

## Executive Director's Report

### New Regional Administrator

I want to welcome Dr. Jim Balsiger as the new Regional Administrator, taking over for Steve Pennoyer. Jim was with us for our October and November 1998 meetings, so he knows the ropes. He has long been associated with the Council process, first as chairman of the Gulf of Alaska groundfish plan team, then deputy Center Director, and then Center Director before moving into his current position as Regional Administrator. So welcome aboard, Jim.

### Departing Council Members

This is the last meeting for Rick Lauber and Joe Kyle. We will give Joe special recognition at an industry-hosted reception on Wednesday night. A farewell reception for Chairman Lauber will be held this fall in Sitka during our October 4-9 Council meeting.

### October and September Meetings

We will meet in Sitka the week of October 2<sup>nd</sup>. Some of the issues will include final action on groundfish processor sideboards and excessive share analysis, review of the EISs for groundfish and AFA, preliminary review of the charterboat IFQ program, initial review of groundfish specifications for 2001, final action on halibut subsistence and Cook Inlet ban on pelagic trawling, and initial review of several other amendments including separate sideboards for catcher vessels, Pacific cod pot split between catcher vessels and catcher processors, and CDQ program regulatory amendments.

It is looking more and more like we also may need an early September meeting to take action on Pacific cod RPAs. Either during the sea lion issue under C-4 or at the end of the meeting, we need to get back to this so we can nail down a place and time to meet.

### Eider Critical Habitat

Steller's and Spectacled eiders critical habitat was designated in a proposed rule published in March. Information was in your April meeting notebooks. The comment period on the proposed rule has been extended until June 30, 2000, and there has been a lot of interest shown by the fishing industry in the designation and scope of critical habitat, especially as it may constrain local fisheries. Though I have not copied the April materials for this notebook, attached as item B-1(a) is correspondence from the Alaska State Legislature concerning the issue. We also are developing GIS overlays of fishing areas on proposed critical habitat and may have those charts available for this meeting. USFWS staff also may be here to give us more background.

### Council Chairmen's Meeting

Chairman Lauber and I just returned from a regional council chairmen's meeting in Charleston, South Carolina. We discussed reauthorization issues and you will find a synopsis under agenda item C-6. Another major issue was NMFS guidelines on overfishing definitions. Most councils have found data lacking to accurately estimate MSY. Additionally, having to rebuild overfished stocks in 10 years or less often requires draconian measures that may have extreme impacts on local fisheries and communities, whereas a longer

rebuilding period could allow at least some harvest to occur and sustain the economies. There were sufficient concerns raised by the councils over the guidelines, that NMFS and the councils agreed to hold a workshop, possibly in the August-September timeframe, to consider appropriate changes to the guidelines.

Concerning the overfishing issue, I have placed two letters under item B-1(b). The first is from the Center for Marine Conservation expressing their concern that we have not moved forward promptly with processing amendments to our overfishing definitions, particularly as they relate to the lack of a minimum stock size threshold (MSST). This proposal was accepted by the Council in February and tasked to NMFS. It was supposed to be available for initial review in April, but unfortunately, the principal analyst, Grant Thompson, has been fully booked working on the groundfish SEIS. The second letter was drafted by our SSC and argues against the use of MSSTs in our overfishing definitions. Given the fact that we do not have any overfished groundfish stocks requiring immediate attention, I believe our course of action should be to support the national workshop by sending appropriate SSC members to it, and then based on the outcome, assign highest priority to overhauling our overfishing definitions this fall after some of the dust settles on the SEIS.

A second item of interest raised at the chairmen's meeting was a national initiative to protect coral reefs and other sensitive habitat areas. Under item B-1(c) you will find news items on the initiative and a draft of the executive order. It is difficult to determine whether the order will ultimately affect Alaska waters.

A third item that I thought you should be aware of has to do with a new private commission that is being established by Pew Charitable Trust to study the conditions of the oceans and make recommendations to Congress on how to restore and protect them. Among the panel members is Governor Tony Knowles. More information is available under item B-1(d).

# Alaska State Legislature

AGENDA B-1(a)  
JUNE 2000



Official Business -  
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State Capitol  
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Juneau, Alaska 99801-1182

## Representative Gail Phillips

Friday, April 28, 2000

Clarence G. Pautzke  
Executive Director  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Ste. 306  
Anchorage AK 99501-2252

RECEIVED  
MAY - 3 2000  
N.P.F.M.C.

Dear Mr. Pautzke:

Enclosed is a recently sent letter to David Allen of the U.S. Fish and Wildlife Service (USFWS) regarding the designation of critical habitat for the Spectacled and Stellar's Eiders. This proposed designation would be devastating to Alaskan development that would require any kind of federal permit.

The USFWS has extended the period for comments on the proposed rule change for this designation. It will be important to get as many comments to Mr. Allen as possible to persuade them not to adopt the proposals. Please share the letter with your Alaskan members.

Thank you for your consideration. If you have any Questions please feel to call my office.

