RESOLVED, that the American Bar Association urges Congress to ensure that the nation’s living marine resources are not overexploited and that the coastal habitat and marine ecosystems that sustain those resources are protected and preserved for future generations by enacting legislation that would:

(1) Amend the Magnuson-Stevens Fishery Management and Conservation Act to pursue ecosystem-based fishery management goals to ensure the continued economic and ecological viability of commercially and recreationally important fish stocks, with an emphasis on protecting the marine ecosystems that support such stocks;

(2) Eliminate subsidies and legal procedures that encourage over-fishing and adopt innovative mechanisms to promote sustainable fisheries;

(3) Fund programs to promote and establish statutory goals to improve knowledge of living marine resources necessary to ensuring their sustainable management and use; and

(4) Create a statutory, scientifically supported national system of marine protected areas, including marine wilderness areas and international marine protected areas.
I. INTRODUCTION

This American Bar Association resolution encourages Congress to take specific legislative, regulatory and other actions necessary to improve the United States’ domestic management and regulation of its marine resources for the benefit of present and future generations. This resolution reinforces and builds upon prior ABA resolutions in the specific context of the oceans, including resolutions agreed upon in 2003 concerning sustainable development, good governance and the rule of law.

As discussed more fully below, a consensus is emerging on the need to reform our national oceans policy. Many of the reforms being contemplated require adjustments of current laws and regulations or the creation of new laws and regulations. The ABA, in keeping with its commitment to the rule of law and based on the expertise and experience of the Association and its members, can play a constructive role in identifying, evaluating, and proposing measures that hold particular promise for improving the nation’s oceans policy and regulatory schemes. This resolution offers such advice, as a first step in assisting efforts to develop and adopt such legal measures.

The Pew and U.S. Ocean Commissions, the Administration, members of Congress, and others have made proposals for reform of national oceans policy. Comprehensive reform is an enormous undertaking. This resolution does not address every proposal in these recommendations that the ABA might consider productive. Instead, the resolution advocates, without limiting future ABA action, a number of measures at the federal level conducive to the establishment of a viable United States regulatory regime and policy program for the nation’s marine resources.

II. THE NEED FOR CHANGE IN U.S. OCEAN POLICY

A. The Value of the Oceans and Threats They Face

The United States controls more than four million square miles of ocean, an area larger than the nation’s land mass. Resources found within these waters are critical to the nation’s economic well-being; they also contribute to its recreational diversity and aesthetic beauty. As the Senate committee noted in its proposed 2004 national oceans policy, “the oceans play a critical role in the global water cycle and in regulating climate, sustain a large part of Earth’s biodiversity, provide an important source of food and a wealth of other natural products, act as a frontier for scientific exploration, are critical to national and economic security, and provide a vital means of transportation. The coastal regions of the United States have remarkably high biological productivity and contribute approximately 50 percent of the gross domestic product of the United States.”

The U.S. Commission on Ocean Policy emphasized in 2004 that ocean-related

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1 S. 2647, 108th Cong., § 101(1) (as enrolled Nov. 10, 2004).
activities provide direct benefits of $117 billion to the nation’s economy and create over two million jobs.\(^2\)

This resolution recognizes that human activities can have a profound, negative impact on marine resources and the economic benefits that they provide and that regulatory reforms are necessary to prevent unsustainable use of those resources and to restore already depleted marine resources. As the Pew Oceans Commission noted in 2003, “[w]e are now capable of altering the ocean’s chemistry, stripping it of fish and the many other organisms which comprise its rich biodiversity, exploding and bleaching away its coral nurseries, and even reprogramming the ocean’s delicate background noise.”\(^3\) The U.S. Commission on Ocean Policy agreed in 2004, explaining that:

