



February 27, 2012

Submitted Electronically

National Ocean Council  
722 Jackson Place NW  
Washington, DC 20503

**RE: Comments on National Ocean Policy Draft Implementation Plan**

Dear Members of the National Ocean Council:

The National Ocean Policy Coalition (“Coalition”) is pleased to submit comments on the National Ocean Policy Draft Implementation Plan (“Implementation Plan”). The Coalition is an organization of diverse interests representing sectors and entities that support tens of millions of jobs, contribute trillions of dollars to the U.S. economy, and seek to ensure that the National Ocean Policy is implemented in a manner that best benefits the National interest, including protection of the commercial and recreational value of the oceans, marine-related natural resources, and terrestrial lands of the United States.

The Coalition recognizes the value of a national ocean policy that recognizes the critical role our oceans, coastal areas, and marine ecosystems play in our nation’s economy, national security, culture, health, and well-being, and conserves the natural resources and marine habitat of our oceans and coastal regions. The Coalition does not support the draft Implementation Plan because we are concerned that, as written, it will not achieve these objectives.

We encourage you to delay further policy development and implementation until Congress, user groups, and the public have been fully engaged and all potential economic, societal, and legal impacts of implementing the National Ocean Policy have been assessed and are understood. It remains unclear how the National Ocean Policy will align with existing and functioning regulatory structures that already effectively manage the use of the coastal and marine environment and environmental impacts of permitted activities. Our members are concerned that implementation will result in the creation of new regulations and/or management regimes that will not benefit our mutual desire for clarity and certainty in the use of the marine environment. When ready to proceed, we strongly encourage the use of a pilot project that is limited to one geographic area in order to test policy implementation and allow for any necessary adjustments. The pilot and any further action should account for the observations and recommendations discussed below.

We respectfully urge the National Ocean Council to carefully consider the Coalition’s thoughts and recommendations on these and other important points that are contained herein, as well as the comments and concerns expressed to date.<sup>1</sup>

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<sup>1</sup> See National Ocean Policy Coalition’s April 28, 2011 Comments on the Development of Strategic Action Plans for the Nine Priority Objectives for Implementation of the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes, *available at*

## I. INTRODUCTION

The Coalition has prepared detailed comments in response to the release of the draft Implementation Plan. Observations that emerged from our review include but are not limited to the following:

### ECOSYSTEM-BASED MANAGEMENT

- The proposed definition for Ecosystem-based Management should account for the importance of our economic heritage and specify that actions will not be taken until the foundational science for Ecosystem-based Management and ecosystem services has been sufficiently developed.

### BUDGETARY REQUIREMENTS AND FUNDING SOURCES

- Only resources specifically appropriated by Congress to support the National Ocean Policy should be directed to support the initiative, and budget guidance should reflect the will of Congress and existing statutory authorities.
- All funding for National Ocean Policy implementation activities must rely solely on government resources, without imposing new taxes, fees, or other funding mechanisms on commercial and recreational interests in the absence of congressional authorization.

### REGULATIONS AND RESTRICTIONS UNDER THE NATIONAL OCEAN POLICY

- To ensure that the policy does not create any new regulations or restrictions, actions carried out in furtherance of the National Ocean Policy should be based entirely on collaborative and voluntary efforts among federal, state, local, and industry officials, and in no case should regulations be promulgated without adhering to the Administrative Procedure Act.

### COASTAL AND MARINE SPATIAL PLANNING NATIONAL OBJECTIVES

- Clarity on definitions of and determinations on “sustainable” uses and “new” activities should be provided, and any related decisions should account for critical economic and societal contributions, economic impacts, and historical use patterns.
- Requests or decisions pertaining to human use activity should not be delayed or denied due to the absence of a Coastal and Marine Spatial Plan or an ecosystem characterization under the National Ocean Policy.

### PILOT PROJECTS FOR NATIONAL OCEAN POLICY OBJECTIVES

- To avoid the risk of unintended consequences, the use of pilot projects should be extended to cover all actions taken pursuant to the National Ocean Policy.

### FLEXIBILITY WITH COASTAL AND MARINE SPATIAL PLANNING

- Timelines pertaining to the establishment of regional planning bodies and development of Coastal and Marine Spatial Plans should be advisory and allow participating states and non-federal officials to establish such bodies and plans at a time and pace of their choosing.

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[http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC\\_Comments\\_on\\_SAP\\_Development\\_4\\_28\\_11\\_.pdf](http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC_Comments_on_SAP_Development_4_28_11_.pdf), and National Ocean Policy Coalition's July 1, 2011 Comments on Strategic Action Plan Outlines, *available at* [http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC\\_Comments\\_on\\_SAP\\_Outlines.pdf](http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC_Comments_on_SAP_Outlines.pdf).

## COMPOSITION OF REGIONAL PLANNING BODIES

- Regional planning body membership should be open to include non-government officials and representatives of all potentially impacted sectors that contribute to the respective region's economy, including non-governmental and non-voting Regional Fishery Management Council representatives, with membership determined in a transparent, accountable, and representative manner.
- State, tribal, and local governments should also have adequate representation, with membership determined in a transparent, accountable, and representative manner.

## STAKEHOLDER ENGAGEMENT

- Any regional advisory committee or entity formed to advise on National Ocean Policy matters should be balanced and comprised of members that are sector-appointed and representative of the potentially impacted commercial and recreational interests, and engagement with commercial and recreational interests should occur at every stage of policy development and implementation at the national and regional levels, including through balanced advisory groups.

## COASTAL AND MARINE SPATIAL PLANNING HANDBOOK

- The Council should provide ample opportunity for public review and comment on the Interim "Handbook for Regional Coastal and Marine Spatial Planning," given its expected guidance on key issues such as national consistency determinations, dispute resolution, stakeholder engagement, and the incorporation of Coastal and Marine Spatial Plans into decision-making processes.

## PERMITTING EFFICIENCIES

- While attempts to streamline federal permitting activities are laudable, such efforts should be carried out under existing management regimes that have been established by statute.

## ARCTIC CONSIDERATIONS

- The final Implementation Plan should acknowledge the existing U.S. and international efforts that are underway and further evaluate, reference, and incorporate this body of work to avoid redundancies.

## DATA INTEGRITY

- The final Implementation Plan should clarify that data from all sources will only be included, referenced, or otherwise endorsed by the National Ocean Council (or any other entity or system established under the National Ocean Policy) if such data has been certified to be in compliance with all federal laws, regulations, and policies pertaining to data quality and integrity.

