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Organization: The Humane Society of the United States

Path: http://edit.whitehouse.gov/sites/default/files/webform/ocean_policy_comments.pdf

Comment: Please accept the attached comments on the draft National Ocean Policy Implementation Plan on behalf of The Humane Society of the United States. Feel free to let me know if you have questions or concerns about our submission.

Sent on behalf of:

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Submitted via: www.whitehouse.gov/oceans

February 27, 2012

Dear Ms. Sutley,

The Humane Society of the United States and Humane Society International commend the administration for working toward a forward-thinking plan for stewardship of our fragile and valuable marine resources. We agree with the majority of goals and objectives outlined in the draft National Ocean Policy Implementation Plan (the Implementation Plan). Our comments will focus on considerations or situations that we believe should be taken into account in order for the broad objectives to be meaningful. The Council has asked that commenters also address whether the Implementation Plan reflects actions that are needed in each of the nine identified priority objectives, which are addressed below.

Ecosystem-based Management (EBM)

We agree that an EBM approach to resource management provides a more comprehensive approach than ad hoc management resource-by-resource, as it seeks to balance the needs of both complementary and competing interests for use of space or resources in the marine environment. We support the intent to assure that this process is science-based. However, the inability to precisely quantify resource abundance, distribution and resiliency can lead to partisan calls for exploitation that may exceed precautionary levels. The continued discussion over the status of cod in New England is such a conflict. We are concerned that some of the strictures on funding for a number of key areas in the National Oceanic and Atmospheric Administration (NOAA) budget may undermine our ability to improve science and protect ocean resources.

As outlined by Dr. Jane Lubchenco in her summary of the proposed 2013 budget (Lubchenco, 2012), funding for Fisheries and for Oceans programs and for Coastal Management are both reduced, the latter by five million dollars from the 2012 levels. Funding for research and management of protected resources, which includes endangered fish, turtle and marine mammal species has been reduced by a similar amount. Habitat conservation and restoration funds are similarly reduced. A number of programs have been proposed for elimination, including the John H. Prescott Marine Mammal Rescue Assistance Grant program. This program not only funds response to live stranded animals—a potential source of information on ocean health—but it also funds response to endangered marine mammals entangled in commercial fishing gear. If successfully disentangled, these animals live, if they are not disentangled,

Comments of The HSUS on the Draft National Ocean Policy Implementation Plan

then their deaths may result in restriction of fisheries whose impact cannot exceed levels mandated under the Endangered Species Act and the Marine Mammal Protection Act. While we understand the need for trimming budgets, we are concerned that some of these cuts may undermine our ability to gather information for proper EBM. In fact, base costs for the National Marine Fisheries Service (NMFS) (e.g., salaries and overhead) are often inadequately funded and then are extracted from already straited research budgets, thus further limiting science needed to generate important data for management.

Further, we believe strongly that EBM must consider not only human needs but the needs of ocean predators including fish and marine mammals. Determination of maximum sustainable yields for fisheries seldom includes consideration of the needs of marine predators, whose healthy populations are key to a healthy ecosystem. We strongly encourage consideration of forage needs in models of sustainable management.

Obtain, Use and Share the Best Science and Data to Inform Decisions and Improve Understanding

This objective is vital to precautionary management and we were encouraged to see a commitment to precautionary management in the Implementation Plan's response to prior comments. This approach is particularly important in the face of uncertainty. However, we are concerned that what constitutes "best science" is often in the eye of the beholder, with commercial fisheries advocates often challenging the judgment of agency scientists as to stock abundance and harvest levels. A somewhat pessimistic (though not entirely inaccurate) review of this sort of conflict indicates that obfuscation and litigation by fisheries users can stymie the Agencies' attempt to use science for management (Rodgers, 2003). A 2005 conference sponsored jointly by regional Fishery Management Councils reached similar conclusions, that is, that the use of best science may be frustrated or undermined by short-sighted economic interest (FMC 2005).

As mentioned in our comments above, the agency must seek appropriate funding levels for stock assessments of both economically exploited ocean resources and the protected species resources that depend on a healthy ecosystem. We support true science-based management of exploited resources.

Observation, Mapping and Infrastructure

We have no particular comments to offer on this objective outside of the objectives already outlined in the Implementation Plan.

Coordinate and Support Management

As noted below, in our comments on water quality, it is vital that there be close coordination among federal entities charged with managing public trust resources. This is not always the case. For example, the Fish and Wildlife Service (FWS) does not assess or use the same standards for management of marine mammals under its jurisdiction as does the NMFS. This has been a topic of discussion in MMPA-mandated independent Scientific Review Groups. This disparity results in different levels of agency tolerance for risk and uncertainty in stocks such as arctic marine mammals, where the stock assessments for ice seals acknowledge that the NMFS no longer tracks levels of native subsistence hunting whereas the FWS does track this sort of hunting for species it manages. Conversely, the FWS management of manatees uses a far less precautionary approach to defining stocks in Florida than that used by the NMFS for dolphins with similar patterns of habitat use and anthropogenic impacts.

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There is also a frequent disconnect between how states manage fisheries within state waters and how the federal government manages the same species outside of the 3 mile limit of state waters. For example, whereas the NMFS declares white sharks to be a prohibited species for all fisheries, states often permit fishing for them within state waters. Conversely, whereas the state of Florida bans possession of scalloped hammerhead sharks by all fishermen, the federal government permits possession of this species caught in federal waters, just outside the state's 3 mile jurisdiction. When one management agency is less conservative than the other, this difference can undermine attempts to manage the same resource more conservatively.

This difference in approach to exploiting resources can also be seen in the U.S. management of resources in its waters that differs from management of the same resource either by adjacent nations or in international waters. This can be seen clearly in shark management, where the U.S. legislation bans finning of sharks by requiring that sharks are landed with fins naturally attached to carcasses, however this is undermined by an exemption for smooth dogfish sharks, with a higher fin to carcass ratio than scientists recommend. As shark populations continue to decline, primarily due to the demand for shark fins, more nations are adopting complete bans on removing shark fins at sea, including OSPESCA countries in Central America, Taiwan, and the EU.

We believe that disparate management of a shared resource does a disservice to the resource and believe the more precautionary approach should prevail. It is not clear in the Implementation Plan how such discrepancies would be resolved.

Strengthen Regional Ecosystem Protection and Restoration

While we support the need to consider and manage issues of unique regional concern so that an inappropriate one-size-fits-all approach is not attempted, and regional resource managers can be empowered to take local action; we are concerned that there should be consistency where management affects a shared resource. As noted above, by allowing considerable latitude at the regional level, the result can be a checkerboard of protection that ultimately undermines conservation of a shared resource. Where regional actions can contribute to the health of an overall system we believe it should be strongly encouraged (e.g., protection in Chesapeake Bay contributes to strong ocean fisheries by ensuring and protecting productivity in a key spawning habitat). However, a parochial desire to facilitate ocean users in one area may result in undermining stewardship of a broader ecosystem or resource that extends outside of a smaller region (e.g., if localized seasonal spawning habitats are permitted to be exploited by a local or regional management agency, then sustainable ocean fisheries would be jeopardized).

This can also be seen where state managers may introduce non-native fish such as bass and walleye into rivers to please recreational fishers and provide greater sporting satisfaction but science-based inquiry indicates that the non-indigenous fish actually compete with or prey on native fish, such as salmon, which range outside that jurisdiction and are struggling to recover from habitat loss and degradation. Strong coordination between regional and national managers and oversight of such regional activities is needed to prevent localized actions from undermining national priorities for recovery of species.

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Resiliency and Adaptation to Climate Change and Ocean Acidification

We support the broad objectives and actions outlined in this section of the Implementation Plan. It is also vital that keystone and or signal species be monitored to determine impact of ongoing changes in ocean temperature and acidification. For example, while *calanus* copepod abundance (and northerly shifts in species habitat use) has been monitored on the eastern North Atlantic; this is less the case in the western North Atlantic. There are consequences to poor monitoring. In this case, since copepods are primary prey of critically endangered North Atlantic right whales, changes in their distribution may result in challenges to reproductive fitness in the whales if their prey resource is less available or in greater risk to the whales from anthropogenic impacts (e.g., fishery-related entanglement and ship collisions), if their distribution changes as they try to exploit resources in areas outside of current management zones. Adequate monitoring of indicator species should be an important part of responsible ocean management.

Water Quality and Sustainable Practices on Land

This is a key initiative. Farming and forestry practices, including water usage, have been identified as key factors in the on-going threats to salmon recovery in the west. Without proper management of human land and water use practices, both fisheries and marine predators are adversely affected by salmon declines. Not only are marine predators deprived of food resources, but their predation on salmon has resulted in regional calls to reduce their populations even as major actions to promote meaningful salmon recovery are ignored or inadequately addressed. The conflicts in and around the Sacramento River and the Columbia River are prime examples. With proper management of human land and water use and restoring key spawning habitat, salmon recovery is possible without the need to artificially manipulate marine predator populations.

Run-off from land has been found to adversely affect the health of marine organisms. Water quality issues have been identified as a threat to sea otter recovery in California, with bacteria and parasites common to the waste of cat litter being identified in ill or dead otters. This same parasite affects human health as well. Protecting water quality for otters is protecting ourselves.

Strong partnerships between land managers in the Department of Interior and ocean managers in the NMFS and FWS are key to achieving this goal. We strongly support action to establish and/or maintain sustainable land use and water use practices.

Changing Conditions in the Arctic

The spate of substantive proposals to list arctic marine mammals under the Endangered Species Act (e.g., polar bears, ice seals) is indicative of the threat to ice-dependent species, many of which are apex predators and key components of their ecosystem. Polar bears have become an unfortunate standard bearer for diminished arctic habitat in the public eye and pressure on them from hunting has prompted international concern.

As ice has retreated in the arctic, not only is key breeding and foraging habitat diminished but additional exploitation of marine resources is facilitated. Marine mammals become more vulnerable to increased hunting as they are pushed closer to human settlements. Oil and gas exploration and extraction is

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facilitated and ship traffic along the fabled “northwest passage” is likely to increase which increases risk of oil spills, noise-related impacts and vessel collisions with large whales.

We agree there should be attention to sea ice forecasting, as is proposed in the implementation plan; however, attention must also be paid to long-neglected abundance surveys of arctic-dwelling marine mammals. Without an understanding of population abundance of seals and other arctic marine life (something that is entirely lacking at this time), trends cannot be detected and anthropogenic impacts may not be managed until it is too late to remedy incursions into populations. Managing potentially harmful impacts to marine life in the arctic must be precautionary and need to be better informed than at present.

Coastal and Marine Spatial Planning

Coastal Marine Spatial Planning (CMSP) appropriately supported as an approach that serves as a tool in EBM; however, this plan indicates this should be driven from bottom up by regional needs. We raised concerns about regarding allowing parochial interests to dictate policy that may affect a broader ocean community. It is important that there be an overarching guidance on ecosystem health that cannot be swayed by localized (and perhaps short-sighted) economic interests. There are a number of situations where various ocean users conflict and may adversely impact each other as well as marine resources. For example, placement and construction of industrial marine wind power facilities is based on wind strength and proximity to electrical grids and is sited so as to avoid conflict with shipping areas. Use of these areas by commercial fisheries and even by some marine mammal species may be precluded by the construction of many turbine towers. Marine aquaculture facilities lease ocean bottom and they too may preclude other uses. Mobile and fixed gear fisheries often overlap in their activities. Fisheries conflicts can also place marine mammals at risk. For example, lobster gear must be marked with buoys to assure limited conflict with mobile gear fisheries, yet these vertical buoy lines are the source of unsustainable levels of entanglement of endangered marine mammals such as critically endangered right whales. Attempts by a multi-stakeholder group in the Atlantic (including representatives of both the fishing and conservation community) to recommend experimental line-free fishing in some areas have been rebuffed as “impractical” due to multi-use areas and inability to restrict certain fisheries in certain areas to allow for experimentation. Detailed habitat mapping of both benthic and coastal resources and overlaying distribution of various marine resources and uses would allow clear depiction of areas that may be more suited to some uses than others and allow consideration of “zoning” areas for some uses and not others just as terrestrial areas are often “zoned.”

Balancing interests is a lofty goal but difficult to implement smoothly. The conflicts between various ocean user groups as well as concerns expressed by land-based interests threaten to consign marine spatial planning to become more of a concept than a reality (CRE, 2011; United Fishermen of Alaska, 2011; Gloucester Times, 2011). We believe that CMSP is an important step toward better management of ocean resources.

Conclusion

The desire to undertake planning for ocean management is driven in part by a desire to assure that uses are sustainable. Indeed the burgeoning human population that increasingly occupies coastal areas has resulted in depleting and degrading ocean resources (Pew, 2003). Our use of natural resources—particularly fossil fuels—has put in motion changes to the global climate and threatens to change the

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ocean in ways we still cannot fully comprehend. We must strive to assure that human economies and economies of scale do not threaten fragile and vital marine resources. This may require changing management practices in ways that alter the way we interact with ocean resources. Mostafa Tolba, a past chairman of the United Nations Environment Programme's Commission on Sustainable Development, is credited with saying that "[a]chieving sustainable development is perhaps one of the most difficult and one of the most pressing goals we face. It requires on the part of all of us commitment, action, partnerships and, sometimes, sacrifices of our traditional life patterns and personal interests." This seems poignantly true.

Sincerely,



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NATIONAL OCEAN COUNCIL

Name: **Mike Nussman**

Organization: American Sportfishing Association

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_implementation_plan_coalition_comments_2-27-12_final.pdf

Comment: Please see the attached letter submitted on behalf of the American Sportfishing Association, Center for Coastal Conservation, Coastal Conservation Association, Congressional Sportsmen's Foundation, International Game Fish Association, National Marine Manufacturers Association and The Billfish Foundation.

American Sportfishing Association
Center for Coastal Conservation
Coastal Conservation Association
Congressional Sportsmen's Foundation
International Game Fish Association
National Marine Manufacturers Association
The Billfish Foundation

February 27, 2012

The Honorable Nancy Sutley
Chair, Council on Environmental Quality
Co-Chair, National Ocean Council
Executive Office of the President
Washington, DC 20500

Dr. John P. Holdren
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Co-Chair, National Ocean Council
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Washington, DC 20502

Re: Comments on the Draft National Ocean Policy Implementation Plan

Dear Ms. Sutley and Dr. Holdren,

Thank you for the opportunity to provide comments on the Draft National Ocean Policy Implementation Plan. As the largest user group of the oceans, the recreational fishing and boating community is very much interested in the future planning and coordinating components of the National Ocean Policy. Our organizations represent the overwhelming majority of recreational boating and angling interests in the United States, collectively a \$200+ billion industry in the United States that supports over 1.5 million jobs.

It is unfortunate that many of the questions and concerns we have raised since the initial release of the work of the Interagency Ocean Policy Task Force, and which we have reiterated in subsequent communications regarding the development of the National Ocean Policy (NOP), still remain unanswered. An overarching concern of our community with the NOP, particularly as it pertains to Coastal and Marine Spatial Planning (CMSP), is the treatment of recreational uses as one of numerous ocean "sectors" for which planning activities will occur, along with oil, gas, mining, commercial fishing, transportation and defense. We firmly believe that there is a distinct and inherent difference between recreational and industrial ocean uses, and their respective impact on the ocean environment. Members of the public who choose to spend leisure time on

the water fishing with family and friends are fundamentally different than commercial activities in which a public resource is extracted for the purpose of selling that resource.

