

otherwise determine support for the petition by the industry . . . .”

We will require additional information from the petitioners and the domestic producers of certain orange juice in order to make our determination regarding industry support and/or time to analyze the petitioners' responses to our requests for information. See the "Determination of Industry Support for the Petition" section of this notice, above. Therefore, it is necessary to extend the deadline for decision on initiation for a period not to exceed 40 days from the filing of the petition. As a result, the initiation determination is due no later than February 7, 2005.

#### **International Trade Commission (ITC) Notification**

Because the Department has extended the deadline of the initiation determination, the Department will contact the ITC and will make this extension notice available to the ITC.

Dated: January 18, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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**BILLING CODE: 3510-DS-P**

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **National Ocean Service; Final Criteria and Data Fields for an Inventory of Existing Marine Managed Areas and Response to Comments**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of final criteria and data fields for building an Inventory of Marine Managed Areas and response to comments on draft criteria.

**SUMMARY:** NOAA and the Office of the Secretary, Department of the Interior (DOI), on July 23, 2003, jointly proposed criteria, definitions, and data fields that will be used in development of an Inventory of U.S. Marine Managed Areas (MMAs). The MMA Inventory will provide information that will lead to the fulfillment of requirements of Executive Order (E.O.) 13158 on Marine Protected Areas (MPAs). This action provides the final criteria and data fields that will be used to develop and complete the MMA Inventory and summarizes and responds to comments received on the notice of July 23rd. This will allow the completion of Phase I, development of the MMA Inventory, to

be followed by the development of criteria for and the List of MPAs (Phase II) called for in E.O. 13158.

**DATES:** Effective on January 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Uravitch, Director, National Marine Protected Areas Center, NOAA, (301) 713-3100, x195.

**SUPPLEMENTARY INFORMATION:** Electronic Access: This Federal Register document also is accessible via the internet at the Office of the Federal Register's Web site at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

#### **I. Background and Overview of MMA Criteria**

E.O. 13158 directs DOC and DOI, 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, to work with non-federal partners to protect significant natural and cultural resources within the marine environment of the United States, including the Great Lakes, by strengthening and expanding a scientifically-based comprehensive National System of MPAs. A key purpose of E.O. 13158 is to "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." A first step in developing this scientifically-based National System of MPAs is the development of an inventory of MMAs. This inventory will become the initial pool of sites from which the List of MPAs called for in section 4(d) of the E.O. 13158 will be developed.

DOC and DOI were given specific roles by E.O. 13158. DOC has delegated lead responsibility to the Under Secretary of Commerce for Oceans and Atmosphere. DOI has delegated its lead to the Assistant Secretary, Lands and Minerals Management. NOAA and DOI have stewardship responsibilities for marine resources under various federal laws, including the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Coastal Zone Management Act, the National Marine Sanctuaries Act, the Antiquities Act, the National Wildlife Refuge System Administration Act, the Outer Continental Shelf Lands Act, and the National Park Service Organic Act. These and other authorities direct DOC and DOI agencies to manage marine

areas for a wide variety of objectives. Area-based management has been used for years to protect marine habitat and submerged cultural resources, rebuild and sustain fisheries, provide recreational opportunities, promote marine research, recover endangered species, and support local economies that depend on ocean resources. These areas have been managed in different ways ranging from restricting specific activities and allowing sustainable use of natural resources within an area, to the establishment of marine reserves that limit access and close the site to all uses except research.

The MMA Inventory will be used in Phase I to inform federal, state, commonwealth, territorial, local, and tribal agencies of the locations and characteristics of existing MMAs and to form a pool from which sites may later be considered for placement on the List of MPAs (Phase II). Resource managers and others can use this information to better manage these areas and determine the effectiveness of individual sites, as well as regional and national assemblages. The core purposes of the MMA Inventory are:

- Providing centralized, easily accessed information on and maps of existing federal, State, commonwealth, territorial, local, and tribal MMAs in the United States;
- Providing information and tools for environmental assessments and effectiveness monitoring (supporting independent analyses and studies of a wide variety of marine issues by governmental and non-governmental users);
- Providing important site-specific information for developing and maintaining the official nationwide List of MPAs required by section 4(d) of E.O. 13158; and
- Providing information to fulfill other requirements of E.O. 13158.

NOAA and DOI have placed a variety of protective or restrictive measures on different marine areas to achieve different management purposes. The definitions and working criteria in this notice are being used to build the MMA Inventory and may, at some future date, be used in determining which sites should be placed on the List of MPAs (Phase II). These definitions and criteria are final and incorporate public comment, as appropriate, but may be changed at some future date if required by experience gained by using the MMA Inventory and implementing E.O. 13158. The public will be informed of such changes to the criteria through the **Federal Register** and the MPA Web site, <http://www.mpa.gov>.

It is important to distinguish between the MMA Inventory and the List of MPAs. The MMA Inventory is not designed to fulfill the requirement of E.O. 13158 for a List of MPAs but is the first step toward development of that List. The List is to be established at some future date after an administrative process for listing has been established.

As a result of public comment, NOAA and DOI have decided to broaden some aspects of the inventory criteria for building the MMA Inventory.

## II. Comments and Responses

### A. General/Overall Comments Not Related to Specific Proposed Criteria or Data Fields

*Comment 1:* Six commenters expressly supported the development of the MMA Inventory.

*Response 1:* No response necessary.

*Comment 2:* One commenter recommended that NOAA and DOI proceed immediately to the MPA listing process rather than build an Inventory of MMAs, questioning the need to identify and Inventory MMAs in order to identify MPAs subject to the Executive Order.

*Response 2:* In addition to the requirement for NOAA and DOI to “publish and maintain a List of MPAs that meet the definition of MPA,” the E.O. also requires that protection of MPAs be enhanced and expanded, through, e.g., “(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; and (5) practical, science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs.” The broader List of MMAs will enable the fulfillment of these requirements. Based on the universe of possibilities, those sites that best fit the specific goals of the MPA system, whose goals are in the process of being defined, will be chosen for the MPA List.

*Comment 3:* One commenter recommended that the Inventory be limited to areas qualifying as a “marine protected area” and not expand it to

also include areas called “marine managed areas.”

*Response 3:* See Response 2.

*Comment 4:* One commenter suggested that once a site is on the MMA Inventory or later on the MPA List, it should have a “federal imprimatur” indicating that the basis for the site’s protections be scientifically reviewed before a site is put on the Inventory. The commenter also suggested that the Inventory be periodically reviewed to remove sites when no longer warranted.

