

MINUTES
BOATING AND WATERWAYS COMMISSION
MONTEREY, CALIFORNIA
November 17, 2005

Pursuant to due and regular notice, the meeting of the Boating and Waterways Commission was called to order by Chairman Sandy Purdon, on November 17, 2005, at 2:00 P.M., at the Hyatt Regency Monterey, Windjammer Room, 1 Old Golf Course Road, Monterey, California.

ROLL CALL

Commissioners Present: H.P. "Sandy" Purdon, Chairman
 Jon S. Fleischman, Vice Chairman
 Lenora S. Clark
 Charles P. "Bud" Johnson
 Edward C. Reno III

Commissioners Absent: Robert Y. Nagata

Department of Boating and
Waterways Personnel Present: Raynor Tsuneyoshi, Director
 Joy Fisher, Staff Counsel
 David Johnson, Deputy Director
 Reinhard Flick Ph.D, Oceanographer
 Steve Watanabe, Acting Division Chief
 Dolores Farrell, Chief of Operations
 Mary Just, Associate Governmental Program Analyst
 Mike Sotelo, Associate Governmental Program Analyst
 Margarita Sanchez, Administrative Assistant

STRATEGIC PLANNING SESSION

Chairman Purdon opened the meeting by welcoming the public to the Boating and Waterways Commission meeting. He introduced Mr. Fred Meurer, City Manager of Monterey.

Mr. Meurer thanked the Commission for holding the meeting in Monterey and he hoped the Commission would at some future meeting tour the City of Monterey and visit some completed grant projects sponsored by the Department of Boating and Waterways. He stated Monterey's City Council views the Commission and the Monterey Bay National Marine Sanctuary as key partners in maintaining access to the water for the general public and for the fishing community. Mr. Meurer stated that Mr. Douros of the Monterey Bay National Marine Sanctuary, has been important in maintaining access to the waters for the general public as well as dealing with

pollution issues and issues in dealing with the tension between individuals who would like to use the waters at any cost and others who do not due to damage to the environment and marine mammals.

Chairman Purdon gave a brief history and description of the Department of Boating and Waterways. He reported that the Department's mission is to provide access to navigable waterways for recreational boaters and to protect the public's right to safe and enjoyable boating to the estimated four million boaters in California. Chairman Purdon added that the Department was initially a division of State Parks in 1957 and will soon have its 50th anniversary.

Chairman Purdon welcomed and introduced Mr. William Douros, Superintendent, Monterey Bay National Marine Sanctuary, of the National Oceanic and Atmospheric Administration.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION PRESENTATION

Mr. William Douros thanked the Commission for the opportunity to present his presentation. He gave a PowerPoint presentation and orientation on the Sanctuary programs and explained the National Oceanic and Atmospheric Administration (NOAA) organization and the projects and programs NOAA administers. A handout entitled "*National Oceanic and Atmospheric Administration – National Marine Sanctuaries on the California Coast*" was given to the Commissioners and was available to the public.

Mr. Douros stated the following:

- There are 13 National Marine Sanctuaries around the country and most are designated at the direction of Congress.
- NOAA protects over 18,000 square miles of aquatic ecosystems.
- National Marine Sanctuaries protect ecosystems, their habitats, and the natural resources.
- NOAA mandates include research, education and facilitating multiple uses to the extent compatible with primary mandate of resource protection.
- There are four NOAA Sanctuaries in California: Cordell Bank, Gulf of the Farallones, Monterey Bay and Channel Islands.
- NOAA program areas: Education and Outreach, Resource Protection, Research and Monitoring, and Program Operations.
- Regulated Activities: Discharging or depositing materials into Sanctuary waters; alteration of the seabed; disturbing of marine mammals and birds; moving/removing or injuring historical resources; oil and gas exploration or production; aircraft elevation; cargo carriers; motorized personal watercraft; and attracting white sharks.
- There is a management plan review at Channel Islands, Cordell Bank, Gulf of Farallones and Monterey Bay.

Mr. Douros stated that the management plan review process for the three Central California Sanctuaries started in 2001 and has had about 20 scope meetings which identified a number of issues and has worked through the advisory council and public input. He said the public input led to a development of action plans that describe the issues and how to solve them. As an

example, he said, in Monterey Bay there were 221 people in 16 different working groups that met over a six month period to provide advice on what the activities and strategies should be in order to address the various problems at the Sanctuaries. Mr. Douros said there are many benefits on having public input but it also lengthens the timeline to complete the management plan review process. He said it is anticipated that the joint management plan documents should be released in the spring of next year and in six or seven months after that the plan should be finalized.

Mr. Douros reported the management plan review enables NOAA to evaluate the Sanctuaries operations and administration and whether or not focus is being done on the priority programs and to evaluate the rules and regulations.

Mr. Douros stated some examples of issues being addressed by NOAA. He indicated the Monterey Bay Sanctuary's management plan was initially about 40 pages and it is now about 300 pages which includes and addresses issues such as, coastal development; ecosystem protection; partnerships and opportunities; water quality; wildlife disturbance; and operations and administration needs. Mr. Douros said these issues have to be worked on with state agencies, local government and federal agencies.

Mr. Douros said the proposed regulatory changes for the motorized personal watercraft (MPWC) at Monterey Bay is to update the definition and to return to the original intent of the 1992 regulation and to allow for a permit program for tow-in surfing at Mavericks. He stated that NOAA is willing to consider, and it is stated in the management plan, a process to consider allowing tow-in surfing at Mavericks. Mr. Douros said Mavericks is probably the largest surf break in California and is very popular with tow-in surfing and competitions. He said NOAA is willing to allow a permit program that will allow tow-in surfing at that site.

