas River Mouth), our scope of discussions narrowed. Eventually our efforts were directed to current allowed use at Mavericks. With surfer deaths at Mavericks, big wave surfers requested a change.

Prior to the Joint Management Plan being approved, there were hours of meetings that established current regulations, which did not address the safety issues being emphasized by some MPWC users. Our group addressed that issue.

Scott Kathey shared with this subcommittee the 27 points that public safety agencies must comply with to obtain an MPWC permit from the MBNMS. We worked through those points with two representatives from the big-wave surfing community (Shawn Dollar, Ed Guzman) as a possible means by which MPWC users could form a safety patrol that could meet all the

criteria. Shawn and Ed were to share this offer with the Titans of Mavericks in late 2015 / early 2016, because there were indications that Titans might take on the responsibility of forming a permitted safety patrol.

Shawn had a life threatening injury, and progress toward forming a permitted safety patrol stopped. Most recently, the Titans of Mavericks declared (double) bankruptcy.

## 2. Wildlife Disturbance – Ocean Noise Working Group

**Working Group Members:** PJ Weber, Carol Maehr, Clifton Hermann, Mike Bekker, Rich Hughtett, Gary Hoffman, Bart Selby and staff liaison Andrew DeVogelaere,

**Outside expertise:** Brandon Southall, Michael Weiss, Marjolaine Calliat, Benjamin Reeder, Leila Hatch, Charles Wahle.

**Task:** Is there a need for any regulatory or non-regulatory strategies to address harmful ocean noise?

What are the current noise impacts/threats in MBNMS? What info does MBNMS need to know about noise impacts?

### **Working Group Recommendations**

An evaluation of the overall acoustic environment of our Sanctuary suggests with very little military sonar, no oil and gas exploration or recovery, as well as limited pile driving the Sanctuary provides some level of protection for sea life from anthropomorphic acoustic interference.

Scientists told us important sources of disruptive sound present in MBNMS that do impact marine life are seal bombs, commercial and recreational vessels, dredging, pile driving and potentially noise from whale watching. Most of this disruptive sound is in the low frequency ranges large whales use to communicate, navigate, find prey and mate. These experts suggested a scientific risk assessment based approach be adopted to manage acoustic conflicts.

1. Because the sonic environment is of critical importance to the survival of marine mammals in our sanctuary we recommend increasing research efforts, including CeNCOOS(Central and Northern California Ocean Observing System) begin to **monitor sound as a core variable** tracked over time. To this end we support encouraging the **acquisition of equipment** required to better quantify our acoustic landscape and **utilizing experts** who can precisely locate, measure and analyze sonic activity.
2. Soundscapes are a critical part of the sanctuary environment, we recommend this be featured in the **Discovery Center-** utilizing **exhibits, events and outreach** detailing acoustic research efforts that reveal how animals use acoustics.
3. We recommend that the Sanctuary legal, enforcement and science staff work with appropriate agencies to **review literature and existing data** regarding the use of **seal bombs**, as well as the applicability of MMPA and ESA mandated action due to their **impact on marine mammals**. Information from CDFW suggests existing regulations mandate action given the level of disruption the data, presence of species and sensitivity of the species indicate. Scientists explained seal bombs deliver low frequency acoustic impacts of at least 210 decibels- high enough to damage tissue- and can impact animals miles from the explosion. The single

hydrophone now in Monterey Bay recorded 2,308 seal bomb detonations from August 2015 to January 2016.

4. We recommend the Sanctuary request scheduled **annual reviews** from fisheries management on current and past usage and strategies to minimize future **seal bomb use** in the Sanctuary. Seal bombs are not currently used on the East Coast or in the Gulf of Mexico.
5. We recommend staff maintain an awareness that ship or boat produced **sound can be reduced** as **new vessels** and equipment(all vessels operating in the Sanctuary) are designed and **brought into service** and take steps to encourage this happens as vessels and equipment are replaced.
6. We recommend the Sanctuary **encourage tour providers to work with experts** to understand how to interact with whales using techniques to **minimize acoustic interference**, and to educate and inform visitors of these issues. Monterey Bay is home to the world's best whale watching. We should encourage tour providers and our hospitality industry to promote and grow businesses with practices that lead the world in safeguarding our star attractions. The advice offered by scientists includes dampening acoustic impacts by not stopping using engines, accelerating and de-accelerating slowly, not flooding areas with sound, and if they are near whales, placing transmissions in neutral when possible.

### **3. Wildlife Disturbance – Whale Disturbance Working Group**

#### **Working Group Members:**

Gary Hoffmann (Chair, At-Large)  
Steve Scheiblaue (Harbors)  
Paul Reilly (CDFW)  
Dan Haifley (At-Large)  
Christina McGinnis (At-Large)  
Margaret (P.J) Webb (At-Large)

#### **Invited speakers & participants:**

Robert Puccinelli, CDFW Enforcement Officer  
Penny Ruvelas, Chief, NMFS Protected Resources Division  
Jim Harvey, Marine Mammal Scientist, Moss Landing Marine Labs  
Wildlife Viewing Operators:  
Gabe Torres, Stagnaro Whale Watch  
Katlyn Taylor, Monterey Bay Whale Watch  
John Mayer, Monterey Bay Whale Watch  
Kate Spencer, Fast Raft  
Dorris Welch, Sanctuary Cruises  
Giancarlo Thomae, Sanctuary Cruises  
Dave Johnston, Venture Quest, Santa Cruz

#### **MBNMS Staff Members:**

Karen Grimmer  
Paul Michel

**Task:** Is there a need for any regulatory or non-regulatory strategies to address approach/disturbance for whales (Humpback, Gray, Blue, Orca)?

