

HJR

16

<TARGET><BILL>HJR 16</BILL><SUBJECT>HJR
16</SUBJECT><COMM>HRES28</COMM></TARGET>

ALASKA STATE LEGISLATURE

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REPRESENTATIVE DAN SADDLER

Sponsor Statement

House Joint Resolution 16 – Relating to National Ocean Policy

House Joint Resolution 16 urges an Alaska exemption from a forthcoming and far-reaching federal policy to manage and zone activities in marine and coastal areas.

President Obama created the National Ocean Council (NOC) in 2010 by executive fiat and gave it broad authority to create a national policy that would, among other things, “ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources” and “respond to climate change and ocean acidification.”

A key part of that national ocean policy (NOP) is the development of coastal and marine spatial plans (CSMP). This federal ocean-use planning or “zoning” would prescribe what, where, and when certain activities are allowed – not only in our marine and coastal areas but also on wetlands and waterways located far inland of our coasts and oceans. The list of activities subject to regulation under both the NOP and the CSMP would prospectively include oil, gas, and renewable energy development, fishing, mining, timber, transportation, and tourism.

While highly populated areas of the Lower 48 – where user conflicts over scarce resources are well-demonstrated – might benefit from a federally driven ocean policy and zoning plan, in Alaska there is neither a proven scarcity of resources nor a demonstrated level of user conflict that would warrant the increased bureaucratic burden and government imposition these federal policies presage.

The NOC released its National Ocean Policy Draft Implementation Plan in January of 2012, with the stated intent of releasing a final implementation plan in spring of 2012. The final plan is a year overdue and likely nearing completion. Now is the time for the Legislature to urge an Alaska exemption to a NOP and CSMP or, at a minimum, to ask for voluntary state-by-state participation in these federal policies.

I urge you to help ensure Alaska maintains control over activities on our oceans, coasts, and waterways and to minimize federal overreach by supporting HJR 16.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HJR 16
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HJR16-LEG-SESS-04-04-16
Title: NATIONAL OCEAN POLICY
Sponsor: SADDLER
Requester: House Resources

Department: Alaska Legislature
Appropriation: Legislative Operating Budget
Allocation: Session Expenses
OMB Component Number: 782

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial Version

Prepared By:	Jessica Geary, Finance Manager	Phone:	(907)465-6626
Division	Legislative Affairs Agency	Date:	04/04/2013 03:19 PM
Approved By:	Pamela Varni, Executive Director	Date:	04/04/13
	Legislative Affairs Agency		

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HJR 16

Analysis

This Legislation has zero fiscal impact on the Legislative Affairs Agency.



National Ocean Council

[About the Council](#) | [NOC Blog](#) | [National Ocean Policy](#) | [Priority Objectives](#) | [Coastal and Marine Spatial Planning](#) | [FAQ](#) | [Contact Us](#)

About the National Ocean Council

The National Ocean Council is a dual Principal- and Deputy- level committee. Membership of the NOC initially includes the following, with additional officers designated by the Co-Chairs as needed:

- The Secretaries of: State, Defense, the Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy, and Homeland Security
- The Attorney General
- The Administrators of: the Environmental Protection Agency (EPA) and the National Aeronautics and Space Administration (NASA)
- The Chairs of: The Council on Environmental Quality (CEQ), the Federal Energy Regulatory Commission (FERC), and the Joint Chiefs of Staff
- The Directors of: the Office of Management and Budget (OMB), National Intelligence, the Office of Science and Technology Policy (OSTP), the National Science Foundation (NSF)
- The Assistants to: the President for National Security Affairs, Homeland Security and Counterterrorism, Domestic Policy, Economic Policy, and Energy and Climate Change
- An employee of the United States designated by the Vice President
- The Under Secretary of Commerce for Oceans and Atmosphere (NOAA Administrator)

Steering Committee

The Steering Committee is the key forum for ensuring integration and coordination on priority areas within the NOC. It will be a high-level, streamlined body of five members from OSTP, CEQ, one Chair each of the Ocean Resource Management Interagency Policy Committee (ORM-IPC) and Ocean Science and Technology Interagency Policy Committee (OST-IPC), and the Director of the NOC Staff.

Ocean Resource Management Interagency Policy Committee

The ORM-IPC will function as the ocean resource management body of the NOC, with an emphasis on ensuring the interagency implementation of the National Policy, national priority objectives, and other priorities defined or approved by the NOC. Chairs of the ORM-IPC will be designated by the NOC and the Committee will consist of Deputy Assistant Secretaries or comparable representatives, or appropriate senior-level representatives with decision-making authority from departments, agencies and offices represented on the NOC.

Ocean Science and Technology Interagency Policy Committee (OST-IPC)

The OST-IPC will function as the ocean science and technology body of the NOC, with an emphasis on ensuring the interagency implementation of the National Policy, national priority objectives, and other priorities for science and technology objectives. Chairs of the OST-IPC will be appointed through the National Science and Technology Council procedures in consultation with the NOC, and the Committee will consist of Deputy Assistant Secretaries or comparable representatives, or appropriate senior-level representatives with decision-making authority from departments, agencies, and offices represented on the NOC.

Governance Coordinating Committee

On February 23, 2011, the National Ocean Council established the Governance Coordinating Committee (GCC), in consultation with appropriate state, tribal, and local governments and organizations, to serve as a key coordinating body on inter-jurisdictional ocean policy issues. The GCC consists of 18 members from states, Federally recognized tribes, and local governments. Members include:

- One state representative each from the Great Lakes Region, Gulf of Mexico Region, Mid-Atlantic Region, Northeast Region, South Atlantic Region, and West Coast Region
- One state representative each from Alaska, the Pacific Islands, and the Caribbean
- Two at-large representatives from inland States
- One state legislative representative
- Three at-large tribal representatives

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of the
INTERAGENCY OCEAN POLICY
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EXECUTIVE ORDER
ESTABLISHING
the
NATIONAL OCEAN COUNCIL
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- Three local government representatives from coastal states (i.e., two mayors and one county official)

GCC members will serve staggered one to two-year terms. The current GCC members are:

Brian Baird, California (West Coast Region)
Assistant Secretary for Ocean and Coastal Policy, California Natural Resources Agency

Kathleen Leyden, Maine (Northeast Region)
Director of Maine's Coastal Zone Management Program

David Naftzger, Illinois (Great Lakes Region)
Executive Director, Great Lakes-St. Lawrence River Basin Water Resources Council

Lelei Peau, American Samoa (Pacific Islands Region)
Deputy Director, Department of Commerce for the American Samoa Government

Mark Robbins, Alaska (Alaska Region)
Associate Director, Office of the Governor

Paige Rothenberger, U.S. Virgin Islands (Caribbean Region)
Coral Reef Initiative Coordinator, USVI Dept. of Planning & Natural Resources

George Stafford, New York (Mid-Atlantic Region)
Deputy Secretary of State

Bill Walker, Mississippi (Gulf of Mexico Region)
Chair of the Gulf of Mexico Alliance Management Team and Executive Director of the MS Department of Marine Resources

Steve Crawford, Maine (Tribal Representative)
Environmental Director, Passamaquoddy Tribe of Pleasant Point, ME

Jacque Hostler, California (Tribal Representative)
Chief Executive Officer and Director of the Transportation and Land-Use Department, Cher-Ae Heights Indian Community of the Trinidad Rancheria

Micah McCarty, Washington State (Tribal Representative)
Tribal Chairman & Marine Policy & Fisheries Advisor, Makah Tribal Council

Kristin Jacobs, Florida (Local Government Representative)
County Commissioner - District 2, Broward County, Florida

Geraldine Knatz, California (Local Government Representative)
Executive Director, Port of Los Angeles

Joan Murphy, Illinois (Local Government Representative)
Cook County Commissioner, IL, 6th District

Kevin Ranker, Washington State (State Legislative Representative)
Washington State Senator

Additional GCC members will be announced as they are selected. [Click here to read the press release announcing the establishment of the GCC.](#)

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 19, 2010

EXECUTIVE ORDER

- - - - -

STEWARDSHIP OF THE OCEAN, OUR COASTS, AND THE GREAT LAKES

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The ocean, our coasts, and the Great Lakes provide jobs, food, energy resources, ecological services, recreation, and tourism opportunities, and play critical roles in our Nation's transportation, economy, and trade, as well as the global mobility of our Armed Forces and the maintenance of international peace and security. The Deepwater Horizon oil spill in the Gulf of Mexico and resulting environmental crisis is a stark reminder of how vulnerable our marine environments are, and how much communities and the Nation rely on healthy and resilient ocean and coastal ecosystems. America's stewardship of the ocean, our coasts, and the Great Lakes is intrinsically linked to environmental sustainability, human health and well-being, national prosperity, adaptation to climate and other environmental changes, social justice, international diplomacy, and national and homeland security.

This order adopts the recommendations of the Interagency Ocean Policy Task Force, except where otherwise provided in this order, and directs executive agencies to implement those recommendations under the guidance of a National Ocean Council. Based on those recommendations, this order establishes a national policy to ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests.

This order also provides for the development of coastal and marine spatial plans that build upon and improve existing Federal, State, tribal, local, and regional decisionmaking and planning processes. These regional plans will enable a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to planning and managing sustainable multiple uses across sectors and improve the conservation of the ocean, our coasts, and the Great Lakes.

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Sec. 2. Policy. (a) To achieve an America whose stewardship ensures that the ocean, our coasts, and the Great Lakes are healthy and resilient, safe and productive, and understood and treasured so as to promote the well-being, prosperity, and security of present and future generations, it is the policy of the United States to:

(i) protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources;

(ii) improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies;

(iii) bolster the conservation and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;

(iv) use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes, and enhance humanity's capacity to understand, respond, and adapt to a changing global environment;

(v) support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes;

(vi) respect and preserve our Nation's maritime heritage, including our social, cultural, recreational, and historical values;

(vii) exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security;

(viii) increase scientific understanding of ocean, coastal, and Great Lakes ecosystems as part of the global interconnected systems of air, land, ice, and water, including their relationships to humans and their activities;

(ix) improve our understanding and awareness of changing environmental conditions, trends, and their causes, and of human activities taking place in ocean, coastal, and Great Lakes waters; and

(x) foster a public understanding of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.

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(b) The United States shall promote this policy by:

(i) ensuring a comprehensive and collaborative framework for the stewardship of the ocean, our coasts, and the Great Lakes that facilitates cohesive actions across the Federal Government, as well as participation of State, tribal, and local authorities, regional governance structures, nongovernmental organizations, the public, and the private sector;

(ii) cooperating and exercising leadership at the international level;

(iii) pursuing the United States' accession to the Law of the Sea Convention; and

(iv) supporting ocean stewardship in a fiscally responsible manner.

Sec. 3. Definitions. As used in this order:

(a) "Final Recommendations" means the *Final Recommendations of the Interagency Ocean Policy Task Force* that shall be made publicly available and for which a notice of public availability shall be published in the *Federal Register*.

(b) The term "coastal and marine spatial planning" means a comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas. Coastal and marine spatial planning identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives. In practical terms, coastal and marine spatial planning provides a public policy process for society to better determine how the ocean, our coasts, and Great Lakes are sustainably used and protected -- now and for future generations.

(c) The term "coastal and marine spatial plans" means the plans that are certified by the National Ocean Council as developed in accordance with the definition, goals, principles, and process described in the Final Recommendations.

Sec. 4. Establishment of National Ocean Council. (a) There is hereby established the National Ocean Council (Council).

(b) The Council shall consist of the following:

(i) the Chair of the Council on Environmental Quality and the Director of the Office of Science and Technology Policy, who shall be the Co-Chairs of the Council;

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(ii) the Secretaries of State, Defense, the Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy, and Homeland Security, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Under Secretary of Commerce for Oceans and Atmosphere (Administrator of the National Oceanic and Atmospheric Administration), the Administrator of the National Aeronautics and Space Administration, the Director of National Intelligence, the Director of the National Science Foundation, and the Chairman of the Joint Chiefs of Staff;

(iii) the National Security Advisor and the Assistants to the President for Homeland Security and Counterterrorism, Domestic Policy, Energy and Climate Change, and Economic Policy;

(iv) an employee of the Federal Government designated by the Vice President; and

(v) such other officers or employees of the Federal Government as the Co-Chairs of the Council may from time to time designate.