Mr. Douros said at the Channel Islands Sanctuary the proposed regulatory changes for MPWC is prohibition within one nautical mile offshore, which is the park boundaries, and complements the existing ban by the National Park System. He added there is no change to existing prohibition at Gulf of the Farallones. Mr. Douros stated that at all the Sanctuary sites the regulation exempts motorized personal watercrafts for search and rescue, and training activities.

Mr. Douros indicated that the original designation and intent in 1992 was to have all MPWC activity occur in four zones off of the harbors of Pillar Point, Santa Cruz, Moss Landing and Monterey Bay. He added that the MPWC has evolved since then and no longer fits the definition as to what a motorized personal watercraft is. Mr. Douros said the MPWC users can and have operated the craft outside the definition, but not necessarily outside of the original intent beyond the zones and enforcement has not been pursued. He added, instead the definition will be updated and will recapture what a MPWC is so they can be operated in the four zones as was originally intended in 1992. Mr. Douros emphasized that this is not a new change but only updating and trying to get back to the original intent of 1992.

Mr. Douros said all four Sanctuary sites are proposing regulation to ban the introduction of introduced species into the Sanctuary with the exception of the Department of Fish and Game

who has sought an exemption for striped bass because the species are already here. He said the ban of introduction of introduced species is an important issue to State and Federal agencies and they are looking to pull resources and work together on this issue.

Another prohibition, Mr. Douros added, is deserted vessels. He said there is proposed regulation on prohibiting deserted vessels at Gulf of the Farallones, Monterey Bay and Channel Islands.

Mr. Douros stated that the Channel Island management plan is in the final clearance process and should be released in the winter of 2006. There will be a 60-day comment period, he said, and at least two advisory council meetings.

Mr. Douros reported that the three draft joint management plans of Cordell, Gulf of the Farallones and Monterey Bay could be released by spring of 2006. He added the plans will have proposed regulations and one draft EIS. Mr. Douros said there will be a 60-day public comment period, about eight public comment hearings and three Sanctuary Advisory Council meetings. He anticipates the release of the final management plan should take place by winter of 2006/2007, and the new regulations will become active.

Mr. Douros added there is a separate environmental review process at Channel Islands which is part of a State/Federal partnership with the Department of Fish and Game, the Resources Agency and NOAA. He said they have been pursuing a six year process with stakeholder involvement to consider state reserves which have been designated by the State and Federal Reserves that compliment those around the Sanctuary.

Mr. Douros mentioned other non-regulatory boating programs that the National Marine Sanctuaries is participating in. He mentioned the following boating programs:

Water Quality:

- Monterey Bay harbors and marinas plan
- Pumpout facilities
- Dock walker programs
- Guidelines for hull cleaning
- Funding and training

Introduced Species:

- Collaborating with harbors to study and remove
- *Undaria* in Monterey Bay and Santa Barbara
- Guidelines on hull cleaning
- Next Step-early detection with harbors and the Department of Boating and Waterways

Wildlife Disturbance:

- Kayak programs at Monterey Bay and Gulf of the Farallones
- Wildlife viewing guidelines; paddlers etiquette
- Working with boaters to reduce marine debris

Education:

- Brochures on regulations
- Signage programs with harbors-pump out facilities, general information
- Weather kiosks in some harbors

- Exhibits and partnerships at Monterey Bay and Channel Islands maritime museums
- Boating instruction and safety center at Channel Islands

Mr. Douros gave copies of the “*Boating and Safety*” brochure to the Commissioners. He said the brochure is a collaborative project of many state and federal agencies including the Department of Boating and Waterways. The brochure was available to the public.

Mr. Douros stated that the Sanctuary Advisory Council consists of 9 to 20 members representing several state agencies, harbor masters, U.S. Coast Guard, recreation, and recreational fishing. He added that the Resources Agency is on the Monterey Bay Advisory Council and the Channel Islands Advisory Council.

Mr. Douros gave the following contact information for the management plan review: Sean Morton, Management Plan Coordinator, Monterey Bay, 831.647.4217 / sean.morton@noaa.gov; Anne Walton, Management Plan Coordinator, Gulf of the Farallones and Cordell Bank, 415.663.0314 / anne.walton@noaa.gov; Michael Murray, Management Plan Coordinator, Channel Islands, 805.966.7107 / Michael.Murray@noaa.gov.

Chairman Purdon asked if the management plan will be posted on the website. Mr. Douros said yes, the Joint Management Plan can be viewed at <http://sanctuaries.nos.noaa.gov/jointplan/> and for Channel Islands it can be viewed at www.channelisland.noaa.gov.

PUBLIC COMMENT

Chairman Purdon said the public can comment on this issue and each person will be allowed to speak for three to five minutes.

Mr. Mason Killebreu, Immediate Past President of California Motorcycle Dealers Associations, stated his dismay of what has happened to the personal watercraft boating in the State of California. He stated he was the plaintiff when the National Oceanic and Atmospheric Administration originally proposed restricting motorized personal watercraft. Mr. Killebreu said NOAA made the proposed restriction based on a fair amount of misunderstanding of the product. He stated individuals thought that MPWC had propellers but in fact they have impellers, so no one could run over something and damage it. NOAA, he said, had stated that MPWC operators were chasing and abusing otters and seals, but that was never established and NOAA proposed to promulgate rules that would restrict personal watercraft usage and maybe eliminate them because of this. Mr. Killebreu said he won in the lower court, but NOAA appealed and he lost in the 9th Circuit Court of Appeals in Washington DC. He added that due to high court cost he was not able to proceed further with the suit.

Mr. Killebreu said it was never established by NOAA that there was a need for counter regulations that were proposed. He stated that NOAA set up off-shore restricted riding areas which are quite a distance off-shore about one mile by two miles and it is hard to tell when you are in the restricted riding areas. Mr. Killebreu indicated that the MPWC user communities have

been aghast as to where the rules have led to. He indicated that the MPWC business has fallen off dramatically and many dealers have dropped the MPWC line. Mr. Killebreu said that trying to expand the original regulations is unnecessary.

