

IMPLEMENTING AN ECOSYSTEM APPROACH TO OCEAN MANAGEMENT: AN ASSESSMENT OF CURRENT REGIONAL GOVERNANCE MODELS

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I. INTRODUCTION

The two recent national ocean policy studies considering the fate of United States' oceans in the twenty-first century, conducted by the Pew Oceans Commission¹ and the United States Commission on Ocean Policy ("USCOP"),² were largely in agreement on some very fundamental issues. First, both commissions concluded that human activities have severely stressed ocean systems and that major changes in ocean management are needed to stop degradation of ocean resources and to restore and protect the oceans for future generations.³ Second, the commissions found that better management of the oceans required an ecosystem-based approach, implemented through coordinated, regional mechanisms.⁴ However, the jurisdictions of our federal and state governments currently are not organized to operate or take actions at regional levels.⁵ Any proposals

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1. PEW OCEANS COMM'N, AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE (2003) [hereinafter PEW REPORT], available at http://www.pewtrusts.org/pdf/env_pew_oceans_final_report.pdf.

2. U.S. COMM'N ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY: FINAL REPORT OF THE U.S. COMMISSION ON OCEAN POLICY (2004) [hereinafter USCOP REPORT], available at http://www.oceancommission.gov/documents/full_color_rpt/000_ocean_full_report.pdf.

3. PEW REPORT, *supra* note 1, at 97-98; USCOP REPORT, *supra* note 2, at 1-4.

4. PEW REPORT, *supra* note 1, at 103-06; USCOP REPORT, *supra* note 2, at 5-9.

5. The exception to this is the regional fishery management councils established by the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1852 (2000). Even these regional councils are limited to jurisdiction over the federal Exclusive Economic Zone, and their jurisdictions do not include adjacent state waters.

to implement the goals of a regional, ecosystem-based approach to ocean management must therefore consider how regional mechanisms would be structured and how they would function in our federal system.

Since the reports were released, the President has responded with an executive level Ocean Action Plan,⁶ and major legislation has been introduced in both the Senate⁷ and House of Representatives.⁸ It is clear from these responses that widespread agreement that a regional approach is needed has not led to consensus as to what kind of response is necessary to deal with the mismatch between governance structure and the need for eco-regional governance of the oceans. In this context, this paper will discuss the various regional governance structures and approaches to coordination and compliance that the reports, the executive order, and the current legislative initiatives propose.

II. ECO-REGIONAL MANAGEMENT AND GOVERNANCE STRUCTURE

The necessity of ocean governance to address problems at the ecosystem level is virtually accepted these days as a truism.⁹ USCOP identified ten large marine ecosystems, bordering the coasts of the United States,¹⁰ but these ocean eco-regions have little relation to geopolitical boundaries or jurisdictional boundaries. Beyond that, many of the environmental stresses on the oceans come from activities landward of ocean boundaries altogether. The mismatch between the jurisdictional competences of levels of government in the United States and the need to act on a regional level creates a major impediment to ocean ecosystem management and creates a dilemma for our federal system.

Creating a competence for regional governance will involve surmounting serious systematic hurdles.¹¹ Our governmental

6. U.S. OCEAN ACTION PLAN: THE BUSH ADMINISTRATION'S RESPONSE TO THE U.S. COMMISSION ON OCEAN POLICY (2004) [hereinafter U.S. OCEAN ACTION PLAN], available at <http://ocean.ceq.gov/actionplan.pdf>.

7. See National Oceans Protection Act of 2005, S. 1224, 109th Cong. (2005).

8. See Oceans Conservation, Education, and National Strategy for the 21st Century Act, H.R. 2939, 109th Cong. (2005).

9. See USCOP REPORT, *supra* note 2, at 5.

10. *Id.* at 63-64.

11. For an excellent and in-depth discussion of these issues, see Bradley C. Karkkainen, *Collaborative Ecosystem Governance: Scale, Complexity, and Dynamism*, 21 VA. ENVTL. L.J. 189 (2002-2003). See also Laurence Juda, *Considerations in Efforts to Effectuate Regional Ocean Governance*, in WORKSHOP ON IMPROVING REGIONAL OCEAN GOVERNANCE IN THE UNITED

institutions are not designed to deal with either the scale or complexity of ecosystem-based management. Our concepts of federalism and separation of powers do not provide the institutional bases for responding to problems on a regional ecosystem level. Our governance system is fundamentally rule driven and jurisdictionally constrained, and these jurisdictions are often jealously guarded. States are seriously concerned about the creation of new hierarchies and new levels of governance that could encroach further on state prerogatives.¹²

Eco-regional governance also suggests a reallocation of power and authority that raises democratic concerns as well. Transparency and accountability are critical factors. The direct participation by nongovernment actors raises concerns of capture of the process by stakeholders.¹³ Who is in charge, and to whom would regional governance bodies be accountable? The next sections of this paper will look at the commission reports and recommendations and the responses that are currently being considered for addressing regional ocean governance. This paper will also assess their strengths and weaknesses in the context of the challenges to eco-regional governance.

STATES: WORKSHOP PROCEEDINGS, 23-27 (2002), available at <http://www.udel.edu/CMS/CSMP/pdf/regionaproceedings.pdf>; Susan Steele Hanna, *Implementing Effective Regional Ocean Governance: Perspectives from Economics*, 16 DUKE ENVTL. L. & POL'Y F. 205 (2006).

12. Karkkainen, *supra* note 11, at 214-16. For example, in the governors' comments on the Preliminary USCOP Report, Alaska's and Louisiana's comments emphasized state sovereignty and jurisdiction. Alabama, Alaska, and Florida did not support the creation of new regional ocean authorities, while Texas, New York, and Georgia supported only voluntary regional arrangements, and Louisiana, Maryland, and Virginia warned against creating a new layer of regional bureaucracy. Oregon stated that "Regional Ocean Councils should have no new regulatory authority." See GOVERNORS' COMMENTS ON THE PRELIMINARY REPORT, SPECIAL ADDENDUM TO AN OCEAN BLUEPRINT FOR THE 21ST CENTURY, FINAL REPORT OF THE U.S. COMMISSION ON OCEAN POLICY (Washington, D.C., 2004).