(c) The Co-Chairs shall invite the participation of the Chairman of the Federal Energy Regulatory Commission, to the extent consistent with the Commission's statutory authorities and legal obligations, and may invite the participation of such other independent agencies as the Council deems appropriate.

(d) The Co-Chairs of the Council, in consultation with the National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism, shall regularly convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to address particular subject matters, establish and direct committees of the Council that shall consist exclusively of members of the Council.

(e) A member of the Council may designate, to perform committee functions of the member, any person who is within such member's department, agency, or office and who is (i) an officer of the United States appointed by the President, (ii) a member of the Senior Executive Service or the Senior Intelligence Service, (iii) a general officer or flag officer, or (iv) an employee of the Vice President.

(f) Consistent with applicable law and subject to the availability of appropriations, the Office of Science and Technology Policy and the Council on Environmental Quality shall provide the Council with funding, including through the National Science and Technology Council or the Office of Environmental Quality. The Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative support necessary to implement this order.

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(g) The day-to-day operations of the Council shall be administered by a Director and a Deputy Director, who shall supervise a full-time staff to assist the Co-Chairs in their implementation of this order.

Sec. 5. Functions of the Council. (a) The Council shall have the structure and function and operate as defined in the Final Recommendations. The Council is authorized, after the Council's first year of operation, to make modifications to its structure, function, and operations to improve its effectiveness and efficiency in furthering the policy set forth in section 2 of this order.

(b) To implement the policy set forth in section 2 of this order, the Council shall provide appropriate direction to ensure that executive departments', agencies', or offices' decisions and actions affecting the ocean, our coasts, and the Great Lakes will be guided by the stewardship principles and national priority objectives set forth in the Final Recommendations, to the extent consistent with applicable law. The Council shall base its decisions on the consensus of its members. With respect to those matters in which consensus cannot be reached, the National Security Advisor shall coordinate with the Co-Chairs and, as appropriate, the Assistants to the President for Energy and Climate Change, and Economic Policy, and the employee of the United States designated by the Vice President, subject to the limitations set forth in section 9 of this order, to present the disputed issue or issues for decision by the President.

Sec. 6. Agency Responsibilities. (a) All executive departments, agencies, and offices that are members of the Council and any other executive department, agency, or office whose actions affect the ocean, our coasts, and the Great Lakes shall, to the fullest extent consistent with applicable law:

(i) take such action as necessary to implement the policy set forth in section 2 of this order and the stewardship principles and national priority objectives as set forth in the Final Recommendations and subsequent guidance from the Council; and

(ii) participate in the process for coastal and marine spatial planning and comply with Council certified coastal and marine spatial plans, as described in the Final Recommendations and subsequent guidance from the Council.

(b) Each executive department, agency, and office that is required to take actions under this order shall prepare and make publicly available an annual report including a concise description of actions taken by the agency in the previous calendar year to implement the order, a description of written comments by persons or organizations regarding the agency's compliance with this order, and the agency's response to such comments.

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(c) Each executive department, agency, and office that is required to take actions under this order shall coordinate and contribute resources, as appropriate, to assist in establishing a common information management system as defined in the Final Recommendations and shall be held accountable for managing its own information assets by keeping them current, easily accessible, and consistent with Federal standards.

(d) To the extent permitted by law, executive departments, agencies, and offices shall provide the Council such information, support, and assistance as the Council, through the Co-Chairs, may request.

Sec. 7. Governance Coordinating Committee. The Council shall establish a Governance Coordinating Committee that shall consist of 18 officials from State, tribal, and local governments in accordance with the Final Recommendations. The Committee may establish subcommittees chaired by representatives of the Governance Coordinating Committee. These subcommittees may include additional representatives from State, tribal, and local governments, as appropriate to provide for greater collaboration and diversity of views.

Sec. 8. Regional Advisory Committees. The lead Federal department, agency, or office for each regional planning body established for the development of regional coastal and marine spatial plans, in consultation with their nonfederal co-lead agencies and membership of their regional planning body, shall establish such advisory committees under the Federal Advisory Committee Act, 5 U.S.C. App., as they deem necessary to provide information and to advise the regional planning body on the development of regional coastal and marine spatial plans to promote the policy established in section 2 of this order.

Sec. 9. General Provisions. (a) Nothing in this order, the establishment of the Council, and the Final Recommendations shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department or agency or the head thereof; or

(ii) functions assigned by the President to the National Security Council or Homeland Security Council (including subordinate bodies) relating to matters affecting foreign affairs, national security, homeland security, or intelligence.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) In carrying out the provisions of this order and implementing the Final Recommendations, all actions of the Council and the executive departments, agencies, and offices that constitute it shall be consistent with applicable international law, including customary international law, such as that reflected in the Law of the Sea Convention.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 10. Revocation. Executive Order 13366 of December 17, 2004, is hereby revoked.

BARACK OBAMA

THE WHITE HOUSE,
July 19, 2010.

#

March 5, 2012

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:

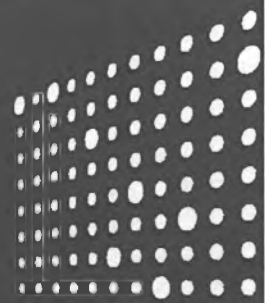
The Alaska State Chamber of Commerce (Alaska Chamber) is pleased to submit comments on the National Ocean Policy Draft Implementation Plan (Plan). The Alaska Chamber is a diverse organization representing nearly 500 business members from across the state. Alaska Chamber members employ tens of thousands of private sector workers.

Alaska businesses are increasingly challenged by a dwindling supply of oil in the pipeline, rising energy and logistics costs, burdensome state and federal regulations, infrastructure deficiencies, and domestic and global competition.

The people of Alaska cannot afford added policies that further restrict Alaskans ability to access and develop our state's natural resources. The Plan provides for actions that seek to protect millions of acres of land as "high conservation priorities." The draft Plan could result in federal entities excluding human activities from large areas of Alaska waters and lands through the implementation of "coastal and marine spatial planning" and new designations of marine protected areas. This is simply another federal land seizure of millions of acres of onshore and offshore areas by creating regulations that apply to both land and water based activities.

Alaska, with more coastline than all other states in our nation combined, is a maritime state. The Alaska Chamber understands that Alaska's broad diversities, including the Arctic and vast coastlines, and our diverse uses of water and natural resources, will require many critical aspects to be assessed. The National Ocean Council said it will include Regional Fishery Management Councils (RFMC), such as the North Pacific Fishery Management Council, in the proposed Regional Planning Bodies. However, seats are limited to federal, state, tribal, or local government RFMC voting members and exclude private sector members.

The idea that the policy is intended to be flexible and guided by regions is contradicted by the fact that state and local officials, stakeholders, and the public are forced to respond to deadlines, schedules, and directives from federal officials in Washington, D.C. The continued refusal to open up membership of regional planning bodies to individuals outside of government who represent the sectors and communities that will be impacted reflects the top-down characteristics of the policy.



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The Alaska Chamber urges representation from economic stakeholders, not limited to, but including oil and gas leaseholders, coastal communities and boroughs, fishing and fish processing, and transportation users.

All Alaskans rely on marine transportation to deliver the essential items for living in this state, everything from groceries to construction materials to fuel for transportation and heating. The Plan has the potential to deprive our state of the ability to engage in essential transportation necessary to the livelihoods of Alaskans. The Plan's call to "minimize and/or mitigate the risk associated with vessel use and carriage of heavy-grade fuel oil in the Arctic" must not be used as a means to deprive the State of the essential transportation and trade lanes and to limit commerce.

While the Plan says it will create no new regulations, references to regulatory actions under the policy are mentioned throughout, including statements that "successful implementation will require concerted activities, including the use of regulatory ...measures."

The 118 page document proposes 53 federal actions and nearly 300 milestones, including 158 to be completed by the end of next year. Significant federal dollars will be required to implement this policy, with the draft Plan noting that federal agencies are asked to consider how existing resources can be repurposed and that federal agencies have been instructed to prioritize the National Ocean policy into their FY2012 budgets.

Alaskans cannot afford another new and expensive initiative that will drive resources away from programs that support the ability of Alaska employers to operate and support our citizens and communities.

Adding another layer of bureaucracy will only add costs, time, and uncertainty to investments and businesses in Alaska. The people of Alaska already live in a state filled with federal regulatory oversight, and our economy cannot afford additional policies that further restrict our ability to access and develop the State's natural resources.

The Alaska Chamber respectfully urges the National Ocean Council to discard this Draft Implementation Plan and bring forth a new Plan that will promote responsible and economically feasible resource development in Alaska.

Sincerely,



Rachael A. Petro
President/CEO





RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

Founded 1975
Executive Director

Rick Rogers

2011-2012 Executive Committee

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Senator Lisa Murkowski

Congressman Don Young

Governor Sean Parnell

Rick Rogers

Executive Director

Resource Development Council for Alaska

**Testimony on Alaska's Sovereignty in Peril:
The National Ocean Policy's Goal to Federalize Alaska
April 3, 2012**

Good morning Members of the Subcommittee. My name is Rick Rogers, Executive Director of the Resource Development Council for Alaska (RDC). RDC is a statewide membership-funded non-profit trade association representing the combined interest of the Forestry, Fishing, Tourism, Mining, and Oil and Gas industries in Alaska. Our membership is truly a broad cross section of Alaska businesses, including the aforementioned industries as well as local communities, all twelve Alaska Native Regional Corporations, organized labor, utilities and support businesses that recognize the important role resource development plays in our economy. I have submitted a copy of our most recent annual report for the record.

The National Ocean Policy will have a disproportionate impact on Alaska's resource dependent industries and our economy as a whole. It is appropriate the Subcommittee chose to hold a field hearing here in Alaska. At approximately 34,000 miles, Alaska has more coastline than that of all other states in our nation combined.

The National Ocean Policy adds uncertainty and anxiety to an already cumbersome and complex regime of state and federal permitting and oversight. Increased bureaucracy could hamper the already slow processes with no added benefit to the environment. In our view the Coastal Marine Spatial Planning/Regional Planning Body structure is an unauthorized new regulatory program that suggests a federal level "top down" approach to management resources with minimal local input.

The ecosystem-based management goal requires a vast amount of scientific data to be fully implemented. The lack of sufficient information is often the basis for third party legal claims by Environmental Non-government Organizations (eNGOs) to block development projects and their corresponding jobs. Natural resource managers need to use best available data to move forward and make the best decisions with information available. Ecosystem Based Management runs the risk of "paralysis-by-analysis."

The National Ocean Policy's stated goal of reaching to onshore activities adds to the uncertainty and anxiety for upland land use and resource development. Section 404 of Clean Water Act and ubiquitous nature of wetlands means upland activities are

already highly regulated in Alaska. Ever increasing and stringent clean air standards are already burdensome offshore and inland. A plethora of petitions to list additional species under the Endangered Species Act on and offshore add burden to landowners and resource industries. The hard rock mines in Alaska require over 60 State and Federal authorizations to proceed with development. The National Ocean Policy adds yet another hurdle to overcome, and may serve to provide an additional platform for third party eNGOs to litigate against projects that appear to lack the informational requirements or expectations for the National Ocean Policy.

RDC is concerned that Coastal and Marine Spatial Planning may lead to far reaching use restrictions on marine waters that will over-ride the social and economic needs of Alaskans. Broad swaths of submerged lands could be restricted in exclusionary zones for a nebulous national agenda of "ecosystem-based-management". Even if restricted zones were more modest in size and scope, use restrictions in strategic marine corridors necessary for resource transport and shipping could be devastating to our marine-dependent industries.

