

Public Comments on the U.S. Commission on Ocean Policy's Preliminary Report

Topic Area: Governance

Comments Submitted by:

- Sydney T. Bacchus, Athens, Georgia
- Sarah Davidson, Santa Cruz, California
- Ms. Wilcox's Marine Biology Class, Lynnwood, Washington
- David Whitehouse
- Russell Train, Washington, D.C.
- Jeff P. Koenings, Washington State Department of Fish & Wildlife

Comment Submitted by Sydney T. Bacchus, Ph. D.

Dear Commission:

The comments included below and incorporated by reference in this letter are being provided on behalf of the following members of the public, all of whom have been adversely affected by actions taken by the referenced agencies who are recommended by the U. S. Commission on Ocean Policy (Commission) to act as ³Lead Agencies² in the proposed federal action: Floridians for Environmental Accountability (FEAR); Wetlands Alert, Inc. (Wetlands Alert), Tom Warnke (Government and Media Liaison, Palm Beach County Surfrider Foundation Chapter, founder of the first Surfrider Foundation Chapter in Florida, and longtime recreational fisherman in the Keys and other waters of the U. S.), and me (a third-generation Floridian, and avid diver in the Keys and other waters of the U. S. since 1968). We are requesting that the relevant agencies (referenced below) place this comment letter in the File of Record for all of the proposed and permitted projects included in the Exhibits list below.

A. General Comments

1. The Commission has made a valiant effort to address the myriad problems with current federal regulation (and lack of federal regulation) that threatens this planet's oceans. The following ³Guiding Principles² identified by the Commission particularly are well thought-out and essential: Sustainability; Ocean-Land-Atmosphere Connections; Ecosystem-based Management; Preservation of Marine Biodiversity; Best Available Science and Information; Adaptive Management; Participatory Governance; Timeliness; Accountability; International Responsibility. Unfortunately, most of the Commission's proposed actions will do little to implement these Principles or resolve the current problems. In addition to perpetuating the current problems, most of the Commission's recommendations will result in extensive cost to taxpayers at the federal, state, and local levels, without concomitant accomplishments.
2. I attended the February 22, 2002 Public Meeting held by the Commission in St. Petersburg, and provided verbal comments at that time. I also provided written comments on 2/13/02, 3/1/02, and 3/25/ 02. The additional comments offered in this letter, in conjunction with my previous comments and extensive Exhibits listed below, provide the support for that conclusion. I will provide examples of agency actions in Florida in support of my conclusions and comments.
3. Before providing more specific comments regarding current coastal-related problems that have not been and will not be addressed by your draft recommendations, I will address one of the Commission's Congressional recommendations. Recommendation 7-4 suggests that Congress ³authorize the President to propose structural reorganization of federal departments and agencies, subject to expedited Congressional approval. The legislation should preclude Congress from amending the President's proposal and require a vote on the proposal within a fixed time period after submission of the plan by the President.² Such an approach sounds more like a ³dictatorship² than a democracy. Even with under the auspices of the most knowledgeable President, that proposed approach is cause for great concern.

4. The concern is magnified since the Preliminary Report failed include the Complete ³Legal Review and Analysis² and the ³Governors¹ Comments² (referenced on p. xxviii). The report also could not be reviewed in its entirety because only a ³limited number of hard copies were produced and distributed throughout the ocean policy community², preventing the Commission from fulfilling requests for printed copies of the report² (public comment announcement). Although I was able to print the Introduction, Table of Contents, and Executive Summary (Chapter 31) from the version posted on-line, repeated attempts to print the remaining ³Preliminary Report² from an assortment of computers and printers were unsuccessful (including attempts to print individual sections and chapters separately). Therefore, the public comment process was flawed.

B. Proposed Revisions to the Clean Water Act and NEPA

1. Numerous references are made in the Commissions Draft Recommendations regarding the need to revise the Clean Water Act (CWA) and the National Environmental Policy Act. A large portion of the current ocean-related problems are due to the failure of the agencies to enforce and adhere to the requirements of the CWA and NEPA, rather than inherent inadequacies in those laws.

2. Please refer to the extensive comment letters as Exhibits that I have listed below. Numerous Commission Recommendations reference agency conflicts of interest and the lack of monitoring, assessment, and consideration of cumulative impacts. Those problems are addressed in grave detail in the referenced Exhibit comment letters. Organization of the proposed ³National Ocean Council² and proposed shift to ³lead agencies² will not resolve these agencies¹ long-standing avoidance of their Congressionally-mandated duties under the CWA and NEPA and their failure to enforce these laws.

C. NOAA

1. The U. S. Department of Commerce, National Oceanographic and Atmospheric Administration (NOAA) has selected personnel without the necessary scientific training, education, or experience to lead critical entities such as the National Marine Sanctuary in the Florida Keys. As a result, sensitive resources, like the most extensive (formerly) living coral reef tracks in North America, have declined to the point of near extinction since the time of their ³protection² under NOAA's ³Sanctuary².

2. During NOAA's oversight of sensitive marine resources in Florida, the agency has diverted extensive federal funds to research not only lacking scientific justification (and ignoring extensive previously-published literature contrary their premise), but also lacking basic scientific logic. As only one example, I point to initial ³research² that concluded the mass seagrass dieoffs in Florida Bay had resulted from hypersalinity and could be corrected by diverting massive pulses of pollutant-laden runoff from agricultural and urban areas that formerly were part of the Everglades natural wetlands. Since that time, those assertions have been refuted by numerous scientists (who were not funded by NOAA). The most recent example is described by Lapointe and Barile (2004) in the Exhibit list below, and included as a pdf file with this comment letter.

