

American Sportfishing Association
Bass Anglers Sportsmen Society
Berkley Conservation Institute
Center for Coastal Conservation
Coastal Conservation Association
Congressional Sportsmen's Foundation
International Game Fish Association
National Marine Manufacturers Association
Shimano Sport Fisheries Initiative
The Billfish Foundation

February 12, 2010

**Via E-Mail &
Electronic Submission**

The Honorable Nancy Sutley
Chair, Council on Environmental Quality
Interagency Ocean Policy Task Force
The White House
Washington, D.C. 20503

Re: U.S. Recreational Fishing & Boating Coalition Comments on White House Interagency Ocean Policy Task Force Interim Framework for Effective Coastal and Marine Spatial Planning

Dear Chairwoman Sutley:

The above listed organizations are pleased to submit the following formal written comments on the White House Interagency Ocean Policy Task Force ("Task Force") Interim Framework for Effective Coastal and Marine Spatial Planning ("Interim Framework"). Our organizations have fully participated, in good faith, in the Task Force stakeholder meetings, at regional meetings, at in-person meetings with Task Force staff, and through formal public comment. The Task Force has interfaced with key stakeholder organizations and we appreciate the opportunity to provide constructive feedback to you and all the Task Force members on the President's initiative to formalize a national oceans policy. Although we support many of the objectives of this effort, we have serious questions and concerns about the Interim Framework.

Our organizations represent the overwhelming majority of recreational boating and angling interests in the United States, collectively a \$200+ billion industry in the United States. We have commented, collectively and independently, to the Task Force previously and reiterate those comments herein by reference, including comments submitted by the National Marine Manufacturers Association ("NMMA") and comments submitted by the American Sportfishing Association ("ASA") on July 15, 2009, signed by multiple organizations¹ and testimony submitted by the Center for Coastal Conservation on October 15, 2009 on behalf of multiple organizations.

¹ Comments submitted jointly by American Sportfishing Association, Center for Coastal Conservation, Congressional Sportsman's Foundation, Coastal Conservation Association, International Game Fish Association, The Billfish Foundation, Shimano Sport Fisheries Initiative, and National Marine Manufacturers Association.

I. Introduction & Overview

Pursuant to a June 12, 2009 Presidential Memorandum, the Interagency Ocean Policy Task Force was established with the mission of recommending to the President ways to enhance U.S. oceans policy coordination and outline a National Oceans Policy. Our organizations support reasonable policy mechanisms to enhance interagency dialogue and improve federal, state, and local agency coordination on oceans policy concerns. The Interim Framework, however, raises more questions than it answers and appears to call for significant, fundamental changes to both the regulatory structure and statutory authorities that form the basis for nearly every aspect of oceans management and use.

In general, our organizations support increasing coordination among the myriad federal and state agencies that manage or regulate our oceans and coasts. While improving coordination is a laudable goal and efforts should be made to achieve it, our organizations would urge that such an effort not supersede or diminish existing federal and state laws that govern the regulated community. Federal and state regulators responsible for the implementation of a range of laws are typically expert in their policy areas. The regulated community has a high degree of familiarity with the current legal framework, which helps ensure compliance and awareness of legal obligations. Improving coordination should not occur at the expense of established management regimes.

While the Task Force has suggested that the President does not intend to override existing legal authorities, our organizations remain concerned about this possibility, particularly given the language of the Interim Framework with respect to legal authorities and possible future legislative changes. While we have encouraged the Task Force to avoid recommendations for creating additional layers of bureaucracy, it would appear that the Interim Framework specifically calls for a new ocean governance superstructure headed by the National Ocean Council with suspect or vaguely-defined legal authorities. Our organizations believe that the Task Force should reorient its focus toward effective ways to support local and regional efforts rather than imposing top-down regulations. Unfortunately, it would appear the Interim Framework as currently drafted moves in the opposite direction. In addition, we are especially concerned that the role of the states, which have the primary jurisdiction for resident fish and wildlife, is not appropriately recognized. In fact we believe the states' role is diminished and threatened by the language of the Interim Framework. The Interim Framework, in our view, also intrudes upon the states' various authorities for water access.

II. An Executive Order Should Not Be Issued

The Interim Framework suggests a "fundamental change" must be made to our national ocean policy and ocean governance systems and proceeds to outline a new systemic approach to ocean management which raises far more questions than it answers. As discussed below, we have attempted to identify some of the key gaps in the Task Force's proposal, which we hope the Task Force will address specifically in future iterations of its work. At a minimum, the Interim Framework calls for a top-down federal approach to every aspect of ocean management, and would impact every sector and every conceivable ocean activity. This new structure is built on vague or unspecified statutory authority, without input from Congress, and will likely add massive new complexity for both regulators and the regulated community.

Most recently there has been significant discussion regarding the issuance of an Executive Order following the Task Force's submission of its Final Report to the President. Our organizations strongly oppose any Executive Order. As the Task Force well knows, ocean management is complex and warrants significant, sustained discussion in transparent public policy processes. An executive action would

bypass key Congressional review and input, likely overstep the bounds of state authority and drastically limit the ability of stakeholders to meaningfully influence the policy and the implementation of a new national oceans policy or a coastal and marine spatial plan.