One of the key justifications for Coastal and Marine Spatial Planning is to resolve conflict among diverse resource interests, yet RDC members representing Mining, Tourism, Forestry, Oil and Gas, and Fisheries interests are firmly aligned. These industries are all concerned that NOP will create far more difficulties than it will resolve.

RDC is concerned that funds used to implement National Ocean Policy will come at the expense of congressionally-mandated activities. RDC's member companies require mandatory permits and often federal leases to operate, and declining federal resources should not be expended on National Ocean Policy at the expense of these congressionally mandated obligations. RDC members also require the best scientific data to address the impacts of their activities and funding diverted to National Ocean Policy could come at the expense of needed scientific efforts.

We urge Congress to maintain an integral role in these broad efforts to change the way ocean and coastal resources are managed, and the power of appropriation should be considered in restraining the premature implementation of the National Ocean Policy. Congressional oversight is needed to ensure implementation of the National Ocean Policy does not constrain the ability of federal agencies to fulfill their congressional mandates to adjudicate needed federal permits and leases.

RDC is concerned with the process being used to roll out this far-reaching policy. RDC has repeatedly requested meaningful stakeholder engagement without the suspected bias toward conservation and blocking responsible resource access and development. These concerns are underscored by the fact that Regional Planning Bodies charged with developing zoning plans will be comprised solely of government officials.

Detailed economic analysis of impacts of the policy should be completed and available for full public and Congressional review before policy implementation. The Handbook for Coastal and Marine Spatial Planning must be subject to public input, review, and comment before implementation.

We have urged the National Ocean Council to utilize pilot projects in geographic areas where NOP and CMSP has broad acceptance, before large swaths of ocean and marine areas, such as Alaska, have this policy imposed upon them.

In this time of tenuous economic recovery and high unemployment, Congress and the administration should be untangling the complex web of statutes and regulations that are strangling our productive resource sectors of our economy. The National Ocean Policy does the opposite by adding complexity and jurisdictional ambiguity. Congress, the states, and the private sector should have a more meaningful role in

development and implementation of such far-reaching policies for state and federal waters and upland resources.

Thank you for the opportunity to comment on this far-reaching initiative. We thank the members of this Subcommittee for watching out for the best interests of Alaskans and all Americans.

Additional Background to Augment RDC verbal testimony.

Natural resources are vital to the economic survival of Alaska and its residents. In part, Alaska was granted statehood due to our vast natural resources; the federal government expected Alaska to utilize its bounty of natural resources to build and sustain its economy. Alaska's constitution includes a unique provision, Title 8, the preamble of which states "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." To fulfill the vision of Alaska's Constitution, we must have access to our resources, and avoid uncertainty and unnecessary regulations that offer no added benefit to the environment.

The National Ocean Policy will have a disproportionate impact on Alaska's resource-dependent industries and our economy as a whole. It is appropriate the Subcommittee chose to hold a field hearing here in Alaska. At approximately 34,000 miles, Alaska has more coastline than that of all other states in our nation combined.

RDC members know that Alaska's economy is based on responsible resource development conducted in accordance with existing local, state, and federal environmental protections and laws. Alaskans must continue to have access to our valuable and traditional resources. The responsible development of these resources creates jobs in communities throughout Alaska, many of which have few other jobs available. Many of these communities will disappear if overly burdensome regulations are added to existing and new projects.

Alaska fisheries provide over half of the commercial seafood harvested in U.S., and these sustainably managed fisheries are a model for the world. Oil and Gas reserves in the Beaufort/Chukchi Seas alone could result in 26 billion barrels of oil and 32 trillion cubic feet of natural gas over next 50 years, yielding 54,700 new jobs, \$145 billion in payroll, and \$193 billion in government revenue. All Alaska industries, forestry, tourism, oil and gas, fisheries and mining, are highly dependent on ocean access and marine transportation.

For the record, RDC submits four publication summaries highlighting the economic significance of oil and gas, mineral, tourism and fisheries resources. Unfortunately we do not have a similar report of our timber industry, except to report that it is a mere shadow of its former self, having precipitously declined due to what RDC views as failed federal public land policy constraining timber supply. The decline of the timber industry in Alaska highlights our need to be ever vigilant regarding the unintended consequences of policy initiatives such as the National Ocean Policy and Coastal and Marine Spatial Planning.

The policy raises significant concerns from the fisheries community regarding the future role of the stakeholder driven Regional Fishery Management Councils. The North Pacific Fishery Management Council is a model for sustainable and adaptive management of this renewable resource. The old adage, "if it isn't broke, don't fix it" should apply and it needs to be abundantly clear that the decision authority of the stakeholder driven Regional Fisheries Management Councils is not compromised by a new National Ocean

Policy structure. The Regional Fishery Management Councils are working well and should not be coopted by a new regional planning and management structure.

RDC is concerned that Coastal and Marine Spatial Planning may impose disproportionate restrictions on the ability of Alaskans to have a balanced and robust resource based economy. Consider that 58.6% of uplands in Alaska are federally managed lands, 65% of which are in restrictive conservation system units such as parks, Wilderness Areas, refuges and wild and scenic rivers. For the record, we have submitted an RDC publication entitled "Who Owns Alaska" which highlights the dominance of federal management of uplands in Alaska with priorities that are often in direct conflict with the economic interest of Alaskans.

RDC shares the concerns expressed by Alaska Governor Sean Parnell and the six other Governors in the Outer Continental Shelf Governors Coalition in their letter to President Obama dated March 13, 2012. In that correspondence, the Governors raise concerns of unintended consequences for all types of energy development. RDC notes that the same unintended consequences are likely to also affect fisheries, forestry, mineral development and tourism activities.

RDC has weighed in on this important policy initiative several times. We have asked that the National Ocean Council improve coordination of existing protection measures, such as the Clean Water Act, the National Environmental Policy Act, and the Magnuson-Stevens Fishery Conservation Act instead of adding another layer of bureaucracy. In reference to the other Strategic Action Plan objectives not addressed in RDC verbal testimony, included are copies of two detailed letters RDC wrote to the NOC in 2011, and our most recent written input on March 28, just last week.

Attachments submitted for the record include:

2011 Annual Report of the Resource Development Council for Alaska. Available online at <http://akrdc.org/membership/annualreport/annualreport2011.pdf>

Economic Report Overview, Potential National-Level Benefits of Oil and Gas Development in the Beaufort and Chukchi Sea, University of Alaska Institute of Economic Research and Northern Economics. Available online at <http://www.northerneconomics.com/pdfs/ShellOCS/National%20Effects%20-%20page%20brochure%20FINAL.pdf> .

The Economic Benefits of Alaska's Mining Industry, Alaska Miners Association, January 2012. <http://www.alaskaminers.org/mcd11sum.pdf>

The Seafood Industry in Alaska's Economy, Prepared by Northern Economics for the Marine Conservation Alliance, available online at http://www.marineconservationalliance.org/wp-content/uploads/2011/02/SIAE_Feb2011a.pdf

Alaska Visitor Statistics Program VI, Summer 2011, Executive Summary, Prepared by The McDowell Group for Alaska Department of Commerce, Community and Economic Development. Available online at <http://www.commerce.state.ak.us/ded/dev/toubus/pub/2011AVSP-ExecSummary-StandAlone.pdf>

Who Owns Alaska, A Special Issue of Resource Review, A periodic publication of the Resource Development Council for Alaska. Available online at <http://akrdc.org/newsletters/2009/whoownsalaska.pdf>

RDC written comments to the National Ocean Council dated April 29, 2011, July 1, 2011 and March 28, 2012.



RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

March 28, 2012

National Ocean Council
722 Jackson Place, NW
Washington, DC 20503

Submitted via <http://www.whitehouse.gov>

Re: Comments on the National Ocean Policy Draft Implementation Plan

Dear National Ocean Council Members:

Thank you for the opportunity to comment on the National Ocean Policy Draft Implementation Plan (Draft Plan).

The Resource Development Council for Alaska, Inc., is an Alaskan business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, tourism, and fisheries industries. RDC's membership includes Alaska Native Corporations, local communities, organized labor, and industry support firms. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources.

RDC has submitted comments regarding the plan on several occasions, and again urges the National Ocean Council (NOC) to fully consider the following concerns regarding the Draft Plan:

RDC is concerned with the potential negative impacts National Ocean Policy will have on Alaskan communities and projects. The Draft Plan includes 53 actions and almost 300 benchmarks, of which more than half are supposed to be completed by the end of 2013.

This plan places additional burden and uncertainty on Alaskans, threatening to further restrict our ability to access and responsibly develop our natural resources. Alaska has the highest interest in protecting and ensuring the protection of our coastal and marine resources. These resources are vital to Alaska's economy. Alaska, and the U.S., can benefit from our largely untapped resources such as the estimated 27 billion barrels of oil and the 132 trillion cubic feet of natural gas in the Outer Continental Shelf. But development of these resources must not be further restricted or further hindered by unnecessary bureaucratic delay.

In part, Alaska was granted statehood due to our vast natural resources, the federal government expected Alaska to utilize its natural resources to build and sustain its economy. Note that Alaska's constitution includes, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public

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2011-2012 Executive Committee
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John Sturgeon
Dan Sullivan
Peter Taylor
Michael Terminal
Jan Trigg
Ex-Officio Members
Senator Mark Begich
Senator Lisa Murkowski
Congressman Don Young
Governor Sean Parnell

interest." But, we must have access to our resources, and avoid uncertainty and unnecessary regulations that offer no added benefit to the environment.

In regard to public policy, RDC questions how the policy can proceed without Congressional authorization. Implementation of the Plan will likely cost a considerable amount of federal dollars and adds another level of bureaucracy to our already highly regulated and protected oceans and surrounding areas. The Draft Plan's national objectives should focus on reducing unnecessary measures and improving existing programs and policy.

In response to the recent announcement to include a seat on the Regional Planning Bodies (RPB) for a member of the Regional Fishery Management Councils (RFMC), RDC is disappointed in the limiting factor that the individual must be a government representative. This continued refusal to include stakeholders outside of government reflects the lack of consideration for all other stakeholders. Additionally, RDC remains concerned that the authorities of the RFMCs to manage fisheries will be undermined by the actions of the Regional Planning Bodies. Having a single seat on the RPB does not mitigate this concern.

Coastal and Marine Spatial Planning

RDC continues to be concerned with the NOC's goal to develop Coastal and Marine Spatial Planning (CMSP). RDC reiterates our previous recommendation to use areas interested in and supportive of CMSP as pilot projects. CMSP should not be enforced by the federal government in areas which are already well managed and where it is unsolicited.

Further, the Handbook for Regional CMSP should be subject to public input, review, and comment. All stakeholders should have the opportunity to be engaged, and all science, including that of industry, should be used to develop any policy. CMSP should be transparent and should demonstrate exactly what the program is expected to achieve, how such actions will be achieved, and who has authority to make related decisions.

Changing Conditions in the Arctic

The Draft Plan calls for improvement of Arctic development response, coordination of science and data, and new studies. The NOC must ensure the new studies and efforts do not unnecessarily delay or curtail activities, effectively making those activities unviable.

Regulations intended to reduce sea ice loss will likely negatively impact Alaska's economy at a disproportionately higher magnitude.

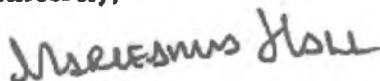
Conclusion

Before further proceeding, the NOC must fully consider the potential economic impacts that the National Ocean Policy may have on industries across the nation, including fishing, oil and gas, energy, mining, transportation, tourism and more.

In addition to the comments above, RDC respectfully endorses the more detailed comments developed by the National Ocean Policy Coalition (dated February 27, 2012).

Thank you for the opportunity to comment.