Sincerely,

A handwritten signature in cursive script that reads "Gail Phillips".

Gail Phillips  
Representative

GP:sp



# ALASKA STATE LEGISLATURE

REPRESENTATIVE GAIL PHILLIPS

April 26, 2000

Mr. David B. Allen  
Regional Director  
U.S. Fish and Wildlife Service  
1011 East Tudor Road  
Anchorage, AK 99503

Dear Mr. Allen:

These are my comments regarding the proposals to designate critical habitat for the spectacled and Steller's eiders. Although two separate federal register notices were published, I have decided to combine my comments on both proposals as they are basically the same. I am requesting that you include these comments in the record for both species.

After examining the information available to the public, I agree with the initial ruling of the U.S. Fish and Wildlife Service (Service) that it was not prudent to designate critical habitat for both the Steller's eider and the spectacled eider because there was no demonstrable benefit to the recovery of either species. It also appears to me that the "best available scientific and commercial data available" has not changed dramatically since the original decision was made.

I am advised that the out-of-court settlement which has led to the development of these proposals only required that the initial decision be re-examined. The Service, after appropriate deliberation and public review, is still faced with determining whether or not the scientific evidence supports a conclusion that the designation of critical habitat is "prudent" or "not prudent" for each species. In order for the Service to reverse its position and now conclude that the designation of critical habitat "is prudent", it would seem logical that one of three things must occur: (1) The Service would have to admit that the original decision was based on faulty science; (2) The Service presents new and convincing evidence to reverse the original decision; or (3) The Service admits that the new decision is based on politics and not biology.

Presentations by representatives from the Service stress that the reason these designations are being proposed is that the Service has lost numerous cases where critical habitat was not designated for species listed under the Endangered Species Act (ESA). I would contend, however, that whether or not the agency has won or lost cases should not determine the biological assessment processes employed by the agency. If the courts or a plaintiff have applicable biological information that was not considered by the agency or was inadequately considered in the initial decision, then that should be assessed. The courts may also propose a new threshold for designating critical habitat or admonish an agency for avoiding altogether a biological assessment to determine whether designation is prudent or not.

Everyone understands the importance of habitat to the very survival of a species. In addition, I would probably concur that all of the areas you have mentioned fall within the ranges of the two species and are

utilized to some degree. I cannot, however, agree that all of the areas described are of equal and critical importance. Describing the entire northern one-third of NPR-A and the entire southern coast line of the Alaska Peninsula and Kodiak Island as critical habitat because on occasion an unknown number of birds occupied this habitat is absurd.

Without going into detail, I want to stress that the information presented in these proposals are totally insufficient to adequately describe the habitat requirements of the species, to describe Primary Constituent Elements (PCE), to justify critical habitat designations or to document population trends. The federal register is filled with quotes such as:

- "It is unknown whether the Alaska-breeding population concentrates in distinct areas or disperses..."
- "The exact historical breeding range of the Alaska-breeding population of Steller's eiders is not clear."
- "The historical range may have extended discontinuously..."
- "There are few historical records from the eastern North Slope, however, so it is unknown whether the species was abundant or whether sightings were uncommon."
- "Determining population trends for Steller's eiders is difficult..."
- "We do not know whether the species' breeding population on the North Slope is currently declining, stable or improving."
- "North Slope eiders have no clear population trend."
- "We do not know the size of the nonbreeding segment of any population."
- "...we have no evidence that a population decline has occurred on the North Slope due to our complete lack of historical data."

I disagree with the Services' contention that the designation of critical habitat will have no real impacts as the same degree of consultation is already required due to the fact that the species is listed as threatened under the ESA. It is intellectually dishonest for the Service to make this claim knowing full well that the designation of critical habitat expands the consultation process requirements to include modification of habitat whereas at present there must be demonstrated jeopardy to the species. It would be easier to demonstrate a potential impact on habitat, regardless of whether or not it is inhabited, utilized or critical to the recovery or survival of the species, than it is to demonstrate impacts that result in actual jeopardy to the species. The Service attempts to vaguely allude to some possible expanded consultation when it stated:

"Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future."

Considering the depth of knowledge that the Service has about these two species, the potential for court intervention and misapplication of the ESA is enormous. One has to also assume that there is a real reason that the environmental groups have continually and aggressively pushed for the designation of critical habitat for listed species. I have concluded that the recent success they have had in federal court in pushing for the designation of critical habitat gives them some assurances that the same courts will be equally sympathetic to their demands that all critical habitat be totally protected. Whether or not the Service treats the process and scope of the consultation basically the same is no assurance that the courts will. I truly believe the designation of critical habitat will give the environmental extremists the leverage they need to keep any legitimate project or program proposed within the boundaries of the designated critical habitat areas either frozen in the bureaucracy or effectively stymied in court.

The November 29, 1999 memo to Laverne Smith from Lisa Del Compare in the Office of the Solicitor emphasizes some of the inconsistencies in the spectacled eider proposal. Although there is no recovery plan for Steller's eiders at present, some of the same criticism is appropriate to that species as well.

