

Coastal and Marine Spatial Planning: Public Comments Received 1/24/2011-4/29/2011

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Name

Catherine Hughes

Organization

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

California Sea Grant and the state of California's Ocean Protection Trust is conducting baseline data work.

Have you even looked at the National Sea Grant strategic plan. They went through this same exercise in most of the areas you are looking at.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Name

rhoda libre

Organization

kauai westside watershed council/marine and coastal zone management/hanakaumaka pu'uhona

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

to collaborate with coastal cultural community with native cultural practices that exist in the region for resources management and infrastructure. This would be the most economical, moral, holistic, self-sustaining, and in compliance to Section 106, Clean Water Act 319, International Intellectual and cultural property rights, and Native gathering rights and practices. The restoration and conservation of the people and its resources are essential to all genres mentioned in the priority objectives for effective, self-resilient, emergency prepared, and integrity of a native habitat, historical sites, and traditional fisheries, species, nurseries, and food/water security and supplies.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

to achieve any positive outcome from changes is to address and implement collaboration and adoption of existing native practices and stewardship in each region to maintain quality management, accountability, damage-control, resolve user conflicts, and foster regional socio-economics, safety, security, and prosperity.

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

1. Identify regional cultural native stewards, stackholders, agencies from federal, state, and county into a meeting to adopt management plan.
2. Implement watershed cultural management plan from regional cultural native stewards, practitioners and gatherers, and kuleana descendents fostered to progress and prosper through grants, funding, and support to remediate, restore, maintain, and enhance resources in their particular region.

Name

Eric Jones

Organization

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

Collect and analyze data on spatial networks, i.e., how individuals, firms, enforcement agencies, fishing villages/ports and target species are tied together over space, including strength and types of ties (e.g., markets, cultural, permits, knowledge, etc.).

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

Time it takes to carefully collect these bits of data that constitute all the ties between stakeholders, towns, and target species.

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Smaller regional samples collected first.

Name

Jean Tierney

Organization**Which Priority Objective would you like to provide comment on?**

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

The first and most sensible step would be to defund the NOC. We do not need to give more control of our lives to the government. We have no money for this.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

The two major obstacles are 1.our country can not afford to spend the money.

2. This is something that is counterproductive to our way of life.

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Number one priority is blocking all of these actives and deactivating the NOC.

Name

John Doyle

Organization**Which Priority Objective would you like to provide comment on?**

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

near term:

Stop using governmental agencies to maintain and achieve the goals set by government, use private businesses. Government can set goals and establish measurements while avoiding corruption, over spending and special interests. Enforce current laws and regulations. The short falls here are in equipment that local harbors have. Pursuit boats and fuel shortage allows freedom for violators. Over crowding harbors by commercial marinas. Public anchorage in harbors is not always large enough and town moorings are too few or non-existent. Retain public access to beaches and obtain more of the same in this critical near term.

mid term:

More public docks for small craft (under 14 ft) for access to food, restaurants, shops, equipment, etc. This increases commerce, revenue and the tax base while satisfying boaters. Several public moorings in every harbor allows low income boaters an opportunity to travel.

long term:

Educate toward respect for people, this leads to respect for all that serves people. The environment serves us, our pleasure and happiness is served by nature. This service has a price and we should pay by our respect and caring for nature. This is a time in history when the human race should quickly take positive action to conserve what the earth is offering. We can continue to take with no regard for the health of the earth, the result will be as with our own nature, it will become ill and ultimately die. This should be the theme of education.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

Obstacles:

Ignorance is the lack of knowledge or not knowing. Many people are not impressed with the needs of nature. Lack of discipline, our society is impatient. It's not so much an unwillingness but a lesson learned in early childhood that pleasure can be achieved easily. The cost of having your way is not very high at all.

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Milestones:

- 1.Our children are being educated to the environments needs.
- 2.Our adults are committed to the program.
- 3.Government is committed to allowing non-government enterprises get the job done.
- 4.Government is not

influenced by any monetary related influence from any individual or organization. 5.Private enterprise is committed to abide by the laws set by government.

Measurements:

More students are entering into areas of science that is directed toward preserving life on earth. Entertainment media is producing more diversions having nature as its theme along with the satisfaction, pleasure and accomplishment it brings to everyone. People are in better health. People are spending more time out of doors. People have pride in the condition of the physical nation, its natural resources, water, fish, game, forests and the attention paid by those expanding commerce toward maintaining this level of excellence.

Im no expert and these ideas may be simple but I believe they are essential to this goal. This along with ideas from science, planners, politicians, etc should lead to a successful end. It's governments job to lead but not for government to create a bureaucracy nor, to profit monitarily from it.

Name

Paul Vanderbrink

Organization

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

Not to use CMSWP at all without better informing the public at large. This appears to be a major change. For many CMSP will be entirely unwelcome, and unwanted. You are talking about radically changing the way we manage the oceans without informing or consulting the people. It is as if you are disconnected!

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

Could you say this in English?

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Name

Wayne Becker

Organization

Salutary Technology, Inc.

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

Explicitly valuing all the major effects of proposed actions in their analyses, allowing balanced decisions, considering the interests of all involved, producing the greatest net good. (Please see the attached abstract for a recent paper summarizing this: "A Community Safety System Balancing Risk, Cost and Freedom.")

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

1. baseline information (See the work of the National Ocean Pollution Policy Board for a leg up.)
2. clear scientific understanding of situations and processes in view
3. involvement of all interests
4. assuring appropriate recognition and valuing of activities precluded or modified by intended policies, and weighing them into projected costs and benefits. (Both are uncertain: identifying and quantifying.)

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

1. The extent to which all affected interests are effectively represented in decisions.
2. The quality of formal analysis of alternatives. A metric allowing incorporation of the effects of the proposals under consideration on (individual, institutional, scientific, economic) Freedom can and should be included in their analyses. Please see the attached abstract of a paper indicating the 'why' and 'how' as developed for another area of maritime activity. This approach can be extended to an explicit probabilistic valuing of the activities that would be precluded by limiting use or access to certain marine areas, as will happen in coastal and marine spatial planning. (Please see the attached reference to a paper summarizing a point of departure for an applicable approach.)

Attachment: Attachment included in index: "Becker, W.W. and Chinnis, J.O. "A Community Safety System Balancing Risk, Cost and Freedom." *Oceans 2010*. September (2010): 9 pages. Print." Found on page 92 of document.

Name

Ken Cordero

Organization**Which Priority Objective would you like to provide comment on?**

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

This is a bunch of long winded legal ease. How about protecting the oceans by controlling all extreme behavior. In other words...No dumping waste, No spilling oil, No Poaching of any species, and no one telling us that we can't fish or boat in a certain parcel of the ocean. If everyone would be reasonable this discussion wouldn't exist. Unfortunately someone will make a point for closing the ocean entirely, and someone else will say that we need oil drilling with no regulations.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

Politics are the biggest obstacle. I'm not trying to insult anyone. Quit arguing and work together with the competition. I don't believe for a second that anyone wants to destroy the oceans on purpose.

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Milestones with Mother Nature? The ocean goes thru cycles and changes that we could never control. Global warming might be a problem, but we need to quit making it an excuse for everything. We shouldn't be trying to control any specific measurement. In California over the past 20 or so years there have been different protection levels for sea lion, great white sharks, and salmon. Along with natural fluctuations in lower parts of the food chain we have toyed with disaster...Too many sea lions, no salmon, great white shark concentrations around San Francisco might become too big. Take everything with a grain of sea salt and don't try to change things too quickly.

Name

Margo Blaha

Organization

Florida Institute of Technology

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

a) Near-term:

The NOC will need to promote the identification of all the user groups (stakeholders) within a respective region. This may be a daunting task because of the myriad of conservation, economic, and national security interests within all levels of both the public and private sectors. The encouragement of communication (through public meetings and workshops) between groups that have historically been adversarial may be necessary. This could be challenging, but necessary if both environmental and economic interests are to be integrated into any plan. Success is more likely with the presence of visible and dynamic leaders (perhaps in the legislative body) who believe in CMSP and are willing to vigorously promote its implementation.

c) Long-term: A legislative mandate that clearly states this is the new national approach to coastal and marine management. This will take intense lobbying of the US Congress, but it may be necessary to legitimize CMSP and ensure its future implementation as administrations change and executive support potentially diminishes.

Because members of the NOC are political appointees, their allegiance and interest in promoting CMSP could change with new administrations. This could mean that CMSP implementation becomes sporadic, thereby hindering long-term success of this policy objective.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

I believe a major obstacle to achieving the objective is the lack of enforcement of participation in a CMS Plan. Stakeholders can apparently opt-out of the regional NOC-certified plan. Without legal teeth behind CMSP, I fear it will be too easy for business as usual with stakeholder groups continuing to follow their own interests. The NOC does state that part of the CMSP is to encourage the enforcement of existing regulations, but not to make additional laws. Perhaps the NOC is relying too much on the good-will of stakeholders to work together under existing regulations. As mentioned previously, a new legal mandate may be necessary to ensure participation.

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

A significant milestone for a national policy of CMSP would occur when each region puts forward its CMS Plan, including coastal zoning areas. Scrutiny of these Plans will determine if a national CMSP initiative is to be a success. In other words, are these regional Plans likely to meet the goals set forth by the policy objective.

Several performance measures can result from the implementation of these regional plans including, for example, metrics to measure the improved conservation of threatened ecosystems. After all, the goal of CMSP is to improve the environmental status of our coastal and marine areas through increased communication and integrated planning. If there is little improvement in the health of coastal ecosystems, then the success of CMSP is dubious.

Name

Todd Harwell

Organization

Florida Institute of Technology

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

- i. Near-Term: The establishment of nine regional planning areas that mirror those of the Regional Fishery Management Councils. This will allow for relief from the sector-by-sector approach to management that has been practiced in the past, as well as reduce any previous overlap or ambiguity in management jurisdictions.
- ii. Mid-Term: Improve ecosystem health and services of coastal zones by planning human uses on conjunction with conservation of important ecological areas. These improvements would lead to the protection of areas that are vital for the resiliency and maintenance of healthy ecosystems services and biological diversity, as well as providing marine resources and supporting human use.
- iii. Long-Term:
 1. Facilitate sustainable economic growth in coastal communities by introducing projects for economic investments related to coastal and marine industries.
 2. Economic incentives should be established for both public and private entities that choose to sustainably develop and manage their use of the coastal zone.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

- i. Preexisting agencies and management jurisdictions that may unenthusiastic about adhering to the new federal regions and policies.
- ii. Unwillingness of agencies and governments to form cohesive partnerships and cooperation that support the Council.
- iii. Stakeholder groups that are unsupportive of the new regions, policies, and partnerships, and the impacts that each will have on their industry or cause
- iv. Possible hesitation or unwillingness of individual coastal communities to adapt to the proposed policies, and lack of support for sustainable economic growth and incentives.

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

- i. Immediate implementation of the National Ocean Policy and the Nine Priority Objectives.
- ii. Establishment of the nine regional planning areas.

- iii. Introduction of economic incentives.
- iv. Formed partnerships and cooperation among agencies and governances.
- v. Observed and measured improvement of ecosystem health based on environmental assessments and monitoring.

Attachment: Attachment included in index: “Todd A. Harwell.” Found on page 181 of document.

Name

Michael De Luca

Organization

National Estuarine Research Reserve Association

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

Near-term actions should be to capitalize on existing capacity at NOAA and through its partners such as the National Estuarine Research Reserve System. NOAA capabilities include:

Observation and monitoring programs

Geospatial referencing, Web mapping, and spatial analysis tools

Navigation charts and ocean mapping data

Ecosystem mapping and characterization

Data management, distribution, analysis, and archiving

Weather and climate prediction

Ecological modeling and forecasting

Social and economic science-based assessments

The NERRS are well-suited to be information providers and conveners of stakeholders as a result of their estuarine monitoring and research portfolio, and capacity to engage coastal decision-makers through the Coastal Training program. Existing data streams and GIS information (land use/land cover, habitat maps) can support development of CMSP strategies. This can occur at the regional and local scales, scales at which the NERRS excel in data collection and stakeholder engagement. The NERRS also possess excellent capacity to integrate data streams that can be spun into CMSP products and services via the Coastal Training Program.

Engagement of the Regional Ocean Governance Associations also can help provide a venue to advance development of CMSP plans.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

A major obstacle is the willingness of coastal states to participate in a planning exercise that may diminish their access to or rights over marine and coastal resources. Further, several states already have produced CMSP documents (e.g., Rhode Island, Massachusetts) and may find it difficult to alter these plans.

Another obstacle is that CMSPs will be based on maps, maps that can not reflect the dynamic nature of coastal and marine environments, or reflect the periodic connectivity between habitats important for productivity and

recruitment processes. How does one build in the dynamic nature of physical and chemical changes that occur in the water column. For example, how does one document on a map a plankton bloom associated with a dynamic water mass that aggregates fish? These are ephemeral features that are difficult to predict in time and space. Broad, interdisciplinary scientific approaches are needed to understand the transport mechanisms that determine the fluxes of carbon, nutrients, water and other materials and energy through coastal systems, and to build the coupled physical-biological-geochemical models to implement ecosystem-based management practices in marine and coastal environments

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Resource managers possess science-based management tools and strategies to enhance ecosystem resilience and sustain economic activities.

Name

John Ogden

Organization

University of South Florida

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

The 9 regional planning areas should be prioritized using criteria that indicate the potential for success of CMSP. It seems to me that the top area to begin implementation of CMSP is the Gulf of Mexico region for the following reasons: (1) The 5 Gulf states have incorporated the essential features of CMSP in the Gulf of Mexico Alliance, the first of its kind to form after the Commission of Ocean Policy report in 2004. (2) The BP oil spill proved the need for CMSP while the spill was in progress and even more so now, during the planning of restoration efforts. (3) There is substantial funding that could provide a pilot CMSP effort while serving the needs of restoration. Funding for this CMSP effort could be considered a sort of "tax" on the numerous restoration projects that will be funded by BP funds over the next 10 years.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

The major obstacle to CMSP is convincing the public that this isn't a "government grab" of territory. I believe that GIS maps are the key, and clearly are a first step in CMSP anyway. Such mapping efforts, incorporating biophysical, oceanographic and human use parameters, are quite advanced in development in the Gulf of Mexico region and could be the focus of a series of high profile public events where they could be demonstrated and where public input could be sought. This would show that a great deal is known about the ocean and about the serious nature of the human footprint on it. The web-based maps would allow anyone to click on their favorite places and see what is known there and add to the information base. It also strikes me that this is an obvious way to build stewardship.

I witnessed the power of maps the present complicated concepts in a form that nearly everyone can understand during the implementation of the Meso-American Barrier Reef project of Mexico, Belize, Honduras and Guatemala in the late 1990s.

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Attachment: Attachment included in index: "Carollo, Cristina, Redd, Dave J., Ogden, John C., Palandro, David. 'The importance of data discovery and management in advancing ecosystem-based management.' *Marine Policy: The International Journal of Ocean Affairs*.33.4 (2009) : 4 pages. Print and electronic." Found on page 85 of document.

Name

Peter Saundry

Organization

National Council for Science and the Environment

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

A. In order to implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States:

- i. Planners should capitalize on work already done in the U.S. territorial waters.
- ii. Those involved in ecosystem-based Marine Spatial Planning (MSP) should develop a set of maps to recognize and identify resource sensitivity.
- iii. The U.S. should require those who use the ocean resources to collect more inclusive data and make them available for public and private planners to make decisions.
- iv. The Federal Government should encourage data aggregation in useful formats as a repository of information for planning.
- v. Inventory and assess existing global coastal and ocean management practices in order to inform future practice in the US territorial waters and beyond (ref. Session 8).
- vi. Create a centralized storehouse of information relevant to MSP.
- vii. The national ocean planning process should result in at least 10 percent of U.S. waters being designated as no take zones.
- viii. The National Ocean Council should ensure active cooperation among regional managers regarding different species and ecosystem types.
- ix. Regional planning bodies (RPBs) should develop a data management plan that updates and re-evaluates the data base for regional planning.
- x. The Council on Environmental Quality (CEQ) should ensure interface between the National Environmental Policy Act (NEPA) process and information that goes into Coastal and Marine Spatial Planning (CMSP).

B. In order to maximize the positive role of Coastal and Marine Spatial Planning in stabilizing food security:

- i. A national advertising blitz should be undertaken to inform the public about CMSP and food security with industries, conservation organizations, and governments working together.
- ii. NOAA should develop and participate in a centralized data collection and management system. They should involve land use planning agencies in collecting coastal and watershed data, in developing understanding, and in connecting the system to the local level.

- iii. Government agencies should collect data on social and economic impact from stakeholders.
- iv. FDA and USDA should fund education and research about food security and ocean interactions.
- v. Policymakers should use existing tools, such as Total Maximum Daily Loads (TMDLs) in decisions about CMSP and food security.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Attachment: Attachment included in index: “National Council for Science and the Environment’s 11th National Conference on Science, Policy and the Environment: Our Changing Oceans.” Found on page 35 of document.

Name

Margaret Podlich

Organization

Boat U.S.

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

Please see our comments.

- Marine spatial plans should reflect shared us among stakeholders
- Our oceans, lakes and rivers are held in common by citizens.
- Plans must provide for boating stakeholder input.
- Benefits of CMSP must be clearly articulated.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?**What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?**

Name

Molly McCammon

Organization

Alaska Ocean Observing System

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

A critical need for any resource management decision is ocean and coastal data translated into information and knowledge. The NOC should pilot a regional data portal in the Arctic, building upon the Alaska ocean Observing System data portal, and providing increased public access to federal, state, local and industry environmental data.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Name

William Nuckols

Organization

W.H. Nuckols Consulting

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

The current plan to coordinate, but not change the authorities for how many decisions are made - as many times the ultimate decision maker is spelled out by statute - is doomed to continue to result in many more decisions that are similar to those sector by sector decisions which have dismissed significant costs to the nation as we promote certain special interest sectors over others.

A short term goal should be to identify what statutory authorities are in conflict to a more consensus based approach, or approaches where issues would be routinely elevated to the Executive Office of the President to reduce the numbers of occasions when the federal decision maker has, at in some cases, a strong self interest in the matters they are deciding. One possible approach could be to ask those in final decision making authority positions to certify that the decisions made not only meet the statutory requirements that give those entities the authority to make rulings, as well as include a statement in which they certify that the decision are, in the broadest sense, in the best interests of the nation. For those cases where agency interests must be made due to statutory considerations, but there is a clear indication that other interests are being harmed by said decision, then a process akin to a minority report in the judicial system could illustrate such cases. It wouldn't change the outcomes per say in the short run, but it could begin to illustrate a body of instances where changes in statutes may be in order if a truly multi-sector system is to be optimized for the overall benefit of the American people.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

CMSP currently faces significant opposition from some portions of Congress and industries. This is due in part, but not in entirety, to a lack of clarity on the nature of what sort of CMSP system would be enacted under this Administration. Having a significantly more detailed and robust proposal in hand, and also allowing for significant transparency in how the proposed system would work, could move the CMSP system forward. Transparency- it was an early goal of the Administration, but one that is not at all times adhered to as much as it should. Improvements in transparency, as well as significant increases in intellectual headway on how a system would work could bear fruit.

That said, I am quite concerned about the intellectual capital and significant numbers of hours that the creation of a CMSP is requiring at the federal, state and NGO levels. The concern is not that careful deliberation could result in a quality CMSP system, for that would be a good outcome, rather the concern is that there seems to be a significant drain on agency senior career and political appointee level representatives who are focused in CMSPs seemingly at a level of distraction which prevents them from addressing other items of national significance, including several of those identified as goals in the National Ocean Policy of the United States.

Given the time remaining in this term, and political realities at the moment, an increased focus on areas other than CMSPs may bear more fruit in a timely manner and ultimately have a larger positive impact on the nation as a whole.

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Name

nicholas hill

Organization

commercial fisherman

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

"marine spatial planning." is just another big waste of time and money for the uneducated non science based non economic based overzealous nut jobs now in charge of NOAA. TAKE AWAY FROM THE WORKING MAN AND FOR WHAT YOU PEOPLE NEED TO GET A CLUE AND A LIFE. I AM SICK AND TIRED OF IDIOTS LIKE YOU TAKING OUR JOBS AND RESOURCES. NICHOLAS HILL 40 YEAR FISHERMAN AND AQUA SYSTEMS FOLLOWER.

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Name

Guy Daniels

Organization

taxpayer

Which Priority Objective would you like to provide comment on?

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

The following letter was sent to the Town Administrator of Wellfleet, MA to avoid an environmental disaster.

Mr Paul Sieloff,

It is my understanding that you do not see the need to deal with an accessibility, legal, environmental and liability situation in the above mentioned area.

It is my belief that you are short-sighted.

The weather this past year has brought extreme and disastrous change to the beach area at the west end of Hiawatha Road, which is also a Town Landing.

All elements of nature have eroded and shifted the sand dunes, which have been there forever, and now private and Town property is being threatened. The Stossels, who live at 5 Samoset Rd, have generously offered to finance a bulkhead to preserve their property and their septic system, which is being exposed with each storm. This bulkhead will also provide access for beachgoers to transition from Hiawatha Road to the beach. At the east end of the proposed bulkhead are concrete slabs which were dumped there 50 or more years ago, and beyond that are dunes buffering Hiawatha Road.

At points along Hiawatha are shoulders of which are now only 2-3 feet wide in measure with a drop-off into Sewell's Gutter of about 10ft or more. But, gradually and sooner than later, these shoulders will be lost into the Gutter and vehicular passage on Hiawatha will become more hazardous if not impossible. It's amazing to everyone in the neighborhood that there hasn't yet been a serious vehicular accident which in turn causing an environmental nightmare.

The proposed bulkhead requires heavy trucks and machinery to trek along Hiawatha to their destination. That means not only are the contractors taking a chance on the road giving way and maybe creating an environmental nightmare spilling gallons upon gallons of gas and/or diesel fuel into the gutter and into our water supply, but the Town of Wellfleet and the deeded owners of that portion of Hiawatha might also be held liable. I say deeded owners because most of the western half of Hiawatha is on private property and not where it should be. This is a long story but we (the neighborhood) have tried in the past to have the Town place Hiawatha where it should be located. First the DPW and then the BOS granted adjacent property owners more privacy by temporarily repositioning Hiawatha to the southern perimeter

It has been requested of the contractors for the bulkhead to restore Hiawatha to its original condition when they are done. My concern is not the condition of the road after construction, but whether it's suitable to handle heavy equipment during any phase of the construction.

My other concern about Hiawatha is that with the increased intensity of storms how long will the dunes be able to support the diminishing shoulder along Hiawatha.

For many of the people in the neighborhood the solution is simple. Restore Hiawatha to where it was designed to be and is recorded in the County records. This will remove the threat of any motorized vehicle (including police and fire equipment) from falling into the gutter because of the road giving way, provide guaranteed access to the beach

for everyone in the neighborhood and to homes at the west end of Hiawatha and the south end of Samoset, and avert any hazardous spills from occurring in Sewell's Gutter.

I am very much looking forward to your response.

Respectfully,

Guy J Daniels

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Name

Merita

Organization**Which Priority Objective would you like to provide comment on?**

Coastal and Marine Spatial Planning

What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

View this video..It will show you the latest victim of the Toxic Gulf we coastal dwellers have been left with. The President has turned his back on us all as we sit watching our families suffer and become ill. Under the direction of the President, the EPA ALLOWED BP to continue poisoning is all. The oil and Corexit wasn't bad enough they even allowed BP to introduce a Genetically created Viral Microbe, SYLVIA into the toxic mix. BP should be brought up on charges for doing so and EPA for allowing them. When the President created the "Gulf Ecosystem Restoration Task Force" he stated within the Declaration that it would ALSO address Health issues along the coast. Many attended the first meeting in Pensacola. When Ms Jackson was asked about some of the ongoing health issues Ms Jackson replied they were not there to address any health issues but only Eco issues. When asked to clarify she said Economic issues. So she represents our government right? Her boss is the President?? Obviously he doesn't care about the citizens of the coast then.. According to Ms Jackson only \$\$\$\$ issues matter. I am here to tell you WE DO matter and we are very angry about the way we continue to be treated. It is wrong and shouts volumes to have a single person in charge of the EPA that only answers to the president. What do you think that says to the public? It's quiet obvious. The oil disaster showed America how our Government has been operating for way too long. It is time to listen to what we have to say ...

What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?**What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?****Attachment:**

http://www.youtube.com/watch?v=JtQsErcdXhc&feature=player_embedded

Index:
Attachments to Comments
And Letters Received
Pertaining to Coastal and Marine Spatial
Planning



April 28, 2011

Surfrider Foundation
PO Box 6010
San Clemente, CA 92674

National Ocean Council
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear National Ocean Council,

The Surfrider Foundation would like to thank you for your efforts to develop a Strategic Action Plan for implementation of **Coastal and Marine Spatial Planning**. We believe that an increase in existing and emerging uses of our oceans and coasts is necessitating a more integrated approach to planning and management. We also believe that a national framework for coastal and marine spatial planning (CMSP) must prioritize protection of the natural ecosystem, including recreational resources, and incorporate significant opportunities for public and stakeholder engagement.

The Surfrider Foundation generally supports the Interagency Ocean Policy Task Force recommended CMSP goals and principles as appropriate for guiding planning efforts. In particular, we support the priority focus on **conservation of important ecological areas**. As our nation considers a range of potential new uses of the ocean, it is crucial that we embrace a precautionary approach and prioritize the protection of areas that are essential to the resiliency and maintenance of ecosystem services and biodiversity. We believe such efforts will be significantly aided by the scientific assessment of biological resources and ecological condition throughout the CMSP process, as highlighted in the *Final Recommendations*.

The Surfrider Foundation would also like to emphasize our support for the CMSP goal to: “provide for and maintain **public access to ocean, coasts, and Great Lakes**”. As an organization that represents the interests of recreational ocean users, Surfrider believes in the right of low-impact, free and open access to the world's waves and beaches for all people. You are undoubtedly aware that there is a varying degree of coastal access opportunities across our nation, with a number of states and territories that have significant restrictions, often through private ownership. We strongly believe that CMSP provides a historic opportunity to maintain and improve public access to our nation's beaches, oceans, and Great Lakes.

With respect to the development of coastal and marine spatial (CMS) plans, we endorse a regional approach that provides flexibility for addressing local priorities, and includes the **meaningful participation of ocean users and the general public**. As you know, many states including Massachusetts, Rhode Island, and Oregon have begun developing spatial plans for their coastal waters. These efforts have benefited from incorporating input from coastal communities and recognizing local values and stewardship. Such engagement has also helped to promote the buy-in of ocean stakeholders who use and value our nation's tremendous coastal ecosystems.

As a grassroots organization with a membership of thousands of recreational ocean users, the Surfrider Foundation is very interested in participating in effective coastal and marine spatial planning. With seventy volunteer chapters and over a dozen field staff located throughout the United States, the Surfrider Foundation is well equipped to promote the constructive participation of ocean stakeholders in

CMSP processes. We have listed below several key elements for CMSP that Surfrider Foundation may provide support or participation for:

- **Data collection on non-consumptive recreational ocean use.** Such data is integral to informing CMSP as these uses provide significant economic and sociocultural benefits to coastal communities and the nation as a whole. Surfrider may be able to provide significant support for such data collection with respect to: study design/ methodologies; promoting recreational user participation; disseminating results; fostering partnerships; and identifying funding.
- **Participation of recreational users in CMSP.** Non-consumptive ocean recreation encompasses a broad spectrum of activities including: surfing; kayaking, beach-going, wildlife viewing, diving, windsurfing; etc. Fostering the participation of these ocean stakeholders can help minimize potential impacts to recreation and reduce conflicts with other uses. The Surfrider Foundation has the capacity to help facilitate the participation of this demographic in many regions of the country.
- **Public Education & Outreach.** Successful CMSP will depend upon effective education and outreach, particularly to ocean stakeholders. Surfrider Foundation has significant capabilities for disseminating information to recreational ocean users and the general public in coastal communities across the nation. These include a broad set of communication strategies ranging from public outreach events to web-based communications.

We believe that the elements above are critical for successful CMSP. Ocean and coastal recreation provides enormous socioeconomic benefits to coastal communities and the nation as a whole. These activities also promote healthy lifestyles and enhance stewardship for our precious nearshore ecosystems. As such, we believe that CMPS provides an important opportunity to plan for the lasting protection of ocean and coastal places that support these activities.

The Surfrider Foundation is a non-profit environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches for all people, through conservation, activism, research and education. The Surfrider Foundation has over 50,000 members and 80 local chapters in the United States with chapters in almost every coastal state. Surfrider Foundation chapters are volunteer run organizations that are supported by regional staff and work on coastal and ocean issues including beach access, water quality, shoreline protection, and marine protected areas.

Thank you for your consideration,

Pete Stauffer
Ocean Ecosystem Manager
Surfrider Foundation



April 29, 2011

SUBMITTED ELECTRONICALLY

Ted Wackler
Deputy Chief of Staff
Office of Science and Technology Policy
National Ocean Council
722 Jackson Place, NW
Washington, DC 20503

Re: Comments of Statoil USA E&P Inc. on Development of Strategic Action Plans for Implementation of the National Policy for the Stewardship of the Ocean, our Coasts, and the Great Lakes

Dear Mr. Wackler:

Statoil USA E&P Inc. (Statoil) appreciates the opportunity to submit comments on the development of Strategic Action Plans (SAP) for the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes (National Ocean Policy). We believe that active engagement with stakeholders and the public is necessary to ensure a sound and balanced National Ocean Policy.

Statoil's comments address the NOC's second priority objective regarding the implementation of Coastal and Marine Spatial Planning (CMSP). Specifically, we are concerned with how CMSP will be implemented on the Outer Continental Shelf (OCS), an area already subject to rigorous planning and balancing under the Outer Continental Shelf Lands Act (OCSLA). In order to prevent unnecessary delays and duplicative permitting requirements, the NOC should exempt the OCS and associated areas from the scope of anticipated CMSP activities.

I. BACKGROUND ON STATOIL

Statoil and its affiliates comprise an international energy enterprise with operations in forty countries. We have more than thirty-five years of experience from oil and gas production on the Norwegian Continental Shelf, where we operate 80% of the production. Statoil is the largest offshore operator in the world, and we are committed to accommodating the world's energy needs in a responsible manner, applying technology, and creating innovative business solutions.

Statoil began building its upstream petroleum assets in the US market in 2002, and we have invested over \$14 billion to grow our upstream business. Statoil is one of the largest leaseholders in deepwater Gulf of Mexico and holds significant positions in the Alaska Chukchi Sea. Over the past two years, we entered into joint venture agreements for onshore gas production in several eastern states and Texas.

In 2008, Statoil acquired sixteen leases during the MMS's OCS Lease Sale 193 in the Alaska Chukchi Sea with Eni Petroleum as a 40% partner on 14 of the 16 leases. We successfully completed a 3-D marine seismic program on our leases and adjacent areas during the open water season of 2010 and are planning a shallow hazards and soil investigation program for the 2011 open water season. Statoil is also a 25% owner in ConocoPhillips' Devils Paw prospect in the Chukchi Sea and has worked cooperatively with Shell and ConocoPhillips to collect environmental baseline data in the region over the past two years.

Statoil is the designated operator on 181 leases in the Gulf of Mexico. We continue to invest in the Gulf and obtained twenty-three leases during MMS's Central Gulf of Mexico Outer Continental Shelf Lease Sale 208 in March 2009, and obtained twenty-one leases in Lease Sale 213 in March 2010.

II. COMMENTS

A. The OCLSA already provides a comprehensive framework for CMSP.

The OCSLA provides a comprehensive framework for undertaking OCS oil and gas activities and lays the foundation for satisfying the NOC's priority objectives. Section 18 of the OCSLA establishes the regime for OCS lease planning and should be maintained as the exclusive basis for any decision-making regarding where, and under what circumstances, OCS oil and gas leasing is undertaken.¹ Decisions regarding the timing and location of OCS oil and gas exploration, development, and production are based on a number of considerations that address coastal and marine environments. 43 U.S.C. § 1344(a)(2). Before any leasing decisions are made, the Secretary of the Interior is required to balance "the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone." *Id.* at § 1344(a)(3).

At various points throughout the development of the OCS leasing program, OCSLA provides for participation by Congress, affected state and local governments, relevant federal agencies, and the public. Section 18 requires the Secretary to invite and consider suggestions from interested federal agencies and the Governor of a State which may become an affected State. Section 19 further provides for State Governors and executives of local governments to provide recommendations to the Secretary regarding leasing options which the Secretary must consider in making the balancing decision under Section 18(a)(3). Every step of the OCSLA five-year planning review calls for public involvement and stakeholder participation, much as envisioned by the SAPs. Creating additional public comment mechanisms with a new CMSP would also create duplication of efforts by commenters and government agencies, given that Section 18 is statutorily required and cannot be eliminated.

Following the leasing and development of any area, the Secretary conducts additional studies to monitor the marine and coastal environments and to identify significant changes to those

¹ Section 18(a)(1) states: "Management of the Outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the Outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the Outer Continental Shelf and the marine, coastal, and human environments." 43 U.S.C. § 1344(a)(1).

environments. The Secretary also must submit to Congress an assessment of cumulative impacts of activities conducted under the OCSLA on human, marine and coastal environments every three years. In addition, the OCSLA contains provisions that authorize the Secretary to suspend or cancel any activity that threatens serious harm to the marine or coastal environment. The OCSLA directs that the Secretary promulgate regulations, including "provisions for the suspension or temporary prohibition of any operation or activity, including production," if there is a "threat of serious, irreparable, or immediate harm or damage to life (including fish or other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment." 43 U.S.C. § 1334(a)(1). After a hearing, the Secretary may cancel any existing lease or permit if the Secretary determines that continued activity under the lease or permit would "probably cause serious harm or damage to life (including fish and other aquatic life)... or to the marine [or] coastal environment." *Id.* at § 1334(a)(2).

In addition to the OCSLA, a host of other laws and programs apply to OCSLA decision-making.² These laws and programs provide additional layers, standards and procedures that build upon the already strong and detailed environmental and CMSP-based requirements of the OCSLA. When considered in addition to the OCSLA, these other laws add further support to the conclusion that the process for OCS leasing is robust³ and that further layers of management planning would be counterproductive to OCSLA's goal of encouraging development of offshore energy resources.

Last, we stress that the exclusion for areas under lease or slated for lease sales should extend to adjacent areas that are necessary for development of OCS resources. For example, in many instances, it will be necessary to develop subsea pipelines and other infrastructure to move hydrocarbons to shore-based processing facilities. A decision by the federal government to allow OCS leasing must also account for the fact that the lease will be explored and developed, which requires development of off-lease infrastructure in most instances. An operator must have the ability to pursue timely development of infrastructure between its leases and onshore facilities, and the regulatory regime governing these areas must be certain and predictable. Hence, we believe the NOC should provide corridors to onshore areas that are – along with OCS areas—outside the scope of CMSP planning activities.

CONCLUSION

Statoil wants to ensure that implementation of a National Ocean Policy is done in such a way that is helpful rather than harmful to the important national interests, including the interests of

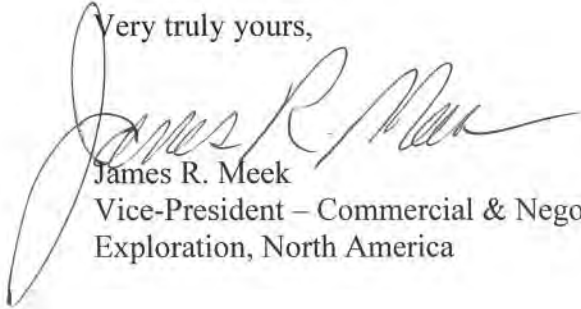
² See the Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1450 *et seq.*; the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*; the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.*; the Marine Mammal Protection Act (MMPA), 16 U.S.C. §§ 1361 *et seq.*; the Magnuson-Stevens Fishery Conservation Act (FCMA), 16 U.S.C. §§ 1801 *et seq.*; the Clean Water Act (CWA), 33 U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*

³ As an example, in Sale 193 for the Chukchi Sea in Alaska, the Secretary excluded from the lease sale a corridor 15 to 50 miles wide along the coast. This area was not included in the sale because marine mammals and birds migrate north through this area in the spring. These nearshore waters are also used by local communities for subsistence hunting.

commercial and recreational users of the oceans and marine-related energy and natural resources. Federal actions for oil and gas activities on the OCS are conducted in accordance with the OCSLA, which already provides robust consideration and protection of coastal and marine environments. Accordingly, in the forthcoming SAP, Statoil urges the NOC to exempt OCS oil and gas lease areas and associated corridors to onshore areas from any new CMSP-based planning or regulatory requirements.

Thank you for consideration of our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "James R. Meek". The signature is fluid and cursive, with a large initial "J" and "M".

James R. Meek
Vice-President – Commercial & Negotiations
Exploration, North America

**Comments for the National Ocean Policy Strategic Action Plans
from the
National Council for Science and the Environment's
11th National Conference on Science, Policy and the Environment:
Our Changing Oceans**

For three days in January 2011, the National Council for Science and the Environment (NCSE) convened 1,250 leaders in ocean science, policy, management and education, conservation and business to explore issues affecting the world's changing oceans. Their objectives were to advance science based decision-making on oceans by:

1. sharing the most current state of the science;
2. linking science to policy and other decisions;
3. communicating key messages and reframing issues;
4. developing targeted and actionable recommendations; and,
5. catalyzing long-term collaborations

Meeting participants put forth a spectrum of ideas on specific challenges facing the world's oceans. Here we present those recommendations that are germane to the National Ocean Policy process, mapped onto the nine Priority Objectives from the Final Recommendations of the Interagency Ocean Policy Task Force. Recommendations that were not targeted for the National Ocean Policy Strategic Action Plans (e.g., recommendations directed at Congress or the private sector) are not included here.

Because there is considerable overlap among these priority areas, some recommendations are included in more than one area, but we also encourage those working on individual priorities to view recommendations in related areas (for example, ecosystem-based management is very much connected with marine and spatial planning).

Because of the nature of the conference, there is considerable diversity in the types of ideas put forth - research, policy, education and outreach; regional, national and international; single agency, multi-agency and public-private partnerships. There is also considerable diversity in the budgetary implications of the recommendations. We recognize that the current budgetary situation places considerable constraints on the NOC process; constraints that may limit that ability of the government to implement some excellent ideas contained in this document. We ask you to be a forward looking as possible in considering the recommendations included here and "do your best."

In addition to the nine priority areas, we encourage the National Ocean Council to develop sets of cross-cutting recommendations in the areas of education (including public education, and pre-professional STEM and workforce education as well as attention to diversity of those knowledgeable about the oceans) and science (inventory and monitoring, observations, and fundamental and applied research). We are concerned that without such cross-cuts, the need for a comprehensive and integrated approach to ocean and coastal education and research, is not likely to be addressed.

We also encourage cross-cutting looks at particular issues such as the importance of oceans for human health and well-being and energy – both traditional (oil and gas) and alternative (wind and waves).

These recommendations are presented in spirit of constructive suggestions from the conference participants. Not all of the conference participants endorse all of the recommendations, and no recommendation should be interpreted as official input from the organizations where conference participants work. For additional information about the conference please go to www.OurChangingOceans.org.

We hope that you find this input helpful. We would be pleased to meet with the members of the National Ocean Council and your various teams and to assist in other ways.

Best wishes and success with your important work.

Margaret Leinen
Conference Chair

Peter Saundry
Executive Director

Priority Area 2. Coastal and Marine Spatial Planning

- A. In order to implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States:
 - i. Planners should capitalize on work already done in the U.S. territorial waters.
 - ii. Those involved in ecosystem-based Marine Spatial Planning (MSP) should develop a set of maps to recognize and identify resource sensitivity.
 - iii. The U.S. should require those who use the ocean resources to collect more inclusive data and make them available for public and private planners to make decisions.
 - iv. The Federal Government should encourage data aggregation in useful formats as a repository of information for planning.
 - v. Inventory and assess existing global coastal and ocean management practices in order to inform future practice in the US territorial waters and beyond (ref. Session 8).
 - vi. Create a centralized storehouse of information relevant to MSP.
 - vii. The national ocean planning process should result in at least 10 percent of U.S. waters being designated as “no take” zones.
 - viii. The National Ocean Council should ensure active cooperation among regional managers regarding different species and ecosystem types.
 - ix. Regional planning bodies (RPBs) should develop a data management plan that updates and re-evaluates the data base for regional planning.
 - x. The Council on Environmental Quality (CEQ) should ensure interface between the National Environmental Policy Act (NEPA) process and information that goes into Coastal and Marine Spatial Planning (CMSP).

- B. In order to maximize the positive role of Coastal and Marine Spatial Planning in stabilizing food security:
- i. A national advertising blitz should be undertaken to inform the public about CMSP and food security with industries, conservation organizations, and governments working together.
 - ii. NOAA should develop and participate in a centralized data collection and management system. They should involve land use planning agencies in collecting coastal and watershed data, in developing understanding, and in connecting the system to the local level.
 - iii. Government agencies should collect data on social and economic impact from stakeholders.
 - iv. FDA and USDA should fund education and research about food security and ocean interactions.
 - v. Policymakers should use existing tools, such as Total Maximum Daily Loads (TMDLs) in decisions about CMSP and food security.

April 29, 2011



To: National Ocean Council
722 Jackson Place, NW.
Washington, DC 20503.

**Re: North American Submarine Cable Association comments on
Development of Strategic Action Plans for the National Policy for the
Stewardship of the Ocean, Our Coasts, and the Great Lakes**

National Ocean Council,

The North American Submarine Cable Association (NASCA) is a non-profit organization of companies that own, install or maintain submarine telecommunications cables in the waters of North America. We are pleased to submit the following comments on the Development of Strategic Action Plans for the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes. We will confine our comments to Priority Objective #2: Coastal and Marine Spatial Planning (CMSP).

