

July 2, 2003

Admiral James D. Watkins
U.S. Commission on Ocean Policy
1120 20th St., NW
Suite 200 North
Washington, DC 20036

Dear Admiral Watkins,

I am pleased to present the U.S. Commission on Ocean Policy with The Ocean Conservancy's recommendations for reforming the nation's ocean policy. The attached document contains recommendations for several of the topics discussed during the Commission's three deliberation meetings in Washington, DC. I hope that the Commission and your staff will seriously consider our suggestions.

The Ocean Conservancy looks forward to continuing our dialogue during the Commission's deliberations. Please don't hesitate to contact me, or members of my staff, if you have questions or would like additional assistance.

Sincerely,

Roger T. Rufe, Jr.
President

U.S. Commission on Ocean Policy
Comments on Proposed Draft Recommendations

I. INTRODUCTION

The Ocean Conservancy is pleased to have this opportunity to provide formal written comments on the Commission on Ocean Policy's proposed draft recommendations and requests that these comments be included as part of the record. The Ocean Conservancy (TOC) urges that the Commission carefully consider the recommendations contained in the Pew Oceans Commission's final report.

II. GUIDING PRINCIPLES / DEFINITIONS

Sustainability

- The Commission's definition should acknowledge the environmental degradation that has already taken place as well as the need to rebuild and restore impaired marine ecosystems.

Multiple Use

- The Commission's definition states that conservation is a "competing use" in the same sense as economic and other uses. This is incorrect. Conservation should be recognized as a primary "use," because neglecting conservation precludes current and future options, some permanently.

Ecosystem-Based Management

- The Commission's definition should include the need to protect marine ecosystems, and the importance of having, healthy intact ecosystems. In addition, this definition should change the term "multi-species" to "the full range of species" as management should consider all species within the ecosystem, not just the commercially significant ones currently present.
- The Commission's definition should also include the need to better understand how biology works at spatial and temporal scales. There are very few long-term biological time series at a time when we must drastically improve our understanding of large-scale, interannual processes by ensuring that our eyes of exploration focus not only on unexplored geographical areas of the ocean, but also on its unexplored time scales. For example, the California Cooperative Offshore Fisheries Investigations database is one of the few continuous long-term time-series of zooplankton in the world and has provided important insight into the ecology of the California Current ecosystem.

Marine Protected Areas

- The Commission's definition and subsequent explanation, as currently crafted is inadequate. Several aspects are missing including, but not limited to, the need for clear measurable objectives in designing MPAs, the need for setting specific conservation goals, the role that MPAs can play in marine ecosystem management and offering unparalleled scientific, educational and recreational opportunities.
- The Commission's definition and findings should also reflect the nation's urgent need to establish a national system of MPAs that is comprehensive, that protects representative

examples of the nation's diverse marine and coastal habitats and biological communities, and that is extensive enough, and includes enough large MPAs, to contribute significantly to restoring depleted species and damaged habitats, protecting ecological processes, restoring the health of marine ecosystems, and helping protect against future management errors, catastrophes (e.g., oil spills), natural disasters (e.g., hurricanes) and adverse environmental changes (e.g., climate change, coral bleaching). The national marine protected areas system must include adequate no-take marine reserves and ocean wilderness areas that are free from fishing, oil and gas development, and other resource extraction activities.

- The Commission should recommend full funding for NOAA's Marine Protected Areas initiative. \$5 million annually will allow NOAA to work more effectively with federal and state agencies and other partners to acquire data for the ongoing MPA inventory and to support the recently formed Marine Protected Areas Advisory Committee and its working groups. Increased funding will allow NOAA to better assist stakeholders, including states, the National Park Service and others by holding regional workshops and providing training and technical assistance to determine how best to design and implement MPAs.
- The Commission should explicitly recognize the diverse roles of MPAs (e.g. fisheries management, threatened species recovery) and therefore the appropriate roles of diverse agencies and organizations, including for example the Department of Commerce and the Department of the Interior. Coordination among various MPA programs is essential, but flexibility to allow MPA sites and programs to be tailored to meet different mandates and principal objectives must be maintained and, to the extent appropriate, increased.

