



December 27, 2021

The Honorable Richard W. Spinrad

Administrator

National Oceanic and Atmospheric Administration

1401 Constitution Avenue NW, Room 5128 Washington, DC 20230

Submitted online at Docket No. NOAA-HQ-2021-0109 at <http://regulations.gov>

RE: Docket No. NOAA -HQ-2021-0109

Dear Dr. Spinrad,

Thank you for the opportunity to comment on President Biden's *America the Beautiful* initiative. Our comments are limited to ocean conservation and policies. We first make general comments, then address specific requests contained in the RFI.

**Who we are:**

**The San Diego Fishermen's Working Group (SDFWG)** was formed to provide a unified voice to commercial fishermen of all gear types in the greater San Diego region. We are a 501-c-3 non-profit organization, purposed to bring the collective views of commercial fishermen to fisheries science and management, and to any public process that may impact the success of our fisheries. The SDFWG is led by a nine person Board of Directors (Board), representing the various important gear types and fisheries in the region.

**The Alliance of Communities for Sustainable Fisheries (ACSF)** is a 19-year-old 501(c)(3) not-for-profit organization, founded for the purposes of educating the public on fisheries issues, connecting fishing men and women (collectively "fishermen") with their communities, and representing fishing interests in state and federal processes. The ACSF is a regional organization with commercial fishing leaders representing Monterey, Moss Landing, Santa Cruz, Morro Bay, Pillar Point, and Port San Luis on our Board of Directors. Port communities, several recreational fishing organizations, and the California Wetfish Producers Association (squid,

sardines, etc), also have representation on our Board. Thus, the ACSF represents a large cross-section of fishing and community interests from the Central Coast of California.

### **Define “conserve”, “conservation”, and “biodiversity”**

Neither the President’s Executive Order (EO) nor the initiative to implement it, provide clear a clear definition of the term “conserve”, or even of the concept of “biodiversity”.

If conservation is defined in a way that means no, or severely curtailed, extractive activities, then such a mandate will needlessly wipe out our industry at a time when the fragility of U.S. food security is being made clear. The pandemic, brought upon by Covid-19, has highlighted implications for food security and nutrition. The U.S. commercial seafood industry, particularly wild-capture harvesters, were quick to change their business models due to pandemic related disruptions. Direct-to-consumer approaches allowed U.S. seafood consumers to access a healthy, and sustainably sourced, protein source.

Such a mandate will also be contrary to the successful U.S. fisheries statutory framework as proscribed in the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) already creates a science-based, bottom-up public process to address sustainable levels of harvest based on the best scientific information available, habitat protections, taking into account ecosystem function and role - all of which provide for enhanced, conserved, restored, and protected marine biodiversity.

Quoting from NOAA’S “Conserving and Restoring America the Beautiful Fact Sheet”:

*“The America the Beautiful Report acknowledges the value of various conservation actions, in addition to protected areas. These include marine protected areas, ecosystem restoration, and areas that allow for sustainable mixed use. Because federal agencies will seek input on how to measure progress toward the 30 percent goal, EO 14008 and the report do not exclude any specific conservation action from consideration at this time.”*

Any definition of *conserve* for purposes of implementing the 30 x 30 initiative, must include all measures which have value for one or more species which conserve, protect and/or preserve biodiversity. Such a definition will embrace the **ecosystem-based approach to ocean management**. In 2017, NOAA made the following statement,

*“For 135 years, NOAA and its predecessor agencies have had a role in managing our nation’s fisheries. As NOAA looks to the future, the agency is embracing an “ecosystem-based” approach to fisheries management. An ecosystem approach is one that considers all living resources within a marine area, all sources of environmental stress, and all factors influencing the ecosystem in making management decisions.”<sup>1</sup>*

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<sup>1</sup> See - <https://celebrating200years.noaa.gov/visions/fisheries/welcome.html#intro>

Marine Protected Areas (MPA's) are certainly one tool; however, they have distinct limitations and problems – including those associated with the displacement of fishing effort/pressure. Even simple management measures, such as a size limit on the harvest of a species will have conservation and biodiversity benefits. Actions which designate Essential Fish Habitat, Habitat Conservation Areas, Habitat Areas of Particular Concern, Rockfish Conservation Areas—all must be included in the definitions of *conserve* and *conservation* for any calculation of meeting a 30% goal. One such example is delineation of specific areas in which trawl gear is allowed; and others where that gear type is specifically banned.

We submit that considering the Magnuson-Stevens Fishery *Conservation* and Management Act, which covers the entire US EEZ, the President's goal of conserving for nature and biodiversity 30% of US waters is more than met.