Mr. Hunter Eldridge, surfer, stated that while he was surfing in huge waves he lost his board and was swimming for about an hour and no one had seen him, but fortunately a group of tow-in surfers rescued him. He considers the MPWC a life saving tool and would like them to be allowed as recreational use but they should be regulated or have established rules to keep them and the environment safe.

Mr. Wayne Kelly, marketing specialist and professional athlete, said he has been swimming in Monterey Bay for about 25 years and has noticed in the last few years the water quality has been bad and there has been some issues with MPWC. Mr. Kelly indicated the MPWC issue is a user conflict issue that could be addressed with regulations within the county and that the federal government does not have any position to tell California boaters what they should be doing within Monterey Bay. He stated there have been changes in motorized personal watercrafts and the craft has become environmentally efficient and can now carry two or three riders. Mr. Kelly said more people use MPWC now such as the fishermen who use them for Salmon and Halibut fishing. He said he does not agree with NOAA's proposed restrictions on the MPWC and the craft should not be limited to the one mile zone.

Mr. Don Curry, surfer, safe boating instructor, and boating professional, expressed his disagreement with NOAA's stance on the MPWC. He said NOAA has succeeded in eliminating the motorized personal watercraft from the Monterey Bay Marine Sanctuary by penning the MPWC in the four areas off Moss Landing, Half Moon Bay, Santa Cruz, and Monterey Bay. Mr. Curry stated that within a year there are less than a handful of users that will go out there and ride the MPWC in the pen areas because it is a waste of time. He agreed that the older MPWC were loud and noisy, but now the crafts are used as tools to catch the large waves which only happen a few times a year. Mr. Curry said there are only two spots that the MPWC are being used in and that is at Mavericks and Pescadero Point and he hoped that they will be allowed to continue using them there. Mr. Curry said a ban will not eliminate tow-in surfing but will make it more dangerous because athletes will take extreme measures to catch the big waves.

Mr. Tsuneyoshi reported that a meeting was held a few months ago to try to get all of the constituents who are involved in tow-in surfing to talk about issues involving tow-in surfing. He said a follow-up meeting will be scheduled and asked Mr. Curry to leave his name and address so he can be notified of the next meeting.

Ms. Kathy Fosmark, Co-Chair of the Alliance for Communities for Sustainable Fisheries, stated that the fisheries are currently under the authority of the National Marine Fisheries Service and the California Department of Fish and Game. She said some of the Sanctuary's proposals, all of which came together with supplemental fishing regulations, were never meant to be a regulatory body for fisheries and only have the ability to promulgate regulation rather than work with the public in an open process in a way that other agencies have. Ms. Fosmark indicated the Pacific Fishery Management Council actually took a position at the last council meeting not to give NOAA regulatory authority over fishing. She said the fishing community was originally

interested in supporting the Sanctuaries because it was a matter of prevention for oil drilling and not to get into regulating independent industries and the independent user groups which are already under the authority of other regulatory agencies.

Mr. Steve Scheiblaue, Harbor Master, City of Monterey, stated that there have been many successful partnership programs with the Department and the Sanctuary program. He said the Sanctuary program is a relatively new program and is the only sanctuary that comes up to an urbanized coast within state waters which makes it more complex and has more issues than other sanctuaries. Mr. Scheiblaue said that the City Council made recommendations to NOAA in the form of advice during its management plan review process. He reported that NOAA can look to existing state and local authorities for regulations reactions rather than trying to create federal authorities and that the state should balance use with protection. Mr. Scheiblaue added there should be a good fundamental base for decision making so that a regulation can be based on it rather than on someone's personal opinion or personal definition of what protection means as oppose to what imagine threats are to human uses. Mr. Scheiblaue said another point is to look to education and volunteer actions rather than creating regulations. He added NOAA should not try to create fishing regulations but should look to existing authorities as was the understanding made with the fishing community when the Sanctuary was created. Mr. Scheiblaue added that the City of Morro Bay; Moss Landing Harbor District; San Mateo County Harbor District; Santa Cruz Port District; Large Local Chamber of Commerce; Boating Safety Officers Association; and the Harbor Masters Association all have adopted either identical or very similar recommendations to give to the Sanctuary program.

Mr. Scheiblaue said the harbors are wondering where NOAA will go in terms of regulations with regards to introduced species. He asked in ten years will there be mandatory hull cleanings or possible quarantine of a harbor? Mr. Scheiblaue added with regards to the motorized personal watercraft issue, will NOAA, if concerned with performance characteristics of a craft, extend regulations to other kinds of boating? He asked if NOAA will allow contract trainers to provide their training services with MPWC to lifeguards and law enforcements.

Mr. Ed Guzman, professional surfer said he was the program director of outdoor recreation at Fort Ord and has been using boats in the Monterey and Moss Landing area. One of his responsibilities as director, he said, was giving the boating safety course and using the MPWC to rescue people safely. Mr. Guzman stated if there is a ban on MPWC in the Sanctuary it will bring up a lot of complex issues such as, surfers who want to ride larger waves will start using longer ropes and boats that are not safe. He added that there is an issue at the moment in Moss Landing of surfers and people using MPWC to ride waves and with tow-in surfing in that area.

Mr. Guzman stated that there is a group of about 20 people who have met consistently in the last week to address this issue. He stated that they have created the Northern California Tow-Surfing Association to outline and address the problems and issues so that MPWC can be used safely in certain areas. He thanked the Commission for allowing him to speak today and as a group would like to work with the state and local agencies to come up with solutions rather than compound problems and waste taxpayers money.