Congress and the entire regulated community, including recreational anglers and boaters, should be fully involved in any effort to radically change U.S. Oceans Policy. An Executive Order might be expedient, but it would be inappropriate and contribute to significant mistrust and resentment among effected ocean users. An Executive Order at this time is also premature given the state of the Interim Framework, which is almost completely void of policy specification. We urge the Administration to resist calls from a very limited set of stakeholders to issue an Executive Order and extend its process in order to ensure that a viable, clear oceans policy can be formulated through normal public policy channels.

III. The Importance of Recreation in the Ocean Space

Our organizations have attempted to convey the economic, cultural, and social importance of our industries and our consumers' activities in formal comment on a number of occasions, particularly in comments responsive to the OPTF's Interim Report on a National Oceans Policy. This report, in particular, failed to account for the economic or social importance of recreation in the ocean space with respect to recreational boating and angling. That was an unfortunate oversight which we expect the Task Force to correct in its Final Report. Although the Interim Framework does much better in referencing both recreational fishing and boating as legitimate ocean uses, a reiteration of recreational angling and boating's importance to the national economy and social fabric justifies the repeating here.

- **U.S. Recreational Boating Industry.** The U.S. recreational marine industry is comprised mostly of small- and medium-sized businesses—approximately 19,000 such businesses across the United States. In 2008, recreational boating directly and indirectly impacted 337,758 jobs with a labor income of \$10.4 billion—due to severe negative economic conditions, the industry has lost 135,000 jobs, although many factories are beginning to hire again. There are nearly 12,000 marinas in the United States which serve as gateways to both salt and freshwater resources and the Great Lakes. As with recreational fishing consumers, boating consumers are largely middle-class Americans, with more than 75 percent of boat owners earning an annual household income of less than \$100,000, and 95 percent of boats in use are less than 26 feet in length.²
- **U.S. Recreational Fishing Industry.** The saltwater recreational fishing community is also a major consumer goods and services industry, particularly in coastal states. More than 28 million fishing licenses were sold in 2008. According to the National Oceanic and Atmospheric Administration's National Marine Fisheries Service ("NOAA Fisheries"), the recreational fishing sector contributes over \$82.2 billion in sales and \$24 billion in income, and provides over 533,000 jobs³. Compare this to the domestic commercial landings of finfish in the U.S. (\$28 billion in sales, \$12 billion in income and 423,000 jobs), and the recreational sector is as significant in the commerce mission of NOAA as the commercial fisheries sector, although at substantially less environmental cost. Our economic contribution is provided with much less impact on the resource – recreational harvests account for only 3 percent of fish harvested, while commercial harvests account for 97 percent⁴.

² National Marine Manufacturers Association. 2008 Recreational Boating Statistical Abstract. Chicago 2009.

³ Genter, Brad, and Scott Steinback. *The Economic Contribution of Marine Angler Expenditures in the United States, 2006*. U.S. Department of Commerce.

⁴ NOAA National Marine Fisheries Service. *Fisheries of the United States, 2008*. U.S. Department of Commerce

- **Great Lakes Fishing and Boating.** With respect to the Great Lakes, these numbers do not account for recreational fishing's substantial economic impact, where according to the U.S. Fish and Wildlife Service and U.S. Census Bureau recreational fishing had an overall economic impact of over \$7 billion in 2006. This includes \$2.5 billion in retail sales, 58,000 jobs and \$508 million in federal tax revenue.⁵
- **Nexus between Fishing and Boating.** Recreational boating is very closely tied to a robust recreational fishing industry. Recreational fishing is the most popular activity to pursue while boating among current boat owners. In 2008, 54.2 percent of boaters engaged in fishing when they were out on the water. According to the U.S. Fish and Wildlife Service, 57 percent of anglers who went fishing in 2006 did so from a boat; in the Great Lakes, 74 percent fished from a boat, and 69 percent of all saltwater fishing was done from a boat. If people's ability to recreationally fish is inhibited, this will clearly impact their decision to go boating or buy a boat.⁶
- **Boating and Fishing Contribution to Conservation and Environmental Stewardship.** Since 1950, recreational anglers and boaters have, through a unique user tax on motorboat fuel, fishing tackle, and other sportfishing equipment, generated more than \$5.7 billion in funding through the Sport Fish Restoration and Boating Trust Fund for fishery conservation and enhancement, habitat restoration, clean water programs and boating safety programs. Fishing license sales generate nearly \$560 million in annual revenues for state conservation and education programs. In 2008, the Sport Fish Restoration and Boating Trust Fund had \$720 million in revenues, \$402 million of which was apportioned to the 50 states specifically for sport fish restoration. No other coastal, ocean or Great Lakes user group collectively contributes more than recreational users.

