

REGIONAL FISHERY MANAGEMENT COUNCILS

NORTH PACIFIC COUNCIL

PACIFIC COUNCIL

WESTERN PACIFIC COUNCIL

NEW ENGLAND COUNCIL

MID-ATLANTIC COUNCIL

SOUTH ATLANTIC COUNCIL

GULF COUNCIL

CARRIBEAN COUNCIL

June 7, 2002

The Honorable Wayne T. Gilchrest, Chairman
Subcommittee on Fisheries Conservation, Wildlife, and Oceans
1324 Longworth House Office Building
Washington, DC 20515

Dear Senator Gilchrest:

The Chairmen of the eight Regional Fishery Management Councils met during the week of May 27, 2002 to address several matters of mutual concern. One significant issue that we spent considerable time on was potential changes to the Magnuson-Stevens Act. At the request of Dave Whaley, Legislative Staff for the House Committee on Resources, we would like to take this opportunity to provide general comments on this matter, and provide specific comments on H.R. 4749 ("Magnuson-Stevens Act Amendments of 2002"). Due to time constraints, we were unable to address the ten amendments to H.R. 4749 proposed but withdrawn on May 23.

Enclosed (Attachment 1) you will find section-specific comments to H.R. 4749, but the Chairmen also wish to take this opportunity to address a few other key issues which concern them. First, we'd like to draw your attention to two bad ideas we hope you will exclude from further consideration: splitting the authority in the MSA for conservation and allocation, and eliminating the role of Governors in making appointments to the Councils. We would also like to draw your attention to problems related to the interaction between the National Environmental Policy Act (NEPA) and the Magnuson-Stevens Act (MSA), as well as to the nexus between legislative initiatives and the funding necessary for fishery conservation and management.

Dividing Conservation and Allocation

We understand there has been discussion in certain arenas about splitting the authority in the MSA for conservation from the authority for allocation, and assigning the conservation decisions to the Secretary of Commerce and the allocation decisions to the Councils. **The Council Chairmen strongly disagree with such an approach.**

Conservation and allocation are two of the elemental components of fishery management. The Chairmen know from their direct and long-standing experience that decisions regarding these components are inextricably linked. Proponents of a separation strategy presume that the political and societal pressures

confronting decisions-makers will somehow evaporate if a body other than the Regional Councils decide upon biological targets and management goals. To the contrary, such pressures will always be factors in these decisions. While the Council process is not perfect, the Councils are better suited to deal with these complex issues than a centralized bureaucracy which is divorced from the public. Councils are transparent (open to public scrutiny), deliberative bodies in which a multitude of different viewpoints are considered in the context of science-based management. Included in this process are the different scientific views brought to "objective, best science" by federal, state, tribal, academic, and private sector scientists that currently participate in the Council process. Such a broad base of scientific opinion would not be available if the National Marine Fisheries Service alone determines "conservation science."

Additionally, the Council process is also sensitive to the impacts of management on society. Conservation decisions are more often than not allocative. Usually, such management decisions involve a complex suite of interactive decisions which require a balancing between competing uses. Examples include establishing closed areas or Marine Protected Areas. How does one untangle the science of a variety of nearly equivalent protection areas from the allocative decision about which fisheries or communities should bear the greatest brunt of their effects, particularly when other alternatives like annual quotas can achieve the same resulting benefits to fish stocks? Another example is bycatch, when decisions to reduce bycatch for conservation purposes have inherent allocation impacts between fisheries and among fishermen.

Gubernatorial Role in Council Nominations/Appointments

We also understand there has been discussion of diminishing or eliminating the role of the Governors in developing lists of qualified nominees from which the Secretary makes appointments. One of the strengths of the MSA is the recognition of the importance of regional decision making. The Chairmen cannot think of a more effective way of destroying the influence of Councils in representing local viewpoints during development of regional fishery management plans, than to eliminate the Governors' roles in the selection of Council members. This might relegate Councils to the role of minor advisors in a federal fishery management decision-making process and could eliminate the serious participation of the States in this process. This is far from the deliberate concept to thoroughly involve regional interests envisioned by the framers of the MSA. Problems with Governor's offices that fail to submit nominations, or submit unbalanced nominations, can be addressed by existing Secretarial authority.