13. See H.R. 2939, § 401(6). Much can be learned from the experience with Regional Fisheries Management Councils under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1852 (2000). These councils are criticized for their failure to assure broad representation of interests and for their lack of accountability. The councils are further often accused of industry capture and conflicts of interest. See generally David A. Dana, *Overcoming the Political Tragedy of the Commons: Lessons Learned from the Reauthorization of the Magnuson Act*, 24 ECOLOGY L.Q. 833 (1997); Thomas A. Okey, *Membership of the Eight Regional Fishery Management Councils in the United States: Are Special Interests Over-represented?*, 27 MARINE POLICY 193 (2003); PEW REPORT, *supra* note 1, at 45; Statement by President William J. Clinton Upon Signing S. 39, 32 WEEKLY COMP. PRES. DOC. 2040 (Oct. 14, 1996), as reprinted in 1996 U.S.C.C.A.N. 4120-21.

III. THE PEW OCEANS COMMISSION REPORT

In May 2003, the Pew Oceans Commission, “a bipartisan, independent group of American leaders,”¹⁴ released the results of its efforts to chart a new national ocean policy.¹⁵ The report, *America’s Living Oceans, Charting a Course for Sea Change*, determined that a federal governance framework that was fragmented both in terms of the hodgepodge of laws and agencies involved,¹⁶ and in terms of the geographic scope of resource management authority, has contributed to the inability to protect and sustainably manage marine ecosystems.¹⁷ Further, the federal/state division of ocean authority into offshore and nearshore areas of jurisdiction provides inadequate protection of marine ecosystems because no sufficient mechanisms exist to coordinate or harmonize management efforts.¹⁸ The Pew Commission concluded that the focus of ocean management should be the maintenance of the health of marine ecosystems, which requires a coordinated, regional management approach.¹⁹

A. *Regional Ocean Ecosystem Councils*

The Pew Commission’s primary mechanism for accomplishing an ecosystem-based approach to ocean management is through creation of regional ocean ecosystem councils.²⁰ The Pew Report envisions the executive, decisionmaking core of the regional councils to be federal, state, and tribal authorities with jurisdiction over relevant ocean space and resources.²¹ The Pew Report provides no particularized guidance about how the councils would be constituted. Broad stakeholder participation would be included through a “robust and influential” advisory process.²² The regional councils would be charged with developing regional ocean governance plans that would

14. PEW REPORT, *supra* note 1, at ix.

15. The Pew Oceans Commission began its independent study in May 2000, only three months prior to the Oceans Act of 2000 being signed into law on August 7, 2000. The Oceans Act of 2000 called for a Commission on Ocean Policy appointed by the President to make recommendations for a comprehensive national ocean policy. Thus, the two commissions carried out concurrent studies. Oceans Act of 2000, Pub. L. No. 106-256, 114 Stat. 644 (2000).

16. The Pew Report notes that more than 140 laws, involving dozens of federal agencies, apply to oceans and coasts. PEW REPORT, *supra* note 1, at 26.

17. *Id.*

18. *Id.*

19. *Id.* at 32-33.

20. *Id.* at 33, 103.

21. *Id.* at 33.

22. *Id.* at 103.

address, at a minimum: management of living marine resources, protection of habit, protection of water quality, and management of development affecting marine ecosystem health.²³ The regional councils would consult and coordinate with other agencies and regional entities, and review their actions, but would not supplant day-to-day management of such authorities as, for example, the regional fishery management councils.²⁴

Regional ocean governance plans would require the approval of a national ocean agency created by a new National Ocean Policy Act (“NOPA”).²⁵ The plans must be based on science and be consistent with the national ocean policy and standards to guide ocean governance incorporated in NOPA.²⁶ The regional plans are envisioned as incorporating “clear and measurable management and restoration goals”²⁷ and performance standards.²⁸ The plans should feature use zoning, including areas designated for marine protection, fishing, energy development, and other commercial and recreational uses.²⁹

The regional ocean plans are intended to have “teeth;” that is, they should be binding and enforceable against all parties.³⁰ The Pew Report identifies several specific enforcement mechanisms. First, states would be able to require compliance with enforceable policies through a consistency mechanism incorporated into the Coastal Zone Management Act (“CZMA”).³¹ States could appeal inconsistent federal actions to the national ocean agency or seek injunctive relief in federal court.³² Reciprocally, state actions inconsistent with regional ocean governance plans could be “preempted” by the federal government.³³ Finally, a cause of action would be created for third parties by a citizen suit provision to compel compliance with the plan.³⁴

23. *Id.*

24. *Id.* at 104-05.

25. *Id.* at 33, 102-03.

26. *Id.* at 103.

27. *Id.* at 104.

28. *Id.*

29. *Id.* at 105.

30. *Id.* at 33, 104.

31. *Id.* at 104.

32. *Id.*

33. *Id.*

34. *Id.*

The Pew Report also calls for the creation of a national oceans council, chaired by the head of the new oceans agency, within the Office of the President.³⁵ This council would deal primarily with the coordination of federal agencies and federal programs at the national and international levels to assure compliance with national ocean policy,³⁶ but no specific role is designated vis-à-vis the regional ocean councils.

B. *Implementation Issues*

Of all the approaches to regional implementation of ecosystem-based ocean management currently proposed, the Pew Commission proposal most directly addresses the implementation of regional ocean governance and proposes the strongest regional authority for ocean management with widely available enforcement mechanisms applicable to all levels of government. The regional ocean councils would be involved in the implementation of ocean policy at all levels of management through review of state, federal, and regional management activities to assure consistency with regional ocean governance plans.³⁷

Because the Pew Commission proposal envisions an enforceable regional governance structure, which is arguably a new level of government, the proposal has not been widely endorsed among states. The Pew Commission approach is problematic in its creation of this additional level of governance applicable to, and enforceable against, the states. In addition, the Pew Report envisions the states providing some level of funding for the regional councils.³⁸ The Pew Commission argues that non-economic incentives would provide strong bases for state participation.³⁹ For example, the Commission cites the prospect of improved productivity of ocean resources through ecosystem-based management, harmonization of federal and state ocean management regimes, and greater influence on the management of Exclusive Economic Zone (“EEZ”) resources.⁴⁰ The hope for such benefits, however, does not outweigh what many states perceive as a serious infringement on state sovereignty.

35. *Id.* at 107.

36. *Id.*

37. *Id.* at 33-34, 102-03.

38. *Id.* at 105.