IV. The Task Force Should Ensure Public Access is Maintained

Given the scope of economic, conservation, and social contributions of recreational fishing and boating, it is imperative that any national ocean policy encourage, promote and celebrate recreational activities in the marine and freshwater environments. This can only be achieved if the policy and the implementation of marine spatial planning provide for access to marine areas for recreation and the opportunities for angling. In tandem with our coalition comments to the Interim Report calling on the Administration to make recreation a national ocean policy priority and objective, an Interim Framework on marine spatial planning should strive to implement open, sustainable recreational access to the ocean space and freshwater space. In the absence of a clear policy statement in the Interim Report prioritizing recreation, we remain concerned that the proposed new layers of bureaucratic management and new spatial planning in the marine environment will converge into vast areas eventually being closing off to recreational uses.

Pursuant to the President's Memorandum and the Interim Report, officials within CEQ, NOAA and other agencies are charged with developing a marine spatial planning framework that will provide a "comprehensive, integrated, ecosystem-based approach that addresses conservation, economic activity, user conflict, and sustainable use of ocean, coastal, and Great Lakes resources".⁷ Marine spatial planning must be a policy that seeks to better inform decision-making in the ocean environment and address gaps

⁵ Southwick Associates. *Sportfishing in America: An Economic Engine and Conservation Powerhouse*. 2007

⁶ National Marine Manufacturers Association. 2008 Recreational Boating Statistical Abstract. Chicago 2009.

⁷ Interim Report, pg. 2.

in science and data to improve conservation and management objectives. Marine spatial planning must not be a means to catalogue, map and designate vast marine areas as marine restricted set-asides.

The Interim Report makes numerous references to ambiguous terms such as “healthy,” “pristine,” and “resilient” and articulates broad management concepts that call for the protection of biological diversity. The report then couples these hard-to-define terms and concepts with a precautionary approach when there is scientific uncertainty.⁸ Marine spatial planning under this approach would lead to the preservation of the ocean based entirely on precautionary principles and, invariably and necessarily, arbitrarily exclude users—primarily recreational users, we fear—from the marine environment and its resources.

Recreational interests and access to the marine environment must be a core element of any marine spatial planning policy and proposal. Too often recreational interests are afterthoughts of marine policy, whereas under the Magnuson-Stevens Act, the recreational community has equal legal standing as commercial interests to fishery resources and access to the marine environment. For marine spatial planning to be effective it must not ignore or inadequately consider recreational interests at the outset, but instead have a strong focus on maintaining and encouraging public access and recreation in the marine environment.

We would strongly encourage this Administration to follow the legal requirements in the Magnuson-Stevens Act (“MSA”) for establishing any marine restricted area under a marine spatial planning policy. Any marine restricted area should: 1) be based on sound science that addresses a specific threat to ocean resources; 2) be the smallest marine area possible to achieve an articulated conservation goal, and 3) be continuously reviewed to determine whether the marine restricted area is necessary to achieve these conservation goals.⁹

Marine spatial planning should not be designed or oriented around cataloguing marine areas that should be simply set-aside as marine reserves or no-go zones. Marine spatial planning should not be a means to lock-up, restrict or otherwise diminish the ocean to public access and recreation. Some advocates have called on the Administration to implement coastal and marine spatial plans (CMS Plans) for this very purpose—not to reduce or better manage conflicts, but to eliminate uses altogether. We believe this approach is contrary to true conservation.

Finally, we strongly oppose the use of the Antiquities Act especially to establish “marine national parks.” Previous Administrations have utilized this arcane federal power to circumvent established public policy channels and summarily exclude meaningful stakeholder involvement in major policy decisions effected uses in the ocean environment. This has led to lingering mistrust of federal oceans policy within many ocean sectors, including the recreation sector. The Antiquities Act was never intended to be employed for such designations and we call upon this Administration to avoid using the law to subvert or short circuit critical public input and comment on marine areas that could be potentially turned into “ocean parks.”

V. Interim Framework Posits a Solution for an Undefined Problem

While it is true that federal agencies in particular often focus on issues directly under their jurisdictional authority and their scope of expertise, neither the Interim Report nor the Interim Framework outline, with any data, any broad-scale failure to protect the coastal and ocean environment or outline any specific user conflicts that will require fundamental reform. Although we concur that the President should direct his Cabinet Secretaries and federal agency heads to increase their coordination in order to enhance planning,

⁸ Id., pg. 14.

⁹ MSA, 16 U.S.C. 1853(b)(2)(C) (P.L. 109-479).

streamline permitting, and reduce late-breaking conflicts, it is unclear why a Presidential directive would be insufficient in achieving these goals and why a new, “fundamental change” to ocean policy governance is required.

