

**THE PRESIDENT'S NEW NATIONAL  
OCEAN POLICY—A PLAN FOR FUR-  
THER RESTRICTIONS ON OCEAN,  
COASTAL AND INLAND ACTIVITIES**

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**OVERSIGHT HEARING**

BEFORE THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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Tuesday, October 4, 2011

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**OVERSIGHT HEARING TITLED “THE PRESIDENT’S NEW NATIONAL OCEAN POLICY—A PLAN FOR FURTHER RESTRICTIONS ON OCEAN, COASTAL AND INLAND ACTIVITIES.”**

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**Tuesday, October 4, 2011  
U.S. House of Representatives  
Committee on Natural Resources  
Washington, D.C.**

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The Committee met, pursuant to call, at 10:04 a.m. in Room 1324, Longworth House Office Building, The Honorable Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, Young, Duncan of Tennessee, Bishop, Lamborn, Wittman, Fleming, McClintock, Duncan of South Carolina, Tipton, Gosar, Southerland, Flores, Runyan, Markey, Holt, Bordallo, Sarbanes, Tsongas, Pierluisi, Garamendi, and Hanabusa.

The CHAIRMAN. The Committee will come to order. The Chairman notes the presence of a quorum, which under Rule 3[e] is just a couple Members, and we have that easily.

The Committee is meeting today to hear testimony on an oversight hearing on “The President’s New National Ocean Policy—A Plan for Further Restrictions on Ocean, Coastal and Inland Activities”. Under Rule 4[f], opening statements are limited to the Chairman and the Ranking Member. However, I ask unanimous consent that any Member who wishes to submit a statement provide that statement before the close of business today. Without objection, so ordered. I will now recognize myself for my opening statement.

**STATEMENT OF THE HONORABLE DOC HASTINGS, A REPRESENTATIVE FROM THE STATE OF WASHINGTON**

The CHAIRMAN. In 2009, President Obama ordered the creation of an Interagency Ocean Task Force to establish a new policy for management of our oceans and coasts. From the onset, there are serious questions about the task force work and the recommendations. A bipartisan group of 69 Members of Congress wrote the Chairman of the task force expressing concerns that the effort was not balanced and failed to recognize the need for a multi-use policy—a multi-use policy that includes both the responsible use of our ocean resources and environmental stewardship.

From fishing to energy production to recreation, our oceans are an integral part of our national economy that supports millions of jobs throughout the country. Any new regulations or changes to the management of our oceans should be done thoughtfully and in full collaboration with those affected.

Despite expressions of concern from various sectors of our economy and bipartisan voices in Congress, President Obama last year signed an Executive Order to unilaterally implement the final recommendations of the task force. This was done without congressional approval and without specific statutory authority. With the stroke of a pen, President Obama created a new, huge, top-heavy bureaucracy that could override state and local authorities, and change the way activities on the oceans, coasts and far inland, as a matter of fact, will be managed.

The Executive Order creates 10 national policies, a 27-member national ocean council, an 18-member governance coordinating committee, and nine regional planning bodies. This has led to the creation of nine national priority objectives, nine strategic action plans, seven national goals for coastal marine spacial planning, and 12 guiding principles for coastal marine spacial planning.

This tangled web of regulatory layers will only lead to increased uncertainty for many diverse sectors of the economy, and it will create demands for new spending by the Federal bureaucracies charged with executing and funding this Executive Order.

Especially alarming is the mandatory ocean zoning order to be imposed. Disguised with the label of coastal marine planning, ocean zoning would place huge sections of the ocean off limits to activities not zoned as government approved. Ocean zoning is posed to impact commercial and recreational fishing, and energy development, including renewable energy, recreational activities, marine commerce, shipping, transportation, construction and manufacturing. It has the potential to stop economic growth and the jobs associated with that growth.

Though labeled as ocean policy, the Executive Order scope goes way beyond the oceans. The order includes the Great Lakes where states could be dictated to by a regional planning body on where certain activities are allowed. Regional planning bodies are empowered to reach far inland to potentially regulate activities occurring on lands adjacent to rivers, tributaries, or watersheds that drain into the ocean or, in this case, the Great Lakes.

None of the people, communities, and businesses most affected by this policy will have representation on the regional planning bodies. They have no seat at the table deciding their fate. The President's Executive Order places all the power in the hands of the government.

So, let me be clear. The Administration can, and should, require Executive Branch agencies with jurisdiction over our ocean policies, to work in a coordinated manner, to share information, and reduce duplication of their work. However, this White House policy has been driven under the claim that it is only an ocean conservation measure when its actual effects could be far-reaching and economically hurtful to American jobs and businesses both at sea and well onshore.

[The prepared statement of Mr. Hastings follows:]

**Statement of The Honorable Doc Hastings, Chairman,  
Committee on Natural Resources**

In 2009, President Obama ordered the creation of an Interagency Ocean Policy Task Force to establish a new policy for the management of our oceans and coasts. From the onset, there were serious questions about the Task Force's work and rec-

ommendations. A bipartisan group of 69 Members of Congress wrote the Chairwoman of the Task Force expressing concerns that the effort was not balanced and failed to recognize the need for a multi-use policy. A multi-use policy that includes both the responsible use of our ocean resources and environmental stewardship.

From fishing to energy production to recreation, our oceans are an integral part of our national economy that supports millions of jobs throughout the country. Any new regulations or changes to the management of our oceans should be done thoughtfully and in full collaboration with those affected.

Despite expressions of concern from various sectors of our economy and bipartisan voices in Congress, President Obama last year signed an Executive Order to unilaterally implement the final recommendations of the Task Force. This was done without Congressional approval and without specific statutory authority.

With the stroke of the pen, President Obama created a new, huge top-down bureaucracy that could over-ride states and local authorities, and change the way activities on the oceans, coasts and far inland will be managed.

The Executive Order creates: 10 National Policies; a 27-member National Ocean Council; an 18-member Governance Coordinating Committee; and 9 Regional Planning Bodies. This has led to the creation of: 9 National Priority Objectives; 9 Strategic Action Plans; 7 National Goals for Coastal Marine Spatial Planning; and 12 Guiding Principles for Coastal Marine Spatial Planning.

This tangled web of regulatory layers will only lead to increased uncertainty for many, diverse sectors of the economy; and, it will create demands for new spending by the federal bureaucracies charged with executing and funding this Executive Order.

Especially alarming is the mandatory 'ocean zoning' ordered to be imposed. Disguised with the label of Coastal Marine Spatial Planning, 'ocean zoning' could place huge sections of the ocean off-limits to activities not 'zoned' as government-approved.

'Ocean zoning' is poised to impact commercial and recreational fishing, energy development—including renewable energy, recreational activities, marine commerce, shipping and transportation, construction and manufacturing. It has the potential to stunt economic growth, and the jobs associated with that growth.

Though labeled as 'ocean policy,' the Executive Order's scope goes well beyond the oceans. The order includes the Great Lakes, where states could be dictated to by a Regional Planning Body on where certain economic activities are allowed.

Regional Planning Bodies are empowered to reach far inland to potentially regulate activities occurring on lands adjacent to rivers, tributaries or watersheds that drain into the ocean.

None of the people, communities and businesses affected the most by this policy will have representation on the Regional Planning Bodies. They have no seat at the table deciding their fate. The President's Executive Order places all the power in the hands of the government.

So, let me be clear, the Administration can and should require Executive Branch agencies with jurisdiction over our ocean policy to work in a coordinated manner, to share information, and reduce duplication of their work.

However, this policy has been driven under the claim it's only an ocean conservation measure, when its actual effects could be far-reaching and economically hurtful to American jobs and businesses both at-sea and well-ashore.

The CHAIRMAN. With that I yield back my time. I am pleased to recognize the gentleman from Massachusetts, Mr. Markey.

**STATEMENT OF THE HONORABLE EDWARD MARKEY, A  
REPRESENTATIVE FROM THE STATE OF MASSACHUSETTS**

Mr. MARKEY. I thank you, Mr. Chairman. I would like to welcome our guest, Mr. Farr, and everyone else who is here with us today.

The letters P-L-A-N, may be a four-letter word but they are not a dirty word, as the Republican Majority would have us believe. The last time I checked plans were helpful things. We have an emergency evacuation plan for this building. We have a plan for the airspace above us that says no one can fly too close to the Capitol. We have long-term investment plans so we can enjoy a com-

fortable retirement, but no plans would be a loss day to day and long term. We would struggle when decisive action was needed. It would cause unnecessary conflicts that could be avoided.

Just like other plans, comprehensive ocean planning would allow everyone with an interest in our coasts and oceans to participate in the transparent decisionmaking process to determine how to best utilize an increasingly busy, productive, and important national resource. This would increase productivity and certainly for existing and new uses of these areas, and improved ocean health would provide certainty.

Opposing ocean planning is like opposing air traffic control. You can do it, but it will cause a mess or lead to dire consequences. And it is time for our nation to have an ocean plan. The United States and territories have exclusive economic jurisdiction over approximately 4.5 million square miles of ocean. These areas are a vital part of the United States economy, supporting tens of millions of jobs and contributing trillions of dollars annually to our national economy. Our coastal counties which make up only 18 percent of the country's land area are home to 108 million people, or 36 percent of our nation's population, and these numbers are steadily increasing. These growing uses within our ocean and coastal areas are placing significant pressures on these natural resources, and planning will help ensure that they are healthy and available for future generations.

Last year, the President established the National Ocean Policy to do just that, begin planning to protect, maintain, and restore our ocean and coastal resources. Instead of supporting a plan for our oceans, the Republican Majority continues to pursue scare tactics, claiming that the policy creates additional regulations and kills American jobs. Just the opposite is true.

By harmonizing the existing regulations that govern our coasts and oceans, this policy will allow developments to move ahead more quickly while creating jobs and improving the health of the oceans.

This is not just a theoretical debate. We know ocean planning works. Look at what has happened in my home state of Massachusetts. In 2008, Governor Deval Patrick signed into law the landmark Massachusetts Oceans Act to develop the first in the Nation ocean management plan designed to balance commercial and recreational use with wildlife and habitat protection in state waters. The plan uses hard data, and web-based mapping to make sure we are not creating conflict on the high seas.

For example, Massachusetts works with stakeholders to refine the area considered for offshore wind energy development to take into account certain areas identified as important to the fishing industry while still making wind energy developers happy because plenty of space was still going to be available for them in future offshore energy development.

An ocean plan enables businesses to create, catch the wind or to catch the fish without getting caught up in unnecessary conflict. An ocean plan will also allow military operations and maritime shipping to both to occur off the coast of Virginia so the Armed Forces can practice landing tanks and companies can still land their tankers. An ocean plan means we can lay down fiber optic cable from



Cape Cod to Martha's Vineyard without affecting fish habitat so customers can surf the World Wide Web without affecting the web of life below the surf.

The National Ocean Policy, like the Massachusetts ocean management plan, is a plan that we should all support. The ocean plan promotes commerce while encouraging economy, and promotes the economy while protecting ecosystems.

Thank you, Mr. Chairman, and I look forward to the testimony. [The prepared statement of Mr. Markey follows:]

**Statement of The Honorable Edward J. Markey, Ranking Member,  
Committee on Natural Resources**

Thank you, Mr. Chairman.

The letters, P-L-A-N may be a "four-letter" word, but they are not a dirty word, as the Republican Majority would have us believe. The last time I checked, plans were helpful things. We have an emergency evacuation plan for this building. We have a plan for the airspace above us that says no one can fly too close to the Capitol. We make long-term investment plans so we can enjoy a comfortable retirement.

Without plans, we'd be at a loss day-to-day and long-term. We'd struggle when decisive action was needed. We'd cause unnecessary conflicts that could be avoided.

Just like other plans, comprehensive ocean planning would allow everyone with an interest in our coasts and oceans to participate in a transparent, decision-making process to determine how to best utilize an increasingly busy, productive and important national resource. This would increase predictability and certainty for existing and new users of these areas and improve ocean health.

Opposing ocean planning is like opposing air traffic control. You can do it but it will cause a mess or lead to dire consequences.

It is time for our nation to have an ocean plan. The United States and territories have exclusive economic jurisdiction over approximately 4.5 million square miles of ocean. These areas are a vital part of the U.S. economy, supporting tens of millions of jobs and contributing trillions of dollars annually to our national economy. Our coastal counties, which make up only 18% of the country's land area, are home to 108.3 million people or 36% of our nation's population, and these numbers are steadily increasing. These growing uses within our ocean and coastal areas are placing significant pressures on these natural resources and planning will help ensure that they are healthy and available for future generations.

Last year, the President established the National Ocean Policy to do just that—begin planning to protect, maintain, and restore our ocean and coastal resources. Instead of supporting a plan for our oceans, the Republican Majority continues to pursue scare tactics, claiming that the policy creates additional regulations and kills American jobs.

Just the opposite is true. By harmonizing the existing regulations that govern our coasts and oceans, this policy will allow developments to move ahead more quickly while creating jobs and improving the health of the oceans.

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For example, Massachusetts worked with stakeholders to refine the area considered for offshore wind energy development to take into account certain areas identified as important to the fishing industry—while still making wind energy developers happy because plenty of space was still going to be available to them for future offshore energy development. An ocean plan enables businesses to catch the wind or catch the fish, without getting caught up in unnecessary conflict.

An ocean plan will also allow military operations and maritime shipping to both occur off the coast of Virginia, so the armed forces can practice landing tanks and companies can still land their tankers.

An ocean plan means we can lay down fiber optic cable from Cape Cod to Martha's Vineyard without affecting fish habitat, so customers can surf the worldwide web without affecting the web of life below the surf.

The National Ocean Policy, like the Massachusetts Ocean Management Plan, is a plan that we should all support. The ocean plan promotes commerce, while encouraging comity, and promotes the economy while protecting ecosystems.

The CHAIRMAN. Thank you, and I thank the gentleman, and I would just make a note regarding his testimony. He talked about planning. Nobody is opposed to planning. But the operative words of what the gentleman said was that there is a law signed by the Governor of Massachusetts. I don't think any of us would argue with that process. What we are having this hearing on today is something called an Executive Order coming unilaterally from the White House, and that is the distinction, and that is something obviously we can discuss.

I appreciate the gentleman's testimony and I am very pleased to welcome our first panel, a former colleague of ours on this Committee and a gentleman from California, Mr. Farr, and I don't think I have to go through the drill. You know what the green light means, the yellow light means and the red light means. What you don't know is that we strictly enforce this in this Committee, so with that we are very pleased to welcome the gentleman from California, Mr. Farr.

**STATEMENT OF THE HONORABLE SAM FARR, A  
REPRESENTATIVE FROM THE STATE OF CALIFORNIA**

Mr. FARR. Thank you very much, Chairman Hastings, and thank you, Ranking Member Markey, and all of the Members, many new to me when I was on this Committee.

I just want to point out that the issue that you have before you was brought to you, brought to us by us, by this Committee. This Committee, in the year 2000 under the Republican leadership of Don Young, passed the Oceans Act of 2000, and that Act created an Oceans Commission. The bill actually was signed into law, I think, by President Clinton, but the appointees to the Commission were made by President Bush, and those on the Commission represented oil companies and port authorities, oil drilling companies, the University of Washington, Oil Shipping Council, Wells Fargo Bank in Alaska, University of South Florida and others.

That Commission published for us, because we asked them, what do we need to do about our oceans, and here is the issue. As you pointed out, we have dozens, dozens, multi dozens, I think 140 Federal laws and dozens of agencies. I have been dealing with coastal issues all my political life, and what you have is a conflict of the seas; is that Mineral Mining Agency doesn't tell fishermen where they are going to patrol for seismic issues, pulling up crab pots, destroying fisheries. I mean, there has just been a lack of communication, and for years the states have asked the Federal Government to try to resolve these conflicts, which are all Federal agencies, and to work with state agencies to come up with a process that allows you to know what is going on in your back yard, and that is what this report, the final report given to Congress recommended essentially everything that is in the President's Act.

We in Congress introduced bills, not much of which had to be done statutorily except for I think the permanence of governing commissions, so I think the criticism of the Chairman is, well,

these are regional commissions. Sure, we have regional commissions for clean water, we have regional commissions for clean air, but most importantly we have regional commissions to set up our fishing policies, and those commissions have reported back to us that we can't just deal with whether you can or cannot fish without dealing with all these other issues that your other Federal agencies do, so your 27 Federal agencies need to come together and come up with a plan. That is exactly what the President did. I think every Federal agency was involved in discussing how we have an oceans policy.

I might add that the Chair of the private nonprofit, the Pew Oceans Policy, which actually made recommendations to this Committee about the same time as the committee's Ocean Council did. That was chaired by Leon Panetta, who was very involved in oceans issues and is now Secretary of Defense, and I think if he were here to testify today he would tell you this is absolutely essential for our national security.

Look, the planet is blue, and it is 73 percent water. The United States has more ocean territory than any other country, not because of just our coastlines but we have exclusive economic zone jurisdiction 200 miles out from all the possessions that we have, so the Guams, the Hawaiis and all the Atolls in the South Pacific that we are responsible for managing, we have that. So we are the king of the world on oceans and we don't have a policy until the President came along and did exactly what essentially a Republican-led Commission recommended to be done.

I think that if you are going to deal with the Act we ought to look at statutorily implement some of these things because we want it to be permanent. As you know, an Executive Order can be repealed by the next President. So, the statements that you made, Mr. Chairman, that I have to take issue with. There is no mandated zoning planning in this. It is a bottoms-up process. It is one that our state, California, is very involved in because we have probably the strongest Coastal Act in California, and it is almost sacred to the state. In fact, nations around the world are coming to California to look at what they are doing because they want to implement coastal zone management as we have done in our state. So it in no way restricts any ocean activity, and it doesn't impose any new regulations.

What they said is we need much more of a planning process that can deal with these conflicts of the sea. We do it in the law, it is a bottom-up planning approach. It gives states and regions the ability to make informed decisions about how best to use the ocean. Each state has a right to decide whether they would like to conduct marine spacial planning off their coasts. It is not mandated. Twenty-two of the 35 coastal states have expressed the need for coastal marine spacial planning in their coastal zone management plans.

So, I think that we are right on target in meeting what this Committee earlier, working with then-Chairman Don Young, about how the Commission should do this report to Congress and what should be included, we are now implementing it. We ought to be praising the action taken because you are the responsible steward for all of this ocean. There is no other committee in Congress that has this jurisdiction, and it is a global responsibility.

[The prepared statement of Mr. Farr follows:]

**Statement of The Honorable Sam Farr,  
a Representative in Congress from the State of California**

Chairman Hastings, Ranking Member Markey, and to the rest of my colleagues that sit on this Committee, thank you for the opportunity to submit testimony on the President's National Ocean Policy. This issue is of particular importance to me, as I have spent much of my career fighting to improve ocean governance and management. I think many of my colleagues here today would agree that the oceans play a critical role in our national economy. Commercial fishing, for example, contributes \$70 billion annually to our nation's economy and is an industry that impacts businesses in every community across America. From the fisherman who catches our dinner, to the truck driver who transports the seafood, to the mom and pop seafood restaurant owners, all of these people depend on healthy oceans for their livelihoods.

The terrifying fact is, however, that our ocean economy is at risk. Just this summer, a growing 83-mile dead zone in the Chesapeake Bay was described by scientists as the worst in history. Simply put, if we continue on our current destructive path, oyster and shellfish populations in Chesapeake Bay will be doomed, placing further economic hardship on shellfish harvesters and fishermen.

Our inability to deal with the serious pressures facing our oceans stems from the way we manage our oceans, which historically has been a bureaucratic mess where we manage our resources in what amounts to policy "silos." Over 140 Federal laws and dozens of agencies have jurisdiction over ocean resources. This problem was recognized by both the Bush Administration's U.S. Commission on Ocean Policy and the Pew Oceans Commission. These two separate Commissions found the Federal government's management of our oceans to be fragmented, uncoordinated, and in dire need of improvement. Following consultation with hundreds of stakeholders and scientists, the U.S. Commission on Ocean Policy published its final report which called for a comprehensive and coordinated national ocean policy.

To fulfill the Bush Commission's recommendations, President Obama established America's first National Ocean Policy to reduce duplicative efforts and waste and increase the effectiveness and coordination of ocean management. The National Ocean Policy emphasizes the importance of oceans for jobs, food, energy development, transportation, trade, and international security with the goal of sustaining both our ocean economy and our marine resources.

The National Ocean Policy has laid out nine priority objectives in order to address the most pressing challenges facing our oceans, coasts, and Great Lakes. These priority objectives include: enhancing water quality, addressing changing conditions in the Arctic, implementing ecosystem-based management, improving Federal coordination with State, tribal, local, and regional efforts, developing adaptation strategies for ocean acidification, and utilizing a data collection and analyzing tool called Coastal Marine Spatial Planning (CMSP). Through the nine priority objectives, tangible benefits will be achieved by all ocean users.

Unfortunately, however, there has been a great deal of misconception regarding CMSP, which is just one of the nine priority objectives. This misconception has wrongly tainted the understanding of the National Ocean Policy at its most basic level. Some claim that CMSP is a new, mandatory program that will impose job-killing regulations on ocean industries and restrict ocean uses and activities—but this is simply untrue. The National Ocean Policy explicitly states that CMSP shall "Support sustainable, safe, secure, efficient, and productive uses of the ocean, our coasts, and the Great Lakes, including those that contribute to the economy, commerce, recreation, conservation, homeland and national security, human health, safety, and welfare ... and ... Provide for and maintain public access to the ocean, coasts, and Great Lakes." Ultimately, the National Ocean Policy is about balance and will ensure long-term sustainability for our ocean economy, ocean jobs, and ocean environment.

The Administration has made very clear that the National Ocean Policy is a non-regulatory, bottom-up approach. CMSP is an adaptive, ecosystem-based tool that has been used for decades to analyze current and anticipated uses of our coastal and marine resources. Under the National Ocean Policy, each state has the right to decide whether they would like to conduct CMSP off of their coasts, and decisions about the offshore environment will be made by local governments in coordination with tribal, State, and regional entities. It is important to point out that 22 of the 35 coastal States explicitly recognize the need for CMSP in their Coastal Zone Management plans, including Washington, Texas, Georgia, Virginia, and South Carolina. These states recognize that improved decision-making across multiple levels of gov-

ernment will translate to saving both the government and permit applicants' time and money by reducing duplication of effort.

Additionally, CMSP will produce upfront benefits to the industry and agencies, helping create jobs in emerging industries by providing more certainty for offshore projects. CMSP in the State of Massachusetts, for example, allowed for coordinated planning between Federal and State agencies and stakeholders in the planning of offshore wind energy development. Through a collaborative effort, the State was able to acquire and analyze existing data and information regarding fisheries, transportation, navigation infrastructure, sediment, recreation and cultural services, and wind. Using this information, the State was able to determine the area most suitable for offshore wind energy, while taking into account areas identified as important to the fishing industry. This example demonstrates how CSMP can successfully reduce conflict, provide certainty to the industry, and also result in a streamlined decision-making process leading to substantial ecological, social, and economic benefits.

I agree that implementation of the National Ocean Policy must be a transparent, open, and stakeholder driven process. So far, the Administration has made an effort to ensure that stakeholders have a voice through public workshops and comment periods, but these efforts need to be expanded as we move forward so the actions and issues most important to the American people can be brought to the forefront. The National Policy will ultimately provide States, Tribes and Local governments an unprecedented forum, through the newly established Governance Coordinating Committee which represents all parts of the U.S. with the purpose of coordinating on an ongoing basis with the Federal government. Congress, however, has not recognized that this stakeholder engagement comes at a cost, and if we want a transparent process, we must provide the necessary funding.

The National Ocean Policy is a common-sense, bipartisan idea that has spanned both Republican and Democratic Administrations. If we want to ensure that fishing, recreation, and other uses are available to future generations, we must act now to change the status quo. The National Ocean Policy is about good governance, not restricted use, and it is necessary both for the long term health of our national economy and our ocean environment.

