



## STATE OF NEW YORK

GEORGE E. PATAKI  
GOVERNOR

June 3, 2004

Dear Admiral Watkins:

Thank you for the opportunity to provide comments on the United States Commission on Ocean Policy (Commission) *Preliminary Report of the U.S. Commission on Ocean Policy, Governors' Draft*. This report provides a comprehensive evaluation of our nation's ocean resources and, as a member of the Pew Oceans Commission, I am pleased that many of the recommendations coincide with those of the Pew Oceans Commission Report entitled *America's Living Oceans*.

New York State enjoys the third longest coastline of all of our Nation's coastal states, and over three quarters of our eighteen million citizens live within the State's coastal region. Accordingly, federal ocean policy is a high priority to this State. New Yorkers treasure our State's coastal area for its beauty, recreational opportunities, quality of life, and economic vitality. Our Atlantic Ocean, Hudson River Estuary, and Great Lakes regions have distinct attributes, and each face unique environmental and economic challenges. For this reason, New York appreciates the complexity and diversity of the issues addressed by the Commission.

The Commission's report strives to present a vision, guiding principles and concepts for ocean and Great Lakes coastal policy and management. The organizational structures, including the short-term transition to be directed by the National Oceans Council and a strengthened National Oceanic and Atmospheric Administration as well as the long-term Cabinet-level commitment, show great promise for the future use and stewardship of our coastal resources. The Commission's initiatives provide the framework to address problems which coastal states face, thereby enhancing and ensuring the long term sustainability and public benefits that our coastal environment provides.

New York State strongly supports the report's ecosystem-based approach to solve coastal concerns, supported by solid objective science and relying on a comprehensive monitoring program. The recommendations as well are cognizant of the important interplay among the social, economic and ecological factors and supportive of ocean and Great Lakes education and stewardship. The report recognizes important new tools for ecosystem management such as marine protected areas, but the report could be strengthened in its discussion of habitat conservation and restoration, especially in highly urbanized states such as New York.

Our experience demonstrates that the principles on which the Commission based its report are vital for good environmental stewardship. For instance, we have used ecosystem-based management to develop and implement estuary plans for Long Island Sound, Peconic Bay and South Shore Estuaries on Long Island, New York Harbor and the Hudson River. Solid objective science justifies New York State's leading role in a consortium of the eleven Northeast states in the Regional Greenhouse Gas Initiative to reduce carbon dioxide emissions from power plants and the benefits this effort will have for coastal waters. The balance of social, economic and ecological factors are reflected in New York's recent Superfund and Brownfields law aimed at the restoration and revitalization of New York's contaminated sites, many of which are located on waterfronts. Finally, through the Center for Rivers and Estuaries on the Hudson, New York is developing a world-class site to further collaborative research, education and stewardship of water resources.



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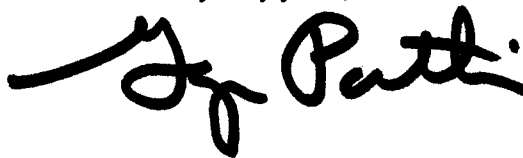
The Commission's recommendations generally support an effective overall strategy and direction for the future preservation of our Nation's coastal resources. I believe, however, that the report overlooks a central concept that is vital to build on and leverage existing efforts and relationships that are already in place at the state and local level. Although the Atlantic and Pacific Oceans clearly are national and international resources, the states and local governments ultimately bear the responsibility for effective land use and resource management and pollution control in the coastal zone. The states need a greater commitment of institutional, technical and financial support from the federal government to address the urgent issues addressed in the report. I urge the Commission to provide greater recognition of this concept in their final report.

The significant redirection of federal policy that the report advocates will not come without substantial federal investment. Absent specific details of the level of funds to be made available to states, I am concerned that funding will be insufficient for states to carry out the many positive recommendations of the Commission. There are also financing opportunities for many state programs that go beyond the report's proposed Trust Fund, such as enhancing and expanding the use of existing Land and Water Conservation Fund revenue, raising the cap on funding for State Coastal Management Programs, funding the Wet Weather Quality Act of 2000 and increasing appropriations for the Clean Water Revolving Loan Program that the report has not explored. The Trust Fund resource allocation proposed in the report will not adequately address the needs of states with longer shorelines and greater coastal populations.

In general, the Commission should be applauded for its recognition of the essential role which the states play in shaping and implementing regional and national policy for ocean resources. At the same time, I encourage you to strengthen the report's recommendations by better taking into account the needs of the states for adequate federal funds and appropriate federal direction in the implementation of actions that will ensure the long-term health and viability of our ocean resources.

I have enclosed for your consideration additional detailed comments on the report. Thank you again for providing New York with the opportunity to offer comments on this visionary and comprehensive report and if you have any questions, please contact New York State Environmental Conservation Commissioner, Erin M. Crotty, at (518) 402-8540. Together, we can secure a sustainable future for our oceans.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. P. Path". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Admiral James D. Watkins, USN  
Chairman - U.S. Commission on Ocean Policy  
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Washington, D.C. 20036

Enclosure

# Comments of New York State on the U.S. Commission on Ocean Policy

## Chapter 1 - Recognizing Ocean Assets and Challenges

New York State Recommendation: The Commission's report effectively describes oceans and coastal waters as national assets. It is particularly strong in its description of the economic, environmental and social benefits resulting from the natural resources of our oceans. However, for a fully balanced approach, as envisioned in the federal Coastal Zone Management Act of 1972 (CZMA), the report should also look on the coastal urban centers as assets, not only as a potential causes of degradation to coastal resources. The older, established cities and villages are an important part of the coastal economy. Ports, working harbors, recreational access and tourism are found in existing centers. The existing centers also are often marked by brownfields and underused waterfront land, wasting past public investment. The report should consider the environmental and economic benefits that could accrue to the nation's oceans and coasts by reclaiming and recycling underused or abandoned urban land, including lessening pressure for the development of open coastal lands.

## Chapter 2 - Understanding the Past to Shape a New National Ocean Policy

New York State Comment: The historical overview leading to the advocacy of a new national ocean policy is persuasive. New York State concurs with this assessment and the need to shape a new national ocean policy.

## Chapter 3 - Setting the Nations's Sights

New York State Comment/Recommendation: Overall, the Vision, Guiding Principles and Concepts establish a sound and visionary foundation for the report. The report's definition of sustainability as "meeting the needs of the present generation without compromising the ability of future generations to meet their needs" is simple and elegant, and should be considered in an environmental policy context beyond this report.

The State strongly supports an ecosystem-based management approach that considers the interaction of the human-made and natural environments. This approach recognizes that marine ecosystems cannot be managed as if composed of separate entities. Human impacts are of many kinds and have multiple and inter-related effects. A comprehensive, ecosystem-based approach is the only way to proceed toward solutions to these types of problems.

The research agenda proposed by the Commission is heavily weighted toward natural sciences as a foundation for decision-makers. In addition to the natural sciences, greater understanding of community and coastal economics is also needed, as is more refined and sophisticated institutional arrangements for interstate and inter-municipal cooperation to protect and restore shared resources. New York State recommends expanding the report to include research to support a greater understanding of community and coastal economics.

## Chapter 4 - Enhancing Ocean Leadership and Coordination

New York State Comment: A National Ocean Council and a Presidential Council of Advisors on Ocean Policy would better coordinate multi-issue overlapping areas of responsibilities and issues among Federal agencies. These councils would elevate coastal issues to a more visible and active Executive level. New York State agrees that this type of attention and direction is needed to enhance ocean leadership and coordination, but not create new bureaucracies.

## **Chapter 5 - Advancing a Regional Approach**

New York State Comment: The report recommends the realignment of federal agency regions with ecosystem boundaries. In principle, this option is appealing, but the State urges caution to avoid having numerous federal offices/points of contact within a single state that encompasses multiple major watersheds. Consolidation must be considered at the same time as realignment to reduce the number of points of contact for the federal-state interface.