Sincerely,



Marleanna Hall
Projects Coordinator

Alaska Oil and Gas Association



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Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114
Email: williams@aoga.org
Kate Williams, Regulatory and Legal Affairs Manager

March 28, 2012

National Ocean Council
722 Jackson Place, NW
Washington, DC 20503

Re: Comments on the Draft National Ocean Policy Implementation Plan

Dear Members of the National Ocean Council:

The Alaska Oil and Gas Association (AOGA) appreciates the opportunity to provide comments on the Draft National Ocean Policy (NOP) Implementation Plan (Draft Plan), released on January 12, 2012. AOGA is a business trade association whose member companies represent the majority of oil and gas exploration, development, production, transportation, refining, and marketing activities in the state.

The Draft Plan covers the nine NOP national priority objectives, two of which are of particular interest to AOGA, Changing Conditions in the Arctic and Coastal and Marine Spatial Planning (CMSP), and replaces the previous effort to issue Strategic Action Plans for each objective. AOGA remains engaged on this issue because of the policy's potential to significantly impact resource and economic development in Alaska. We continue to be concerned about the lack of detail included in the Draft Plan, and thus the ability to provide substantive, meaningful input on implementation of the NOP.

For example, under the priority objective to "Inform Decisions and Improve Understanding," science activities will be informed by recommendations from *Science for an Ocean Nation: An Update of the Ocean Research Priorities Plan*. As of the public comment deadline, however, the report has yet to be released to the public. Furthermore, important details regarding implementation of CMSP were not included in the Draft Plan, and instead will be addressed in the *Handbook for Regional Coastal and Marine Spatial Planning*. To date, the Handbook has not been released, and there is no assurance that public comment will be collected.

AOGA agrees that more streamlined permitting and regulatory processes are needed, but that this should be accomplished through existing statutory and regulatory regimes. According to statements by the National Ocean Council (Council) and other senior level officials in the Administration, the NOP will not change existing Federal authorities and responsibilities; however, the Draft Plan includes contradictory language. For example, language is included that the NOP and Draft Plan

“do not change existing Federal authorities and responsibilities,” yet one of the milestones for the Legal Working Group for 2013 is to complete review of Ecosystem-based Management-relevant statutes and regulations to identify “potential legislative changes that would fill gaps and support full implementation of EBM.” The Council needs to clarify in the final plan that the NOP will only be implemented through existing statutory and regulatory regimes.

Furthermore, under the priority objective to better coordinate and support management of our oceans, coasts and Great Lakes, the Council should address the importance of and need for streamlining permitting processes across all agencies, rather than just focusing on a pilot project for aquaculture permitting.

Under the priority objective addressing changing conditions in the Arctic, the Draft Plan does not acknowledge, but should, existing government and industry Arctic prevention and response capabilities. For example, the oil spill response plan for Shell’s 2012 oil and gas exploration programs in the Beaufort and Chukchi Seas that was recently approved by the Bureau of Safety and Environmental Enforcement; significant oil spill prevention and response capabilities have been developed and will be available and onsite this summer as part of Shell’s exploration programs. In fact, these programs cannot and will not proceed in the absence of adequate response capabilities.

Of primary concern to AOGA is CMSP, particularly the potential for the program to result in exclusionary zoning of Alaska’s oceans and coastline and additional layers of bureaucracy for project planning and development purposes, and thus, increased project delay, costs and uncertainty. Language in the Draft Plan also raises concern that the geographic scope of the NOP will be expanded beyond the coast to include inland areas.

Importantly, the Draft Plan includes very little information on the Regional Planning Bodies (Planning Bodies), only that membership will be restricted to Federal, state and tribal authorities relevant to CMSP. Stakeholders will have no direct representation on the Planning Bodies, despite the fact that they are charged with creation and implementation of regional CMS plans encompassing all ocean and coastal uses. AOGA believes membership on the Planning Bodies should be expanded to include representatives from these stakeholder groups. However, at a minimum, the Draft Plan should specify the processes and procedures for stakeholder and public engagement with the Planning Bodies on CMSP issues. Apparently, this information will be included in the Handbook, but again, it is not clear whether public input will be collected or the policies included in the Handbook discretionary or mandatory. Additionally, it will take time for the Planning Bodies to organize and establish CMS plans; therefore, the Draft Plan should clarify that lack of a Planning Body in a region or CMS plan does not in any way impact project approvals under existing statutory and regulatory regimes.

Finally, with regard to CMSP, the Council is charged with “certifying” the regional CMS plans. However, no details are provided on the process or criteria that will be used to certify the plans and there has been no indication that this information will be provided in the CMSP Handbook or otherwise made available for public review and input.

In general, AOGA is concerned the NOP, particularly CMSP, will be used as a tool for litigation given the lack of detail described above and prevalent throughout the Draft Plan. This is a real concern and one the NOC should acknowledge before pursuing implementation much further or so broadly across regions.

AOGA is also concerned about how plan implementation will be funded, especially given scarce Federal resources across all agencies. Implementation of the NOP should not be given priority over existing regulatory and permitting programs necessary for approval and oversight of resource and economic development projects in Alaska and elsewhere or funds diverted away from these programs.

Developing Alaska's vast Outer Continental Shelf (OCS) resources is essential to any effort to reduce the nation's dependence on foreign sources of oil and should not be unjustifiably impeded by unclear project regulation and development procedures. Alaska's OCS is estimated to hold approximately 27 billion barrels of oil and 132 trillion cubic feet of natural gas, the development of which would translate into an annual average of 54,000 new jobs over 50 years, \$145 billion in payroll throughout the U.S. and \$193 billion in revenues to state, local and Federal governments. These resources are also vital to stemming the decline of throughput through the Trans-Alaska Pipeline, identified as critical national infrastructure, which is currently operating at one-third capacity and will face continued operational challenges without additional supply. Implementation of the NOP should not hinder efforts to develop the resources contained in Alaska's OCS.

AOGA does not agree that the NOP should be implemented without detailed information on all aspects of implementation, including the science that will be used and collected to inform implementation and how the Regional Planning Bodies will operate and the policies and procedures for development of CMS plans and public engagement. At a minimum, AOGA believes that implementation should not occur until there has been opportunity to provide input on these important issues.

In addition to the comments outlined above, AOGA also endorses the comments of the National Ocean Policy Coalition. If you have any questions on our comments or concerns with implementation of the NOP, please do not hesitate to contact me.
Sincerely,

Sincerely,



KATE WILLIAMS
Regulatory and Legal Affairs Manager

**COMMENTS ON THE DRAFT
NATIONAL OCEAN POLICY IMPLEMENTATION PLAN**

Released January 12, 2012

Comments Submitted By:

**Alaska Bering Sea Crabbers
Alaska Crab Coalition
Alaska Groundfish Data Bank
At-sea Processors Association
Crab Group of Independent Harvesters
Deep Sea Fishermen's Union
Fishing Vessel Owners Association
Freezer Longline Coalition
Groundfish Forum
Pacific Seafood Processors Association
Petersburg Vessel Owners Association
Southeast Alaska Fishermen's Alliance
United Catcher Boats
United Fishermen of Alaska
West Coast Seafood Processors Association**

Comments Submitted February 27, 2012

INTRODUCTION

These comments are being submitted in response to the request for public input on the Draft National Ocean Policy Implementation Plan which was released on January 12, 2012. This document was released as part of the Administration's continuing effort to impose a new national regulatory process for zoning ocean activities and regulating the actions of ocean user groups.

The commercial fishing and processing organizations submitting these comments represent numerous companies which participate in the federally managed fisheries in the Exclusive Economic Zone off Alaska, Washington, Oregon and California, along with businesses that rely on these companies. These fisheries comprise over 55% of the annual commercial seafood harvest of the United States. The yearly direct value is over two billion dollars, with hundreds of millions of dollars of secondary economic effects resulting from our expenditures in other sectors such as shipyards, marine equipment, seafood packaging, insurance and finance, and transportation providers.

These associations, and the dozens of companies they represent, have been involved in this issue for well over a decade since the ocean policy commissions began preparing their reports. We have offered our views each step of the way since then. When the recommendations of the oceans commissions were put into legislative form by various environmental groups (H.R. 4900/108th Congress, H.R. 2939/109th Congress, H.R. 21 in the 110th and 111th Congresses) we provided comments and testimony along with many other ocean user groups. After Congress repeatedly refused to enact this legislation, the approach of the environmental community changed and H.R. 21 reappeared in the form of the Administration's National Ocean Policy (NOP). The NOP was given life through the President's proclamation of Executive Order 13547 on July 19, 2010. We now are being offered another opportunity to provide comments on the NOP Implementation Plan, the Administration's effort to impose a new regulatory program for the oceans and Great Lakes.

Although we are again submitting comments, we are disappointed that despite the importance of our industry to the nation's economy, and despite our familiarity with ocean ecosystems, our comments at each step in this process have been ignored. We continue to present what we think is an obvious case: the NOP's Coastal Marine Spatial Planning/Regional Planning Body structure is an unauthorized new regulatory program aimed at imposing a new ocean governance structure which conflicts with successful Congressionally authorized programs such as regional fishery management. Nevertheless, we remain committed to participating in the process and we hope that the Administration will eventually make this as transparent and collaborative a process as has been claimed all along.

THE IMPLEMENTATION PLAN

The Draft Implementation plan proclaims four overarching themes. We will briefly address each.

Adopt Ecosystem-Based Management

This has been a goal of resource managers for many years. It is a goal that we support. But, as any oceanographer will tell you, it is also a goal that cannot be fully achieved without vast amounts of additional scientific data that will take decades to collect and interpret, even assuming that funding is available. In the meantime, resource managers must use the best available data to manage our ocean resources. Progress has definitely been made in moving from single species management to using ecosystem principles. In fact, the fishery management process used by the North Pacific Fishery Management Council incorporates consideration of ecosystem effects for almost all decisions they make and the Pacific Fishery Management Council is well along on adopting a similar process. Nevertheless, we are a long way from being able to claim that we understand any ecosystem well enough to be able to simultaneously manage all the species which interact within a given region. This is especially true given that current law requires specific actions – rebuilding overfished stocks, protecting endangered or threatened species, protecting marine mammals – which elevate certain species to a higher plane than others within an ecosystem.

Obtain, Advance, Use, and Share the Best Science and Data

As we just pointed out, everyone supports collecting and using the best possible science. But doing so requires large amounts of money and time. We hope that the federal budget will soon allow a greater allocation of funds toward this goal. But, in the meantime, scientists and resource managers will have to do the best job they can with the data that is available. To the extent that funding is not available to provide precise, accurate and current data which allows the best management of ocean resources, we need to be careful not to set goals which are technically unobtainable.

Promote Efficiency and Collaboration

Once again, we are all in favor of greater cooperation and coordination among the agencies which regulate ocean activities. Interestingly, when discussing this theme the document states, “This draft Implementation Plan creates no new regulations, however, within existing authorities, legal and regulatory barriers to full implementation of the National Ocean Policy will be identified and permitting processes will be streamlined.” This statement is as close as we have seen to an admission that there is no specific

statutory authority for this program. It also suggests that the Administration intends to impose new regulations where necessary in order to eliminate the "regulatory barriers" they identify, and to seek new legislation that would provide the statutory authority.

Strengthen Regional Efforts

The final theme is to strengthen regional, state and local ecosystem conservation efforts. We doubt anyone would be opposed to this goal, and as long as the resources are available it is something we would support. At the same time, we suggest that since federal funds are scarce, the Administration should focus on supporting existing organizations with a record of success, such as the regional fishery management councils and the federal scientists on whom they rely.