## II. DETAILED COMMENTS

### ECOSYSTEM-BASED MANAGEMENT

The draft Implementation Plan notes that adopting Ecosystem-based Management (“EBM”) as the “foundation for resource stewardship” involves a “fundamental shift in the way Federal agencies manage the ocean, our coasts, and the Great Lakes.”<sup>2</sup> It further states that a “holistic approach that examines and accounts for the complex relationships among species and their habitats is required,”<sup>3</sup> providing the following definition for Ecosystem-based Management:

“...the term EBM describes an integrated approach to management, including resource management, that considers the entire ecosystem, including humans, and elements that are integral to ecosystem functioning. Informed by both natural and social science, EBM is intended to conserve and restore our natural and cultural heritage by sustaining diverse, productive, resilient ecosystems and the services they provide, thereby promoting the long-term health, security, and well-being of our Nation. Specifically, EBM:

- Recognizes that humans are a part of ecosystems and that healthy ecosystems are essential to human welfare;
- Focuses on ensuring the abundance and long-term sustainability of natural resources and the benefits they provide...by emphasizing protection and restoration of ecosystem structure, functioning, and key processes;
- Is place-based, with a focus on a specific ecosystem, is implemented on a range of scales, and addresses a range of activities and cumulative impacts affecting the ecosystem;
- Recognizes ecological complexity and accounts for the interconnectedness within individual systems, including interactions among target and non-target species and key services;
- Acknowledges the interconnectedness among different systems, such as between air, land, and sea, while remaining open and flexible to change and adaptation;
- Is based on sound natural and social science, is information-driven, and is adaptable to changing environmental, social, and economic conditions;
- Considers diverse ecological, social, economic, cultural, and institutional perspectives, recognizing their strong interdependencies, and assesses trade-offs among diverse management objectives; and
- Aims to conserve and protect our natural and cultural heritage.”<sup>4</sup>

If Ecosystem-based Management is to adequately recognize the role humans play in ecosystems and consider economic and social perspectives, then the final Implementation Plan should modify the definition to clarify that Ecosystem-based Management is “intended to conserve and restore our natural, *economic*, and cultural heritage by sustaining diverse, productive, resilient, *and accessible* ecosystems and the services *and benefits they have provided and will continue to provide*, thereby promoting the long-term health, security, and well-being of our Nation.”

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<sup>2</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 11, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf). See also Page 11 (“Although there are examples of EBM efforts with multiple Federal agencies, State and local governments, and other stakeholders working together with a focus on particular ecosystems...generally management has focused largely on single species, uses, and ecosystem benefits.”).

<sup>3</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 9, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>4</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 10-11, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

The final Implementation Plan should also ensure that proposed implementation timelines and actions, particularly with regard to those such as Coastal and Marine Spatial Planning that are premised on Ecosystem-based Management, do not lead to decisions being made without the proper foundational science.

The science underpinning Ecosystem-based Management and ecosystem services has not advanced to the point at which ecosystem health can be assessed and the dynamics of change can be measured on an ecosystem basis that includes ecosystem services for human use. If science related to Ecosystem-based Management and ecosystem services is to form the foundation for National Ocean Policy actions, including Coastal and Marine Spatial Planning on an ecosystem scale, then such scientific disciplines must first be sufficiently developed and established in a manner that can account for ecosystem services for human use.

## BUDGETARY REQUIREMENTS AND FUNDING SOURCES

The current budgetary environment and fiscal constraints that face the nation are resulting in increased competition for fewer federal resources. As the draft Implementation Plan notes, the ability to complete proposed actions and milestones in the timelines provided are based in part on the availability of funding.<sup>5</sup> In the context of National Ocean Policy implementation, great care should be taken with respect to federal resource allocation so that regulated industries and entities--and the jobs and communities that they support--do not succumb to backlogs and delays that impact their ability to operate.

To that end, the Coalition notes that federal agencies have been “instructed to prioritize” the National Ocean Policy in their FY 2013 budgets,<sup>6</sup> and that in developing the draft Implementation Plan, federal agencies were asked to consider how existing federal resources can be utilized as well as “repurposed” in order to support the policy.<sup>7</sup> Other entities have previously raised concerns about such a possibility.<sup>8</sup>

In order to prevent the diversion of existing resources away from activities that are essential to the ability of businesses to function and the economy and local communities to thrive, the final Implementation Plan should state that only resources appropriated by Congress specifically in support of the National Ocean Policy will be used to fund the initiative.

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<sup>5</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 5, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf) (“...given the constrained fiscal climate and the uncertainty in the budget and appropriations processes, completion of every action and milestone in this draft Implementation Plan within the timeframes expected are contingent on the availability of funds.”).

<sup>6</sup> See Appendix to Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 108, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>7</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 5, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf) (“As the actions in this draft Implementation Plan were developed, Federal agencies were asked to consider three questions: What activities can be accomplished with existing Federal and partner resources? How can existing resources be repurposed for greater efficiency and effectiveness? Where do we need to include activities that with minimal additional resources may allow for additional truly transformative and far-reaching impact?”).

<sup>8</sup> See July 1, 2011 Comments on Strategic Action Plans Submitted by the Association of Fish & Wildlife Agencies (“...we continue to have concerns with the resources necessary to accomplish this initiative. We are particularly concerned that CMSP will divert resources, particularly from the National Marine Fisheries Service...budget, to undertake the large data compilation and analysis required by CMSP. In an era of tight budgets, we cannot endorse the use of limited resources for CMSP when the critical stock assessment needs of the agency are not funded at sufficient levels.”), *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/full\\_website\\_public\\_comments\\_6\\_30\\_11\\_to\\_7\\_2\\_11\\_final\\_0.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf); and July 1, 2011 Comments on Strategic Action Plans Submitted by Ocean Peace, Inc. (“Until the Executive Branch is able to provide a detailed blueprint describing how Federal agencies will cooperate and/or coordinate their activities with respect to CMSP, how they will balance competing agency mandates, and how they will balance competing budgetary concerns, among other things, no Federal funds should be expended in support of CMSP.”), *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/full\\_website\\_public\\_comments\\_6\\_30\\_11\\_to\\_7\\_2\\_11\\_final\\_0.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf)

This will ensure that funds appropriated by Congress are allocated by the Executive Branch toward the very activities that they were intended to support. If the National Ocean Council distributes an annual memorandum providing “further guidance and prioritization toward allocating Federal resources to achieve implementation goals,”<sup>9</sup> such guidance should also reflect the will of Congress and existing statutory authorities.