*Response 4:* The Executive Order directs the agencies to publish and maintain a List of MPAs that meet the definition of MPA for the purposes of this order. The agencies have determined that in order to be placed on the MMA Inventory a site must meet all five criteria published in this Federal Register notice: Area, marine, reserved, lasting, and protection. In addition, cultural sites also must meet the definition of “cultural.” The agencies will develop similar criteria to move a site from the MMA Inventory to the MPA Inventory based on the goals of the National System of MPAs.

The federal, state, or tribal authorities that established these areas are responsible for determining whether they meet their statutory criteria, including scientific review. NOAA and DOI are authorized to review the programs and their sites to determine their applicability in supporting the goals of the national system of MPAs. NOAA and DOI intend to conduct periodic reviews of the sites on the List of MPAs. If the sites no longer meet the goals of the National System of MPAs, they will be removed from the List.

*Comment 5:* One commenter questioned whether the development of the MMA Inventory and MPA List is intended to facilitate the eventual federal control of each of the sites on the Inventory or List and requested clarification.

*Response 5:* The placing of state, territorial, commonwealth, or tribal sites will not result in federal control of these sites. Section 8(a) of the E.O. states that “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.”

*Comment 6:* One commenter asserted that agency decisions should be guided

by criteria in Section 4(a) of the Executive Order.

*Response 6:* The agencies are conducting the activities under Section 4(a) of the E.O. and will use the information gained as part of the decision-making process.

*Comment 7:* One commenter requested that sites that clearly meet the definition of MPA given in the Executive Order should be declared official MPAs, and suggested that the Executive Order is self-executing in this regard and does not require review or approval of criteria to declare a site an MPA. The commenter asserted that NOAA and DOI do not need to complete the entire National System of MPAs in order to implement the Executive Order and should proceed now. The commenter also suggested that this be applicable to permit applications to the Army Corps of Engineers.

*Response 7:* The agencies agree that the entire National System of MPAs does not need to be established in order to implement some parts of the Executive Order. With regard to the List of MPAs, the agencies are of the opinion they are proceeding in a logical fashion and, pursuant to the requirements of the Executive Order, ensuring sufficient involvement of agencies and stakeholders. Until the List of MPAs is prepared, it has no application to activities of federal agencies such as permits.

*Comment 8:* One commenter recommended not changing the criteria in any significant way that would require states to expend more resources in adding/modifying data that has already been submitted. This commenter would like open discussion of the proposed listing criteria during the development process.

*Response 8:* The changes to the criteria will not negate or require changes to any data submitted already. The changes to “lasting” are more inclusive and more sites may qualify. The agencies will continue to work with the States and provide support for any additional significant effort needed to address revisions to the criteria. We do not expect those to be significant. The agencies will conduct a public process to develop the criteria to establish the List of MPAs.

*Comment 9:* One commenter suggested reviewing the criteria before asking states to compile their inventory to ease the workload.

*Response 9:* See Response 8 regarding criteria change. In addition, the agencies recognize that state participation in this project is voluntary, and have provided NOAA funded data collection interns in

State offices to reduce the workload on existing state staff.

*Comment 10:* Three commenters expressed concern about the process and time it is taking to complete the Inventory. The commenters suggested that little has been done to implement the Executive Order and are concerned that the **Federal Register** Notice is a deferral of meaningful action—envisioning a lengthy and bureaucratic process that postpones federal action. The commenters urge immediate application of the Executive Order to all sites meeting the general MPA definition of the Executive Order, recommending clear Phase I and Phase II deadlines and moving away from cataloguing to analysis. It was also noted that the database needs to be updated or it will risk misleading the public.

*Response 10:* The agencies believe it is necessary to complete the cataloguing in order for analyses to have any value. The agencies are developing a plan to move from Phase I (MMA Inventory) to Phase II (MPA List) and will include the public in the process. The agencies do not believe it is feasible to move immediately to the MPA List (see Response 2). The database is being updated continuously. Regarding concerns that little has been done to implement the Executive Order, the agencies note that the Executive Order requires a number of other tasks besides the establishment of the List. Considerable progress continues to be made in such tasks as establishment and maintenance of an MPA information web site, creation and support of the Federal Advisory Committee, and strengthening of existing sites through training, technical assistance, and scientific support, among others.

*Comment 11:* One commenter suggested that the MMA criteria be refined and the Inventory and database corrected within the next 12 months, and that the corrected Inventory be considered the MPA List, recognizing that the List will be refined as the process advances.

*Response 11:* See Response 2 concerning the need for the MMA Inventory. In regard to the schedule, the agencies intend the collection of final federal site information and the collection of the majority of State, territorial, and commonwealth site information be completed by mid 2005. Collection of tribal site information will be initiated in FY2005. Actual completion of the inventory of individual federal program and State, territorial, and commonwealth sites will depend upon the time available to them and NOAA to obtain or develop the

necessary information and to complete Quality Assurance/Quality Control process. Information concerning progress on these tasks can be found on <http://www.mpa.gov>.

*Comment 12:* One commenter recommended that next steps include a determination of how to comply with Section 5 of the Executive Order, the “avoid harm” clause.

*Response 12:* The Federal Inter-Agency MPA Working Group intends to resume discussion of the process for compliance with Section 5 in FY2005.

*Comment 13:* One commenter recommended that the MPA Center proceed with the development for the framework for the National System of MPAs, as required by Section 4(e) of the Executive Order.

*Response 13:* The agencies are conducting a public process for developing the framework. Agency and public meetings will be held on this subject in FY2005.

*Comment 14:* One commenter suggested that a broad ocean management plan or structure is more important, useful, and successful in addressing marine resource issues than the identification of MMAs or MPAs. The commenter noted that the MPA concept does not address the complex cross-jurisdictional issues of marine resource management or the abundant sources of specialized expertise (including local and traditional knowledge) that should be central to an effective marine resource management structure.

*Response 14:* NOAA and DOI recognize the value of broad ocean management planning. However, the agencies believe that MPAs can address complex cross-jurisdictional issues of marine resource management and can use abundant sources of specialized expertise, including local and traditional knowledge. While this may not be the case for all MPAs at all governmental levels, at the federal level compliance with the National Environmental Policy Act (NEPA) implicitly requires such considerations. Authorities comparable to NEPA exist in most states. The MMA Inventory and MPA List illuminate complex cross-jurisdictional issues by collecting information from all possible management authorities. Their contents are drawn from abundant and varied sources of expertise including public input and traditional knowledge.