At no time in the Interim Framework does the Task Force outline what specific existing or potential user conflicts a national structure of coastal and marine spatial planning (“CMSP”) would resolve, or what CMSP would do to resolve them. Rather, the Interim Framework is comprised of vague assertions of inevitable conflict among various ocean uses—a so-called crowding of the ocean. The Interim Framework suggests that “a fundamental change in our current management system is required to achieve the long-term health of our oceans, coasts, and Great Lakes,” but this claim itself is never substantiated.¹⁰

Indeed, the only specific example referenced in the Interim Framework of successful CMSP is the comprehensive, inter-agency planning done for the Stellwagen Bank National Marine Sanctuary. This effort involved cooperation by the National Oceanic and Atmospheric Administration (“NOAA”) and the U.S. Coast Guard (“USCG”) in rerouting Boston sea lanes to minimize Right Whale strikes. Perplexing about the Task Force’s use of this particular example of marine spatial planning is that it was accomplished under status quo authorities and existing procedures. Essentially, for this successful endeavor in marine management, all that was required was a basic level of inter-agency cooperation and information sharing.

Recommendation: *The Task Force should revisit the Interim Framework and specifically outline, with data, areas of the ocean space where user conflict is occurring or is inevitable. The document currently relies on unwarranted assertions of inevitable widespread and escalatory conflicts between ocean users. While we do not disagree that conflicts may exist, we don’t know what they are and believe this may be overstated as a problem. The Interim Framework fails to identify any conflict, much less justify the necessity of the sweeping policy changes it recommends.*

VI. Task Force Should Specifically Exclude “Zoning” or Spatial Allocation From CMSP

In the literature on CMSP, definitions vary significantly. The Interim Framework defines CMSP as “a comprehensive, adaptive, integrated ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas.”¹¹ Although it appears that the Task Force has made an effort to distance CMSP from ocean zoning by excluding any overt reference to space allocation itself and focusing instead on CMSP being a “public policy process for society,” it is important to point out that this is at odds with widely accepted understandings of CMSP. For example, the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) defines marine spatial planning as “a public process of analyzing and *allocating the spatial and temporal distribution* of human activities in marine areas to achieve ecological, economic and social objectives that have been specified through a political process (emphasis added).”¹² Indeed, the Interim Framework itself alludes to spatial allocation—or zoning—when it suggests that CMSP would identify “areas most suitable” for various ocean activities. Although zoning is not a required component of marine spatial planning, the two are reasonably associated.

Additionally, in the UNESCO model, marine spatial planning is “not conservation planning.” Rather, the approach is to balance economic uses and environmental conservation, not privilege environmental

¹⁰ Interim Framework p. 2.

¹¹ Interim Framework, p.1.

¹² <http://www.unesco-ioc-marinesp.be/>

protection efforts.¹³ Throughout the Task Force’s Interim Framework, however, it is abundantly clear that the general objective of CMSP is to comprehensively evaluate the “cumulative effects” of various ocean activities, which “ultimately is *intended* to result in *protection* of areas” and “maximize the ability of marine resources to continue to support a wide variety of human uses (emphasis added).”¹⁴

Our concern is that CMSP will be utilized in a way that reduces “user conflicts” by reducing use, with the stated goal of environmental protection—rather than balanced conservation or stewardship—being the operative mandate under any new system recommended to the President. In the context of multiple uses, an evaluation of “cumulative effects” virtually guarantees that management decisions will attempt to mitigate any *perceived* environmental impact by restricting those activities which ensure the least political resistance.

For example, the siting of an energy facility, backed by powerful vested interests, will likely overwhelm any opposition from a local recreational fishing group concerned with maintaining traditional public access to public fishery resources. The fishing group is the guaranteed loser in this scenario. While this may also be true in the status quo, the Interim Framework does nothing to address the political imbalance. The dispute resolution process and the planning structures outlined in the Interim Framework provide no solution to inevitable winners and losers when conflicts arise—at most, conflicts are “elevated” to the National Ocean Council (“NOC”), where vested interests may be even more entrenched. The Interim Framework does nothing to level the playing field or change political dynamics and may only exacerbate political conflicts by “resolving” disputes by restricting the weakest players.

Recommendation: *The recreational fishing and boating community strongly opposes a federal effort to allocate space and restrict public access to recreational fishing (i.e., zone) within the ocean or inland environment. Any CMSP should be solely limited to enhancing interagency cooperation in the planning stage of potential uses where conflicts might be unavoidable. The Task Force should better define CMSP and indicate clearly whether it is the intent of the Interim Framework to lay out a new federal policy of spatial planning and space allocation, based primarily on top-down federal government decisions on what is and is not a proper use in any given ocean or inland space.*

The Task Force should clarify whether it intends to initiate a policy of ocean and inland zoning in the United States or if marine spatial planning will be strictly limited to joint data collection, mapping, and cooperative processes between federal, state and local agencies. Should the Administration initiate an ocean zoning policy, it should be the result of well documented biological, economic or social needs and subject to vastly more public review and comment and Congressional oversight.

VII. Role of National Ocean Council Vast, Vague

The Interim Framework clearly recommends a new, vast authoritative role for the National Ocean Council (NOC) in every aspect of U.S. ocean policy. Although the Interim Framework asserts consistently that any CMSP will be primarily developed at the regional level, all final decisions remain with the NOC. For example, the NOC will create the template of the CMSP “Development Agreements” which will form the basis of regional planning body actions.¹⁵ The NOC is the exclusive final arbiter of regional planning body “Work Plans,” which the NOC will “review and approve. . . prior to [their]

¹³ UNESCO, Intergovernmental Oceanographic Commission/Man and the Biosphere Programme. p. http://www.unesco-ioc-marinesp.be/msp_faq?PHPSESSID=a0cdbf614ad67bf9cc346f908ed5bb92

¹⁴ Interim Framework, p. 4.