The Council Chairs strongly recommend that the current appointment process and mix of authorities embodied in the MSA be retained.

Funding Adequacy Issues

There has been much litigation recently that has been costly, aggravating, and not terribly productive towards the goal of fostering more effective fishery conservation and management. In fact, it has delayed several necessary management actions around the country. Often such litigation is based either on procedural issues (as opposed to substantive issues), or on matters where data are lacking and timelines not met. Adequate data on bycatch, stock status, essential fish habitat, and the socio-economic impacts of alternative fishery management options must be provided to the Councils before the Councils can prepare the requisite plans to avoid litigation. Setting new or additional performance standards for fishery management will only subject the process to further litigation if the information is unavailable to meet those performance standards. This most likely means that Congress has to substantially increase funding for the Services, the Councils and other related partners (e.g. the States) for data collection.

The Council Chairmen are strongly united in their recommendation that any new mandates must include additional funding to NMFS and the Councils if those mandates are to be met. We cannot stress enough the urgency of this matter. It is based on recent experience and reflects the reality of our situation. Council and NMFS staffs are fully engaged at this time and Council Chairmen are concerned that some of the mandates enacted under the SFA in 1996 have not been met simply because adequate funding was not provided. Adding new mandates without additional funding will only compound the problem.

Interaction between NEPA, the Administrative Procedures Act, and MSA

Finally, most Councils have substantial concerns about the interaction of the NEPA and the MSA. In fact, both laws include many of the same requisite features, but often the timelines and procedural requirements vary in ways that make coordination and timeliness extremely difficult to reconcile. The Council Chairmen would also like to raise the problem recently created by federal court interpretation in a West Coast groundfish case, in which the court found that the APA and Magnuson-Stevens Act itself required that the annual specifications and management measures be implemented through a proposed and final rule published in the Federal Register. Prior to this decision, the main focus of public comment was during the Council process, after which NMFS typically published final rules. Now, after the full Council process, NMFS is obligated to publish proposed rules, allow a comment period, respond to comments, and then proceed with the final rule process. This effectively prolongs establishing fishery measures five months or more beyond the final Council action, and can cause such problems as losing the currency of an entire stock assessment cycle. This issue affects all the Councils. We understand Commerce is appealing this court decision, but feel a legislative solution is appropriate to ensure a reasonable review and approval time frame.

The Chairmen believe consideration should be given to treating NEPA and the APA in the same way that the Magnuson-Stevens Act treats the Federal Advisory Committee Act (FACA). Councils and their committees are exempt from FACA but all provisions of FACA apply under the Magnuson Act. In this way, the substance of the requirements are met but there is no procedural competition in terms of timelines. This strategy should be considered for NEPA, APA, and the MSA.

Thank you very much for the opportunity to comment. The comments above and those in the following attachment are in addition to those already submitted by the Council Chairmen about a year ago (Attachment 2). The Council Chairmen look forward to working with Congress towards a reauthorization that will remove us from the burden of counterproductive lawsuits and aid us in even more effectively managing the Nation's marine fisheries. We have assigned continuous involvement in this issue to the collective Executive Directors of the eight Regional Councils; please contact Chris Oliver, the Executive Director for the North Pacific Council (Chris.Oliver@noaa.gov; or 907-271-2809) with regard to any questions you may have on this submittal, or any other substance associated with this matter.

Sincerely, on behalf of the Chairmen of the Regional Councils.

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North Pacific Fishery Management Council
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Copies to:

Members of the Senate Committee for Commerce, Science and Transportation

Members of the Senate Subcommittee on Oceans, Atmosphere, and Fisheries

Members of the House Committee on Resources

Members of the House Subcommittee on fisheries Conservation, Wildlife, and Oceans

Vice Admiral Lautenbaucher, Jr.

Dr. William Hogarth

David Russell

David Whaley

Regional Fishery Management Councils

**RECOMMENDATIONS
OF THE REGIONAL FISHERY MANAGEMENT COUNCIL CHAIRMEN
ON THE REAUTHORIZATION OF THE
MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT
(Based on draft Bill H.B. 4749 dated May 16, 2002, 12:30pm)
MAY 31, 2002**

The following is a description of proposed changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) under H.B. 4749 and the positions agreed upon by the Chairmen of the eight Regional Fishery Management Councils during their annual meeting May 28-31, 2002, in Sitka, Alaska.