Thank you for the opportunity to speak before you today, and I hope that we can work together to ensure that our vibrant coastal economies thrive and local communities have a voice in ocean governance.

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The CHAIRMAN. I thank the gentleman for his testimony, and while we don't ask questions of Members, there is a precedent of doing that here on this Committee. I think the gentleman was part of that the last time we had that.

Mr. FARR. Three hours.

The CHAIRMAN. I just want to make an observation because you are testifying in front of a committee that probably to a person would not say we have to be responsible for planning on the oceans. That is a great unknown really when you think about it. But this hearing is about an Executive Order by the President, and in your own testimony you suggested that there ought to be some statutory means to address this. I am not opposed to that. We may have a huge debate of what those statutory efforts will be, but there has been nothing, there has been no legislation sent to this Committee to implement the task force recommendations. Nothing has come down.

And I know the gentleman has introduced legislation. You and I have had conversations on that. But I think the proper way and what this hearing is all about, the proper way is the role of Congress in all of this. I am certainly open to that.

Mr. FARR. Mr. Chairman, with all due respect, I used to be a member of this Committee. There was a former Chairman, Mr. Pombo, who would not even hear the report even though Admiral Watkins, our former Chair of the Joint Chiefs of Staff was involved on this Committee, was Chair of the Committee, came before it

asking to be able to present the report to the Committee. They were denied. Bills have been introduced and they haven't had a hearing, and you had leaders on your side. You had Congressman Greenwood, Don Young has been involved in it, Congressmen Saxton and Gilchrest, all active members of this Committee who really wanted to move forward with legislation, and essentially it never got the hearings, it never got the time of day.

So, if you are interested in doing it, we certainly have the framework of legislation, I will give it to you.

The CHAIRMAN. Every Member is free to introduce legislation.

Are there further questions of the gentleman from California? The gentleman from Massachusetts.

Mr. MARKEY. I thank the gentleman, I just want to thank the gentleman for his work. You are the single most consistent supporter of the oceans in the Congress, and no one can match your passion and your knowledge of the subject, and we thank you for being here.

Mr. FARR. Well, thank you very much. Let me tell you why. I grew up on the oceans, and I saw these conflicts, and my family has probably been more involved in helping the fishermen in getting—we used to have the largest sardine port in the world in Monterey, California. When that port closed, when the sardines disappeared because we just over fished them, it was devastation, really devastation. Now they have turned it into a tourist industry, thank God to John Steinbach writing the book "Cannery Row". But the fishing is coming back and we are working with it.

Our biggest tourist attraction is not on the gulf, it is in the Monterey area, but it is the aquarium on the Monterey Bay area. It is essentially the ocean and the watchable water life of sea otters, sea lions, bird life, now we have condors being restored. It is a huge market. People pay a lot of money to come see watchable wildlife, and all of you have that in your district, and what this Committee is and why I love this Committee is because you are the stewards for that.

You know, the birds and trees and animals don't vote, but you represent them, and I think we find when we manage our resources well they are sustainable, and the issue on the oceans is they are dying. All you have to do is get the reports of what happened two weeks ago in the ocean clean up of all the stuff they found. Oceans are dying, and if they die mankind dies because we are dependent on that sea.

So, we have to find a way to sustain a livable ocean, and the only way you are going to do it is with good strong planning. Thank you.

The CHAIRMAN. Further questions of the gentleman? If not, Mr. Farr, thank you. OK, Mr. Farr, thank you very much for your testimony, and if further questions are asked of you, it will be in writing, and we would like you to respond. I am not sure it is going to happen, but the opportunity is open.

Mr. FARR. We will get you a copy of the report that was prepared for this committee.

The CHAIRMAN. We have a copy of it here. I have been perusing it.

Mr. FARR. OK. Thank you very much

The CHAIRMAN. Thank you very much, Mr. Farr.

Next, I would like to call our next panel to testify. We have Mr. W. Jackson Coleman, Co-Managing Director of the National Ocean Policy Coalition; Mr. Jim Gilmore, Director of Public Relations, At-sea Processors Association; Mr. Christopher Guith, Vice President - Policy, U.S. Chamber of Commerce; Mr. Barry Rutenberg, Chairman-Elect of the Board of National Association of Homebuilders; Mr. Marc Gorelnik, Board of Directors, Coastside Fishing Club; Mr. John Bullard, President of the Sea Education Association; and Mr. Jim Lanard, President of Offshore Wind Development Coalition.

I want to thank all of you for joining the Committee today, and once again, under the rules by which we operate, the green light in front of you means you are free to talk, but when the yellow light comes on it means you have one minute left, and when the red light comes on it means your five minutes are up. Your full written testimony will appear in the record, so I invite you to summarize your testimony orally.

With that we will go to our first witness, Mr. W. Jackson Coleman, Co-Managing Director of the National Ocean Policy Coalition. You are recognized for five minutes, Mr. Coleman.

**STATEMENT OF W. JACKSON COLEMAN, CO-MANAGING  
DIRECTOR, NATIONAL OCEAN POLICY COALITION**

Mr. COLEMAN. Thank you, Congressman Hastings and Ranking Member Markey, and Members of the Committee. We are very pleased to be able to provide our testimony today on behalf of the coalition. As a personal note, I appreciate the opportunity to testify before the Committee having served here for almost six years, and previously to that for 14 years at the Interior Department dealing with ocean issues, and before that at NOAA for three and a half years. So most of the last 29 years I have been personally involved in ocean policy issues.

Now, the Ocean Policy Coalition is an organization of diverse interests united in our desire to ensure that the implementation of this new National Ocean Policy is done in a way that is helpful rather than harmful to the national interest, including the interest of commercial and recreational users of the ocean and marine-related natural resources.

As currently set forth, the National Ocean Policy has the potential to unnecessarily damage both terrestrial and marine economic value by affecting sectors such as agriculture, commercial and recreational fishing, construction, manufacturing, marine commerce, mining, oil and gas, renewable energy, recreational boating, and water-borne transportation, among others. These sectors support tens of millions of jobs and contribute trillions of dollars to the U.S. economy.

The Coalition believes that the justification for many aspects of the policy including, but not limited to coastal and marine spatial planning, has not been adequately established by information based on realities on the ground and scientific data. In addition, uncertainty continues to abound—in some cases within the Administration—about what the policy means, how it will be implemented and the potential scope of its impact. I want to emphasize—tremendous uncertainty.

This policy has created, as I said, uncertainty across the whole economy of this country. As the Administration has acknowledged, the policy “may create a level of uncertainty and anxiety among those who are relying on these resources; and they generate questions about how they align with existing processes, authorities, and budget challenges.”

So, frankly, the risk of unintended economic and societal consequences remains particularly high due in part to the unprecedented geographic scale under which the policy is to be established—I should say has been established because the policy is in effect already even if we don’t have coastal marine spacial plans yet.

The ecosystem-based management requirements of the policy are fully in effect, as are the requirements that the agencies exercise their discretion under the statutes to accommodate the National Ocean Policy.

The Coalition has repeatedly brought up these concerns to the Administration in great detail. At this time, however, the policy remains on a fast track for nationwide implementation. A few of the problems that we are most concerned about is, number one, the negative impact on U.S. jobs and the economy at large, potentially affecting every major sector of the economy. This policy would essentially create exclusionary zones within our Great Lakes, coastal areas and oceans, and provide a new regulatory ocean policy overlay over all Federal permits for inland and offshore activities.

Ocean zoning and the broader ocean policy will not be limited to these coastal marine areas but to the extent of every watershed in the country, and coastal marine spacial planning specifically talks about it will be used to better manage things like aquaculture, commerce and transportation, commercial and recreational fishing, and the list goes on and on.

So, the regional planning bodies, as has been mentioned, also do not have user groups. The people who produce in this economy will not be part of those regional planning bodies. They will be all governmental. The Federal Government will have the majority vote on every planning body. I understand the states will have one vote each.

So, there is so much to be talked about here that five minutes, of course, doesn’t do it justice, but we very much appreciate the hearing and the great concern that we have, that the Coalition members have, and the opportunity to express that. Thank you very much.

[The prepared statement of Mr. Coleman follows:]

**Statement of W. Jackson Coleman on Behalf  
of the National Ocean Policy Coalition**

**I. Introduction**

Chairman Hastings, Ranking Member Markey, and Members of the Committee, my name is Jack Coleman and I am Co-Managing Director of the National Ocean Policy Coalition (Coalition). We appreciate the invitation to present the Coalition’s views at this hearing on “The President’s New National Ocean Policy—A Plan for Further Restrictions on Ocean, Coastal and Inland Activities.”

On a personal note, I appreciate the opportunity to testify before this Committee which I served for almost six years from 2003 until 2009, first as Energy and Minerals Counsel and then as Republican General Counsel. My first work on ocean issues began during the period from March 1982 until August 1985 when I was Spe-



cial Assistant to the Associate Administrator of the National Oceanic and Atmospheric Administration. This was followed by more than 14 years in the Department of the Interior, Office of the Solicitor—first as Senior Attorney for Environmental Protection and later as Senior Attorney for Royalties and Offshore Minerals. So, for most of the last 29 years I have been personally involved in ocean policy issues.

The National Ocean Policy Coalition is an organization of diverse interests united in our desire to ensure that the implementation of the new National Ocean Policy is done in such a way that it is helpful rather than harmful to the National interest, including the interests of commercial and recreational users of the oceans and marine-related natural resources. Please see our website, [www.oceanpolicy.com](http://www.oceanpolicy.com) for information on our membership and as a resource for information on ocean policy.

As currently set forth, the National Ocean Policy has the potential to unnecessarily damage both terrestrial and marine economic value by affecting sectors such as agriculture, commercial and recreational fishing, construction, manufacturing, marine commerce, mining, oil and gas and renewable energy, recreational boating, and waterborne transportation, among others. These sectors support tens of millions of jobs and contribute trillions of dollars to the U.S. economy.

The Coalition believes that the justification for many aspects of the policy, including but not limited to coastal and marine spatial planning, has not been adequately established by information based on realities on the ground and scientific data.

In addition, uncertainty continues to abound, in some cases within the Administration, about what the policy means, how it will be implemented, and the potential scope of its impact. As the Administration has acknowledged, the policy “may create a level of uncertainty and anxiety among those who rely on these resources and may generate questions about how they align with existing processes, authorities, and budget challenges.” At the same time, federal entities “whose actions affect the ocean, our coasts, and the Great Lakes” are directed to move aggressively forward with implementation.

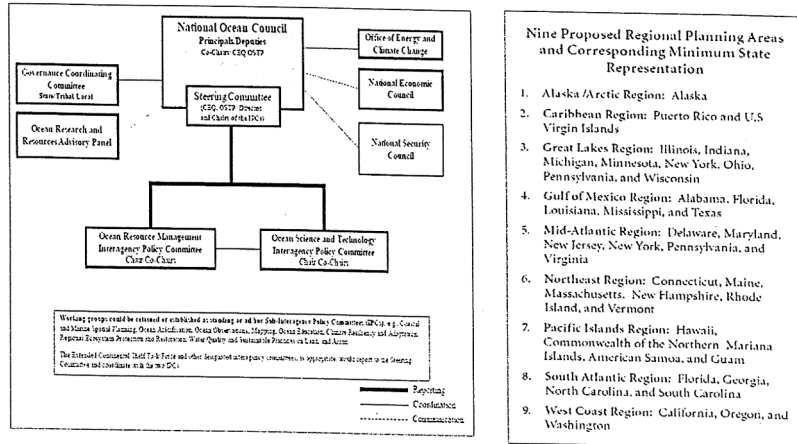
Finally, the risk for unintended economic and societal consequences remains particularly high due in part to the unprecedented geographic scale under which the policy is to be established. Given the scope and nature of the policy, the Coalition has consistently maintained—and continues to believe—that a measured approach in which potential impacts are examined in a pilot project in a limited area would be a wiser course of action.

The Coalition has repeatedly brought these concerns to the Administration in great detail. It has filed numerous, lengthy documents raising concerns and suggesting a different approach to solving whatever problems might exist. Recent documents include 16 pages of comments on development of strategic action plans which was submitted on April 28, 2011, and 98 pages of comments on strategic action plan full content outlines which was submitted on July 1, 2011. At this time, however, the policy remains on a fast track for nationwide implementation.

Let me highlight in detail a few of our concerns:

- We are very concerned that the National Ocean Policy will be negatively impactful to U.S. jobs and the economy at large, potentially affecting nearly every major sector of the economy.
- This policy would essentially create exclusionary zones within our Great Lakes, coastal areas, and oceans, making it more burdensome for citizens and organizations to conduct commercial and recreational activities that already must comply with a myriad of environmental regulatory regimes.
- Ocean zoning and the broader National Ocean Policy will not be limited to coastal and marine areas—it could be applied to restrict activities far inland—to the extent of every watershed in the country.
- The Administration itself acknowledges these legitimate concerns: “The Task Force is mindful that *these recommendations may create a level of uncertainty and anxiety among those who rely on these resources and may generate questions about how they align with existing processes, authorities, and budget challenges.*” (Ocean Policy Task Force Final Recommendations)
- Coastal & Marine Spatial Planning (CMSP), a zoning tool, to be used to “better manage” supposed conflicts involving human uses including: **aquaculture, commerce and transportation (e.g., cargo and cruise ships, tankers, and ferries), commercial and recreational fishing, boating, mining (e.g., sand and gravel, oil and gas exploration and development, ports and harbors, recreational fishing, renewable energy, boating, beach access, swimming, surfing, security, emergency response, and military readiness activities, subsistence uses, tourism, and traditional hunting, fishing, and gathering.**

- **Regional planning bodies**, whose decisions and disputes will be vetted in Washington, DC by the National Ocean Council and the President if necessary, **have the authority to include inland areas** when developing coastal and marine spatial plans.
- CMSP is but one of several National Ocean Policy priority objectives that address land-based activity. For example:
  - Ecosystem-Based Management: “an integrated framework that accounts for the interdependence of the land, air, water, ice, and the interconnectedness between human populations and these environments.” Officials within the Administration have stated to us that they are unsure what this means in the context of the National Ocean Policy.
  - Water Quality and Sustainable Practices on Land Objective: to address “major impacts of **urban and suburban development and agriculture**, including **forestry and animal feedlots**,” and “relative contributions of the relative contributions of **land-based sources of pollutants, sediments, and nutrients** to receiving coastal waters and ways to address them. . .;” “**poor land management practices**” and “**runoff from. . . streets and lawns, agricultural and industrial uses, transportation activities, and urban development**. . .negatively impacts water quality. . .”
  - Climate Change & Ocean Acidification objective: outline cites **resource extraction as one of several “stressors”** whose impacts should be reduced, references regulatory decision-making, and references “feasible alternative scenarios” for the future operation, maintenance, and **relocation of built infrastructure such as coastal roads, port facilities, and dam operations**.
  - Regional Ecosystem Protection & Restoration objective: proposes exploration of policy options for **incorporating carbon sequestration services of coastal wetland habitats into federal decision-making**.
  - Use of the Precautionary Approach or Principle which provides that federal decisionmakers should reject permit applications and other requests if the federal agency determines that information is lacking about some potential impact of a proposed activity.
- Though a National Ocean Policy could be beneficial, serving as a mechanism for job creation, infrastructure revitalization, and economic growth, this particular effort seems to be guided by a bias toward conservation and against human activity.
- Rather than conduct analysis of the potential economic impacts **prior to** implementation, the Administration simply states that the National Ocean Council “will address questions and specifics as implementation progresses” and references opportunities for stakeholder and public engagement. (Final Recommendations)
- In light of the Administration’s own admission that the policy in part represents “a fundamental shift in how the United States manages [ocean, coastal, and Great Lakes] resources,” failing to assess economic consequences prior to mandating and enforcing this broad and sweeping policy threatens federal, state, and local budgets, jobs, and the economy at large.
- National Ocean Policy and CMSP will require a significant amount of federal human and financial resources, as the administration has acknowledged—complete information as to what the National Ocean Policy-related federal budgetary costs have been and are likely to be (including those at the non-federal level, where applicable) has not been forthcoming.
- National Ocean Policy creates a new bureaucracy, including a 54-member National Ocean Council with officials from 27 different federal entities, two 27-member interagency policy committees, and nine regional planning bodies covering every coastal region of the United States.
- Governance structure includes federal officials from entities ranging from the Departments of Defense, Interior, and Homeland Security all the way to Agriculture, Labor, and Health & Human Services.



- Final Recommendations cite some of the many programs and authorities already in place that address ocean and coastal activities, including the Coastal Zone Management Act, Clean Water Act, Clean Air Act, National Environmental Policy Act, Magnuson-Stevens Fishery Conservation and Management Act, and Outer Continental Shelf Lands Act.
- The National Ocean Policy has not been congressionally authorized and Executive Branch has not adequately engaged Congress. Efforts to pass major ocean policy legislation have failed three successive Congresses under both Democrat and Republican control, thus showing that there has been no consensus in Congress for a vast restructuring of laws governing ocean and coastal resources and uses.
- Congress should have an integral role in any effort to address changes to the way that ocean and coastal resources and uses are managed, particularly in light of the fact that governance/management of these resources and uses “span hundreds of domestic policies, laws, and regulations covering international, Federal, State, tribal, and local interests,” (Final Recommendations)
- NOPC represents many of the sectors that are supposedly in conflict with each other, and we have yet to hear any discussion about inherent conflicts that exist in ocean, coastal, or Great Lakes areas that require a response of this magnitude
- While conflicts among various uses and between uses and the environment is cited as justification for the policy, no scientific data is referenced to back up the claims.
- The Administration has stated that it will seek to find funding efficiencies to further the program in light of current budget constraints.
- The Policy has the potential to harm existing jobs and economic activities by diverting funds from existing federal programs and operations (e.g. permitting) that such activities rely on.
- There is a real and growing possibility that NGOs will be empowered to help fill a funding void and influence policy outcomes, potentially blocking stakeholders with user perspectives from contributing to the process.
- The Outline released by the National Ocean Council proposes improved coordination through government-private partnerships to “enable all parties to better leverage limited resources” and calls for the identification and inventory of “specific ways to leverage funding sources among and between” federal agencies and NGOs, among others.
- Ocean zoning has never been attempted at this geographic scale, yet calls for a pilot project have been ignored. As the NOAA Science Advisory Board observed earlier this year, the spatial scale U.S. Coastal and Marine Spatial Planning effort is unprecedented, with the total area of the nine U.S. Regional planning areas equaling the total area of *all* the world’s existing marine spatial plans combined. The Board’s finding that the U.S. effort “argues for consideration of smaller areas (and possibly fewer objectives) that can be nested within larger regions over time” is consistent with NOPC advocacy for

a pilot project in a limited geographic area to reduce the risk of unintended consequences.

- Lack of adequate legal analysis raises many concerns about conflicts between the policy and existing federal laws and constitutional questions over matters of state sovereignty, among others.
- Effective policy implementation will require “clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component” (Final Recommendations), and federal entities are ordered to implement policy, based in part on guidance from National Ocean Council.
- The Policy has strong potential to infringe on the power and authority of federal officials by requiring them to always exercise their discretion in favor of the policy.
- The Final Recommendations also state that the National Ocean Policy has been established in part to address “the challenges we face. . . in the laws, authorities, and governance structures intended to manage our use and conservation” of these resources, and CMSP is to be carried out “under the authority of” existing statutes.
- Since Coastal and Marine Spatial Plans are expected to vary by region, application of the federal laws used to allegedly authorize such plans may vary by region as well, causing such federal statutes to no longer be uniformly applied in national manner as originally intended.
- Constitutional concerns regarding: (1) the inclusion of non-advice and consent officials on the National Ocean Council; and (2) the authority provided to regional planning bodies. (potential conflicts with the Appointments Clause resulting from non-federal officials sitting on bodies issuing policies binding on federal officials)
- The Policy also intrudes into the sovereignty of coastal and inland states, including in part through establishing the geographic scope of CMSP to include state waters, inland bays, estuaries, and additional inland areas if deemed appropriate.
- By ordering federal entities to implement the policy, based in part on guidance from the National Ocean Council, there is a real potential for contravention of Administrative Procedure Act and Regulatory Flexibility Act provisions, which respectively require agency consideration of all comments on an equal basis prior to issuing a regulation and agency consideration of potential impacts on small entities and less burdensome alternatives.
- The Administration has severely limited opportunities to express concerns, and stakeholder concerns have not been adequately addressed.
- The Administration has called for a robust and meaningful stakeholder engagement process, but so far, stakeholder engagement has been largely defined by document dumps of voluminous yet vague information with fast-approaching deadlines to respond, both of which have helped inhibit the development of informed comments.
- The Administration began holding “listening sessions” on 92 pages of Strategic Action Plan outlines on the policy within seven days of their release.
- Draft Strategic Action Plan outlines were written before the public comment period on the development of Strategic Action Plans had even come to an end.
- Town Hall meetings held on the policy last year in Alaska, Massachusetts, New Jersey, and Virginia were announced not via Federal Register or web announcements, but rather through agency e-mail lists, greatly limiting the amount of public notice.
- The recent national workshop on CMSP limited public participation to the first day of the three-day workshop, with only 200 pre-screened members of the public allowed in; audio/video or written materials from the non-public portion of the workshop has not been made available.
- Comments submitted by stakeholders who are not biased against human uses and activities have for the most part been ignored (e.g. calls for a pilot project, more openness and transparency, and greater engagement with user groups).
- The policy is not voluntary: administration plans to implement it wherever federal jurisdiction exists over activities deemed to affect the oceans, coasts, or Great Lakes.
- The Administration has implied that the policy is really just a voluntary program that will be whatever the regions decide they want it to be. As they have stated privately, and in a few cases publicly, however, this is not voluntary, and the Administration intends to vigorously implement the policy

pursuant to the Executive Order wherever they have jurisdiction. (federal waters, state waters, inland)

- The Policy has already been cited in December 2010 Interior Department announcement (Revised OCS Leasing Program) restricting certain economic activity in certain areas through 2017.
- The policy creates new vehicles for attempts to further restrict domestic economic activity. We are already seeing the potential for this to occur.
- In June, groups led by the Center for Biological Diversity, citing in part the National Ocean Policy as legal justification, filed a petition with NOAA seeking to restrict the speed for vessels greater than 65 feet in length to 10 knots when traveling through national marine sanctuaries offshore California. Petition calls this “an excellent opportunity to implement the sort of coordinated, forward-looking marine spatial planning called for by President Obama’s National Ocean Policy initiative.” If the petition is granted, it could more than double the time it takes to transit through these areas, adding that there’s no clear science that there is any benefit to whales (the petition’s purported goal).

It is for all of these reasons that, consistent with previous Coalition statements, we and other signatories wrote a letter of support for the Flores amendment to HR 2584, Interior, Environment, and Related Agencies appropriations bill, to achieve a pause in policy implementation. Such a suspension would provide additional time to allow for the careful consideration of all potential economic, societal, and legal implications associated with implementation, well-informed stakeholder input, and adequate congressional engagement.

To be clear, the Coalition is not opposed to a National Ocean Policy. The Coalition supports the development of a sound, balanced, and effective 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, rather than the creation of new bureaucracies, procedures, and regulations that only serve to create additional uncertainty, unnecessary restrictions, and delay. A pause in policy implementation will help reduce the risk of detrimental economic and societal impacts and ensure a policy that fully recognizes and accounts for the critical role our oceans, coastal areas, and marine ecosystems play in our nation’s economy, national security, culture, health, and well-being.

Thank you for the opportunity to testify and I would be pleased to answer any questions.

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The CHAIRMAN. Thank you very much, Mr. Coleman, for your testimony. Now I would like to recognize Mr. Jim Gilmore, the Director of Public Relations with the At-sea Processors Association. Mr. Gilmore, you are recognized for five minutes.