3. Other examples include research which failed to address and control for introduced factors, such as added contaminants (e.g., chlorine) in antropogenic fertilizers used to conclude that grazer influences rather than anthropogenic eutrophication was the

primary factor in harmful macro-algal blooms engulfing the Florida Keys reefs. A more comprehensive and scientifically justifiable treatment of that issue is provided in the recent publication by Lapointe et al. (2004), referenced in the Exhibit list below, and included as a pdf file with this comment letter.

4. The situation has been exacerbated as researchers funded by NOAA have taken over influential positions in professional journal and precluded from publication results from other research, with conflicting results and conclusions. Those circumstances alone would be sufficient to result in the rapid demise of any coastal system, but the problems are more pervasive. For example, programs such as those funded by NERC are promoting the premise that the massive coastal eutrophication is from natural ³up-welling². This concept completely ignores the well-established fact that extensive volumes of groundwater historically discharged from the margin of the karst shelf that underlies the entire state of Florida, and is receiving hundreds of millions gallons of injected effluent and other contaminants daily. Submerged diver's ³habitats² used to conduct research under that program reportedly flushes raw sewage from participating scientists into the very areas they are studying. Despite the wealth of supporting literature, NOAA has failed to address ³flush-welling² as the source of eutrophication in those coastal waters.

5. To add insult to injury, NOAA arbitrarily has implemented a ³No Discharge Zone² in the Florida Keys, insinuating that small water crafts are the significant source of anthropogenic nutrient-loading. Simultaneously with this action, they have supported massive conversion to shallow wells (cased to 60 feet in the porous carbonate rock) for the injection of minimally-treated sewage effluent throughout the Keys. More than 1000 of these shallow injection wells occur throughout the Florida Keys. Small-scale experiments conducted in some of those wells showed rapid discharge of injected tracers into nearshore (non-canal) coastal waters.

6. It seems clear that NOAA is not suited to serve as a ³lead agency² in any aspect of the governing of our coastal waters. Furthermore, there is adequate evidence that NOAA's involvement as a federal agency should be restricted to ³atmospheric² endeavors. Therefore, NOAA should be disbanded and their atmospheric duties (and related staff, if appropriate) transferred to and combined with NASA. Natural resource duties of NOAA most logically should be distributed to the Department of the Interior (USGS and US Fish and Wildlife Service).

D. DOT

1. Commission recommendations include transferring regulation of marine ³transportation² to the Department of Transportation (DOT). Although integrating aspects of land, sea, and air are justified to sustain natural resources, there appears to be no justification that a land-based transportation agency is capable of handling marine transportation. The most logical entities to serve as lead agencies for ocean transportation are the Navy and the Coast Guard. The Commission is urged to consider these more logical options.

E. COE

1. Commission recommendations such as 12-4 (p. 384) correctly claim that federal agencies such as the U. S. Army Corps of Engineers (COE), NOAA, the U. S. Environmental Protection Agency (EPA), and U. S. Geological Survey (USGS) should develop a strategy for ³improved assessment, monitoring, research, and technology development to enhance sediment management². This statement holds true for all aspects of activities undertaken by those agencies. Of those agencies, the COE is the only one receiving adequate federal-funds. Historically, the bulk of those funds have been used for natural resource destruction rather than for sustaining those resources. Attempting to reverse the damage done by the COE not only is technologically challenging, but overwhelmingly expensive for the American taxpayers.

2. A prime example of the problem with the COE is the approximately \$8 billion proposed Everglades ³restoration² headed by the COE (to reverse damage originally conducted by that agency). Key aspects of that ³restoration² effort, such as aquifer injections, are being conducted in the absence of a scientific foundation. Furthermore, the recently-released Draft Environmental Impact Statement (EIS) for those aquifer injections fails to provide any information regarding the economic analysis of that proposed action.

3. The extensive list of Exhibits below, under the ³COE² heading, provides more than adequate evidence that the COE is incapable and unwilling to improve ³assessment, monitoring, research, and technology development² to enhance sediment management or any other aspect of their duties and responsibilities. The Commission should consider transferring the COE's Clean Water Act responsibilities back to EPA and/or the USGS.

F. EPA and USGS

1. These agencies are infinitely better-suited for scientific-related ³assessment, monitoring, research, and technology development² than the COE. Unfortunately they have been under-funded to do the critical tasks their agencies are charged with doing. By disbanding NOAA and diverting funds from the COE, supplemental funding will be available for EPA and USGS to fulfill the responsibilities that Congress originally directed and to adhere to the Principles provided by the Commission.

2. One critical need is the basic scientific ³assessment, monitoring, and research² regarding aquifer injections which has not been done during the more than 20 years that EPA has administered the ³Underground Injection Control² (³UIC²) rule. For example, approximately 1 billion gallons per day of liquid contaminants are injected into Florida's highly permeable karst aquifer system in proximity to the coast. The governing agency (EPA) has not determined where those injected contaminants resurface.

3. Numerous Recommendations by the Commission reference the need for a strong role at the state level. Before this can happen, there must be a strong role at the federal level. As described above, this is lacking. A prime example is EPA's delegation of aquifer injections to the states, prior to establishing a sound scientific foundation for these actions. The Commission should recommend that delegation of the aquifer-injection activities from EPA to the states should be transferred back to EPA until EPA, in conjunction with USGS, can complete the necessary comprehensive scientific-related ³assessment, monitoring, and research² and cumulative impacts analysis that is essential before additional wells and increased injections occur.