Mr. Jeff Ludwig, Regulatory Affairs Manager for Personal Watercraft Industry Association, stated that the personal watercraft has evolved from the vessel that was available to the market in 1992. He said today 75 percent of MPWC sold are three passenger vessels and have four stroke engines. Mr. Ludwig added that all MPWC sold in California are complying with the California Air Resources Board's regulations which are the most stringent in the country. He said when MPWC first became controversial across the country the popularity was exploding and since then they have followed a bell curve where the sales peaked in 1995 with 200,000 units, then declined until about 2002 where they have leveled out to about 80,000 units. So, he said, there was a perception that they were taking over the world which is farther from the case.

Mr. Ludwig said they have built bigger MPWC and incorporated new technology and are more expensive, so the demographics of people who are now using MPWC are older individuals and not kids who are out there hot rodding. He said Mr. Douros' presentation which showed two pictures of a MPWC is prejudicial because it shows them racing. Mr. Ludwig said the standup craft accounts for less than one percent of sales and has for a long time and it has evolved to a three-passenger family vessel. He stated the crafts are used by families for touring, towing tubes or water skies, or just enjoying themselves out in the water. Mr. Ludwig stated that Monterey's regulation on MPWC was not substantiated in 1992 and is not substantiated now in 2005. He said there have not been any studies done, for example, the Park Service has been looking at MPWC use for many years and there are now ten units in the Park Service that allow MPWC. Mr. Ludwig said the environmental impact statement that was done by one unit, Glen Canyon Recreation Area, Lake Powell, found no significant impact by MPWC and are now allowed there. Because of federal rule making and associated law suits, he said, the Park Service is required to do studies on unit after unit before MPWC are allowed. Mr. Ludwig stated this has not been done in Monterey and NOAA has not done any studies and has no data on usage, on violations, or on impacts of MPWC. He said as far as usage and violations, the consensus are that there is not much usage and there have not been any violations as far as law enforcement actions relating to operating outside the zones or harassing marine wildlife.

Mr. Ludwig stated that there has not been any consultation with the Department of Boating and Waterways and the Department is not on the Sanctuary Advisory Council as the presentation indicated.

Mr. Ludwig stated that the Personal Watercraft Industry Association supports reasonable regulations. He said the personal watercraft working group that was formed by NOAA was not willing to consider alternatives and was simply there to rubber stamp the Sanctuary staff's idea of what the regulation should be. For example, he said, the industry knows that education works and has been successful throughout the country on both user conflict issues and statistical analysis related to fatalities, accidents and injuries. Mr. Ludwig said all of these situations have declined throughout the years because of education efforts conducted not only by state agencies but by industries sponsors.

Mr. Ludwig read an article in the Los Angeles Times which addresses kayaks and their interaction with sea otters. The article identified all the programs the Sanctuary has undertaken to address the issues with the kayakers interacting with the sea otters and other marine mammals. He said the Sanctuary is willing to address issues with kayakers through education, but with

MPWC it will ban or have extreme regulations and restrict them to the four zones which are remote and out into sea. Mr. Ludwig stated that Mr. Douros mentioned the Dock Walkers in his presentation which reaches out to some segment of the boating community through education but as far as MPWC is concerned it is just banned them or have extreme regulations against them.

Mr. Ludwig stated the industry and other MPWC supporters tried to put forth a buffer zone concept to avoid any marine mammal issues or issues with the shoreline, but the Sanctuary wanted the four individual zones which are hard for people to know when they are in the zones. Mr. Ludwig said they presented a couple of reasonable regulations and had hoped the Sanctuary would consult more with the State to work with and to come up with some reasonable alternatives instead of extreme measures.

Mr. John Alexiou thanked the Commission and Department for taking the time to explore the new sport of tow-surfing. He said the Department has invested interest in providing and enhancing the recreational boating opportunities for the public through many programs often involving safety, education and enforcement. Mr. Alexiou indicated he has worked and is experienced in the field of marine safety, law enforcement, and life savings in California since 1980 and has worked along with the Morro Bay Harbor Patrol, California Highway Patrol, and Pillar Point Harbor Patrol. He said he works as the lead personal watercraft instructor for the Department and has been a consultant with the Department since 2002 and works as the lead instructor for K38 Water Safety since 1998.

Mr. Alexiou said he does not like the MPWC and the people who operate them. He did not like them in 1970 when they would drive through local surfing areas and caused wakes that affected the waves and the surfing. Mr. Alexiou indicated at that time the craft was noisy and had polluting engines and many operators did not have an understanding of the ocean, rules of the road or the environment. He said currently the problems and issues are the same and as a paddle surfer, he does not want to share the water with the noisy and polluting jet skis and an ignorant operator who does not recognize their impact to the surfing experience, safety, the environment, and the ocean's marine mammals and waterfowl. Mr. Alexiou said he does acknowledge that there have been some changes and improvements to the MPWC since the 1970s and that sound and emission levels have been reduced. He said the argument today is whether to ban or regulate MPWC in the Monterey Bay Sanctuary to only four locations that is based on recreational user conflict between two groups rather than quantifiable data. Mr. Alexiou said paddlers and surfers do not want to share the waves with tow-in surfers and they should not be required to do so. There can be areas of separation, but he believes that paddlers, surfers and many environmentalists have NOAA's attention on this issue. He said his recommendation is to protect the rights of both groups through education rather than legislation.

Mr. Alexiou mentioned a conflict between two users groups involving kayak surfers and surfers in Santa Cruz over the last ten years. He said kayak surfers had an unfair advantage to surfers because they were using paddles and were able to catch waves but it was dangerous because when you get pushed forward on a kayak by a wave you can not keep out of the way of a regular surfer. Mr. Alexiou stated that instead of legislating, the two groups came out with education and now the surf schools and surf stores have and give out the educational brochure titled "*The Surfing Way a Guide to the Waves.*" The brochure was made available to the public.

