



Marine Conservation Alliance

promoting sustainable fisheries to feed the world

COMMENTS TO THE INTERAGENCY OCEAN POLICY TASK FORCE REGARDING THE INTERIM REPORT, DATED SEPTEMBER 10, 2009 FOR THE DEVELOPMENT OF A NATIONAL POLICY FOR THE OCEAN, COASTS, AND THE GREAT LAKES.

October 15, 2009

The Marine Conservation Alliance (MCA) is pleased to provide these comments to the Interagency Ocean Policy Task Force in response to the Task Force's Interim Report. MCA is a broad based coalition of harvesters, processors, coastal communities, Community Development Quota organizations, and support services businesses involved in the groundfish and shellfish fisheries of 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 represent roughly 70% of the production of North Pacific fisheries.

MCA welcomes President Obama's oceans policy initiative and the work of the Task Force. We recognize that the President has laid out an ambitious schedule, and applaud the Task Force for your efforts to reach out to various constituencies and the public as you formulated your preliminary recommendations. MCA is also supportive of much of the findings and recommendations of the Interim Report; however we believe the report can be improved upon in several key areas. In this regard, our comments will follow the format of the Interim Report.

As a final point, MCA remains concerned that implementation of the recommendations remains obscure, including a plan to provide adequate funding for essential tasks such as marine research, monitoring, resource management, and enforcement. We will touch further on these concerns at the end of these comments.

Comments on the *Proposed National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes*.

I. Vision.

MCA believes that the vision statement on page 9 provides a useful broad perspective for the national policy. We would note however that it does not include in this vision the sustainable use of ocean and coastal resources by present and future generations, a statement of which we believe is also a necessary part of any national policy founded on ecosystem based management.

II. National Policy Context.

This section of the Interim Report could be improved in both tone and substance. While the discussion provides useful insights into the status of the oceans, coasts and Great Lakes, at times it takes on an alarmist tone that undermines the credibility of the overall document.

MCA also notes that the document does not acknowledge the progress that has been made in recent years. For example, there are repeated references to overfishing, but no discussion of the recent reauthorization of the Magnuson Stevens Act (MSA). Amendments to the MSA included specific requirements to address overfishing and strengthen the role of science in fisheries management. Those changes were intended to place in statute the long held practices of the North Pacific Fishery Management Council, where the Council in over thirty years has not voted to increase catches over the levels recommended by its scientific advisors. The result is that Alaska produces over half the nation's fishery landings with no overfished stocks of groundfish. Other important MSA provisions include requirements to resolve the conflict between NEPA and MSA procedures as well as new initiatives to protect marine habitat and sensitive species, foster cooperative research, and promote technology development to address important fishery management issues. These new initiatives are in the process of being implemented by NOAA and the Regional Fishery Management Councils (RFMCs). It would be useful if the policy document could identify such ongoing efforts, and describe how the new policy will assist in successful implementation of these new provisions.

Similarly the document registers concern over environmental changes in the Arctic, but does not acknowledge the actions taken by the NPFMC to close the United States Exclusive Economic Zone to commercial fishing. This action was taken at the urging of the Alaska seafood industry as a precautionary measure in the face of scientific uncertainty, lack of good resource assessments, and with regard to the effects of climate change on that unique part of the world. This action is now translating into an international initiative to protect high Arctic ecosystems and the people that live there.

MCA suggests that the report would be strengthened by acknowledging that there is a conservation ethic at work in managing our nation's marine resources, that progress has been made in recent years on numerous fronts, and describe fully how the new policy will assist in the practical implementation of these initiatives. From this foundation, the report can then build a more realistic and balanced case for the need for additional action, including an overarching national policy.

III. Policy.

MCA again notes that the policy does not contain any explicit statement that it is the policy of the United States to promote the sustainable use of ocean resources as a national goal and policy. We believe that it is important for the national policy to be as clear on this point as it is on other points in the policy.

The policy statement that begins on page 13 of the report contains many important and useful concepts. We believe that such policy statements can provide useful guidance to further our

Nation's stewardship goals for our oceans and coasts. However, we remain concerned about the application of amorphous terms embraced by this policy, if such terms are incorporated into regulation or statute. For example, the implementation of a policy to "protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes" or "improve the resiliency of ocean, coastal, and Great Lakes ecosystems" while laudable goals, are difficult to cast into clear and concise regulatory requirements. Lack of clarity and a concise and measurable standard for interpreting and enforcing such terms could open the door to unproductive bureaucratic delays and litigation. This will only delay and confound efforts to improve our nation's marine and coastal management programs. One of the goals of the work of the Task Force should be to develop a policy framework that seeks to provide guidance without creating bureaucratic or legal logjams.

One way to address this concern would be to explicitly state that the National Policy does not provide new legal rights or obligations. A clear statement that the policy will build on existing laws and regulations, does not establish any new legal rights or mandates, and does not obligate the United States, the States, Tribes, or other managing entities in any way should be included in the policy text.

IV. Principles.

As with other sections of the Interim Report, the Principles section should acknowledge sustainable use as an important concept. For example, Principle 1 (a) could be improved by modifying the language to state the "Policies, programs, and activities of the United States should be managed and conducted in a manner that seeks to promote sustainable uses of the nations marine and coastal resources while preventing or minimizing adverse environmental impacts...."

Principle 1 (b), which incorporates the precautionary principle as reflected in the Rio Declaration should be explicit that a perceived threat, or mere speculation that a threat may arise is not justification for action. In other words the potential threat or harm must be plausible and real as demonstrated by substantial evidence, not speculative or unsubstantiated. Otherwise, application of Principle 1 (b) provides an excuse for taking action to restrict activities when no real action is warranted. Striking a balance between the need for action in the face of uncertainty, and the need for prudence in determining whether or not a threat is real or speculative is a difficult matter. As such, flexibility and discretion are required, which argues strongly that such vague principles not be implemented through legally binding statute or regulation.