The act of laying a cable is the end result of an exercise in CMSP. Planning the route of an undersea cable requires literature review, an inshore, coastal and deep water survey, avoidance of areas where activities may cause damage to a cable (fishing areas, anchorages, etc.) and in the event that a risk cannot be avoided, mitigation of that risk by working with other ocean user communities. As such NASCA members have been practicing CMSP for over 150 years. NASCA member's cables land in 14 States and Territories of the United States. In addition we bring a unique world view to the discussion as all of our undersea cables connect to another country, often with its own unique challenges related to CMSP. NASCA members deal with such interactions as pipeline and cable crossings with our cables, wind farms in proximity to our cables and commercial fishing and anchoring near our cables on an almost daily basis and are well versed in working with other ocean users. The National Ocean Council should draw upon this vast wealth of knowledge as it moves forward. Our members stand ready to assist your efforts in whatever way we can.

The United States, and indeed much of the world, is coming to the realization that undersea telecommunications cables are a critical infrastructure. Undersea cables carry more than 95% of all international telecommunications traffic. One of the major challenges for those involved in CMSP will be how best to

**North American Submarine Cable Association
c/o David Ross Group 58A South Street Morristown, New Jersey 07960**

Alaska
Communications
System

Alaska United Fiber
System Partnership

Alcatel-Lucent
Submarine Networks

Apollo Submarine
Cable System Ltd

AT&T Corp.

Brasil Telecom of
America, Inc
(GlobeNet)

Columbus Networks

Global Marine
Systems Limited

Hibernia Atlantic

Level (3)
Communications,
LLC

Reliance GlobalCom

Southern Cross
Cable Network

Sprint
Communications
Corporation

TATA
Communications

Tyco Electronics
Subsea
Communications

Verizon Business

accommodate current uses and protect critical infrastructure and make room for future uses. We encourage the National Ocean Council to ensure that the critical infrastructure embodied in the undersea cable network is given consideration proportionate to its importance to the United States.

Early international treaties, such as the Geneva Convention of the High Seas, contemplated CMSP albeit on a limited level. They foresaw the conflict between undersea cables and fishing and proposed a solution, one which is still adhered to by undersea cable companies to this day. NASCA would be remiss if we did not take this opportunity to encourage the Nation Ocean Council to ensure that CMSP plans are consistent with the United Nations Convention on the Law of the Sea (UNCLOS), as indicated in the public notice and to ensure that the special protections afforded to undersea cables in UNCLOS are included in all the United States' CMSP efforts.

Thank you for this opportunity to comment. As indicated above, NASCA is ready and willing to assist so if you have any questions please contact us at the address above.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Wargo", with a long horizontal flourish extending to the right.

Robert Wargo
President
NASCA



April 29, 2011

Chairwoman Nancy Sutley

Council on Environmental Quality, Executive Office of the President

Director John Holdren

Office of Science and Technology Policy, Executive Office of the President

RE: Recommendations for the National Ocean Council's Strategic Action Plan for Coastal and Marine Spatial Planning

Dear Chairwoman Sutley and Director Holdren,

As you know, the States of Alabama, Florida, Louisiana, Mississippi and Texas formed a collaborative organization called the the Gulf of Mexico Alliance (GOMA) in 2004 as a result of a shared vision for a healthy and resilient Gulf of Mexico region. On behalf of the Alliance, I would like to commend you for encouraging the implementation of a comprehensive, integrated ecosystem-based approach to coastal and marine spatial planning and, based on unique circumstances in the Gulf region, we offer the following comments and recommendations as the Strategic Action Plan is developed:

- What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

Several of the states have developed strategic plans for coastal restoration and management which were the basis for the development of the *2009 Gulf of Mexico Alliance Governors' Action Plan*. In the *2009 Action Plan*, the following actions were identified to comprehensively address regional priorities and should be used to develop a coastal and marine spatial planning framework:

Water Quality Priorities for Healthy Beaches & Shellfish Beds:

1. Reduce risk of exposure to disease-causing pathogens
2. Minimize occurrences and effects of harmful algal blooms
3. Identify sources of mercury in Gulf seafood
4. Improve monitoring of Gulf water resources

Habitat Conservation and Restoration:

1. Engage a diverse group of stakeholders from state, federal, and international agencies, business and industry, and non-profit organizations to restore and conserve critical habitat.
2. Improve policies that promote conservation and restoration efforts in both the public and private arena.



3. Provide improved conservation and restoration management tools through the application of science and technology.
4. Develop and implement an accurate tracking system to document gains and losses of Gulf habitats and ecosystem services.

Ecosystems Integration and Assessment

1. Develop regional data systems that contain environmental and economic data. A priority is the development of a Gulf of Mexico Master Mapping Plan to collaboratively acquire data on the physical characteristics of the Gulf region, particularly elevation, shoreline, and surface data.
2. Establish strategic partnerships to fill environmental and ecological data gaps.
3. Provide ecosystem decision-support tools to address priority issues within the Gulf. A priority is the development of procedures and tools to determine socioeconomic values of critical coastal ecosystem services in the Gulf region.

Nutrients and Nutrient Impacts

1. Establish a comprehensive ecosystem approach to manage nutrient inputs and reduce impacts to coastal ecosystems. A priority is nutrient characterization to evaluate ecosystem responses and develop tools to better characterize nutrients in coastal waters.
2. Develop and implement strategies that reduce nutrient inputs and hypoxia.
3. Increase the management capacity of Gulf coastal communities so that nutrient impacts are better managed and reduced.

Coastal Community Resilience

1. Provide enhancements for coastal communities, ecosystems, and economies to become more resilient to coastal hazards.
2. Increase the understanding of coastal hazards risks associated with living, working, and doing business in the Gulf region.
3. Incorporate state-of-the-art mitigation methods for reducing risks and enhancing resilience.
4. Encourage growing numbers of communities, businesses, and individuals to adopt new methods for risk mitigation and resilience.

Environmental Education

1. Increase awareness and promote action among Gulf citizens by engaging in educational and outreach activities.
 2. Expand public awareness efforts to connect the Gulf and its relevance to the lives of citizens.
 3. Increase environmental literacy with the K-20 audience by developing, implementing, expanding, and enhancing specific environmental education programs.
 4. Include economic value of Gulf ecosystems in environmental education.
- What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?



Some of the major obstacles to achieving a true coastal and marine spatial framework for the Gulf region are funding, “stove-piping” of various agency responsibilities, and conflicting authorities without clear guidance on priorities. In addition, it’s sometimes uncertain which agency mandates could or should be superseded by the public interest. Coastal and marine spatial planning could possibly present opportunities to provide clear guidance about agency mandates/responsibilities as well as when and how challenges arising from competing interests should be met.

The Alliance believes strongly that the States and local authorities should lead the CMSP effort in the Gulf. We also believe that the federal guidance must give maximum flexibility to the states.

- What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

In general, measurable milestones such as documented improvements in water quality metrics, habitat valuations and habitat creation would be the most valuable measures of progress. In addition, the most helpful measurable economic milestones for coastal economies should be based on actual measurements of economic outputs for various sectors of the coastal economies.

Specifically, GOMA identified several measureable objectives in the *2009 Governors’ Action Plan* based on priority actions being conducted by the Alliance and its partners. These would also represent useful measures of progress for comprehensive, integrated, ecosystem-based coastal and marine spatial planning.

Water Quality Priorities for Healthy Beaches & Shellfish Beds:

1. A better understanding of pathogens and their sources leads to increased beach and shellfish bed protection and decreased human health impacts.
2. Coordinated operational systems regularly detect, track, and forecast harmful algal bloom movements through coastal ecosystems.
3. Health risks are reduced by determining primary sources of mercury, predicting effects, and communicating information about seafood consumption to public health advisory groups.
4. Water quality data collected regionally is of known and comparable data quality.

Habitat Conservation and Restoration

1. Funding and permitting processes, policies, and regulations regarding habitat conservation and restoration are improved.
2. Improved science-based management tools are available and routinely used for habitat conservation and restoration projects.
3. Regional sediment management is implemented in collaboration with stakeholders.
4. The downward trend in habitat and ecosystem services is reversed.



Ecosystems Integration and Assessment

1. Coastal management decisions are made more effectively by updated elevation, shoreline, and sea floor characterization data.
2. Ecosystem based tools are used to identify areas of critical habitat for conservation and protection.
3. Agreements between resource managers who address data gaps and support ecosystem based management efforts are strengthened.
4. A regional status and trends report of emergent wetlands is created and updated at regular intervals.
5. Economic values of ecosystem services are incorporated into coastal resource management decisions.

Nutrients and Nutrient Impacts

1. Nutrient impacts to coastal ecosystems are adequately characterized to establish key ecological relationships, thresholds, and socio-economic values for state-selected indicators.
2. Integrated models are designed and used to estimate nutrient loads from watersheds, establish goals, and predict ecological and socioeconomic impacts of management decisions.
3. An integrated, regionally-comparable model that predicts hypoxia and its impacts is developed.
4. Watershed nutrient reduction plans are completed, including strategies for reducing hypoxia in priority watersheds.
5. There is an increase in access to information documenting nutrient reduction progress for states and partners.

Coastal Community Resilience

1. A region-wide geospatial infrastructure is designed to obtain baseline data for monitoring local sea level rise trends.
2. An assessment of regional risks and resilience of natural, built, and social environments is assisting planners to incorporate a better understanding of risk into the determination of appropriate land use.

Environmental Education

1. On-the-ground outreach and education projects are developed and implemented to better engage the public.
2. Programs targeted toward under-represented and underserved populations are expanded.
3. Local, regional, and national environmental education and public awareness initiatives incorporate the economic value of regional ecosystems.

Knowing that healthy Gulf ecosystems are required for healthy Gulf economies, our primary concern is sustainability. The Gulf region provides 27% of our nation's domestic crude oil, contains 7 of the 10 largest shipping ports in the United States, and supplies 1.2 billion pounds of fresh seafood each year. Also, the third largest river system in the world drains into the Gulf of Mexico carrying runoff from nearly half of the North American continent. This runoff affects fragile coastal ecosystems and is a



primary factor in the hypoxic zone affecting our seafood supply each year. In addition, the Gulf region contains some of the most diverse habitats in the world and roughly 60% of our nation's wetlands. As such, the natural capital of the Gulf region is susceptible to human and natural impacts and cannot sustain this level of stress indefinitely. The Alliance recognizes these competing forces and strives to promote a balance between economic and ecological sustainability by focusing on priority issues such as water quality, ecosystems services valuation, habitat conservation, nutrient management, community resilience and public outreach.

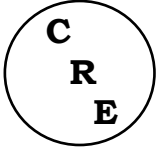
The Gulf of Mexico Alliance has proven itself to be an effective regional governance partnership, and as such we believe that we are the proper entity to coordinate the development of CMSP in the Gulf. Thank you for the opportunity to provide comments during the development of the Coastal and Marine Spatial Planning Strategic Action Plan. Please let me know if and how the Alliance can be of assistance as the Regional CMSP Strategic Action Plans are developed. We look forward to working with you to ensure that the Gulf is a healthy and sustainable region.

Sincerely,

FINAL SIGNED COPY SENT VIA U.S. MAIL

Bill Walker, Ph.D.
Co-Chair, Gulf of Mexico Alliance

Center for Regulatory Effectiveness



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1601 Connecticut Avenue, N.W.
Washington, D.C. 20009
Tel: (202) 265-2383 Fax: (202) 939-6969
secretary1@mbsdc.com www.TheCRE.com

April 8, 2011

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

Re: 75 Fed. Reg. 4139-- National Ocean Council; Development of Strategic Action Plans for the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes

Dear Sir or Madam:

The Center for Regulatory Effectiveness is pleased to submit the enclosed report to the National Ocean Council on Coastal and Marine Spatial Planning (CMSP). The Department of Interior (DOI) has recently implemented the Smart from the Start Initiative, which CRE believes will undermine the efforts of the National Ocean Council's development of CMSP. CRE has prepared a white paper outlining how the Smart from the Start Initiative will set back CMSP.

The Smart from the Start Initiative intends to streamline the leasing process for offshore wind energy by establishing Wind Energy Areas (WEAs), which are ocean locations that DOI has designated as particularly well suited for the development of offshore wind projects. Specifically, the WEAs established by DOI under the Smart from the Start Initiative undermine CMSP for the following two reasons:

- Certain stakeholders are cut out of the process, especially fishermen and shipping. This is well reflected in recent a bipartisan letter signed by Senators and Congressmen, urging DOI to provide these stakeholders with a greater opportunity for input.
- The creation of WEAs involves ocean zoning for particular uses with limited public participation. The WEAs are zoning ocean areas without taking a comprehensive approach to the current and anticipated future uses of the oceans.

The CMSP is designed to use a comprehensive approach in allocating the best way to utilize the United States' ocean resources. The scale of the CMSP is great, but so will its long-term benefits. However, zoning WEAs under the Smart from the Start Initiative in the Atlantic ahead of the comprehensive spatial planning in the CMSP, undermines the purpose and effectiveness of

the CMSP. Establishing WEAs before CMSP is implemented is not comprehensive ocean planning and is not the “smart” solution for stewardship over the United States’ oceans.

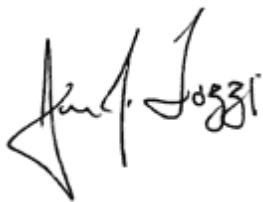
In the attached report CRE concludes:

The Smart from the Start Initiative is in direct conflict with President Obama’s National Ocean Policy that calls for CMSP. CMSP requires a comprehensive, transparent plan that considers current and anticipated uses of the United State’s Oceans. The WEAs do not adequately integrate the current uses of the ocean areas, such as for fishing and shipping.

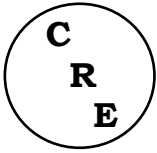
CRE is pleased to submit the following report on how offshore wind development will undermine efforts for comprehensive Coastal and Marine Spatial Planning. CRE will continue to monitor developments for ocean zoning on its Ocean Zoning Interactive Public Docket, which is available at <http://www.thecre.com/creipd/>.

If you need further information regarding any issue discussed in this comment, please do not hesitate to contact me at secretary1@mbsdc.com or (202) 265-2383.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jim Tozzi". The signature is stylized with a large, sweeping initial "J" and "T".

Jim Tozzi
Member, Board of Advisors



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SMART FROM THE START: NOT THE SMARTEST

SOLUTION TO OCEAN ZONING

APRIL 8, 2011

SMART FROM THE START: NOT THE SMARTEST SOLUTION TO OCEAN ZONING

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SMART FROM THE START: NOT THE SMARTEST SOLUTION TO MARINE SPATIAL PLANNING

I. Introduction

On November 23, 2010, Secretary of the Interior, Ken Salazar, “launched a ‘Smart from the Start’ wind energy initiative for the Atlantic Outer Continental Shelf to facilitate siting, leasing and construction of new projects, spurring the rapid and responsible development of this abundant renewable resource.”¹ The core idea behind “Smart from the Start” is to establish an accelerated leasing process for wind energy development on the outer continental shelf (OCS). Under the program, the regulatory process for leasing and development will be streamlined by establishing Wind Energy Areas (WEA). Secretary Salazar claimed, “Our ‘Smart from the Start’ Initiative for Atlantic wind will allow us to identify priority Wind Energy Areas for potential development, improve our coordination with local, state, and federal partners, and accelerate the leasing process.”

Launched only a month after the approval of the lease for Cape Wind, Smart from the Start is an overreaction to the regulatory quagmire experienced with Cape Wind. Cape Wind, the nation’s first expected offshore wind farm, was first proposed in 2001 in Nantucket sound. The project was met with great resistance and was the basis for several lawsuits. After 9 years of environmental reviews and lawsuits, Secretary of the Interior Ken Salazar and Cape Wind Associates President Jim Gordon signed the nation’s first lease for commercial wind energy development on the OCS on October 6, 2010.²

The Smart from the Start Initiative is clearly intended to avoid future leasing problems such as those experienced with Cape Wind. However, it is vital that the Department of the Interior (DOI) does not bypass desired regulations and processes for public involvement in the leasing of offshore wind farms. This is especially important, because only two weeks after the

¹ The Department of the Interior, *Press Release: Salazar Launches ‘Smart from the Start’ Initiative to Speed Offshore Wind Energy Development off the Atlantic Coast*, November 23, 2010, available at <http://www.doi.gov/news/pressreleases/Salazar-Launches-Smart-from-the-Start-Initiative-to-Speed-Offshore-Wind-Energy-Development-off-the-Atlantic-Coast.cfm>.

² The lease is available here: http://www.boemre.gov/offshore/RenewableEnergy/PDFs/CapeWind_signed_lease.pdf

Smart from the Start Initiative was announced, Deepwater Wind LLC announced its intentions to build the largest offshore wind farm in the United States. In fact, Deepwater Wind executives attribute the plans for the wind farm to Smart from the Start. Deepwater Wind executive Jeff Grybowski stated, “The White House and the Department of the Interior are throwing a lot of resources at the permitting process. We want to take advantage of that federal momentum.”³ The proposed wind farm will consist of 200 wind turbines producing 1,000 megawatts of electricity and will provide 350,000 homes across several states with electricity. The size and scope of the project are unprecedented in the United States.

Undoubtedly, the Rhode Island Wind project will have a substantial impact on other ocean uses and it is imperative that Smart from the Start does preempt the marine spatial planning process mandated by the establishing of the National Ocean Policy. It is clear that licensing process should not be as difficult as it was with Cape Wind; however, as Smart from the Start currently stands, it will bypass many of the desired avenues for public input and a more comprehensive approach to ocean planning.

The purpose of this paper is to analyze the impact that Smart from the Start Initiative will have on the regulatory process for issuing leases for OCS wind development and its interplay with the comprehensive ocean zoning called for with Coastal and Marine Spatial Planning (CMSP). Section I of this paper begins by providing an overview of the Smart from the Start program and explains how it will streamline the process for issuing leases. Section II provides an overview of the proposed wind project in Rhode Island. It discusses the expected cost, size, energy production capacity, and current regulatory timeline. Section III explains why wind energy development in the OCS has taken a non-science based priority over other ocean uses for ocean zoning.

Section IV analyzes the opposition to the Rhode Island Wind project and describes how little input it has had in the development of the Rhode Island project. Finally, section V concludes the paper by arguing that Smart from the Start will do more harm than good by

³ Alex Kuffner, *Size doubled of proposed wind farm in R.I. Sound*, Providence Journal, Dec. 8, 2010, available at http://www.projo.com/news/content/DEEPWATER_CHANGES_12-08-10_GLLB4TV_v50.4f9d955.html.

moving ahead before the CMSP is in place. The CMSP is designed to use comprehensive approach in allocating on best to utilize the resources provided by the United States' oceans. However, by zoning WEAs under the Smart from the Start Initiative in the Atlantic ahead of the comprehensive spatial planning in the CMSP, undermines the purpose and effectiveness of the CMSP.

II. Overview of Smart from the Start

The massive offshore wind energy project in Rhode Island is being developed alongside a new regulatory program by the Department of the Interior (DOI)—“Smart from the Start.” Smart from the Start is an initiative aimed at ensuring the process for developing wind energy in the OCS is streamlined. The key provision of the initiative is to implement a comprehensive, expedited leasing framework, which entails identifying “Wind Energy Areas” (WEAs) along the OCS.

The WEAs are areas in the ocean along the OCS that the DOI has designated as particularly well suited for the development of offshore wind projects. The WEAs are identified by interagency task forces. Task forces bring together the knowledge and perspectives of tribes, local and state governments, and other federal agencies. The task force members cannot alter the regulatory framework or leasing process, but rather they function to provide input on how to implement the processes and their impact.⁴ The task forces have identified potential resource and user conflicts that might preclude offshore wind development.⁵ Thus far, task forces have been established in nine states along the Atlantic Coast.⁶ With the help of these interagency task forces, WEAs have been established offshore of the following four states in the Mid-Atlantic: Delaware, Maryland, New Jersey, and Virginia.

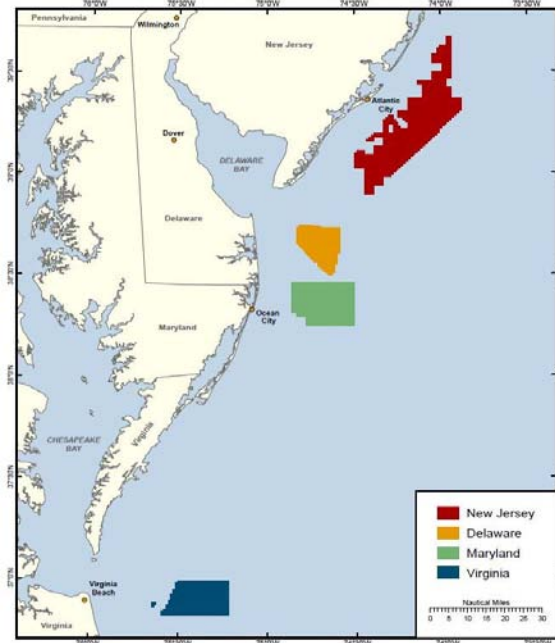
⁴ Erin Trager, Bureau of Ocean Energy Management, Regulation, and Enforcement, *MMS Rhode Island Task Force Meeting: Renewable Energy Uses of the Outer Continental Shelf*, November 17, 2009, available at http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/IntroTaskForce_Rhode%20Island.pdf [hereinafter *RI Task Force November Meeting*].

⁵ Department of the Interior, *Overview: Offshore Wind Energy Development off the Atlantic Coast*, available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=186636> [hereinafter *Smart From the Start Overview*].

⁶ States with Task Forces include Delaware, Main, Maryland, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, and Virginia. Task forces are expected be established in Florida, Oregon, and South Carolina.

Proposed WEAs

Figure 1



Source: Department of the Interior,
<http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=18663>

In addition, the Smart from the Start initiative seeks to simplify the approval process for individual proposed projects by eliminating unnecessary regulatory requirements. The first step towards alleviating the regulatory burden proposed by the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) is to eliminate the requirement of a “duplicative and unnecessary” step when there is no competitive interest in a lease area.⁷ Under the current regulations, the process for acquiring a noncompetitive OCS renewable energy lease initiated by BOEMRE is inconsistent with the process for a noncompetitive OCS lease initiated by an unsolicited request for a lease.⁸ Currently, after BOEMRE publishes a request for information (RFI) or a Call for Information and Nomination (Call), if there is only one respondent expressing interest, BOEMRE may offer a lease through a noncompetitive process. However, before proceeding with a noncompetitive leasing process, BOEMRE must publish a second RFI to confirm the absence of competition.⁹ In contrast, when BOEMRE receives an

⁷ 76 Fed. Reg. 8962, February 16, 2011.

⁸ Id.

⁹ 30 CFR §285.232

unsolicited request for a noncompetitive lease, BOEMRE may award a noncompetitive lease after publishing only a single notice of an RFI.¹⁰ In a rule proposed on February 16, 2011, BOEMRE intends to eliminate the discrepancy by requiring only one RFI notice to be published.¹¹ BOEMRE stated that the second RFI is “a duplicative and unnecessary step in the noncompetitive leasing process.”¹²

Finally, Smart from the Start will also establish a parallel track to process applications to build offshore transmission lines. The details have to be released on how the process will be streamlined. However, BOEMRE expects that the WEAs will assist in siting and conducting environmental reviews for the offshore transmission lines.

As BOEMRE stated, “The objective [of Smart from the Start Initiative] is to accelerate responsible wind energy development on the Atlantic OCS by using appropriate designated areas, coordinated environmental studies, large-scale planning and expedited approval processes.”¹³ Importantly, BOEMRE expects to have identified a WEA for Rhode Island in mid-march. This is of particular significance, because Rhode Island is currently being sited for largest offshore wind farm in the United States. Accordingly, the next section will discuss the Rhode Island wind project

III. Background on Rhode Island Wind Project

A. Overview of the Project

The Deepwater Wind Energy Center (DWEC) will be the largest offshore renewable energy project in the United States.¹⁴ The project, initially planned for 350 MW, will now produce 1,000 MW of wind energy to the Eastern seaboard.¹⁵ Deepwater decided to increase the

¹⁰ 30 CFR §285.231

¹¹ 76 Fed. Reg. 8962, February 16, 2011.

¹² *Id.*

¹³ Bureau of Ocean Energy Management, Regulation and Enforcement, *Overview: Offshore Wind Energy Development off the Atlantic Coast*, available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=186636>.

¹⁴ Eric Lindeman and Jonathan Rickman, *Deepwater Wind Banks On 1,000-MW Offshore Wind Farm To Open New England Market*, *The Energy Daily*, Dec. 9, 2010.

¹⁵ Alex Kuffner, *Size doubled of proposed wind farm in R.I. Sound*, *Providence Journal*, Dec. 8, 2010, available at http://www.projo.com/news/content/DEEPWATER_CHANGES_12-08-10_GLLB4TV_v50.4f9d955.html.

output of the Smart from the Start initiative¹⁶ and technological developments.¹⁷ The increased production capacity can be attributed to next generation 5 MW turbines that Deepwater Wind plans to use on the project. The larger turbines will bring greater efficiency to the projects and reduce the electricity rate to one third of what has been proposed for other offshore wind projects.¹⁸ DWEC will be located in the Rhode Island Sound, with most turbines more than 20 miles from the coast.¹⁹ Deepwater Wind plans to sell the electricity generated from DWEC to multiple states in the northeast via a transmission system connected to southern New England and Long Island.²⁰ The underwater transmissions network will cost approximately \$1 billion.²¹ DWEC will produce enough electricity to power approximately 350,000 homes and will come at a cost of nearly \$6 billion.²²

The plan for the Deepwater Energy Center will not actually lie solely in Rhode Island, but rather in Area of Mutual Interest (AMI) established by Rhode Island and Massachusetts. In a signed Memorandum of Understanding, both Massachusetts and Rhode Island seek to “recognize the benefits of collaborating in the evaluation and potential development of this area of common interest and in sharing the increased economic development and renewable energy benefits resulting from a shared wind source...as well as the necessary infrastructure upgrades and environmental review associated developing individual projects and the offshore energy industry as a whole.”²³ As part of the Memorandum of Understanding, both states agreed to incorporate Rhode Island’s Ocean Special Area Management Plan (Ocean SAMP) as the governing planning and assessment document for the development of offshore wind energy in the AMI.

B. Rhode Island Ocean Special Area Management Plan

¹⁶ Alex Kuffner, *Size doubled of proposed wind farm in R.I. Sound*, Providence Journal, Dec. 8, 2010, available at http://www.projo.com/news/content/DEEPWATER_CHANGES_12-08-10_GLLB4TV_v50.4f9d955.html (Deepwater Chief Administrative Officer Jeffry Grybowski stated, “The White House and the Department of the Interior are throwing a lot of resources at the permitting process. We want to take advantage of that federal momentum.”).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Memorandum of Understanding between Rhode Island and Massachusetts, available at <http://www.governor.ri.gov/documents/RI%20MA%20MOU.pdf>.

Rhode Island established the development of offshore wind energy as a priority in 2008 when it began work on the Ocean SAMP. The Ocean SAMP is an ocean zoning project whose primary purpose is to establish offshore wind farms. As described by the Rhode Island Coastal Resources Management Council (CRMC), the Ocean SAMP is a “mechanism to develop a comprehensive management and regulatory tool that would proactively engage the public and provide policies and recommendations for appropriate siting of offshore renewable energy.”²⁴ Intending to promote wind energy through environmental assessments and coordination between federal and state agencies, the Ocean SAMP provides a “comprehensive understanding of this complex and rich ecosystem as well as describes how the people living in this region have long used and depended on these offshore resources.”²⁵ The Ocean SAMP was approved on October 19, 2010 by the Rhode Island CRMC.²⁶ The SAMP is the governing planning assessment document for the area.²⁷

C. Leasing Process for the AMI

The plans for developing the AMI for wind energy are at the initial stage of the leasing process. BOEMRE has received two unsolicited lease applications from Deepwater Wind LLC and Neptune Wind, LLC to construct commercial wind energy projects.²⁸ BOEMRE has deemed both applicants as “legally qualified” to hold an OCS lease, and is currently reviewing the two applications for “technical” and “financial” capability.²⁹ Figure 2 below illustrates the next steps in leasing process as outline by BOEMRE in December 2010. Although BOEMRE is already behind in concluding their review of the leasing applications, BOEMRE is still expected to identify the WEA for Rhode Island sometime in March. The WEA identified in Rhode Island will largely be guided by Rhode Island’s Ocean SAMP. As the leasing process quickly moves

²⁴ Ocean Special Area Management Plan, Executive Summary, page 2, October 19, 2011, available at http://seagrant.gso.uri.edu/oceansamp/pdf/samp_approved/000_ExecSum_APPROVED.pdf [hereinafter Ocean SAMP].

²⁵ *Id.* at 1.

²⁶ *See Id.*

²⁷ Memorandum of Understanding between Rhode Island and Massachusetts, available at <http://www.governor.ri.gov/documents/RI%20MA%20MOU.pdf>.

²⁸ Poojan B. Tripathi, *Unsolicited Lease Request Areas Within the Area of Mutual Interest: Joint Rhode Island & Massachusetts Renewable Energy Task Force Meeting*, Bureau of Ocean Energy Management, Regulation, and Enforcement, page 7, Dec. 10, 2010, available at http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/RI/FINAL_RIMA_JointTskFrc_Dec2010.pdf.

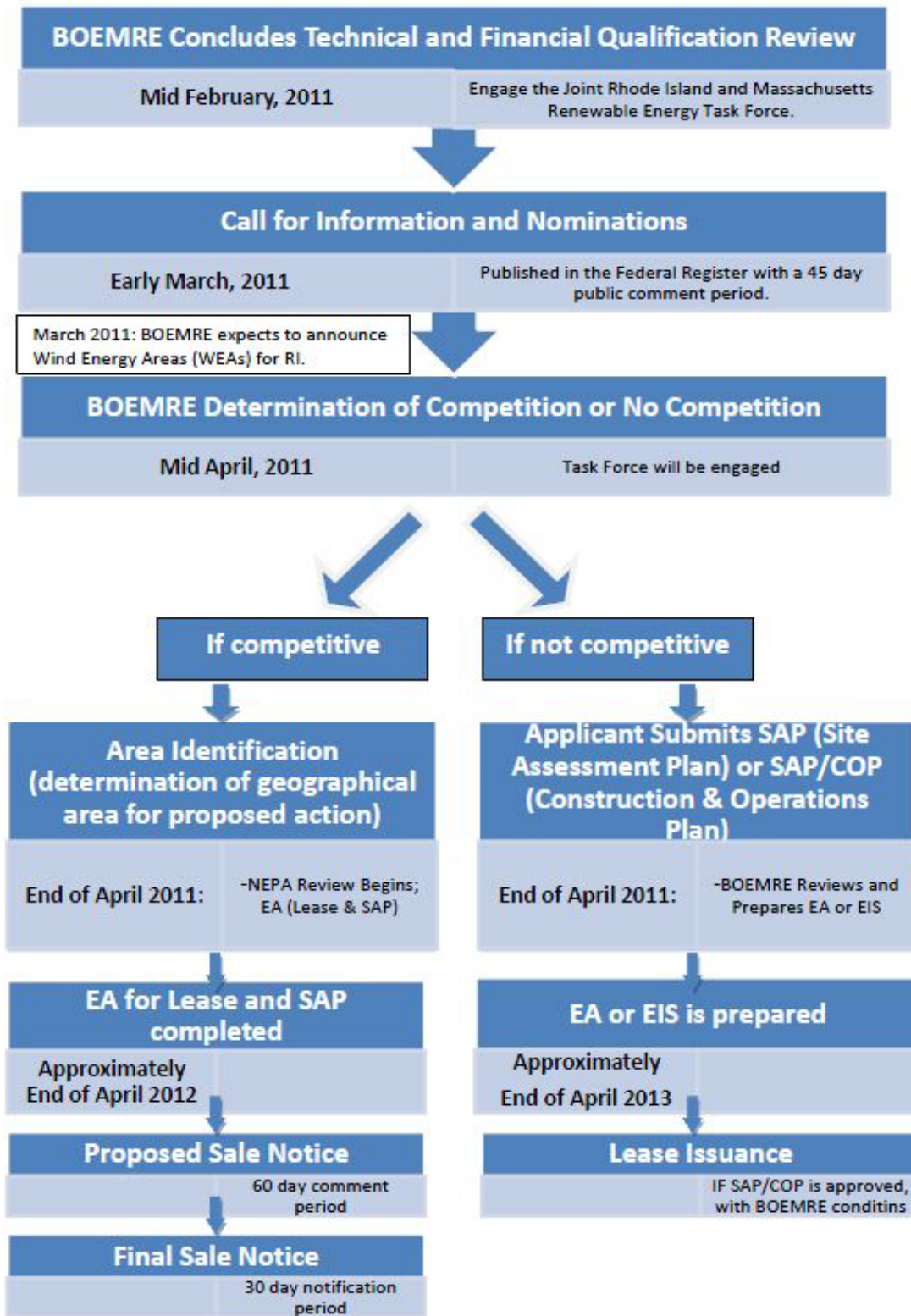
²⁹ *Id.* at 10.

forward under Smart from the Start, several groups feel they have not had ample time to provide input on how offshore wind energy will affect them.

---- See Graphic Below---

Figure 2

Regulatory Timeline for Rhode Island Wind Offshore Wind Project and the Issuance of Leases



IV. Why is Offshore Wind Energy now the “Smart” Solution

Although comprehensive ocean zoning has been a priority of the Administration, offshore wind energy has taken precedent over other ocean uses. This section discusses why wind energy has moved ahead of other ocean uses.

A. Energy Policy Act of 2005

The Energy Policy Act of 2005 established the authority in the Department of the Interior to license offshore wind projects. Specifically, the 2005 Energy Act requires the Secretary of the Interior to grant leases, easements, or ROWs on the OCS for activities that "produce or support production, transportation, or transmission of energy from sources other than oil and gas."³⁰ Despite the Energy Policy Act of 2005, “offshore wind development remained stagnant as questions lingered about jurisdictional issues and the regulatory process that the Department would develop for offshore renewable energy projects.”³¹ Thus, the Smart from the Start Initiative has been DOI’s attempt to jumpstart the development of offshore wind pursuant to their authorization under the Energy Policy Act of 2005.

B. Renewable Energy Production is a Priority of the Administration and Rhode Island

Offshore wind development has been moving forward so quickly because renewable energy production has been a priority of the Obama Administration and the State of Rhode Island. In implementing Smart from the Start, DOI stated, “A top priority of this Administration is developing renewable domestic energy resources to strengthen the nation’s security, generate new jobs for American workers and reduce carbon emissions.”³² In addition, Former Rhode Island Governor, Donald Carcieri, set a goal of having 20% of Rhode Island’s Energy come from Renewable Energy and 15% from wind. Rhode Island has taken steps to meet their renewable

³⁰ See Energy Policy Act of 2005 § 388; Pub. L. No. 109-58, § 388(a) (amending the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, et seq., which generally governs the federal government’s administration of the submerged lands, subsoil, and seabed, lying between the seaward extent of the states’ jurisdiction and the seaward extent of the Federal jurisdiction).

³¹ Department of the Interior, *Frequently Asked Questions: ‘Smart From the Start’ Atlantic OCS Offshore Wind Initiative*, page 1, available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=73317>.

³² *Id.*

energy goal of 20% by creating the Ocean SAMP and coordinating offshore wind development with Deepwater LLC.

C. Job Growth

Finally, the push towards offshore wind energy has been viewed as an effort to spur job growth. Job creation is very clearly laid out as a goal of offshore wind development by the Memorandum of Understanding between Mass and Rhode Island, which provides that the two states will coordinate economic development to maximize job creation in the region.³³ The Rhode Island project alone is expected to create 800 jobs.³⁴ Furthermore, Deepwater Wind's plans to increase the facility to 1,000 MWs will not increase the number of jobs, but will extend the expected two year construction cycle to four years, "guaranteeing construction and assembly jobs for a longer period."³⁵ Moreover, at 1,000 MWs, the project may cause suppliers to establish manufacturing, assembly, and support services in the region, having a multiplying effect for job creation.

V. Opposition to the Project

A. Fishermen

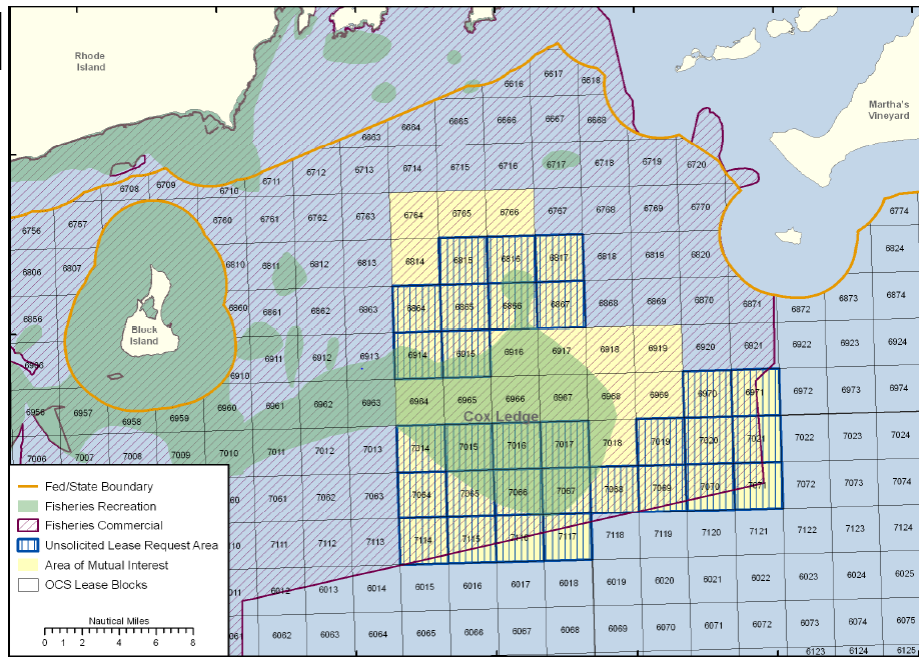
Fishermen will be adversely affected by the proposed wind farms in the Atlantic OCS. The AMI is an area that is heavily fished and navigated by fishermen. Accordingly, the offshore wind farm proposed has great potential to displace fishermen from their managed grounds. In figure 3 below, the area shown in yellow is the AMI. The area contained inside the purple line is commercial fisheries, which encompasses the entire AMI. The green area depicts the recreational fisheries. As illustrated below in figure 3, the AMI is located at the heart of the recreational fisheries, and is located entirely within the commercial fisheries. The development of wind farms will interfere with the ability of fishermen to fish in their managed grounds.

³³ Memorandum of Understanding between Rhode Island and Massachusetts, available at <http://www.governor.ri.gov/documents/RI%20MA%20MOU.pdf>.

³⁴ Alex Kuffner, *Size doubled of proposed wind farm in R.I. Sound*, Providence Journal, Dec. 8, 2010, available at http://www.projo.com/news/content/DEEPWATER_CHANGES_12-08-10_GLLB4TV_v50.4f9d955.html.

³⁵ *Id.*

Figure 3



Source: Poojan B. Tripathi, *Unsolicited Lease Request Areas Within the Area of Mutual Interest: Joint Rhode Island & Massachusetts Renewable Energy Task Force Meeting*, Bureau of Ocean Energy Management, Regulation, and Enforcement, page 20, Dec. 10, 2010, available at http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/RI/FINAL_RIMA_JointTskFrc_Dec2010.pdf

Moreover, Fishermen have been shut out of the process in the siting of WEAs and leasing sites. In developing WEAs, formal consultations have not occurred with Regional Fishery Management Councils. For example, DOI recently published a RFI for potential leases in 3,000 square miles of ocean in the Nantucket Sound.³⁶ Fishermen and the public only became aware of the proposal after DOI held a hearing in New Bedford, with the comment period ending only 12 days later.³⁷ Massachusetts lawmakers were outraged by the lack of transparency and the speed with which DOI was moving ahead with the leasing process. In a letter signed by Senator Scott Brown, Senator John Kerry, and Representatives Barney Frank and John Tierney, the lawmakers proclaimed, “We feel that amount of time is insufficient for affected stakeholder to analyze and submit comments on an energy development proposal that could have lasting impacts in the region.”³⁸ Representative Frank commented, “I am deeply disappointed by this

³⁶ 75 Fed. Reg. 82055, December 29, 2010.

³⁷ Patrick Cassidy, *Wind Energy Leasing Plan Under Fire by Mass. Lawmakers*, Cape Code Times, February 23, 2011, available at <http://www.capecodonline.com/apps/pbcs.dll/article?AID=/20110223/NEWS/102230324/-1/rss02>.

³⁸ *Id.*

decision by DOI and upset that neither Congress, the fishing industry, nor fishing regulators were notified before the decision was made.”³⁹

Fishermen also claim that the proposed wind farms violate the Outer Continental Shelf Lands Act (OCSLA). OCSLA requires “the character of the water above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall by not be affected.”⁴⁰ The wind farms will interfere with Fishermen’s ability to fish and navigate, thus, violating OCSLA. In addition, the wind farms will affect the navigation of fishermen by interfering with their navigational equipment. This will create safety concerns, inefficiencies in the fisheries, and increase fuel consumption. Finally, fishermen are concerned about the legal liability for damage caused by draggers that become entangled with transmission cables and also the need for additional crewmembers to monitor the location of the turbines.⁴¹

B. Shipping

The proposed wind farm in the AMI will also substantially interfere with shipping routes. As currently planned, nine lease blocks⁴² will interfere with established shipping routes. In figure 4 below, the area in red shows the marine traffic routes in the Rhode Island Sound, the area in yellows shows the AMI, and the blue boxes depicts the unsolicited lease request areas. As shown in figure 4, the AMI and the unsolicited lease request area interfere directly with the established marine traffic route.

