



# Marine Conservation Alliance

*promoting sustainable fisheries to feed the world*

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Adak Community Development Corporation

Alaska Bering Sea Crabbers

Alaska Longline Co.

Alaska Whitefish Trawlers Association

Alaska Groundfish Data Bank

International Seafoods of Alaska  
North Pacific Seafoods  
Trident Seafoods  
Western Alaska Fisheries

Alaska Scallop Association

Aleutian Pribilof Island Community Development Association

Akutan, Alka, False Pass, Nelson Lagoon, Nikolski, St. George

Arctic Storm Management Group

Bristol Bay Economic Development Corporation

Aleknagik, Clark's Point, Dillingham, Egegik, Ekwok, King Salmon, Levelock, Manokotak, Naknek, Pika Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, Ugashik

Central Bering Sea Fishermen's Association

St. Paul

City of Unalaska

Glacier Fish Company

Groundfish Forum  
Fishermen's Finest, Iquique US, Ocean Peace, O'Hara Corporation, United States Seafoods

High Seas Catchers

Ocean Harvester, Sea Storm, Neahkahnie

Icicle Seafoods

Norton Sound Economic Development Corporation

Brevig Mission, Diomedes, Eilm, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, White Mountain

Pacific Seafood

Pacific Seafood Processors Association

Alaska General Seafoods  
Alyeska Seafoods  
Golden Alaska Seafoods  
North Pacific Seafoods  
Peter Pan Seafoods  
Phoenix Processor Limited Partnership  
Trident Seafoods  
UniSea  
Westward Seafoods

United Catcher Boats

Akutan Catcher Vessel Association  
Mothership Fleet Cooperative  
Northern Victor Fleet Cooperative  
Peter Pan Fleet Cooperative  
Unalaska Fleet Cooperative  
Unisea Fleet Cooperative  
Westward Fleet Cooperative

December 26, 2014

Lauren Wenzel  
National Marine Protected Areas Center  
1305 East West Highway, N/NMS  
Silver Spring, MD 20910

Dear Ms. Wenzel:

The Marine Conservation Alliance (“MCA”) is pleased to submit comments pursuant to the notice of 79 Fed. Reg. 63899 (October 27, 2014) regarding the proposed update of the Framework for the National System of Marine Protected Areas (“Updated Framework”).

MCA is a broad based coalition of harvesters, processors, coastal communities, and western Alaska Community Development Quota organizations involved in the groundfish and shellfish fisheries off Alaska. MCA was formed to promote the sustainable use of North Pacific marine resources by present and future generations. MCA supports research and public education regarding the fishery resources of the North Pacific and seeks practical solutions to resource conservation issues. Our members collectively harvest and process the majority of seafood caught in Federal waters off the coast of Alaska.

In general, the Updated Framework would greatly benefit from further consideration and clarification of several key issues, including: 1) what is meant by “avoid harm” to MPA resources, 2) how activities which indirectly impact MPA resources should be treated, and 3) clarity regarding the process by which agency actions will be determined to be consistent with the E.O. and in particular, who decides whether “harm” will be caused to MPA resources. We have provided further detail in our comments below, which are organized by section for ease of reference.

**Definition of Terms.** Section 5 of Executive Order 13158 provides that each Federal agency “shall identify” its actions that affect the natural or cultural resources protected by a Marine Protected Area in the National System (“MPA”). Having identified each such action, Federal agencies “shall avoid harm” from any such action to the resources protected by an MPA. The Updated Framework explains the intent of Section 5 of the Executive Order stating Section 5 requires agencies to “ensure” that their activities avoid harm to the resources protected by MPAs. Updated Framework at 20.

While the Executive Order directs that Federal agencies “shall avoid harm” to MPAs and the Updated Framework states that this avoid harm standard imposes an absolute requirement that Federal agencies “ensure” there is no harm of any type, neither the Executive Order nor the Updated Framework provide for any clarity regarding when harm occurs and when it does not. As the Updated Framework itself states, MPAs are created for a variety of reasons and are host to a wide array of different types of activities, both use and non-use. The fact that MPAs are so diverse means that impacts to resources within MPAs occur to varying degrees. With this in

mind, certainly the determination of “harm” is more complex than a simple binary issue. The determination of “harm” should allow for a scaling of minor versus major harms against the purpose of the MPA in question. It would be wise to also consider the balancing of such harms and whether the benefits of the Federal activity outweigh a harm that such an activity may have to MPA resources. Without further clarity the Updated Framework could be read to mean that any Federal activity, no matter how beneficial or in the national interest is precluded if it will cause any harm of any description, no matter how minor or inconsequential, to the resources which the MPA was created to protect. Related to this issue, neither the Executive Order nor the Updated Framework make a distinction between direct and indirect harm. Compounding this dilemma is the fact that by defining a Federal activity as any Federal “action,” the Executive Order and Updated Framework include not only those actions carried out exclusively by Federal agencies but also any action permitted by a Federal agency.

Consider first the issue of scaling harm. As currently drafted and interpreted in the Updated Framework, the Executive Order provides for a binary, black and white judgment regarding harm. If harm of any description is found, the activity is prohibited. But some “harm” may be inherent in activities that do not, in fact, adversely affect the resources found in an MPA. For example, if fishing is occurring in an MPA, there is clearly harm to the individual fish that are harvested, a resource of the MPA. However, if fishing levels are such that the stock of fish is maintained at or above its maximum sustainable yield, then fishery management goals are being met, meaning no harm to the resource is occurring. The Executive Order and Updated Framework can easily be read as prohibiting the harm of killing any fish by managed harvest even if there is no meaningful risk posed to the goals managers have for the fishery resource.