Some have suggested that fishery management designations (with accompanying regulations) are not permanent so they ought not to be considered towards meeting the 30% goal. Such a view pits permanence of management against **adaptive management**. Earlier this year, the FAO published a lengthy paper entitled *Adaptive management of fisheries in response to climate change*<sup>2</sup>. Page 8 of that paper includes the following, "Therefore, the food security, livelihood, and biodiversity outcomes of most concern as a result of climate change can be mitigated to a great degree through the implementation of climate-adaptive fisheries management."<sup>3</sup>

We ask: Is anything in nature permanent?

Species compositions and quantities change, adapt, and are even replaced by others over time. If we implement severe restrictions in a given area to protect certain species, that species may move or be replaced by different ones as a result of changing ocean conditions due to climate change. We must be adaptive if we are to stay in sync with change, human-caused or otherwise.

If "conservation" is interpreted in a holistic, adaptive, ecosystem-based manner - meaning regulation and management for long-term sustainability with levels of protection for certain habitats, then we believe you will find the U.S. is meeting its 30% goal already for its marine waters. We respectfully draw your attention to the letter (attached) signed by thirty eminent fisheries scientists, which lays out the scientific basis as to why a policy banning ALL extractive activities is unnecessary, destructive to US fisheries, and undermines existing state and federal laws.

In defining "biodiversity", our comment, consistent with the discussion above, is that it must not be defined as a static condition. The variety and population sizes of species change over time even in the absence of human impacts.

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<sup>2</sup> <https://www.fao.org/3/cb3095en/cb3095en.pdf>

<sup>3</sup> Id @ page 8

*MPAs produce conservation benefits inside their borders, many MPAs are also justified on the grounds that they confer conservation benefits to the connected populations that span beyond their borders. A network of MPAs covering roughly 20% of the Channel Islands National Marine Sanctuary was established in 2003, with a goal of providing regional conservation and fishery benefits. We used a spatially explicit bioeconomic simulation model and a Bayesian difference-in-difference regression to examine the conditions under which MPAs can provide population-level conservation benefits inside and outside their borders and to assess evidence of those benefits in the Channel Islands. As of 2017, we estimated that biomass densities of targeted fin-fish had a median value 81% higher (90% credible interval: 23–148) inside the Channel Island MPAs than outside. However, we found no clear effect of these MPAs on mean total biomass densities at the population level: estimated median effect was –7% (90% credible interval: –31 to 23) from 2015 to 2017. Our simulation model showed that effect sizes of MPAs of <30% were likely to be difficult to detect (even when they were present); smaller effect sizes (which are likely to be common) were even harder to detect. Clearly, communicating expectations and uncertainties around MPAs is critical to ensuring that MPAs are effective.”*

In another finding, direct fishing-sampling done under a California Department of Fish and Wildlife scientific permit of the long-established California Big Creek State Marine Reserve showed a distinct *lack* of biodiversity, as large predator finfish (ling cod, Cabazon, etc) dominated the populations. (Tom Hafer, Morro Bay commercial fisherman, personal communication, 2021).

### **The Conservation Role of National Marine Sanctuaries (NMS)**

On December 20, the Administration published the Year One Report – America the Beautiful<sup>5</sup> celebrating expansion of locally-led conservation efforts in the first year of “America the Beautiful” Initiative. Prominent in the Report are references to NMS. It can be inferred that President Biden views expanding NMS’s as a tool for protecting biodiversity. Outside of regulations requiring permits for the disturbance of the seafloor, NMS’s offer little beyond the other major laws of the nation and many states. Notably, the statute, the National Marine Sanctuaries Act, explicitly allows for extractive activities like fishing and even oil and gas development. It is only site-specific regulations, which can be amended or overturned, that prevents oil and gas extraction in some NMS’s. Statutes such as the Endangered Species Act, the Clean Water Act, the Marine Mammal Protection Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Migratory Bird Treaty Act, among others, offer protections regardless of sanctuary designation. **NMSs should be counted as contributing to conservation and biodiversity protection, but absent compelling reasons for a particular area, we see no need for new or expanded NMS’s.**

In the Central Coast of California there is deep community concern that a new “Chumash Heritage NMS” will be forced on a region which largely does not want such a designation. **We hope that President Biden and NOAA agree that a NMS should not be imposed upon**

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<sup>5</sup> [https://www.whitehouse.gov/wp-content/uploads/2021/12/AtB-Year-One-Report\\_.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/12/AtB-Year-One-Report_.pdf)

**communities that have voiced strong opposition from a wide range of stakeholder interests.** We acknowledge that a large number of signatures were submitted by certain ENGO supporters, many not local to the region and many more who clearly have little understanding of the NMSA and the many other protections that already exist. We note that in the just-released Year One Report, a statement is made that the Chumash nomination has “broad community support.” This is demonstrably not true. Ranchers, growers, fishermen, Chambers of Commerce, the local Board of County Supervisors, the City of Morro Bay, and a Harbor District, are all on record, in addition to numerous current and former elected officials.