G. FEMA

1. Numerous Recommendations by the Commission reference FEMA's role in addressing coastal hazards. There is no mention of the coastal hazards that FEMA is causing - with federal funding, and at great expense to the taxpayers at all levels.
2. Please refer to previous comment letters to this agency included under the list of Exhibits below for extensive details. For example, in the Florida Keys, FEMA currently is preparing to provide millions of federal tax dollars to construct and inject increased volumes of sewage effluent and stormwater into shallow wells throughout the Keys.

H. NAS and NRC

1. As described above and in the Exhibits listed below, the federal agencies referenced in the Commission's Recommendations have lost their ability to conduct, select, and fund the necessary objective scientific research that is required to achieve the Principles set forth by the Commission. Therefore, it is recommended that the selection and oversight of all coastal and ocean-related research (including land-based actions that may result in coastal/ocean-related impacts) take place under the National Academy of Sciences (NAS) and National Research Council (NRC), rather than left to the discretion of the agencies and organizations referenced in the Commission's Preliminary Report. This recommended approach would remedy many (if not most) of the problems addressed by the Commission in the Preliminary Report.
2. Additionally, it is recommended that the NAS and NRC oversee all EISs and other NEPA-related evaluations. For example, many NEPA-related reviews for proposed actions in Florida are conducted by entities that will benefit financially by the ³alternatives² they recommend. Therefore, the Public Interest is not served by those reviews. Please refer to my comment letters listed under the FEMA category of the Exhibits list below.

I. Watershed Approach, New Information, International Implications, and Invasive Species

1. Numerous recommendations by the Commission reference the need for ³watershed-based² approaches. More than a hundred years ago - prior to extensive groundwater mining and extensive aquifer injections - a ³watershed-based² approach may have been scientifically-sound. That no longer is the case. The scientific evidence is increasing that extensive aquifer alterations result in significant adverse impacts across extensive ³watershed² boundaries that are designated using surface features. As only one example, the regional Floridan aquifer system underlies all of Florida, in addition to the Coastal Plain of Georgia, South Carolina, and Alabama. In this area, countless ³watersheds² occur. A ³watershed-based² approach for monitoring, assessment, and research is scientifically unfounded (meaningless) in consideration of the current anthropogenic aquifer alterations.
2. Since my previous comments to the Commission new information has been published regarding environmentally harmful and hazardous substances contained in treated sewage effluent - and created by the treatment of human sewage effluent. These contaminants include, but are not limited to wastewater-derived organic compounds, pesticides, pharmaceutical compounds, and nonylphenol. The most recent

findings were the result of an extensive study conducted by USGS. The report, recently released, was edited by Murphy, Verplanck, and Barber, and is available on line at the following web address: http://wwwbrr.cr.usgs.gov/projects/SWC_Boulder_Watershed/. That report is incorporated by reference into my comment letter for the projects listed above. If you have any difficulty obtaining a copy of Water Resources Investigation (WRI) Report 03-4045 electronically, please notify me and I will arrange to forward a hard copy.

3. In the USGS study referenced above, 226 water quality variables were evaluated in samples collected from the stream into which the sewage effluent discharges. The researchers (Murphy et al., 2003) concluded that the discharge from the wastewater treatment plant "has a substantial impact on the water chemistry" of the receiving waters. In addition to causing increases in the receiving waters of nutrients such as nitrogen and phosphorus, the researchers determined that the discharge of treated effluent also increases the concentrations of major ions, trace metals, organic carbon to the receiving waters. Furthermore, they found that the treated effluent contained substances used in diagnostic medical procedures, surfactants, pharmaceuticals, hormones, and 11 types of pesticides. As indicated previously, billions of gallons of similar treated effluent is being injected into Florida's porous aquifer system in proximity to the coast.

4. The Commission's Recommendations reference the need to consider International implications of our actions (adverse impacts to the World's oceans). The adverse implications of aquifer injection of contaminants has not been considered. These impacts occur by other countries following our lead, despite the lack of scientific basis for those injections. Adverse implications also may be occurring in the form of our injected contaminants re-surfacing beyond our boundaries.

5. The 2004 publication by Lapointe et al., referenced above and below (and provided), documents highly abnormal and excessive nitrogen (ammonium) levels (N:P ratio of 80:1) that increased with depth between 25 and 100 m (~300 feet) in a subsurface karst cave system of the Bahamas that is ³connected² to the aquifer system used for injections of fluid contaminants in Florida. Those results were unexpected, and study had not been designed to evaluate the source of those excessive nitrogen levels. Deep-aquifer injected sewage effluent is one possible explanation.

6. The Commission's recommendations also recognize that scientifically and financially overwhelming problem with ocean-related invasive species. However, the recommendations appear to address only one aspect of this increasing problem - introduction of invasive species. Another critical aspect of the establishment and spread of invasive species (both native and alien) is the alteration of habitat and natural conditions that we are promoting. Aquifer-injections appears to be one type of alteration of natural coastal conditions that is promoting the establishment and spread of invasive species. The referenced Exhibits provide more detailed information on this problem that is not being addressed adequately by the agencies referenced in the Commission's Preliminary Report.

Sincerely,
Sydney T. Bacchus, Ph. D.
Hydroecologist
Athens, Georgia

Comment Submitted by Sarah Davidson, Santa Cruz, California

Sarah Davidson
Student of Marine Biology
Santa Cruz, California

May 25, 2004

Dear US Ocean Commission Members,

I have recently read the Preliminary Report and found it to be both thorough and encompassing of much of the PEW Oceans Commission recommendations. I am very impressed with the proposed changes and recommendations the US Preliminary Report presents and I commend your efforts to meet as many of the needs of your constituents as possible while still offering a very comprehensive plan that will improve our oceans. Although it is evident that considerable effort went into meeting the recommendations of the PEW Oceans Commission, as well as the needs of others who rely upon the coastal waters for their livelihood, there are a few pieces left out, and one in particular that I'd like to bring to your attention.

