



Marine Conservation Alliance

promoting sustainable fisheries to feed the world

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February 12, 2010

Alyeska Seafoods

Alaska Crab Coalition

Alaska Whitefish Trawlers
Association

Alaska Groundfish Data Bank

Alaska Pacific Seafoods

Alaska Scallop Association

Aleutian Pribilof Island
Community Development
Association

Akutun, Atka, False Pass, Nelson Lagoon, Nikolski, St. George

At-Sea Processors Association

Bristol Bay Economic
Development Corp.

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

Central Bering Sea Fishermen's
Association

St. Paul

City of Unalaska

Coastal Villages Region Fund

Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nighthute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tunutuliak, Tunurak

Groundfish Forum

High Seas Catchers
Cooperative

Icicle Seafoods

Mothership Group

PV Excellence
PV Ocean Phoenix
PV Golden Alaska

Norton Sound Economic
Development Corporation

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

Pacific Seafood Processors
Association

Alaska General Seafoods
Alyeska Seafoods, Inc.
Golden Alaska Seafoods, Inc.
North Pacific Seafoods, Inc.
Peter Pan Seafoods, Inc.
Premier Pacific Seafoods, Inc.
Supreme Alaska Seafoods, Inc.
Trident Seafoods Corp.
UniSea Inc.
Westward Seafoods, Inc.

Prowler Fisheries

Trident Seafoods Corp.

United Catcher Boats

Akutun Catcher Vessel Assoc.
Arctic Enterprise Assoc.
Mothership Fleet Cooperative
Northern Vector Fleet
Peter Pan Fleet Cooperative
Unalaska Co-op
UniSea Fleet Cooperative
Westward Fleet Cooperative

U.S. Seafoods

Waterfront Associates

Western Alaska Fisheries, Inc.

Yukon Delta Fisheries
Development Association

Alakanuk, Enmonak, Grayling, Kotlik, Mountain Village, Nunam Iqna

Ms. Nancy Sutley, Chair
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

Dear Ms. Sutley:

The Marine Conservation Alliance (“MCA”) submits these comments in response to the Interim Framework for Coastal and Marine Spatial Planning (“MSP Framework”) published on December 9, 2009. MCA is a broad based coalition of harvesters, processors, coastal communities, Community Development Quota organizations, and support service 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 approximately 70% of the production of North Pacific fisheries off Alaska, which in turn accounts for over half the nation’s fishery production.

Summary

MCA has long supported conservation actions to improve and enhance our nation’s marine resources and the environment. This includes ocean “zoning” as part of the fishery management process under the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”). However, MCA does not support the proposed policy with its new, top heavy bureaucratic structures. The new policy:

- Will be costly to the economy with little additional conservation benefit.
- Creates a new, redundant, and expensive bureaucracy.
- Will frustrate transparency in decision making.
- Is contrary to existing law, and will only serve to increase the potential for unnecessary litigation.

Given these concerns, MCA recommends that this process halt, and the policy be significantly revised. The revised policy should be clear that plans developed pursuant to this policy are advisory only, and that existing authorities and regulatory processes will retain primacy. This is particularly true for the Regional

Fishery Management Council process under the MSA. The policy should explicitly acknowledge that agencies are free to spend discretionary funds as they deem appropriate to meet their regulatory and management responsibilities. This should include research funds. The revised policy should also drop the proposed new ocean governance structure outlined in this draft, including the enhanced role of the National Oceans Council as final arbiter for ocean management. Instead, the revised policy should seek to enhance existing regional efforts including those of the Regional Fishery Management Councils without this top-down approach.

Our specific comments follow.

The President's State of the Union Address

The President's State of the Union address rightly focused on the need to protect and enhance this nation's economy. That means, in part, enhancing our international trade position by reducing imports and increasing exports. Reducing the production of a sustainable natural resource, such as the fisheries off Alaska, costs America in terms of jobs and economic output. MCA is concerned that this policy will unnecessarily restrict America's fishery productivity in a manner that has severe consequences for the nation's economy with little attendant conservation benefit.

The overall economic value of the seafood industry in Alaska is \$5.8 billion. The industry provides over 78,000 jobs (direct and indirect) in Alaska alone. If Alaska were an independent nation, it would rank ninth among all seafood producing nations. The annual two million metric ton harvest of Bering Sea pollock, cod, and other groundfish ranks it among the largest fisheries in the world. Alaska produces 42% of the world's harvest of wild salmon and 80% of the production of high value species such as king, sockeye, and coho salmon. Domestically, Alaska accounted for 62% of all seafood landings in the United States in 2007. Alaska fisheries also fuel community development programs that are based on fishery allocations of Bering Sea catch to economically disadvantaged rural Alaska communities. These community development programs generate over \$100 million annually for the participating communities and employ over 2000 people. In addition, millions of dollars are invested in training programs to enhance the employment opportunities for community residents.