**Recommendation 5-1. State, territorial, tribal, and local governments and nongovernmental participants should use the broad, flexible process developed through the National Ocean Council to begin the establishment of regional ocean councils.**

New York State Comment/Recommendation: New York State endorses the Commission's recommendation for a voluntary, rather than a mandatory, regional ocean council process, and is pleased that the Commission recognizes that the regional councils should support, not supplant, existing issue-specific and sub-regional ocean and coastal programs. A model already exists through Coastal America's regional teams (e.g., the Mid-Atlantic Regional Implementation Team which is made up of representatives from all of the involved federal agencies, the states, the aquariums, and other interests). Coastal America is recognized later in the report (page 130) but there is no consideration of using this existing organization and its regional components for ocean policy initiatives beyond habitat restoration and education projects. The Estuarine Habitat Restoration Council is also recognized in the Commission's report, but it is not offered as an existing option for expanded ocean coordinating functions. The State recommends carrying the charge to the regional councils a step further, so that the councils can provide active support and enhancement to ongoing sub-regional initiatives, particularly National Estuary Program (NEP) Management Conferences and state or regional estuary and watershed management partnerships.

**Recommendation 5-3. Each regional ocean information program, with guidance from the National Ocean Council, should coordinate the development of a regional ecosystem assessment, to be updated periodically.**

New York State Comment/Recommendation: New York State supports the proposal to establish periodic regional ecosystem assessments. Later in the report, the Commission suggests that state Coastal Zone Management programs provide state assessments to feed into these regional assessments. New York State recommends recognizing in the final report that this positive concept will require significant financial investment at the state level.

**Recommendation 5-4. Congress should establish regional boards to administer regional ocean information programs throughout the nation. Program priorities should be carried out primarily through a grants process.**

New York State Comment/Recommendation: New York supports this recommendation. The State further recommends that the Port Authority of New York and New Jersey (Port Authority) be included as a member of the regional board for this region.

## **Chapter 6 - Coordinating Management in Federal Waters**

**Recommendation 6-2. Congress, working with the National Ocean Council and regional ocean councils, should establish a coordinated, ecosystem-based offshore management regime that sets forth guiding principles for the balanced coordination of all offshore uses. It should recognize the need, where appropriate, for single-purpose ocean governance structures that are comprehensive and fully integrated with and based on the principles of the new offshore management regime. The regime should also include a process for planning for new and emerging activities and a policy that a reasonable portion of the resource rent derived from such activities is returned to the public.**

New York State Recommendation: New York State notes the importance of this recommendation. The Commission is advised to separate the planning and directing of resource rent issues into separate recommendations and provide a more detailed description of the process it envisions for making decisions among competing uses of offshore areas.

**Recommendation 6-3. The National Ocean Council should develop national goals and guidelines leading to a uniform process for the effective design and implementation of marine protected areas.**

New York State Comment: New York State supports this recommendation. Federal leadership on this issue is needed. National goals and guidelines, based on scientific information, with input from state and local interests, would help facilitate the appropriate design and implementation of marine protected areas.

## **Chapter 7 - Strengthening the Federal Agency Structure**

New York State Comment: New York State agrees that, in general, consolidation (and additional coordination) of responsibilities across federal agencies would provide real reform and eliminate redundancies. In fact, all levels of government would benefit by considering some efforts to provide better focus and clarity of responsibilities necessary to manage the coastal resources. However, while the consolidation of major ocean and coastal functions and programs of federal agencies is laudable, moving all national ocean and coastal functions and programs might undermine the well-established balance currently provided through multi-purpose roles in some agencies. Rather than consolidating several agencies in a primarily single-purpose natural resources agency, the federal government's approach might be modeled on the objectives of the CZMA and the successes of networked multi-agency management structures provided through several State Coastal Management Programs.

## **Chapter 8 - Promoting Lifelong Ocean Education**

New York State Comment: In order to improve ocean related education the Commission should consider opportunities to improve ocean science based education programs developed with local school district involvement identifying the need for coastal-ocean professional training. Formal and informal education for K-12, undergraduate, graduate and continuing adult learners will be critical

for creating a concerned and knowledgeable public, sophisticated decision-makers, motivated workers and dedicated and expert natural resource scientists. Sea Grant could supplement its current collective focus and expertise toward this additional educational requirement with one or more educational specialists added to each state Sea Grant office and activities for K-12, graduate student fellowships and distinguished professorships.

While citing national-level ocean education programs of particular significance in the Participants in Coastal Education section, the report makes no mention of two exemplary national initiatives which the National Oceanic and Atmospheric Administration (NOAA) administers with well developed and excellent ocean education efforts: the National Marine Sanctuary Program, with 13 programmatic sites in the Atlantic and Pacific oceans and Gulf of Mexico; and the National Estuarine Research Reserve System (NERRS), with 26 individual programmatic sites on the Atlantic, Pacific and Gulf coasts.

NERRS, as a partnership between NOAA and individual coastal states, has well-developed formal education programs, and holds great potential to grow ocean education, especially in light of the report's statement that ocean-related education is essentially a state responsibility. The report neglects to adequately acknowledge or represent the existing effort and future potential of the education programs of the NERRS, its efforts to bridge the gaps between scientists and educators, its exemplary Coastal Training Program, and Estuary Live (an interactive live feed estuary science program available to schools nationwide).

The State strongly supports the report's discussion in the sections on Science Literacy and Future Ocean Leaders.

## **Chapter 9 - Managing Coasts and their Wetlands**

New York State Comment: As mentioned earlier, New York supports adoption of a watershed or ecosystem focus for a national oceans policy, recognizing that marine ecosystems cannot be managed as if composed of separate entities. A comprehensive, ecosystem-based approach is the only way to proceed toward solutions to the issues outlined in the report. The Coastal Nonpoint Pollution Control Program (Coastal Zone Act Reauthorization Amendments of 1990 Section 217) has been very successful in restoring and protecting water quality through the broad application of cost effective management measures for watershed protection.

**Recommendation 9-1. Congress should reauthorize the Coastal Zone Management Act to strengthen the planning and coordination capabilities of coastal states and enable them to incorporate a coastal watershed focus and more effectively manage growth. Amendments should include requirements for resource assessments, the development of measurable goals and performance measures, improved program evaluations, additional funding to adequately achieve the goals of the Act, incentives for good performance and disincentives for inaction, and expanded boundaries that include coastal watersheds.**

New York State Comment: The report contains a clear account of some of the barriers to better coastal management. The discussion properly highlights the problem of insufficient appropriations dedicated to protecting coastal resources. The State also strongly supports the recognition of the Coastal Zone Management Program as a principal tool for fostering comprehensive management. We concur with the recommendations for strengthening the ability of state Coastal Management Programs to more comprehensively manage coastal resources, including the ideas for resource

assessments, a coastal watershed focus, and growth management. However, a significant increase in staff resources and funding level would be necessary to conduct such resource assessments, and extend the reach of the program – the coastal zone boundary – to the upstream extent of tidal influence. In New York this would include the tidally influenced portions of tributaries of the Hudson River, and the entire area that drains to the Great Lakes.

The need to better manage and guide growth away from sensitive areas is an appropriate goal, but the challenge represented by home rule in states such as New York, where land use decisions are largely the purview of local governments, cannot be ignored. The State also agrees that federal funding and infrastructure programs which provide incentives leading to the degradation of coastal environments should be revised to be more in line with ecosystem-based goals and plans.

New York State strongly advises the Commission to be cautious about creating disincentives for states which do not meet their goals. If the Commission's desired result is better assessment and management, this report language could be counterproductive to achieving those goals. This dilemma points to the need for proper funding and additional technical support to states.

**Recommendation 9-2. Congress should consolidate area-based coastal management programs in a strengthened NOAA, capitalizing on the strengths of each program. At a minimum, this consolidation should include the Coastal Zone Management, National Estuarine Research Reserve System, and National Marine Sanctuary programs currently administered by NOAA and additional programs administered by other agencies: the Coastal Barrier Resources System; the National Estuary Program; and the U.S. Fish and Wildlife Service Coastal Program.**

New York State Comment/Recommendation: New York State has benefitted from the designation of three of its major estuaries – Long Island Sound, the Peconic Estuary and New York/New Jersey Harbor – under the NEP. We and our partners are actively implementing the Comprehensive Conservation and Management Plans (CCMPs) at costs exceeding one billion dollars to the state and local governments. From our very positive experience and track record, New York understands that it is essential to use the enforceable mechanisms of the Clean Water Act to successfully implement our CCMPs, and particularly to secure the necessary investment of state and local government revenue to do so. We have adopted Total Maximum Daily Loads (TMDLs) for nitrogen inputs to estuaries and have amended State Pollutant Discharge Elimination System (SPDES) permits, and initiated enforcement actions to assure the municipal dischargers stay on schedule to achieve the TMDLs. We are initiating TMDLs for pathogens and toxics and have worked with EPA to establish vessel no-discharge zones. The partnership with EPA and incorporation of the NEP CCMPs under the Clean Water Act are essential to maintain the progress we have made in cleaning up our estuaries. We support a significantly increased NOAA role and investment in the NEP partnership, and the strong support of a regional ocean council (see above). Given the success of the NEP in New York, we are concerned with the recommendation to move the NEP to NOAA.