To address concerns by stakeholders<sup>10</sup> about the possibility that decisions may be made based on biases of outside groups with unique interests, the final Implementation Plan should clarify that all funding for National Ocean Policy implementation activities rely solely on government resources. This will ensure that stakeholders with user perspectives are not blocked from participating in the process. In addition, the final Implementation Plan should make clear that new taxes, fees, or other funding mechanisms will not be imposed on commercial and recreational interests without congressional authorization.

## REGULATIONS AND RESTRICTIONS UNDER THE NATIONAL OCEAN POLICY

It has been stated before that the National Ocean Policy will not result in any new regulations or restrictions and does not contain a zoning plan.<sup>11</sup> The Final Recommendations of the Interagency Ocean Policy Task Force (“Final Recommendations”) that were adopted through Executive Order 13547, however, state that effective National Ocean Policy implementation will “require clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component.”<sup>12</sup>

More recently, the U.S. Department of the Interior noted that Coastal and Marine Spatial Planning “has emerged as a new paradigm and planning strategy for coordinating all marine and coastal activities and facility constructions with the context of a national zoning plan.” The Department added that “it is anticipated that the [Coastal and Marine Spatial] plans will serve as an overlay for decisions made under existing regulatory mandates.”<sup>13</sup>

The draft Implementation Plan notes with regard to one National Ocean Policy objective that “[s]uccessful implementation will require concerted activities, including the use of regulatory...measures.”<sup>14</sup> It also calls for identifying “underutilized” laws and regulations and “opportunities to incorporate [Ecosystem-based Management] principles into Federal laws,

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<sup>9</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 5, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>10</sup> See e.g. Comments on Coordinate and Support Strategic Action Plan Outline Submitted by Quinault Indian Nation (“...leveraging nonprofit and private dollars to achieve federal action has potential bias issues”...), *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/full\\_website\\_public\\_comments\\_6\\_30\\_11\\_to\\_7\\_2\\_11\\_final\\_0.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf).

<sup>11</sup> See e.g. Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 4, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf) (“This draft Implementation Plan creates no new regulations.”); Statement of Nancy H. Sutley, Chair, White House Council on Environmental Quality, Testimony on “The President’s New National Ocean Policy - A Plan for Further Restrictions on Ocean, Coastal and Inland Activities,” October 26, 2011 U.S. House Natural Resources Committee Hearing, *available at* <http://naturalresources.house.gov/UploadedFiles/SutleyTestimony10.26.11.pdf> (“The National Ocean Policy does not establish any new regulations or restrict the multiple uses of the ocean... coastal and marine spatial planning is not zoning...Coastal and marine spatial planning has been mischaracterized as “ocean zoning”...The National Ocean Policy does not impose any restrictions on ocean, coastal, or Great Lakes activities...); and National Ocean Council Website, Frequently Asked Questions, *available at* <http://www.whitehouse.gov/administration/eop/oceans/faq> (“The National Policy does not establish any new regulations or restrict any ocean uses or activities... The National Policy is not a map drawing exercise and does not contain a zoning plan or establish any restrictions on activities, nor does it restrict access.”).

<sup>12</sup> See Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, Page 30, *available at* [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf).

<sup>13</sup> See Draft Programmatic Environmental Impact Statement, Outer Continental Shelf Oil and Gas Leasing Program:2012-2017, U.S. Interior Department, Bureau of Ocean Energy Management, November 2011, Page 4-54 and 4-58, *available at* [http://www.boem.gov/uploadedFiles/BOEM\\_2012-2017\\_OCS\\_Oil\\_and\\_Gas\\_Leasing\\_Draft\\_Programmatic\\_EIS.pdf](http://www.boem.gov/uploadedFiles/BOEM_2012-2017_OCS_Oil_and_Gas_Leasing_Draft_Programmatic_EIS.pdf).

<sup>14</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 63-64, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

regulations, and policies,”<sup>15</sup> as well as “strengthen[ing]” the “content and/or application” of existing laws to “incorporate and better support climate change adaptation efforts.”<sup>16</sup> The latter proposal could potentially result in the reinterpretation of statutes in a manner that contravenes the original legislative intent.

The draft Implementation Plan further notes that successful implementation will require regulatory action to address water quality and sustainable practices on land, specifically citing regulatory measures related to Total Maximum Daily Loads, Combined Sewer Outflow Controls, waste and stormwater management, and vessel discharge,<sup>17</sup> and calling for the protection, restoration, or enhancement of more than 2 million acres of lands identified as high conservation priorities, including at least 100,000 acres of wetlands, wetland-associated uplands, and other high-priority habitat, and 700,000 acres of forestlands. The draft Implementation Plan also proposes to reactivate the National Marine Sanctuary Site Evaluation List,<sup>18</sup> and calls for the identification of “options to minimize and/or mitigate the risk associated with vessel use and carriage of heavy-grade fuel oil in the Arctic.”<sup>19</sup>

In light of the above, as well as statements from National Ocean Council members as to the relationship between Marine Protected Area designations and Coastal and Marine Spatial Planning,<sup>20</sup> the National Ocean Policy as currently envisioned could result in unnecessary restrictions or prohibitions on commercial and recreational activities through zoning plans, regulations, and land use designations.

Concerns in this regard are heightened in that sectors potentially impacted by the policy are responsible for supporting over 73 million jobs and contributing nearly \$9.5 trillion to the nation’s economy.<sup>21</sup> However, the draft Implementation Plan does not seem to adequately address the significance of these economic and societal contributions and the effects that unnecessary constraints and additional uncertainty could have on the nation and local communities. In some cases, sectors that contribute billions of dollars annually to the U.S. economy go without mention.<sup>22</sup>

To ensure that the National Ocean Policy does not create any new regulations or restrictions and unnecessarily harm economic and recreational activity, the final Implementation Plan should clarify that all actions carried out in furtherance of the National Ocean Policy shall be based entirely on collaborative and voluntary efforts among federal, state, local, and industry

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<sup>15</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 13, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>16</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 39, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>17</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 73, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>18</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 74, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>19</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 79, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>20</sup> See October 31, 2011 Letter from Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere, to Mr. Eugenio Pineiro-Soler, Chair of the Marine Protected Areas Federal Advisory Committee (“...many of the ideas presented in the [Marine Protected Areas Federal Advisory Committee’s] recommendations are being actively considered and incorporated into emerging plans and guidance.”). See also Marine Protected Areas Federal Advisory Committee Recommendations for the Coastal and Marine Spatial Planning Process, available at [http://www.mpa.gov/pdf/helpful-resources/mpa\\_fac\\_recommendations\\_sep2011.pdf](http://www.mpa.gov/pdf/helpful-resources/mpa_fac_recommendations_sep2011.pdf).