39. *Id.*

40. *Id.*

Through the regional governance plans, states would also be required to conform to national ocean policies set through federal legislation.⁴¹ Although this is similar to the CZMA⁴² in that national policies are implemented through programs at the state level, there are several major differences. First, participation by states in the CZMA is voluntary.⁴³ In addition, states have total control of how CZMA policies are implemented, whereas representation in regional councils does not assure the plans will reflect state concerns.⁴⁴ Finally, state coastal programs are not directly enforceable against the states by the federal government. While the federal government may withdraw approval of a state program,⁴⁵ neither the Administrator of the National Oceanic and Atmospheric Administration (“NOAA”) nor the Secretary of Commerce can directly enforce the programs or the national policies.⁴⁶

The Pew Oceans Commission’s somewhat idealistic vision of a direct governance approach to ecosystem-based management at the regional level would effectively deal with interjurisdictional issues and issues of accountability and enforceability. The proposed approach fails, however, to provide realistic incentives for state participation or to adequately address the political reality that states are unlikely to support or participate in what many view as further federal encroachment on state sovereignty.

IV. UNITED STATES COMMISSION ON OCEAN POLICY REPORT

The Commission on Ocean Policy, created by the Oceans Act of 2000,⁴⁷ was appointed by President George Bush in 2001 and is comprised of individuals of diverse expertise and interests in the oceans.⁴⁸ The final report, *An Ocean Blueprint for the 21st Century*, was issued on July 22, 2004, following three years of hearings, study, and analysis.⁴⁹ On the issue of ocean governance, the USCOP Report

41. *Id.* at 104.

42. Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1465 (2000).

43. *See id.* § 1454. The Pew Report is somewhat ambiguous about whether states must participate in regional governance under their model, but the framework suggests that participation would not be voluntary.

44. *See id.* § 1458; PEW REPORT, *supra* note 1, at 103-06.

45. 16 U.S.C. § 1458(d).

46. *See id.* § 1458.

47. Oceans Act of 2000, Pub. L. No. 106-256, § 3(a), 114 Stat. 644, 645 (2000).

48. *See* USCOP REPORT, *supra* note 2, at xiii, 3, 56.

49. *See id.* at 3-4, 56-59 (describing the process of the commission study).

found that past and current attempts to coordinate ocean management within some particular areas had been helpful, but the efforts inadequately dealt with a broad and diverse range of ocean responsibilities.⁵⁰ The “lack of communication, coordination, and a strong sense of partnership continues to inhibit effective action” by the government.⁵¹ To move toward an ecosystem-based approach to ocean management, the USCOP Report found that institutional capacities were necessary to coordinate response to ocean issues across jurisdictional boundaries.⁵²

A. *Regional Ocean Councils*

The USCOP Report envisions a much less structured and evolving system of regional ocean councils than the Pew Report. USCOP recommends the encouragement of voluntary regional ocean councils, established by the states, with a wide range of participants including all levels of government, along with persons from the private sector, nongovernmental organizations, and academia.⁵³ The exact structure and function of the councils should be determined by the participants to meet the unique needs of each region.⁵⁴ The USCOP Report does, however, include some guidance on the nature of the councils: The regional ocean council boundaries should be based on large marine ecosystem boundaries and extend landward to incorporate coastal watersheds, and seaward through the EEZ.⁵⁵ The councils should address a wide range of ocean and coastal issues, support existing regional initiatives, and be broadly representative.⁵⁶ Core council functions should include “developing regional goals and priorities and facilitating coordinated, collaborative responses to regional issues,” as well as providing the means to communicate regional concerns to the federal level.⁵⁷

USCOP suggests that some existing regional initiatives might provide a starting point for regional ocean councils.⁵⁸ Broadening existing initiatives would assure that there would not be duplication in

50. *Id.* at 77.

51. *Id.*

52. *Id.* at 86.

53. *Id.* at 87.

54. *Id.* at 90.

55. *Id.* at 91.

56. *Id.*

57. *Id.*

58. *Id.*

the efforts of regional programs, and the experience and expertise that has been developed in those programs could contribute to more effective regional ocean councils. The USCOP Report highlights several regional programs that have been successful in moving toward ecosystem-based management using different approaches to accommodate not only the particular regional problems addressed, but also the unique “political and social climate” of the regions.⁵⁹ Like these efforts, by focusing on regional concerns and opportunities, the councils could identify the best strategies and mechanisms to achieve agreed-upon regional goals.

The regional ocean councils are to provide a “bottom up” response to USCOP’s proposed new National Ocean Policy Framework.⁶⁰ The linchpin in this framework would be a National Ocean Council, established within the Executive Office of the President. The Council would be chaired by an assistant to the President and would be composed of secretaries of departments and directors of agencies with ocean and coastal responsibilities.⁶¹ The Council would have the responsibility to set national goals for the ocean, establish broad principles for ocean governance,⁶² and coordinate federal agency implementation of national ocean policies.⁶³ The Council would be at the center of an extensive network of councils and advisory agencies established within the Executive Office of the President to “improve federal leadership and coordination of the nation’s oceans and coasts.”⁶⁴ With respect to the regional councils, the National Ocean Council would be charged to work with state governments and the private sector to develop a voluntary process for the creation of the regional ocean councils.⁶⁵

Another major council at the executive office level, the President’s Council of Advisors on Ocean Policy, would be a

59. *See id.* at 88-89, 93 (discussing the Chesapeake Bay Program, the Delaware River Basin Commission, the California Bay-Delta Authority, and the Gulf of Mexico Program, as well as initiatives in the Great Lakes region).

60. *Id.* at 87.

61. *Id.* at 79.

62. These ocean governance principles are to be based on guiding principles set out in the USCOP Report: sustainability, stewardship, ocean-land-atmosphere connections, ecosystem-based management, multiple use management, preservation of marine biodiversity, best available science and information, adaptive management, understandable laws and clear decisions, participatory governance, timeliness, accountability, and international responsibility. *Id.* at 61-63.

63. *Id.* at 79-80.

64. *Id.* at 83.