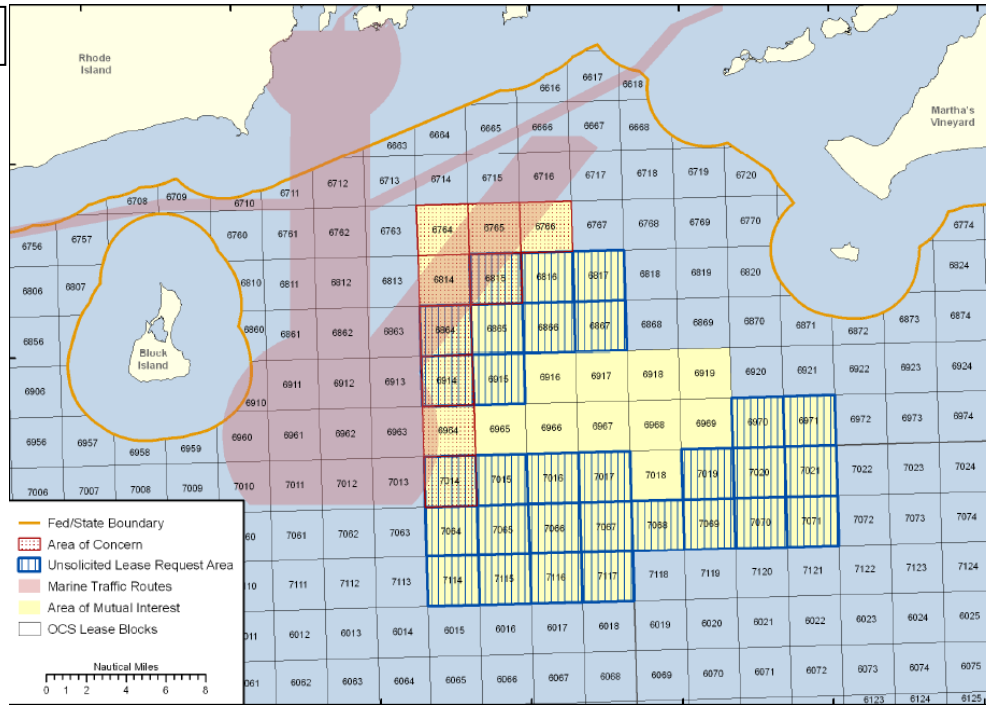
³⁹ *Lawmakers Demand More Public Input on US Offshore Wind Plan*, Recharge News, February 23, 2011.

⁴⁰ Outer Continental Shelf Lands Act, 43 USC § 2332(2).

⁴¹ Patrick Cassidy, *Wind Energy Leasing Plan Under Fire by Mass. Lawmakers*, Cape Code Times, February 23, 2011, available at <http://www.capecodonline.com/apps/pbcs.dll/article?AID=/20110223/NEWS/102230324/-1/rss02>.

⁴² The following lease blocks will interfere with established shipping routes: 6764, 6765, 6766, 6814, 6815, 6664, 6914, 6964, 7014.

Figure 4



Source: Poojan B. Tripathi, *Unsolicited Lease Request Areas Within the Area of Mutual Interest: Joint Rhode Island & Massachusetts Renewable Energy Task Force Meeting*, Bureau of Ocean Energy Management, Regulation, and Enforcement, page 21, Dec. 10, 2010, available at http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/RI/FINAL_RIMA_JointTskFrc_Dec2010.pdf

Shipping routes must be considered in the beginning stages of the siting and leasing process, because offshore wind farms have the potential to increase shipping time and costs, interfere with port access, and cause safety concerns. Although the risk of a collision is not great, the environmental costs and damages of a single collision between a ship and wind turbine would exceed any benefits to be gained by offshore wind energy.

C. *Incompatible with the National Ocean Policy*

Similar to all resources, valuable ocean resources are heavily sought after for many uses. Because of this, the Obama Administration created the National Ocean Policy, which directs all executive department and agencies to participate in Coastal and Marine Spatial Planning (CMSP). CMSP is the “comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning, based on sound science, for analyzing current and anticipated uses of ocean.”⁴³ Under the CMSP framework, the U.S. coastal waters will be divided into nine regional planning

⁴³ Executive Order, *Stewardship of the Ocean, Our Coasts, and the Great Lakes*, July 19, 2010, available at <http://www.whitehouse.gov/the-press-office/executive-order-stewardship-ocean-our-coasts-and-great-lakes>

zones.⁴⁴ Each region will have a corresponding regional planning body consisting of Federal, State, and Tribal representatives to develop regional goals, objectives, and ultimately regional Coastal Marine Spatial plans (Ocean Zoning Plans).⁴⁵ In addition, the regional planning bodies will provide a formal mechanism for consultation with their respective Regional Fishery Management Councils (RFMCs) on fishery related issues.⁴⁶

The WEAs currently being established by BOEMRE contradict the CMSP by failing to account for the current uses of the ocean that are incompatible with the placement of the wind farms. CMSP is intended to consider all potential ocean uses, and based on sound science, develop a comprehensive plan to efficiently use the ocean resources. The WEAs are being established ahead of the CMSP and only focus on the best locations for the development of offshore wind. Furthermore, there is no indication how the Wind Energy Areas will be integrated in the coastal and marine spatial planning. Prioritizing offshore wind energy ahead of all other ocean uses undermines the holistic approach take with CMSP.

VI. Conclusion

Smart from the Start was developed as an initiative to streamline the regulatory process to facilitate the leasing and construction of wind projects located in the Atlantic OCS. However, by streamlining the process, Smart from the Start attributes to reduced transparency in the leasing process and shuts out public input on the impact of the wind farms. DOI must allow for open deliberation as it establishes Wind Energy Areas and include the voices of all interested parties.

Moreover, the Smart from the Start initiative is in direct conflict with President Obama's National Ocean Policy that calls for CMSP. CMSP requires a comprehensive, transparent plan that considers current and anticipated uses of the United State's Oceans. The WEAs do not adequately integrate the current uses of the ocean areas, such as for fishing and shipping.

⁴⁴ *White House Council on Environmental Quality, Final Recommendations of the Interagency Ocean Policy Task Force*, at 51(July 19, 2010) available at http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf.

⁴⁵ *Id.* at 52.

⁴⁶ *Id.* at 53.

Smart from the Start will do more harm than good by moving ahead before the CMSP is in place. The CMSP is designed to use a comprehensive approach in allocating the best way to utilize the United States' ocean resources. The scale of the CMSP is great, but so will its long-term benefits. However, zoning WEAs under the Smart from the Start Initiative in the Atlantic ahead of the comprehensive spatial planning in the CMSP, undermines the purpose and effectiveness of the CMSP. While leasing for wind energy does need to be streamlined, it does not need to be streamlined ahead of all other ocean uses. Establishing WEAs before CMSP is implemented is not comprehensive ocean planning and is not the "smart" solution for stewardship over the United States Oceans.

Objective 2: Coastal and Marine Spatial Planning: Implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States.

- *Build on Existing Efforts*: Avoid undermining existing efforts by utilizing the experience from the states and other organizations and programs, such as the WCGA and CZM Programs.
- *Results-Oriented Messaging with Coastal and Marine Spatial Planning (CMSP) as a Tool*: Identify national goals, such as ensuring clean beaches, improving water quality, maintaining productive and healthy fisheries, and promoting sustainable coastal communities, and then promote CMSP as a planning tool that will help us achieve them.
- *Information Management*: Create an accessible, user-friendly data portal that links existing data, monitoring networks, and mapping products to improve decision making.

The NOP should support regional, state, and local CMSP efforts and build upon existing programs, such as the WCGA and CZM Program. These partnerships and programs can directly contribute to on-the-ground implementation of CMSP. The federal government should avoid actions that could undermine existing efforts and create duplication and the sentiment that this is a top-down approach. The Regional Planning Body (RPB) is an opportunity for all parties to convene as equals to support existing national, regional, and state actions and goals.

The NOP should emphasize a results-oriented set of goals with CMSP as one of the key tools to achieve them. For example, the WCGA views CMSP as a planning tool that will help us achieve the goals of ensuring clean beaches, improving water quality, maintaining productive and healthy fisheries, and promoting sustainable coastal communities. This reframing will help in both political and public engagement. The WCGA supports engaging the public in the CMSP process at regional stakeholder workshops and other public forums.

Absent additional resources and funding, states cannot be expected to fully implement CMSP. In addition, decision making and CMSP should be based on the best available information. Providing immediate and sustained technical assistance for information management provides a strong incentive for state participation and lays the foundation for sound policy and management decisions. Availability of high quality, usable information will be critical to develop each region's CMS plans. The creation of an accessible, user-friendly data portal that links existing data, monitoring networks, and mapping products (i.e., fisheries management, protected areas and national marine sanctuaries, energy siting, state lands leases, etc.) will help the states, regions, and the nation to make more informed decisions for our environment. Use of standardized metrics and data protocols will help to reduce incompatibility between data from different sources and ease the incorporation of new data into this information network.



ENVIRONMENTAL
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COASTAL AND MARINE SPATIAL PLANNING STRATEGIC ACTION PLAN COMMENT April 29, 2011

FOUR KEY ACTIONS FOR THE CMSP ACTION PLAN

The **Environmental Law Institute (ELI) Ocean Program**¹ submits this comment to highlight key opportunities to satisfy the federal agencies' statutory obligations, by building on the national ocean policy, stewardship principles, coastal and marine spatial planning (CMSP) national priority objective, and accompanying information established in response to Executive Order 13547, "Stewardship of the Ocean, Our Coasts, and the Great Lakes."²

Specifically, this comment focuses on how the CMSP Strategic Action Plan (CMSP SAP) can be used to support national and regional CMSP development by integrating CMSP with existing federal laws, policies, and regulations.

Table 1. Four Key Actions to Include in the CMSP SAP

1. Create a CMSP process that integrates CMSP development and implementation with **environmental impact assessment under the National Environmental Policy Act.**
2. Create a CMSP process that integrates CMSP development and implementation with **offshore leasing decisions under the Outer Continental Shelf Lands Act.**
3. Create a CMSP process that integrates CMSP development and implementation with **water quality protection under the Clean Water Act.**
4. Ensure that the CMSP SAP is **appropriately integrated with other SAPs** developed pursuant to the Task Force's recommendations and National Ocean Council mandate.

¹ ELI's comment is based on several years of research focused on law and policy mechanisms to implement ecosystem-based management for the oceans, including coastal and marine spatial planning. For more information, see ENVIRONMENTAL LAW INSTITUTE (ELI) AND CENTER FOR OCEAN SOLUTIONS, COASTAL AND MARINE SPATIAL PLANNING: LEGAL CONSIDERATIONS (2010); ELI, MARINE SPATIAL PLANNING IN U.S. WATERS: AN ASSESSMENT AND ANALYSIS OF EXISTING LEGAL MECHANISMS, ANTICIPATED BARRIERS, AND FUTURE OPPORTUNITIES (2009) (included here as an appendix); ELI, OCEAN AND COASTAL ECOSYSTEM-BASED MANAGEMENT: IMPLEMENTATION HANDBOOK (2009); ELI, EXPANDING THE USE OF ECOSYSTEM-BASED MANAGEMENT IN THE COASTAL ZONE MANAGEMENT ACT (2009). Additional information and reports are available at http://www.eli.org/Program_Areas/ocean_projects.cfm.

² Executive Order 13547, Stewardship of the Ocean, Our Coasts, and the Great Lakes (July 19, 2010).

According to Executive Order 13547 (Ocean Policy EO), it is now the national policy to “protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources.”³ To achieve this national ocean policy, President Obama has established a new National Ocean Council and mandated all federal agencies to:

- implement the national ocean policy, the stewardship principles, and the national priority objectives;
- participate in the CMSP process; and
- comply with certified coastal and marine spatial plans

“... to the fullest extent consistent with applicable law.”⁴ This includes following the detailed final recommendations developed by the precursor Interagency Ocean Policy Task Force (Task Force), which the Ocean Policy EO incorporates by reference.⁵

In developing nine Strategic Action Plans to support implementation of the national priority objectives, the National Ocean Council is to “identify specific and measurable near-term, mid-term, and long-term actions, with appropriate milestones, performance measures, and outcomes to meet each [national priority] objective.”⁶

To achieve the Coastal and Marine Spatial Planning National Priority Objective (NPO), the Interagency Ocean Policy Task Force (Task Force) recommends development of an SAP to “[i]mplement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States.”⁷ A major rationale for CMSP is that

It would allow for the reduction of cumulative impacts from human uses on marine ecosystems, provide greater certainty for the public and private sector in planning new investments, and reduce conflicts among uses and between using and preserving the environment to sustain critical ecological, economic, recreational, and cultural services for this and future generations.⁸

While in isolation the existing system of laws and regulations fails to achieve these objectives, when examined collectively, many U.S. laws and regulation are designed to address cumulative impacts, provide regulatory certainty, reduce conflicts among users and the ecosystem, and preserve the ecosystem. **The National Ocean Council, in developing the CMSP SAP, has an opportunity to develop a framework that builds from and integrates with the current system of laws and policies, rather than create a new layer of government bureaucracy.**

Specifically, the **National Environmental Policy Act (NEPA)** is an environmental impact assessment law that is designed to evaluate direct, indirect, and cumulative impacts of proposed activities in combination with all other past, present and reasonably foreseeable future activities that affect an ecosystem. It can be a platform upon which to build the environmental analysis that must accompany

³ Executive Order 13547, § 2.

⁴ *Id.* § 6.

⁵ *Id.* § 1.

⁶ Interagency Ocean Policy Task Force, Final Recommendations of the Interagency Ocean Policy Task Force 7 (July 19, 2010).

⁷ *Id.* at 32.

⁸ *Id.* at 33.

the coastal and marine spatial plans (CMS plans). By developing CMSP in connection with NEPA analyses, the NOC could enable a more certain regulatory environment and decrease the burden on project proponents to conduct large-scale and costly cumulative impact analyses.

Also, implementation of sector- and issue-specific laws and regulations could be improved through the development and use of CMSP. In order to ensure that agencies appropriately utilize this new and important planning tool, the NOC should specify how agencies could integrate existing siloed programs with the broader CMSP framework. This comment focuses specifically on the potential utility of integrating CMSP with the existing **Outer Continental Shelf Lands Act (OCSLA)** and **Clean Water Act (CWA)** programs.

Action 1

Create a CMSP process that integrates CMSP development and implementation with environmental impact assessment under the National Environmental Policy Act.

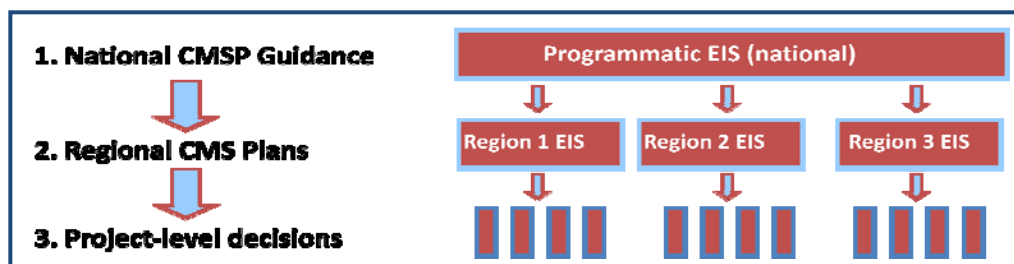
There is great potential to utilize the CMSP process to comply with statutory obligations to conduct environmental impact assessment in the ocean and coastal environment under the National Environmental Policy Act (NEPA). As Table 2 indicates, CMSP and NEPA have similar objectives and approaches.

Table 2. Similarities between NEPA and CMSP

Action/Approach	NEPA	CMSP
Environmental baseline assessment	X	X
Consideration of alternatives (trade-offs)	X	X
Cross-sector approach	X	X
Spatially explicit analysis	X	X
Identify and assess cumulative impacts	X	X
Planning tool	X	X
Tool to coordinate across agencies & jurisdictions	X	X

Specifically, a “tiered” NEPA approach offers a promising way to utilize the CMSP process to achieve NEPA’s ecological, social, and economic objectives. Figure 1 provides a schematic showing how NEPA could be integrated with the CMSP process.

Figure 1. Integrating NEPA and CMSP



One type of NEPA document is called a programmatic environmental impact statement or PEIS. A programmatic EIS is most often used by agencies to conduct an environmental impact analysis of broad policies, plans, and programs. The NEPA Task Force in its 2003 recommendations categorized PEIS as addressing one of three actions: policy and/or strategy, land use, and program (Table 3).⁹

Table 3. Summary of Actions Addressed by PEIS¹⁰

Category of Action	Description	Example
Policy and/or strategy	National or regional integrated multiple program analyzes that establish program goals and objectives.	APHIS—“Proposed Rule for the Importation of Unmanufactured Wood Articles from Mexico— with Consideration for Cumulative Impact of Methyl Bromide Use” TVA—“Integration of NEPA into a Comprehensive Environmental Management Systems” BPA—“Business Plan” and an example of use in “Longview Energy Development Plan” USCG—“Deepwater Program”
Land Use	Integrated planning analyzes for a fixed geographical or landscape scope; might prescribe general standards and controls and procedures for project implementation.	White River National Forest Plan and EIS APHIS—“Bison Management Plan for Montana and Yellowstone National Parks”
Program	Resource or program-specific focused planning analyzes that decide future priorities for development and scheduling and set controls for implementation of site-specific actions.	APHIS—“Rangeland Grasshopper and Mormon Cricket Suppression Program” BPA—“Fish and Wildlife Improvement Plan”

Site-specific or action-specific EIS or EA documents follow from the programmatic EIS in a process known as “tiering.” Such a tiered approach enables decision-makers to move analytically from broad and often cumulative impacts to more site-specific or action-specific impacts in a tiered fashion.¹¹

⁹ NEPA Task Force Recommendations, Chapter 3. Programmatic Analyses and Tiering (2003), available at <http://ceq.hss.doe.gov/ntf/report/chapter3.pdf> (last visited Feb. 11, 2011).

¹⁰ Adapted from NEPA Task Force Recommendations. *Id.* This table excludes a column on “additional information” that included contact information.

¹¹ For a general discussion of programmatic EIS and tiering, see Beth C. Bryant, *NEPA Compliance in Fisheries Management: the Programmatic Supplemental Environmental Impact Statement on Alaskan Groundfish Fisheries and Implications from NEPA Reform*, 30 HARV. ENVTL. L. REV. 441 (2006).

Council on Environmental Quality (CEQ) regulations further define tiering as follows:

Tiering refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

- (a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
- (b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.¹²

The comprehensive cross-sector planning embodied by the CMSP process is the type of coordinated program that NEPA tiering is meant to facilitate. NEPA charges the federal government with “attain[ing] the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.”¹³ A 2003 NEPA Task Force, reporting on strategies to modernize NEPA, highlighted the need for federal, state, and local agencies and tribal representatives to collaborate on cross-jurisdictional issues.¹⁴

Developing an EIS at an early stage of the CMSP process could result in more comprehensive analyses, as well as efficiency gains, when NEPA review of project-level actions tiers from the broader EIS. One idea is that a Tier 1 analysis would look at area-wide or program-wide cumulative environmental impacts and the mitigation measures that might effectively constrain them. A Tier 2 analysis would then focus “on those issues and mitigation measures specifically relevant to the narrower action but not analyzed in sufficient detail in the document.”¹⁵

For CMSP, the tiering process could include the following stages: (1) completing an EIS for the national CMSP program; (2) completing an EIS for each regional CMS Plan; and (3) completing EISs as necessary for CMS Plan implementation actions. In such a tiered review system, a national-level assessment could analyze, for the CMSP Framework as a whole, the principles and objectives that regional planning bodies should prioritize and the mitigation strategies that they should adopt in regional CMS Plans. In turn, the CMS Plans could guide the scoping of more specific NEPA reviews.

¹² 40 CFR § 1508.28.

¹³ 42 USC § 4331(b)(3).

¹⁴ NEPA TASK FORCE, *supra* note 146, at 39 (2003).

¹⁵ Department of the Interior, Bureau of Land Management, NEPA Handbook H-1790-1 at 27 (2008), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf

Action 2

Create a CMSP process that integrates CMSP development and implementation with offshore leasing decisions under the Outer Continental Shelf Lands Act.

ELI is not alone in recognizing the opportunity to build from the new national ocean policy structures, plans, and information. There has been high-level recognition of the value of implementing the Ocean Policy EO and Task Force recommendations to achieve statutory obligations. For example, in the wake of the BP Deepwater Horizon oil disaster, the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling called for integration of the five-year leasing program with coastal and marine spatial planning. Specifically, the Commission stated that

Integrating five-year leasing plans and associated leasing decisions with the coastal and marine spatial planning process will be an important step toward assuring the sustainable use of ocean and coastal ecosystems. It could also reduce uncertainty for industry and provide greater predictability for potential users of different areas.¹⁶

Thus, the Commission recommended that “[t]he Department of the Interior should reduce risk to the environment from OCS oil and gas activities by strengthening science and interagency consultations in the OCS oil and gas decision-making process.”¹⁷

As part of the OCSLA obligations, and including the OCS Oil and Gas Program for 2012–2017, DOI has the opportunity to satisfy the Ocean Policy EO obligations while at the same time satisfying its NEPA and OCSLA requirements. The remainder of this section briefly summarizes how the Coastal and Marine Spatial Plans (CMS Plans) can be integrated into and support planning and decision-making under NEPA and OCSLA.

Table 4. Three Ways to Integrate CMSP and OCSLA

OPPORTUNITY 1. The OCSLA PEIS process should be integrated or coordinated with the regional ecosystem assessments that are to accompany CMSP development, to increase understanding of ecosystem processes and human use impacts, better predict potential cumulative impacts, and support and inform management and decision-making at both the regional and sector-specific levels.

- Using CMSP-derived ecosystem information as a platform for OCSLA-specific impact assessment should improve DOI’s efficiency and minimize the time and expense required to collect the same information from scratch.
- Building from CMSP ecosystem assessments should help DOI identify appropriate mitigation or monitoring priorities based on a better understanding of larger ecosystem processes, the connectivity between important habitat areas, and trends in key resources for each region.

¹⁶ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling* 262-63 (2010), available at <http://www.oilspillcommission.gov/>.

¹⁷ *Id.* at 263.

Table 4. Three Ways to Integrate CMSP and OCSLA**OPPORTUNITY 2. Environmental analysis and decision-making under OCSLA should rely, in part, on the CMSP ecosystem assessments and CMSP Plans.**

- A CMS Plan and accompanying ecosystem assessment could:
 - Serve as a mechanism to identify environment harm, fisheries and navigational needs, and the views of each region, including state and local government views.
 - Help determine when actions would be considered “unduly harmful.”
 - Be included as part of the “environmental information” used to make decisions related to oil and gas leasing, development, exploration and production.
 - Form the basis of an environmental sensitivity determination, as well as its consideration of other “sea and sea-bed uses” and the laws and policies of affected states.

OPPORTUNITY 3: DOI should overcome the “cart before the horse” challenge of the PEIS and lease program process preceding SAP and CMSP development by creating conditional approval of the Lease Program and allowing incorporation of SAP and CMSP actions and incorporation of ocean policy planning decisions and information as they become available.**OCSLA OPPORTUNITY 1. The current OCSLA PEIS process should be integrated or coordinated with the regional ecosystem assessments being conducted for, to increase understanding of ecosystem processes and human use impacts, better predict potential cumulative impacts, and support and inform management and decision-making at both the regional and sector-specific levels.**

Timeline: CMSP is in its initial stages, and it is unlikely that a CMSP regional assessment will be completed by the time the current OCSLA PEIS is complete or the OCS Oil and Gas Program for 2012–2017 is developed. However, the OCS Oil and Gas Program for 2012–2017 could be designed with conditional language to enable subsequent incorporation of CMSP regional ecosystem assessment information as it becomes available.

As explained in the Interagency Ocean Policy Task Force Final Recommendations, a CMSP ecosystem assessment is part of the CMSP process.¹⁸ The purpose of the ecosystem assessment is to serve as the scientific basis upon which to develop a CMS plan. In addition, the CMSP ecosystem assessment will likely have broader utility for informing all regional ocean management decisions, including OCSLA decisions. By building from information developed under a CMS plan, DOI will likely have a stronger understanding of potential cumulative impacts and be better positioned to minimize potential harms.

Further, using CMSP-derived ecosystem information as a platform for OCSLA-specific impact assessment could improve procedural efficiency and minimize the time and expense required to collect the same information from scratch. It could improve the quality of OCSLA-specific environmental impact

¹⁸ Interagency Ocean Policy Task Force, *supra* note 6 at 59.

assessments by providing a broader picture of the ecosystem. For example, a CMSP ecosystem assessment could indicate the distribution and significance of resources and habitat, and the interconnections between various ecosystem components.

Building from CMSP ecosystem assessments may help identify appropriate mitigation or monitoring priorities that might otherwise be missed. In addition, CMSP ecosystem assessments may help improve the quality of required mitigation in light of an improved understanding of larger ecosystem processes, the connectivity among habitats, and trends in key resources.

Box 2. Lessons from Massachusetts

Massachusetts recently developed a marine spatial plan to guide ocean development decisions. This example indicates the potential utility of the CMSP ecosystem assessment to inform oil and gas decision-making and, in particular, the PEIS process.

In 2009, Massachusetts prepared a *Baseline Assessment of the Massachusetts Ocean Management Planning Area* (Baseline Assessment) to support marine spatial planning in Massachusetts waters. The Baseline Assessment constitutes the information base of the Massachusetts Ocean Management Plan (Plan).¹⁹ After the state Secretary of Energy and Environmental Affairs adopted the Plan, “all certificates, licenses, permits and approvals for any proposed structures, uses or activities in areas subject to the ocean management plan” were required to be consistent with the Plan to the maximum extent practicable.²⁰ This requirement encompasses approvals made under the Massachusetts Environmental Policy Act (MEPA).²¹

The Baseline Assessment and supporting work group documents provide the scientific context for the state’s efforts to manage conflicts and compatibilities between present and future human uses, and between human uses and the environment. The Baseline Assessment assembles and synthesizes the best available science on present conditions, characteristics, and human uses within the marine planning area.²² It identifies key ecosystem components and maps the distribution, density, and abundance of “special, sensitive or unique [SSU] estuarine and marine life and habitats.”²³ It also maps significant human uses within and adjacent to the management area, including renewable energy development, and identifies specific areas suitable for wind energy development. Further, it identifies important pressures and threats (e.g. water pollution) and principal drivers of ecosystem change. The Baseline Assessment incorporates an adaptive management element and must be updated every five years.

Notably, the Baseline Assessment includes many of the elements that are required in the description of the “existing environment” under MEPA, and therefore may be used to provide current baseline information against which the magnitude and significance of impacts of proposed projects or actions are evaluated. The Assessment provides important baseline information related to existing uses, recognizing them as significant interests, which should be considered in evaluating significant cumulative impacts under MEPA. Further, special, sensitive or unique resource information and maps

¹⁹ MASS. GEN. LAW ch 21A § 4C (2008) (Massachusetts Oceans Act).

²⁰ MASS. GEN. LAW ch 21A § 4C (2008).

²¹ 301 C.M.R. § 11.07(6)(g).

²² See generally State of Massachusetts, Ocean Management Plan, vol. 2 (2008).

²³ MASS. GEN. LAW ch 21A § 4C (2008).

provide “clear baseline information that will allow proponents, agency staff, and the public to focus on areas of greatest potential environmental significance.”²⁴ Information in the Baseline Assessment is meant to direct and focus scoping for cumulative impacts “on aspects of a given project of greatest potential environmental significance”²⁵ and appropriate alternative actions.

OCSLA OPPORTUNITY 2. Environmental analysis and decision-making under OCSLA should rely, in part, on the CMSP ecosystem assessments and CMSP Plans.

Timeline: Since the CMSP ecosystem assessments and CMS Plans will not be complete in time for the final PEIS and development of the OCS Oil and Gas Program for 2012–2017, DOI could create conditional language to enable subsequent incorporation of CMSP regional ecosystem assessment information as it becomes available.

According to Section 5 of OCSLA, the Secretary of the Interior has broad authority to develop rules needed to “provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein.” This and other provisions of OCSLA indicate that the Secretary has the broad authority to utilize the CMS Plans (and more broadly the national ocean policy and framework) for OCSLA decision-making.

OCSLA policy requires DOI to consider environmental harm when developing resources, take actions that do not affect fisheries and navigation, and consider views of state and local governments.²⁶ Because CMS Plans are developed in collaboration with state and tribal governments, they could serve as one of the key mechanisms for satisfying OCSLA obligations to consider state and local government views. Further, CMSP is intended to minimize user conflict and create regulatory certainty. The CMS Plans should serve as one of the mechanisms to ensure that oil and gas development activities do not adversely affect fisheries and navigational needs. Also, one required element of CMS plans is identification of important ecological areas, habitats, flora, and fauna. DOI should use such information to ensure that the lease program does not unduly impact such identified resources.

Under OCSLA Section 11, any authorized person can conduct geological and geophysical exploration as long as such activities do not interfere or endanger other operations and “which are not *unduly harmful* to aquatic life in such area.”²⁷ CMS Plans should help determine when actions would be considered “unduly harmful.”

Section 20 requires consideration of environmental information. Specifically, “[t]he Secretary shall consider available relevant *environmental information* in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.”²⁸ CMS Plans should be included as part of the “environmental information” used to make decisions related to oil and gas leasing, development, exploration and production.

²⁴ State of Massachusetts, Ocean Management Plan, vol. 1 at 2-8 (2008).

²⁵ State of Massachusetts, Ocean Management Plan, vol. 1 at 2-8 (2008).

²⁶ OCSLA § 3.

²⁷ OCSLA § 11 (emphasis added).

²⁸ OCSLA, § 20 (emphasis added).

In addition to the general requirements under OCSLA, Section 18 creates the four-step oil and gas leasing process (five-year leasing program, lease sale, exploration, and development and production). The first step, the five-year leasing program, serves as the base of the pyramid and provides the broad planning framework upon which subsequent decisions are made.²⁹ By design, the establishment of the five-year leasing program is a comprehensive environmental, economic, and social assessment of the leasing area, albeit one with the narrow goal of facilitating oil and gas development. CMSP offers significant opportunities to inform this five-year leasing program process.

The analysis requirements for development of the five-year leasing program align nicely with the CMSP regional scoping requirements (Table 5). Therefore, the information developed to support CMSP is likely to be a good starting place for analysis in the OCSLA lease program context.

Table 5. Comparing OCSLA and CMSP	
OCSLA Requirements	CMSP Regional Overview Requirements³⁰
(1) geographical, geological, and ecological characteristics	(1) “the planning area’s ecosystems and their biological, chemical, and physical environments”
(2) the location of other sea and seabed uses	(2) “social, recreational, human health, safety, security, and economic uses”
(3) the relevant laws and policies of affected states	[CMS plan is to include a description of the regulatory framework related to CMSP]
(4) the relative environmental sensitivity and marine productivity of different areas	(4) “ecological and conservation considerations, including identification of important ecological areas, habitats, flora, and fauna; and other concerns of the region”

In addition to the four OCSLA requirements, the leasing program also must balance any potential oil and gas resources against the potential for environmental damage and adverse coastal zone impacts.³¹ OCSLA implementing regulations require consideration of factors such as “multiple-use conflicts”³² and use of the “views and recommendations of Federal agencies, State agencies, local governments, organizations, industries and the general public as appropriate.”³³

As data are collected and preliminary mapping takes place as part of the CMSP process, this information can be used to structure and inform the Lease Program process. A certified CMS Plan could form the basis of an environmental sensitivity determination, as well as its consideration of other “sea and seabed uses” and the laws and policies of affected states. Integrating oil and gas decision-making with CMS Plans and related ecosystem assessments can ensure that best available information is used in decision-making, advance regional goals and objectives, minimize potential user conflict, support regulatory certainty, and more effectively minimize cumulative impacts to coastal and ocean environments.

²⁹ *Id.*

³⁰ Interagency Ocean Policy Task Force, *supra* note 6 at 59.

³¹ 43 U.S.C. § 1344(a). The D.C. Circuit recently affirmed that DOI’s environmental sensitivity analysis must be substantive. The court found the assessment of relative environmental sensitivity in the 2007-2012 Alaska offshore leasing program to be insufficient, and as a result found MMS’s balancing of potential environmental damage, oil and gas discovery, and adverse effects on coastal areas improper. *Ctr. for Biological Diversity v. U.S. Dep’t of the Interior*, 563 F.3d 466 (D.C. Cir. 2009).

³² 30 C.F.R. § 256.26(a).

³³ *Id.* § 256.26(b).

OCSLA OPPORTUNITY 3. DOI should overcome the “cart before the horse” challenge of the PEIS and lease program process preceding SAP and CMSP development by creating conditional approval of the Lease Program and allowing incorporation of SAP and CMSP actions and incorporation of ocean policy planning decisions and information as they become available.

As noted previously, it is unlikely that a CMSP regional assessment will be completed by the time the OCSLA PEIS is complete or the OCS Oil and Gas Program for 2012–2017 is developed. And certainly the CSM Plans will not be completed by the time the Lease Program is finalized. However, the target for finalization of initial CMS Plans is 2015, two years before the end of the 2012-2017 Lease Program.

In order to appropriately consider the regional objectives and needs, the 2012-2017 Lease Program could be approved conditionally in order to allow for subsequent incorporation of CMSP regional ecosystem assessment information and SAP and CMSP decisions as they become available. Furthermore, the CMSP and SAP materials will certainly be available when it comes time to prepare the 2017-2022 Lease Program, and these comments would remain relevant.

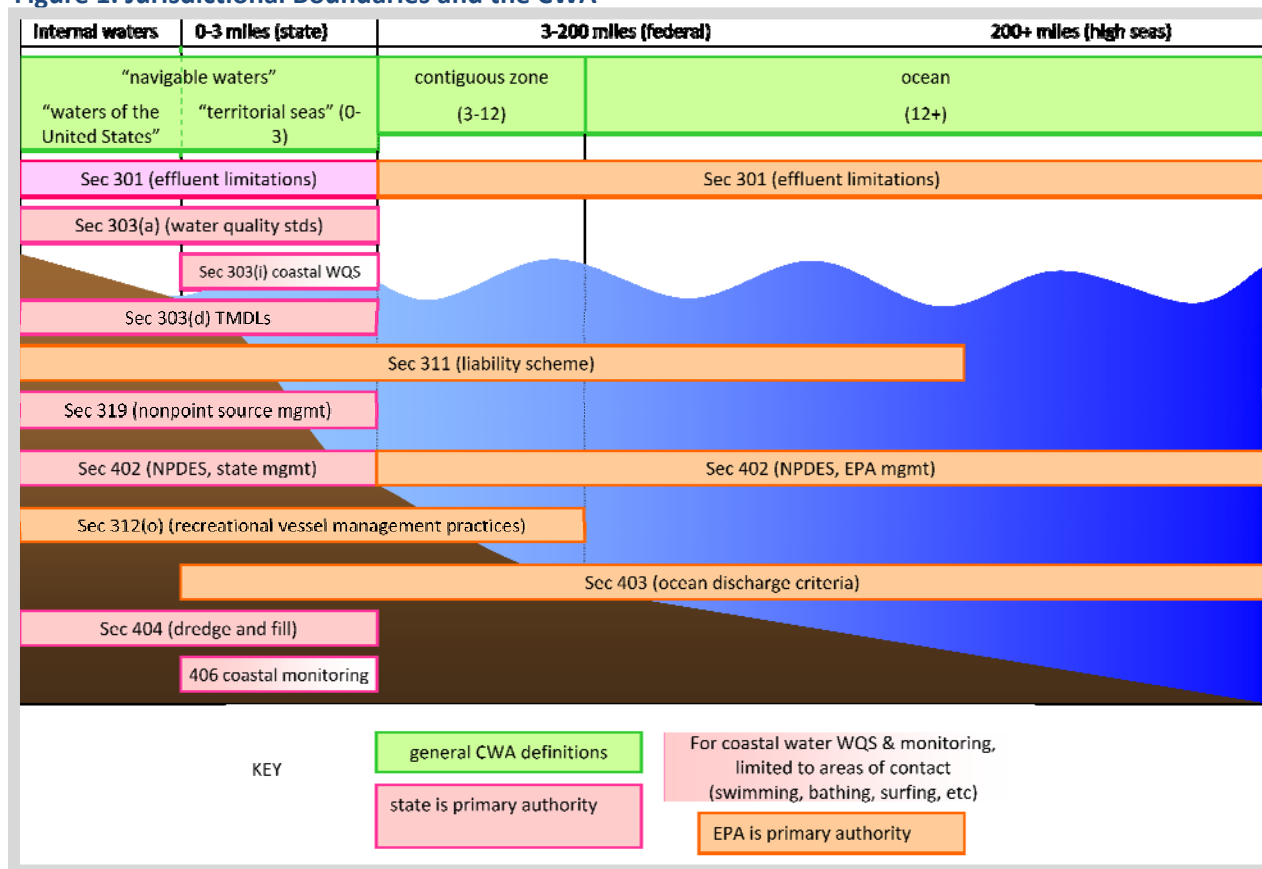
Action 3

Create a CMSP process that integrates CMSP development and implementation with water quality protection under the Clean Water Act.

For CMSP, the Task Force Recommendations make specific reference to one potential role of the Clean Water Act, stating that “ocean, coastal, and Great Lakes activities that affect land-based ecosystems should be considered and accounted for during CMSP efforts using the existing State and Federal programs including the Coastal Zone Management Act (CZMA), Clean Water Act, Clean Air Act, and other relevant authorities.” Furthermore, the CWA may play a more direct role in CMSP, since it allows for place-based protection, including the designation of no-discharge zones. In fact, at one point EPA considered designating “special ocean sites” geared at minimizing discharge to such important areas.

Authority for addressing point and nonpoint sources of ocean pollution under the Clean Water Act varies depending on the specific provisions in the statute. Figure 1 provides an overview of the key regulatory elements of the CWA and how they apply to the ocean.

Figure 1. Jurisdictional Boundaries and the CWA



CWA OPPORTUNITY 1: Update ocean discharge criteria to adhere to ecosystem requirements identified by the CMSP ecosystem analysis and CMS Plans.

Ocean Discharge Criteria offer an opportunity to achieve water quality objectives in accordance with the Ocean Policy EO, Water Quality SAP, and CMSP. In addition to the NPDES point-source permitting program laid out in CWA Section 402, Section 403 sets forth additional requirements for NPDES permits for discharges to the territorial sea, contiguous zone, and ocean, and calls for EPA to establish ocean discharge criteria.³⁴ In accordance with this section, EPA may permit a point source discharge to these waters only if it determines that the discharge will not result in “unreasonable degradation of the marine environment.” Unreasonable degradation is defined by regulation as:

- (1) Significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities,
- (2) Threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms, or

³⁴ 33 U.S.C. § 1343(a); For a thorough discussion of ocean discharge criteria, see Robin Kundis Craig & Sarah Miller, *Ocean Discharge Criteria and Marine Protected Areas: Ocean Water Quality Protection Under the Clean Water Act*, 29 B.C. Env'tl. Aff. L. Rev. 1 (2001).

- (3) Loss of esthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge.³⁵

EPA determines whether a discharge will cause unreasonable degradation of the marine environment based on ten factors set forth in the regulations.³⁶

If EPA determines that the discharge will not cause unreasonable degradation after any necessary permit conditions have been applied, it may issue the permit. Conversely, if the agency determines that the discharge will cause unreasonable degradation even with permit conditions, or that there is insufficient information to determine whether unreasonable degradation will occur, it may not permit the discharge. Notably, if the discharge complies with state water quality standards for that pollutant, it is presumed not to cause unreasonable degradation of the marine environment.³⁷

Despite an attempt in the early 2000s, EPA has not updated the ocean discharge criteria since 1980, and as currently written, the criteria provide limited guidance for dischargers. Therefore, the ocean discharge criteria could be a target for improvement consistent with CMSP. One advantage of building from this provision is that EPA has sole authority to regulate all ocean discharges in accordance with the ocean discharge criteria. In other words, the agency has the ability to regulate ocean point source discharges in all ocean waters.

In order to better protect ocean and coastal waters and take advantage of the CMSP process, EPA could revive its efforts to develop new ocean discharge criteria. The prior proposed rule, which was withdrawn, included elements that still resonate today. Some of these described by Kundis Craig (2001) include the following:

- Definition of a 3-200 mile “use” as “Healthy Ocean Waters.”
- Creation of discharge criteria based on the above use.
- Establishment of “special ocean sites” that would limit new discharges, and would encourage states to adopt areas as “no discharge zones”³⁸

³⁵ 40 C.F.R. § 125.121.

³⁶ 40 C.F.R. § 125.122(a). These factors are:

- (1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;
- (2) The potential transport of such pollutants by biological, physical or chemical processes;
- (3) The composition and vulnerability of the biological communities which may be exposed to such pollutants, including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem, such as those important for the food chain;
- (4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism.
- (5) The existence of special aquatic sites including, but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;
- (6) The potential impacts on human health through direct and indirect pathways;
- (7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;
- (8) Any applicable requirements of an approved Coastal Zone Management plan;
- (9) Such other factors relating to the effects of the discharge as may be appropriate;
- (10) Marine water quality criteria developed pursuant to section 304(a)(1).

³⁷ 40 C.F.R. § 125.122(b).

³⁸ Kundis Craig & Miller, *supra* note 34 at 26-29 (2001).

CWA OPPORTUNITY 2: Develop recreational boating regulations in a way that requires adherence to CMS Plans.

With few exceptions, any discharge of a pollutant from a point source into internal, state, and federal waters requires a permit under the NPDES program. Permits can be granted either to individual dischargers or as part of a general permit. For example, the Vessel General Permit is a recently developed general NPDES permit, which, the EPA estimates, applies to approximately 61,000 domestic vessels and approximately 8,000 foreign-flagged vessels.³⁹

The NPDES program comes with exceptions and does not apply the same in all waters, and the definition of “discharge of a pollutant” varies according to ocean boundaries. In the freshwater and 0-3 mile area (i.e. navigable waters), “discharge of a pollutant” means “any addition of any pollutant to navigable waters from any point source.”⁴⁰ In federal waters and high seas (i.e. waters of the contiguous zone and ocean), “discharge of a pollutant” is “any addition of any pollutant ... from any point source *other than a vessel or other floating craft.*”⁴¹ Therefore, vessels and floating crafts do not require NPDES permits under the CWA for discharges beyond the 3-mile limit. In accordance with this provision, EPA limited the Vessel General Permit to only discharges in the 0-3 mile ocean area.⁴²

Further, with passage of the Clean Boating Act in 2008, recreational vessels were excluded from the vessel definition and the subsequent rule.⁴³ However, the new law also amended the CWA to add the new Section 312(o), which calls upon EPA to: develop regulations to identify discharges for which it is reasonable and practical to develop management practices to mitigate impacts; identify the applicable management practices; and create performance standards for each practice.⁴⁴ It then calls upon the Coast Guard to promulgate regulations that address the design, construction, installation, and use of the management practices.

In designing new regulations, EPA has an opportunity to develop best management practices and performance standards in accordance with CMSP, including ecosystem assessments and CMS plans.