<sup>21</sup> See Appendix 2, Sector-By-Sector Analysis, Economic Contributions of Agriculture, Aquaculture, Chemical, Coal, Commercial Fishing, Construction, Forest and Paper, Manufacturing, Oil and Gas, Ports, Power Generation and Transmission, Recreational Boating, Recreational Fishing, Tourism, and Transportation Sectors, National Ocean Policy Coalition’s July 1, 2011 Comments on Strategic Action Plan Outlines, available at [http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC\\_Comments\\_on\\_SAP\\_Outlines.pdf](http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC_Comments_on_SAP_Outlines.pdf).

<sup>22</sup> With regard to recreational boating, for example, saltwater and Great Lakes anglers, who operate in geographic areas covered by the National Ocean Policy and fish almost by necessity from a recreational boat, generate approximately \$13.8 billion in retail sales and \$38.5 billion in total expenditures each year, supporting 363,000 jobs and generating more than \$2.3 billion in federal and state taxes annually. See National Marine Manufacturers Association’s 2010 Recreational Boating Statistical Abstract, Page 67, available at <http://www.nmma.org/statistics/publications/statisticalabstract.aspx>

officials. In no case should regulations be promulgated without adhering to the Administrative Procedure Act.

## COASTAL AND MARINE SPATIAL PLANNING NATIONAL OBJECTIVES

Pursuant to the Final Recommendations of the Interagency Ocean Policy Task Force that were adopted in the Executive Order establishing the National Ocean Policy, all Coastal and Marine Spatial Plans will be reviewed by the National Ocean Council to ensure consistency with national objectives, among other things.<sup>23</sup>

The draft Implementation Plan proposes the following two national objectives:

National Objective 1: Preserve and enhance opportunities for sustainable ocean use through the promotion of regulatory efficiency, consistency, and transparency, as well as improved coordination across Federal agencies.

National Objective 2: Reduce cumulative impacts on environmentally sensitive resources and habitats in ocean, coastal, and Great Lakes waters.<sup>24</sup>

The draft Implementation Plan, however, does not identify the criteria under which the National Ocean Council will make determinations and certifications with regard to consistency with the national objectives. The final Implementation Plan should clarify how Coastal and Marine Spatial Plans will be reviewed for national consistency and provide ample opportunity for public review and comment on this important subject.

### National Objective 1

Efforts to maintain and expand opportunities for ocean, coastal, and Great Lakes use through better federal coordination and increased regulatory efficiency, consistency, and clarity should be encouraged. As noted below, such efforts should be given a high priority and carried out under existing management regimes that have been established by statute.

For purposes of this national objective, the draft Implementation Plan defines “sustainability” as “compatibility of current and proposed ocean and coastal uses with the long-term maintenance of important ecosystem services, including other uses.”<sup>25</sup> It further notes that coastal and marine spatial planning can reduce delays and costs in part by “pre-assessing areas where certain uses may be better suited” and “identifying in advance those uses that might have synergistic relationships.”<sup>26</sup>

“Sustainability” includes environmental, economic, and social components. In order to ensure that opportunities for ocean, coastal, and Great Lakes uses are preserved, the final Implementation Plan should specify that determinations as to what constitutes “sustainable” uses are further defined, adequately account for critical economic and societal contributions, do not result in decisions that negatively impact the economy, and build on (rather than detract from) the uses that have taken place in the applicable area over time.

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<sup>23</sup> See Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, Page 63, *available at* [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf) (“The NOC would review each regional CMS Plan to ensure it is consistent with the National Policy, CMSP goals and principles as provided in this framework, any national objectives, performance measures, or guidance the NOC has articulated, and any other relevant national priorities.”).

<sup>24</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 87-88, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf)

<sup>25</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 87, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf)

<sup>26</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 87, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).



## National Objective 2

According to the draft Implementation Plan, implementation of National Objective 2 will “improve the ability of decision-makers to identify and define sensitive areas and habitats, identify opportunities to mitigate or completely avoid impacts to sensitive areas, identify areas where future activities would cause the least amount of negative impact, maximize sustainable and beneficial uses of the marine environment, and protect the integrity of marine and coastal ecosystems.”<sup>27</sup>

It further states that Coastal and Marine Spatial Planning “should strive to improve our ability to characterize the past, present, and if possible, potential future conditions of an ecosystem spatially—*before* any particular new activity is implemented.”

Without further clarification, such an approach could harm commercial and recreational activities and the jobs and communities they support. Certain groups have already begun to argue that federal permits for commercial activity should not be issued until Coastal and Marine Spatial Planning is in place.<sup>28</sup>

One entity commented that the “ocean zoning framework should be established *before* pending or future offshore projects are allowed to move forward,” adding that “allowing offshore projects to first move forward without first implementing an ocean zoning framework will inevitably result in projects that are harmful to the environment and ecosystem and potentially contradict the final spatial planning process put forth by the [National Ocean] Council.”<sup>29</sup>

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<sup>27</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 88-89, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>28</sup> See October 13, 2011 Comments on Cape Wind Associates, LLC Application for Incidental Harassment Authorization for the Non-Lethal Taking of Marine Mammals Resulting from Pre-Construction High Resolution Geophysical Survey in Nantucket Sound, Submitted by Tribal Historic Preservation Department of the Wampanoag Tribe of Gay Head (Aquinnah) on Cape Wind Associates, LLC Application for Incidental Harassment Authorization for the Non-Lethal Taking of Marine Mammals Resulting from Pre-Construction High Resolution Geophysical Survey in Nantucket Sound; and October 13, 2011 Joint Comments on Cape Wind Associates, LLC Application for Incidental Harassment Authorization for the Non-Lethal Taking of Marine Mammals Resulting from Pre-Construction High Resolution Geophysical Survey in Nantucket Sound, Submitted by Gloucester Fishermen’s Wives Association, Hyannis Yacht Club, Institute for Fisheries Resources, Oceans Public Trust Initiative (a project of Earth Island Institute’s International Marine Mammal Project), Pegasus Foundation, Save our Sound/Alliance to Protect Nantucket Sound, and Three Bays Preservation, *available at* [http://www.nmfs.noaa.gov/pr/pdfs/permits/cwa\\_comments.pdf](http://www.nmfs.noaa.gov/pr/pdfs/permits/cwa_comments.pdf).