65. *Id.* at 80, 87.

presidentially appointed group of nonfederal parties who are knowledgeable and experienced in ocean issues.⁶⁶ This Council of Advisors would be broadly representative and include “governors of coastal states and other appropriate state, territorial, tribal and local government representatives, plus individuals from the private sector, research and education communities, nongovernmental organizations watershed organizations, and other nonfederal bodies with ocean interests.”⁶⁷ An important function of the Council of Advisors is to communicate regional concerns to the National Ocean Council. The structure and function of this advisory council is based on the National Advisory Committee on Oceans and Atmosphere (“NACOA”).⁶⁸ NACOA was created by Congress in 1971 in response to recommendations of the Stratton Commission.⁶⁹ Regional concerns would be communicated to the National Ocean Council through the President’s Council of Advisors on Ocean Policy.⁷⁰

B. *The Regional Approach at the Federal Level*

Recognizing the major role that federal agencies play in management of ocean and coastal resources, USCOP made a number of recommendations concerning the organization and coordination of federal agencies. First, agencies’ operations and responsibilities should be divided along common regional lines.⁷¹ Although the primary agencies involved in managing issues related to the coasts and oceans have regional offices, the areas served by the offices incorporate differently defined regions. The USCOP recommends moving toward common agency boundaries, coordinated with the establishment and creation of regional ocean councils.⁷² This agency regionalization is also viewed as an incentive for formation of regional ocean councils.⁷³

66. *Id.* at 81.

67. *Id.*

68. *Id.*

69. *Id.* The Stratton Commission, which was created in the late 1960s, was the first commission charged with developing national ocean policy recommendations for the country. *Id.* at 50-51. The advisory committee created in response to the Stratton Commission recommendations, NACOA, lost political support and simply quit meeting in the 1980s. *Id.* at 81.

70. *Id.* at 90.

71. *Id.* at 94.

72. *Id.*

73. *Id.* at 92.

Better coordination among agencies is anticipated by shifting to a common regional structure, but the USCOP Report also recommends that the President, by Executive Order, direct federal agencies to address regional coordination and communication among agencies, identify gaps or inconsistencies in agency policies, practices, or regulations, and coordinate funding and grants to be consistent with regional priorities.⁷⁴ These regional priorities are to be identified through collaboration with governmental and nongovernmental stakeholders at all levels.⁷⁵

C. Regional Ocean Councils and Regional Fishery Management Councils

The Magnuson-Stevens Fisheries Conservation and Management Act⁷⁶ designated eight regions within the United States EEZ,⁷⁷ and established regional fisheries management councils (“RFMCs”) to develop fisheries management plans for each region.⁷⁸ The USCOP Report acknowledged that these RFMCs have begun to transition toward a regional, ecosystem-based approach to fishery management, but noted that an ecosystem-based approach requires considerations that go beyond fisheries to interactions with other resources and activities.⁷⁹ Other than noting that the RFMCs “need to interact regularly with other regional, state and local entities with related responsibilities”⁸⁰ in the marine environment, the USCOP Report suggested little role for entities like the regional ocean councils in the fishery management process. Participation of the RFMCs in a collaborative process with regional ocean councils was encouraged, however, to assure fisheries issues are integrated into the regional perspective and to allow regional ocean councils to benefit from the RFMCs’ “experience in dealing with diverse constituents and multiple objectives” in developing a comprehensive, ecosystem-based approach to management in the regions.⁸¹

74. *Id.*

75. *Id.*

76. 16 U.S.C. §§ 1801-1883 (2000).

77. *Id.* § 1852.

78. *Id.*

79. USCOP REPORT, *supra* note 2, at 295.

80. *Id.*

81. *Id.* at 297.

D. *Implementation Issues*

An interesting aspect of the USCOP recommendations is that the structuring of governance to promote a regional, ecosystem-based approach to ocean management can largely be accomplished without congressional action. For example, by recommending the reorganization of federal agencies along common regional lines and better coordination of agency activities within those regions,⁸² USCOP provides initial, functional steps toward an ecosystem-based approach to management at the federal level that are relatively easily implemented and do not require legislative authority to initiate.

While regional ocean councils may eventually be formalized through interstate compacts, no legislation is necessary for the creation of voluntary regional councils or for the extension of existing regional efforts. USCOP's recommendations concerning regional ocean and coastal approaches to management also avoid many of the issues raised by the Pew Commission governance proposals: State participation in development of regional approaches to ecosystem-based management of the oceans is voluntary, and national standards or regional ocean governance plans that are enforceable against the states are not required.⁸³ Participants in voluntary regional councils can identify problems and responses that are best addressed at the regional level. Because they are not constrained by a legislative mandate to take a particular approach or meet particular goals, the councils can address the priorities they identify for the regions and have the flexibility to adopt adaptive management approaches to respond to the dynamic nature of ecosystems.

As the USCOP Report acknowledges, this "strength" is also the weakness of the approach.⁸⁴ Voluntary participation means that, in general, states must initiate the process and there is no accountability and no timetable for addressing ocean issues that have been identified as requiring concerted and immediate responses. Further, the lack of formal mechanisms or authorities makes it difficult to develop and coordinate responses to issues that cut across so many jurisdictions, statutes, ocean and coastal uses, and institutional actors. With limited authority and limited funding, the regional councils would have to take a long-term and incremental approach. Incentives like funding or a mechanism like the CZMA's consistency requirement are not

82. *Id.* at 94.

83. *Id.* at 87, 90.

84. *Id.* at 91.

provided. Concerted efforts of states and stakeholders as well as the support and cooperation of the federal government and federal agencies will be necessary to sustain the momentum required to achieve results at the ecosystem level.

V. THE U.S. OCEAN ACTION PLAN

The Ocean Act of 2000 required that USCOP's report be submitted to Congress and the President.⁸⁵ Within 90 days after submission of the Report, the President was directed by the Act to submit to Congress his response to the USCOP recommendations for a coordinated, comprehensive and long range national policy for the oceans.⁸⁶ The President's response was in the form of the *U.S. Ocean Action Plan*,⁸⁷ issued on September 4, 2004.

A. *Coordination and Leadership at the National Level*

The Ocean Action Plan's primary approach to providing greater visibility for ocean issues and coordinating ocean related matters is through the creation of a Cabinet level Committee on Ocean Policy.⁸⁸ The Committee on Ocean Policy was established by Executive Order on December 17, 2004, with the Chairman of the Council on Environmental Quality ("CEQ") designated as chair of the committee.⁸⁹ Following the directions of the Ocean Action Plan and the Executive Order, the Committee on Ocean Policy has established several subsidiary bodies: the Interagency Committee on Ocean Science and Resource Management Integration, the National Science and Technology Council Joint Subcommittee on Ocean Science and Technology, and the Subcommittee on Integrated Management of Ocean Resources.⁹⁰ These newly created bodies, along with the existing National Security Council Policy Coordinating Committee and an expanded Ocean Research Advisory Panel, form the Executive Office level ocean governance structure.⁹¹

The Committee on Ocean Policy, in conjunction with its subsidiary committees, will facilitate implementation of the national

85. Pub. L. No. 106-256, § 3(f)(1), 114 Stat. 644, 647 (2000).

86. *Id.* § 4(a), 114 Stat. at 648.