**STATEMENT OF JIM GILMORE, DIRECTOR OF PUBLIC  
RELATIONS, AT-SEA PROCESSORS ASSOCIATION**

Mr. GILMORE. Thank you, Mr. Chairman and Members of the Committee for the opportunity to testify today. I am testifying on behalf of 10 West Coast and Alaska fishing and fish processing organizations.

The fishermen processors for those organizations participate in fisheries that buy volume account for over half of all seafood landed annually in the United States. Our testimony focuses on how the National Ocean Policy initiative, one, establishes a new bureaucracy with sweeping powers; two, usurps the role of expert Federal fishery managers and reduces public participation in the fishery regulatory process; and three, creates regulatory uncertainty.

We conclude our testimony to request the Congress prohibit the expenditure of any funds to establish regional planning bodies or to develop any plans referenced in the National Ocean Policy Executive Order until the structure, scope, and cost of the program have been reviewed by Congress.

The plain language of the Executive Order and the Ocean Policy Task Force final recommendations explicitly state that coastal and marine spacial planning process intends to manage uses and activities. This is not the benign collaborative planning process described by some proponents, but a program that anticipates the regulations and changes to existing regulations if it is to achieve its management objectives.

The Ocean Policy Task Force recommendations state that CMSP is intended to improve ecosystem health and services by planning human uses and the conservation of important ecological areas such as areas of high productivity and biological diversity, areas in key species that are critical to ecosystem function and resiliency, areas of spawning, breeding, and feedings, areas of rare or functionally vulnerable marine resources, and migratory corridors.

This passage illuminates that the purpose of the ocean policy is less about coordinating fishing activities with other ocean user activities and is more about creating regulatory process for further restricting ocean use, including commercial fishing.

Federal fisheries are managed currently under the authority of the Magnuson-Stevens Act which establishes eight Regional Fishery Management Councils tasked with conserving and managing fishery resources out to 200 miles. Each council is composed of one Federal official, a state official for each state in the region, and private citizens with requisite fishery management experience who are appointed by the Commerce Secretary. Private citizen appointees constitute a voting majority on those councils.

On the other hand, the national ocean regional policy body is tasked with developing coastal and marine plans are described as consisting only of Federal and state officials and tribal interests. Few government officials from the Federal agency serving under the regional planning boards will even be knowledgeable about fisheries management. The result is the National Ocean Policy creates a new regulatory process that competes with and threatens to supersede the Regional Fishery Management Council process. The decisionmakers will have little expertise and there will be less opportunity for public participation.

National ocean proponents argue unconvincingly that the coastal ocean spacial plans do not supersede current statutory authorities. The Ocean Policy Task Force report states, however, where existing regulatory or statutory requirements impose constraints on the ability of an agency to fully implement because of the marine spacial plan the agency would seek regulatory or legislative changes to fully implement the CMS plan.

The above passage is unambiguous. The agencies are expected to either develop new regulations or change any existing regulations in order to be compliant with the CMS plan. The Regional Fishery Management Council will have no choice but to defer to CMS plans developed by regional planning boards. Under Section 304 of the Magnuson-Stevens Act if a Regional Fishery Management Council does not act to develop regulations the Commerce Secretary is authorized to bypass the council and promulgate regulations. The NOP effectively creates an end run of the existing Regional Fishery Management Council process, not coincidentally a long-time goal of many organizations supporting the National Ocean Policy.

To date, the Administration has financed its NOP initiative by diverting existing appropriations from various agencies and it appears intent on continuing to do so without congressional authorization. We are concerned that NOAA programs that are needed for fishery assessments, protected species research, and fisheries monitoring enforcement are being short changed to create a new bureaucracy with potentially adverse impacts of commercial fishing.

In closing, we propose that Congress explicitly prohibit the expenditure of Federal funds to establish regional planning bodies or to develop any plans identified within the scope of the Executive Order.

That concludes my testimony, Mr. Chairman. Thank you again for the opportunity to testify.

[The prepared statement of Mr. Gilmore follows:]

**Statement of Jim Gilmore, Director of Public Affairs,  
At-sea Processors Association**

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to testify today on the Obama Administration's National Ocean Policy (NOP) initiative, including the Coastal and Marine Spatial Planning (CMSP) component of that policy.

I am testifying today on behalf of ten West Coast and Alaska fishing and fish processing associations. The organizations are: the Alaska Bering Sea Crabbers; Alaska Crab Coalition; 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; and United Catcher Boats.

The fishermen and processors from the above organizations participate in fisheries that, by volume, account for over half of all seafood landed annually in the U.S. The fisheries include the Alaska crab, Alaska groundfish, halibut and sablefish, Alaska salmon, and Pacific whiting fisheries. The seafood harvested provides tens of thousands of jobs in Alaska and the Pacific Northwest, generates \$2.0 billion in economic activity, and accounts for a large percentage of U.S. seafood export earnings.

Our testimony focuses on how the Administration's NOP/CMSP initiative 1) establishes a costly new bureaucracy with sweeping powers; 2) usurps the role of expert federal fishery managers and reduces public participation in the fishery regulatory process, and 3) creates regulatory uncertainty and places unnecessary burdens on the seafood industry. We conclude our testimony with the request that Congress prohibit the expenditure of any federal funds to establish Regional Planning Bodies or to develop any plans referenced in Executive Order 13547 until the structure and scope of the program have been reviewed by Congress and supported by the ocean user community.

**The Regional Planning Bodies That Develop Coastal and Marine Spatial Plans Are Granted Sweeping Authority to Regulate Ocean Users, Including the Commercial Fishing Industry**

Executive Order 13547, which creates the National Ocean Policy, defines the CMSP component as providing "a public policy process for society to better determine how the ocean, our coasts, and Great Lakes are sustainably used." According to the Executive Order, CMSP "identifies areas most suitable for various types or classes of activities in order to reduce conflicts among users, reduce environmental impacts, (and) facilitate compatible uses. . ." The *Final Recommendations of the Interagency Ocean Policy Task Force*, which are incorporated by reference into the Executive Order, state, "(T)he recommendations provide a framework for CMSP that offers a new, comprehensive, integrated, regionally-based approach to planning and managing uses and activities." While the benefits anticipated by the Administration in its NOP are open to debate, the plain language of the Executive Order and the Task Force's final recommendations cited above explicitly state that the CMSP process intends to manage "uses and activities." This is not the benign collaborative planning process described by some proponents, but a program that anticipates new regulations and changes to existing regulations if it is to achieve its management objectives.

Specific to fisheries management, the Ocean Policy Task Force recommendations state that, “*CMSP is intended to improve ecosystem health and services by planning human uses in concert with the conservation of important ecological areas, such as areas of high productivity and biological diversity; areas and key species that are critical to ecosystem function and resiliency; areas of spawning, breeding, and feeding; areas of rare or functionally vulnerable marine resources; and migratory corridors.*” This passage illuminates that the purpose of the National Ocean Policy is less about coordinating fishing activities with other ocean user activities and more about creating a new regulatory process for further restricting fishing opportunities for both the recreational and commercial sectors.

The organizations on whose behalf I am testifying today have expressed these concerns consistently over the past two years to the Administration, but those concerns have not been addressed. We are left to conclude that the intent of the National Ocean Policy is, in fact, to create a Cabinet-level council and federal agency-dominated planning boards that are empowered to trump the Regional Fishery Management Council process established under the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”).

**“Top Down” Federal Regional Planning Bodies Will Usurp the Authority of “Bottom Up” Regional Fishery Management Councils Established Under the Magnuson-Stevens Act**

Federal fisheries are managed under the authority of the Magnuson-Stevens Act, or MSA. The MSA created eight Regional Fishery Management Councils tasked with developing plans and regulations necessary to conserve and manage fishery resources in federal waters out to 200 miles. Each Council is composed of one federal official, a state official from each state in the region, and private citizens with requisite fisheries experience who are nominated by Governors and appointed by the Commerce Secretary. The Regional Fishery Management Councils involve affected users directly in the decision making process. Private citizen appointees constitute a voting majority on the Councils. This unique public role in federal fisheries management in waters off Alaska and the West Coast has worked well since the MSA’s enactment in 1977.

Federal fisheries management in the Alaska Region, in particular, is recognized internationally for its forward looking, precautionary, science-based approach. All fish stocks are managed to ensure sustainable harvest levels. Regulations are in place to minimize impacts of fishing on non-target species, other living marine resources, and sensitive habitat. Conservation measures include establishing more than 100 fishing area closures to avoid prey competition with Steller sea lions and closing 250,000 square miles of ocean to fishing gear that contacts the ocean floor to protect sensitive habitat. I would note that 250,000 square miles is an area only slightly smaller than the State of Texas. Fisheries management is complex and contentious, especially where catch allocations are involved, but stakeholder confidence is high because the process is guided by individuals with knowledge of, and experience in, the fisheries, and the public is engaged every step of the way in the highly transparent planning and regulatory process. Congress has shown strong support for this system by having repeatedly reauthorized the MSA and by having provided necessary funding every year.

The NOP Executive Order undermines the current fisheries management system by anticipating that Regional Planning Bodies will include provisions in Coastal and Marine Spatial Plans that restrict fishing. The Regional Planning Bodies tasked with developing CMSPs are described as consisting of federal and state officials and tribal interests. Few government officials from the federal agencies serving on Regional Planning Boards will be knowledgeable about, and experienced in, fisheries management. The result is that the NOP creates a new fisheries regulatory process that competes with and threatens to supersede the MSA process. The decision makers will have little expertise, and less opportunity is provided for public participation.

**The NOP Creates Uncertainty in the Regulatory System for the Commercial Fishing Industry and Will Unnecessarily Increase the Burden on an Already Highly Regulated Industry**

It is simply not good public policy to create an additional regulatory process, to confuse lines of authority, and to likely end up fostering litigation due to inevitable inconsistencies in regulations developed under different processes. NOP proponents argue unconvincingly that Coastal and Marine Spatial Plans do not supersede current statutory authorities. The Interagency Ocean Policy Task Force report states, however, “*Where pre-existing legal constraints, either procedural or substantive, are identified for any Federal agency, the NOC would work with the agency to evaluate*



*the necessary and appropriate legislative solutions or changes to regulations to address the constraints. In the interim, agencies would comply with existing legal requirements but should endeavor, to the maximum extent possible, to integrate their actions with those of other partners to a CMS Plan.”*

The above passage is unambiguous that agencies are expected to change any existing regulations in order to be compliant with a CMS Plan. The Cabinet-level National Ocean Council (“NOC”) is directed by Presidential decree to ensure that federal departments and agencies, including the Regional Fishery Management Councils, change any regulations deemed inconsistent with the Strategic Action Plans or Coastal and Marine Spatial Plans. Similarly, fishery managers would be obligated to promulgate new regulations deemed necessary to meet management objectives established under new policies and plans developed under the NOP.

The Regional Fishery Management Councils will have little choice but to defer to CMS Plans developed by Regional Planning Boards and approved by the National Ocean Council. Under section 304 of the Magnuson-Stevens Act, if a Regional Fishery Management Council does not act to develop regulations, the Commerce Secretary is authorized to bypass the Council and promulgate regulations. The NOP effectively creates an “end run” of the existing Regional Fishery Management Council process, not coincidentally, a long-time goal of many of the organizations supporting the NOP.

Proponents of NOP/CMSF construct their statements carefully when arguing that the CMS planning process is not a regulatory process, but the intent of the Executive Order is clear in promoting the development of Cabinet-level approved CMS plans that dictate areas “suitable” to various activities, including commercial fishing. Similarly, the NOP establishes broad performance standards for protecting “breeding, spawning, and feeding” areas for living marine resources. The scope of authority conferred upon Regional Planning Bodies is extraordinarily broad. It may be the case that provisions of CMS Plans will be implemented under the general wording of the existing Magnuson-Stevens Act National Standards, but the salient point is that such regulatory measures will be developed by inexperienced federal agency officials usurping the role of Regional Fishery Management Councils.

NOP proponents argue also that this initiative is intended to coordinate federal oceans management, and yet the policy creates duplicative processes and ambiguous authorities. If implemented fully, the effective, fisheries conservation-focused and stakeholder supported Regional Fishery Management Council process will be compromised. Stakeholders will be faced with having multiple decision making processes at work. The result will be more costly, less effective, and less coordinated fisheries management. Stakeholder support for federal resource management will be eroded and the likelihood of litigation will increase.

### **Need for Legislation**

President Obama issued a memorandum on June 12, 2009 establishing an Inter-agency Ocean Policy Task Force and directing the Task Force to develop recommendations for a National Ocean Policy. Those recommendations were published on July 19, 2010 and implemented that same day without public review through Executive Order 13547. A National Ocean Council has been formed and it is being advised by the intergovernmental Governance Coordinating Committee. The next planned step is to establish Regional Planning Bodies composed of federal, state and tribal interests, and these entities will design regional ocean-zoning plans.

There is no statutory authorization for the National Ocean Policy. The few measures introduced by Members of Congress to establish the NOP have won little support, and accordingly, have made very little headway. The Administration has offered no legislative proposal and has simply made an end run around Congress by Executive fiat.

The pending House and Senate appropriations bills provide no funding for the National Ocean Policy initiative. Some funds are provided in the Commerce, Justice, and State appropriations bills reported by the House and Senate Appropriations Committees for state-run coastal and marine spatial planning projects limited to state waters, and we do not oppose these pilot projects.

To date, the Administration has financed its NOP initiative by diverting existing appropriations from various agencies, and it appears intent on continuing to do so without Congressional authorization. We are concerned that NOAA programs that are needed for fishery assessments, protected species research, and fishery monitoring and enforcement activities, among other critical functions, are being short-changed to create a new bureaucracy with potentially adverse impacts on commercial fishing.

We propose that Congress explicitly prohibit the expenditure of federal funds to establish Regional Planning Bodies or to develop any plans identified within the

scope of E.O. 13547. We urge Congress to request the Administration to provide a budget for the cost of implementing the Order and to define the scope and structure of activities provided for under the NOP. Finally, we urge the Administration to address the concerns stated repeatedly by the ocean user community before attempting to proceed further.

That concludes my testimony, Mr. Chairman. Thank you, again for the opportunity to testify. I am glad to respond to any questions.

The CHAIRMAN. Thank you, Mr. Gilmore. You took exactly five minutes. That is pretty good.

I am pleased to recognize Mr. Christopher Guith, Vice President of Policy for the U.S. Chamber of Commerce. Mr. Guith, you are recognized for five minutes.

**STATEMENT OF CHRISTOPHER GUTH, VICE PRESIDENT—  
POLICY, U.S. CHAMBER OF COMMERCE**

Mr. GUTH. Chairman Hastings, Ranking Member Markey, Members of the Committee, thank you for convening this hearing. From my vantage point, the National Ocean Policy is the most significant issue affecting energy security, job creation, and economic growth that no one has heard about. The policy has been promulgated with little fanfare from the Administration, with little notice from the American household and businesses that the policy can impact most.

Healthy and state of oceans is absolutely in our interest. Federal state governments have enacted literally hundreds of laws creating a framework to do precisely what this policy presupposes it to do, and at no point does the Administration suggest that this policy is what Congress intended under any statute or combination of statutes. The policy seeks to utilize coastal marine spacial planning, a concept that would limit specific areas of ocean for particular use. This is a solution to a problem that does not appear to currently exist. Allowing unelected regional planning authorities to essentially zone state and Federal waters is not authorized in any statute nor envisioned by any previous congressional action.

The facet of this policy that inspires our greatest concern is its potential breadth. On several occasions the policy explicitly suggests that any and all activities onshore could come under the regulatory reach of these regional planning authorities. The policy also suggests that the existing statutory authority, such as the Clean Air Act and the Clean Water Act, should be harnessed by the planning authorities when allocating ocean use.

The policy also brings to bear the precautionary approach or sometimes termed precautionary principle which is intended to preclude, stop, or otherwise take regulatory action against human activity when there exists the possibility that future scientific conclusions may find such activity is linked to environmental degradation.

To put it differently, the principle states unless there is a current, conclusive scientific finding that a specific proposed human activity does not cause environmental degradation it shouldn't go forward.

By preemptively utilizing the precautionary approach in such a broad context, this policy reorders our existing regulatory construct by shifting the burden of disproving environmental harm to those

intending to engage in a specific activity as opposed to allowing such activities until environmental harm is actually proven. This reversal is not sanctioned by any statutory authority and has in fact previously been rejected by Congress.

The National Ocean Policy results in a plethora of impacts in the country. Healthy or more sustainable oceans may or may not be one of them. However, one impact that is most likely to come from this policy is increased regulatory uncertainty. We estimate that nearly 2,500 rules were proposed in 2010, requiring some \$1 trillion in compliance costs paid by American businesses. Small businesses, the jobs engines of our economy, pay an average of \$10,000 per employee per year for compliance costs. Ultimately this uncertainty makes it difficult, if not impossible, for any business to modify its operations to ensure both compliance and profitability with any level of surety.

The President's National Ocean Policy will exacerbate this uncertainty and add yet another maze of real or de facto regulation for businesses to attempt to navigate. By discouraging investment into energy production, you have the additional result of threatening our energy security by forcing the country to continue to import energy when we could be producing significantly more of it domestically.

At a time of anemic economic growth and persistently high unemployment, the country is looking to its leaders to reverse these trends. The single most impactful action that can be taken is to increase the level of regulatory certainty to encourage private investment again. The President's National Ocean Policy is a step in the wrong direction and will only increase the level of uncertainty for years to come.

We would encourage the Administration to back away from this current policy and look to Congress to determine the scope and breadth of any changes in current ocean policy. The Administration's time would be much better served by reversing its record of decreasing energy production on Federal lands and forcing the country to import more energy. Hundreds of thousands of jobs have been created in the energy over the past five years supporting energy exploration and production on private and state lands. Millions more could be created in the immediate future if the Administration made domestic energy production a priority once again.

America business has been the target of a regulatory onslaught of historic proportion. Much of Congress's time has rightfully been devoted to oversight of these regulatory actions, and in many cases attempting to pass legislation reversing these actions. However, in the case of the President's National Ocean Policy, Congress still has time to act before the initial impact of the Administration's actions are realized. We would encourage you to take these actions immediately.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Guith follows:]

**Statement of Christopher Guith, Vice President for Policy,  
Institute for 21st Century Energy, U.S. Chamber of Commerce**

Chairman Hastings, Ranking Member Markey, and members of the Committee. I am Christopher Guith, vice president for policy of the Institute for 21st Century Energy (Energy Institute), an affiliate of the U.S. Chamber of Commerce. The U.S.

Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region.

The mission of the Institute is to unify policymakers, regulators, business leaders, and the American public behind common sense energy strategy to help keep America secure, prosperous, and clean. In that regard we hope to be of service to this Committee, this Congress as a whole, and the Administration.

Thank you for convening this hearing. From my vantage point, The National Ocean Policy is the most significant issue affecting energy security, job creation, and economic growth that no one has heard about. This policy has been promulgated with little fanfare from the administration and with little notice from the American households and businesses that the policy could impact the most. Congress should and must utilize its oversight function to examine the National Ocean Policy to ensure it is consistent with the administration's statutory authority, and that it would not create new and unnecessary barriers that would jeopardize economic growth or energy security.

The potential impacts on offshore energy like oil and natural gas production and renewable electricity generation are clear. However, while this policy is focused on oceans, the Final Recommendations of the Interagency Ocean Policy Task Force makes it clear that the policy's impacts do not stop at the coastline. Through a myriad of drawn-out arguments, the recommendations allow for regulatory coverage of virtually every bit of land and any entity operating or living on it. Onshore energy operations like mining, oil and natural gas production, and electricity generation are also vulnerable to new regulatory actions. The potential impacts do not hit just the energy sector but also agriculture, manufacturing, and construction. To be sure, the reach could be economy wide.

The Chamber's Energy Institute, and many of the other organizations represented on this panel, have spent a great deal of time educating our members and the public about the potential impacts of this policy. While they are quick to understand the potential implications, the unfortunate reality is that this represents just one of dozens of actions in a historical regulatory onslaught that has undercut any semblance of the certainty required to foster the investments that will create jobs and economic growth.

#### **RATIONALE**

Healthy and sustainable oceans are absolutely in our nation's interests. The federal government has seen fit to enact dozens of laws to ensure that interest. Together with hundreds of state laws, a framework has been created to do precisely what the President's National Ocean Policy presupposes it will do. The administration argues that the authority to implement such a policy is based in this myriad of federal statutes. However at no point does the administration suggest this policy is what Congress intended under any statute, or combination of statutes. The administration suggests that amongst other things, the creation of this new regulatory structure is needed to allocate ocean use through Coastal and Marine Spacial Planning and to "strengthen the governance structure." Both purposes should give pause to every Governor, anyone who ever intends to enjoy the beach or ocean, and anyone concerned about jobs and economic growth.

Coastal and Marine Spacial Planning is a concept that would limit specific areas of ocean for particular use. This is a solution to a problem that does not appear to currently exist. It is true some areas of ocean are already designated for uses that may preclude additional uses. For example, significant swaths are designated for use by the Department of Defense. However, if a specific use of ocean waters otherwise precludes another use, there are existing avenues through statute and common law to resolve such a question. Allowing unelected regional planning authorities to essentially "zone" state and federal waters, as in the case of the National Ocean Policy, is not authorized in any statute, nor remotely envisioned by any previous Congressional action. At a time of prolonged unemployment and anemic economic growth, Congress should take note that these planning authorities would be expressly empowered to limit commercial endeavors at will without such statutory authority.

I do not desire to play the role of alarmist, but I am left with little option given the vagueness of the policy itself and the non-transparent fashion in which it was created. The President's Task Force provides little analysis or even description for the problems its recommendations allege to address. More troubling however, the Task Force Recommendations and the subsequent Executive Order provide little insight or detail about how the recommendation will be implemented. Nor do the recommendations provide any facet of constraint or even oversight which might otherwise allay concern over potentially sever negative impacts. The policy is overly

vague throughout which only magnifies the concerns any current or potential ocean user should have.

### **BREADTH**

The facet of this policy that inspires our greatest concern is its potential breadth. On several occasions, the policy explicitly suggests that any and all activities on shore could come under the regulatory reach of the regional planning authorities. The policy explicitly calls for addressing, “urban and suburban development,” as well as “land based source pollutants.” Given the administration’s existing regulatory overreach on numerous “land based pollutants,” that in many cases are explicitly authorized by statute, it does not require a vivid imagination to foresee an unchecked regional planning authority attempting to take action on inland activities that it finds are having an impact on ocean waters.

The Coastal and Marine Spacial Planning section explicitly allows for the regional planning authorities to include upland areas. In fact, this policy finds that current conditions, “necessitate connecting land-based planning efforts with ocean, coastal, and Great Lakes planning.” The policy continues to find that existing statutory authorities such as the Clean Air Act and the Clean Water Act should be harnessed by the planning authorities when allocating ocean use.

The policy utilizes the overly broad and vague term “industries” when describing “human activities” that are ultimately impacting the oceans, which presumably then can fall under the regulatory reach of this action. However, it also explicitly targets certain specific industries by name including energy, agriculture, forestry, and development.

The policy provides the following concern as context for why and how action should be taken:

“Urban and suburban development, including the construction of roads, highways, and other infrastructure. . . can adversely affect the habitats of aquatic and terrestrial species.”

Infrastructure developers must already negotiate a byzantine regulatory labyrinth that often leads to costly delays. Superimposing the will of a regulatory planning authority on top of this process has the very real potential of precluding many of the infrastructure projects which the country needs and the administration itself has been clamoring.

Not only does the President’s National Ocean Policy allow for the inclusion of virtually every sector of private enterprise to fall under new regulation, but it also brings to bear the “precautionary approach,” a new prism by which the prospective regulatory actions should be taken. The precautionary approach—also commonly referred to as the Precautionary Principle—was adopted in 1992 by the United Nations Conference on Environment and Development in Rio De Janeiro, Brazil (“The Rio Declaration”).

