

RECOMMENDATIONS

for State and Territorial Participation in the National System of Marine Protected Areas



COASTAL STATES ORGANIZATION
MARINE PROTECTED AREA STATE ADVISORY GROUP

A Report Submitted to the National Oceanic and Atmospheric Administration's
National Marine Protected Area Center and the U.S. Department of the Interior

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TABLE OF CONTENTS

| | |
|-----------|--|
| 1 | Executive Summary State Recommendations |
| 5 | Introduction Purpose of the Report Methodology |
| 7 | Analysis of State Recommendations |
| 15 | Conclusions |
| 17 | Appendices |
| 17 | Appendix A Executive Order 13158 on MPAs |
| 21 | Appendix B Primary Issues for State Participation in the National MPA System |
| 26 | Appendix C MPA State Advisory Group (SAG) Mission Statement and Members |
| 27 | Marine Protected Areas State Advisory Group |

Presidential Executive Order 13158 on Marine Protected Areas (MPAs), signed on May 26, 2000, directs the National Oceanic and Atmospheric Administration (NOAA) through its National Marine Protected Area (MPA) Center and the Department of the Interior (DOI) to work with other federal agencies and to consult with states, territories, tribes, and the public to develop a scientifically-based, comprehensive national system of MPAs.

State and territorial (state) participation in the national MPA system is voluntary. However, given 1) the significant coastal and marine resources under state jurisdiction; 2) that most of the existing sites included in the broad Executive Order definition of MPAs are in state waters; and 3) the potential impacts to states from MPAs located in federal waters, comprehensive state participation is critical to the successful development and implementation of the national MPA system.

Information for this report has been compiled over the past few years from several sources: state, regional, and national MPA workshops and meetings; a 2005 white paper summarizing three of these workshops; a series of regional public dialogue sessions led by the MPA Center; and other comments to state resource managers, NOAA, and the Coastal States Organization. It also builds upon a 2004 publication from the Coastal States Organization entitled “*State Policies and Programs Related to Marine Managed Areas: Issues and Recommendations for a National System.*” This report is intended to assist the National MPA Center and the DOI in recognizing and promoting full state involvement in developing and managing the national system of MPAs by offering recommendations representing states’ interests and concerns.

This short Executive Summary, which includes the state recommendations, is followed by an analysis of the recommendations offered, conclusions, and supporting appendices.

State MPA Recommendations

Recommendation One

Ensure that the MPA system is national, not federal

States, local governments, and Native Americans have established and managed MPAs for decades. These sites protect a wide variety of marine resources, habitats, and uses in waters and coastal lands under state jurisdiction, and are thus already part of an existing national system of MPAs. States believe that an MPA site need not be operated or managed by a federal agency, or designated under federal law to be considered part of a national system. Therefore, the efforts to develop the national MPA system as envisioned under Executive Order 13158 should first focus on identifying and building upon these existing sites. Consideration of new sites should be based either on identifying and filling in gaps between existing sites or on enhancing existing sites.

Ensure that the MPA system is national, not federal

Create a blueprint that clearly defines what the national MPA system will include, how the national system adds value to current state or regional efforts, and how individual sites fit into that system

Develop a specific process for designating marine protected areas in federal waters, including siting and implementation criteria and authority, through an administrative process or by enacting new federal legislation

Recommendation Two

Create a blueprint that clearly defines what the national MPA system will include, how the national system adds value to current state or regional efforts, and how individual sites fit into that system

The MPA Center should, in consultation with coastal states, federal agencies, and other stakeholders define clear terms and establish specific goals of the national MPA system; explicitly delineate site inclusion criteria and authority; and promote on-going coordination as a blueprint for the continued development of the national system of MPAs.

The national blueprint should:

- provide a methodology for calculating the expected costs and value-added benefits of MPAs to the states through implementation and expansion of the national system of MPAs;
- enhance regional and national mechanisms for on-going sharing of information and coordination among federal, state, and local entities involved in MPA identification, management, and governance; and
- clarify how existing state MPA sites meet the ecological, cultural and social goals of the national MPA system.

Recommendation Three

Develop a specific process for designating marine protected areas in federal waters, including siting and implementation criteria and authority, through an administrative process or by enacting new federal legislation

Marine resources warranting protection often occur beyond state waters in areas of federal jurisdiction. At present there is no systematic or strategic federal process for establishing new MPAs within federal waters. In order to fulfill a national ecosystem-based management approach, it is essential that establishing MPAs not be limited to state initiatives in areas under state jurisdiction. A federal process is needed to provide a specific, rational, and predictable process for creating MPAs in federal waters.

Recommendation Four

Involve states as partners in the continued development of the national system of MPAs, and establish a process to ensure state participation in all future MPAs that affect state coastal waters and resources

Because existing state, tribal, and federal MPA sites all maintain the values and resources necessary to enhance the national system of MPAs, all MPA managers should be included as essential partners in the maturation of the national MPA system.

States should approve the nomination, designation, and establishment of all MPA's within their jurisdictions. It is also critical that a definitive process be established to ensure state participation in future MPA site nominations and designations across federal/state jurisdictions; on a regional basis in federal waters; and for those MPAs in federal waters that may affect state coastal waters and resources.