Fiscal Responsibility

There is a discussion of Fiscal Responsibility on page 5 of the document. It says that the National Ocean Council will issue an annual memorandum on how federal resources should be allocated. We think it would be more useful if a detailed NOP implementation budget were developed and presented to Congress. Given federal budget constraints, it is almost certain that Congress will continue to refuse funding for the NOP initiative unless such a budget plan is offered. Providing a budget proposal that is subject to public scrutiny and debate will also increase transparency of the process. The document itself even admits that carrying out the Implementation Plan is, "contingent on the availability of funds". This is one of the reasons we have argued since the beginning of this process that if NOP is to be pursued it should involve small steps and pilot projects. We fear that if various agencies attempt to implement this massive program within their current budgets, large amounts of money will be diverted from ongoing, Congressionally mandated programs. An example of the threat posed by such a diversion of funds is the possibility that certain fishery stock assessment surveys done in the North Pacific could switch from being done annually to being done bi-annually. Lowering the quality of the data available to fishery managers would threaten economic activity worth over one billion dollars annually. As an affected industry, we and our employees are not ready to see our livelihoods threatened should implementation of the National Ocean Policy result in funds being siphoned off from existing NOAA fishery programs.

Treatment of Commercial Fisheries

As we said earlier, the commercial fishing industry has now participated in this process for over a decade, through the oceans commissions, H.R. 21, its predecessor legislation, and now NOP. Our goal all along has been to preserve and strengthen the system of regional, stakeholder-driven fishery management that has worked so well in our part of the country. Even after all our attempts to participate, the Draft Implementation Plan ignores the points we have made and proposes the creation of a new ocean resource

management system that appears to have few limits. Page 9 of the report states that “fisheries can be better managed” and that NOP “will improve future management decisions.” Our question is: Decisions made by whom? We suggest that either the Regional Fishery Management Council process be exempted from this entire program or that the NOP/CMSP/RPB process be revised so that it genuinely becomes the voluntary planning process we have been told it was intended to be.

The Nine Priority Objectives

The bulk of the Draft Implementation Plan describes specific actions the Administration intends to take to achieve the nine priority objectives. There are numerous milestones and deadlines for each. We will not take the time to go through the scores of actions and milestones laid out in the plan. However, we will highlight some which we believe are overly ambitious/costly or which seem to lead to the inescapable conclusion that NOP is more of a regulatory program as opposed to the transparent, collegial planning process we keep hearing about.

Overly Ambitious Action Proposals (target date)

Page 19 --- Explore “the 95-percent of the ocean that remains poorly known.” (2014)

Page 23 --- Enhance ocean education so that “a highly competent workforce is available for U.S. employers.” (2014-2017)

Page 25 --- Assess the environmental knowledge of middle school students. (2017)

Page 27 --- Develop and deploy within ten years a fleet of unmanned air, sea surface and underwater research systems. (2022)

Page 32 --- Map the entire EEZ and continental shelf. (2017)

Page 50 --- Address “planned and unplanned activities impacting coral reef ecosystems.” (2012)

Page 56 --- “Integrate relevant socioeconomic monitoring information with ecosystem monitoring information to understand changes in coupled human-natural systems in selected areas.” (2013) [Perhaps this would be a more appropriate task for academia?]

Page 57-58 --- Conduct research to assess direct and indirect impacts of climate change and ocean acidification on coastal communities, including estimations of mean sea-level rise, impacts on jobs, and effects on marine species. (2013-2015)

Page 65 --- Provide funding to private landowners to help them reduce nutrient and sediment runoff. (2012)

Page 67 --- Reduce air pollutants (sulfur, nitrogen, mercury) to the oceans and Great Lakes. (2012) Control storm-water runoff from the federal highway system. (2015)

Page 74 --- "Protect 2 million acres of lands identified as high conservation priorities" (including 700,000 acres of forest) (2015)

Evidence that NOP is a Regulatory Program

Page 4 --- "CMSP is an important tool for implementing EBM." It will lead to a more "certain decision-making process for managing activities in the ocean"

Page 6 --- "The NOC expects to complete and approve the final Implementation Plan in the Spring of 2012. Federal agencies will then implement its initial set of actions."

Page 11 --- "Existing regulatory requirements and programs that were developed based on a fundamentally different model may need to be modified"

Page 12 --- "an EBM approach supports adaptive, iterative management."

Page 12 --- "various responses or actions may become necessary given the limits of existing regulatory or statutory authority."

Page 13 --- Find "opportunities to incorporate EBM principles into Federal laws, regulations, and policies"

Page 15 --- "Establish a process for adaptive resource management"

Page 39 --- "Review the interpretation and, as necessary, propose to strengthen content and/or application of Federal legislation.....to incorporate and better support climate change adaptation efforts."

Page 51- 52 --- The Plan proposes to identify "important marine areas for management or protection". This includes use of "national marine sanctuaries, national estuary programs, and national marine monuments." "Priority species" would be protected using "Essential Fish Habitat (EFH) Provisions including Habitat Areas of Particular Concern (HAPC)". This passage provides some of the strongest and clearest language that RPB's, comprised principally of federal officials with no expertise in fisheries management, will develop CMS Plans that usurp the responsibilities of regional fishery management councils. Contrary to the stated intent of the NOP, the Plan creates confusion and ambiguity on EFH and HAPC responsibilities, as well as other areas of fishery management authorities, where none now exists.

Pages 85 – 92 --- This section discusses Coastal and Marine Spatial Planning and the role of the Regional Planning Bodies. It lays out a detailed process for creation of the nine Regional Planning Bodies, implementation of CMSP, creation of CMS Plans for

each region, and the presentation of these plans to the National Ocean Council for certification. This is to be accomplished by 2019.

One of the stated goals of CMSP is empowering coastal communities through a public planning process to make decisions about activities in their regions. This sounds fine until you realize that the membership of the RPB's consists entirely of government officials, dominated by Federal representatives. The document states that "Members will be of an appropriate level of responsibility within their respective governing body to be able to make decisions and commitments throughout the process." This sounds less like planning and more like regulation to us. The system is then removed even further from public/local control by the fact that once the RPB's have developed their CMS Plans, these plans are submitted to the National Ocean Council (a group of 27 Federal officials). This Federal entity then decides if the plan is worthy of "certification". Our presumption is that the next step would be implementation of the plan through new or modified federal regulations. Otherwise, what would be the point of the exercise? We make this statement despite the following discussion that appears on Page 109 of the document (the "Summary of Public Comments" section).

Public Comment: "The Administration should clarify that it will not be the purpose of the Regional Planning Bodies to override the duties of regional fishery management councils."

Response: "The Executive Order expressly provides that Federal agencies will implement NOC-certified CMS Plans consistent with existing statutory authority, including the Magnuson-Stevens Act. Regional planning bodies will be established to develop these plans. They do not have any legal authority or mandate that would override the statutory or regulatory duties of any existing entity, including Regional Fishery Management Councils."

We understand that the Regional Planning Bodies do not have independent legal/regulatory authority. The point is that the CMS Plans they create then go to the NOC for approval and implementation by every agency throughout the federal government. This process is clearly stated in the "Final Recommendations of the Interagency Ocean Policy Task Force" (July 19, 2010...page 65) ---

"Agencies would incorporate components of the CMS Plan into their respective regulations to the extent possible. Adherence with CMSP would be achieved through Federal and State agencies and tribal authorities incorporating CMS Plans into their pre-planning, planning, and permitting processes, to the extent consistent with existing laws and regulations. The CMS Plan signatories would periodically review these processes and where legal constraints are identified, would seek to remedy these constraints, including by working with the NOC to evaluate whether a legislative solution or changes to regulations are necessary or appropriate."

This clearly states that CMS Plans will be implemented government-wide, and that if new regulations are required to achieve the goals of the NOC, they will be pursued. We are not comforted by the boilerplate language about the process being "consistent with existing laws and regulations". If an agency implements the NOP/CMSP plans in a way which, in our view, conflicts with an existing law or regulation, our only option would be to go to court. As the Administration is aware, few entities have the resources to file court challenges on a regular basis. All ocean user groups, not just the seafood industry, would have little chance of preventing the imposition of CMS Plan regulations.

As we said earlier, we would prefer that the Regional Fishery Management Council process be exempted from this program. If not, then we request that the final NOP Implementation Plan categorically state that nothing in the plan will lead to either new or modified Federal regulations. If this is a collegial, voluntary planning process, as we have repeatedly been told, we are happy to participate. If this is a new Federal bureaucracy whose aim is to regulate virtually all ocean activities, then we prefer to opt out until such time as Congress has provided specific authorization for such a program.

Thank you for the opportunity to once again comment on development of the NOP/NOC/CMSP/RPB program.

February 27, 2012

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR
Cora Campbell, Commissioner

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March 2, 2012

National Ocean Council
722 Jackson Place, N.W.
Washington, DC 20503

Re: State of Alaska Comments on the National Ocean Policy Draft Implementation Plan

Dear Council:

The National Ocean Council (NOC) released a draft National Ocean Policy Implementation Plan for public comment on January 12, 2012. The NOC requested comments by March 28, 2012. The following comments represent the views of the State of Alaska on the plan. They are consistent with, and intended to supplement, previous comments the state has provided on the National Ocean Policy, Coastal and Marine Spatial Planning (CMSP), and the nine priority objective Strategic Action Plans. We encourage you to revisit the state's previous comments for more detailed discussion on many of the issues raised here.

Alaska is dedicated to the continued health and productivity of its coastal and marine resources. We rely on these areas for commercial, sport, and subsistence fisheries, recreation, transportation, abundant development opportunities (such as offshore oil and gas and renewable energy), shipping, tourism, and a multitude of other uses. Thus, any major proposed policy change related to the oceans has our full attention.

The Administration's National Ocean Policy and CMSP propose to establish a new federal framework for management of the oceans. Alaska's coastal and marine resources and their uses are already regulated by a diverse array of federal, state, and local authorities. This existing oversight has a proven track record and is fully capable of ensuring the long-term health and viability of Alaska's coastal and marine resources. The drivers that have been cited for CMSP in the lower-48 are largely absent in Alaska. For these reasons, we continue to question the need for applying this new governance framework in the Alaska region.

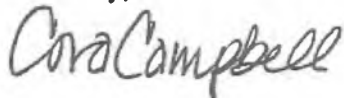
The state notes several improvements in the implementation plan over previous strategic action plan documents. For many of the objectives, problematic language has been removed and greater emphasis has been appropriately placed on identifying data gaps and the means for closing those gaps.

The state, however, identifies four broad issues of concern with the document:

1. *State Authority*: There is no recognition of state authority for state waters or trust resources. The plan must recognize the sovereign jurisdictions of states over their marine and coastal waters and trust resources.
2. *Theme of Protectionism*: A concept of protectionism pervades the plan. The term "protect" implies non-use, and should globally be replaced with "conserve," which suggests multiple-use.
3. *Planning Effort Time Frames*: No time frame is provided for the planning effort. It is unclear whether the focus is on near and short term outlooks (0-10 years), medium outlooks (10-25 years), or longer term outlooks (beyond 25 years). We question focusing on longer term outlooks, as they are highly speculative. Instead, we recommend remaining focused on near and medium term outlooks, which are more predictable.
4. *Diversion of Funds*: The Draft Implementation Plan clearly underscores concerns regarding the diversion of existing resources to accomplish the goals of the Plan. We request that implementation of this plan not come at the expense of ongoing, mission critical activities of National Oceanic and Atmospheric Administration and other agencies as they pertain to research and management of our marine and coastal resources.

Furthermore, we continue to identify a number of more specific concerns with the Coastal and Marine Spatial Planning and Ecosystem Based Management (EBM) objectives of the implementation plan. We also have concerns about how the expertise and authority of the North Pacific Fishery Management Council will be incorporated into the CMSP process. These concerns are more fully discussed in the attached document.