SECTION 3: REPORT ON OVERCAPITALIZATION

Recommendations: This section should be revised to require Secretarial consultation with the Councils in preparation of the overcapitalization report. Also, in subsection (b) page 3, line 6, after the word "financing" add ", government-funded buybacks or other available means."

SECTION 4: BUYOUT PROVISIONS

(Page 3, line 12 through page 4, line 4). Current language provides that the Secretary can only embark on a buyout program if a Council or "the Governor of a State for fisheries under State authority" requests such a program. The proposed language changes the provision so that the Secretary can engage in a program without the request of a Council or Governor, but the Council or Governor may request such a program if they so wish.

Recommend that current language of the MSA be retained. The Chairmen believe that the Secretary should have the concurrence of the Council or a Governor in order to develop a buyout program.

Page 4, line 5 through page 5, line 11. The current language of the Act means that a vessel being bought out must surrender the applicable permit for which the buyout is intended. The proposed language means that all permits authorizing participation in any U. S. fishery must be permanently surrendered and the holder of a permit that does not currently own a fishing vessel shall be prohibited from engaging in a buyout program (eliminates old section 312(b)(2)(B)).

Recommend support for the proposed language. The proposed language seems to better reflect the intent that all capacity be removed, without being shifted into another fishery. The Chairmen believe that buyouts should apply to all fisheries, whether or not they have been identified as overcapitalized.

SECTION 5: DATA COLLECTION

(Page 5, lines 17-20). The Secretary shall develop a recreational catch data program "...through the use of information gathered from State-licensed recreational fishermen."

The Chairmen recommend that data from recreational fishermen be included even if a State does not have a marine recreational fishing license.

The Chairmen strongly support better, more timely, collection of data to better meet current management needs, e. g. real time data for implementation of fishery management plan provisions.

Economic Data from processors. Page 6, line 9 through Page 7, line 2. Proposes the Secretary prepare a report to Congress regarding economic data from processors.

Recommendation: The Chairmen do not feel that the requirement for a report, alone, should be all that is adopted in this reauthorization. Councils cannot meet current needs under NEPA, Magnuson, etc. without access to data that describes the full range of the fisheries. The current prohibition prevents councils from being able to evaluate processor sector involvement in the fisheries. **In 2001, the Chairmen recommended the elimination of prohibitions on collecting economic data from processors. The Chairmen reaffirm their support for this position.** [See attached Chairmen's recommendations dated May 23, 2001]

SECTION 6: ECOSYSTEM-BASED MANAGEMENT

The Chairmen agree that management based on ecosystem principles and ecosystem-wide information will be an important component of future fisheries management planning but sufficient information does not exist to embark on development of such plans at this time. Councils now include ecosystem-based information and ecosystem management principles and considerations in fishery management plans, to the extent they can do so. The effect of management on fishery-based communities is extremely important and ecosystem-based management should consider this factor. Improvements in science and the plan development process are clearly warranted and will come with time but adoption of ecosystem-based management now or in the near future is problematic given our current state of knowledge. The councils should lead in the effort to integrate ecosystem management principles into fishery management plans through the existing FMP amendment process.

For the current reauthorization, the Chairmen recommend that only subsection (b) "Authorization of Research" and subsection (c) "Definitions and Criteria for Management" should be included in this reauthorization and the other subsections should be deferred to a future reauthorization process. The Chairmen believe that subsection (a) is redundant to other provisions of the Act, and that it is premature to develop pilot programs (subsection (e)) because of the current lack of data. The Chairmen further recommend that subsection (c) be revised (Page 8, lines 1-2. "In General") to state:

"The Secretary and the Councils shall—(A) create a definition for "ecosystem" and for "marine ecosystem"; and..."

Unlike the SFA amendments for such things as EFH, where NMFS only consulted with the Councils in the promulgation of implementing rules, this will emphasize that the Councils must be full and equal partners in developing definitions and criteria for management based on ecosystem management principles and ecosystem-wide information.

Recommend that subsections (a), (d), (e) and (f) not be adopted in the current reauthorization.

Recommend that subsection (b) "Authorization of Research" be included in the current reauthorization.