Recommendation Five

Assist and support states to both enhance their participation and further the development of the national MPA system

Coastal states may require technical, scientific, and financial resources beyond their current capacity to fully participate in the national system of MPAs. This may include support for the management of both new and existing state MPA sites, regionally based MPAs in federal waters, and MPAs in federal waters that may affect state coastal waters and resources.

Sufficient federal support via funding and other assistance is necessary for successful science-based MPA monitoring and assessment, as well as effective management and enforcement – all essential to evaluate the benefits and impacts of MPAs on the biological, cultural, and socio-economic conditions of state coastal areas. Therefore, federal assistance should be identified and provided to states as needed. This support should also facilitate state participation and coordination with other local and regional management entities both within and among states.

Involve states as partners in the continued development of the national system of MPAs, and establish a process to ensure state participation in all future MPAs that affect state coastal waters and resources

Assist and support states to both enhance their participation and further the development of the national MPA system

Develop clear criteria and performance measures by which to evaluate the use and management goals of individual MPAs

Provide effective outreach and education about MPAs to all stakeholders

Recommendation Six

Develop clear criteria and performance measures by which to evaluate the use and management goals of individual MPAs

An explicit and practicable set of performance indicators to evaluate the effectiveness of individual MPAs should be developed in consultation with coastal states, federal agencies, and other stakeholders. Because there is a wide diversity of MPA goals these performance indicators should aid managers to better evaluate the effectiveness of a distinct MPA in relation to the goals for which it was established. Therefore, the performance indicators must be flexible enough to track these site-specific goals as well as the applicable goals of the national MPA system. They should also be used to assess the benefits and costs of MPAs over time to states and other management authorities using the best science available.

Recommendation Seven

Provide effective outreach and education about MPAs to all stakeholders

A wide-reaching information and education strategy regarding the national system of MPAs and its value and impacts to coastal, cultural, and biological marine resources should be developed in cooperation with coastal states, federal agencies, and other stakeholders. This strategy should include mechanisms for ensuring good communication among all partners and stakeholders.

Purpose of this Report

Presidential Executive Order 13158 on Marine Protected Areas (MPAs), signed on May 26, 2000, directs the National Oceanic and Atmospheric Administration (NOAA) through its National MPA Center and the Department of the Interior (DOI) to work with other federal agencies and to consult with states, territories, tribes, and the public to develop a scientifically-based, comprehensive national system of MPAs. The Executive Order defines “marine protected area” as “any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.” It does not create any new authority to establish or manage MPAs. As a result, the national system will need to rely initially on existing MPA programs, authorities, and sites that represent the nation’s diverse coastal, marine, and Great Lakes waters and ecosystems. For a text of the Executive Order please see Appendix A.

State and territorial (state) participation in the national MPA system is voluntary. However, given 1) the significant coastal and marine resources under state jurisdiction; 2) that most of the existing sites included in the broad Executive Order definition of MPAs are in state waters; and 3) the potential impacts to states from MPAs located in federal waters, comprehensive state participation is critical to the successful development and implementation of the national MPA system. Thus, this report is intended to assist the National MPA Center and the DOI in recognizing and promoting full state involvement in developing and managing the national system of MPAs.

Methodology

Information for this report was compiled over the past few years from several sources: state, regional, and national MPA workshops and meetings; a 2005 white paper summarizing three of these workshops; a series of regional public dialogue sessions led by the MPA Center; and other comments to state resource managers, NOAA, and the Coastal States Organization. This report also builds upon a 2004 publication from the Coastal States Organization entitled “*State Policies and Programs Related to Marine Managed Areas: Issues and Recommendations for a National System.*”

The principal source of information was three regional workshops held by the MPA Center throughout 2005. Representative state coastal, fisheries, and cultural resource managers were invited to attend. The primary goal of these workshops was for participants to develop draft recommendations to the MPA Center about their role, opportunities, concerns, and considerations as they relate to voluntary state participation in a national system of MPAs. For a summary of the primary issues for state involvement in the national system as developed in these workshops (the “raw material”) please see Appendix B. Some of the workshop participants were also members of the Marine Protected Areas State Advisory Group (SAG), a consultative and representative body that seeks to provide guidance and recommendations to the MPA Center on matters relevant to state interests pursuant to the Executive Order and the efforts of the MPA Center. Members of the SAG are state leaders in natural and cultural coastal resource management, and are in a unique position to both assure that the forthcoming national system of MPAs will accurately reflect the interests of their respective states, and to improve the

effectiveness of the system to protect and enhance cultural and living marine resources. Please see the SAG's membership list and its Mission Statement in Appendix C. Three of the participants were also members of the Marine Protected Areas Federal Advisory Committee (FAC). The FAC is made up of individuals who represent parties interested in the use of MPAs as a management tool. These individuals are appointed by the Secretary of the Department of Commerce, and serve for two-year terms. They represent a broad stakeholder community, including scientists, academia, commercial and recreational fishermen, other resource users, state and tribal resource managers, and environmentalists. In addition, nine pertinent federal agencies are represented by non-voting ex-officio members of the committee. The committee's role is to provide expert advice and recommendations to the Secretaries of Commerce and the Interior on implementation of aspects of the Executive Order. In June 2005, the FAC published a document entitled "A Report of the Marine Protected Areas Federal Advisory Committee on Establishing and Managing a National System of Marine Protected Areas" that presents the findings of the committee. Please contact Lauren Wenzel of the MPA Center at lauren.wenzel@noaa.gov for more information regarding the FAC. Other information regarding the MPA Center and marine protected areas may be found at www.mpa.gov.