Recreational use of our public waters is not only compatible with, but in fact is essential to, sound conservation and natural resource stewardship, as highlighted by contributions made to successful conservation programs such as the Sport Fish Restoration Program. Because recreational angling and boating contribute directly to funding the conservation of our nation's aquatic resources and provide other significant social and economic benefits, these activities warrant special and elevated consideration as a national priority as NOP development moves forward. In addition, saltwater recreational activities are compatible with the *America's Great Outdoors* initiative and play an important role in providing outdoor recreation, exercise and life skills.

1. Priority Consideration for Recreational Fishing and Boating

The saltwater recreational fishing community presently faces an unprecedented number of new regulations and management approaches as a result of changes being made by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) in an effort to improve federal fisheries management. From new annual catch limits to saltwater angler registries to entire fisheries closures, all across the nation anglers are being required to change where and how they fish, and in many cases are facing fewer or diminished fishing opportunities as our nation strives to end overfishing and rebuild fish stocks.

Unfortunately, the rollout of the NOP has created even greater uncertainty as anglers and recreational-fishing dependent businesses struggle to understand how recreational access will be treated in CMSP. While efforts have been made by the Administration to alleviate some of these concerns, such as listing a national goal of CMSP to "provide for and maintain public access to the ocean, coasts, and Great Lakes,"¹ other language in the draft Implementation Plan and previous NOP documents fuels the concern that areas of our nation's coastal and marine waters will ultimately be closed to recreational fishing under the CMSP process. For example, the National Objective 2 of CMSP, to "(r)educe cumulative impacts on environmentally sensitive resources and habitats in ocean, coastal, and Great Lakes waters,"² can be interpreted to mean identifying areas in which certain ocean uses, such as recreational fishing, will ultimately be restricted. The recreational fishing community is not opposed to limiting fishing activities to conserve vulnerable habitats or to stop overfishing when other management options have been ineffective, so long as these decisions are scientifically sound. We firmly believe that these decisions should be left to existing fisheries management agencies, given their wealth of expertise in these matters, not the new regional planning bodies.

¹ Final Recommendations of the Interagency Ocean Policy Task Force (July 19, 2010), pg. 63.

² Draft National Ocean Policy Implementation Plan (January 12, 2012), pg. 88.

As defined in the Magnuson-Stevens Fisheries Conservation and Management Act, fishing activities in the U.S. Exclusive Economic Zone are managed by NOAA Fisheries and the Regional Fishery Management Councils. In state waters these activities are managed by individual state fish and wildlife agencies and through the multi-state marine fisheries commissions. The final Implementation Plan and upcoming CMSP Handbook should clearly state that the authority to manage fishing activities will remain solely with these existing fisheries management bodies, which have decades of experience in fisheries management and through which our community is adequately represented.

In several states that have undertaken coastal and marine spatial planning processes, the existing authority of fisheries management agencies was expressed from the outset. For example, the enabling legislation for the Massachusetts CMSP process, the Massachusetts Oceans Act of 2008, states:

“In the geographic area subject to the ocean management plan, as described in paragraph (b), commercial and recreational fishing shall be allowable uses, subject to the exclusive jurisdiction of the division of marine fisheries. Any component of a plan which regulates commercial or recreational fishing shall be developed, promulgated and enforced by the division of marine fisheries pursuant to its authority under chapter 130.”³

The Massachusetts act also includes the following language further reinforcing the authority of the state marine fisheries agency:

“The director of marine fisheries, subject to the approval of the marine fisheries advisory commission, shall have sole authority for the opening and closing of areas within the geographic area described in subsection (b) for the taking of any and all types of fish.”⁴

In Washington State, recent legislation to initiate a CMSP process, the Washington Marine Waters Planning and Management Law of 2010, includes similar language providing the state fish and wildlife agency with the sole authority to manage fishing activities as part of the CMSP process:

“If the director of the department of fish and wildlife determines that a fisheries management element is appropriate for inclusion in the marine management plan, this element may include the incorporation of existing management plans and procedures and standards for consideration in adopting and revising fisheries management plans in cooperation with the appropriate federal agencies and tribal governments.”⁵

³ M.G.L. ch.21A §4C(k)(1)

⁴ M.G.L. ch.21A §4C(k)(3)

⁵ R.C.W. ch.43.372.040(5)

In the cases of Massachusetts, Washington and Rhode Island – which also undertook a CMSP process – recreational fishing and boating received priority consideration in the development of the plans. Importantly, these processes also required that potential impacts on recreational fishing and boating be taken into account and minimized while planning for other future or existing activities.^{6, 7, 8}

Recommendation: We strongly urge you to review the enabling legislation for the state CMSP processes described above and incorporate similar language reserving management of recreational fishing under existing authorities into the Final Implementation Plan and CMSP Handbook. In Massachusetts, Rhode Island and Washington, elevating the status of the recreational fishing and boating community in CMSP was critical to generating support from our community and ultimately leading to a successful outcome.

2. No Private Funding for CMSP

Given the numerous references to protecting areas and habitats in the draft Implementation Plan, we and our members cannot help but view CMSP under the NOP as potentially following a similar path to another marine spatial planning process to which our community has had strong objections – the California Marine Life Protection Act (MLPA) process. While the MLPA was conducted for the specific purpose of closing areas to fishing, as compared to CMSP planning for all ocean uses, our concern that CMSP will follow a similar track of unnecessarily closing areas is heightened by the listing of the MLPA as an example of a CMSP process on NOAA's website⁹ as well as the numerous references throughout the draft Implementation Plan of protecting ocean ecosystems, habitats and resources.

Perhaps at the root of the problems with the MLPA was that the process was funded almost entirely through a public-private partnership by organizations that support closures. As we have noted in previous comments on NOP, to ensure that CMSP is developed through a fair and balanced approach, it is essential that the federal government not seek or collect private funding to aid in the development of the regional plans.

Recommendation: Given the potential for privately-funded CMSP to follow a similar path as the MLPA, it is critical to avoid engaging in a public-private funding partnership, and we strongly encourage you to provide this assurance in the final Implementation Plan and the CMSP Handbook.

⁶ M.G.L. ch.21A §4C(k)(2)

⁷ R.C.W. ch.43.372.040(6)

⁸ Rhode Island Ocean Special Area Management Plan (SAMP) Goals and Principles for the Ocean SAMP (November 16, 2009), pg. 2

⁹ <http://cmsp.noaa.gov/examples/california.html>

3. Adequate Representation from the Regional Fishery Management Councils

We are grateful that the National Ocean Council recently decided to formally include Regional Fishery Management Councils in the regional planning bodies.¹⁰ It is vitally important that the fisheries resource expertise of the councils be represented on the regional planning bodies given the implications of CMSP to the fishing community and fisheries resources. However, the current policy precludes executive directors of the respective councils and private members of the fishing community itself who have seats on the councils from serving on regional planning bodies. Therefore, many of those with the greatest knowledge, familiarity and experience with issues important to the fishing community are excluded from regional planning body membership.

Recommendation: We request that any Regional Fishery Management Council representative – not just government or tribal representatives – may be selected for representation on regional planning bodies.

4. Participation of the States in CMSP

We are deeply concerned that the development of the NOP thus far is not adequately acknowledging the difficult financial limitations states in general – and their natural resource management agencies in particular – are now facing. CMSP will clearly rely heavily on state agencies and if this is carried out in a “top-down” manner that is insensitive to the harsh economic burdens state agencies are carrying, the endeavor will be crippled before it has truly started at the regional level.

This problem is compounded by inadequate outreach thus far in approaching states as partners in this effort. If CMSP is to succeed at any level, it must be carried out in a collaborative manner with the states, which have done a much better job historically of managing marine resources than has the Federal government. If states are unable or unwilling to participate in the regional planning process due to financial limitations or other reasons, they should not be held to the timelines described in the draft Implementation Plan.

Recommendation: The final Implementation Plan should clarify that the timelines pertaining to the establishment of regional planning bodies and development of regional plans are advisory in nature, dependent upon the availability of resources to adequately conduct the process, and are not intended to interfere with the right of applicable regions to establish such bodies and subsequent plans at a time and pace of their choosing.

¹⁰ Another Step Toward Ocean Stewardship (February 1, 2012), available at: www.whitehouse.gov/blog/2012/02/01/another-step-toward-ocean-stewardship

5. Coastal and Marine Spatial Planning Handbook

We look forward to the release of the forthcoming Handbook for Regional Coastal and Marine Spatial Planning, which is expected to include guidance in significant areas, including stakeholder and public engagement, consultation with scientists and technical and other experts, how Coastal and Marine Spatial Plans will be reviewed for national consistency, and how Coastal and Marine Spatial Plans will be incorporated into decision-making processes. However, the draft Implementation Plan does not clarify whether the Handbook will be released as a draft that will subsequently open for public review and comment, or if it will be released in its final form only.

Recommendation: Because the information contained in the Handbook is expected to be highly significant to those who may be impacted by Coastal and Marine Spatial Planning, ample opportunity for public review and comment on the Handbook should be provided before it is finalized.

6. Conclusion

We again thank you for the opportunity to provide comments on the draft Implementation Plan, and hope that our recommendations will receive strong consideration during the development of the final Implementation Plan and CMSP Handbook. While we have seen some progress made since the initial rollout of the NOP toward addressing previous comments we have submitted, we must note that our organizations are hearing ever-increasing questions and concerns from our members about the lack of adequate consideration of our overriding issues with the NOP. It is our genuine hope that this letter provides reasonable and workable solutions that will be incorporated into the final Implementation Plan to ensure that the recreational fishing and boating community can actively and productively engage in CMSP with the assurance that it will be a truly beneficial process for our community and the resources we care about. We stand ready to provide input and ideas and thank you for this opportunity to reinforce our ideas.

Sincerely,

Mike Nussman, President and CEO
American Sportfishing Association

Rob Kramer, President
International Game Fish Association

Jeff Angers, President
Center for Coastal Conservation

Thom Dammrich, President
National Marine Manufacturers Association

Pat Murray, President
Coastal Conservation Association

Ellen Peel, President
The Billfish Foundation

Jeff Crane, President
Congressional Sportsmen's Foundation

NATIONAL OCEAN COUNCIL

Name: **Jennifer Smith**

Organization: Confluence Aikido Systems

Path:

Comment: I respectfully ask that you support this draft of the National Ocean Policy Implementation Plan.
Thank You

Name: **Ron DeHaven**

Organization: American Veterinary Medical Association

Path: http://edit.whitehouse.gov/sites/default/files/webform/2012-02_ceq_national_ocean_policy_draft_implementation_plan.pdf

Comment: Comments submitted on behalf of the AVMA, established in 1863 and the largest veterinary medical association in the world. As a not-for-profit association established to advance the science and art of veterinary medicine, the AVMA is the recognized national voice for the veterinary profession. The association's more than 82,500 members comprise approximately 83% of U.S. veterinarians, who are involved in a myriad of areas of veterinary medical practice including private, corporate, academic, industrial, governmental, military, and public health services.

AVMA



American Veterinary Medical Association

February 27, 2012

1931 N. Meacham Rd.
Suite 100
Schaumburg, IL
60173-4360
phone 847.925.8070
800.248.2862
fax 847.925.1329
www.avma.org

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

RE: National Ocean Council--National Ocean Policy Draft Implementation Plan

Dear Sir or Madam:

I am writing on behalf of the American Veterinary Medical Association (AVMA), established in 1863 and the largest veterinary medical association in the world. As a not-for-profit association established to advance the science and art of veterinary medicine, the AVMA is the recognized national voice for the veterinary profession. The association's more than 82,500 members comprise approximately 83% of U.S. veterinarians, who are involved in a myriad of areas of veterinary medical practice including private, corporate, academic, industrial, governmental, military, and public health services.

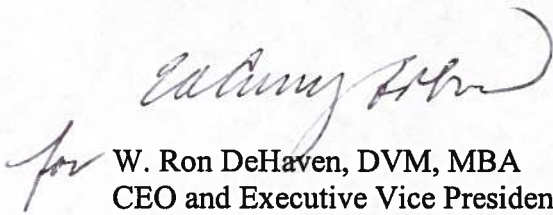
This letter is in response to the solicitation by the Council on Environmental Quality for comments on the National Ocean Council's draft National Ocean Policy Implementation Plan (Implementation Plan). The AVMA applauds the NOC's adoption within the Implementation Plan of ecosystem-based management (EBM). Collectively, animals and people breathe the same air, drink the same water, and eat from the same source of plant and animal food products. Therefore, what affects the air and water for people, also affects the air and water of pets, livestock, and diverse wildlife species. In addition, animals have a major influence upon the health of our ecosystems – urban, rural, and natural. This interdependence of all animal life creates a common interest in ecosystem health and preserving biodiversity among veterinarians and many other disciplines, including wildlife and marine biologists, physicians, ecologists, environmental scientists, and several others. The complex nature of modern environmental problems demands effective team efforts by scientists from multiple disciplines in order to solve or prevent world environmental problems.

EBM is very similar to One Health, which is the integrative effort of multiple disciplines working locally, nationally, and globally to attain optimal health for people, animals, and the environment. Veterinarians are uniquely qualified to be key players in the field of environmental quality and ecosystem health. Veterinary education focuses heavily on comparative medicine and the influence of the environment on health. Their role is vital in the control of wildlife diseases, conservation of endangered wildlife species, and preservation of animal biodiversity.

The AVMA agrees that a report card format, while superficial, could be useful in reporting the progress of the outcomes proposed by Implementation Plan for the public. Additionally, a Gantt chart, or one similar, would be helpful in conveying to the public the basic schedule or projected timelines of each of the milestones within the Implementation Plan as well as presenting their interdependency, percentage completed, and deliverables. Regardless of the public reporting format or combinations of formats chosen, we urge the reporting to be widely announced to, easily accessed by, and transparent for the public.

The AVMA appreciates the opportunity to provide input. For further clarification on the AVMA's comments, please contact Dr. Kristi Henderson at 800-248-2862 ext. 6651, or at khenderson@avma.org.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Ron DeHaven".

for W. Ron DeHaven, DVM, MBA
CEO and Executive Vice President
American Veterinary Medical Association

Name: **Erin Anderson**

Organization:

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_comment_letter_-_oregon_electeds.pdf

Comment: Please accept the attached comment letter on behalf of the listed elected officials from Oregon. Thank you for providing the opportunity for stakeholders and the public to weigh in on the draft Implementation Plan for the National Ocean Policy.
Sincerely,
Erin Anderson

February 27, 2012

Ms. Nancy Sutley, Dr. John Holdren, and National Ocean Council Members
National Ocean Council
722 Jackson Place, NW
Washington, DC 20503

Dear Chairs Sutley, Holdren, and National Ocean Council Members:

We would like to share our support for National Ocean Policy draft Implementation Plan. As elected officials from Oregon, we are charged with promoting and protecting our communities' assets, including Oregon's coast and ocean.