III. OCEAN GOVERNANCE

The Ocean Conservancy is concerned that some of the Commission's recommendations in this area fall far short of what is necessary to dramatically improve the U.S. ocean governance structure to improve the protection of our marine resources. TOC urges this Commission to adopt the recommendations of the Pew Oceans Commission on ocean governance.

National Ocean Council

- TOC supports the Commission's recommendation to create a National Ocean Council (NOC), and that some key functions of the Council should be to improve interagency coordination and cooperation, to identify and participate in resolution of interagency policy disputes, to review and assess the progress of individual agencies and their programs in achieving the national ocean goals, and to establish policies to deal with emerging issues.
- TOC believes the Council should have formal operating and budgetary authority and should certify agency ocean budgets, consistent with the recommendations of the Pew Oceans Commission. This will ensure that the federal agencies have the adequate resources to meet the nation's ocean science, research, education and conservation objectives.
- Consistent with Dr. Sandifer's and Dr. Rosenberg's statements at the April 3rd meeting, the NOC should have enough budgetary clout to help spur agency action on crosscutting ocean governance problems (i.e. how to control nonpoint source pollution).
- The Commission should carefully consider how to ensure that appointments to the President's Council of Advisors on Ocean Policy are not subject to political pressure. If appointments cannot be insulated from political pressure, this entire recommendation should not move forward. In addition, it should be explicitly stated that this council of advisors does not have decision-making authority.

- TOC supports the creation of “task groups” to address specific coastal and ocean problems requiring concerted, high level attention within specified timeframes.
- TOC fully supports the recommendation that the NOC should periodically report on the state of the nation’s oceans and progress in implementing the national ocean policy.
- TOC urges the Commission to be more explicit in its call for a National Ocean Policy Act. TOC urges the Commission to incorporate the recommendations of the Pew Oceans Commission in developing the legislation. This legislation should provide clear and measurable goals and standards to govern activities affecting the oceans, establish mechanisms to ensure compliance with the national policy, and establish national and regional institutions capable of carrying out that policy.
- TOC supports the recommendation to assess the state of the ecosystem, but is concerned that the assessment, as proposed, puts too much emphasis on the oceans’ goods and services and not enough on its health, including recommendations to restore degraded and protect fragile habitat.

Agency Reorganization

- TOC is extremely disappointed that the Commission has not yet resolved itself to recommend changes in the federal agency structure and functions to improve U.S. ocean governance and management. The Commission has stated publicly that agency reorganization is warranted and the Ocean’s Act clearly states that Commission is required to make “recommendations for any modification to U.S. laws, regulations, and the administrative structure of the Executive agencies, necessary to improve the understanding, management, conservation, and use of, and access to, ocean and coastal resources.”¹
- The Commission’s current proposal to pass the buck to the National Ocean Council ensures a turf war between the heads of departments, which will result in minimal change or worse, the status quo.
- The Commission should reexamine this topic and seriously reconsider the alternative of establishing an independent oceans agency, consisting of NOAA; the ocean minerals, marine mammal, and seabird programs of the Department of the Interior; the Chesapeake Bay Program and the National Estuaries Program of the EPA; shoreline protection and estuarine restoration activities of the Army Corps of Engineers; and aquaculture programs for marine species from the Department of Agriculture.
- Consistent with statements made by several commissioners at the April 2-3 meeting, any agency reorganization should not separate science and data management responsibilities from policy and enforcement responsibilities.

Regional Ocean Councils

- TOC is disappointed with the Commission’s current recommendations for regional ocean councils. Several commissioners at the public hearings have urged that these councils be extremely limited and not add to the current bureaucracy. However it is unrealistic to expect that regional councils without staff, budget, mandate, facilities or authority will have more than a token impact on how our oceans are governed. TOC urges in the strongest possible terms that the Commission reexamine this set of recommendations.
- Councils should be charged with developing and overseeing implementation of enforceable

¹ Public Law 106-254 Section 3F(2)(H).

regional ocean governance plans to carry out the national policy to protect, maintain and restore marine ecosystems.