Recommend that subsection (c) be included in the current reauthorization with the revision in (1) stating “The Secretary and the Councils shall—(A) create a definition for “ecosystem” and for “marine ecosystem”; and”

Recommend that subsections (b) and (c) of Section 6 “Ecosystem-Based Management” be enacted only if Congress provides substantive new funding to NMFS, the Councils and the States to engage in the research and development of an ecosystem-based management system.

SECTION 7: OBSERVERS

Recommend support (workload problems notwithstanding).

SECTION 8: OVERFISHING

(Page 11, lines 12-16). This proposal raises a substantive concern. Currently, definition 3(29) of the Act aggregates “overfishing” and “overfished” within the same definition. In attempting to clarify two different (although related) words, the proposal substantively changes the current interpretation of the word “overfished” with respect to the national standard guidelines adopted by the NMFS.

The proposed language would define an overfished stock as one with a size “below the natural range of fluctuation associated with the production of maximum sustainable yield.” It is unclear what the “natural range of fluctuation” would be or who would decide that term. Arguably, depending on the level of precision (confidence) one wished to achieve, the “natural range” could produce virtually any number. Conservative individuals could push for a small confidence interval around the estimate meaning “overfished” would be almost equal to Bmsy. A more liberal interpretation would produce a larger confidence interval and a lower “low end” of the natural range (i. e. “overfished” would represent a biomass level much lower than Bmsy). One can just imagine the arguments over this distinction, and therefore this definition should be based on the observed range of fluctuations rather than the natural (i.e., theoretical) range of fluctuations.

The NSGs appear to define an overfished stock as one for which the stock size is less than ½ of the Bmsy “minimum biomass threshold.” This is less subjective than the proposed language although still rather constraining on the councils’ flexibility to adopt regionally-specific reference points.

Recommend: The Council Chairs support separating ‘overfishing’ and ‘overfished’ definitions, but have no further specific recommendation at this time.

The proposed addition of the words “due to overfishing” means that a stock that is not building biomass due to environmental factors but is being exploited at a level of mortality that does not jeopardize the capacity of the fishery “to produce the maximum sustainable yield on a continuing basis” would not be considered overfished. Effectively, managers would have done everything possible (maintaining an appropriately low fishing mortality rate) but the stock has not responded due to environmental factors.

Page 11, line 21 through Page 12, line 5. This provision separates, as a reportable distinction, whether a stock is “overfished” due to fishing, or due to other causes. **Recommend support:** Consistent with the proposed language (Page 11, line 21-Page 12, line 5), we believe the

definition of 'overfished, however it is eventually determined, clarifies that that condition is 'due to overfishing,' consistent with that section.

Additionally, the Chairmen are concerned about interpretations by some parties of the current language regarding rebuilding requirements [Sec. 304(e)(4)(B)]. For example, in recent litigation on the east West Coast regarding groundfish, plaintiffs are focusing on both the terms both the terms 'as short as possible,' and 'not to exceed 10-years' as required mandates, regardless of the conditional language or the interpretive NSCs in place. The Chairmen's concern is that ten years may not be appropriate for some species, and respectfully request that language be included in the Act reinforcing the conditional language in Sect. 304(e)(4)(B)(i) and a firm boundary to the maximum allowable rebuilding time frame, such as currently contained in the NSG on this matter.

SECTION 9: BYCATCH

Subsection (a) (Page 12, line 7) proposes to add the word "seabirds" to the definition of regulatory discards. We do recognize the need to protect seabirds and reduce mortality, but question whether placement of seabirds at this place in the definitions actually serves the purpose intended. Therefore, until clarity is gained on this proposal, the Chairmen recommend against the proposed change.

Subsection (b), page 12, lines 10-22. Mandates a time-certain establishment of (and the beginning of implementation of) a standardized bycatch reporting methodology. Also provides an exception in the event such a method cannot be established or implemented within the year. H. R. 4749 modifies this exception by adding "...and the Secretary shall take appropriate action to address those reasons." The general section seems to be an appropriate inducement to proceed, while not locking the Councils or NMFS into another impossible mandate. However, the new clause in the exception means the Secretary alone is responsible for reconciling the deficiencies obstructing establishment and implementation. The Chairmen believe the Councils should play an equal role in this reconciliation.

Recommend support, with the following added language. The Chairmen believe the new exception should be revised at subsection (b)(2), page 12, lines 21-22 to state that:

"...the reasons why, and the Secretary and the Council must reconcile..."

