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March 9, 1990

Joseph A. Uravitch, chief
Marine and Estuarine Management Office
National Ocean and Atmospheric Administration
1825 Connecticut Avenue, N.W.
Washington, D.C. 20235

Dear Sir:

These comments respond to the notice in 54 Federal Register 53432 (1989) entitled "Announcement of the Decision to Consider New Sites for Addition to the National Marine Sanctuary Program Site Evaluation List."

My comments are restricted to the procedures that NOAA will use to amend the site evaluation list. On behalf of the Pacific Seabird Group, I commented on the current site evaluation list, which was prepared by Chelsea International Corporation (Chelsea), when it was published in 48 Federal Register 35568 (1983). The Pacific Seabird Group's comments included a nomination of the waters surrounding the Northwestern Hawaiian Islands as a marine sanctuary. The nomination was ignored.^{1/}

The most disturbing feature of Chelsea's site evaluation list was the fundamental lack of a meaningful opportunity for public participation. Chelsea selected a Western Pacific site evaluation team comprised of three individuals. Only one, Dr. Allison Kay, was a Hawaii resident. I believe that the others were from Guam and American Samoa. There was little opportunity for interested individuals in Hawaii to know that a site evaluation list was being prepared, let alone participate in the process. There were no public meetings in Hawaii. The meetings of the Western Pacific site evaluation team were closed to the public. I wrote to Dr. Nancy Foster, Chief, Sanctuary Programs Division, and asked for transcripts of the meetings of the Western Pacific site evaluation team. Her letter to me dated October 14, 1983 stated that none were available.

^{1/} Later, I published "A Marine Sanctuary in the Northwestern Hawaiian Islands: An Idea Whose Time Has Come." 25 Natural Resources Journal 317-47 (1985).

Professor Kay told me that she had been "instructed" by Chelsea not to nominate any Hawaii sites. Chelsea's final report stated "No Hawaiian sites were considered because NOAA determined that the proposed Humpback Whale Marine Sanctuary off Maui, now an active candidate in the designation process, satisfies the sanctuary needs of the islands."^{2/}

Hawaii is this nation's only island state. Without belaboring the obvious, it has tropical fishery, mammal, coral and seabird resources that do not exist anywhere else in the United States. Similarly, Alaska has about half of this nation's coastline together with huge marine bird, marine mammal and fishery resources. It is astonishing the current site evaluation list does not have a single Alaskan site. I believe that NOAA's process must, at a minimum, include public meetings in Honolulu and Anchorage concerning possible sites in their respective states.

As a matter of administrative law, NOAA's procedures in 1983 were so deficient with respect to opportunities for notice and comment that they violated the Administrative Procedure Act. If NOAA does not improve the opportunities for public input in Hawaii and Alaska in the forthcoming process, the Agency will risk having its new site evaluation list set aside by a federal court.

Very truly yours,

Craig S. Harrison

^{2/} Chelsea International Corporation, National Marine Sanctuary Site Evaluations Recommendations and Final Reports WP-1 (1983).