<sup>29</sup> See April 29, 2011 Comments on the Development of Strategic Action Plans Submitted by Oceans Public Trust Initiative, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments\\_on\\_all\\_9\\_saps\\_1.24.11-4.29.11.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments_on_all_9_saps_1.24.11-4.29.11.pdf). See also April 29, 2011 Comments on the Development of Strategic Action Plans Submitted by Clean Ocean Action (“EBM and CMSP implementation will (and should) rely heavily on baseline studies, pilot programs, and cumulative impact analyses. No decisions should be made to approve new uses of the coastal and ocean zone (including Outer Continental Shelf energy production, exploration, or siting), or to affect existing uses, without these pre-planning studies and research projects.”), *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments\\_on\\_all\\_9\\_saps\\_1.24.11-4.29.11.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments_on_all_9_saps_1.24.11-4.29.11.pdf); April 26, 2011 Comments on the Development of Strategic Action Plans Submitted by Alliance to Protect Nantucket Sound (“...this [coastal and marine spatial planning] process...should be completed prior to the approval of significant coastal offshore development activities...the CMSP process must 1) encompass all coastal and ocean resources and uses, and 2) must be completed prior to permitting any specific projects...Requiring a moratorium on all proposed projects until ocean zoning is in place promotes the advantages of responsible planning and protecting environmentally sensitive areas such as Nantucket Sound...Allowing pending offshore projects to move forward without first completing CMSP could result in projects being sited in areas with significant negative impacts on the environment that should have been deemed off limits to development.”), *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments\\_on\\_all\\_9\\_saps\\_1.24.11-4.29.11.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments_on_all_9_saps_1.24.11-4.29.11.pdf); April 28, 2011 Joint Comments on the Development of Strategic Action Plans Submitted by Alaska Wilderness League, Center for Biological Diversity, Clean Air–Cool Planet, Defenders of Wildlife, Earthjustice, National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Ocean Conservancy, Oceana, Pacific Environment, Pew Environment Group, Sierra Club, The Wilderness Society, and World Wildlife Fund (“...agencies should take steps to ensure that sufficient baseline scientific information, appropriate monitoring programs, and adequate environmental protections are in place before decision-makers approve actions that may affect the health and resilience of Arctic marine ecosystems.”), *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments\\_on\\_all\\_9\\_saps\\_1.24.11-4.29.11.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments_on_all_9_saps_1.24.11-4.29.11.pdf); and April 28, 2011 Joint Comments on the Development of Strategic Action Plans Submitted by Alaska Wilderness League, Center for Biological Diversity, Clean Air–Cool Planet, Defenders of Wildlife, Earthjustice, National Audubon Society, Natural Resources Defense Council, Northern Alaska Environmental Center, Ocean Conservancy, Oceana, Pacific Environment, Pew Environment Group, Sierra Club, The Wilderness Society, and World Wildlife Fund, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments\\_on\\_all\\_9\\_saps\\_1.24.11-4.29.11.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments_on_all_9_saps_1.24.11-4.29.11.pdf) (“To satisfy the

If, as the Final Recommendations state, “CMSP is not meant to delay or halt existing or pending plans and projects related to marine and Great Lakes environments or their uses,”<sup>30</sup> then the final Implementation Plan should make clear that federal entities are not to deny requests or delay decisions pertaining to human use activity due to the absence of a Coastal and Marine Spatial Plan. Approvals for existing or new projects should remain subject to existing laws and regulations that currently govern the multiple uses that take place in and near our oceans, coasts, and Great Lakes.

It should further specify that in making determinations about consistency between Coastal and Marine Spatial Plans and national objectives, requests or decisions pertaining to human use activity will not be delayed or denied in the event that past, present, and/or future conditions of the applicable ecosystem have not been characterized under the construct of the National Ocean Policy.

Furthermore, the final Implementation Plan should clarify what constitutes a “new” activity and specify that such determinations will be based on historical uses in a wide area within the applicable region, rather than historical use patterns in a single, precise location.

If activities deemed to be “new” are not allowed to proceed until a Coastal and Marine Spatial Plan and associated studies and analysis have been completed and implemented, the impact on economic activity, jobs, and livelihoods could be significant and entail legal implications.

Further, and as discussed above, in order to be science-based and apply on an ecosystem scale, Coastal and Marine Spatial Planning should be based on established protocols for Ecosystem-based Management in the applicable regions. Unless or until there is a means to monitor and assess the health of the ecosystem based on agreed and monitored indicators, the likelihood increases that Coastal and Marine Spatial Planning could be initiated as a precautionary use avoidance tool.

## PILOT PROJECTS FOR NATIONAL OCEAN POLICY OBJECTIVES

The Coalition continues to believe that initial nationwide application of the National Ocean Policy will increase the risk of significant and unintended economic and societal consequences.

A wide and diverse group of interests have previously expressed support for the notion of a pilot project, specifically with regard to Coastal and Marine Spatial Planning.<sup>31</sup> The risk of unintended

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National Ocean Policy’s stewardship principles, decision-makers in the Arctic must engage in more comprehensive preparation before deciding whether or under what conditions to permit offshore oil and gas activity in the U.S. Arctic.”)

<sup>30</sup> See Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, Page 63, *available at* [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf).

<sup>31</sup> See June 29, 2011 Comments on Strategic Action Plan Outlines Submitted by Eight Regional Fishery Management Councils (“...we wish to suggest the possibility of the NOC [National Ocean Council] engaging in a CMSP pilot project once the strategic action plan is finalized...there are regions where experience exists with current regional ocean partnerships and/or Governors alliances – that experience could serve well to test the strengths and weaknesses of the process, and to fine-tune the strategic action plan before applying it on a National scale, across all nine regions.”), *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/sap\\_website\\_public\\_comments\\_6\\_18\\_11\\_to\\_6\\_29\\_11\\_with\\_attachments.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/sap_website_public_comments_6_18_11_to_6_29_11_with_attachments.pdf); July 1, 2011 Comments on Strategic Action Outlines Submitted by Consortium for Ocean Leadership, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/full\\_website\\_public\\_comments\\_6\\_30\\_11\\_to\\_7\\_2\\_11\\_final\\_0.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf) (“We believe, as a first step, the National Ocean Council should support a state-focused operational framework centered on regional issues with distributed data management and stakeholder engagement.”); and Comments Submitted on Strategic Action Plan Outlines by Quinault Indian Nation, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/full\\_website\\_public\\_comments\\_6\\_30\\_11\\_to\\_7\\_2\\_11\\_final\\_0.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf) (“...any regional plans should start small, concentrating on workable areas that have sufficient data to conduct CMSP and learn from those experiences before beginning wider scale planning based on insufficient data.”). See also July 1, 2011 Comments on Strategic Action Plan Outlines Submitted by the Association for Fish & Wildlife Agencies (“With regard to the “wheres and whens” of CMSP, we encourage you to approach this effort in manageable segments. We concur with others whom have observed that CMSP should be undertaken where the concept is desired.”), *available at*

consequences was highlighted during recent exchanges about the potential for confusion and uncertainty in the event that a regional planning body makes a determination to restrict an activity that might otherwise be allowed under existing authorities.<sup>32</sup> In addition, several objectives addressed in the draft Implementation Plan already include proposed actions and milestones that incorporate the use of pilot projects.<sup>33</sup>

Therefore, to address the risk associated with immediate nationwide application and allow for the careful consideration and study of all potential impacts, the final Implementation Plan should extend the use of pilot projects to cover all actions taken pursuant to the National Ocean Policy by first focusing on a limited geographic area.