Charitable Donations. Page 12, line 23. Provides for charitable donations of dead bycatch that, under specified conditions, cannot otherwise be avoided. The Chairmen recognize the advantage of such a proposal but also acknowledge the enforcement and administrative burdens the concept may create. **The Chairmen offer no opinion at this time.**

New Section 408, "Gear Development" Page 13, line 14. This creates a new Section 408 titled "**Bycatch Reduction Gear Development**" in the early Gilchrest Draft but changed to "**Gear Development**" in H. R. 4749. Two differences between the Gilchrest draft and H. R. 4749 are that the language for Grant Authority has changed slightly ("...subject to available appropriations...") and in addition to grant funding being used to minimize bycatch, it can also be used to minimize adverse fishing gear impacts on habitat areas of particular concern. While this change seems beneficial in Section 408, note the ramifications later when considering the newly-proposed definition of 'habitat area of particular concern.'

This section must be viewed carefully. It is an attractive proposal but the activity must be properly funded. New subsection (e) adds "Authorization of Appropriations" in the amount of

\$10,000,000 per year. This is much appreciated by the Chairmen but, of course, the funding has to get through the appropriations approval process and the proposal appears to be intended to fund only grants to entities other than NMFS, the Councils and the States. NMFS, Councils and the States need to be funded in this work if the program is to provide useful products.

Recommend: The Chairmen recommend that new Section 408 be enacted only if the Congress provides substantive new funding to NMFS, the Councils and the States and for research and development grants to engage in the research necessary to develop, or justify modifications to, fishing gear that will help minimize bycatch to the extent practicable.

SECTION 10: FISH HABITAT RESEARCH AND PROTECTION

Page 16, lines 7-21. Focuses conservation on those habitats for which sufficient information exists to be effective, or fishing activities for which the Council determines that the effects jeopardize the ability of the fishery to produce MSY on a continuing basis. This appears to be a useful attempt to direct limited resources towards the most important aspects of the EFH issue. H.R. 4749 adds to the required provisions of FMPs a provision to "minimize to the extent practicable adverse effects on habitat areas of particular concern caused by fishing." This seems acceptable until one reads the newly-proposed definition of 'habitat area of particular concern' in H.R. 4749.

H.R. 4749 adds a new definition of habitat area of particular concern as follows:

(46) The term 'habitat area of particular concern' means any discrete habitat area that is essential fish habitat and that—

- (A) provides important ecological functions;
- (B) is sensitive to human-induced environmental degradation; or
- (C) is a rare habitat type.

This seems to mean that, once a discrete area is identified as essential fish habitat, any area that meets the tests in (A), (B) or (C) is automatically defined as a habitat area of particular concern, invoking some of the other mandatory measures that councils believe should be discretionary. The Chairmen wonder who decides whether an area meets the criteria in (A), (B) and (C)?

The Chairmen do not believe that such a specific definition is warranted. Effectively, it creates the same concerns that surfaced after passage and implementation of the SFA, e.g., EFH, in practical application (although not original intent), was defined as "everywhere."

The Chairmen recommend support of Section 10 only if the definition of habitat area of particular concern is modified as follows, or deleted.

(46) The term 'habitat area of particular concern' means any discrete habitat area that is a subset of essential fish habitat critical to spawning, breeding, feeding or growth to maturity and that a Council, or the Secretary for any plan developed by the Secretary, has so designated in a fishery management plan or plan amendment.

The Chairmen support authority for the Councils to determine what constitutes an 'adverse impact.'

SECTION 11: DEMONSTRATION PROGRAM FOR OYSTER SANCTUARIES AND RESERVES

The Chairmen have no comment on this issue.

