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New England Fishery Management Council

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

May 12, 2008

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

Re: Comments on the Revised Draft Framework Document for Developing the National System of Marine Protected Areas and the Accompanying Environmental Assessment

Dear Mr. Uravitch,

Thank you for the opportunity to comment on the Revised Draft Framework Document (Framework) that outlines a framework for the development of the National System of Marine Protected Areas. As you know, the Council has worked closely with the MPA Center throughout the process of developing the Marine Managed Area (MMA) definitions and inventory. We provided comments in February of 2007 on the initial draft.

We would first like to commend you and your staff on the substantial and evident work that has gone into the framework document. We note that most of the New England Fishery Management Council's previous comments have been addressed. However, the Council has several specific concerns related to newly developed features of the Draft Framework Document. Furthermore, the Council remains concerned that the revised Draft Environmental Assessment is inadequate given the scope of the proposed framework.

Comments on the Revised Draft Framework Document

- The Priority Objectives for the National Framework are inappropriate and unachievable. Executive Order 13158 makes clear that the Framework stipulated is intended to “*encourage the use of the following (strategies) in the exercise of each agency’s respective authorities...*” (Sec. 4(a)) and that “*this...system...is intended to support, not interfere with, agencies’ independent exercise of their own existing authorities*” (Sec. 4(e)). It is our belief that the role of the Framework is to enhance the ability of regulatory authorities to meet their various individual objectives. The Priority Objectives appear instead to impose a set of super-objectives that may or may not be consistent with the individual objectives of the regulatory authorities that chose to utilize (and list) MPAs as a conservation and/or management tool. Further, given the limited scope of authority provided to the National Framework and the MPA Center in EO 13158, these Priority Objectives are unachievable. The document should be revised throughout to make clear the relationship between the National System Goals and those of the relevant regulatory authorities. The Priority Objectives should be re-characterized to address the substantial

difference between striving to *advance* conservation and management, a legitimate goal in this context, and striving to *accomplish* conservation, an activity appropriately left to the relevant regulatory authorities. We note also that while the Goals include the word “management,” the Priority Objectives fail to do so. Any re-characterization of the Priority Objectives should not exclude the management functions potentially served by MPAs.

- Public hearings should be required prior to candidate MPAs being included in the register. The process for nominating candidate MPAs is adequately discussed in the document, but the public should be afforded an opportunity to comment on the inclusion or exclusion of candidate areas in a public hearing prior to formal decision making. Section V(B)(5) should specify that public hearings are required.
- Alternative means of notification for candidate MPA listings should be specified. The document makes clear that the public will be notified of any candidate registry listings via Federal Register notice and other means. “Other means” should be delineated specifically in Section V(B) of the document.
- Mechanisms for changes to the boundaries and/or management regulations of designated MPAs should be addressed specifically in the document. Area-based management is a common and effective tool for regulating the sustainable uses of many of our nation’s natural resources. The document should ensure that, as management objectives for listed MPAs are met or amended by their governing authorities, the process for changing listed MPA’s boundaries, objectives or regulations is specifically delineated. Further, this process should require as little burden on the part of the governing authorities as possible—it is critical that the flexibility of resource management authorities utilizing MPAs as a management tool not be restricted by an additional layer of bureaucracy. Section V(C) should add a third bullet discussing mechanisms for making changes to existing listed MPAs.
- The focus of identifying conservation gaps should shift from the conflated Priority Conservation Objectives currently found in the document, to supporting gaps identification within a relevant regulatory agency’s purview. EO 13158 makes clear that the role of the MPA Center and Framework is to assist regulatory authorities and not supplant them. The MPA Center is not, nor should it be, in a position to determine gaps in, for example, marine fisheries conservation objectives. Section V(D), as well as many other sections, should clarify the role of the MPA Center and the Framework as they relate to identifying gaps. Conservation gaps analysis should not be based on conservation objectives determined by the MPA Center. This issue, as stated previously, permeates the Draft Framework document.

Comments on the Revised Draft Environmental Assessment

Appendix D of the Framework contains the revised Draft Environmental Assessment (EA) for the action to implement a national system of MPAs. The Council continues to disagree with the finding of no significant impact (FONSI) and we believe the EA, as written, is an inadequate and incomplete evaluation of the impacts of the framework. A programmatic environmental impact statement (EIS) is likely necessary, but given the casual treatment of this EA it is impossible for the public to understand the impacts of the proposed action. We will take this opportunity to highlight the documents' most substantial deficiencies, but note that this list is not comprehensive.

- The No Action Alternative is misspecified. The EA states that the No Action Alternative would have the “MPA Executive Order ... stand alone without any further detail of the process necessary for developing the national system.” We believe this to be extra-legal and not a viable alternative. Section 4(a) of the Executive Order leaves the development of a national system of MPAs subject to appropriations, and an argument could be made that failure to develop such a system is a viable component of a No Action Alternative, but this is true only when appropriations are lacking. If

this is the case here, it should be stated. Further, Sections 4(c), 4(d) and 4(e) of the Executive Order each contain required actions that are not subject to appropriations. These required actions, at a minimum, should constitute a portion of the No Action Alternative.

- It does not contain a reasonable range of alternatives representative of all possible actions reasonably expected to satisfy the purpose and need. The document must include a reasonable range of alternatives for public comment. The problem is not that only two alternatives are included, but rather that no other version of a Draft Policy appears to have been seriously considered. Alternative structures that, for example, provide more or less emphasis on research, planning, gaps analysis and technical assistance than those proposed in the framework should be evaluated and considered through the public process. The assumption underlying the choice of alternatives in the existing document is that there is only one possible structure available to meet the purpose and need for action. This assumption is false and the MPA Center has obligations to both consider viable alternatives to the one proposed and to allow the public to comment on such alternatives.
- The EA does not adequately describe the Affected Environment. We note that the changes in this section since the first draft framework EA, in particular the inclusion of cursory evaluations of four valued environmental components, are evident. However, the new descriptions remain insufficient for establishing baseline conditions. Absent such, the reader is unable to adequately determine or understand the impacts of the alternatives.
- The Environmental Consequences section does not describe and analyze the anticipated environmental consequences of the proposed action and alternative(s) on the resources described in the Affected Environment. The EA does not adequately analyze the direct (conduct of the proposed action or any of the alternatives) or indirect (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) impacts as required by NEPA. The EA states that there will be impacts, but makes no attempt to discuss or evaluate precisely what these may be. If the Framework's current treatment of Goals and Objectives persists beyond draft stage, the impacts of conflicts between Framework Conservation Objectives and relevant regulatory authority's statutory objectives must be discussed in some detail.
- A cumulative effects analysis, as required in an EA, must include discussion of reasonably foreseeable future actions. This is of particular importance given the programmatic nature of the framework and the myriad overlapping authorities and regulatory bodies with MPA responsibilities. The EA, as written, contains no discussion of cumulative effects.
- The document is insufficient for understanding any of the potential impacts of the proposed action or alternative(s).

If you have any questions, please feel free to contact Chad Demarest at 508-495-2358 or via email at cdemarest@nefmc.org.

Sincerely,



John Pappalardo
Chairman

cc: FMC Executive Directors and Council Chairs