The draft Plan establishes a strong blueprint for taking action and fostering agency coordination to sustain our ocean, coastal and Great Lakes resources. The draft Plan has successfully incorporated the needs and concerns of governmental, non-profit, and commercial groups and provides clarifying details to improve accountability and monitor progress toward improved ocean management. Frequent notations on how implementing actions are related to one another provide confidence that activities will be coordinated and make good use of limited resources.

Nonetheless, the plan could be improved to achieve even more progress. It should more fully utilize all available authorities for habitat protection and management. Many of the milestones could be extended beyond cataloguing and planning to include action, with tangible, on-the-water activities. Regional need, support, and capacity should guide where coordinated actions should first take place. Federal agencies must continue to ask for input from other levels of the government and the public and incorporate this new information into implementation of the plan.

With these additions, President Obama's Implementation Plan will provide a better guide for achieving the goals of protecting, maintaining, and restoring the nation's oceans, coasts, and Great Lakes and ensuring resilient coastal economies. As elected officials from Oregon, we look forward to the release of the final plan and hope to see policy translated into action on the water soon.

Sincerely,

Mayor Ron Brean
Yachats, OR

City Councilor Melissa Cadwallader
Cannon Beach, OR

City Councilor Jim Clinton
Bend, OR

City Councilor Sandy Dunn
Yachats, OR

City Commissioner Nick Fish
Portland, OR

County Commissioner Rob Handy
Lane County, OR

City Councilor Donna Jordan
Lake Oswego, OR

City Commissioner Randy Leonard
Portland, OR

Mayor Mark McConnell
Newport, OR

Mayor Kitty Piercy
Eugene, OR

City Commissioner Dan Saltzman
Portland, Oregon

County Commissioner Dick Schouten
Washington County, OR

County Commissioner Pete Sorenson
South Eugene District, Lane County, OR

Name: **Erin Anderson**

Organization:

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_comment_letter_-_or_wa_outdoor_and_tourism_businesses.pdf

Comment: Please accept the attached comment letter on behalf of the listed outdoor and tourism businesses from Oregon and Washington. Thank you for providing the opportunity for stakeholders and the public to weigh in on the draft Implementation Plan for the National Ocean Policy.

Sincerely,
Erin Anderson

February 27, 2012

Ms. Nancy Sutley, Dr. John Holdren, and National Ocean Council Members
National Ocean Council
722 Jackson Place, NW
Washington, DC 20503

Dear Chairs Sutley, Holdren, and National Ocean Council Members:

We would like to share our support for National Ocean Policy draft Implementation Plan. As outdoor recreation and tourism businesses and enthusiasts from the Pacific Northwest, we believe that a healthy, sustainably-managed ocean is an asset to our region, and critical to our way of life. A strong Implementation Plan will help protect marine ecosystems and encourage sustainable ocean uses, including recreation on our ocean beaches, as well as in and on our ocean waters.

The draft Plan establishes a strong blueprint for taking action and fostering agency coordination to sustain our ocean, coastal and Great Lakes resources. The draft Plan has successfully incorporated the needs and concerns of governmental, non-profit, and commercial groups and provides clarifying details to improve accountability and monitor progress toward improved ocean management. Frequent notations on how implementing actions are related to one another provide confidence that activities will be coordinated and make good use of limited resources.

Nonetheless, the plan could be improved to achieve even more progress. It should more fully utilize all available authorities for habitat protection and management. Many of the milestones could be extended beyond cataloguing and planning to include action, with tangible, on-the-water activities. Regional need, support, and capacity should guide where coordinated actions should first take place. Federal agencies must continue to ask for input from other levels of the government and the public and incorporate this new information into implementation of the plan.

With these additions, President Obama's Implementation Plan will provide a better guide for achieving the goals of protecting, maintaining, and restoring the nation's oceans, coasts, and Great Lakes and ensuring resilient coastal economies. As outdoor enthusiasts, and tourism and outdoor-based businesses from the Pacific Northwest, we look forward to the release of the final plan and hope to see policy translated into action on the water soon.

Sincerely,

Alder Creek Kayak & Canoe, Portland, OR

Portland Kayak Company, Portland, OR

Aquatic Sports, Portland, OR

Sage, Bainbridge Island, WA

Bob Rees' Fishing Guide Service, Tillamook, OR

South Coast Tours, Gold Beach, OR

Gorge Performance, Portland, OR

The Wild Image Project, Portland, OR

Next Adventure Sports, Portland, OR

Name: **Erin Anderson**

Organization:

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_comment_letter_-_multnomah_county_commissioners.pdf

Comment: Please accept the attached comment letter on behalf of the Multnomah County Commissioners in Oregon. Thank you for providing the opportunity for stakeholders and the public to weigh in on the draft Implementation Plan for the National Ocean Policy.
Sincerely,
Erin Anderson



Board of County Commissioners
MULTNOMAH COUNTY OREGON

501 SE Hawthorne Blvd., Ste. 600
Portland, Oregon 97214
503-988-

Ms. Nancy Sutley, Dr. John Holdren, and National Ocean Council Members
National Ocean Council
722 Jackson Place, NW
Washington, DC 20503

Dear Chairs Sutley, Holdren, and National Ocean Council Members:

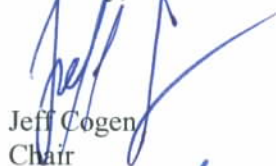
We would like to share our support for National Ocean Policy draft Implementation Plan. As elected officials from Oregon, we are charged with promoting and protecting our communities' assets, including Oregon's coast and ocean.

The draft Plan establishes a strong blueprint for taking action and fostering agency coordination to sustain our ocean, coastal and Great Lakes resources. The draft Plan has successfully incorporated the needs and concerns of governmental, non-profit, and commercial groups and provides clarifying details to improve accountability and monitor progress toward improved ocean management. Frequent notations on how implementing actions are related to one another provide confidence that activities will be coordinated and make good use of limited resources.

Nonetheless, the plan could be improved to achieve even more progress. It should more fully utilize all available authorities for habitat protection and management. Many of the milestones could be extended beyond cataloguing and planning to include action, with tangible, on-the-water activities. Regional need, support, and capacity should guide where coordinated actions should first take place. Federal agencies must continue to ask for input from other levels of the government and the public and incorporate this new information into implementation of the plan.

With these additions, President Obama's Implementation Plan will provide a better guide for achieving the goals of protecting, maintaining, and restoring the nation's oceans, coasts, and Great Lakes and ensuring resilient coastal economies. As elected officials from Oregon, we look forward to the release of the final plan and hope to see policy translated into action on the water soon.

Sincerely,



Jeff Cogen
Chair



Deborah Kafoury
District 1



Loretta Smith
District 2



Judy Shiprack
District 3



Diane McKeel
District 4

Name: **Elizabeth Schuster**

Organization: Food & Water Watch

Path: http://edit.whitehouse.gov/sites/default/files/webform/final_nop_implementation_plan_feb_2012_ew.pdf

Comment: Please see the attached comments.

February 27, 2012

Dear Members of the National Ocean Council:

On behalf of Food & Water Watch (FWW),¹ please accept this letter as formal comments to the “Draft National Ocean Policy Implementation Plan” (DIP). We appreciate the administration’s intent to prevent ad-hoc, fragmented oceans management and plan for a 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 safety of their drinking water, and the fish they eat, how fish are produced or caught, and whether our nation’s fisheries are well managed. We appreciate the opportunity to comment on these matters.

The draft implementation plan asks us to “provide comments regarding (1) priorities for the ocean, coasts, and the Great Lakes and whether this draft Implementation Plan reflects those priorities, and (2) the most effective way to measure outcomes and to detect whether a particular action in the Implementation Plan has achieved its intended outcome.” **Our comments will center upon the following areas: aquaculture, management of the Great Lakes region, public-private partnerships (including the public trust), wetland restoration and land use, and coastal and marine spatial planning (CMSP).**

Aquaculture

In our August 2010 comments, we noted that the National Ocean Policy (NOP) stated that it is the policy of the United States to “protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources.” We indicated then that offshore factory finfish farming would be in direct conflict with this policy, as such operations significantly harm the health of the marine environment and threaten regional biodiversity. Similarly, in our April 2011 comments on the NOP’s SAPs, we stressed caution in incorporating this style of aquaculture in the context of ecosystem-based management. To our dismay, it appears that founding principles in the NOP have been overlooked in the ambitious aquaculture plans outlined in the DIP.

The Problems with Commercial-Scale Rearing of Finfish in the Ocean

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.² 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.³

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.⁴ 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.⁵ 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 fish⁶ – to the oceans over the long term have not been fully researched. Moreover, fish fed diets high in soy produce more excrement,⁷ thus adding extra waste to the marine environment.

Ecosystem based management (EBM) 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, and 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 than traditional

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 ($\delta^{13}\text{C}$ and $\delta^{15}\text{N}$) analyses.” *Aquaculture*, 262: 268-280, 2007.

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.)

Specific Problems with the DIP

To be clear, we have no issues with the National Shellfish Initiative at this time, as most forms of shellfish farming do not carry with them the host of problems mentioned above that plague the ocean fish farming industry. Furthermore, we see an opportunity for small-scale shellfish farming leading to true, *local* job creation.

However, we are concerned with some of the bold, unsupported statements made about the aquaculture industry that appear to be unsupported. (Unfortunately, these statements lump in offshore finfish farming with shellfish farming – again, two very different practices.) On pp. 18-19, the DIP reads: “Enhancing aquaculture technologies will create jobs, provide affordable and accessible food, and lower our trade deficit (currently 86-percent of seafood consumed in the United States is imported).” This claim is unfounded for three key reasons.

First, as stated earlier, the job analysis must take into account potential detrimental impacts on other sectors, such as tourism and commercial fishing. More jobs in the aquaculture sector might actually lead to an overall net loss in jobs. Next, the “affordable and accessible food” claim is also lacking. Raising carnivorous finfish places to feed a narrow demographic of consumers places an inordinate strain on forage fisheries, which deplete this critical food source upon which other people and wild fish rely; this leads to overall food instability and is an unsustainable model. Finally, one cannot begin to address the trade deficit without first acknowledging our huge seafood export market, and the fact that most homegrown finfish aquaculture product will also end up shipping product to foreign countries, thereby doing little to decrease demand on imports and close the gap.

The Interagency Working Group on Aquaculture (IWGA), first referenced on page 20, at first blush appears to be a promising sign of objective agency coordination and further examination of ways to make aquaculture truly sustainable. However, on pp. 40-41, its true purpose as an industry promotion group becomes readily apparent. Action 5 states that the IWGA will collaborate with the NOC to create a “task force to improve permitting efficiencies for aquaculture...” Apparently dissatisfied with current mechanisms in our laws that protect the public from

excessive pollutant discharges, conflicting uses, and the like, Action 5's outcome boldly hopes for an efficient permitting process that "will allow ocean **industries to save time and money and encourage economic development** and growth," (*emphasis added*) and only as an afterthought remembering that it should protect health, safety, and the environment.

Aquaculture and CMSP

Finally, the specifics on how aquaculture ties into CMSP will have to wait for another day, as noted on p. 85. Page 88 of the DIP does give hope: "An overall reduction in delays and costs through CMSP allows for the mandates of environmental laws such as NEPA to be fulfilled more efficiently and should not be interpreted as weakening them or subverting their requirements in any way." Unfortunately, NOAA's attempts to streamline development have told a different story, as evidenced by its shocking approval of the Gulf of Mexico FMP on Offshore Aquaculture and its recently drafted National Aquaculture Policy. Both initiatives faced substantial opposition by the conservation community, and criticism from several commercial and recreational fishermen. Congress has also responded with legislation to prevent factory-scale commercial finfish farms from being developed in the Gulf of Mexico's federal waters (HR 574). In other words, it is hard to fathom how the agency would not subvert or weaken other laws' requirements, when it has consistently been an active promoter of the industry and, like the DIP laments on page 40, too many Federal agencies need to be consulted or grant permits before an aquaculture facility can proceed.

Suggested Alternatives

An EBM 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. Instead of finding ways to permit offshore aquaculture or "zone" its development, the DIP should explore alternatives to prevent 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. 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.

Stewardship of The Great Lakes

On page 45 of the DIP the NOC recognizes that the Great Lakes region faces “urgent issues such as toxics, invasive species, near-shore health, and wetland restoration.” This is particularly noteworthy as the Great Lakes are characterized by a rich and diverse habitat and provide shelter to more than 3,500 plants and animals.⁸ Over 40 million people rely on the Lakes for their lives and livelihoods.⁹ Furthermore, there are indications that if the groundwater surrounding the Great Lakes is being withdrawn at the same rate as current global groundwater withdrawals, *the Lakes could be completely barren and drained of water within 80 years.*¹⁰ The Great Lakes region faces several threats to its ecosystem, including but not limited to: over-extraction, climate change, and mining oil and gas exploration.¹¹ Without careful management, the Great Lakes could cease to exist.

On page 10 of the DIP, the NOC defines the EBM approach as an “integrated approach to management, including resource management, that considers the entire ecosystem, including humans, and elements that are integral to ecosystem functioning.” The NOC continues to state their intent in creating an EBM is to “conserve and restore our natural and cultural heritage by sustaining diverse, productive, resilient ecosystems and the services they provide, thereby promoting the long-term health, security, and well being of our Nation.”

As Maude Barlow, the National Chairperson of the Council of Canadians points out “there is a strong need for Basin-wide consistent laws, regulations and definitions to protect and expand the existing Commons groundwork if we are to save the Great Lakes.”¹² The current mechanisms of managing the Great Lakes are not working and although we applaud the NOC for their efforts to protect and restore the Great Lakes we believe that more is needed to make a management plan work for the Great Lakes region.

Suggested Alternatives

The DIP should integrate public trust language into the Great Lakes’ management plan that makes clear that the waters of the Great Lakes, and tributaries should be treated as commons, held in public trust for the benefit, use and enjoyment of the citizens and inhabitants of the Great Lakes region and beyond.¹³

Specifically, the implementation plan for the Great Lakes should include language that the Great Lakes, and tributaries are shared public resources. With this designation, the Great Lakes can be held in public trust for the “benefit, health, safety, and general welfare of citizens who live within or are inhabitants of the Great Lakes basin or a transboundary river basin.”¹⁴

FWW applauds the NOC’s statement on page 97 that its “decision making will be guided by a precautionary approach as reflected in the Rio Declaration of 1992.”

The implementation plan should make clear, without deemphasizing the importance of scientific findings, “it may sometimes be necessary to adopt a precautionary approach and to act even in the absence of a scientific consensus where prudence is essential to protect the public welfare and the public trust in the those boundary waters that are navigable from improper diversion, use, alienation, impairment or pollution.”¹⁵

To properly protect the Great Lakes public rights must be put in higher priority than private rights. The implementation plan cannot as it says on p. 102, “promote opportunities for public-private partnerships and private investments” and still protect the public trust. The implementation plan should make clear that the ways in which something will affect the public trust must always be taken into consideration.