*Comment 15:* One commenter encouraged the MPA Center to involve New England Fishery Management Council staff and the Council’s MPA Committee on an ongoing basis during the development of MPA listing criteria.

*Response 15:* NOAA and DOI will conduct a broad, open process for the development of MPA listing criteria. Discussion with Regional Fishery Management Councils and other interested stakeholders will be part of this process.

*Comment 16:* One commenter expressed concern that NOAA and DOI will develop federally imposed management restrictions for state sites.

*Response 16:* Executive Order 13158 does not give the federal government the authority to develop or impose federal restrictions on state sites. Section 8(a) of the Executive Order specifically states that “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.”

*Comment 17:* One commenter requested that each state determine how to apply definitions to their own State.

*Response 17:* NOAA and DOI recognize that there are unique circumstances in many states and are working cooperatively with each state to resolve questions about the application of criteria to areas needing extra consideration. The agencies also must ensure the maximum standardization practicable across a nation-wide inventory of federal, State, and tribal sites that will be used for analytical purposes.

*Comment 18:* One commenter recommended that NOAA and DOI suspend further work on developing criteria until the MPA Federal Advisory Committee can review them.

*Response 18:* The MPA Federal Advisory Committee members were provided an opportunity to review the draft criteria.

*Comment 19:* One commenter did not endorse the use of the proposed criteria to determine which sites should be placed on the List of Marine Protected Areas for Phase II.

*Response 19:* NOAA and DOI will use these criteria only for purposes of placing sites on the MMA Inventory. NOAA and DOI, through the National MPA Center, are conducting an extensive, open public process to define the goals of the National System of MPAs and the associated criteria necessary for a site to be placed on the List of MPAs.

*Comment 20:* One commenter recommended that the National MPA Center clearly articulate how the

Inventory of MMAs will be used to take the next step of creating an honest assessment of the existing MPAs in U.S. waters.

*Response 20:* NOAA and DOI, through the National MPA Center, are conducting an extensive, open public process to define the goals of the National System of MPAs and the associated criteria necessary for a site to be placed on the List of MPAs. All sites on the MMA Inventory will be reviewed to determine which qualify for inclusion on the MPA List and to assess whether or not they contribute to the goals of the National System of MPAs.

*Comment 21:* One commenter recommended that NOAA continue to work with the states on a more useable MMA database, establishing a more robust site that would build upon the information by providing numerous spatially based models for use in management decisions.

*Response 21:* NOAA and DOI are working with the states individually and through a state working group to maximize the utility of the MMA Inventory database, including the development of specific query functions. There are no plans presently to include spatially based models directly as part of the Inventory. However, such models might be developed in the future by others or as part of the National MPA Center's training, technical assistance, and science functions.

*Comment 22:* One commenter recommended that the database be as universal as possible so that non-governmental user groups could use the information contained in the database, that proprietary systems and formats be avoided, and that the GIS standard adopted be as universal as possible to allow outside users to use the GIS databases that will be developed.

*Response 22:* NOAA and DOI are redesigning the query capability for users to access the data on MPA.gov. This new design aims to make data access as simple as possible and widely accessible for use by agencies, non-governmental organizations, academia, students, and the general public. To that end, the use of proprietary information and systems will be minimized.

*Comment 23:* One commenter recommended that the agencies maintain a regularly updated database in order to provide accurate information for the public.

*Response 23:* The MPA Center will develop a routine maintenance process to ensure the inventory database is updated as often as is practicable. Individual site records will include the

last date upon which information for that site was reviewed.

*Comment 24:* One commenter noted that the background and summary section of the **Federal Register** notice omits tribal treaties and associated court cases as well as Executive Orders regarding consultation and coordination with the tribes (E.O. 13175 and E.O. 130830), all of which are of concern in dealing with off-reservation issues that affect tribal treaty rights to a variety of resources with usual and accustomed fishing grounds and stations in the Pacific Northwest.

*Response 24:* NOAA and DOI will ensure that tribal treaties, court cases, and the two Executive Orders are taken into consideration when taking action under Executive Order 13158.

*Comment 25:* One commenter noted that the insertion of tribal language into the MMA Inventory and other documents on the MPA web site (mpa.gov) is both incomplete and inconsistent, noting that additional language is needed in the inventory details that refer to ownership and regulatory authority, that National MPA Center documents recognize tribal authority and regulatory responsibility, and the need for the National MPA Center to have a qualified tribal liaison on staff.

*Response 25:* The agencies acknowledge the need to improve information and reference to tribal authority in their documentation, including the MPA.gov web site. The hiring of a qualified, full time, contracted tribal liaison for the National MPA Center is part of the Center's annual operating plan. Some of the responsibilities of this individual will be to ensure recognition of tribal authorities and regulatory responsibilities in MPA Center documents, to develop a tribal information section of the MPA.gov web site, and to work with the tribes on the development of information about tribal sites for the MMA Inventory.

*Comment 26:* One commenter noted that federal laws require recognition of tribal treaty rights that secure the taking of marine resources for commercial, subsistence, and ceremonial use and that areas within tribal usual and accustomed fishing grounds and stations are co-managed by tribes' negotiation with relevant State or federal co-managers through a government-to-government basis.

*Response 26:* NOAA and DOI recognize tribal co-management authorities and the government-to-government relationship.

*Comment 27:* One commenter stated that the inventory framework lacks the

science-based characteristics that E.O. 13158 calls for (*i.e.*, "develop a scientifically based, comprehensive National System of MPAs"), and that inventorying and monitoring must be in place before any new MPA is created. The inventory process cannot be considered complete until the database comprehensively describes the site in detail sufficient to design monitoring programs.

*Response 27:* Pertinent site information being collected for the MMA Inventory includes: Site Description (brief description of site including general features and most prominent, noteworthy, and unique features); Additional Location/Size Information (approximate shoreline length, overlap with other protected areas, connectivity with other protected areas); Marine Components (oceans, bays, estuaries, intertidal areas, Great Lakes, submerged lands, and/or other); Natural Features (biological and geological features); and Cultural Features (archaeological remains, historic shipwrecks, subsistence uses); and Effectiveness (measures used to determine management effectiveness). This information is being collected to describe and help understand existing sites, not designate new sites. Regarding the issue of monitoring programs being established prior to the designation of new MPAs, NOAA and DOI cannot take action on this recommendation, as E.O. 13158 does not give NOAA or DOI the authority to designate new MPAs, nor to affect the federal, State, or tribal authorities used to designate and manage MPAs.

