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8 February 2007

Conrad C. Lautenbacher, Jr.
Vice Admiral, U.S. Navy (Ret.)
Under Secretary of Commerce for Oceans and Atmosphere
Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Kameran Onley
Assistant Deputy Secretary
Office of the Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

re: comments by the Marine Protected Areas Federal Advisory Committee on the
Draft Framework for Developing the National System of Marine Protected Areas

Dear Under Secretary Lautenbacher and Assistant Deputy Secretary Onley:

The Marine Protected Areas Federal Advisory Committee (MPA-FAC) offers the attached 22 recommendations regarding the *Draft Framework for Developing the National System of Marine Protected Areas*. The MPA-FAC is pleased to see the federal government developing a comprehensive national policy regarding marine protected areas. We also wish to call your attention to two sources of concern regarding our comments on the Draft Framework.

First, the MPA-FAC fully understands that the Draft Framework was the product of input from many individuals and multiple agencies. At the same time, we were uniformly disappointed that our highly relevant consensus report, *Protecting America's Marine Environment* (June 2005), was not more thoroughly incorporated into the Draft Framework.

The MPA-FAC is a highly diverse group of 30 committed stakeholders who have worked long and hard over several years to find common ground on the many contentious issues regarding marine protected areas. The fact that we reached consensus, passing our June

2005 report unanimously, is truly remarkable. Given the diversity of perspectives we represent, our lengthy deliberations, and our ultimate consensus, we believe that the Final Framework should more fully reflect the recommendations of our June 2005 report. Personally, I believe that our collective morale is at stake.

Second, the timing of the release of the Draft Framework and the duration of the comment period, combined with severe funding limitations, made it impossible for the MPA-FAC to review the Draft Framework at a face-to-face meeting. This situation forced us to develop our comments via e-mail and conference calls, which restricted effective discussion and inhibited consensus. Given the importance of the Framework to our work and to national marine policy, it is disappointing that these constraints limited the ability of the MPA-FAC to contribute to this important process.


The attached 22 recommendations are listed in the sequence that they appear in the Draft Framework; they are not listed by priority or importance. These recommendations were developed over several months and passed by a quorum of 19 members of the MPA-FAC via conference call on 1 February 2007. Twenty-one of the 22 recommendations passed with strong majority or unanimous votes. Recommendation 4 passed by only one vote, indicating that the MPA-FAC was nearly evenly split on this particular comment.

Discussion during our deliberations indicated that Recommendations 2 and 18 are particularly important yet monumental tasks that will require substantial additional work by both the MPA-FAC and the National Marine Protected Areas Center.

We request that our collective comments be incorporated into the final *Framework for Developing the National System of Marine Protected Areas*. Note that comments from individual members of the MPA-FAC also will be submitted to the National Marine Protected Areas Center as part of the public comment process.

We look forward to a final Framework document that provides clear vision and guidance for an effective national system of marine protected areas, and look forward to continuing our work with the Departments of Commerce and Interior to support this important endeavor. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Hixon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark Hixon
Helen Thompson Professor of Marine Conservation Biology and
Chair, Marine Protected Areas Federal Advisory Committee

attachment

cc: Joseph A. Uravitch, National Marine Protected Areas Center

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Recommendation 1: Territorial governments should be specifically mentioned as partners within the national system.

The document lists federal, state, tribal and local governments and MPA stakeholders, but does not list territorial governments, which should be added.

Recommendation 2: The Draft Framework document fails to adequately describe how the national system of MPAs will operate within the context of the suite of marine conservation and management measures to meet the goal of E.O.13158 “to enhance the ecologically and economically sustainable use of the marine environment for future generations.” The Framework should describe how MPAs in the national system would be utilized along with other management tools, the various trade-offs, the benefits and the costs of these measures taken singly or together, and how the national system fits into a comprehensive marine conservation and management strategy founded on existing authorities.

The Draft Framework is too vague on how the National System fits into an overall national strategy for conserving and managing the nation's marine resources; and how that will be done through a system that relies on existing authorities. MPAs are one of those tools in the toolbox to conserve and manage marine resources.

Recommendation 3: The Vision, Guiding Principles and Comprehensive Themes lack any recognition or discussion of the importance of addressing land-based impacts (e.g., runoff pollution and sedimentation) to protect the health of marine resources and ensure the effectiveness of the national system.

Land-based impacts on marine ecosystems are a very important issue, particularly for nearshore areas.

Recommendation 4: Add language similar to the language in the reauthorized Magnuson-Stevens Act about the considerations that must be made in closing any area to all fishing to “Guiding Principles.”

Add: “An effective National System that includes areas closed to all fishing should ensure that such closure:

- is based on the best scientific information available;
- includes criteria to assess the conservation benefit of the closed area;
- establishes a timetable for review of the closed area’s performance that is consistent with the purposes of the closed area; and

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- *is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the areas, overall fishing activity, fishery science, and fishery and marine conservation.”*

Recommendation 5: Original definitions of categories of MPA from the 2004 MPA Center document (“A Classification System for Marine Protected Areas in the United States”), which were used in the June 2005 MPA FAC report, should be retained.