## FLEXIBILITY WITH COASTAL AND MARINE SPATIAL PLANNING

With regard to Coastal and Marine Spatial Planning, the draft Implementation Plan proposes to conduct regional workshops and simulation exercises in the nine regional planning areas established under the policy.<sup>34</sup> In addition, regional planning bodies tasked with developing Coastal and Marine Spatial Plans would be set up in stages, with all regions submitting Coastal and Marine Spatial Plans to the National Ocean Council for certification by 2019 at the latest.<sup>35</sup>

While adjustments to timeline constraints and opportunities for engagement are welcomed, important questions remain about the authority, establishment, and role of regional planning bodies tasked with developing Coastal and Marine Spatial Plans. A chief concern is that regional planning bodies will supplant the role of existing state and federal agencies in managing resources and activities in areas under their jurisdiction, and that these new entities will add an unnecessary layer of bureaucracy on top of existing governance structures and management regimes. For example, it remains unclear as to how the National Ocean Policy will align with existing and functioning regulatory structures, including but not limited to those under the Outer Continental Shelf Lands Act and National Environmental Policy Act, that are already

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[http://www.whitehouse.gov/sites/default/files/microsites/ceq/full\\_website\\_public\\_comments\\_6\\_30\\_11\\_to\\_7\\_2\\_11\\_final\\_0.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf); and July 1, 2011 Comments on Strategic Action Plan Outlines Submitted by the West Coast Governors' Agreement on Ocean Health ("...consider implementing pilots..."), available at

[http://www.whitehouse.gov/sites/default/files/microsites/ceq/full\\_website\\_public\\_comments\\_6\\_30\\_11\\_to\\_7\\_2\\_11\\_final\\_0.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf).

<sup>32</sup> See October 26, 2011 U.S. House Natural Resources Committee Hearing on "The President's New National Ocean Policy - A Plan for Further Restrictions on Ocean, Coastal and Inland Activities", 47:34-48:38 mark, available at [http://resources.edgeboss.net/wmedia/resources/112/2011\\_10\\_26\\_fc.vwx](http://resources.edgeboss.net/wmedia/resources/112/2011_10_26_fc.vwx) (U.S. Rep. Mark Amodei: "...Is this new plan...going to be used by agencies as a reason to deny a permit?...What I'd like to know is if the plan is created for a specific area, and I've got approval from whomever the planning and zoning folks are...but yet I go to the appropriate federal agency and say 'I want the permit,' is it going to be one those things where it's like, 'I'm sorry, you're not in compliance with the federal plan,' so until you are?..."). Under Secretary of Commerce for Oceans and Atmosphere and National Oceanic and Atmospheric Administrator Dr. Jane Lubchenco: "I think it's hard to talk about examples like that in a vacuum. A concrete one is probably easier to focus on.")

<sup>33</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 16-17 (Ecosystem Based Management: "Identify and implement place-based pilot projects that foster an EBM approach to managing ocean and coastal resources"); Page 20 (Inform Decisions and Improve Understanding: "Establish a National Shellfish Initiative, in partnership with commercial and restoration aquaculture communities, that includes pilot projects..."); Page 23 (Inform Decisions and Improve Understanding: "Initiate a pilot project to include one or more public health or economic indicators, such as port commerce and storm damage prevented, in the Coastal Condition Report"); Page 47 (Regional Ecosystem Protection and Restoration: "The overarching strategy to address wetland loss will be based on the results of pilot studies ...Develop an analytical framework and pilot assessment selection strategy... Identify coastal watersheds for pilot assessments..."); Page 51 (Regional Ecosystem Protection and Restoration: "Review the initial round of pilot-scale proposals, and report on the pilot program's effectiveness and make recommendations for its continued improvement..."); Page 52 (Regional Ecosystem Protection and Restoration: "Develop and pilot a methodology for conducting a marine gap analysis and inventorying information sources to support the analysis...Showcase the gap analysis in one U.S. region..."); Page 66 (Water Quality and Sustainable Practices on Land: "Implement environmental market pilot projects...between Federal and regional partners for nutrient and sediment reduction..."); Page 67 (Water Quality and Sustainable Practices on Land: "Develop pilot projects to increase access to the Urban Waters Federal Partnership..."); and Page 81 (Changing Conditions in the Arctic: "Review pilot DBO activities...Complete pilot phases analysis..."), available at

[http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>34</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 90, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>35</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 92, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

effectively managing the use of the coastal and marine environment and environmental impacts of permitted activities.

Another concern is that Coastal and Marine Spatial Plans developed by regional planning bodies “are expected to vary from region to region,”<sup>36</sup> and that application of federal laws said to authorize such plans may vary by region as well. Thus, federal statutes may no longer be uniformly applied in a national manner as originally intended, and the rules under which commercial and recreational interests operate may deviate between regions and locations that are in close proximity with one another. The uncertainty associated with such a scenario could be detrimental to economic activities occurring in the applicable region(s).

To the extent that efforts to move forward with the establishment of regional planning bodies and the development of Coastal and Marine Spatial Plans nonetheless continue, to ensure maximum flexibility and maintain consistency with the National Ocean Council’s statement that the “final timeline of each RPB [regional planning body] stand-up will be up to the regions,”<sup>37</sup> the final Implementation Plan should provide additional clarification. Specifically, the final Implementation Plan should state that timelines pertaining to the establishment of regional planning bodies are advisory and provide that states in applicable regions may establish such bodies at a time and pace of their choosing, in the event that states in a given region decide to participate.

In line with the draft Implementation Plan’s acknowledgement that “[e]ach region is unique in geographic scope, natural resources, cultural expectations and sensitivities, economic homeland and national security attributes, and existing structures for environmental protection and resource management,”<sup>38</sup> the final Implementation Plan should also clarify that regions may move forward with the development of Coastal and Marine Spatial Plans on timelines set and agreed to by non-federal officials in the various regions, in the event that they decide to proceed.