Most importantly, the majority of Alaska's coastal communities are built around a fisheries based economy, and without a stable fishery resource base many of these communities would not exist. It is because of this dependence upon the sea and its renewable resources that MCA works hard on behalf of our members to ensure that conservation comes first, and that fishery resources are managed for their long term sustainability.

As presently written, this policy would put this economic engine at risk by creating yet another layer of expensive and duplicative bureaucracy. The policy clearly does not recognize the record of North Pacific fisheries for sustainable, ecosystem based management; nor does it take into account the improvements in fishery management codified through the recently reauthorized Magnuson-Stevens Fishery Conservation and Management Act. The economic contributions of Alaska's fisheries to the State and the Nation are put at risk for no good reason, and this seems counter to the President's message for economic recovery and opportunity.

The Policy - Why Do We Need A New Marine Spatial Planning Program

The MSP Framework is singularly devoid of any explanation of why we need this policy. The assumptions are made that a new governance structure to effect marine spatial planning is both necessary and good. However, there is no analysis in the MSP Framework to support either assumption. In fact, we believe the proposed policy ignores the long record of North Pacific fisheries in sustainable production. In that regard, a review of the North Pacific fisheries is in order.

North Pacific fisheries are managed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”), 16 U.S.C. § 1801, *et seq.* Under that statute, the North Pacific Fisheries Management Council (“NPFMC”) develops fishery management plans (“FMPs”) that are implemented if approved by the Secretary of Commerce (“Secretary”), acting through the National Marine Fisheries Service (“NMFS”). The MSA has detailed provisions prohibiting overfishing and providing for the identification and protection of essential fish habitat.

The NPFMC is comprised of federal and state government officials and knowledgeable individuals appointed by the governors of Alaska, Washington, and Oregon. Before making management recommendations, the NPFMC receives recommendations from its Scientific and Statistical Committee (“SSC”), comprised of scientists and fishery management experts, and from the public through an extensive public comment and hearing process that can extend 12 months or more. The NPFMC has never allowed a harvest level in excess of the recommendation of its scientific advisors.

North Pacific fisheries are managed with the first priority given to conservation and to maintaining a sustainable resource. There are no overfished stocks of groundfish in Alaska. Fisheries are managed with hard limits on harvest and are closed when the harvest limit is reached. Federal observers and electronic vessel monitoring systems, coupled with Coast Guard and NMFS enforcement, ensure compliance with any closure.

Ecosystem considerations are taken into account in the development and implementation of fishery management plans. For example, fishing on forage fish species is prohibited and measures are in place to protect endangered and threatened species, marine mammals, and seabirds. Our fishery managers have closed over 600,000 square nautical miles (794,576 square miles) in order to protect marine habitat. This is an area over five times the size of the entire National Park System. Significantly, these extensive closures do not include additional seasonal and gear limitations designed to protect the marine ecosystem and its resources.

The overall result of the scientifically based, conservation oriented approach to North Pacific fisheries management and ecosystem protection is that these sustainable fisheries are a major economic force in the region and the country. The question the MSP Framework fails to answer, or even consider, is why we need to overlay a new marine spatial planning program on top of the existing MSA management program. The MSP Framework provides no analysis of why the existing MSA statutory and regulatory mechanism is legally inadequate. Absent any such analysis the only answer is that marine spatial planning proponents simply want to erect a new system that will be more restrictive, without any showing of why that is necessary.

Related questions arise with respect to other laws that also already provide for ocean use planning. For example, the Outer Continental Shelf Lands Act (“OCSLA”) has an extensive planning and public input process that begins with the identification of areas appropriate for energy development. These geographic leasing plans are followed by carefully scrutinized exploration plans that are in turn followed by detailed development plans. All are subject to a transparent and open public comment and review process. Areas are effectively zoned for energy development. The MSP Framework fails to identify the legal inadequacy of this program that justifies a new marine spatial planning program, leaving the only conclusion that proponents of marine spatial planning do not like the results and want a new and more restrictive policy that will have the effect of reducing this nation’s energy production and furthering our immediate economic dependence on imported energy.