³⁹ EPA, *Background*, at <http://cfpub.epa.gov/npdes/vessels/background.cfm> (last visited Jan. 3, 2011).

⁴⁰ 33 USC § 1362(12)(A).

⁴¹ 33 USC § 1362(12)(A) (emphasis added).

⁴² For more information on the Vessel General Permit, see EPA, *Vessel Discharges*, at http://cfpub.epa.gov/npdes/home.cfm?program_id=350 (last visited January 3, 2011). Prior to 2008, EPA specifically excluded all ocean vessels from NPDES discharge requirements. However, the 9th Circuit found this regulation to be a direct violation of Clean Water Act requirements and vacated the previous rule. *Northwest Environmental Advocates v EPA*, 537 F.3d 1006 (9th Cir 2008).

⁴³ Pub. L. 110-288 (2008).

⁴⁴ For a brief summary, see EPA, *Development of Best Management Practices for Recreational Boats under Section 312(o) of the Clean Water Act*, at <http://yosemite.epa.gov/oepi/RuleGate.nsf/byRIN/2040-AF03?opendocument> (last visited Jan. 3, 2011).

RECOMMENDED ACTION 4.

Ensure that the CMSP SAP is appropriately integrated with other SAPs developed pursuant to the Task Force's recommendations and National Ocean Council mandate.

As a tool for ecosystem-based management implementation, it is especially important to link the CMSP SAP with the ecosystem-based management SAP.

In addition to the CMSP SAP, the NOC is developing strategic action plans for eight other priority objectives. These are: (1) Ecosystem-Based Management; (2) Inform Decisions and Improve Understanding; (3) Coordinate and Support; (4) Resiliency and Adaptation to Climate Change and Ocean Acidification; (5) Regional Ecosystem Protection and Restoration; (6) Water Quality and Sustainable Practices on Land; (7) Changing Conditions in the Arctic; and (8) Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure. As the core approach envisioned by the Task Force, the concepts, objectives, and actions taken to effectively implement CMSP should inform, influence, and affect implementation of the other national priority objectives. The NOC should, accordingly, ensure that all strategic action plans are appropriately aligned and integrated.

2. Coastal and Marine Spatial Planning: Implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States.

1. What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

In the near-term, education and outreach efforts are needed to present specific examples of how CMSP works in practice, especially in support of ecosystems-based management (EBM) and adaptive management. Expanding the number of case studies at local, state, and regional levels available via the Internet and other communication channels would help this effort. As EBM is place-specific, acceptance of CMSP tools will spread as users begin to see maps of places they know personally. As discussed below, much work is needed to better integrate existing CMSP tools and data bases, especially those needed to assist regional planning and implement CMSP at the federal level as required to support implementation of the National Ocean Plan. There currently are many different CMSP databases using different platforms, but apparently not one single CMSP portal at the federal level. In the mid-term, wider use of decision support tools within CMSP should be promoted, especially as needed to support decision making related to zoning changes and other adaptive measures taken to deal with sea level rise, ocean acidification, and other projected changes from climate change forecasts. Long-term actions would be related to refinements in CMSP as it has been implemented.

2. What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

As mentioned above, the lack of an integrated CMSP system at the federal level as required to support EBM and adaptive management at a regional scale is currently a major obstacle.

We offer a specific example, based on our recent attempt to use the CMSP tool suggested by the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) for stakeholders such as Sierra Club to use in developing public comments to identify environmental information and concerns related to the Massachusetts Request for Interest (RFI) public notice.

The purpose of the RFI was to identify interest by wind energy project developers in leasing parcels within the RFI area, and for interested parties to identify environmental information and concerns to be considered as part of the leasing processes.

The map provided by BOEMRE in its public notice delineated the locations of the area and parcels under consideration, but contained no associated bathymetric data or other information required to assess potential environmental impacts from leasing the parcels. As suggested in the December 29, 2010 Federal Register Notice, we accessed the Massachusetts Ocean Resource Information System (MORIS) to see how the BOEMRE area of interest overlays other "layers" within the MORIS GIS system, MORIS is an example of the type of CMSP tools that should be employed. It must be recognized, however, that analyses conducted using MORIS are limited to

the data layers that have been loaded into that system. MORIS appears to be primarily intended for use by the State of Massachusetts Coastal Zone Management Program.

As we attempted to follow the suggestion to use the MORIS system we encountered some shortcomings in that approach, most notably the fact that at least one data set appeared to have been limited to the area within the state boundaries of Massachusetts. This is shown in FIGURE 1 below, CMSP OVERLAY FROM MORIS SHOWING NORTH ATLANTIC RIGHT WHALE SITINGS PER UNIT EFFORT. While strongly supporting wind energy projects in coastal waters, we also are concerned that siting and management decisions fully take into account the potential presence of the highly endangered North Atlantic Right Whale (NARW). MORIS gives a partial view of data relevant to our concerns, but omits the NARWs sightings data for most of the RFI area. We found the same to be true for the Humpback Whale and Fin Whale data layers in MORIS, which are cut off at the same boundary as the NARWs data layer. So, finding that to be the case, we tried another CMSP tool available to us, the Multipurpose Marine Cadastre, jointly hosted by NOAA and the BOEMRE.

The Multipurpose Marine Cadastre (MMC) would appear to be an appropriate CMSP tool for exploring potential environmental impacts using data layers underlying the RFI area, especially as it is specifically designed for uses related to the BOEMRE that transcend state boundaries . **We were not, however, able to find the RFI area among the available data layers on the MMC.** We found the Cape Wind lease area and the Atlantic Wind Energy Areas, but not the RFI area. (See FIGURE 2 - MULTIPURPOSE MARINE CADASTRE SHOWING CAPE WIND LEASE AREA BUT NOT MASSACHUSETTS RFI AREA. Nor did we find any data layer related to the North Atlantic Right Whale, Humpback Whale, or Fin Whale. We did find a data layer for the migratory paths of grey whales off the west coast of the U.S. mainland.

This is but one example where the CMSP infrastructure does not yet appear to be sufficiently advanced to fully support use of CMSP tools for implementing EBM and adaptive management.

3. What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Most, perhaps all, of the Regional Planning Bodies have adopted action plans with goals and timetables. At each level of implementation of EBM, there should be accompanying milestones and performance measures, as this is part of adaptive management, and would likely be required by funding agencies be they private or public. An important major milestone would be implementation of CMSP at the federal level as required to support regional planning efforts.

FIGURE 1: CMSP OVERLAY FROM MORIS SHOWING NORTH ATLANTIC RIGHT WHALE SITINGS PER UNIT EFFORT.

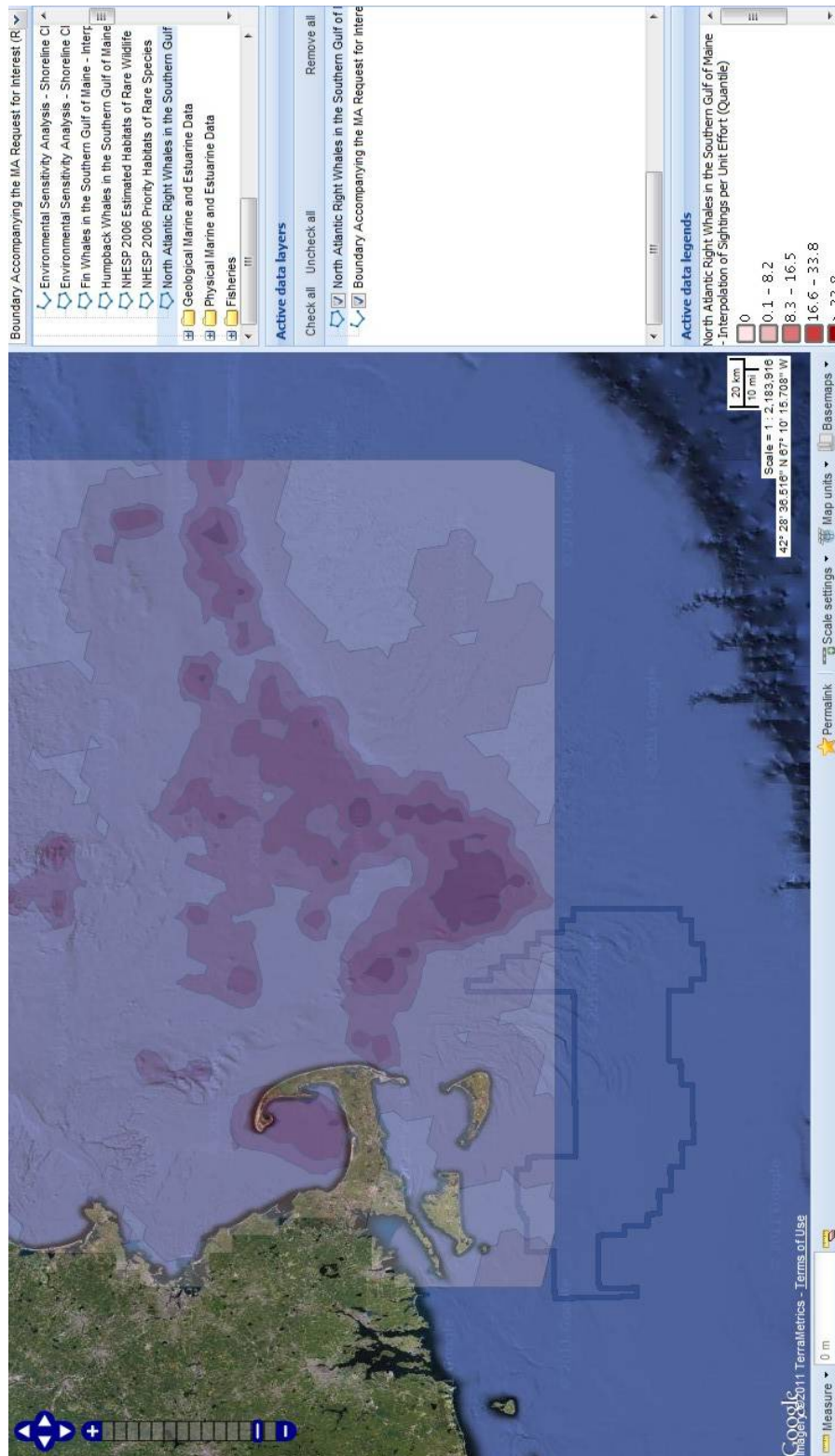
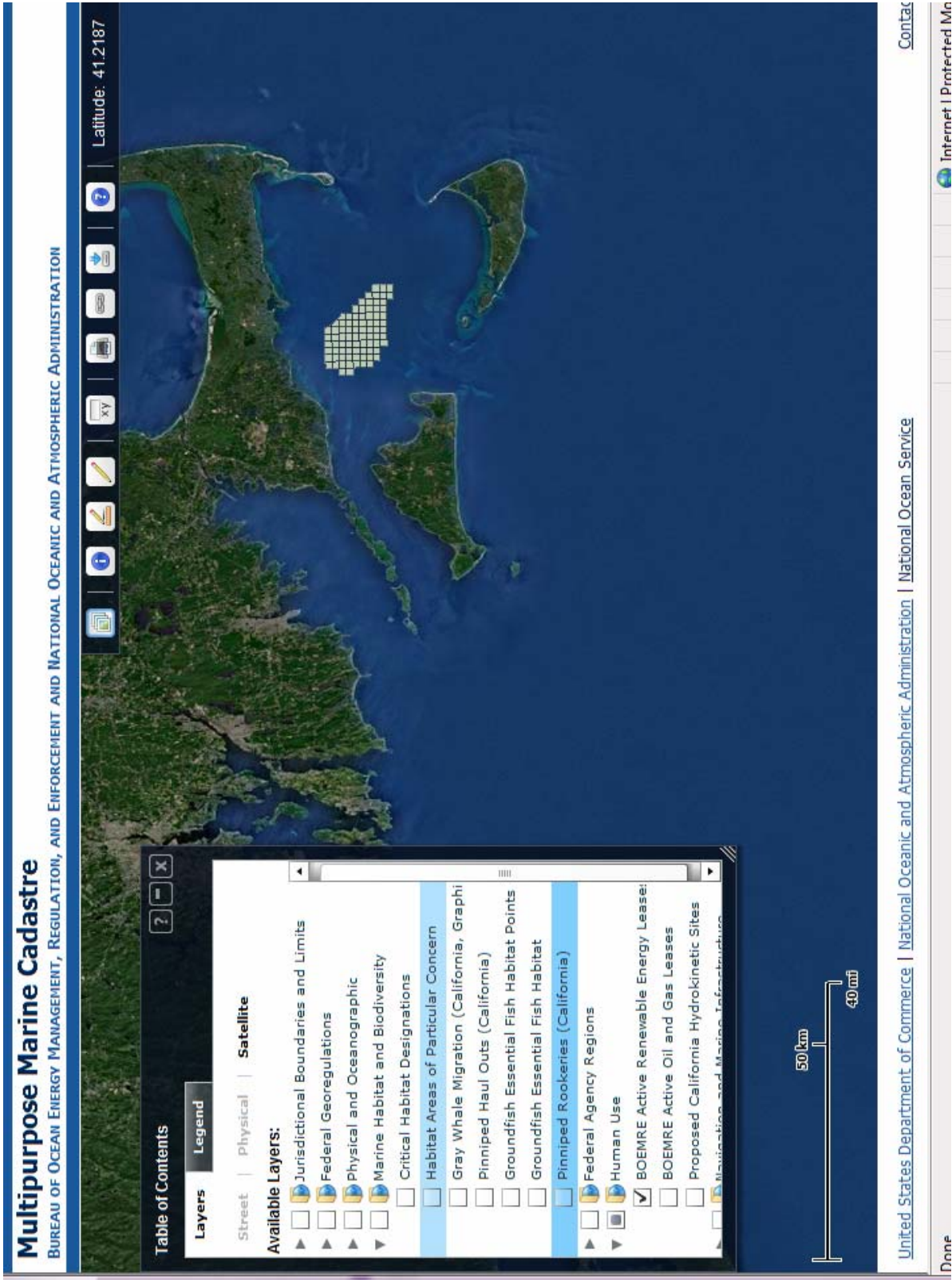
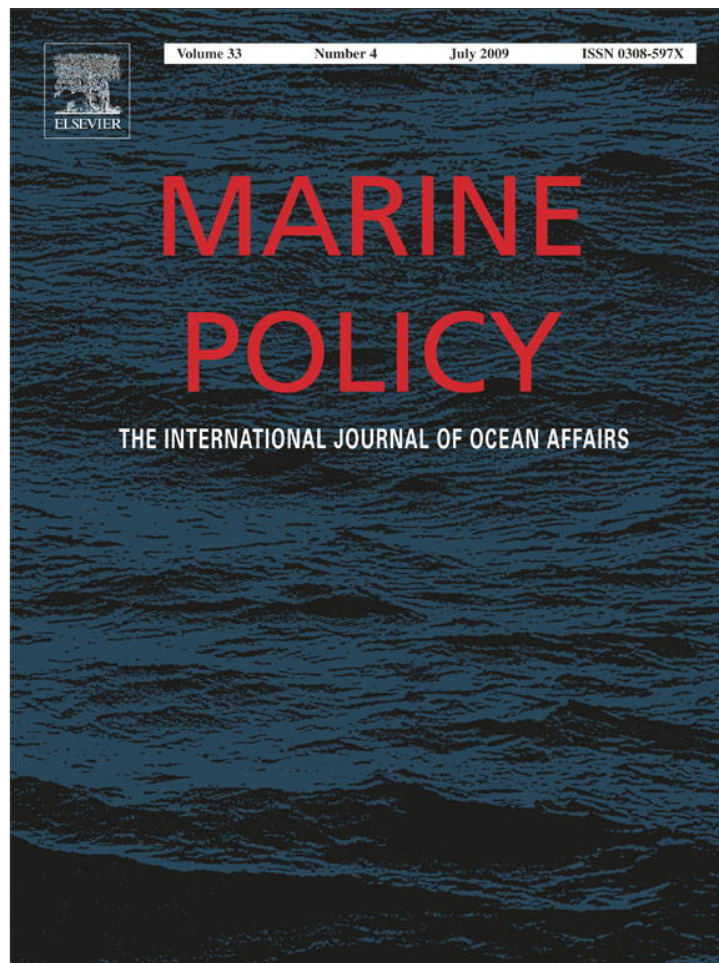


FIGURE 2 - MULTIPURPOSE MARINE CADASTRE
 SHOWING CAPE WIND LEASE AREA BUT NOT MASSACHUSETTS RFI AREA



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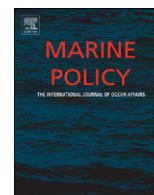
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The importance of data discovery and management in advancing ecosystem-based management

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ABSTRACT

The aim of the Geospatial Assessment of Marine Ecosystems (GAME) project is to develop an inventory of habitat-related data within the Gulf of Mexico and East coast of Florida. This will serve as a foundation to develop a spatial framework for ecosystem-based management associated with regulatory and planning programs and areas of governmental coordination.

The data inventory will have both a regional and local scope and will focus on gathering data and mapping coastal habitats from the estuaries onshore to the edge of the continental shelf offshore. The synthesis of data in a Geographic Information System (GIS)-compatible database will enable the overlay of diverse information in a way that permits transparent and intuitive visualization of habitats and marine resources. Information gaps will be identified and maps produced. The availability of updated maps derived from a spatially organized database can allow rapid access to the information needed to enhance the understanding and protection of habitats and their associated marine resources. In addition, data mining of historical data (e.g., from reports and publications) and their subsequent inventory using metadata standards within an organized data management framework will benefit both researchers and decision makers.

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1. Introduction

There is growing awareness that the escalating crisis in the ocean, ranging from the loss of biodiversity to invasive species to the loss of essential habitat, is in large part a breakdown in governance. There is fragmentation in the governing systems and jurisdictions used to manage specific human uses of the ocean, as well as mismatches of temporal and geographic scales between biophysical ocean systems and policies and decision-making procedures [1].

The federally mandated US Commission on Ocean Policy and the privately funded Pew Oceans Commission both identified significant concerns regarding the sustainability of the use of US ocean resources [2]. The commissions recommended a science-driven, ecosystem-based approach to manage ocean and coastal resources [3,4]. There is emerging scientific and policy consensus that the holistic, encompassing approach of ecosystem-based management (EBM) can reform ocean governance through the identification of ecologically coherent regions.

Several definitions of EBM can be found in the literature [2,5–8]. For the purpose of this paper it is important to point out that EBM: (1) examines links between living organisms and their environment and (2) is an integrated management approach that considers human activities, their benefits, and their potential impacts [7,9–11] within the broader background of related social, economic, and ecological factors. Whichever the definition chosen, the spot light is on the need for a broader, integrated management of the interconnected ecosystem components [8] to move beyond local, single-issue driven practices [6,12] to manage multiple uses of the marine space [1,7,8].

2. The Geospatial Assessment of Marine Ecosystems (GAME) project

These events and circumstances helped develop and shape the idea of a pilot project for Florida marine and coastal waters, called the Geospatial Assessment of Marine Ecosystems (GAME) (Web site link: <http://research.myfwc.com/game>). The goal of GAME is to define and develop ecoregions for the coastal areas and the adjacent waters of the Gulf of Mexico and East coast of Florida. The GAME project was conceived as the first step in a major, long-term effort by the State of Florida to implement ecosystem-based approaches to coastal and ocean management and

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governance. Developing ecoregional approaches to aquatic resource management has been a key goal in Florida for many years. Significant progress has been made in reaching this goal in many of Florida's freshwater management programs [13] but lack of resources has significantly delayed progress for the state's coastal and ocean systems. Marine ecoregions present special challenges since they are not easily compartmentalized and generally present a continuum of overlapping, often interdependent systems. Ecoregion identification is a critical component in managing ocean resources and developing the appropriate tools needed for integrated management, resource protection and, as appropriate, restoration. The identification of each marine spatial framework results from the integration of features such as topography, oceanographic, socioeconomic and jurisdictional parameters [7,11,14] (Fig. 1).

For an integrated assessment of marine ecosystems, a logical step-wise process was designed; (1) find and catalog existing data, (2) fill data gaps where necessary and (3) delineate marine and coastal ecoregions for Florida. The initial phase of the GAME project, data discovery, was designed to inventory physical, geological, biological, chemical, and human processes information [15] in a Web-based database. Examples of spatial information include: (1) benthic habitats, e.g., hard bottom, submerged aquatic vegetation, and coral reefs; (2) oceanography, e.g., circulation patterns, salinity, and temperature; (3) bathymetry and coastal elevation; (4) bottom structure and sediment characteristics; and (5) human-use patterns. The project assembles, when possible, the many sources of existing data in a Geographic Information Systems (GIS) format. Updated maps

derived from a spatially organized database allow rapid access to the information needed to enhance the understanding and conservation of coastal and marine resources. By providing data layers to illustrate the current spatial extent of seagrass beds, oyster reefs, coral reefs, and other benthic habitats, as well as those associated with the water-column, managers will be able to investigate loss or degradation of these habitats, protect and/or conserve them to help maintain the ecological integrity of coastal areas. This effort is the prototype for constructing the ecosystem framework and enables the overlay of diverse information in a way that permits transparent and intuitive visualization and management planning of marine resources in coastal and ocean waters.

This first task of data discovery took on a life of its own. A year and half into the project, the study area was expanded to the entire Gulf of Mexico in support of the "Gulf of Mexico Alliance Governors' Action Plan, Identification and Characterization of Gulf Habitats" priority issue. GAME now provides database infrastructure to establish baseline information and mapping system to inform resource management decisions Gulf-wide and Florida's east coast.

3. Methodology

As a first step in creating the inventory of existing coastal and marine information, the GAME staff designed and deployed an internet application (the GAME survey) to gather information and attendant metadata from researchers, resource managers, and other stakeholders. The survey is a way data holders can enter information relative to their data sets. The information entered via the online survey is stored in a database, called the GAME Catalog, and will provide the basis for modeling ecoregions.

The GAME Catalog is a Microsoft Access relational database, easy to build and query. It took a few months to plan the database in a way that would capture the most information with the fewest number of fields. This translates into a limited number of questions that data holders need to answer to enter a record through the online survey. This point was determined to be key to the success of the project, i.e., acquire as much useful information about the data while requiring a minimal amount of time of the data producer. The catalog has a broad scope and catalogs disparate data sets, which are grouped by general classes. These classes include geological, biological, chemical, physical, and human-use. Also, the catalog is compliant to Federal Geographic Data Committee (FGDC) standards. The information collected is what we term as "metadata lite". This means that an entry in the GAME Catalog is not a full FGDC metadata record, but does address the core questions (who, what, when, why, where) that constitute a metadata record. A key feature of the catalog is that the GAME records link directly to the desired data sets, providing that the data producer has the data available online.

The GAME staff compiled a list of over 2200 researchers, scientists and multiple stakeholders [2] working for state, federal, local, private organizations, universities and NGOs. An email invitation to fill in the GAME survey and contribute to the catalog was sent out a few months after the project started. Reminders are issued from time to time. Also, GAME workshops and seminars are held periodically around Florida and the other US Gulf States to solicit participation. After each electronic reminder and presentation the traffic on the GAME Web site shows a peak and the number of submissions to the catalog increases. However, this response has a very limited effect temporally. Additionally, the GAME staff searched online for information relevant to the project and created the majority of the 2092 records currently stored in

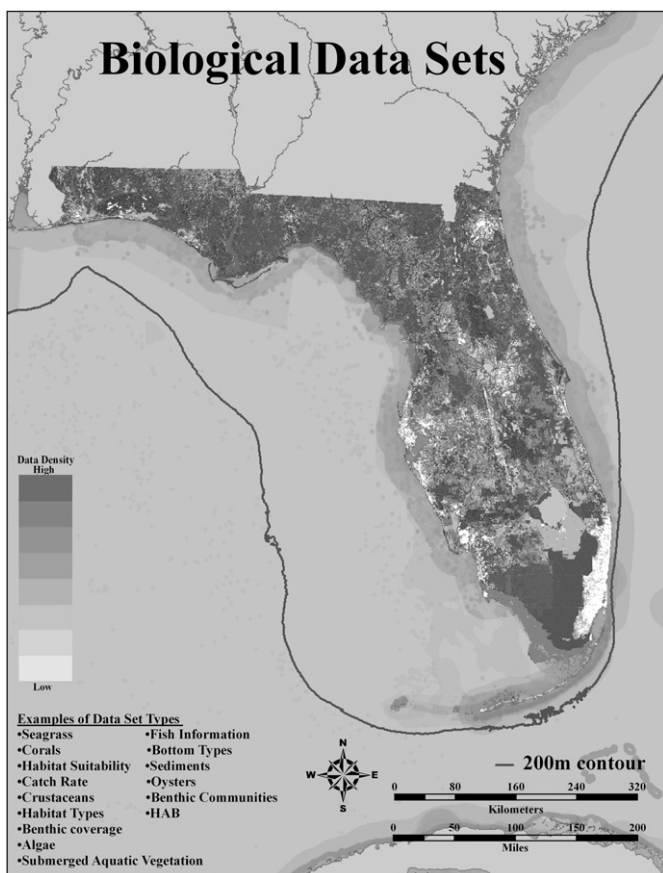


Fig. 1. Data gap map. This figure represents examples of GIS overlays of diverse information in a way that permits transparent and intuitive visualization to easily identify information gaps. The map represents footprints of cataloged GIS-ready data sets for the GAME Biological class.

the catalog. In fact, in general, the response and contribution from scientists and researchers has been very small.

4. Discussion and conclusions

To support the application of EBM approaches to the coastal and ocean environment, the way forward is on data integration across traditional disciplines at appropriate geographic scales [6]. This means building upon existing information collected for a variety of specific purposes and providing a framework to combine these data in ways that add additional value [6]. These are, in synthesis, the challenges that the GAME project is currently facing.

The GAME staff has spent the last 36 months identifying and cataloging available core data sets [15] in order to allow the implementation of EBM. A spatially organized database was developed to inventory existing coastal and marine information to support EBM approaches [16] in the Gulf of Mexico and East coast of Florida.

The GAME project promotes the sharing of information thus reducing duplicative efforts while maximizing the effectiveness of limited resources. By providing core data layers that illustrate the current extent of benthic habitats, as well as habitats associated with the water-column, managers will be able to focus their energies on those areas of critical concern due to loss or degradation. By identifying coastal and marine information through this cataloging and mapping effort, coastal managers can protect and/or conserve priority habitats, identify water quality issues, and help maintain the ecological integrity of coastal areas of the Gulf of Mexico. This data discovery phase, together with the development of online tools to share and visualize data, will allow resource managers to access the necessary information on ecosystem processes and functions [2].

Making this project work is possible only through the sharing of knowledge and pooling of resources with properly prepared metadata. Unfortunately, it is not always mandatory to create attendant metadata. Therefore, many researchers still do not document their studies in this manner; thus, some fundamental information might not be captured through the GAME project.

Unfortunately, during this first phase, the GAME staff experienced a lack of willingness in sharing information. Some scientists chose not to participate in the GAME project because they do not see the benefit of sharing their data. In fact, there are currently no incentives in place to stimulate scientists and researchers in sharing information. Moreover, scientists and researchers tend to retain their own data and information until they are able to

publish their results via peer-reviewed journals. In many instances, even after the publication date, scientists and researchers are reluctant to share their data. If successful in its intent, the GAME project will allow the use of the best available science [2] to identify and develop ecoregions.

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April 29, 2011

National Ocean Council
Nancy Sutley, Co-Chair
Dr. John P. Holdren, Co-Chair
Washington, DC 20503

Dear Ms. Sutley and Dr. Holdren:

As the nation's largest organization of recreational boaters, with over one-half a million members nationwide, BoatU.S., the Boat Owners Association of The United States, appreciates the opportunity to comment on National Ocean Council's strategic action plans. Recreational boating is a significant contributor to our nation's economy and society. It supported \$30.4 billion of economic activity in 2010 and nearly 300,000 jobs. Boating is one of the most popular outdoor family activities with 75 million participants last year and can be a key element in achieving the objectives of the America's Great Outdoors initiative.

We have reviewed the Council's nine priority objectives and are pleased to provide our views on some of the proposed actions.

1. Ecosystem-Based Management: Adopt ecosystem-based management as a foundational principle for the comprehensive management of the ocean, our coasts, and the Great Lakes.

Management actions must consider current uses as their starting point. While it is laudable to take a holistic approach to management of marine resources, it must be recognized that there are many long-standing stakeholders who will want to see tangible benefits from policy prescriptions. Management actions undertaken to implement ecosystem-based management must be based in firm science coupled with public input from those stakeholder most affected. Such actions must receive periodic reviews of their effectiveness from both a socio-economic and scientific perspective with timely reports to stakeholders and the public.

Any actions undertaken in pursuit of this goal must guarantee public access to marine resources for both consumptive and non-consumptive uses. For any ecosystem-based management policy prescriptions to achieve support from the boating public will require as few restrictions as possible on how they currently enjoy their boating activities.

Participation rates in the various recreational boating activities would provide a gauge of the impact of new management practices. Thoughtful use of consumer surveys, market

research and public data such as boat registration and fishing licenses sales could provide valuable insight to inform regional planning efforts.

A particularly tangible measure of participation in boating and fishing is revenue generated for the Sport Fish Restoration and Boating Trust Fund (SFRBTF), long supported by the boating and angling communities. These funds are generated by taxes placed on fishing tackle and equipment, motorboat fuel, imported boats and fishing equipment, and small engines. These funds are then directly used to support a myriad of aquatic resources conservation programs, boating access and infrastructure, and aquatic education programs.

2. Coastal and Marine Spatial Planning: Implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States.

Maine spatial plans should reflect a bias for shared use of resources among a wide range of stakeholders. While certain user groups may seek to create exclusive use areas (security zones, no-take areas, energy extraction, etc...) marine spatial plans must be based on the premises that our oceans, lakes and rivers are held in common by all citizens. The development of these plans must provide ample opportunity for recreational boating stakeholder input. It should also be noted that the full range of recreational users should be consulted, not just one "recreational" representative i.e. beach-goers would not represent the interests of power-boaters particularly well.

In order for CMSP to receive recreational boating stakeholder support the benefits of such activities must be clearly articulated. Without a clear understanding of what CMSP is and is not, boaters will likely draw the conclusion that such planning is only being undertaken to exclude them from large areas to which they currently have access or in some ill-define objective of "protection."

3. Inform Decisions and Improve Understanding: Increase knowledge to continually inform and improve management and policy decisions and the capacity to respond to change and challenges. Better educate the public through formal and informal programs about the ocean, our coasts, and the Great Lakes.

The recreational boating community could support policy initiatives based upon objective science. If they perceive that a particular policy action is being undertaken based on agenda-driven science they will strongly object. If policies are put in place to restrict activities with the objective of achieving a particular goal, catch limits to rebuild fish stocks for example, a mechanism for periodic review and revision of the restrictions must be in place.

Recreational boating has a long-standing history of supporting marine education. As the direct beneficiaries of clean water, vibrant ecosystems, and abundant fish populations, boaters have a keen appreciation for these resources. Support for recreational boating in decision making will expose a broader cross-section of the public to the aquatic

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environment, enhancing their understanding and appreciation while building advocates, not adversaries, for broader National Ocean Policy goals.

4. **Coordinate and Support:** Better coordinate and support Federal, State, tribal, local, and regional management of the ocean, our coasts, and the Great Lakes. Improve coordination and integration across the Federal Government and, as appropriate, engage with the international community.

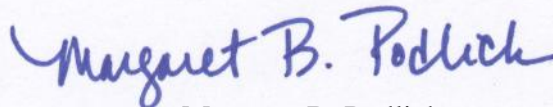
The recreational boating community supports this policy objective. Particular emphasis should be placed on the coordination of the various, often duplicative, permitting regimes now required to complete boating access projects. National guidance to regional planning councils should also be used to promote uniformity in management policies among the various agencies.

9. **Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure:** Strengthen and integrate Federal and non-Federal ocean observing systems, sensors, data collection platforms, data management, and mapping capabilities into a national system and integrate that system into international observation efforts.

The full range of observation and mapping functions of Federal agencies along with state, local and tribal undertakings in this field is strongly supported by the recreational boating community. As consumers of many of these products (weather reports, navigation charts, tide and current tables, etc...) we have direct interest in the promotion of these efforts. In particular we would encourage emphasis on making these products widely available in forms that are usable in day-to-day operation of recreational boats.

Again, we appreciate the opportunity to provide our views on the strategic objectives of the National Ocean Council. Please call upon us at anytime to provide the perspective of recreational boaters as this effort moves forward.

Sincerely,



Margaret B. Podlich
Vice-President, Government Affairs

A community safety system balancing risk, cost and freedom

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Salutary Technology, Inc., Moorestown, NJ, USA

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ABSTRACT

The primary purpose of this paper is to demonstrate that a range of proposed government actions can and often should be evaluated in a way that includes their effects on personal freedoms. This is illustrated in the case of efforts directed toward recreational boating safety in the United States, and evolves from a multi-year study to recommend the composition of an appropriate risk management system for that subject. The proposed system seeks to determine best safety/security decisions, in a way that reflects Community roles, values and resources, and that includes effects on "freedom" in the calculus of costs and benefits associated with alternative actions. Its extension to Regional Coastal and Marine Spatial Planning is discussed. There were 738 reported deaths in U.S. recreational boating accidents in 2009. There is a community interested in preventing boating accidents that includes the U. S. Coast Guard, agencies of each of the States and many localities, various non-profits and interest groups, and, of course, boaters themselves. The ethos of boating and related law are such that proponents for imposed safety measures, including boat and operator requirements and restrictions, must take into account the discretionary nature of this activity. Thus, the question, familiar in U.S. public decision-making, is how best to balance and apportion the risks, costs and changes in participant enjoyment or freedom to act connected with choices that might be made to enhance safety. This paper describes a proposed risk management system the development of which took place over a ten year period by a varied group of participants under a grant to the Marine Safety Foundation. The proposed system recognizes that any policy analysis must consider multiple objectives for different stakeholder groups. It is intentional in incorporating the views, values and resources of Community members in its analyses of proposals for safety actions. It is also intentional about incorporating - - "freedom" as a value in play, (along with the costs to different parties and changes in risk/safety that might result,) in the quantitative analysis of its choices for safety interventions. Thus, these risk management guidelines comprise a structure of values reflecting U. S. political outlook, group relational elements, analytical processes and critical characteristics of its subject. As presented in its final report, published last winter, it includes a computer-enabled process, (developed by participants from Innovative Decisions, Inc.,) to weigh changes in risk, cost and "freedom"

connected with proposed safety options. This model for an integrating framework incorporates probabilistic risk analysis, value-focused thinking for examining critical tradeoffs using multi-attribute utility analysis, and analysis of alternatives across multiple stake holders and boating classes. An in-depth analysis of the human-error causes of fatal boating accidents was also performed during the course of this project. It points out the most serious accident causes, which are seen to vary across different boat types, and provides another basis for identifying needed safety interventions. The outlook and approach developed in the course of this project are useful in a wide range of government decisions where actions intended to provide security or other aspects of the "greater good" demand a balance of rights and obligations among multiple stakeholders with different values, helping to rationalize the essential give-and-take of our political process.

April 7, 2011

Ms. Nancy Sutley, Dr. John Holdren, and Members
National Ocean Council
c/o Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Re: Recommendations for the Coastal and Marine Spatial Planning Strategic Action Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members,

On behalf of the undersigned organizations and their combined membership, we offer the following recommendations to the National Ocean Council (“NOC”) for use in developing the Strategic Action Plan for Coastal and Marine Spatial Planning (“CMSP”).

The Final Recommendations of the Interagency Ocean Policy Task Force (“Final Recommendations”) state that each Strategic Action Plan must address the “Obstacles and Opportunities” inherent in the subject area.¹ For CMSP, the Final Recommendations discuss several obstacles and opportunities: overlapping uses; differing views about where activities should be situated; reducing cumulative impacts on the ocean from human uses; providing greater certainty for the public and private sectors for investment; and reducing conflicts among uses.² The Strategic Action Plan must also contain national objectives for CMSP, national outcome-based performance measures, guidance for the Regional Planning Bodies on regional objectives and regional outcome-based performance measures, and a description of the dispute-resolution mechanism to be used by the Regional Planning Bodies, among other things.³

Our organizations’ recommendations, discussed below, are intended to ensure a strong CMSP process that protects, maintains, and restores ocean and coastal ecosystem health.

¹ White House Council on Environmental Quality, Final Recommendations of the Interagency Ocean Policy Task Force, at 30 (2010) [hereinafter Final Recommendations].

² *Id.* at 33.

³ *Id.* at 70.

I. Substantive Planning

A. Keep Ecosystem Health at the Forefront of CMS Planning

The Final Recommendations acknowledge that the ocean’s ability to “provide sustained delivery of ecosystem services” as well as economic benefits depends on its ecological health.⁴ Accordingly, a primary goal of CMS planning is to “[p]rotect, maintain, and restore the Nation’s ocean, coastal, and Great Lakes resources and ensure resilient ecosystems.”⁵

The NOC must maintain this primary goal in designing the CMSP process. CMSP involves layers of data gathering, public input, and multilateral decision-making. In the course of this complex process, it will be important to ensure that protection of ecosystem health underpins the final plan. To achieve this end, the CMSP process must have a structural design that keeps conservation as a central focus.

The CMSP Strategic Action Plan in particular should: (1) provide a strong national objective to protect, maintain and restore ecosystem health, and explicitly acknowledge that healthy ecosystems are a precondition for the benefits our Nation receives from its ocean, coasts, and the Great Lakes; (2) include guidance to the Regional Planning Bodies that regional objectives should clearly acknowledge ecosystem health as the foundation for productive uses of the ocean; (3) require periodic regional assessments of ecosystem health, using an index that reflects parameters such as “the status of native species diversity and abundance, habitat diversity and connectivity, and key species (i.e., species known to drive the structure and function of ecosystems)”;⁶ (4) instruct the Regional Planning Bodies to employ ecosystem-based management and consider the cumulative impacts of a use—as well as a combination of uses—on the ocean and coasts’ ability to deliver ecosystem services now and in the future; and (5) allow certification of final CMS Plans only if they meet the national objective of protecting, maintaining and restoring ecosystems and will result in maintenance or improvement of ecosystem health as reflected in the periodic regional assessments mentioned above.⁷

B. Acknowledge and Give Weight to Non-Consumptive Uses

During the planning process, each Regional Planning Body will have to weigh various possible uses for the region’s coastal and ocean resources, and decide on a mix of uses that best furthers the regional goals and the goals of CMSP and the National Ocean Policy. As noted in the Final Recommendations, this decision will be science-based and data-driven, using information on the

⁴ *Id.* at 48; *see also id.* at C-VI (explicitly “agree[ing] that healthy ecosystems provide the foundation for the full range of ecological services the oceans, coasts, and Great Lakes provide, including economic, environmental, and societal benefits.”).

⁵ *Id.* at 48.

⁶ *Id.* at 64.

⁷ For further discussion on ecosystem-based management, see Letter from Sarah Chasis, Oceans Initiative Director, Natural Resources Defense Council, et al., to Nancy Sutley & John Holdren, Co-Chairs, National Ocean Council (Jan. 24, 2011).

region's biological, geological, and oceanographic resources, as well as social and economic information.⁸ The decision will also require public input, to assess the various possible ocean and coastal uses that are valued by humans.

In appraising location and compatibility of possible uses within a spatial plan, the Regional Planning Bodies must acknowledge and give appropriate weight to non-consumptive uses of the ocean. This is necessary because public input may under-represent the value of many non-consumptive uses. Significant economic value resides in uses such as recreational beachgoing, sightseeing, wildlife viewing, surfing, diving, sailing, photography, and existence value. Some of that value is captured in market transactions—by hotels, gas stations, stores, property values, restaurants, gear sales, and tour guides.⁹ The remaining value of non-consumptive uses lies in non-market value.¹⁰ Both types of value tend to be widespread and diffuse, so it is difficult for individual stakeholders to accurately represent the aggregate value of non-consumptive uses in a public input process like CMSP. By contrast, the value of extractive and exploitative uses is often concentrated in particular individuals (and corporations), and tends to be better represented in a public input process.¹¹ The Strategic Action Plan should encourage the Regional Planning Bodies to give due consideration to non-consumptive uses of the ocean and coasts when deciding the appropriate mix of uses for their regions.

C. Identify and Protect Important Ecological Areas¹²

The Final Recommendations correctly recognize that identifying important ecological areas is an “Essential Element” of the CMSP process.¹³ Building on this, the CMSP Strategic Action Plan should provide explicit procedures for the Regional Planning Bodies to use in identifying such areas during their regional assessments. In particular, the Strategic Action Plan should outline the steps below, or a comparable method for identifying important ecological areas.¹⁴

⁸ Final Recommendations, *supra* note 1, at 48-49.

⁹ See, e.g., Chris LaFranchi & Collin Daugherty, Surfrider Foundation, Non-Consumptive Ocean Recreation in Oregon (2011) (measuring the economic impact of non-consumptive uses of the ocean and coast in Oregon, in preparation for marine spatial planning), available at http://oregon.surfrider.org/files/2011/03/OregonNonconsumptiveStudy_comp.pdf.

¹⁰ See, e.g., Judith T. Kildow et al., National Ocean Economics Program, State of the U.S. Ocean and Coastal Economies 2009, at 38-46 (noting the total non-market value of the nation's coasts and ocean is likely in the tens to hundreds of billions of dollars, and “may rival or even surpass the market value of the nation's ocean and coastal resources”), available at <http://www.oceaneconomics.org/NationalReport>.

¹¹ For more on public goods and incentive structures, see Mancur Olson, *The Logic of Collective Action* (1971) (outlining the original theory of collective action problems), and subsequent literature.

¹² In certain key places, the Final Recommendations use the phrase “areas of particular ecological importance.” See Final Recommendations, *supra* note 1, at 57. We assume this is equivalent to the popular term “important ecological areas,” which also appears in a few places. See, e.g., *id.* at 59.

¹³ See *id.* at 57. Identifying important ecological areas is a logical and inherent feature of any spatially-oriented planning process. See, e.g., Charles Ehler & Fanny Douvère, *Marine Spatial Planning: A Step-by-Step Approach Toward Ecosystem-Based Management* 50-54 (2009), available at <http://www.unesco-ioc-marinesp.be/uploads/documentenbank/d87c0c421da4593fd93bbee1898e1d51.pdf>.

