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12 May 2008

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

Dr. Kaush Arha
Deputy Assistant Secretary of the Interior for Fish and Wildlife Parks
Department of the Interior
1849 C Street, NW
Washington, DC 20240

re: recommendations by **Marine Protected Areas Federal Advisory Committee**

Dear Under Secretary Lautenbacher and Deputy Assistant Secretary Arha:

On behalf of the Marine Protected Areas Federal Advisory Committee (MPA FAC), I am pleased to submit for your consideration two products from our meeting in Silver Spring, Maryland, during 22-24 April 2008. As you know, 15 new members recently rotated onto this 30-member FAC. I am honored to represent such a distinguished panel of experts on America's oceans.

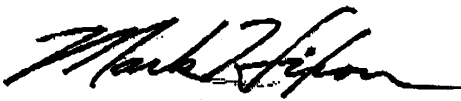
We attach two documents. The first, passed unanimously, is a set of guidance principles regarding compliance and enforcement of MPA regulations. We believe that it is essential to implement these principles if MPAs are to be effective, especially within the context of the national system of MPAs.

The second document lists our collective comments on the revised draft *Framework for Developing a National System of Marine Protected Areas*. A variety of comments were raised by various members of the FAC, including comments that have been or will be submitted by individual FAC members as private citizens. We submit collectively only those comments that passed by majority vote. Overall, to quote the FAC members who compiled these comments: “Many FAC members noted the impressive improvement in the revised draft compared to the first draft. FAC members stated that the document presented the National MPA Center’s clear intent in developing a national system, with much information nicely summarized in comprehensive and easy-to-follow language. The document is largely considered as ready to be finalized, with only minor revisions.”

I continue to be impressed and inspired by the excellent partnership that has developed among members of the MPA FAC, our ex officio members, and the staff of the National MPA Center, despite recent changes in the composition of all three groups.

The MPA FAC looks forward to your response, and to continuing our work with the Departments of Commerce and the Interior to help develop a national system of MPAs that serves both present and future generations of Americans. 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

attachments

cc: Lauren Wenzel, Designated Federal Official, National Marine Protected Areas Center, NOAA

Marine Protected Areas Federal Advisory Committee

MPA MANAGEMENT PRINCIPLES – COMPLIANCE AND ENFORCEMENT

A key focus of the national system of marine protected areas (MPAs) is to enhance stewardship of existing MPAs through coordination, technical assistance, training, and other measures. The Marine Protected Areas Federal Advisory Committee recognizes that compliance and enforcement within individual MPAs is critical for the national system to achieve its overarching goals of conserving natural heritage, cultural heritage, and sustainable production. We therefore recommend these principles for effective compliance and enforcement of U.S. MPAs.

Whether an MPA has a chance to achieve the goals of its creation and its plans for management depends upon the extent of stakeholder* compliance with the rules and regulations of the MPA. Without compliance, the best planning, design, science and management will not produce the desired results. However, perfect compliance alone does not guarantee success for an MPA; it only provides the opportunity for the full potential of an MPA to be realized. Compliance and enforcement involves the application of a broad range of approaches, using both incentives and disincentives, by different agencies to alter the stakeholder's behavior with respect to an MPA. Those approaches can consist of "soft" preventive measures such as education or "hard" sanctions such as apprehension, prosecution and conviction.

Compliance is the outcome of voluntarily acceptance of, and action in accord with, the rules and regulations of the MPA. When that desired outcome is not forthcoming, enforcement is the action taken by managers against those who fail to abide by the rules and regulations. The task of balancing compliance with enforcement requires that MPA managers must make compliance a preferred outcome compared to enforcement actions. Any compliance and enforcement system should be accountable, legitimate, equitable and flexible.

Actions to foster compliance with MPA rules and regulations will change over time. In the initial phase of the MPA, there will need to be an emphasis on general public education and outreach and visible enforcement processes to help stakeholders become familiar with boundaries and regulations. As benefits of the MPA become understood, stakeholders should develop a sense of "ownership" of—and a commitment to—the success of the MPA. At this point self-enforcement should emerge (willful compliance) from social sanctions and peer pressure.

* Stakeholders are individuals, groups or organizations of people who are in one way or another interested, involved or affected—positively or negatively—by the MPA.