- Plans must include performance goals, be binding on all parties, and must meet federal standards established under the National Ocean Policy Act.
- Regional councils should be representative and democratic, and include state and tribal authorities, not just federal agencies.
- Robust advisory boards should be established with strong incentives for participation by the broadest possible range of stakeholders, including local government officials, fishermen and other ocean resource users, and the general public.
- Regional councils should utilize ocean zoning to reduce user conflicts, protect key habitats, and improve the management of marine resources.

IV. FISHERIES

Regional Fishery Management Councils / Allocation Decisions

- The recommendation to have the Scientific and Statistical Committees (SSCs) of the Councils set the allowable biological catch (ABC) for fisheries should be rejected. The Regional Fishery Management Councils and their subsidiary committees are not the appropriate bodies for decisions on fishing limits and the setting of ABCs, because of their dual focus on exploitation and conservation. The SSCs do not operate independently of the Councils, and no changes to the appointment process will create independence while they remain under Council authority.
- An independent scientific entity must be established for evaluating imprecise data on fish abundance, evaluating risks created by uncertainty, and establishing absolute upper limits to the amount of fish that can be caught. Within these limits, various fishery management strategies could be employed without undue risk of causing depletion of fish populations.

Essential Fish Habitat (EFH)

- The Commission should endorse the findings of the National Research Council panel on “Effects of trawling and dredging on seafloor habitats,” which encourages management action now to reduce impacts.
- The Commission should not call for eliminating the concept of EFH without explaining in more detail why the existing approach is flawed and how it could be improved or what alternative mechanisms should be adopted that have resulted in effective protection of habitat.

Enforcement and Vessel Monitoring System

- TOC strongly supports the Commission’s proposed recommendations in this area and urges they be retained.

Dedicated Access Privileges / Individual Fishing Quotas (IFQs)

- Consistent with the position of the Marine Fish Conservation Network, the Commission should call for national standards, not guidelines, for IFQs to ensure that these programs contribute to and enhance the conservation and management of our nation’s marine fisheries. These programs must acknowledge that fish resources are publicly owned, that IFQs are not compensable property rights, and that IFQs are revocable. Quota shares must be of a set

duration - not to exceed five years, after which they may be renewed subject to satisfying defined criteria. IFQ programs must provide additional conservation benefits to the fishery; recover all administrative costs, including costs of enforcement, observer coverage, and independent peer reviews of the programs; and include an independent review of performance.

V. WATER QUALITY

Aquaculture

- Given the amount of information known about the environmental harms of aquaculture, the recommendation to streamline permitting is premature. Finding mitigation measures for polluted discharge from aquaculture; antibiotics that are found in aquaculture waters; escapement of farmed stocks and intermixing with local, wild stocks; and prevalent diseases among farmed stocks should be considered before any permits are streamlined. Naming an existing agency to oversee all aspects of aquaculture may prove to be very helpful.
- In addition, we support the comments of Commissioner Rosenberg, who asked that a policy to address all the effects of aquaculture be put into place. Permitting as to whether or not an aquaculture facility will be a hazard to navigation is not sufficient. Nor is it sufficient to simply assign a governance structure to address this problem, when new legislation is clearly called for to overcome agency struggles. We invite the U.S. Commission on Ocean Policy to consider the recommendation made by the Pew Ocean Commission:

“Congress should enact legislation to regulate marine aquaculture pursuant to sound conservation and management principles. The legislation should establish national standards and comprehensive permitting authority for the siting, design, and operation of ecologically sustainable marine aquaculture facilities. The lead authority for marine aquaculture should reside in the proposed national oceans agency or the National Oceanic and Atmospheric Administration.

Until national marine aquaculture standards and policy are established, the administration or Congress should place a moratorium on the expansion of marine finfish farms. Likewise, until an adequate regulatory review process is established, the government should place a moratorium on the use of genetically engineered marine or anadromous species.”

Cruise Ships

- TOC strongly supports the Commission’s proposed recommendations for a federal statutory regime, applicable nationwide, to regulate cruise ship blackwater, greywater and other waste streams; complementary voluntary programs with comprehensive regulatory regimes for cruise ship waste management; and a robust national enforcement regime. These recommendations would provide important steps forward in addressing pollution from cruise ships and we urge that they be retained.
- Where feasible supplies and infrastructure exist, cruise ships should be required to use the local power grid to reduce air emissions when in port
- After EPA has proposed regulations to limit the emissions of U.S. vessels, the U.S. should ratify Annex VI to MARPOL to limit emissions from vessels worldwide.

