



New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

#3

February 26, 2007

Mr. Joseph Uravitch
NOAA / National Marine Protected Areas Ctr
1305 East West Highway, N/ORM
Silver Spring, MD 20910

Re: Comments on the Draft Framework Document for the development of the National System of Marine Protected Areas (MPA) and the Accompanying Environmental Assessment

Dear Mr. Uravitch,

Thank you for the opportunity to comment on the draft Framework Document that outlines a framework for the development of the National System of Marine Protected Areas. The New England Fishery Management Council (Council) is responsible for managing the living marine resources within our jurisdiction and currently manages fisheries that include twenty-seven commercially important species and the essential fish habitat on which they rely for spawning, feeding, breeding and growth to maturity. We are pleased to be able to comment on the Draft Framework document that has been under development since the signing of Executive Order 13158 in 2004. As you know, the Council has worked closely with the MPA Center during the process to develop the Marine Managed Area (MMA) definitions and inventory process and here we provide constructive comments on the Draft Framework Document.

The Council believes that Marine Protected Areas (MPAs), as defined in Executive Order 13158, can be a useful management tool to aid in the rebuilding of depleted fish stocks, the protection of fish stocks from over-exploitation, and the protection of essential fish habitat. Place-based management is a tool on which the Council relies heavily to meet our objectives. Through the use of year-round or indefinite closed areas, seasonal closures, gear restricted areas and rotational access areas, the Council has implemented many MPAs with differing purposes to effectively manage the fisheries in our jurisdiction. The Council will continue to use MPAs when and where appropriate to meet the goals and objectives of its fishery management plans (FMPs) and believes that no-take marine reserves are a very specific type of MPA that should be used only in very specific circumstances when no other type of management strategy would be appropriate. To be most effective, the Council believes that MPAs, once established, should be managed cooperatively with other Federal agencies to ensure adequate protection from non-fishing-related activities such as sand and gravel mining, oil, gas and mineral exploration and extraction, channel dredging and dredge material disposal, pollution, and cable and pipeline installation, etc.

New England Fishery Management Council Comments on the Draft Framework Document:

1. Role of Fishery Management Councils

The Framework Document disregards the importance of the regional Fishery Management Councils. The role of the Councils in governing the MMA's and MPA's in their jurisdiction should be explicitly acknowledged in accordance with the newly reauthorized Magnuson-Stevens Act which was signed into law by the President on January 12, 2007. Specifically, the Fishery Councils were not considered the "managing authority" by the MPA Center in the MMA Inventory, rather NMFS is listed as the managing authority. Fishery Management Councils are the direct managing authority and the document as well as the MMA Inventory and future MPA list should be modified to reflect this.

The Council requests that the language on page 8 of the Framework document under the heading "U.S. MPA Programs and Authorities" and the sub-section entitled "National Marine Fisheries Service (NMFS) Programs" be changed to "Federal Fishery Management Councils (FMC)". Under this heading, the text should include the reference Federal Fishery Management Zones and Federal Fisheries Habitat Conservation Zones. A sub-section should be written for NMFS that refers to the Threatened and Endangered Species Protected Areas and the Federal Marine Mammal Protected Areas that are implemented outside of the Council process. As provided by the Magnuson-Stevens Act, the Secretary of Commerce has the ability to prepare and implement a FMP if a Council does not do so. To date, there are no "secretarial" FMPs in the NEFMC jurisdiction. Additionally, Councils are proper bodies; therefore, reference to them in the Framework language should reflect this and the term "council" should be capitalized.

2. Marine Reserves / Documenting MPAs

In September 2005, the New England Fishery Management Council passed a Marine Protected Areas Policy (attached) that specifically recognizes the various levels of marine protected areas. We believe that any MPA accepted to the National System that is closed to fishing indefinitely should include an evaluation that the MPA designation is based on the best scientific information available, include criteria to assess the conservation benefit of the closed area and establish a timetable for review of the closed area's performance that is consistent with the purposes of the closed area. If funded, it is the Council's intention as stated in the MPA policy to develop an inventory of our marine protected areas to document this type of information. The Council will be looking to the MPA Center to provide funding under the technical assistance provisions of the Framework document so that we can produce this living document, augmenting the MMA Inventory developed by the MPA Center which only provides cursory information.

3. Land-Based Impacts:

The Framework Document does not include any reference to land-based impacts on MPAs and their ability to compromise the effectiveness of the MPA. The Council and NOAA NMFS Northeast Regional Office have recently undertaken a review and update to the effect of such impacts on marine fish habitats. This document could serve as a template for filling the information gap in the Framework Document.