In closing, I would like to suggest that the Service maintain its original position that the designation of critical habitat for these two species is not warranted or justified. The Service admits that there is little or no difference between the consultation process whether critical habitat is designated or not. Since that is the official position of the agency, compelling evidence should be required to demonstrate that the designation of critical habitat in each area is essential to the recovery of each species.

If the Service, for whatever reason, insists that critical habitat designation is essential, I strongly urge the agency to limit its designations to only those areas where it is proven that the specific habitat being designated is the most critical and essential to meet the recovery objectives of the Service.

Enclosed you will find a copy of the Joint Resolution which has passed the Second Session of the Twenty-First Legislature. I want to assure you that most of us in the legislature consider this a serious issue and are fully prepared to take whatever steps are necessary to protect the interests of the state and its citizens.

I would also like to add that this example clearly illustrates why the ESA needs serious surgery. It is clear that the focus of the ESA has become a mechanism for expanding the influence and jurisdictions of the regulating agencies rather than in the recovery of a listed species. It would also be encouraging if more emphasis by the agency was focused on keeping species off of the lists entirely.

Thank you for considering my comments and recommendations.

Sincerely,

  
Representative Gail Phillips

cc: Senator Ted Stevens  
Senator Frank Murkowski  
Congressman Don Young  
Governor Tony Knowles

Enclosure

GP :rs

JUNE 2000



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May 19, 2000

Richard B. Lauber, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

Re: Failure to Act on Overfishing Proposal of July 26, 1999

Dear Chairman Lauber:

We write regarding the overfishing proposal we submitted to the Council on July 26, 1999. That proposal addressed the Council's and NMFS's failure to implement minimum stock size thresholds (MSSTs) for the Fishery Management Plans (FMPs) for the Bering Sea and the Gulf of Alaska, as required by the Magnuson-Stevens Act. The proposal also asked the Council to increase the default target stock size to 50% of the pristine stock size, and to adopt a more conservative harvest control rule to account for uncertainties in our knowledge of the stocks. The primary purpose of our proposal was to give the Council an additional opportunity to come into compliance with the minimal requirements of the National Standard Guidelines, after it had failed to do so by the October 11, 1998 deadline established in the Sustainable Fisheries Act amendments. As you are no doubt aware, though, conservation organizations have long questioned the legitimacy of the default minimum stock size suggested by the Guidelines. Notwithstanding these concerns, we wished to work with the Council at that time.

After our proposal was received, we were given assurances that it would be acted on expeditiously. These assurances were apparently prompted by concerns expressed by several groups, including NMFS, that Amendment 56/56 lacked MSSTs. The Council's advisors also recognized the value of examining the issues we brought forth, as indicated by the high ranking given to our proposal by the Plan Team and the Science and Statistical Committee. Accordingly, we were assured that the Science and Statistical Committee would analyze alternatives and be prepared to make recommendations in time for the April 2000 meeting, with Council action at the June 2000 meeting. And, indeed, the calendar in the February 2000 edition of *News and Notes* indicated that this was to be the case. We thus spent a great deal of time and energy preparing for a presentation to the SSC at the April meeting. We were quite concerned when this item disappeared from the March 17 Draft Agenda for the April meeting, without explanation. Upon inquiry, we were told that the proposal would be taken up at the June meeting.

To our dismay, however, our proposal is nowhere to be seen on the May 12 Draft Agenda, which we received in our offices this week. We must now conclude that the Council, for whatever reason, has "back-burnered" our proposal and that we can no longer be assured that

either the Council or NMFS will move quickly to rectify their lack of compliance with the overfishing mandates of the Magnuson-Stevens Act. Given this state of affairs, we will pursue other options to address our concerns.

In sum, we are disappointed that the Council has delayed action on this very important conservation issue. The Council is of course free to continue analyzing our proposal, but CMC will look to other fora to achieve the same result.

Sincerely yours,



Kris Balliet  
Director, Alaska Regional Office

Cc: Clarence Pautzke, NPFMC  
Steven Pennoyer, AK Region  
James Balsiger, AFSC  
Richard Marasco, SSC  
Andrew Rosenberg, NOAA  
Dorothy Childers, AMCC  
Jack Sterne, Trustees for Alaska  
Eric Jorgensen, Earthjustice  
Steve Roady, Ocean Law Project



# North Pacific Fishery Management Council

Richard B. Lauber, Chairman  
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May 10, 2000

Ms. Penelope Dalton  
Assistant Administrator of Fisheries  
National Marine Fisheries Service  
1315 East West Highway  
Silver Spring, MD 20910

Dear Ms. Dalton:

The purpose of this letter is to inform you of certain problems that NPFMC is experiencing with the NMFS status determination criteria and to request clarification on a number of issues. NPFMC will be attempting to improve its current overfishing definitions in the next year, so your timely response will be much appreciated. Because of the technical nature of the problem, our Scientific and Statistical Committee drafted this letter.