- The Commission should recommend that cruise ships take the initiative and use the latest technologies to reduce NO_x emissions through Selective Catalytic Reduction Devices, particulate emissions through the use of traps, and SO_x emissions through the use of low sulfur fuels.

Marine Debris

- In addition to the National Research Council and the Food and Agriculture Organization, the State Department should be specifically mentioned in the Commission's recommendations as an agency charged with making recommendations to address the derelict fishing gear problem.
- NOAA's Sea Grant program should be specifically mentioned as an agency in need of increased funding for public education on marine debris.

Nonpoint and Farm Bill

- TOC supports the Commission's proposed goal, functions and most of the priority initiatives for implementing the 2002 Farm Bill. However, carbon sequestration should be removed as a priority initiative as its environmental effects on the ocean environment are not understood.

Concentrated Animal Feeding Operations (CAFOs)

- TOC does not believe that any voluntary programs will provide any noticeable improvement in water quality from an industry that is responsible for an incredible amount of nonpoint source pollution.
- A stronger recommendation would be for EPA and USDA to issue rules to control pollution from CAFOs through National Pollution Discharge Elimination System permits, banning open-air lagoons and eliminating current regulatory loopholes.

Sewage Treatment Plants

- The Commission should recommend that Congress fully fund the Clean Water Act's State Revolving Fund, as well as program implementation.
- EPA's Total Maximum Daily Load program should be kept in place and strengthened.
- After careful study by a blue-ribbon Federal Advisory Committee panel during the previous Administration, a proposed rule was issued by EPA to address the problem of sanitary sewer overflows. These overflows, together with sewage spills, accounted for 20% of all beach closures and advisories in 2000, a serious threat to human health. The Commission should review the proposed rule and recommend its adoption.

Stormwater

- TOC supports the Commission's proposed recommendations under existing and new development and calls for a land acquisition program under watershed protection.

Clean Water Act Section 404

- TOC strongly supports the Commission's recommendation that the federal government, under Section 404 of the Clean Water Act, assert wetlands jurisdiction to the broadest Constitutional extent. TOC also supports the recommendation to maintain and attain "No Net Loss" of wetlands.

Invasive Species - Ballast Water

- The Ocean Conservancy agrees with the Commission's recommendation to develop performance standards for ballast water control technologies as a first priority. The details of the standard should reflect the ultimate goal of "zero discharge" and not be based on the size of organisms. The Commission should formally recognize that there is no such thing as a "safe" level of invasive species discharge.
- Consistent with other point source dischargers, fees should be imposed on the regulated community to fund the development of treatment technologies.
- NISA should be reauthorized to place mandatory controls on discharges of ballast water that will work towards a goal of zero discharge of invasive species. The Commission's international recommendation should be to establish an international ballast water management regime that places mandatory controls on discharges, with a goal of achieving zero discharge of invasive species worldwide.
- The Commission's recommendation to develop a risk assessment process should evaluate the relative risks of all introductions of invasive species into coastal and marine waters. These risks include shipping, aquaculture (escapement, shipping, etc), intentional introductions (i.e. fishery), accidental introductions, and fishing. A separate recommendation should be on the management of these vectors, prioritized based on the risk assessment conducted above.
- The Commission's recommendations for increased funding for public education, monitoring and source identification, prevention, etc should be paid for through user fees on the regulated community.

VI. CORAL REEFS

- The Commission should formally recognize that in addition to ships strikes and ornamental fish trade, other human activities including fishing, pollution, global climate change and coastal development contribute to serious long-term coral reef decline. Deep water, cold water and temperate coral reefs should also be formally recognized.
- The Commission should endorse the entire National Action Plan to Conserve Coral Reefs and recommend that it be strongly implemented to expand and strengthen the U.S. network of coral reef marine protected areas and "no-take" ecological reserves and that the Coral Reef Task Force be retained.
- If the Coral Reef Task Force is to include the Department of Energy, the threat to coral reefs from global climate change needs to be discussed.
- The Commission should recommend global monitoring efforts on the resilience of coral reefs to bleaching; research to better understand the resilience of corals to bleaching; and direct attention to better understanding connectivity, larval dispersal, and recruitment within and among coral reefs.
- The Commission should expand the recommendations on international leadership in order to have a significant impact on coral reef management in the countries where most coral reefs are found. This can be accomplished through the development and implementation of marine protected area networks, Integrated Coastal Management programs to provide a supportive governance context for coral reef conservation, and capacity building of individuals and institutions that can contribute to coral reef conservation.
- The Commission should include the need to build upon and expand the multifaceted coral reef research, management, and capacity-building programs that are currently implemented through NOAA's National Ocean Service, the U.S. Agency for International Development,

