

Appendix C. Response to Comments on the Draft Framework for Developing the National System of MPAs

In September 2006, NOAA and DOI (agencies) published the *Draft Framework for Developing the National System of MPAs* (Draft Framework) for public comment. By the end of the nearly five-month comment period, over 11,000 submissions representing 100 discrete comments, as well as an internet petition with over 10,000 e-mails, had been received from a variety of government agencies, non-governmental organizations, industry and conservation interests, and advisory groups, and the public. In addition, in April 2007, based on the comments received on the draft Framework, NOAA and DOI solicited additional advice from the MPA Federal Advisory Committee (MPAFAC) on three key issue areas.

Given the breadth, multi-faceted nature, and complexity of comments and recommendations received, related comments have been grouped below into categories to simplify development of responses. For each of the comment categories listed below, a summary of comments is provided, and a corresponding response provides an explanation and rationale about changes that were or were not made in the Revised Draft Framework for Developing the National System of MPAs (Revised Draft Framework).

Comment Category 1: General comments on Draft Framework format, content, and approach

Comment Category 2: Goals and objectives of the national system

Comment Category 3: MPA definition, criteria, and national system size

Comment Category 4: Nomination Process

Comment Category 5: Sequence of nominating existing sites and identifying gaps

Comment Category 6: Monitoring and Evaluation

Comment Category 7: Tribal Role

Comment Category 8: Federal Agency Responsibility to Avoid Harm

Comment Category 9: Stewardship, Coordination and Benefits

Comment Category 10: Levels of protection afforded by MPAs and the national system

Comment Category 11: Regional and international contexts

Comment Category 12: Draft Environmental Assessment

Comments and Responses

Comment Category 1: General comments on Draft Framework format, content, and approach

Summary:

A variety of comments were received on the general content, structure, format, and approach of the document, as a whole. These included requests for clarification, simplification, reorganization, and deletion of sections of the document, terminology, and definitions in order to make the document more readable. Examples include removal of draft Framework Section V (A) on the analysis of marine managed areas and providing for a separate section on improving MPA stewardship and effectiveness.

Response:

The agencies agree that clarification and simplification of the Draft Framework is necessary to clarify, reduce confusion, and improve readability of the document. Proposed changes to the Revised Draft Framework based on these comments have resulted in significant modifications to the overall structure and content of the document. Removal of the detailed MMA inventory discussion will streamline the document by focusing on more relevant information for agencies and the public. Simplification and clear communication were key considerations in the proposed changes.

The more significant of these changes include:

- The overall approach of the Draft Framework has been revised into a simplified, clearer Revised Draft Framework document. Memoranda on national system priorities will be published on an as needed basis.
- Section V (A) of the Draft Framework, which outlined analysis findings about U.S. marine managed areas (MMA), and the corresponding glossary and acronym entries have been removed to reduce unnecessary confusion over the terms MMA and MPA.
- As part of the introductory discussion about why a national system is needed, references to the National Academy of Sciences' study of MPAs have been added.
- The concept of 'adaptive management' has been better incorporated into entire document.
- Section VII of the Draft Framework "Developing the National System of MPAs" has been reorganized and a separate section for "Enhancing Stewardship and Effectiveness" has been created.
- Definitions for "ecological networks" and "ecosystem approaches to management" have been added to the Glossary.

Comment Category 2: Goals and objectives of the national system

Summary:

A number of comments were received indicating that natural heritage, cultural heritage, and sustainable production should not be defined as "comprehensive themes" for the national system as described in the Draft Framework. Commenters further explained that these themes were confusing in relation to types of MPAs and the goals of the national system. Readers also were not clear what the national system is attempting to accomplish or how the MPA Center will prioritize among the variety of possible conservation objectives within the national system. Some expressed concern that this lack of prioritization would render the national system too large in scope to be effective. Related comments also were raised concerning the Draft Framework's use of the term "compatible uses" rather than "appropriate access," as recommended by the MPAFAC for goals of the national system.

Response:

The agencies agree with the comments about using consistent terminology for natural heritage, cultural heritage, and sustainable production as goals for the national system, rather than themes. To address the comments, agencies propose in the Revised Draft Framework a new set of priority conservation objectives for each national system goal. These objectives were developed by the MPAFAC and revised by the MPA Center. These objectives also were

prioritized to guide the gradual implementation of the national system over time as available resources permit.

In addition, to address concerns about ‘access’ terminology, the agencies have removed the concepts of “appropriate access” and “compatible uses” from goals and objectives section of the document, and included the MPAFAC’s language of “appropriate access and use consistent with [marine conservation] goals and objectives” in the new “Planning and Implementation Principles” section of Revised Draft Framework.