> Human ingenuity and ever-improving technologies have enabled us to exploit – and significantly alter – the ocean’s bounty to meet society’s escalating needs. Pollution runs off the land, degrading coastal waters and harming marine life. Many fish populations are declining and some of our ocean’s most majestic creatures have nearly disappeared. Along our coasts, habitats that are essential to fish and wildlife and provide valuable services to humanity continue to suffer significant losses. Non-native species are being introduced, both intentionally and accidentally, into distant areas, often resulting in significant economic costs, risks to human health, and ecological consequences that we are only beginning to comprehend.\(^4\) Proposed oceans legislation in the Senate similarly acknowledged that “[t]he oceans and the atmosphere, and related earth systems, are susceptible to change as a direct and indirect result of human activities, and such changes can significantly impact the ability of the oceans and atmosphere to provide the benefits upon which the Nation depends.”\(^5\)

**B. Assessing the Need for Regulatory Reform – The Pew and U.S. Oceans Commission Reports**

In this resolution, the ABA champions refinements of the United States’ current domestic regulatory regime for the oceans, because the current regime fails to adequately protect and steward the ocean and its invaluable resources. The United States has recognized since the 1960s that protecting the marine environment requires sound law, regulation, and policy. In the mid-1960s, Congress appointed the Stratton Commission to comprehensively review the nation’s marine resources and to report on recommended changes in the law. The Commission’s report, issued in January 1969, led to the creation of the National Oceanic and Atmospheric Administration (NOAA) by Congress in 1970 and to the 1972 enactment of the Coastal Zone Management Act, 16 U.S.C. §§ 1451-1465.

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\(^2\) U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY: FINAL REPORT, Executive Summary xxxii (Sept. 20, 2004).

\(^3\) P E W OCEANS COMMISSION, AMERICA’S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE: SUMMARY REPORT 1 (May 2003).

\(^4\) U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY: FINAL REPORT, Executive Summary 1 (Sept. 20, 2004).

\(^5\) S. 2647, 108th Cong., § 101(2) (as enrolled Nov. 10, 2004).
Three decades later, the time has come for a fresh look at the plight of the oceans and at the measures necessary to ensure their well-being. Recognizing the need for a comprehensive review of the nation’s marine laws, regulations, and policies, Congress enacted the Oceans Act of 2000. Pursuant to this Act, on June 15, 2001, President George W. Bush appointed 16 members to the U.S. Commission on Ocean Policy. Under its statutory mandate, the Commission was charged with recommending changes to the nation’s existing ocean and coastal legal and regulatory regimes that would result in a “coordinated and comprehensive national ocean policy . . . .”

On September 20, 2004, the U.S. Commission on Ocean Policy issued its final report to Congress and the President, entitled An Ocean Blueprint for the 21st Century. The Report outlines 13 guiding principles for a revised national ocean policy. Together, these 13 principles envision a scientifically defensible, intergenerational and sustainable, ecosystem-based, multimedia (air, land, and water), national oceans regulatory regime to preserve and restore the nation’s coastal and ocean resources. In addition, by emphasizing ecosystem-based management and preservation of marine biodiversity, the Commission signaled the need for United States law to shift away from its traditional commercial and fragmented focus on marine resources – a focus reflected in the placement of NOAA and the National Marine Fisheries Service (now NOAA Fisheries) within the Department of Commerce and by the myriad statutes and agencies governing marine resources.

In the non-governmental public interest sector, in June 2000 the Pew Charitable Trusts brought together a 16-person commission, the Pew Oceans Commission, to complete “the first national review of ocean policies in more than thirty years.” Under the leadership of its Chair, Leon E. Panetta, the Commission issued its Report, America’s Living Oceans, in May 2003. As the title suggests, the Pew Oceans Commission was focused on living marine resources, a narrower focus than the U.S. Commission on Ocean Policy took. In reviewing the current legal regimes relating to such resources, the Commission identified as “primary problems with ocean governance” in the United States both the current regulatory regime’s “focus on exploitation of ocean resources with too little regard for environmental consequences” and its focus “on individual species as opposed to the larger ecosystems that produce and nurture all life in the sea.”

In light of the findings of the two Commissions, and consistent with their recommendations, this ABA resolution recommends that the U.S. Congress amend relevant statutes to protect the nation’s living marine resources and the habitats and ecosystems that sustain them for the present and future economic and environmental benefit of the nation.