The Draft Framework treats the three categories of MPAs as themes and has altered the wording associated with these categories of MPAs in the June 2005 MPA FAC report. The June 2005 MPA FAC report treats these categories of MPAs as addressing Natural Heritage, Cultural Heritage, and Sustainable Production goals. Reference to these MPA categories in the Framework is often confusing.

Recommendation 6: Create a separate section for discussing marine managed areas (MMAs) and focus Section V on providing the rationale for and benefits of an effective National System of MPAs.

Section V begins with two pages of discussion of MMAs, a topic much different than indicated by the title of the section. This format is confusing and should be clarified.

Recommendation 7: The document should clearly distinguish MMAs from MPAs. The introductory section of the June 2005 MPA FAC report should be consulted and the Framework should be revised to eliminate confusion regarding differences between MMAs and MPAs. The definition of MPAs provided in the June 2005 MPA FAC report should be adopted.

MMAs are treated in a mixed and confusing way throughout the document, often used interchangeably with MPAs. The definition of MMA in the glossary needs to be clarified and reconsidered regarding the term “lasting.”

Recommendation 8: The Draft Framework should be re-drafted to reflect the size, scope and diversity of MPAs in the United States, this should include information on MPAs in federal waters.

In the summary and elsewhere the document states that “roughly 85% of the nation’s existing place-based conservation areas are under the jurisdiction of non-federal governments.” Although this may be true from a numerical standpoint, it is not true with regard to area. The statement in

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the document is misleading in this regard and needs to be re-drafted to convey the importance of the federal MMAs and MPAs in our coastal waters.

Recommendation 9. The term “compatible” in Natural Heritage Objective 1.4 and Sustainable Production Objective 1.4 (pp.17-18) should be defined and used as “appropriate access and uses” as in the June 2005 MPA FAC report glossary.

The term “compatible” appears to have been used in the Draft Framework instead of “appropriate” (in Objective 4 of the June 2005 MPA FAC report). The FAC provided added clarification of “appropriate” in the same sentence by ending with “consistent with the goals and objectives of the MPA.” Further, the phrase “appropriate access and uses” in the FAC report was defined in the glossary as: “Entry to and uses of an area considered for or designated as an MPA, within the framework of sustainable use, and consistent with the goals and objectives of a particular MPA. This does not de facto exclude or include any particular use.” The framework document has lost this needed reference to “sustainable use” and “consistent with the goals and objectives of the MPAs.”

Recommendation 10: Natural Heritage Objective 1.4 and Sustainable Production Objective 1.4 (pp 17-18) should explicitly exclude those activities that are being controlled to achieve protection of natural heritage or sustainable production resources.

While an MPA objective could be to provide for appropriate access to and use of an MPA regarding a particular activity, such an objective would be unreasonable if any allowed activity caused the deleterious impacts the MPA was meant to alleviate. It is counter to the purpose of any MPA, by definition, to say that an objective could be to provide opportunities that would reduce protection for the MPA relative to protection outside the site.

Recommendation 11. The definition of “Area” as a subset of the U.S. federal, State, commonwealth, territorial, local or tribal marine environment in which it is located seems unnecessarily restrictive.

In some small jurisdictions, particularly tribal and local, applying regulations to protect all of the jurisdiction’s marine resources could be both likely and effective. These sites should not be eliminated, just because they apply to the entire marine area governed by the jurisdiction. This subset requirement would eliminate the possible inclusion of two American Samoa MPAs: the Sea Turtle and the Marine Mammal Sanctuary and the Seashore Reserve, because they apply regulations to all territorial waters. For this reason we recommend that the subset requirement be eliminated.

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Recommendation 12: The document should clarify the definition of “lasting.” The definition described in Appendix 1 of the June 2005 MPA FAC report should be adopted.

Lasting has been defined as “permanent” in the Draft Framework. The use of the term “permanent” negates the implementation of adaptive management, a key component of FAC discussions regarding the National System. It also reinforces the public perception that all MPAs must be permanent, creating a source of unnecessary controversy. Consideration should be given to using “indefinite” instead of “permanent,” and especially, defining “lasting” as described in Appendix 1 of the June 2005 MPA FAC report.

Recommendation 13: Criteria for admitting an MMA or MPA to the National System should be strengthened to be more selective and to ensure that all admitted sites meet the goals and objectives of the National System.

The Draft Framework guidelines for becoming a part of the National System are too inclusive, and fail to establish reasonable criteria for an MMA to be admitted to the National System. A National System that starts up with 1,500 sites will likely not succeed because: 1) the available management resources will be so diluted by the large number of sites that the National System would add little value to existing processes; and 2) the 1,500 sites include areas that may meet the criteria for candidate MPAs, but are unlikely to contribute significantly to National System goals and objectives.