Sincerely,



Cora Campbell
Commissioner

cc: The Honorable Don Young, Congressman, U.S. House of Representatives
The Honorable Mark Begich, Senator, U.S. Senate
The Honorable Lisa Murkowski, Senator, U.S. Senate
Kip Knudson, Director of State and Federal Relations, State of Alaska
The Honorable Dan Sullivan, Commissioner, Department of Natural Resources, State of Alaska
The Honorable Larry Hartig, Commissioner, Department of Environmental Conservation, State of Alaska
The Honorable Michael Geraghty, Attorney General, State of Alaska
Doug Vincent-Lang, Acting Director, Department of Fish and Game, State of Alaska
Mark Robbins, Associate Director, Office of Governor Sean Parnell, State of Alaska

**State of Alaska's Comments on the National Ocean Council's Draft
National Ocean Policy Implementation Plan**

Coastal and Marine Spatial Planning (p. 85)

General Comments:

Among the National Ocean Policy's components, Coastal and Marine Spatial Planning (CMSP) continues to cause us the most significant concerns. We have repeatedly communicated a host of concerns related to CMSP. Despite the submission of detailed written comments and numerous conversations with Administration officials, these concerns persist. They include the following:

- *Ocean Zoning:* Despite claims to the contrary from Administration officials, CMSP appears to represent ocean zoning. We have questioned the practicality of ocean zoning given that fish migrate and the locations of oil and gas reserves have yet to be discovered. The State of Alaska has also questioned the additional restrictions that could result from this exercise.
- *Top-down Approach:* We have expressed concern that the framework for CMSP has a rigid top-down orientation, without flexibility to allow for regional differences. The Final Recommendations of the Interagency Ocean Policy Task Force, which were incorporated within Executive Order 13547, outlined this top-down design. We now understand the federal agencies have little, if any, flexibility to depart from the recommendations in implementing CMSP.
- *Use of Existing Federal Authorities:* We have been told that CMSP plans would not be regulatory. However, we remain concerned that by requiring agencies to integrate their actions into CMS Plans, CMSP will constrain and distort the exercise of existing regulatory authority.
- *Marine Protected Areas:* CMSP could lead to the creation of new marine protected areas, when adequate protections in Alaska are already in place.
- *Federal Preemption:* We are concerned the current administration or future administrations may attempt to use the framework of CMSP to supersede Alaska's authority over waters and upland areas that are under state jurisdiction. Federal officials dispute this claim, but the final recommendations clearly describe a geographic scope for CMSP that includes these areas (see page 49 of the final recommendations).
- *Federally Dominated Decision-making Process:* Despite the participation of states, tribes, and other interests in RPBs, ultimate CMSP decision-making authority lies with the federal government (see page 54 of the final recommendations). We oppose a dispute resolution process that gives the federal government ultimate decision-making authority over issues involving state jurisdiction.

- *Precautionary Principle and Ecosystem Based Management:* The precautionary principle and ecosystem based principles, which are cited in the final recommendations, could be applied through CMSP to unnecessarily restrict or postpone economic activity.
- *Regional Fishery Management Councils:* We are concerned about the diminished role of regional fishery management councils, which are essential to U.S. fishery management. Recently, the Administration agreed to provide one seat on each RPB for a government regional fishery management council representative. We do not believe this, in itself, equates to meaningful consultation with the councils.
- *Lack of Congressional Authorization:* Instead of citing specific statutory authority for CMSP, the Executive Order cites numerous statutes that relate to the oceans, and claim them as authority. Congress has not approved CMSP activities or funding for CMSP.¹ Thus, the statutory authority to implement these actions remains in question, and significant questions remain about whether Congress will appropriate funding for CMSP in the future.
- *Funding for other Priorities:* Without a clear funding strategy for CMSP, funding may be diverted from core federal activities in Alaska, such as fishery stock assessments, to support CMSP. In addition, we are concerned that CMSP will divert the attention of federal personnel away from consultation, review and comment on permitting for development projects and programs of importance to the state.
- *Tool for Litigation:* With vague and undefined objectives, goals, and policies, CMSP could result in lawsuits to stop or delay federally-permitted activities.
- *Regulatory Uncertainty:* The new quasi-regulatory layer of CMSP could create an uncertain regulatory climate, which will then have a chilling effect on responsible economic activity and job creation. We understand that CMSP will take years to fully implement. During the process, we fear it will create reluctance on the part of federal agencies to proceed with permitting for major development projects until CMSP is functional.
- *ESA & NEPA:* Since a major CMSP decision could be considered an action that requires consultation under the Endangered Species Act (ESA) and a federal activity under National Environmental Policy Act (NEPA) it is not entirely clear how these processes will interact with each other. Given the tiered lease sale process engaged in by the Bureau of Ocean Energy Management, there may be difficulties in determining the proper time for engaging in ESA consultation. The criteria for determining whether a decision is ripe for review is set out in *Center for Biological Diversity v. U.S. Department of Interior* (563 F.3d U.S. Department of Interior (563 F.3d 466 (D.C. Circuit, 2009).

¹ It should be noted that both Norway and the United Kingdom enacted their marine spatial planning efforts through legislation rather than administrative action.

The State has called for amendments to NOC documents, and where appropriate Executive Order 13547, to address these issues. The Administration's reluctance to consider these recommendations raises doubts about assurances to provide flexibility in establishing an RPB in Alaska and other regions.

In past comments, the State has called for more specificity in describing the CMSP process and the intent of the effort. As the National Ocean Council looks to move forward with an RPB in Alaska, it would be helpful if the NOC were to provide a list of issues involving the waters off Alaska where CMSP could assist federal action. This would help the state understand the NOC's objectives with respect to the Alaska region.

Specific Comments:

- *National objectives introductory section (p. 87):* The plan indicates that regional planning bodies will have "maximum flexibility in developing regional objectives." We believe this flexibility should include the option of foregoing the establishment of a CMS Plan in order to focus on other areas or to develop CMS plans that exclude state waters and upland areas, if the RPB so chooses.
- *Objective 1 (p. 88):* The plan describes how the CMSP process can reduce delays. We agree that coordination among federal agencies is important, but emphasize that certain agencies were given certain missions by Congress. Creating a process that allows one or more agencies to block the activities of another, with statutory authority in that area, would violate the will of Congress. Furthermore, this objective could result in the side-boarding of existing or future uses on state waters and/or trust authorities.
- *Objective 2 (p. 88-89):* The plan describes the identification and definition of sensitive areas. As mentioned above, the state opposes the establishment of new marine protected areas in the region.
- *Action 1:* This action describes the development of a Handbook on Regional Coastal and Marine Spatial Planning. It is unclear whether this document will impose new rules or restrictions on RPBs. Furthermore, it is unclear what the process will be for developing the handbook, what opportunities there will be for comment, and whether the Governance Coordinating Committee will review and approve the handbook before release.
- *Action 2:* Without federal appropriations for CMSP, it is unclear where the federal government will find the funding to convene regional workshops and exercises described in Action 2.
- *Action 5:* Again, the state believes the regions should have the flexibility to forego developing CMS plans if RPBs prefer to focus on other areas. Furthermore, this action calls for "certification" of developed regional plans by the National Ocean Council. Details are not provided on the criteria that will be used to certify these plans. It should be possible for regional plans to depart, even substantially, from the requirements of the final recommendations and the NOC's model charter. Without this latitude, we question whether "maximum flexibility" could be achieved.

Ecosystem-based Management (p. 9)

General comments:

As stated previously, Alaska supports, and already manages state waters and coastal regions using an ecosystem approach. However, the state continues to have concerns with adopting ecosystem-based management guidelines at the federal or international level. State-level management is the best approach. We also oppose mandating "precautionary approaches" or "precautionary principles" that dictate worst-case assumptions when faced with scientific uncertainty. These terms are misleading and should not be confused with the careful and conservative abundance-based management used in Alaska. We support approaches that deal with scientific uncertainty by adopting reasonably conservative assumptions.

Specific comments:

We find several of the milestones listed for this priority objective to be problematic. They are described below:

- *Action 1, milestones bullet 3 (p. 13):* This milestone calls for completion of a review of EBM-relevant statutes and regulations for the purpose of incorporating "EBM principles into Federal laws, regulations, and policies" and "potential legislative changes that would fill gaps and support implementation of EBM." We have been assured that the National Ocean Policy is not intended to be legislative or regulatory. This milestone, however, clearly borders on crossing into legislative and regulatory areas. We recommend removing this milestone.
- *Action 1, milestones bullet 5 (p. 14):* This milestone calls for the development of "guidance for all federal agencies about how to implement EBM under existing regulatory and legislative authorities." We fear this effort will constrain and distort the exercise of existing regulatory authority. Furthermore, it could be used to sideboard existing or future uses of state waters and/or trust resources. We recommend removing this milestone.
- *Action 2, milestone bullet 2 (p. 15):* This milestone calls for phasing EBM principles and goals into the federal process for awarding future grants related to the oceans, coasts, and Great Lakes. Again, we fear this milestone could be used to sideboard existing or future uses of state waters and or/trust resources. We recommend removing this milestone.
- *Action 2, milestone bullet 4 (p. 15):* This milestone calls for the development of "national guidelines and best practices for EBM implementation." Once again, we fear this milestone could be used to sideboard existing or future uses of state waters and or/trust resources. We recommend removing this milestone.
- *Action 4, milestones 1 & 3 (p. 17):* We believe that support from affected states within a given region should be an essential factor in identifying priority geographic areas for pilot implementation of EBM.

Role of the North Pacific Fishery Management Council in the CMSP Process

While the Draft Plan is silent on the specific consultation role with the Councils, we do understand and appreciate the NOC's recently stated intent to include a Council representative on each of the regional planning bodies. We also understand and appreciate the intent to develop technical committees to support the regional planning bodies, which could provide additional opportunities for inclusion of Council perspectives. However, the State is concerned with the limitation that the Council representative on the regional planning bodies must be a Council member who is also a governmental representative – not only does this greatly constrain the Council's choice of its representative on the regional planning body, it also may create the perception that such a representative is not so much a Council representative as an additional State or Federal agency representative. We believe that the NOC should re-evaluate this determination, and be more explicit in the Implementation Plan regarding the Councils' role in the CMSP process.

Regarding the Councils' role in the CMSP process, we also believe that, in addition to a single (somewhat constrained) seat on the regional planning body, there should be an explicit mechanism for formal, body-to-body consultation. In other words, the Councils should be recognized not only through participation in the regional planning bodies, but also recognized in a broader sense through some type of consultation process that allows the Councils as a regulatory body, in their capacity as Executive Agencies of the Department of Commerce, to review and provide input on recommendations of the regional planning bodies. We believe this to be an important consultation mechanism that is not addressed by inclusion of a single Council member on the regional planning body.



UNITED FISHERMEN OF ALASKA

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April 27, 2011

National Ocean Council
722 Jackson Place, NW.
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Submitted electronically via:

<http://www.WhiteHouse.gov/administration/eop/oceans/comment>

United Fishermen of Alaska (UFA) represents 38 commercial fishing organizations participating in fisheries throughout the Alaska and its offshore federal waters. Altogether these fisheries represent more than half of U.S. domestic seafood harvest, and are the economic lifeblood to hundreds of communities, many of which lack other employment opportunities. UFA member groups have a long history of active involvement in the North Pacific Fishery Management Council, and UFA as an umbrella association holds a high level of respect for the Council process regarding fisheries and activities in the Exclusive Economic Zone, and for the State of Alaska for activities in state waters. We support the perspective of the Council Coordinating Committee, the State of Alaska on new federal ocean policy and the US Senate Commerce Committee letter of March 1, 2010, notably signed by Senators Mark Begich and Maria Cantwell.

We appreciate the opportunity to provide comment on the Strategic Action Plans for the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes. We appreciate that you have provided three guidance questions on the nine identified priorities. Most of our concerns are not addressed within the framework of the questions, but fundamental to National Ocean Policy and the Coastal and Marine Spatial Planning (CMSP) program. Thus we offer the following comments based on our need to maintain an efficient fisheries management framework, that includes cooperation with federal and state agencies that oversee not only fisheries but maritime transportation, research, and OCS exploration activities.

Alaska stands out as the sole state under jurisdiction of the North Pacific Fishery Management Council (NPFMC), while every other regional fishery management council includes the federal waters of more than one state or territory. With over 44,000 miles of coastline, Alaska has more coastline than the other eight management regions combined. The federal waters off Alaska, as well as state waters remain healthy and productive. We do not feel we have the same problems that may exist in the rest of the United States that are the impetus behind the Ocean Policy Council, and we feel that the current management process through the NPFMC is not likely to be improved upon through an overarching centralized authority from outside our region. We are concerned that the

Ocean Policy Council has not adequately defined the problems the administration is attempting to address and we question whether these are relevant problems in Alaska.

