



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

Gulf of the Farallones National Marine Sanctuary
991 Marine Drive
San Francisco, CA 94129

April 8, 2010

Dear Gulf of the Farallones National Marine Sanctuary Advisory Council:

The Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary) appreciates feedback you provided during the December 10, 2009 Sanctuary Advisory Council (SAC) meeting on sanctuary permits involving attracting or approaching white sharks in the Sanctuary and the time spent by the SAC in drafting Resolutions 12/10/09-1 and 12/10/09-2.

Resolution 12/10/09-1 seeks written notification by the Superintendent to the SAC as soon as possible after receipt of a permit application with special attention called to any applications that may have a potential for controversy or public debate. Ordinarily, the Superintendent informs the SAC at the first opportunity after a permit decision has been made, usually through a report out given at the quarterly SAC meeting or retreat. Beginning with the April 2010 council meeting, the Superintendent's report will be expanded to include permit applications received or under review as well as permits issued since the previous report.

Resolution 12/10/09-2 advises the Superintendent as to how permit applications should be reviewed and evaluated, as well as how to consult with the SAC and the wider public under certain circumstances. Specifically, it recommends that permit applications be subject "to the most precautionary scientific scrutiny, review by the broadest possible range of stakeholders, consideration of the relative merits and disadvantages of potentially less-invasive methodologies, consultation with the Sanctuary Advisory Council, and, if there is sufficient interest and concern in evidence, the conduct of public meetings on the proposed activity, and [to] consider each and every provision of 50 C.F.R. 922.83 (Permit procedures and issuance criteria)." The SAC has a unique and extremely important role to advise and make recommendations to the Superintendent regarding management issues. However, the SAC's role does not include making permitting or management decisions. The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431-1445c-1) reserves these functions to the Secretary of Commerce and they are exercised on his behalf by NOAA and the Office of National Marine Sanctuaries. Any attempt by the SAC to perform operational or management functions would exceed the legal authority provided to it by the NMSA.

All permit applications are reviewed in accordance with the legal requirements contained in the permit procedures and criteria at 50 C.F.R. 922.83. Section 922.83 lists the four types of permit categories available for GFNMS permits and the eight factors that must be considered in making permit decisions. Permitted activities must further the research or monitoring related to Sanctuary resources and qualities; further the educational value of the Sanctuary; further salvage or recovery operations; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Sanctuary Superintendent must consider:

1. Professional qualifications of the applicant;



2. Financial qualifications of the applicant;
3. Appropriateness of the methods and procedures to achieve the goals of the activity;
4. Compatibility of the activity with the resource protection objective of the Sanctuary;
5. Compatibility of the activity with the value of the Sanctuary;
6. Whether it is necessary to conduct the activity in the Sanctuary;
7. Whether the reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects; and
8. Any other factors deemed appropriate.

As part of the Joint Management Plan Review (JMPR), the Office of National Marine Sanctuaries revised and expanded 50 C.F.R. 922 Subpart H, including the permit procedures and criteria at section 922.83. These procedures and criteria represent the legal requirements with which GFNMS must comply to review and decide whether and how to issue permits for activities within the Sanctuary. They were developed with the lengthy participation and full concurrence of the SAC including substantial public review, comment, and input from a broad range of user groups. We have confidence in these procedures and criteria and believe that they adequately consider impacts to sanctuary resources and qualities, use the best available scientific information, and are fully consistent with the National Environmental Policy Act and other applicable legal requirements. Accordingly, the Sanctuary will continue to review permit applications based on the procedures and criteria that are described in 50 C.F.R. 922.83 and which have been subject to broad public review.

Thank you for your concern and input into these matters.

Sincerely,



Maria Brown
Superintendent
Gulf of the Farallones National Marine Sanctuary