It was made clear by the PEW Oceans Commission and seems very apparent to me that there is a need for the National Oceanic and Atmospheric Administration (NOAA) or another marine regulating agency to exist outside the Department of Commerce (DOC). Yet, this vital point was left out of the Preliminary Report. This point is so critical because of the role that the DOC and US government have played in relation to the fishing industry and subsidies. I would suggest that many of the very problems currently facing our oceans, including those that the Preliminary Report is attempting to address, have arisen due to the policy, funding, and interests of the DOC. Since the ultimate goal of the DOC is to increase commerce (thus subsidizing harmful fisheries up to 90%), there is a conflict of interest with NOAA, whose ultimate goal (to protect and manage the oceans) can not be truly realized while under the confines of the DOC.

The ability for NOAA to analyze, manage, and minimize the harm caused by subsidized fishing gear, that is known to cause a great deal of damage, is therefore limited since the DOC is the source of funding for NOAA and ultimately has the final say. It is unlikely that the DOC would discourage or ban the use of fishing gear, on which they have spent millions of dollars, considering it would minimize short-term commerce and undermine their objective. This causes NOAA to be ineffective in many aspects of their own objectives since they are contrary to those of the DOC, and in essence undermines NOAA's very purpose. For these reasons, it is not surprising that fishing gear reform was also left out of this Preliminary Report, considering it is a government-sponsored report. However, the very fact that such necessary reforms were left out, further proves the importance and need for NOAA to exist outside the limitations of the Department of Commerce.

I urge you (as the only agency that can effect immediate change on this policy) to look beyond the short-term monetary setbacks that freeing NOAA from the confines of the

DOC may have, and instead to fulfill your designated task by considering the long-term needs of our oceans.

This is a necessary step in order to keep our oceans healthy, not only for integrity of the marine environment, but to insure that our oceans will continue to serve as an important natural resource from which we can support our growing human population.

Again, thank you for your overall impressive efforts at addressing a very difficult and complex series of problems related to our coastal waters and oceans. I appreciate your additional time and consideration on this essential issue in particular.

Sincerely,
Sarah Davidson

Comment Submitted by Ms. Wilcox, Meadowdale High School in Lynnwood, Washington

Ocean Commission Board,

The outline of this Ocean Policy sounds very good and has an opportunity to help not only the ocean but also the entire world and its inhabitants. There is only one real criticism that we have of you proposed action, and that is of the practicality. America's bureaucracy is crucial to the functioning of our nation but it also can prevent projects and groups from being effective. We are afraid that your proposal is very likely to suffer from the "Red Tape" that is a built in safety valve of the system. All of your proposal that we have read (Chapter 31: Summary of Recommendations) sounds very well meant and presents ideas that could help the oceans of the world. There are too many connections all while depending on other groups or organizations. At some points four or more different governmental agencies or local boards are supposed to coordinate and share information and resources. This is very unrealistic. The manner in which the bureaucracy of the US is set up does not let actions like this happen without motivations and consequences if the motions are not followed through, and your board does not have the strength to coerce such a group or organization into cooperating within a reasonable time table. National organizations are not the only groups that will have this problem; the international community will not operate as quickly as is necessary for such a board to function, no matter how good the intentions are.

Your Sections specifically about education seem as though they could be successful, as long as the attempt is not stretched out too thin too quickly. The connections between the government research facilities and those in colleges and universities not only nation wide but also internationally can serve to create a community that is watching and beginning to solve those problems that have been apparent and those that will surface in the future.

Ms. Wilcox's Marine Biology Class
Fifth Period
Meadowdale High School
Lynnwood, Washington

Comment Submitted by David Whitehouse

Given that a comprehensive review of the status of the oceans has not been performed for thirty years and given the radical decline in various aspects of our oceans and other water sources...it seems obvious that thirty years is far too long between reviews. The U.S. Commission on Ocean Policy should be mandated to deliver to Congress and the President a comprehensive review once every ten years.



WWF

Russell E. Train
Chairman Emeritus

May 12, 2004

Admiral James C. Watkins, U.S.N. (Ret.)
Chairman
U.S. Commission on Ocean Policy
1120 20th Street, NW
Washington, DC 20036

Dear Jim:

Thank you for sharing with me a copy of the Commission's preliminary report.

First of all, let me congratulate you on your leadership in this matter. You have done a superb job, and the nation owes you a very real debt of gratitude.

In all frankness, most of the matters considered by the Commission are outside my areas of expertise and/or experience. However, I applaud the Commission's outright call for ratification of the Law of the Sea Convention, having participated in some aspects of its development. By the same token, I wish the Commission had found it possible to make an equally positive recommendation with respect to the Convention on Biological Diversity although I recognize that the Commission's interest in that area is probably limited.

My principal concern lies in the area of governance--an area where I think I do have some particularly relevant experience. The new National Ocean Policy Framework recommended by the Commission is, in my opinion, deeply flawed. It may be better than nothing but I am not sure. The central component of the Framework is a National Ocean Council "chaired by an Assistant to the President and composed of all the Cabinet secretaries and independent agency directors with ocean-related responsibilities."

My experience with interagency committees, councils, etc., is that they are seldom capable of providing leadership and making tough

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Tom - FYI

choices but usually end up simply representing the lowest common denominator of the interests of their various component parts. Following the 1968 presidential election, I chaired for President-elect Nixon a Task Force on Environment and Natural Resources. Our key recommendation was that a focal point for environmental policy be established in the White House. Nixon's response to this recommendation was to establish in early 1969 an interagency Environmental Quality Council, chaired by his Science Advisor, Lee Dubridge. It met with some frequency but never accomplished anything. Moreover, since the Council was established purely by executive action, there was no Congressional "buy-in."