In February of 2004 the MPA Center and the Coastal States Organization published a document entitled "State Policies and Programs Related to Marine Managed Areas: Issues and Recommendations for a National System." This document explored the myriad of issues surrounding state participation in a national system of MPAs. The state recommendations and analyses in this current report are natural progressions from this earlier effort, and offer more specific and concrete proposals and analyses.

Ensure that the MPA system is national, not federal

States, local governments and Native Americans have established and managed MPAs for decades. These sites protect a wide variety of marine resources, habitats and uses in waters and coastal lands under state jurisdiction, and are thus already part of an existing national system of MPAs. States believe that an MPA site need not be operated or managed by a federal agency, or designated under federal law to be considered part of a national system. Therefore, the efforts to develop the national MPA system as envisioned under Executive Order 13158 should first focus on identifying and building upon these existing sites. Consideration of new sites should be based either on identifying and filling in gaps between existing sites or on enhancing existing sites.

The great majority of marine protected areas in the United States, regardless of their titles (refuge, park, reserve, etc.), are located in areas of state jurisdiction and administered by state agencies. Many of these areas, either singularly or collectively, have been part of local, tribal, or state “systems” of MPAs that have customarily focused on the conservation and sustainable use of marine resources for many years. Federal MPAs, whether National Marine Sanctuaries, federally managed fishing areas, National Estuarine Research Reserves, coral reef protection zones, or others, are crucial elements of the national effort to both protect marine resources and offer multiple-use management regimes. However, federal MPAs are few in number when compared to state sites.

States are wary of the development and implementation of a national system of MPAs that is designated as “federal” in scope and practice, believing that MPA sites need not be administered under federal law or jurisdiction to be considered “national”. They also believe that a national system should build upon existing state and federal sites, while focusing on both enhancing these sites, and filling marine resource protection gaps that may exist between sites. Therefore, the addition of state MPAs to federal MPA programs, directed toward common goals and joint management, should form the basis of a national MPA system – a whole greater than the sum of its parts.

Parallel to this, states recognize that other MPA stakeholders may also aid in developing and implementing a national MPA system, e.g., research institutions, non-profit organizations, private businesses, coastal land trusts, etc. The conflicts that may naturally emerge in developing a national system may be lessened by a cross-disciplinary effort among all interested parties. It is thus critical to avoid the situation in which a single “piecemeal” agency hinders ongoing efforts by stakeholders who have a vested interest, if not jurisdictional authority, in MPAs. Therefore, a national system of MPAs must be inclusive and fully participatory for non-federal entities as well.

Ensure that the MPA system is national, not federal

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Recommendation Two

Create a blueprint that clearly defines what the national MPA system will include, how the national system adds value to current state or regional efforts, and how individual sites fit into that system

The MPA Center should, in consultation with coastal states, federal agencies, and other stakeholders define clear terms and establish specific goals of the national MPA system; explicitly delineate site inclusion criteria and authority; and promote on-going coordination as a blueprint for the continued development of the national system of MPAs.

The national blueprint should:

- provide a methodology for calculating the expected costs and value-added benefits of MPAs to the states through implementation and expansion of the national system of MPAs;
- enhance regional and national mechanisms for on-going sharing of information and coordination among federal, state, and local entities involved in MPA identification, management, and governance; and
- clarify how existing state MPA sites meet the ecological, cultural, and social goals of the national MPA system.

The states believe that there is a need for unambiguous, concise, and consistent definitions and terms for the use of resource managers, politicians, and the public. As an example, for many stakeholders the definition of a national MPA system is unclear and confusing, especially because state and federal government officials use different terms when discussing MPAs. Some have even recommended that the term national system be put in quotes. This reflects confusion over what the term means, what the objectives of the system are, and skepticism from the states about buying into a “national system” of individual sites around the country. In fact, there are several definitions of “marine protected area” in use both within and outside of the U.S. Clear definitions will allow analytical comparison across regions and sites; improve communication and collaboration with all stakeholders; and clarify how existing state MPA sites meet the ecological, cultural, and social goals of the national MPA system.

State officials must also examine whether potential benefits warrant their participation in new MPA-related initiatives. This decision will likely hinge on clearly identifying the long-term benefits to states and public stakeholders, and on federal support for state participation. States want the national system of MPAs to be a simplified, pragmatic approach to MPA management that does not supersede state efforts, reduce or eliminate state jurisdictional controls, nor burden state governance. Potential negative outcomes could include the establishment of a “paper” MPA system with little or no real manage-

ment; a loss of political will if sites do not meet established goals due to a lack of adequate enforcement or management; or the creation of an additional level of unfunded state and local needs and mandates.

As an integral component of the national system of MPAs, states must also be fully informed of issues related to MPAs at all levels of governance, and be part of a concerted effort to coordinate their activities with those of local and federal government entities. Therefore, stronger efforts at coordination should be undertaken at the regional and national levels so as to be inclusive and efficient. In this same vein, given the mobile nature of some living marine resources as well as pollutants, it is critical that each state work with its neighboring states to develop MPA management plans that enhance regional protection and address regional concerns.