## COMPOSITION OF REGIONAL PLANNING BODIES

The draft Implementation Plan notes that membership on regional planning bodies charged with developing Coastal and Marine Spatial Plans is restricted to Federal, State, and Tribal entities.<sup>39</sup> Subsequent to release of the draft Implementation Plan, the National Ocean Council announced that membership would be extended to *voting government* members of Regional Fishery Management Councils.<sup>40</sup> According to the announcement, each Regional Fishery Management Council will be asked to name one of its Federal, State, Tribal, or local government voting members to serve as its representative to the regional planning body for the applicable region. Thus, representatives of sectors other than fishing that rely on federal decision-making to carry out their activities are still excluded from membership, as well as Executive Directors of the Councils and non-government representatives of the fishing community.

Measures which ensure that potentially impacted stakeholder user groups have direct representation in policy and decision-making processes are encouraged and supported. Merely granting certain government officials additional seats at the table, however, is not sufficient to

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<sup>36</sup> See Page 58, Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, available at [http://www.whitehouse.gov/files/documents/OTPF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OTPF_FinalRecs.pdf).

<sup>37</sup> See National Coastal and Marine Spatial Planning Workshop Summary Report, Page 26, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_cmsp\\_workshop\\_summary\\_report.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_cmsp_workshop_summary_report.pdf).

<sup>38</sup> See National Coastal and Marine Spatial Planning Workshop Summary Report, Page 92, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_cmsp\\_workshop\\_summary\\_report.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_cmsp_workshop_summary_report.pdf).

<sup>39</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 91, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>40</sup> See National Ocean Council Blog, “Another Step Toward Ocean Stewardship,” Posted February 1, 2012, available at <http://www.whitehouse.gov/blog/2012/02/01/another-step-toward-ocean-stewardship>.

ensure that the National Ocean Policy in practice represents a bottom-up initiative that is grounded in and guided by the actual needs and vision of those with the greatest knowledge, familiarity, and experience with the issues most relevant to the regulated community.

The draft Implementation Plan states that the framework for Coastal and Marine Spatial Planning “provides that the regional planning bodies are inherently intergovernmental,” and notes that regions are required to engage and consult with stakeholders, the public, and certain experts.<sup>41</sup> However, engagement and consultation requirements--details on which guidance has not yet been provided--do not equate to the formal and significant role that should be accorded to sectors that contribute significant economic benefits and jobs to local communities and the nation at large.

The final Implementation Plan therefore should require that regional planning body membership will be open to include non-government officials and representatives of all potentially impacted sectors that contribute to the respective region’s economy. The final Implementation Plan should further clarify that members will be chosen in a transparent, accountable, and representative manner.

With regard to public sector representation, states, tribes, and localities should receive adequate representation on regional planning bodies, rather than simply allotting one representative for each participating state.<sup>42</sup> States and tribal representation should be determined in a transparent, accountable, and representative manner.

The final Implementation Plan should further provide for representation of local officials on regional planning bodies. The National Ocean Council previously decided to revisit the issue of whether to allow their participation as members of regional planning bodies,<sup>43</sup> and this important group should also be provided with a direct seat on these entities. Decisions as to local representation should be made in a transparent, accountable, and representative manner.

## STAKEHOLDER ENGAGEMENT

In addition to regional planning body membership, the Coalition reiterates its previous comments that any regional advisory committees formed to advise on National Ocean Policy matters should be balanced and comprised of members that are sector-appointed and representative of the potentially impacted commercial and recreational interests. Advice from such committees should receive significant deference, and they should be empowered to provide advice on their own initiative under a structured process, not just upon request. Such guidelines should also apply to any other entities formed to advise on National Ocean Policy matters.

All commercial and recreational interests must be included in stakeholder engagement efforts going forward as part of an open and transparent process that complies with the letter and

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<sup>41</sup> See Appendix to Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 110, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>42</sup> See e.g. July 1, 2011 Comments on Strategic Action Plans Submitted by the Association of Fish & Wildlife Agencies (“Coastal states must be recognized as partners with sovereign jurisdictions and authorities, not relegated to stakeholder status in coastal and marine policy development. To that end, state fish and wildlife agencies should be included on the RPBs...We are disappointed with the lack of representation by our member agencies on the committees established to date under the National Ocean Policy. We believe the most effective and efficient mechanism for our agencies’ engagement at this point would be to have a seat for each state’s fish and wildlife agency on each of the RPBs; we cannot rely on other state agencies to grasp the intricacies of our management authorities.”), available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/full\\_website\\_public\\_comments\\_6\\_30\\_11\\_to\\_7\\_2\\_11\\_final\\_0.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf).

<sup>43</sup> See National Coastal and Marine Spatial Planning Workshop Summary Report, Page 30, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_cmsp\\_workshop\\_summary\\_report.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_cmsp_workshop_summary_report.pdf).

spirit of the Administrative Procedure Act. Such engagement should occur at every stage of policy development and implementation and at the national and regional levels, including through balanced advisory groups as discussed above.

## COASTAL AND MARINE SPATIAL PLANNING HANDBOOK

By virtue of Executive Order 13547's incorporation of the Final Recommendations of the Interagency Ocean Policy Task Force, the draft Implementation Plan was to include legal analysis and recommendations for legislative changes and a description of a dispute resolution mechanism.<sup>44</sup> In addition, according to the Strategic Action Plan outline for Coastal and Marine Spatial Planning released last year, the draft Implementation Plan was to include, among other things, guidance on stakeholder and public engagement, consultation with scientists and technical and other experts, how Coastal and Marine Spatial Plans will be reviewed for national consistency, and how Coastal and Marine Spatial Plans will be incorporated into decision-making processes.<sup>45</sup>

Since guidance on these subjects was not included in the draft Implementation Plan, the National Ocean Council noted that an Interim "Handbook for Regional Coastal and Marine Spatial Planning" that addresses these and other topics will be made publicly available prior to its finalization sometime this year.<sup>46</sup> Given that the information contained in the guidance is highly significant to all those who may be impacted by Coastal and Marine Spatial Planning, ample opportunity for public review and comment on the Handbook should be provided before it is finalized.

## PERMITTING EFFICIENCIES

The Coalition notes the proposed action to improve the efficiency of permitting of ocean, coastal, and Great Lakes uses, and shares the National Ocean Council's recognition that there are "overlapping, redundant, and sometimes conflicting permit review processes that result in unnecessary delays."<sup>47</sup>

Specifically, the draft Implementation Plan proposes to focus initially on one sector, while waiting to address others until as late as 2015.<sup>48</sup> While attempts to streamline federal permitting activities are laudable, such efforts should be given a high priority and carried out under existing management regimes that have been established by statute.