¹⁵ Interim Framework, p. 12.

implementation.”¹⁶ In order to “ensure a level of national consistency across regions,” the NOC will develop or provide “national guidance” and all CMS Plans will ultimately require “certification by the NOC.”¹⁷ All mechanisms to monitor and evaluate ocean uses, including new technologies, are subject to NOC approval and would be required to undergo a NOC “application” process.¹⁸ It is the NOC that will “develop national performance measures”¹⁹ for the implementation of CMS Plans, and it is the NOC that will identify and implement “compliance mechanisms” to ensure “adherence” by the regional planning bodies.²⁰ Should disagreements arise between the NOC and the regional planning bodies in the NOC certification process, these “interpretation” disputes would be “resolved according to the dispute resolution process developed by the NOC” at a later time.²¹ Ultimately, as outlined in the Interim Framework, it is the NOC which will be the exclusive, final arbiter of any lingering dispute left unresolved at the regional level, in an overall “dispute resolution process” that literally receives one paragraph of elaboration in the Interim Framework and basically consists of “elevation” to the members of the NOC. The resolution of these disputes would appear to have no system for appeal, no independent review. A plain reading of the Interim Framework leaves wide, perhaps unrestricted, discretion to the NOC, an issue of serious concern. Should the dispute resolution process fail to effectively resolve the dispute for the effected parties, the dispute will likely end up in the courts, as is the case today, which begs the question of how precisely the NOC dispute resolution process is enforceable or durable.

Additionally, the Interim Framework outlines no process through which the public can review or comment on any NOC guidance or action. We find it unfortunate that a system that invests so much power in the NOC does not even offer the affected stakeholders the ability to see or comment on the national guidance that will govern the development of regional plans.

Clearly, the Interim Framework would establish a system of top-down federal management of nearly every action involved in any CMS Plan, all subject to NOC policies and procedures which are left undefined in the Interim Framework. While we object to this approach as a general matter, it is impossible for stakeholders to meaningfully comment on vague concepts of governance which are subject to development at a later date.

Recommendation: *The Task Force should substantially elaborate on specific implementation procedures within the Interim Framework and outline the precise mechanisms for any new NOC and under what authorities it would operate. NOC guidance and actions should be subject to public notice and comment. As currently drafted, the Interim Framework is a moving target so vague as to make meaningful public comment impossible. The only thing that is clear is that the NOC would have vast authorities and enforcement options under the Task Force’s proposal.*

Recommendation: *The Task Force should define and elaborate on the NOC “Certification” Process.*

Recommendation: *The Task Force should specify what it means by “National Consistency Standards,” and how they would be designed, developed and enforced.*

Recommendation: *The Task Force should define and elaborate on NOC “Compliance Measures.”*

¹⁶ Interim Framework, p. 13.

¹⁷ Interim Framework, p. 17.

¹⁸ Interim Framework, p. 16.

¹⁹ Interim Framework, p. 21.

²⁰ Interim Framework, p. 18, 22.

²¹ Interim Framework, p. 22.

Recommendation: *The Task Force should define and elaborate on ways to appeal the NOC Dispute Resolution Process, if any.*

VIII. Scope of Regional Planning Bodies and Interaction with Existing Structures

The Interim Framework recommends that CMS planning occur within a set of new regional planning bodies which would evidently be delineated by presidential proclamation outside of specific statutory authorities or Congressional action. These regional areas would correspond to U.S. large marine ecosystems (“LME”) as identified by NOAA, and it is possible that “sub-regional CMS Plans” would also be carved out within the larger regions at the discretion of the regional planning bodies.²² Ultimately, these geographic delineations would encompass the entire U.S. Exclusive Economic Zone (“EEZ”), the Continental Shelf, the Great Lakes, possible upland areas, and essentially absorb “existing state or regional ocean governance bodies.”²³

Subsequent to the creation of these new regional planning bodies, the Partners (a mix of existing and potentially new governing authorities) would execute a “Development Agreement” with which the NOC would ensure adherence through undefined compliance measures.

Our organizations have a number of questions and concerns about these new regional bodies, the scope of their authority, and how they will interface with existing bodies such as Fishery Management Councils (“FMC”), as well as the Highly Migratory Species (“HMS”) Advisory Panel and the NOAA Fisheries NMFS decision-makers for HMS species. These official bodies are authorized by statute under the Magnuson Stevens Act and are the prevailing authority for fisheries management in the U.S. Is it the intent of the Task Force to absorb the FMCs into the new regional planning bodies and, if so, under what authority and to what effect? What impact will the regional planning bodies have on FMC decision-making? What is the consequence for FMC disagreement or a refusal to cooperate with a CMS Plan? If a regional planning body disagrees with a fishery management plan or an FMC regulatory decision, is this dispute subject to resolution by the NOC Dispute Resolution Board, and if so, under what authority?