Finally, as a national system of MPAs may conflict with state priorities and processes, it is important to clarify how individual MPAs may help meet the broader goals of the national MPA system. Marine protected areas of all kinds and sizes have the potential to increase tourism, enhance local and state economic development, provide sustainable resource management, identify important areas, give name and recognition to an area that is deemed “special”, and increase public awareness. MPAs may also aid in coordinating GIS activities within a state and provide better appreciation and protection of cultural/historic resources both within and beyond state waters.

Recommendation Three

Develop a specific process for designating marine protected areas in federal waters, including siting and implementation criteria and authority, through an administrative process or by enacting new federal legislation

Marine resources warranting protection often occur beyond state waters in areas of federal jurisdiction. At present there is no systematic or strategic federal process for establishing new MPAs within federal waters. In order to fulfill a national ecosystem-based management approach, it is essential that establishing MPAs not be limited to state initiatives in areas under state jurisdiction. A federal process is needed to provide a specific, rational, and predictable process for creating MPAs in federal waters.

Currently there is no practical apparent process for establishing new “no-take,” “partial take,” or any other type of MPA within federal waters. Considerable uncertainty exists on the part of the federal government over the most effective processes to use in these areas. Therefore, the federal government must identify a specific, rational, or predictable process for creating marine protected areas in federal waters with full local and state government input.

Develop a specific process for designating marine protected areas in federal waters, including siting and implementation criteria and authority, through an administrative process or by enacting new federal legislation

Involve states as partners in the continued development of the national system of MPAs, and establish a process to ensure state participation in all future MPAs that affect state coastal waters and resources

Recommendation Four

Involve states as partners in the continued development of the national system of MPAs, and establish a process to ensure state participation in all future MPAs that affect state coastal waters and resources

Because existing state, tribal, and federal MPA sites all maintain the values and resources necessary to enhance the national system of MPAs, all MPA managers should be included as essential partners in the maturation of the national MPA system.

States should approve the nomination, designation, and establishment of all MPA's within their jurisdictions. It is also critical that a definitive process be established to ensure state participation in future MPA site nominations and designations across federal/state jurisdictions; on a regional basis in federal waters; and for those MPAs in federal waters that may affect state coastal waters and resources.

The great majority of marine protected areas are sited in state waters and administered by state authorities; these MPAs, created to meet a myriad of goals, are the basis for a national system of MPAs. Diminishing the role and influence of state MPA managers and other sub-federal entities involved in MPA management may severely curtail the effectiveness of a national MPA system. Therefore, it is imperative that all MPA managers be included as partners in developing a national MPA system.

Designating and establishing new MPA sites in state waters should proceed as part of a state's efforts to protect marine resources, but also as additions to the national MPA system. The MPA site nomination process should be open and rigorous, and the criteria for entry into the national system, although clearly defined, should allow for inherent differences between states and agencies within states. However, some new marine protected areas that are established based on ecological, social, and economic considerations may cross jurisdictional boundaries or affect state waters (e.g., those encompassing both state and federal waters; regional MPAs under federal jurisdiction; and those MPAs located entirely in federal waters that may affect state coastal waters and resources), which requires collaboration among local, tribal, state, and federal authorities.

The potential impacts of federal MPAs on state waters and interests may also trigger the federal consistency provisions of the Coastal Zone Management Act. However, states are still uncertain about which federal partners (such as the regional fishery councils, national marine sanctuaries, national parks, etc.), have the authority to designate MPAs in federal waters and which processes they would use. This remains a complex issue and an important question for the states that has not been adequately addressed. Please see Recommendation Three for further elaboration.

A report from the MPA Federal Advisory Committee, "Establishing and Managing a National System of Marine Protected Areas" proposed a nomination process for site inclusion in the federal system of MPAs, but fell short of recommending the appropriate

federal entity to formally approve inclusion. There is an overriding concern that if a federal entity were to be identified for approving the inclusion of sites, states may lose some or all of their authority over MPA sites within their waters, and that some states or interest groups may use MPA designation as an opportunity to further restrict human use of the designated area. Therefore, it is imperative that a clear and definitive process be established and adhered to, with full state input, to determine those sites that should be included in a national system of MPAs.

Recommendation Five

Assist and support states to both enhance their participation and further the development of the national MPA system

Coastal states may require technical, scientific, and financial resources beyond their current capacity to fully participate in the national system of MPAs. This may include support for the management of both new and existing state MPA sites, regionally based MPAs in federal waters, and MPAs in federal waters that may affect state coastal waters and resources.

Sufficient federal support via funding and other assistance is necessary for successful science-based MPA monitoring and assessment, as well as effective management and enforcement – all essential to evaluate the benefits and impacts of MPAs on the biological, cultural, and socio-economic conditions of state coastal areas. Therefore, federal assistance should be identified and provided to states as needed. This support should also facilitate state participation and coordination with other local and regional management entities both within and among states.