NPFMC has continually evolved a TAC-setting process that has resulted in some of the most conservative recommendations found in the world. The quantitative definition of the overfishing level (OFL) as a level that avoids jeopardizing the long-term sustainability of managed resources came into being in the early 1990s as a consequence of a NMFS (D.C.) initiative. Two subsequent revisions (Amendments 44 and 56) were made, as scientists learned that lower fishing mortalities were necessary to achieve conservation principles.

The policy approved by the Council since the early 1990's is a biomass-based policy, wherein (1) fishing mortality is reduced at low population levels below a specified target, (2) separate definitions are given for target (ABC) and limit (OFL) catches, and (3) tiers are set up to accommodate different levels of available information. NPFMC is pleased that all three components are directly addressed in the national Status Determination Criteria. Furthermore, the Council has always set TAC (the actual recommended catch) at or below the ABC level, and thanks to our Observer Program and NMFS in-season management, actual catch (including bycatch) is usually below or near the TAC.

The actions in Amendment 56 to the BSAI and GOA groundfish plans used guidance from the MSFCMA and the 1998 draft NMFS guidelines. The NMFS guidelines call for determination of a minimum stock size threshold (MSST) that would provide rebuilding within a fixed period of 10 years to an MSY biomass level using a maximum fishing mortality threshold (MFMT) that is contained within a harvest control rule. This limiting harvest control rule must have fishing mortality less than or equal to that in the MSY control rule. If a population falls below the MSST, then a rebuilding plan must be completed within one year. The description of a control rule in the guidelines is very similar to the harvest policy that NPFMC uses, so this part of the guidelines has not been a problem. The problem is with the MSST, its technical definition in the guidelines,

its use as an indicator of an "overfished" population, and its triggering of a rebuilding plan as a separate action from the harvest policy. We believe that the current state of science and knowledge allows one to determine when overfishing is occurring, but it is much more difficult to determine when a population or stock is overfished.

The Council policy in Amendments 44 and 56 of using a biomass-based policy that reduces fishing mortality as stocks decrease in size was deliberately selected to provide for automatic rebuilding. In contrast, the NMFS guideline on MSST's requires additional action when stocks are below or approaching the MSST. There is substantial literature to indicate that a biomass-based policy is sufficient to provide for conservation needs. NPFMC experience with the Status Determination process in 1999 has shown that the current biomass-based approach is sufficient to assure that harvest levels provide for sufficient rebuilding within the specified period of 10 years found in the MSFCMA. The added complexity of a threshold policy using MSSTs on top of a biomass-based policy is difficult for the public and even scientists to understand.

NPFMC did not feel obligated to incorporate an MSST in Amendment 56, because the NMFS Guidelines are supposedly suggestions, not statutes. NMFS eventually approved the definitions by agreeing that NPFMC had defined an implicit MSST level and an explicit MSY biomass level (or a proxy) for those tiers with sufficient information. Nevertheless, a current problem is that the same (mostly NMFS) scientists who so ably work within the Council arena on stock assessments must also perform the status determination evaluation using the NMFS guidelines with an explicit MSST that the Council has not accepted. This is creating a confusing, if not untenable, situation for those scientists. In addition, some members of the public, especially those in the environmental community, wish to see further consideration of MSST's, so NPFMC will be reviewing its overfishing definitions in the next year to see if MSST's can be incorporated.

The following issues and related questions have arisen:

1. Currently, NMFS scientists working with NPFMC do not calculate an explicit MSST, but rather a determination is made as to whether the population is above or below MSST. If we explicitly calculate an MSST, is it permissible to alter the definition of MSST in the guidelines? For example, can the requirement that MSST be no lower than  $B_{msy}/2$  be dropped?
2. Much time and energy are spent in developing and reviewing a rebuilding plan by scientists, agency personnel, Council members and staff, and the public. If an automatic rebuilding plan with reduced fishing mortality at low population levels is already in place, can the actual FMP amendment process be avoided?
3. The NMFS guidelines require the definition of an MSY control rule, an MFMT rule less than or equal to the MSY control rule (the limit), and an OY control rule less than or equal to the MFMT rule (the target). Does NMFS view the limit control rule as the "real" control on the fishery? Can we be allowed to set the limit to be the same as the target since this is the real limit NPFMC imposes on our fisheries? Consequently, if catch does not exceed this level by some small amount (say 5%), can we then define "overfishing" not to be occurring?
4. The NMFS guidelines require that rebuilding to MSY be evaluated using the MFMT rather than the target OY (or in our case, the ABC) rate. Our scientists have equated the MFMT with the previous OFL fishing mortality, which is akin to MSY fishing mortality. We believe it is more sensible to evaluate rebuilding on the basis of the ABC fishing mortality rate that is actually used in practice (or even the rate based on TAC). If we establish that catch rarely exceeds this ABC level, can we then substitute the target ABC rate for the MFMT limit to accurately reflect what we expect to occur from our real harvest policy?