There are a number of principles for effective compliance and enforcement that can be applied to MPAs:

- 1. Stakeholder participation and involvement from the onset in the creation of the MPA and its rules and regulations is critical for high compliance.** Stakeholders should perceive a sense of “ownership” of the MPA and its rules and regulations. If it is clear that various views were taken into account when the MPA was created and designed, support for the new MPA should be strong. Although the process of participation and involvement in MPA design may take time, creating MPAs with public involvement may ultimately cost less and be more effective.
- 2. Considerations for compliance and enforcement must be built into the site selection, planning and design stages, and the goals and objectives of the MPA.** Primary considerations should include feasibility, affordability, capacity, political will, public understanding, and size of area to be protected. The simpler the MPA design, the easier the task of public education—and subsequent monitoring, surveillance, and enforcement. Adequate funding, personnel, and equipment for compliance and enforcement activities must be available. Requirements include, but are not limited to, trained staff, educational materials, boats, surveillance technology, and other services and equipment. Managing agencies should consider stakeholder perceptions about MPAs and the burdens of rules and regulations in order to improve compliance. Compliance can be improved by aligning the goals and objectives of the MPAs as closely as possible with those of the resource users and the public.
- 3. Education and outreach is essential to build voluntary compliance.** Education and outreach leads to awareness and voluntary compliance with the rules and regulations of an MPA. Educational programs help stakeholders understand the consequences of their behavior. Education and outreach can also make stakeholders aware of the legal and judicial sanctions that would result from violation of the rules and regulations. Education and outreach focuses attention on the social and cultural dynamics of compliance that can be used to encourage and sustain voluntary compliance.
- 4. Socio-cultural sensitivities must be considered in designing and implementing the rules and regulations.** Specific social and cultural attributes must be understood and incorporated into the design of compliance and enforcement approaches such as the highly personal nature of relationships, transactions, and resource use patterns. For example, the MPA should identify and recognize navigation patterns of local resource users in the area of the MPA in order to reduce potential conflicts.

5. **Monitoring programs should be developed to support compliance and enforcement.** Monitoring, including surveillance, entails observing people's activities within and outside the MPA to ensure that they follow the rules. Some new approaches and technologies can increase the efficiency of enforcement while requiring less manpower. Examples include acoustic buoys and innovative technologies that use satellites to track vessels. Agreements among different agencies and groups can help mobilize resources that are already available. Seeking to adhere to the concept of public "ownership" of the MPA, stakeholders may be involved in monitoring and surveillance activities of the MPA. For example, resource users or community members may work side-by-side with professional enforcement officers in a joint patrol system.

6. **There must be a balance between incentives (voluntary compliance) and punishment (law enforcement).** Education and compliance should be the first option, and enforcement used last. Rules and regulations should be compatible with stakeholders' resource use practices. The implementation of regulations should remain flexible by maintaining an open dialogue between managers and stakeholders of the MPA. In order to foster compliance and ease enforcement, regulations and penalties should be simple, clear, understandable, and appropriate to the socio-cultural context of the area. Enforcement requires an integrated and coordinated approach among the various agencies responsible for it. Enforcement should seek to use innovative means, such as social influences and sanctions, to improve compliance and lessen costs to management agencies. Meaningful but graduated and context-dependent penalties are more legitimate than draconian, one size fits all penalties. When imposed, enforcement must be swift and public, consistent with the due process of law. "Swift" means enforcement should be directed at a specific and identified target. Enforcement should be public immediately so that others will be aware of the consequences of the offenses.

The principles presented above can be incorporated into a framework for MPA enforcement that relates enforcement directly to the desired result of compliance with rules and regulations. Compliance is improved when stakeholders perceive that enforcement is fair, equitable and appropriate. The most effective means of ensuring compliance with MPA rules and regulations is through education, outreach and enlisting the participation of the public in all processes of MPA management. Voluntary compliance is a critical element for MPAs to achieve their full potential.

**Revised Draft Framework for Developing the
National System of Marine Protected Areas**

**COMMENTS BY THE
MARINE PROTECTED AREAS FEDERAL ADVISORY COMMITTEE**

April 2008

III. INTRODUCTION. A. Background

Pages 3 and 4:

- It would be helpful if the following were placed in a text box to highlight critical information: (a) Figure of U.S. EEZ with MPAs highlighted (page 3); and (b) MPA definition (page 4).

Page 5:

- After sentence 4 of paragraph 1, the document should include the specific wording from Sec. 4(e) of E.O. 13158: “This national system framework and the work of the MPA Center is intended to support, not interfere with, agencies’ independent exercise of their own existing authorities.” This inclusion would ease the tensions of some who are or have been involved in the regional fishery management councils and NMFS fisheries management process, and who may be suspicious of the intent of some to make a national MPA system into an over-arching management regime that would weaken and improperly direct the integrated management responsibilities and authorities of the councils and NMFS under the Magnuson-Stevens Fishery Conservation and Management Act.