Mr. Alexiou suggested that instead of legislating hard line rules from NOAA, that education be done first so that tow-in surfing will not be banned or limits placed on personal watercrafts in the Sanctuary.

Mr. Alexiou stated NOAA's Sanctuary Advisory Counsel never invited many coastal regulatory agencies such as the Department of Boating and Waterways, California State Parks or the Marine Safety Division (City of Santa Cruz) for input on redefining personal watercraft and restricting their use in the Sanctuary. He said after he attended one of the meetings it became clear that the chairman did not want any input that was contrary to the regulatory intentions, even though the motorized personal watercraft had changed dramatically since the law was enacted in 1992. He urged the Commission not to support the Sanctuary's recommendation of restricting motorized personal watercraft but rather work with local agencies and a small user group of tow-in surfers for education and self regulation instead of a discriminatory closure of California waterways.

Mr. John Donaldson thanked the Commission for taking and setting aside time to discuss the issue of regulation and recreational boating in state waters by federal agencies. He stated that many surfers use the MPWC as a tool to facilitate tow-in surfing which is a growing extreme sport in California. Mr. Donaldson said why does the federal government see the need to regulate recreational activities in state waters and why do they not use the resources of the Department of Boating and Waterways who have the experience, personnel, funding and the resources to do boating safety and boating regulation? He said he has heard today that the surfers do not feel they have any advocate at the NOAA level and they are petitioning the Commission to advocate for them.

Mr. Donaldson stated he has heard Mr. Douros say to the advisory counsel; don't worry about the personal watercraft issues; we will take care of it. He stated that NOAA has done a tremendous job with a lot of the programs in the Sanctuary, but they are turning a blind eye on this particular issue of recreational boating. Mr. Donaldson said the surfers are state residence in state waters pursuing an activity that is legal every place else in the state, but the federal government is coming in and saying you can't do it here or if you want to do it here we will give you less than one tenth of one percent of the square mileage of the Sanctuary to do it in.

Mr. Donaldson said the regulations are based on passed transgressions and once these regulations are in place this will continue to go forward in perpetuity. He stated that dealerships will close and the State of California will lose on the registrations fees because of a regulation put in place by the Federal Government. Mr. Donaldson stated the tow-in surfing issue is a conflict between the users but that the conflict is driving NOAA into excessive levels of boating regulation. He said he would like the Commission to advocate for the rights of California boaters to recreate in a safe responsible manner without undo and overly restrictive federal regulations that are not consistent with existing state regulations. Mr. Donaldson said at the last Commission meeting it was discussed what the roles and missions of the Boating and Waterways Commission might be, and one is to advocate for recreation for state boaters and that is being asked of the Commission today.

Mr. Brad Gross, President, California Association of Harbor Masters and Port Captains, stated that his organization values the Sanctuary program and has been at the forefront of some clean marina programs and best management practices and values the aspects of the program, but some

of his members have issues with the Sanctuary program. Mr. Gross said if a marina builder suggests that they will discriminate against such a class of vessel as MPWC, it may put a Department loan application in jeopardy. He said his facility is inside San Francisco Bay and the Sanctuaries have not touched it yet but he has noticed that it has overlapped the entrance of San Francisco, so it may affect the facilities or members. The members are also uncomfortable with an open ended regulatory authority on something such as invasive species and would like to see more information on this and on what the plans and goals are with NOAA on this subject. Mr. Gross said his organization supports the speakers today and encouraged more dialog on this subject.

Mr. Eric Storm, Lifeguard, California State Parks, indicated that his agency is very interested in safe recreational activities as well as protecting natural resources. He wanted to know if the Department has any taskforce or subcommittees that State Parks can be a part of where they can assist each other to educate and make safe the community of California. Mr. Storm stated that sometimes when new recreational sports are introduced, old laws have to be reviewed. He said, for example, nobody would think humans could breath underwater and now there is scuba diving and it is regulated. Another example, he said, is a growing sport where someone ties a parachute to their body and ski through the surf. Tow-in surfing he added, is a new sport and needs to be looked at both on the environmental side and the recreational safety side. Mr. Storm said he would like to be included in any taskforce or subcommittee and help in anyway he can.

Mr. Tsuneyoshi, Director, Department of Boating and Waterways, asked Mr. Douros when will there be a spot on the advisory counsel for the Department and if NOAA is aware of the copper bottom paint issue in Shelter Island. Mr. Douros replied that he is vaguely aware of that issue. Mr. Tsuneyoshi stated that if NOAA is going to be concerned with invasive species then NOAA is going to ban the only known antifouling paint which is used to coat the bottoms of boats and the new paints that will be suggested to be used in its placed will be epoxy and Teflon based paints. He said the problem with the new paints is it will be easier for invasive species to adhere to the surface of the hull. Mr. Tsuneyoshi said that of all the invasive species that are known in California have come in on hull bottoms. He reported that copper bottom paints are being banned at Shelter Island and there is no other known antifouling paint that is close to the copper based paints used now. Mr. Tsuneyoshi reported that there is a high level of copper at the bottom of Shelter Island, but it is inert copper and is not hurting anything. He said that one action that can result from banning copper paint is that it can open the door to any boat that goes into foreign waters and bring in invasive species to California waters.

Mr. Tsuneyoshi reported that he met with Mr. Mark Rosenker, Acting Chairman, National Transportation Safety Board and Mr. Mike Chrisman, Secretary, Resources Agency, and representatives of the Governor's office on mandatory boating safety education. Mr. Tsuneyoshi indicated there will be a statewide meeting on mandatory boating safety education and invited NOAA to these meetings.