Public-Private Partnerships

Public-private partnerships (PPPs) are of particular concern to FWW, since privatization of certain core functions of government can lead to a direct conflict of interest between the goals of serving the public good and reaping corporate profits. The DIP states that partnerships that include the private sector “allow Federal agencies to better address national problems that are beyond the mandate or capability of any single Federal agency or the Federal government acting alone.” This statement is problematic for two reasons.

First, Federal agencies should not be pursuing initiatives that are beyond their mandate in the first place. Congress writes the laws, and spells out specific areas where agencies have defined criteria and leeway by which to implement these mandates. One example of agency overreach is offshore aquaculture. The purpose of the Magnuson-Stevens Act is to manage and conserve wild fisheries, not to promote offshore aquaculture production. Yet despite explicit authorization, NOAA consistently claims it has the authority to regulate the industry through creative and liberal legal interpretations of that law.

Second – and we sympathize with Federal agencies in this regard – Federal agencies should be adequately funded to perform their duty without looking for outside, private sources of money. Obviously, in this climate, the appropriations process has been quite unforgiving for many agencies, particularly those concerned with protecting our natural resources – marine or otherwise. Yet once agencies seek and obtain this outside funding, it may be difficult to return to public sources if private sources come with too many strings attached or withdraw their support in the future. Furthermore, it is almost unheard of for a private, multinational corporation to donate money to an entity that would then turn around and use that money for a public purpose that could impair the corporation’s image or decrease its profits. FWW has seen disastrous results when water systems are privatized, including but

not limited to, prioritizing profits over the needs of the public, worse service, and rate increases.¹⁶

To better illustrate our point, we highlight just a couple of the public-private partnerships, mentioned in the DIP, of concern.

Corporate Wetlands Restoration Partnership (CWRP)

The CWRP is explicitly mentioned as an example of one of the public-private partnerships that could help with OCGL protection and restoration projects *this year* in the third milestone on page 38. According to the sidebar on page 37, this “private-public initiative” has a goal of “preserving, restoring, enhancing, and protecting aquatic habitats throughout the United States.” These goals are laudable, but referencing our earlier point, they are all within the mandate and (should be) within the capability of our Federal agencies.

Unfortunately, the CWRP has a questionable assortment of corporate sponsors, including members of the oil and gas industries, pharmaceutical industry, and heavy metal industry. All of these industries pollute and harm marine wildlife within estuaries and other aquatic habitats. Thus, any cleanup efforts to restore particular bodies of water are almost guaranteed to avoid any focus or scrutiny on the practices of some of the largest point-source and non-point-sources of pollution (i.e., from the donors). Instead, restoration efforts center on cleaning up the mess without addressing the root causes.

Suggested Alternative to PPPs

A Public-Public Partnership (PUP) is simply a collaboration between two or more public entities to improve public services on a not-for-profit basis. In a PUP, two or more public water utilities, government entities or non-governmental organizations join forces and leverage their shared capacities to improve things such as water and sewer services. The public partners pool resources, buying power and technical expertise to enhance public efficiencies and service quality. These partnerships promote public-service delivery through sharing best practices.¹⁷

In the last two decades, major multinational efforts have promoted private sector strategies, including PPPs between public utilities and private water companies, for water and sewer services in industrialized and developing countries. Recent research, however, reveals that compared to PPPs, PUPS are a more effective, efficient and equitable approach.¹⁸ Therefore, the DIP should include more of a focus promoting PUPS than PPPs.

Regional Ecosystem Protection and Restoration and Water Quality and Sustainable Practices on Land

We are pleased to see the holistic approach taken to examining the issue of ecosystem degradation, as outlined on page 43: “The health of [OCGL] ecosystems...is being degraded by urban, rural, and agricultural development; unsustainable land-use practices; and other human activities.” The GLRI and the Gulf Coast Ecosystem Restoration Task Force appear to involve a greater collaboration among governments at all levels. Tied in with the “Water Quality and Sustainable Practices on Land” section beginning on page 63, we commend the NOC for its vision. Given FWW’s work on industrial agriculture, we were pleased to see “agricultural development” and “animal feedlots” as “major impacts” on water quality (p. 64). We support most actions from pages 63-74.

We support the first two Actions on pp. 46-47. Implementing some of the ideas for water quality and sustainable practices on land, we recommend that local and regional urban planning commissions be involved in this process, as incorporating coastal development, land zoning, and transportation issues will also play a large role in reducing wetland loss. We also support the remaining actions in this section, with the exception of certain aspects of Action 3, particularly the voluntary carbon market for wetlands.

Coastal and Marine Spatial Planning (CMSP)

Our comments for this section will be relatively brief, given that an accompanying handbook will provide further details. 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 NOP SAP document. We are pleased to see “the creation of an information management system and portal to provide public access to those data and information in support of coordinated planning.” (p. 87) We agree that www.ocean.data.gov will serve as a great way to boost transparency and science-based collaborative planning. 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.

As outlined in the section on aquaculture, FWW is concerned that CMSP could be used for streamlined 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,” (DIP p. 88) 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. 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. Given that regional fishery management councils (RFMCs) will be consulted as part of the CMSP process, 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 (according to the NOP SAP), FWW is worried that local groups, regions, or states might potentially become subject to CMS Plans that they do not support. On p. 60 of the NOP SAP, the Task Force stated: “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 remains problematic, given that the DIP has not altered the NOC’s previous stance. To highlight just one 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 the facility.

FWW firmly 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.

We thank the NOC for considering our comments to the DIP and we encourage the members to contact FWW directly with any additional questions and comments.

Sincerely,

James Mitchell
Senior Policy and Legislative Analyst
Fish Program

Elizabeth Schuster
Policy and Legislative Analyst
Water Program

-
- 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.
- ² Alston, D.E. et al. "Environmental and Social Impacts of Sustainable Offshore Cage Culture Production in Puerto Rican Waters." University of Puerto Rico - University of Miami, unpublished, 2005.
- ³ 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.
- ⁴ Naylor, Rosamond L. et al. "Effect of aquaculture on world fish supplies," *Nature* Vol. 405, 2007 at 1017- 1024.
- ⁵ 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.
- ⁶ Kidd, Karen. "Effects of Synthetic Estrogen on Aquatic Population: A Whole Ecosystem Study," Freshwater Institute, Fisheries and Oceans Canada.
- ⁷ Naylor, Rosamond L. et al. "Feeding aquaculture in an era of finite resources." *Proceedings of the National Academy of Sciences*, vol. 106, iss. 36, September 8, 2009 at 15106.
- ⁸ Barlow, Maude. "Our Great Lakes Commons: A People's Plan to Protect the Great Lakes Forever." The Council of Canadians. Spring, 2011 at 9.
- ⁹ Barlow, Maude. "Our Great Lakes Commons: A People's Plan to Protect the Great Lakes Forever." The Council of Canadians. Spring, 2011 at 9.
- ¹⁰ Barlow, Maude. "Our Great Lakes Commons: A People's Plan to Protect the Great Lakes Forever." The Council of Canadians. Spring, 2011 at 15.
- ¹¹ Barlow, Maude. "Our Great Lakes Commons: A People's Plan to Protect the Great Lakes Forever." The Council of Canadians. Spring, 2011 pp. 9-14.
- ¹² Barlow, Maude. "Our Great Lakes Commons: A People's Plan to Protect the Great Lakes Forever." The Council of Canadians. Spring, 2011 at 31.
- ¹³ Barlow, Maude and James M. Olson. Council of Canadians and Flow for Water. "Report to the International Joint Commission on the Principles of the Pubic Trust Doctrine." November 30, 2011 at Tab 1A.
- ¹⁴ Barlow, Maude and James M. Olson. Council of Canadians and Flow for Water. "Report to the International Joint Commission on the Principles of the Pubic Trust Doctrine." November 30, 2011 at Tab 1B.
- ¹⁵ Barlow, Maude and James M. Olson. Council of Canadians and Flow for Water. "Report to the International Joint Commission on the Principles of the Pubic Trust Doctrine." November 30, 2011 at Tab 1B.
- ¹⁶ For more information, see Food & Water Watch's report Trends in Water Privatization: The Post-Recession Economy and the Fight for Public Water in the United States.
- ¹⁷ Hall, David et al. Public Services International and Transnational Institute. "Public-Public Partnerships (PUPs) in Water." March 2009 at 2 to 5; Boag, Gemma and David McDonald. "A critical review of Public-Public Partnerships in water services." *Water Alternatives*, vol. 3, iss. 1. February 2010 at 6 to 7.

¹⁸ Petrova, Violeta. "At the frontiers of the rush for blue gold: Water privatization and the human right to water." *Brooklyn Journal of International Law*, vol. 31, iss. 2. 2006 at 577 to 578, 581 to 586.

Name: **Erin Anderson**

Organization:

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_comment_letter_-_or_wa_chefs_restaurant_owners_and_seafood_vendors.pdf

Comment: Please accept the attached comment letter on behalf of the listed chefs, restaurant owners and purveyors of sustainable seafood from Oregon and Washington. Thank you for providing the opportunity for stakeholders and the public to weigh in on the draft Implementation Plan for the National Ocean Policy.

Sincerely,
Erin Anderson

February 27, 2012

Ms. Nancy Sutley, Dr. John Holdren, and National Ocean Council Members
National Ocean Council
722 Jackson Place, NW
Washington, DC 20503

Dear Chairs Sutley, Holdren, and National Ocean Council Members:

We would like to share our support for National Ocean Policy draft Implementation Plan. As chefs, restaurant owners, and seafood vendors from the Pacific Northwest, we delight in serving sustainable seafood to our clients. A strong Implementation Plan will help protect marine ecosystems and encourage sustainable ocean uses, including harvesting sustainable seafood.

The draft Plan establishes a strong blueprint for taking action and fostering agency coordination to sustain our ocean, coastal and Great Lakes resources. The draft Plan has successfully incorporated the needs and concerns of governmental, non-profit, and commercial groups and provides clarifying details to improve accountability and monitor progress toward improved ocean management. Frequent notations on how implementing actions are related to one another provide confidence that activities will be coordinated and make good use of limited resources.

Nonetheless, the plan could be improved to achieve even more progress. It should more fully utilize all available authorities for habitat protection and management. Many of the milestones could be extended beyond cataloguing and planning to include action, with tangible, on-the-water activities. Regional need, support, and capacity should guide where coordinated actions should first take place. Federal agencies must continue to ask for input from other levels of the government and the public and incorporate this new information into implementation of the plan.

With these additions, President Obama's Implementation Plan will provide a better guide for achieving the goals of protecting, maintaining, and restoring the nation's oceans, coasts, and Great Lakes and ensuring resilient coastal economies. As chefs, restaurant owners, and seafood vendors from the Pacific Northwest, we look forward to the release of the final plan and hope to see policy translated into action on the water soon.

Sincerely,

Kristofor Lofgren, Owner
Bamboo Sushi, Portland, OR

Holly Smith, Chef/Owner
Cafe Juanita, Kirkland, WA

Lyf Gildersleeve, Owner
Flying Fish Oregon, Portland, OR

John Platt, Owner
St. Clouds, Seattle, WA

Steven and Michelle Korgan Bursey, Keepers
Heceta Head Lighthouse Bed & Breakfast
Yachats, OR

Cassandra Wright, Owner
Vis Seafoods, Bellingham, WA

Name: **Robert F. Zales, II**

Organization: National Association of Charterboat Operators

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_comments_2-27-12.doc

Comment:

February 27, 2012

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

RE: Comments on National Ocean Policy Draft Implementation Plan

Dear Members of the National Ocean Council:

NACO is a national non-profit organization that represents over 3,000 owner/operators across the United States. We are the premier voice for charter boats across the U.S. We provide the following comments on behalf of our members who are located in all regions of the United States.

First, we are extremely disappointed there is no representation, nor has there been, from the for-hire vessel industry on the Ocean Research Advisory Panel. In fact, there is no representative from any fishing, boating, diving, or energy industry on this panel which leads us to believe that the fishing, boating, diving, and energy stakeholders are purposely excluded from any advisory role in the whole National Ocean Policy process.

In addition, the fact you have provided a proposed implementation plan that contains 118 pages, includes 53 proposed federal actions, and almost 300 milestones is evidence that the whole process has been purposely crafted to be complicated and confusing to the average stakeholder so it will be extremely difficult to provide reasonable comments on the entire plan. It is clear to the few members of the public currently aware of this policy and the unprecedented use of the Presidential Executive Order process that you intend to ram this policy on the citizens of the U.S. regardless of the alleged need. The obvious misuse of the public and open process of government and the lack of congressional oversight is a travesty of public trust in such an overwhelming policy that has such an extreme impact on the citizens of this country.

The proposed plan will provide mechanisms to completely shut down public access to waterways for recreational and commercial uses. It will create unnecessary and costly social and economic impacts to millions of recreational fishermen and boaters while failing to enhance an already over regulated management system. The addition of another level of bureaucracy will only serve to create more expense of government creating more tax burdens for the citizenry. It is clear that in these times of economic uncertainty that any efforts to increase the size of government, especially when it will do nothing to increase an already heavily managed resource, are a pure waste of money and time.

Current management efforts to preserve and manage resources are working. According to the National Marine Fisheries Service, all marine species are no longer undergoing overfishing and are being managed to be rebuilt. Marine Protected Areas have been created to ensure sensitive areas are protected which serves to enhance the resource. State Marine Resource Agencies provide excellent management of their resources within their authority of all salt and fresh water areas. We do not need to fund or create additional agencies to do the job already being done.

During this time of rising gasoline prices, increasing turmoil overseas, and a fragile economic recovery, it is imperative that our nation maximizes the domestic production of energy, including oil and gas, to the fullest extent possible. The Draft Implementation does little to calm fears that the National Ocean Policy will be used as a reason to discourage rather than promote development of resources here at home. The goal of reducing our dependence on imported seafood and foreign oil will not be furthered by new regulations or a federal land grab of areas both onshore and offshore.

Rather, cordoning off vast areas of the ocean from fishery and energy development, enacting new restrictions, and establishing new hurdles that are required to be carried out before commercial and recreational activity can take place will cause additional and unnecessary pain for fishermen and energy consumers across the United States. Moving full steam ahead with new regulations and a national zoning plan through “Coastal and Marine Spatial Planning” will make it more difficult to protect and create jobs and bring relief at the gas pump and grocery store check-out lines. It will serve no further purpose to enhance our fishery management system or access to boaters.

Furthermore, stacking zoning boards known as “regional planning bodies” solely with government officials--with no assurances of adequate state and local representation and the specific exclusion of the private sector--makes it all the more likely that ill-informed decisions will be made that harm jobs, the economy, families, and our communities.

Finally, embarking on a costly new initiative in part through repurposing federal resources threatens to divert scarce assets away from existing governmental activities that are actually necessary for the fishing and energy industries to operate.

We urge you to ensure that the National Ocean Policy, including Coastal and Marine Spatial Planning, is rooted in non-regulatory, collaborative, and voluntary measures based on ideas and input that emanate from the states, local communities, and stakeholders. The decision to proceed in any other direction would be a mistake that the nation simply cannot afford.