*Comment 28:* One commenter requested that the MPA Center certify that management plans for the sites are scientifically based and comply with requirements for a "Natural Resource Plan."

*Response 28:* Certifying site management plans is beyond the scope of the MMA Inventory; the Inventory is not in place to evaluate or review site management plans. It is up to the individual sites and managing agencies to evaluate management plans. Further, the National MPA Center does not have the authority under E.O. 13158 to certify the plans of authorized programs.

*Comment 29:* One commenter suggested including certification for each site showing that the data collected meets NOAA, DOC and DOI Information Quality Guidelines, including a contact person and process for requesting corrections to information.

*Response 29:* NOAA and DOI will incorporate a statement about this information in the Inventory section of the MPA.gov web site. A contact is

provided on MPA.gov and a process in place to request corrections from the appropriate contact at the agency or program responsible for that data.

*Comment 30:* One commenter suggested that sites with incomplete information be included in the Inventory and updated as information becomes available.

*Response 30:* This already is NOAA and DOI policy.

*Comment 31:* One commenter suggested developing GIS boundary files for sites rather than just centroid points.

*Response 31:* The NOAA and DOI Inventory Team is actively engaged in obtaining or developing GIS boundary files where the data is available. Centroid points will be used in lieu of GIS boundary files until such files are available.

#### B. Comments on Proposed Criteria

*Comment 1:* Two commenters concurred with all of the criteria, definitions, and data fields.

*Response 1:* No response necessary.

##### 1. Comments on Proposed Criterion "Area"

*Comment A:* One commenter recommended that a lower limit on the size of an area be added to the criterion.

*Response A:* NOAA and DOI recognize the value that MMAs may provide to natural or cultural resources regardless of size, for example, areas that protect shipwrecks, and therefore the MMA Inventory does not impose a lower limit on the areas of an MMA.

*Comment B:* One commenter questioned whether a site must have legally defined geographic boundaries.

*Response B:* NOAA and DOI require legal boundaries for MMAs to help fulfill the "reserved" criterion that an area be established by and currently subject to federal, State, commonwealth, territorial, local or tribal law or regulation. MMA/MPA management activities, such as enforcement, cannot be conducted if the MMA has no legally defined boundary.

*Comment C:* One commenter requested clarification of the term "legally defined" (i.e., is a map legal?).

*Response C:* NOAA and DOI consider boundaries to be legally defined as they are described by a federal, State, commonwealth, territorial, local or tribal law or regulation. A map would be "legal" if it is deemed so under federal, state or tribal authority.

*Comment D:* One commenter suggested the need for criteria for defining the "significance of resources" as written in section 1 of E.O. 13158.

*Response D:* NOAA and DOI acknowledge that as a part of the overall

purpose of E.O. 13158, section 1 identifies the need to "protect the significant natural and cultural resources within the marine environment." However, the definition of MPA listed in E.O. 13158, from which the MMA criteria were selected for consistency and are herein defined, does not include criteria for "significance of resource." NOAA and DOI will seek and consider public input on the issue of "significance of resource" through the process to develop the framework for the National System of MPAs pursuant to section 4(e) of E.O. 13158.

*Comment E:* Several commenters requested clarification of the language to include dynamic area management approaches/sites.

*Response E:* NOAA and DOI recognize that Dynamic Area Management and other areas with shifting boundaries can provide valuable protections to the marine environment. However, because these areas do not appear in the same place year after year they do not meet the definition of an MMA/MPA and are not considered MMAs for the purposes of this Executive Order.

*Comment F:* One commenter suggested modifying the criteria by adding the language "underlying submerged or intertidal lands" to the definition.

*Response F:* The definition of "Marine" addresses this comment.

##### 2. Comment on Proposed Criterion "Marine"

*Comment A:* Two commenters deem this criterion adequate for the MMA Inventory.

*Response A:* No response necessary.

*Comment B:* Several commenters cited unique or unusual circumstances (e.g., species dependent on extreme high tide events, ancient volcanic connections to the sea, or extreme variations in salinity gradients) and recommended that the agencies work with individual States to determine the application of "marine" (including estuarine) along their shorelines.

*Response B:* The agencies recognize that unique or unusual hydrologic and geologic conditions may exist and the agencies will work with individual States on a case-by-case basis to determine the applicability of the marine criterion to these areas.

*Comment C:* One commenter noted that the definition is inclusive of federal regulations, but also must recognize tribal jurisdiction authority. Tribal land and associated jurisdiction authority extends to the mean low water level.

*Response C:* The agencies recognize authority and jurisdiction of the

individual tribes and will work with them to ensure that accurate information is included in the MMA Inventory.

*Comment D:* One commenter supported the definition of "marine" in the proposal, but suggested that maps explicitly note that upland areas in sites which contain both marine and upland components are not "MMAs" and that the freshwater habitat of anadromous species be excluded from the definition of "estuary."

*Response D:* Although uplands are not considered part of MMAs, these areas were included on the maps if submitted as part of the source boundary, to maintain data integrity. Eventually, sites can be viewed along with shoreline data to show the marine and terrestrial components. MMA site map boundaries are created with the most recent and accurate boundary information available, but edges and/or borders of boundaries may change due to natural land changes, site boundary modification or higher resolution maps. Therefore, the currency or accuracy of these boundaries, including the precise exclusion of uplands, cannot be guaranteed. The agencies will work with an individual State, commonwealth or territory, on a case-by-case basis, to determine the applicability of the criterion to estuarine areas.

##### 3. Comment on Proposed Criterion "Reserved"

*Comment A:* Four commenters deem this criterion adequate for the MMA Inventory.

*Response A:* No response necessary.

##### 4. Comment on Proposed Criterion "Lasting"

*Comment A:* Three commenters questioned how the three month threshold was chosen, suggesting that significant restrictions for shorter periods could provide protection.

*Response A:* NOAA and DOI agree shorter periods may provide significant protection for some sites; however, the agencies maintain that the potential for permanence is important. Therefore, in response to comments this criterion has been modified to allow inclusion of any site providing the same protection of any duration within a year, at the same location on the same dates each year, for at least two consecutive years. In addition, to accommodate the variety of authorities that govern MMA permanence, this criterion has been further modified to allow the inclusion of sites established with the expectation of, history of, or at least the potential for, permanence. Overall, this will increase the number of sites that may be

placed on the MMA Inventory and considered for the National System and List of MPAs. Sites that exist for a single year, or whose protections vary temporally or spatially on a year-to-year basis, would not be included under the modified criterion.