Similarly, New York State also has reservations about relocating the United States Fish and Wildlife Service (USFWS) Coastal Program to NOAA. This program integrates the expertise of the fish and wildlife experts with a coastal focus that are not part of NOAA's mission. The work that the USFWS Coastal Program has performed for the NEPs in New York has been excellent and incredibly cost-effective.

**Recommendation 9-4. Congress should amend CZMA, the Clean Water Act, and other federal laws where appropriate, to provide better financial, technical, and institutional support**

**for watershed initiatives. Amendments should include appropriate incentives and flexibility for local variability. The National Ocean Council (NOC) should develop guidance concerning the purposes, structures, stakeholder composition, and performance of such initiatives.**

New York State Comment: New York State support this recommendation that would incorporate a watershed focus into federal laws, and that recognizes the need for Congress to provide better financial, technical, and institutional support for watershed initiatives. Many activities, such as the removal of contaminated sediments associated with dredging operations, are impacted by what takes place upstream. This recommendation recognizes the need for the tools and resources to prevent the migration of contaminated sediments from uplands into the coastal waters.

## **Chapter 10 - Guarding People and Property against Natural Hazards**

**Recommendation 10–1. The NOC should review and recommend changes to the U.S. Army Corps of Engineers (Corps) Civil Works Program to ensure valid, peer-reviewed cost-benefit analyses of coastal projects, provide greater transparency to the public, enforce requirements for mitigating the impacts of coastal projects, and coordinate such projects with broader coastal planning efforts.**

New York State Comment: In regards to cost/benefit analysis studies, traditional economic analysis discounts future benefits and costs compared to immediate benefits and costs. As a result, future benefits associated with long term risk reduction compare poorly with shore defense construction. This economic discounting is important and many "smart growth" options compare unfavorably to structural options even though the structures may be overwhelmed by storm conditions exceeding design standards, and even though the structures have a limited life span which necessitates additional future projects.

New economic analysis should be developed to favor long term adaptive re-development when funding is available and conditions warrant. Non-structural options benefit natural resources and provide permanent risk reduction that is not adequately valued in traditional cost/benefit analysis. In addition, natural resource restoration in high risk areas adds value to adjacent properties, benefiting both owners and the local property tax base. Traditional cost/benefit analysis does not recognize this ancillary benefit. Finally, the cost of structural measures must include the costs associated with necessary future measures in a meaningful way, and probably should include costs associated with limited future management options as a result of structure construction and associated a t-risk development.

Our experience in New York also suggests that there could be significant improvements in Corps projects where peer review of the science/engineering has occurred. Peer review of the science/engineering will also lead to greater public acceptance of the results. The State believes that the science and engineering analysis performed for Corps studies should also be peer-reviewed.

Finally, the enforcement of project mitigation requirements should extend to projects already constructed. There are many examples of Corps projects in New York which have had dramatic and adverse impacts on coastal habitats and coastal processes. Mitigating those impacts would be an important first step in returning the coastal system to a more natural condition.

**Recommendation 10–3. The NOC should recommend changes in the National Flood Insurance Program (NFIP) to reduce incentives for development in high-hazard areas.**



New York State Comment/Recommendation: Regarding changes in the NFIP, the report accurately and candidly discusses structural problems with the NFIP and management of development in coastal hazard areas, and should be endorsed. The Commission also should establish disincentives to building or rebuilding in coastal high-hazard zones by requiring actuarial insurance rates.

**Recommendation 10–4. The NOC should encourage Congress to increase financial and technical assistance to state and local entities for developing hazards mitigation plans consistent with requirements of FEMA. The NOC should also identify opportunities for conditioning federal hazards-related financial and infrastructure support on completion of FEMA-approved state and local hazards mitigation plans.**

New York State Comment/Recommendation: The NOC should encourage Congress to provide additional funding, technical assistance and incentives for States and local governments to formulate mitigation plans is sound but mitigation plans can be improved. Currently, municipalities are free to choose from a menu of items to include in mitigation plans. Instead, risk should be identified for a participating community and targeted levels of risk reduction should be required to complete a satisfactory plan. This should include measures to address flood and erosion risk areas.

## **Chapter 11 - Conserving and Restoring Coastal Habitats**

New York State Comment: The recommendations in this chapter emphasize federal agency coordination, as well as increased and focused federal funding sources. The recommendations are generally sound, but the State is concerned regarding the tendency to overly bureaucratize the system, creating oversight agencies that may have little impact on how other federal agencies operate or coordinate habitat-related activities.

The emphasis on assessing coastal habitat conservation needs within a regional context, in coordination with other regional needs and issues, is particularly encouraging. We agree that a baseline ecosystem assessment is a necessary prelude to any conservation planning. New York State would strongly support this concept, in combination with the recommended increased funding for project monitoring. Recommendations for better science and technologies related to restoration are also important, and promotion of a comprehensive national wetlands protection program (beyond the fragmentary Clean Water Act coverage) is a welcome suggestion.

Potential gaps in the report's recommendations include a very limited discussion of the habitat values that provide the reasons for supporting a substantial public investment in protection and restoration of coastal habitats and landscapes and a lack of discussion concerning community/volunteer efforts. Given the magnitude of the problem, future funding will not likely be sufficient to meet public need without the assistance of substantial volunteer effort. This issue, in turn, relates to increased need for public outreach and education for this and many other aspects of ocean policy. The Commission should consider some discussion of the relationship, in terms of prioritization, between restoration and protection. Finally, with the emphasis on top-down coordination, there is little recognition in the chapter that many coastal resource protection decisions are made at the local level and consequently are not adequately addressed in this report.

**Recommendation 11–1. Congress should amend CZMA to authorize and provide sufficient funding for a dedicated coastal and estuarine land conservation program**

New York State Comment/Recommendation: New York State strongly supports this recommendation, and notes that New York's Open Space Conservation Plan is fully consistent with the Commission's recommended planning process. This recommendation could provide funding to augment the Habitat Protection Plan that the Port Authority has with the states of New York and New Jersey, in which the Port Authority provided \$30 million to each state for the purchase of environmentally valuable land, identified by the state, for the purpose of preserving property, saving critical animal habitats and creating areas for public access to the waterfront. The Commission is urged to more specifically address the source and magnitude of funding to be provided for the proposed program. For example, the Commission should consider recommending increasing funds and dedication of a portion of the Land and Water Conservation Fund for this purpose. New York State also urges the Commission to broaden this recommendation to include the provision of funds for improving access to the coast.

**Recommendation 11-4. The NOC should coordinate development of a comprehensive wetlands protection program that is linked to coastal habitat and watershed management efforts and should make specific recommendations for the integration of the Clean Water Act Section 404 wetlands permitting process into that broader management approach.**

New York State Comment/Recommendation:

The State believes that a program such as that recommended in the report is essential to incorporate the states as full partners in development of a comprehensive wetlands protection program. The State would like to note, however, that the report highlights crises in the Everglades, Louisiana and San Francisco regarding wetlands losses. The accelerated rate of wetlands loss in Jamaica Bay that may result in loss of all wetlands in the bay in the next 20 years should similarly be highlighted. While not as extensive as Louisiana, it is occurring for reasons not yet well understood and in the Gateway National Recreation Area – next to one of the largest urban populations in the country.

## **Chapter 12: Managing Sediment and Shorelines**

New York State Comment/Recommendation: The report's discussion of navigational dredging highlights problems with handling dredged material, source management, and the impacts of dredging and contaminants. The report then goes on to recommend streamlined regulatory processes without recognizing that the permit reviews are long because difficult issues must be addressed. Any initiative to streamline the dredging process must be careful to include resolution of these issues, which is not discussed in this section.

Maintenance of navigation channels causes recognized impacts to adjacent areas. In particular, projects that allow dredging to below the authorized channel depth for "advance maintenance" and "over-dredging" reduce the frequency of maintenance (and costs), but incur environmental impacts as a result. The report should consider recommendations to identify these extra dredging depths as potential problems and require them to be included in advance analysis of the project, to advocate reducing channel depths to the minimum necessary to maintain safe navigation, and to formulate plans for more frequent maintenance if necessary.