¹⁴ The framework outlined in bullet points (1)-(4) is taken from a recent discussion paper by Oceana on identifying important ecological areas. See Jim Ayers et al., *Important Ecological Areas in the Ocean: A Comprehensive*

- (1) Define important ecological areas as areas that “have distinguishing ecological characteristics, are important for maintaining habitat heterogeneity or the viability of a species, or contribute disproportionately to an ecosystem’s health, including its productivity, biodiversity, functioning, structure, or resilience.”¹⁵
- (2) Compile a list of important ecosystem structures and functions relevant to the region, such as sensitive habitat, migration routes, spawning and feeding grounds, and high-diversity areas.¹⁶
- (3) Survey the region and identify specific ecosystem features (such as a particular rocky reef habitat, an area of high krill density, a sea turtle nesting beach, etc.) that contribute to one or more of the important ecosystem structures or functions.¹⁷
- (4) Determine which of these identified ecosystem features qualify as important ecological areas, based on the definition above.

The Strategic Action Plan should also clarify that once the Regional Planning Bodies identify important ecological areas, they must evaluate potential threats to the areas and provide appropriate protection in order to maintain these areas’ roles in the ecosystem. Protective designations may vary, based on each area’s ecological role and the particular threats faced, but the underlying goal would remain constant: to protect the important ecological function(s) of each designated area.

As a general matter, scientific studies have established that protecting ecologically-important areas contributes to maintaining and restoring ocean health.¹⁸ More specifically, protective use designations can allow fish populations to recover,¹⁹ restore damaged habitat,²⁰ provide habitat connectivity and population interactions,²¹ maintain biodiversity levels²² (in turn stabilizing the

Ecosystem Protection Approach to the Spatial Management of Marine Resources, at 6-10 (2010), available at http://na.oceana.org/sites/default/files/_campaigns/oceana_iea_discussion_paper.pdf

¹⁵ *Id.* at 9.

¹⁶ *See id.* at 19 (providing sample “ecological criteria” for a hypothetical region).

¹⁷ *See id.* (providing examples of “specific features” for a hypothetical region).

¹⁸ *See generally* Committee on the Evaluation, Design, and Monitoring of Marine Reserves and Protected Areas in the United States, National Research Council, *Marine Protected Areas: Tools for Sustaining Ocean Ecosystems* (2001), available at http://www.nap.edu/catalog.php?record_id=9994 [hereinafter *Sustaining Ocean Ecosystems*].

¹⁹ *See, e.g.*, R. C. Babcock et al., *Decadal Trends in Marine Reserves Reveal Differential Rates of Change in Direct and Indirect Effects*, 107 *Proc. Nat’l Acad. Sci.* 18,256 (2010); Scott L. Hamilton et al., *Incorporating Biogeography Into Evaluations of the Channel Islands Marine Reserve Network*, 107 *Proc. Nat’l Acad. Sci.* 18,272 (2010); R. A. Pelc et al., *Detecting Larval Export from Marine Reserves*, 107 *Proc. Nat’l Acad. Sci.* 18,266 (2010); Callum M. Roberts et al., *The Role of Marine Reserves in Achieving Sustainable Fisheries*, 360 *Phil. Transact. Royal Soc’y B* 123 (2005).

²⁰ *See, e.g.*, Alison Tamsett et al., *Dynamics of Hard Substratum Communities Inside and Outside of a Fisheries Habitat Closed Area in Stellwagen Bank National Marine Sanctuary (Gulf of Maine, NW Atlantic)*, *Marine Sanctuaries Conservation Series ONMS-10-05* (2010); *Sustaining Ocean Ecosystems*, *supra* note 18, at 22.

²¹ *See, e.g.*, Steven D. Gaines et al., *Designing Marine Reserve Networks for Both Conservation and Fisheries Management*, 107 *Proc. Nat’l Acad. Sci.* 18,286 (2010); G. Stefansson & A. A. Rosenberg, *Designing Marine Protected Areas for Migrating Fish Stocks*, 69 *J. Fish Biol.* 66 (2006); *Sustaining Ocean Ecosystems*, *supra* note 18, at 115, 177.

ecosystem²³), safeguard genetic resources,²⁴ and improve overall ecosystem resilience.²⁵ Furthermore, protecting important ecological areas can increase the regional economic yield from fishing and lead to optimal economic outcomes.²⁶

Protecting the important ecological areas identified during the CMSP process is essential to fulfilling the core CMSP goal of “ensur[ing] resilient ecosystems and their ability to provide sustained delivery of ecosystem services,”²⁷ as well as to the National Ocean Policy’s goal of protecting, maintaining, and restoring ecosystem health and the overall Priority Objectives of Ecosystem-Based Management and Regional Ecosystem Protection and Restoration.²⁸ Thus, the CMSP Strategic Action Plan should instruct the Regional Planning Bodies to provide appropriate protection—tailored to functional need—for important ecological areas.²⁹

²² See, e.g., Laurence J. McCook et al., *Adaptive Management of the Great Barrier Reef: A Globally Significant Demonstration of the Benefits of Networks of Marine Reserves*, 107 Proc. Nat’l Acad. Sci. 18,278 (2010); Sustaining Ocean Ecosystems, *supra* note 18, at 21-22.

²³ See, e.g., Schindler et al., *Population Diversity and the Portfolio Effect in an Exploited Species*, 465 Nature 609 (2010); D. U. Hooper et al., *Effects of Biodiversity on Ecosystem Functioning: A Consensus of Current Knowledge*, 75 Ecological Monogr. 3 (2005); F. Stuart Chapin III et al., *Consequences of Changing Biodiversity*, 405 Nature 234 (2000).

²⁴ See, e.g., Jesus M. Arrieta et al., *What Lies Underneath: Conserving the Oceans’ Genetic Resources*, 107 Proc. Nat’l Acad. Sci. 18,318 (2010).

²⁵ See, e.g., McCook et al., *supra* note 22; Babcock et al., *supra* note 19; Roberts et al., *supra* note 19.

²⁶ See, e.g., Gaines et al., *supra* note 21 (noting optimal outcomes when 30% or more of the area in a region is protected); Christopher Costello et al., *The Value of Spatial Information in MPA Network Design*, 107 Proc. Nat’l Acad. Sci. 18,294 (2010); Christopher Costello & Stephen Polasky, *Optimal Harvesting of Stochastic Spatial Resources*, 56 J. Envtl. Econ. & Mgmt. 1 (2008); Crow White et al., *Marine Reserve Effects on Fishery Profit*, 11 Ecology Letters 370 (2008); Stefansson & Rosenberg, *supra* note 21; James N. Sanchirico et al., *When Are No-Take Zones an Economically Optimal Fishery Management Strategy?*, 16 Ecological Applic. 1643 (2006); Brian Gaylord et al., *Marine Reserves Exploit Population Structure and Life History in Potentially Improving Fisheries Yields*, 15 Ecological Applic. 2180 (2005); Gunnar Stefansson & Andrew A. Rosenberg, *Combining Control Measures for More Effective Management of Fisheries Under Uncertainty: Quotas, Effort Limitation and Protected Areas*, 360 Phil. Transact. Royal Soc’y B 133 (2005); see also Sustaining Ocean Ecosystems, *supra* note 18, at 111-16, 175-80, 247-56 (surveying numerous studies and noting recommendations for maximizing yield call for protected areas ranging from 15-80% of the total area in a region).

²⁷ Final Recommendations, *supra* note 1, at 48.

²⁸ See *id.* at 32, 37 (outlining the National Priority Objectives of Ecosystem-Based Management and Regional Ecosystem Protection and Restoration); see also Benjamin S. Halpern et al., *Placing Marine Protected Areas Onto the Ecosystem-Based Management Seascape*, 107 Proc. Nat’l Acad. Sci. 18,312 (2010) (discussing how protective designations can substantially further the goals of ecosystem-based management); Sustaining Ocean Ecosystems, *supra* note 18, at 175-76.

²⁹ This would already be the result, under a properly-executed CMSP process, for areas that truly have particular ecological importance: given the high conservation value of the areas, Regional Planning Bodies would be expected to give weight to protection during the balancing of uses, and absent extraordinary circumstances, a protective use classification should result. The recommendation above is simply meant to clarify this expectation .

II. Regional Planning Bodies

A. Make Decisions by Super-Majority Vote

In the Regional Planning Bodies, decisions should be made by super-majority vote to ensure proper functioning.

Members of the Regional Planning Bodies are expected to have heterogeneous interests, as they will represent various levels of government and different constituencies. In a separate letter, we recommended a composition of half Federal and half non-Federal partners, with ex officio membership for certain parties such as the Regional Fishery Management Councils.³⁰ Given this mixed composition, and given the difficult decisions to be made by the Regional Planning Bodies, disagreement is likely at times. If the Regional Planning Bodies use consensus-based decision-making, a single party could obstruct progress and derail the group's substantive agenda. For this reason the Regional Planning Bodies must use some type of voting, which allows for robust discussion and debate, but respects the majority view on any given issue.

At the same time, a simple majority voting requirement would risk leaving behind too many dissenting parties. If just under half the parties in a Regional Planning Body are dissatisfied on an important issue, moving ahead without addressing their concerns would be inconsistent with the participatory principle of CMSP. Parties who feel their concerns are not met during the decision-making process will be less likely to sign the eventual CMS Plan, so a simple majority voting requirement could weaken the group's ability to effectively implement the final CMS Plan.

As a solution, we recommend a super-majority voting rule whereby something like 2/3 of the voting members must be in favor for a decision to pass. This system would maintain substantial buy-in, while avoiding the problem of individual holdouts. This rule should apply to important substantive decisions taken with respect to the plan, including final approval by the Regional Planning Body.

In practice, we expect the Regional Planning Bodies will attempt to forge a consensus on an issue before moving on. CMSP is a cooperative enterprise, and the parties will understand that mutual agreement produces greater investment in the eventual CMS Plan. The purpose of the above recommendation, however, is that negotiation toward consensus will be most effective when all parties know the formal decision will be made by super-majority vote.

B. Use CMSP Principles for Resolving Disputes

In contrast to the substantive planning decisions that should be resolved by voting, occasionally disputes will arise between Regional Planning Body members. Members may disagree over their roles and authorities during the CMSP process, or they may diverge on the extent to which a CMS Plan will be integrated into the actions of their respective agencies. Once a final CMS Plan

³⁰ See Letter from Sean Cosgrove, Marine Campaign Director, Conservation Law Foundation, et al., to Nancy Sutley & John Holdren, Co-Chairs, National Ocean Council, at 2 (Dec. 14, 2010).

is completed, parties may interpret the plan differently—including what it means to be compliant with the Plan. Disputes may involve any number of members of a Regional Planning Body.

The Final Recommendations wisely provide for a dispute resolution process to resolve such disagreements. Various instructions are given for the dispute resolution process, including that most disputes should be resolved at the regional level, and that the Governance Coordinating Committee should be involved when the dispute is between Federal and non-Federal members.³¹ The Final Recommendations do not address, however, the substantive principles under which disputes will be resolved.

The CMSP Strategic Action Plan should clarify that disputes must be resolved based on the principles of CMSP itself. The Final Recommendations list twelve “National Guiding Principles” for CMSP, including “us[ing] an ecosystem-based management approach that addresses cumulative effects to ensure the protection, integrity, maintenance, resilience, and restoration of ocean, coastal, and Great Lakes ecosystems, while promoting multiple sustainable uses,” and “be[ing] guided by the precautionary approach as reflected in . . . the Rio Declaration.”³² The twelve guiding principles should form the basis for resolving disputes: whichever of the competing approaches or views best furthers the principles of CMSP should prevail.

Without an explicit declaration that disputes must be resolved based on CMSP principles, it is possible that disputes could be resolved based on political influence, personal connections, or simple compromise, without regard to the purposes of planning. Placing the CMSP principles at the core of the dispute resolution mechanism may not solve everything—indeed, the principles are broad and may be open to conflicting interpretations—but it will at least guide the disputing parties back to the purpose of CMSP, and help them frame their arguments in terms of that purpose. Doing so should help maintain the integrity of the CMSP process and prevent politics from derailing successful planning.

C. Ensure the Planning Process Keeps Moving

CMSP involves diverse players, extensive stakeholder and public input, complex data gathering, and technically-challenging decisions. As such, there are numerous areas where delays can arise. The CMSP Strategic Action Plan should ensure that the planning process keeps moving in the following ways:

First, the NOC must have authority to ensure that the Regional Planning Bodies meet the deadlines in the Final Recommendations. Specific mechanisms to resolve a deadlocked or lagging Regional Planning Body—other than the formal dispute resolution mechanism³³—could

³¹ Final Recommendations, *supra* note 1, at 54.

³² *Id.* at 48-49.

³³ The primary intent of the dispute resolution mechanism is to resolve conflicts among members of the Regional Planning Bodies in a principled and consistent way. *See id.* at 54. While this should be conducted in a timely manner, the dispute resolution mechanism is not inherently a tool for ensuring deadlines are met. Separate mechanisms are necessary to keep the planning process moving, as described above.

involve NOC-based mediation, or if no other resolution can be achieved, the NOC simply instructing the Federal agencies to proceed with developing a CMS Plan for Federal actions and resources in the region as outlined in the Final Recommendations.

Second, the Final Recommendations note that Regional Planning Bodies “might agree not to resolve certain issues in a CMS Plan.”³⁴ The Strategic Action Plan should clarify that this option is only to be used as a last resort, and should require approval from the NOC. Furthermore, the Strategic Action Plan should outline a specific set of procedures to re-approach the issue later, and require resolution within a certain time-frame.

III. Participation in CMSP and Compliance with CMS Plans

A. Federal Agency Participation and Compliance Is Mandatory

The CMSP Strategic Action Plan should reiterate that Federal agencies are required to participate in the CMSP process and comply with final CMS Plans. Federal participation and compliance is central to the success of CMSP, so even though the Final Recommendations and Executive Order 13547 legally require Federal agencies to participate in CMSP,³⁵ it bears repeating in the Strategic Action Plan.

In particular, the Strategic Action Plan should reiterate that Federal agencies are expected to participate in CMSP to the fullest extent permissible under statutory law. Section 6(a) of the Executive Order states:

All executive departments, agencies, and offices that are members of the Council and any other executive department, agency, or office whose actions affect the ocean, our coasts, and the Great Lakes shall, *to the fullest extent consistent with applicable law*: (i) take such action as necessary to implement the [National Ocean Policy] and the stewardship principles and national priority objectives as set forth in the Final Recommendations and subsequent guidance from the Council; and (ii) participate in the process for coastal and marine spatial planning and comply with Council certified coastal and marine spatial plans, as described in the Final Recommendations and subsequent guidance from the Council.³⁶

The Final Recommendations note that the “applicable law” referred to above is both statutory and regulatory law.³⁷ However, as soon as an agency identifies a regulation limiting its participation in CMSP or its compliance with a CMS Plan, that regulation should be changed: “Where pre-existing legal constraints, either procedural or substantive, are identified for any Federal agency, the NOC would work with the agency to evaluate necessary and appropriate . . .

³⁴ *Id.* at 60.

³⁵ *See id.* at 65; Exec. Order No. 13,547, 75 Fed. Reg. 43,023, 43,026 (July 22, 2010).

³⁶ Exec. Order No. 13,547, 75 Fed. Reg. at 43,026 (emphasis added).

³⁷ *See* Final Recommendations, *supra* note 1, at 65 (“Signatories and all NOC member agencies would adhere to a NOC-certified CMS Plan, within the limits of their existing statutory and regulatory authorities.”).

changes to regulations to address the constraints.”³⁸ Over time, therefore, the only boundary on Federal agency participation in CMSP and compliance with the Plans should be statutory law.³⁹

The Strategic Action Plan must clearly state that regulations should not limit an agency from participating in CMSP or complying with a CMS Plan, unless the regulation constraining compliance with a CMS Plan is required by statute and may not be modified. The Strategic Action Plan should also note that current statutory law gives agencies substantial discretion to take environmental considerations into account and consult with other agencies in making decisions, and should direct Federal agencies to use this discretion in implementing CMSP. Finally, to ensure Federal agencies are positioned to pursue CMSP in a timely fashion, the Strategic Action Plan should provide a specific timeframe for changing all regulations that are not aligned with CMSP.

B. Embed CMS Plans and the CMSP Process in Federal Agency Regulations

In addition to removing regulations that hinder CMSP, Federal agencies should promulgate new regulations to affirmatively promote coastal and marine spatial planning. Regulations should be directed at integrating both the CMSP process as well as eventual CMS Plans into agency operating procedures.

Integrating the CMSP process into Federal agency procedures is important because coastal and marine spatial planning takes time. The Final Recommendations provide up to five years to adopt CMS Plans, followed by ongoing monitoring and revision.⁴⁰ Incorporating the planning process into Federal agency regulations will help to facilitate participation, as well as provide a degree of permanence to the CMSP process beyond that afforded by the executive order. This durability could be crucial, given the time required for CMSP.

Therefore the CMSP Strategic Action Plan should require each Federal agency on the NOC or otherwise involved in CMSP to promulgate final rules that (1) acknowledge the agency’s obligation to participate in CMSP, and (2) outline specific procedures for doing so, including modifying current procedural regulations to conform with CMSP. This can be done immediately, without waiting for final CMS Plans to be created, and the Strategic Action Plan should provide specific deadlines for Federal agencies to issue final rules on the subject.

Once the final CMS Plans are certified, their integration into agency regulations is crucial because the plans rely on agency compliance for their effectiveness. Rulemaking is the best way to integrate final CMS Plans into agency operating procedures, as it is an open and transparent process that results in concrete, well-defined subsequent actions by the agency. Thus, after the NOC approves a final CMS Plan, member agencies of the respective Regional Planning Body should incorporate the contents of the plan into their operating procedures via rulemaking.

³⁸ *Id.* at 47.

³⁹ *See id.* (noting “[a]n agency or department’s capacity to internalize the elements of any particular CMS Plan would vary depending on the nature of applicable statutes.”).

⁴⁰ *Id.* at 69.

Federal agencies, which are bound by Executive Order 13547 and the Final Recommendations,⁴¹ are required to do this. The Final Recommendations state: “Agencies would incorporate components of the CMS Plan into their respective regulations to the extent possible. Adherence with CMSP would be achieved through Federal . . . agencies . . . incorporating CMS Plans into their pre-planning, planning, and permitting processes, to the extent consistent with existing laws and regulations.”⁴²

The Strategic Action Plan should reiterate that once final CMS Plans are approved, Federal agencies are required to issue new regulations and/or amend existing regulations in order to integrate the CMS Plans into their operating procedures. The Strategic Action Plan should also provide a specific timeframe for doing so.

C. Structure CMS Plans to Strengthen the Commitment of non-Federal Agencies

CMS Plans will be signed by authorities from several levels of government—Federal, State, and Tribal. Federal agencies, as noted above, are required to engage in CMSP and to enact regulations supporting both the CMSP process and final CMS Plans. State and Tribal agencies, however, are not bound by the terms of Executive Order 13547 or the Final Recommendations. The act of signing a CMS Plan therefore provides an important mechanism to strengthen the commitment of State and Tribal authorities to CMSP.

To strengthen the commitment of non-Federal parties, CMS Plans should contain an explicit statement of intent by all signatories to conduct permitting and other decision-making in accordance with the plan, and to support the CMSP process in the future. CMS Plans should also spell out the role of each signatory in detail, including responsibilities and specific actions to be taken as a consequence of committing to the plan, along with a timeline for action. More generally, CMS Plans should articulate the benefits of coordinated management and clearly state each signatory’s agreement with the CMS Plan and its goals.

As a further way of strengthening the buy-in of State and Tribal signatories, CMS Plans should contain a statement of intent by all signatory agencies to evaluate their internal operating procedures and rules, and bring them into alignment with the CMS Plan. The Final Recommendations envision this happening (and require it for Federal agencies, as noted above): “[Agencies] with programs relevant to the CMS Plan would in a timely manner review and modify programs, as appropriate, to ensure their respective activities, including discretionary spending (e.g., grants and cooperative agreements), adhere to the CMS Plan to the extent possible.”⁴³

Such a statement of intent would be an effective way of strengthening the commitment of State and Tribal partners to implement the CMS Plan. The Strategic Action Plan therefore should

⁴¹ See Exec. Order No. 13,547, 75 Fed. Reg. at 43,023 (“This order adopts the recommendations of the Interagency Ocean Policy Task Force . . . and directs executive agencies to implement those recommendations . . .”).

⁴² Final Recommendations, *supra* note 1, at 65.

⁴³ *Id.* at 61.

require all final CMS Plans to contain a pledge that each signatory agency will integrate the contents of the CMS Plan into its operating procedures.

D. Create Incentives for State and Tribal Participation

The CMSP Strategic Action Plan should also provide broader measures to encourage State and Tribal agencies to participate in the CMSP process, and to sign final CMS Plans. States and Tribes already have an incentive to participate in CMSP because it allows them to coordinate with and influence Federal activities affecting State and Tribal areas, but further measures should be provided to encourage participation.

The most obvious incentives are financial: the NOC should instruct all Federal agencies currently issuing grants for State-level coastal or marine projects to consider whether the receiving State is participating in the CMSP process. To the extent a State participates in its respective Regional Planning Body, and signs a final CMS Plan, the Federal grant-making agency should take this into consideration when evaluating grant applications.

Another possible incentive—particularly if federal grants are not available for states—is to provide in-kind value such as information or staff sharing, or access to Federal technical resources, in return for State and Tribal engagement in CMSP.

IV. Participation and Transparency

Public and stakeholder engagement in CMSP is important because it can expand the information available for planning, lead to greater buy-in from all parties, and provide legitimacy for the eventual outcomes. The Final Recommendations acknowledge stakeholder and public participation as a crucial element of the CMSP process,⁴⁴ and instruct as follows:

The regional planning body would ensure there is frequent and regular stakeholder engagement throughout all phases of the CMSP process Stakeholder and public participation would be sought through a variety of robust participatory mechanisms that may include, but are not limited to, workshops, town halls, public hearings, public comment processes, and other appropriate means. . . . [R]egional planning bodies would operate with the maximum amount of transparency, participation, and collaboration . . . permissible by law.⁴⁵

In a separate letter, several groups have provided a conceptual framework for stakeholder and public participation generally, and flagged important issues related to stakeholder and public

⁴⁴ See *id.* at 47 (discussing public and stakeholder engagement generally); *id.* at 48 (listing “engagement of partners, the public, and stakeholders” as the third National Guiding Principle for CMSP); *id.* at 56 (establishing stakeholder and public engagement as an Essential Element of the CMSP Process); *id.* at 70, 73 (outlining how public engagement will be implemented).

⁴⁵ *Id.* at 56.

participation in the CMS planning.⁴⁶ Here, we raise the subject in order to recommend the NOC use the CMSP Strategic Action Plan to provide specific guidance for the Regional Planning Bodies on public and stakeholder participation.

The Strategic Action Plan should clearly define the scope of expected public and stakeholder engagement—both in terms of how much input will be accepted from the public and stakeholders, and how that input will be used during each Regional Planning Body’s decision-making process. Particular points should include the following:

First, the Strategic Action Plan should instruct the Regional Planning Bodies to convene public advisory committees, composed of a broad set of stakeholders and public representatives. These advisory committees should have specific and well-defined roles, which would include acting as communication links between the Regional Planning Bodies and the public, conveying information both ways. Public advisory committees could also provide an ongoing forum for discussing public concerns.⁴⁷

Second, the NOC should require each Regional Planning Body to engage in an outreach and communication effort designed to inform stakeholders and the public exactly what their roles in the CMSP process will be. It is vital to provide stakeholders and the public with a clear road map of their involvement: by defining roles at the outset, the Regional Planning Bodies will help avoid unrealistic expectations and potential disappointment.⁴⁸

Third, the Strategic Action Plan should direct the Regional Planning Bodies to schedule regular public meetings during the CMS planning process, with the first meeting scheduled shortly after the Regional Planning Bodies are convened. Each meeting should have a defined purpose and an agenda that clearly explains what kind of information and input is sought from the public, and what will be discussed by the Regional Planning Body.

Fourth, the Strategic Action Plan should instruct each Regional Planning Body to maintain a website for the regional CMSP process, and to post any and all non-confidential planning-related documents to the website in a timely manner. The regional website should also explain ways for the public and stakeholders to get involved in the CMSP process, as well as provide a web-based portal for the public to file comments and suggestions throughout the plan development process.

⁴⁶ See Letter from Ocean Conservancy et al., to Nancy Sutley & John Holdren, Co-Chairs, National Ocean Council (Feb. 28, 2011) (including attached white paper on public and stakeholder participation in coastal and marine spatial planning).

⁴⁷ For further discussion of public advisory committees, see *id.* (white paper §4). See also Letter from David Dickson, Western Arctic and Oceans Program Director, Alaska Wilderness League, et al., to Nancy Sutley, Chair, Interagency Ocean Policy Task Force at 8-9 (Jan. 29, 2010) (similarly recommending public advisory committees); Conservation Law Foundation et al., Recommendations for a Framework for Marine Spatial Planning 27 (2009) (similarly advising that public advisory committees be created).

⁴⁸ See Letter from Ocean Conservancy et al. to Nancy Sutley & John Holdren, *supra* note 46 (discussing the importance of defining expectations among stakeholders and the public, at white paper §2.2); see also Conservation Law Foundation et al., *supra* note 47, at 8 (recommending that “Stakeholders should know from the start the precise nature of their role in the process . . .”).

Finally, the Strategic Action Plan should contain tools for evaluating how well public and stakeholder engagement is being handled by each Regional Planning Body. Such tools could include surveys and polls, or feedback from the public advisory committees, among other things. Third-party evaluation of each Regional Planning Body’s performance should also be required, using one or more of the tools outlined in the Strategic Action Plan.

V. Funding

The CMSP process requires funding for analysis, workshops, data gathering, agency coordination, plan design, and monitoring and enforcement. Unfortunately, new funding for CMSP is likely to be limited during the initial planning period. The NOC should plan accordingly, in order to keep CMSP viable and moving forward.

In particular, the CMSP Strategic Action Plan should set priorities for allocating funds. Envisioning a scenario where no new money is available for CMSP, the NOC should outline core activities that must receive funding in order for CMSP to proceed. These activities should receive priority in funding decisions over the upcoming years, and to the extent possible, agencies should re-distribute existing funds to accommodate them. As stated in the Final Recommendations, “Recognizing the reality of the limited availability of new resources, each of the Federal agencies engaged in the implementation of strategic action plans [sh]ould re-evaluate how resources should best be allocated in light of their statutory and regulatory mandates.”⁴⁹ As a starting point, the Final Recommendations contain four priority areas for initial funding⁵⁰; the Strategic Action Plan should go further and outline priorities for future stages of CMSP as well.

The CMSP Strategic Action Plan should also identify actions possible with limited or no funding. Doing so will give the NOC avenues to pursue even in a scenario of severe budget cuts, and having achievable “wins” will help ensure the CMSP process stays viable. Possible actions include conducting socio-economic and ecological data gap assessments, establishing regional public and stakeholder participation processes, and designing a national data portal.

* * *

Thank you for the opportunity to share these recommendations; we would welcome the chance to discuss them in more detail as needed. We appreciate all the effort you and your agencies have invested in the National Ocean Policy to date, and we look forward to continuing to work with you to improve the health of our valuable ocean and coasts.

⁴⁹ Final Recommendations, *supra* note 1, at 30-31.

⁵⁰ *See id.* at 74-76.

Sincerely,

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April 28, 2011

Ms. Nancy Sutley, Dr. John Holdren and Members
National Ocean Council
c/o Council on Environmental Quality
722 Jackson Place NW
Washington, DC 20503

Re: CSO Recommendations on *Objective 2: Coastal and Marine Spatial Planning*

Dear Chairs Sutley and Holdren, National Ocean Council Members:

On behalf of the Coastal States Organization (CSO), we offer the following recommendations to the National Ocean Council (NOC) for use in developing a Strategic Action Plan for *Objective 2: Coastal and Marine Spatial Planning (CMSP)*. Since 1970, CSO has represented the interests of the Governors of the nation's thirty-five coastal states and territories, including the Great Lakes states, on issues relating to the sound management and development of coastal and ocean resources. CSO applauds the *Final Recommendations of the Interagency Ocean Policy Task Force* and the Strategic Action Plan efforts as they represent the evolution of the nation's management of ocean and coastal resources in a balanced approach. With respect to the CMSP objective, states possess most of the on-the-ground experience in implementing larger-scale CMSP within our nation. As the development of the Strategic Action Plan moves forward, CSO urges the National Ocean Council to consider CSO's recommendations and to value state and territorial input in order to successfully advance this objective and institutionalize the effort within the federal government.

CSO's top three recommendations for the CMSP Strategic Action Plan will ensure a strong planning process and be critical to the success of the overall effort in the long-run, transitioning the *Final Recommendations* on CMSP from an academic exercise to an effective practice in the regions.

1. Build upon the Efforts of Coastal States and Regions

CSO continues to recommend that the Action Plan build upon existing successful efforts in coastal states. For years, the states have been on the front lines of balancing competing demands in the coastal zone, nearshore waters and beyond. With their experience, the

states have led the move toward comprehensive, ecosystem-based coastal and ocean management. This is evidenced most recently by the development of Regional Ocean Partnerships around the nation led by the Governors and the employment of CMSP concepts in state waters.

The Regional Ocean Partnerships have shown significant leadership by producing meaningful and measurable results on-the-ground benefitting both the economy and the environment across a broad set of issues relevant to the National Ocean Policy. In order to effectively build upon the work to date, CSO recommends that the Regional Planning Bodies (RPB) endorse the existing priorities already identified in a region by the existing Regional Ocean Partnerships, including the Northeast Regional Ocean Council, Mid-Atlantic Regional Council on the Ocean, Southeast Governors' Alliance, Gulf of Mexico Alliance, West Coast Governors Agreement, Council of Great Lakes Governors, and the priorities emerging from efforts in the Pacific and Caribbean islands and Alaska. In terms of implementing CMSP, states are the leaders. They are utilizing CMSP as an effective tool to move toward a system of comprehensive management, including in the Massachusetts Ocean Management Plan, Rhode Island Ocean Special Area Management Plan, Oregon Territorial Sea Plan, and California Marine Life Protection Act Initiative.

Related Obstacle: States, local communities, federal agencies and the public have dedicated significant time and resources to these successful efforts in the regions and states. It is critical that the Action Plan take steps to build upon these existing efforts, taking advantage of the expertise and momentum developed to date. In this tough fiscal climate, the Action Plan should look to avoid redundancy and to maximize efficiencies. There are concerns with buy-in, costs, and the additional bureaucracy associated with incorporating a new set of individuals and rules into these existing efforts and how it could potentially undermine them and/or not be feasible (resources/time) to build new efforts around RPBs.

Additionally, this initiative causes conflict with some state and local authorities who view the effort as a top down imposition of federal authority that disregards or subordinates local concerns and priorities. When implementation discussions begin, it is vital that federal agency representatives in the regions, states, tribes and the Regional Ocean Partnerships are at the table. This is important in engaging the public stakeholders, as some may view this process as something being done to them rather than with them.

2. Develop Results-Oriented Messaging

CMSP is a planning tool that is used to build capacity in order to solve one or more management problems. To date, too much emphasis has been placed on the process of CMSP, not the intended on-the-ground outcomes. CSO recommends that messaging around CMSP focus on actions and outcomes. With decreasing budgets, both at the federal and state levels, talking about CMSP as a process will not garner the funding and support needed to advance this objective; demonstrating how CMSP can explicitly bolster economies and protect valuable ecosystems is the vital message.

CSO recommends that the messaging around CMSP recognize it as a spatial tool, within a larger complement of tools, used to achieve more proactive, ecosystem-based management in the long run. CMSP is only one type of tool utilized to achieve better planning and management in our coastal and ocean waters. While it can be a very useful tool, the messaging needs to acknowledge that it is a means, not an end. The goal is to solve the pressing issues of our time and this will require us to simultaneously pursue a complement of tools and actions, beyond CMSP. It is important to recognize the big picture within the messaging, because it places context around CMSP and continues to support our current on-the-ground work and the development of non-spatial tools and approaches to solve relevant issues. CSO also recommends the consideration of alternative references, such as ocean planning or ocean management.

Related Obstacle: CMSP has become highly politicized, which makes it very difficult to advance in this economic and political environment. Thus far, the messaging has focused on CMSP as a process that can achieve our ultimate management goals. Neither of these labels best serves CMSP or the community, as it makes it unattractive to fund, sets up false expectations, and isolates it from the larger management context making it a political target.

3. Capitalize on an Urgent Issue

In this tough fiscal climate, managers must work to solve the most pressing problems along our coasts and in our oceans. In order to garner the political will and finite resources to move CMSP forward at the state and regional levels, CSO recommends that CMS Plans initially target efforts around solving a specific issue(s) in each region. The relevant issues have already been identified, or are in the process of being identified, by the existing Regional Ocean Partnerships or their appropriate counterparts in the Great Lakes, Pacific and Caribbean Islands and Alaska. For example, many of the CMSP efforts in state waters began in response to proposals around offshore alternative energy development. In targeting this issue, the CMSP process naturally brought in multiple users and constituencies, while remaining focused on an overarching goal. Capitalizing on an urgent issue as a starting point provides an opportunity to initiate the process in a realistic manner.

Related Obstacle: National CMSP efforts are struggling to advance, so there is an urgent need to create momentum and establish or leverage funding sources. There are significant lessons learned from the states, in how they have capitalized on a pressing problem in order to mobilize constituencies and leverage funds to effectively engage in CMSP.

Short Term Actions

CSO recommends that the National Ocean Council acknowledge the following recommendations and develop supporting actions critical to the start-up of CMSP in the regions.

Acknowledge CZMA as Foundational Tool

For coastal states, the Coastal Zone Management Act (CZMA) is a legal and policy foundation for many of the identified priorities in the National Ocean Policy, especially CMSP, and, along with existing state authority, provides tools and authority for effective

coastal management. Coastal Zone Management has used CMSP-like tools for years (such as the Special Area Management Plans or SAMPs), as both are integrated, participatory and seek to reduce conflicts between human uses and the environment. Since 1990, the CZMA has specifically authorized planning for energy siting, ocean planning, sea level rise, habitat, and working waterfronts. With the unique capabilities and accomplishments of the CZMA relative to CMSP, it is important that these programs take a lead role in implementing this objective, where appropriate. CSO recommends that CZMA be recognized as a heavily utilized legal mechanism to pursue CMSP in the states and regions.

Provide Incentives to the States

CSO recommends that the Action Plan include incentives for states to ensure broad interest and participation in the RPBs. These incentives could be new funding, leveraging existing funding across federal agencies, providing federal personnel time or technical assistance, etc. States are leaders on these efforts and will need to be able to demonstrate the utility of participation in the RPBs to their Governors, some of which are new. The NOC should develop a compelling business case that clearly presents why CMSP is essential and provides concrete examples highlighting the benefits to states of engaging in the RPBs. In addition, the NOC should consider focusing their initial efforts and resources in regions where interest in CMSP activities exists amongst partner states and Regional Ocean Partnerships.

Hire Public Relations Staff

Based on the importance of messaging, CSO recommends that the NOC look into obtaining public relations staff to develop messaging regarding the national policy and CMSP. The staff could also work with existing state efforts and ROPs on outreach design regarding the RPBs.

Create a Mechanism to Provide Consistent Funding

If CMSP is to endure, CSO recommends that the Action Plan seek to identify and pursue consistent funding for the federal agencies, states, tribes, etc. Funding could come from a variety of sources, including a National Ocean and Coastal Trust Fund, better aligning existing federal funding across the agencies, or other mechanisms. If funding cannot be identified in the near-term, CSO recommends the development of a finite and realistic set of near-term goals to reflect the current funding situation. It is important to deliver on expectations to retain momentum and engagement, so the vision should reflect the current state of affairs.

Related Obstacle: Inconsistent funding runs the risk of implementing CMSP in a piecemeal way and expending resources on stakeholder-based consensus that are subject to conflicting decisions at a later stage. In order to better manage new and emerging issues, states and regions are leveraging funds from existing programs to advance their efforts on-the-ground and in the Regional Ocean Partnerships and are heavily dependent on donated time and resources. If no new funding is provided, the states will continue to focus on their own local and regional efforts and will be unable to engage in the RPBs.

In the current fiscal environment, states are struggling to fund just their mandatory programs.

Address Scale

CSO recommends that the Action Plan provide near-term actions addressing the complexities of scaling up current state CMSP efforts to a regional level, including collecting and analyzing data, information, and science, negotiating regulatory issues across boundaries, broadening stakeholder processes, etc. Where relevant, the Regional Ocean Partnerships can provide lessons learned on scaling across jurisdictions through the development and implementation of their strategic plans.

Where CMSP is just getting started in the states or may begin as a result of regional efforts by the RPBs, it is important to consider the differing context, timing, and activities of a multi-tiered approach to spatial planning. Both processes could be synergistic, yet include variations in advisory committees, stakeholder engagement efforts, messaging, etc. in order to be most effective. RPBs may be able to provide data and information, standardize and support stakeholder engagement, conduct mapping and analysis and convene partners, all of which could achieve economies of scale and result in greater efficiencies to aid in the development of individual state plans. The NOC should also address how an RPB will need to scale up to planning for the massive area noted in the *Final Recommendations*, from the high tide to the EEZ, including estuaries. It will have to be a phased approach over time.

Related Obstacle: The issues around scaling and multi-tiered CMSP efforts are complex and must be addressed; they cannot be underestimated if the goal is to achieve successful CMSP for a region. It will be a better fit if states are brought into the regional process having exercised or initiated their own state-led efforts, based on their current laws, regulations, political realities, constituencies and public interest. This will provide for local experience and feedback into the CMS Plans. Without this perspective, RPBs must move cautiously in their work plan development. They do not want to rush buy-in by the membership, be too prescriptive or exclusionary in policies or objectives, or disregard the complexities of managing across jurisdictional boundaries.

For a state that chooses to participate in an RPB, but has yet to understand its own obstacles and contributions, an RPB rushing ahead could make it nearly impossible for a state to ultimately pursue a supporting CMSP plan in state waters. Regional CMSP priorities may not translate into state waters and could be a non-starter, requiring a shift in state policies, promulgation of rules through appropriate Boards or Commissions, or passing legislation in a state legislature.

Acknowledge the Need for Flexible Timing

In developing a CMS Plan, there are many steps in the process that may require more time than what is outlined in the *Final Recommendations*. Allowing for this time could be the difference between a fully collaborative and enduring plan within a region versus a contentious and ill-supported attempt. In one state's plan, located within state waters, it took over three years to secure the support and collect the relevant data of one key

stakeholder group. While this may seem arduous, it is proving to be instrumental to the expected success of the state plan in the long-term. If the nation is going to invest the time and resources to advance CMSP, CSO recommends that the NOC allows for enough time to do it with all of the affected stakeholders and face the hurdles respective to each region, state, and locality.

Related Obstacle: The timing in the *Final Recommendations* may be unrealistic. CSO has concerns over losing momentum and facing political fallout on CMSP because a region is unable to demonstrate predicted successes within the tight timeframe.

Clarify Adherence Mechanism and Dispute Resolution

CSO recommends that the Action Plan clarify the ambiguous language within the *Final Recommendations* and the varied messaging around the adherence mechanism and the dispute resolution process. While this may be a challenge, Governors, as well as other constituencies, will need to understand the specific requirements or restrictions that are likely to be included in these mechanisms before they can commit to actively participate in the RPBs. CSO encourages these mechanisms to be more flexible and voluntary for the states and tribes, so as to encourage participation at the onset. While the federal government is under an Executive Order to work towards this objective, states are varied in their political leadership, public interest and internal capacities.

Related Obstacles: There is a lack of specificity in the *Final Recommendations* that prescribes the manner in which the CMS Plan will be used by federal agencies in the application of their separate regulatory, leasing or planning authorities. It is also not clearly defined how states and tribes would be encouraged, expected or required to adhere to the CMS Plan as a signatory. While this ambiguity can keep all interested parties engaged in this process for the near-term, in terms of advancing implementation, it will need to be specifically defined for actual buy-in and fully-engaged participation. Without question, there will be a divergence between the objectives of federal agencies, either among themselves or with the regional organizations and individual states, during the implementation of a CMS Plan.

Acquire the Data

CSO recommends that the Action Plan develop concrete steps for acquiring the data and information needed to perform CMSP and build the national information management system recommended by the *Final Recommendations*. These steps may include the following at various scales:

- Establish an agreement on the data sets that will be used for both site planning and regulatory management decisions;
- Conduct a gap analysis as to the availability of the data sets;
- Conduct a geospatial data acquisition action plan;
- Develop plan to disseminate the data;
- Develop user-friendly, open-source, efficient and transparent tools for data visualization, integration, and sharing; and,
- Summarize and evaluate decision-support tools.

The federal agencies should partner with the states and regions on all of these activities, as appropriate.

In addition to identifying a federal agency lead on the database, the federal government should designate key staff within each partner federal agency, and other relevant data providers, with responsibility for coordination and data management. CSO strongly encourages the RPBs to seek out data from all affected constituencies, including fisheries, and to build upon the current work and existing data portals in the states, in order to ensure complimentary efforts.

Related Obstacle: The federal agencies that are expected to bear the significant burden in providing the data, administration management, and infrastructure to support such a system will need to grow significant technical capacity and overcome inherent institutional intransigence.

Mid-Term Actions

In the development of the Action Plan, CSO recommends that the National Ocean Council acknowledge the following recommendations and develop supporting actions critical to the mid-term success of CMSP in the regions.

Ensure Robust Stakeholder Processes

CSO recommends the Action Plan support robust stakeholder processes in the development of CMS Plans. Ocean users and stakeholders must have meaningful opportunities to participate in the planning process in order to buy into the outcome. Participation can be encouraged through local advisory groups and/or through the development of a process, in addition to public meetings, whereby members of the public can actively engage with the RPBs or the state, at the appropriate scale. The NOC will need to assist the RPBs in recognizing and developing methods for addressing diverse value systems within the varied communities within a region that can lead to different goals and objectives within the CMSP process.

Related Obstacle: Robust stakeholder processes will take additional time and patience, but offer many benefits in the long-run. For states that have engaged in such processes, they developed non-traditional champions and are now facing less political hurdles in the advancement of CMSP.