*Comment B:* Two commenters suggested modification of the definition so that “lasting” is permanent and all year, without a plan to terminate unless a clear alternative is identified, and questioned the reasoning behind the three-month threshold.

*Response B:* NOAA and DOI disagree that the MMA Inventory should be restricted only to sites with permanent, year-round protection. Since the Inventory sites are intended to be the candidates from which the MPA List will be derived, such a restriction would greatly limit the candidate pool, and not reflect the wide-ranging nature of protective mechanisms used in the marine environment. It also limits the information that will be available for analyses pertaining to defining a National System of MPAs. The agencies do agree; however, that the potential for year-to-year permanence is important. To accommodate the variety of authorities that govern the permanence of MMAs, this criterion has been further modified to allow the inclusion of sites established with the expectation of, history of, or at least the potential for permanence.

*Comment C:* One commenter requested clarification of the difference between year after year protection and annual management specification, and questioned whether excluding the latter would mean certain fishery closures or areas where activities are restricted due to the presence of endangered species would not be placed on the MMA Inventory.

*Response C:* Annual management specifications are a type of fishery management technique that, because of the life cycle of the managed species or stock, typically change temporally, spatially or in level or method of protection from year to year; and have little or no potential for permanence. To address this and other comments, the “Lasting” criterion has been modified to allow inclusion of any site providing the same protection of any duration within a year, at the same location on the same dates each year, for at least two consecutive years. To accommodate the variety of authorities that govern the permanence of MMAs, this criterion has been further modified to allow the inclusion of sites established with the expectation of, history of, or at least the potential for permanence. Placement of a particular site on the MMA Inventory

based on the purpose of its restrictions, such as fishery conservation or endangered species recovery, is determined under the “Protection” criterion.

*Comment D:* One commenter requested that the definition be made more specific as to the inclusion or exclusion of sites established through general fishing regulations. The definition should also highlight the distinction between year-after-year specifications and annual management specifications.

*Response D:* The “Lasting” criterion is not intended to be used in isolation for placing a site on the MMA Inventory. To focus solely on the temporal characteristics of a particular site, this criterion has been modified to allow inclusion of any site providing the same protection of any duration within a year, at the same location on the same dates each year, for at least two consecutive years. To accommodate the variety of authorities that govern the permanence of MMAs, this criterion has been further modified to allow the inclusion of sites established with the expectation of, history of, or at least the potential for permanence. The distinction between different types of sites based on the purpose for which protections are put in place is a determination made under the “Protection” criterion.

*Comment E:* One commenter requested clarification of the definition to reflect that year-after-year protection does not mean that the boundaries stay the same.

*Response E:* We recognize that management of marine resources needs to consider that many species are not tied to a single area for all stages of their life cycle and may require measures that change on a frequent basis. A network of MPAs may be an effective tool to conserve such species as they move to different locations seasonally or during their lifecycle. However, when such species are linked to changing locations, there is no “permanence” to a managed area. Hence, such sites are not considered MMAs for the purposes of this Inventory. This criterion has been modified to allow inclusion of any site providing the same protection of any duration for the same period of time on a multi-year basis. But such protections must be at the same location and established with the expectation of, history of, or at least the potential for permanence.

*Comment F:* One commenter suggested changing the definition to “must provide year-after-year protection or protection for at least three months of each year.”

*Response F:* In response to comments this criterion has been modified to allow inclusion of any site providing the same protection of any duration within a year, at the same location on the same dates each year, for at least two consecutive years. In addition, to accommodate the variety of authorities that govern the permanence of MMAs, this criterion has been further modified to allow the inclusion of sites established with the expectation of, history of, or at least the potential for permanence. This will increase the number of sites that may be placed on the MMA Inventory and considered for the List of MPAs. Sites that exist for a single year, or whose protections vary temporally or spatially on a year-to-year basis, would not be included under the modified criterion.

*Comment G:* One commenter expressed concern that an annual three-month closure for single species provides little protection for other species or habitats in that area.

*Response G:* Depending on the nature of the threat, a year-round closure may not be necessary to provide protection for a particular site or species. On the other hand, narrowly focused restrictions may not offer sufficient protection from all activities that may adversely affect the natural or cultural resources in a specific area. For the purposes of the MMA Inventory, however, NOAA and DOI consider that the extent of protection provided beyond the specific rationale for establishing the MMA should not be a determining factor. While additional species or broader habitat-wide protection may be desirable criteria for the List of MPAs, this criterion has been modified to allow inclusion of any site providing the same protection of any duration within a year, at the same location on the same dates each year, for at least two consecutive years, in order to include a larger pool of sites in the MMA Inventory. The agencies further maintain that the potential for year-to-year MMA permanence is important. To accommodate the variety of authorities that govern MMA permanence this criterion has been further modified to provide for the inclusion of sites established with the expectation of, history of, or at least the potential for permanence.

*Comment H:* Two commenters requested that the definition be loosened to include sites with protections of less than three months to include more sites in the Inventory. One of these commenters also suggested that sites with only annual restrictions be included in the database.

*Response H:* In response to comments this criterion has been modified to allow

inclusion of any site providing the same protection of any duration within a year, at the same location on the same dates each year, for at least two consecutive years. The agencies maintain that the potential for year-to-year MMA permanence is important. To accommodate the variety of authorities that govern MMA permanence this criterion has been further modified to provide for the inclusion of sites established with the expectation of, history of, or at least the potential for permanence. Sites that exist for a single year, or whose protections vary temporally or spatially on a year-to-year basis would not be included under the modified criterion. See also *Response E* above.

*Comment I:* Three commenters questioned the exclusion of areas protected only by emergency fishery regulations under the Magnuson-Stevens Fishery Conservation and Management Act or other authorities, which may begin as temporary measures, but are then followed by permanent designations; two of these commenters also stated that the "year-after-year protection" requirement could be problematic depending on how the term "protection" is treated.

*Response I:* NOAA and DOI believe that the "Lasting" criterion, as modified, will address situations in which a site has been established under emergency rule, or other authority, for less than two consecutive years and is subsequently amended to a longer term or made permanent. The term "protection" is treated under the "Protection" criterion.

*Comment J:* One commenter noted that fish conservation areas are regularly identified and maintained through annual management processes, and that such areas must be included within the "Lasting" definition. The example currently provided under the proposed definition would exclude a local fish conservation area that has existed for more than a decade.