SECTION 12: INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS

The Chairmen have a number of recommendations to offer on this section but will depart from line-by-line analysis in favor of several broad recommendations. **The Chairmen recommend lifting the moratorium [see attached previous recommendations], with the following comments and recommendations:**

1. Any IFQ developed by a Council should only be able to be terminated by that Council through a fishery management plan or plan amendment.
2. There should be no mandatory referenda to approve initiation of, or to ratify final approval of, a plan or plan amendment containing an IFQ. Essentially, the Chairmen believe that the existing council process is the appropriate forum for consideration, development and approval of such plans.
3. The issue of processor shares of individual quotas should be determined by the Council developing the plan. The implications of this issue will vary by region.
4. The ten-year sunset/review provision should be eliminated. The Councils do not support statutory sunset dates, but do support periodic review. The Councils can change or eliminate their IFQ plans as necessary by plan amendment.
5. On the issue of fees, the Council developing the plan should establish the fees, the NMFS should collect the fees, and use of the fees should be only for the FMP for which the fees were collected.
6. The Councils reaffirm their position that IFQs are not property rights and termination of a program does not constitute a taking.

SECTION 13: COOPERATIVE EDUCATION & RESEARCH.

The Council Chairmen have no comment on this issue.

NOTE: On page 32, lines 10-11, "New England Fisheries Science Center" SHOULD read, "Northeast Fisheries Science Center."

SECTION 14: HIGHLY MIGRATORY SPECIES.

The Council Chairmen have no comment on this issue.

SECTION 15: PROHIBITED ACTS.

The Council Chairmen have no comment on this issue.

SECTION 16: MEMBERSHIP OF FISHERY MANAGEMENT COUNCILS

Page 33, line 23. This proposal would add New York to the member states of the New England Council. This is a regional issue on which the Chairmen have chosen not to offer a collective opinion. The Mid-Atlantic Council supports the proposal. The New England Council believes there is a better way to address the issue. Both Councils are encouraged to pursue their views individually.

Page 34, Line 4. Additional Secretarial member. The Chairmen are uncertain what has prompted this proposal and note a technical error. H.R. 4749 makes substantive changes to the Gilchrest draft. The Gilchrest draft stated such member could not be directly employed or substantively compensated by the commercial, charter, or recreational fisheries. This seemed to leave open choices from academia, environmental organizations, or government. H.R. 4749 removes these qualification criteria, changes numbers of members, and cites an incorrect subsection as the authorizing subsection for how the appointments shall be made. (Section 302(b)(6) is the subsection that authorizes the Secretary to remove an appointed council member for just cause).

Recommend that this provision not be adopted because it unnecessarily adds to membership without a clear purpose. This adversely impacts both organizational efficiency and administrative costs.

The Chairmen believe that the appropriate way for knowledgeable and experienced citizens to become members of a Regional Fishery Management Council continues to be to have the Governors of the States include them on their nomination lists.

SECTION 17: MISCELLANEOUS AMENDMENTS

The Chairmen believe the proposed language does not substantively add to the effectiveness of the Act and respectfully request that such language changes not be adopted.

SECTION 18: FOREIGN FISHING

The Council Chairmen have no comment on this issue.

SECTION 19: DRIFTNETS

The Council Chairmen have no comment on this issue.

SECTION 20: SOURCES FOR DATA IN FISHERIES RESEARCH

Recommend support. Adds clarity that fishery-dependent as well as fishery-independent data sources should be used.

SECTION 21: MISCELLANEOUS FISHERY PROTECTIONS IN FISHERY MANAGEMENT PLANS

The Chairmen believe the proposed addition of a new paragraph (13) to section 303(b) is redundant [see section 303(b)(2)] and furthermore does not substantively add to the effectiveness of the Act. As alluded to in Section 17, such language may assist those who seek reinforcement in litigation. Again, believing that this is counterproductive to effective fishery management, the Chairmen respectfully request that such language not be adopted.

SECTION 22: COOPERATIVE MARINE EDUCATION AND RESEARCH PROGRAM

While the Chairmen believe support and funding for marine education and research is worthwhile, The Secretary can enter into such cooperative agreements without this section being passed. The Chairmen believe the list of included research items is too limiting and may constrain the funding of other appropriate areas of research. **Consequently, the Chairmen oppose Section 22 in its current limited form.**

SECTION 23. AUTHORIZATION OF APPROPRIATIONS

Recommend that the requirements of the SFA in 1996, and any new mandates under a 2002 reauthorization bill be adequately funded by the Congress. The Chairmen respectfully request that, if the Congress wishes to require more attention be paid to these issues, then the Congress must provide sufficient funding. Staffs within State and Federal agencies and the regional Councils are "fully exploited." There is no "free time" to fill with new mandates; in fact, we need funding to cover the "old mandates" enacted in 1996.