Equally important, the requirement to ensure no harm to the resources of an MPA ignores the question of whether the alleged harm is actually to the resources sought to be protected by the MPA designation. For example, an MPA may be established to protect an archeological value such as a sunken ship. Pelagic fishing activity would not impact that MPA resource. The Updated Framework appears to tie “harm” to the goals of the MPA, however more effort should be made to clarify this point, otherwise the Updated Framework could appear to prohibit activities that impact any resource in the MPA, regardless of whether the impact is to the resource whose protection was the basis for establishing the MPA.

The Executive Order, as interpreted by the Updated Framework, does not appear to provide any flexibility to assess and balance the nature and scope of the harm to an MPA resource from a proposed activity. The Executive Order and the Updated Framework should be clarified to provide for a scaling of harm based on the purposes for which the MPA was created so that Federal agencies will have the ability to do what amounts to a cost-benefit analysis when deciding whether to undertake or permit an activity.

The failure to distinguish between direct and indirect harm further complicates the issues described above. Consider, for example, a major infrastructure project such as a Federally-approved surface transportation or renewable energy project that will significantly reduce air emissions or otherwise provide significant national benefits. If such a project, even if located thousands of miles from an MPA, will result in sediment or water runoff that will eventually find its way to an MPA, then that activity would appear to be prohibited under the standard of the Updated Framework that the Federal agency must “ensure” no harm to an MPA if doing so is deemed “practicable”. This appears to be the case regardless of whether the harm is direct or indirect and regardless of whether the harm is minor or insignificant. Is this the intent of the Updated Framework? Further clarification on such indirect effects would improve the Updated Framework document.

**Designation Principles.** The Updated Framework provides that an objective of the National System is to connect already existing MPAs by identifying geographic gaps. Updated Framework at 8, 10, 12. This objective raises the question of whether MPAs are a goal or a tool. Simply connecting

MPAs so there is a geographic linkage and “network” appears to ignore the more important question of whether connecting areas serves a larger conservation purpose. The Updated Framework repeatedly emphasizes the goal of connecting existing areas without offering an analytical or conservation framework for doing so, other than more is better than less. The creation of MPAs should be a tool to achieve a conservation purpose and not a goal by themselves.

The Updated Framework lacks a discussion about weighing the social and economic importance of the marine environment to communities and economies. Along the coast of Alaska many communities are intimately tied to the marine environment and utilize marine resources for economic livelihoods and subsistence. Similarly, hundreds of thousands of jobs in Alaska, the Pacific Northwest, and elsewhere depend upon large scale fishing activity and these jobs are a substantial economic driver in many regions. Simply stating that a goal of the Updated Framework connect MPAs by identifying geographic gaps (implying that more is better than less) fails to ask some basic questions about what MPA designation is attempting to do. Each MPA designation needs to carefully weigh the benefits and costs of such designation and such a process needs to carefully consider the social and economic importance that marine users (industry, communities) place on an area in question. The Updated Framework should more carefully consider the objectives of the National System and more carefully articulate that 1) MPAs are a tool, not a goal, 2) that MPAs should be proposed only after carefully considering management needs and carefully considering social, economic, and ecological considerations.

**Management Principles.** The Updated Framework states that MPAs must be managed in a manner that is integrated with the larger, evolving ecosystem based approach to managing marine resources. Updated Framework at 6. The question arises regarding what is meant by the “larger, evolving ecosystem-based approach to managing marine resources.” It is important that the updated framework not lose sight of the fact that MPAs must integrate with existing law and these existing laws contain standards for management of marine resources. For instance, the Magnuson-Stevens Fishery Conservation and Management Act contains National Standards for fishery management which any fishery management action must abide by. MPAs must be managed in a manner consistent with existing law and such standards. Stating that MPAs must integrate with an evolving ecosystem based approach raises questions about the legal framework that will apply to MPAs. Is it the intent of the Updated Framework to replace existing law in favor of a yet-to-be-defined “ecosystem-based approach to managing resources”?

The Updated Framework states there is an “evolving” management system. This creates the question of whether the evolving management system refers to the management of marine resources in general, the management of MPAs, or both. Regardless of how that important question is answered, the next issue is who identifies the standards that are to be applied. By definition, an evolving system or standard is one that is changing. To provide consistency among the many Federal agencies whose actions might “harm” MPAs requires that someone be charged with specifying the applicable management standards and for stating what new standards have “evolved” and are now the governing standard. And is the entity or person making such decisions acting unilaterally or pursuant to a transparent process that would involve public input and comment such as pursuant to the Administrative Procedure Act?

**Sustaining Fisheries.** The Updated Framework provides that one purpose of MPAs could be to support the “sustainable production of fisheries.” MCA supports the sustainable harvest of fishery resources. However, the word “sustainable” is subject to interpretation because various harvest levels can all be deemed “sustainable.” For example, fisheries that harvest millions of tons of fish on a sustainable basis could also harvest hundreds of pounds and be declared sustainable. The Updated Framework should make it clear that the concept of “sustainable” fisheries is to be implemented and understood within the conservation and management context set forth in the Magnuson-Stevens Fishery Conservation and Management Act which provides for the management of fishery resources to achieve the optimum yield from the fishery. 16 U.S.C. §1801 *et seq.*

MCA appreciates the opportunity to offer these comments, and we would be pleased to talk further with you as the Updated Framework is revised.

Sincerely,

Merrick Burden  
Executive Director