Similarly, the Coastal Zone Management Act (“CZMA”) contains a process by which the federal government approves a state’s coastal zone management plan pursuant to explicit statutory standards. Federal activities occurring in a state’s coastal zone must be certified by the state as consistent with its coastal zone management plan. Again, proponents of marine spatial planning fail to explain how this existing statutory program is legally inadequate, leaving the only conclusion that marine spatial planning proponents do not like the results and seek a new mechanism to restrict activities in coastal zone areas.

The MSP Framework is Contrary to Law

The MSP Framework proposes a system for ocean zoning. *See* MSP Framework at 1 and 18 (plans “would describe the spatial determinations for conservation and uses.”) If the coastal and marine spatial plans (“CMS Plans”) called for in the MSP Framework designate areas closed to fishing, or otherwise adopt programs, that are different from those established by the regional fishery management councils (in the case of Alaska, the NPFMC), does the marine spatial plan developed via Executive Order supersede an FMP approved pursuant to the statutory process and standards established by the MSA? MCA believes the answer must be no.

The authority of the Secretary under the MSA is statutorily limited to approving, disapproving, or partially approving an FMP developed by a Regional Fishery Management Council (“Council”) created by the MSA, including the NPFMC. The MSA further provides that if the Secretary disapproves or partially disapproves a Council FMP, the Secretary “shall specify ... the applicable law with which” the proposal is inconsistent. 16 U.S.C. § 1854(a)(3). The question is whether the drafters of the MSP Framework consider resulting marine spatial plans to be other applicable law.

The MSP Framework states all CMS Plans and their implementation would be consistent with existing statutes and must be undertaken “within the limits of applicable statutory, regulatory, and other authorities.” MSP Framework at 6 and 20. This statement by the drafters of the MSP Framework begs the question of whether or not a marine spatial plan developed under this policy constitutes “other applicable law” or “authority”. Indeed, the MSP Framework states that signatories of the CSP Plans, which presumably will include the Secretary, will make “an express commitment ... to act in accordance with the plan ... to ensure their respective activities ... adhere to the CMS Plan to the extent possible.” *Id.* at 20. The MSP Framework goes on to require that a newly created National Ocean Council (“NOC”) will “ensure” that CMS Plans are

consistent with, among other things, a National Policy, performance measures, and guidelines developed by the NOC. *Id.*

The critical legal question is whether an Executive Order issued by the President, and CMS Plans developed under that Order, become a binding “other applicable law” with which the Secretary must comply when approving or disapproving Council recommended FMPs pursuant to the MSA. If the purported answer to that question is yes, then there will be serious legal and constitutional questions regarding whether an Executive Order has the same legal and constitutional standing as a law duly approved by the Congress and signed by the President. The power to pass laws is vested by the Constitution with the Congress. If the purpose of the Executive Order is to constrain or override the statutory standards of the MSA, it presents constitutional separation of powers issues. Recommendations by the MSP planning process, to be considered by the Councils and the Secretary are one thing. Fixed, firm, and legally binding standards are quite another. Any Executive Order or other document issued by the President must make it clear that the MSP Framework and CMS Plans are advisory only, without legal effect such that they are not enforceable in a court of law, and do not constitute applicable law or a new legal standard under the MSA.

Although it is not the focus of MCA’s activities, the same issues arise under the OCSLA, CZMA, and similar statutes such as the Clean Water Act. These statutes provide both a process and substantive standards for the review and approval of regulated activities. Any Executive Order or other similar action purporting to add new standards to these statutes presents serious legal and constitutional questions.

In addition to the fundamental legal and constitutional issues discussed above, the MSP Framework presents other no less significant legal questions. The MSP Framework states the coastal and marine spatial planning program leading to CMS Plans “would utilize the best available data....” MSP Framework at 32. The MSA requires that FMPs “shall be based upon the best scientific information available.” 16 U.S.C. § 1851(a)(2). The legal issue is who defines what constitutes the best scientific data. If it is the intent of the MSP Framework to employ the CSP Plan process to decide what constitutes the best scientific data, particularly if there is not 100% agreement with, or certainty in, the data, it will raise serious legal issues regarding the consistency of the CMS Plans with the MSA, and all other statutes with similar provisions.

Pursuant to the MSA, the Congress has vested the Councils, and ultimately the Secretary, with the responsibility to determine what constitutes the best scientific information available. If the MSP Framework purports to transfer that statutory authority to the CMS Plan process, and to bind the Secretary and the Councils, it would constitute a direct amendment to the MSA. Any such action is beyond the legal and constitutional authority of an Executive Order or similar document.