Additionally, what remains unclear is the incentive for states to participate in CMS Plans or the regional planning bodies. The Interim Framework suggests that states and local governments would *want* to participate because there will be “opportunities and incentives” associated with participation.²⁴ What are these incentives? How will compliance or cooperation be enforced, if an incentive structure alone fails? If a carrot-only approach proves insufficient in accumulating participation, will the NOC recommend new legislative authorities to require participation, or take actions to withhold federal funding in order to prompt participation?

Finally, it is unclear as to why the Oceans Policy/CMSP is applied to the Great Lakes. The Great Lakes are not oceans. The submerged lands in the Great Lakes region are under the jurisdiction of the adjacent states and Ontario and there are no waters under exclusive federal jurisdiction. We are concerned that applying CMSP to the Great Lakes would in fact take away state authority in these regions and bring them under federal control setting up a constitutional conflict as well as impacting the existing international Great Lakes management arrangement between the U.S. and Canada.

²² Interim Framework, p. 10.

²³ Interim Framework, p. 11.

²⁴ Interim Framework, p. 5.

Recommendation: *The Interim Framework should clarify the role of the regional planning bodies, their legal force, and how they will interact with state agencies and existing statutorily established regulatory bodies, such as FMCs and the HMS Advisory Panel. The Interim Framework should elaborate on the specific incentive structure it is suggesting in order to compel state and local participation. Additionally, the legal authorities of the regional planning bodies should be specified—will Development Agreements be binding, legal agreements subject to federal enforcement, for example? Will regional planning bodies have the capacity to override individual state management decisions if they do not conform to the CMS Plan, or will the NOC pursue such authority in the future?*

Recommendation: *The Interim Framework should clarify how CMS plans affecting the Great Lakes would be implemented in accordance with the Law of the Sea Convention given that UNCLOS is a saltwater/ocean specific document.*

IX. Geographic Boundaries Create Nexus to Inland Freshwater

Though the original intent of the Presidential directive seems to relate to the nation’s oceans, coasts and Great Lakes, the Interim Framework specifically provides an opportunity for a broader, inland extension of authority under CMSP’s and the NOC. The geographic scope as defined in the document extends to the ordinary high-water line for coastal regions, and the ordinary high-water mark for the Great Lakes. However, due to unclear language in the Interim Framework, it is unclear if the geographic boundary for CMSP would extend to inland tributaries and their high-water line. Would all waters with established high water designations, or those subject to future designation, fall under the purview of CMSP’s? If so we find this to be a collision course of authorities, especially as it relates to the management of resident aquatic resources. How far inland does the geographic scope of CMSP extend?

Furthermore, the Interim Framework suggests that, if the regional planning bodies so choose, they can incorporate upland areas within the scope of CMSP. The parties represented here support efforts to improve land-based practices that improve water quality for aquatic resources within watersheds and ultimately receiving bodies of water. However, we do not support relinquishing any existing authority, be it state or federal, to a regional CMSP or the NOC.

Recommendation: *The Task Force should clearly define the geographic scope to omit tributaries beyond the legally established shoreline of the oceans, estuaries or Great Lakes. Authority should not be given to the regional planning bodies to designate tributaries and upland areas within CMSP jurisdiction, but simply encourage the regional planning bodies to coordinate efforts with existing inland authorities.*

X. Statutory Authority Discussion Sets Table for Unpredictable Legislative Changes, or Significant Reinterpretation of Existing Statutes

The Interim Framework indicates that that Coastal and Marine Spatial planning under its recommended new structure would be carried out by federal, state, local and tribal authorities under existing applicable statutes. The Framework itself is designed to “provide all agencies with agreed upon principles and goals to guide their actions under these authorities”²⁵ Currently, there are a range of statutory authorities which govern the activities of recreational boaters, anglers, marina operators and others in the marine space—all of which are predictable regulatory structures with which the regulated community has become familiar. Specifically, these authorities include, but are not limited to, the Magnuson Stevens Fisheries

²⁵ Interim Framework, p. 6.

Conservation and Management Act (“MSA”), the Coastal Zone Management Act (“CZMA”), the National Environmental Policy Act (“NEPA”), the Clean Water Act (“CWA”), and authorities ranging from the U.S. Coast Guard, the Army Corps of Engineers, the National Marine Sanctuaries Program and numerous others.

Although the Interim Framework suggests that its implementation could occur within existing authorities, it also outlines a vague process for resolving “pre-existing legal constraints, either procedural or substantive.”²⁶ These potential legal constraints are not identified in the Interim Framework. Rather, federal agencies would identify any legal obstacles at a later date and the NOC would “evaluate” whether or not to pursue a legislative solution, change regulations, or reinterpret statutory requirements. All of this would apparently be done with no public consultation. Indeed, in the NOC Strategic Action Plan (“SAP”), the NOC is empowered to “oversee efforts to identify gaps and conflicts in Federal authorities, and recommend potential steps to reconcile them.”²⁷ Moreover, this legal review effort would specifically involve a consideration of how legal authorities “might be collectively used to support” implementation of CMSP—an apparent concession that even if new legislative authorities are not pursued, the NOC would directly involve itself in leveraging existing statutes in new and unpredictable ways. Should this not succeed, the NOC would recommend legislative changes.

