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New England Fishery Management Council

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

DRAFT

September 25, 2008

Mr. David Bizot, Attn: 304(d) ANPR
 NOIA Office of National Marine Sanctuaries
 1305 East-West Highway (N/ORM6), SSMC4 #11500
 Silver Spring, MD 20910

Re: Comments on Conducting Consultations Pursuant to Section 304(d) of the National Marine Sanctuaries Act (ANPR)

Dear Mr. Bizot,

Thank you for the opportunity to comment on ANPR for Conducting Consultations Pursuant to Section 304(d) of the National Marine Sanctuaries Act (NMSA).

During the Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 2005, the Regional Fishery Management Council (RFMC) Chairs provided the following positions regarding the delineation of authorities for managing fisheries, including fishery resources that may overlap with sanctuary resources designated under the NMSA. We believe these comments remain relevant, given the proposal for additional regulations pursuant to Section 304(d) of the NMSA.

“Fishery management authority in national marine sanctuaries (NMS), for all species of fish as defined in the current MSA, shall be under the jurisdiction of the RFMCs and the Secretarial approval process described in the current MSA. This authority shall not be limited to species of fish covered by approved fishery management plans (FMPs), but shall include all species of fish as defined in the current MSA and shall cover the full range of the species in the marine environment. Prior to reaching decisions on the management regulations affecting fishing in NMS waters, a RFMC shall give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.”

The RFMCs also recommended that Section 304(a)(5) of the NMSA be amended to include, among other items, the following:

“Preparation of fishing regulations under this section shall constitute compliance with section 304(d) of this Act. Fishing in compliance with regulations prepared under this section shall not constitute a violation of this Act.”

While the Reauthorization of the MSA did not provide the jurisdictional clarity we feel is needed, we maintain that, consistent with the MSA, the regulation of commercial and recreational fisheries, even and especially those fisheries that depend on species listed in a Sanctuary's Management Plan as "sanctuary resources," is the sole purview of the RMFCs.

To this end, the New England Fishery Management Council does not believe that the basic statutory requirements for NMSA consultations warrant additional regulation, and we encourage the Office of National Marine Sanctuaries and the National Ocean Service to find that further regulations are not appropriate for the implementation of the NMSA Section 304(d).

Sincerely,

John Pappalardo
Chairman

cc: FMC Executive Directors and Council Chairs