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7 Id. at 2.
8 Id. at 15-16.
III. AMEND RELEVANT STATUTES TO PROTECT LIVING MARINE RESOURCES AND THE COASTAL HABITATS AND MARINE ECOSYSTEMS THAT SUSTAIN THEM FOR THE PRESENT AND FUTURE BENEFIT OF THE NATION

A. Congress Should Amend Relevant Statutes to Improve Fishing Regulation and to Reduce Fishing’s Effects on Other Species, Habitat, and Ecosystem Function

1. The Need to Protect Fished Species

Over-fishing is a serious threat to our nation’s marine resources, especially to the sustainability of living marine resources. The U.S. Commission on Ocean Policy recognized that current management regimes have created unsustainable “race to the fish” incentives, allowed over-exploitation of many fish stocks, depletion of habitats, and negative impacts on many ecosystems and fishing communities.\(^9\) The Pew Oceans Commission stressed throughout its Report that “we are depleting the oceans of fish, and have been for decades.”\(^10\) Relying on U.S. Department of Commerce reports, it noted that “30 percent of the fish populations that have been assessed are overexploited to some degree,” that “the government can only assure us that 22 percent of managed fish stocks are being fished sustainably,” and that “[e]ven this figure is optimistic because the legal definition of over-fishing does not account for the needs of other species and overall ecosystem health.”\(^11\)

Unsustainable fishing practices already have caused economic havoc in certain areas of the country. As the Pew Oceans Commission noted, “[b]y 1989, populations of New England cod, haddock, and yellowtail flounder had reached historic lows. In U.S. waters, Atlantic halibut are commercially extinct – too rare to justify a directed fishing effort.”\(^12\) As the Pew Commission recognized, the impetus for fishing legislation has changed in the 30 years since the Stratton Commission Report and should now be focused on preserving “already depleted fish populations” and “marine ecosystems” to avoid “leaving fishermen out of work . . . .”\(^13\)

More generally, as the U.S. Commission on Ocean Policy recognized, “America is a nation intrinsically connected to and immensely reliant on the ocean. All citizens – whether they reside in the country’s farmlands or mountains, in its cities or along the coast – affect and are affected by the sea. Our grocery stores and restaurants are stocked with seafood and our docks are bustling with seaborne cargo. Millions of visitors flock annually to the nation’s shores, creating

\(^9\) U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21\textsuperscript{ST} CENTURY: FINAL REPORT, Executive Summary xlviii-xlvi (Sept. 20, 2004).

\(^10\) PEW OCEANS COMMISSION, AMERICA’S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE: SUMMARY REPORT 5 (May 2003).

\(^11\) Id.

\(^12\) Id.

\(^13\) PEW OCEANS COMMISSION, AMERICA’S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE: SUMMARY REPORT 8 (May 2003).

“[N]early 30 years ago, in response to public outrage over foreign over-fishing of abundant fish populations off America’s shores, Congress took action to develop a domestic fishing industry and capture the wealth of fisheries for this country. Today, the problem is reversed. We are over-fishing our already depleted fish populations, harming marine ecosystems, and leaving fishermen out of work . . . .” Id. at 15.
jobs and contributing substantially to the U.S. economy through one of the country’s largest and most rapidly growing economic sectors: tourism and recreation.”14 Fisheries are an “important source of economic revenue and jobs and provide a critical supply of healthy protein. They also constitute an important cultural heritage for fishing communities. The commercial fishing industry’s total annual value exceeds $28 billion, with the recreational saltwater fishing industry valued at around $20 billion, and the annual U.S. retail trade in ornamental fish worth another $3 billion.”15

Ensuring the sustainability of these fished stocks thus is critical to the economic well-being of the nation, and Congress should thus amend existing fisheries statutes and regulations, especially the Magnuson-Stevens Fisheries Conservation and Management Act, to ensure that such regulation prevents over-fishing of these stocks. As the Pew Oceans Commission emphasized, “[r]ebuilding U.S. fisheries has the potential to restore and create tens of thousands of family wage jobs and add at least 1.3 billion dollars to the U.S. economy.”16 However, “[i]n the long term, economic sustainability depends on ecological sustainability. We must reassess and, where necessary, change our actions to take out no more living things than the system can reliably replace and put in no more contaminants than the system can safely absorb.”17