Mr. Tsuneyoshi said the Coast Guard representative of the Monterey Bay Advisory Council voluntarily withdrew voting status and that Mr. Paul Newman, U.S. Coast Guard, would like to know the name of the person who submitted an application for that vacancy.

Mr. Tsuneyoshi thanked Mr. Douros for his presentation.

Mr. Douros responded to the questions asked by the speakers. He stated that in 1992 the regulation prohibited MPWC throughout the Sanctuary except in the four zones but the portrayal that NOAA is now banning MPWC is inaccurate. He said NOAA is attempting to return to the original intent that was there in 1992 regarding MPWC and is not creating a new ban but only returning to the original intent. Mr. Douros said when more of the three-seat jet skis, the ones that were falling outside of the definition, were being used, NOAA should have recrafted the definition then and made it clear. He said NOAA thought the process of the regulatory adjustment through the broad management plan review would happen quicker than it has and as noted by the speakers today that there is a new sport which was not there three years ago.

Mr. Douros stated that if this meeting were to have been advertised for public input on the Monterey Bay and MPWC regulations then you would have seen a different crowd here today. He said there are a lot of people who do not share the same views as some here today and this is the tension between balancing multiple uses.

Mr. Douros said the industry has improved greatly on one of the key aspects of 1992 that being the pollution caused by MPWC and the two stroke engines. He said the effect the craft has on wildlife is still a problem and still remains a concern of his agency. Mr. Douros stated that there are studies as to the effects the craft has on wildlife. Mr. Douros said the path NOAA is on now with the working groups was not to open the doors and reevaluate everything on MPWC. He said there will be accommodations at Mavericks for MPWC and NOAA will see how things proceed there and possibly make more changes in a year or two. Mr. Douros said NOAA is always open to dialog.

Mr. Douros said State Parks has some parks that strictly restrict scuba diving and other parks where it is allowed and some counties have banned MPWC and not just in the Monterey Bay Sanctuary. NOAA, he said, is constantly, as a collective community, trying to balance the best approaches to this. Mr. Douros said he does not want a regulation that results in people drowning, as has been characterized in the media, and which is not accurate. He stated that if someone has a legitimate life training program for public agencies, Coast Guard, and State Parks, it is something that would be considered a legitimate activity and is exempted from the prohibition on MPWC.

Mr. Douros said on the issue on what is a federal agency doing regulating on state waters. He said there are National Parks that are in state waters and local governments in some parts of the state, including here, own part of the state waters and can craft laws that the state can not. Mr. Douros said the Clean Water Act, a federal law, provides guidance for what goes on in state and federal waters. He added that some federal fisheries laws apply in state waters and in this case, the Federal National Marine Sanctuary Act may apply in state waters. Mr. Douros said when a Sanctuary is designated or when a boundary is created, in state waters, the governor of that state is provided an opportunity to review it and can accept or reject it. He stated it was Governor Pete Wilson who accepted the Monterey Bay Sanctuary in state waters.

Mr. Douros reported that NOAA typically creates regulations and there are about ten for Monterey Bay. He said when the management planning review process is done there may be about 14 regulations for Monterey Bay. Mr. Douros said these regulations are adopted when

federal or state regulations are inadequate to protect the special resources in the National Marine Sanctuary. He added if a state or a federal law is adequate then there is no need for NOAA's regulations. Mr. Douros said this was the case in 1992 when the ban on jet skis was adapted for the Monterey Bay Sanctuary. He said there was no federal or state law that provided the same level of protection in the Sanctuary. Mr. Douros said the federal government is not overreaching and there are no laws outside of the boundaries in state waters or laws in the San Francisco Bay, nor do the regulations apply in harbors. He added the regulations are only within the boundaries set up by Congress in state waters that have been accepted by the governor of that state.

Mr. Douros stated that there needs to be additional dialog on the subject of introduced species. He said it would be good to hear from the Commission, the Department, and the City of Monterey to see if there is acceptance and commitment on not having introduced species in local harbors in state waters. Mr. Douros said he does not know if the Governor or the Department of Boating and Waterways have a policy or statement opposing and willing to take all actions reasonable to prohibit introduction of introduced species. He added it is important to know where everyone stands collectively and if everyone agrees on the objectives. Mr. Douros stated that the focus on invasive species is on education, monitoring in order to detect them and quick and prompt action. He added he would like a regulation so that it is relevant that the subject of invasive species is being addressed. Mr. Douros stated this is an issue that exists in the Monterey Bay Sanctuary and there is no other state or federal law that is addressing the problem and NOAA is handling it in a non-regulatory way which will be a ten word regulation. He added NOAA does not want to have harbors quarantine. Mr. Douros said NOAA definitely wants to have a regulatory approach where there are deliberate introductions of invasive species because *Egeria densa* was deliberately introduced to California by someone who wanted to grow it and use it for a particular soup.

Mr. Douros said he would be happy if the Director or someone from his staff would come to the Advisory Council meetings and that he would send him the upcoming dates for the meetings. He said he has confirmed with all the four Sanctuaries to notify and send the agendas to the Department. Mr. Douros also stated that the Advisory Council consists of 20 members and that the Resources Agency has a member on the Council. He said the U.S. Coast Guard representative on the advisory council stated they are willing to become a nonvoting member on the advisory council which made a seat available that was later used to invite recreational fishing.

Mr. Tsuneyoshi stated that if the Advisory Council is dealing with recreational boating issues, then there should be a recreational boating member on the Council. Mr. Douros replied that he and the Director could meet with Mr. Brian Baird of the Resources Agency, who sits on several advisory councils, and find out what can be done.