It is evident that most states lack the adequate resources (funding, staff time, research, monitoring, enforcement, public educational programs, etc.) to fully participate in a national system of MPAs without outside assistance. Even those state agencies and programs that are actively addressing MPA issues within their states have limited resources to expand beyond their existing efforts and become completely involved in developing and implementing a national MPA system. The lack of such resources may lead to the continuation of or creation of new unmanaged “paper parks.” Thus, coastal states require federal funding and technical support to aid in identifying, developing, and managing MPAs both for their own marine resource protection and management interests, and to partner completely within a national MPA system. Federal support must be identified and made available to states on a continual, predictable basis. This support may include the use of competitive grants on a state or regional level. With sufficient federal support, state managers and other state-level MPA practitioners will then be better able to offer their expertise to all partners to meet the goals of the national MPA system. In addition, to ensure the complete support required to achieve both state and national goals, states should coordinate their assistance efforts with local governments, serving as supporters of local MPA planning and management initiatives.

Assist and support states to both enhance their participation and further the development of the national MPA system

Recommendation Six

Develop clear criteria and performance measures by which to evaluate the use and management goals of individual MPAs

An explicit and practicable set of performance indicators to evaluate the effectiveness of individual MPAs should be developed in consultation with coastal states, federal agencies, and other stakeholders. Because there is a wide diversity of MPA goals, these performance indicators should aid managers to better evaluate the effectiveness of a distinct MPA in relation to the goals for which it was established. Therefore, the performance indicators must be flexible enough to track these site-specific goals as well as the applicable goals of the national MPA system. They should also be used to assess the benefits and costs of MPAs over time to states and other management authorities using the best science available.

As defined and as practiced, individual MPAs have a number of ecological, scientific, socio-economic, and educational purposes. For state-administered MPAs to fully participate in a nationally coordinated MPA system there is a need to demonstrate that participating in the national system creates positive economic impacts to the state; provides a good return on a state's investment; and shows other benefits to a state that already has comprehensive state protections in place. This requires developing a set of consistent, flexible, and comprehensive performance and evaluation indicators to examine the effectiveness of MPAs in meeting both their individual goals and those of the national MPA system. Given the myriad of differences among MPAs, this will require complete coordination among all stakeholders, with a focus on the use of the best scientific information available to support ecosystem-based management. Success should not, however, be measured solely by state participation. In fact, a state's efforts in providing background and input as a cooperating party should not imply full support of the national MPA system being developed.

Unfortunately, many states, even those who are vigorously engaged in MPA management efforts, often lack the necessary research and monitoring capabilities to effectively evaluate their own sites let alone contribute to the monitoring efforts of a regional or national MPA system. Therefore, as described in Recommendation Five, federal support should be earmarked to states to contribute substantially to the monitoring and evaluation efforts for the national MPA system.

Provide effective outreach and education about MPAs to all stakeholders

A wide-reaching information and education strategy regarding the national system of MPAs and its value and impacts to coastal, cultural, and biological marine resources should be developed in cooperation with coastal states, federal agencies, and other stakeholders. This strategy should include mechanisms for ensuring good communication among all partners and stakeholders.

Among state resource managers and other stakeholders there is confusion and misunderstanding over the actual workings of the MPA Executive Order, the different types of MPAs, MPA regulations, and jurisdictional authorities. One example is the pre-conception of many that all MPAs are no-take/no-access zones. Therefore, a broad strategic education and outreach program, together with coordinated dialogue between state and federal agencies, and inclusive participation, should be a priority component of the national MPA system.

One key component of the national MPA system must be the opportunity for state agencies to cooperate and partner with other agencies and programs within their state, federal agencies (including fisheries management agencies), non-governmental organizations, international counterparts, and the private sector. This will offer the cross-cutting benefits of cooperation, coordination and promotion of education and research; will provide improvement in communications among and within agencies; and will help leverage active participation by many users and user groups.

While it is important to recognize and solicit input on MPA management from stakeholders at all levels, it is critical to develop local stakeholder meetings at the community level that feed into a larger regional framework. This will help develop a national constituency to support marine conservation. An open process that is inclusive and transparent is necessary to increase public recognition of the need to zone coastal and ocean areas to protect resources and to demystify MPAs. This open process should easily communicate information about MPAs and the national system so that all stakeholders can actively participate.

Provide effective outreach and education about MPAs to all stakeholders

State and territorial participation in developing a national system of MPAs as envisioned by Executive Order 13158 is voluntary, but absolutely critical to its success. States and other non-federal entities concerned with MPAs must be full partners in this effort. However, there exists some skepticism by states over a “new” national system of MPAs because states, local governments, and Native Americans have been managing areas for marine resource protection and sustainable development for many years. Further, many states already include MPAs as part of their statewide ocean management plans; and most MPAs in the United States lie in state coastal waters and are administered under state jurisdictional authorities. States thus believe that an MPA need not be operated or managed by a federal agency, or designated under federal law to be considered part of a national system. To ensure continuation of past efforts the national MPA system should begin by focusing on enhancing existing state and federal MPA sites, and then proceed to fill in gaps between these existing sites with a focus on ecosystem-based management strategies.

To fulfill a national ecosystem-based management approach, establishing MPAs cannot, and should not be limited to what a state can create within its jurisdiction as many marine resources warranting protection extend beyond state waters and well into federal waters. For future MPAs sited partially or completely outside of state waters, jurisdictional questions remain. New MPAs that encompass both state and federal waters, regional MPAs under federal jurisdiction, and those MPAs located entirely in federal waters may impact state coastal waters and resources. Currently there is no rational or predictable process for establishing new no-take, partial take, or any other type of MPA within federal waters. Therefore, the federal government must identify a specific, predictable process for creating marine protected areas in federal waters.