Sincerely,

Robert F. Zales, II

Capt. Robert F. Zales, II
President

Name: **Kathleen Leyden**

Organization: State of Maine / State Planning Office, Maine Coastal Program

Path: http://edit.whitehouse.gov/sites/default/files/webform/comments_nop_draft_implementation_plan.maine_.pdf

Comment:



PAUL R. LEPAGE
Governor

PETER J. ROGERS
Acting Director

February 27, 2012

Nancy Sutley, Chair
Council on Environmental Quality
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

FILED ELECTRONICALLY

RE: National Ocean Council; Comments on the Draft National Ocean Policy Implementation Plan

Dear Ms. Sutley:

I am writing to provide the State of Maine's ("State") comments on the National Ocean Council's ("NOC") draft National Ocean Policy Implementation Plan ("Plan") which outlines proposed federal actions to address the nine priority objectives identified in the final recommendations of the Interagency Ocean Policy Task Force and incorporated by reference in Executive Order 13547.

Overall, the State commends the NOC on production of a document that is well-organized and well-presented and reflects consultation with coastal states and their citizens. The importance to the credibility and success of the NOC's work of continued federal commitment to such consultation cannot be overstated. As noted in various comments below, further refinements of the Plan are needed to recognize and adapt to the vitally important roles, responsibilities, and authorities of coastal states and to ensure that, as implemented, the Plan does build on and does not detract from current ocean and coastal resources management efforts.

General Comments and Policy Recommendations

The State expressed a number of concerns about this national planning initiative in its comments on the proposed Strategic Action Plan ("SAP") and full-content outlines for the SAPs that led to development of the proposed Plan. A number of these concerns centered on the lack of clarity regarding whether and how the New England Fisheries Management Council ("NEMFC") and comparable fisheries councils would be involved in the process. Recently, NOC staff confirmed that a representative from the NEMFC and its fellow councils will be eligible to serve as a member of its pertinent regional planning body. Accordingly, the State is optimistic that the regional coastal and marine spatial planning process that is a core element of

the Plan may be conducted in a manner that acknowledges and ensures due consideration of fisheries councils' knowledge and expertise and helps inform discussion about the issues and concerns of the fishing industry.

The State continues to have the following general concerns about the Plan's overall approach, focus, and concepts, some of which were expressed in its comments on the draft full content outlines of the SAPs. The following comments and suggestions address these concerns:

- **Clarify how federal agencies intend to work with coastal states and others**

In general terms, the Plan acknowledges the importance of federal-state coordination. However, it is largely silent on how federal and state agencies will work together. Although the Plan's limited focus on federal agencies' actions is understandable given its basis in an executive order, more explanation of how federal agencies will work with their state counterparts is necessary. The Plan should be designed and executed to maximize opportunity to compliment, and not duplicate or conflict with, related state efforts. This coordination is particularly important concerning direct communication with coastal stakeholders with whom states are more likely to have well-established and on-going working relationships. This approach will also help make the most effective use of federal as well as state resources. The Governance Coordinating Committee would provide a useful forum for discussing and providing more detailed recommendations on this issue.

- **Designate a lead federal agency for each action**

The Plan helpfully lists the key federal agencies to be involved in implementation of each action. This clarification addresses in part the State's prior comment on the need for assurance of federal agency coordination throughout the Plan. The State suggests that the Plan also designate the lead federal agency for each action to help increase accountability and oversight for progress under the Plan, for coordination with coastal states and others, and for development of more refined work plans that further detail federal agencies' respective roles.

- **Complement and don't detract from existing ocean and coastal resources management efforts**

The Plan states that one may not assume that any additional federal funding to carry it out will be provided. The State remains concerned that this effort may divert resources needed to fulfill objectives under existing ocean and coastal resources management, water quality, and related ocean and coastal-oriented programs, including those under the Coastal Zone Management Act and Clean Water Act, that have long-standing records of success in addressing issues and creating opportunities for beneficial use of the marine environment. The State urges the NOC to work to ensure that these programs, along with fisheries councils' resource planning-related work, help provide a firm foundation for the Plan and are not undermined by diverting funds from them to support this national planning effort. As noted below, the State sees the Plan's proposals for federal agencies to budget their related activities across agencies as particularly important to making optimal use of available resources.

- **Optimize use of existing information and analyses**

The draft Plan does not plainly direct federal agencies to optimize use of existing studies and analyses of pertinent ocean and coastal issues, problems, and opportunities. Such an approach could help make efficient use of available resources. To this end, it would be helpful to include under each action a threshold task focused on identification, assessment, and consideration of such information.

- **Ensure the pre-requisites for effective coastal and marine spatial planning are met**

In the Plan, coastal and marine spatial planning (CMSP) is a principal tool for meeting a number of the National Ocean Plan's goals; CMSP likewise has the potential to serve a number of the State's ocean policy-related goals. In keeping with prior comments and on the eve of kick-off the Northeast region's ocean planning effort, the State wishes to re-emphasize the importance of assurance that:

- Regional coastal marine spatial plans are not zoning maps but designed as dynamic, information-oriented tools to assist public and private decision-makers in using the best available science and information to assess and to address opportunities for beneficial uses of ocean and coastal resources;
- Fisheries managers and the interests of the fishing industry and other existing users and stakeholders of the marine environment, including the New England Fisheries Management Council and interstate management bodies such as the Atlantic States Marine Fisheries Commission, are appropriately represented at all planning and decision-making stages;
- Just as the Plan includes caveats that federal action to fulfill its ambitions depend on the availability of funding, the nature and extent of the State's participation in CMSP-related efforts will depend on availability of funding and related policy considerations and priorities;
- Maine's interests are considered on par with those of other more densely populated and more developed states in its Northeast planning region;
- Public and private resources available for regional planning are used strategically in the interests of the overall regional planning effort - and therefore, at the outset of the Northeast region's planning effort, data collection and assessment work needed in Maine's coastal waters and adjoining federal waters (which make up about half of the region's ocean area) need to be top regional priorities to ensure a baseline of information comparable to that in New England sister states that have state-prepared ocean plans; and

- The unique resources and environmental conditions of Maine’s coastal waters, and data gaps needed to consider them, are taken into consideration in developing policy options that may affect uses of or in its coastal waters - one size will not fit all.

- **Focus on specific, tangible natural resources-based outcomes**

In finalizing the Plan, the State continues to urge that the Plan be as specific as possible in articulating each objective's aims and desired outcomes in terms of progress in protecting or enhancing ocean and coastal resources, environmental conditions, and related opportunities for beneficial, natural resources-based human uses. The outcomes stated for the Plan's ecosystem-based management and CMSP objectives, for example, are predominantly process-oriented. The true measure of the Plan's success will be taken in terms of improved health and productivity of the ocean environment and expansion of opportunities for sustainable economic development. Better governmental efficiency and information resources, although necessary, are means to such ends.

- **Prioritize and encourage flexibility to address regionally significant issues**

The Plan would benefit from an additional hard look at and prioritization of its proposed actions in light of the reasonable expectations for federal funding to address them. For example, the Plan includes several long-standing environmental monitoring-related proposals that have languished due to lack of federal funding. Implementation of the draft Plan in its entirety would be a massive undertaking involving not only dozens of federal agencies, whose roles are indicated in the Plan, but also many state, local and tribal governments and private parties whose active involvement is integral to the Plan's success. In addition, as implemented the Plan should provide sufficient flexibility to ensure that CMSP and other efforts reflect regional priorities by focusing on the opportunities, issues, and concerns of primary importance in each region.

Comments on Specific Actions Proposed

The following comments highlight issues or concerns regarding actions and milestones identified under the Plan's objectives.

Ecosystem-Based Management (EBM)

The State supports ecosystem-based management in principle due to its emphasis on grounding public policy in the best available science and ever-improving data and information. The State offers the following comments and questions on how the Plan would put this concept into practice.

Action 1 - Framework for collaboration and a shared set of goals regarding EBM.

While the Plan expressly addresses only collaboration among federal agencies, the State is confident that there is widely-shared understanding that success in integrating EBM into natural resources management, planning, and decision-making requires that federal and state agencies and others work closely together. The Plan's proposed review of existing laws and

regulations for opportunities for and obstacles to EBM is of critical importance. To be successful, this review must be done in close consultation with Maine and other coastal states.

The State urges that the NOC give special and careful consideration to use of the Coastal Zone Management Act ("CZMA") and National Environmental Policy Act ("NEPA") as cornerstones of the policy framework for implementation of the Plan's EBM-related provisions. The CZMA is a well-established vehicle designed and long-used to encourage and in part require federal-state consultation regarding federal activities in coastal waters. Federally-approved state coastal programs also provide a well-established vehicle for coordinating, facilitating, and funding state implementation of EBM-related efforts. In the event that the NOC does not choose to use the CZMA to ensure necessary collaboration regarding EBM initiatives, the State urges that it ensure that the Plan explains how the means chosen relates to state and federal authorities and obligations under the CZMA.

Procedural in nature, NEPA provides a primary tool that all federal agencies must employ to ensure a hard look at potential effects of a proposed action on the human environment. Assurance that environmental analyses conducted under NEPA embrace EBM concepts could go a long way to ensuring that EBM is widely-integrated into the environmental review process.

The State acknowledges and appreciates the Plan's further clarification of its use of the term "ecosystem-based management." Notwithstanding this further clarification, as noted in prior comments, the State has concerns about amending decision-making criteria under key federal laws, such as the Magnuson-Stevens Fisheries Conservation and Management Act and the Endangered Species Act, pending development of a more mature and shared understanding of the meaning and application of EBM.

Action 2: Science framework to support EBM.

To be effective, implementation of EBM must be based on sound science. With respect to many of the NOP's objectives, the most appropriate role for federal agencies and best uses of federal funding center on data collection and analysis, on-going monitoring and assistance with indicator development, and development of assessment tools and technologies that can be used by state and local governments. For the most part, Maine and other individual states lack the resources or authority needed for this type work, particularly at a regional scale.

Given constraints on federal agencies' budgets, collaborative planning and budgeting among and across federal agencies seems critical to ensuring strategic, well-coordinated use of limited federal funds available to support scientific research and data collection and analysis. A national scientific research agenda that stemmed from such an inter-agency process has great potential to help ensure well-targeted, efficient use of federal dollars and to help influence and leverage academic and industry investments in research to address key problems.

Action 3: EBM-related training and education

The State suggests that federal agencies work closely together to ensure their training-related programs and activities are well-coordinated and dove-tail with, build on, or utilize any

related state programs. The cross-agency budgeting called for by the Plan would be an important tool for ensuring efficient integration of federal agencies' efforts. To be effective, federal training must be adaptable to state and regional needs and priorities. In addition, these federal efforts should incorporate state and local expertise and knowledge to the extent possible.

The State also urges the NOC to shape EBM-related training in part to the relationship between EBM and analysis required under the National Environmental Policy Act (NEPA). See comment under Action 2, above.

Action 4: Pilot projects.

Conducting small pilot efforts in priority areas to demonstrate the feasibility of EBM in practice seems a sensible approach. Using well-designed monitoring plans, one or more EBM pilot project should explore adaptive management techniques that foster development and deployment of emerging ocean technologies, including those for offshore wind energy, in ways that help avoid and minimize impacts on existing uses and resources.

Through the work to date of the states in our region, the Northeast Regional Ocean Council ("NROC"), and the Gulf of Maine Council on the Marine Environment ("GOMC"), the Northeast is a prime location for an EBM pilot project. With adequate provision for necessary supplemental studies, data collection and analyses, such a pilot could also help address data gaps and advance the Northeast's regional ocean planning process as a whole.

Inform Decisions and Improve Understanding

Action 1: Advance fundamental scientific knowledge.

The State recognizes the need for and potential benefits of well-coordinated and prioritized federal investment to advance scientific understanding of our oceans (see comment under EBM section, Action 2, above). The State continues to have concerns, however, about potential diversion of funds away from fisheries research and other matters of importance to Maine and other coastal states. Close federal-state cooperation will be needed to ensure appropriate consideration of states' research-related interests, needs, and priorities.

Action 3: Provide data and information tools for science-based decision making.

The State strongly supports efforts to make the best available information readily available to public and private decision makers. The State urges close federal-state cooperation to avoid duplication of effort and ensure consistency with related state-specific efforts and to maximize the effectiveness of these efforts.

Observation, Mapping and Infrastructure

Action 7: Integrated ocean and coastal data collection, processing, and management system

The State suggests that this action be among the Plan's top priorities. Integration of the wide range of current and foreseeable ocean data collection efforts to produce a manageable and readily usable tool seems a key component of the overall Plan. With mapping capability, such a tool would greatly aid in accomplishing a number of the NOP's objectives, particularly those regarding coastal and marine spatial planning. Such an endeavor is necessarily multi-state nature and appropriately a federal responsibility.

Coordinate and Support

Action 1: Support for regional partnerships

Given the Plan's focus on coastal and marine spatial planning and its regional focus, this action is of particular importance. For efficiency's sake and to avoid replication or duplication of effort, the State recommends that, as implemented, the Plan build on and enhance promising, ongoing regional efforts, including those of NROC. Moreover, in keeping with the role of NROC and comparable regional entities, the Plan should emphasize and enhance support for data collection and analysis needed to advance regional planning efforts.

Action 3: Barriers to achieving the National Ocean Plan's goals

Review of federal laws and their inter-relationships to identify inconsistencies, redundancies, and other inefficiencies as well as regulatory gaps that may frustrate achievement of the NOP's goals is a key part of the Plan. The NOC should ensure that the Plan also involves a careful analysis of how state and federal laws interact and may be better coordinated. Although as in previous, related documents, the Plan states that it will be implemented within existing authorities, the State continues to have concerns about extension of federal authority into areas of state authority and responsibility. Any analysis of the legal framework must include due consideration of and due deference to coastal states' autonomy, authority, and Public Trust-related responsibility to manage state-owned submerged lands and ocean resources in the public benefit. Further, any such analysis must involve all stakeholders before additional or changes to existing legal authorities are proposed.

Action 4: Cross-cutting budget analyses

This action is vital to the overall success of the Plan, and essential to help ensure the most efficient use of available resources. This action has potential to work synergistically with and help support many of the Plan's actions, including those that aim at a well-concerted national scientific research plan and harmonized data gathering and assessment efforts.

Action 5: Improve permitting efficiency

As noted elsewhere, State strongly supports the basic goal of this action and stresses that federal agencies must consult and work collaboratively with their state counterparts in exploring ways to achieve it. The milestones focus mainly on aquaculture. This focus should be expanded to address the leasing and permitting processes for renewable ocean energy and other beneficial uses where significant concerns regarding potential regulatory timelines and related complexities have been expressed.

Regional Ecosystem Protection and Restoration

As noted in prior comments on this topic, the State recommends that any regional protection and restoration efforts that may be undertaken in the Gulf of Maine build on the strong and cooperative working relationships and information and analyses developed through the GOMC and feature appropriate consultation with our region's partners in Canada. In addition, further clarification of the relationship between this objective and its related actions and the coastal and marine spatial planning objective and its related actions would be useful.