The upshot of these questions, if not clearly addressed in any implementing instrument by clearly defining the MSP plans as advisory and non-binding, will be inconsistent, confusing, and competing regulatory processes. This will be fertile grounds for unnecessary and unproductive litigation.

The Precautionary Principle

The MSP Framework states the coastal and marine spatial planning process will be guided by the precautionary principle defined in Principle 15 of the 1992 Rio Declaration. That principle states: “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

At the outset, it is not clear whether the intent is to use this principle to impose a new legal requirement on the MSA decision making process. If so, the legal and constitutional issues addressed above become applicable. Moreover, the bare statement of an intent to apply the 1992 Rio Declaration precautionary principle raises additional issues of legal and interpretive significance.

The first such issue involves the risk assessment trigger under the Rio Declaration that there is a “serious” threat of environmental damage. “Serious,” like “beauty,” may be in the eye of the beholder and use of this ill defined standard will lead to arbitrary and inconsistent decisions regarding when to apply any precautionary principle. Webster’s New Collegiate Dictionary defines “serious” as “relating to a matter of importance” or “having important or dangerous possible consequences.” Clearly, the word “serious” has some meaning more than detectable or known. There must be some consequential impact that rises to a level of significance or substantiality. However, the National Environmental Policy Act speaks of “major” actions “significantly affecting” the environment. The Resource Conservation and Recovery Act speaks of “imminent and substantial” endangerment. The Endangered Species Act is framed in terms of jeopardy to the very survival of the species. Which of these standards, or other standards, is the proper frame of reference for the legally untested concept of “serious”? Alternatively, are we to employ the well understood judicial injunction standard of irreparable harm? These issues merit further and focused debate, something not likely to occur in the accelerated time frame established to move forward with a marine spatial planning initiative.

Further, what are the factors weighed in any determination of what constitutes a “serious” matter? Is the impact on fish and wildlife or natural processes the only measure of “serious” or is that evaluation to be made in a larger context of the entire human environment. That larger context would include benefits to humans, including economic or similar benefits, that result in an overall balancing of interests to determine what is “serious”? A thing may appear “serious” only if a larger context is not provided. Given the absence of analysis regarding the need for marine spatial planning, one can only conclude that marine spatial planning advocates promoting this policy do not wish to consider the larger context.

In addressing this important risk management threshold, the Rio Declaration states “the lack of scientific certainty” shall not be a reason for postponing actions. This raises the issue of the level of scientific certainty that is to be applied in making the “serious” determination. American jurisprudence is based on the principles of preponderance of evidence and beyond a reasonable doubt. The intent of the MSP Framework appears to be to establish a new evidentiary standard that is less than the preponderance of evidence. Is that evidentiary standard to be some basis some place, a plausible belief, or something else? If the great weight of evidence says there is no “serious” issue but a few minority opinions hold to the contrary, does this constitute scientific

uncertainty justifying regulatory action? Application of such a standard can only be arbitrary because what constitutes “serious” is without definition other than what may be in the heart of the decision maker. Such an arbitrary principle runs contrary to well established legal standards and should not be included in any Executive Order or other document.

In addition, to whom is assigned the burden of proof regarding whether there is a “serious” effect? Does the opponent of an action bear that burden or is it up to the proponent to prove by some unknown evidentiary standard that there is no “serious” impact? Placement of the burden of proof is not an insignificant legal matter. Further, it is inextricably intertwined with the issue of what level of proof is required.

Assuming these issues are somehow resolved, any Executive Order or other document seeking to implement the Rio Declaration must recognize and fully implement the standard in that Declaration that only “cost-effective” measures may be adopted “to prevent environmental degradation.”

Ecosystem Management

The principle of “ecosystem management” has long been discussed, but there has been little focus on how this principle can be translated into actual practical management. It is one thing to say managers should be aware of the larger and related impacts of their actions. However, it is entirely different to say we can define precise boundaries of an ocean ecosystem, identify and understand all the forces acting on and acting within that ecosystem, and then manage the entirety. Neither our scientific knowledge nor our wisdom permits such “ecosystem” management.

Nevertheless, the MSP Framework appears to fall into the trap of confusing the principle with practical reality. If by “ecosystem management” the MSP Framework means managers should, to the extent reasonably possible, be aware of related impacts of any decision, that is a reasonable and responsible approach. In fact, we believe that the fisheries management regime in the North Pacific is one of the best examples of ecosystem based fishery management in the country. If, however, the MSP Framework contemplates defining precise ecosystem boundaries and managing the entirety as a unified whole, then actual management decisions will become virtually impossible, or worse, arbitrary.