The agencies also responded to other comments on goals and objectives in the following ways:

- Goal 1, from the Draft Framework has been separated into three separate goals to focus the national system’s goals on marine conservation: natural heritage, cultural heritage, and sustainable production resources. Each of these goals also includes more specific conservation objectives to guide the national system.
- Goals 2 and 3 from the Draft Framework, which focused on stewardship and coordination, respectively, are incorporated in new sections of the Revised Draft Framework under “Implementing the National System.”
- An approach to building the national system gradually over time based on prioritized conservation objectives has been incorporated, as recommended by the MPA FAC.
- An explanation of how the new set of conservation objectives was prioritized and the process for iterative implementation over time has been included in the Revised Draft Framework.

Comment Category 3: MPA definition, criteria, and resultant national system size

Summary:

A number of comments were received concerning the various key terms associated with MPA definition (e.g., “lasting”) and other MPA eligibility criteria for the national system in the Draft Framework. The vast majority of these comments expressed concern that the criteria were too broad and inclusive. Related and often in conjunction with these “criteria” comments, were concerns indicating that the number of eligible sites based on these inclusive criteria would result in a national system that would be too large in size and scope to be effective. To this end, a number of commenters suggested that MPAs should be required to have a management plan in order to be eligible for the national system.

Finally, a number of comments indicated that the definitions of “lasting” provided by the MPAFAC in June 2005 should be used – including the “minimum 10-year duration of protection” and “indefinite” definitions – rather than the “permanent” meaning found in the Draft Framework. These commenters indicated that the Draft Framework definition negated the concept of adaptive management. Several comments also requested modification of the definition of “lasting” to better accommodate fishery management MPAs, which typically are not established in permanence, given their goals for sustainable use.

Response:

With regard to issues raised about the overall inclusiveness of the proposed MPA criteria, a new MPA criterion requiring MPAs to have a management plan to be eligible for the national system has been added to the Revised Draft Framework. This criterion was developed by the MPAFAC, and will significantly limit the number of sites that are eligible for the national system.

The vast majority of sites that would no longer be eligible are sites not typically thought of as MPAs, but otherwise conformed to the proposed technical definitions associated with the term “MPA.” For example, hundreds of sites designated to overlay and provide additional water quality protections to existing MPAs, such as outstanding water designations, do not meet the management plan requirement. To address potential concerns about unintentional exclusion of eligibility due to this new requirement, language was added to allow, at managing entity request, evaluation and inclusion of sites on a case-by-case basis that may not meet this criterion but contribute to priority conservation objectives of the national system.

The management plan requirement is one of three new approaches in the Revised Draft Framework which are intended to work in concert to address concerns about the size of the national system. The second approach is the use of the near, mid, and long term priority conservation objectives described in Comment Category 2, above. This approach will result in the gradual building of the national system over time, such that it can be effectively implemented and achieve success. The third proposed approach is a new set of MPA categories for use within the national system.

These categories will: (1) provide a limited set of user friendly terms for communicating about each national system MPA’s purpose and level of protection; (2) partition the national system into manageably sized groups of comparable sites to ease identification of shared technical or other assistance; (3) package sites based on comparable conservation objectives to facilitate identification of gaps in protection; and (4) provide a logical framework for organizing and tracking how sites added to the national system contribute to the system’s conservation objectives. These categories also are consistent with the more detailed MPA classification system developed by the MPA Center, which remains available for more detailed analysis.

With regard to the broader issue of using the MPA FAC’s “lasting” definition, the agencies contend that for natural and cultural heritage MPAs the proposed definition in Draft Framework does not equal “permanent,” and is, in fact the same definition provided by the MPAFAC for the term “indefinite.” Moreover, while a well-thought out rationale was provided for the “minimum 10-year duration of protection” clause, the agencies find 10 years to be, in fact, arbitrary. For example, no bona fide scientific justification could be found for a 10-year minimum, versus, say 11, or 9, years.

As such, and given the Order’s intent for a national system that benefits current and future generations, the agencies find that the most reasonable definition for natural and cultural heritage MPAs is as proposed in the Draft Framework, “established with the intent at the time of designation to provide permanent protection.”

The agencies agree, however, that further clarification is needed on the issue of adaptive management and the definition of “lasting.” As such, the definition of “lasting” in the Revised Draft framework includes the following language, provided by the MPAFAC, clarifying that the proposed definition, “recognizes that subsequent to establishment, MPA designation and level of protection may change for various reasons, including natural disasters that may destroy or alter resources, or changes in societal values.” Should any of these changes occur, the status of the MPA relative to the national system would be re-evaluated.