The Rio Declaration states, “[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” The intent of employing this “precautionary approach” is to preclude, stop, or otherwise take regulatory action against human activity when there exists the possibility that future scientific conclusions may find such activity is linked to environmental degradation. To put it differently, the principle states, unless there is current conclusory scientific finding that a specific proposed human activity does not cause environmental degradation, it should be limited.

While similar regulatory formulas are explicitly called for in statute where Congress intended to preserve the status quo, they are few and far between. By preemptively utilizing the “precautionary approach” in such a broad context, this policy reorders our existing regulatory construct by shifting the burden of disproving environmental harm to those intending to engage in a specific activity as opposed to allowing such activities until environmental harm is proven. Since the policy clearly seeks to include land-based human activities under its regulatory purview, the “precautionary approach” may presumably be applied to any such activities. This reversal is not sanctioned under any statutory authority and has previously been rejected by Congress. This is a significant shift in regulatory policy and law, and will undoubtedly have a chilling effect on many forms of enterprise and economic activity, most especially technological innovation.

### **IMPACTS**

The President’s National Ocean Policy will result in a plethora of impacts on the country. The stated impact of healthier and more sustainable oceans may or may not be one of them. However, one impact that is most likely to come from this policy is increased regulatory uncertainty. The recent regulatory overreach has permeated

so many areas of commercial enterprise already, ranging from healthcare to financial services to labor relations to energy production to name just a few.

Businesses of all sizes and sectors are impacted by these regulatory actions and will be attempting to determine the ultimate impacts on their operations for years, if not decades, to come. We estimate that nearly 2,500 rules were proposed in 2010 requiring some \$1 trillion in compliance costs on the back of American businesses. The impact of these costs is greatest on small businesses. Businesses with fewer than 20 employees incur regulatory costs 42% higher than larger businesses of up to 500 employees. The average regulatory cost for each employee of a small business exceeds \$10,000 per year. Ultimately, this uncertainty makes it difficult, if not impossible, for any business to modify its operations to ensure both compliance and profitability with any level of surety.

The most visible effect of this environment is a lack of capital investment. This is the foundation of what some economists have described as a "job-less recovery". The country is experiencing some economic growth, but the private sector is not creating jobs at a rate that should correspond with that growth or to ensure future growth. It is estimated that throughout the recovery some \$2 trillion has remained liquid, without being invested. The uncertainty caused by the recent regulatory overreach is a primary reason so many are not comfortable investing this capital.

The President's National Ocean Policy will exacerbate this uncertainty and add yet another maze of real or de facto regulation for businesses to attempt to navigate. This may in turn lead to even less investment in areas such as infrastructure construction, manufacturing, and energy production. These are all areas that have significant track records of generating economic growth for the nation, as well as creating millions of jobs. By discouraging investment into energy production, this policy has the additional impact of harming our energy security by forcing the country to continue to import energy when we could be producing significantly more of it domestically.

## CONCLUSION

At a time of anemic economic growth and persistently high unemployment, the country is looking to its leaders to reverse these trends. The single most impactful action that can be taken is to increase the level of regulatory certainty to encourage private investment again. This investment will not only generate economic growth, but create jobs in nearly all sectors. The President's National Ocean Policy is a step in the wrong direction and will only increase the level of uncertainty for years to come.

We would encourage the administration to back away from this current policy and look to Congress to determine the scope and breadth of any changes in current ocean policy. The administration's time would be better served reversing its record of decreasing energy production on federal lands and forcing the country to import more energy. Hundreds of thousands of jobs have been created in the energy industry over the past five years supporting energy exploration and production on private and state lands. Millions more could be created in the immediate future if the administration made domestic energy production a priority once again.

Additionally, we would encourage the administration to increase its efforts to ensure ratification and adoption of the United Nations Convention on the Law of the Sea (also referred to as the Law of the Sea Treaty), which will provide not only an environmental benefit by ensuring America's arctic territory is officially identified and defined (and thus protected by U.S. law), but also pave the way for tremendous investment into those areas.

American business has been the target of a regulatory onslaught of historic proportions. Much of Congress' time, especially in the House of Representatives, has rightfully been devoted to oversight of these regulatory actions, and in many cases attempting to pass legislation to reverse final actions taken by the administration. However, in the case of the President's National Ocean Policy, Congress still has time to act before the initial impact of the administration's actions are realized. We would encourage you to take such action immediately.

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The CHAIRMAN. Thank you very much, Mr. Guith. Next we will hear from Mr. Barry Rutenberg, Chairman-Elect of the Board of the National Association of Homebuilders. Mr. Rutenberg, you are recognized for five minutes.

**STATEMENT OF BARRY RUTENBERG, CHAIRMAN-ELECT OF  
THE BOARD, NATIONAL ASSOCIATION OF HOMEBUILDERS**

Mr. RUTENBERG. Chairman Hastings, Ranking Member Markey, and Members of the Committee, thank you for the opportunity to testify today.

My name is Barry Rutenberg, and I am NAHB's Chairman-Elect of the Board and a regional builder from Gainesville, Florida. NAHB recognizes the need to preserve the health of the marine ecosystem as it is one of the many lifelines upon we as a nation depend. NAHB members are national stewards of the ocean, coasts and Great Lakes, and regularly take steps to improve the long-term conservation of these resources.

As the Committee considers the National Ocean Policy, I hope Members will be mindful of the unintended consequences on regulated entities and stakeholders. President Obama and the Inner Agency Ocean Policy Task Force had developed an ambitious and far-reaching set of policies and actions that are expected to be undertaken in the next several years. NAHB has a number of concerns on how the implementation of any ocean policy may affect the health of the homebuilding industry, housing affordability, and our nation's overall economy.

Given the significant impacts that may accrue from the implementation of this policy, NAHB is concerned by the Administration's attempt to authorize these activities through an Executive Order instead of securing congressional support and approval. NAHB believes it is imperative that the Administration only implement any such policy after securing specific statutory authority.

Further, it is unclear if or how the task force of the agencies will be required to consider the economic impact of their actions. NAHB strongly believes some type of economic analysis should be conducted prior to implementing any of the proposed actions. Overall, NAHB is concerned that agencies will enact regulations that will only have a minor impact on the environment at a significant cost to private landowners and businesses.

When contemplating how the National Oceans Policy will be implemented, the Administration must take care to ensure that its actions do not disrupt the ability of communities to define themselves how they choose. Any potential government policies that will broadly shape the future of our communities must be based on solid research and sound science.

As one of the most highly regulated industries, homebuilders already comply with numerous Federal, state, and local environmental statutes. We can offer a unique view on how the National Oceans Policy might impact regulated entities.

For example, homebuilders must already comply with the Federal Emergency Management Agency's national flood insurance program when siting, designing and constructing their homes. We meet the mandates of the Clean Water Act for controlling stormwater discharges. We demonstrate that the activities are consistent with our states' coastal zone management plan, and we meet the requirements of the local zoning critical areas for shoreland protection ordinances. Clearly, governments at all levels have already taken significant steps to protect coastal areas.

Further, while the focus of the policy is to protect ocean health, because its scope is currently undefined it has the potential to make land-based activities without limit to the health of the ocean.

Instead of blindly adopted blanket policies that are far-reaching the task force must identify where the gaps and coverages exist so that those voids can be targeted.

NAHB has significant concerns about the potential for the Federal Government to overstep its bounds with regard to land use planning. This practice allowed home buyers and homeowners the opportunity to choose a location of their homes and past experience suggests that caution must be taken to ensure that local governments are free to direct their community growth without Federal interference or coercion.

It is likely that the agencies and courts will struggle with the scope, definitions, and implementations of the National Oceans Policy, making regulatory compliance a great challenge. Given the number of existing policies the efforts already taken at the Federal, state, and local levels, and the need to preserve the rights of local governments, NAHB questions the need for an additional layer of regulation.

The deep recession that has permeated all segments of the housing industry since 2008 continues to hold back the economic recovery of the United States. The already battered housing industry cannot successfully face the forthcoming challenges already done by additional regulatory burdens that are not based upon science.

While we support the overall intent of the National Oceans Policy, we cannot currently support any action that would unnecessarily impede recovery of this important economic sector.

Thank you for the opportunity to testify today, and I look forward to your questions.

[The prepared statement of Mr. Rutenberg follows:]

**Statement of Barry Rutenberg, Chairman-Elect of the Board,  
on Behalf of the National Association of Home Builders**

**Introduction**

Chairman Hastings, Ranking Member Markey and members of the House Natural Resources Committee, I am pleased to appear before you today on behalf of the 160,000 members of the National Association of Home Builders (NAHB) to share our views on President Obama's National Ocean Policy. We appreciate the invitation to appear before the Committee on this important issue. My name is Barry Rutenberg and I am the Chairman-elect of the Board for NAHB and a home builder from Gainesville, Florida.

NAHB recognizes the need to preserve the health of the marine ecosystem as it is one of the many lifelines upon which we as a nation depend. NAHB members are national stewards of the ocean, coasts, and Great Lakes and regularly take steps to improve and promote the long term conservation and use of these resources. Due to the impact that the National Oceans Policy may have on the future of our homes and communities, NAHB has been monitoring its development and on a number of occasions, has provided input to the White House Council on Environmental Quality and the Interagency Task Force on Ocean Policy. In general, NAHB has supported the goals of these programs, but has raised a number of concerns on how the implementation of any oceans policy may affect the health of the home building industry and our nation's overall economy.

**National Oceans Policy**

President Obama and the Interagency Ocean Policy Task Force have developed an ambitious and far-reaching set of policies and actions that are expected to be undertaken over the next several years to "ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and re-



sources, 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.”

Given the significant impacts that may accrue from the implementation of this policy, coupled with its far-reaching effects, NAHB is concerned by the Administration’s attempt to authorize these activities through an Executive Order instead of securing Congressional support and approval. In four separate Congresses, legislation has been introduced to create ocean policy. None of these attempts have ever reported out of Committee. During the 111th Congress, NAHB submitted a statement for the record to the Subcommittee on Insular Affairs, Oceans, and Wildlife opposing that legislative effort. It is clear from these unsuccessful attempts that there are differing views on the need for, and scope of, any national oceans policy. Due to these widespread discrepancies, NAHB believes it is imperative that the Administration only implement any such policy after securing specific statutory authority to do so.

Further, it is unclear from the Executive Order and the Final Recommendations of the Interagency Ocean Policy Task Force if or how the Task Force or the agencies will be required to consider the economic impact of their actions. Because we believe the impacts could be significant, NAHB strongly believes some type of economic analysis should be conducted prior to implementing any of the actions. NAHB also believes that the requirement for the agencies to implement the National Oceans Policy “to the fullest extent possible” further limits their ability to conduct a cost-benefit analysis before implementing any new regulation or requirement. Overall, NAHB is concerned that agencies will enact regulations that will only have a minor impact on the environment but a significant cost to private landowners and businesses. Such an outcome is unacceptable and completely contrary to this Administration’s pledge to make regulations more effective and less burdensome.

#### **The Oceans Policy Must Preserve Community Choice**

The strength of our communities is their reflection of a diverse range of people, needs, ideals, and locales. Their design and shape are dictated by powerful market forces and realities that reflect the choices consumers make about where they live, work, and play. As communities age, evolve, and grow, community leaders must balance often competing needs, including a wide range of neighborhood and housing options; housing that meets the needs of families across the economic and demographic spectrum; reasonable proximity to jobs, commerce, and recreation; safe neighborhoods and a healthy environment; and open space and access to natural resources. When contemplating how the National Oceans Policy will be implemented, the Administration must take care to ensure its actions do not disrupt or otherwise impede the ability of communities to define themselves how they choose. For example, although a number of coastal communities have recently undertaken efforts to revitalize their waterfronts or downtown areas, strict implementation of the Policy may no longer allow such activities to occur. Further, any potential government policies that will broadly shape the future of our communities must be based on solid research and sound science and data and allow for choices and flexibility in the marketplace.

#### **NAHB Is Concerned About Potential Unintended Consequences**

As one of the most highly regulated industries, home builders already comply with numerous federal, state and local environmental statutes and can offer a unique view on how the National Oceans Policy might impact regulated entities. For example, homebuilders must already comply with the Federal Emergency Management Agency’s National Flood Insurance Program when siting, designing and constructing their homes; meet the mandates of the Clean Water Act for controlling storm water discharges during their construction activities; demonstrate that their activities are consistent with their state’s coastal zone management plan; and meet the requirements of their local zoning, critical areas and/or shoreland protection ordinances. Clearly, governments at all levels have already taken significant steps to protect, maintain, and enhance their waterways and coastal areas. As a result, any National Oceans Policy has the potential to create yet another set of standards and/or approvals that could unnecessarily impose significant impacts on home builders, private landowners, and other businesses while providing minimal benefits.

Further, while the focus of the policy is to protect ocean health, because its scope is currently undefined and also references coastal areas, it has the potential to link land based activities, without limit, to the health of the ocean whether or not such activities have an actual impact. For example, even though they already contain

stringent standards to guard against environmental degradation, any type of permit issued under the Endangered Species Act or Clean Water Act could be impacted by the National Ocean Policy. Instead of blindly adopting blanket policies that are far-reaching and may not meet their intended goals, the Interagency Task Force must identify where the gaps in coverage exist across the range of federal, state, and local environmental, land-use, and zoning requirements rather than putting new regulations on top of existing regulations.

Likewise, because a portion of the Policy concerns the use of coastal areas, NAHB has significant concerns about the potential for the federal government to overstep its bounds with regard to land use planning. Currently, state and local governments have the ability to plan for and determine appropriate uses for their entire communities, including coastal areas. If a local government deems an area fit for residential development and the site/project meets all of the existing federal requirements, construction may be allowed to occur. This practice allows homebuyers and homeowners the opportunity to live in a home of their choice in a location of their choice. The National Oceans Policy, however, has the potential to significantly change this standard practice. Past experience suggests that caution must be taken to ensure that local governments are free to continue to direct their community growth without any federal interference or coercion.

Finally, although one goal of the National Oceans Policy is to better coordinate and plan for competing uses of the oceans, Great Lakes, and coastal areas, NAHB cautions against planning for that objective alone. Planning is not simply about managing resources with one objective in mind, but about optimizing multiple community or society goals. Solutions that seem simple to some may be complex and fraught with tradeoffs that make them far from ideal. A proposal that may solve one problem may generate new problems. Indeed, placing too much emphasis on one objective may not result in success, thus policymakers must seek to balance the full range of policy goals and should not address ocean health (or any other issue) to the exclusion of other crucial concerns. Clearly, decision makers must also be mindful of unintended consequences as they develop solutions to address this complex web of issues.

Based on past efforts, it is likely that the agencies will struggle with the scope, definitions and implementation of the National Oceans Policy, making regulatory compliance a great challenge for not only the nation's home builders, but other stakeholders, as well. Given the number of existing policies specifically designed to protect our nation's oceans, coastlines, and watersheds, the efforts already taken at the federal, state, and local levels, and the need to preserve the rights of local governments to make their own decisions about the fate of their communities, NAHB questions the need for an additional layer of regulation. At a minimum, NAHB suggests that any action that would impact or impeded the ability of the housing sector to recover be avoided and/or delayed until the industry is back on sound footing.

### **Climate Change**

The Task Force has implicated climate change as part of its rationale for the need for the National Oceans Policy. Over the past two decades, concerns in the United States have increased over the potential impacts of greenhouse gas (GHG) emissions on water resources. Research, however, has yielded mixed results regarding the direct impacts of emissions on global resources, atmospheric events and atmospheric particle deposition on aquatic resources. Likewise, due to limited knowledge, dependency on forecasting models, and contradictory evidence, there is a high degree of uncertainty associated with climate change findings and assumptions. For example, estimating future impacts on precipitation events and aquatic resource availability have proven to be difficult. Similarly, research on anthropogenic impacts on climate change and water availability has been hypothesized to fluctuate, but definitive research has not yet proven to what degree.

Additionally, research regarding the hydrologic (and other) impacts of climate change and the subsequent preventative measures needed must be an interagency effort. NAHB commends the Task Force for collaborating with the various agencies that have climate change policies currently in place. At a minimum, a holistic approach to research, programmatic strategy development, and coordinated implementation oversight will help to reduce duplication and improve overall results.

Until the true causes and effects of human interaction with the marine biological and ecosystem cycles are better understood, any major actions to mitigate or adapt to the effects of climate change should be undertaken with extreme caution to avoid onerous or duplicative regulations that fail to provide adequate water protection or ensure efficient use. The Administration must commit to performing research on the effects of climate change on ocean health and water availability and supporting existing policies that can be adapted to address the research findings. It is vital to

continue to research the development of cooperative solutions in the face of scientific uncertainty, not adopt additional regulations based upon minimal data. There must be definitive science that fully supports policy and policy implementation.

**Conclusion**

NAHB's members are stewards of the environment. Many builders go above and beyond current requirements of the Endangered Species Act, Clean Water Act, and other federal, state and local environmental statutes in order to build an environmentally friendly home. NAHB's members take their responsibilities under the ESA, Clean Water Act, and other federal and state environmental statutes seriously.

As you are well aware, the deep recession that has pervaded all segments of the housing industry since 2008 continues to hold back economic recovery in the United States. The already-battered housing industry, however, cannot successfully face the forthcoming challenges while weighed down by additional regulatory burdens that do little to further protect the nation's natural resources, including our oceans, Great Lakes, and coastal areas. While we support the overall intent of the National Oceans Policy, we cannot currently support any actions that would impede recovery of this important economic sector.

NAHB appreciates the opportunity to provide comments on the implementation of the President's Executive Order and the Task Force's recommendations on the National Oceans Policy. Protecting, maintaining and restoring the health of the oceans, Great Lakes, and coastal areas, as well as planning for their sustainability, is of great importance and we look forward to continued opportunities to participate in this undertaking.

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The CHAIRMAN. Thank you very much for your testimony.

Next we will hear from Mr. Marc Gorelnik, Board of Directors, the Coastside Fishing Club. You are recognized for five minutes.

**STATEMENT OF MARC GORELNIK, BOARD OF DIRECTORS,  
COASTSIDE FISHING CLUB**

Mr. GORELNIK. Chairman Hastings, Ranking Member Markey, Committee Members and hard working staff, my name is Marc Gorelnik, and I serve on the Board of Directors of the all-volunteer, 10,000-member-strong Coastside Fishing Club, and I am a life-long recreation angler. I am here today with a cautionary tale from California.

For myself and many of the other millions of salt water anglers in the United States going fishing is more than a recreational past time. It is a tradition, a connection to the generations before us, and a tradition that we pass to the generations that follow us. It is also a recreational activity that binds us tightly to the health of the environment.

What makes our ocean activity so different from any other ocean users is that the quality of our experience depends directly on the health and vitality of the resource. To us the ocean isn't merely a surface to be transited from port to port, or a fruitful place from which to extract energy and minerals. On this basis a reasonable observer might believe that California recreational anglers are over the moon about the President's National Ocean Policy and its coastal and marine spacial planning. But we Californians are living the nightmare of a similar program. The Marine Life Protection Act, also know as the MLPA, which included its own component of marine spacial planning, and it is our experience in California that brings me to my cautionary tale.

The MLPA eliminates or severely restricts recreational and commercial fishing activities without regard to species management. While posited as a science-driven process, it was far more political.

After all, private foundations funded this pseudo-public process, and he who pays the piper names the tune.

It was a biased process and recreational anglers who devoted thousands of hours in stakeholder and other meetings in the end served merely as window dressing. Proposals supported by environmental NGO's always triumphed over proposals by anglers, and this is true even when the NGO favored proposal offered no conservation benefits and higher social-economic costs than the angler proposal.

Now, there may be times when sound fishery management guided by credible scientific data instructs that angling must be curtailed in order to restore a species or habitat. Recreational anglers on the whole would not and have not chafed at such restrictions because the restrictions are generally narrowly tailored, temporary in duration, and directed toward increasing future recreational opportunities. But that is not what happened in California where the MLPA usurped the role of fishery management.

The President's National Ocean Policy does not need to go down the same road as California's MLPA. As I noted at the beginning of my testimony, anglers, unlike many other ocean users that may be impacted by national ocean policy, need and desire a healthy ecosystem in order to engage in our pursuits. Because we generate billions of dollars of economic activity, there are real jobs and businesses that desperately need and desire a healthy and vibrant ocean ecosystem. We would like to work with the Administration to this end but your experience in California leaves us wary.

Why don't recreational anglers, and there are more than 12 million of us on our nation's coasts, have a hand on the tiller? Will our participation be merely window dressing as it was in California? It seems that that is the way we are headed.

A year or two ago a National Ocean Policy Task Force met publicly in San Francisco. The recreational angling community was not included except as spectators to a series of speakers praising California's MLPA process. This provides us with little room for optimism.

In closing, I would urge the Administration to remember that recreational ocean angling is woven into the fabric of our nation's coastal communities and is important to tens of millions of voting age anglers and their families. It brings billions of dollars of economic benefit to coastal economies, and our nation's anglers already deal with vast closures imposed by fishery managers. The notion that further restrictions, unrelated to fishery management and largely politically driven, may be visited upon anglers is unacceptable.

In California, we were told not to worry about the process as it would be fair to all. Well, it wasn't, and we do not want to see California's politically drive and unfair marine spacial planning promoted to the national stage.

Thank you very much for your time.

[The prepared statement of Mr. Gorelnik follows:]

**Statement of Marc Gorelnik, Member, Board of Directors,  
Coastside Fishing Club**

I am here today with a cautionary tale from California. My name is Marc Gorelnik. I am a director of the all-volunteer, 10,000 member strong Coastside Fish-

ing Club and a lifelong recreational angler. I grew up fishing from the ocean piers of Southern California and now fish from my own trailer boat in the waters of Central and Northern California. For myself many of the other millions of saltwater anglers in the United States, going fishing is more than a recreational pastime. It is a tradition, a connection to the generations before us, and a tradition that we pass to the generations that follow us. It is also a recreational activity that binds us tightly to the health of the environment.

What makes our ocean activity different from that of some other witnesses here is that the quality of our experience depends on the health and vitality of the resource. To us, the ocean isn't merely a surface to transit from port to port or a body of water that lies between us and minerals to be extracted.

On this basis, a reasonable observer might believe that California recreational anglers are over the moon about the President's National Ocean Policy initiative. But we Californians are living the nightmare of an analogous program, the Marine Life Protection Act, also known as the "MLPA," which included its own marine spatial planning initiative. And it is our experience in California that brings me to the cautionary tale of recreational anglers.

The debacle of the MLPA in California should not be visited on the nation. National Ocean Policy initiative should not be directed to decreasing recreational freedoms on our nation's ocean waters. Rather, the policy should work to improve the quality and scope of recreational experiences for Americans.

There may be times when sound fishery management, guided by credible scientific data, instructs that angling must be curtailed in order to restore a species or habitat. Recreational anglers would not, and have not, chafed at such restrictions because they are generally narrowly tailored, temporary in duration, and directed toward increasing future recreational opportunities. But that's not what happened in California, where the MLPA usurped the role of fishery management.

The MLPA eliminates or severely restricts recreational and commercial fishing activities without regard to species management. Closures are self-justifying. While posited as a science driven process, it was far more political. After all, private foundations funded this pseudo-public process, and he who pays the piper names the tune. It was a biased process and recreational anglers, who devoted thousands of hours in stakeholder and other meetings, served merely as window dressing. In the end, proposals supported by environmental NGOs always triumphed over proposals by anglers. This is true even when the NGO-favored proposal offered no conservation benefit and higher socio-economic costs.

We see a similar path with National Ocean Policy. Ecosystem based management is laudable from a lay or political perspective, but it is not a well-defined scientific standard unlike management standards in Magnuson-Stevens. In the end, it is a political football. In California, we saw "ecosystem protection" as an all-purpose, one size fits all, justification for any path sought by the environmental NGOs. Even in the absence of any scientific justification, the so-called "precautionary principle" was invoked as a lazy device to deprive recreational anglers from locations that had been sustainably fished for generations.