87. U.S. OCEAN ACTION PLAN, *supra* note 6.

88. *Id.* at 6.

89. Exec. Order No. 13,366, 3 C.F.R. 244 (2005).

90. *See* U.S. OCEAN ACTION PLAN, *supra* note 6, at 7-9; *see also* About the Committee on Ocean Policy, <http://ocean.ceq.gov/about/welcome.html> (last visited Mar. 27, 2006).

91. U.S. OCEAN ACTION PLAN, *supra* note 6, at 7, 10.

policy announced in the Executive Order to “coordinate the activities of the executive departments and agencies regarding ocean-related matters in an integrated and effective manner to advance the environmental, economic, and security of present and future generations of Americans.”⁹² The Committee on Ocean Policy will also advise the President in development and implementation of national ocean policy. While not authorized to establish national ocean policy goals for federal agencies, the Committee is to facilitate the “development and implementation of common principles and goals for the conduct of governmental activities on ocean-related matters.”⁹³

B. *Regional and Other Initiatives*

The Ocean Action Plan provides that the federal government should support regional collaborations on ocean and coastal initiatives.⁹⁴ The Great Lakes Interagency Task Force, the Great Lakes Regional Collaboration, the Gulf of Mexico Program, and regional fisheries management commissions are specifically identified as programs that are moving in the direction supported by federal policy.⁹⁵

The President’s Executive Order further directs the Committee on Ocean Policy to assist and advise in regard to a second national policy announced to: “Facilitate, as appropriate, coordination and consultation regarding ocean-related matters among Federal, State, Tribal, and local governments, the private sector, foreign governments, and international organizations.”⁹⁶ In that regard, the Committee is to “provide and obtain information and advice to facilitate . . . voluntary regional approaches with respect to ocean-related matters.”⁹⁷

C. *Implementation Issues*

The U.S. Ocean Action Plan and the Executive Order to create the Committee on Ocean Policy take important steps toward meeting USCOP goals of creating national visibility for ocean issues at the

92. Exec. Order No. 13,366, 3 C.F.R. 244 (2005).

93. *Id.* at 246.

94. U.S. OCEAN ACTION PLAN, *supra* note 6, at 10.

95. *Id.* at 10-11.

96. 3 C.F.R. 244.

97. *Id.* at 246.

Executive Office level and coordinating ocean activities and policy at the federal level. By designating the Chairman of CEQ, the body charged with overseeing federal agency implementation of their obligations under the National Environmental Policy Act (“NEPA”), as the chair of the Committee on Ocean Policy,⁹⁸ the Executive Order creates an important linkage between ocean policy issues and the NEPA process.

Although the Ocean Action Plan and the Executive Order call for more coordination at the federal level, neither requires specific action toward regional, ecosystem-based ocean management either on the federal level or at the state or regional level. This response to the USCOP Report provides only a minimal and measured initial step toward regional, ecosystem-based management.

VI. S. 1224, THE NATIONAL OCEANS PROTECTION ACT OF 2005

The National Oceans Protection Act (“NOPA”) of 2005, Senate Bill 1224, was introduced June 9, 2005, by Senator Boxer.⁹⁹ The findings of the bill echo the Pew Commission and USCOP reports in calling for ecosystem-based management through partnerships between all levels of government.¹⁰⁰ The stated purpose is “to secure, for present and future generations of people of the United States, the full range of environmental, economic, educational, social, cultural, nutritional, and recreational benefits of healthy marine ecosystems.”¹⁰¹

A. *Regional Approach to Management*

The proposed NOPA follows the recommendations of USCOP in requiring NOAA to organize its activities and programs around common ecosystem boundaries¹⁰² and to work with other federal agencies to move toward “eco-regional organization and . . . collocation of related programs.”¹⁰³ Such reorganization is intended to “maximize opportunities to work in partnership with States in order to facilitate eco-regional management and enhance State and local

98. *Id.* at 244-45.

99. *See* National Oceans Protection Act of 2005, S. 1224, 109th Cong. (2005).

100. *Id.* § 2(10).

101. *Id.* § 3. Title I of the proposed act, which focuses on national ocean policy and governance, is entitled the “Ernest ‘Fritz’ Hollings National Ocean Policy Leadership Act.” *Id.* § 101.

102. *Id.* § 117(1).

103. *Id.* § 117(2)(A).

capacity to manage issues on an eco-regional basis.”¹⁰⁴ In addition, NOAA would work with the states to encourage planning and implementation of regional actions to cooperate, coordinate, and integrate across relevant state and federal programs.¹⁰⁵ Finally, NOAA would also, “in consultation with the states, develop regional information programs” and coordinate research strategies and activities.¹⁰⁶

Located in the Executive Office of the President and overseeing and coordinating federal ocean activities would be a Council on Ocean Stewardship.¹⁰⁷ The Council would have three to five members, appointed by the President with advice and consent of the Senate.¹⁰⁸ In addition, the proposed Act directs the President to establish a Presidential Panel of Advisers on Oceans and Climate to advise the President and the Council on Ocean Stewardship.¹⁰⁹ The Panel would be co-chaired by the chairman of the Council on Ocean Stewardship and would involve up to twenty-four other, nonfederal members including at least one representative nominated by a governor from each of the coastal regions designated the USCOP Report.¹¹⁰

The primary responsibility for working toward coordination with states is placed with the Administrator of NOAA who is directed to promote partnerships with states to facilitate eco-regional management and enhance state and local capacity. In at least nine sections of NOPA, the Administrator is charged with the responsibility to work with the states to encourage early cooperation, coordination, and integration of state and federal ocean programs, including planning and implementing eco-regional activities.¹¹¹ The Act does not, however, address or propose any specific approach to developing eco-regional coordination and partnerships.

104. *Id.* § 117(1)(F).

105. *Id.* §§ 117(2)(B), 118(d).

106. *Id.* § 117(3).

107. *Id.* § 131.

108. *Id.* § 132(a).