2. The Need to Reduce Fishing’s Effects on Other Species, Improve Habitat Protection, and Sustainably Protect Marine Biodiversity Generally

Current fishing practices also put other species at risk besides the targeted fish stocks, impacting overall marine biodiversity. As the Pew Oceans Commission noted:

Already depleted sea turtle, marine mammal, seabird, and noncommercial fish populations are endangered by incidental capture in fishing gear. Worldwide, about 25 percent of the catch is discarded, either because it is not commercially valuable or because of regulatory requirements that prohibit undersized or non-targeted marine life. Destructive fishing practices, such as bottom trawling and dredging, are damaging vital habitat upon which fish and other living resources depend. Taken together, over-fishing, bycatch, and habitat destruction are changing relationships among species in webs and altering the functioning of marine ecosystems.18

Across the globe, fishers in the 1980s and 1990s generated “about 60 billion pounds” of bycatch each year. The bycatch threat to other species is significant: “[b]ycatch of albatrosses, petrels, and shearwaters in long line fisheries is one of the greatest threats to seabirds,”19 and “[b]ycatch in the Atlantic pelagic long line fishery may be jeopardizing the continued existence of the

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15 Id. at 2.
16 PEW OCEANS COMMISSION, AMERICA’S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE: SUMMARY REPORT 8 (May 2003) (citation omitted).
17 Id. at 19.
18 PEW OCEANS COMMISSION, AMERICA’S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE: SUMMARY REPORT 5, 9 (May 2003).
19 Id. at 8 (citations omitted).
loggerhead and leatherback sea turtles off the eastern U.S. seaboard,”20 potentially violating the federal Endangered Species Act.

3. Needed Statutory Reforms

Legal reforms are needed to reduce over-fishing and to protect marine biodiversity.21 Given the prevalence of over-fishing and its side effects, the ABA agrees with both the Pew Oceans Commission and the U.S. Commission on Ocean Policy that the relevant statutory and regulatory regimes, especially the Magnuson-Stevens Act, be amended to appropriately employ concepts of precaution and stewardship. Although more specifically focused on discrete actions, the Bush Administration’s *U.S. Ocean Action Plan* also recognized the need to improve legal protections for a number of marine species at risk from over-fishing, especially marine mammals, sea turtles, and sharks.

In pursuit of this goal, the Administration already has helped secure prohibition by the International Commission for the Conservation of Atlantic Tunas of ‘the destructive fishing practice of ‘shark finning’ (removal of sharks' fins and then dropping the shark overboard) in the Atlantic, Mediterranean, and Gulf of Mexico to reduce bycatch of sharks”22 and signed into law the Marine Turtle Conservation Act of 2004 to promote conservation of sea turtles and their habitats.23 The Administration also has committed itself to pursuing reauthorization of the Marine Mammal Protection Act, implementing a new national bycatch strategy, proposing limits on Atlantic gill net fishing to protect dolphins and sea turtles, and creating a national strategy for fisheries enforcement.24 In its *U.S. Ocean Action Plan*, the Bush Administration recognized the need to “achiev[e] sustainable marine fisheries” and committed to a series of actions to help bring about that result.25 Moreover, in consensus with the Pew Oceans Commission, the Bush Administration would pursue innovative, market-based fisheries management regimes, such as individual fishing quotas.26

A variety of specific regulatory refinements are possible, and the exact constellation of measures adopted is best left to the legislative process. Nevertheless, the concepts of precaution and stewardship dictate, at a minimum, that the resulting regulatory regime require a high level of confidence, based on valid scientific data, that a specific fishing practice or quota will not impair the sustainable existence of *any* species or ecosystem. In other words, significant scientific uncertainty regarding the short- and long-term effects of particular resource exploitation practices – for example, the sustainability of a particular fishing quota or the bycatch and ecosystem effects of a new fishing technology – should prompt the federal government to analyze the forces driving the adoption of such a practice and to implement it incrementally, if at all, in order to allow its effects to be studied in greater detail before the practice becomes widespread. Moreover, current fishery management laws and regulations, such as the Magnuson-Stevens Act, also need to be amended to regulate fisheries on an ecosystem basis.