Here is some background on the MLPA. Shortly before the MLPA became California law, the federal government amended the Magnuson-Stevens Act (creating the Sustainable Fisheries Act of 1996). Federal policy changed from one of expanding US fisheries while excluding foreign fisheries from US waters. Instead of maximizing yield, the policy changed to maximum *sustainable* yield—a huge difference. The focus and weight of law was now on sustainability. And with that, the Pacific Fisheries Management Council really did change the way in which it managed the fishery off California's coast.

The Council declared that several groundfish species were overfished, and undertook rebuilding plans based on the biology of the fish and the needs of the fishing community. And with these rebuilding plans in place, these depleted species became the controlling factor for the majority of the species that have always remained healthy. By-catch of these constraining fishes shut down otherwise healthy fisheries when rebuilding take limits were attained.

Unlike other coastal waters around the world, California's fishery is healthy and rebuilding. Then what is the role of the later-enacted MLPA? What role do its marine protected areas play in supporting sustainability or improving the rebuilding rate of critical species? For those fisheries that are healthy, and successfully managed to maximum sustainable yield, there is no need to close fishing, as the same number of fish will ultimately be allowed to be taken from areas outside of the MPAs—they will just be harder and more expensive to get. So with no net reduction in the amount of fish taken, there will be little if any net gain as a result of an MPA closure. And if you are a recreational fisher, in some cases that increase in

difficulty and expense will result in forgone opportunity and a slower economic engine within the recreational sector.

This concept of no net gain presents an interesting paradox. The annual catch limits are set by the PFMC based on the best available science regarding the status and biology of the stocks. The PFMC is required by law to set levels that do not allow overfishing to occur—i.e. the level must be sustainable; and to rebuild those stocks that are overfished in as fast a time as practicable. But once those levels are set, the fishermen are largely free to fish to those limits. Closing small areas will not have a significant effect on the total number of fish extracted—they will just shift where they are caught and how difficult—expensive—it will be to catch them. Controlling the level of fishing is the responsibility of federal and state fishery management organizations; and, rightly so, not the responsibility of the MLPA. Closing areas to fishing within the structure of the MLPA will not impact the level of extraction, and thus not affect the level of sustainability of the vast majority of our fish stocks—which are healthy.

But then what about those handful of groundfish species that are overfished and are rebuilding? The Big Old Fat Female (“BOFF”) theory and the size and spacing requirements of the MPAs are relevant to that discussion. But the fact is that the preferred habitat for these few critical fish are largely outside of state waters, and thus the MLPA is working on the margins of the habitat for them. Compare that with the thousands of square miles of preferred habitat already closed by the federal fishery managers in what are known as Rockfish Conservation Areas, and Cowcod Conservation Areas. These areas are basically closed to both recreational and commercial bottom fishing, and are critical elements of the rebuilding strategy of the PFMC and the NMFS.

While changes to the boundaries are made in response to improved understanding of the stocks, the size of these closed areas makes the MLPA closures relatively insignificant to the rebuilding rate. So while the concept has relevance to the rebuilding discussion, the potential magnitude of the impact of the MLPA’s BOFF and the associated size and spacing is likely to be of no significance to the rebuilding of the few overfished stocks off California.

And just like the healthy stocks, the concept of no net reduction in take is still going to control the rebuilding rate of these fish. The PFMC sets the allowed level of take for these fish too—be it unintended by-catch, or minimal directed harvest based on the approved rebuilding plan strategy. So as long as that level of take occurs, the rebuilding rate will not significantly change.

The MPAs established under California’s MLPA are simply not relevant to the concept of sustainable fishing: they are not impairing sustainability, but they are not enhancing it either—decent science based fishery management has simply overtaken the MLPA, and made it a relic of the past. But it is affecting the way recreational fishermen pursue their passion. It is changing where we fish, and the expenses we incur in pursuit of those fish. The MLPA impacts the infrastructure that we depend on as we attempt to catch a fish.

Our charter boat industry, the bait shops, marine fueling operations, etc. are all affected by the resulting increases in operating costs and forgone opportunity. They are struggling to stay in business, and many are not making it. The most obvious operating cost impacts result from travel distances increasing as a result of closures near the ports, resulting in added fuel costs. And in some cases it is possible that the added distances could prove to be a safety hazard should boats try to return to port in front of approaching storms. The economic impact is real: Morro Bay has already lost most of its sportfishing fleet, and tourism is down dramatically. The same is true in Bodega, and other small coastal communities.

Fishing is a mainstay of tourism in our coastal communities and the MLPA doesn’t have the money to encourage the ecotourism used to justify the closures. To be sure, there will be offsetting economic gains to coastal communities, when or if the economy switches from fishing to ecotourism. But I for one prefer a working marina to tee shirt and souvenir shops.

During the implementation phase, 10s of millions of dollars have been spent—mostly from private funding sources, but significant amounts of taxpayer money as well. However the huge cost issue with the MLPA will be the ongoing enforcement and monitoring expenses. Estimates from the California Department of Fish and Game project additional annual expenses from 10 to 50 million dollars a year—money they don’t have, and won’t get. The Department has repeatedly said they don’t have the money to do the job, and will likely not be able to effectively enforce the regulations. Which raises the very real possibility that these MPAs could become viable target areas for poachers—which would be doubly bad. First because that would defeat the biological gains we expect to see inside the MPAs, but also

because these catches would be un-reported and thus detract from our ability to accurately monitor actual take levels.

The implications relative to the national movement for Coastal and Marine Spatial Planning are significant. If the California MLPA example is followed on a national basis, fishermen have good reason to be concerned. Already we are seeing that getting fishermen and fishery science a seat at the planning table is an uphill battle. Given all the other competing users and preservationists, who do have strong presence on the planning councils and oversight bodies, our ability to influence the outcome is doubtful. Our ability to have access to a healthy fishery is in real jeopardy.

While repeatedly touted as “the most open and transparent process in state government,” this was instead a brave new world of ruthless NGO-driven regulations. Indeed, the “open and transparent” MLPA organization refused to respond to a public records request on grounds that it wasn’t a state body. It took a lawsuit and court order to force open the MLPA records.

The flawed MLPA process in California is relevant to the President’s Ocean Policy Initiative because we see the same actors on stage. The same NGOs with the same objectives and principles, such as self-justifying recreational access closures. Like the MLPA, we see a complete absence of representation of American anglers in any meaningful way, and certainly not in balance with those who drove the MLPA in California.

With the bitter aftertaste of the railroad job anglers received in California, and seeing many of the same environmental NGOs striving for a hand on the steering wheel, you can understand why anglers may be apprehensive about the National Ocean Policy. We fear that it may be California’s MLPA, writ large. We fear the same lost opportunities, with greater concentration in fewer areas; more closings of landings and lost jobs; more high-minded rhetoric.

The President’s National Ocean Policy does not need to go down the same road as California’s MLPA. As I noted at the beginning of my testimony, anglers—unlike most other ocean users that may be impacted by the National Ocean Policy—need and desire a healthy ecosystem in order to engage in our pursuits. Because we generate billions of dollars of economic activity, there are real jobs and businesses that derivatively need and desire a healthy and vibrant ocean ecosystem. We would like to work with the Administration to this end, but our experience in California leaves us wary.

Why don’t recreational anglers, and there are more than 12 million of us on the oceans, have a hand on the tiller? Will our participation be mere window dressing as it was in California? It seems that that’s the way we’re headed. A year or two ago, a National Ocean Policy task force met publically in San Francisco. The recreational angling community was not included except as spectators to a series of speakers praising California’s MLPA process. This provides little room for optimism.

In closing, I would urge the Administration to remember that recreational ocean angling is woven into the fabric of our nation’s coastal communities and tens of millions of voting age anglers and their families. It brings billions of dollars of economic benefit to coastal economies. And our nation’s anglers already deal with vast closures imposed by fisheries managers. The notion that further restrictions, unrelated to fishery management and largely politically driven, may be visited on anglers is unacceptable. In California, we were told not to worry about the process as it would be fair to all. Well, it wasn’t. And we do not want to see unnecessary, feel-good closures imposed throughout our nation’s coastal waters. Thank you for your time.

The CHAIRMAN. Thank you very much, Mr. Gorelnik.

Next we will hear from Mr. John Bullard, the President of the Sea Education Association. Mr. Bullard, you are recognized for five minutes.

**STATEMENT OF JOHN BULLARD, PRESIDENT,  
SEA EDUCATION ASSOCIATION**

Mr. BULLARD. Chairman Hastings, Ranking Member Markey, Members of the Committee, my name is John Bullard. I am President of Sea Education Association in Woods Hole, Massachusetts. We teach college students about the ocean. It is nice to see one of our alumni on your staff.

I was also selected by Massachusetts Governor Deval Patrick to serve on the Commonwealth's Ocean Advisory Commission, a body which was heavily engaged in the development of the Massachusetts Ocean Plan. Additionally, I am a former mayor of the fishing port of New Bedford, a historic fishing port which in recent years has consistently ranked as the top ranked port in the country in terms of value landed.

In Massachusetts and the rest of New England, we value our traditional uses of the ocean greatly. Commercial fishing, shipping, tourism, and recreation are mainstays of the coastal economy, and they help define the character of many of our seaports. At the same time in Massachusetts and elsewhere new proposals for the use of our oceans are emerging, many of which may offer opportunities to provide new jobs, feed a growing nation, and address other important policy goals. Renewable energy, aquaculture, extraction of sand resources to provide protection for low lying coastal areas are all examples of recent new types of human activities proposed for our coastal and ocean waters. In many areas of the ocean there are existing economically important uses that we value and cherish that could conflict with these type of emerging uses.

With sufficient public discussion and application of best available information early in the process we have seen examples in New England of how new and existing uses can coexist.

Ocean planning boils down to two main components as I see it. Open transparent dialogue about public goals and desires for the ocean from all stakeholders and incorporation of science, data, and information from the beginning of this dialogue. This is an important departure from past practice where certain viewpoints were not represented during the review of a specific project until late in the specific project review process. This ultimately leads to project delays, lawsuits, and general frustration with the process.

Ocean planning efforts do not necessarily equate to ocean zoning. It is up to the participants of the planning effort to determine the end result. Similarly, it is clearly laid out in the National Ocean Policy it will be up to the regions themselves to determine the content of a regional ocean plan.

In Rhode Island and Massachusetts, ocean planning efforts have resulted in development of better information and public discussion over how to balance new and existing uses of our ocean. This will ultimately lead to better and faster decisionmaking, increase certainty in the decisionmaking process because certain issues will have already been addressed once specific projects are proposed because these decisions incorporate better science and data, and because the decisions are in the public realm, and with the data gathered in the ocean planning process it is possible to talk about opening areas that have been closed to fishing, not just closing more areas. This can be a net gain for fishermen.

The two basic tenants of ocean planning all involve interest with the seat at the table and incorporation of best science and data will lead to more efficient, transparent, and fair decisionmaking about our oceans. The President's National Ocean Policy incorporates these principles which have been put into action already in several states. The National Ocean Policy rightly requires new focus on Federal agency coordination as well, but also appropriately leaves



it up to the regional efforts to determine the substance of these regional ocean plans.

Thank you for the opportunity to present this testimony.  
[The prepared statement of Mr. Bullard follows:]

**Statement of John Bullard, President, Sea Education Association, Woods Hole, Massachusetts; and Former Mayor of the fishing port of New Bedford, Member of the Massachusetts Ocean Advisory Commission**

**Introduction**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present testimony on today's hearing on the President's New National Ocean Policy. My name is John Bullard, and I am the President of the Sea Education Association, located in Woods Hole Massachusetts. At SEA, we teach college students about the oceans with a semester program in which students prepare an oceanographic research project that they conduct at sea on one of our two sailing research vessels. In addition to my current role as President of Sea Education Association, I was also selected by Massachusetts Governor Deval Patrick to serve on the Commonwealth's Ocean Advisory Commission—a body which was heavily engaged in the development of the Massachusetts Ocean Plan, which I will discuss in a few minutes. Additionally, I am a former mayor of the fishing port of New Bedford—a historic fishing port which in recent years has consistently ranked as the top-ranked port in the country in terms of value landed.

**Background**

In Massachusetts and the rest of New England, we value our traditional uses of the ocean greatly. Commercial fishing, shipping, tourism, and recreation are mainstays of the coastal economy—providing thousands of jobs and for many of us, providing the character of our coastal communities which we cherish. The continued economic health of these uses is directly tied to the environmental health of our coasts and oceans—for example, as many fish stocks in New England continue to recover, commercial fishing will continue to be vital. Tourism and recreation rely on clean water and habitats for marine animals and fish.

At the same time, in Massachusetts and elsewhere new proposals for the use of our oceans are emerging, many of which may offer opportunities to provide new jobs, feed a growing nation, and address other important policy goals. Renewable energy (wind and tidal-based generation), aquaculture, and extraction of sand resources to provide protection for low-lying coastal areas are all examples of recent, new types of human activities proposed for our coastal and ocean waters. I am not here to debate the validity of these types of activities; more to the point, they are a reality as our society increasingly looks to the ocean to assist us in meeting our economic goals and to address significant issues related to energy generation and food production. The issue I do wish to speak to is this: in many areas of the ocean, there are existing, economically important uses that we value and cherish that could conflict with these types of emerging uses.

I stress the word could, however, because these potential conflicts do not have to become reality. With sufficient, public discussion and application of best available information early in the process, we have seen examples in New England of how of how new and existing uses can co-exist.

**The National Ocean Policy and Framework for Coastal and Marine Spatial Planning**

These two simple concepts: everyone having a seat at the table, and application of best available science and data, are at the heart of the National Ocean Policy's Framework for Coastal and Marine Spatial Planning. As you know, the National Ocean Policy calls for the development of regional ocean plans, to be developed through a transparent, bottom-up process. I would like to offer a few points on this aspect of the National Ocean Policy, drawing upon recent experience in New England:

First, coastal and marine spatial planning (or ocean planning) as described in the National Ocean Policy is not a new concept. As I described earlier, ocean planning boils down to two main components:

- Open, transparent dialogue about public goals and desires for the ocean
- Incorporation of science, data, and information from the beginning of this dialogue

Thus, ocean planning, as described in the National Ocean Policy, brings all viewpoints to the table: energy, recreation, conservation, fisheries, national security,

safety and navigation, commerce (shipping), and others. This allows all voices to be heard and to have a say in how ocean space is utilized.

This is an important departure from past practice, where certain viewpoints were not represented during the review of a specific project until late in a specific project review process. This ultimately leads to project delays, lawsuits, and general frustration with the process—from all standpoints. We are all familiar with examples of this in action. Additionally, by allowing all voices to be heard up-front, combined with a focused effort to incorporate best available data from the beginning of the process, ocean planning is a simple, straight forward tool that will enable better, more efficient, and more transparent decision-making. These two main tenets of ocean planning are incorporated in the National Ocean Policy and its Framework for Coastal and Marine Spatial Planning.

In New England, aspects of ocean planning have been in place for years, such as through fishery management efforts. There are also several recent examples of a broader approach to ocean planning, including those led by the states of Rhode Island and Massachusetts. These states have led the way in New England in thinking more comprehensively about how we value and use our coastal and ocean resources. The need for these states to undergo this activity is as I described previously: in recognition of New England's connection to its ocean and the cultural and economic importance of this connection in the face of increasing desire for new uses of ocean resources.

New England states, led by its Governors, are also considering potential new uses of ocean waters—including renewable energy—that could result in potential conflict with these traditional uses such as fishing. As you know, the Governors of several states beyond New England are also realizing the potential for offshore energy—and the jobs it will bring—on the east coast of the United States, so this is a phenomenon not limited to New England.

Recognizing that reality for us in New England, but realizing the importance of this issue as well, both Rhode Island and Massachusetts have applied ocean planning principles of open dialogue, with all voices at the table, and development and incorporation of science and data to help inform decision-making. These efforts have been recent undertakings, as Massachusetts completed its Ocean Management Plan in 2010, and Rhode Island completed its effort earlier this year. In my role as a Governor-appointed member of the Massachusetts Ocean Advisory Commission, I was able to help the Massachusetts Ocean Management Plan happen in real time—consequently, I'm speaking to you with the perspective of someone who has successfully lived through an ocean planning effort.

This brings me to a very important second point: both efforts were completed in relatively short order: 18 months in MA, and about two years in the case of Rhode Island, demonstrating that such an effort can be done in a timely fashion. Partly, this timeliness was because neither the Rhode Island nor Massachusetts attempted to develop ocean zoning schemes that divvy up all ocean space for particular activities. Ocean planning efforts do not necessarily equate to ocean zoning: it is up to the participants in an ocean planning effort to determine the end result. Similarly, as is clearly laid out in the National Ocean Policy, it will be up to the regions themselves to determine the content of a regional ocean plan.

The Rhode Island and Massachusetts ocean planning efforts have resulted in development of better information (science, data) and public discussion over how to balance new and existing uses of our ocean. This will ultimately lead to better and faster decision-making, increased certainty in the decision making process because certain issues will have been already addressed once specific projects are proposed, because these decisions incorporate better science and data, and because the decisions are in the public realm—available for all (including future potential projects) to draw from in the future.

As a specific example of this: Coming from New Bedford, the nation's top dollar port for 11 straight years and a city that plans to be the staging area for Cape Wind, I know the importance of early communication between fishing interests and ocean planners who are searching out areas appropriate for renewable energy. No matter the background interest, certainty in decision making is something we all seek. For example, turbines can be beneficial to some fishing methods such as fixed gear or aquaculture. It can conflict with mobile gear. So communication early on in decision-making is essential so that fishermen and renewable energy developers alike can plan ahead. And with the data gathered in the ocean planning process it is possible to talk about opening areas closed to fishing as well as closing some. This can be a net gain for fishermen as we have seen with scallops. But we will not be able to explore even this possibility unless all voices are at the table.

This example and others from Massachusetts and Rhode Island are important demonstrations of the benefits of the type of approach envisioned in the National Ocean Policy's Framework for coastal and marine spatial planning.

In addition, there are four other important aspects of the National Ocean Policy, which are important to point out:

1. First, it requires all federal agencies to work together on addressing important ocean issues—a significant improvement over the often-fragmented approach that has occurred historically. President George W. Bush's US Ocean Commission was just one of the more recent examples where the issue of coordinating multiple agencies was highlighted as a significant policy issue. The oft-cited issue of regulatory certainty is one that cuts across agencies as well, and this National Ocean Policy is significant in its requirements for federal agencies to cooperate—in ways not seen before.
2. Second, it clearly recognizes the reality that certain human activities are regional in nature—such as fishing. If a boat is fishing on Georges Bank east of Cape Cod, it could be from a home port in any of the New England states. Therefore, it makes sense that regions of the country—states and the federal government together—should work together to address those issues of importance to that region.
3. It also clearly recognizes that the ocean ecosystem—its species, habitats, and physical aspects such as circulation/currents—do not necessarily follow jurisdictional lines.
4. It does not include a “one-size fits all” approach to ocean planning. Rather, it outlines a series of principles for ocean planning but leaves the details to be determined by the individual regions. Thus, the National Ocean Policy includes an appropriate level of flexibility to enable the development of regional ocean plans that are appropriate to those issues—and appetites to address those issues—identified at the regional level.

#### **Conclusion**

We in New England, like other parts of the country, are reliant on our coasts and oceans for jobs, recreation, and the very fabric of our coastal communities. These connections to the oceans are a strong tradition, and we are now looking to the ocean for critical new services in the future while continuing the traditional. Ocean planning, such as the framework put forth in the President's National Ocean Policy, is a sensible approach that will enable new and existing uses to thrive together.

The two basic tenets of ocean planning—all involved interests with a seat at the table and incorporation of best science and data—will lead to more efficient, transparent, and fair decision-making about our oceans. The President's National Ocean Policy incorporates these principles, which have been put to action already in several states. The National Ocean Policy rightly requires a new focus on federal agency coordination, as well, but also appropriately leaves it up to the regional efforts to determine the substance of these regional ocean plans.

Thank you for the opportunity to present this testimony for the Committee's consideration and to make an oral presentation of the summary of my written comments.

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The CHAIRMAN. Thank you very much, Mr. Bullard.

And last we will hear from Mr. Jim Lanard, the President of the Offshore Wind Development Coalition. Mr. Lanard, is it Lanard? Did I say it correctly?

Mr. LANARD. It is.

The CHAIRMAN. You are recognized for five minutes.

#### **STATEMENT OF JIM LANARD, PRESIDENT, OFFSHORE WIND DEVELOPMENT COALITION**

Mr. LANARD. Thank you. Chairman Hastings, Ranking Member Markey, Members of the Committee, thank you very much for having us here today.

My name is Jim Lanard, President of the Offshore Wind Development Coalition. We represent 11 offshore wind developers that are developing projects in the Great Lakes, along the Atlantic Coast, and in the Gulf of Mexico, particularly off the coast of Texas.

Our mission is a very simple one. We push for legislative and regulatory policies that will promote the development and the faster moving development of offshore wind projects that will support thousands of high-skilled jobs and support billions of dollars of investment in manufacturing facilities along our coasts.

Let me give you a quick history of the status of our industry. We are losing the intellectual and economic race for offshore wind to Europe and China. They are exporting their products throughout Europe and throughout the world and yet here in the United States we don't have a market and we are exporting or developing none of those products whatsoever. It is time to catch up.

The first step in that catch up is for this Congress to consider the investment tax credit. Chairman Hastings, we have spoken with you and your Committee about this before, but it is the highest priority for the Offshore Wind Development Coalition and our developers.

Let us look at the state of the ocean. It is busy out there and it is getting busier. There are expanding and existing uses. You have heard them today, oil and gas production, shipping, commercial and recreational fishing, national security issues, Department of Defense territories. Let me say that we work very closely with the Department of Defense. We have a great working relationship with them, and we are going to continue to find areas of common ground with DOD. There are also other recreational uses. There are cultural resources that need protection as does wildlife and habitat protection.

So, where does offshore wind fit into this plan? The Department of the Interior asked and answered this question for first mover projects. They adopted the "Smart From the Start Program", which is a process involving state task forces and stakeholders throughout the coastal areas of the United States. This Smart From the Start process identified the best areas for first mover offshore wind projects, and as a result of that they reduced the permitting timeline by over two years so that we can start putting our workers back on the job developing offshore wind and getting that investment here in the United States.

And the Smart From the Start also gives us great ideas about where we should consider developing in the future. We are a new use in the ocean. We are not an existing use, but we need to be compatible with all the uses that are already out there, so we believe there needs to be better planning, better cooperation, and better management so that all of this can be coordinated and integrated in a reasonable and fair process for all users, and that is where we think the President's National Ocean Policy comes in.

The National Ocean Policy is very simple. It provides for better planning to protect and to use our ocean resources. It is basic, too. It calls for broad-based data collection, science-based management, and this leads, I believe, to certainty for our developers and for the manufacturers, and the certainty that our developers and manufacturers need.

We all need to know that we have a process that is ecologically and socially significant, that we have to protect these areas. We have to know where not to develop, and we have to know where not to develop so we don't waste our developers' time, and so we

don't waste the government's time reviewing permit applications for sites that just don't make sense.

Ocean planning isn't new as we have heard and it is bipartisan. In Massachusetts, as we have heard, the ocean management plan was adopted by a Democratic Governor. In Rhode Island, the special area management plan was adopted by a Republican Governor, and today in New Jersey, New Jersey Governor Chris Christie has stated that he wants New Jersey be the first in offshore wind in the United States, and is relying on policies that they have adopted called the Ecological Baseline Study. So we have Democrats and Republicans supporting an initiative to move forward with offshore wind and with new uses for the ocean.