109. *Id.* § 137(a).

110. *Id.* § 137(b).

111. *See id.* §§ 102(4), 114(2), 114(20), 114(21), 117(1)(D), 117(1)(F), 117(2)(B), 118(d), 134(3).

B. *Enforcement of Ocean Policy*

NOPA would create an enforcement mechanism at the federal level that would require federal agencies undertaking “covered actions”¹¹² to certify that the action:

- (1) complies with all relevant and applicable laws relating to ocean or coastal waters and resources;
- (2) is consistent with the protection, maintenance, and restoration of marine ecosystem health; and
- (3) is not—
 - (A) likely to significantly degrade the health of marine resources; or
 - (B) likely to significantly impede the restoration of marine resources.¹¹³

The agency certification would be reviewed by the Administrator of NOAA in consultation with the Chair of the Council on Ocean Stewardship.¹¹⁴ If the Administrator does not concur with the certification, the Administrator would provide “recommendations to remedy the identical deficiencies.”¹¹⁵ The agency would be required to “incorporate the recommendations and submit to the Administrator and Council on Ocean Stewardship a report documenting how the recommendations [would] implement the recommendations prior to [the agency] taking final action or subsequent action.”¹¹⁶

C. *Implementation Issues*

Much of the emphasis of NOPA is directed toward developing an ocean policy structure at the national level. National priority issues do, however, emphasize “ecosystem-based management, protection, and restoration of ocean and atmospheric resources and environments, including management oriented research, technical assistance and organization of programs and activities along common eco-regional boundaries,”¹¹⁷ and recognize that ecosystem management will require partnerships across all levels of

112. “The term ‘covered action’ under this subtitle means any activity affecting United States ocean or coastal waters or resources, that is authorized (including the issuance of a Federal license or permit), carried out, or funded by a Federal agency.” *Id.* § 151.

113. *Id.* § 152.

114. *Id.* § 153.

115. *Id.* § 154.

116. *Id.*

117. *Id.* § 134(3).

government.¹¹⁸ The reorganization of federal agencies along ecoregional lines is an important step in the direction of a regional approach to ocean governance. But as far as regional governance structure for ecosystem-based management is concerned, the proposed Act seems to distance itself from encroaching on state prerogatives in designing regional responses to ocean issues, leaving the NOAA Administrator responsible for exploring mechanisms for future development of regional cooperation and coordination by states.¹¹⁹

VII. H.R. 2939, OCEANS CONSERVATION, EDUCATION, AND NATIONAL STRATEGY FOR THE 21ST CENTURY ACT

The Oceans Conservation, Education, and National Strategy for the 21st Century Act (“OCEANS-21”), House of Representatives bill 2939, is a bipartisan bill introduced to implement recommendations of the Pew Commission and USCOP.¹²⁰ The bill is intended to enhance ocean stewardship by, among other things, establishing a comprehensive, binding national ocean policy and promoting ecosystem-based management by “strengthening and empowering ocean governance.”¹²¹

A. *Regional Ocean Partnerships*

Citing the call by the Pew Commission and USCOP for a more comprehensive and integrated ecosystem-based management approach to coastal and ocean management, OCEANS-21 proposes the establishment of regional entities that will form a “national network of [ocean and coastal] governance planning bodies.”¹²² The Administrator of NOAA and the states, in consultation with the executive office level Committee on Ocean Policy, would be directed to establish eight Regional Ocean Partnerships based on regions designated in the bill.¹²³ The regions extend seaward through the 200-mile EEZ and landward to include the coastal zone as defined in the CZMA¹²⁴ and watershed areas that have a significant impact on

118. *Id.* § 2(10).

119. *Id.* §§ 117-118.

120. Oceans Conservation, Education, and National Strategy for the 21st Century Act, H.R. 2939, 109th Cong. (2005).

121. *Id.* § 3.

122. *Id.* § 401.

123. *Id.* § 402(a), (f).

124. Coastal Zone Management Act of 1972, 16 U.S.C. § 1453(1) (2003).

coastal waters of the states identified in the region.¹²⁵ Membership of the Partnerships would include representatives of designated federal agencies, including a representative of NOAA, representatives of coastal state agencies with primary responsibility over ocean and coastal policy or management, representatives of inland states with jurisdiction over waters that feed into the ocean region, the executive director of the regional fisheries management council, and other members appointed by the Administrator of NOAA which may include local government representatives, representatives of Indian tribes, and where appropriate, international representatives as nonvoting participants.¹²⁶ Each Regional Ocean Partnership may establish advisory committees and working groups as needed for its mission, but each is required to create a Citizens Advisory Committee representing a wide range of “citizens interested in multiple uses of United States ocean waters and ocean resources.”¹²⁷

The partnerships are not intended to replace existing regional entities, but to identify means to coordinate and integrate programs and activities in the region and build upon relevant ongoing initiatives.¹²⁸ The OCEANS-21 calls for a study to be conducted by the National Research Council (“NRC”) to evaluate current approaches to ecosystem-based management of ocean and coastal areas, current regional governance approaches currently being used, and mechanisms for engaging all levels of government, as well as interest groups and the public, in the management process.¹²⁹ The findings and recommendation of the NRC are to be reported to NOAA, the Committee on Ocean Policy, and the Regional Ocean Partnerships.¹³⁰

The primary functions of the Partnerships would be to:

- (1) provide for more systematic, communication, collaboration, and integration of Federal and State coastal and ocean environmental and resource management efforts;
- (2) provide for regional ecosystem assessment and information programs to guide management decisions;

125. Oceans Conservation, Education, and National Strategy for the 21st Century Act, H.R. 2939, 109th Cong. § 401(f) (2005).

126. *Id.* § 402(c).

127. *Id.* § 402(d).

128. *Id.* § 402(e).

129. *Id.* § 404.

130. *Id.* § 404(d).