Finally, we would like to make some suggestions for future revisions to the NMFS guidelines based on our experiences to date:

- A. Fish populations fluctuate widely due to a variety of reasons. One of the most important is recruitment fluctuations due to changes in the environment. Setting an MSST that balances conservation concerns with efficacious management is very difficult in these circumstances. The notion of maximum sustained yield for widely fluctuating stocks may not be applicable. We are preparing rebuilding plans for three crab populations for which fishing probably had little or nothing to do with their declines. The overfishing definitions that we constructed follow the intent of the NMFS guidelines but are probably not in accord with the biological reality of the populations. Therefore, new guidelines for widely fluctuating species under changing environmental conditions should be investigated. It is not clear that an MSST is desirable for such populations.
- B. Using  $B_{MSY}/2$  as the lower bound for the MSST is arbitrary and based on population dynamics concepts that are about 50 years old. The use of such a high value may be draconian in its effect and induce unnecessary management action in light of naturally fluctuating stocks. For most of our populations, there is little or no evidence of reduced recruitment at lower population levels over the range of stock sizes encountered. The biological basis for a unique MSST value has therefore not been established. We believe that an appropriate MSST definition is likely to be population-dependent. The use of  $B_{MSY}/2$  as a default rather than a requirement may be a better approach.
- C. The use of a fixed 10 year period for evaluating rebuilding conveys the impression that we can predict where the population will be ten years hence, but we all know the uncertainties involved. Furthermore, by concentrating on the population level ten years hence in defining MSST, one may ignore the near-term population trajectory, which is often of greater importance for current management. We do recognize that this requirement comes from the revised Magnuson-Stevens Act and would require Congressional action to change it.
- D. Future improvements in management require the understanding of uncertainty in stock projections and the notion of risk. One way to get away from policies that lead to overfishing is to formulate problems in terms of risk, both to the fish and to the fishery. While the guidelines mention this possibility, better technical guidance needs to be developed.
- E. As mentioned above, some flexibility to choose the appropriate fishing mortality based on the target level should be given to Councils who have shown the ability to keep fishing mortality under control.
- F. There is strong potential for confusion over the term "overfished". Stocks with wide natural swings in abundance will be classified as "overfished" with minor or no contribution from fishing (such as our crab stocks). Consequently, the deserved reputation of the NPFMC for its conservative management practices could be damaged. Under the current definition, there are hundreds of species that were "overfished"; but these are species that went extinct long before humans walked the planet! NMFS should give strong consideration to alternate classification systems such as that described by Musick et al. (1999, Fisheries 24(12): 6-14). The term "overfished" should be reserved for those populations for which fishing can be said to be one of the main factors in a population decline. Nevertheless, we do support the basic concept that stock declines should invoke greater conservatism in management and have designed our harvest policies accordingly.

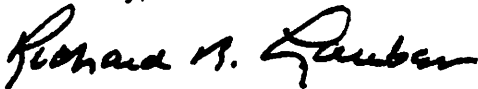
Ms. Penny Dalton  
May 10, 2000  
Page 4

The Council chairmen have raised similar concerns about rebuilding periods and overfishing definitions at their June, 1999 meeting and in their testimony on MSFCMA reauthorization.

In summary, NPFMC urges that NMFS revise these guidelines to allow consideration of alternative approaches, such as automatic rebuilding programs. In addition, greater flexibility in using these guidelines is sorely needed, and further attention is needed on the issue of establishing prudent MSST's for conservation benefits. One possibility is for NMFS to convene a workshop with SSC representatives and assessment scientists from the different Councils, along with others with experience in harvest policy development. Surely it must be possible to come up with a set of workable guidelines to achieve the laudable goal of rebuilding depleted stocks and at the same time effectively interface with existing Council harvest policies.

If you need further clarification or would like to discuss this further, our SSC contact is Dr. Terry Quinn at the University of Alaska Fairbanks (907-465-5389, Terry.Quinn@uaf.edu).

Sincerely,

A handwritten signature in black ink that reads "Richard N. Lauber". The signature is written in a cursive style with a large, stylized initial 'R'.

Richard Lauber  
Chairman, NPFMC

**Subject: FW: New Plan To Protect Fragile Water****Date:** Fri, 26 May 2000 13:04:21 -0400**From:** "Furlong, Dan" <DFurlong@mafmc.org>**To:** Clarence Pautzke <Clarence.Pautzke@noaa.gov>,  
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FYI - timely item based on our recent meeting in Charleston, SC.

New Plan To Protect Fragile Water

The Associated Press

By ANNE GEARAN

WASHINGTON (AP) - The Clinton administration plans broad new protections for fragile stretches of sea, beach and reef - a system of ocean preserves that could eventually mirror the system of protected forest and parks on land, environmental groups said Thursday.

On Friday, President Clinton plans to direct federal agencies to come up with a quick plan for protecting Hawaiian coral reefs and a longer-term plan for addressing threats to other marine areas, private organizations involved in the effort said.

His plans do not require action by Congress, but could be undone by the next president.

''We've set aside more than 200 million acres of wilderness and national parks to provide sanctuaries for wildlife and ourselves, but we have until now neglected our oceans,'' said John Adams, president of the nonprofit Natural Resources Defense Council.