The fishing industry operates with an expansive variety of vessel types, target species, home port communities, and related industry sectors. Ultimately, most of these operations are small, entrepreneurial family businesses, with long term capital investment. Alaska's fishing fleets have successfully established models for sustainable fishing practices, with long term goals and scientifically established harvest constraints overriding short term profit-based decisions. In Alaska's offshore waters there are already huge areas that are excluded from some or all fishing practices, and these closures have been the result of the NPFMC process and are accepted by fishing fleets. The financial wellbeing of these small family fishing businesses is a very delicate balance, including interrelationships of fisheries with processing, transportation, energy, and financial sectors, but ultimately the small businesses are dependent first and foremost on access to a harvestable abundance of finfish and shellfish stocks. We would like the Ocean Policy group to recognize the national interest in recognizing the oceans as a storehouse of sustainable food for the world, and the national interest in maintaining viable commercial fishing fleets in coastal communities. We ask that you not take measures that would reduce our access to harvestable fish stocks, except through the NPFMC.

United Fishermen of Alaska priority recommendations:

1. Costs to agencies and to the public, in time and money.

The goal of coordinating research and data to provide access to agencies and the public is commendable and appropriate. However, given the concerns of the federal budget, we ask for assurance that NOAA's budget not be diverted from ongoing scientific research needs that are essential to sustainable fisheries.

We caution that new regulatory bodies and processes bring considerable expense in time and money to affected agencies and to the public stakeholders, adding additional overhead costs to fishing operations that take part in the process. Considering the amount of time that fishermen spend to participate in existing processes, we are not eager to participate in new overarching bodies and processes without a clear objective or stated problem to be addressed.

2. Access to productive ocean and coastal waters.

Fishing businesses require access to harvestable fisheries stocks. Oceans are a dynamic environment, subject to constant change, and ocean life in any particular area cannot be expected to remain static. Other areas of the United States may have situations of competing user groups, or conservation needs that would require zoning for allowable uses, but we do not feel this to be the case in the coastal or federal waters off Alaska's shores. We feel that the ability of Alaska's commercial fishing fleets to operate compatibly with energy production has been important to the survivability of fleets in Cook Inlet where active energy development has occurred. We ask that the EEZ offshore from Alaska be specifically excluded from specific designations under CMSP. We concur with the April 21 letter of Alaska Senator Mark Begich to Dr. Lubchenco, asking "that you not expend taxpayer funds for CSMP in Alaska this year", and his suggestion that

you “use savings from keeping Alaska out of this program to increase your investment in fisheries stock assessments in Alaska waters.”

3. Local Empowerment.

We strongly support local and regional empowerment, and a public stakeholder-based process in oceans policy and management. While we respect the understanding of the National Ocean Council that offshore uses may have an impact on coastal and adjacent land, we note that the State of Alaska is the appropriate management authority for Alaska’s lands and state waters. With no limiting barrier between state and federal waters, the health of fisheries requires a coordinated approach between state and federal regulators. We feel this is functioning well in Alaska through state representation on the NPFMC, and regular coordination and communication between the NPFMC and the Alaska Board of Fisheries.

UFA holds a high degree of confidence in the North Pacific Fishery Management Council (NPFMC) as the public body best equipped to assess and direct fishing and related activities in the federal waters, and feel that the NPFMC is well equipped to coordinate with the State of Alaska on matters within the State’s jurisdiction. We urge caution and restraint in overarching policy-making or CSMP based on distant rather than locally involved perspectives.

4. Regional Planning Bodies – representation for commercial fishing stakeholders

The CSMP process calls for Regional Planning Bodies (RPB), and includes Alaska as a single region. Yet Alaska’s 44,000 + mile of coastline and our own regions, the Alaska RPB would need to address an overwhelming scope of information and data. The RPBs are proposed to have a Federal, tribal, and State Co-lead, as well as individual Federal, tribal and State RPB members. We are concerned that the inclusion of commercial fishing organizations is not explicit. The Ocean Policy Council should spell out the intentions for composition of the RPBs, to specifically include commercial fishing stakeholder representation, and should specify the process for appointments.

5. Regional Citizens Advisory Councils (RCAC),

such as those established in Alaska under the Oil Pollution Act of 1990, should be established in all areas where production or transportation of potential ocean pollutants occurs. We feel that healthy and successful commercial fleets are the best “tool in the toolbox” for containment and cleanup exercises. Local fleets can provide vessels that are capable in design with operators that are most familiar with the local waters, currents, and conditions. So rather than “fence off” areas for development, we suggest enabling access by local fleets, and providing opportunities for fishing fleets to be developed if not already established in areas such as the Arctic that may see future offshore resource development or new shipping activity.

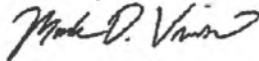
We reiterate the recommendation of the Presidential Panel from the Deepwater Horizon oil spill calling for RCACs as one meaningful act that the National Ocean Policy Council should enact.

In summary, we ask that the National Ocean Council carefully consider the underlying need for the CSMP in relation to Alaska’s size, scope, distance, and current health of our oceans. The comprehensive public Council process is currently working well to help us

provide sustainable seafood to the U.S. and employment opportunities in remote and coastal communities, as well as the 48 other U.S. states with residents who hold Alaska commercial fishing permits.

Thank you for your consideration.

Sincerely,



Mark Vinsel
Executive Director

CC:

Honorable Mark Begich, United States Senate
Honorable Lisa Murkowski, United States Senate
Honorable Don Young, U.S. House of Representatives
Mark Robbins, Office of the Governor of Alaska
Cora Campbell, Commissioner of the Alaska Department of Fish and Game

MEMBER ORGANIZATIONS

Alaska Bering Sea Crabbers • Alaska Crab Coalition • Alaska Independent Fishermen's Marketing Association
Alaska Independent Tendermen's Association • Alaska Longline Fishermen's Association • Alaska Scallop Association • Alaska Trollers Association
Alaska Whitefish Trawlers Association • Aleutian Pribilof Islands Community Development Association • Armstrong Keta • At-sea Processors Association
Bristol Bay Reserve • Bristol Bay Regional Seafood Development Association • Cape Barnabas Inc. • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Crab Group of Independent Harvesters • Douglas Island Pink and Chum
Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Petersburg Vessel Owners Association
Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owner Association • Seafood Producers Cooperative
Southeast Alaska Herring Conservation Alliance • Southeast Alaska Fisherman's Alliance • Southeast Alaska Regional Dive Fisheries Association
Southeast Alaska Seiners • Southern Southeast Regional Aquaculture Association • United Catcher Boats • United Cook Inlet Drift Association
United Southeast Alaska Gillnetters • Valdez Fisheries Development Association



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.¹

¹ 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.

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.

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.”² It further states that a “holistic approach that examines and accounts for the complex relationships among species and their habitats is required,”³ 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.”⁴

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.”

² 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. 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.”).

³ 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.

⁴ 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.

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.⁵ 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,⁶ 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.⁷ Other entities have previously raised concerns about such a possibility.⁸

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.

⁵ 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 ("...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.").

⁶ 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.

⁷ 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 ("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?").

⁸ 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; 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

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,”⁹ such guidance should also reflect the will of Congress and existing statutory authorities.

To address concerns by stakeholders¹⁰ 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.¹¹ 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.”¹²

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.”¹³

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.”¹⁴ It also calls for identifying “underutilized” laws and regulations and “opportunities to incorporate [Ecosystem-based Management] principles into Federal laws,

⁹ 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/cea/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

¹⁰ 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/cea/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf.

¹¹ 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/cea/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.”).

¹² 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.

¹³ 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.

¹⁴ 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/cea/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

regulations, and policies,”¹⁵ as well as “strengthen[ing]” the “content and/or application” of existing laws to “incorporate and better support climate change adaptation efforts.”¹⁶ 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,¹⁷ 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,¹⁸ 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.”¹⁹

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,²⁰ 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.²¹ 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.²²

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

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² 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.²³

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.²⁴

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.”²⁵ 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.”²⁶

“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.

²³ 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 (“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.”).

²⁴ 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

²⁵ 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

²⁶ 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.

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.”²⁷

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.²⁸

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.”²⁹

²⁷ 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.

²⁸ 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.

²⁹ 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. 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; 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; 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; 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 (“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,”³⁰ 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.³¹ The risk of unintended

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.”)

³⁰ 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.

³¹ 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; 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 (“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 (“...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.³² In addition, several objectives addressed in the draft Implementation Plan already include proposed actions and milestones that incorporate the use of pilot projects.³³

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.³⁴ 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.³⁵

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

http://www.whitehouse.gov/sites/default/files/microsites/cea/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/cea/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf.

³² 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 (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.")

³³ 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/cea/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

³⁴ 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/cea/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

³⁵ 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/cea/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,”³⁶ 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,”³⁷ 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,”³⁸ 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.³⁹ 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.⁴⁰ 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

³⁶ See Page 58, Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, available at http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf.

³⁷ See National Coastal and Marine Spatial Planning Workshop Summary Report, Page 26, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_cmssp_workshop_summary_report.pdf.

³⁸ See National Coastal and Marine Spatial Planning Workshop Summary Report, Page 92, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_cmssp_workshop_summary_report.pdf.

³⁹ 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.

⁴⁰ 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.⁴¹ 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.⁴² 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,⁴³ 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

⁴¹ 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.

⁴² 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.

⁴³ 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.

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.⁴⁴ 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.⁴⁵

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.⁴⁶ 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."⁴⁷

Specifically, the draft Implementation Plan proposes to focus initially on one sector, while waiting to address others until as late as 2015.⁴⁸ 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

⁴⁴ 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.

⁴⁵ 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_cmssp_full_content_outline_06-02-11_clean.pdf.

⁴⁶ 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

⁴⁷ 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.

⁴⁸ 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.

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,”⁴⁹ 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.”⁵⁰ In addition, the draft Implementation Plan proposes to reduce air deposition of mercury, sulfur, nitrogen, and other substances.⁵¹

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 portal⁵² 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,”⁵³ currently only contains federal data sets, “[c]hanges are currently being made to accommodate non-federal spatial data and information.”⁵⁴

To that end, suggestions have been requested on “how best to integrate data from State and academic sources.”⁵⁵ In the meantime, the portal already includes a guidance on selecting “Decision Support Tools” in furtherance of Coastal and Marine Spatial Planning.⁵⁶ 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

⁴⁹ 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/cea/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

⁵⁰ 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/cea/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

⁵¹ 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/cea/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

⁵² 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-data.gov>.

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

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

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

⁵⁶ 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."⁵⁷

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

⁵⁷ 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.

DOUG VINCENT-LANG
ADF+G, DWG

HOUSE RESOURCES
4/8/2013

Good afternoon, Mr. Chair, members of the Committee. My name is Doug Vincent-Lang. Thank you for the opportunity to speak with you today regarding HJR 16.

Let me begin by stating that Alaska has a strong interest in assuring the continued health and productivity of its marine and coastal resources. We rely on these areas for commercial and sport fisheries, subsistence uses, recreation, transportation, shipping, and a multitude of other uses. Marine and coastal resources are vital to our economy, supporting a vibrant fishing industry that produces almost six billion dollars in economic activity in our state annually, accounts for approximately 60 percent of the nation's seafood production, and is our largest private sector employer. Coastal and marine areas also provide abundant development opportunities, such as; offshore oil and gas, renewable energy, shipping, and tourism. With over 44,000 miles of shoreline - more mileage than the other eight proposed planning areas combined - and an expansive EEZ, Alaska's interest in managing ocean and coastal resources cannot be overstated.

Implementation of the President's National Ocean Policy institutes a new federal framework to govern marine and coastal activities. Upon inspection, it federalizes decision processes regarding marine and coastal activities and embeds authority into regional governance boards dominated by federal agencies and federal decision processes.