- (3) create a strategic plan for and implement adaptive, ecosystem-based management of coastal and ocean resources within ocean regions, building on and complimenting local, State, and regional efforts; and
- (4) encourage improved citizen and community stewardship of coastal and ocean resources.¹³¹

At the heart of the responsibilities of the Regional Ocean Partnerships is development and monitoring of implementation of Regional Ocean Strategic Plans.¹³² The NOAA Administrator would be given discretion to provide grants from a fund to be established by the bill to cover expenses incurred in development or implementation of the plans.¹³³ The plans must include, at a minimum, the following features:

- (1) An assessment of the ocean region in order to guide management decisions
- (2) Identification of multiple indicators to measure ecosystem health and the effectiveness of current management efforts
- (3) Determination of priority issues within the region and the adjoining inland regions and an assessment of the capacity of existing governance mechanisms to address those problems.
- (4) Determination of solutions and specific policies to address the priority problems that take an adaptive, ecosystem-based approach.
- (5) Identification of short and long-term ecosystem goals, responsibilities for taking actions to implement solutions . . . and the necessary resources.
- (6) Analysis of the gaps in authority, coordination, and resources, including funding, that must be filled in order to achieve the plan's goals.
- (7) Identification of model programs whose existing infrastructure aid in implementation of the plan.¹³⁴

The Regional Ocean Strategic Plans would have to be approved by the NOAA Administrator as adequately addressing required elements of the plans.¹³⁵ Further, the Administrator would have to find the plans consistent with the guiding principles of the Regional Ocean Partnerships set out in OCEANS-21: “to protect, maintain, and restore the health of marine ecosystems, and to provide for the ecologically sustainable use and management of ocean and coastal

131. *Id.* § 402(a).

132. *Id.* § 403(a), (c).

133. *Id.* § 403(e)(2).

134. *Id.* § 403(b).

135. *Id.* § 403(e)(1)(C)(ii).

resources.”¹³⁶ In general, the plans will be implemented “to the maximum extent practicable” by the members of the Regional Ocean Partnership and the federal government consistent with legal authorities.¹³⁷ If additional authority or resources are required to implement a plan successfully, the Partnership or its members may make recommendations for congressional action.¹³⁸

B. Federal Level Ocean Policy Development and Regional Coordination

The proposed Executive Office framework for ocean leadership is similar to the structure already implemented through the U.S. Ocean Action Plan and Executive Order. The OCEANS-21 bill would reconstitute the Committee on Ocean Policy with a newly created National Ocean Advisor¹³⁹ as Executive Director and the Secretary of Commerce as Chair.¹⁴⁰ In addition to secretaries of relevant federal agencies, the membership would include the Director of the National Science Foundation, the Chairs of the NRC and CEQ, and four state governors.¹⁴¹ The Chair of the Committee on Ocean Policy would also establish a Committee on Ocean Science, Education, and Operations to advise the Committee on Ocean Policy and assist in carrying out its functions.¹⁴² A Council of Advisors on National Ocean Policy would also be created to advise the President, the National Oceans Advisor, and the Committee on Ocean Policy.¹⁴³

Among the duties of the Committee on Ocean Policy would be the facilitation of ecosystem-based management through the Regional Ocean Partnerships.¹⁴⁴ This Committee would have a leadership role in devising a plan “for creating a balanced, ecosystem-based management regime for activities in Federal waters.”¹⁴⁵ The plan must designate lead federal agencies for ocean activities and

136. *Id.* § 402(b).

137. *Id.* § 403(f)(1).

138. *Id.* § 403(f)(2).

139. *Id.* § 301.

140. *Id.* § 312(a).

141. *Id.* § 312(b)(1).

142. *Id.* § 501(a), (d).

143. *Id.* § 321-322. The Council would include 13 to 17 members representative of state, tribal, and local governments, the marine science and marine education communities, fisheries, non-fishing marine activities, agriculture, watershed organizations, and other nongovernmental organizations. *Id.* § 323.

144. *Id.* § 311(b)(6).

145. *Id.* § 313.

uses, and a process or mechanism to ensure that lead agencies coordinate with states and Regional Ocean Partnerships.¹⁴⁶

C. *Enforcement of National Ocean Policy*

The OCEANS-21 bill also sets out a national ocean policy¹⁴⁷ and national standards that would apply to the interpretation and administration of United States laws, policies, and regulations.¹⁴⁸ The national standards provided are as follows:

(a) To the fullest extent possible the policies, regulations, and Public Laws of the United States shall be interpreted and administered in accordance with the following national standards:

(1) Covered actions¹⁴⁹ affecting United States ocean waters or ocean resources must be conducted in a manner that is consistent with the protection and maintenance of healthy marine ecosystems and, where appropriate, the restoration of degraded marine ecosystems.

146. *Id.*

147. *Id.* § 101. The section on National Oceans Policy states:

(a) Policy. The Congress declares that it is the continuing policy of the United States to protect, maintain, and restore the health of marine ecosystems in order to fulfill the ecological, economic, educational, social, cultural, nutritional, recreational, and other requirements of present and future generations of Americans.

(b) Responsibility of Federal Governance System. In order to carry out the policy set forth in this Act, the President, acting through the Administrator of the National Oceanic and Atmospheric Administration and top officials of other Federal agencies and departments, shall—

- (1) protect, maintain, and restore the health of marine ecosystems;
- (2) require that ocean resources be used in a manner that is ecologically sustainable;
- (3) manage covered actions affecting the oceans on an ecosystem basis;
- (4) exercise precaution in support of protecting, restoring, and maintaining the health of marine ecosystems in the case of uncertain or inadequate information;
- (5) use the best available scientific, social, and economic information to make decisions;
- (6) support research and education to improve basic understanding of marine ecosystems and their management and restoration;
- (7) promote and support international collaboration on research of marine ecosystems and the conservation of healthy marine ecosystems;
- (8) adapt in a timely manner to new information on the health of marine ecosystems and the effectiveness of management decisions;
- (9) be equitable and transparent, and promote cooperation and participation among all stakeholders;
- (10) provide accountability; and
- (11) foster responsible stewardship of the oceans.

148. *Id.* § 111.

149. “The term ‘covered action’ means any activity affecting United States ocean waters or ocean resources, that is carried out—(A) by a Federal agency, including the issuance of a Federal license or permit; or (B) by any other person using Federal funds.” *Id.* § 4(1).

(2) Any covered action that may significantly affect United States ocean waters or ocean resources may proceed only if the covered action, individually and in combination with other covered actions—

(A) is not likely to significantly harm the health of any marine ecosystem; and

(B) is not likely to significantly impede the restoration of the health of any marine ecosystem.

(3) In the case of incomplete or inconclusive information as to the effects of a covered action on United States ocean waters or ocean resources, decisions shall be made in such a way as will ensure protection, maintenance, and restoration of healthy marine ecosystems.