III. INTRODUCTION. C. Benefits of an Effective National System

Page 7, Enhanced Conservation, #2--Connectivity:

- Change this paragraph to read as follows: “The national system provides an opportunity to identify and establish networks of MPAs that are ecologically connected. An ecological network of MPAs is a set of discrete MPAs within a region that are connected through dispersal of reproductive stages (eggs, larvae, spores, etc.) or movements of juveniles and adults. Properly designed and located, these networks can enhance linkages between sources and sinks for many marine organisms, which may be essential for some local populations to persist. Planning at the national and regional scales provides an opportunity to address connectivity for many different marine organisms at different spatial scales.”

Page 7, Social and Economic Benefits, #2--Sustained fisheries:

- Replace “using MPAs” with “incorporating MPAs where appropriate” to reflect the fact that MPAs are only one of the appropriate management tools available

and need to be evaluated in the larger context of the suite of tools available and the least cost alternative.

Page 8, Public Awareness, Understanding and Education, #1--Increased support for marine conservation:

- Replace “protection” with “conservation” on line 3 because conservation is a more appropriate term implying all types of marine management, from total protection to multiple use.

IV. DEFINING THE NATIONAL SYSTEM OF MPAs.

A. National System Purpose

Page 9:

- Two phrases (here in italics) should be added to the first sentence to read as follows: “The purpose of the national system is to support *within existing authorities* the effective . . . for all who use, *benefit from* and care about our marine environment.” These two additions would again emphasize that the intent of the EO was to maintain existing authorities and to recognize the important employment, food, energy, mineral, recreational and community values derived from our marine resources. Note: “Existing” should be footnoted to denote that the Framework is a living document and that the term is intended to refer to existing authorities as they evolve over time.

IV. DEFINING THE NATIONAL SYSTEM OF MPAs.

D. MPA Eligibility Criteria

Page 15: Table 2 under “Lasting”:

- In the definition of “lasting,” the word “long-term” as it applies to sustainable production MPAs (3rd paragraph) should be clarified as meaning “a minimum of 10 years” as the amount of time previously recommended by the MPA FAC in its June 2005 report.

V. BUILDING THE NATIONAL SYSTEM OF MPAs.

A. Summary and Sequence

Page 18:

- Add a clarifying phrase to the second of the “two major sets of activities” to read: “2. the identification of national system conservation gaps relative to the conservation objectives and national system design criteria, with facilitation of subsequent development of new MPAs and/or enhancement of existing MPAs to fill those gaps, outlined in Sections IV (B) and (D) above.”

- Add the following sentence to the end of the paragraph labeled #3 regarding conservation gaps: “It is expected that an assessment of priority areas, including the risks to and human uses of those areas, will be considered in establishing priorities.”

V. BUILDING THE NATIONAL SYSTEM OF MPAs.

B. Nomination Process for Existing MPAs

Page 19:

- At the end of paragraph #5, add: “The MPA Center will work with the managing entities to ensure adequate public involvement, including public meetings as appropriate.”

V. BUILDING THE NATIONAL SYSTEM OF MPAs.

D. Identifying National System Conservation Gaps

Page 21:

- The language in this section should reflect that all gap analysis to identify conservation gaps must be comprehensive and take into consideration the suite of conservation measures currently in place, including all MPAs and actions taken by other managing entities.

VI. IMPLEMENTING THE NATIONAL SYSTEM OF MPAs.

B. National and International Coordination

Page 29:

- Further detail should be provided on the composition and role of the national steering committee and its relationship to the regional steering committees.

VI. IMPLEMENTING THE NATIONAL SYSTEM OF MPAs.

D. Federal Agency Responsibilities to Avoid Harm

Page 31:

- The Framework should provide a clear description of what is meant by the term “avoid harm” in order for nominating entities to understand the management requirements that will ensue from placing a site on the List of National System MPAs. Clarification is needed regarding who makes the determination of what constitutes “harm,” to which resources the term applies within an area, and how to mitigate or “avoid” harm.

APPENDIX C. Response to Comments on the Draft Framework for Developing the National System of MPAs

Page xii:

- Referring to halfway down the page beginning with “Additionally”, it should be clarified what happens when the entities that share formal management agreements do not agree on whether to nominate a site to the national system.

GENERAL COMMENTS

- An action plan for the National System should be developed to provide additional detail about the processes and schedule that will be used. Specifically, the plan should address:
 - A clear and detailed description of the nomination process.
 - The regional coordination mechanism described on page 26 should precede the science workshops and facilitate regional work.
 - This should be tested on a pilot basis.
- Clarification should be provided regarding the role of the regional fishery management councils in nominating, establishing, and implementing MPAs in the national system (see recent 9th Circuit Court decision – Fishing Company of Alaska v. Gutierrez).
- Clarification should be provided regarding NEPA’s role in the nomination process for existing sites, including any specific NEPA requirements for different stages of the process.