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20 Id. (relying on evaluations by the National Marine Fisheries Service).
23 Id.
24 Id.
26 Id. at 18-19.
Thus, the ABA recommends that Congress amend the Magnuson-Stevens Act and other relevant federal laws to include provisions that: (1) ensure that fisheries are regulated on the basis of scientifically valid assessments of sustainable fishing quotas; (2) require that such fishing quotas ensure the sustainability not only of the fished stock but also of other affected species and of overall ecosystem function; (3) comprehensively address bycatch issues not only through fishing quotas but also through gear and other restrictions; and (4) limit and, where sustainability requires, prohibit fishing practices that destroy ecologically critical habitat.

B. Congress Should Provide Funding and Statutory Goals to Improve Knowledge About the Status of Living Marine Resources

Our knowledge about commercially and recreationally important marine species and ocean biodiversity more generally is limited. As the U.S. Senate acknowledged in its review of the Oceans Act of 2000, which created the U.S. Commission on Ocean Policy, “many ocean ecosystems, particularly the ocean’s deepest regions, remain undiscovered and unexplored.”

Similarly, relying on U.S. Department of Commerce information, the Pew Oceans Commission stressed in its Report that “[w]e know only the status of one-third of the commercially fished stocks in U.S. waters . . . .”

Given this lack of knowledge, the ABA joins both the U.S. Commission on Ocean Policy and the Pew Oceans Commission in recommending that Congress improve federal support for marine science research and for improvements in our knowledge about ocean resources. Such improved knowledge is a basic requirement for improving legal regulation of such resources. As the Pew Oceans Commission noted, although “[w]e know enough about coastal and marine ecosystems to improve their sustainable use,” “[w]ith better information we could do much more.”

The Bush Administration has acknowledged the need for better scientific information in the U.S. Ocean Action Plan. It stressed that the duties of the renamed National Science and Technology Council Joint Subcommittee on Ocean Science and Technology will be to “identify national ocean science and technology priorities” and “facilitate expansion of knowledge about the oceans and the interactions with other components of the Earth system . . . .” Moreover, the Plan’s second set of proposed actions all relate to the advancement of our understanding of the oceans, coasts, and Great Lakes. In order to expand basic scientific knowledge, for example, the Plan commits the Administration to developing an ocean research priorities plan and implementation strategy. More specifically, the Plan directed NOAA “to establish guidelines and procedures for the development and application of scientific advice for fisheries management decisions” to “increase the efficient use of the best available scientific information for management considerations.”

31 Id. at 12-17.
32 Id. at 12.
33 Id. at 19.
Thus, there is emerging consensus that development of additional scientific knowledge, especially basic knowledge regarding the status of marine species and the ecosystems that sustain them, would improve legal regulation of marine resources, increase economic opportunities from ocean resources, and better protect public health. Such research, however, is not free, and a presidential commitment to a research agenda is subject to changes in political priorities. Therefore, Congress should implement the recommendations of the Pew Oceans Commission and the U.S. Commission on Ocean Policy to: (1) increase federal funding for ocean science research; and (2) commit NOAA, at a statutory level, to developing and implementing an ocean research agenda, with a priority of developing basic status information about the nation’s living marine resources and their ecosystems. Moreover, to encourage NOAA’s reasonable progress, Congress should require that NOAA submit annual progress reports to Congress detailing what scientific studies are being pursued and what knowledge gaps are being closed.