Regarding the discussion of beach nourishment, the report recognizes opposing views on this subject without resolving them. At a minimum, the report should note that the use of beach fill often does nothing to reduce the long term potential for damages because it allows development to remain in high risk locations vulnerable to future erosion. This continuing risk dictates a commitment to fill maintenance and more shore protection projects in the future. Beach fills may also encourage more

investment in high risk locations due to the perception that government is committed to long term shore protection.

**Recommendation 12-1. The NOC should develop a national strategy for managing sediment on a regional basis, taking into account both economic and ecosystem needs. The strategy should: consider adverse impacts on marine environments due to agriculture, dredging, pollutant discharges, and other activities that affect sediment flows or quality; ensure involvement of port managers, coastal planners, and other stakeholders in watershed planning; and require that ecosystem-based management principles serve as the foundation for permitting processes for activities that affect sediment.**

New York State Comment/Recommendation: New York strongly supports this recommendation. Currently, the federal government continues to treat performance requirements for dredged material placement in the ocean and estuaries differently across the nation, at significant disadvantage and costs to some locales. Even within New York, the federal view of open water disposal between the Atlantic Ocean and Long Island Sound are directly contradictory. Coordination of sediment management plans on a scale equivalent to regional ocean council areas will benefit the process, particularly in regards to evaluating and implementing large-scale regional alternatives to open water disposal. However, sediment is generated and becomes contaminated within a watershed, and planning to minimize the generation of sediment or to implement local solutions to disposal needs must be done at the watershed level, using regional dredging teams where possible. We suggest that regional sediment management teams be organized at the major watershed level, and develop and implement comprehensive, cooperative Dredged Material Management Plans.

**Recommendation 12-2. The Corps should ensure that its selection of the least-cost disposal option for dredging projects reflects a more accurate accounting of the full range of economic and environmental costs and benefits for options that reuse dredged materials, as well as for other disposal methods.**

New York State Comment/Recommendation: New York State supports the recommendation, but notes that there is a need to develop improved methods for quantifying the environmental costs of inexpensive disposal options. The report should consider advocating revision of the Corps mandate to dispose dredged sediment in the least cost manner (often ocean dumping) and suggest instead that the Corps fund the placement of dredge material in a manner which best supports restoration of natural processes. In particular, if it can be shown that the least-cost disposal option has significant detrimental impacts, it should be replaced with a more beneficial option.

**Recommendation 12-3. The National Dredging Team and regional dredging teams should begin to implement more ecosystem-based approaches. The National Dredging Team should implement the recommendations of the 1994 report to the Secretary of Transportation, *The Dredging Process in the United States: An Action Plan for Improvement*, with a priority of developing and implementing a streamlined permitting process. Regional dredging teams, working with regional ocean councils, should establish sediment management programs that include watersheds, coastal areas, and the nation's shoreline.**

New York State Comment/Recommendation: New York State supports the recommendation. The recommendations of the 1994 report to the Secretary of Transportation call for establishing teams, holding pre-application meetings, creating application checklists, improving federal interagency review and a Corps/EPA Memorandum of Understanding. These measures were supposed to be

implemented some time ago, but continue to be plagued by two fundamental problems – timing and information. These concerns are of particular importance in coordinating federal proposals with state 401 Water Quality certification.

Regarding timing, the federal schedule for project development and bidding does not provide state regulatory staff with sufficient notice of the project or request for state water quality certification. Potential environmental obligations for contractor operations, equipment and ultimate dredge material management are also not adequately considered during the bid process. Once those obligations become known, the complaint is that the bid award did not contemplate the additional time or costs of these requirements and a conflict is guaranteed. All state requirements expected from the state 401 certification should be reflected in the request for bids before a bid award is made.

Regarding information, federal resistance to state environmental windows for doing work is premised on poor information about actual conditions and risks. A baseline study of target species of concern in specific areas would provide certain justification for all future project schedules. Such a baseline study approach, suggested elsewhere in the report for state and regional ecosystem assessments, is appropriate here as well.

In addition, this recommendation cites a number of reasons why dredge permitting is slowed, including problems disposing of contaminated material. As noted previously, it would be unwise to "streamline" the permit process at the expense of proper disposal of contaminated material. Proper review and safe handling of contaminants must be part of the permit approval process.

**Recommendation 12-4. The Corps, NOAA, EPA, and United States Geological Survey (USGS) should develop a strategy for improved assessment, monitoring, research, and technology development to enhance sediment management. Congress should modify its current authorization and funding processes to encourage the Corps to monitor outcomes from past projects and study the cumulative, regional impacts of its activities within coastal watersheds and ecosystems.**

**Recommendation 12-5. EPA, working with other appropriate entities, should develop a coordinated strategy for assessment, monitoring, and research to better understand how contaminated sediment is created and transported, and to develop technologies for better prevention, safer dredging of such sediment, and more effective treatment after it is recovered.**

New York State Comment: New York State supports these recommendations calling for an interagency strategy to enhance sediment management; funding to encourage the Corps's monitoring and study activities; and a proposal for EPA to develop a coordinated strategy to assess, monitor and research the contamination, transport and management of sediment. Development of the strategy called for in these recommendations would serve to complement the ongoing Contaminant Assessment and Reduction Program (CARP) in which the Port Authority, the states of New York and New Jersey, the Corps and EPA are partners. Additional science on how to clean contaminated material, and funding sources for doing so, is badly needed.

The Commission may want to review recent programs at US Army Engineer Research and Development Center and the work of Great Lakes Dredge Team. These programs would show the Corps's ability to consider the beneficial use of dredged material and regional dredge management policies. However, limited funding for Corps maintenance dredging in major waterways limits the exploration of beneficial use options. The funding issue should be addressed in the report.

## **Chapter 13 - Supporting Marine Commerce and Transportation**

New York State Comment/Recommendation: Sustainable inter-modal marine transportation will require a reliable vehicle for federal assistance for infrastructure improvement projects. Congressional action to sustain and grow a viable inter-modal transportation infrastructure is warranted, as supported by the Commission's report. Support for marine commerce and transportation should also include facilitating coordination with international partners (i.e. through the International Joint Commission (IJC)).

Although this chapter goes into substantial characterizations of the values and operations of ports, there is no mention of the prospect of operating "Green Ports" such as the Port of Houston initiative and others. Environmentally sound management of port operations on a holistic basis via the use of environmental management systems or other tools is critical to ensuring the viability of these ports as natural resources as well as economic engines. The Commission should consider some discussion of "Green Port" initiatives.

### **Recommendation 13–2. Congress should codify the Interagency Committee for the Marine Transportation System and place it under the oversight of the National Ocean Council.**

New York State Comment: New York State supports the recommendation and the call for the Interagency Committee for the Marine Transportation System to recommend strategies and plans for alternate funding scenarios to meet short and long-term demands on the marine transportation system. Specifically, for the Port of New York and New Jersey cargo volumes are projected to increase, with high costs associated with port and intermodal infrastructure improvements. Alternative funding sources will be required to ensure that enhancements to regional marine transportation system elements, which are needed to accommodate the anticipated growth in maritime commerce, are completed.

**Recommendation 13–5. The U.S. Department of Transportation (DOT), working with other appropriate entities, should establish a national data collection, research, and analysis program to provide a comprehensive picture of freight flows in the United States and to enhance the performance of the nation's intermodal transportation system. DOT should periodically assess and prioritize the nation's future needs for ports and intermodal transportation capacity to fulfill the needs of the nation's expected future growth in marine commerce.**

New York State Comment: Given the expected growth in maritime commerce at the Port of New York and New Jersey, the states of New York and New Jersey should be included among the appropriate entities to provide input into the development of this program and the prioritization of future needs for ports and intermodal transportation capacity.

**Recommendation 13–6. In developing a national freight transportation strategy, DOT should work closely with the United States Department of Homeland Security and FEMA to incorporate port security and other emergency preparedness requirements. The strategy should focus on preventing threats to national security and port operations and on response and recovery practices that limit the impacts of such events, including an assessment of the availability of alternative port capacity.**

New York State Comment: This recommendation recognizes the importance of ports to our national security and the need to prevent, respond and manage the consequences of a terrorist attack as well as identify alternative port capacity to maintain the flow of maritime commerce. Other unanticipated events such as those affecting labor, groundings and spills, strife and other potential disruptions anywhere within the inter-modal commerce and transportation continuum need to be considered as well. Technological advancements in security screening, cargo movement and tracking, and traffic management may be required in a shorter time frame than anticipated or perceived. Maritime academies, and the research and development of innovative technologies for handling increasing volumes of cargo (and personnel) movement should be included in the stakeholder interests schedule. Federal funds to address the emergency preparedness needs identified by this strategy should be provided.