MCA supports Principles 2, 3, 5, 6, and 7 as written.

Principle number 4 is perhaps the most important outcome of the Task Force's work to date, and MCA strongly supports its full implementation. Funding and implementing the research programs necessary to fulfill the promise of the statements in Principle 4 should be the premier goal of the Task Force.

Principle 8 should include clear goals for sustainable use and stewardship of marine resources.

Principle 9 should include language that emphasizes use of existing regional governance structures including the Regional Fishery Management Councils. There should also be an explicit statement that U.S. policies and programs will be conducted within the existing legal and regulatory framework, and that nothing in this policy provides additional rights to any party or places any additional obligations on the U.S. or other management entities (States, Tribe, etc.).

Comments on the *Proposed Policy Coordination Framework*.

MCA supports the recommendations for a National Ocean Council and the advisory groups described in this section of the Interim Report. We note however that there is no mention of NOAA in the framework. As the nation's leading marine resource management agency we assume that this is an oversight and that NOAA will figure prominently in the framework structure.

MCA supports the recommendation to establish a Governance Advisory Committee. We would note that this committee has only one representative from Alaska which has most of the nation's continental shelf, the majority of its coastline, produces over half the nation's fish, and is the nation's energy leader. It would seem reasonable to afford Alaska with the same representation as inland states (2) given the magnitude of Alaska's marine and coastal resources, and its likely role in the future of the nation's quest for sustainable food production and domestic energy supplies.

Comments on the *Implementation Strategy*

The implementation strategy describes a general approach to addressing nine priority objectives, calling for development of a strategic action plan to address each of these priorities. This process would be overseen by the National Ocean Council. The Interim Report goes on to state that effective implementation would require clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component.

What is unclear is who will develop these plans, at what scale the plans will be developed, and what authorities will be used for compliance and enforcement. For example, priority 1 is the implementation of ecosystem-based management. Under this priority, the Interim Report calls for application of "best practices" and the identification of geographic areas of special sensitivity or in greatest need for ecosystem-based management. It also calls for measures to ensure that decisions about ocean activities, uses, and goals are made based on the best available science and incorporate principles of ecosystem-based management.

There have been several proposals and initiatives in recent times to establish a national policy requiring ecosystem-based management of our nation's ocean and coastal areas. As we have commented earlier, there are significant difficulties with translating the national goal of ecosystem-based management into practical reality. Issues of geographic scope, questions about the level of scientific information required to design and implement such a management regime, and fiscal reality all come into play. In reviewing the Interim Report we are left

wondering who will make these determinations. What will be the process to provide public input into these decisions? What will be the process to balance between competing uses? What regulatory process will be used to enforce the measures called for in this section of the report?

For example, how will this priority be addressed in the Mississippi watershed and Gulf of Mexico regions? Does it apply to inland activities like agriculture, where the cumulative effects of many small generators of non-point source pollution may be affecting the health of marine areas in the Gulf? If so, how will federal agencies work with local farmers to implement this policy? Is it intended to also address urban development, roads, or other activities? Does it apply to federally funded programs operated by the states? If so, what is the role of the states in making determinations about the effects of their activities on the marine ecosystem of the Gulf? The interim report is silent on these questions.

MCA is pleased to note that the Interim Report does not call for creation of new bureaucracies as has been proposed in legislation before Congress. We believe that this process should be conducted at the regional level utilizing existing authorities and procedures. In particular, MCA strongly encourages the Task Force to be explicit regarding procedures to ensure adequate participation by ocean users and the public in any such planning exercise. Providing coordination and financial support will serve a useful and practical function as the policy is implemented.

As part of this implementation strategy the policy should also explicitly acknowledge the role of the Regional Fishery Management Councils (RFMCs) as regional governance bodies with specific responsibilities and authorities for fishery management, and identify their role in this process. As noted above, the reauthorization of the MSA initiated numerous actions and programs to further ecosystem based fisheries management by the RFMCs, and steady progress has been made already. MCA suggests that the Implementation Strategy would be strengthened by adding a detailed plan for working with NOAA and the RFMCs to build on this work, and implement these MSA initiatives as part of the overall national strategy.

Funding to implement the Task Force's final recommendations for the National Policy will be a crucial issue, especially the fiscal impact on existing programs and budgets. The Interim Report touches on this critical matter only lightly. MCA once again wishes to emphasize the importance of adequate funding for basic marine science, monitoring, and enforcement. This must include routine stock assessment programs at NOAA/NMFS, and fishery enforcement at the U.S. Coast Guard. Too often new initiatives result in funds being shifted from ongoing and critical functions like stock assessment and enforcement, to new programs such as ecosystem research (in NOAA's case) or Arctic enforcement (in the case of the USCG). MCA believes that the successful implementation of this National Policy must be founded on the simple principle that new funds must be found for new initiatives, and that ongoing and critical programs will not be shortchanged.

MCA has similar concerns regarding long term monitoring. We were surprised, for example, that priority area 5 did not include a specific objective to fully fund the National Oceans Observing System program. This was one of the major priorities of the USCOP report, and

should be a high priority as part of any effort to implement ecosystem-based management. We support fully funding ongoing monitoring, and believe that it is an agency function that should be fully funded as part of NOAA's base budget. The Administration should make full funding of the OOS program a high priority in its next budget if it wishes to effectively implement this National Policy.