Toward the end of 1969, Congress passed the National Environmental Policy Act (NEPA), sponsored by Senator Jackson, chairman of the Senate Interior Committee (now Energy). One of the key components of NEPA was the establishment of the Council on Environmental Quality (CEQ). The administration opposed the legislation on the Senate side on the ground that it was unnecessary, given the existence of the interagency Environmental Quality Council. However, before the relevant House committee I was able to support NEPA, and Nixon signed it into law on January 1, 1970, as his first official act of the decade of the Seventies. I became CEQ's first chairman. For the next three plus years, CEQ was the moving force in spearheading an extraordinary array of environmental policy initiatives, both domestic and international. With the Ash Council on executive reorganization, I pressed to have environmental responsibilities placed in a clearly-defined, independent agency in the executive branch, such as EPA became, rather than having those responsibilities buried in a larger conglomerate, such as a Department of Natural Resources, as the White House initially wanted. CEQ was given a number of specific international responsibilities but always "in coordination" with the foreign policy responsibilities of the State Department. Even so, we had the undisputed lead in international environmental affairs. (All of this is set out in some detail in my recent book, Politics, Pollution, and Pandas at pp. 77-154. I am sending you a copy under separate cover.)

During that same period, CEQ was involved in a number of ocean matters. We wrote the Ocean Dumping Act (officially, the Marine Protection, Research, and Sanctuaries Act of 1972). As CEQ chairman, I headed the U.S. delegation to the London Conference that wrote the Ocean Dumping Convention, and chaired one and co-chaired another U.S. delegation to IMCO conferences in London.

One possible approach to the governance issue, therefore, is for the President simply to issue an executive order directing CEQ to undertake the task of coordinating Federal agency activities with respect to the ocean and to develop and transmit to him needed policy initiatives in that regard. I believe it is important to include that last aspect of policy development and note that the Commission's description of the role of the proposed National Ocean Council only speaks of coordination.

The Commission also recommends the creation of a Presidential Council of Advisors on Ocean Policy. I simply note that CEQ, at least during my association with it, made extensive use of outside, non-governmental, advisory task forces on a wide range of subjects. It did so entirely on its own initiative.

Having said all this, I doubt that using CEQ for the Commission's purposes is a very good idea at this time. Over the years, CEQ has drifted into near-irrelevance. So far as I am aware, it plays a very limited role today. In addition, since only executive action would be required, I assume that there would be little Congressional "buy-in." Moreover, since President George W. Bush has evinced little or no interest in ocean matters, executive action of the kind I have described is either doubtful or, if initiated, might not carry with it any real presidential commitment or follow-through.

Another option, of course, is the creation of a new Department of Ocean Affairs. However, I think there is general agreement that that is pretty much a non-starter at the present time. After the Homeland Security initiative there is not much stomach either in the executive branch or in the Congress for another major reorganization. Even if there were, I am not sure how the various ocean activities of the Navy (other than strictly military) could be effectively included. My own sense is that an Ocean Department is too narrow a concept around which to organize. If one wishes to go the department route, I would suggest adding the ocean responsibilities to those of EPA and creating a Department of the Environment. Of course, such a move would involve taking NOAA out of Commerce, leaving a pretty non-viable shell.

My recommendation at this point is for legislation creating a Council on the Oceans, pretty much modeled on CEQ which I think was enormously successful in its early years. It would have three members, one of whom would be designated chairman by the

president. It would be located in the executive office of the president. Its functions could include not only coordination of ocean activities among the various executive agencies but also the development of policy initiatives for the president, monitoring the state of the ocean environment, and perhaps an annual report to the Congress on the latter.

The advantages of this approach are that 1) it would involve no executive reorganization, 2) it would involve the Congress, 3) it would cost very little, 4) it would represent a very positive, identifiable oceans initiative, and 5) it would permit the thoughtful examination of other options for the future.

I suspect that, given the disinterest of the White House, none of these options are particularly viable. I realize that legislation opposed by the White House has little chance of enactment in the current Congress. Yet, I believe the interagency council proposed by the Commission and requiring no legislation is a paper tiger that will accomplish nothing. To recommend, as the Commission does in its preliminary report, the weakest option of all, namely, an interagency council, is to guarantee the weakest possible response by the White House. To recommend, as I suggest, a new Council on the Oceans opens up three possible courses of action by the White House (other than ignoring the whole matter): 1) buying the new Council proposal, 2) utilizing the existing Council on Environmental Quality, or 3) creating an interagency council.

* * *

There are a few other areas with regard to which concern has been expressed to me. I will pass these on but preface my remarks by disclaiming any particular expertise on the issues involved.

a) The Commission should address the international problem of fishery subsidies.

b) While the Commission addresses the subject of Marine Protected Areas, it could be a lot stronger and clearer in its recommendations. Marine Protected Areas have proven extremely valuable tools for building sustainable fisheries.

c) It has been suggested to me that science and management should be kept separate in the regional councils. I have not found exactly where this issue is addressed in the report, but I think

the suggestion sounds desirable. We see in the current administration constant efforts to change scientific findings to achieve a political result. If the lines of separation are not clear, it becomes even easier to obfuscate the science.