4. Environmental Assessment (EA)

Appendix D of the Draft Framework document contains the Draft Environmental Assessment for the action to implement a national system of MPAs. The Council strongly disagrees with the finding of no significant impact and we believe the EA as written is an adequate evaluation of

the impact of the Draft Framework and that a full environmental impact statement (EIS) is necessary for the following reasons:

- *It does not contain a reasonable range of alternatives* which should be representative of all of those possible actions that can be reasonably expected to satisfy the purpose and need. This is particularly true when the purpose and need, as herein, is broad. *The MPA Center needs to develop a reasonable range of alternatives for public comment.* Two alternatives are insufficient in this case where the implications are broad.
- The EA *does not adequately describe the Affected Environment.* Because there are many cumulative impacts associated with the determination of MPAs as part of a large national policy framework, the affected environment should be described broadly. Further, each of the subsections of the Affected Environment are considered descriptions of Valued Ecosystem Components (VEC) with are used to evaluate the impacts of the alternatives under consideration. It appears that the VECs described for this action are *natural heritage resources, sustainable production resources, cultural heritage resources, current governmental management structure and importance to Americans.* These VECs are not described in the Draft Framework. When appropriate descriptions of the VECs are developed by the MPA Center, these VECs *should provide a view on the current conditions and serve as a baseline against which to compare impacts of the alternatives.* The EA as written does not do this.
- The *Environmental Consequences* section *does not describe and analyze the anticipated environmental consequences* of the proposed action and alternatives on the resources that should have been described in the Affected Environment chapter. The document *does not adequately analyze the direct (conduct of the proposed action or any of the alternatives) or indirect impacts (activities that are not a part of the proposed action or any of the alternatives but are reasonably foreseeable consequences of NOAA conducting the proposed action or alternatives) as required by NEPA.* Specifically, the Environmental Consequences sections must discuss the impacts of viewing the direct and indirect impacts of the proposed action and alternatives as if it were the only activity being conducted (individual effects) and the direct and indirect impacts in the context of all other activities (human and natural) that are occurring in the affected environment and potentially impacting the resources being affected by the proposed action and alternatives (cumulative effects).

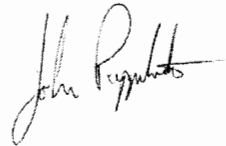
5. General Document Comments

- The process of developing and admitting a new MPA site into the National System is not described. The document seems to infer that only sites which are currently listed as an MMA will be considered. Additionally, it is unclear how and by whom an MPA will be evaluated and possibly removed from the system.
- A separate section needs to be created to discuss MMA's. Section V begins with two pages of discussion of MMA's which remains unconnected to the rest of the section and is confusing to the reader.
- "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 definition of MMA and MPA throughout the document is “fuzzy” and need to be clarified and clearly distinguished from one another. The June 2005 MPA FAC report includes a glossary that would assist in this correction.
- The statistic in the Framework Document that states that “roughly 85% of the nation’s existing place-based conservation areas are under the jurisdiction of non-federal governments” is misleading and should be re-framed in the units of square miles.

We look forward to working with you on the ongoing development of the national system of MPAs. If you have any questions, please feel free to contact Leslie-Ann McGee of the Council staff at (508) 495-2358 or LeslieAnn.McGee@nefmc.org.

Sincerely,

A handwritten signature in black ink, appearing to read "John Pappalardo", with a stylized flourish at the end.

John Pappalardo
Chairman

Attachment: NEFMC Marine Protected Areas Policy

cc: FMC Executive Directors and Council Chairs



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Marine Protected Areas Policy Statement September 2005

1.0 Background

According to Executive Order 13158, which was signed on May 26, 2000 by President Clinton, defines a marine protected area (MPA) as *“any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.”*

Where,

“Area” is defined as: Marine site or region that has legally defined geographic boundaries. The site or region shall not include the entire US Exclusive Economic Zone (EEZ) or an entire state’s waters.

“Reserved” is defined as: Legally established by federal, State, territorial, tribal or location governmental authority.

“Lasting” is defined as “enduring long enough to enhance the conservation, protection, or sustainability of natural or cultural marine resources. The minimum duration of “lasting” protection ranges from 10 years to indefinite, depending on the purpose and level of protection. An “Indefinite” duration of protection means that the intent at the time of designation is permanent protection. The distinction between the terms “indefinite” and “permanent” acknowledges that MPA designation and level of protection may change for various reasons, including natural processes that may destroy or alter resources, or changes in societal values.