Mr. Douros said he would like to have a national sanctuary person sitting on the Boating and Waterways Commission and share information as is commonly done with the Coastal Commission and the regional quality control boards. Mr. Tsuneyoshi responded that the Commission's positions are legislated which is different than the Advisory Council who can increase or decrease its members. Mr. Tsuneyoshi added that Mr. Douros is always welcomed to the Commission meetings and if he is not on our mailing list then his name will be added.

Mr. Douros said there might be a legislative solution or maybe just have a nonvoting member on the Commission for a NOAA representation.

Commissioner Fleischman thanked Mr. Douros for informing the Commission on NOAA. He said in looking at the slide presentation, the Sanctuaries take up a substantial portion of the California coastline and if someone, for instance, is a recreational boater from Santa Cruz they would have to go through the Sanctuary to recreate on the water. Commissioner Fleischman asked what data is there that shows MPWC are causing environmental damage inside the Sanctuary. Mr. Douros responded he was not familiar with the issues in 1992 but that the general issues are the speed that the craft can travel and their maneuverability. He said the sea otters spend most of their time on the water surface and have been affected by personal watercraft coming too close and disrupting the otters as well as seal lions and harbor seals.

Mr. Douros stated there have not been violations on this issue because the craft evolved beyond the definition of 1992. He said the intent was for all of the crafts, whether they were used for tow-in surfing or casual recreation, to be inside the zones, so all of those crafts technically are in violation.

Mr. Douros said the MPWC's first issue of water pollution has been dealt with, with the new and cleaner burning engines, but the second issue of wildlife impacts and the third issue of user conflicts are still there. He said other users such as kayakers and surfers who feel now and as in 1992 that there is a conflict with their recreational use.

Commissioner Johnson stated that things have changed since 1992 and the industry now has four stroke engines which are cleaner and contained. He said it is time to reevaluate the criteria of 1992 that established the regulation and update it. Commissioner Johnson commented that the first criteria of pollution have been changed with major changes in the engine and the wildlife and user conflict are educational issues. Mr. Douros acknowledged that of the three issues the first one has been largely solved, but it is not the sole criteria for the regulation. He added that education existed in 1992 as a strategy and was not an effective approach then and the conflicts still exists today. Mr. Douros stated that NOAA is interested in trying tow-in surfing at Mavericks to see how it goes; it will be permitted and allowed which will be an expansion of the allowed uses or reduction if you are an environmentalist. He said if it goes well then it could be extended to other areas as well.

Commissioner Clark stated that the Commission is here to ensure access to the waters of California to recreational boaters. She stated that once there is limited access of one kind of vessels on the coastal waters of California then there are concerns that it will increase to other vessels. Commissioner Clark asked that there are offshore racers that have the issue of speed and maneuverability similar to the MPWC and will there be regulation promulgated their use in coastal waters? She asked that NOAA should not just experiment with opening Mavericks to tow-in surfing, but look at whether the MPWC can be accommodated with the changes that have occurred. Mr. Douros responded that he is aware of the Commission's concerns and said this is not an issue just in the Monterey Bay Sanctuary but also in Marin County, the National Parks and other Sanctuaries; they all have prohibitions on MPWC as well as do other local governments.

Commissioner Purdon asked why the local government hasn't done something about the MPWC issue. Mr. Douros responded, what have the Commission or Department done on this issue as well? Is there, he added, a statewide policy, approach or strategy in place. Mr. Tsuneyoshi responded that the Department has responded publicly and in writing on the MPWC issue.

Commissioner Purdon asked when the regulations were put into effect in Marin County. Mr. Douros responded it was about three years ago. Commissioner Clark added it is a very small area that the MPWC are restricted to. Mr. Douros stated it is throughout the Gulf of the Farallones Sanctuary and throughout the Marin Coast.

Commissioner Purdon asked if this is such a big issue why then did the local community not propose a regulation. Mr. Douros responded that in 1992 when NOAA proposed a regulation, the local community supported it including the Association of Monterey Bay Area Government who wrote letters supporting it and so did the City of Monterey.

Commissioner Johnson asked if the 1992 regulation was done because there was no state or local regulation. Mr. Douros responded yes, if there was a state law that would prohibit the activity in state waters except in the four zones, then there would not have been a need for NOAA to have a regulation.

Commissioner Reno thanked Mr. Douros for the presentation. He stated that the Department should be involved with NOAA since boating or any type of recreation involving boating impacts the four million constituents. Commissioner Reno asked what the next step is in the process and who will make the final decision. Mr. Douros responded that Channel Island National Marine Sanctuary will release their draft plan in a few months and will be available for public review. He added that the administrator for NOAA will make the final decision.

Commissioner Reno asked who gives the guidance on the distinction between the personal watercraft issue and any other form of watercraft. Mr. Douros responded that there are no distinction between one kind of craft over any other, but statutes requires that Sanctuaries, when designated, include laws and regulations that restrict human activities that may cause harm to natural resources in the Sanctuaries. He added that the statutes are very broad and it is from this that the mandate comes to evaluate all the potential human uses in the Sanctuaries.

Commissioner Reno asked how NOAA can assure the constituents that the regulation will not extend beyond personal watercrafts. Mr. Douros responded that to the extent that their activities are not causing potential substantial harm to the resources, it will not extend beyond personal watercrafts. He added Channel Islands and Gulf of the Farallones have a regulation in which very large cargo ships can not come within a certain distance of the islands because of the potential harm to the environment so at that site there has been a regulation applied to marine vessels which are not MPWC.

Commissioner Reno asked if it is NOAA's intent with Mavericks to provide data on tow-in surfing. Mr. Douros responded yes, it will provide data, such as, MPWC use on very large wave days is unlikely to cause harm to natural resources because sea otters are not likely to be in the area of the large waves.