* * *

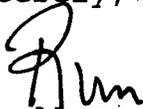
Let me add just one bit of history. In 1969, when I was under secretary of Interior, my office had the responsibility within the department for interacting with the Stratton Commission. Interior then was the home of the Bureau of Commercial Fisheries (now the largest unit in NOAA). Our idea, of course, was to have all the ocean responsibilities placed in Interior, building on the Bureau of Commercial Fisheries. I think we pretty much sold the Stratton Commission on this approach. However, Walter Hickel was not popular in the White House and would be fired in about a year. Maurice Stans, secretary of Commerce, was a close friend of Nixon, and NOAA was located in Commerce.

* * *

I have rambled on too long in this letter. If anyone should want to discuss any of the points I have raised, I will be happy to do so. (Office: 202/778-9512; home: 202/332-5800.)

With best regards and, again, many congratulations to you and the members of the Commission for a great job,

Sincerely,



Russell E. Train



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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May 24, 2004

The Honorable Gary Locke
Office of the Governor
Post Office Box 40002
Olympia, Washington 98504-0002

Subject: Final Comments on the U.S. Ocean Policy Commission Preliminary Report

Dear Governor Locke:

The Washington Department of Fish and Wildlife (Department) commends the United States Commission on Ocean Policy (USCOP) for its work in assembling a comprehensive review of information associated with ocean issues that face the nation. The complex and multi-faceted form of ocean governance, both from a national as well as an international perspective, highlights the need for a coordinated approach to achieve national goals and objectives. The recommendations serve as a well thought out road map to meet the challenges that lie ahead. We commend the USCOP for recognizing the importance of having a strong regional role in the formation and implementation of national ocean policies.

The Department represents the state of Washington on both the North Pacific and the Pacific Fishery Management Councils. We strongly support the regional council fishery management system, but are equally supportive of efforts to improve them. The Department has concerns with several recommendations affecting regional management councils that we address below. We support carefully created regional ocean councils to facilitate federal, state, tribal, local government, and public decision making to achieve an ecosystem management regime. The recommendations should be strengthened relative to the initial creation of the regional ocean councils to avoid undesirable overlaps with the regional fishery management council system.

From our perspective, the greatest immediate need is the need to provide state, tribal, and federal agencies the resources to improve the science base relative to ocean bottom habitats and marine fish resources and their productivity. In the last decade, the Pacific Fishery Management Council (PFMC) has strictly followed the advice provided by its Scientific and Statistical Committee (SSC). Unfortunately, in many cases, the SSC has been forced to base its recommendations on stock assessments that are based on incomplete data and information that is not robust in terms of providing information that can be used to quantify changes in recruitment resulting from changes in ocean environmental conditions. The result has been that the PFMC has been making management decisions while looking in the rear view mirror instead of out the front windshield.

An improved structure of decision-making that is founded on high-quality science, strong regional participation, and public education will enable federal and state managers to make well-informed decisions that will make it possible to achieve the goal of healthy and sustainable ocean ecosystems. The federal structure must be designed to meet the challenges associated with issues and species that cross international boundaries including salmon, highly migratory, coastal pelagics, and groundfish.

The four Washington coastal treaty tribes' usual and accustomed fishing grounds and stations include the majority of the Washington coastline. Over time, tribal fisheries have expanded and now target fisheries on groundfish, salmon, and halibut. Tribal governments manage their respective fisheries and promulgate regulations that control their fisheries. Tribal staffs have expertise in science, enforcement, and management. The report needs to acknowledge the role of the tribes in achieving the national goals and objectives.

The following are the Department's comments on specific recommendations contained in the report:

1. **Recommendation 4-1, Creation of the National Ocean Council**
We agree that improvement is needed in federal leadership relative to ocean policy issues. However, the creation of new governmental organizations should be limited to where the existing structure is inadequate to achieve the objective. The National Oceanic and Atmospheric Administration (NOAA) is currently the lead agency for national ocean issues, including science and management. Given the scarcity of new federal dollars, priority should be given to the goal of obtaining high-quality science for existing decision-makers rather than the costs associated with creating more layers of government.

2. **Recommendation 4-9, Review of Ocean-Related Councils**
National Marine Fisheries Service (NMFS) should remain the federal entity responsible for the oversight of the regional fishery management councils (RFMC). The administrative regions of NMFS and the Science Centers are appropriately defined geographically to provide the type of regional support to the RFMC that is supported in other parts of the report.

3. **Recommendations 4-10 and 4-11, Regional Ocean Councils**
The Department supports the concept of regional ocean councils (ROC) and their important linkage to a national ocean policy initiative. Care must be given to avoid overlaps relative to their authority, if any, and their responsibility with existing bodies, such as the RFMCs and entities established under the National Marine Sanctuary Act.

The Department recommends including a greater degree of specificity to the structure of the ROCs than what is provided in the report. The governors and the

regional administrators of NMFS should have a specific role in forming and designating the initial membership. The geographic boundaries should initially be aligned with the NMFS administrative regions, not the RFMC boundaries. ROCs would also have the benefit of NMFS regional science centers.

4. Recommendation 6-3, Marine Protected Areas

The Department supports the development of national goals and guidelines for the effective design of marine protected areas. The process and authority should reside within NOAA and there must be enough flexibility in the national goals to accommodate regional differences.

5. Recommendations 8-2, 8-3 and 8-7, 8-9, 8-11, 8-12, Office of Education

We acknowledge and support the need to create and fund a public education strategy to increase the public's knowledge of the importance and linkages between the ocean and the quality of life in the United States. In addition, we support the need to expose students to marine science and non-science majors and to facilitate career decisions that will result in a qualified workforce to meet the challenges of managing ocean related issues in the future.