Despite the efforts of some states acutely engaged in MPA management efforts, most states will require continual federal funding and technical support to be a full partner in the national MPA system. There is also a need to develop consistent, flexible and comprehensive performance and evaluation indicators to examine the effectiveness of MPAs, as well as a broad strategic education and outreach program. As a means to relieve states of some of these financial and institutional strains of participating in a national system of MPAs it may be advantageous for states to coordinate their efforts through a shared regional approach.

Finally, states believe that the key to a successful national MPA system is for all federal, state, and local government entities (and others involved in MPAs) to collaborate in developing a system that is all-inclusive; that highlights the complete sharing of information; and that consults states fully in MPA site identification, designation, management, and governance. Only then will a marked improvement in marine conservation through the use of MPAs be realized.

Appendix A: Executive Order 13158 on Marine Protected Areas (2000)

Marine Protected Areas

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.), National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-ee), National Park Service Organic Act (16 U.S.C. 1 et seq.), National Historic Preservation Act (16 U.S.C. 470 et seq.), Wilderness Act (16 U.S.C. 1131 et seq.), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), Coastal Zone Management Act (16 U.S.C. 1451 et seq.), Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), Marine Mammal Protection Act (16 U.S.C. 1362 et seq.), Clean Water Act of 1977 (33 U.S.C. 1251 et seq.), National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq.), Outer Continental Shelf Lands Act (42 U.S.C. 1331 et seq.), and other pertinent statutes, it is ordered as follows:

Section 1—*Purpose*

This Executive Order will help protect the significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation’s system of marine protected areas (MPAs). An expanded and strengthened comprehensive system of marine protected areas throughout the marine environment would enhance the conservation of our Nation’s natural and cultural marine heritage and the ecologically and economically sustainable use of the marine environment for future generations. To this end, the purpose of this order is to, consistent with domestic and international law: (a) strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded MPAs; (b) develop a scientifically based, comprehensive national system of MPAs representing diverse U.S. marine ecosystems, and the Nation’s natural and cultural resources; and (c) avoid causing harm to MPAs through federally conducted, approved, or funded activities.

Section 2—*Definitions*

For the purposes of this order:

- (a) “Marine protected area” means any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.
- (b) “Marine environment” means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.

- (c) The term “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Section 3—*MPA Establishment, Protection, and Management*

Each Federal agency whose authorities provide for the establishment or management of MPAs shall take appropriate actions to enhance or expand protection of existing MPAs and establish or recommend, as appropriate, new MPAs. Agencies implementing this section shall consult with the agencies identified in subsection 4(a) of this order, consistent with existing requirements.

Section 4—*National System of MPAs*

- (a) To the extent permitted by law and subject to the availability of appropriations, the Department of Commerce and the Department of the Interior, in consultation with the Department of Defense, the Department of State, the United States Agency for International Development, the Department of Transportation, the Environmental Protection Agency, the National Science Foundation, and other pertinent Federal agencies shall develop a national system of MPAs. They shall coordinate and share information, tools, and strategies, and provide guidance to enable and encourage the use of the following in the exercise of each agency’s respective authorities to further enhance and expand protection of existing MPAs and to establish or recommend new MPAs, as appropriate:
- (1) science-based identification and prioritization of natural and cultural resources for additional protection;
 - (2) integrated assessments of ecological linkages among MPAs, including ecological reserves in which consumptive uses of resources are prohibited, to provide synergistic benefits;
 - (3) a biological assessment of the minimum area where consumptive uses would be prohibited that is necessary to preserve representative habitats in different geographic areas of the marine environment;
 - (4) an assessment of threats and gaps in levels of protection currently afforded to natural and cultural resources, as appropriate;
 - (5) practical, science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs;
 - (6) identification of emerging threats and user conflicts affecting MPAs and appropriate, practical, and equitable management solutions, including effective enforcement strategies, to eliminate or reduce such threats and conflicts;
 - (7) assessment of the economic effects of the preferred management solutions;
and

- (8) identification of opportunities to improve linkages with, and technical assistance to, international marine protected area programs.
- (b) In carrying out the requirements of section 4 of this order, the Department of Commerce and the Department of the Interior shall consult with those States that contain portions of the marine environment, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, tribes, Regional Fishery Management Councils, and other entities, as appropriate, to promote coordination of Federal, State, territorial, and tribal actions to establish and manage MPAs.
- (c) In carrying out the requirements of this section, the Department of Commerce and the Department of the Interior shall seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested persons and organizations through a Marine Protected Area Federal Advisory Committee. The Committee shall be established by the Department of Commerce.
- (d) The Secretary of Commerce and the Secretary of the Interior shall establish and jointly manage a website for information on MPAs and Federal agency reports required by this order. They shall also publish and maintain a list of MPAs that meet the definition of MPA for the purposes of this order.
- (e) The Department of Commerce's National Oceanic and Atmospheric Administration shall establish a Marine Protected Area Center to carry out, in cooperation with the Department of the Interior, the requirements of subsection 4(a) of this order, coordinate the website established pursuant to subsection 4(d) of this order, and partner with governmental and nongovernmental entities to conduct necessary research, analysis, and exploration.

The goal of the MPA Center shall be, in cooperation with the Department of the Interior, to develop a framework for a national system of MPAs, and to provide Federal, State, territorial, tribal, and local governments with the information, technologies, and strategies to support the system. This national system framework and the work of the MPA Center is intended to support, not interfere with, agencies' independent exercise of their own existing authorities.