Enhance Technical Assistance

CSO recommends that the Action Plan support enhanced technical assistance as the regions and states move forward on CMSP. The development and implementation of CMSP will bring about complex questions, tradeoffs and value assessments. The regions and states will need guidance and science-based approaches for how to evaluate the relative compatibility and incompatibility of uses in CMSP plans under alternative management schemes. The Action Plan should also support the development of models and methods for assessing and optimizing tradeoffs among social, economic, and environmental objectives at multiple spatial and temporal scales, as well as, support work to identify a currency (or currencies) for comparing outcomes of alternative CMSP plans,

noting the critical need to include market and non-market benefits from nature in the assessment.

Long Term Actions

In the development of the Action Plan, CSO recommends that the National Ocean Council acknowledge the following recommendations and develop supporting actions critical to the overall success and long-term foundation of CMSP in the regions.

Provide a Flexible Approach

CSO recommends that the Action Plan continue to allow flexibility to adapt to unique regional, state and local conditions, including political will, environmental pressures, data availability, capacity and resources and stakeholder processes. The expectation that CMSP will move forward in similar ways around the nation, or even within a region, is unrealistic, as regions will face different challenges on the ground. A successful Action Plan will enable flexibility in regional approaches and implementation.

Develop Capacity at All Governance Levels

Fundamental to the planning, monitoring and adaptive processes is spatial data and information. CSO recommends that the Action Plan institute steps towards the development of robust CMSP capacity at all levels of affected governments. With increased capacity, practitioners can define and develop planning processes, and consensus building tools, acquire and analyze data and information, implement strategies, enforce mechanisms and monitor activities.

As mentioned in previous recommendations, coastal states need support and funding for the planning and management of marine resources and uses within state waters. These state efforts will serve as the baseline for regional CMS Plans by the RPBs. CSO also recommends that the NOC consider a program that encourages the co-location of staff from various agencies, or amongst the state agencies, to foster synergy of activities, shared resources and improved efficiency.

Related Obstacles: In addition to the obstacle of minimal funding and/or resources to build capacity, federal agencies must overcome their institutional inertia to cooperate across their missions. Because of statutory mandates, federal agencies still have strong incentives to operate within silos. The perception by some federal agencies that CMSP is a task of limited duration and effort is short-sighted and self-defeating. CMSP must be an on-going process, continually adjusting and evolving, or it becomes irrelevant to management.

Develop Review Process

CSO recommends that the Action Plan look to implement a systemic periodic review process in the long-run to evaluate the use of the CMSP in the management of marine resources across all agencies and jurisdictions.

Within the CMSP objective, there are several opportunities for transformative change in the stewardship of our oceans, coasts, and Great Lakes. Most importantly, it will build strong, productive linkages between the states and the federal government, as well as other stakeholders.

This is already evidenced by the relationships within the Regional Ocean Partnerships, where vertical levels of collaboration are enabling renewed attention to pressing issues and the leveraging of resources and expertise to advance the proactive management of these important resources. Building on these efforts, RPBs should look to be a melding of purpose across agency and intergovernmental boundaries. They should also be flexible enough to provide opportunities to incorporate users and other stakeholders as active participants with more responsible roles over time, provided they engage and contribute resources.

CMSP can also provide new opportunities for and renewed interest in increasing the education level on ocean and coastal issues. Finally, for the states and federal agencies, it will increase their area of influence over decision-making in marine waters. This will be transformative to the way resources are managed in an integrated fashion.

CSO recognizes that the milestones and performance measures will play an important role in providing credibility to the implementation of the CMSP objective. Depending on the steps contained within the Action Plan, CSO looks forward to discussing in more detail appropriate milestones and performance measures. Preliminary examples of such measures could include:

- Formalization of the entities engaging in an RPB;
- Number of MOU or MOA established between agencies, states, academia and/or NGOs which formulizes the use of a specific framework around data and information gathering or the execution of regulations;
- Number of and specific constituency outreach for public meetings;
- Reduction of permitting time in planned areas; and,
- Amount of grant funding and/or technical assistance utilized.

The states and territories strongly support the NOC in its work to implement the CMSP objective. CSO appreciates the opportunity to comment and work with the National Ocean Council on this Action Plan.

Sincerely,



Braxton Davis
Chair
Coastal States Organization



Kristen M. Fletcher
Executive Director
Coastal States Organization

Sarah Marie Mooney
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**Strategic Action Plan Comment for National Ocean Council on Priority Objective #2:
Coastal and Marine Spatial Planning**

*Based on attending CMSP Conference
at Vermont Law School on April 1, 2011*

**Coastal and Marine Spatial Planning:
The Intersection between Energy, CMSP and Our Future Needs**

This comment responds to the National Ocean Council's request for input by offering insights based on the collective wisdom provided by the experts during a recent Conference on CMSP at Vermont Law School (VLS). On April 1, 2011, student members of the VLS Ocean and Coastal Law Committee, a subgroup of the Environmental Law Society hosted a high-level conference on Coastal and Marine Spatial Planning. A copy of the Conference brochure is attached. Panel participants included representatives from National Oceanic Atmospheric Administration, Bureau of Ocean Energy Management Regulation and Enforcement, Department of the Interior, the Rhode Island Coastal Resource Management Council, Defenders of Wildlife, Pew Environment Group, Ocean Conservancy, Natural Resources Defense Council, Perkins and Coie, Monterey Bay Aquarium, Vermont Law School and Stanford Law School.

An overview and introduction addressed the way CMSP integrates with the new national policy by encouraging cohesion and strategic action plans. The first panel focused on how the regulatory framework for siting and permitting offshore energy projects is transforming in the aftermath of the Deepwater Horizon oil spill. The panelists discussed how the regulatory framework fits into CMSP and what changes this holds for future projects.

One keynote speaker stressed the importance of reducing conflict and redundancy among federal agencies while emphasizing that CMSP is not an end goal, but a tool to be used to streamline the process of planning for the oceans. She explained that CMSP provides certainty to industry, facilitates the collection of interagency environmental data, and reduces litigation risks. Another keynote speaker touched on experience with CMSP on the west coast and the integration of existing state CMSP programs into a larger federal program. She emphasized the

importance of stakeholder simulation workshops, human capacity and funding in executing CMSP as an effective tool.

In the second panel, the experts were asked to address why CMSP is controversial because it may threaten stakeholder status quo usage, and how it can make progress as a tool for ocean and coastal planning. The panelists focused on how a national and combined regional plans can be effectively developed through coordination with Federal, State, tribal, local authorities and regional governance structures.

The conference initiated discussion regarding numerous facets of how CMSP is misunderstood and how it can be better explained:

1. There is a need for adequate data collection transparency and consistency. The strengths and weaknesses of the tools used to gather data for CMSP must be understood by decision makers using the data. The panelists introduced numerous tools currently in use in state CMSP programs. These tools build on different temporal and spatial scales with certain detailed caveats. For effective strategic plans, there needs to be a fundamental understanding of which tools are being used, and what those tools are qualified to measure.¹ Furthermore, scientific and ecosystem based management data must be merged with legal data for a comprehensive and effective strategic action plan.²
2. There is the need for collaboration between the Department of Defense and all other CMSP stakeholders engaged in the strategic action plan development. There were no representatives from the Department of Defense or Department of Homeland Security at the conference, and there was little guidance from the panelists on the role that the Departments of Defense and Homeland Security play in CMSP. For CMSP to function overall, the Department of Defense and

¹ Contact Sarah Carr, Ph.D., Program Coordinator from the Ecosystem-Based Management Tools Network, NatureServe at 1101 Wilson Blvd, 15th Floor, Arlington, VA 22209, Phone: 703.908.1892, Email: ebmtools@natureserve.org .

² See <http://csc-s-web-p.csc.noaa.gov/legislativeatlas/viewer.html>.

Homeland Security's CMSP perspective must be acknowledged and engaged in the strategic action plans.³

3. There is the need to generate buy in from all ocean and coastal users impacted by the strategic action plans and CMSP. Empowerment at the local and regional level, as well as a focus on publicizing CMSP as a planning tool will generate more buy in. Further acceptance of CMSP can be gained by conducting stakeholder simulation workshops and CMSP educational workshops in order to demonstrate exactly how this conceptual framework operates in real decision making processes.⁴

³ There will be a workshop titled: *Coastal and Marine Spatial Planning (CMSP): Introduction and Simulation Exercise*, which will be held at the 2011 Sustaining Military Readiness Conference in Nashville, TN from 7/25/11-7/29/11. This four-hour workshop will introduce the EO 13547 goals and objectives, the National Ocean Council structure including the Regional Planning Bodies, a description of CMSP processes, and the tools and technology available to conduct CMSP. There will be a two-hour mini-CMSP exercise, followed by a Question & Answer/open discussion on CMSP with the workshop participants. It would be ideal to publicize this workshop to all organizations involved in CMSP work in order to see the function and role of DoD CMSP.⁴ Contact Meg Caldwell at megc@law.stanford.edu for more information on successful stakeholder simulation workshops.

⁴ Contact Meg Caldwell at megc@law.stanford.edu for more information on successful stakeholder simulation workshops.

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**Strategic Action Plan Comment for National Ocean Council on Priority Objective #2:
Coastal and Marine Spatial Planning**

*Based on attending the CMSP Conference at
Vermont Law School on April 1, 2011*

**Coastal and Marine Spatial Planning:
The Intersection between Energy, CMSP and Our Future Needs**

States have much to teach the federal agencies responsible for implementing the National Ocean Policy (NOP) adopted in 2011. This comment suggests that existing state ocean policies should be incorporated into the NOP.

Well before 2011 many States had adopted management plans that recognized the importance of the nine priority objectives later outlined by the National Ocean Council. These include ecosystem-based management, coastal and marine spatial planning, and coordination and support between all of the key players governing marine resources. It would be a shame to push aside the hard work of states like California and Rhode Island that have already created and begun to implement many of the nine priority objectives. Instead, a process should be created that mimics that of the federal consistency requirement found in the Coastal Zone Management Act (CZMA) so that state programs found to be consistent with the NOP can be incorporated into the Regional plans. *See* 16 U.S.C.A. §§ 1451-1464.

The NOP sets up a system under which Strategic Action Plans provide guidance for Regional Planning Bodies in creating Regional Plans that are consistent with the goals outlined in the NOP. The Strategic Action Plans should outline broad requirements that Regional Plans need to meet in order to comply with the NOP. In addition, states whose ocean policies relate to the nine priority objectives should be able to apply for a federal consistency determination that the state's ocean policy complies with the nine priority objectives outlined by the NOP and therefore should be deemed to satisfy the Regional Plans requirements.

Under the CZMA, each State's coastal management programs must address a laundry list of requirements before the Secretary of Commerce approves the state's program. 16 U.S.C.A. § 1455(d). The requirements are broad, leaving room for each state to decide how best to comply

with the requirements based upon its resources, governance structures, etc. In enacting the CZMA Congress found that “because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.” 16 U.S.C.A. §1451(m). The significant interest states have in managing their ocean and coastal resources lead states to develop their own ocean policies before the NOP.

These state ocean policies should be incorporated into the NOP for three reasons: (1) States have already put the time, money, and resources into developing a plan to regulate ocean resources saving the federal government time and energy from having to do the necessary research to develop an ocean policy; (2) States are most familiar with the local ocean users including state, tribal, and local authorities and the political interests each stakeholder has in regulating and managing coastal resources; and (3) the current proposed structure for the NOP lends itself to adopting state ocean policies.

States have already done the research:

States that have adopted ocean policies have already put in the time, money, and resources to doing the necessary research to develop comprehensive, ecosystem based plans. In addition to gathering such data, the states have analyzed the data and have developed plans based on sound science. It would be wasteful to ignore such efforts by the states in order for the Federal government to turn around and have to perform the same tasks to develop plans.

For instance, Rhode Island’s planners spent years filling in the gaps in data they needed to implement an ecosystem based approach to regulating the state’s marine resources. The research they gathered included life history and habitat of commercially and recreationally important fish species; recreational and tourist uses of the marine ecosystem; submerged archaeological sites; shipping routes and traffic; right whale management areas; viable sites for offshore energy projects; etc. Once this data was gathered, Rhode Island was able to overlay the data to see what ocean uses were traditionally found in what areas. From there, they implemented the Special Area Management Plan goals:

- Foster a properly functioning ecosystem that is both ecologically sound and economically beneficial
- Promote and enhance existing uses
- Encourage marine-based economic development that meets the aspirations of local communities and is consistent with the state's overall economic development needs and goals, including offshore renewable energy infrastructure and
- Build a framework for coordinated decision-making between state and federal management agencies. (See http://seagrant.gso.uri.edu/oceansamp/pdf/documents/doc_osamp_brochure.pdf).

If states have already taken the time and invested money in researching and developing an ecosystem approached plan, then the Federal government should adopt such plans if they are consistent with the goals set out in the NOP.

States are Most Familiar with the Regulated Community:

The states may already have in place the existing stakeholder groups that are required under NOP. For instance, in Rhode Island there are stakeholder groups that were established when the Ocean Special Area Management Plan was created and implemented consisting of government, citizens, civic and environmental organizations, resource users, and the private sector. (See http://www.crmc.ri.gov/samp_ocean/finalapproved/RI_Ocean_SAMP.pdf). These organizations should be utilized when developing strategic action plans.

States are best equipped to create management plans because they are most familiar with their marine resources, the ocean users, and the political pressures that go into regulating marine resources on their coasts. Therefore, if states have developed programs that already address the nine priority objectives their programs should be found consistent with the NOP and incorporated into the Regional Planning Bodies' Regional Plans.

Current Proposed NOP Structure Could Easily Incorporate a Consistency Requirement:

The Strategic Action Plans should consist of a broad laundry list of requirements that state's programs would have to comply with before a state's plan would be deemed consistent with the NOP. This list should not be identical to requirements under the CZMA, but like the

requirements listed in the CZMA, should be broad enough to permit great flexibility in the type of approaches to coastal management that states can choose from. The Strategic Action Plans are supposed to “establish national objectives for CMSP consistent with, and in furtherance of, the National Policy, CMSP goals and principles, and other relevant national goals and priorities.” (p. 71). These national objectives shall give direction to regional planning bodies in order to help maintain national and regional consistency. (p. 71).

The Final Recommendations of the Interagency Ocean Policy Task Force already lay out the essential elements of a Coastal and Marine Spatial Plan (CMSP): Regional Overview and Scope of Planning Area; Regulatory Context; Regional Assessment; Objectives, Strategies, Methods, and Mechanisms for CMSP; Compliance Mechanisms; Monitoring and Evaluation Mechanisms; and Incorporation of the Dispute Resolution Process. (p. 58). The Recommendations go on to lay out a little more detail on what should be included for the essential elements of a CMSP. For the “Compliance Mechanisms” requirement the following guidance is given on what a CMSP should include: “The CMS Plan would specify mechanisms to enhance coordination and cooperation among decision-makers and promote consistency in each agency’s interpretation and application of its respective existing laws and regulations used for implementation and enforcement of CMS Plans.” The flexibility given to the Regional Planning Bodies then is great to create Compliance Mechanisms.

Since great flexibility is given to Regional Planning Bodies in the type of approach they adopt to create CMSP, already existing state ocean policies could easily be deemed consistent with the Regional Plans encompassing the broad requirements in the Strategic Action Plans. In addition, the Recommendations recognize that sub-regional plans maybe developed and overseen by the regional planning body. (p. 54). The states ocean policies could be considered sub-regional plans as outline by the Recommendations for which the regional planning bodies oversee. Therefore, if states ocean policies comply with the nine-priority objectives setout in the NOP, guided by principles in the Strategic Action Plan and the Regional plans, then the states ocean policies should be deemed consistent.



UNITED FISHERMEN OF ALASKA

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April 27, 2011

National Ocean Council
722 Jackson Place, NW.
Washington, DC 20503.
Submitted electronically via:

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

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

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

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

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

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

United Fishermen of Alaska priority recommendations:

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

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

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

2. Access to productive ocean and coastal waters.

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

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

3. Local Empowerment.

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

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

4. Regional Planning Bodies – representation for commercial fishing stakeholders

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

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

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

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

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

Thank you for your consideration.

Sincerely,



Mark Vinsel
Executive Director

CC:

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

MEMBER ORGANIZATIONS

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

Index:
Attachments to Comments
And Letters Received
Pertaining to Costal and Marine Spatial
Planning and Other Strategic Action Plans

April 28, 2011

Nancy Sutley
Council on Environmental Quality
722 Jackson Place NW
Washington, DC 20506

John Holdren
Office of Science and Technology Policy
725 17th Street NW
Washington, DC 20502

Re: Strategic Action Plan Comments on Priority Objectives Two, Three, and Four

Dear Chairwoman Sutley and Director Holdren:

As a student at Vermont Law School who has just attended a conference on coastal and marine spatial planning, I respectfully submit to the National Ocean Council these comments on priority objectives one, two, and four. With these comments I outline how priority objective four should be incorporated into priority objectives one and two.

The international community should be engaged in the process of implementing ecosystem-based management and coastal and marine spatial planning.

Objective four states an interest in engaging with the international community as appropriate. This part of objective four should not be downplayed. It is appropriate to engage the international community when carrying out objective one, coastal and marine spatial planning, and objective two, ecosystem-based management.

The Final Recommendations of the Interagency Ocean Policy Task Force emphasize the importance of United States accession to the United Nations Convention on the Law of the Sea. Ratifying UNCLOS is indeed an essential step to the management of our ocean resources. UNCLOS identifies rights and responsibilities of a nations' use of the oceans including the need for conservation and protection; however, it lacks the necessary backing for EBM. CMSP is a tool that can be used to accomplish the objective of EBM. In order to effectively accomplish EBM, the NOC should seek international support beyond that of UNCLOS in the area of CMSP.

For the purposes of CMSP the Task Force's Final Recommendations divided the United States into nine regional planning areas based on large marine ecosystems. However, many species, natural resources, and human uses cross the boundaries of these LMEs, both within different regions of the U.S. and beyond the jurisdiction of the United States. Consequently, management of these resources will be difficult while staying solely within the jurisdiction of the United States. Without integration of and coordination with the international community, EBM and CMSP will not be as effective as desired.

Programs already implemented in states and other nations should be used as precedent for implementing ecosystem-based management and coastal and marine spatial planning.

CMSP is practiced differently across the world and terms are used inconsistently, however the NOC should take advantage of other nations and individual states that have implemented CMSP. These nations are setting precedent and establishing processes. Prime examples include The Netherlands and Rhode Island. Although CMSP should be implemented region-by-region and state-by-state in order to meet localized needs, the NOC should use these existing examples to provide a foundation to begin CMSP in the nine LMEs.

The main obstacle to implementation of coastal and marine spatial planning is a lack of data and information. The first thing the NOC should focus on is extensive mapping of each LME. All relevant stakeholders, including but not limited to, federal agencies, states, regions, tribes, fisherman, and developers, should be involved in the mapping process. Ecosystem based management is multidisciplinary; therefore CMSP cannot be effectively implemented without engaging all relevant stakeholders from the start.

For purposes of conflict avoidance and effective implementation of EBM, scientific analysis and mapping cannot end at the boundary of each LME. In order to preserve highly migratory fish stocks and marine mammals international cooperation will be necessary. Consequently, CMSP must take into account programs being implemented in other nations. It should be kept in mind that CMSP is a tool, not the ultimate goal. If one of the goals of Executive Order 13547 is to implement effective EBM, then CMSP must utilize the international community with greater importance than the language “as appropriate” used in priority objective four.

Thank you for your efforts and for your consideration of these comments.

Sincerely,

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Recommended Materials:

Fanny Douvère & Charles Ehler, *New Perspectives on Sea Use Management: Initial Findings from European Experience with Marine Spatial Planning*, 90 *Journal of Environmental Management* 77-88 (2009).

Jake Rice, Kristina Gjerde, Jeff Ardron, Salvatore Arico, Ian Cresswell, Elva Escobar, Susie Grant, & Marjo Vierros, *Policy Relevance of Biogeographic Classification for Conservation and Management of Marine Biodiversity Beyond National Jurisdiction, and the GOODS Biogeographic Classification*, 54 *Ocean & Coastal Management* 110-122 (2011).



April 29, 2011

Ms. Nancy Sutley, Dr. John Holdren, and Members
National Ocean Council
Council on Environmental Quality
722 Jackson Place, NW
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Dear National Ocean Council Members:

On behalf of Food & Water Watch (FWW),ⁱ please accept this letter as formal comments on the Strategic Action Plans (SAPs) of the National Priority Objectives (Objectives) for implementing the Final Recommendations of the Interagency Ocean Policy Task Force. We appreciate the National Ocean Council's efforts in overcoming ad-hoc, fragmented oceans management and planning for long-term, holistic approach to oceans policy.

As a consumer organization, FWW is very interested in U.S. ocean policy as it relates to the product consumers ultimately receive. People tell us regularly that they are paying more attention to the fish they eat, how it is produced or caught, and whether it is well managed. We appreciate the opportunity to comment on these matters, and will address four of the nine objectives, reminding the Council that we have also previously submitted comments on the Policy as a whole.

Objective One: Ecosystem-Based Management

When considering fisheries, ecosystem-based management often refers to the consideration of all wild stocks and how they interact with each other and the marine environment. FWW supports the Council's efforts to break free of the narrow focus of single-species management, as successful fisheries management can only arise from consideration of big picture, ecosystem-level relationships. We seek to expand the Council's understanding on how failure to consider other industrial activities that impact fisheries, such as offshore aquaculture, can prevent successful management of a marine ecosystem's wild fish stocks.

The Dangers of Offshore Aquaculture

Ocean finfish farming can be problematic for both the environment and the economy. The waste – fecal matter, uneaten food, and any chemicals or drugs used in the operation – flows directly into the ocean, and the ecological equilibrium of the seafloor or surrounding area could be permanently damaged.ⁱⁱ Fish often escape from ocean cages, and once in the wild, they can interbreed with or outcompete wild fish, leading to decreased genetic viability and potential population collapses. Even before fish escape, they can spread diseases and

parasites to nearby wild fish. For example, sea lice have been well documented to be problematic around salmon farms.ⁱⁱⁱ

Ocean fish farming could actually increase pressure on wild fish, because the most commonly farmed fish are carnivorous – they often need to eat other fish. Thus, the feed given to captive fish often uses large quantities of fishmeal and fish oil.^{iv} Already, fish farms use a significant portion of the world supply of fishmeal and fish oil from our oceans, such as sardines, herring, and menhaden.^v Removing these fish from the ocean to feed farmed fish reduces the availability of food for whales and other ocean mammals, and for larger predatory fish and sea birds. Notably, these smaller fish are also food for many low-income coastal communities worldwide. Reducing stock availability may deprive already food insecure people of a primary protein source.

Using soy to replace fishmeal has been suggested as a more sustainable option, but this alternative is not without concerns. The implications of adding a terrestrial plant – high in estrogen-mimicking compounds, which has been known to harm the reproductive capabilities of fresh water fish^{vi} – to the oceans over the long term have not been fully researched. Moreover, fish fed diets high in soy produce more excrement,^{vii} thus adding extra waste to the marine environment.

Ecosystem based management requires taking into account impacts on human communities as well as the health of ocean resources. Unfortunately, fish farming can also harm commercial and recreational fishermen, as well as the coastal communities where they live. Worse than failing to fulfill the promise to provide new jobs, U.S. ocean fish farms are likely to outcompete and ultimately replace traditional fishing occupations, causing widespread job losses. This happens due to simple market forces: industrial farming can regularly produce tons of fish. Flooding the market with these fish can cause prices to drop. Also, companies can usually charge less for farmed fish, because artificially subsidized mass production is less costly and less time intensive

Environmental concerns with ocean fish farming:

- The only published study of offshore aquaculture in the United States found that aquaculture cages, even in deep ocean waters (35 meters deep, with bottom currents estimated to be no stronger than 50 cm/s), had “grossly polluted” the sea floor and “severely depressed” marine life at some sampling sites very close to the fish cages and that, over the course of 23 months, these effects had spread to sites up to 80 meters away.¹

- Extensive research shows that the escape of farmed fish into the wild can result in competition for food and space, and cause predation on native species.²

- A study in 2007 of sea bass and gilthead sea bream operations in the Mediterranean Sea found significant sedimentation of feces and uneaten feed underneath fish farms placed at depths of about 50 to 90 feet with swift currents.³

¹ Lee, Han W. et al., Temporal Changes in the Polychaete Infaunal Community Surrounding a Hawaiian Mariculture Operation.” *Marine Ecology Progress Series*, Vol. 307, 175–185 (January 2006).

² Marine Aquaculture Task Force, “Sustainable Marine Aquaculture: Fulfilling the Promise; Managing the Risks.” January 2007. One species with two biologies: Atlantic salmon (*Salmo salar*) in the wild and in aquaculture. *Canadian Journal of Fisheries and Aquatic Sciences* 55(Suppl. 1):131–144).

³ Holmer, M. et al. “Sedimentation of organic matter from fish farms in oligotrophic Mediterranean assessed through bulk and stable isotope ($\delta^{13}C$ and $\delta^{15}N$) analyses.” *Aquaculture*, 262: 268–280, 2007.



than traditional fishing. Usually, fishermen cannot compete with lower fish prices, especially now with sky-high rates for the fuel necessary to run fishing boats.

As the number of fishermen dwindles, other local businesses will also suffer, risking more job loss and hurting economies of coastal communities. Even industrial enthusiasts have openly stated that offshore aquaculture will neither lead to a net increase in employment, nor domestically available seafood. (Current trade patterns and international imbalances in seafood import standards mean that 70% of U.S. seafood is exported to countries that are willing to pay for higher health, safety, environmental and labor standards.)

Incorporating the Council's Call for Ecosystem Based Management Offers a Solution

A holistic, more eco-system based approach to fisheries management requires revisiting the Administration's current emphasis on ocean fish farming as the main way to increase US finfish production. Ocean fish farming – potentially injurious on so many levels - should not be allowed to expand in U.S. waters, especially after so much time has been put into developing a sustainable long-term approach to oceans management. Rather than creating a federal policy to regulate offshore aquaculture or to permit or “zone” its development, this Task Force should direct the NOC *not* to pursue ocean aquaculture in U.S. waters, and instead develop a strategic action plan to prevent such harm.

While there is a need to supplement wild-caught domestic fish to meet consumer demand for seafood, there are many forms of aquaculture that could fill this niche, and some are better than others for producing a cleaner, greener, and safer product. Rope-grown farmed shellfish, like mussels, is a good example.^{viii} Another form of more sustainable aquaculture is land-based Recirculating Aquaculture Systems (RAS), closed-loop facilities that retain and treat the water within the system.

Objective Two: Coastal and Marine Spatial Planning (CMSP)

If done well, CMSP can offer beneficial, common-sense results, such as the example of the Stellwagen Bank National Marine Sanctuary, on p. 45 of the National Ocean Policy document. However, there is great concern that CMSP will be used to zone exclusive access to benefit a lucky few businesses, to the detriment of our natural resources and the public.

Exercise Caution in Protecting “New Investments”

FWW is concerned that the goal to protect “new investments” could dominate the others. This goal (p. 48) reads: “Increase certainty and predictability in planning for and implementing new investments for ocean, coastal, and Great Lakes uses.” On the very same page, offshore aquaculture is referred to as an “emerging use.” We are concerned that shortcuts might be taken to streamline zoning of certain areas of



the ocean for offshore aquaculture – and that because they have been zoned as such, that environmental impact assessment requirements might be reduced or expedited, and public input therefore inappropriately limited or eliminated.

While it is true that CMS Plans do not substitute for “existing legal obligations,” it would be problematic if a fast-tracked permitting process for offshore aquaculture, for example, were to be interpreted as having met such obligations.

Stakeholders and Opting Out

FWW applauds the Task Force for recognizing the importance of public and stakeholder engagement, even in the early stages of a CMS Plan (phase I). Part of ensuring “substantial opportunity for public participation” means that the opinions and experience of people from the region will be seriously considered in addition to local agencies. On p. 63 it appears that regional fishery management councils (RFMCs) will be consulted as part of the CMSP process. While this makes sense, it is imperative that agency officials do not equate consultation with RFMCs as having sufficient regional public input. RFMCs are composed of members who have been chosen in part based on their profession and have an incentive to protect their industries. Oftentimes, the concerns of fishermen, coastal businesses, waterfront communities, consumers and conservationists from their region are not given full consideration. Additional stakeholder processes should be put in place during CMS program development.

Because there is no ability to opt-out of a CMS Plan, FWW is very concerned that local groups, regions, or states might potentially become subject to CMS Plans that they do not support. On p. 60, the Task Force states: “In the event that a particular State or tribe opts not to participate in the development or implementation of a CMS Plan, the development or implementation of the CMS Plan would continue.” This seems very problematic. For example, if the question for the numerous agencies is where to site sea cages for use in offshore aquaculture in order to best avoid shipping lanes and essential fish habitat, it is inappropriate to only ask the public where to locate the cages when the public opposes the operation altogether. Rather, the question should be whether or not to move forward with ocean aquaculture before asking where to site it.

FWW believes that an opt-out provision would be beneficial. If a proposed CMS Plan is not in the public interest, it should not go forward. The Task Force must consider what criteria should be used to determine whether a CMS Plan is in the public interest for a given region, and how that region can opt-out of a plan.

Objective Four: Coordinate and Support

The following suggestions in this section will focus primarily on the regional management of the ocean, particularly ensuring that the voices of those in coastal



communities are given equal or greater weight than economically driven industry voices.

Council Reform and Comprehensive Management

Interagency coordination has often been a disjointed and closed-door process in the past due to lack of coordination between agencies and the council decision-making process. The second issue is the closed-door nature of fisheries management decision-making, which should be more transparent.

In order to address the lack of agency coordination, the new ocean governance agency should be separate from the Department of Commerce. As long as fisheries management remains under Commerce, it will remain difficult to manage fish in a manner that does not place too large of an emphasis on economic gain, rather than sustainable use of shared public trust resources. Language in the Magnuson-Stevens Act suggesting decision-makers should consider all factors is currently insufficient to address this issue.

The new agency should focus on the bigger picture, and allocate its resources to dealing with problem areas instead of continuing with a reactive approach that responds to a particular fish stock on the verge of collapse. The agency must work on a holistic, ecosystem-based approach to marine resources management.

In 2002, a Stanford University study found four reasons why the councils are not able to effectively regulate coastal fisheries:

- 1. The councils decide both how many fish can be caught and who can catch them. Because larger catches are easier to divide up among competing fishery interests, the councils' responsibility to allocate catches encourages them to set lax fishery limits undermining conservation.*
- 2. More than 80 percent of the citizens who are appointed to the councils by the Secretary of Commerce represent the fishing industry. Homogeneous groups are less likely to produce well-considered decisions than groups with diverse membership.*
- 3. The large number of council members drawn from industry results in ubiquitous conflicts of interest. Yet the conflict of interest rules that apply to the councils are very weak compared to those that apply to other government decision-makers.*
- 4. Despite its legal responsibility to carefully oversee the councils, NMFS gives the councils significant leeway in decision-making.^{ix}*



To these, we add that council appointees are finalized by the very entities they advise (NMFS, NOAA, and the Department of Commerce). This means that “loading” the councils – to ensure recommendations in line with administration priorities, whether the public supports these priorities or not – is happening more and more. This is very troubling. Administration appointees should not interfere with the appointment of council members without a publicly stated and justifiable cause. For example, last year, Rita Merritt was removed from the South Atlantic Fishery Management Council, against the will of Governor Perdue of North Carolina and that of many fishermen in the region. While there was no stated reason for this change on the Council, many have speculated it was due to Merritt’s resistance to the Administration’s interest in pushing for catch shares.

The intent behind the Council system is to have people most familiar with the regional fisheries participate in management and to represent those in the region. Unfortunately, this system is broken. The council appointment process should be revised to both expand participation (with various interests represented), and to promote a more public approach to appointments.

The new agency should also address issues that have arisen with Interdisciplinary Planning Teams (IPTs), which have functioned in a way that avoids regional public input. Formed several years ago by the RFMCs and NMFS, these advisory bodies are composed of council members, NMFS and other agency personnel, and occasionally experts called in for consultation. The IPTs meet regularly to discuss developing council plans, outside of public venues and without public notice (meaning that there has been no publication in the Federal Register of these meetings). The IPTs have made changes to plans without public input and present these changes at council meetings for approval.

This is not how the council process was intended to function - nor is it in keeping with the key principle that oceans resources are public assets. While we appreciate the greater interest and coordination on council plans, IPTs hinder the transparency of the process. In the interest of a more collaborative and public approach to fisheries management, we urge that IPTs either be discontinued *or* that they be fully open to the public and announced in the Federal Register like council meetings.

Stakeholder input through public comment sessions should be given more weight in the decision making process. As it currently stands, councils do a poor job of advertising public comment periods. As mentioned above, they are not even a part of IPT meetings. This discourages public participation in fisheries management. In our own experience with public comment sessions at council meetings, oftentimes certain groups are given more time than others to comment, and those left to comment last receive the least amount of time and attention. This is inappropriate. Equal time should be allotted to all participants.



In addition to clear notice of *when* the public may comment at meetings, councils should consider the comments made in a more meaningful way. For instance, councils often listen to hours of public comments, and then fail to address any of the issues raised during the subsequent discussion. In sum, public participation should be more than just a requisite farce – and in addition to allowing more opportunities for public comment and giving widespread notice of when public comment periods are scheduled, public input should be considered carefully in decision-making.

The Governance Coordinating Committee

In addition to issues with RFMC reform, we desire to highlight the role of the Governance Coordinating Committee. It is critical that the “eighteen members from States, federally-recognized tribes, and local governments” truly represent the interests of the people from those areas. To that end, we are concerned that these “members would be chosen by the NOC.” Giving the federal officials the power to choose who they want to work with at the state, local, and tribal level might lead to the selection of those who already share a similar interest in a given management plan or CMSP, rather than necessarily representing the interests of the people. This might inadvertently leave out important concerns of the people from that region and inappropriately limit the amount of information and experience in designing the program.

The Ocean Research and Resources Advisory Panel (ORRAP)

In a similar vein, the role of ORRAP is highly problematic. The Secretary of Defense chooses ORRAP members, and it is unclear why the Department of Defense should exclusively determine who makes up this advisory panel intended for more holistic ocean management. The public should have a more active role in nominating and confirming the members of this group, to avoid security and industry interests dominating the thinking and outcomes. It is furthermore difficult to see how ORRAP “would provide independent advice and guidance to the NOC,” particularly when some members are explicitly from “ocean industries” (p. 27).

The expansion of ORRAP is also perplexing – “membership would be reviewed to determine whether to include additional representatives to broaden the level of expertise in support of the goals of the National Policy.” Members from a wide array of interests must be included for this body to be valuable, and the NOC should reconsider and redesign this body so that the public has a prominent role in the representation. It remains unclear which goals would require “additional representatives.” The NOC should furthermore disallow the Secretary of Defense to serve as the controlling entity.

Objective Seven: Water Quality and Sustainable Practices on Land

Adoption of Recirculating Aquaculture Systems to Curb Pollution



There are many forms of aquaculture, including open-water and recirculating aquaculture. Open-water aquaculture, as discussed above, allows fecal waste, chemicals, antibiotics and excess feed to flow freely into rivers, bays and oceans. This unfiltered discharge does not occur in land-based recirculating aquaculture systems (RAS). The NOC should emphasize RAS to increase aquaculture production in the US over environmentally harmful forms of aquaculture, such as open-water.

Smart and Responsible Land Use to Protect the Marine Environment

While addressing the issue of water quality and sustainable practices on land will be a multi-faceted approach, FWW believes that any meaningful approach to both fish farming and production of vegetables, one that fully internalizes the true costs of production, will involve land-based aquaponics. We can spare the ocean the pollution from unsustainable ocean fish farming and chemically-intensive agricultural operations and Concentrated Animal Feeding Operations by adopting a safer alternative to aquaculture and agriculture on land.

A national policy supporting RAS would enable this industry to grow faster than it has on its own. Since the policy of NOAA has been to support ocean fish farming, the industry has received millions of dollars in grant money, but existing ocean fish farms at academic institutions and state waters have yet to prove that they can be ecologically sustainable or economically feasible. If these grants could be directed toward RAS, such as in S. 3417, The Research in Aquaculture Opportunity and Responsibility Act (2010), they would fund development of a more feasible and environmentally friendly industry, which could provide fresh local seafood across the country. NOAA and the U.S. Department of Agriculture should manage RAS under a coordinated program.

Thank you for considering our comments, and please feel free to contact any of us who are part of the Fish Program at Food & Water Watch.

Sincerely,

Food & Water Watch Fish Program

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James Mitchell, Policy and Legislative Coordinator
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¹ Food & Water Watch (FWW) is a nonprofit consumer advocacy organization headquartered in Washington, DC that runs cutting-edge campaigns to help ensure clean water and safe food. We work



with various community outreach groups around the world to create an economically and environmentally viable future. We advocate for safe, wholesome food produced in a humane and sustainable manner, and public rather than private control of water resources, including oceans, rivers and groundwater. The FWW Fish Program promotes clean, green, safe seafood for consumers, while helping to protect the environment and support the long term well-being of coastal communities.

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- iii Krkosek, M, Ford, J.S., Myers, R, A., Lewis, M.A. "Parasites from Farm Salmon Declining Wild Salmon Populations in Relation to Parasites from Farm Salmon," *Science* 318, 2007 at 1772.
- iv Naylor, Rosamond L. et al. "Effect of aquaculture on world fish supplies," *Nature* Vol. 405, 2007 at 1017- 1024.
- v Tacon, Albert et al. "Use of Fishery Resources as Feed Inputs to Aquaculture Development: Trends and Policy Implications." FAO Fisheries Circular No. 1018, Food and Agriculture Organization of the United Nations, Rome, 2006.
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- viii "FAQs." American Mussel Harvesters, Inc. North Kingston, RI available at: www.americanismussel.com/faqs.html.
- ix Eagle, Josh et al. *Taking Stock of the Regional Fishery Management Councils*. Pew Science Series on Conservation and the Environment. Island Press. 2003, at 5.

SPO



Maine State Planning Office

Executive Department

PAUL R. LEPAGE
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April 29, 2011

Nancy Sutley, Chair
Council on Environmental Quality
The White House
1600 Pennsylvania Avenue, NW
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FILED ELECTRONICALLY

RE: National Ocean Council; Comments on the strategic plans to address national objectives

Dear Ms. Sutley:

We are writing in response to the January 24, 2011, Federal Register notice published by the Office of Science and Technology Policy.¹ The notice solicits comments for consideration by the National Ocean Council (NOC) in developing proposed strategic action plans for the nine priority objectives which are identified in final recommendations of the CEQ-led Interagency Ocean Policy Task Force (Task Force) and incorporated by reference in Executive Order 13547. The State of Maine has grave, fundamental concerns about the establishment of such a far-reaching policy, and its associated initiatives, that are completely outside the legislative process and in a manner that not only bypasses, but completely excludes, current statutorily established decision making bodies.

Overview:

Maine has a strong and enduring interest in protecting and enhancing the biological productivity of the ocean environment and opportunities for related beneficial human uses, such as commercial fishing, and both exercises its constitutional rights and participates in statutorily mandated regional resource management bodies whose authority has been established by statute and supersede those of the National Ocean Policy (NOP). Ensuring compatibility and minimizing potential conflicts among fishing and other valuable, traditional ocean uses and promising, emerging uses of the marine environment, such as deep-water offshore wind energy production, needs to be among the primary objectives of coastal and marine spatial planning and needs to be conducted under the aegis of those states and statutorily mandated regional resource management bodies. Accordingly, we urge the NOC to ensure that its strategic action plans

¹ The Maine State Planning Office (SPO) developed these comments in consultation with the Office of the Governor, Maine Departments of Marine Resources, Environmental Protection, and Conservation. SPO's duties include administration of the State's networked coastal zone management program.

answer to and serve these core interests and authorities, which are vitally important not only to Maine but to the nation as a whole.

Coastal and marine spatial planning (CMSP) is a central and defining feature of the NOP and a principal engine of change that may drive action and progress in meeting a number of the Policy's objectives. We recognize that CMSP has the potential to serve the above-noted, overarching public policy goals and to facilitate optimal use of the marine environment. Realization of that potential is, however, contingent on a number of factors, chief among them assurance that:

- Coastal marine spatial plans are conceived as dynamic, information-oriented tools to be employed by public and private decision-making bodies established by statute, operating under the constitutional authority of states, tribal or other authority, as opposed to static, prescriptive zoning plans that may both unduly hamper existing uses and discourage investment and innovation related to emerging uses;
- There is adequate representation of fisheries managers and the interests of the fishing industry and other existing users and stakeholders of the marine environment, including seats at the decision-making table for representative of states and of statutorily mandated regional resource management bodies such as the New England Fisheries Management Council (NEFMC) as well as interstate management bodies such as the Atlantic States Marine Fisheries Commission (ASMFC), at all planning and decision-making stages;
- Expectations regarding state contribution to CMSP efforts, including the nature and extent of state agencies' participation, are commensurate with resources available for plan development, implementation, and on-going improvement of information resources;
- Maine's interests are considered on par with those of other more densely populated and more developed states in its Northeast planning region; and
- The unique resources and environmental conditions of Maine's coastal waters, which are generally subject to a lower degree of upland development-related influences than those of other Northeast states and not currently significantly exploited for commercial interests, are taken into consideration when evaluating and accurately reflected in developing policy options that may affect uses of or in its coastal waters.

The following comments highlight specific issues or concerns regarding several SAP objectives and are divided into recommended short, medium, and long-term actions.