“Management Plan” is defined as: A coordinated strategy of programmed interventions and action plans that meet the goals and objectives of the MPA

“Monitoring and evaluation” is defined as: the process-based on independently reviewed natural and social science, as well as other information-of determining whether, and to what extent, a MPA has met or is on course to meet its specified goals and objectives, and whether modifications are warranted.

“Protection” is defined as: established with the goal of providing an enhanced level of conservation for part or all of the natural and cultural resources therein.

“Cultural resource” definition may include historical fishing communities.

2.0 Policy Statement

- 2.0.1 The New England Fishery Management Council (Council) believes that Marine Protected Areas (MPAs), as defined in Executive Order 13158, can be a useful management tool to aid in the rebuilding of depleted fish stocks, the protection of fish stocks from over-exploitation, and the protection of essential fish habitat.
- 2.0.2 The Council will continue to use MPAs when and where appropriate to meet the goals and objectives of its fishery management plans (FMPs). The Council believes that no-take marine reserves (Category D MPAs; See section 2.2.4) are a very specific type of MPA that should be used only in very specific circumstances when no other type of management strategy would be appropriate.
- 2.0.3 The Council believes that to be most effective, MPAs, once established, should be managed cooperatively with other Federal agencies to ensure adequate protection from non-fishing-related activities such as sand and gravel mining, oil, gas and mineral exploration and extraction, channel dredging and dredge material disposal, pollution, and cable and pipeline installation.

2.1 Inventory

The Council shall undertake an inventory of existing MPAs created under the regulatory authority of the New England Council provided by the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (as amended). The goal of the inventory would be to develop a “living” list of MPAs in New England that were established and are managed by the Council. This inventory should include the following information for each MPA:

- 2.1.1 Name
- 2.1.2 Date Established
- 2.1.3 Expiration Date (if any)
- 2.1.4 Regulations Citation
- 2.1.5 Regulations Effective Date
- 2.1.6 Boundary/Coordinates and Size Information
- 2.1.7 Spatially-Explicit Map
- 2.1.8 Purpose / Justification
- 2.1.9 Activities and Uses and/or Restrictions

2.2 Establishment:

Given the regulatory authority of the Council provided by the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (as amended), when considering regulations that will apply to specific areas that meet the criteria laid out by the implementation of E.O. 13158, the Council will strive to enact marine protected areas (MPA) that meet the following conditions:

- 2.2.1 Will have a clearly stated purpose and objective where the purpose shall be based on clearly defined fishery management concerns. These include but are not limited to decreases in fish stocks, decreases in reproduction, fishing pressure, and ecological considerations.
- 2.2.2 Shall allow for the strengthening of the resource both within and outside the designated MPA boundary in order to promote multigenerational equity.
- 2.2.3 Shall be established based on best available science and a thorough investigation and evaluation of this science. The design will consider marine physical features (shelves basins, troughs and seabed), ecological process, trophic dynamics, species composition (resident and migratory), and associated hydrology and ocean patterns (currents, temperature).
- 2.2.4 If established or currently existence (via inventory), the MPA shall be catalogued to apply to one or more of the following categories:

Category A: Area to protect a single species

Category B: Area to protect multiple species

Category C: Area to protect essential fish habitat

Category D*: Areas closed to all extractive uses, including commercial and/or recreational fishing, except for what is required for research and monitoring purposes.

** Within Category D areas, the Council will work with other agencies to prohibit other activities that may negatively affect or prevent the MPA from doing what it is set up to do. These activities may include dumping, pipeline construction etc.*

- 2.2.5 MPAs that meet these conditions shall include specific provisions for monitoring assessment and enforcement contingent on available funding.

2.3.2 Each site may be modified at the time intervals set out in the establishment phase in order to make certain the MPAs are moving in the direction of meeting their clearly stated goals. Generally, the minimum duration of the MPA is 10 years. However, newly created MPAs will be subject to adaptive management practices. The goals, purpose, function, boundaries and timeframe will be assessed based on periodic FMP review and changes may be made or the MPA could potentially be eliminated. After the ten years, the goals, purpose, function, boundaries, and timeframe will be assessed and changes may be made or the MPA could potentially be eliminated.

2.4 Applicability

MPAs shall be enacted to follow the purposes laid out in Executive Order 13158 and the policy statement applies to all waters under the jurisdiction of the New England Fishery Management Council.

2.5 Communication: Education and Outreach:

The Council will create a public forum that will include relevant updates regarding the monitoring and status of MPAs.