(4) To the extent practicable, and consistent with other provisions of this Act, including the other national standards under this subsection, adverse social and economic impacts on communities that are significantly resource dependent shall be minimized. Consideration of impacts on resource dependent communities shall include, but not be limited to, cumulative impacts.¹⁵⁰

To implement the national standards, OCEANS-21 requires agencies, in consultation with the Administrator of NOAA, to include an assessment of the impact of proposed actions on the health of marine ecosystems in environmental reviews authorized under the National Environmental Policy Act.¹⁵¹ The Administrator of NOAA is to prepare a written opinion as to whether the proposed action complies with national policies and standards, and offer alternatives that would bring the action into compliance.¹⁵² Each federal agency would be responsible for ensuring covered actions meet national ocean policies and standards.¹⁵³

D. *Implementation Issues*

OCEANS-21 attempts to provide structure and guidance, as well as technical support and funding, for development of regional ocean governance without significantly encroaching on state sovereignty. By establishing the Regional Ocean Partnerships and requiring development of Regional Ocean Strategic Plans, OCEANS-21 would assure that critical ocean issues receive timely consideration at the

150. *Id.* § 111.

151. *Id.* § 113(a).

152. *Id.* § 113(b)-(c).

153. *Id.* § 113(d).

eco-regional level. The requirement that federal agencies coordinate with strategic plans would provide a strong incentive for states to participate in development of planning and programs. States would not, however, be subject to enforceable polices developed at the regional or national levels. National ocean policies that are directly enforceable against federal agencies apply only indirectly to the states as guidelines for development of Regional Ocean Strategic Plans.¹⁵⁴ Implementation of Regional Ocean Strategic Plans is directed at the state level only to the extent practicable, leaving states with considerable discretion about whether and how to implement regionally developed policies and programs.¹⁵⁵

VIII. CONCLUSION

The federal government manages the sea surrounding the nation beyond three miles¹⁵⁶ through its internationally recognized sovereign rights over the EEZ¹⁵⁷ and continental shelf.¹⁵⁸ This area comprises about 3.4 million square miles¹⁵⁹ and obviously incorporates most of the spatial extent of the ocean eco-regions off United States' coasts. It is relatively easy to imagine reorganizing federal agency structures to conform to these eco-regions and requiring the federal agencies to coordinate programs and actions along these ecosystem lines. Unfortunately, this approach provides answers to only a small piece of the problem of addressing the mismatch between governance structure and the need for eco-regional governance of United States' oceans. Neither the myriad of external causes of problems that manifest themselves in the EEZ nor the external effects of EEZ management measures on states' coasts, populations, or economies can be directly addressed even within that extensive geographic scope. On the landward side of the EEZ, states, individually, can have only a limited ability to affect ecosystem-wide problems or problems that originate outside their jurisdictions.

154. *Id.* § 403(f).

155. *Id.*

156. However, Florida and Texas state boundaries in the Gulf of Mexico are not federally managed. Fla. Const. art. II § 1; *United States v. Louisiana*, 525 U.S. 1 (1998).

157. Proclamation No. 5030, 3 C.F.R. 22-23 (1983), *incorporated in* 16 U.S.C. § 1801(b)(1)(A) (2000).

158. Proclamation No. 2667, 3 C.F.R. 67 (1943-1948), *nullified by* Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 (1953).

159. USCOP REPORT, *supra* note 2, at 30.

Congress can establish national ocean policies and require federal agencies to operate consistently with these policies, but bringing the states into a coordinated and collaborative process for ecosystem-based ocean management will require incentives including, but not limited to, funding and technical assistance. The CZMA demonstrated that funding for program development is an enticing carrot to attract states into a program,¹⁶⁰ but providing states with a powerful tool for exerting their influence at the federal level—the federal consistency requirement¹⁶¹—has assured that states have continued to be engaged in the coastal management process. Of course, negative incentives might play a role as well. The possibility of a federally imposed role for the states or of a regional mandate that is enforceable against the states could spur initiatives by states.

Even with constraints created by institutional frameworks, there have undoubtedly been some voluntary, collaborative regional management success stories that have been cited by the Pew Commission,¹⁶² USCOP,¹⁶³ and the U.S. Ocean Action Plan,¹⁶⁴ such as the Chesapeake Bay Program, the Atlantic States Marine Fisheries Commission, and others. These programs may provide excellent models, but even more importantly they have provided laboratories for experimentation. There is a great deal to be learned from these programs. For example, understanding the nature of the concerns and of the perception of benefits that have led states to cooperate voluntarily in these programs may be crucial to implementation of any regional ocean governance scheme. But the lessons of these programs may not always be transferable to the context of a large marine ecosystem regime. The programs have been relatively limited in either geographic or substantive scope when compared to the potential scale of collaborative programs to address the problems of eco-regional ocean significance.

The current responses to the Pew Ocean Commission and USCOP recommendations through the U.S. Ocean Action Plan and proposed legislation take only the first incremental steps toward a

160. While the CZMA provides a good example of a mechanism to encourage state participation in the implementation of national goals and policies, its usefulness as a model for regional ocean governance probably ends at that point. Although the CZMA's incentives have led to almost universal participation by the states, the state management programs vary greatly in their scope and effectiveness. *See* USCOP REPORT, *supra* note 2, at 153-54.

161. 16 U.S.C. § 1456(c)-(d) (2000).

162. *See* PEW REPORT, *supra* note 1, at 28-30.

163. *See* USCOP REPORT, *supra* note 2, at 88-89.

164. *See* U.S. OCEAN ACTION PLAN, *supra* note 6, at 10-11.

regional governance model. OCEANS-21 proposes the most concrete model for moving forward within a foreseeable timeframe, providing national standards and policies to direct ocean stewardship and creating incentives for state participation. The Ocean Action Plan and the NOPA model rely upon voluntary participation by the states in ecosystem level governance leaving the hard issues of structure, power, and incentives unaddressed and ambiguous. For those of us who have watched the wax and wane of state ocean policy initiatives built on collaborative efforts with no legal framework, there is real skepticism that a comprehensive network of entirely voluntary programs will develop spontaneously and evolve to address the ecosystem level problems that plague our oceans. If only some regions respond or, if on the eco-region level, ocean issues continue to be addressed in a piecemeal fashion, the nation's response will be woefully inadequate to address the Pew and USCOP Commissions' determinations that our oceans are in crisis and that comprehensive, coordinated action is required.