Objective 1: "Ecosystem-Based Management: Adopt ecosystem-based management as a foundational principle for the comprehensive management of the ocean, our coasts, and the Great Lakes"

Short term:

- Clarify EBM definition. To ensure a shared understanding and facilitate comparison and assessment of relevant initiatives, the NOC should clearly define "ecosystem-based management" (EBM) as used in its strategic plans and related activities. This definition should be well-adapted to CZMA-based coastal planning and management; and consequently should specify that EBM is an approach and tool for use by managers of statutorily mandated resource management bodies to use in the exercise of their responsibilities and authorities. The NOC's plan should recognize that such an approach necessitates and identifies sources for additional federal funding support, through the CZMA or otherwise, to ensure state-level capacity for:
 - scientific research to improve understanding of current environmental conditions, stressors, and impact thresholds;
 - a robust public process conducted under statutorily mandated regional resource management bodies to develop ecosystem values;
 - design and implementation of regulations based on sound science;
 - programs that monitor effectiveness and the ability to develop and populate indicator programs; and
 - translation of all of the above into outreach and education materials for a variety of audiences.
- Ensure NOC and fisheries-related EBM efforts are complementary. Fisheries management councils established under the Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA) have been leaders in the field of ecosystem based management and their work, and related focus on fisheries habitat issues, continues to evolve. NOC staff has reportedly advised that it is researching whether under the Federal Advisory Committee Act (FACA), MSFCMA councils, which are not executive branch agencies directly subject to the terms of Executive Order 13547, may participate on the Regional Planning Bodies (RPB) charged with developing CMSPs. Although NMFS, with whom the councils work closely, is on the NOC, statutorily mandated regional resource management bodies do not have a seat at the NOC. It is essential to include the statutorily mandated regional resource management bodies at the decision-making table, in particular at the NOC in addition to the RPB, and we object to the use of the Executive Order in an attempt to supersede or conflict with their legislative authority. The NOC's deliberations must include well-informed representation of fishing interests at all planning and *decision-making stages*. See also related comment regarding objective 2 (coastal and marine spatial planning).

- **Ensure eco-regional assessment serves states' needs.** The NOC should ensure opportunity for coastal states' active involvement in the design and implementation of eco-regional assessments. To optimize the assessments' utility for state coastal managers, the data used needs to be sufficiently detailed to capture the specific environmental conditions in states in a region. For example, use of the National Coastal Condition Assessment, which employs probabilistic (random) sampling, would be problematic. Many states, including Maine, have repeatedly objected to this approach; it enables generalized condition assessments that facilitate comparison of one state to another but it is of limited use in addressing specific, in-state problems that require coastal states' time, attention, and funds.

Medium term:

- **Remove obstacles to federal agencies' consideration of state-produced data.** The NOC should identify obstacles to and develop recommendations for changes in law and policy as needed to facilitate federal agencies' use of state-produced environmental data. Maine DEP, for example, notes that it has had difficulty sharing data with EPA even though it considers the state information superior to that used by EPA.
- **Ensure well-coordinated monitoring efforts.** Assurance of effective monitoring of ocean and coastal resources and key environmental conditions needs to be a centerpiece among NOC's strategies. At present, existing monitoring efforts are not effectively networked and integrated. The NOC, with assistance from the National Research Council, should:
 - inventory existing ocean and coastal resources-related monitoring efforts, particularly those supported with federal funds;
 - review past attempts to establish pertinent national or regional monitoring networks as a source of "lessons learned" and identify and present to state, federal and other statutorily mandated resource management bodies opportunities for coordination among related efforts and for consolidation of closely-related and potentially redundant efforts to optimize use of available funding; and
 - develop means to facilitate consistency and public availability of monitoring data collected, developed, or managed with federal funding support.
- **Address data gaps.** Notable gaps exist in key data about the marine environment and related human uses. The NOC's EBM strategy should include development of a well-concerted federal effort to ensure availability of improved and on-going collection, assessment, and management of offshore data needed to support decision making by both private interests and statutorily mandated regional resource management bodies. For example, seafloor mapping of OCS areas off Maine is sparse. This information is useful in defining ecosystems and identifying suitability for economic opportunities, such as commercial fishing and ocean energy development. In developing this strategy, the NOC should identify key data gaps, inventory current federal programs that support collection

of ocean and coastal data, and identify steps to ensure that federal agencies implement these programs in a manner well coordinated with state and statutorily mandated regional resource management bodies and that optimizes use of available federal resources in filling these data gaps.

Long term:

- Develop in conjunction with statutorily mandated regional resource management bodies and states an on-going federal program to support data collection, assessment, and management. Effective coastal and marine spatial planning will require consideration of and ease of access to the best available data. This necessitates updating and on-going management of information resources. The NOC should develop CZMA-based or other federal programs that provide opportunity for a stable, on-going source of federal funds to help support data collection, assessment, and management and other activities at the state and regional levels that are necessary to ensure the utility and continued refinement of coastal and marine spatial plans.

Objective 2: "Coastal and Marine Spatial Planning [CMSP]: Implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States."

Short term:

- Ensure representation of fisheries management-related interests in decision making. Commercial fishing is among the predominant uses of the marine environment and has long provided significant sustainable economic benefits to Maine and the nation as a whole. The MSFCMA provides a statutorily established, science-based framework for management of fishing activities throughout the EEZ by industry, the public, as well as coastal states, which, in turn, manage fishing under constitutional authority in their territorial waters. It is essential that the NOC ensure that CMSP is undertaken with full respect for and recognition of MSFCMA-related, interstate, and state fisheries management decisions, authorities, and responsibilities. As noted above, the NOC's staff has reportedly advised that it is researching whether FACA precludes direct representation of MSFCMA councils on the RPBs established by the NOP. . We find exclusion of the councils from a central role in NOC-related planning and decision making, particularly the NOC itself, unacceptable. In addition, Maine is a member of the ASMFC, which serves as a deliberative body, coordinating the conservation and management of the states shared near shore fishery resources – including lobsters, shrimp and herring – for sustainable use. We strongly urge Presidential amendment of the NOP and associated provisions of regulation, if and as necessary, to ensure full, decision making representation by such statutorily established bodies.
- Avoid unfunded mandates or expectations. At this point, the federal government has provided no additional funds for coastal states, federal agencies, or statutorily mandated regional resource management bodies, to support their involvement in CMSP efforts

under Executive Order 13547. Under these circumstances, we strongly object to any move by the NOC to establish objectives or expectations regarding state participation in development and implementation of CMSP that are not matched with an identified source of federal support. CMSP should not become or be seen as a new unfunded federal mandate or a source of unrealistic public expectations.

- Planning areas. The geographic scope of the planning area on which the regional planning bodies will focus needs to be shaped by and commensurate with the available resources. It may be unworkable and unrealistic in one or more regions to develop a CMSP that includes all marine waters, from estuaries to the limits of the EEZ. We suggest that each region rightfully defer to the relevant statutorily mandated regional resource management bodies and states in defining planning areas to allow its work to reflect regionally specific social, political, and ecological considerations. This flexible approach would reflect and support region-specific issues and make the CMSP effort more efficient and more effective by building on existing efforts and institutions.
- Recognition of sub-regional differences and state autonomy. Provisions for development and implementation of regional CMSPs should ensure that each state retains its autonomy and a co-equal role among states in its region. While Maine has worked well and values its collaboration with neighboring coastal states through NROC and other regional efforts, a number of significant differences exist between Maine's coastal character, the substantially greater length of our coastline, the diverse environmental and ecological conditions, and the greater proportion of our economies being marine resource base, and those of southern New England. A uniform, regional approach to a variety of issues may not be appropriate. The Federal Consistency provision in the CZMA requires that Federal actions that may have reasonably foreseeable effects on any coastal use or resource, either directly or indirectly, be consistent with the enforceable policies of National Oceanic and Atmospheric Administration (NOAA) approved state coastal management programs. CZMA consistency determinations must be submitted to the state for review to address federal actions that may occur both in and beyond the coastal zone, such as energy projects, which have the potential to impact coastal uses or resources, such as Maine's commercial fisheries. Adhering to the CZMA Federal Consistency provision will help to avoid or reduce long term use-conflicts, as it will allow for each state to be consulted, allowing for sub-regional differences to be addressed including through existing, statutorily mandated regional resource management bodies before activities take place, thus ensuring the success of proposed activities in coastal waters.
- Support necessary stakeholder engagement. The NOC's strategic plan should emphasize the importance of, encourage, and identify additional federal resources to help support the well-informed engagement of statutorily mandated regional resource management bodies, marine harvesters and other public stakeholders in the CMSP process.
- Adopt result-oriented performance measures. CMSP is a process tool; even an excellent plan is not, in and of itself, a sufficient outcome. The NOC should, in consultation with statutorily mandated regional resource management bodies, adopt concrete, action-oriented performance measures, such as reduction of permitting time in pre-planned

areas, renewable ocean energy generation capacity approved for siting, or other measures that by their nature demonstrate efficient, technically-sound, and well-coordinated governmental decision-making that fosters and avoids and minimizes conflict among beneficial uses of our shared marine environment.

- BOEMRE and CMSP. Working to address national renewable energy policy goals, the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) is moving forward in cooperation with coastal states to identify OCS areas that may be well-suited to offshore wind energy development. While we do not suggest that BOEMRE in any way slow the progress of its work to facilitate well-sited renewable offshore energy development, the NOC should clarify the relationship between BOEMRE's on-going efforts, including its work with state task forces, and regional planning bodies' efforts to develop CMSPs, with particular attention to how these efforts will be integrated. An agreement between the NOAA and BOEMRE establishing a framework to facilitate coordination on OCS renewable energy development is needed to assist in these goals.

Medium term:

- Concurrent review of the federal governance framework. The NOC should undertake a concerted, interagency federal effort, in conjunction with statutorily mandated regional resource management bodies, to identify and develop recommendations for statutory and regulatory changes to address inefficiencies, conflicts, and other potential obstacles to streamlined, well-coordinated federal decision making regarding renewable ocean energy and other development activities in the marine environment. Proactive preparation of this analysis is necessary for to regional planning bodies in developing realistic CMSPs. Needed improvements in the federal governance framework would facilitate their implementation and effectiveness.

Objective 4: "Coordinate and Support: Better coordinate and support Federal, State, tribal, local, and regional management of the ocean, our coasts, and the Great Lakes. Improve coordination and integration across the Federal Government and, as appropriate, engage with the international community."

Short term:

- Ensure interagency coordination and collaboration. Effective coordination and assurance of collaboration among federal agencies, states and statutorily mandated regional resource management bodies, and others participating in the CMSP, and all other NOC strategies, is a prerequisite for success. Without the presence at the decision making table - not just advisory boards - for states and statutorily established resource management bodies, this process will fail. Further, the NOC should emphasize the importance of and identify specific tools to authorize and facilitate a coordinated and integrated effort at both the field office and headquarters levels among federal agencies states statutorily mandated regional resource management bodies.

Medium term:

- Optimizing the utility of the NEPA process. The NEPA process offers opportunity for environmental review that supports decision-making by a variety of agencies, states and statutorily mandated regional resource management bodies. An agency's participation in the NEPA process as a cooperating agency (when it is not the lead agency for NEPA review) may ensure that issues are addressed as necessary to support and help streamline its own environmental review, leasing, or permitting decision. The NOC should explore and develop standardized practices for federal agencies' participation as cooperating agencies that are designed to streamline the overall federal environment review, leasing, and permitting process, and for comprehensive, transparent communication between federal agencies, states, statutorily mandated regional resource management bodies and other bodies. Such practices may include a schedule for early identification of all environmental approvals needed for the activity subject to NEPA review and agencies' related information needs, coordination or consolidation of agency review procedures, and development of a detailed schedule for completion of all requisite reviews. The National Marine Fisheries Service (NMFS), for example, has developed spatial planning concepts through the identification of Essential Fish Habitat (EFH). The EFH designations are currently in the final stages of approval at the NEFMC, but they will not be implemented before BOEMRE's offshore wind site identification. Nonetheless, the NEPA review process will rightly allow for the final EFH designations to be submitted as part of a "body of knowledge" in the final site selections for offshore wind, thus providing for a more informed decision making process as well as potentially reducing user-conflicts in the long run.

Objective 5: "Resiliency and Adaptation to Climate Change and Ocean Acidification:

Strengthen resiliency of coastal communities and marine and Great Lakes environments and their abilities to adapt to climate change impacts and ocean acidification."

Short term:

- Support planning and action at all governmental levels. Coastal states are likely to address climate change adaptation issues in a variety of ways through statutorily mandated regional resource management bodies and other instruments at the regional, state, county, and local levels. Therefore, the NOC's strategic plan should recommend provision of available federal funding support for voluntary climate change adaptation-related planning and action at each of these jurisdictional levels as appropriate to meet coastal states' differing needs and approaches. In addition, in developing the plan, the NOC should inventory and ensure coordination among potential federal funding sources, particularly in light of prospects for reduced federal support for state efforts in this area as reflected in the current year federal budget's proposed elimination of EPA funding.

Medium term:

- Identify additional sources of funding. Climate change is driven by forces beyond the control of state, county, and local governments. If addressed ineffectually, its

consequences would manifest locally as loss or degradation of coastal infrastructure. As a whole, such loss and degradation would have significant adverse effects on our nation's economy and quality of life. The NOC should identify and call for provision of additional federal funds that may be used to ensure a well-coordinated and effective national response to this issue through implementation of its strategic plan.

- **Strengthen authorization in CZMA for climate change-related activities.** The NOC should recommend that as reauthorized the CZMA more clearly support provision of funding for voluntary development and implementation of coastal adaptation plans that recognize the individual needs of each state while building into a proactive national strategy. As noted above, such plans may be undertaken at the county or local level.

Objective 9: "Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure: Strengthen and integrate Federal and non-Federal ocean observing systems, sensors, data collection platforms, data management, and mapping capabilities into a national system and integrate that system into international observation efforts."

- Augment support for federal OCS-focused ocean observing, data collection, and management. Coastal states' ocean observing and related data collection and management efforts focus primarily on nearshore, state coastal waters. At current funding levels, the Integrated Ocean Observing System is not equipped to meet coastal managers' information needs, particularly as related to OCS areas. The NOC strategy should call for identification of coastal managers' current and projected OCS-oriented data and information needs and existing federal resources available to address those needs, and steps to address current or projected gaps in key information.

Thank you for the opportunity to comment, and your agency's on-going efforts to engage coastal states and other stakeholders in the development of these strategic plans. We appreciate the opportunities for and evident attention to comments and suggestions provided by Maine and other coastal states to date on related matters and look forward to continued constructive engagement on issues of concern to our state as this planning process moves forward.

Sincerely,



Darryl Brown
Director, Maine State Planning Office

cc: Carlisle McLean, Office of Maine Governor Paul LePage
Norman Olsen, Commissioner, Maine Department of Marine Resources
Patricia Aho, Deputy Commissioner Maine Department of Environmental Protection
Bill Beardsley, Commissioner, Maine Department of Conservation

Congress of the United States
Washington, DC 20515

April 29, 2011

Chairwoman Nancy Sutley
National Ocean Council
Council on Environmental Quality
722 Jackson Place, NW.
Washington, DC 20503

Director John Holdren
National Ocean Council
Office of Science and Technology Policy
725 17th Street NW
Washington, DC 20502

Dear Chairwoman Sutley and Director Holdren,

We are writing to comment on the development of Strategic Action Plans for the nine priority objectives identified in the National Policy for the Stewardship of the Ocean, our Coasts, and the Great Lakes, established under Executive Order 13547.

The United States has exclusive environmental and economic jurisdiction over approximately 4.5 million square miles of ocean, which supports 2.3 million jobs and generates more than \$138 billion annually. It has also been projected that nearly 75 percent of the U.S. population will live in coastal counties by 2025. Given the heavy burden that we continue to place on our oceans and coasts, we commend the National Ocean Council for addressing some of the most pressing challenges to ensure healthy oceans for present and future generations.

We offer comments on the nine priority objectives, the development of strategic action plans for said objectives, and examples of opportunities, obstacles, and ways to gauge progress, as follows:

Ecosystem-Based Management

This management approach affords the opportunity to preserve and restore ecosystems to ensure that the necessary services they provide will be available now and well into the future. Ecosystem-based management should work to reveal the benefits, including recreational and aesthetic uses, as well as the hidden costs of current and future uses to ensure comprehensive management of our oceans. We cannot afford to overexploit our ocean and coastal resources and to lose ecosystem services that incur costs to society. These services, such as carbon storage or shoreline protection from wetlands, meet critical needs for humans and should be incorporated into management decisions. For example, in Washington and California, the Puget Sound Partnership and Morro Bay Ecosystem-Based Management Program, respectively, assessed tradeoffs between stakeholders and management strategies by linking ecosystem and human health through an ecosystem services based framework. In Massachusetts, the Ocean Act is structured around ecosystem services balancing the compatibility of current ocean uses and

future needs. We encourage you to learn from these programs as you develop this Strategic Action Plan.

Coastal and Marine Spatial Planning

Effective and transparent communication regarding the use of our ocean and coastal areas is vital to coordinating and initiating coastal and marine spatial planning activities without jeopardizing existing or future marine activities. Federal, State, Territorial, Tribal, regional, and local entities must communicate efficiently with each other and the public as our reliance on ocean resources increases, and the National Ocean Policy must serve to coordinate these efforts. The Strategic Action Plan should provide specific guidance for the Regional Planning Bodies on public and stakeholder participation, including defined expectations, establishment of public advisory committees, and ongoing evaluations of the effectiveness of public and stakeholder engagement.

The Massachusetts Ocean Act, for example, established an Ocean Advisory Commission, consisting of State legislators, agency representatives, and stakeholders, and a Science Advisory Council, coordinating six agency work groups, to acquire and analyze existing data and information regarding habitat; fisheries; transportation, navigation, and infrastructure; sediment; recreation and cultural services; and renewable energy. Using this information, the State of Massachusetts was able to request a refinement of the area considered for offshore wind energy development to take into account certain areas identified as important to the fishing industry. These planning efforts were able to reduce conflict and provide certainty for the development of new off-shore energy technologies and for Massachusetts' iconic and vibrant fishing industry. Furthermore, the ability to coordinate and streamline the permitting process for such projects leads to substantial ecological, social, and economic benefits. Only through an open and transparent process will we be able to effectively address these and other pressing ocean issues, like climate change, ocean acidification, and water quality. Additionally, as the National Ocean Policy implementation process continues, it is imperative that the National Ocean Council and the involved agencies highlight examples of successful coastal and marine spatial planning efforts. There is an abundance of misinformation regarding the intention and purpose of coastal and marine spatial planning, and education is key to accomplishing the end goals.

Inform Decisions and Improve Understanding

Adaptive management requires increasing knowledge to continually improve management decisions to ensure the common goals of healthy and productive oceans alongside vibrant coastal communities. The National Estuarine Research Reserve System, including Padilla Bay, Elkhorn Slough, Narragansett Bay, and Waquoit Bay, provide excellent examples of integrating research and education to help communities develop strategies to address coastal resource issues. Specifically, the Narragansett Bay National Estuarine Research Reserve collaborates with partners to conduct coastal and estuarine research and monitoring throughout the Narragansett Bay and makes this data and related education programs and activities available to Rhode Island schools, colleges, and universities to increase public awareness and understanding of the importance of this estuary.

Similarly, the National Estuary Program takes a collaborative, community-wide approach to protecting and restoring watershed and estuary resources. The Morro Bay National Estuary Program in California has partnered with landowners and conservation groups over a period of seven years to develop site-specific best management practices for their properties. Dedicated community members generate valuable long-term water quality data as part of the volunteer monitoring program and work with program staff and scientists at local universities and agencies to improve our understanding of the complex health of the estuary. The estuary program's education efforts range from field trips and presentations to the development of a free, public-friendly estuary center in Morro Bay. When developing this Strategic Action Plan, we encourage the council to support the development of ocean and environmental education and outreach programs, including citizen science-based research projects. Educating the public on these issues will encourage public participation in the policy decision-making process and will ultimately lead to better policy and more effective implementation.

Coordinate and Support

During these fiscally austere times, it is particularly critical that we reduce duplication and increase efficiency in governmental operations. It is imperative that this effort moves forward from the ground up relying on existing local, regional, Tribal, Territorial, and State programs and entities through a transparent process, which facilitates the direct involvement of stakeholders. Coordinating efforts in permitting processes, as an example, will provide greater clarity for permittees and will reduce time and costs for all stakeholders. The National Ocean Policy must help to coordinate these efforts without adding additional layers of management.

Regional Ecosystem Protection and Restoration

Regional ecosystem protection and restoration should be developed within a comprehensive process for defining, identifying, and evaluating areas of ecological importance. For example, through the Marine Life Protection Act, California is in the process of re-designing the state's system of Marine Protected Areas using information from regional stakeholders in the planning process. Three of the five designated regions have been completed with a process involving the public in a variety of ways including direct communication with regional stakeholder group members, attendance at workshops and public meetings, and providing input on public documents and proposals as they are developed.

Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure

The integration of Federal and non-Federal ocean observing systems, sensors, data collection platforms, data management, and mapping capabilities will provide authoritative, timely, and interoperable data, products, and services to address multiple needs, including for maritime safety, natural hazards mitigation, and environmental protection. This Strategic Action Plan should identify data gaps within these observing systems and additional resources to fill these gaps, expand observations, and outline a system where data is readily accessible to all stakeholders.

We appreciate the opportunity to comment on these Strategic Action Plans and to share examples from our States, which demonstrate existing and effective actions to help the Nation

Chairwoman Sutley
Director Holdren
April 29, 2011
Page 4

achieve these policy objectives and ensure the balanced use of our oceans, coasts, and Great Lakes. We look forward to working with you as this process moves forward.

Sincerely,

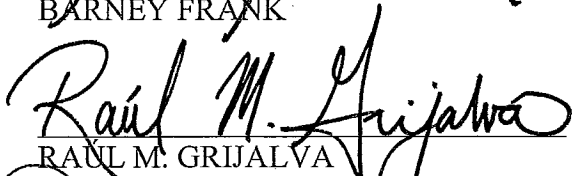

EDWARD J. MARKEY


LOIS CAPPS


SAM FARR

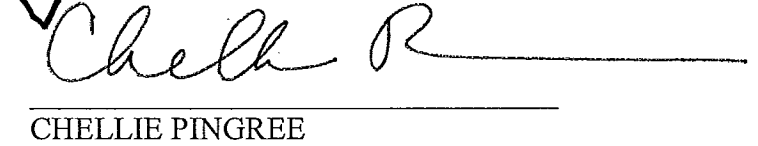

BARNEY FRANK


HOWARD L. BERMAN


RAUL M. GRIJALVA


JAMES P. MORAN


JOHN W. OLVER

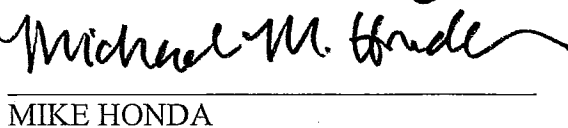

CHELLIE PINGREE

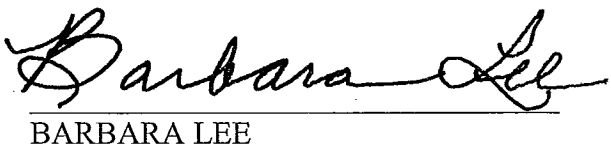

RUSH D. HOLT


MAURICE D. HINCHEY

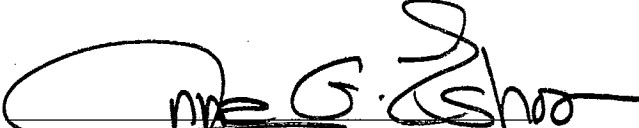

LYNN WOOLSEY


MADELEINE BORDALLO


MIKE HONDA

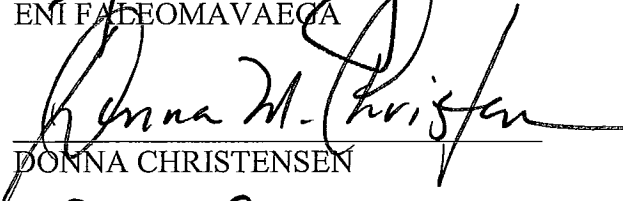

BARBARA LEE


EARL BLUMENAUER


ANNA ESHOO


ENI FALEOMAVAEGA

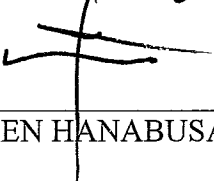

ALCEE HASTINGS


DONNA CHRISTENSEN


DALE KILDEE


JIM LANGEVIN


LLOYD DOGGETT


COLLEEN HANABUSA


GREGORIO SABLAN



ENVIRONMENTAL
ENTREPRENEURS

April 29, 2011

Ms. Nancy Sutley, Dr. John Holdren, and Members National Ocean Council
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Re: National Oceans Policy Strategic Action Plans

Dear Chairs Sutley and Holdren and National Ocean Council Members:

I am writing on behalf of Environmental Entrepreneurs (E2) (www.e2.org), to offer our support and input to the National Ocean Council (NOC) for use in developing the Strategic Action Plans.

E2 represents a national community of over 850 business leaders who promote strong environmental policy to grow the economy. E2 is widely recognized as a resource and an independent voice for understanding the business perspective on environmental issues. We are entrepreneurs, investors and professionals who collectively manage over \$90 billion of venture capital and private equity, and have started well over 1100 businesses, which in turn have created over 500,000 jobs.

The Need for a Coherent National Oceans Policy

Imagine running a multi-billion dollar corporation without a CEO, a mission statement, a board of directors or any consistent data or systems to inform decision making. That's the challenge that our ocean management strategic action plans must address.

As you know, our oceans and great lakes are a powerful engine of economic development and jobs that depend on healthy oceans. America's ocean economy contributes more to the country's GDP than the entire farm sector, grossing more than \$230 billion in 2004.

Lack of a coherent National Oceans Policy (NOP) places these important resources at risk. For decades lack of adequate management and data have subjected our oceans to threats from overexploitation, habitat degradation, coastal pollution, and competing usage which in turn jeopardizes the jobs and recreation that they provide. A National Oceans Policy is long overdue.

Since the strategic objectives of ecosystem-based management and coastal and marine spatial planning are inextricably linked, we shall address our remarks to those two areas.

Ecosystem-based Management Can Drive Economic Growth

The Interagency Ocean Policy Task Force Report refers to ecosystem-based management as an approach "which integrates ecological, social, economic, commercial, health, and security goals, and which recognizes both that humans are key components of ecosystems and also that healthy ecosystems are essential to human welfare."¹

¹ White House Council on Environmental Quality, Final Recommendations of the Interagency Ocean Policy Task Force, (2010) [hereinafter Task Force Report]. p. 2

An ecosystem-based management approach must keep the health of our oceans as its paramount objective. Healthier oceans will lead to a higher GDP and increased job growth. For example, in 2009, across the country, there were more than 18,000 closings and advisory days at ocean, bay and Great Lakes beaches. The economic impact of those closings reverberates through the economy. Beach closings mean fewer travelers to our shores, less revenue for hotels, restaurants, recreational fishing, and other activities.

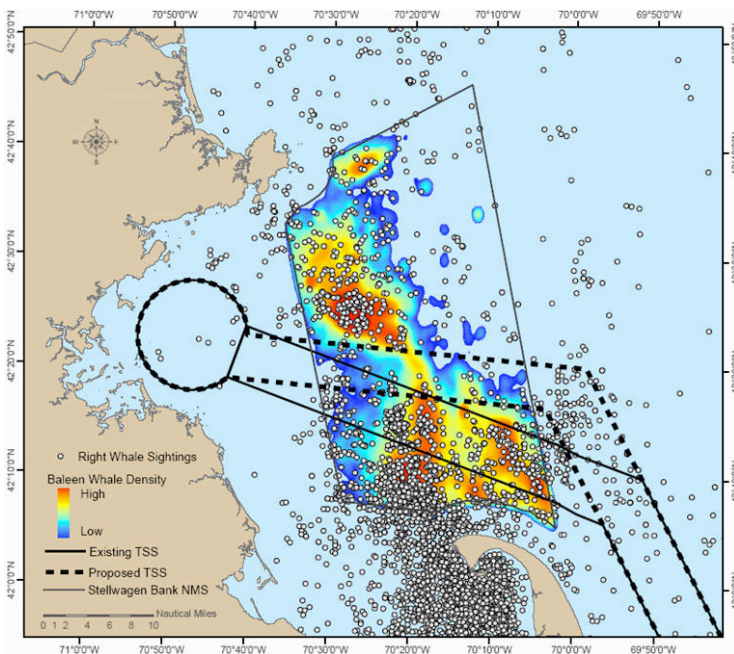
Another component of ecosystem-based management is sustainable fisheries that rely on healthy oceans. In 2008, U.S. commercial and saltwater recreational fisheries generated \$163 billion in sales impacts and supported 1.9 million full and part-time jobs. A separate analysis by the National Marine Fisheries Service in 2006 found that expenditures by recreational fishermen contributed \$82 billion in sales to the U.S. economy and supported over 500,000 jobs.

With the current backdrop of high unemployment, the U.S. should recognize its ocean resources as an economic engine of growth. Exploitive uses must be balanced in ways that do not impact the overall health of the marine ecosystems.

Coastal and Marine Spatial Planning

In New England, E2 was a strong advocate for the Massachusetts Oceans Act and remained involved in the development of the resulting Massachusetts Ocean Management Plan². That plan addresses many of the same challenges facing the National Oceans Council:

1. Balance and protect the natural, social, cultural, historic, and economic interests of the marine ecosystem through integrated management.
2. Recognize and protect biodiversity, ecosystem health, and the interdependence of ecosystems.
3. Support wise use of marine resources, including renewable energy, sustainable uses, and infrastructure.
4. Incorporate new knowledge as the basis for management that adapts over time to address changing social, technological, and environmental conditions.



In Massachusetts, the process of marine spatial planning was crucial to addressing many of these issues and we are already seeing results. For example, as noted in the Task Force Report³, the Stellwagen Bank National Marine Sanctuary suffered from a large risk of whale mortality due to collision with ships. NOAA, the United States Coast Guard, and several other government agencies and stakeholders used MSP to examine shipping needs, proposed deepwater liquefied natural gas port locations, and endangered whale distribution. The result was a successful effort to reconfigure the Boston shipping traffic to reduce the risk of whale mortality due to collisions with ships. The reconfigured shipping lanes reduced the risk of collision by up to 81%.

² Massachusetts Ocean Management Plan, June 2009

³ Task Force Report, p. 45

Our conclusion is that the MSP process of data collection and visualization using layered maps is an incredibly useful tool that should be used in all ocean decision making.

Terminology Matters: The Negative Connotations of “CMSP”

The Ocean Policy Task Force defined coastal and marine spatial planning (CMSP) as “a comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas.”⁴ This terminology and definition is widely used and broadly accepted in the scientific and environmental communities.

However, an E2 group recently met with members of Congress and their staffs to discuss Oceans issues. We found that the term CMSP had strong negative connotations with many of those with whom we met. We found that legislators associate it with “Ocean Zoning” and among some it has come to represent a potential new layer of restrictive bureaucracy that will limit state and local autonomy. When we actually showed the Stellwagon Banks map and described the benefits of the process, their reaction changed and became much more positive.

Few can deny the obvious need for data gathering and analysis as the basis for good decisions. The CMSP process combined with ecosystem-based management closely mirrors the recommendations of two blue ribbon commissions: the U.S. Commission on Ocean Policy Report and the Pew Oceans Commission Report, though the term “coastal and marine spatial planning” does not appear in either report.

Visualizing data through spatial mapping provides an easily understandable framework for good decision making. We suggest that the Council focus on the benefits of data gathering and visual mapping plus informed decision making without specifically using the term CMSP. We believe that use of a different term might be less threatening and help gain a better reception among members of Congress and the general public.

We urge the NOC to implement the National Ocean Policy with the primary goal of creating the enduring environmental stewardship of our ocean, coastal and Great Lakes ecosystems that is the foundation of healthy communities, increased economic opportunities and a secure nation.

Sincerely,



Berl Hartman
Director, E2 New England

⁴ www.cmsp.noaa.gov/

Participating Organizations

Alliance for a Living Ocean
American Littoral Society
Arthur Kill Coalition
Asbury Park Fishing Club
Bayberry Garden Club
Bayshore Regional Watershed Council
Bayshore Saltwater Flyrodders
Belford Seafood Co-op
Belmar Fishing Club
Beneath The Sea
Bergen Save the Watershed Action Network
Berkeley Shores Homeowners Civic Association
Cape May Environmental Commission
Central Jersey Anglers
Citizens Conservation Council of Ocean County
Clean Air Campaign, NY
Coalition Against Toxics
Coalition for Peace & Justice/Unplug Salem
Coast Alliance
Coastal Jersey Parrot Head Club
Communication Workers of America, Local 1034
Concerned Businesses of COA
Concerned Citizens of Bensonhurst
Concerned Citizens of COA
Concerned Citizens of Montauk
Concerned Students and Educators of COA
Eastern Monmouth Chamber of Commerce
Fisherman's Island Conservancy
Fishermen's Conservation Association, NJ Chapter
Fishermen's Conservation Association, NY Chapter
Fishermen's Dock Cooperative, Pt. Pleasant
Friends of Island Beach State Park
Friends of Liberty State Park, NJ
Friends of the Boardwalk, NY
Garden Club of Englewood
Garden Club of Fair Haven
Garden Club of Long Beach Island
Garden Club of RFD Middletown
Garden Club of Morristown
Garden Club of Navesink
Garden Club of New Jersey
Garden Club of New Vernon
Garden Club of Oceanport
Garden Club of Princeton
Garden Club of Rumson
Garden Club of Short Hills
Garden Club of Shrewsbury
Garden Club of Spring Lake
Garden Club of Washington Valley
Great Egg Harbor Watershed Association
Green Party of Monmouth County
Green Party of New Jersey
Highlands Business Partnership
Holly Club of Sea Girt
Hudson River Fishermen's Association
Jersey Shore Captains Association
Jersey Shore Parrot Head Club
Jersey Shore Running Club
Junior League of Monmouth County
Keypoint Environmental Commission
Kiwans Club of Manasquan
Kiwans Club of Shadow Lake Village
Leonardo Party & Pleasure Boat Association
Leonardo Tax Payers Association
Main Street Wildwood
Mantoloking Environmental Commission
Marine Trades Association of NJ
Monmouth Conservation Foundation
Monmouth County Association of Realtors
Monmouth County Audubon Society
Monmouth County Friends of Clearwater
National Coalition for Marine Conservation
Natural Resources Protective Association, NY
NJ Beach Buggy Association
NJ Commercial Fishermen's Association
NJ Environmental Federation
NJ Environmental Lobby
NJ Main Ship Owners Group
NJ Marine Education Association
NJ PIRG Citizen Lobby
Nottingham Hunting & Fishing Club, NJ
NYC Sea Gypsies
NY State Marine Education Association
NY/NJ Baykeeper
Ocean Wreck Divers, NJ
PaddleOut.org
Piscataway Saltwater Sportsmen Club
Raritan Riverkeeper
Religious on Water
Riverside Drive Association
Rotary Club of Long Branch
Rotary District #7510—Interact
Saltwater Anglers of Bergen County
Sandy Hook Bay Anglers
Save Barnegat Bay
Save the Bay, NJ
SEAS Monmouth
Seaweeders Garden Club
Shark Research Institute
Shark River Cleanup Coalition
Shark River Surf Anglers
Shore Adventure Club
Sierra Club, NJ Shore Chapter
Sisters of Charity, Maris Stella
Sons of Ireland of Monmouth County
Sorporntist Club of Cape May County
South Jersey Dive Club
South Monmouth Board of Realtors
Staten Island Tuna Club
Strathmere Fishing & Environmental Club
Surfers' Environmental Alliance
Surfrider Foundation, Jersey Shore Chapter
TACK, MA
Terra Nova Garden Club
Three Harbors Garden Club
Unitarian Universalist Congregation/Monm. Cnty.
United Boatmen of NY/NJ
Village Garden Club
Volunteer Friends of Boaters, NJ
WATERSPIRIT
Women's Club of Brick Township
Women's Club of Keypoint
Women's Club of Long Branch
Women's Club of Merchantville
Women's Club of Spring Lake
Women Gardeners of Ridgewood
Zen Society



Ocean Advocacy
Since 1984

Clean Ocean Action

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Info@CleanOceanAction.org

April 29, 2011

Chairwoman Nancy Sutley
Council on Environmental Quality
Executive Office of the President

Director John Holdren
Office of Science and Technology Policy
Executive Office of the President

Re: Comments on Strategic Action Plans for the Priority Objectives for the National Ocean Council

Dear Chairwoman Sutley and Director Holdren;

The National Ocean Council (NOC) announced its intent to prepare strategic action plans for nine priority objectives for National Ocean Policy goal implementation and solicited comments from the public on January 24, 2011. See 76 F.R. 4139. These public comments should, according to the announcement, inform the preparation of the strategic action plans. Clean Ocean Action has prepared the following comments in response to that request.

Clean Ocean Action (COA) is a regional, broad-based coalition of 125 conservation, environmental, fishing, boating, diving, student, surfing, women's, business, service, and community groups with a mission to improve the degraded water quality of the marine waters of the New Jersey/New York coast. For over 25 years, COA has been actively engaged in ocean management to ensure a vibrant, diverse, economically robust ecosystem. From successfully closing eight ocean dumpsites and thwarting offshore drilling and exploration to promoting clean beaches, citizens have worked hard to ensure a clean ocean economy. Clean Ocean Action has, in addition to this letter, signed onto two other comments for this notice, one general comment and one comment on strategy item five.

Framework

In the announcement requesting comments for the strategic action plan development phase of the National Ocean Policy Framework, the NOC requested that for each of nine priority areas, we (broadly) answer these questions:

- What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?
- What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?
- What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

Data and Mapping

Priority areas:

(3) Inform Decisions and Improve Understanding

(9) Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure

One Action that needs to be taken immediately is an across-the-board expansion of data collection—we simply do not know enough about many parts and aspects of the ocean environment, and we don't know enough about the industries that are operating within this environment. This broad data collection initiative should be done in an environmentally-unobtrusive manner. Furthermore, ecosystem and socioeconomic data should not be used to inform only a select few researchers or institutions, but should be available to all agencies and institutions and should be publically accessible.

The NOC should undertake an assessment of the state of the science in each “area” of the ocean and attempt to coordinate research to systematically fill gaps in knowledge, eliminate redundant research projects, and encourage more ecosystem-wide studies. Part of this initiative should be to develop, again for each marine area, one clearinghouse of coastal and ocean knowledge where methodologies, research projects, and data can all be accessed by any interested individual. Regional monitoring programs that have long-term funding are needed – especially for areas such as the Mid-Atlantic Bight which currently lacks a comprehensive regional program.

Obstacles to sharing data and informing decisions are plentiful, but not unresolvable. First, data collected by one agency or institution (the EPA, for example), may be in a form that doesn't comport with the needs of local decision-makers or state agencies. Second, collection methods that one agency uses may not be, by regulation, guidance, or policy, “admitted” by other agencies. Third, priorities in data collection vary by program and geographic location. Fourth, different research methods and tools may be used by different researchers. Fifth, technological and methodological innovation can result in differences within the same type of data collected over time – in other words, trends and time series might not mean that situations are changing, just that we've learned how to better measure a variable.

These challenges, and more, can be addressed through data collection standardization. If all agencies at all levels of government are working from the same methods documents and datasheets, we will improve our collective understanding of the state of our marine ecosystems. However, the process of data standardization needs to integrate some flexibility in order to avoid stifling innovation in scientific research.

Another impediment to informing decisions and improving mapping, infrastructure, and ecosystem understanding is the disconnect between the lay-public and expert scientists. Politics and communication play an important role in the implementation of the National Ocean Policy; if the public cannot understand why they need to protect these ecosystems, regional ocean managers will face an uphill battle in trying to convince people otherwise.

Many aspects of the National Ocean Policy itself (including associated frameworks, regulations, and policies) are not written in an easily-understandable form for public education. The NOC should try to distill and re-frame its mission and the steps it will be taking into a message easily transmitted to the public. Regulations and policies developed as a result of this process should also be communicated in “plain” English.

Coordination and the Decision-Making Processes

Priority areas:

- (1) Ecosystem-Based Management (EBM)
- (2) Coastal and Marine Spatial Planning (CMSP)

Actions that immediately need to be taken include data collection and information dissemination. EBM and CMSP implementation will (and should) rely heavily on baseline studies, pilot programs, and cumulative impact analyses. No decisions should be made to approve new uses of the coastal and ocean zone (including Outer Continental Shelf energy production, exploration, or siting), or to affect existing uses, without these pre-planning studies and research projects. The NOC should also advocate for legislation and regulations to prohibit programs from allowing ecological harm to the ocean – all too often discretion is given, under the guise of flexibility, to damage resources.

Aside from data collection and research studies, the NOC should also take immediate steps to require that EBM principles and policies are implemented across the nation in land use, environmental, and energy decisions. Decisions are now being made, daily, which should take EBM and scientific knowledge into account but do not. From stormwater permits to development plans and mitigation banks, incorporating understanding of ecosystems is critical to prevent and minimize impacts from actions taken.

While a top-down approach to managing the ocean and coastal zone (which is much of what the NOC will be doing) is needed, so too is a bottom-up approach. Requiring regular, sustained inclusion of the interested public at all stages of the process leads to stronger, more resilient plans and policies by identifying conflicts, providing knowledge about issues/problems present at all scales (national, regional and local) and allowing for the development of common solutions that lead to public support and ownership of policies, programs and activities. Getting the public to “*buy in*” to a policy developed from the top down is often not successful. Instead, the best public policies start from the grass-roots up. The interested public must “*be in*” on policy development early at the most local level, often and sustained, including regular and continuous communication and dialogue. Ultimately, determinations regarding appropriate ocean uses, allocation of space and resources, and protection of those resources will be based on societal choice. Public support for the preservation and protection of environmental resources is based on their understanding of environmental issues and their active role in developing management solutions. Therefore, the development and implementation of a National Policy must continue to include an explicit requirement for robust and ongoing public participation.

Obstacles may arise in implementing EBM and CMSP where the NOC tries to make ocean maps and use-plans without a truly comprehensive understanding of the ecosystem, where local managers make decisions that do not comport with the needs of the ecosystem, where state-by-state goals and uses are not aligned, and where there is not public support for the “hard” decisions that will need to be made. To overcome these obstacles, science and communication are key – especially where there are social and economic pressures that conflict with ecosystem needs or where there are overlapping and contradictory governance systems.

Implementing a National Ocean Policy

Priority areas:

- (5) Resiliency and Adaptation to Climate Change and Ocean Acidification
- (6) Regional Ecosystem Protection and Restoration
- (7) Water Quality and Sustainable Practices on Land

Action that needs to be taken by the NOC include empowering localities to make politically challenging decisions on coastal watershed uses and plans and developing toolkits and funding sources to enable coastal managers to encourage that these tough decisions are environmentally protective. Adaptation, resiliency, and sustainable practices, for ocean and coastal ecosystem management, tend to require local efforts more than national efforts. One major problem that towns and counties run into when, for example, they try to preserve wetlands, limit development in flood zones, de-harden coastlines, track pollution and sewage sources, or fix and upgrade water and wastewater infrastructure, is a lack of financial and technical support. Citizens need to be informed that adaption will mean accepting the loss of land due to sea level in certain areas. Data standardization, public disclosure, and inter-agency collaboration and coordination can all be conditions to financial and technical NOC support for these local programs – doing so would tie local actions to the NOC’s national strategy and allow all stakeholders to play a part in protecting, restoring, and adapting coastal ecosystems.

Obstacles for each of these priority areas (resilient coasts, ecosystems, and water quality) arise because most of these require local and state-level agencies expand their permitting, enforcing, monitoring, and regulating departments and may also require regulatory changes. The NOC can (and should) develop model programs and guidance for local and regional regulators, but many of the changes needed under these program areas can only be accomplished by local action. Local action, in turn, requires a renewed nation-wide investment in environmental programs – something the NOC must make a priority.

Conclusions

In general, regarding the NOC strategy for implementing the National Ocean Policy, Clean Ocean Action opposes regional governance systems that lack a public connection, accountability, and meaningful involvement in decision-making. Most of the decisions that will be required by the NOC’s plans depend on public support, so the NOC needs to ensure there is public accountability and involvement in actual, implementation and regulatory decisions – not just for purposes like this comment solicitation (public comment on strategy development). Along this vein, citizens, states, and regions have already begun ocean policy changes – and the NOC should inventory, analyze, and work within the goals these planners and managers have set for their own ecosystems.

As the NOC moves to develop strategies for National Ocean Policy implementation, priority should be given to (1) building a robust system of data standardization and dissemination, and (2) funding regional clearinghouses of information and policy discussion. The NOC should refrain from making conclusions as to coast-wide “use” maps or CMSP systems until baseline studies and ecological performance indices can be developed. Finally, because most of the changes called for in the National Ocean Policy will rely on local support and local change, the NOC should work, at state and federal levels, to secure more funding and support for local environmental programs – from enforcement to planning and research.

Sincerely,



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Executive Director



Sean Dixon
Coastal Policy Attorney



Heather Saffert, Ph.D.
Staff Scientist



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April 29, 2011

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

Re: Comments on the National Ocean Council's Nine Strategic Action Plans

National Ocean Council Representatives:

The Coastal Treaty Tribes (CTT's), Hoh, Makah, and Quileute Tribes and the Quinault Indian Nation, of the Olympic Coast submit for your consideration comments and recommendations regarding the development of the National Ocean Council's Nine Strategic Action Plans.

We have individually and collectively been consistent in our messages that ocean management in the Pacific Northwest must be inclusive of the four coastal treaty tribes. Our concerns extend to all Nine Priority Objectives as not only does our usual and accustomed fishing grounds in marine waters, but our reservations and communities border the open ocean as well. We have been stewards of our land and waters since time immemorial. Preserving our fish and wildlife resources, as well as access to them, is essential to our economic, cultural, and spiritual well being.

Our legal standing and management status regarding ocean resources and governance is unique. Each of our tribes' has treaty secured hunting and fishing rights with the United States. These treaties retained rights to protect our way of life and reserved rights of hunting, fishing and gathering and are inclusive of our rights to manage and utilize marine resources in perpetuity. We are co-owners with the United States of these marine resources, and our co-management authority is legally recognized to include both state and federal waters. The development of a National Ocean Policy and Strategic Actions Plans must acknowledge and accommodate tribal values and activities with our usual and accustomed areas.

We are encouraged that the inaugural meeting of the Governance Coordinating Committee included identification of the tribes along with the state and federal representatives as co-leads in the Regional Planning bodies. We strongly urge the National Ocean Council to ensure (through communication and funding venues) that tribal participation is a high priority in the development and implementation of the National Ocean Policy. We expect that the Regional Planning Body for the West Coast will be created in keeping with the expressed intent of Executive Order 13547. Furthermore, it is our expectation that our

tribal governments will each have designated seats at the table given our status as sovereigns with treaty resources and management authority in ocean waters.

Specific and dedicated funding will be needed for the CTT's to engage at all levels of the National Ocean Policy. As sovereigns, the CTT's will need to be fully engaged due to their role as managers of the marine resources in order for the Nine Priority Objectives to successfully move forward. Dedicated funding for the CTT's will be especially important within the areas of CMSP, mapping and infrastructure, and resiliency and adaptation to climate change and ocean acidification. Funding is needed for education as well, both to get tribal knowledge out to educators, managers, scientists, and policy experts and to bring education opportunities to tribal communities.

The CTT submit the following for your consideration as the NOC develops the Nine Strategic Action Plans):

Coordinate and Support:

- Proper consultation with tribes is vital to the success of implementing the Action Plan and the National Ocean Policy in the northwest as tribal Usual and Accustomed Areas (U & A's) occupy the marine waters north of Point Chehalis to the U.S. Canadian border. We strongly suggest that this action plan will benefit from establishing a formal policy and protocol for consultation and consideration of the tribes at the NOC level. A couple of examples are:
 1. Coordination and Consultation Policy Plan of Action developed by the Environmental Protection Agency <http://www.epa.gov/indian/consultation/index.htm> or:
 2. Work done by National Marine Fisheries Service, Alaska Region at <http://www.fakr.noaa.gov/tc/>
- All of the action plans need to have a common theme that is in support of the United States governments' responsibility to uphold the treaties established between the federal government and the Coastal Treaty Tribes.

Ecosystem-Based Management:

- As stewards of ocean resources for thousands of years, the mainstream shift of marine resource management from single species to ecosystem-based is not a new principle in the management strategies of the coastal tribes. However, in order for Ecosystem-based management to become a fully integrated part of the National Ocean Policy there will need to be the establishment of the following:
 1. Creation of secure financial resources;
 2. The development of standards for data acquisition and processing
 3. Protocols for data and report availability
- In addition, we encourage the NOC to work with the regional fishery management councils and appropriate management authorities to ensure coordination with their existing efforts.

Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure:

- This will need to include a strong research component that identifies gaps in data that hinder or limit resource management decisions. With shifts in climate already a reality, it is critical to include a long term monitoring element that will establish both baseline conditions of ocean ecosystems as well as documenting the changes over time. Finally there are numerous assessments and inventories that in the short term can assist in guiding management decisions. Some examples of short term programs are:

1. Complete a data GAP analysis to identify the data needed to bring coastal waters off of Washington to an equal level of available data in Oregon and California coasts.
2. Conduct habitat and coastal current mapping.
3. Develop and complete stock assessments that forward understanding of important stocks at a regional scales.

Coastal and Marine Spatial Planning:

- The Regional Planning Bodies for the West Coast Region must include seats for tribal representatives as the CTT will be directly affected by CMSP. In short, planning for implementation of NOP or CMSP cannot occur off the Olympic Peninsula without each of the 4 coastal sovereign tribes being part of the discussion and planning.
- Currently, it appears that the NOC views the West Coast Governors Agreement on Ocean Health (WCGAOH) as the potential entity for the regional ocean partnership for the west coast region. This is not acceptable because WCGAOH does not satisfy the terms of a ROP as described by the NOC and most importantly, because the tribes are not part of the WCGAOH.
- As with the west coast states the CTT will require dedicated funding for the duration of the planning effort for coastal and marine spatial planning. Expecting the tribes to access funding through a competitive grant process wrongly puts the needs of tribal ocean policy and management as sovereigns in competition with stakeholders who already have a voice through their state elected officials.

Resiliency and Adaptation to Climate Change and Ocean Acidification:

- Tribes and coastal communities are experiencing climate change now, not only are resources affected by climate change but also the characteristics of the regions culture as well. Tribes can offer a unique perspective to how the NOC addresses Climate Change within the National Ocean Policy for our region.
- The effects of ocean acidification on the exercise of treaty rights to harvest marine resources both commercially and for subsistence are largely unknown. Tribal communities rely on these resources for our cultural and economic wellbeing. The potential changes or impacts as a result ocean acidification is beyond comprehension.

Regional Ecosystem Protection and Restoration:

- The large size of each of the regions indentified by NOC must be taken into consideration. As we stated in earlier correspondence: the "West Coast Region" may be too large; we must remember that the "large California current ecosystem" is the result of multiple smaller systems that function with some independence.
- Dedicated financial support for understanding the chemical and biological relevance of these sub-systems would help ensure that conservation and restoration efforts are effectively distributed. Effective distribution must be based on sound science so that areas of low population and high need do not lose out to areas of high population.

Inform Decisions and Improve Understanding:


- While not always considered, local knowledge such as that preserved in Tribal cultures can provide information that is not available elsewhere, to inform management decisions

The CTT would like to reiterate their support for the National Ocean Council and its critical role in implementing the National Ocean Policy. Thank you for this opportunity to comment and we look forward to working with the Council as you draft the Strategic Action Plans.

Sincerely,


Coastal Treaty Tribes of the Olympic Coast

Hoh Indian Tribe



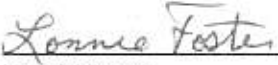
David Hudson

Makah Tribe



Micah McCarty

Quileute Tribe



Lonnie Foster

Quinault Indian Nation



Ed Johnstone

**COMMENTS SUBMITTED TO THE NATIONAL OCEAN COUNCIL
ON STRATEGIES FOR IMPLEMENTING THE PRIORITY OBJECTIVES
OF THE NATIONAL OCEAN POLICY
April 29, 2011**

Dear Council Members:

The undersigned include fishermen, representatives of coastal fishing communities, scientists, environmental organizations, farmers, farming community organizations, seafood distributors, and food sovereignty organizations. We appreciate the opportunity to make recommendations regarding some of the nine priority objectives of the National Ocean Policy in addressing some of the most pressing challenges facing the ocean, our coasts, the Great Lakes and the food we get from these waters.

Objectives 1 & 2 & 6

Ecosystem-Based Management (EBM): Adopt ecosystem-based management as a foundational principle for the comprehensive management of the ocean, our coasts, and the Great Lakes.

Coastal and Marine Spatial Planning (CMSP): Implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States.

Regional Ecosystem Protection and Restoration: Establish and implement an integrated ecosystem protection and restoration strategy that is science-based and aligns conservation and restoration goals at the Federal, State, Tribal, local, and regional levels.

Ecosystem Based Management and Coastal and Marine Spatial Planning are fundamentally linked and should not be considered separately from each other. Similarly, ecosystem protection and restoration are not separate decisions but fully integrated with EBM and CMSP. That different governmental bodies are responsible for their implementation should not prevent or impede the planning, restoration and management plans from being integrated.

RECOMMENDED ACTIONS

Near-term:

- EBM that includes humans as an integral part of ecosystems should be adopted in principal by all federal agencies whose activities affect marine, estuarine, and Great Lakes environments including management agencies and programs, e.g. among others: National Marine Fisheries Service (NMFS), NOAA Office of Ocean and Coastal Resources Management and the Coastal Zone Management program it administers through states, National Marine Sanctuary programs, Bureau of Ocean Energy Management, Regulations, and Enforcement (BOEMRE), Department of Agriculture, and Environmental Protection Agency, Army Corps of Engineers and Forest Service.
- Relative to CMSP, regional oversight structures and operational menus for more local implementation should be developed. The structure should incorporate governmental, tribal, community, and non-governmental

participants concerned with public welfare, including all those along the seafood production food chain from fishermen to processors to consumers, and those representing environmental, human health and sociological interests that function at a variety of scales.

- Guidelines and structures should be developed for establishing truly collaborative decision-making and adaptive management that gives weight to: restoring and maintaining diverse and resilient ecosystems; sustaining healthy living resources; and revitalizing coastal communities closely linked to those marine and Great Lakes resources and ecosystem services through such activities as fishing).
- The National Ocean Council should review existing legislation governing the management of marine and Great Lakes ecosystems and resources and alert Congress if changes are needed to accommodate full implementation of collaborative and adaptive EBM and CMSP at various ecosystem scales.
- The importance of living marine and aquatic resources to local, regional, and national food sovereignty should be recognized and given weight in the CMSP and EBM decision-making processes.
- The roles and responsibilities of the existing regional bodies important to implementing EBM, such as Fisheries Management Councils (which has management powers) and the International Joint Commission (US and Canada Great Lakes advisory body), should be integrated into NOP strategies.

Long-term:

- EBM, including Ecosystem Based Fisheries Management, should be fully implemented in management plans that are integrated on multiple scales consistent with ecosystem processes and integrate local participatory governance with regional oversight.
- EBM must be scientifically based and promote the long-term health and diversity of ecosystems, living resources, and ecosystem services. As a subset of this, Ecosystem Based Fisheries Management, must include fishermen as part of the ecosystem.
- EBM should be spatially based and coordinated with CMSP based on collaborative bottom-up decision-making and adaptive management that integrates ecological, sociological, and economic objectives.
- CMSP should begin with collaborative visioning processes with outcomes incorporating socio-economic elements on spatial scales that are well matched to the ecosystem, consistent with the goals of EBM. The outcomes of visioning should guide future decision-making and establish measuring posts for assessing progress.
- Food sovereignty should be incorporated into the vision guiding CMSP, so that in planning for activities in the marine and Great Lakes environment, fisheries and local and regional markets and food systems are supported and protected.
- Restoration of critical habitats and ecosystem diversity, including fisheries diversity, should be integral to CMSP.
- Monitoring should be keyed to vision milestones and spatial planning should

- be adaptive to the results of monitoring, to unexpected changes, and to the evaluation of progress toward the guiding vision.
- The incorporation of local knowledge into CMSP is critical and should be part of planning and woven into the monitoring programs. Collaboration among scientists, users, local communities, and managers is critical to doing this effectively.

IDENTIFYING CHALLENGES

Obstacles and Opportunities:

Adaptive management. None of this is easy and it requires repeated exchange of information and discussion of adaptive measures. Ecosystems are complex so management that truly addresses the ecosystem is also complex. That is why the adaptive aspect is so important and should be addressed more seriously in the National Ocean Policy. Many monitoring and research programs would have to be revamped and augmented to enable adaptive management. Data for different types of management (e.g. fisheries, water quality, aquaculture, energy exploitation) would have to be detailed and coordinated at multiple scales. Monitoring must at the same time be individualized to capture critical scales of ecosystem variables and be common enough to be used in combination with other monitoring programs. This difficult coordination of data collection could be aided by effective and well funded regional plans.

Existing models. Agencies such as National Marine Fisheries Service (NMFS), have been actively discussing and developing scientific protocols for ecosystem-based fisheries management and EBM in general. While the need to include fishermen in these EBFM management plans persist, there is still not a good model for how this can be most effectively done. Recommendations from fishing communities for area-based management are promising but have yet to be accepted by regional management. In other EBM efforts on land, some agencies have model collaborative processes that include community participation in planning and have had some notable successes on local scales. We believe these processes can be translated for the ocean and Great Lakes.

Relevant programs. Existing collaborative research programs take advantage of smaller vessels and their operators, both scientists and fishermen who are knowledgeable about marine ecosystems. These could be improved with more participation and compensation, better coordination, and better use of the information in management decisions and adaptive management. This smaller scale research has been undervalued in the past. Ironically it is generally far less expensive to acquire abundant information this way and it reveals important ecosystem patchiness. It also offers more rapid assessment of data to enable adaptive management in real time.

Multi-scale management. Long-term management decisions should meld fine scale with regional scale information; and management structures should reflect multiple scales of ecosystems. This presents challenges to simplified management that

averages over large areas and considers species separately from each other.

Transformations:

The issue of scale in fisheries. We strongly recommend a major transformation in scales of monitoring and management, particularly in fisheries management:

- *From* top-down, broad brush management that encourages fishermen to pursue fish over distances that require larger boats; *to* bottom-up, spatial and community-based management that encourages cooperation and stewardship among groups of fishermen
- *From* scale blind management of fishing operations; *to* scale sensitive management consistent with ecosystem processes and distributions. At a minimum this would divide management of inshore fleets from management of offshore, larger boat fleets, and would match fishing scales and diversity to scales and diversity in ecosystems.

The issue of scale in general. For all uses of marine and Great Lakes environments, it is important that scales of monitoring and management as well as scales of activities themselves match ecosystems and ecosystem processes.

Bottom-up decision making. We recommend transforming decision-making processes from strictly top down regulation and management in which stakeholder comments and advice are heard but rarely incorporated; to bottom-up collaborative processes in which agreement, consistent with regulatory requirements, is reached by all participants from individual stakeholders to government officials. By nature the bottom up processes tend to be more local and thus more diverse but better adapted to specific ecosystem traits. Polarized controversy is often avoided.

Application of the Public Trust Doctrine. All private industry operating in marine and Great Lakes waters, which are public, must be open to scrutiny by the public and allowed to operate only if and under conditions agreed through collaboration with the public.

We encourage the recognition and incorporation of fisheries diversity and food sovereignty objectives into CMSP. The provision of healthful and diverse local seafoods from healthy ecosystems is critical to the welfare of coastal communities and regions depending on them. We believe:

- Fisheries should maintain diversity in the fleet and in the ecosystem.
- Ecosystems should be protected from degradation by all causes so they may continue to support diverse fisheries.
- Fisheries should be executed by coastal communities and operated according to strict codes of stewardship.
- Seafood markets should prioritize local consumption of seafood and minimize exports.
- Fair and equitable distribution of fishing rights and fair compensation for fishermen should be objectives.

- The farming of seafood should be consistent with ecosystem objectives, maintenance of wild species and populations, diverse food production, aversion to non-native species, and prohibition of manufactured species (i.e. genetically engineered).

IMPORTANT PERFORMANCE MEASURES

It is essential that monitoring be directly relevant to the goals and objectives of management and policy decisions and tied to visioning processes.

- There must be a way of gauging management effectiveness and trade-offs between uses and ecosystem services so that adaptive management can be implemented. Outcomes of initial visioning will give end-points toward which progress can be measured by monitoring key indicators.
- Performance measures should be determined at the beginning when management decisions are first implemented.
- The US needs integrated, ecological-economic visualization, analysis, and forecasting in the coastal zone.

Objectives 5 & 7

Resiliency and Adaptation to Climate Change and Ocean Acidification: Strengthen resiliency of coastal communities and marine and Great Lakes environments and their abilities to adapt to climate change impacts and ocean acidification.

Water Quality and Sustainable Practices on Land: Enhance water quality in the ocean, along our coasts, and in the Great Lakes by promoting and implementing sustainable practices on land.

Both these objectives address impacts on marine and Great Lakes ecosystems from land-based activities – impacts that can fundamentally alter ecosystems, including their diversity of species, their resiliency, and their ability to provide ecosystem services. Climate Change and Ocean Acidification are caused on global scales but they affect ecosystems on all scales. Land based source of water pollution are caused by direct emissions or runoff and have impacts in local marine and Great Lakes ecosystems or may be carried by air and water currents to create impacts in remote locations. We recommend:

- Any national level planning should include measures to minimize and prevent land-based sources of negative impacts on marine and Great Lakes ecosystems; and they should coordinate with local plans to do the same.
- Synergistic and cumulative impacts of these effects from land plus those of at-sea activities must be taken into account and monitored in conjunction with CMS Planning.
- Strong, swift and effective regulations and measures to continuously reduce US generated causes of climate change and ocean acidification are essential.
- Similarly, improved enforcement of water and air quality laws and standards is needed.
- The objectives of coastal and port community plans to mitigate land-based sources of impacts to marine and Great Lakes ecosystems should be supported by national actions and monetary and technical support.

Objectives 3 & 9

Inform Decisions and Improve Understanding: Increase knowledge to continually inform and improve management and policy decisions and the capacity to respond to change and challenges. Better educate the public through formal and informal programs about the ocean, our coasts, and the Great Lakes.

Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure: Strengthen and integrate Federal and non-Federal ocean observing systems, sensors, data collection platforms, data management, and mapping capabilities into a national system and integrate that system into international observation efforts.

Some monitoring and research needs have already been mentioned in conjunction with regional and smaller scale management. We support as well the development and improvement of national research and monitoring systems that would provide a basis for overlaying and integrating finer scale research and monitoring significant to local and regional decisions but comparable across large marine and Great Lakes ecosystems for the purpose of national coordination.

We encourage basic research on ecosystem functions, interactions among species, effects of changing marine and Great Lakes environments, the human role in ecosystems, important scales of ecological processes, and other areas where more knowledge would enhance the effectiveness of ecosystem based management. It would enable identification of key indicators for measuring progress in achieving goals.

We encourage the incorporation of sociological research that sheds light on and enables measurement of the social and economic impacts caused by management actions as well as such impacts caused by human-induced changes in ecosystems. The relatively new science of ecological-economic visualization, analysis, and forecasting in the coastal zone is not widely known or acknowledged. We encourage the recognition and funding of this important line of research.

Sharing information with the public is critical to successful collaborative management. The development of user-friendly templates should be a priority for regional ocean councils. It is critical that the public be informed at the initial stages of producing management plans (both EBM and CMSP), and that they receive information and data used throughout the adaptive management process.

Summary

We offer the following summary of key strategies we have recommended and explained above:

- Collaborative management at local scales;
- Adaptive management and monitoring;
- Visioning processes at various levels of management;

- Accounting for humans as part of the ecosystem;
- Monitoring to measure achievement of objectives;
- Scale-sensitive matching of activities with ecosystem processes in ocean, coastal, and Great Lakes environments;
- Multi-scale spatially based management;
- Protection of food sovereignty and marine-based food systems;
- Bottom up decision-making;
- Management for the public good and with public oversight;
- Protection of food sovereignty in context of CMSP;
- Pollution prevention;
- Ecological-economic visualization, analysis, and forecasting;
- Integration of local knowledge with sound science; and
- Sharing of knowledge and data effectively with public in a timely manner.

Yours truly,

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Brian Makokha
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Strategic Action Plan Comment for National Ocean Council on Priority Objective #1: Ecosystem-Based Management and Objective #2: Coastal and Marine Spatial Planning

*Based on attending CMSP Conference
at Vermont Law School on April 1, 2011*

**Coastal and Marine Spatial Planning:
The Intersection between Energy, CMSP and Our Future Needs**

Objective 1: Ecosystem- Based management: Adopt ecosystem- based management as a foundational principle for the comprehensive management of the ocean, out coasts, and the Great Lakes.

- What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

We should strive to identify the important ecological areas that will need protection and demonstrate to the communities the benefits of this management system. The ecological areas identified should be subjected to regular reviews and adjusted to reflect any changes that have taken place since ecosystems are dynamic. Benchmarks should also be set to gauge whether the program is achieving its intended goals. We should create a one time compensatory mechanism for communities who might have to give up some of their traditional rights to these areas.

- What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

A major obstacle might be sourcing the funds to conduct detailed studies that are necessary to identify these ecosystems. Some of these ecosystems straddle international boundaries and this may call for negotiations of treaties which might prove difficult. This might call for acceding to the Law of the Sea convention. This objective can help protect areas that fall out of marine reserves or parks.

- What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

A significant performance measure would be to quantify the economic benefits the local communities have inured after adopting the system. Another significant milestone would be the level human use that has been incorporated in the program. This endears the plan more to the public.

Objective 2: Coastal and Marine Spatial Planning: Implement comprehensive, integrated, ecosystem- based coastal and marine spatial planning and management in the U.S.

- What near-term, mid-term, and long-term actions would most effectively help the Nation achieve this policy objective?

In the short term the CMSP should not supersede any existing statutes. States should be given a greater role in developing this policy since they can tailor it to meet their unique local conditions. Marine mapping should be carried out frequently to assist in effective planning and decision making. Tribal participation should also be encouraged in the process. There should also be continuing education to sensitize the general public on the benefits of this system and how it affects them.

- What are some of the major obstacles to achieving this objective; are there opportunities this objective can further, including transformative changes in how we address the stewardship of the oceans, coasts, and Great Lakes?

A planning process is intangible so it is difficult to understand for some people. Funding to get the process started might prove to be a challenge. Without a scientific basis it might be difficult to justify CMSP. Without political support it will be difficult for CMSP to be implemented. There will be some resistance to CMSP from industry. To incorporate them in the process we should use standards that industry has helped to develop. There are a multiplicity of policies and every agency has its approach to things.

- What milestones and performance measures would be most useful for measuring progress toward achieving this priority objective?

A reduction in litigation of federal off-shore leasing activities will be a good performance measure of the objective.



April 26, 2011

Ted Wackler
Deputy Chief of Staff, OSTP
National Ocean Council
722 Jackson Place, NW
Washington, DC 20503

Re: Comments on the National Ocean Council's Development of Strategic Action Plans to Implement Priority Objectives for the Protection of the Ocean, our Coasts, and the Great Lakes

Dear Mr. Wackler:

The Alliance to Protect Nantucket Sound (Alliance) submits these comments in response to the National Ocean Council's request for comments on the *Development of Strategic Action Plans for the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes*. 76 Fed. Reg. 4,139 (Jan. 24, 2011).

The Alliance is a nonprofit environmental organization dedicated to the long-term preservation of Nantucket Sound, the unique body of water between Cape Cod, Nantucket, and Martha's Vineyard. Nantucket Sound is one of the most valuable marine ecosystems in the country and is a significant marine habitat for a wide range of ecologically and economically important species. It is the economic engine of the Cape and Islands, through which over 3 million ferry passengers travel and over which more than 400,000 airplanes fly every year. The Sound is the source of livelihood for local fishermen, an inspiration for artists and authors, and a source of solace and recreation for the millions who flock to its shores. Nantucket Sound has long supported its fishing community and the Native American tribes that in turn have helped define the historic and cultural landscape and rich maritime heritage of the area. Protecting this heritage is our key concern.

Since our inception nearly a decade ago, the Alliance has consistently called for the creation and implementation of a national ocean policy based on the foundation of coastal and marine spatial planning (CMSP) in order to balance the protection of coastal resources with competing development interests. The Alliance believes that this process, now being undertaken by the National Ocean Council (Council), should be completed prior to the approval of significant coastal offshore development activities. In doing so, the Council will be able to prevent such ill-advised siting decisions as the Cape Wind offshore wind energy project proposed for construction in the middle of Nantucket Sound.

The Alliance Supports the Use of Ecosystem-Based Management

Objective 1 calls for the use of ecosystem-based management (EBM) as a principle of the National Ocean Policy (NOP). The Alliance strongly supports this. EBM should be used to determine whether

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particular areas are suitable for development, or whether alternatives should be sought in order to avoid environmental damage. The final NOP should adopt a series of regionally-based measures, including environmental, cultural, and socioeconomic considerations, in measuring the potential impact of any proposed activities against the particular area in question.

Under the principle of EBM, Nantucket Sound should be protected in order to preserve the unique environmental and biological features and characteristics that led to its 1971 designation as a Cape and Islands Ocean Sanctuary, 1980 nomination for designation as a National Marine Sanctuary, 1983 determination that the Sound was worthy of such designation, and most recently, the 2010 ruling that Nantucket Sound was eligible for listing on the National Register of Historic Places. No large-scale projects, such as the Cape Wind project and its related infrastructure, should be allowed to degrade these qualities. In fact, the Advisory Council for Historic Preservation recommended to the Department of Interior to deny or relocate the Cape Wind project because it would cause pervasive and permanent damage to the Sound.

The Alliance Strongly Urges the Completion of Coastal and Marine Spatial Planning Prior to the Authorization of any Coastal or Offshore Activities or Projects

Objective 2 calls for the use of CMSP as a foundational principle of the NOP. As discussed above, the Alliance has consistently advocated the adoption of CMSP as a principle for the management and protection of offshore and coastal resources.

In the short term, the CMSP process must 1) encompass all coastal and ocean resources and uses, and 2) must be completed prior to permitting any specific projects. This is especially important when, as in the case of Cape Wind, the project is both a new type of development whose impacts have not been clearly demonstrated in similar projects, and is also a dramatic move away from any previous use of the area. Requiring a moratorium on all proposed projects until ocean zoning is in place promotes the advantages of responsible planning and protecting environmentally sensitive areas such as Nantucket Sound. This moratorium would also avoid future controversy and lengthy delays such as the one surrounding the Cape Wind project. Allowing pending offshore projects to move forward without first completing CMSP could result in projects being sited in areas with significant negative impacts on the environment that should have been deemed off limits to development.

In the long-term, the Council should incorporate the use of consensus-based management, transparency, and public participation, all concepts touted by this Administration, to develop regional CMSP initiatives and determine what uses are best suited for particular areas.

The Alliance Supports Coordination with Local Communities

Several of the objectives call for increased coordination and information-sharing with state, tribal, and local authorities. This is particularly critical for Nantucket Sound, a single ecosystem spanning both federal and state waters. Because Massachusetts and the federal government are both undertaking CMSP efforts, these plans must be coordinated if either is going to be successful. The state plan does not have jurisdiction over the federal waters in the center of Nantucket Sound; these waters must be included in the national plan and coordinated to be complimentary with the state-level plans and protections.

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In addition, local communities must be integrated into the planning process. In Nantucket Sound, a strong voice must be given to the local tribes, towns, and regional land use planning agencies, such as the Cape Cod and Martha's Vineyard Commissions.

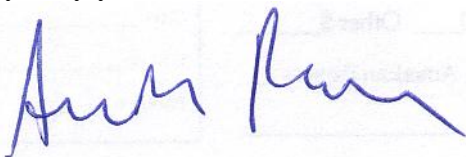
Construction of Cape Wind Must be Stayed

As discussed above, the approval and construction of projects such as the Cape Wind facility must be stayed pending completion of the NOP, especially with respect to the development and implementation of the regional CMSP process. The Alliance is concerned that the Department of the Interior and Bureau of Ocean Energy Management, Regulation and Enforcement, in spite of their participation on the Council, have continued to move forward with the approvals for the Cape Wind project, issuing a lease in October 2010, and releasing an Environmental Assessment, Finding of No Significant Impact, and Record of Decision on the Construction and Operation Plan on April 22, 2011.

If this project is allowed to proceed, it will be a premature decision without the benefits of the completed and comprehensive analysis to be provided by the NOP. In addition, the project will, without a doubt, conflict with the final NOP, which must recognize the unique characteristics and appropriate existing uses of Nantucket Sound and affirm the Alliance's call for protection of this great resource. Allowing the project to continue before the completion of the NOP will undermine the Council's efforts, compromise the integrity of the CMSP process, and forever negatively alter Nantucket Sound and its important environmental and cultural resources.

The Alliance appreciates the opportunity to comment on the development of these strategic action plans, and looks forward to continued means of participation as the Council moves forward with the development of the NOP.

Very truly yours,



Audra Parker
President & CEO
Alliance to Protect Nantucket Sound

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To Whom It May Concern:

Thank you for the opportunity to provide public comments in regards to the nine priority objectives of the National Ocean Policy proposed by the National Ocean Council. This comment letter will address four of the nine objectives, presented in the order of perceived priority.

I. Objective 3: Inform Decisions and Improve Understanding

a. Actions that would most effectively help the Nation achieve this policy objective

i. Near-Term:

1. Identify and prioritize the most important issues and topics that are influencing coastal zones the most in the United States. This should not be limited to those that are most apparent or immediate, but also those that will have a large and significant impact over time, such as sea level rise and climate change.
2. Formal and non-formal curriculum should be developed and implemented to better educate youth as well as the general public about scientific and environmental information pertaining to climate change and the current environmental state of not only the United State but also globally.
3. Develop and implement educational programs to be delivered in K-12 classrooms throughout the United States. Attention should be given to adhering to national and/or state science curriculum standards.

ii. Mid-Term:

1. Develop and provide a more comprehensive awareness of environmental conditions and trends, as well as human impacts and activities that affect the coastal zones. This awareness and educational information needs to be developed and presented for specific audiences in both formal and informal settings, whether it be school children, young adults, baby boomers, senior citizens, potential stakeholders, businessmen and women, blue-collar individuals, or any other demographic.
2. Continued education curriculum should be delivered to more isolated audiences that are unknowledgeable of climate change.

iii. Long-Term:

1. Implement routine integrated ecosystem assessments and forecasts involving a collaborative and comprehensive approach. The assessments should include impacts related to climate change and areas of vulnerability, risks, and resiliency.
2. Continued delivery of formal and non-formal educational programs.

b. Major obstacles to achieving this objective

- i. Funding to develop and introduce educational programs.
- ii. Difficulty in reaching isolated or smaller populations that are unfamiliar with scientific evidence related to climate change.
- iii. Lack of basic scientific and environmental knowledge and understanding by the general public audiences.
- iv. Gaps in linking ecosystem conditions to human health.

- v. Ignorance or indifference of audiences to understand the importance of coastal, marine, and Great Lakes health, and how these ecosystems impact human life and well-being.
- vi. Funding and nationwide adoption of formal and informal educational programs that provide awareness of the current state of our coastal ecosystems, as well as the current work being done to improve coastal areas.
- c. Milestones and performance measures most useful for measuring progress toward achieving this priority objective
 - i. Immediate implementation of the National Ocean Policy and the Nine Priority Objectives.
 - ii. Creating, delivering, and evaluating assessments related to the knowledge currently held by the public in terms of coastal zone health and the impacts of global climate change.
 - iii. Creating and delivering awareness and education programs related to coastal zones and ecosystem health, tailored to specific audiences based on the previous knowledge assessments.
 - iv. Establishing a visible web-based platform for the importance and significance of the health of coastal ecosystems, and how it can be linked to human life.
 - v. Using widespread and varied techniques to gather information related to the current state of the nation's coastal zones, including new technologies of remote sensing and unmanned aerial vehicles in addition to the latest scientific data available.
 - vi. Assessing and analyzing the effectiveness of the educational programs after they have been developed and delivered by distributing surveys to those who participated.
 - vii. Revising educational programs and information based on assessment feedback, and delivery of new programs developed from public input.

II. Objective 5: Resiliency and Adaptation to Climate Change and Ocean Acidification

- a. Actions that would most effectively help the Nation achieve this policy objective
 - i. Near-Term: Routine integrated ecosystem assessments and forecasts of factors and activities contributing to climate change should be implemented and conducted, including briefings delivered to Congress. This will allow the National Ocean Council to determine the areas or entities most prominently contributing to climate change that should be addressed on a priority level.
 - ii. Mid-Term: Make efforts to transition to more renewable energy practices that will ultimately reduce greenhouse gas emissions. Such practices have been introduced in the Report to Congress by the EISA in 2009. Introducing more renewable energy practices, such as marine hydrokinetic energy in the form of offshore wind farms, will not only allow the United States to become more energy independent, but it will also reduce greenhouse gas emissions and the level of carbon dioxide in the atmosphere.
 - iii. Long-Term: Institute and enforce stricter regulations on humans to protect the environmental health of our ecosystems. Some of these regulations may include introducing more National Marine Sanctuaries and reserves, stricter fishing regulations and enforcement to reduce overfishing, reduction of fertilizer use in commercial and residential coastal areas, and ultimately limiting and reducing the carbon dioxide amounts released in the atmosphere by businesses and industries.
- b. Major obstacles to achieving this objective
 - i. The numerous, widespread, and various impacts of climate change may be difficult to monitor, especially in collaboration with other agencies and organizations.

- ii. Media, politicians, and stakeholder groups that strongly oppose and refute the validity of climate change and the scientific evidence that supports it.
- iii. Increasing human impacts on our ecosystems and the increasing contributions to perpetuating climate change such as greenhouse gas emissions.
- c. Milestones and performance measures most useful for measuring progress toward achieving this priority objective
 - i. Immediate implementation of the National Ocean Policy and the Nine Priority Objectives.
 - ii. Continued support and reporting of climate change-related findings from NASA.
 - iii. Assessments and updates on the level of carbon dioxide in the atmosphere.
 - iv. Assessments of industrial greenhouse gas emissions.
 - v. Monitoring and reporting of continued climate change evidence such as sea surface temperatures, sea level, ice sheets in the Arctic, and levels of carbon dioxide in the atmosphere.

III. Objective 2: Coastal and Marine Spatial Planning

- a. Actions that would most effectively help the Nation achieve this policy objective
 - i. Near-Term: The establishment of nine regional planning areas that mirror those of the Regional Fishery Management Councils. This will allow for relief from the sector-by-sector approach to management that has been practiced in the past, as well as reduce any previous overlap or ambiguity in management jurisdictions.
 - ii. Mid-Term: Improve ecosystem health and services of coastal zones by planning human uses on conjunction with conservation of important ecological areas. These improvements would lead to the protection of areas that are vital for the resiliency and maintenance of healthy ecosystems services and biological diversity, as well as providing marine resources and supporting human use.
 - iii. Long-Term:
 - 1. Facilitate sustainable economic growth in coastal communities by introducing projects for economic investments related to coastal and marine industries.
 - 2. Economic incentives should be established for both public and private entities that choose to sustainably develop and manage their use of the coastal zone.
- b. Major obstacles to achieving this objective
 - i. Preexisting agencies and management jurisdictions that may unenthusiastic about adhering to the new federal regions and policies.
 - ii. Unwillingness of agencies and governments to form cohesive partnerships and cooperation that support the Council.
 - iii. Stakeholder groups that are unsupportive of the new regions, policies, and partnerships, and the impacts that each will have on their industry or cause
 - iv. Possible hesitation or unwillingness of individual coastal communities to adapt to the proposed policies, and lack of support for sustainable economic growth and incentives.
- c. Milestones and performance measures most useful for measuring progress toward achieving this priority objective
 - i. Immediate implementation of the National Ocean Policy and the Nine Priority Objectives.
 - ii. Establishment of the nine regional planning areas.
 - iii. Introduction of economic incentives.
 - iv. Formed partnerships and cooperation among agencies and governances.

- v. Observed and measured improvement of ecosystem health based on environmental assessments and monitoring.

IV. Objective 9: Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure

- a. Actions that would most effectively help the Nation achieve this policy objective
 - i. Near-Term:
 - 1. Establish and maintain a national integrated network of ocean, coastal, and Great Lakes observing systems, allowing agencies and organizations to compile and share observations, data, and information. Cooperating international partners and organizations may also access this network.
 - 2. Formal technology training programs should be created and delivered for governmental and environmental agency employees. This will ensure that new technologies are not only accessible, but also able to be used properly in order to observe and monitor coastal areas.
 - ii. Mid-Term: Introducing and integrating new technologies and techniques of monitoring and collecting coastal information, such as unmanned autonomous vehicles (UAVs) and remote sensing satellites and technology. Using sophisticated forms of data collection, the Council would be able to monitor the health and productivity of coastal zones, and address any potential threats as they are discovered.
 - iii. Long-Term:
 - 1. Development and launching of more satellites that measure and record environmental and geographical data. This data should be linked and shared on an accessible national or global network as previously mentioned.
 - 2. Expansion of the National Oceanographic fleet of ships and facilities. More vessels should be added to the fleet in order to monitor and manage for coastal areas.
 - 3. Facilities and laboratories should be expanded and updated so that they are equipped to address any potentially hazardous threats to the health of our ecosystems as they are discovered.
- b. Major obstacles to achieving this objective
 - i. Cooperation among agencies and organizations to share observations among the coastal systems network.
 - ii. Funding and maintenance of proposed new monitoring technologies in the form of UAVs and remote sensing satellites.
 - iii. Full and complete integration of ocean, coastal, and Great Lakes observations and data.
 - iv. Cohesive and well-coordinated infrastructure related to the national observing systems integrated network.
- c. Milestones and performance measures most useful for measuring progress toward achieving this priority objective
 - i. Immediate implementation of the National Ocean Policy and the Nine Priority Objectives.
 - ii. Willingness and agreement from agencies and organizations to participate in the observing systems network.
 - iii. Implementation of UAV and remote sensing technologies in coastal monitoring.
 - iv. Assessment and evaluation of the effectiveness and efficiency of the new monitoring technologies.
 - v. Creation of an accessible database of observations and recorded data related to coastal monitoring.

I would like to thank you again for the opportunity to provide comments on the National Ocean Policy and these Priority Objectives.

Regards,
Todd A. Harwell



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April 25, 2011

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

Subject: Comments from Fort Bragg City Council on Strategic Action Plans

Fort Bragg is a coastal city in northern California that is located midway between San Francisco and the Oregon border. Our City has a port, Noyo Harbor, that shelters commercial and sport fish fishing boats, whale watch tour boats and recreational boats. Commercial and recreational uses of the ocean are an important component of our local and regional economy. Recreational use of the ocean is important to our citizens. The ecological health of the ocean is important to all of us.

The North Coast region of California has recently engaged in extensive public discussion of ocean issues during the California Marine Life Protection Act implementation process to establish marine reserves in this region. The following comments on the National Ocean Council's Strategic Action Plans are informed by that discussion:

1. Ecosystem-Based Management:

The tribal communities, fisherman and other ocean users of the North Coast of California stand ready to participate in management of our ocean resources. Please include co-management by these groups in your management strategy.

2. Coastal and Marine Spatial Planning (CMSP):

Much of the ocean resource is currently utilized. Please take full account of existing uses as a baseline for CMSP. The tribal and non-tribal local jurisdictions of the North Coast have experience with planning and vast knowledge of existing uses. Please consult our local jurisdictions early in the CMSP process. Local and tribal jurisdictions should be represented on the Regional CMSP recommending group.

- 3. Inform Decisions and Improve Understanding; and 4. Coordinate and Support:**
The tribal and non-tribal local jurisdictions of the North Coast have vast experience and knowledge of our Ocean resource. Please consult our local jurisdictions. Local and tribal jurisdictions should be represented on any Regional recommending group.
- 5. Resiliency and Adaptation to Climate Change and Ocean Acidification; 6. Regional Ecosystem Protection and Restoration; 7. Water Quality and Sustainable Practices on Land; and 8. Changing Conditions in the Arctic:**
We agree with the above four items as objectives, but have no specific comments. We stand ready to cooperate on these goals as they apply to our City.
- 9. Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure:**
Much more information and mapping is needed to characterize the ocean resource in the North Coast area of California sufficiently to establish good policy. Please do all that you can to direct resources to our area for further mapping and scientific study. Further knowledge is a pre-condition to the establishment of good policy for our ocean resource.

Sincerely,



Dave Turner
Mayor



Meg Courtney
Vice Mayor



Dan Gjerde
Councilmember



Doug Hammerstrom
Councilmember



Jere Melo
Councilmember