*Response J:* The MMA Inventory definition of "Lasting" has been modified to allow inclusion of any site providing the same protection of any duration within a year, at the same location on the same dates each year, for at least two consecutive years. The agencies maintain that the potential for permanence is important; however, and to accommodate the variety of authorities that govern MMA permanence, this criterion has been further modified to allow the inclusion of sites established with the expectation of, history of, or at least the potential for permanence. NOAA and DOI believe that these changes will address situations in which a site has been

established for a single year and is renewed in subsequent years. Sites whose protections vary temporally or spatially on a year-to-year basis, or whose protections have expired, would not be included on the MMA Inventory.

*Comment K:* One commenter recommended the "Lasting" definition include language requiring a cooperative management process between the tribes and other marine resource managers.

*Response K:* NOAA and DOI disagree. The "Lasting" definition is intended to focus solely on the temporal characteristics of a particular site. Requiring a cooperative management process between any marine resource management entities is not appropriate under this definition. In addition, such a requirement is beyond the scope of the MPA Executive Order and not warranted under the other definitions proposed for MMA Inventory criteria. Information on MMA management, including level of government and management organizations, is captured in several of the data fields proposed for the MMA Inventory.

#### 5. Comment on Proposed Criterion "Protection"

*Comment A:* One commenter deems this criterion adequate for the MMA Inventory.

*Response A:* No response necessary.

*Comment B:* One commenter supported relaxing the criterion to include areas with restrictions on single species.

*Response B:* Single-species sites can be placed on the MMA Inventory under the proposed criteria.

*Comment C:* One commenter requested clarification on why areas closed to avoid fishing gear conflicts and those subject to area-based regulations that are established only to facilitate enforcement or to limit fisheries by quota management are excluded from the "protection" definition.

*Response C:* The MMA Inventory is intended to serve as the pool of candidate sites for development of the List of MPAs called for under the Executive Order. As such, the criterion is designed to identify only those sites established with a primary purpose of long-term conservation to meet the intent of the Order. While areas closed to avoid gear conflicts, facilitate enforcement or for other purposes may also contribute to long-term conservation, this is not their primary purpose. NOAA and DOI acknowledge that such sites of high ecological value may provide some conservation

benefits; however, NOAA and DOI will not include these sites as "MMAs".

*Comment D:* One commenter expressed concern regarding the omission of certain area-based management measures under the proposed criterion and suggested the addition of an appendix listing area-based closures/management measures, and including a statistic, such as the percent of the EEZ under protection with such measures. The commenter states that without this, it gives a distorted picture of the extent of marine resource protections.

*Response D:* NOAA and DOI agree that the criterion, as proposed, may not capture all area-based management efforts in the marine environment. To make the MMA Inventory better reflect the broad range of protective restrictions used to manage marine resources and provide a broader pool of sites from which the List of MPAs will ultimately be drawn, the definition of "lasting" has been modified. However, even with this change some sites still may not be included in the MMA Inventory. NOAA and DOI believe that the MMA Inventory must differentiate between sites established for conservation and sites established for other, possibly conflicting purposes. As the MMA Inventory is intended to provide the pool of candidate sites for the List of MPAs, including every area-based management action for every governmental entity with authority over activities in the marine environment would result in an excessively broad and potentially misleading collection of sites. The purpose of the proposed MMA criteria is to narrow the multitude of sites to those with potential for inclusion on the List of MPAs. An appendix is not practicable within the current MMA database structure. Because of the varying degrees of protection and considerable spatial overlap amongst the types of MMAs, statistics may not effectively describe levels of protection and may be misinterpreted. NOAA and DOI are performing a parallel effort of resource characterization and statistical information may be captured by this activity.

*Comment E:* One commenter requested that protections offered at each site be explicitly stated.

*Response E:* The MMA Inventory is not designed to replace official agency sources for site-specific information. The MMA database includes fields for each site that reference the statutory and regulatory provisions that provide protection for its natural or cultural resources, as well as briefly summarize the area's primary restrictions. Readers

desiring the precise regulations for a particular site are directed to the appropriate source (e.g., Code of Federal Regulations, state fish and game code, etc.). Every effort will be made to keep the information in the MMA database as current as possible.

*Comment F:* One commenter remarked that distinguishing those areas that provide increased protection beyond any general protections that apply outside the site is problematic and subjective and recommended that individual States determine how to apply this term within their jurisdiction.

*Response F:* The provision is intended to recognize that a number of spatially wide-ranging provisions have been put in place to protect marine resources and differentiate them from the more focused protections envisioned for the MMA Inventory. For example, discharge of certain substances is prohibited throughout the entire U.S. EEZ (e.g., discharge of plastics) or the use of certain types of fishing gear is prohibited over very expansive ocean areas (e.g., prohibition of fish traps in the South Atlantic EEZ). This provision supports the "Area" criterion's exclusion of broad-based resources management authorities. NOAA and DOI recognize that there are unique circumstances in many states and are working cooperatively with each state to resolve questions about the application of the MMA criteria to areas needing extra consideration. The agencies also must ensure the maximum standardization practicable across a nation-wide inventory of federal, State, and tribal sites that will be used for analytical purposes.

*Comment G:* One commenter requested that areas closed to prevent fishing gear conflicts, established only to limit fisheries through quota management, or intended to facilitate enforcement be included in the initial MMA Inventory, as these areas have valuable conservation benefits.

*Response G:* See Response C.

*Comment H:* One commenter supported the inclusion of protecting subsistence uses in the marine environment and the protection of access by tribes for cultural, ceremonial and harvest activities.

*Response H:* The "Protection" definition is intended to reflect the MPA Executive Order's emphasis on the long-term conservation of natural and cultural resources within the marine environment. The agencies believe that only restricting access to these resources to specific groups or individuals, without additional provisions to protect the natural or cultural resources of a

particular site, is not sufficient to meet the "Protection" criterion.

#### 6. Comment on Proposed Definition of "Cultural"

*Comment A:* Two commenters support this definition, while encouraging the acknowledgment of subsistence uses as manageable and legitimate uses of marine resources.

*Response A:* NOAA and DOI recognize the cultural value and importance of subsistence uses and they will be addressed thoroughly and appropriately along with other activities in and uses of the marine environment. After further consideration of comments and input from all sources, NOAA and DOI have determined that subsistence use will not be included under the definition of cultural resource. The primary purpose of MMAs is to protect and conserve tangible physical resources, sites, and objects, such as individual species, communities of marine life, shipwrecks, and archaeological sites and such sites must meet all five criteria (area, marine, reserved, lasting and protection). The inclusion of subsistence use as a cultural resource is inconsistent with this approach because it is a human activity rather than a physical or tangible asset. Subsistence use of the marine environment is a very important aspect to consider and as such NOAA and DOI believe it will receive the most effective treatment under Section 4(a)(6) of the Executive Order where conflicts between user groups are addressed. This offers the best option to address opportunities for subsistence use in the competition among recreational, commercial, industrial and traditional uses for access to the same resources or areas.