The agencies also agree that sustainable production MPAs are generally established with the intent to last as long as necessary to achieve the restoration of the targeted species, group of species, or their associated habitat to allow for future harvest. As a result, sustainable production MPAs are almost never established with the intent to be permanent; and the duration

of time necessary to achieve the intended restoration varies by the resource targeted. Therefore, the national system's definition of "lasting" for sustainable production MPAs has been clarified in the Revised Draft Framework as follows "must be established with the intent at the time of designation to provide, at a minimum, the duration of protection necessary to achieve the long-term sustainable production objectives for which the site was established."

Comment Category 4: Nomination Process

Summary:

Several commenters requested clarification of the state role in nominating sites for the national system, especially those federal sites that are adjacent to state waters. Other commenters also raised concerns over the role of Federal Fishery Management Councils vis-à-vis NMFS, in the nomination of sites to the national system. Several comments also raised questions about the role of the public in the nomination of MPAs to the national system.

There also appeared to be confusion concerning how the nomination process would apply to existing and potential future sites. The term "candidate" with reference to eligibility for nomination was noted as confusing. One comment also recommended that the MPA Center publish the set of MPAs that are eligible for the national system, concurrently with the final Framework.

Response:

Based on comments regarding the role of certain entities, ranging from Federal Fishery Management Councils (FMC) to the public, in the nomination process, the agencies have added specific language to Section 5 (B) of the Revised Draft Framework. It is not practical, however, for the nomination process to allow stakeholders to directly nominate existing sites to the national system since the managing entity has the authority for management decision-making about its sites. As a result, language has been added to direct stakeholders who are interested in the nomination of certain MPAs to contact and work with the respective managing entity or entities. Similar language has been added with regard to involvement of governmental entities with an interest in the nomination of certain MPAs for which they do not have management authority.

Additionally, proposed language has been added to clarify the MPA nomination role in cases where shared or other formal management arrangements may be in place, for example between FMCs and NMFS. This language stipulates that where such arrangements exist, the multiple agencies shall be consulted with regard to the nomination of corresponding MPAs.

The agencies also agree that the term "candidate" as used in the Draft Framework to identify MPAs that are eligible for nomination to the national system proved to be confusing. As such, based on recommendations from the MPAFAC, the term "Eligible" is used in the Revised Draft Framework to indicate those MPAs that are eligible for the national system. Similarly, once nominated by the managing entity or entities, the MPA will be termed "nominated."

Other changes in the Revised Draft Framework in response to related comments include:

- Language has been added to clarify that the nomination section refers only to existing sites, and a new section regarding the establishment of new MPAs has been added to clearly describe those processes.

- A separate notice will be published concurrently with the final framework that outlines the near term priority objectives that the system will focus on and also lists the set of existing, eligible MPAs for nomination.

Comment Category 5: Sequence of nominating existing sites and identifying gaps

Summary:

Several comments were received on issues regarding the national system's treatment of existing versus new MPAs. These comments ranged from the need to clarify different processes for existing versus new MPAs, to the need to merge the two processes and place greater emphasis on the identification of gaps. A number of comments called for a separate section on new MPAs to be added. Comments also were received noting that the process for removing an MPA from the system was unclear.

Response:

In order to address these comments on the sequence of nominating sites and identifying gaps, the agencies have made the following modifications to the Revised Draft Framework.

- To sequence the nomination of existing MPAs and meet the highest priorities for the national system within limited funding, the set of priority conservation objectives described in Comment Category 2, above, have been added with a detailed description of the sequence of their implementation.
- A separate section has been added on new MPA sites to fill gaps in the national system. This will provide clarity on the gap analysis process, as well as the roles and responsibilities of the MPA Center, national system, and managing entities in creating new MPA sites.
- The section that describes the process for identifying gaps in the national system has been revised to provide greater clarity to related activities and timing. Similarly, a new set of national system design principles has been added to guide identification of gaps in the system. These design principles are based on similar principles recommended by the MPAFAC and others described in, *Establishing networks of marine protected areas: A guide for developing national and regional capacity for building MPA networks. Non-technical summary report* (WCPA/IUCN. 2007).
- A section on removing MPAs from the national system has been added and additional clarification has been provided on the roles of managing entities and the MPA Center.
- Several diagrams have been added to better illustrate the processes associated with building and implementing the national system.