and the Department of State, as well as the U.S. engagement in and support of the International Coral Reef Initiative.

VII. MARINE MAMMAL PROTECTION

Marine Mammal Research

- The Commission should retain the recommendation to at least double research funding on marine mammals. The independent Marine Mammal Commission, not the National Ocean Partnership Program, has the demonstrated expertise in marine mammals and is therefore more qualified to recommend research priorities. These priorities should be developed in consultation with the marine mammal take reduction teams.
- As previously recommended by TOC, the Administration in consultation with conservation groups, industry, academic experts, the Department of Defense, the Department of Commerce, the Marine Mammal Commission, and the National Academy of Sciences should develop a national policy and action plan to address the impacts of noise on marine mammals.

Definition of Harassment

- As put forward in earlier testimony by TOC, the Commission should not undermine the MMPAs precautionary premise of the Act by changing the definition of harassment. The Department of Defense's current proposal includes language that is not defined scientifically which, if adopted, would result in more ambiguity, less protection of marine mammals, less transparency, and even more controversy and debate.
- Improved coordination and advanced planning may be the most expedient way to achieve both marine mammal conservation and improve efficiency in the issuance of permits for military readiness activities.

VIII. NEXT GENERATION OF COASTAL ZONE MANAGEMENT

Coastal Management

- TOC supports the Commission's proposed recommendation to protect important coastal habitat and recommends that a federally-funded program to acquire and protect these lands be established.
- The Commission should call for strengthening of the state consistency and polluted runoff provisions of the Coastal Zone Management Act and support full funding of the Act.
- The National Flood Insurance Program should be reformed to deny coverage for new development in environmentally sensitive areas and coverage should be phased out for repetitive loss properties.

Watershed management and monitoring

- TOC supports the Commission's recommendation to create a clearinghouse for the coordination and distribution of monitoring data. In addition, a national monitoring strategy at the watershed level should ensure that agencies have consistent monitoring standards and that the information is immediately made available to the public. Total maximum daily loads should be set and monitored to ensure those limits are achieved.

Sediment management

- The Commission should make recommendations to address the removal and disposal of contaminated dredge materials, a problem found in most ports.

IX. EDUCATION AND OUTREACH

- TOC shares the concerns of Dr. Rosenberg and others made at the April 3 meeting concerning the recommendation to increase public education on the benefits of offshore oil and gas. TOC urges in the strongest possible terms that this recommendation not become a public relations campaign for offshore oil and gas development. One way to protect against this would be to shift the focus to marine technology in general, including ocean exploration.
- While the National Science Education Standards will be revised in 2005, new ones will not be created around ocean science. Science standards are meant to be "generic," not specific to each discipline. Therefore, ocean science case studies and examples must be woven into the 2005 revision so that teachers have the frameworks to teach to the standards.
- Create and fully fund an Office of Ocean Science Education in NOAA to coordinate the federal government's public outreach and education leadership.
- National Science Foundation should continue to support and integrate research and education that furthers understanding of our oceans, models for teacher training and innovation.
- Ensure that the funding and provisions of the "No Child Left Behind Act" of 2001, which includes Teacher Quality State Grants program, are appropriate and utilized for ocean science teachers and that states are encouraged to use this provision to increase the number of prepared ocean science teachers. This program focuses on using practices grounded in scientifically based research to prepare, train, and recruit high-quality teachers.
- Congress should pass legislation establishing a National Oceans Awareness Week to help bring ocean issues to the forefront of the national agenda. An annual week of education outreach and events should be planned, that help make the oceans matter to children, students and adults. The week would include educational activities and public events and opportunities that generate extensive media coverage, as well as volunteer opportunities for the general public, and speaking events for elected officials, including the president.
- The Administration should promote existing - and create new volunteer -opportunities that connect people with the oceans, such as the International Coastal Cleanup.
- The Department of Education should promote the integration of interdisciplinary ocean studies (including the liberal arts, and social and hard sciences) and conservation into our K-12 curriculum nationwide and encourage at least one on-the-water educational experience during grades K-12.
- The Department of Education should require that ocean science become a component of the national science assessment program for grades K-12 -- that now focuses on reading and math, but will expand to include science in future years -- as part of the president's "No Child Left Behind Act."
- Ocean science education in the federal government should be centralized, not spread out amongst a variety of agencies. We have that problem already with the ocean management being the purview of more than 9 agencies and 140 laws.