Action 2: Reduce loss and improve understanding of coastal wetlands

The State currently has strong programs for management and protection of coastal wetlands. Accordingly, the State recommends that the Plan's milestones reflect and build on the work of Maine and other jurisdictions, non-profits, and academic institutions in this area.

Action 6: Identify nationally significant marine areas in need of protection

The Northeast region is well-positioned to work with NOAA to help develop and showcase the gap analysis called for in this action's milestones. Consideration should be given to undertaking this work in relation to the pilot project proposal discussed under Action 5. In addition, sites off Maine that may be considered for additional protection, including those that remain on the National Marine Sanctuary Site Evaluation list, may be of considerable importance to Maine fishermen; any such consideration should be done in close consultation with Maine agencies and stakeholder groups.

Action 7: Improve the effectiveness of coastal and estuarine habitat restoration projects

The State recommends that, as part of the cross-agency budgeting called for by the Plan, federal agencies work together to coordinate coastal land acquisition and restoration programs. In undertaking this effort, federal agencies should reach out to coastal states and others to explore opportunities for complementary efforts.

Water Quality and Sustainable Practices on Land

Education of the general public on the effects and larger implications of individual choices and actions on water quality and reasonable steps to improve those choices and related behaviors is common theme that should be emphasized in actions under this objective.

Regulatory requirements instill such awareness in the regulated community. There is a need for enhanced understanding among and consequent actions by members of the general public who collectively have a considerable influence on and make a considerable contribution to nutrient, sediment, toxic, pathogen loading to state and federal waters.

Overall, the milestones associated with this action appear quite ambitious under the proposed timelines, especially considering that a significant amount of collaboration with local, state, and regional partners would be needed.

Action 1: Reduce rural sources of pollutants

Atmospheric deposition to rural areas and reduction strategies need to be considered for protection of all rural receiving waters and downstream waters. Consideration should also be given to point sources as cumulative impacts to loadings, even if contributions are minor compared to non-point sources. Section 319 program targets should be identified nearly entirely by states and funding prioritized for local implementation of comprehensive strategies based on states' strategies. State resources may still be insufficient to address all nutrient reduction goals established by 2015. Generally, incentives to address non-point source pollutant loadings by private landowners, especially, need to be stronger to enable measurable improvements. Additional federal funding will be critical to implementation success.

Action 2: Reduce urban sources of pollutants

The State questions the feasibility of milestones under this action. Milestone 1 regarding air deposition of pollutants in the short term (2012) is an extremely ambitious and unrealistic goal since significant coordination among EPA, states, municipalities, the regulated community and the general public will be needed to achieve reductions. Milestone 4 will require significant state involvement and resources above and beyond those available or foreseeable.

Milestone 2 should also identify those significant municipal wastewater treatment plants that do not yet have nitrogen or phosphorus permit limits but are located in receiving waters or upstream of waters that have been identified as priorities for nutrient reductions.

Action 3: Minimize impacts of hypoxia

The Plan should specify how the 12 states for state-wide nutrient reduction strategies will be chosen. The State suggests that these states be well-distributed around the nation's coastline and Great Lakes to enable strategy development and implementation for states directly influenced by hypoxia problems but perhaps not directly influenced by the major hypoxic zones, i.e. Gulf of Mexico and Chesapeake Bay.

Action 4: Minimize impacts of harmful algal blooms

Harmful algal blooms (HAB) considered under this action should also include noxious blooms that, in the absence of neurotoxin production, can still have devastating effects on estuarine and coastal nearshore marine life. Milestone 1 should include use of inshore buoys in

addition to offshore buoys based on the location of known cyst beds. Generally, HAB-related actions should incorporate partnerships with states and academics to best inform placement of monitoring platforms, monitoring strategies, communication of bloom events to the public, and other decisions. Research scientists in the Northeast have extensive knowledge of HAB monitoring and related infrastructure needs and will be vital to the success of this action in our region.

Action 5: Address threat of toxics and land use practices

The State endorses a number of the aspects of this action, which may be further improved by ensuring close coordination with and use of existing, related efforts. Where existing programs are already in place for swimming beaches and shellfish harvesting areas, as in Maine and other states, a Health Early Warning System should be designed in consultation with state program managers to avoid needless duplication and improve its utility for all parties. The State strongly encourages inclusion of Milestone 2 involving outreach programs, especially for seafood processors. Milestone 3 can be addressed in part through EPA's National Coastal Condition Assessment program data, and also through states' efforts to monitor contaminants in indicator species. Although microbial source tracking has great potential for determining the origin of contaminants (especially fecal), a rapid field technique and consistent and less expensive lab techniques would facilitate states' abilities to conduct these needed investigations. The Plan's holistic "atmosphere-watershed-coastal ocean" approach is laudable. A concerted national and possibly international effort will be needed to curtail and remediate atmospheric contributions.

Action 6: Reduce impacts of marine debris and trash

Milestone 1 would be strengthened by publishing a flyer, written for the lay person, for distribution in bait shops, fishing and outdoor equipment stores, public docks, popular fishing holes, marine supply stores, and comparable locations. Milestone 5 should be modeled in part after successful state beach clean-up programs and other established community-based actions already in place. One potentially important addition to this action would be a school-based education program tailored to a younger audience.

Action 7: Identify, protect, and maintain high quality areas

The State strongly encourages inclusion of Milestone 3, which involves stakeholder involvement in monitoring programs and suggests that the Plan build on existing efforts. Some such programs already exist and are being led by passionate individuals who play a vital role in supplementing monitoring by state agencies. However, many such programs have little or no funding; volunteers could be utilized to a much greater extent if adequate funding were available. Federal assistance, funding as well as training in monitoring techniques, would be very helpful to state agencies in Maine and elsewhere that are strapped for resources.

Changing Conditions in the Arctic

The State has no specific comments on this objective at this time.

Coastal and Marine Spatial Planning

In addition to its comments above regarding overall prerequisites to be met to lay the groundwork for successful CMSP, the State offers for the following comments on proposed actions regarding this objective:

Action 3: By 2015, incorporate all pertinent data into the National Information Management System and Data Portal

As emphasized throughout its comments, the State applauds the Plan's overall goal of the making the best available, scientifically sound information readily accessible to public and private sector decision makers. The National Information Management System and Data Portal has great potential to contribute to this goal. The Plan sets 2015 as the deadline for completion of federal datasets. However, the Northeast region, whose constituent states are national leaders in CMSP, needs access to this information well before 2015 in order to move forward with regional planning as intended. Accordingly, the Plan should make special provision for ensuring that the complete datasets for the Northeast region are made available to the Northeast region's planning body in an alternative and efficient way in 2012 or as soon as practicable.

Action 4: Establish regional planning bodies

In marked contrast to much of the rest of the Plan, this action, like Action 5, below, makes virtually no mention of role of the NOC or federal agencies and attempts to outline key steps in an action plan that RPBs would implement. This is problematic. The RPBs are voluntary organizations whose members represent not only federal agencies, but also states, federally-recognized Indian tribes, local governments, and fisheries management councils. It is not appropriate for the NOC via the Plan or otherwise to develop a scripted action plan for such a unique and diverse voluntary group. Properly focused, this section would address actions that federal agencies would take to support regional planning efforts. More specifically, this action should address tasks and related timelines, including but not limited to:

- Final guidance to assist RPBs;
- Letters to state governors inviting them to designate RPB members;
- Letters to tribes inviting them to designate RPB members;
- Information clarifying how RPB members to represent local government and fisheries management councils will be selected;
- Completion and final approval of the model charter by the NOC and related criteria and guidance for RPBs on how RPBs' charters will be reviewed; and
- Specific directives from federal agencies' headquarters to their regional offices, as well as headquarters personnel as appropriate, regarding support for RPBs

Action 5: Within three to five years of their establishment, nine RPBs (one per region) have a NOC-certified CMSP

As with Action 4, above, this action should focus on what federal agencies will do to support and advance the work of the RPBs and not purport to predetermine or dictate the nature of the outcome of that work. More specifically, this action should address tasks and related timelines, including but not limited to:

- Development of guidelines that explain how the NOC will review regional plans, the process and criteria for plan certification, and the implications of grant or denial of certification; and
- As further discussed below, better information on the benefits of CMSP and how, through federal agency activities proposed in the Plan, those benefits may be realized.

It is crucial that the Plan articulate, emphasize, and ensure the strong connection between the potential benefits of CMSP and work that federal agencies will undertake to address barriers to realizing those benefits. Developing plans for federal agency actions now (beginning in 2012 and continuing into 2013) is vital to assure state, tribal, local, and fisheries management council members serving on RPBs of the value of the potentially lengthy CMSP process beyond that of the plan alone. This assurance is also important to attract and retain the engagement of industry and other stakeholders throughout the process.

Improvements to the Plan are needed to forge the necessary connection between the CMSP process and desired practical outcomes. For example, the Plan (page 89) discusses efficiencies in regulatory processes that can result from CMS, but does not adequately specify federal agency activities to address the issue that the regional scale data useful for CMSP will not in many instances be sufficiently site-specific to be used for regulatory purposes. A well-concerted, regional-scale effort among federal agencies to collect new data to help inform regulatory decisions, such as bird, bat and marine mammal data to assist in ocean wind power planning and regulation, would be a related initiative that helps bring home the benefits of CMSP. An NOC-conducted policy analysis on how a NOC-certified CMSP or a state-level plan, such as those developed by Massachusetts, Rhode Island or Oregon, may be used to better inform and streamline the NEPA process or environmental review needed for decision on one or more federal and state lease or permit decisions would also help show the practical benefits of CMSP.

Using the approach for other objectives in the Plan, a lead federal agency and key cooperating agencies should be identified for each potential benefit listed in the sidebar on page 86. The lead federal agency should be responsible for development of a concrete plan for activities federal agencies will undertake in the CMSP process to assist in realization of these benefits. This plan should be developed and submitted to the NOC prior to or as soon as practicable following establishment of each RPB and periodic reports made to NOC on progress and any changes in federal agencies' supporting efforts.

* * *

Thank you for the opportunity to provide comments on the draft Plan. I look forward to working with you as work on the Plan unfolds.

Sincerely,



Kathleen Leyden
Director
Maine Coastal Program

cc:/

Senator Olympia Snowe

Senator Susan Collins

Representative Michael Michaud

Representative Chellie Pingree

Patricia Aho, Commissioner, Maine Department of Environmental Protection

William Beardsley, Commissioner, Maine Department of Conservation

Patrick Keliher, Commissioner, Maine Department of Marine Resources

Carlisle McLean, Office of Governor Paul LePage

Peter Rogers, Acting Director, Maine State Planning Office

Name: **Melissa Clark**

Organization: Marriott International

Path:

Comment: Dear Chairs Sutley, Holdren, and National Ocean Council Members:

Personally, the most loved and insightful outdoor experiences I have had in my lifetime involve the Ocean. As an outdoor enthusiast from the Pacific Northwest and Hawaii, I believe that a strong Implementation Plan will help protect marine ecosystems and encourage sustainable ocean uses, including recreation and tourism.

The draft National Ocean Policy Implementation Plan establishes a strong blueprint for taking action and fostering agency coordination to sustain our ocean, coastal and Great Lakes resources. The draft plan has successfully incorporated the needs and concerns of governmental, non-profit, and commercial groups and provides clarifying details to improve accountability and monitor progress toward improved ocean management. Frequent notations on how implementing actions are related to one another provide confidence that activities will be coordinated and make good use of limited resources.

Nonetheless, the plan could be improved to achieve even more progress. It should more fully utilize all available authorities for habitat protection and management. Many of the milestones could be extended beyond cataloguing and planning to include action, with tangible, on-the-water activities. Regional need, support, and capacity should guide where coordinated actions should first take place. Federal agencies must continue to ask for input from other levels of the government and the public and incorporate this new information into implementation of the plan.

With these additions, President Obama's Implementation Plan will provide a better guide for achieving the goals of protecting, maintaining, and restoring the nation's oceans, coasts, and Great Lakes and ensuring resilient coastal economies. I look forward to the release of the final plan and hope to see policy translated into action on the water soon.

Thank you so much!

Melissa Clark

Name: **Sam Wilcox**

Organization: None

Path:

Comment: Dear Chairs Sutley, Holdren, and National Ocean Council Members:

Thank you for your time. I would like to talk about an issue close to my heart. I would like to share my support for National Ocean Policy draft Implementation Plan. As an outdoor enthusiast from the Pacific Northwest, I believe that a strong Implementation Plan will help protect marine ecosystems and encourage sustainable ocean uses, including recreation and tourism.

The draft National Ocean Policy Implementation Plan establishes a strong blueprint for taking action and fostering agency coordination to sustain our ocean, coastal and Great Lakes resources. The draft plan has successfully incorporated the needs and concerns of governmental, non-profit, and commercial groups and provides clarifying details to improve accountability and monitor progress toward improved ocean management. Frequent notations on how implementing actions are related to one another provide confidence that activities will be coordinated and make good use of limited resources.

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Sincerely,

Sam Wilcox

NATIONAL OCEAN COUNCIL

Name: **Robert Gagosian**

Organization: Consortium for Ocean Leadership

Path: http://edit.whitehouse.gov/sites/default/files/webform/ocean_leaderships_comments_on_the_nop_implementation_plan_final_022712.pdf

Comment: On behalf of Ocean Leadership's 103 member institutions, I am submitting the attached letter as our formal comments on the National Ocean Policy implementation plan.

Best,
Bob Gagosian



February 27, 2012

Nancy Sutley
National Ocean Council Co-Chair
Chair of Council on
Environmental Quality
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

John Holdren
National Ocean Council Co-
Chair
Director of the Office of Science
and Technology Policy
New Executive Office Building
17th Street, NW
Washington, DC 20502

Dear Chairs Sutley and Holdren,

On behalf of the Consortium for Ocean Leadership's 103 member institutions, I would like to submit the following recommendations and comments on the National Ocean Policy (NOP) draft Implementation Plan. We thank the National Ocean Council (NOC) for incorporating many of our comments on the Strategic Action Plans full content outlines into this implementation plan. While we concur with the goals of the plan, the majority of the science milestones are activities that are currently underway, and almost completed, making this more of a status report than a plan for advancing adaptive management, Federal coordination, and our understanding of the ocean/coastal systems. Moreover, we are concerned that this plan lacks priorities and is a long list of milestones and action items without a clear sense of which are most important to the policy, and this administration.