Most American live near a coastline, and pressures from development, pollution, fishing, and oil and gas drilling are increasing yearly, environmental advocates said.

Clinton wants a federal proposal in 90 days that would permanently protect reefs along a 1,200-mile string of islands in far northwest Hawaii. The coral reef system there represents more than half the total reef structure in U.S. waters, environmentalists said. It is threatened by pollution and overfishing.

Elsewhere, the Interior Department and the Commerce Department would draw up lists of threatened areas and weigh how best to protect them - through total bans on fishing, drilling or other activities, or through milder measures. A new federal office would administer the process.

Clinton plans to do those things by executive order, or presidential prerogative. His announcement is to be part of a visit to the Assateague Island National Seashore off the Maryland and Virginia coasts.

Opposition to the plan is likely from commercial fishing interests and other businesses that use open ocean. But Sarah Chasis, a lawyer with the Natural Resources Defense Council, said some fishermen have become allies of protection plans in Florida and elsewhere.

''The protection means new spawning grounds, and that ultimately benefits fishing elsewhere,'' she said.

The federal government already has administrative power to impose protections on federal waters and coastline, but it is not often invoked. Those powers do not extend to private waters.

Only about 50 square miles of ocean is now afforded the kind of blanket protection from human activity accorded true wilderness areas on land, said Jack Sobel, a specialist in marine ecosystems and coral reefs at the nonprofit Center for Marine Conservation.

''We don't think the executive order by itself is going to make sure that (proper) protection happens,'' Sobel said. ''But we do think a lot can get done in eight months,'' before Clinton leaves office. ''We think a committed administration can leave a lasting legacy in a relatively short time.''

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**Trish Kennedy**

**From:** AOLNews@aol.com  
**Sent:** Thursday, March 02, 2000 3:56 PM  
**To:** undisclosed-recipients  
**Subject:** Clinton Seeks Coral Reef Protection

Clinton Seeks Coral Reef Protection

c The Associated Press

By H. JOSEF HEBERT

WASHINGTON (AP) - The Clinton administration proposed an unprecedented campaign Thursday to set aside one-fifth of America's coral reefs as "ecological reserves," banning fishing and many other activities.

Less than 3 percent of these reefs are so protected, although environmentalists said that two-thirds of the 8,600 square miles of U.S. coral reefs are at risk from overfishing, pollution and commercial activities.

The "action plan" to reverse the decline of coral reefs involves 11 agencies but will be headed by the National Oceanic and Atmospheric Administration and the Interior Department.

"The coral reef crisis we are facing threatens the marine ecosystem. It is absolutely critical that we act now," said NOAA Administrator James Baker.

America's coral reefs are mainly off Florida, Hawaii, the Virgin Island and Puerto Rico and in the Pacific trust territories. About 10 percent of coral reefs have disappeared and another two-thirds are under severe environmental stress, marine biologists said.

The administration plan, which is to be coordinated with state officials and territorial agencies, calls for developing a scientific consensus on what areas should be set aside as ecological reserves where fishing and other disruptive activities would be banned.

The goal is to give at least 20 percent of U.S. coral reefs such protection by 2010 to ensure that the reefs are replenished. The plan also calls for increased mapping of coral reefs and additional monitoring.

The reef revitalization plan was recommend by an 18-member task force created by President Clinton two years ago to study how coral reefs could be better protected. The group included a broad cross-section of government officials, scientists, environmentalists and members of the fishing community.

Fishing interests - both commercial and recreational - have been concerned about fishing bans. Some recreational fishing interests have suggested fish-and-release policies in the protected areas. However, marine biologists said that would still be harmful to the coral and the many species that are found in the ecosystem.

It's unclear how the off-limits areas would be designated. Officials said that was still to be worked out,

3/3/2000

but that designations would be made jointly by federal, state and local authorities with participation by environmentalists and commercial interests.

Roger Rufe, president of the Center for Marine Conservation, called the approach "bold and visionary" but said he was concerned that it didn't address many of the pollution problems that threaten the coral ecosystems in areas such as southern Florida where there has been rapid growth and sprawl.

Baker acknowledged the shortcoming. "The plan is a start," he said, suggesting that the threats to coral reefs from nutrient and chemical runoffs would have to be addressed separately.

Environmentalists also questioned whether enough money would be put into the reef protection plan, which they say will have to be long-term over 10 or 20 years. The current budget calls for \$21 million in federal spending for coral reef protection and the administration has asked for \$25 million for next fiscal year.

Coral reefs have become a growing tourist attraction, accounting for \$2 billion to the tourist industry in Florida and Hawaii alone. They also contribute about \$200 million to the recreational and commercial fishing industries and are primary source for new medicines and biochemicals.