## **Chapter 14 - Addressing Coastal Water Pollution**

New York State Comment/Recommendation: Conventional wastewater treatment is not capturing pharmaceuticals, home care products, industrial chemicals, insecticides and flame retardants, some of which are found to be endocrine disruptors to aquatic organisms and possibly other organisms up the food chain. Early United States Geological Survey (USGS) sampling work in New York is revealing some of these same findings. Later in the report (page 181) there is some discussion of this issue. Federal support for both sampling capability and pollution prevention programs to help manage sources is needed.

The discussion of non-point source pollution gives relatively short treatment of the role of local land use planning and stormwater system management in addressing the issue, yet in non-agricultural areas such as the population centers of the Northeast, this is absolutely critical. This chapter of the report does not address issues related to withdrawal of water from coastal watersheds and the associated impacts from modified hydrographic regimens, impingement/entrainment of aquatic organisms and modified salinity and temperature conditions in estuaries and coastal waters. The Commission is urged to evaluate these problems and discuss them in its final report.

In the first paragraph under “Increasing the Focus on Nonpoint Sources of Pollution” (page 162) the list of pollutants is fairly limited. The listing of categories of pollution should be expanded to include hydrologic modification, among others.

**Recommendation 14–2. EPA and states should increase technical and financial assistance to help communities improve the permitting, design, installation, operation, and maintenance of septic systems and other on-site treatment facilities. State and local governments, with assistance from EPA, should adopt more effective building codes and zoning ordinances for septic systems and should improve public education about the benefits of regular maintenance.**

New York State Comment: In the report, septic systems are placed under point sources, although not all septic systems are classified as point sources. The discussion makes no reference to EPA's guidelines for decentralized systems or its proposal for voluntary guidelines. This EPA action makes it difficult for individual states to advocate for implementation of the guidelines. Management measures for new and operating septic systems continue to prevent full approval of many state Section 6217 programs, despite the provisions in the 1998 administrative changes which authorized voluntary programs with back up enforcement authority.

**Recommendation 14–3. Where necessary to meet water quality standards, states should issue regulatory controls on concentrated animal feeding operations in addition to those required by the federal government. EPA and the U.S. Department of Agriculture should fund research on removal of nutrients from animal wastes and should develop improved best management practices that retain animal waste-derived nutrients and pathogens on agricultural lands.**

New York State Comment/Recommendation: New York State supports the recommendation, but suggests that the Commission incorporate a further recommendation for additional funding for Agriculture Environmental Management Programs such as exists in New York.

**Recommendation 14–14. EPA, states, and watershed groups should explore regional approaches for managing atmospheric deposition, particularly when it affects water bodies in states far from the source.**

New York State Comment: The Commission's report correctly highlights atmospheric deposition as a significant pollution source affecting watersheds and ultimately the marine environment, but, we believe, places too much emphasis on international attention to this issue, ignoring the current national debate on controls of air pollutants, including mercury, carbon dioxide, nitrogen oxides, and sulfur dioxide. In addition, many states, including New York, have taken steps to control these harmful pollutants. For example, the consortium of the eleven Northeast states who have formed the Regional Greenhouse Gas Initiative to reduce carbon dioxide emissions from power plants. The credibility of the report demands some recognition of the necessity for strong federal action.

**Recommendation 14–5. EPA and states should experiment with tradable credits for nutrients and sediments as a water pollution management tool and evaluate the ongoing effectiveness of such programs in reducing water pollution.**

New York State Comment: New York State cautions that moving forward with experimental trading of credits for nutrients and sediments as a water management tool may pose significant risks to local environmental resources. There are many issues to be addressed. If such a trading scheme is developed, criteria must be developed with close interaction by states.

**Recommendation 14–9. To improve and strengthen federal efforts to address nonpoint source pollution, Congress should amend the Clean Water Act to merge NOAA's enforceable nonpoint source pollution program, created under Section 6217 of the CZARA, into EPA's incentive-based program, created under Section 319 of the Clean Water Act. To support these efforts, Congress should provide adequate federal resources to enable states to implement best management practices.**

New York State Comment: New York State does not support this recommendation that Congress amend the Clean Water Act to merge the NOAA's enforceable nonpoint source pollution program (Coastal Nonpoint Pollution Control Program), created under Section 6217 of the CZARA, into EPA's incentive-based program, created under Section 319 of the CWA. A mix of measures are necessary to better manage nonpoint pollution including land use controls. No evidence has been presented to come to conclusion that the Section 6217 program, jointly developed and administered by EPA and NOAA, would be more effective if moved entirely to EPA. The close connection between land use and water quality is the basis for the Section 6217 program, and Coastal Management Programs, which fall under NOAA's responsibilities, are an extremely effective tool to

guide land use. Rather than severing the strong ties between the state Section 6217 programs and the Coastal Management Programs, the ties should be strengthened. The Commission should reconsider its recommendation for relocation of the Coastal Nonpoint Pollution Program to EPA.

**Recommendation 14–10. Congress should provide authority under the Clean Water Act and other applicable laws for federal agencies to impose financial disincentives and establish enforceable management measures to ensure action if a state does not make meaningful progress toward meeting water quality standards on its own.**

New York State Comment: As noted in comments on Recommendation 9-1 above, New York State has reservations regarding disincentives. Our reservations are even more pronounced when state performance is, as discussed in this recommendation, largely dependent on federal funding support. Program effectiveness requires appropriate funding and support. The State also disagrees with the Commission's belief that the issue of concern is relaxed oversight on the part of EPA with respect to Section 6217 activities. Rather, it is EPA's change in position that has introduced uncertainties and hindered long range planning by the states. The Commission should appropriately address this concern.

**Recommendation 14–11. State and local governments should revise their codes and ordinances to require land use planning and decision-making to carefully consider the individual and cumulative impacts of development on water quality, including effects on stormwater runoff. EPA and other appropriate entities should increase outreach programs that provide local land use decision-makers with the knowledge and tools needed to make sound land use decisions that protect coastal water quality.**

New York State Comment: New York State notes that revising codes and ordinances to accommodate this recommendation is an enormous undertaking that calls for substantial and long overdue federal support. The same recommendations have been proposed since the federal 205G planning studies of the 1970s, particularly for Long Island – yet full implementation has not been achieved. Financial incentives and enforcement disincentives must be strengthened in order to drive changes in land use and development practices.

Phase II Stormwater regulations now mandate that state and local governments in urbanized areas revise their codes and ordinances to require land use planning and decision making to carefully consider the cumulative impacts of development on water quality by 2008. In addition, given the mounting volume and complexity of municipal responsibilities, the need for municipal outreach programs that facilitate coordination, integration, communication and efficiency is apparent. The report should recommend outreach programs to municipalities that address efficient delivery and implementation of municipal policies, services and procedures.

In fact, the role of local governments in protecting water quality goes far beyond their land use decisions. The Phase II Stormwater program is only one example of a broad range of municipal policies, practices and programs which are pivotal to ensuring the sustainable use of our nation's coastal resources. These include public education and outreach, public involvement and participation, pollution prevention and good housekeeping, illicit detection and elimination, construction site runoff control and post-construction runoff control.

The University of Connecticut Project NEMO (Nonpoint Education for Municipal Officials) program has grown to become the coordinating hub for a nation-wide network of over 30 NEMO



programs across the country. The New York Sea Grant NEMO Program has provided Long Island municipal officials with educational training and support to assist them in protecting their coastal resources for the past four years, and is now being expanded to include some upstate areas. The discussion regarding Project NEMO should be updated to reflect the broader geographic scope of the program.

**Recommendation 14–12. EPA, working with state and local governments, should ensure that stormwater management programs are based on a comprehensive approach that includes: codes or ordinances requiring best management practices; increased enforcement of legal requirements; monitoring to determine whether goals and state water quality standards are being met and to identify ongoing problems; an adaptive management approach to ensure that efforts are effective and that best management practices are modified as needed; improved public education; and funding and personnel sufficient to implement and enforce stormwater management programs.**

New York State Comment: New York State supports this call for EPA to work with state and local governments to ensure that stormwater management programs are based on a comprehensive approach. This recommendation would lead to better management of stormwater discharges with less contamination reaching our waterways and be of ecological benefit while also reducing the cost to dispose of contaminated sediment resulting from dredging.

**Recommendation 14-13. The NOC and regional ocean councils should strengthen the ability of collaborative watershed groups to address problems associated with nonpoint source pollution by developing and implementing strategies to provide them with adequate technical, institutional, and financial support.**

New York State Comment: New York State supports the call for technical, institutional and financial support to collaborative watershed groups to address non-point source pollution. In addition to the innovative New York City Watershed Agreement, New York State has done important work with numerous stakeholders in its Watershed Restoration and Protection programs, particularly in the Upper Susquehanna River Watershed. This interior waterway ultimately supports the coastal waters of Chesapeake Bay. These programs are very staff intensive over long periods of time in order to be successful but they provide unprecedented results at a watershed scale that cannot be achieved otherwise. Federal funding for these programs needs to be restored to do precisely the kind of work envisioned in the report.

As noted above, New York recognizes the value and supports the efforts of watershed groups working in partnership with local governments. New York has worked in partnership with these groups and local governments, providing technical assistance and matching grants, and plans to continue to do so. Efforts of any regional ocean councils established should be closely coordinated with existing regional and state programs including National Estuary Programs and state coastal management programs.

**Recommendation 14–14. EPA, states, and watershed groups should explore regional approaches for managing atmospheric deposition, particularly when it affects water bodies in states far from the source.**

New York State Comment: The Commission’s report correctly highlights atmospheric deposition as a significant pollution source affecting watersheds and ultimately the marine environment, but, we

believe, places too much emphasis on international attention to this issue, ignoring the current national debate on controls of airborne mercury. The credibility of the report demands some recognition of the currently outstanding obligations and proposals of EPA to address airborne toxics such as mercury.

## **Chapter 15 - Creating a National Water Quality Monitoring Network**

**Recommendation 15-1. NOAA, USGS, and EPA, working with other appropriate entities, should develop a national water quality monitoring network that coordinates existing and planned monitoring efforts, including monitoring of atmospheric deposition. The network should include a federally funded backbone of critical stations and measurements needed to assess long-term water quality trends and conditions.**

New York State Comment: New York State supports the creation of a National Water Quality Monitoring Network. Because of the limits on available funds, a coordinated effort is necessary to effectively monitor the Nation's waters, both the oceans and the upland freshwaters that feed into them. As mentioned in the report, efforts already undertaken by groups such as the National Water Quality Monitoring Council (NWQMC) could be expanded to address this need. The National Methods and Data Comparability Board, which is a workgroup for the NWQMC, is developing the Water Quality Data Elements which are a core set of parameters that should be included in monitoring projects to identify the issues surrounding monitoring, so that a comparison of data between projects can be accomplished. We also support the recommendation for the network to include adequate coverage of coastal areas and upland areas affecting them and for a linkage to the Integrated Ocean Observing System.

The report does not, however, adequately acknowledge or represent the existing effort and future potential of the National Estuarine Research Reserve's system-wide monitoring program, which focuses on monitoring in coastal waters. The program reflects a coordinated effort by the NERR system's 26 sites on the Atlantic, Pacific and Gulf coasts to monitor physical and chemical water quality indicators, nutrients and the impact of weather on estuaries. The report should include discussion of NERR's system-wide monitoring program.

New York and other states rely heavily on data compiled and assessed by USGS. Cuts in funding to USGS have resulted in the elimination of numerous stream gage sampling stations, thereby hampering the ability of states to effectively manage nonpoint pollution to coastal waters at a time of rapidly changing land use. Continued collection and assessment of data is critical to the long term protection and restoration of watershed hydrology and water quality. Cumulative impacts of multiple small rivers discharging to estuaries cannot be effectively assessed in the absence of such data.

**Recommendation 15-3. NOAA, USGS, and EPA, working with other appropriate entities, should ensure that the national water quality monitoring network includes the following elements: clearly defined goals that fulfill user needs and measure management success; a core set of variables to be measured, with regional flexibility to measure additional variables where needed; an overall system design that determines where, how, and when to monitor and includes a mix of time and space scales, probabilistic and fixed stations, and stressor- and effects-oriented measurements; technical coordination that establishes standard procedures and techniques; and periodic review of the monitoring network, with modifications as necessary.**

**Recommendation 15-4. NOAA, USGS, and EPA, working with other appropriate entities, should ensure that water quality monitoring data are translated into timely and useful information products that are easily accessible to the public and linked to output from the Integrated Ocean Observing System.**

New York State Comment: As noted above, New York State is a partner in three NEP programs. In addition, the state has implemented State laws regarding the protection of two in-state estuary management programs for the Hudson River and the South Shore Estuary Reserve. Each of these programs is adopting specific targets that are derived from its management plan. To track and assume accountability for our progress toward achieving the outcomes reflected in these targets, it is essential to carry out monitoring programs specifically designed for that purpose. Such programs, carried out by EPA (page 176) and the states, should be recognized as an essential part of a national network, and should be provided with access to the scientific support, funding and data management and information delivery system support available to the national network.

## **Chapter 16 - Limiting Vessel Pollution and Improving Vessel Safety**

**Recommendation 16-7. EPA should conduct a thorough assessment, including field inspections, to verify the availability and accessibility of functioning pump out facilities in existing no-discharge zones and prior to the approval of any new no-discharge zones. EPA, working with other appropriate entities, should increase voluntary installation of pump out facilities.**

New York State Comment: New York State supports the recommended assessment by EPA. However, New York State does not support a moratorium on new No-Discharge Zones designations until the recommended assessment by EPA is complete.

**Recommendation 16-11. Congress should create an incentive program for boat owners to install or use less polluting engines in recreational boats.**

New York State Comment/Recommendation: The State believes that this recommendation will have significant benefits. The Commission also should provide incentives for installing improved on-board waste treatment, particularly for holding tanks.

**Recommendation 16-12. DOT, the U.S. Coast Guard, EPA, and MMS should conduct a risk-based analysis of all oil transportation systems, identify and prioritize areas of greatest risk, and develop a comprehensive plan for long-term action to reduce the threat of significant spills.**

New York State Comment/Recommendation: It is essential to include the states in risk-based analysis efforts. The Commission should include NOAA in this activity as well.

**Recommendation 16-14. EPA, NOAA, the U.S. Coast Guard, and other appropriate public and private entities should support a vigorous research program on the impacts of all types of vessel pollution. Research results should be used to guide management priorities, develop new control technologies, determine best management practices, and create more effective regulatory regimes.**

New York State Comment: The report advocates research on vessel air pollution in ports, particularly those ports with existing air quality problems. This is relevant to the Port of New York and New Jersey, where New York State has been negotiating air emission reductions with the Corps from ferry services and other sources in the Port area to meet New York State air quality conformity requirements. These air emission reductions are part of the compliance and compensatory measures required for the Corps with respect to the comprehensive Port channel deepening project.

## **Chapter 17 - Preventing the Spread of Invasive Species**

**Recommendation 17–1. The U.S. Coast Guard’s national ballast water management program should: apply uniform, mandatory national standards; incorporate sound science in the development of a biologically meaningful and enforceable ballast water treatment standard; include a process for revising the standard to incorporate new technologies; ensure full consultation with EPA, both during and after the program’s development; and include an interagency review, through the NOC, of the policy for ships that declare they have no ballast on board.**

New York State Comment: This recommendation will assist the U.S. Coast Guard in developing a nationwide ballast water management program with standards that are based on sound science and are enforceable, and also subject to revision to incorporate new technologies. The states should have an input into developing these standards.

**Recommendation 17-2. The NOC should commission a credible, independent, scientific review of existing United States ballast water management research and demonstration programs and make recommendations for improvements.**

New York State Comment/Recommendation: There is increasing concern about the potential introduction of human pathogens via ballast water discharges. The Commission should consider human pathogens in ballast water in its recommendations here and in Chapter 23.

**Recommendation 17–4. The National Invasive Species Council and the Aquatic Nuisance Species Task Force, working with other appropriate entities, should establish a national plan for early detection of invasive species and a system for prompt notification and rapid response. Congress should provide adequate funding to support the development and implementation of this national plan.**

New York State Comment: The states must be fully involved in developing the proposed national plan, and the plan must identify a strategy for funding state implementation efforts.

## **Chapter 18 - Reducing Marine Debris**

**Recommendation 18–2. The NOC should re-establish an interagency marine debris committee, co-chaired by EPA and NOAA. The committee should work to expand and better coordinate national and international marine debris efforts, including: public outreach and education; partnerships with local government, community groups, and industry; monitoring and identification; and research.**

New York State Comment/Recommendation: The proposed committee’s work should be expanded to include coordination of abatement activities for sources of marine debris.

**Recommendation 18–4.** NOAA should promote a public-private partnership program and implement strong incentives for removal and disposal of derelict fishing gear.

New York State Recommendation: Additional federal funding assistance may be required to develop acceptable disposal options. Gear component recycling and reuse should be included in this program.

## **Chapter 19 - Sustainable Fisheries**

New York State Comment: The Commission has made a number of important recommendations which, if implemented, will make important contributions towards the success of fisheries management, improvement of the health of fisheries resources and ecosystems. New York strongly supports the expansion of a regionally-based cooperative research program in NOAA which collaborates with commercial and recreational fishermen, affirmation that fishery managers are authorized to institute dedicated access privileges, repealing legislation and programs that encourage overcapitalization in fisheries, changing the designation of essential fish habitat from species-by-species to multispecies and ultimately to ecosystems, developing regional bycatch reduction plans, and supporting enhanced enforcement capabilities including use of the Coast Guard and Vessel Monitoring Systems.

**Recommendation 19–1.** Congress should amend the Magnuson–Stevens Fishery Conservation and Management Act and related statutes to require Regional Fishery Management Councils (RFMCs) and interstate fisheries commissions to rely on their Scientific and Statistical Committees (SSCs), incorporating SSC findings and advice into the decision-making process. In keeping with this stronger role, SSC members should meet more stringent scientific and conflict of interest requirements, and receive compensation.

**Recommendation 19–2.** SSCs should be required to supply RFMCs with the scientific information necessary to make fishery management decisions. Such information could include reports on stock status and health, socioeconomic impacts of management measures, sustainability of fishing practices, and habitat status. In particular, the SSCs should determine allowable biological catch based on the best scientific information available to them.

**Recommendation 19-3.** Each RFMC should be required to set harvest limits at or below the allowable biological catch determined by its SSC. The councils should begin immediately to follow this practice, which needs to be codified at the next opportunity in amendments to the Magnuson–Stevens Fishery Conservation and Management Act.

**Recommendation 19–4.** NMFS, working with the RFMC and the interstate fisheries commissions, should develop a process for independent review of the scientific information generated by the SSC in all regions.

**Recommendation 19–5.** Each RFMC should set a deadline for its SSC to determine allowable biological catch. If the SSC does not meet that deadline, the NMFS Regional Science Director should set the allowable biological catch for that fishery.

**Recommendation 19–6.** Once allowable biological catch is determined, whether by the SSC or the NMFS Regional Science Director, the RFMC should propose a fishery management plan in

**time for adequate review and approval by NMFS. If the plan is not presented in a timely fashion, all fishing on that stock should be suspended until NMFS can review the adequacy of the management plan.**

New York State Comment: The Commission recommends a fairly detailed process whereby RFMC and Interstate Fisheries Commissions (Commissions) establish SSCs that will independently determine harvest levels that are binding on the RFMCs/SSCs. New York State urges the Commission to reconsider these process recommendations, and focus instead on improving the scientific basis of fishery stock assessment.

Our objection is based on two principal issues. First, the recommendations imply that current fishery stock assessment advice is definitive and certain. Stock assessment advice, including advice on total allowable catch (TAC), is a result of a process that must incorporate and resolve often differing opinions on which models to use, model input parameters, assumptions, which data sets to use, how to modify or smooth data to best fit the model requirements, etc. The results may eventually result in a peer-accepted best estimate within a range of estimates, but never results in the single “correct” calculation of TAC.

Accordingly, the second issue is the question of where a decision should be made to set a TAC from the range set forth in the scientific advice. New York State’s view is that the members of the councils and commissions, which include senior state fishery management officials, are the proper parties to make, and to be held accountable for, those decisions.

New York State further urges the Commission to formulate recommendations on how stock assessments can be improved to achieve more reliable outputs with a more narrow range of uncertainty that remain stable over time. Investment in enhanced research into stock assessment and modeling techniques, training new stock assessment scientists, and most importantly, enhancing data collection programs needed for stock assessments should all be addressed.

**Recommendation 19–8. NMFS, working with states and interstate fisheries commissions, should require all saltwater anglers to purchase licenses to improve in-season data collection on recreational fishing. Priority should be given to fisheries in which recreational fishing is responsible for a large part of the catch, or in which recreational fishermen regularly exceed their allocated quota.**

New York State Comment: New York State agrees that licensing of marine anglers should be considered in order to facilitate data collection and to provide revenue to support fishery conservation and management. However, the decision to license anglers and the implementation of licensing programs is one that has been, and must remain, with the states. The Commission also should be aware that, under the Federal Aid to Wildlife and Sport Fish Restoration Programs, USFWS has worked with states to ensure that angler license revenues have remained dedicated to fish conservation programs.

**Recommendation 19–10. Congress should develop new statutory authority, similar to the Atlantic Coastal Fisheries Cooperative Management Act, to support and empower the Gulf States and Pacific States Fisheries Management Commissions. All interstate management plans should adhere to the national standards in the Magnuson–Stevens Fishery Conservation and Management Act and the federal guidelines implementing these standards. States should participate in guideline development to ensure they are relevant to interstate plans.**

New York State Comment: The Atlantic States Marine Fisheries Commission's Interstate Fishery Management Program (ISFMP) has operated very effectively with standards adopted and supported by all the east coast states, that differ from the national standards in the Magnuson-Stevens Act. It is not necessary to revise those standards, and in fact, we believe the ISFMP would be less effective, less efficient and less flexible if it were so burdened. Most importantly, the current ISFMP standards are supported by the states; it would be counter-productive and confrontational to suggest unilateral imposition of the national standards on this state program.

**Recommendation 19–11. When a fish stock crosses administrative boundaries, Congress should clearly assign fishery management jurisdiction and authority. For each fishery management plan, a state, RFMC, interstate fisheries commission, or NOAA should be established as the lead authority. That designation should be based primarily on the proportion of catch associated with each management authority. However, once designated, management authority should not shift based on annual changes in landings.**

New York State Comment: This recommendation effectively calls on Congress to tell states which fisheries they can manage (via the ISFMP) and which they cannot. Such an action potentially disenfranchises states from managing the fisheries in their own waters. New York State urges the Commission to recognize the states' authority to develop fishery management plans applicable to state waters and reconsider this recommendation. We agree that the process of jointly managing fisheries (between Councils and between a Council and an Interstate Commission) has, at times, been frustrating and inefficient. However, the joint process also ensures equity among participating jurisdictions and stakeholders and ordinarily results in broader buy-in to the resultant management plan.

**Recommendation 19–12. Congress should amend the Magnuson–Stevens Fishery Conservation and Management Act to require governors to submit a broad slate of candidates for each vacancy of an appointed RFMC seat. The slate should include at least two representatives each from the commercial fishing industry, the recreational fishing sector, and the general public.**

New York State Comment/Recommendation: New York State supports efforts to broaden Council membership. Governors should be encouraged to nominate qualified candidates from a variety of backgrounds for appointment to states' obligatory seats. If a requirement on the composition of slates of nominees is to be considered, it should only be applicable to at-large seats. We also urge the Commission to reconsider calling for a minimum of six nominees per seat; states are more and more frequently encountering difficulty finding three persons willing to be nominated. Lastly, candidates from the general public should possess knowledge or experience related to marine science, marine conservation, marine product marketing or consumerism, etc. New York encourages the Commission to incorporate these revisions regarding the composition of the RFMC to this recommendation into the final report.

**Recommendation 19–17. Congress should increase funding for Joint Enforcement Agreements to implement cooperative fisheries enforcement programs between NMFS and state marine enforcement agencies. The United States Coast Guard should be included as an important participant in such agreements.**

New York State Comment: We applaud the Commission's recommendation to strengthen Joint Enforcement Agreements and to provide more funding for their implementation by the states and the federal fisheries enforcement agencies. We urge the Commission to recommend increasing funds for other facets of the state-federal fishery management infrastructure including appropriations for basic statistics programs, including the Atlantic Coastal Cooperative Statistics Program, in particular, and reauthorization of an expanded and better funded Interjurisdictional Fisheries Act to support cooperative state/federal research, data collection, and management.

**Recommendation 19–22. NMFS and the RFMCs should develop regional bycatch reduction plans that address broad ecosystem impacts of bycatch. Implementation of these plans will require NMFS to expand current efforts to collect data on bycatch, not only of commercially important species, but on all species captured by commercial and recreational fishermen. The selective use of observers should remain an important component of these efforts.**

New York State Comment/Recommendation: New York State supports the development of regional bycatch reduction plans. We further suggest that the states and interstate commissions should be included as full partners in development of regional bycatch reduction plans.

## **Chapter 20 - Marine Mammals and Endangered Species**

New York State Comment/Recommendation: The clear emphasis on increased and focused research to inform management and recommendations for more ecosystem-based management is very important. However, the Commission should work with the states to develop specific recommendations to accomplish this goal.

## **Chapter 22 - Marine Aquaculture**

**Recommendation 22–2. NOAA's new Office of Sustainable Marine Aquaculture should be responsible for developing a comprehensive, environmentally-sound permitting, leasing, and regulatory program for marine aquaculture.**

New York State Comment: New York State supports an expanded role for NOAA in developing and administering a leasing and regulatory program for ocean aquaculture in coordination with state requirements. New York State believes that the role of the EPA to regulate discharges of pollutants from aquaculture facilities under the Clean Water Act should be maintained and strengthened under such a coordinated interagency regulatory program. While New York State has had long standing local strategies to address shellfish aquaculture, addressing finfish aquaculture proposals (e.g. off East End of Long Island) has been a challenge, particularly regarding effective management of impacts, competing interests for affected areas and regulatory jurisdiction. Also, marine zoning, as a principal means of managing the legal and regulatory environment surrounding the offshore aquaculture, is not explored in the draft report.

## **Chapter 23 - Connecting the Oceans and Human Health**

**Recommendation 23–2. NOAA, National Science Foundation, National Institute of Environmental Health Sciences, and other appropriate entities should support expanded research efforts in marine microbiology and virology.**



**Recommendation 23–3. NOAA, National Science Foundation, National Institute of Environmental Health Sciences, and other appropriate entities should support the development and implementation of improved methods for monitoring and identifying pathogens and chemical toxins in ocean waters and organisms.**

New York State Comment/Recommendation: While New York State supports recommendations 23-2 and 23-3, the United States Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) are in the lead for implementing the National Shellfish Sanitation Program, which is significantly concerned with microbiological pathogenic contamination of bivalves. Here and throughout the chapter, the Commission should include the FDA and the ISSC among the entities to be involved in this issue.

**Recommendation 23–4. Congress should establish and fund a national, multi-agency Oceans and Human Health Initiative to coordinate, direct, and fund research and monitoring programs.**

New York State Comment/Recommendation: New York State supports this recommendation. We further suggest that such an expanded monitoring program include funds for the FDA and states to undertake expanded monitoring of contaminants, toxins and pathogens in domestic and imported seafood, particularly in shellfish. Contaminated seafood and fish and shellfish diseases are important issues that need new monitoring tools to measure toxins, contaminants, bacteria and viruses. For example, we have seen the devastating impacts that these diseases can have on fisheries, the local economy, and public perceptions here in New York. There is also a need for technology transfer efforts to ensure that local, state and federal monitoring programs can effectively use these tools. Perhaps this could be handled in the section in Chapter 23 on public education and outreach. Currently that section focuses on pollution, but does not recognize the need to communicate effective messages on these other issues to stakeholders such as the seafood industry, recreational fishermen and the seafood consuming public.

## **Chapter 24 - Managing Offshore Energy and Other Mineral Resources**

New York State Comment/Recommendation: Given recent experience, New York State concurs with the need to better address offshore wind energy proposals. Funding support for comprehensive state and regional planning for wind farm development is needed. However, the Commission needs to carefully consider the “permit streamlining” proposals suggested in the report that may supersede state authority to regulate any aspects of these facilities, given that the impacts of these operations tend to affect individual states the most.

For example, federal Consistency Requirements for Outer Continental Shelf (OCS) Lease allocation by the MMS is clearly addressed in the existing codified regulations of the CZMA (15 CFR Part 930). The rule-making proposed by NOAA for changes to outer continental shelf exploration would undermine the original legislative intent of the CZMA. It would also deny states their jurisdiction, granted through the consistency provisions of the CZMA, to issue decisions regarding the consistency of OCS lease and exploration activities, which may impact coastal uses and resources. Limiting the appeals process by confining the Secretary of Commerce to an appeal decision for OCS activities, as currently proposed in the Notice of Proposed Rulemaking (NPRM), also diminishes states’ jurisdiction for consistency decision-making to the interests of OCS exploration interests and the federal government. This abrogation, as currently written and proposed in the NOAA NPRM,

would also compromise State's abilities on appeal for other activities unrelated to OCS activities and should not be advanced.

## **Chapter 27 - Enhancing Ocean Infrastructure And Technology Development**

New York State Comment: The report calls for significant interagency coordination guided by the national strategy outlined in Chapter 25. Maximizing resources through collaboration; continued partnerships among public and private entities; cost-effectiveness; and the need for international partnerships are all things on which New York State has actively been working, and which we support.

The State suggests, in addition, that the proposed NOC act as an advocate for interagency initiatives before Congress so that Congress recognizes that funding for facilities/research in one agency's budget may rely upon funding related to items in a separate agency's budget. The NOC can make Congress aware that a project funded through multiple federal sources is one interrelated project, not separate initiatives.

**Recommendation 27 - 2. NOAA should create, and Congress should fund, an Office of Technology to expedite the transition of experimental technologies into operational applications. This office should work closely with academic institutions, the regional ocean information programs, the National Science Foundation, the United States Navy, the National Aeronautics and Space Administration, and other relevant agencies to achieve its mission.**

New York State Comment: This is an excellent recommendation, and the office could start with investigation of beneficial uses of contaminated dredged materials.

**Recommendation 27 - 3. Congress should establish a modernization fund for critical ocean infrastructure and technology needs. Spending priorities should be based on the NOC's ocean and coastal infrastructure strategy.**

New York State Comment: New York State supports the report's call for the creation and funding of a Federal Modernization Fund (updating obsolete facilities including vessels) and a national virtual marine technology center. The State believes, however, that the Commission needs to specify how much funding will be needed, and the time period for which it will be needed.

## **Chapter 28 - Modernizing Ocean Data And Information Systems**

New York State Comment: Efforts to modernize ocean data and information systems is a tremendous idea that deserves support. In many cases today, data exists to answer a particular question or solve a particular problem, but its location is either unknown to the person needing it, or it is unretrievable in a useable format. A concerted effort to modernize and integrate the various data systems could reasonably be expected to result in a reduction of duplicative monitoring projects. One thing the Commission does not recommend that should be considered is return of value added data. That is, the Commission addresses the issue of collecting raw data, massaging it, disseminating it, using it in models and analyses, but does not discuss a mechanism for getting back data that has been improved. This should be part of any data sharing agreement.

## **Chapter 29 - Advancing International Ocean Science and Policy**

New York State Comment: Of all of this Chapter's recommendations, the most substantive are those recommending acceding to the United Nations Convention on the Law of the Sea and the United Nations Convention on Biological Diversity. Implementing those two Conventions would provide for the greatest immediate and long-term protection, restoration, and appropriate uses of national and international ocean and coastal areas and resources. Both of these Conventions would lead to improved international relations and management of resources of ecosystem-wide and global proportions.

### **Chapter 30 - Funding Needs and Possible Sources**

New York State Comment : Revenue sources to fund the recommendations of the report include lease payments for outer continental shelf marine extraction, mariculture and renewables energy development. If these revenues were approved, the Commission's acknowledgment of the essential future role of the states in the delivery of ocean and coastal programs and the need for additional federal financial support is strongly supported by New York. New York State recommends, however, that the Commission provide a detailed analysis of the estimated future state cost and proposed support in its final report.

New York also recommends that the Commission support the distribution of funds based on need within the coastal states. States with greater coastal populations to service, and greater resource impacts, should be given a greater share of the funding to address coastal issues. NOAA should develop a formula to distribute the funding that guarantees the application of the funds where they are needed most.

Finally, Chapter 30 presents estimates of the costs of the various recommendations made in the text of the report. Chapter locations in the text are cited for each estimate; in some cases there are no estimates in the chapters, in others, the estimates in the chapters and Table 30.1 do not agree. Estimates should be consistent wherever they occur in the document. Where they do not appear in the text, they should be added along with data supporting the estimate.