How are similar regulations in other places effective? (e.g.: what were the processes putting them in place, how are they monitored and enforced, who is engaged?)

#### **Introduction**

In 2015, Monterey Bay National Marine Sanctuary (MBNMS) initiated the process of updating the MBNMS Management Plan. During scoping sessions related to the review and revision of the Management Plan, some comments were submitted related to whale harassment within the Sanctuary. Subsequently, the Sanctuary Advisory Council (SAC) formed a Whale Disturbance Working Group consisting of six members of the SAC, tasked with the charge to answer a core question: is there a need for any regulatory or non-regulatory strategies to address whale disturbance or harassment in the Sanctuary?

From July 2016 through January 2017, the Working Group met with subject matter experts, whale watching and kayak company operators, and Sanctuary staff to collect information for the purpose of answering the core question. As a result of these meetings, the Working Group has developed the following recommendations for the SAC to consider.

### **Working Group Recommendations**

1. MBNMS should work collaboratively with whale watch operators, marine mammal experts and other parties to develop comprehensive guidelines for approaching and viewing whales in Monterey Bay National Marine Sanctuary that would prevent whale disturbances. The guidelines should be applicable to all motorized and non-motorized vessels operating in the Sanctuary.
2. Upon implementation of the guidelines, a science-based compliance assessment shall be conducted for at least one year. The actual duration of the assessment will be determined by the scientific team assembled to develop the assessment protocol.
3. If this assessment shows significant non-compliance with the whale approach and viewing guidelines, the reasons for non-compliance will be assessed. Then, if non-compliance appears to be willful based on the preponderance of evidence, the process for adopting a minimum approach and viewing regulation for vessels operating in the Sanctuary should be implemented.
4. MBNMS should develop a sanctuary-wide outreach program on whale approach and viewing guidelines that includes recreational boaters and other users that may not have access to the traditional methods for disseminating information regarding marine mammal approach and viewing etiquette. Below are some example ideas:
5. Ensure purchasers of kayaks at retail outlets receive information on marine wildlife approach and viewing etiquette.
6. Solicit and encourage kayak rental shops to assist with outreach efforts.
7. MBNMS could work with the Department of Boating and Waterways through their Boating Under the Influence (BUI) prevention program, to provide marine mammal approach and viewing etiquette information.
8. MBNMS could work with the Department of Motor Vehicles to include whale approach and viewing guidelines in their boater registration packages sent out every 2 years.
9. MBNMS could work with CDFW to provide their recreational fishery samplers with marine mammal and viewing etiquette information at the four launch ramps within Monterey Bay.

10. Harbor staffs, perhaps supported by volunteers from Save Our Shores or other groups, could distribute whale approach and viewing flyers to the vessel owners and operators including kayak launchers.

11. The Harbors within the Sanctuary could use their gate notice boxes and electronic newsletters to distribute the whale approach and viewing guidelines to resident boaters.

12. A laminated poster could be developed describing the guidelines and placed on all whale watch operator vessels as well as in public areas for all boaters as appropriate.

### **Resources**

Regulations Governing the Approach to Humpback Whales in Alaska, 2001, 50 CFR Part 22  
Endangered Fish or Wildlife; Special Prohibitions; Approaching Humpback Whales in Hawaiian  
Waters, 1995, 50 CFR Part 222

Approach Regulations for Humpback Whales in Waters Surrounding Islands of Hawaii:  
Environmental Assessments; Availability, etc., NOAA-NMFS-2016-0046

Environmental Assessment for Approach Regulations for Humpback Whales within 200  
Nautical Miles of the Islands of Hawaii, July 2016, National Marine Fisheries Service

Effectiveness of Voluntary Conservation Agreements: Case Study of Endangered Whales and  
Commercial Whale Watching, Wiley et al Conservation Biology, Volume 22, No. 2, 450–457  
DOI: 10.1111/j.1523-1739.2008.0089

Geospatial analysis of management areas implemented for protection of the North Atlantic right  
whale along the northern Atlantic coast of the United States, Asaro et al, Marine Policy, January  
2011

Whale Watching Guidelines, Stellwagen Bank National Marine Sanctuary

#### **4. Seabird Protection (GFNMS Working group)**

**MBNMS Advisory Council Member:** Bart Selby

**Task:**

The Overflight Working Group was formed by Greater Farallones National Marine Sanctuary Advisory Council in their effort to assist the Greater Farallones National Marine Sanctuary (the Sanctuary) with addressing several years of public requests to review the location and dimensions (shape and size) of NOAA regulated overflight zones in certain areas of San Mateo, Marin and Sonoma Counties that are managed by the Sanctuary.

Full report provided in email: recommendations relevant to Devil's slide are found on page 30 of the report:

**Working Group Recommendations**

At this time the Working Group is not recommending a new regulatory zone at this site.

The Working Group recommends the following actions be implemented concurrently:

1. Request the FAA to change chart markings to make pilots aware of Devil's Slide Rock and risks to resources:

Create marking on the chart that combines [two approaches currently in use over the Lawrence Livermore Laboratory and Alameda Air Station](#). Use a Magenta Circle and insert a text box that explains that it is a "sensitive nesting area" and "request 1000 Ft. AGL."

A mock-up of this warning on the FAA charts is linked [here](#).

If NOAA would like support to address this with FAA, US Fish & Wildlife Service and others can be asked to write letter of support or even attend meeting, if thought to be helpful.

2. Immediately engage with FAA's current process to re-consider Class B Airspace to better support this need. i.e., ask FAA to move the current Class B airspace away from Devil's Slide to provide more room to allow pilots more easily to maneuver around Devil's Slide Rock to better protect birds

3. Gather Data

Gather data on whether this approach worked. Commit to a time to revisit this.