It is difficult for stakeholder groups to comment meaningfully on potential, unpredictable reinterpretations of statute or legislative changes at this time given that there is no specific analysis in the Interim Framework. More problematic is that there are no provisions outlined in the Interim Framework for the public to engage on the NOC Strategic Action Plan, which would be developed according to the Interim Framework in the Phase I development stage. Public stakeholder engagement is only initiated in Phase II, subsequent to the development of the SAP, and only on the regional CMS Plans. Why are stakeholders excluded from the development of the SAP, and the entirety of Phase I?

Within the Interim Framework’s top-down federal management system, we are unclear about the role of the states as it relates to management of fish and wildlife, controlled access to water for recreation and the allocation of water. As stated in the introduction of our comments this is a serious concern because of the pivotal role the states play in each of these areas. The states, which have the primary jurisdiction for resident fish and wildlife, are not appropriately recognized; in fact we believe the states’ role is diminished and threatened by the language of the Framework. The Interim Framework, in our view, also intrudes upon the states’ various authorities for water access and allocation.

Recommendation: *The Interim Framework should substantially elaborate on the specific statutory authorities that would enable the implementation of a national-level CMSP framework. These authorities should be outlined in a separate document subject to public notice and comment. Additionally, public engagement should be initiated in Phase I during the development of the NOC SAP. This engagement should occur within existing, conventional means that ensure meaningful public comment and the creation of an administrative record.*

Recommendation: *The Task Force should reassert the jurisdiction of the states in fish and wildlife management, water-based access and water allocation.*

²⁶ Interim Framework, p. 6.

²⁷ Interim Framework, p. 28.

XI. Recognizing Economic Contribution of the Blue Economy

While the Interim Framework clearly highlights the number of oceans uses that contributes to the Blue Economy, the Interim Framework does not provide clear guidance on how the economic contribution of various sectors will factor into any CMSP regional plan. The vitality of coastal economics depends on robust ocean uses and by extension the ability of recreational and commercial sectors to access ocean and coastal resources. The Interim Framework will inherently affect resource access which will translate to direct economic impacts. It should therefore be centered around promoting a strong Blue Economy and be careful to not unduly impinge on existing jobs, economic development and job creation.

As stated earlier, saltwater recreational fishing contributes over \$82.2 billion in sales and \$24 billion in income to the economy, and provides over 533,000 jobs. And in 2008, recreational boating directly and indirectly impacted 337,758 jobs with a labor income of \$10.4 billion. In addition, there are nearly 12,000 marinas in the United States which serve as gateways to both salt and freshwater resources and the Great Lakes. These economic contributions should not be ignored. Sound policy decisions require that these economic and job factors be an integral part of the process

***Recommendation:** The Task Force should expand the essential elements of the CMSP to include comprehensive economic impact analyses of ocean uses as part of the regional assessments. These analyses should include both the direct “ocean-based” economic contribution of ocean uses as well as indirect onshore economic contributions.*

***Recommendation:** In regards to the recreational fishing and boating sectors, all CMS Plans should include independent documentation of Local, Regional and National Economic implications on recreational fishing and related businesses which rely on environmentally sustainable fisheries.*

***Recommendation:** All Draft CMS Plans should contain a complete independent socio-economic impact analysis on recreational fishing and boating and related businesses for public and Congressional review.*

XII. Stakeholder Involvement is Insufficient

Nothing about the Interim Framework’s policy recommendations is subject to well-established, formal mechanisms that ensure meaningful stakeholder involvement in either the regional planning bodies or the NOC. Although the Interim Framework touts the value of stakeholder participation, it does not guarantee it and it does not require common safeguards such as those required by the Administrative Procedures Act (“APA”) or the Federal Advisory Committee Act (“FACA”). Indeed, the structure outlined in the Interim Framework would appear to be designed specifically to avoid these requirements—to avoid, for example, the creation of an administrative record on what will clearly be *de facto* regulatory decisions.

Specifically, the Interim Framework states that the regional planning bodies should “ensure there is frequent and continuous stakeholder engagement throughout all phases of the CMSP process.”²⁸ While we concur with the sentiment, the Interim Framework unfortunately only recommends that regional bodies “consider” establishing a stakeholder advisory body—there is no requirement that such a body be established; there are no guidelines as to how participants would be selected, and there are no formal procedures (e.g. public meeting requirements; recordkeeping; notice and comment periods) to guarantee meaningful public consultation or participation.

²⁸ Interim Framework, p. 14.