- (f) To better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment. Such regulations may include the identification of areas that warrant additional pollution protections and the enhancement of marine water quality standards. The EPA shall consult with the Federal agencies identified in subsection 4(a) of this order, States, territories, tribes, and the public in the development of such new regulations.

Section 5—Agency Responsibilities

Each Federal agency whose actions affect the natural or cultural resources that are protected by an MPA shall identify such actions. To the extent permitted by law and to the maximum extent practicable, each Federal agency, in taking such actions, shall avoid harm to the natural and cultural resources that are protected by an MPA. In implementing this section, each Federal agency shall refer to the MPAs identified under subsection 4(d) of this order.

Section 6—Accountability

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.

Section 7—International Law

Federal agencies taking actions pursuant to this Executive Order must act in accordance with international law and with Presidential Proclamation 5928 of December 27, 1988, on the Territorial Sea of the United States of America, Presidential Proclamation 5030 of March 10, 1983, on the Exclusive Economic Zone of the United States of America, and Presidential Proclamation 7219 of September 2, 1999, on the Contiguous Zone of the United States.

Section 8—General

- (a) Nothing in this order shall be construed as altering existing authorities regarding the establishment of Federal MPAs in areas of the marine environment subject to the jurisdiction and control of States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Indian tribes.
- (b) This order does not diminish, affect, or abrogate Indian treaty rights or United States trust responsibilities to Indian tribes.
- (c) This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON
THE WHITE HOUSE
May 26, 2000

Appendix B: Primary Issues for State Participation in the National MPA System

During the three national MPA workshops and public dialogue sessions held throughout 2005, the participants were asked to discuss and list their primary questions, issues, hopes, fear, challenges, and opportunities regarding state participation in the development and implementation of a national system of MPAs; and to generate recommendations to the MPA Center. The following is a summary of those comments that led to the formation of the final state recommendations:

A. State Questions and Issues

As a whole, the state agency representatives concluded that the primary questions and issues related to the development of a national system of MPAs fall into the following broad categories:

1. Definitions and Processes

- What is the definition of a national system for regional and/or state use?
- What types of sites should be included in a national system?

2. Jurisdiction and Governance

- What are the particular issues that impact sites with shared federal and state jurisdiction?
- Who has the jurisdiction or authority to establish MPAs in federal waters and, specifically, how is this done?
- What is the role of states in establishing MPAs?
- How can states best work with Congressional delegations and other federal agencies?

3. Benefits of State Involvement

- What are the value-added benefits of a national system to MPAs in state waters?
- What potential benefits of the national MPA system warrant state participation?

4. Financial and Technical Support

- Will federal funding be available for state involvement in the national system of MPAs for inventories, monitoring, research and enforcement?

5. Goals and Measures of Success

- What will it take for the national system to be successful in the state’s eyes?
- What do states want the national system to accomplish?
- What are the best ways to ensure the integration of the various objectives of MPAs, e.g., living marine resource management, cultural resource preservation, recreational opportunities, etc.?
- Can this lead to more efficient use of federal, state, and local funds?

6. Communication and Outreach

- What are the best ways to maintain and enhance the communication between the states and NOAA/DOI?
- How can states and the MPA Center best involve and inform the general public?
- How can the MPA State Advisory Group be used most effectively?

B. State Challenges and Opportunities

As the states, territories, and commonwealths are voluntary partners in this effort, state workshop participants and others expressed a number of challenges and opportunities regarding the establishment of the national/regional MPA system. These are summarized below:

1. Definitions and Processes

- The definition of a “national system” is unclear and confusing, especially as state and federal government officials use different terms when discussing MPAs. We need unambiguous, concise, and consistent definitions and terms for the use of resource managers, politicians, and the public to allow analytical comparison across regions and sites.
- Among state resource managers there is confusion and misunderstanding over the actual workings of the MPA Executive Order, the Marine Managed Inventory Project, and the different types of regulations, jurisdictions, and MPAs. Better education and outreach, together with coordinated dialogue between state and federal agencies, and inclusive participation is needed. This will also address the pre-conception of many that all MPAs are no-take/no-access zones.
- The MPA site nomination process should be open and rigorous, but the criteria for entry into the national system should be general and flexible enough to allow for differences between states and agencies within states.

2. Jurisdiction and Governance

- It is critical to states that the MPA national system adequately addresses the delineation of decision-making authority (i.e. federal and state roles). This is not presently clear. There is also an overriding concern that states will lose some or all of their authority over MPA sites within their waters, and that some states or interest groups may use MPA designation as opportunity to restrict usage
- The national system of MPAs must have a mechanism for partnering with or recognizing adjacent states that may not have MPAs or the ability to designate MPAs, but that already work on interstate water quality issues. Working across state geographic boundaries (e.g. watershed issues) may become a higher priority as a national system is developed.
- The national system of MPAs may provide a mechanism for protecting cultural resources outside of state waters.
- The national system of MPAs may leverage and encourage action on adjacent land areas in coastal regions. However, there is the possibility that traditional uses may have to change as MPAs may restrict “private rights.”
- There are conflicts between MPA natural, cultural, and fishery resource management and protection goals and programs, and state confusion as to how state agencies, the SAG, the MPA Center, DOI, the MMA Inventory Project, NGOs, the private sector, the Coastal States Organization and other “pieces of the MPA puzzle” link together to develop the national system of MPAs. A full cross-disciplinary effort across all interested parties and disciplines is needed. Without this, a new “piece-meal” agency that hinders ongoing efforts by other stakeholders may emerge.
- There is not enough focus on fisheries agencies and their relationship with other agencies. The MPA Center must clarify how existing fisheries management structure will be used in consideration of the national MPA system.