Comment Category 6: Monitoring and Evaluation

Summary:

Several commenters indicated that monitoring and evaluation standards and protocols for sites included in the national system should be included in the Framework. A number of commenters also indicated an interest in having the public and other MPA stakeholders participate in the monitoring and evaluation of MPA sites once the national system is established. Others expressed a strong interest in participating in the monitoring and evaluation of specific sites within the national system.

Response:

The agencies agree with commenters that protocols and standards for evaluating the effectiveness of the national system are critical. Nonetheless, in order to develop the most meaningful evaluation standards for the national system, these protocols and indicators of effectiveness must be developed in collaboration with the participating managing agencies and regional partners. As such, it would be premature for to develop guidance or standards prior to this collaboration process.

In addition, while commenters expressed an interest in both having the national system focus on and MPA stakeholders participate in the monitoring and evaluation of specific sites within the national system, the agencies maintain that this is not the purpose or intent of the national system. To this end, clarifying language was added to direct stakeholders with an interest in participating in the monitoring of individual MPAs to work directly with the respective managing entity or entities.

In addition, clarification was added to the Revised Draft Framework to note that it is neither the MPA Center's nor national system's role to monitor individual MPAs or MPA programs in terms of their ability to meet their mandated or otherwise required goals and objectives. The monitoring and evaluation efforts of the national system pertain to the effectiveness of the national system in achieving its own objectives, the contributions of participating MPAs and MPA programs in achieving those national system objectives, and providing assistance to MPA programs to better evaluate their own efforts pertaining to their own programmatic authorities.

Comment Category 7: Cultural and Tribal Comments

Summary:

A number of commenters suggested that the National Register of Historic Places Criteria for Evaluation (NRHPCE) should be adopted verbatim, rather than piecemeal as in the Draft Framework, as they are the accepted standard for assessing the significance of cultural resources.

Several comments also were received expressing concern that the existing roles and authorities for tribal nations might be altered by the development and implementation of a national system. Additionally, comments were received indicating concern that the definition of the term "cultural resource" in the Draft Framework would exclude tribal sacred sites and other submerged places of cultural, historical, and archeological value to tribes.

The comments also requested that the national system recognize the cultural importance of marine resources beyond those designated as "cultural resources," for example that fishing is a way of life for many indigenous communities.

Response:

The agencies agree with commenters that incorporating the NRHPCE in whole, rather than in part, would eliminate any ambiguity as to the standards being used for the national system. To this end, the verbatim NRHPCTE have been included in the Revised Draft Framework.

With regard to concerns regarding the potential jeopardy to existing roles and authorities of tribal nations, the agencies assert that these will not be altered in any way by the implementation of the national system. Nor will the authorities of the Department of the Interior be altered in administering the Indian Self-Determination Education Assistance Act. A

statement to this end is included in the “Administrative and National Policy Requirements” section of the Draft and Revised Draft Frameworks.

In response to comments about the definition of the term “cultural resource” and the broader cultural significance of marine resources to indigenous peoples, the agencies agree that further clarification is needed. To this end, additional language was added to the Revised Draft Framework to clarify that the “cultural resource” definition is inclusive of tribal sacred sites and other submerged tribal places of cultural, historical, and archeological value, including sacred waters. Similarly, text was added to acknowledge the broader cultural importance of many marine resources beyond the definition of “cultural resource,” such as the importance of fishing as a way of life for many indigenous communities.

Comment Category 8: Federal Agency Responsibility to Avoid Harm

Comment Summary:

Several comments requested additional details on standards and protocols to aid agency compliance with the avoid harm directives of the Executive Order, including an augmented oversight role for the MPA Center. A related comment was received requesting the strengthening of accountability and implementation standards for federal agencies under this provision.

Response:

As described in the Draft Framework, each federal agency is responsible for complying with and reporting annually on its compliance with the Executive Order's Section 5 avoid harm directives: “*each federal agency that is required to take actions under this order shall prepare and make public annually a concise description of actions taken by it in the previous year to implement the order, including a description of written comments by any person or organization stating that the agency has not complied with this order and a response to such comments by the agency.*” The MPA Center role is to make these reports available to the public on the <<http://www.MPA.gov>> website, facilitate a federal agency coordination mechanism through the Federal Interagency MPA Working Group, and upon request by federal agencies, facilitate technical or other assistance.

Comment Category 9: Stewardship, Coordination and Benefits

Summary:

A range of commenters requested clarification on the types of benefits the national system can provide to MPAs participating in the national system, as well as to the nation. A number of concerns also were raised regarding the time and effort that may be required of managing agencies to maintain sites in the national system once they have joined.