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## EXECUTIVE ORDER

### MARINE PROTECTED AREAS

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), National Wildlife Refuge Administration Act (16 U.S.C. 668dd-ee), National Park Service Organic Act (16 U.S.C. 1 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), Wilderness Act (16 U.S.C. 1131 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*) and other pertinent statutes, it is ordered as follows:

#### Section 1. Purpose

The purpose of this Executive Order is to assure that significant natural and cultural resources within U.S. marine waters are protected for the benefit of the present and future generations in perpetuity, by strengthening and expanding the nation's system of marine protected areas. An expanded and strengthened comprehensive system of marine protected areas throughout our nation's marine waters is essential to the conservation of our nation's natural and cultural marine heritage, and for the ecologically and economically sustainable use of U.S. marine waters for future generations. To this end, this order directs federal agencies to, consistent with domestic and international law: (1) strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded marine protected areas; (2) work together to develop a scientifically based, comprehensive national system of marine protected areas representing diverse U.S. marine ecosystems, natural or cultural resources; and (3) avoid causing harm to MPAs through federally conducted, approved or funded activities.

#### Section 2. Definitions

(a) "Marine Protected Area" means any area of marine waters that has been reserved by Federal, State, Tribal or local laws or regulations to protect part or all of the natural and cultural resources therein.

(b) "Marine waters" means all submerged lands and waters between the baselines from which the U.S. territorial sea is measured to the limits of the U.S. Exclusive Economic Zone or U.S. jurisdiction over the continental shelf, whichever is greater, and also may include immediately adjacent waters internal to the baselines whose chemical composition is more similar to oceanic than fresh.

(c) "Ecological reserve" means a type of marine protected area in which there is no resource extraction, including no fishing, no deep-sea mining and no oil and gas drilling.

**Sec. 3. MPA Establishment, Protection and Management.** Each Federal agency whose authorities provide for establishment or management of MPAs shall assess marine water resources and take appropriate actions to enhance or expand protection of existing MPAs and establish or recommend, as appropriate, new MPAs.

**Sec. 4. National System of MPAs.**

(a) The Department of Commerce and the Department of the Interior, in consultation with the Department of Defense, the Department of State, the Department of Transportation, the Environmental Protection Agency, the National Science Foundation and other pertinent Federal agencies, shall coordinate and share information, tools and strategies to assure that the following are used in the exercise of each agency's respective authority, to further enhance and expand protection of existing MPAs and to establish new MPAs, including ecological reserves:

- science-based identification and prioritization of natural and cultural resources for additional protection;
- integrated assessment for ecologically linked MPA sites to assure synergistic benefits;
- target levels of protection as ecological reserves for representative habitats in different geographic areas of U.S. marine waters;
- an assessment of threats and gaps in levels of protection currently afforded to natural and cultural resources;
- practical, science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs;
- identification of emerging threats and user conflicts affecting MPAs and appropriate, practical and equitable management solutions, including effective enforcement strategies, to eliminate or reduce the threats and conflicts; and
- identification of opportunities to improve linkages with international marine protected area programs.

(b) In carrying out the requirements of this section, the Department of Commerce shall seek the expert advice and recommendations of non-federal scientists, resource managers, and other interested persons and organizations through the creation of a Marine Protected Area Federal Advisory Committee. Further, the Department of Commerce's National Oceanic and Atmospheric Administration shall establish a Marine Protected Area Project Center to carry out the requirements of this section, collect the information set forth above, coordinate the Web site established pursuant to section 6 of this Order, and partner with governmental and non-governmental entities to conduct necessary research, analyses and exploration. The goal of the MPA Project Center shall be to develop a framework for, and to provide NOAA and other MPA programs the necessary information, technologies and strategies to support a National System of MPAs. This National System framework and the work of the MPA Project Center is intended to support, but not dictate, agencies' independent execution of their own existing authorities. Further, nothing in this subsection is intended to impede or prevent immediate or future actions to

create new or expand existing MPAs.

(c) In addition, to better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall propose new regulations by December, 2000, to strengthen existing programs, improve marine water quality standards, and define specific marine areas that warrant special protection from sources of pollution. EPA shall include in its proposal the establishment of sensitive ecological and important recreational areas that would be protected against degradation from pollution. Further, EPA shall limit the issuance of permits for marine development activity until after it proposes the new regulations. Prior to issuing its regulations, EPA shall consult with the Department of Commerce, Department of the Interior, other pertinent Federal agencies, coastal States and Territories, Tribes, and the public.

**Sec. 5. Intergovernmental Cooperation.** Each Federal agency whose actions may affect the natural or cultural resources of an MPA shall:

(a) Identify such actions.

(b) Use relevant programs and authorities to support the protection and enhancement of the conditions of such resources.

(c) To the extent permitted by law, ensure that any actions it authorizes, funds or carries out will not degrade the conditions of such resources. Exceptions to this requirement may be allowed to the extent permitted by law under terms prescribed by the heads of Federal agencies: (i) during time of war or national emergency, (ii) when necessary for reasons of national security, as determined by the Secretary of Defense, (iii) during emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution; or (iv) in any case that constitutes a danger to human life or a threat to vessels, aircraft, platforms, or other man-made structures at sea, such as cases of force majeure caused by stress of weather or other act of God.