6. Recommendation 17-1, Ballast Water Management

Ballast water infestation of invasive species and pollution poses significant threats to the health of inland marine areas of Washington, including Puget Sound, coastal estuaries, and the Columbia River. We strongly support a national program for ballast water management that is scientifically based, effective, enforceable, and is coordinated with the applicable federal and state agencies. To be effective, the United States Coast Guard must place a higher priority on monitoring and enforcing current laws pertaining to ballast water discharge.

7. Recommendations 19-1, 19-3, 19-4, Science and Statistical Committees

As demonstrated in the North Pacific and Pacific Fishery Management Councils, strong reliance on scientific and statistical committees (SSC) findings and advice results in sound fishery management decisions. We support providing compensation for all SSC members because we believe it will help in attracting additional qualified candidates. As an alternative to amending the Magnuson/Stevens Fishery Conservation and Management Act, the composition of the SSCs could be specified by NMFS within the National Standard Guidelines. The composition specified for council SSCs should ensure that a broad range of expertise is represented and that it includes independent scientists from state, tribal (where appropriate), and academic institutions, in addition to scientists from federal agencies. To avoid a conflict of interest of SSC members, scientists from the private sector should not be allowed to be a member of an SSC if they are financially affiliated with any stakeholder group affected by actions of the council or SSC.

SSCs should play a lead role in determining acceptable biological catch (ABC). Regional management councils should have the authority to adopt policies that require ABCs to be set at a precautionary level if the scientific knowledge relative to the abundance of the particular species is minimal or unknown. In addition, SSCs should be provided the flexibility to bring forward to the RFMC a range of ABCs bracketed by uncertainty and accompanied by a risk analysis.

A process that includes an independent peer review of stock assessments and other scientific documents used to base management decisions on should be completed before the documents are reviewed by the SSC. The PFMC has developed such a process relative to stock assessments that includes a stock assessment team whose work products are, subsequently, reviewed by an independent stock assessment review team before being sent to the SSC. Flexibility must be preserved to develop regional processes that address the need for independent review of science documents and conclusions.

8. Recommendations 19-5, 19-6, Timely Submittal of Fishery Management Plans

The North Pacific and Pacific Councils have specific protocols for developing, reviewing, and adopting management plans and provisions within each of their fishery management plans. These procedures are designed to incorporate the best scientific and peer reviewed information into a decision making process that provides for public review and comment that is, subsequently, submitted to NMFS in time to meet the federal rule making process. If a RFMC fails to carry out its function, the Secretary of Commerce has the authority to intercede to ensure that conservation and management objectives are not compromised. We are unclear relative to the necessity of these two recommendations.

9. Recommendation 19-8, Saltwater Recreational Fishing Licenses

Collection of recreational catch data is a critical component to managing the fishery, particularly as inseason management becomes more important to managing recreational fisheries to stay within certain allocations. We support a requirement that recreational fishers be licensed, provided that state licenses would satisfy the requirement. In addition, we propose adding recreational shellfish licenses to the formula used to distribute funds to the states associated with Wallop-Breaux funding.

10. Recommendation 19-10, National Standard Guidelines Application

We oppose this recommendation. Interstate management plans should not be required to adhere to the National Standard Guidelines. The national guidelines were not developed to be applicable to interstate management plans and are not

necessarily applicable or compatible to such plans or future plans. For example, if implemented, National Standard 4 appears to prohibit states from using their limited entry programs in federal waters through a management plan interstate agreement to address overcapitalization issues. In addition, development of maximum sustained yield values or proxies and determination of ABCs for species such as pink shrimp or Dungeness crab is an unnecessary burden to place on the states.

11. Recommendations 19-12 and 19-13, Regional Council Representation

While we agree the goal of creating councils comprised of individuals that are knowledgeable, fair, and reflective of a broad range of interests, we do not believe that requiring the governors to nominate six (6), instead of three (3), candidates will accomplish this goal. Washington State has taken great care in sending well-qualified candidates for consideration to the Secretary of Commerce. The nominees the Governor has submitted have included candidates from commercial, recreational, and academic backgrounds. We do not agree that requiring the governors to submit two nominees each from the commercial fishing industry, the recreational fishing sector, and the general public will result in more balanced RFMCs.

12. Recommendation 19-14, Training for Council Members

We would support this recommendation, provided that NMFS makes the training available in a timely manner. As an alternative, however, we recommend allowing the newly appointed member to participate and vote within the first six months of their appointment without having to complete the specified training. After six months has elapsed from the date of their appointment, they must have completed the training in order to vote.

13. Recommendation 19-15, Dedicated Access Privileges

We support affirming that fishery managers are authorized to institute dedicated access privilege systems, such as the individual quota programs adopted by the NPFMC. It is an important fishery management tool that should be available to the regional councils for potential use. Numerous science and policy bodies have concluded that ending the race for fish results in enhanced conservation and provides a greater level of economic stability, profitability, and fisheries that are significantly safer for the participants.

14. Recommendation 19-16, Fisheries Finance Program

We support this recommendation. Most of the nation's fisheries are overcapitalized. The Fisheries Finance Program and the Capital Construction Fund should be terminated and replaced with programs designed to permanently reduce harvest capacity.