3. Benefits of State Involvement

- The MPA Center must demonstrate the benefits of a national system of MPAs to the states, and be sure to not put the system together in an ad hoc way without adequate state involvement. A national system may help identify important areas, give name and recognition to an area that is deemed “special”, and increase public awareness.
- A national system of MPAs may conflict with state priorities and processes, but MPAs themselves have the potential to increase tourism, enhance local and state economic development, provide sustainable development, and better manage fisheries resources. They may also aid in coordinating GIS activities within a state and provide better appreciation of cultural/historic resources.

4. Financial and Technical Support

- Most states lack adequate resources (funding, staff time, research, monitoring, enforcement, public educational programs, etc.) to fully design or implement their participation in a national system of MPAs. Thus, federal funding and technical support to aid the identification, development, and management of existing and new MPAs within a national system must be realized. A little money can go a long way. The worst scenario for states is an unfunded federal mandate.
- State governments may also be called upon to fund initiatives to be part of a national system, although a reallocation of state resources could harm existing programs already strapped for funding.

5. Goals and Measures of Success

- States hope that the national system of MPAs will be a simplified, pragmatic approach to MPA management that does not supersede state efforts, reduce or eliminate state jurisdictional controls, nor burden state governance. Negative results would include the establishment of a “paper” MPA system with little or no real management; a loss of political will if a site can not be effective due to a lack of protection from other unregulated impacts on the site; or the creation of an additional level of unfunded state and local needs.
- To be successful to states the national MPA system must show that MPAs are an effective management tool; create positive economic impacts; demonstrate a good return on a state’s investment; and show benefits to a state that already has comprehensive state protections in place. This will require very good scientific information and other data to support ecosystem-based management models.
- It is important that the system contain a way to identify unprotected resources in need of protection (i.e., through gap analysis) and mechanisms for protecting those resources.
- Success should not, however, be measured by state participation. In fact, a state’s efforts in providing background and input as a cooperating party should not imply full support of the national system being developed.

6. Communication and Outreach

- To better engage states in the national system, the MPA Center needs a targeted campaign of outreach, education, public relations, and marketing to illustrate to the value-added benefits of participating in the national system. This may help identify and reduce the many inefficient simultaneous efforts to propose, designate, initiate, and map MPAs that are presently occurring without coordination.
- An overriding key component of the national system of MPAs must be the opportunity for state agencies to cooperate and partner with other agencies and programs within their state, federal agencies (including fisheries management agencies), non-governmental organizations, international counterparts, and the

private sector. This will offer the cross-cutting benefits of cooperation, coordination, and promotion of education and research; an improvement in communications between and within agencies; and will help leverage active participation by many user and user groups. One caveat, however, is the inherent problem of overlapping jurisdictions that may occur between agencies.

- As it is important to recognize and solicit input on MPA management from stakeholders at all levels, it is critical to develop local stakeholder meetings at the community level that feed into a larger regional framework. This will help develop a national constituency to support marine conservation. An open process that is inclusive and transparent is necessary to increase public recognition of the need to zone the ocean and protect it, and to demystify MPAs. This open process should easily communicate information about MPAs and the national system so that all stakeholders can participate.

Appendix C: Marine Protected Areas State Advisory Group (SAG)

MPA SAG Mission Statement

The Marine Protected Areas (MPA) State Advisory Group (SAG) seeks to provide guidance and recommendations to the National Oceanic and Atmospheric Administration's (NOAA) National Center for Marine Protected Areas (National MPA Center), NOAA's National Ocean Service's (NOS) Special Projects Office, and the Department of the Interior on matters relevant to state interests pursuant to *Executive Order 13158 on Marine Protected Areas*. The SAG seeks to improve the coordination and effectiveness of ongoing state and federal efforts to analyze, establish, monitor, evaluate, and enforce a system of regional networks of marine protected areas that will protect and enhance cultural, living, and non-living marine resources for sustainable use and enjoyment.

Objectives/Tasks

- The SAG will provide guidance and recommendations from the state perspective to the National MPA Center on its goal of developing and implementing a national system of marine protected areas, and on determining how this national system can best enhance state MPAs.
- The SAG will provide a forum to facilitate interstate communication on MPA issues and efforts.
- The SAG will provide guidance and recommendations on conducting analyses of state programs and policies to enhance the management of marine protected areas.
- The SAG will assist the MPA State Liaison(s) from the National MPA Center in analyzing and documenting state concerns, issues, policies, and programs; and in recommending best practices from states as they relate to the management of a national system of marine protected areas.
- The SAG will assist NOS in the coordination of efficient data collection and in conducting follow-up and Quality Assurance/Quality Control activities.
- The SAG will provide guidance, assistance, and recommendations to the National MPA Center and NOS in conducting an inventory of marine protected areas.

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