## ARCTIC CONSIDERATIONS

Many U.S. and international efforts are already underway with respect to issues in the Arctic, including but not limited to initiatives led by the Arctic Council and the Department of the Interior. The final Implementation Plan should acknowledge these existing U.S. and

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<sup>44</sup> See Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, Page 70, *available at* [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf).

<sup>45</sup> See Strategic Action Plan Outline for Coastal and Marine Spatial Planning, released June 2, 2011, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/sap\\_2\\_cmstp\\_full\\_content\\_outline\\_06-02-11\\_clean.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/sap_2_cmstp_full_content_outline_06-02-11_clean.pdf).

<sup>46</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 87 ("Topics not covered in this draft Implementation Plan will be included in a CMSP handbook as discussed in Action 1 below.") and 89 ("Provide the Interim Handbook to Federal agency regional planning body co-leads. (NOC Office; 2012)...Concurrently post the Interim Handbook on the NOC website. (NOC Office; 2012)"), *available at*

[http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf)

<sup>47</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 40, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>48</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 40, 41, *available at* [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

international efforts that are underway and further evaluate, reference, and incorporate this body of work to avoid redundancies.

## FEDERAL EMISSIONS MANAGEMENT

The draft Implementation Plan includes several references to emissions management and activities that federal entities will engage in to address the subject in the context of the National Ocean Policy. While in one case, the draft Implementation Plan proposes support for “private-sector development of greenhouse gas offset protocols for use in voluntary carbon markets,”<sup>49</sup> it also calls for development of a “protocol for carbon sequestration as an ecosystem service that can be incorporated into existing Federal policies and laws that require the use of ecosystem-based management approaches for environmental management.”<sup>50</sup> In addition, the draft Implementation Plan proposes to reduce air deposition of mercury, sulfur, nitrogen, and other substances.<sup>51</sup>

Emissions are already tightly regulated through a myriad of existing regulatory and permitting controls. The final Implementation Plan should clarify that federal entities will not use the National Ocean Policy as justification for the establishment of redundant controls on single use activities or the adoption of new emissions management strategies, including but not limited to the creation of a mandatory carbon trading program, without the express authorization of Congress.

## DATA INTEGRITY

The recent launch of the prototype ocean.data.gov web portal<sup>52</sup> highlights the need for data used, referenced, or otherwise relied upon in support of decisions made pursuant to the National Ocean Policy to be compliant with all federal laws pertaining to data quality and information integrity.

Although the portal, “intended to be used for Coastal and Marine Spatial Planning, including both spatial data for mapping as well as data that could be used in decision support tools,”<sup>53</sup> currently only contains federal data sets, “[c]hanges are currently being made to accommodate non-federal spatial data and information.”<sup>54</sup>

To that end, suggestions have been requested on “how best to integrate data from State and academic sources.”<sup>55</sup> In the meantime, the portal already includes a guidance on selecting “Decision Support Tools” in furtherance of Coastal and Marine Spatial Planning.<sup>56</sup> The portal includes direct links to thirteen such tools, all but three of which are non-federal in nature.

Furthermore, consideration should also be given to including data gathered by user groups as potential source material. Such data would be subject to the same level of scrutiny for data

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<sup>49</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 49, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>50</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 49, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>51</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 67, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).

<sup>52</sup> See National Ocean Council Blog, “Opening Our Oceans With Data.Gov,” Posted December 6, 2011, available at <http://www.whitehouse.gov/blog/2011/12/06/opening-our-oceans-datagov>.

<sup>53</sup> See Ocean.Data.Gov Prototype, Frequently Asked Questions, available at <http://www.data.gov/communities/node/237/view/faq>.

<sup>54</sup> See Ocean.Data.Gov Prototype, Quick Reference – FAQs from Practitioners, available at <http://www.data.gov/communities/node/237/community-of-practice/quick-reference>.

<sup>55</sup> See Ocean.Data.Gov Prototype, Frequently Asked Questions, available at <http://www.data.gov/communities/node/237/view/faq>.

<sup>56</sup> See Ocean.Data.Gov Prototype, Tools, available at <http://www.data.gov/communities/node/237/tools#>.

quality as data submitted by federal agencies, the academic community, and Non-Governmental Organizations.

In order to ensure the integrity of all data relied on in furtherance of activities conducted pursuant to the National Ocean Policy, the final Implementation Plan should clarify that data from any source will only be included, referenced, or otherwise endorsed by the National Ocean Council (or any other entity or system established under the National Ocean Policy) if such data has been certified to be in compliance with all federal laws, regulations, and policies pertaining to data quality and integrity.

### III. CONCLUSION

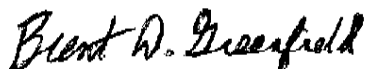
The Coalition continues to strongly support a National Ocean Policy that serves as a mechanism for job creation, infrastructure revitalization, and economic growth, and relies on full utilization of existing programs and well-established authorities that are already in place. Moving forward with such an initiative will avoid the creation of new bureaucracies, procedures, and regulations and substantially address the National Ocean Council's recognition of the "complexity of organizing, managing, and implementing the National Ocean Policy."<sup>57</sup>

The Coalition remains concerned, however, that many of the actions proposed in the draft Implementation Plan will lead to a much different result and adversely impact sectors including agriculture, commercial fishing, construction, manufacturing, marine commerce, mining, oil and gas and renewable energy, recreational boating, recreational fishing, and shipping and waterborne transportation. The cumulative impacts resulting from the added uncertainty, regulations, and costs associated with elements of the draft Implementation Plan could adversely affect commercial and recreational activities that are crucial components of the nation's economic and social fabric.

Therefore, the Coalition encourages you to delay further policy development and implementation until Congress, user groups, and the public have been fully engaged and all potential economic, societal, and legal impacts of implementing the National Ocean Policy have been assessed and are understood. When ready to proceed, we strongly encourage the use of a pilot project that is limited to one geographic area in order to test policy implementation and allow for any necessary adjustments. The pilot and any further action should account for the observations and recommendations discussed above.

The concerns and recommendations included herein, as well as our comments previously submitted, have been developed from the unique perspective of the Coalition's membership, which represents entities and sectors that support tens of millions of jobs and contribute trillions of dollars to the U.S. economy. The Coalition appreciates the opportunity to comment on the draft Implementation Plan and respectfully requests that our comments be carefully considered.

Sincerely,



Brent D. Greenfield  
Executive Director  
National Ocean Policy Coalition

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<sup>57</sup> See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 39, available at [http://www.whitehouse.gov/sites/default/files/microsites/ceq/national\\_ocean\\_policy\\_draft\\_implementation\\_plan\\_01-12-12.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf).