

# Subcommittee on Water, Power and Oceans

John Fleming, Chairman

Hearing Memorandum

May 13, 2016

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff  
Subcommittee on Water, Power and Oceans (x58331)

Hearing: Oversight Hearing on *"The Implications of President Obama's National Ocean Policy."*

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On Tuesday, May 17, 2016, at 10:00 a.m., in room 1324 Longworth House Office Building, the Subcommittee on Water, Power and Oceans will hold an oversight hearing on *"The Implications of President Obama's National Ocean Policy."*

## **Policy Overview:**

- Following unsuccessful efforts to pass major national ocean policy legislation during three successive Congresses under both Democrat and Republican majorities, the Obama Administration initiated the development of a sweeping multi-agency federal management plan for oceans. This effort culminated with the July 2010 issuance by the White House of National Ocean Policy Executive Order 13547.<sup>1</sup>
- The National Ocean Policy (NOP) imposes a new governance structure over two dozen federal agencies to ensure to the fullest extent that all future agency actions are consistent with the Executive Order.
- The reach of the National Ocean Policy extends beyond coastal areas to inland rivers and adjacent lands, as demonstrated in part by National Ocean Policy directives to protect forestlands and wetland-associated uplands.<sup>2</sup>

## **Invited Witnesses:** *(listed in alphabetical order)*

*Mr. Dan Keppen*  
Executive Director, Family Farm Alliance  
Klamath Falls, Oregon

*Ms. Elizabeth Kerttula*  
Director, National Ocean Council  
Washington, D.C.

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<sup>1</sup> [The White House, Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes, July 19, 2010.](#)

<sup>2</sup> [National Ocean Council: National Ocean Policy Implementation Plan Appendix, April 2013, pg 12.](#)

*Mr. Jim Lanard*  
Chief Executive Officer, Magellan Wind  
Collingswood, New Jersey

*Ms. Meghan Lapp*  
Fisheries Liaison, Seafreeze, Ltd.  
North Kingstown, Rhode Island

*Mr. Bob Zales*  
President, National Association of Charterboat Operators  
Hurley, Mississippi

## **Background:**

### *The Origin of the National Ocean Policy*

On June 12, 2009, President Obama issued a Presidential Memorandum (Memorandum)<sup>3</sup> establishing the Interagency Ocean Policy Task Force (Task Force), composed of 24 senior-level officials employed by executive departments, agencies, and offices across the Federal government and led by the Chair of the Council on Environmental Quality (CEQ). The Memorandum charged the Task Force with creating a national policy that ensures “protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhances the sustainability of ocean and coastal economies, preserves our maritime heritage, and provides for adaptive management to enhance our understanding of and capacity to respond to climate change.”<sup>4</sup>

The Memorandum also requires the Task Force to develop a framework for coastal and marine spatial planning (CMSP) – an initiative viewed as “zoning”<sup>5</sup> oceans for conservation, public, and economic uses.<sup>6</sup> In December 2009, the Task Force released the *Interim Framework for Effective Coastal and Marine Spatial Planning*.<sup>7</sup> According to the Task Force, CMSP is intended to improve ecosystem health by planning human use in concert with conservation of “important ecological areas.”<sup>8</sup>

According to the framework, nine Regional Planning Bodies (RPBs) composed of up to 27 Federal agencies/offices and applicable states, federally-recognized tribes, and territories would be established and tasked with developing and implementing marine spatial plans for their respective regions. In some areas, such as the West Coast RPB, foreign countries such as

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<sup>3</sup> [The White House, Memorandum for the Heads of Executive Departments and Agencies: National Policy for the Oceans, Our Coasts, and the Great Lakes, June 12, 2009.](#)

<sup>4</sup> [Id at 3, pg 4.](#)

<sup>5</sup> [Official Testimony of Douglas Vincent-Lang, Acting Director of Alaska Department of Fish and Game’s Division of Wildlife Conservation, submitted to the Committee on Natural Resources, April 3, 2012, pg. 2.](#)

<sup>6</sup> [The White House, Memorandum for the Heads of Executive Departments and Agencies: National Policy for the Oceans, Our Coasts, and the Great Lakes, June 12, 2009, pg 2.](#)

<sup>7</sup> [The Interagency Ocean Policy Task Force: Interim Framework for Effective Coastal and Marine Spatial Planning, December 9, 2009.](#)

<sup>8</sup> [Id at 7, pg 3.](#)

Mexico and/or Canada that border the RPB would be afforded “Ex-Officio” status and would be allotted representation on that RPB.<sup>9</sup>

The Task Force’s interim framework for CMSP suggests that States that participate in the RPBs will:

*“[b]enefit from sustained Federal participation on the regional planning bodies that consists of representatives empowered to make binding and authoritative decisions on behalf of their respective agencies.”<sup>10</sup>*

Proponents have claimed that CMSP is not an effort to zone the ocean but rather a tool to bring stakeholders together with Federal, State, tribal and other partners to better inform and guide decisions regarding ocean use.<sup>11</sup> However, opponents of CMSP have stated that the Administration has made very little information available as to how these plans will regulate use and interact with existing federal regulations and other federally permitted activities already in place.<sup>12</sup> For example, the Committee has heard from fishing industry representatives that the NOP, using CMSP, could impose a new ocean governance structure which could conflict with successful, congressionally authorized programs such as Federal Regional Fishery Management Councils.<sup>13</sup>

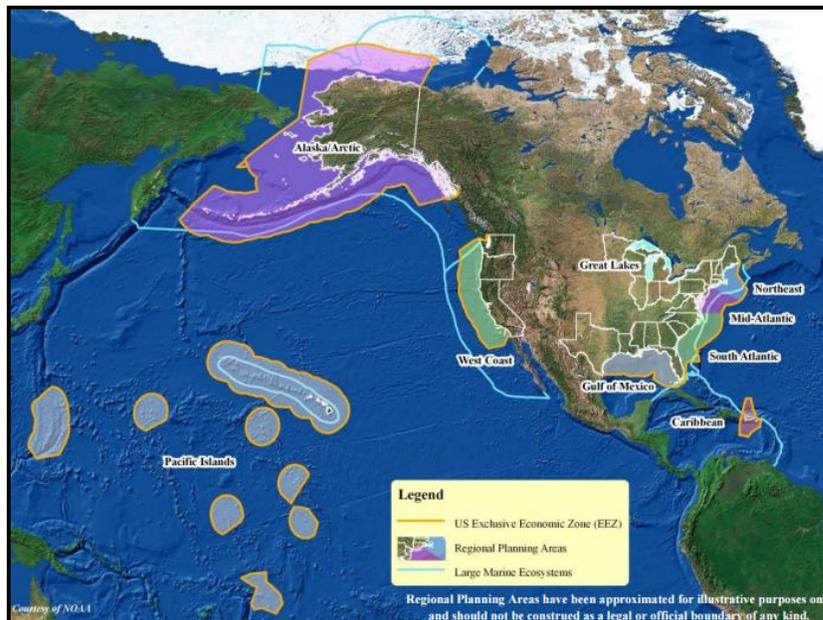


Image 1: Nine Regional Planning Bodies established by the National Ocean Policy.

Source: National Oceanic and Atmospheric Administration

authorized programs such as Federal Regional Fishery Management Councils.<sup>13</sup>

The Administration has stated that: “[T]he development of CMSP would require significant initial investments of both human and financial resources”<sup>14</sup> The first draft Regional

<sup>9</sup> [Id at 7, pg 12.](#)

<sup>10</sup> [Id at 7, pg 5.](#)

<sup>11</sup> [Official testimony of Ms. Nancy Sutley, Chair of the Whitehouse Council on Environmental Quality submitted to the Committee on Natural Resources, October 26, 2011, pg 9.](#)

<sup>12</sup> [Official testimony of Mr. Jim Gilmore, Director of Public Affairs for the At-Sea Processors Association, submitted to the Committee on Natural Resources, October 4, 2011, pg 2.](#)

<sup>13</sup> [Official Testimony of Justin LeBlanc, Federal Representative of United Catcher Boats, Submitted to the Committee on Natural Resources, March 22, 2012, pg 3.](#)

<sup>14</sup> [The Interagency Ocean Policy Task Force: Interim Framework for Effective Coastal and Marine Spatial Planning, December 9, 2009, pg 3.](#)

Ocean Plan – put forth by the Northeast RPB – is scheduled to be released on May 25, 2016.<sup>15</sup> Witnesses will testify on this proposed plan.

On July 19, 2010, the Task Force released “*The Final Recommendations of the Interagency Ocean Policy Task Force*” report.<sup>16</sup> This report recommended nine objectives for what later would be deemed the National Ocean Council (the Council). These nine “National Priority Objectives” were:

- Ecosystem-Based Management (EBM)
- Coastal and Marine Spatial Planning (CMSP)
- Inform Decisions and Improve Understanding
- Coordinate and Support
- Resiliency and Adaptation to Climate Change and Ocean Acidification
- Regional Ecosystem Protection and Restoration
- Water Quality Sustainable Practices on Land
- Changing Conditions in the Arctic, and
- Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure.<sup>17</sup>

According to the Task Force report:

*“[T]hese 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.”*<sup>18</sup>

The report further acknowledged this uncertainty when it stated: “*the [Council] will address questions and specifics as implementation progresses.*”<sup>19</sup> Witnesses will discuss these continued uncertainties on water and land-based activities.

On the same day that the Task Force released its final recommendations, President Obama signed Executive Order 13547,<sup>20</sup> which established a National Policy for the Stewardship of the Ocean, Coasts, and Great Lakes, created the Council and began implementing the Task Force recommendations. The Council consists of the Secretaries of State, Defense, the Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy, and Homeland Security; the Attorney General; the Administrators of the Environmental Protection Agency (EPA) and the National Aeronautics and Space Administration (NASA); the Chairs of the Council on Environmental Quality (CEQ), the Federal Energy Regulatory Commission (FERC), and the Joint Chiefs of Staff; the Directors of the Office of Management and Budget (OMB), National Intelligence, the Office of Science and Technology Policy (OSTP), the National Science Foundation (NSF); the Assistants to the President for National Security Affairs, Homeland Security and Counterterrorism, Domestic Policy, Economic Policy, and Energy and

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<sup>15</sup> Northeast Regional Planning Body: Ocean Planning May Newsletter, May 9, 2016.

<sup>16</sup> [The White House Council on Environmental Quality: Final Recommendations of the Interagency Ocean Policy Task Force, July 19, 2010.](#)

<sup>17</sup> [Id at 16, pg 6.](#)

<sup>18</sup> [Id at 16, pg 9.](#)

<sup>19</sup> [Id at 16, pg 9.](#)

<sup>20</sup> [The White House, Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes, July 19, 2010.](#)

Climate Change; an employee of the United States designated by the Vice President; and the Under Secretary of Commerce for Oceans and Atmosphere (NOAA Administrator).<sup>21</sup>

The Executive Order also created a five-member Steering Committee, an eighteen member Governance Coordinating Committee, and two policy committees – the Ocean Resource Management Interagency Policy and the Ocean Science and Technology Interagency Policy.<sup>22</sup>

### *Concerns Regarding Potential Ocean-Related Impacts*

Under the NOP, CMSP plans are required to be consistent with the national policy guidelines contained in the Executive Order. This has the potential to create a conflict between the statutory authorities under the Magnuson-Stevens Act and provisions that might affect fisheries put into these plans by the RPBs.<sup>23</sup>

Ecosystem-Based Management could also cause conflicting overlap with existing federal fisheries management. The Council has stated: "*Fisheries can be better managed by considering not only fishing and targeted fish population dynamics, but also competitors, predators, and prey; the quantity and quality of the habitat that supports each life- stage; cultural, societal, and economic importance; the effects of climate change and invasive species; and the dynamic interactions among these components.*"<sup>24</sup> These considerations have in the past and are currently taken into consideration by the Fishery Management Councils; however, the Council implies that this duty will now be undertaken by Federal agencies or the RPBs.

The Council has also stated the RPBs will consider "*interactions with other human uses such as energy, mineral extraction, coastal development, tourism, shipping, and national security...*"<sup>25</sup> to improve management decisions.

Further, the NOP implementation plan calls on Federal agencies to "*coordinate to protect, restore, and enhance wetlands, coral reefs, and other high-priority ocean coastal and Great Lakes habitats*"<sup>26</sup> However, the plan does not define or specify what "high-priority" habitats are, creating greater uncertainty for industry and others already subjected to regulation by federal agencies.

### *Concerns about Potential Inland Impacts*

While CMSP has generated many vocal concerns and apprehension, the "Ecosystem Based Management" and "Water Quality Sustainable Practices on Land" objectives could create potential implications on inland water and land activities. For example, authorities under the Coastal Zone Management Act, Clean Water Act, Clean Air Act, and "other relevant authorities" under the RPBs could interfere with private landowner uses and inland land-based activities,

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<sup>21</sup> [Id at 20, pg 3.](#)

<sup>22</sup> [Id at 20, pg 6.](#)

<sup>23</sup> [Official Testimony of Justin LeBlanc, Federal Representative of United Catcher Boats, Submitted to the Committee on Natural Resources, March 22, 2012, pg. 3.](#)

<sup>24</sup> [The National Ocean Council: Draft National Ocean Policy Implementation Plan, January 12, 2012, pg. 9.](#)

<sup>25</sup> [Id at 24, pg 9.](#)

<sup>26</sup> [The National Ocean Council: National Ocean Policy Implementation Plan, April, 2013, pg. 8.](#)

such as agriculture, ports and navigation and forestry.<sup>27</sup> A witness representing irrigated agriculture will testify on these uncertainties and potential adverse implications.

In 2013, the Council released the National Ocean Policy Implementation Plan<sup>28</sup> and accompanying Appendix.<sup>29</sup> The Appendix includes specific directives to be taken by land-management Federal agencies specific to agriculture and other land management activities, including: 1) protecting, restoring, or enhancing 100,000 acres of wetlands, wetland-associated uplands, and high-priority coastal, upland, urban, and island habitat; 2) protecting 2 million acres of land identified as ‘high conservation priorities,’ with at least 35 percent being forest land of highest value for maintaining water quality; and 3) developing a protocol for carbon sequestration as an ecosystem service that can be incorporated into existing Federal policies.<sup>30</sup>

Legislation to accomplish a similar ocean policy had been introduced in multiple previous Congresses;<sup>31</sup> however, none of these bills were ultimately signed into law. As such, concerns continue to be raised by Members of Congress that executive branch actions related to the National Ocean Policy have no specific statutory or constitutional authority. This has led to House-passed language over the past three Congresses prohibiting any federal funding for implementation of NOP. Most recently, during debate of H.R. 2578, an amendment offered by Congressman Bill Flores (R-TX) was adopted prohibiting funding for implementation of NOP.<sup>32</sup>

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<sup>27</sup> [The Interagency Ocean Policy Task Force: Interim Framework for Effective Coastal and Marine Spatial Planning, December 9, 2009, pg 10.](#)

<sup>28</sup> [National Ocean Council: National Ocean Policy Implementation Plan, April 2013.](#)

<sup>29</sup> [National Ocean Council: National Ocean Policy Implementation Plan Appendix, April 2013.](#)

<sup>30</sup> [Id at 29.](#)

<sup>31</sup> H.R. 4900 (108<sup>th</sup> Congress), H.R. 2939 (109<sup>th</sup> Congress), H.R. 21 (110<sup>th</sup> Congress), H.R. 21 (111<sup>th</sup> Congress).

<sup>32</sup> [United States House of Representatives Roll Call vote 291, House Amendment 346 to H.R. 2578, offered by Congressman Bill Flores \(R-TX\), 114<sup>th</sup> Congress, June 3, 2015.](#)