A Complex and Expensive Process

In October, 2009 MCA commented to the Interagency Ocean Policy Task Force regarding its interim report on a national policy for the oceans, coasts and the Great Lakes. In our comments, MCA was generally supportive of development of an overarching national policy. We offered comments on the vision, principles, coordination and implementation. We stressed that the policy should include the principle of promoting sustainable uses of our ocean’s resources, especially in the context of ecosystem based management, a recommendation that went unheeded. While some of our suggestions were accepted, and many were not, MCA was generally encouraged that the Administration was taking a reasoned approach to marine policy. We now question that assumption. The approach envisioned in this policy erodes many of the reasons we initially supported development of the national policy.

For example, MCA supported the proposal for a National Ocean Council (NOC) as a mechanism to coordinate federal actions and programs. We never anticipated that the NOC would be granted the authority to control regional decision-making as described in this proposed policy. We supported the concept of a regional process that was based on existing authorities and procedures. We urged that participation by ocean users and the public be meaningful, and begin early in the planning process. Instead, we see a planning process dominated by federal agencies, with little incentive for the states to be involved, a limited role for the public or ocean user groups, and controlled by the NOC from Washington, DC.

Similarly, we were supportive of the policy because it did not call for the establishment of a new regional oceans governance bureaucracy. The regional planning structure called for in the proposed policy is an elaborate, and potentially very expensive, oceans planning process. The potential geographic scope of the proposed new system, even with the caveat that the landward extent of the planning effort would not include upland areas unless a regional planning body decides to include them, further complicates resource management programs of states and local governments. As such, it has a high likelihood of creating added confusion, delays, and new conflicts, not resolving existing problems.

Overall, we believe this will be an expensive endeavor, with the potential for drawing funds away from ongoing conservation or science programs to fund the new bureaucracy. For example, we understand that the Administration is asking for \$20 million for this initiative while funding for on-going critical programs such as stock assessments and other fisheries and oceans science programs remains woefully inadequate.

Geographic Divisions In Alaska

The MSP Framework suggests there are five large marine ecosystems in Alaska, the west Bering Sea, East Bering Sea, Chukchi Sea, Beaufort Sea, and Gulf of Alaska. MSP Framework at 10, n.2. The implication is that there might be up to 4-5 regional planning bodies in Alaska. Given the focus of this policy to provide regulatory authority to the planning bodies, we recommend that there be one regional planning body in Alaska, with the authority to establish planning subcommittees to coincide with the different geographic regions within the state. We say this reluctantly, because we do not support providing any regulatory authority to these bodies, nor do we think such action by Executive Order is legal. However, there will need to be a level of coordination and consistency between the regions within Alaska such that a single planning body is needed. Otherwise, this policy will only contribute further to confusion and inconsistent policy development and planning.

The Process to Consult on Ocean Policy

MCA is deeply distressed about the public comment process surrounding the MSP Framework and the related ocean policy documents that are the subject of these comments. This Administration came to Washington, D.C. pledging a transparent and open dialog about public policy issues. The process used to develop the MSP Framework and related documents has been neither open nor transparent.

We understand from sources inside the Administration that the Executive Order implementing the MSP Framework has already been written, largely completed long before the public comment period closed. Equally important, we understand that people requesting transcripts and records of the “expert consultations” and the testimony at the public meetings held by the Administration on its ocean policy initiative have been told transcripts do not exist for all of these sessions. A process that does not keep a complete record of public comments to consult and that makes its decisions before the public comment period has closed is far from open and transparent. Such a beginning offers little comfort to people whose lives will be affected by the Administration’s marine spatial planning program, particularly when these people will not have a seat at the decision making table but are told their views will be considered only as part of a public comment process.

Conclusion

While MCA supports this Administration’s goal of improving the science available for ocean management and improving those management systems, MCA believes the marine spatial planning initiative is fundamentally flawed. We believe that the proposed policy, if implemented as it currently stands, will undermine existing successful conservation programs, result in less transparency, and add significant economic burdens to our economy with little or no attendant conservation gain. The reality is that proponents of this policy are rushing it through without full and adequate consideration of all the issues. MCA recommends that this flawed process be stopped unless and until there is a complete, open, and transparent analysis of the need for this policy as well as the legal, policy and economic implications of its implementation.

Sincerely,

A handwritten signature in black ink, appearing to read "David Benton". The signature is fluid and cursive, with the first name "David" and last name "Benton" clearly distinguishable.

David Benton
Executive Director

Encl: MCA 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 (10/15/09)



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.