Our bottom line is simple: We support economic and environmentally sustainable use of our oceans and the Great Lakes. We need to protect marine ecosystems and we think that is good for all users that have talked about this today, and we think that is what the National Ocean Policy is all about. Thank you very much for your time.

[The prepared statement of Mr. Lanard follows:]

**Statement of Jim Lanard, President, Offshore Wind Development Coalition**

**Introduction**

Mr. Chairman and Members of the Committee,  
Good morning.

My name is Jim Lanard, President of the Offshore Wind Development Coalition. Thank you for the opportunity to present our testimony to you today on "The President's New National Ocean Policy." The Offshore Wind Development Coalition represents offshore wind developers, service providers to the industry including turbine manufacturers, cable manufacturers, submarine cable installers, other supply chain businesses, offshore submarine transmission providers, environmental consulting firms, and law firms. Our Board of Directors includes eight offshore wind developers and a representative from the American Wind Energy Association (AWEA).

The highest priority of the Offshore Wind Development Coalition is a long-term extension of the Investment Tax Credit (ITC). Due to the long period of time it takes to develop and permit an offshore wind farm, a long-term extension of the ITC is critical. Said another way, a failure to reauthorize and extend the ITC for offshore wind farms will make it very hard—if not impossible—to finance these projects.

For additional background about the Offshore Wind Development Coalition, and our perspective on offshore wind issues in general, please refer to written testimony we submitted in advance of your Committee's June 1, 2011 hearing on the "American Energy Initiative: Identifying Roadblocks to Wind and Solar Energy on Public Lands and Waters, Part II—The Wind and Solar Industry Perspective", at which we also presented oral testimony.

**The economic and job creation potential of a robust U.S. offshore wind industry**

The offshore wind industry has the potential to create thousands of jobs in the manufacture of wind farm components, and in the construction, installation and operation and maintenance of the wind farms. These are high-skilled jobs that could be supplied by the existing workforce in Atlantic Coast states. To realize the full job-creating potential of offshore wind development, however, it will be necessary to build offshore wind farms at scale, as is occurring today in Europe and China. Manufacturers will only be able to invest in new US-based facilities if they have the magnitude of orders necessary to justify the huge outlays associated with the building of complex wind turbines (composed of as many as 8,000 discrete parts), construction of special purpose-built vessels and manufacturing of highly-specialized submarine cables. Accordingly, we hope the Committee and the Congress will continue to consider initiatives to spur and expedite development of these facilities so that US workers can join the world's ever-growing offshore wind workforce.

Establishment of an offshore wind industry in the U.S., in addition to creating thousands of jobs, will result in billions of dollars of economic development, reduction in the need for costly and divisive new interstate transmission lines, and will

help coastal States meet their renewable electricity standards. A 2008 study by the U.S. Department of Energy (DOE), entitled “20% Wind Energy by 2030: Increasing Wind Energy’s Contribution to U.S. Electricity Supply”, found that the U.S. could obtain 20 percent of its electricity from wind by 2030, and that 15 percent of that wind power could come from offshore projects with a total of 54 Gigawatts of generating capacity.<sup>1</sup>

### **Hosting utility-scale offshore wind farms: a new role for our oceans and Great Lakes**

The oceans, our coasts and the Great Lakes have supported a wide range of industrial, commercial, national defense, and cultural and recreational activities since the founding of our country. These uses are increasing. And increased use leads to increased competition. These growing competitive pressures are exemplified by calls for expanded oil and gas drilling along our coasts, by more and expanded shipping lanes that are being considered, by greater competition among commercial fishing operations, by the need for state-of-the-art national defense measures and by increased recreational uses in our oceans and the Great Lakes. And now, an additional use is about to be introduced into this mix—the use of our oceans and the Great Lakes for utility-scale offshore wind farms, which will have the potential to generate clean, renewable energy for hundreds of thousands of homes up and down our coasts.

The footprints for utility-scale offshore wind farms may range from 25 square miles to 100 square miles. To maximize the output of a wind farm as the wind moves through the turbine array, larger turbines will likely require more separation between their foundations. Hence, wind farms with larger turbines—and perhaps with more of them—could utilize 100 square miles of the ocean. With larger separation between turbines—ranging from one-half mile to nearly a mile between turbines—many other ocean uses will be feasible at a wind farm site. We recognize, however, that an additional use of our already heavily used ocean resources will require better planning, better cooperation, and better management. For these reasons, the offshore wind industry believes that the President’s National Ocean Policy is essential to ensure that our oceans, coasts and Great Lakes remain economically and environmentally viable.

### **DOI’s Smart from the Start**

Congress, when it enacted the Energy Policy Act of 2005, mandated that regulations related to the use of the OCS for offshore wind be adopted within 180 days of the bill becoming law. Five years later, on April 29, 2009, those regulations were finally adopted by the Department of the Interior. Interior, in collaboration with the Governors of many East Coast states, announced in November 2010 the Smart from the Start initiative, a program that is intended to accelerate the responsible development of our offshore wind resources.

Smart from the Start is a major step to ensure that all ocean uses are fully considered when developing policies for the new offshore wind industry. Specifically, Smart from the Start is intended to shorten the leasing and permitting timeline for offshore wind projects to be located in the most favorable locations off the Atlantic coast. Under prior rules and policies, leasing and permitting of an offshore wind project in federal waters—even at the least-sensitive, least-controversial sites—was estimated to require seven-to-nine years. By working closely with state officials to identify areas characterized by (1) strong development potential (favorable winds and proximity to demand centers), (2) abundant existing environmental data, and (3) low potential for conflict with existing uses, BOEMRE has moved to streamline early, leasing stage environmental review, and thereby shave years from the permitting timeline for some first-generation projects, while still requiring completion of thorough environmental reviews prior to a developer receiving approval to actually construct an offshore wind farm.

Interior noted that the Smart from the Start process and associated data collection efforts will inform the Coastal and Marine Spatial Plans that will be developed by the Regional Planning Bodies anticipated in the National Ocean Policy. Smart from the Start takes into account existing information on wildlife and ecosystems and other uses of the ocean (e.g., fishing and shipping) and thus attempts to “take into account the national CMSP (Coastal and Marine Spatial Planning) goals and principles,” as recommended in the Final Report of the Ocean Policy Task Force. Final Report at 63. In many ways, the development of offshore wind farms provides

<sup>1</sup> U.S. Department of Energy, 20% Wind Energy by 2030: Increasing Wind Energy’s Contribution to U.S. Electricity Supply (July 2008) (available at <http://www.20percentwind.org>).

a fulcrum for putting CMSP into practice. Indeed, the Smart from the Start program can serve as a pilot program for larger CMSP efforts.

There already are some important lessons learned from the Smart from the Start process. For example, even at sites selected as among the most favorable for early development, the need for additional data and a systematic framework for understanding and resolving potential conflicts has been apparent. At sites off the coasts of Delaware, Maryland, and Massachusetts, other agencies, existing users and resource advocates have identified uncertainties about the effect of wind farm development on existing resources or uses, prompting BOEMRE to reduce areas initially designated for Smart-from-the-Start leasing and permitting.

### **The President's National Ocean Policy**

During the development of the National Ocean Policy, many of our member groups commented both individually and collectively on how the policy could be tailored to ensure the responsible development of our nation's significant ocean renewable energy resources like offshore wind. The development of offshore wind resources can play a vital role in the nation's effort to restructure its electrical power sector in a manner that increases employment and manufacturing opportunities, improves national security, reduces price volatility, and combats climate change. In general, our members have been supportive of the Administration's efforts to create a national oceans policy and implement coastal and marine spatial planning in U.S. waters and we continue to participate actively in the development of the policy.

One critical goal of the National Ocean Policy is to create better planning to protect our oceans in the future, especially as demands on them continue to grow. Planning requires informed, broad-based data collection and data integration that right now is managed by a vast array of federal agencies. Better plans lead to road maps that can guide current and future users of the oceans about how to best achieve their business plans. Thus, these types of planning and data collection will help industry by providing us with more certainty about the rules of the road. Certainty leads to the avoidance of conflicts, improves efficiencies and minimizes competing uses.

Comprehensive, science-based management of ocean resources can supply needed data on existing and potential uses of ocean resources and a critically needed framework for analyzing those data to characterize and resolve conflicts. For this reason, we see a comprehensive, science-based oceans management framework as an indispensable long-term complement to the Administration's well-conceived Smart from the Start approach for offshore wind.

Unlike some users of the oceans and Great Lakes, we don't consider coastal and marine planning to be an ocean zoning exercise. Rather, we see it as a process to identify ecologically and socially significant areas that should be considered whenever any use is proposed for a specific area. While it is true that these plans could indicate preferences and priorities, proposed uses for any site will still have to be studied separately. We also think ocean planning is important to protect marine ecosystems while ensuring the orderly and sustainable development of ocean resources in a manner that respects and minimizes conflicts and existing uses including commercial fishing, recreational boating, surfing, aesthetic appreciation, wildlife, habitat, shipping, oil and gas and national defense activities. Regarding national defense, the offshore wind industry has an excellent working relationship with the Department of Defense; we're working with DOD to avoid conflicting uses of the ocean and to identify opportunities to provide domestically-produced power to their military bases located along the Atlantic Coast.

Ocean planning is not new to the United States. And it's not a partisan issue, either. Massachusetts, led by Democratic Governor Deval Patrick, Rhode Island, led by Republican Governor Don Carcieri and New Jersey, led by Republican Governor Chris Christie are relying on their states' ocean planning processes to identify the best sites for offshore wind farms. None of these processes has resulted in ocean zoning outcomes; rather, they have identified areas with the least conflicting uses for the potential development of offshore wind farms.<sup>2</sup> In each of these state's processes there was extensive stakeholder involvement. The National Ocean Policy requires the Regional Planning Bodies to ensure similar extensive stakeholder participation, a critical component as ocean planning evolves in the U.S.

<sup>2</sup>For more information see: the Massachusetts Ocean Management Plan, ([http://www.mass.gov/?pageID=eoeaterminal&L=3&L0=Home&L1=Ocean+%26+Coastal+Management&L2=Massachusetts+Ocean+Plan&sid=Eoeea&b=terminalcontent&f=eea\\_oceans\\_mop&csid=Eoeea](http://www.mass.gov/?pageID=eoeaterminal&L=3&L0=Home&L1=Ocean+%26+Coastal+Management&L2=Massachusetts+Ocean+Plan&sid=Eoeea&b=terminalcontent&f=eea_oceans_mop&csid=Eoeea)), the Rhode Island Ocean Special Area Management Plan (RI SAMP) <http://seagrant.gso.uri.edu/oceansamp/>, and the New Jersey Ocean/Wind Power Ecological Baseline Studies <http://www.nj.gov/dep/dsr/ocean-wind/>.

### **Ensuring a smooth transition to a National Ocean Policy**

OffshoreWindDC and our members believe there are a number of policies that should be considered as the National Ocean Policy evolves. We have suggested that the National Ocean Council adopt an appropriate transition protocol to deal with projects that are progressing through the permitting process and believe that guidance should be adopted that makes clear how CMSP will move forward without causing delay to pending plans and projects. We have stressed that there must not be a moratorium related to permitting of offshore wind farms as coastal and marine spatial plans are being developed; any such moratorium would make it impossible to finance these capital-intensive projects.

We also support comprehensive government-supported environmental data collection, which will increase public confidence in the decision-making process related to the siting of offshore wind farms. To that end, we have encouraged the National Ocean Council to expand the Multi-Purpose Marine Cadastre (MMC) that is managed by NOAA and BOEMRE. By bringing many datasets together and representing them in a single web interface, the MMC is a powerful tool for agencies, developers, and other stakeholders to evaluate offshore wind siting decisions.

### **Conclusion**

In summary, we support the National Ocean Policy and believe that it can help bring clarity to the management of our oceans and advance the growth of the offshore wind industry. A National Oceans Policy will result in the protection of marine ecosystems and will ensure the orderly and economically- and environmentally-sustainable development of ocean resources, in a manner that respects and minimizes conflicts with existing users. We are eager to support our nation's efforts to create more jobs for U.S. workers and think that thoughtful implementation of the National Ocean Policy will help achieve that goal.

OffshoreWindDC believes that comprehensive, science-based management of ocean resources, conducted in accordance with the CEQ's July 19, 2010 Final Recommendations of the Interagency Ocean Policy Task Force and Executive Order 13547, "Stewardship Of The Ocean, Our Coasts, And The Great Lakes" (July 19, 2010), will lead to a shorter, more predictable leasing and permitting process for offshore wind projects. In our view, a comprehensive, science-based approach to oceans management is a critical long-term complement to the Administration's more immediate effort to speed offshore wind development at the most favorable, least controversial sites through its Smart from the Start initiative.

Thank you for the opportunity to share our thoughts with you.

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The CHAIRMAN. Thank you very much, Mr. Lanard.

We will now begin the round of questioning, and I will recognize myself. Mr. Coleman, in my opening statement I referenced or at least questioned the statutory authority that the President has in his action and several of the other witnesses also raised that question. You are an attorney. Your thoughts on that.

Mr. COLEMAN. Mr. Chairman, this is such a broad reaching policy. We have all agreed there are many statutes that are engaged with ocean use and coastal use, but what we have here is we have a policy which has taken the discretion that each one of those laws gives to the implementer of that policy, it has taken that discretion away from—it is basically amending those statutes.

There are huge legal problems with this policy. That is one of them. When you say to the Secretary of Commerce you no longer have the discretion in amending the Magnuson-Stevens Conservation Act, you have to exercise whatever discretion you have toward amending the National Ocean Policy, that, frankly, is not what Congress intended. The Congress intended that the Secretary of Commerce would have the discretion, the full discretion, not some limitation that the President decides to put on it.

The same thing would be for the Secretary of the Interior in the Outer Continental Shelf Lands Act. Same thing for the Secretary of Homeland Security dealing with the Coast Guard and L&G ter-



minals. There are so many different statutes that I could list where this policy, just by the stroke of a pen has taken away a portion of the discretion that the Congress has given to those officials, all without any action or approval by Congress.

So, there are huge problems with it. There are many other problems, frankly, legal problems.

The CHAIRMAN. Mr. Coleman, thank you for that. I am sure that we will have more discussions on that.

Mr. Gilmore, I want to ask you a question. You have attended a number of briefings, I understand, on the CMSP. In those briefings do you have a clear understanding of how this is going to be implemented?

Mr. GILMORE. No. I could expand on that.

The CHAIRMAN. Well, why don't you just—

[Laughter.]

The CHAIRMAN. Just real briefly if you would.

Mr. GILMORE. Yes. The assurances that we have received in the briefings don't match up with the language in the Executive Order. The example of fishery management councils, we are told that this isn't intended to impinge at all on the authority of Regional Fishery Management Councils, and yet the plain wording of the Executive Order and the task force final recommendations that are incorporated by whole into the Executive Order make very clear that if something is in a coastal marines special plan the Secretary of that agency is obligated to act to enforce that through developing a regulation or changing an existing regulation that is inconsistent.

The CHAIRMAN. This is consistent then with what Mr. Coleman just said about the discretion then within the statutory agencies or laws that are already developed.

Mr. GILMORE. I mean, the best case scenario we are creating two regulatory processes where we have the Regional Fishery Management Councils and then we have something entirely different going on over at the regional planning bodies established under this which just creates uncertainty and legal challenges, I suspect. I am not a lawyer but I know you can find one in this town.

The CHAIRMAN. Neither am I.

Mr. Guith, I want to ask you a question. The marine special planning initiative clearly intends on adding a new layer for any activity that may affect ocean ecosystem health no matter how far inland. If this were taken to the extreme or fully implemented, how would this affect job creation in this country?

Mr. GUTH. I think it would affect job creation in this country the same way that dozens of other proposed or contemplated regulations over the last three years have done, and that is increase the level of regulatory certainty to the point where cumulatively we now have over \$2 trillion of cash sitting on the sidelines instead of being invested from non-financial sector companies because they don't have the certainty necessary to make a prudent decision of how to invest that money.

And while I don't necessarily assume that the Administration will try and regulate every acre of land, the problem with this policy is it provides no constraint, and therefore those regional planning authorities have that opportunity, and therefore you have to

assume that at least in some instances that might happen, therefore if you are a business you can't move forward.

The CHAIRMAN. That is one more layer of uncertainty.

Mr. GUTH. A very significant layer of uncertainty at this point.

The CHAIRMAN. My time has expired. I recognize the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

The National Ocean Policy is based on existing laws, and I would like to submit, Mr. Chairman, for the record a document citing the legal authorities related to implementation of the National Ocean Policy.

The CHAIRMAN. Without objection.

Mr. MARKEY. Thank you very much.

[The document offered by Mr. Markey follows:]

**[NOTE: The documents submitted for the record have been retained in the Committee's official files.]**

Mr. MARKEY. The Constitution vests the Senate with the responsibility of ratifying treaties, and I have been interested in reading in the written statement of the U.S. Chamber of Commerce here today that they actually support ratification of the international treaty known as the Law of the Sea although it is being blocked by Republicans in the Senate even while opposing the National Ocean Policy, so that means that the U.S. Chamber of Commerce actually supports international coordination on ocean issues, but not national coordination, so that is just something I thought I would throw out there.

Mr. Bullard, Mr. Lanard, you have heard my Republican colleagues argue that marine spacial planning would cause additional delays to offshore development. In your experiences, hasn't the lack of coordination actually been that which is responsible for the lack of development offshore. Mr. Lanard, then you Mr. Bullard.

Mr. LANARD. Thank you, Mr. Markey.

We are at a loss right now. The Energy Policy Act was passed in 2005. The Congress mandated that the Department of the Interior adopt within 180 days rules regulating the use of the offshore space, the Outer Continental Shelf for offshore wind. It took five years, and it occurred very early in this Administration's tenure, and started giving us a roadmap to go forward.

The next step was the Secretary of the Interior's adoption of Smart From the Start, which I mentioned in my testimony, and through work that the developers had been advocating for many years we were able to cut off at least two years in the permitting process, but we still need a roadmap for when this industry becomes more robust, when we have many different offshore wind farms working with billions of dollars of investment and thousands of workers. Right now there is no roadmap. Those jobs won't be created.

Mr. MARKEY. And Mr. Bullard, could you deal with the issue of Massachusetts and Rhode Island while they were developing their ocean plans in actually under two years? Were you aware while they were being developed of any activities that were halted or prevented from moving forward until the plan was completed?

Mr. BULLARD. No, the planning process didn't halt any existing activities. If I could respond to the earlier question about delays,

I think the best example I can see of the need for this is that ten years ago Jim Gordon proposed a substantial renewable energy field of wind turbines in Nantucket Sound, and whether you are a champion of free market or whether you want renewable energy to deal with the issue of CO<sub>2</sub> emissions, ten years later there is only a met tower.

Now, certainly we can do better than this. This is death of a thousand cuts. This is what the policy tries to get at with regulatory certainty. I think what Massachusetts and Rhode Island are doing to try and lay out in advance here are our areas where renewable energy works and where it would not conflict with mobile gear would make it a lot quicker to achieve an important goal like that, but that is not the only goal.

Mr. MARKEY. And again let us zero in on that a little bit because in the United States there has been permitted less than 500 megawatts of wind offshore, and the construction right now is exactly zero on those 500 megawatts. Meanwhile our counterparts in Europe and China have permitted more than 40,000 megawatts and they have 6,000 megawatts already operating or under construction right now. The Governors of Massachusetts, Rhode Island, and New Jersey are using ocean planning now to identify the best sites for offshore wind, and we know Governor Christie doesn't make decisions about the future lightly.

So the Department of the Interior now has a process for Federal waters called Smart From the Start that incorporates principles of coastal and marine spacial planning in bringing stakeholders together. Isn't that the type of planning which we need nationwide if we want to telescope the timeframe that it takes for us to have that offshore wind, Mr. Lanard and Mr. Bullard?

Mr. LANARD. Mr. Markey, first, you know, one thing that we haven't said here today is that there is ocean zoning already in place. There is ocean zoning for shipping. There is ocean zoning for marine protected areas. The Department of Defense has zoned areas. The fisheries, the commercial fisheries areas have zoned areas, so we already have that, and what we need now is a regulatory framework that provides certainty, that shows us a roadmap to move forward in a way where we can put our workers to work and catch up to Europe and China.

China, by the way, started a few years ago. Mayor Bullard talked about the fact that Cape Wind started 10 years ago. They don't have any steel in the water for turbines. China started three or four years ago and has hundreds of turbines either in construction or in the water. There is a way to catch up and there is a way to put these multi-billion dollar projects on the U.S. Outer Continental Shelf so that we can create the economy that we want.

The CHAIRMAN. Time of the gentleman has expired.

Before I recognize the gentleman from Louisiana, Mr. Fleming, I ask unanimous consent that a letter from the State of Alaska, and Governor Sean Parnell, letter from Taylor Shellfish, a June 29, 2000, letter to the Chair of the National Ocean Council from the eight Regional Fishery Management Councils, and a letter from Richard Robins, Jr., Chair of the Mid-Atlantic Fishery Management Council be part of the record, and without objection so ordered.

Mr. MARKEY. Mr. Chairman, could I ask unanimous consent and enter into the record numerous letters in support of the National Ocean Policy by 154 organizations from over 30 states and other comments as well at this point?

The CHAIRMAN. Without objection as long as you don't say all 154. Without objection, so ordered.

**[NOTE: The documents submitted for the record have been retained in the Committee's official files.]**

The CHAIRMAN. The gentleman from Louisiana, Mr. Fleming.

Dr. FLEMING. Thank you, Mr. Chairman. Just some general comments before I get to questions that I find of interest today. The gentleman from Massachusetts talks about this being a mere plan. It sounds very benign, but obviously if you are going to create a hyper regulatory atmosphere, which I think this will do, it all begins with a plan, and that worries me very much.

The other thing that bothers me. Congressman Farr made the comment that this should be kind of a grass roots from the ground up sort of process, and yet he willingly admits that this Committee and Congress in general has been unwilling to go along with this, and therefore that the President should somehow bypass the whole process and by fiat create what he has done, and that is an Executive Order.

What has that done for us so far? The Executive Orders that have come down from President Obama have included, in effect, the Dream Act, which again Congress would not pass, and endangerment finding for the EPA, which was really just cap and trade by another name, and then the refusal to defend DOMA, the Defense of Marriage Act, which puts the President—substitutes his wisdom for that of the Supreme Court.

So, it seems to me that what we are seeing here is an unprecedented power grab to make decisions from a bureaucratic standpoint from the Oval Office that affects so many people. So, if indeed this is a grass roots from the ground up and we should all have input, I think it should go through regular order, and that is not what we are seeing here today.

A comment about losing market, that somehow that seems to be a great fear on the left. But when it comes to wind, sir, that we are losing all this market. Well, a market is a market. If there is a market there and we are competitive, it will happen, but to continue to prop these kind of alternative green energy forms through tax credits is absolutely ridiculous. We see now the scandal we know with Solyndra today where this was attempted and, of course, a lot of taxpayer money being wasted.

So, I get to my question. As a Representative of the State of Louisiana, I recognize the importance of healthy coastal communities. We are affected more by that than any state. I am, however, skeptical as to whether the Administration's national ocean policy takes into account the significance as it relates to the people who reside near these communities. The Administration has even noted that the National Ocean Policy may create a level of uncertainty and anxiety among those who rely on these resources, and may generate questions about how they align with existing processes, authorities, and budget challenges.

My question to both Mr. Gilmore and Mr. Guith, am I saying—Guith. I am sorry. What has the Obama Administration done to ensure the livelihood of those in coastal communities that is not disrupted by the National Oceans Policy?

Mr. GILMORE. Thank you, Congressman.

You know, the one thing that jumps out at us the State of Washington has a statute for coastal and marine spacial planning, and in their statute they point out that any element of a marine spacial plan that touches on commercial or recreational fishing must minimize the negative impacts on fishing and must provide substantial deference to the state fish and wildlife director in his opinion of how to mitigate any of these negative impacts.