In our comments on the NOP full-content outlines, we urged the swift release of the Ocean Research Priorities Plan (ORPP) and Implementation Strategy. Nonetheless, that update, which was due in 2010, has yet to be finalized despite the fact that the NOP implementation plan will need guidance to rank initiatives, given these tight budgetary times. We believe that setting 2013 as a target year for the release of the ORPP would weaken its role and means a missed opportunity to prioritize the NOP milestones. Given the austere budget environment and the possibility of sequestration, we need a prioritized list this year, not later. While the implementation plan incorporates the ORPP as an important component of the NOP implementation, we are concerned that the failure of the Executive Branch to finalize this overdue report is a reflection of its inability to prioritize the objectives of the NOP in its entirety. Once again, we strongly urge the release of

MEMBERS

Bermuda Institute of Ocean Sciences
Bigelow Laboratory for Ocean Sciences
College of William and Mary
Columbia University (Lamont-Doherty Earth Observatory)
East Carolina University
Florida State University
Florida Straits Consortium
Gulf of Mexico Consortium
Harbor Branch Oceanographic Institution
Louisiana State University
Massachusetts Institute of Technology
Mississippi State University
Monterey Bay Aquarium Research Institute
Monterey Bay/Central California Consortium
North Carolina State University
Old Dominion University
Oregon State University
Pennsylvania State University
Rutgers, The State University of New Jersey
Skidaway Institute of Oceanography
South Carolina Marine Science Consortium
Stanford University
Stony Brook University
Texas A&M University
University of Alaska Fairbanks
University of California, San Diego (Scripps)
University of Connecticut
University of Delaware
University of Florida
University of Hawaii
University of Maryland Center for Environmental Science
University of Massachusetts
University of Miami
University of Michigan
University of Mississippi
University of Nebraska-Lincoln
University of New Hampshire
University of North Carolina-Chapel Hill/Duke Consortium
University of North Carolina, Wilmington
University of Rhode Island
University of South Florida
University of Southern California
University of Southern Mississippi
University of Texas at Austin
University of Washington
Woods Hole Oceanographic Institution

ASSOCIATE MEMBERS

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Institute for Global Environmental Strategies
Institute for Marine and Antarctic Studies
at the University of Tasmania
International SeaKeepers Society
John G. Shedd Aquarium
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Marine Advanced Technology Education Center
Marine Technology Society
Mid-Atlantic Regional Association for
Coastal Ocean Observing System
Mystic Aquarium
National Aquarium in Baltimore
National Federation of Regional Associations for
Coastal and Ocean Observing
NOAA Fisheries Service
NOAA Great Lakes Environmental Research Laboratory
NOAA National Centers for Coastal Ocean Science
NOAA National Sea Grant College Program
New England Aquarium
Nobilis, Inc.
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U.S. Arctic Research Commission
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University of Wisconsin-Milwaukee Great Lakes WATER Institute

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Teledyne RD Instruments

the ORPP as soon as possible so that it can guide the rapid progress of the short- and long-term NOP milestones.

As an organization representing the ocean science community, we are encouraged that the draft plan will be guided by one theme (of four) to “obtain, use, and share the best science and data.” We believe sound science should be the foundation of this policy and will be vital to its success. Moreover, we strongly recommend the continued collaboration with external science partners, including the international oceanographic communities. The government needs the capacity and expertise of the external research community and industry partners to understand the natural and social science parameters of these issues. We also believe that as agencies are forced to tighten their belts, they should take into consideration that extramural research is a much more efficient and flexible mechanism to achieve scientific goals. We encourage the National Ocean Council (NOC) to continue to engage with those stakeholders for input throughout this process.

With these points in mind, we also are pleased that two other themes for the implementation are “promote efficiency and collaboration” and “strengthen regional efforts.” It is tremendously important to focus implementation efforts on these areas, for without them the effectiveness of the NOP will be greatly degraded in an environment where Federal agencies depend heavily on State, Tribal, and local authorities, and regional governance structures, to implement coastal management, and where nongovernmental organizations, the private sector, and the public at large all participate. Moreover, we recommend the NOP implementation plan more fully recognize and include discrete milestones related to the role of Ocean Research Advisory Panel (ORAP), again incentivizing agency utilization of a management tool that is well positioned to encourage and leverage greater cross-agency as well as federal/non-federal collaboration. While ORAP is technically an advisory body, its membership represents prominent members of the ocean science community who are active in many other public and private scientific and policy forums and are well positioned to help influence and guide these processes in support of the NOP priorities. We strongly recommend a greater recognition of ORAP in the NOP implementation plan.

Finally, the Consortium for Ocean Leadership and its member institutions recognize the hard work required to develop the National Ocean Policy implementation plan in the face of the current fiscal environment. However, in order for the National Ocean Policy to drive tangible and effective solutions for managing and conserving our nation’s oceans, coasts, and Great Lakes, it will require the Executive Branch and its federal agencies to dedicate appropriate and sustained funding levels. We believe the NOC has not taken the necessary steps to prioritize fiscal investments to see the NOP succeed. In fact, without new funds, budget authority, and guidance or priorities coming from the NOC, we have received little interest from our member institutions in commenting on this document as they don't see how this plan will be implemented.

We look forward to working with the NOC and the federal agencies to ensure the objectives of the National Ocean Policy are fulfilled in a timely, effective, and accurate manner. In order for the NOP to succeed the Executive Branch will need to develop priorities, create productive collaborations with the science community through ORAP and other external groups, and dedicate the necessary funds to execute the plan.

Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert B. Gagosian". The signature is fluid and cursive, with the first name "Robert" and last name "Gagosian" clearly legible.

Robert B. Gagosian
President and CEO
Consortium for Ocean Leadership

Name: **Ethan Anderson**

Organization:

Path:

Comment: Dear Chairs Sutley, Holdren, and National Ocean Council Members:

I would like to share my support for National Ocean Policy draft Implementation Plan. As an outdoor enthusiast from the Pacific Northwest, I believe that a strong Implementation Plan will help protect marine ecosystems and encourage sustainable ocean uses, including recreation and tourism.

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Sincerely,

Ethan Anderson

NATIONAL OCEAN COUNCIL

Name: **Fredric Andes**

Organization: Federal Water Quality Coaliton

Path: <http://edit.whitehouse.gov/sites/default/files/webform/fwqcoceanplancomments022712.pdf>

Comment: Attached are the comments of the Federal Water Quality Coalition regarding the National Ocean Policy Draft Implementation Plan. Please feel free to call me if you have any questions. Thank you.

Fredric P. Andes, Coordinator
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, IL 60606
(312) 214-8310

.....

Federal Water Quality Coalition

February 27, 2012

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

RE: Comments on National Ocean Policy Draft Implementation Plan

Ladies and Gentlemen:

The Federal Water Quality Coalition (the "FWQC") is pleased to provide the following comments on the National Ocean Policy Draft Implementation Plan (the "Draft Plan").

The FWQC is a group of industrial companies, municipal entities, agricultural parties, and trade associations that are directly affected, or which have members that are directly affected, by regulatory decisions made by the U.S. EPA and States under the federal Clean Water Act. The FWQC membership includes entities in the aluminum, agricultural, automobile, chemical, coke and coal chemicals, electric utility, home building, iron and steel, mining, municipal, paper, petroleum, pharmaceutical, rubber, and other sectors.

FWQC member entities or their members own and operate facilities located on or near waters of the United States. Those facilities operate pursuant to permits that impose control requirements with respect to their discharges into those waters. Many of those waters are covered by the Draft Plan, and the activities described in the Draft Plan will affect the requirements that will be imposed on FWQC member facilities. The FWQC therefore has a direct interest in the matters addressed in the Draft Plan.

The Draft Plan identifies a large number of actions to be taken by the Federal Government and other parties to address issues regarding the oceans, coastal waters and the Great Lakes. There are certain fundamental concepts that the FWQC believes must be followed in developing and implementing the specific actions to be taken.

First, it must be recognized that the Draft Plan is not a legal document, and it does not provide any agency with legal authority that the agency does not already possess under existing laws and regulations. Therefore, any actions to be taken that have legal or regulatory significance must be accomplished within existing authority. Under the Clean Water Act, for instance, there are specific roles and responsibilities for the Environmental Protection Agency and for the States. The final Plan should explain how the actions listed in the Plan that involve the use of Clean Water Act authority would be implemented within that regulatory structure.



.....

Second, it is critical that the actions to be taken be founded on sound science. Any other course of action would likely result in allocation of large amounts of resources – public and private – to efforts that may turn out to focus on the wrong issues, mandate the wrong solutions, and most importantly, not achieve the environmental results that are desired by all concerned.

Third, any actions taken to implement the Ocean Policy must be accomplished in the most cost-effective way possible. This is mandated by the President's Executive Order No. 13563, which was issued on January 18, 2011. That Order requires that regulatory actions be based on determinations that the benefits are justified by the costs, and that the regulations impose "the least burden on society, consistent with obtaining regulatory objectives." The final Plan should identify how it will be ensured that the actions taken will comply with the Executive Order.

Fourth, the FWQC notes that there are several items related to nutrients in the Draft Plan, including support of development and implementation of State-wide nitrogen and phosphorus reduction strategies, and production and development of at least 12 State-wide nutrient reduction strategies. These actions will likely have a direct effect on the operations of FWQC members. It is very important that any efforts related to nutrients recognize that the key issue to be addressed is the biological health of the relevant waterbodies. So, for example, waters that have elevated levels of nitrogen or phosphorus, but which are biologically healthy, should not be considered to be "impaired" under the Clean Water Act, and should not be the focus of regulatory nutrient control efforts. US EPA has recognized this concept recently, in its review of new draft nutrient criteria for Florida (letter attached), and it is important that this focus on biological health be implemented in any actions related to nutrients that are taken by Federal or State agencies.

Finally, we want to stress that as the Federal Government and others move forward to develop and implement actions to implement the Ocean Policy, that they follow a robust public participation process, which should encourage and promote active involvement by all stakeholders, including regulated parties.

The FWQC appreciates the opportunity to submit these comments on the Draft Plan. Please feel free to call or e-mail if you have any questions, or if you would like any additional information.



Fredric P. Andes
Coordinator





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 2 - 2011

OFFICE OF WATER

Herschel T. Vinyard
Secretary
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

Dear Secretary Vinyard:

Thank you for soliciting EPA's views on the Florida Department of Environmental Protection (FDEP) draft rule on numeric nutrient criteria for inland and estuarine waters. We understand that you have submitted language to the Florida Administrative Weekly for publication as a proposed rule. EPA has reviewed FDEP's October 24, 2011 draft of the rule. As we discussed, sharing EPA's preliminary evaluation of that draft rule represents an important opportunity to affirm the Agency's support for FDEP's efforts to address nutrient pollution.

While EPA's final decision to approve or disapprove any nutrient criteria rule submitted by FDEP will follow our formal review of the rule and record under section 303(c) of the Clean Water Act (CWA), our current review of the October 24, 2011 draft rule, guidance, and other scientific and technical information supporting the draft rule, leads us to the preliminary conclusion that EPA would be able to approve the draft rule under the CWA.

We understand that the rulemaking package must undergo review and potential modification by the State's Environmental Review Commission (ERC) and Legislature. While EPA appreciates the work by FDEP in crafting a draft rule that appears to comport with the CWA, the Agency's analysis of the draft rule and its consistency with the CWA could change should modifications be made before and/or during the State ERC or legislative process or our review of the technical information and public comments identifies reasons why the final rule does not meet the requirements of the CWA.

Should EPA formally approve FDEP's final nutrient criteria as consistent with the CWA, EPA would initiate rulemaking to withdraw federal numeric nutrient criteria for any waters covered by the new and approved state water quality standards.

Below we have summarized our view of the principal provisions of the state's October 24, 2011 draft rule.

Springs and Lakes

For spring vents, FDEP's draft numeric criteria are consistent with the State's longstanding analysis of the applicable data and science related to spring vents. EPA views this approach and

resulting criteria as consistent with the Clean Water Act and believes these criteria would operate to assure protection of the State's designated uses for springs.

For lakes, FDEP's draft rule reflects a scientifically supportable stressor-response analysis that links appropriate levels of TN and TP in a lake to corresponding concentrations of the response variable chlorophyll *a* for particular lakes classified as indicated in the table by alkalinity and color. EPA views this approach and resulting criteria as consistent with the Clean Water Act and believes these criteria would operate to assure protection of the State's designated uses for lakes.

Estuaries

EPA supports FDEP including criteria for some estuaries in this rulemaking as a first step towards adopting criteria for all estuaries. EPA's initial review of the draft numeric criteria and the underlying methodologies relied upon by the State indicate that the State's approach is similar to the approach EPA is using in developing proposed criteria for estuaries in Florida. EPA also appreciates FDEP's regulatory commitment to a formal and public schedule for establishing final criteria for the two remaining groups of estuaries, the first by 2013, and the second by 2015. We are, of course, unable to offer a view on the remaining two groups of estuaries that are scheduled for future completion, but we are confident that elements and components of the science and technical approach the State is considering for the currently draft estuary criteria can be successfully applied to the remaining estuaries. As you know, EPA is under Consent Decree obligations to propose and promulgate criteria for estuarine and coastal waters in 2012. Final adoption by FDEP of the draft criteria for the initial group of estuaries, and progress toward completing the regulatory process for the remaining estuaries on the schedule set out in the draft rule will be important to EPA in considering seeking any adjustments to those deadlines.

Rivers and Streams

The FDEP draft rule includes numeric thresholds for TN and TP in streams that are used to interpret the narrative nutrient criterion where a site-specific interpretation (e.g., TMDL, SSAC, Level II WQBEL) has not been established. These threshold values are the same values that EPA finalized in our inland waters rule. Under FDEP's draft rule, the criteria will be applied in combination with biological information to determine if the water is attaining its uses. This "biological confirmation approach" to determining the nutrient health of a stream is one that several states currently have under development and is an approach EPA is prepared to support if properly constructed with appropriate numeric end-points for assessing biological information in combination with numeric criteria.

FDEP's draft rule provides numeric end-points (metrics) for assessing the health of stream fauna through the use of the Stream Condition Index (SCI), and provides in guidance how FDEP will assess stream flora health. While FDEP's biological health assessments would be more robust if metrics were included in the rule for assessing all of the biological information, our preliminary review indicates that the combination of draft rule language and guidance can be implemented in a way that protects the designated uses of the stream or river. EPA understands that where there is insufficient biological information to confirm stream health, FDEP will use the nutrient stream thresholds for 303(d) listing decisions, TMDL development, and NPDES permitting decisions. If this understanding is correct, EPA's preliminary conclusion is that the draft rule, in

combination with specific guidance language, can be implemented in a manner that is protective of the designated uses of Florida's streams and rivers.

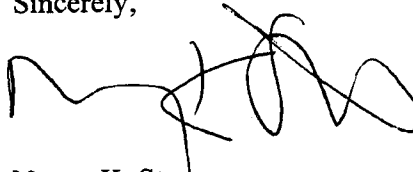
Canals

EPA understands that the FDEP draft rule covers all Class III inland waters in Florida, except for canals in South Florida. EPA also understands, however, that there is interest from specific stakeholders in removing some canals outside of South Florida from coverage under this rule. Should these waters be removed from the rule, EPA would be unable to withdraw its promulgated numeric nutrient criteria for these waters.

Conclusion

We appreciate the opportunity to review the draft rule and we look forward to receiving the final package after the rule is finally promulgated and ratified by the State Legislature. The draft regulatory numeric criteria developed by FDEP represent very significant progress in protecting the State's unique aquatic resources.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

Name: **Robert Rocha**

Organization:

Path:

Comment: I'm from New Bedford, MA, a city that has always derived its identity from its connection to the ocean. Whether it's been whaling, fishing, or researching, this area depends on the sea for its livelihood and its collective energy. We are now home to a world class ocean sciences research campus, and are only an hour away from several others. In that driving distance are whale watch tours, aquaria and coastal science centers. These facilities all exist because there is a proven demand for the business of connecting citizens to the ocean. I know that economic arguments often outweigh the natural resource protection argument, but I will close by combining the two themes. It is always more fiscally responsible to prevent a mess than it is to make the mess and then have to clean it up. (I refer you to the Superfund site we have in New Bedford as a case study in expensive clean up, lower property values and environmental injustice in a poor neighborhood.) Please protect our aquatic resources, both salt and fresh water, and please, please, please protect the practice of using sound science to drive policy. That pretty much disappeared in the eight years that preceded this current administration.