While the Interim Framework calls for outreach to stakeholders during the development of a CMS Plan, this outreach would be *initiated* nine months into the development of these plans, and it would not be formalized. Instead, the regional planning bodies would “identify” key stakeholders, “engage” them, and prepare educational materials with a “glossary” to reduce “misunderstandings” by the public.²⁹ In other words, this stakeholder process is informal and completely driven in one direction—by the regional planning bodies—by procedures they determine, on their own timeline, and without a formal process, nine months into the planning process and with no apparent mechanism to comment on any final plan, or any NOC action with respect to such a plan, at the end of the development process. This is not meaningful stakeholder or public involvement—indeed, it is the opposite of real, binding consultative outreach to potentially impacted parties.

Recommendation: *The Interim Framework should outline a specific, meaningful process for stakeholder involvement that references and complies with FACA and APA. Final CMS Plans should be subject to public notice and comment. NOC decisions, and dispute resolution negotiations, should be transparent, and subject to public review.*

Again, we appreciate the opportunity to comment on the Interim Framework for Effective Coastal and Marine Spatial Planning. We hope these comments have been helpful. Although we support many of the intentions and objectives of the Task Force, we cannot support the Interim Framework without substantial revisions.

We look forward to a continued positive dialogue with the Task Force and the Administration on effective ways to enhance oceans policy coordination and governance. We respectfully request the Task Force please provide us with a written response to the questions and recommendations we have brought forward. Over one million jobs are supported coast to coast in America by recreational fishing activities. The potential impacts from Task Force recommendations on this economy, on people who fish and on state natural resource agencies require much greater clarity and specificity.

Please do not hesitate to contact Patricia Doerr of the American Sportfishing Association (pdoerr@asafishing.com; (703) 519-9691) or Mathew Dunn of the National Marine Manufacturers Association (mdunn@nmma.org; (202) 737-9760) with any questions or if we can provide further assistance.

Respectfully submitted,

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²⁹ Interim Framework, p. 30.

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About the Signing Organizations

American Sportfishing Association the sportfishing industry's trade association, committed to looking out for the interests of the entire sportfishing community. We invest in long-term ventures to ensure the industry will remain strong and prosperous as well as safeguard and promote the enduring economic and conservation values of sportfishing in America. ASA also represents the interests of America's 60 million anglers who generate over \$45 billion in retail sales with a \$125 billion impact on the nation's economy creating employment for over one million people.

For more than 40 years, Bass Anglers Sportsmen Society (BASS) has served as the authority on bass fishing. With more than 500,000 members, it is one of the nation's largest angling organizations that works diligently for progressive, positive change on issues related to conservation and water access.

Berkley Conservation Institute (BCI) is the conservation division of Pure Fishing, the world's largest fishing tackle manufacturer and a leading advocate for conservation in the fishing tackle Industry. Pure Fishing is headquartered in Columbia, South Carolina.

The Center for Coastal Conservation is a coalition of the leading advocates for marine recreational fishing and boating. It is dedicated to promoting sound conservation and use of ocean resources by affecting public policy through the political process.

Coastal Conservation Association is the largest marine resource conservation group of its kind in the nation. With almost 100,000 members in 17 state chapters, CCA has been active in state, national and international fisheries management issues since 1977. Visit www.JoinCCA.org for more information.

The Congressional Sportsmen's Foundation provides sportsmen and women with access to elected officials and other key policy makers affecting hunting, fishing and conservation issues. Composed of leading conservation and outdoor industry organizations, and serving elected officials through its affiliate Caucuses (Congressional Sportsmen's Caucus, the National Assembly of Sportsmen's Caucuses and the Governors Sportsmen's Caucus), CSF is dedicated to providing a voice for sportsmen in the political arena.

The International Game Fish Association (IGFA), is a 70 year old world renowned not-for-profit organization committed to the conservation of game fish and the promotion of responsible, ethical, angling practices through science, education, rule making and record keeping. IGFA accomplishes its mission by enlisting the voice of over 300 official IGFA representatives in nearly 100 countries, and more than 15,000 angler-members around the globe.

National Marine Manufacturers Association is the nation's leading recreational marine industry association, representing over 1,600 boat builders, engine manufacturers and marine accessory manufacturers. NMMA collectively produces more than 80 percent of all recreational marine products made in the United States.

Shimano is a major manufacturer of fishing rods, reels, tackle and bicycle components. The Shimano Sports Fisheries Initiative (SFFI) was founded in 1990 as it corporate conservation, youth education, scientific research and fishery habitat improvement effort across North America. SFFI was the first member of the recreational fishing industry to sign a formal Memorandum of Understanding with the U.S. Department of Interior on behalf of these initiatives. Shimano believes it is our responsibility to give something back to the natural resources on which our business is based, as well as to our customers who share our commitment to conservation and environmental stewardship.

The Billfish Foundation is dedicated to conserving and enhancing billfish populations around the world. The non-profit organization is an effective advocate for international change, synthesizing science and policy into effective fishery management solutions. By coordinating efforts and speaking with one voice, The Billfish Foundation is able to work for solutions that are good for billfish and not punitive to recreational anglers.