### **Social and environmental justice issues**

**Negatively impacting commercial fishing will fly in the face of social and environmental justice goals that state leaders and the President have stated are of value.** The seafood supply chain is heavily represented by people of color, from direct harvest through processing and delivery. Diminishing the harvest of seafood will cost jobs in the supply chain. We hope the U.S. will value, and not sacrifice, the good paying jobs, many with benefits, that exist in seafood processing from California and U.S. companies.

As working-class people who have few funds and little time to participate in the federal and state processes, fishermen do not have a level playing field with governmental agencies and well-funded ENGO's. Please don't compound this.

The just-released Year One Report touts the reimposed fishing restrictions at the Northeast Canyons and Seamounts National Marine Monument as a biodiversity success. We caution: while the biodiversity benefits are debatable, the inequity of using executive, top-down authority, with no public process or scientific scrutiny to remove historic users, clearly feels like an injustice to many.

Last, we note that for many Americans, eating local seafood, harvested by U.S. commercial fishermen, is the only real connection they have with our ocean.

### **Specifically, NOAA is seeking public input on the following:**

- Which of NOAA's existing authorities and associated measures, as listed above, are most appropriate for addressing the threats identified in the Report, which are the disappearance of nature, climate change, and inequitable access to the outdoors.

*The Magnuson-Stevens Fishery Conservation and Management Act, the Marine Mammal Protection Act, the Endangered Species Act, the Migratory Bird Treaty Act, the Wild and Scenic Rivers Act, the Environmental Protection Act, the National Marine Sanctuaries Act, the Clean Water Act, the Coastal Zone Management Act (addressing state policies), and the National Environmental Policy Act, all provide for comprehensive management and protection for our ocean ecosystems.*

- Whether NOAA should better apply its existing authorities and associated measures, as listed above, to advance the goals and recommendations in the Report.

*Many Regional Fishery Management Councils are already planning for the effects of climate change on fisheries, habitats, and communities. For example, the Pacific Fishery Management Council recently completed the first phase of its Climate and Communities Initiative. The purpose of this initiative is to help the Council, its advisory bodies, and the public to better understand the effects of near-term climate shift and long-term climate change on our fish, fisheries, habitats, and fishing communities, and identify ways in which the Council could incorporate such understanding into its decision making<sup>6</sup>.*

*The MSA could be strengthened by expanding its authority over non-fishing impacts. Let this work continue.*

*Do not expand the authority of NMS's.*

- What criteria NOAA should consider in working with other agencies to identify existing or potential new "conserved" or "restored" areas for the purpose of advancing the goals and recommendations in the Report.

*NOAA should coordinate with BOEM/Department of Interior on the question of Offshore Wind (OSW) increasing, or reducing, biodiversity in areas affected by wind farms Likewise the Department of Defense has areas of the ocean which are highly restrictive for public use. These areas also serve as de facto MPAs, with potential biodiversity value. Many states also have restrictive measures – for example, California state waters are off limits to nearly all bottom trawling, with commensurate biodiversity benefits.*

- What additional scientific information, Indigenous Knowledge, or other expertise NOAA should consider in order to advance the goals and recommendations in the Report.

*The traditional knowledge of Native American tribes must be sought and integrated into fisheries management and ocean conservation.*

*The knowledge of experienced commercial fishermen must also be utilized. In many areas of our country, this knowledge is multi-generational and incapable of being obtained elsewhere.*

- How should progress, including with partners, toward advancing the goals and recommendations in the Report, be measured.

*We note that the Pacific Fishery Management Council already publishes an annual report on the status of the California Current Large Ecosystem. Other RFMC's produce similar reports. Thus, this goal is already being met.*

- What actions NOAA should consider taking to support non-Federal entities, including tribal, state, territorial, and local governments and non-governmental organizations and other private entities, to advance their efforts to conserve and restore U.S. lands and waters.

*First exercise scientific scrutiny as to the specific merits of each project. If warranted, financial support is an obvious need.*

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<sup>6</sup> <https://www.pcouncil.org/actions/climate-and-communities-initiative/>

- What actions NOAA should consider taking to facilitate broad participation in the America the Beautiful initiative.

*Do not make the initiative into a threat to the nation's food security, the livelihoods of fishermen, and the well-being of coastal communities.*

- What additional information NOAA should consider as relevant to its role in implementing the America the Beautiful initiative.

*This well-intended initiative reminds us of the message found in "The Wizard of Oz": **We already have that which we seek.***

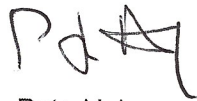
*The MSA and the RFMC structure allow the US to credibly assert that it more than meets the goal of conserving 30% of US waters for conservation and biodiversity.*

Thank you for considering the comments of the Alliance of Communities for Sustainable Fisheries and the San Diego Fishermen's Working Group.



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Co-Chair, ACSF



Pete Halmay

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