*Comment B:* One commenter supports the application of the cultural resources term to physical sites or objects as well as to subsistence activities in, or uses of, the marine environment.

*Response B:* See Response A.

*Comment C:* One commenter recommended limiting inclusion to historical or cultural sites of "national significance" in line with the Historic Sites Act of 1935.

*Response C:* NOAA and DOI have determined that the MMA Inventory should be inclusive, containing all submerged historical or cultural sites presently protected by area-based management in order to support future analyses related to establishment of the National System of MPAs. The agencies will consider the Historic Sites Act of 1935 when developing criteria for the inclusion of sites on the List of MPAs.

*Comment D:* One commenter suggested creating a method for determining which shipwrecks would be considered a "cultural resource" and therefore included in the Inventory (to be consistent with other criteria that have limitations).

*Response D:* NOAA and DOI have determined that the MMA Inventory should be inclusive, containing all submerged historical or cultural sites presently protected by area-based management in order to support future analyses related to establishment of the National System of MPAs. Subsequent criteria to determine the types of "cultural resources" to be included in the National System of MPAs will be developed in later phases of this process.

*Comment E:* One commenter suggested that the proposed definition is viewed as recognizing the subsistence use for maintaining the culture of the Inuit.

*Response E:* See Response A.

*Comment F:* One commenter recommended that the definition be modified to state: "Areas of traditional subsistence use in the marine environment, and areas that contain submerged historical sites, including archaeological sites, historic structures, shipwrecks and artifacts."

*Response F:* See Response A.

*Comment G:* One commenter requested the removal of "subsistence use" from the definition, stating that it is not a resource but an activity and inconsistent with the Executive Order.

*Response G:* NOAA and DOI agree with this recommendation regarding subsistence as a use. See Response A. As indicated, the agencies have determined that subsistence use is addressed in another part of the Executive Order.

*Comment H:* Two commenters recommended that "subsistence use" be further defined to only include areas in which subsistence uses are practiced using traditional and customary gear and methods that have been also determined to be long-term sustainable fisheries.

*Response H:* See Response A.

*Comment I:* One commenter requested clarification of how the definition applies to areas with enforceable policies that protect subsistence use but do not have specific boundaries.

*Response I:* Sites that do not have specific boundaries do not meet the "area" criterion of the MMA definition. See also Response A.

*Comment J:* One commenter encouraged the recognition of subsistence activities as legitimate and manageable uses of marine resources.

*Response J:* See Response A.

#### 7. Comments on proposed MMA Inventory Data Fields

*Comment A:* One commenter deems these data fields adequate for the MMA Inventory.

*Response A:* No response necessary.

*Comment B:* One commenter suggested that fields be pre-defined when possible and available as drop downs to minimize data entry and standardize responses.

*Response B:* NOAA and DOI note that this is already the case and will continue to be so for data entry, editing and query.

*Comment C:* One commenter suggested including a pick list and a free text form for the Purpose of Protections field.

*Response C:* NOAA and DOI note that the database currently has a text form for this field and an extensive section for categorically listing resources and how they are protected.

*Comment D:* One commenter suggested identifying dates including when the information was compiled, and when MPA Center staff last reviewed the information.

*Response D:* NOAA and DOI will include the date that the program contact, known as the data owner, gives approval for the data submitted. The data submitted are reviewed by the NOAA/DOI Inventory Team prior to final approval from the program. MPA.gov will include the date of most recent updates from the data owners.

*Comment E:* Two commenters raised concerns about data analysis and preventing misinterpretation or skewed interpretation of the data.

*Response E:* NOAA and DOI are taking precautions to represent the data as accurately as possible and will include disclaimers where appropriate.

*Comment F:* Several commenters suggested adding data field categories including location, natural features, site programs and plans, primary restrictions, enforcement, type and intensity of human uses, habitat type, substrate type, boating activities, and fishing activities.

*Response F:* NOAA and DOI note that the data questionnaire already includes all of these fields.

*Comment G:* One commenter suggested including a field for nearest counties or boroughs.

*Response G:* NOAA and DOI have determined that this information is not currently necessary for the purposes of the MMA Inventory. However, each state is welcome to use the information from the Inventory in combination with

its county or borough system for individual analysis.

*Comment H:* One commenter suggested adding ocean currents, upwellings, and freshwater inputs as data field categories for the Inventory.

*Response H:* The Inventory currently includes a text field for natural features where this information may be entered; however, adding a specific field for entry of this kind of data is currently beyond the scope of the MMA Inventory. Such information may be collected as part of the National Marine Protected Area Center's regional resource characterization work, another task associated with the design of the framework for a National System of MPAs.

*Comment I:* One commenter suggested that natural features be used as "site boundaries".

*Response I:* The answer section for this question is currently a text field. Specific natural features can be entered into this box as site boundaries if needed.

*Comment J:* One commenter suggested that the enforcement field clarify that information on community programs that assist formal state or federal efforts is useful.

*Response J:* NOAA and DOI acknowledge that this data is not specifically requested, but also note that this is a text field in which descriptive information can be included if needed.

*Comment K:* One commenter suggested that "Purpose of Protections" be changed to "Purpose of the MMA" and that request information be modified accordingly to include a broad and comprehensive List of MMAs, many of which may have multiple purposes for being established.

*Response K:* NOAA and DOI will retain the data field title of Purpose of Protections and note that the Inventory contains information on sites whose primary purpose is protection of natural or cultural resources. The database includes a broad range of information and therefore covers a broad and comprehensive List of MMAs.

*Comment L:* One commenter suggested that "Primary Restrictions" be changed to "Management Program" and that information presented should identify major components of the management measures in place in the MMA, to provide a more comprehensive picture of what MMAs are set up to do.

*Response L:* NOAA and DOI note that a separate data field provides information on the programs, activities, capacities, and measures that are currently being used to manage a site. Therefore NOAA and DOI will retain

the data field title of Primary Restrictions.

*Comment M:* Two commenters asked about the "effectiveness" data field regarding the identification of the date the site last evaluated effectiveness and how this information would be used to determine if the site were effective.

*Response M:* NOAA and DOI note that the effectiveness data field does not ask "how effective is the site?" but rather if the site has effectiveness measures in place.

