



January 25, 2010



Dr. Jane Lubchenco, Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW, Room 5128
Washington, DC 20230



Dr. Lubchenco:

{We wish to make you aware of the following comments which were submitted to the White House Council on Environmental Quality via their comment website, and respectfully request your assistance in following through on these comments as the CMSP Framework is finalized.}



Please consider the following comments from the Council Coordination Committee (CCC), consisting of the Chairs, Vice-chairs, and Executive Directors of the eight Regional Fishery Management Councils (Councils) regarding the proposed Interim Framework for Coastal and Marine Spatial Planning (Framework). The CCC met recently with NOAA Fisheries leadership and reviewed the draft Framework prior to developing these collective comments. The Councils, created in 1976 by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), are responsible for the development and maintenance of fishery management plans (FMPs) and regulations for waters within the U.S. Exclusive Economic Zone (EEZ), subject to review and approval by the Secretary of Commerce.



The Councils, as executive agencies of the Department of Commerce and direct partners with NOAA Fisheries in the management of our Nation's fisheries resources, are responsible not only for management of fishing activities directly, but also develop plans and regulations which may indirectly affect other activities. These include establishment of spatially-based marine managed areas developed by each Council which restrict, or prohibit, fishing activities to protect habitat, reduce interactions with marine mammals or seabirds, address bycatch concerns, or address other management issues. Many of these closure areas are considered to be marine protected areas (MPAs) by the MPA Center and are being considered for inclusion in the National System of MPAs.



The CCC applauds the efforts of the Administration to develop a more comprehensive approach to coastal and marine planning, and we realize that fisheries management is only one of the many critical aspects to be considered. However, given that a substantial portion of the scientific and other information to be assembled under the draft Framework is already under the purview of the Councils and NOAA Fisheries, and given that the processes envisioned under the draft Framework are already successfully in place under the purview of the Councils and NOAA Fisheries, it is imperative to explicitly recognize these roles and include them in the draft Framework.



The Framework states that CMS plans would be developed using a regional approach by National Ocean Council (NOC) established regional planning bodies. While the draft Framework specifically recognizes Federal, State, regional governance structures, and tribal representation (including Native or indigenous communities) on the regional planning bodies, it does not specify which Federal and State agencies, nor does it even mention the Councils. The CCC discussed the need to have Federal and State fisheries management agencies at the table in the development of CMS plans, as well as each regional Council. **We strongly urge that the next iteration of the Framework, or any potential Executive Order implementing the Framework, explicitly list the Councils, NOAA Fisheries, and relevant State fisheries agencies as members and signatories of the regional planning bodies.**

A related primary concern is whether the implementation of the proposed Framework could effectively supercede the existing authorities of the Councils under the Magnuson-Stevens Act. The Framework states that “*CMSP processes would be carried out consistent with and under the authority of existing statutes...and that CMSP is not intended to supercede them....*” However, the Framework also implies, at various places, that individual ‘agencies’ would be required to work within their respective authorities to comply with the plans developed by the regional planning bodies (or justify why they are not doing so), thereby implying an indirect regulatory authority. The draft Framework also states that “*State and Federal agencies would also be expected to formally incorporate relevant components of the CMS plan into their ongoing operations or activities consistent with existing law*”. Further, in the particular case of the Councils, it is unclear of their standing relative to the term ‘agencies’. Finally, the draft Framework makes reference (page 23) to enforcement of “*CMSP related laws*”. If no regulatory authority is vested within the CMS plans, then it is unclear what is meant by this phrase. **We recommend that the Framework more explicitly clarify the relationship of the CMS plans to existing regulatory processes and authorities, and ensure it does not undermine or impair successful processes already in place.**

The CCC has previously gone on record opposing legislation which would create large, new bureaucratic processes which have the potential to undermine, or be redundant to, existing, successful regulatory processes such as that epitomized within the Magnuson-Stevens Act. The draft Framework describes a very large and ambitious process for development of the regional CMS plans, and associated data and other scientific information, which will necessarily interact with existing authorities and which will subsume enormous resources to compile. We urge that the Framework clarify these authorities, particularly as they relate to the RFMCs, and specify the resources necessary to fully develop the CMS plans as envisioned. **It appears possible that the development of the centralized CMS plans could override, or subsume, the expertise, authority, and decision making processes of individual agencies, including the Councils. We believe that the Administration should consider a more limited approach, such as developing more generalized policy guidance for CMSP rather than the detailed, centralized plans as envisioned.**

In addition to the primary concerns described above, we offer the following more specific comments:

- Regional planning bodies would consist of Federal, State, tribal, local authorities, and regional governance structures – given the potentially large number of entities involved (particularly in order to accommodate numerous tribal, Native, or indigenous communities), it will be very difficult to appoint a regional planning body of a small enough size to operate effectively. **The Framework should be more explicit about the composition of the regional planning bodies, and the process for appointing these bodies.**
- The Framework calls for the regional planning bodies to investigate, assess, forecast, and analyze an enormous body of information and data (page 15), comprising virtually every known body of scientific information potentially available. However, the Framework does not identify the resources, or lead agency, expected to compile this vast array of information. It is highly unlikely that the

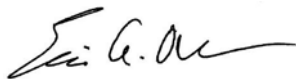
members of the regional planning bodies themselves have the wherewithal to undertake this task. There is concern on the part of the CCC that financial and human resources under NOAA Fisheries (and the Councils) will be diverted from their current mission in order to fulfill this ambitious undertaking. **We recommend that the Framework directly address the human and financial resources necessary to accomplish these tasks.**

- Following the compilation of this baseline information, the Framework calls for the preparation of a draft CMS plan “with supporting environmental impact analysis, including alternatives...for appropriate public review and comment”. Similar to the point above, the CCC is concerned with regard to the resources necessary to compile these analyses. The CCC also questions whether this would either implicitly or explicitly be a NEPA process, which is typically associated with a ‘federal action’. If no direct regulatory authority is associated with these plans, then is it necessary to go through a NEPA process prior to approval? **We recommend further clarification regarding the process for approval of CMS plans.**

- NOAA, and the Councils, are currently engaged in a process to identify and list Marine Protected Areas in the National MPA inventory. We believe that the Framework should clarify the relationship between this process and the CMS plans. For example, does CMSP dictate how MPAs will be designated, or do designated MPAs factor into the larger CMS plans? And, who makes that determination? **We recommend that the Framework directly address and clarify this relationship.**

We appreciate the opportunity to comment on this important initiative, and stand ready to assist in its development. However, we also recognize the enormity of the tasks outlined in the draft Framework and caution against the potential deterioration of existing ocean and fisheries management processes in order to accomplish the ambitious objectives of the Framework. **We believe that existing processes, such as the Council process under the Magnuson-Stevens Act, can be effectively leveraged to facilitate the success of this initiative, and we urge that the Framework recognize and rely upon those processes.**

Sincerely,



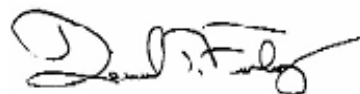
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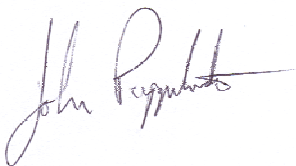
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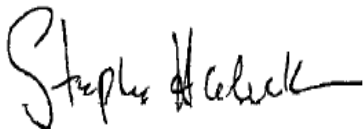
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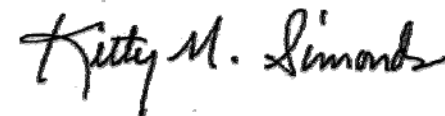
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