- 15. Recommendation 19-17, Joint Enforcement Agreements**
The Department has entered into several joint enforcement agreements with NMFS. These agreements have resulted in more effective enforcement of both federal and state fisheries laws through the efficient and coordinated use of federal and state enforcement resources. Greater use of joint enforcement agreements will enhance the enforcement capability of state and federal authorities.
- 16. Recommendation 19-18, Strategic Plan for Fisheries Enforcement**
Considering the importance of state/federal partnerships in enforcement of federal fisheries laws, we recommend that states be included in the development of strategic enforcement plans between the NMFS and the U.S. Coast Guard. It makes little sense to develop a federal strategic enforcement plan absent state participation, and then look to the states to enter into joint enforcement agreements with the federal agencies.
- 17. Recommendation 19-19, Vessel Monitoring Systems**
Vessel monitoring systems are a powerful fishery management and enforcement tool and we support their use. Decisions relative to their application should be left to the regional management councils, depending on the management strategy in use and the usefulness of Vessel Monitoring Systems (VMS) in attainment of the management objective.
- 18. Recommendation 19-22, Regional Bycatch Reduction Plans**
Observers are an essential part of managing fisheries and we support their use to quantify bycatch of all animals and plant life that are essential to the ocean ecosystem. Bycatch reduction can be achieved through the use of strategies that test fishing gear configurations and types using tools such as experimental fishing permits. NMFS should be encouraged to form partnerships with states and the fishing industry to explore development of bycatch friendly fishing practices and develop rewards for fishers who fish with less bycatch.
- 19. Recommendation 19-24, International Fisheries Management**
The state of Washington has a long-standing relationship with Canada relative to fishery management because of the large number of transboundary stocks. These include salmon, groundfish, coastal pelagic, forage fish, and highly migratory species that migrate through federal and state waters. We have been active participants in development and implementation of three international treaties with Canada governing salmon, albacore tuna, and Pacific whiting. Additional international commitments must be focused on cooperative management approaches for groundfish stocks such as canary and yelloweye rockfish.

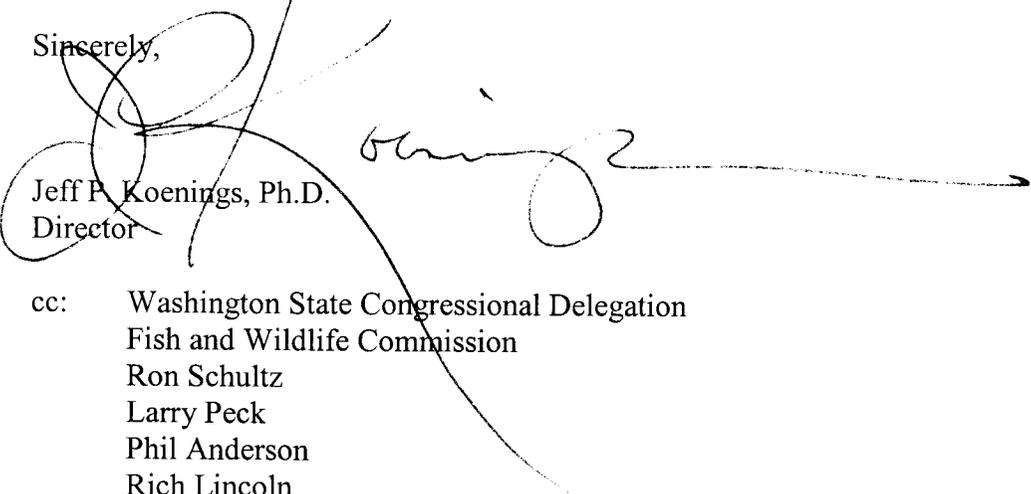
- 20. Recommendations 21-1 and 21-2, Coral Reef Protection**
Coral ecosystems are well known to be among the most important habitat systems for marine life productivity. Mapping, research, and monitoring of these important systems will greatly improve our ability to preserve and protect coral systems. We support both of these recommendations.
- 21. Recommendation 22-3, Marine Aquaculture Research**
Funding support for marine aquaculture development and research must include funding for an economic assessment of the consequences on the existing fishing industry as a result of large numbers of aquaculture fish entering the market place. In addition, genetic pollution, disease control, and environmental pollution must also be carefully evaluated.
- 22. Recommendation 25-1, Coastal and Ocean Research Budget**
We support a greater investment in research, with an emphasis on regional information collection programs. National Marine Fisheries Service Science Centers should be given the lead responsibility for coordinating and implementing the research, including development of cooperative research projects with state agencies and institutions.
- 23. Recommendation 30-1, Ocean Policy Trust Fund**
We strongly support the establishment of an Ocean Policy Trust Fund in the U.S. Treasury as the depository for unallocated federal revenues derived from private activities in federal waters. Distribution of these funds to coastal states will greatly enhance our ability to partner with the federal government in research projects and meeting our management objectives.
- 24. Marine Toxins**
An apparent omission in the report concerns the issue of marine toxins. Harmful algal blooms have increased in frequency and intensity within the last decade, causing disruption or closure of economically important commercial, recreational, and tribal fisheries. In Washington State, there have been closures of our large coastal razor clam fisheries and partial closures of our commercial Dungeness crab fisheries; fisheries that annually generate up to \$12 and \$60 million dollars in revenue, respectively. We believe a strategy must be developed to effectively deal with the human and marine mammal health issues associated with these events.

The initiative taken by Congress to enact the Oceans Act of 2000, and the subsequent review by the U.S. Commission on Ocean Policy of the current state of the nation's oceans and its recommendations, represents a unique opportunity for the country to focus efforts on making much needed changes in the nation's ocean policy and commitments to the health of the ocean ecosystem. The Washington State Department of Fish and Wildlife encourages you to respond

Governor Gary Locke
May 24, 2004
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in a positive manner to the Commission's report and take advantage of this opportunity to change the nation's course toward managing the oceans in a manner that will provide immediate and future benefits for the state of Washington.

Sincerely,


Jeff P. Koenings, Ph.D.
Director

cc: Washington State Congressional Delegation
Fish and Wildlife Commission
Ron Schultz
Larry Peck
Phil Anderson
Rich Lincoln
Lew Atkins
Jo Wadsworth