Commissioner Reno asked how or who will be enforcing the ban on MPWC. Mr. Douros responded that the Sanctuary has a cooperative agreement with the State of California, the Department of Parks and Recreation, and Department of Fish and Game to provide enforcement and support. He added there is an informal Memorandum of Understanding between the U.S. Coast Guard and an enforcement officer with NOAA. Mr. Douros said they will use education first and will ticket only repeated violators who are aware of what the regulations are.

Commissioner Reno asked if an economic impact study is being done. Mr. Douros responded that one is being done and will be part of the environmental impact study. He added that the regulation is not final and there is always opportunity for negotiation. Mr. Douros said what is intended to be released is clarification of definitions as described and will include the description of the process of allowing tow-in surfing at Mavericks under certain circumstances. He stated that things can be changed between the draft and the final document. Mr. Douros noted that extensive public comment has already been done with more public comment during the public review period. Mr. Douros stated that even if NOAA has adopted the revised definition and in a few years it is noted that it is working at Mavericks then NOAA can consider changing and expanding tow-in surfing to other locations.

Mr. Tsuneyoshi asked how many incidents of harassing of marine mammals have there been with the three-seat MPWC. He noted that the three-seat MPWC have been in existence for about eight to ten years and is being added to the ban. Mr. Douros responded that it has not been monitored or measured.

Commissioner Reno asked what data is available. Mr. Douros responded that the data and reports that exist is from 1992 forward and are the basis for concern. Commissioner Reno stated why NOAA would enforce the intent of 1992. Mr. Douros responded the reason it is being done now is because the management plan which began almost five years ago is being updated.

Commissioner Reno stated that one potential avenue NOAA can take is to commission a study and during that time continue status quo which has worked effectively since 1992. Mr. Douros responded that it is not known if it has worked effectively. He added that NOAA's budget has been reduced and there are no funds available to do studies. Mr. Douros stated NOAA will be evaluating at Mavericks the effect of tow-in surfing on the natural resources. Commissioner Reno asked why is it necessary to cast a broad based ban across the substantial amount of area NOAA is responsible for. Mr. Douros responded that the management plan is to return to the original intent of 1992 and there may be disagreement with this, but that has been the intention of NOAA.

Chairman Purdon asked if NOAA will be considering eliminating some of the restrictions of 1992. Mr. Douros responded that from the perspectives from some marine mammal advocates NOAA is doing exactly that by allowing tow-in surfing at Mavericks.

Commissioner Reno asked at what point can the Commission weigh in with comments where there can be an impact. Mr. Douros responded that the Commission can weigh in during the comment process. He added that the Channel Islands documents are due out in a couple of months and that would be one point where anyone can comment. Mr. Douros added that the central California documents are due out in the spring.

Commissioner Clark said there has been many positive things said about NOAA's educational and outreach efforts and suggested that the same be done with the contentious groups that are having problems in the Monterey Bay waters so that they may know what should or should not be done with respect to the environment and marine mammals.

Mr. David Johnson stated that in the Harbors and Navigation Code there is a phrase called "special use area" where a city or county can restrict or even prohibit personal watercraft and in early 1990 there was some confusion as to how it can be done. He indicated that in 1992 the city of Redding wanted to prohibit personal watercraft on the Sacramento River and that the Attorney General's office gave an opinion that stated a city, county or district can prohibit personal watercraft in their entirety, but there has to be a good reason or rational as to why the city would do it and the city can not discriminate against the personal watercraft alone. Mr. David Johnson added there have been some ordinances that have banned personal watercraft.

Chairman Purdon thanked Mr. Douros for this presentation and the public for its comments. He said the Commission and the Department will continue to monitor this issue. Chairman Purdon said he would like the Department to keep the Commission informed on this issue and that Department staff get involved.

ADJOURNMENT

The Chair adjourned the meeting at 4:55 P.M.

Raynor Tsuneyoshi, Secretary

Attachment

BOATING AND WATERWAYS COMMISSION MEETING
 REGISTRATION
 NOVEMBER 17, 2006
 MONTEREY, CALIFORNIA

NAME	TITLE	AFFILIATION	ADDRESS
John Alexiou			5330 Ethrington Way, Soguel, 95073
Linda Bendsen	Director	Recreational Boaters Of California	400 Marina Blvd, Suisun, 94585
Don Curry	Surfer/Boating Professional	Monterey County Tow-in Surfers	3260 Rio, Carmel, 93923
John Donaldson			3 Hutton Ctr Drive#880, Santa Ana
William Douros	Superintendent	Monterey Bay Natl Marine Sanctuary	299 Foam Street, Monterey, 93940
Hunter Eldridge		Citizens of Monterey Peninsula	820 Maple Street, Monterey
Kathy Fosmark	Co-Chair	ACSF	Figueroa Street, #1, Monterey
Brad Gross	President	CA Assoc. of Harbormaster & Port Captains	3950 Scott Street, San Francisco
Brad Gross	Manager of Marina Operations	City of San Francisco Rec. Park Dept.	3950 Scott Street, San Francisco
Ed Guzman	Surfer/Tow-In Surfer	No. CA Tow Surfing Association	11 Nunes Rd, Watsonville, 95076
Wayne Kelly	Marketing Specialist		192 Walker Valley Rd., Castroville
Mason Killebreu		CA Motorcycle Dealers Assoc.	1020 Auto Center Parkway, Seaside, 93955
Jeff Ludwig	Regulatory Affairs Manager	Personal Watercraft Industry Assoc.	444 N Capitol St., NW #645, Washington DC
Fred Muerer	City Manager	City of Monterey	City Hall, Monterey
Steve Scheiblauber	Harbormaster	City of Monterey	Monterey
Linda Newland		Recreational Boaters Of California	907 Lilac Street
Eric Storm	Lifeguard	CA State Parks	2211 Garden Rd, Monterey, 93940