*Comment N:* One commenter suggested interactive GIS tools and greater flexibility and functionality in the Query the Inventory section of MPA.gov to include easier searching across categories and within categories.

*Response N:* NOAA and DOI are currently planning a major overhaul of the Query the Inventory section encompassing these and other new improvements (interactive mapping, pdf on the fly, and direct download of data sets and shape files).

#### C. Changes to the Proposed Criteria

*Area:* This criterion remains the same as the text is written in the original **Federal Register** Notice (FRN).

*Marine:* This criterion remains the same as the text is written in the original FRN.

*Reserved:* This criterion remains the same as the text is written in the original FRN.

*Lasting:* In response to comments this criterion has been modified to allow inclusion of any site providing the same protection of any duration for the same period of time at the same location for a minimum of two consecutive years. This criterion has been further modified to allow the inclusion of sites established with the expectation of, history of, or at least the potential for permanence. This will increase the number of sites that may be placed on the MMA Inventory and considered for the National System and List of MPAs. Sites that exist for a single year, or whose protections vary temporally or spatially on a year-to-year basis, would not be included under the modified criterion.

*Protection:* This criterion remains the same as the text is written in the original FRN except additional clarification and examples are given regarding its application.

*Cultural:* In response to comments this criterion has been modified to delete subsistence from the definition of cultural resource. The primary purpose of MMAs is to protect and conserve tangible physical resources, sites and objects, such as individual species, communities of marine life, shipwrecks,

and archaeological resources. The inclusion of subsistence use as a cultural resource is inconsistent with this approach because it is a human activity rather than a physical or tangible asset. Subsistence use of the marine environment is a very important aspect to consider. However, NOAA and DOI believe it will receive the most effective treatment under Section 4(a)(6) of the Executive Order where conflicts between user groups are addressed. This offers the best option to address opportunities for subsistence use in the competition among recreational, commercial, industrial and traditional uses for access to the same resources or areas.

#### *D. Final MMA Inventory Criteria and Data Fields*

**Area:** Must have legally defined geographical boundaries, and may be of any size, except that the site must be a subset of the U.S. federal, State, commonwealth, territorial, local or tribal marine environment in which it is located. Application of this criterion would exclude, for example, generic broad-based resource management authorities without specific locations and areas whose boundaries change over time based on species presence.

**Marine:** Must be: (a) ocean or coastal waters (note: Coastal waters may include intertidal areas, bays or estuaries); (b) an area of the Great Lakes or their connecting waters; (c) an area of lands under ocean or coastal waters or the Great Lakes or their connecting waters; or (d) a combination of the above. The term "intertidal" is understood to mean the shore zone between the mean low water and mean high water marks. An MMA may be a marine component part of a larger site that includes uplands. However, the terrestrial portion is not considered an MMA. For mapping purposes, an MMA may show an associated terrestrial protected area.

NOAA and DOI intend to use the following definition for the term "estuary": "Part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage, and extending upstream to where ocean-derived salts measure less than 0.5 parts per thousand during the period of average annual low flow." Application of this criterion would exclude, for example, strictly freshwater sites outside the Great Lakes region that contain marine species at certain seasons or life history stages unless that site is a component of a larger, multi-unit MMA. However, upon request the

agencies will work with individual states, commonwealths and territories to examine unique conditions which may affect applicability of the term "estuary". Estuarine-like sites on tributaries of the Great Lakes will be considered for inclusion if they are located within the eight-digit U.S. Geological Survey cataloging unit adjacent to a Great Lake or its connecting waters.

**Reserved:** Must be established by and currently subject to federal, state, commonwealth, territorial, local or tribal law or regulation. Application of this criterion would exclude, for example, privately created or maintained marine sites.

**Lasting:** Must provide the same protection, for any duration within a year, at the same location on the same dates each year, for at least two consecutive years.

Must be established with an expectation of, history of, or at least the potential for permanence.

Application of this criterion would exclude, for example: Areas subject only to temporary protections, such as areas protected only by emergency fishery regulations under the Magnuson-Stevens Act, which expire after 180 days.

**Protection:** To be included in the MMA Inventory, the site:

Must have existing laws or regulations that are designed and applied to afford the site with increased protection for part or all of the natural and submerged cultural resources therein for the purpose of maintaining or enhancing the long-term conservation of these resources, beyond any general protections that apply outside the site.

Application of this criterion would exclude restricted areas that are established for purposes other than conservation. For example, the term would not include areas closed for navigational safety, areas closed to safeguard modern man-made structures (e.g., submarine cable no-anchor zones), polluted shellfish-bed closure areas, areas closed to avoid fishing gear conflicts, and areas subject to area-based regulations that are established solely to limit fisheries by quota management or to facilitate enforcement.

**Cultural:** In addition, the Executive Order uses the term cultural resources. NOAA and DOI interpret this to mean any submerged historical or submerged cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts in the marine environment.

Taken together, these six definitions and criteria provide the basis for

selecting sites to be included in the MMA Inventory.

#### **MMA Inventory Data Fields**

The MMA Inventory database consists of 35 main fields divided into 5 main topic sections. These inventory fields are used to gather site-specific information including (but not limited to) site description, legal authorities, management tools, habitat information, species information, location, and size. Please refer to MPA.gov "inventory database description" web page at [http://www.mpa.gov/inventory/database\\_description.html](http://www.mpa.gov/inventory/database_description.html) for full list and explanation of the data fields.

Dated: December 29, 2004.

**Conrad C. Lautenbacher, Jr.,**

*Under Secretary of Commerce for Oceans and Atmosphere.*

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### **COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

#### **Request for Public Comments on a Commercial Availability Request under the Caribbean Basin Trade Partnership Act (CBTPA)**

January 19, 2005.

**AGENCY:** The Committee for the Implementation of Textile Agreements (CITA)

**ACTION:** Request for public comments concerning a request for a determination that certain yarns, for use in chief-weight cotton sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA

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**SUMMARY:** On January 14, 2005 the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Outlast Technology, Inc. of Boulder, CO and Bernette Textile Co, LLC of New York, NY, alleging that certain colored open end spun yarns ranging in size from 6/1 to 18/1 English count (10.16/1 to 30.47/1 metric) of a blend of reclaimed and reprocessed cotton and not less than 35 percent nor more than 49 percent by weight of Outlast licensed phase change acrylic staple fibers produced under license from Outlast, for use in chief weight cotton sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that such apparel made from such yarn be eligible for preferential treatment under the CBTPA. This is a refiling of a previous petition regarding the subject yarn. CITA hereby solicits