Active efforts to advance scientific knowledge, pursued in addition to such other reform efforts as recommended in this resolution, can be expected to enable subsequent enhancement of those other reform efforts and development of additional measures to ensure sustainable management and use of ocean resources. Nevertheless, while better science should be supported in pursuit of a continuously improving national oceans policy, current gaps in knowledge should not delay the enactment of an ecosystem-based national oceans policy or implementation of measures to improve the sustainability of current marine resource exploitation. Again, global incorporation of the concepts of precaution and sustainable use could produce immediate improvements in U.S. ocean policy and marine resource use even while the nation’s knowledge of those resources is still increasing.

C. Undergird the Existing National System of Marine Protected Areas with Legislation and Increase the Number of Marine Reserves

Congress should increase our nation’s commitment to a national system of marine protected areas (MPAs) and marine wilderness areas in order to increase the protection given to critical marine ecosystems. Essentially, an MPA is any area of the ocean set aside by law and protected from at least some uses. The most protective kinds of MPAs are marine wilderness areas or marine reserves, which generally prohibit all extractive uses within their boundaries, although they usually permit non-extractive uses such as diving and scientific research. Both the Pew Oceans Commission and the U.S. Commission on Ocean Policy recommended, in light of increasing scientific consensus, increased implementation in the United States of marine protected areas (MPAs), marine wilderness areas, and a national system of MPAs as the best means of preserving and restoring marine biodiversity.

The Pew Oceans Commission regarded marine reserves as a “very promising approach to marine conservation . . . .” As it noted, “[t]he establishment of areas that prohibit extractive and disruptive activities, such as wilderness areas, has been a well-accepted conservation practice on land for more than a century”; nevertheless, “[w]hile 4.6 percent of the land area of the United

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States is preserved as wilderness, the area of ocean that is under U.S. jurisdiction that is protected in marine reserves is a small fraction of one percent.”35 Around the world, marine reserves and marine wilderness areas have been shown to increase fish biomass; “[i]n most reserves studied, the biomass doubled within five years. The larger fish found within reserves also produce more eggs.”36

The U.S. Commission on Ocean Policy also endorsed use of MPAs as an effective tool that has proven useful, citing a 2001 report by the National Research Council as concluding that “marine protected areas can be effective in maintaining marine biological diversity and protecting habitats, and have the potential to provide a flexible, spatially based management framework for addressing multiple ecological and socioeconomic objectives. The report stated that, in particular, closing certain areas to fishing – temporarily, seasonally, or permanently – can advance sustainable fisheries management and provide insurance against uncertainties in fisheries science.”37 However, “design and implementation of marine protected areas, like any other marine resource management measure, must be considered in the context of broader planning and the implementation of a coordinated regime.”38 As a result, Congress should develop national goals and guidelines for the effective design, implementation and evaluation of MPAs, relying on the best available science.39

MPAs also have received presidential support. In May 2000, President Clinton issued Executive Order No. 13158 on Marine Protected Areas.40 The order seeks to establish a national system of marine protected areas through the coordinated legal efforts of the federal government, states, tribes, and local governments.41 President George W. Bush adopted this MPA Executive Order in June 2001,42 but development of the national system has stalled in light of other executive priorities, most notably in the aftermath of the September 11 terrorist attacks. Nevertheless, since 2004, the federal government has given evidence of a revived interest in, and increased attention to, the national system of marine protected areas, and the Bush Administration’s U.S. Ocean Action Plan recognized the importance of marine protected areas and, more generally, the need to preserve important habitats and ecosystems for biodiversity, such as coral reefs.43 The Administration has committed itself to protecting the Northwestern Hawaiian Island Coral Reef Ecosystem Reserve44 and, more generally, to improving marine managed areas by better coordinating and integrating the existing network of marine managed areas and by adopting an ocean parks strategy.45 The Plan extends habitat conservation and restoration goals to coastal