There is nothing like that in the National Ocean Policy. There is nothing like that. So, I think we are learning from these state plans a good bottom-up way to do it, the way Congressman Farr speaks to, but we don't see that in the National Ocean Policy, and we have received no assurances other than don't worry, be happy.

Mr. GUTH. The only thing that I would add is that if I were a Governor of any state, whether it be the middle of Colorado or whether it be Alaska or Louisiana, I would be very concerned. In fact, I would be even more concerned if I were a Governor Brown or Governor Patrick from a state that has actually taken steps to pass legislation to cover our coastal areas because these regional planning authorities can circumvent that and completely take that authority away from them.

As you mentioned, they went through their regular order and in this case there has been none whatsoever. I think it is important to remind people, this is an oversight hearing. This is not a legislative hearing. You are not considering legislation. You are considering a unilateral action the Administration has taken, one that was not promulgated as a proposed regulation because there is not a specific statute in order to which to propose it under, so it was unilateral, and if I were a Governor I would be very concerned.

Dr. FLEMING. Yes, I would just submit in closing, Mr. Chairman, that this is clearly a bait and switch process going on. Thank you. I yield back.

The CHAIRMAN. I thank the gentleman and the Chair recognizes the gentlelady from Guam, five minutes.

Ms. BORDALLO. Thank you, Mr. Chairman. I would also like to thank our witnesses for their testimony today, and I would like to state my strong support for the National Ocean Policy.

The demands in our oceans' resources are always increasing, and it is time we establish a national framework to coordinate efforts and balance these demands to ensure our oceans remain healthy and productive for future generations.

Mr. Bullard, my home district of Guam relies heavily on the ocean for our culture, our fisheries, and our tourism economy. The island is currently undergoing a military build up which will increase the demands on our local waters, so it is important to me and my constituents that a plan be in place to adequately balance these demands. I believe that the regional coastal and marine spacial planning as envisioned in the National Ocean Policy will be critical.

Drawing on your experience developing the Massachusetts ocean plan, could you describe for the Committee how coastal and marine spacial planning could be a benefit to areas like Guam or other state and local jurisdictions?

Mr. BULLARD. Thank you, Congresswoman.

One of the greatest benefits of participating in the process in Massachusetts was just the accumulation of relevant data, whether it is where people fish or shipping channels, and starting to map all of that data so that every user of the ocean could start to see a richer picture of the ocean, so it was educational to begin with, and that was terrific.

I think the Governor, I can't speak for Governor Patrick in Massachusetts, but we certainly were aware that we bumped up to the three mile limit and were very anxious as most natural systems don't recognize that limit, that that process continue out into the 200 mile limit. So, one was just the information and mapping it so that all stakeholders could see it.

The other was the conversations that started to take place among different user groups in the planning process that perhaps should have occurred before but hadn't. That was helpful so that different people understood the needs of different constituencies, and I think that was epitomized for me in a hearing about lease tracts in Federal waters for offshore wind that was held in New Bedford where Federal agencies came and said, well, we have looked at all these things and this is where we think you could put wind, and the fishermen in New Bedford had not been consulted and they went crazy, and they said, who knows more about this than we do. So there started an intense communication between the Federal agencies, not in charge of fishery management, but who were planning where to locate wind, and an interest group that had the historical knowledge and right to those spaces. That resulted in a much better placement of where wind should occur.

So, I think the ability to have the conversations between user groups was a tremendous benefit of the Massachusetts experience, and I would say that one of the things, and I am all for bottom up and lots of stakeholders being involved in it, but one of the problems is the death by a thousand cuts, all of the different agencies that can impede any project, and so having every Federal agency that has an ore in the water at the table saying you need to work together is going to make it a lot simpler for anyone trying to do anything.

Ms. BORDALLO. Thank you very much.

Now, many of my colleagues on the other side of the aisle have portrayed the regional planning bodies as having no representation or any input by the people in the communities that will be impacted by the National Ocean Policy. Is this true or will local stakeholders be engaged in the regional planning and decision-making process?

I would also like to put in one more thing, Mr. Chairman. About the offshore wind development, and ask you, what have you done? Have you looked into the Pacific Islands such as Hawaii, American Samoa, or Guam?

Mr. BULLARD. Is that for—

Ms. BORDALLO. Yes, we only have a few minutes left.

Mr. BULLARD. I think the biggest challenge for us at the beginning was getting people at all interested in the marine environment. As Congressman Farr said, there are no voters out there, and when you talk about ocean planning you will immediately get eyes glazing over. And so it is great to see the Chamber of Commerce and the National Association of Homebuilders interested in the marine environment. I never knew that existed before. So if this process can start to get that kind of engagement, I think it is terrific.

Ms. BORDALLO. Thank you.

Mr. Chairman, I would like to enter into the record the Governors' comments on the preliminary report of the U.S. Commission on Ocean Policy from 2004, which includes letters from 14 Republican Governors in the support of the National Ocean Council and the Regional Ocean Councils.

The CHAIRMAN. Without objection, so ordered.

**[NOTE: The documents submitted for the record have been retained in the Committee's official files.]**

The CHAIRMAN. The Chair recognizes the gentleman from California, Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

Mr. Coleman, just to follow up on that line of questioning. How many seats on the National Ocean Council are there for enterprise, for commerce, or for simple citizens whose land is at stake?

Mr. COLEMAN. Every person on the National Ocean Council is an appointee of the President.

Mr. MCCLINTOCK. So the assurance we just heard that don't worry, the stakeholders will be fully involved in this process is simply a "smarmy" facade.

Mr. COLEMAN. Even at the regional basis there will be no individuals on the councils.

Mr. MCCLINTOCK. The analysis reads as follows. "The zoning plans will reach as far inland as necessary to protect ocean ecosystem health and protect ocean bio diversity. All Federal agencies will be required to follow the zoning plan when making decisions on granting permits or when authorizing activities under their jurisdiction."

Is that accurate?

Mr. COLEMAN. It is absolutely accurate.

Mr. MCCLINTOCK. Well, now, virtually the entire land mass of the United States drains into an ocean ultimately in one form or another. Does this mean that this National Ocean Council can assert land use planning authority over virtually the entire land mass of the United States?

Mr. COLEMAN. Yes, Congressman, it does mean that. The opportunity to do this is based on this inclusion of this whole 78-page final recommendations. The President incorporated that into the Executive Order.

Mr. MCCLINTOCK. So this is basically the death of local land use planning. It is the death of state jurisdiction over state waters. It is the assertion of Federal authority over virtually the entire land mass of the United States on the sophistry that the ocean ultimately is affected by drainage from every water source in the United States.

Mr. COLEMAN. That is true, Congressman. To a great degree one of the main statutes that they are basing this authority on is the Coastal Zone Management Act, and I must say I have been disappointed over the years that the people in charge of that implementation that NOAA have said things like permitting something in Iowa is subject to the Coastal Zone Management Act because it will have impact down in Louisiana, or that they could choose the color of buildings on a naval base because of aesthetic reasons. There is really no limit to how far that they can take these acts if they wish.

Mr. MCCLINTOCK. Is there anything left to the concept of state waters under this Act?

Mr. COLEMAN. All Federal agencies will have to follow this policy if they are permitting things in state waters or Federal waters.

Mr. MCCLINTOCK. According to the analysis states may opt out of serving on the regional planning boards. However, the regional planning board will continue with the zoning plan regardless of state participation. This is true even if all states in the region decline to participate. Is that accurate?

Mr. COLEMAN. Absolutely accurate.

Mr. MCCLINTOCK. Any state which agrees to participate in the planning process will then be required to make sure all state permit activities meet the guidelines and goals of the zoning plan.

Mr. COLEMAN. That is accurate.

Mr. MCCLINTOCK. So there really is nothing left of state jurisdiction over state waters or local land use authority over local communities.

Mr. COLEMAN. We have great concerns about it and that is why we have stated numerous times in submittals to the Administration and in written testimony here that this infringes on state sovereignty.

Mr. MCCLINTOCK. What are our options as a Congress? This is obviously a user patient of legislative authority under Article 1 of the Constitution, but it is an Executive Order. Does that mean it can be rescinded by Executive Order?

Mr. COLEMAN. A President may rescind this.

Mr. MCCLINTOCK. Obviously it will require a different President to do so since this President has set this process in motion.

Mr. COLEMAN. Apparently.

Mr. MCCLINTOCK. What can Congress do?

Mr. COLEMAN. Congress can do many things. One of the simpler things would be to prohibit spending of funds on a temporary basis.

Mr. MCCLINTOCK. We tried that and the Administration just thumbed its nose at us on other matters.

Mr. COLEMAN. I understand, Congressman, and I want to reiterate the National Ocean Policy Coalition is not against a policy which would help coordination and make the economy grow. We are just so much against adding this huge new burden overlay across the whole country.

Mr. MCCLINTOCK. Mr. Rutenberg, you warned of unintended consequences of this Act. What makes you think they are unintended? There is a body of thought on the lunatic fringe of the environmental left that government's role is to force people into dense urban cores, and restore the vast land mass of the United States



to its pristine prehistoric condition. The problem with that, of course, is that most people don't want to be forced into dense urban cores. They want a yard in which their children can play. They want a little elbow room. But this does seem to fit in with this radical agenda of urban centralization.

Mr. RUTENBERG. Congressman, I had actually turned to the points that you were reading from because if I was asked I was going to comment, and I think what concerns me most is that the general public do not understand where this is going to go, and what is going to happen, and the potential for—I have had 30 plus years in land development and land conservation. I have been on both sides of it. And this just really scares me of where we could be going with it and what we might wind up with.

The CHAIRMAN. The time of the gentleman has expired.

The gentlelady from Hawaii, Ms. Hanabusa.

Ms. HANABUSA. Thank you, Mr. Chair.

Mr. Lanard, I would like to follow up with what the Congresswoman from Guam was speaking about and that, of course, is the offshore wind development, and you are, of course, in Massachusetts, and I believe she was asking about what about areas, for example, like Guam. In Hawaii, we have wind, of course, but we are on land, and we haven't ventured yet out offshore.

Can you tell us how, for example, the NOP would be assisting a company such as yours because you do say it is a great development of jobs that you are engaged in, and whether you see this type of activity moving to areas in the Pacific?

Mr. LANARD. The roadmap that the industry needs doesn't exist yet, and because of all the different competing uses in the ocean we think it is essential that there be coordination among all of those users. I have listed them before. I think it is very important to have this coordination so that we can all find the best places and preferred places to site our resources.

The way that I have read the National Ocean Policy and the way that I read coastal and marine spacial planning there is no definition that I have never found that talks about ocean zoning. It talks about science-based management and data collection so that we can understand where the best uses are, and when there are conflicting or competing uses then we need to find a resolution that works for all the parties.

As far as Hawaii is concerned, one of the sister companies of one of our members, First Wind, is a developer in Hawaii on land and working actually to bring a submarine cable, I believe, between two of your islands to make sure that you can have clean renewable energy. You have some of the most expensive electricity prices in the United States.

So, as far as offshore wind is concerned, I believe that the demand would not be great enough for the investment in infrastructure that would be necessary. We really are looking for areas where we have huge load centers, where we build facilities that are serving several hundred thousand homes with offshore wind and balancing that with not intermittent wind energy sources as well.

Ms. HANABUSA. Have you looked at, for example, with the build-up in Guam whether or not you would be able to accommodate

Guam's growing need if, for example, it builds up to the capacity that they are looking at?

Mr. LANARD. I would have to understand more what the load and demand is before I could answer that, and to the Congresswoman from Guam I would be happy to work with your office to give you some good data from people who understand that.

Ms. HANABUSA. Thank you. Mr. Lanard, one last thing. You talk about the fact that there is no zoning per se of the ocean. We have heard about the Magnuson-Stevens Act which is something that I am very concerned about because of the—as you can imagine, fishing is a very critical part of Hawaii, not only as the Congresswoman from Guam said we have cultural ties, but in addition to that it is a source of our food. As a matter of fact I was home and was told, and I also would address this to Mr. Gilmore, is that Hawaii will use its quota up by October, and we are hosting APEC this November, and our wholesalers have been contacted by China saying don't worry, you can buy your fish from us, and I find that to be rather more than disturbing that, you know, we have a great fishing industry but because of the quotas imposed upon it we are not going to be able to sell our own fish to APEC when they come to Hawaii. We are going to have to buy it from China.

So, do you see, for example, a conflict in that area with the NOP?

Mr. LANARD. I actually think the opposite occurs. Mayor Bullard talked about a meeting in New Bedford. I was also asked to come to New Bedford and work and talk with the commercial fishermen there about how to find compatible uses, and we learned a lot in a great several hour conversation.

When I started in this industry I was a developer of offshore wind farms to different companies, and we started talking about three megawatt turbines. We are now looking at five, six, and seven megawatt turbines which require greater separation between them, so we can imagine wind farms with separation of over a mile apart between the turbines which gives great access to commercial fishing operations.

There are some issues that we are still looking at and working with commercial fishing industries on this but we are very comfortable that not only do we create greater habitat with these new foundations that don't exist in the ocean for fishing, mostly for recreational fishing, but for commercial fishing we have learned that their turning radius, their dredges, all of the different types of equipment that they use would be compatible with in a wind farm the way we are configuring them, and in fact we are going to be so wide apart that you could have competing commercial fishermen passing each other within one array of turbines and still have plenty of safety other than maybe in really major storms, which I hope they wouldn't be out there anyway, but they do that kind of fishing I would rather than go every other array in a case like that.

Ms. HANABUSA. Thank you.

Mr. MCCLINTOCK. [Presiding.] Thank you. The gentlelady's time has expired. The Chair recognizes Mr. Runyan for five minutes.

Mr. Runyan. Thank you, Mr. Chairman, and I thank all of you for your testimony.

It is ironic that I think we have had a hearing very similar to this in the past, and it was the Administration's wildlands policy,

which I think, you know, we keep going through these same scenarios, and quite frankly, I think the Administration has stepped up and rescinded that policy because much of the same fears we are talking about here today.

Representing coastal New Jersey, obviously have a lot of commercial and recreational fishermen there, and whether we are dealing with uncertainty of catch shares, now we are thrown into another realm of uncertainty here, and I just wanted to ask Mr. Gorelnik.

I think you kind of alluded to in your testimony that you have dealt with this in California, one of those pitfalls that our fishermen, coastal fishermen, you know, they would want to voice this but obviously as we have testified over here that they might not be able to hear their voice because of the way these things would be set up. What are some of those obstacles that you faced in California?

Mr. GORELNIK. Thank you, Congressman.

The fundamental problems we found are really twofold. One, the process essentially was rigged from the beginning. The private funding that allowed the process to go forward had changed the rules along the way, and there really was not sufficient objectivity amongst the decisionmakers in the process.

Second, the science behind the process was not—well, as a person with a bachelor's and master's degree in physics I was very disappointed by the science that I saw going forward. It seemed that in the absence of any data the precautionary principle was invoked as a way to drive the process in a predetermined direction, and when contrary data in abundance was provided against that predetermined direction it was merely ignored.

So, I think that planning is not inherently a bad thing, but if planning is going to go forward on the nation's oceans, which that could be a good thing if it is done the right way, but I think we have to have an open process, one that is open-minded and does have the involvement of all of the stakeholders, and that would include recreational and commercial fishing.

Mr. RUNYAN. And I agree on that. I just wanted to bring that point out because as we—you know, whether we are dealing with Magnuson or we are dealing with this, and I think Mr. Bullard said, you know, best science available. Well, a lot of the best science we have available right now is killing our fishing industry because it is not the most accurate science because some of it is 10, 15, 20 years old, and we have NOAA creating regulation around that, and quite frankly, driving our fishermen right out of the industry, so that is really something, not only the structure of it, but to have the science to do it, and I don't even know if within my time here in Congress there will ever be even close enough to have something like that, so I caution everybody on moving forward with that, and with that I yield back, Mr. Chairman.

The CHAIRMAN [presiding]. The gentleman yields back his time. The Chair recognizes the gentleman from Maryland, Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman. Thank you all for your testimony. I wanted to pick up on a couple of things that have been said.

One, well, you are there from California, I can't see your name, sorry. Mr. Gorelnik, sorry about that. You did say just now that planning can be a good thing if it is done right, and I agree with you, and you are bringing in a particular case study. I don't know enough about it to argue back the point from the other side, but I think implicitly you are making the case for the fact that if we use data correctly, if we do get our hands on the best science, if we make sure that we listen carefully to all the evidence and science that is brought forward, that that can result in a very effective planning and decisionmaking resource, and I don't think the National Ocean Policy is aspiring to do anything other than that.

You are offering some good cautions as we move forward. You have to make sure that you have these principles in place so that the process is as good as it can be.

Congressman, I think it was McClintock, made what I thought was a breathtaking statement. He said that the National Ocean Policy would result in the death of all land use planning in the country, something to that effect, and I can't imagine that anyone sitting here would agree that that is going to be the result of this process, but feel free to interrupt me as I continue on with the questioning if you do feel passionately about it.

Mr. GUTH. Death may be an overstatement but I think it is very clear that any regional, local, or state planning is very much in jeopardy of Federal preemption by these regional planning authorities, clearly.

Mr. SARBANES. OK. Well, let me ask—go ahead.

Mr. RUTENBERG. I was going to say that based upon experience with other agencies interacting on local and regional and state matters, I have seen a precedent for it, and I am fearful of it. Whether it would happen in this case is not certain, but we have certainly got precedent. We have the potential.

Mr. SARBANES. Mr. Bullard, what is your position and what office do you hold or have you held?

Mr. BULLARD. I was mayor of the City of New Bedford.

Mr. SARBANES. OK, so you would be very sensitive to the impact or on the ability to make local decisions and so forth of the kinds of policies that are being discussed here. Do you want to respond to this scenario that somehow the ability of local officials and state officials and others to make good decisions about zoning and planning would be completely up-ended by something like the National Ocean Policy?

Mr. BULLARD. When I read the National Ocean Policy I was not fearful that it would usurp local zoning. Now, I think there are all kinds of connections between land and water. It is one of the wonderful things that exist, but I think that is an overstatement.

Mr. SARBANES. OK.

Mr. BULLARD. And I am not mayor anymore, but I think zoning is very important, and zoning being decided at the local level is very important, and I don't think it is at all threatened by this policy.

Mr. SARBANES. Well, I think it is an overstatement, too. When we had this hurricane recently I was coming down from Montreal to Maryland, and I was trying to figure out the best path to take to avoid the storm, the full impact of the storm. The problem was

that I only had state maps in my car so every time I was getting ready to cross the border or trying to anticipate what my route should be I found that I didn't have the right kind of information in my fingertips to do that, which made for a very bumpy ride because the passengers weren't happy with me.

My point is this: Just the informational dimension with the National Ocean Policy is trying to achieve it seems to me is a very noble goal here, and that is to provide us with a more comprehensive map so that we can make all kinds of decisions in a more intelligent fashion.

Again, I haven't heard from this side of the table real resistance to the information dimension of this, the data collection dimension of this, and, you know, Maryland is benefitting, the Chesapeake Bay is benefitting from efforts right now in that regard working with NOAA. I understand when it gets to, OK, then how do you use it there is some anxiety here about the decisionmaking implementation of the information that you have, but again, I think that the benefits of this far outweigh the anxieties that have been presented, particularly if the agencies which will be collaborating more as a result of this process are sensitive to the concerns that are being expressed here, and I think that they will be. With that I yield back my time.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Florida, Mr. Southerland.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. I want to thank all the witnesses here today.

I wanted to allude to some of the comments earlier. You know, the Ranking Member spoke about a plan. He also made a statement that, you know, I am sure we disagree on both sides of the aisle that all Republicans are against plans. That was a pretty broad statement. I know my family we put together business plans and have for many, many generations. But he also makes an assumption that all plans are good, and I think that is also extremely dangerous.

You know, he stated that our side's view would be like having no air traffic control. That is ludicrous. However, I think his view, quite honestly, would be like having an air traffic control help coordinate an air invasion on our own freedoms. That would be ludicrous, and I think that is what we see here in these efforts.

We talk about stakeholders, we talk about advisory councils and planning bodies, and authorities, and management councils, and I believe oftentimes we do see window dressing. You know, this call to participation. You know, we don't need as a people—we do not need the government to remind us that we can talk to each other. I mean, have we been so dumbed down that we need "Oz" to tell us that we can communicate? How pathetic that we have been just so denigrated as a thinking people that we need a government and a bureaucracy to remind us how important communication is to make a better and brighter future.

We have seen so often times where these planning boards and all these stakeholders are brought together just to window dress and to make it look like we are all working together. Well, I can tell you there are abuses of councils and planning bodies all over the country, only to push through an agenda that harms us.

I will say that asking all these bodies to participate reminds me it would be similar to the Greeks asking the people of Troy to help plan the design and construction of a Trojan Horse.

Thank you for allowing me to have some say, to literally plan the dismantling of my freedoms. Thank you for allowing me to have some say in that regard. I am not so dumbed down, I have never served in an elected office before in my life. January the 5th I left my family business to come here, and I am telling you I don't need the government to help me anymore. They are helping our family business—it is 60 years old—to struggle like we have never struggled before, and our story is no different than small businesses all over this country. Please stop helping me.

I want to ask, many of you have traveled many distances. Mr. Rutenberg, thank you for being here. I know you are not from my district but you are from Florida. You represent homebuilders. Obviously, the real estate crisis in Florida is deeply affecting our economy in Florida, an economy that right now is suffering through historic unemployment numbers. Let me ask you this.

Why would this Administration feel the need to implement upon your industry more regulations? Your opinion.

Mr. RUTENBERG. Our industry is being blasted at the moment by regulations from all fronts. We have lots of regulations that are coming our way. This is just one instance of it, and I suspect it is a way of implementing a belief that has not gone through the congressional process, and that has been one of the discussions today.

Mr. SOUTHERLAND. Thank you. And last, you know, and I have some issues that have been raised, we talk about economic analysis and economic impacts, and oftentimes in Washington we do little to do a constitutional analysis, do we have the authority to do this, but let us just say to be assume that we have the constitutional authority, and let us also, you know, pretend that the Administration cares about this body's opinion and our commitment to that Constitution.

I would ask Mr. Bullard, how do we pay for this?

Mr. BULLARD. I think the question is we are paying for it now. The example that I used before of someone 10 years ago proposing renewable energy, and in 10 years nothing happens. I mean, there is a cost to that. There is an opportunity cost. There is a jobs cost. The number of regulations—regulatory bodies that developers had to go through to get nothing in the ground. I mean, there is a cost. Whether you agree with that type of development or not, that is a private developer trying to do something and being absolutely suffocated, and I think if we had a way of saying what are our goals with the ocean environment that solicited all stakeholders' opinions and said here is where we want to put wind turbines, you would have them built right after they were proposed.

Mr. SOUTHERLAND. I yield back.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SOUTHERLAND. Thank you.

The CHAIRMAN. The gentleman from New Jersey, Mr. Holt, is recognized for five minutes.

Mr. HOLT. Thank you, Mr. Chairman.

As someone who also represents an ocean-bounded state, I am very interested in this discussion, and it is particularly noteworthy

that we have At-sea Processors and the Chamber of Commerce and Homebuilders, and I am pleased to say a physicist—I am speaking as a physicist here—involved in this to make the point that there are many competing interests, and the function of government can be described as finding beneficial, optimal, balancing of competing interests, and when you have this many different interests, not to mention a lot of different agencies involved in the balancing of those interests, it seems obvious that we would want coordination.

My colleague, Mr. Sarbanes, had, I thought, a fairly apt description of saying if you have small-scale maps with a large-scale problem you are limited, and it is not just that your passengers might get angry with you, peoples' quality of life, whether you are talking about their economic vitality, their environment or their food supply, are put in jeopardy, so I think we should welcome this, and look for ways to make this coordination work well, and there is so my railing against regulations. I believe it is true. I have looked to the Chairman. There is nothing in this policy that actually specifies new regulations. I see the Ranking Member nodding her head. We can talk about the wisdom of individual regulations, but that is not what we are talking about here. We are talking about coordination.

