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## New England Fishery Management Council

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Eric Reid, *Chair* | Thomas A. Nies, *Executive Director*

DRAFT

Dr. Richard W. Spinrad  
Under Secretary of Commerce for Oceans and  
Atmosphere, and NOAA Administrator  
115 East-West Highway, 14<sup>th</sup> Floor  
Silver Spring, MD 20910

Dear Dr. Spinrad:

The New England Fishery Management Council (NEFMC; Council) reviewed the request for information (RFI) issued by NOAA related to Executive Order 14008, Tackling the Climate Crisis at Home and Abroad.<sup>1</sup> The RFI seeks input on how NOAA should, using its existing authorities and associated measures, conserve and restore America's oceans, coasts, and Great Lakes. Executive Order 14008 specifically notes the need for the Regional Fishery Management Councils to participate in discussions about area-based management for conservation, fisheries management, and ecosystem protection. The Conserving and Restoring America the Beautiful report (Report) appropriately directs that "NOAA should work closely with the regional fishery management councils to identify areas or networks of areas where their fisheries management efforts would support long-term conservation goals."<sup>2</sup> The Councils have a principal role in developing regionally specific fishery conservation and management plans through a transparent stakeholder driven process. The Council system embodies many, if not all, of the core principles and areas of focus detailed in the America the Beautiful Report such as collaborative and inclusive approaches, locally led and designed conservation efforts, incorporation of Tribal Nation priorities, job creation, use of science, and development of flexible and adaptive approaches to conservation management. Considering the key role fishery management councils have in this effort, please consider our comments.

The Council is aware that NOAA co-chairs an interagency working group of agency experts that is developing an American Conservation and Stewardship Atlas (Atlas), with input from a wide range of stakeholders. In response to the America the Beautiful Report, the eight Regional Fishery Management Councils (RFMCs) created an Area-Based Management Subcommittee to assist the Councils in coordinating with NOAA to achieve the goals set forth in the Report. The Subcommittee is preparing a comprehensive evaluation of all existing federal fishery

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<sup>1</sup> Request for Information Federal Register Notice, October 29, 2021 <https://www.govinfo.gov/content/pkg/FR-2021-10-29/pdf/2021-23590.pdf>

<sup>2</sup> Conserving and Restoring America the Beautiful Report (2021) <https://www.doi.gov/sites/doi.gov/files/report-conserving-and-restoring-america-the-beautiful-2021.pdf>

conservation areas currently implemented in the US EEZ for consideration in the Atlas. The Area-Based Management Subcommittee is discussing many of the questions included in this RFI and more extensive input is forthcoming through the Council Coordination Committee (CCC) next year. Our comments are informed by the CCC work to date.

In brief, we support tackling the important and challenging task of conserving and restoring US lands and waters that is proposed by the Executive Order. Indeed, the RFMCs have been doing this for over forty years. Below is a handful of high-level comments summarized first, followed by initial responses to the specific questions included in the RFI.

- Climate change is bringing new challenges to the fishery management process and area-based management is just one tool of many that fishery managers can employ to conserve and restore marine and coastal ecosystems. Area-based management can be a valuable conservation tool, but it is not the right tool in every case. Efforts should be taken to catalogue and quantify other beneficial conservation measures NOAA implements, as well as conservation recommendations NOAA makes as a consulting agency for other federal projects.
- When NOAA collaborates with other federal agencies to define conservation areas, the Council recommends the definition be broad; it should not be required to be a “no-take” area. No-take fishery closures can have negative unintended consequences. Allowing well-regulated fishing within a conservation area can still be consistent with the goals of the America the Beautiful Report.
- No areas within the ocean or along the coast are without some level of activity. The marine ecosystem is closely interconnected with the seabed as well as the atmosphere and the human environment. Numerous activities occur in these spaces and that will increase with time. Additional pressures like offshore wind and aquaculture development are imminent activities in the Northwest Atlantic that will increase competition for ocean space. Therefore, conservation and restoration plans need to be holistic, balanced, and realistic.
- After the Atlas is developed, a specific process must be used to add/change/remove conservation areas to keep the Atlas current and useful. Because fishery conservation and management is adaptive fishery conservation areas should not be static or permanent. NOAA should consult with the Council on a regular basis to ensure accuracy of fishery related conservation areas.