35 Id.
36 Id. at 19, fig. 6.
38 Id.
39 Id. at chp. 6.
41 Id. §§ 2(a), (4).
42 NOAA, Statement of Secretary of Commerce Donald L. Evans Regarding Executive Order 13158, Marine Protected Areas (June 4, 2001).
44 Id. at 20.
45 Id. at 23-24.
In light of this broad consensus that MPAs and marine wilderness areas should be an important component of our country’s marine regulatory scheme, the ABA concurs with the Pew Oceans Commission’s recommendation that “Congress should enact legislation mandating the establishment of a national system of marine reserves to protect marine ecosystems, preserve our national ocean treasures, and create a legacy for our children.” A statutory commitment to an ecologically comprehensive national system of MPAs and to better protection of coastal habitat would ensure that these mechanisms for safeguarding the nation’s marine resources are not subject to changes of Administration or shifts in their priorities. Such legislation also would help to fulfill our country’s sustainable development obligations under Agenda 21. Chapter 17 of Agenda 21 addresses “the protection of the oceans,” and it specifically promotes integrated management of marine areas and the “conservation and restoration of altered critical habitats.”

Most explicitly, Chapter 17 encourages signatories to “undertake measures to maintain biological diversity and productivity of marine species and habitats under national jurisdiction,” including “establishment and management of protected areas.”

IV. CONCLUSION

The ABA, like the U.S. Commission on Ocean Policy and the Pew Oceans Commission, considers an overarching ecosystem-based and precautionary national oceans policy to be a necessary step in attaining sustainable use of the nation’s living marine resources for present and future generations of Americans. Enactment of the recommendations in this resolution would thus be one step toward improving the effectiveness of the United States’ regulatory regime for the oceans.

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46 Id. at 28.
47 Id., at 21.
50 Id. §§ 17.5, 17.6(h).
51 Id. § 17.7.
GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Standing Committee on Environmental Law

Submitted By: R. Kinnan Golemon, Chair

1. **Summary of Recommendation(s).** Urges Congress to take specific legislative, regulatory, and other actions necessary to improve the nation’s domestic management and regulation of its marine resources for the benefit of present and future generations.

2. **Approval by Submitting Entity.** Approved by the Committee in May 2005.

3. **Has this or a similar recommendation been submitted to the House or Board previously?**

   No. In 1967, the ABA adopted policy enabling two ABA Sections to assist the National Council on Marine Resources and Engineering Development recommend a plan for an adequate national oceanographic program. That government agency no longer exists, and the issues and the governmental regulatory structure have changed since then. In August 1991, the ABA adopted policy urging the U.N. and all nations to adopt and implement measures to ensure that activities within their jurisdiction or control will be conducted in a manner that accounts for the interests of present and future generations, to generate plans promoting conservation and efficient use of natural resources, and to cooperate with other nations.

4. **What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?**

   No existing policy positions address sustainability of marine resources or marine ecosystems. The proposed recommendations support and build on more general ABA policies adopted in 1991 and 2003 that call for U.S. achievement of sustainable development goals. Further, ABA policy adopted in August 1995 generally asks the federal government to take account of all appropriate scientific knowledge when regulating environmental matters. The proposed resolution builds on that general call, by seeking tailored actions specific to oceans protection.

5. **What urgency exists which requires action at this meeting of the House?**

   Two significant commission reports have issued, one by legislative mandate, reviewing oceans issues and presenting recommendations for U.S. statutory and policy changes. In addition, the Administration has offered an Action Plan to address some, but not all, of the recommendations. Last year several bills were introduced in Congress with the aim of legislating oceans protections, and legislation is expected in this congressional session.

   The oceans are in a critical state. The proposed ABA recommendations allow the ABA to speak out on these very important issues, including commenting on legislation that inevitably will be introduced.
6. **Status of Legislation.** (If applicable.)
   Administration sources report plans to propose legislation in this congressional session.

7. **Cost to the Association.** (Both direct and indirect costs.)
   None

8. **Disclosure of Interest.** (If applicable.)
   None

9. **Referrals.**
   The recommendations were drafted with the input of several ABA Sections. The resultant documents are being referred to all ABA Sections in May 2005, and also will be circulated to the state bar associations of California, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington, and the District of Columbia, among others, and to the Maritime Law Association of the U.S.

10. **Contact Person.** (Prior to the meeting.)
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