Alaska's marine and coastal resources and their uses are already tightly regulated by a vast and diverse array of federal, state, and local authorities. This existing oversight has a proven track record and is fully capable of ensuring the long-term health and viability of our marine and coastal resources. We do not believe additional federal regulatory oversight is needed and we oppose creation of additional federal bureaucracy and regulation and view this as an unnecessary threat to our sovereignty. We also do not support use of this process for zoning or alternatively termed regulated marine use planning purposes. Instead, we support achieving efficiency by relying on the effective proven processes and authorities that are already in place. Any establishment of further authority should be through Congressional action. Congress has a keen awareness of the current multi-jurisdictional structure and respect for the traditional role of states in managing their marine and coastal resources.

Jurisdiction and management decisions for marine waters and submerged lands and responsibility for marine and coastal activities and ecosystems is divided between the states and the federal government. Alaska's jurisdiction includes uplands, wetlands, tide and submerged lands and extends out three nautical miles to the territorial limit. Within these areas, Alaska manages and leases lands, and with federal and local agencies, permits or restricts activities on them that could impact the environment. Alaska and the federal government each have respective sovereign responsibilities and authorities to maintain healthy, resilient, and sustainable marine and coastal resources. Any adopted program must recognize and respect Alaska's jurisdiction and sovereign authorities. Coastal states must be recognized as equal partners with sovereign jurisdictions and authorities, not relegated to stakeholder status in marine and coastal policy development and implementation.

Rather than development and implementation of new regulatory programs, a better focus would be investment in Arctic research, monitoring, and infrastructure. In short, we need more resources, not more rules, to ensure conservation of our coastal and marine resources. It is unfortunate that the new planning effort is draining agency resources at a time when core agency functions are struggling for funding due to declining federal budgets. We prefer to see the federal government focus its resources on the many needs in the Arctic and to focus on much needed research and monitoring rather than expending resources on an unnecessary and duplicative planning effort.

Finally, to ensure an effective outcome, it is important that any planning effort have clearly defined expected outcomes, an appropriate timeline, and provides both the states and the users of marine and coastal resources with primary authority to develop ocean and coastal policies. Despite numerous requests by the state to provide such specifics, they have yet to be provided. The health and management of our marine and coastal resources is simply too critical to engage in a process that does not provide meaningful dialogue opportunities to address stated concerns.

In closing, this policy is simply not ready for implementation. Until requested details are provided, especially with respect to governance and regulated use, the State cannot support

this effort as currently described. We urge Congress to involve itself in this process and for the National Ocean Council to delay implementation of this policy to allow more meaningful dialogue to address state and other affected users concerns. We also urge a more meaningful dialogue with the State that recognizes its sovereign authorities and responsibilities.

We appreciate your resolution and the concern it expresses. Thank you for the opportunity to speak with you today.

Linda Hay

From: Rep. Dan Saddler
Sent: Monday, July 01, 2013 5:28 PM
To: Rep. Dan Saddler
Subject: National Ocean Policy alert
Attachments: Van Ness Feldman alert re National Ocean Policy.pdf

Dear Colleagues –

You may recall that I introduced HJR 16 last session, proposing to express the Alaska Legislature’s general opposition to the president’s National Ocean Policy (NOP). HJR 16 passed the House, but is awaiting action in Senate Rules.

Shortly after we adjourned, the White House did release its National Ocean Policy Implementation Plan (IP), and I wanted to pass along several links and information related to this issue. I believe the National Ocean Policy poses significant risks to our state and its interests, and believe it will be useful for us all to understand the issue.

I appreciate your kind consideration of this information.

-Rep. Dan Saddler

- 1) NOP Implementation
Plan: http://www.whitehouse.gov/sites/default/files/national_ocean_policy_implementation_plan.pdf
- 2) IP Appendix: http://www.whitehouse.gov/sites/default/files/national_ocean_policy_ip_appendix.pdf
- 3) NOP IP press release: http://www.whitehouse.gov/administration/eop/ceq/Press_Releases/April_16_2013
- 4) National Ocean Policy IP homepage: <http://www.whitehouse.gov/administration/eop/oceans/policy>
- 5) HJR 16: http://www.legis.state.ak.us/basis/get_bill.asp?session=28&bill=HJR16
- 6) Van Ness Feldman recap of National Ocean Policy Issue: Attached .pdf file: “Van Ness Feldman alert re National Ocean Policy.pdf”

National Ocean Council Releases Final Ocean Policy Implementation Plan

Jonathan Simon, Tyson Kade, and Andrew VanderJack

On April 16, the National Ocean Council (“Council”) released its final National Ocean Policy Implementation Plan (“Implementation Plan” or “Plan”) to address challenges facing the Nation’s oceans, coasts, and Great Lakes. The Implementation Plan identifies more than 200 specific actions for Federal agencies to undertake between 2013 and 2025 to implement the President’s National Ocean Policy and to bolster the nation’s ocean economy, strengthen our national security, improve ocean health, support local communities, and provide better science and information to improve decision making. These actions could broadly impact a wide range of ocean uses, including, but not limited to, offshore energy development, shipping, recreation, fishing, and aquaculture.

BACKGROUND


In July 2010, President Obama issued Executive Order 13547, establishing a National Ocean Policy (“Policy”) to promote stewardship of the oceans, coasts, and Great Lakes. The Executive Order adopted the Final Recommendations of the Interagency Ocean Policy Task Force (“Final Recommendations”), a more detailed outline of policy goals published concurrently with the Executive Order.

Executive Order 13547 established a national policy “to ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests.” Among other things, the Policy established a National Ocean Council to coordinate the ocean-related activities of Federal agencies, focusing on reducing bureaucracy, improving coordination and integration, enhancing efficiency and effectiveness, and maintaining fiscal responsibility. (For more information, see our [July 22, 2010 VNF Alert](#)).

On January 12, 2012, the Council released a draft Implementation Plan, which described initial steps for implementation of the Policy. The draft Implementation Plan focused on nine “priority objectives” central to the Policy, and proposed 50 specific Federal “actions” to achieve these priority objectives. (For more information see our [January 23, 2012 VNF Alert](#)).

THE FINAL IMPLEMENTATION PLAN

The final Implementation Plan describes more than 200 specific actions intended to benefit the ocean economy, safety and security, and coastal and ocean resilience, by supporting local choice and foundational science. To achieve these benefits, the Plan realigns the priorities and activities of the 27 Federal agencies, departments, and offices that comprise the Council. The Plan emphasizes that the Policy does not add to, or modify existing regulations or authorities, but rather aims to help coordinate the implementation of existing regulations and



authorities. Following are brief summaries of some of the identified specific actions that may be of more interest to stakeholders:

Regional Planning

The Implementation Plan reflects an apparent effort to help defuse what had become one of the Policy’s more controversial elements: coastal and marine spatial planning. The Implementation Plan reiterates the Administration’s intent to establish regional planning bodies that would develop “marine plans” (previously referred to as “coastal and marine spatial plans”) to provide information and/or to “describe future desired conditions” and guide decision making relating to the use of ocean resources. Significantly, however, the Plan clarifies that participation by states, tribes, and Regional Fishery Management Councils on regional planning bodies will be voluntary, and that a regional planning body will not be established if “all States within a region choose not to participate.” The Plan further emphasizes that regional planning bodies “are not regulatory bodies and have no independent legal authority to regulate or otherwise direct Federal, State, tribal, or local government actions.” Each regional planning body would have flexibility to determine the scope, scale, and content of its marine plan. The Implementation Plan sets a goal of establishing regional marine plans by 2017.

Coastal Communities and Habitats

Recognizing the impacts of storms, sea-level rise, and climate change on coastal communities, the Plan directs Federal agencies to take certain actions to improve the resilience of coastal communities and to enhance their ability to adapt to changing environmental conditions. For example, agencies must integrate scientific observations into a coordinated network of “climate sentinel sites” to enhance the nation’s ability to provide early warnings, risk assessments, and impact forecasts. The Plan also directs agencies to take certain actions focused on sea-level rise, shoreline erosion, flood insurance, invasive species, water quality, and habitat restoration, to further reduce the vulnerabilities of coastal communities and ocean environments to climate change.

Fishing and Aquaculture

The Implementation Plan notes that commercial and recreational fishing will continue to be managed exclusively by the relevant state and Federal fisheries managers and Regional Fishery Management Councils or Commissions. But the Plan directs agencies to take certain actions affecting the fishing and aquaculture industries, like addressing regulatory inefficiencies, combating ocean acidification and other habitat stressors, strengthening contaminant detection capabilities, and incorporating ecosystem-based management into planning.

Agriculture

Recognizing the effect of water quality on ocean and coastal health, the Implementation Plan identifies actions relating to the agriculture and farming industry. For example, the Plan directs that agencies take certain actions to



reduce nutrient and sediment loads, reduce pollutant runoff, protect watersheds, and conserve new lands.

Offshore Energy

The Implementation Plan lists actions designed to promote the development of offshore energy resources and to protect against associated environmental impacts. For example, the Plan contains actions to improve oil spill prevention, containment, response infrastructure, technology, and plans; improve coastal and seafloor mapping; support private-sector development of greenhouse gas offset protocols for use in voluntary carbon markets; and provide access to relevant climate, water, wind, weather data and information, and environmental models, to support the development of renewable energy.

Shipping and Ports

The Implementation Plan recognizes the need for safe, efficient, and secure navigation and waterways management systems, and for measures to address changing conditions in the Arctic. The Plan supports United States ratification of the Convention on the Law of the Sea as “critical” to protecting our navigational rights and advancing our economic interests. In addition, the Plan calls for incorporating sea-level rise into project planning; continuing work on Waterway Analysis and Management System assessments and Port Access Route Studies; assessing communication capabilities in the Arctic region; improving and delivering Arctic sea ice analyses; and improving Arctic mapping and charting to promote safe navigation.

IMPLICATIONS

Given its scope, the final Implementation Plan could affect the array of users of our oceans, coasts, and Great Lakes. Although the Plan appears to reflect an effort by the Council to show that coastal and marine spatial planning does not equate to zoning the oceans, the establishment of regional planning bodies—despite being voluntary and providing no additional regulatory authority—and the subsequent development of marine plans could increase Federal agency involvement in the management of ocean and coastal activities and resource utilization. In addition, an emphasis on ecosystem-based management in the Implementation Plan could result in expanding the scope of Federal agency review, increasing Federal oversight, and heightening environmental permitting requirements for ocean and coastal uses.

As Federal agencies begin implementing the specific actions identified in the final Implementation Plan, there will be many opportunities for states, tribes, communities, project developers, and other coastal and ocean resource users to participate in ocean and coastal planning efforts. Active stakeholder engagement in the activities specified in the Implementation Plan, including the development of regional planning processes and regional plans, and the application of ecosystem-based management approaches to planning, will be instrumental to ensuring that the results of these actions meet the needs of ocean users and do not impose unreasonable burdens on the various productive and other uses of our oceans, coasts, and Great Lakes.



FOR ADDITIONAL INFORMATION

For clients with business interests impacted by ongoing federal regulatory and policy developments relating to the use of U.S. waterways and coastal areas, Van Ness Feldman offers significant depth of experience and capabilities. Over half of the firm's more than 95 lawyers and policy advisors have worked as congressional staff, or at the U.S. Departments of the Interior and Energy, the U.S. Environmental Protection Agency, the Federal Energy Regulatory Commission, and the White House. Our professionals monitor federal regulatory and policy developments on a daily basis, and provide strategic advice to a range of clients. For more information, please contact your usual Van Ness Feldman point of contact at 202.298.1800 in Washington, D.C. or 206.623.9372 in Seattle, WA.

In February 2012, Van Ness Feldman expanded its capabilities by combining practices with the Seattle law firm of GordonDerr LLP, a preeminent real estate, land use, water law, and civil litigation firm in the Pacific Northwest. Learn more at www.vnf.com.

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