Entry into the National System should not be automatic based on satisfying minimal criteria, including mere consent of the relevant management agency. Flexibility for consideration of potential candidates is essential. We further recommend that: 1) MPA authorities be able to determine which of their sites are most appropriate to nominate; and 2) the MPA Center be able to select among nominated sites, based on additional priority setting criteria, to ensure that the National System has adequate resources to add value to existing MPA processes.

The Framework should also include a process to support the identification and remediation of problems preventing MMAs from meeting the criteria to be added to the system, in particular, for MMAs that would contribute to filling priority gaps in the national system of MPAs.

Recommendation 14: When discussing “Additional National System MPA Criteria” the framework should reproduce the National Register Criteria for evaluation.

The standard for assessing the significance of any cultural resources at a state and federal level are the National Register of Historic Places Criteria for Evaluation. Verbatim adoption of these criteria in the report should eliminate any guesswork as to the standards being used to establish significance of known or newly discovered sites, whether in MPAs focused on cultural resources or in those focused on living resources.

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On pp. 21-22 paragraph numbered 2) and following sections a-c should be deleted and the following language, including National Register Criteria should be added as follows:

In addition, given the cultural resource management community's widespread acknowledgement of the standards developed by the National Park Service for inclusion of a cultural resource in the National Register of Historical Places (NRHP), the National System will integrate core elements of those standards into its criteria for MPAs with cultural marine resources. As such, the cultural marine resources within those MPAs must be historic, defined as at least 50 years of age, unless otherwise determined to be unique to the nation's maritime history or traditional connections to the sea as defined by the NRHP. In addition the resources must also meet the following NRHP evaluation criteria:

“The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or*
- B. That are associated with the lives of significant persons in or past; or*
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or*
- D. That have yielded or may be likely to yield, information important in history or prehistory.”*

Recommendation 15: The document should be edited to ensure that accurate and appropriate use of the term “ecological network” is evident.

The treatment of network principles requires improvement and the term “ecological network” requires a clear and accurate definition, as provided by the June 2005 MPA FAC Report.

Recommendation 16: The “Sequences and Steps” section should be modified to ensure that stakeholders have input to the checklists that are part of the “candidate MPA forms.”

The first phase of identifying and nominating candidate MPAs involves the completion of Candidate MPA Forms by managing authorities for nomination to the National System. It is critical that stakeholders have the opportunity to review and provide input during this stage, as there are often unique situations and qualifications that will not be captured by a checklist.

Recommendation 17: The Framework needs more emphasis on the importance of enforcement and compliance to the effectiveness of MPAs and any national system, and on the role of NOAA, the US Coast Guard, and other law enforcement agencies in ensuring MPA effectiveness.

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Recommendation 18: The Framework needs to fully describe how the national system will work as an integrated national system with a regional emphasis. More information is needed on the geographic scope of “regions” and the administrative structure that is envisioned to support an effective national and regional approach. The Framework should also describe more fully how the national system will incorporate and complement the management efforts and work of management bodies at the regional level that are designating and managing MPAs, including federal, state, or tribal agencies, as well as the federal regional fishery management councils, interstate fishery commissions, multi-state planning commissions, or other institutions with statutory or regulatory authorities to establish and manage MPAs.

Recommendation 19: The Framework should be revised to ensure that the concept of adaptive management is developed and transparent in MPA management guidelines.

The June 2005 FAC report defines and emphasizes the importance of adaptive management when implementing MPAs. The framework mentions but does not develop this concept as an important approach.

Recommendation 20: The Framework should include a section indicating how new (presently non-existing) sites will be developed and receive consideration for admission to the National System.

The document appears to be silent about the development of new MPAs. There is no place in the document where a process for adding new sites is described (as described in the June 2005 MPA FAC report on pp. 9-10). Section VIII includes only maintaining and removing existing sites. As written, the framework document seems to treat only sites on the list of existing MMAs as candidates for admission to the system.

Recommendation 21: The document should be revised to clearly indicate the responsible parties and procedures for removing a site from the National System.

The Draft Framework is confusing regarding who actually is responsible for removing sites from the system, and whether or not an admitted site that does not meet minimum management criteria might be removed from the National System.

The Framework should also add language on the benefit of establishing an independent external evaluation process of MPAs included in the system, in part, to determine if they are meeting minimum MPA system criteria, performance standards, and when necessary, instituting adaptive management actions. Section VIII(b) does not provide details on evaluation processes for

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individual MPAs. As currently written, Section X of the Draft Framework would preclude any performance evaluation beyond the status quo.

Recommendation 22. The glossary should be carefully reviewed and edited to ensure accuracy and proper use of terms. Strong consideration should be given to definitions closely in line with those provided in the June 2005 MPA FAC report.

Much time and effort was invested to provide clear and meaningful definitions of key terms in the June 2005 MPA FAC report. Words defined in that report appear in the Draft Framework but have not been defined in the glossary, and the definitions of several terms defined in the June 2005 MPA FAC document have been altered and obfuscated in the Draft Framework. Consideration should be given to using MPA FAC definitions with only minimal modification. The definitions of “lasting” and “marine managed area” are especially problematic.