**Sec. 6. Accountability.** Each Federal agency that is required to take actions under this order shall prepare and make public annually a concise description of actions taken by it in the previous year to implement the order, including a description of claims made in writing by any person that the agency has not complied with section 5(c) of this order and a response to such claims by the agency. The Secretary of the Interior and the Secretary of Commerce shall establish and jointly manage a Web site for information on MPAs, including the information provided under section 4 of this Order and Federal agency reports required by this section.

**Sec. 7. Judicial Administration.** This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

# Anchorage Daily News

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Thursday, May 25, 2000

## **Private commission to study state of oceans**

By DAVID WHITNEY  
Daily News Washington Bureau

WASHINGTON - A national commission has been created by one of the nation's leading philanthropic organizations, The Pew Charitable Trusts, to study the conditions of the nation's oceans and make recommendations to Congress on how to restore and protect them.

The Pew Oceans Commission will be headed by New Jersey Gov. Christine Todd Whitman, a Republican. Leon Panetta, President Clinton's former chief of staff and a former Democratic congressman from California, will be vice chairman.

Alaska Gov. Tony Knowles will be among the panel's members. The panel also will have members representing fishermen, environmentalists and business.

At a press conference Wednesday, Panetta said the threats to marine life are pretty well known - pollution, habitat destruction, fishing, climate change, and introduction of non-native plants and animals into bays and waterways through the discharge of ship ballast water.

But Panetta said there is no consensus on the solutions.

"Crisis has often dictated our policies related to the oceans, and too often that has been too late," Panetta said.

The commission will meet around the country and will prepare a report to give Congress in two years.

That report will arrive on Capitol Hill about the time that Alaska Sen. Ted Stevens, a leading architect of national fisheries law, will be ending his tenure as Senate Appropriations Committee chairman and taking over as chairman of the Senate Commerce Committee that has jurisdiction over ocean policy.

Congress has been wrestling for several years with the idea of

creating its own commission to study the deteriorating condition of the oceans, but has been unable to come to any agreement.

Panetta said that while the Pew commission is stepping into that void, "if the commission does its work well and makes recommendations based on that, whoever is in Congress will want to pay attention to it."

"It's the quality of the work we do that will be the determination," he said.

Knowles, who participated in the press conference by telephone, called the commission's agenda "bold, ambitious and absolutely necessary."

Alaska has more than 7,000 miles of coastline, and about 55 percent of the nation's seafood is produced from its coastal waters.

Trevor McCabe, a former fisheries aide to Stevens who now is executive director of an association of factory ship owners, questioned why the commission had no fisheries representatives from Alaska when it produced such a high volume of the nation's seafood.

"We recognize Alaska fishermen and the challenges they face are important," replied Panetta. "We'll give you a full opportunity to present your views and concerns."

Among the fishery representatives on the panel will be Pietro Parravano, a commercial fishermen from California and president of the Pacific Coast Federation of Fishermen's Associations.

Whitman, also participating by telephone in the press conference, stressed that the panel was not going into its work with any preconceived notions about what is causing marine problems. She said the problems may vary by region, and the solutions likewise may need to be regional.

\* Reporter David Whitney can be reached at [dwhitney@adn.com](mailto:dwhitney@adn.com)

**Subject: news clips - Commission to Study Oceans**

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Another indication of changing times for fisheries management...

AP/ NEW YORK TIMES

May 24, 2000

New Group To Study Ocean Health

Filed at 5:54 p.m. EDT

By The Associated Press

WASHINGTON (AP) -- The Republican governor of New Jersey and a former chief of staff to President Clinton joined Wednesday to launch a commission that will assess the health of America's oceans.

The Pew Oceans Commission, formed by the Pew Charitable Trusts, will spend 18 months studying issues like pollution, overfishing, coastal development and the viability of marine life.

Though formed by a nonprofit group, the commission expects to find that lawmakers will be interested in its recommendations.

"If we do a credible job, then I think whoever is president and whoever is in the Congress will want to pay attention to the report of this commission," said panel vice chairman Leon Panetta, former White House chief of staff.

Gov. Christie Whitman, the panel's chairman, told reporters that the commission will "gather the best scientific advice available" before deciding what to recommend, and to whom.

The panel's 15 other members represent conservation groups, industry, fishermen and the science community.

The panel is designed in part as a successor to the Stratton Commission, which issued a report in 1969 that led to the creation of the National Oceanic and Atmospheric Administration and passage of the Coastal Zone Management Act of 1972.

"We are convinced that the ever-deepening ocean crisis requires an independent and comprehensive reexamination of basic issues in marine policy," said Rebecca Rimel, president of the Pew Charitable Trusts.

Panetta, now director of the Panetta Institute for Public Policy at California State University at Monterey Bay, said there is a growing consensus among scientists on five "principle threats" to marine life - pollution, coastal development, fishing, climate change, and the introduction of nonnative species when ships discharge ballast in bays and harbors.

There is no consensus, he said, on solutions.

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