Our responses to the seven questions in the RFI are provided below.

1. 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?

NOAA has multiple existing authorities that are appropriate for addressing the threats of climate change on America’s oceans, coasts, and Great Lakes. The Magnuson Stevens Fishery Conservation and Management Act (MSA), first adopted in 1976, established a 200-mile Exclusive Economic Zone (EEZ) and created eight regional fishery management councils to

develop and recommend fishery management measures to be implemented by NOAA Fisheries. This law has provided the structure and requirements needed for successful conservation and management of US fisheries and essential fish habitat for decades. It is the primary law used to implement fishery conservation areas and should be the authority NOAA should use to comply with this Executive Order. The ten National Standards of the MSA that dictate US fishery conservation and management are consistent with the core principles of the Conserving and Restoring America the Beautiful Report. Essential fish habitat provisions of the Act provide additional authorities for NOAA coordination and consultation with federal and state agencies.

Other relevant authorities are the National Marine Sanctuaries Act, Marine Mammal Protection Act, Endangered Species Act, and Coral Reef Conservation Act. These acts also enable NOAA to manage specific areas, species, and habitats to further conserve important ecosystems. In addition, NOAA has authorities to conserve and restore marine, estuarine, and riverine coastal ecosystems through the Coastal Zone Management Act (CZMA). CZMA provides a mechanism for federal grants to support state-specific conservation and restoration projects. Individual states have coastal management programs that require approval by NOAA. This authority provides critical oversight to ensure maintenance of strong coastal conservation programs. Finally, NOAA partners with states to designate National Estuarine Research Reserves (NERRs) that are a network of coastal sites designated to protect and study estuarine systems.

The overarching goal of this Executive Order is to conserve and restore US lands and waters using conservation areas. However, the Council believes that the conservation and restoration of Americas oceans and lands require more holistic, comprehensive programs that utilize a variety of conservation approaches. In addition to the direct authorities described above, NOAA also has a critical role in conservation and restoration as a consulting agency with other federal entities. For example, NOAA is a consulting agency with the US Army Corps of Engineers, Bureau of Ocean Energy Management, US Coast Guard, and Environmental Protection Agency. These agencies are responsible for permitting and licensing activities in federal and state waters and are required to consult with NOAA on projects such as offshore wind development, sand and gravel mining, offshore oil and gas development, designation of offshore dredge disposal sites, etc. It is critical for NOAA to be at the table when these projects are being developed so the potential impacts on the physical, biological, and human dimensions related to NOAA's trust resources are avoided, minimized, or mitigated. This consultation role highlights that area closures are not the only tool that can provide conservation benefits. The conservation recommendations and restoration requirements NOAA recommends for federal projects in state and federal waters should not be overlooked. It is essential that NOAA identifies a concrete way to quantify and track these conservation benefits in addition to the conservation areas that will be included in the American Conservation and Stewardship Atlas.

The Antiquities Act of 1906 allows the President to create national monuments to protect significant natural, cultural, or scientific features. Working with the Department of the Interior, NOAA has authorities under the Antiquities Act when marine national monuments are designated. While the Antiquities Act has been used to implement conservation areas in the US EEZ, the Council believes that the partnership between the Councils and the Department of

Commerce, prescribed by the MSA, is the best way to manage fishery resources, including within the boundaries of the Northeast Canyons and Seamounts Marine National Monument. Our February 12, 2021, and June 29, 2017, letters to the Department of the Interior explain our stance in detail. We believe designation of monuments via the Antiquities Act is not consistent with the core principles of the America the Beautiful Report, which espouse transparency, locally led, and science-based initiatives. With respect to the Northeast Canyons and Seamounts Marine National Monument, we have previously expressed concerns that there was not a transparent process that solicited input from all stakeholders before developing the fishing restrictions associated with the designation, nor were the impacts of the restrictions analyzed before implementation.

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

The Council recommends NOAA continue to develop fishery conservation areas and other management measures in the US EEZ through the regional council process under MSA to advance the goals and recommendations in the Report. This process ensures public participation and is most consistent with the core principles of the Report. NOAA should continue, or even expand its role as a consulting agency for projects proposed in state and federal waters.

3. 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?