Response:

The agencies agree that a more detailed description of the value and benefits of the national system is needed. Based on input from the MPAFAC and other stakeholders, a new section on the benefits of the national system was included in the Revised Draft Framework.

To address specific concerns about the benefits that the national system can provide to participating MPAs and MPA programs, a process for creating regional MPA Science, Stewardship, and Effectiveness Strategies (MPASSES) has been added to the Revised Draft Framework. The process for developing MPASSES clearly describes how the technical assistance priorities of MPA programs and sites in the national system will be inventoried and used to catalyze action and derive support and benefits from the national system.

Comment Category 10: No take MPAs

Summary:

A broad spectrum of comments was received on the topic of no-take MPAs (a.k.a. marine reserves). These comments ranged from requests for a national network of no-take MPAs, to a specified target number for the amount of U.S. no-take area, to concerns that there should not be any no-take areas given their perceived undue limitation on access. Additionally, a number of commenters referred to a specific disinterest in any new MPAs, especially no-take areas in their region (e.g., New England, Gulf of Mexico, etc.).

Response:

In response to these comments, the agencies maintain that neither the national system nor the Order have the authority to establish new MPAs, require a certain level of protection for an MPA in the national system, or prescribe a total amount of U.S. waters that should be protected through MPAs. In addition, the national system is intended to be inclusive of MPAs across the spectrum of levels of protection, from multiple use to no-take, recognizing that existing MPAs across this spectrum offer different values to the national system that can help meet its goals and objectives. Finally, the processes in the Revised Draft Framework for identifying conservation gaps in the national system and supporting regional MPA planning are designed to ensure opportunities for public input on the purpose and level of protection of any future MPAs that may be needed to achieve a comprehensive, representative national system.

Comment Category 11: Regional, national and international coordination

Summary:

A significant number of comments were received on issues related to the regional, national, and international coordination functions, processes, and characteristics of the national system.

Comments on regional coordination included requests for more detailed information about: the geographic scope of national system 'regions;' a strengthened regional approach; the administrative structure that would support a regionally-coordinated national system; and how the national system will work with existing regional institutions that may already exist or be in development.

With regard to national coordination, several commenters expressed an interest in having representatives of Federal Fishery Management Councils as possible members of the National System Steering Committee.

Finally, in the context of international coordination, commenters suggested clarification of the international linkages and role of the national system.

Response:

The agencies agree that a more detailed explanation of the regional collaboration process is needed. To this end, a more robust regional coordination section has been added to the Revised Draft Framework. In addition, the set of U.S. large marine ecosystems has been included as the underlying framework for the national system's regional coordination, gap analyses, and MPA planning processes. The Revised Draft Framework also acknowledges that many other regions exist (e.g., Federal Fishery Management Council regions, biogeographic

regions, state-based institutions, etc.) and recognizes certain tasks and processes may be best completed at nested or sub-regional levels.

In response to comments regarding national coordination, representatives of Federal Fishery Management Councils have been listed as possible members of the National System Steering Committee.

Finally, the agencies agree that in the same way the national system can help address resource management issues that may go beyond the scope of a single MPA or state, a clear international coordination function can help address many marine resource conservation issues whose problems and solutions extend beyond U.S. borders. As such, an improved description of the national system's international coordination function has been included in the Revised Draft Framework.

Comment Category 12: Draft Environmental Assessment

Summary:

One commenter raised several issues about regarding the draft environmental assessment (EA). These comments included: 1) the finding of no significant impact was not accurate in that the Framework was likely to have a major environment and socioeconomic impact; 2) that a reasonable range of alternatives was not analyzed; 3) that certain sections were mislabeled; and 4) that a full environmental impact statement should be completed.

Response:

The agencies disagree and believe that the EA accurately justifies the finding of no significant impact and assesses a reasonable range of alternatives in doing so. Moreover, the Framework itself will not have a significant effect (positive or negative) on the environment as it serves administrative, managerial, and coordination roles. Any future action that might have an effect on the human environment would require NEPA compliance independently since the MPA Center cannot create new MPAs.

The reason for the simplified range of alternatives in the EA is that any alternative other than those described would simply be a different managerial strategy to achieve the goals of the Order. As such, because the agencies are bound by the Order to achieve certain goals and operating procedures, any impact analysis of the various organizational permutations would show no difference between additional potential alternatives and the preferred.

The agencies do agree with the comment that the "Affected Environment" section in the EA was misleading to readers by titling a subsection "Importance to Americans." This section discusses the social, economic and cultural benefits (both direct and indirect) of protecting resources and environments and should be more appropriate labeled.