X. OCEANS AND HUMAN HEALTH

- This program appears to be too narrowly designed to focus only on nutrient pollution and the ecosystem degradation that arises from that. It should, however, include toxic contaminants

such as trace metals (e.g., mercury), biocides (e.g., DDT, tributyl tin) industrial organic chemicals (e.g., PCBs) and by-products of industrial processes and combustion (e.g., dioxins). It should also include the category of persistent organic pollutants (POPs). Human health is affected directly by trace metals, industrial organic chemicals and by-products of industrial processes and combustion, which bioaccumulate in the fatty tissue of fish. People then consume the pollutants when consuming the fish, and often suffer serious health harms.

- It is very important that governance of this program be within the Environmental Protection Agency, the agency that currently assesses pollution of the waters of the United States and human health effects of pollution.
- A marine biotechnology research and development program is very worth exploring. This would be especially true if any profits shared by the federal government could be used for ocean stewardship projects, similar to the original intent of offshore oil and gas leasing revenues.

XI. OCEAN SCIENCES

- There is a strong need for more comprehensive monitoring strategies for biological systems, especially coral ecosystems and deep-water ecosystems, the latter of which are virtually unexplored, let alone unmonitored. A systematic "gaps analysis" approach should be taken to examine the spatial and temporal "holes" that need to be filled in the monitoring network. Such an analysis can provide a basis upon which funding priorities can be developed.
- Although we have gathered vast amounts of data and gained great understanding of many other parts of the marine environment, our research has largely focused on what we harvest or extract, with emphasis biologically on target species and their associated habitats in a context of human influence. Thus, even the areas that are "known" are often known only from relatively narrow perspectives, and there remain compelling, basic questions about the function of ocean ecosystems even in the areas we often characterize as well understood.
- Additional research is needed to help us develop a better understanding of the impacts of fishing and other consumptive activities on the marine environment and the efficacy of marine reserves and other management tools for addressing them. Research is needed to help us develop a better understanding of the life histories of imperiled species and their utilization of habitat resources in order to improve conservation efforts. We also need to better understand the impacts of coastal development and water quality impacts on the marine environment. How many other "dead zones" are out there?
- One of the most important needs of ocean research is providing baseline information on the interconnectivity of various marine habitats. Such information is absolutely essential to allow us to move beyond what might be characterized as a "first generation" of MPAs toward a comprehensive network of MPAs that truly achieves the protection large-scale ecosystem function. Knowledge about ocean and bottom currents, larval belts, sources and sinks, spawning aggregations, current assemblages or conveyor belts and other such interconnectivity features is essential for the identification of new areas of the ocean requiring protection and identifying where additional protection is needed for existing protected areas.
- Recent research has better illustrated the great magnitude and global pervasiveness of human-induced changes to marine species and ecosystems. Additional research is needed in this area to develop comprehensive and useful indicators of marine ecosystem health (including ecosystem stability and resilience), to identify ecologically appropriate targets for

conservation and management efforts, and to establish realistic baselines against which to measure progress.

XII. CONCLUSION

The Ocean Conservancy again thanks the Commission on Ocean Policy for the opportunity to provide detailed comments on the Commission's proposed draft recommendations. We look forward to continuing our dialogue during the rest of the Commission's deliberations. Please don't hesitate to contact us if you have questions or would like additional assistance.

Sincerely,

Eli Weissman
Ocean Governance Program Manager
The Ocean Conservancy