As part of the CCC, the Council is participating in an effort to develop criteria for potential new or restored conservation areas. Until those criteria are identified, in general terms, the Council believes that any criteria used must recognize the full range of ecological services that are provided by the ocean. Criteria should allow for managed, sustainable use of ocean resources in order to benefit the nation. This is an underlying principle of the MSA that should be extended to other activities.

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

NOAA is fortunate to have numerous data sets available for tracking and evaluating the potential impacts of climate change. However, many uncertainties still exist, and it will be important to incorporate local knowledge from all ocean users to fill any data gaps. Commercial and recreational fishers have been observing changes in the marine and coastal ecosystem in New England for years. Efforts should be made to incorporate these observations as much as possible. NOAA should also invest in evaluating the potential impacts of climate change on fishing communities and related industries. Fishery managers have recently undertaken a separate initiative focused on the potential effects of climate change on fisheries management and

governance along the East Coast. This coastwide collaboration intends to engage with stakeholders to identify a set of tools and processes that provide flexible and robust fishery management strategies in an era of climate change.<sup>3</sup> The Council recommends NOAA track this initiative and incorporate any relevant findings that could further advance the goals of the America the Beautiful Report.

5. How NOAA should consider tracking its actions and measuring its progress, including with partners, toward advancing the goals and recommendations in the Report.

NOAA is required to prepare an annual report related to progress on this initiative. It is critical that the first report accurately describes the baseline and summarizes the conservation measures already in place. This report should also clearly define “conserve.” The Council recommends this baseline analysis should not simply focus on closure areas, but should also include conservation measures that avoid, mitigate, and minimize impacts to ecosystems. There are numerous measures such as catch limits, fishing gear modifications, and effort controls that provide holistic conservation benefits. Specific metrics should be defined in the first annual report for measuring progress. It is important that NOAA engage with the Council and other end users to ensure the metrics are useful and relevant to overall conservation and management efforts.

This initiative could impede adaptive management if area-based measures become part of a baseline that is presumed to be unchangeable. Because fisheries are dynamic and marine ecosystems are complex, area-based management and overall conservation and restoration efforts need to be flexible to adjust to changing conditions. Climate change will inevitably require fisheries management to be even more adaptive. As a result, area closures and other conservation measures cannot be static in all cases. If an area is included in the Atlas today, that should not mean it can never be removed or adjusted. As a result of climate change and other factors that area may not be an effective conservation area in the future. NOAA should be clear in its messaging about this initiative that the Councils retain the authority to modify their own management measures, regardless of an area or measure’s status relative to this initiative.

6. 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?

Again, the Council process is already designed to consider the interests of non-Federal entities, including tribal, state, territorial, and local and non-governmental organizations and other private entities. These stakeholders are invited to participate through the Council process to help develop appropriate conservation measures. NOAA should support and encourage programs designed to increase outreach and engagement of more stakeholders in the Council process. In addition to the

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<sup>3</sup> East Coast Climate Change Scenario Planning Initiative <https://www.mafmc.org/climate-change-scenario-planning>

Council process, it will be necessary to develop specific outreach initiatives to reach stakeholders that are not already engaged. In addition, it is important that the Atlas and annual reports include interactive tools and is user friendly for end users and the general public. Specific outreach and education programs could be established to review the Atlas and annual review reports to improve participation and ensure utility and transparency.

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

NOAA has already hosted several listening sessions on the America the Beautiful initiative. These efforts are important to inform the public about this important work. However, this is a long-term initiative that will require active engagement over a minimum of ten years. More specific outreach is needed to engage stakeholders and sustain committed participation. NOAA should plan for regular updates on the Atlas and annual reviews with all eight Councils as well as other regional bodies like NROC (Northeast Regional Ocean Council), MARCO (Mid-Atlantic Regional Council on the Ocean), etc. In addition, NOAA should consider identifying a new advisory body for the America the Beautiful initiative that could develop and review progress on efforts to conserve and restore US lands and waters.

The Council looks forward to continuing engagement with NOAA on development of the American Conservation and Stewardship Atlas as well as NOAA's efforts to track its annual progress toward advancing the goals and recommendations in the Report. Please contact me if you have any questions or would like to discuss these comments further.

Sincerely,

cc: Janet Coit, AA of Fisheries, NOAA