In the limited time I have, I would like to focus on wind so let me direct my question or questions to Mr. Lanard because this is an area where in New Jersey Republicans and Democrats, Governor Christie, and the congressional delegation should be working together and could work together. There is an enormous resource out there that I believe can be harvested in a way that is economically advantageous and very beneficial environmentally.

Could you comment on whether the Smart From the Start kind of cluster of recommendations and regulations is working? Is that what we need? Do we need more or less of that approach? And in the minute and a half that you have are there any specific regulations that you would like to talk about which will be the subject for another hearing another time?

Mr. LANARD. Thank you, Congressman.

First, the Smart From the Start has worked very well for first mover projects; that is, to start getting these facilities developed in the ocean, it is working very, very well. The Department of the Interior acknowledged that it was the first step, and it is a very, very important first step.

As far as specific regulations are concerned, we need coordination among all the different regulatory bodies, Department of Commerce, the Army Corps of Engineers, the EPA, the Department of the Interior, Department of Defense, so at the secretariat level in the Department of the Interior there is a group that gets together, deputy secretaries from all the different agencies starting to work together. Our biggest concern is that they get enough resources to get the job done.

I do want to just mention about local zoning and what we have heard from others on the panel is the death of local zoning. We have to bring our submarine cable from offshore onto land. We cross territorial waters at three miles and then we have to interconnect on the property someplace into the electric grid. There are many different state and local zoning ordinances that we will have

to follow, and I can assure you the National Ocean Policy will not overrule one of them. Some of our developers might like that, but it will never happen. They will be subject to many different state and local zoning and regulatory ordinances.

Mr. HOLT. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from South Carolina, Mr. Duncan.

Mr. DUNCAN OF SOUTH CAROLINA. Thank you, Mr. Chairman, and gentlemen, thank you for sitting here so long. I appreciate your patience.

I remember back in 2009 when the Ocean Policy Task Force first started its work. I as Chairman of the House Agricultural and Natural Resource and Environmental Affairs Committee in my State of South Carolina's General Assembly, because I was contacted by sport fishing groups, I was contacted by commercial fishermen, equipment manufacturers, former chairman of the Congressional Sportsmen Caucus there in the state legislature, so I have been following this for quite awhile, and I see that as a result of this Executive Order the Federal agencies are required to determine whether the activity has a potential to harm ocean ecosystems, help no matter where the activity occurs.

And so as I read that requirement and I start looking at the makeup of the 27-member National Ocean Council, you have the Secretaries of State, Defense, Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy, Homeland Security, the Attorney General, Administrator of the Environmental Protection Agency, NASA, the Chairs of the Council on Environmental Quality, and the list goes on and on, OMB, NOAA. In addition, the five-member steering committee. It is just amazing to me that we are going to create something with this many layers.

Where I come from we would say that is too much government because of all the people that have input into setting policies for the nation's oceans that affect our ability to go out and maybe sport fish or our ability for commercial fishermen in South Carolina and all along the East Coast to practice their trade.

We had a hearing earlier on this year where some commercial fishermen came and they shared the data that is being used to close bottom fishing, and how skewed it was and how flawed the science was. And I remember a gentleman from Florida talking about policies being set forth by folks in lab coats who aren't going out in the ocean and really understanding the true fishery, and so I am concerned that we have gotten to this level via an Executive Order and creating this what I would say is too much government.

The question I have is for the gentleman from the American sports fishing association, Mr. Gorelnik. Is that pronounced correctly?

Mr. GORELNIK. Gorelnik and I am from the Coastside Fishing Club.

Mr. DUNCAN OF SOUTH CAROLINA. OK. Well, thank you. You were on the Governmental Affairs Committee with the sports fish—

Mr. GORELNIK. I am here in another capacity.



Mr. DUNCAN OF SOUTH CAROLINA. I understand that as well, but I wonder if you can add any input as to where our American tackle manufacturers stand on this particular oceans act.

Mr. GORELNIK. Well, I think that naturally the economy is affecting that business like it is all other businesses, but the issues specifically in California, which have thrown a lot of fishermen off the water, has decreased tackle sales. We have seen tackle stores close. We have seen landings close as a result of the regulations adopted in California. Of course, that filters right back up to the tackle manufactures. So I would say our lesson in California is if the process is not done right and we have unnecessary closures, you know, you are going to see businesses take an unnecessary hit, and it is tough enough in this economy, but to have these what I would say is gratuitous closures is going to have a further negative impact.

Mr. DUNCAN OF SOUTH CAROLINA. All right. Going back to the too much government and it is still directed at you, you know, in your testimony that at a public meeting in San Francisco only those invited to speak were allowed to participate. Does that fit into your definition of public participation in a bottom-up approach?

Mr. GORELNIK. Speaking to that one event, there really wasn't much of a big tent philosophy there. Recreational anglers were never contacted in terms of being one of the invited speakers, and there wasn't really sufficient time really for public comment, and we really felt shut out. We were very frustrated at that event. We felt that not only were our voices not heard, but voices on the other side of our issue were given an abundant amount of time to set forth their views.

Mr. DUNCAN OF SOUTH CAROLINA. Right, and you are not alone on that. I have heard that on the East Coast as well, and we have heard that from the fishermen within the sport fishing arena but also the commercial fishermen I was talking about earlier that as they were determining closures for the Atlantic Coast and the Eastern Gulf, they were never given an opportunity to really have their voice heard, so that concerns me if we are going to have true participatory government that we allow that, so I appreciate you testifying, and Mr. Chairman, I yield back the balance.

The CHAIRMAN. The gentleman does yield back his time and the Chair recognizes the gentlelady from Massachusetts, Ms. Tsongas.

Ms. TSONGAS. Thank you, Mr. Chairman, and thank you all for your testimony.

I have been in Congress almost four years, so will be coming up on my four-year anniversary, and as I have worked on this Committee I think it was maybe several years ago we had testimony come in about the state of our oceans, and Jacques Cousteau, who has done so much really to dramatize the remarkable oceans that we have had, his grandson came in and talked about how he used to go out with his grandfather, and the remarkable life that took place in the ocean as compared to his more recent forays into the depths of the ocean where he really bemoaned their sad state, and it was a story that has really stuck with me. I cannot say I spent a lot of time underwater looking at what we have down there, but clearly this was a young man who has spent his life there.

So, as we talk about—as we are here today to hear your testimony, we have to remember that our oceans really are at risk, and I happen to come from a state in which so much of our economic health is tied to the health of the ocean. We depend on it for tourism, for shipping, for commercial fishing. Now we will see activity in energy generation, renewable energy. So much is at stake here, and not only do the coastline communities stand to benefit, but our Commonwealth as a whole, and really our country because even those kinds of businesses, tackle businesses or whatever that are related to fishing, they will be dramatically impacted if our oceans are not healthy in the long run.

We have already heard testimony, differing testimony about the processes different states have undertaken, so we have in Massachusetts a story that is a very good one in which it was not overly lengthy. There was adequate effort to bring in all the stakeholders to the table. It was a process that seems to have satisfied those stakeholders versus the story of California which it has not been so necessarily the case, so it is an object lesson that we need to remember as we go forward.

We have also been hearing the concern about the fishing industry so I have a question for Mr. Bullard. Did the ocean plans of Massachusetts and Rhode Island hinder the work of the New England's Fisheries Council in any way? And how did you work with them in the course of doing your work?

Mr. BULLARD. The fishing industry is very important in Massachusetts economically in terms of defining character of seaports and also politically it is a very strong entity. I think that is true nationwide. And so in the Massachusetts ocean plan it was very specific that this was not to infringe on the management of fish through Magnuson in Federal waters, and yet it also required that the fishing industry be very active participants, so they participated actively. We learned a lot, but it was very clear that this was not an end around or different attempt to manage fisheries.

I do think there is one thing that may come out of this that can benefit fishermen. Fishermen look at Magnuson which in New England has used closed areas as a way of managing fishery or enforcing fishery regulations, and then they see wind developers come, and that is like another closed area where they see sanctuaries come and they feel that is another threat for a closed area, so fishermen look at all of this as saying you are just taking more and more bottom away from me.

I think if you put all these together in an ocean plan it is possible, I hope it will happen that people will start to say with this science and data we should be able to talk about opening areas to fishermen, not just closing them. So that if we are going to close an area so that there can be a marine protected area, maybe we can open an area that was enclosed for enforcement purposes. It should be a two-way street if fishermen are involved in the overall planning process.

Ms. TSONGAS. Well, I agree with you and I have seen in the coastal communities of the Cape just how really very important the fishing industry is, and yet the fishing industry is dependent upon a vibrant ocean, so I commend you all for your testimony today, and thank you. I yield back.

The CHAIRMAN. Thank you, and I want to thank all the panelists for their testimony today. I must say what has struck me with the testimony of all of you and the questions from the members of the Committee is that the ocean is a great unknown and there needs to be a proper way to address that. The question is how and what is the process, and I think most people would probably agree with the notion that the government closest to the people is probably more responsive to the diversity at a local level and community. In fact, Mr. Bullard talked about the Massachusetts process which apparently was very transparent.

But the debate here and the reason for this hearing was the Executive Order of the President and the potential mischief that could happen because of that Executive Order. If you start up the process at a local level, which I think again most people would agree with, and then you go to the next level you would probably have less agreement because there would be more special interests that could insert their views, and then you go to the next level, which would be the Federal Government, and then you take out the legislative process, the statutory process and put it within the Executive Branch, then you have the potential for real mischief.

And in response to what Mr. Holt said that the task force has no regulations in there, I wish he were here, but this is what the task force said and it is on page 47 under six, the authority for coastal and marine spacial planning, and it says, second to the last paragraph, it says, "Where preexisting legal constraints, either procedural or substantive, are identified for any Federal agency, the NOP would work with the agency to evaluate necessary and appropriate legislative solutions," which is good, "or changes to regulations to address the constraints."

Now, this is where the uncertainty that was said by several of the panelists exists, and I think that is probably where we will have further discussion on the process of how this should be address in the long run, and so that was the reason for the hearing. I certainly didn't hear disagreement on anybody here that there ought to be a proper way to proceed forward, but the key is how do you do it so that all of the interests are properly represented. And again, when you start at the lowest level, at the grass roots and go all the way up to an Executive Order, does not even have congressional input, a whole lot of mischief can be had, and I think that is the concern certainly of this Chairman. That was the reason for this hearing.

I would ask all the witnesses if there are questions that come from other Committee Members that you would respond in a timely manner, make that response available to the whole Committee, and once again I want to thank you very, very much for your testimony, and with no further business coming the Committee is adjourned.

[Whereupon, at 12:10 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record by Mr. Pierluisi follows:]

**Statement of The Honorable Pedro R. Pierluisi,  
the Resident Commissioner in Congress from Puerto Rico**

Thank you Mr. Chairman.

I have great interest in this morning's hearing on U.S. ocean policy because Puerto Rico is one of the nation's 35 coastal states and territories, and the ocean plays an integral role in the Island's social, cultural and economic life. Accordingly, I believe the National Ocean Policy, as embodied in the President's July 2010 Executive Order, deserves our strong support.

I am keenly aware that federal support and intergovernmental cooperation is essential to protect Puerto Rico's roughly 700 miles of coastline and our waters and submerged lands that extend nine miles from shore. The ocean surrounding Puerto Rico is home to diverse and precious coral ecosystems, beautiful beaches that underpin our tourism economy, and unique bioluminescent bays and mangrove lagoons.

The NOAA-approved Puerto Rico Coastal Program—which is supported by scores of dedicated professionals from the Puerto Rico government and the Island's 44 coastal municipalities, along with numerous non-governmental organizations—is the chief means by which we are addressing the challenges to and stressors upon our marine ecosystem. Tourism, shipping, agriculture, fishing, and coastal development, are among the many factors that must be managed for their impact on the ocean.

This Committee—and this Congress—should find value and promise in the President's National Ocean Policy. The Policy places a premium on shared ocean governance, and appropriately aligns the otherwise varied efforts that span the Executive Branch. In a time where efficiency, coordination, and prevention of government duplication is sought, we are presented with a Policy that achieves precisely that.

Importantly, the Policy fosters greater collaboration within the federal government and between the federal government and the states and territories. Though this collaboration, solutions to mitigate stress on the ocean and to plan for its sustainable use can be more easily accomplished. Balancing competing interests and multiple uses of our ocean is needed now more than ever, and that is why I join many of my colleagues in recognizing this Policy's capacity to accelerate coastal and marine spatial planning.

I look forward to hearing from the witnesses today about how the Policy will help us grapple with the effects of land-based sources of pollution, over-fishing, a deficit of public awareness about impacts, and recreational misuse or overuse of the ocean resource. Thank you, Mr. Chairman.

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[A statement submitted for the record by Richard B. Robins, Jr., Chairman, Mid-Atlantic Fishery Management Council, follows:]

**Statement submitted for the record by Richard B. Robins, Jr.,  
Chairman, Mid-Atlantic Fishery Management Council**

Chairman Hastings and distinguished members of the Committee, I sincerely appreciate the invitation and opportunity to provide written testimony regarding the National Ocean Policy. I will focus my remarks on one of the nine priority objectives identified in the policy that has important implications for the Mid-Atlantic region; specifically, Coastal Marine Spatial Planning (CMSP).

It is widely anticipated that the Mid-Atlantic region will become a modern epicenter of offshore energy development as the private and public sectors work to develop a large scale renewable wind energy system in the region. As an example of the scale of proposed development, the Atlantic Wind Connection project proposes to connect up to 1.9 million households with 6,000 MW of offshore wind turbine capacity from Virginia through New Jersey.

In addition to having a reliable corridor of winds that make the region favorable for emerging wind energy development, the marine ecosystem within the region supports billions of dollars of economic activity related to traditional uses of the area, including recreational and commercial fishing, shipping, military and national security, and other recreational and commercial activities that are powerful drivers of the nation's economy.

CMSP, as contemplated in the National Ocean Policy, is expected to provide for a more integrated and proactive approach to evaluate complex interactions between traditional and emerging uses of the ocean than those currently in place. The current processes for managing potentially conflicting uses of the ocean related to offshore energy development do allow for public input but lack transparency in the decision making process and do not benefit fully from interdisciplinary and interjurisdictional integration. If CMSP is implemented effectively at the regional level, it has

the potential to improve the transparency and coordination in the planning and decision-making process which will lead to better coordination of uses of the ocean environment.

In 2010, BOEMRE proposed a Massachusetts RFI area of 3,000 square miles, south of Nantucket, for offshore wind energy development. The proposed area overlaid shipping lanes, the Nantucket Lightship Habitat Closure Area, the Nantucket Lightship Groundfish Closed Area, and one of the most productive scallop grounds in the region—the Nantucket Lightship Scallop Access Area. The proposal met with extensive protest and the RFI area was subsequently reduced by over 50 percent. This is a contemporary example of what we might expect in the absence of a proactive, integrated CMSP approach that would anticipate and evaluate conflicting uses of the ocean across a broader spectrum of regulatory entities and user groups to facilitate appropriate planning.

The Mid-Atlantic Fishery Management Council was established by the Magnuson-Stevens Fishery Conservation and Management Act and has authority over the fisheries in the Atlantic Ocean seaward of the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia. For the past 35 years, the Mid-Atlantic Council, along with the other U.S. Regional Fishery Management Councils (RFMCs), has been engaged in the geospatial management of fisheries within complex marine ecosystems. The Council has identified essential fish habitat (EFH) for its 13 managed species, in addition to habitat areas of particular concern (HAPC), and gear restricted access (GRA) areas to manage discrete portions of the marine environment for specific fisheries management objectives and related ecosystem and habitat considerations.

The Mid-Atlantic Fishery Management Council has also been actively engaged with the Mid-Atlantic Regional Council on the Ocean (MARCO) since it was formed by five Mid-Atlantic governors in 2009. Earlier this year, the Council has named a staff representative to MARCO's CMSP and Habitat Action Teams, in order to make the fisheries-related expertise available to the teams and to provide a conduit between the two organizations. MARCO has made early progress in developing a mapping and planning portal that will benefit future planning processes in the Mid-Atlantic region. Our engagement with MARCO is typical of the other RFMCs in regions around the U.S. that have established regional ocean agreements that are viewed as potential precursors to the Regional Planning Bodies (RPBs) described in the National Ocean Policy.

The National Ocean Policy describes the role of the RFMCs as a consultative role and leaves further specification of the role to the National Ocean Council (NOC). The Mid-Atlantic Fishery Management Council, together with our peer Councils, has requested that the NOC grant the RFMCs membership on the RPBs. The RFMCs have extensive experience and specialized expertise in the management of the marine environment and well established conduits for stakeholder input that can and should be harnessed in the CMSP process to contribute to the success of the RPBs. The Massachusetts RFI example underscores the shortcomings of the current limitations of the system to anticipate and *resolve* conflicting uses of the ocean in a *cohesive* manner, and suggests that a CMSP framework would facilitate a more robust planning process in the Mid-Atlantic region. RFMC membership in the RPBs will contribute to the success of the RPBs and will ensure that fisheries resources and uses are considered at appropriate points in the process.

Working with limited resources, MARCO has experienced early success with their portal development but full CMSP implementation will require significant additional resources. As future decisions concerning funding are considered, I would encourage the Committee to identify funding opportunities for CMSP implementation that do not diminish the budgets of NOAA Fisheries that are already challenged to support the scientific and management programs that are critical to the core mission of the Agency and the RFMCs.

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[A letter and statement submitted for the record by Captain Jay W. Spence, President, Passenger Vessel Association, follows:]

October 3, 2011

The Honorable Doc Hastings, Chairman  
Committee on Natural Resources  
United States House of Representatives  
1324 Longworth House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

The Passenger Vessel Association (PVA) would like to thank you for taking up the issue of a national ocean policy and marine spatial planning. PV A would like to add comments to the record for the hearing in your Committee on “The President’s New National Ocean Policy—A Plan for Further Restrictions on Ocean, Coastal and Inland Activities” on Tuesday, October 4, 2011.

The Passenger Vessel Association (PVA) is the national trade association for owners and operators of U.S.-flagged passenger vessels of all types. PVA currently has nearly 550 vessel and associate members. Our members own and operate passenger and vehicular ferries, dinner cruise vessels, sightseeing and excursion vessels, private charter vessels, whale watching and eco-tour operators, windjammers, gaming vessels, amphibious vessels, water taxis, and overnight cruise ships.

Washington State is home to 63 members of PVA, including the Washington State Ferry System, many other vessel companies, four shipyards, several naval architects and vessel design firms.

The issue of a national ocean policy and marine spatial planning is of great concern to the members of the Passenger Vessel Association. Ferry routes and other traditional navigational lanes are located where they are for a reason. These are the most economical and safest routes by which a vessel can reach its destination. They cannot be arbitrarily moved for someone else’s convenience or whim.

PVA is also concerned that marine spatial planning may become one more method by which the government imposes yet more costs on small businesses and small entities.

Your consideration of our comments is appreciated. Please let us know if we can answer any questions or provide you with any additional information. Thank you.

Sincerely,

Captain Jay W. Spence  
President  
Passenger Vessel Association

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**Statement submitted for the record by Captain Jay W Spence,  
President, Passenger Vessel Association**

The Passenger Vessel Association (PV A) is the national trade association for owners and operators of U.S.-flagged passenger vessels of all types.

PVA currently has nearly 550 vessel and associate members. Our members own and operate passenger and vehicular ferries, dinner cruise vessels, sightseeing and excursion vessels, private charter vessels, whalewatching and eco-tour operators, windjammers, gaming vessels, amphibious vessels, water taxis, and overnight cruise ships.

The diverse membership of PVA includes small family businesses with a single boat, companies with several large vessels in different locations, and governmental agencies operating ferries.

The passenger vessel is a vital and thriving segment of the U.S. maritime industry. It has a longstanding presence on our nation’s oceans, coastal and Great Lakes waters, rivers, and lakes.

Ferries are an important aspect of the nation’s surface transportation system. They provide essential services in places as diverse as New York Harbor, North Carolina’s Outer Banks, the offshore islands of Maine and Massachusetts, Delaware Bay, San Francisco Bay, Puget Sound, and Lake Michigan. To obtain a more comprehensive view of the role of ferries in the national Maritime Transportation System, PV A refers the Interagency Task Force to the National Census of Ferry Operators maintained by the Bureau of Transportation Statistics of the U.S. Department of Transportation and posted at [www.bts.gov](http://www.bts.gov).

Ferry routes and other traditional navigational lanes are located where they are for a reason. These are the most economical and safest routes by which a vessel can reach its destination. They cannot be arbitrarily moved for someone else’s convenience or whim.

As governments begin to implement “marine spatial planning” (or ocean zoning) as directed by a national ocean policy, it is essential to be aware of the needs of the maritime industry, especially ferry operators, to preserve and protect their routes and traditional navigational lanes. The passenger vessel industry and its ferry operators must not be considered an afterthought, inconvenience, or obstacle when someone proposes a new and conflicting use for waters traditionally used for navigation.

Unfortunately, this is exactly what has happened in Nantucket Sound in Massachusetts with a proposal for a massive offshore wind energy development. Neither

the developer nor the federal government properly considered the impact of the project on the safety to the vessels and passengers of the ferries that serve the island of Nantucket and Martha's Vineyard. The ferry operators and PV A are greatly concerned that navigational safety will be compromised. The attached letter to the Minerals Management Service describes PVA's concerns and includes the resolution adopted by PYA's Board of Directors opposing the proposed wind energy installation because of its deleterious effect on the marine safety of the area's ferries.

As people and industry look to ocean waters for nontraditional uses (wind and tidal energy, artificial islands, large aquaculture installations, expanded sanctuaries or marine protected agencies), the possibility of conflicts with traditional navigational uses increases.

While all federal agencies involved in carrying out marine spatial planning through a national ocean policy must be cognizant of the needs of ferries and other vessel operators, the U.S. Coast Guard and the Maritime Administration must be "aggressive" advocates for traditional navigational users when conflicting uses are proposed. The existing Committee on the Marine Transportation System ([www.cmts.gov](http://www.cmts.gov)) in the Department of Transportation can play a helpful coordinating role.

PVA in no way opposes offshore wind energy or other nontraditional ocean uses, but they must be sited in a manner that does not impinge on traditional vessel navigational lanes or compromise the safety of U.S. ferry operations. Those who promote marine spatial planning through a national ocean policy must ensure that navigational uses are recognized and protected.

It is crucial that Congress and Federal Agencies involved in the development of a national ocean policy take into account the cost and cumulative impact of regulation on small business. PV A members are greatly concerned about the economic burdens imposed by the cumulative impact of numerous federal laws and regulations. In recent years, passenger vessel operators have had to absorb costs associated with Coast Guard maritime security mandates, higher assumptions about average passenger weight for purposes of calculating vessel stability, new rules for serving customers with disabilities and EPA permit requirements for discharges incidental to the normal operation of a vessel.

Nearly all vessel-operating members of PVA are small businesses or small entities as designated by the U.S. Small Business Administration (SBA). According to the SBA small businesses "continue to bear a disproportionate share of the federal regulatory burden." The SBA estimates that the cumulative cost of federal regulation per employee for a firm with fewer than 20 employees is \$10,585 per year. For a company with between 20 and 499 employees, the estimated annual cost per worker is \$7,454.

Federal regulators must also take into account that many PV A vessel operators have seasonal businesses, and that they frequently compete with land-based venues. Since the potential customer can often find similar services or attractions ashore, more burdensome rules placed on the vessel operator create a financial disadvantage, since the land-based competitor does not have to shoulder a similar regulatory burden.

Your consideration of our comments is appreciated. Please let us know if we can answer any questions or provide you with any additional information.