Name: **Anna Zivian**

Organization: Ocean Conservancy

Path: http://edit.whitehouse.gov/sites/default/files/webform/imp_plan_oc_2.27.12.doc

Comment: Please see attached letter.

1300 19th Street NW
8th Floor
Washington DC 20036



202.429.5609 Telephone
202.872.0619 Facsimilie
www.oceanconservancy.org

February 27, 2012

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 Draft Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members,

Thank you for the opportunity to comment on the *Draft National Ocean Policy Implementation Plan* (Plan). The Plan is an important step in putting into practice the vision laid out in President Obama's Executive Order 13547: "To achieve an America whose stewardship ensures that the ocean, our coasts, and the Great Lakes are healthy and resilient, safe and productive, and understood and treasured so as to promote the well-being, prosperity, and security of present and future generations."

We strongly support the National Ocean Council's work towards an inclusive process for engaging all stakeholders and the general public. We thank you for your efforts to improve the Plan from earlier drafts. In particular, we appreciate the greater number of short-term actions and the additional clarity about responsible agencies and timing of activities, as well the strong focus on using ecosystem-based management to support healthy habitats that runs throughout the plan. We are sending this letter to supplement four additional letters to which Ocean Conservancy is a signatory that the NOC will receive, including a comment letter with broad scope signed by dozens of organizations throughout the country, the New England Ocean Action Network letter, an ENGO letter with several suggestions for areas of improvement, and a letter from several ENGOs that work in the Arctic and Alaska that address items related to Alaska in particular.

In this letter, we wanted to highlight several specific areas in the individual chapters, including items that we were particularly glad to see included as well as few areas where we have suggestions for change or improvement.

CMSP

This section, with the addition of the soon-to-be-completed CMSP Handbook and Guidance for Regional Planning Bodies document, is an excellent step towards commencing on the ground CMSP. In particular, we applaud the very specific and deliberate way this section explicitly recognizes the importance of consultation with tribes and inclusion of tribal governments in CMSP process.

Our main comment regarding the CMSP chapter is the timing for the formation of the regional planning bodies (RPBs). Currently, the Plan calls for the formation of four RPBs by the end of 2013. It is critical

that the practical work of CMSP start as soon as possible. The two regions where CMSP in federal waters has already been initiated by the existing Regional Ocean Partnerships (ROPs) are New England (NROC) and the Mid-Atlantic (MARCO). They have already invested significant time, effort, and resources into initial planning data and information gathering and compilation, stakeholder outreach, mapping, and planning activities, both on the state and regional levels. Formalizing these two RBPs will help define how the RBPs will interface with the ROPs and greatly enhance the durability of these regional planning efforts.

We strongly support the phased approach to establishing planning regions, with two more regions, including the West Coast, to be formed by the end of 2013. We appreciate that on page 86 of the plan, the use of sub-regions for planning purposes is defined as an option for RBPs to employ as a planning strategy. The West Coast may be an appropriate place to form two sub-regions that would allow planning to progress in a coordinated fashion but at a different pace and with different priorities for each one. Similarly, the Plan should consider that in some regions, there are far greater needs for baseline data, outreach to local governments, states, and tribes, and initial public participation efforts, and that regional coastal and marine spatial planning is a lower priority in the near term.

Furthermore, we recognize that the Alaska region has unique challenges and that CMSP may not be feasible in the near term including within the timeframe of this Plan (see footnote #7 from the letter: Comments on the “Changing Conditions in the Arctic” section with which we concur). We recommend that the priorities for this region be on the necessary research, data collection and mapping as well as improved coordination among state, federal and tribal entities and stakeholder engagement needed to implement the goals of the National Ocean Policy.

In addition, we would like to draw your attention to several ongoing regional efforts that support CMSP. Several regions have already launched data portals. For example, the WCGA Regional Data Network will be a portal for all state and federal West Coast ocean and coastal data. It is anticipated that in the future it will include visualizations and decision support tools that will integrate and enhance the transparency of federal, state, local and tribal data. In addition, National Objective 2 should build off experience of using spatially explicit data in MarineMap in both the MLPA and Oregon’s TSP processes. Also building off of experiences on the West Coast, we reemphasize the importance of having a significant stakeholder component (Action 4), especially based on our experience with MLPA in California.

Finally, on page 91, the responsible entity for creating a regional planning body is the RPB itself. This should be changed to the NOC. Additionally, the Plan should specify the role of the Regional Fishery Management Councils on the RBPs.

Regional Ecosystem Protection and Restoration

In this section, we have several comments on Action 6. First, we support the reactivation of the National Marine Sanctuary Site Evaluation List. We would like to recommend a few specific changes:

This text could/should be expanded to include recognition of state marine protected areas and the potential value of federal protections building onto or expanding already designated state protections. Here or elsewhere in document there should be recognition that federal actions can have adverse impacts on existing state designated marine protected areas and recommend that the implementation plan should specify the need to avoid or reduce such impacts.

This section should also acknowledge the potential need to improve/enhance protections within exiting national marine sanctuaries/estuaries and not simply establish new ones. We would also like to see inclusion of a focus on protecting representative habitats and not merely those that meet a standard of “national significance.”

Ecosystem-Based Management (EBM)

The sidebar on page 11 makes no mention of California's Marine Life Protection Act as an example of EBM, where California has evolved past single species fisheries management and has encouraged its \$43 billion coastal industry to prioritize healthy ecosystems (both of which are mentioned in the overview of EBM, on pages 9-10).

We suggest using the West Coast as a potential pilot project for EBM (per Action 4), given that both the West Coast Governors' Agreement Regional Data Network and California's data portal project are currently underway. Note also that the West Coast Governors' Agreement Regional Data Network is intended to perform the functions in Actions 2 and 3.

In conclusion, thank you again for the many months of hard work that you have put into the Plan. It contains many important milestones that will lead us towards a healthy, vibrant, and productive ocean, coasts, and Great Lakes. We look forward to working with you to implement the National Ocean Policy.

Very truly yours,

A handwritten signature in cursive script that reads "Anna M. Zivian". The signature is written in black ink and is positioned below the text "Very truly yours,".

Anna M. Zivian, Ph.D.
Senior Manager, Coastal and Marine Spatial Planning

NATIONAL OCEAN COUNCIL

Name: **Douglas Norlen**

Organization: Pacific Environment

Path: http://edit.whitehouse.gov/sites/default/files/webform/national_ocean_policy_implementation_plan.pdf

Comment: Please see attached comments



PACIFIC ENVIRONMENT

Protecting the Living Environment of the Pacific Rim

February 27, 2012

National Ocean Council
The White House
Washington, DC

RE: Lack of Attention to International Bodies in Ocean Protection

To the National Ocean Council,

Thank you for the opportunity to comment on the National Ocean Policy Implementation Plan (Implementation Plan). This comment letter supplements Pacific Environment's previous input on the proposed National Ocean Policy.

We applaud the strengths of the National Ocean Policy Implementation Plan, including the robust National Priority Objectives listed at pg. 8, including an ecosystems approach and attention to indigenous and other community needs. However, we note that the Implementation Plan lacks adequate attention to international aspects of ocean protection.

For example, the Implementation Plan correctly identifies the Arctic Council as an important international body where cooperation between Arctic states occurs. There is no doubt that the Arctic Council is absolutely critical for international efforts to protect Arctic people and marine environment. Yet, other international bodies are crucial. For example, the Arctic Council has correctly identified the United Nations' International Maritime Organization (IMO) as the body where some of the most important Arctic shipping decisions are made.

The IMO is currently developing a Polar Code which will establish mandatory measures to decrease safety risks and the negative environmental impacts of Arctic shipping. Yet, the IMO committees responsible for the development of the Polar Code are letting environmental and social aspects of the Code languish. In a major setback, just this month the IMO Design and Equipment Subcommittee (which has a central role in the development of the Polar Code) shelved consideration of the environment chapter of the Code until 2013. Some non-governmental organizations fear the environment chapter of the Polar Code may be scuttled altogether.

U.S. Government leadership is absolutely crucial to get the IMO back on track with the Polar Code and Arctic ocean environmental protection more generally. Yet, we fear that the U.S. Government writ large does not give environmental elements of the Polar Code the priority they deserve. Our fear is deepened by the complete absence of any

Implementation Plan reference to the need to engage the IMO on Arctic ocean protection. Indeed, the Implementation Plan omits any reference to the role of the IMO to establish measures to protect *any ocean* from the environmental impacts of shipping.

We urge that the Implementation Plan correct this omission by describing the broad range of international bodies, institutions and processes that the U.S. Government must engage with to ensure successful implementation of the National Ocean Policy.

Sincerely,

Doug Norlen
Policy Director
Pacific Environment

Name: **Mark Capron**

Organization: PODenergy Inc

Path: <http://edit.whitehouse.gov/sites/default/files/webform/imtaeccs-podenergy.pdf>

Comment: Dear Ocean Council,

Attached is a suggested comprehensive approach to maximize ocean and lake benefits to humans and the ecosystem. PODenergy Inc. has prepared the attached plan for Integrated Multi-Trophic Aquaculture Plus Renewable Energy Production Plus Carbon Capture and Storage. This system can combine the following benefits:

- Sustainable food production
- Habitat restoration
- Profitable bioenergy
- Remediation of waste and excess nutrients from runoff
- Reducing ocean acidity and reversing climate change.

For more details, contact MarkCapron@PODenergy.net or PODenergy.net.

Integrated Multi-Trophic Aquaculture Plus Renewable Energy Production Plus Carbon Capture and Storage

Combining Sustainable Food Production with Habitat Restoration with Profitable Bioenergy with Waste Remediation with Reducing Ocean Acidity and Global Warming

Many ocean areas have low productivity, because nutrients released by dying plants and animals sink to depths where sunlight cannot reach to power photosynthesis. If we can instead, capture and recycle the nutrients, vast areas of ocean become available to address human crises while increasing ocean primary productivity and biodiversity.

Food Plus Energy

Integrated Multi-Trophic Aquaculture with renewable energy production (IMTA+E) is the term for quick nutrient recycling in a combination of aquaculture, marine agronomy, and marine forestry portrayed in Figure 1. When explaining the process to non-scientists, we prefer the term Ocean Algal Afforestation. The aquaculture and agronomy are an adaptation to Climate Change. When Climate Change displaces and concentrates people or droughts and floods reduce terrestrial agriculture production, OAA is an adaptation providing food and jobs. The forestry is a mitigation producing renewable energy via microbial anaerobic digestion of selectively harvested macroalgae.

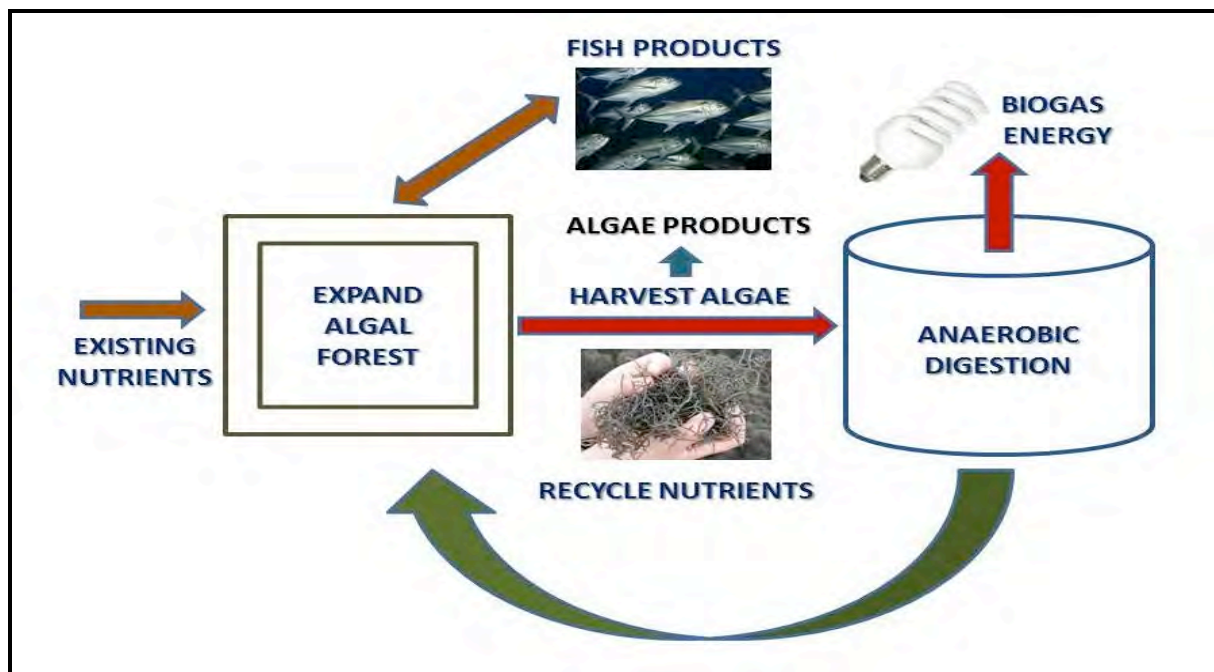


Figure 1 – IMTA+E Flow Chart

Figure 1 diagrams IMTA+E in shallow water performing as adaptation and mitigation. It is particularly sustainable because nearly all the nutrients are recycled from within a few kilometres and months of their production. A relatively small amount of nutrients generally exist at the site from treated wastewater, urban or rural runoff, ocean currents or upwellings of deep water. The existing nutrients allow the algal forest to extend the nutrient recycle over longer distances and times to expand or replace nutrients exported as algal products or fish products. A sustainable portion of the algae is harvested for renewable energy production. The anaerobic digester separates the carbon (60%CH₄ and 40%CO₂) from the plant nutrients (NH₄, P, etc.). The plant nutrients are recycled to sustain the algal forest. The biogas is converted to electricity.

Food Plus Energy Plus Carbon Sequestration

IMTA+E+CCS reduces ocean acidity and atmospheric CO₂ by separating it from the CH₄ and permanently sequestration as in Figure 2. Concentrations of CO₂ may be lowered even quicker if the CO₂ produced from CH₄ combustion for energy is also sequestered (not shown). When anaerobic digestion is performed in water deeper than about 100 meters, differential dissolution is a low-energy low-cost process for separating the CO₂ from the CH₄. The CO₂ may be stored in any manner appropriate for the local geography, hydrology, and geography. Locations lacking the geology for hot deep-earth storage may have water deeper than 500 meters and cooler than 8°C nearby. A CO₂-hydrate in long-lasting geotextile containers on the seafloor is denser than seawater and would provide stable and easily monitored storage.

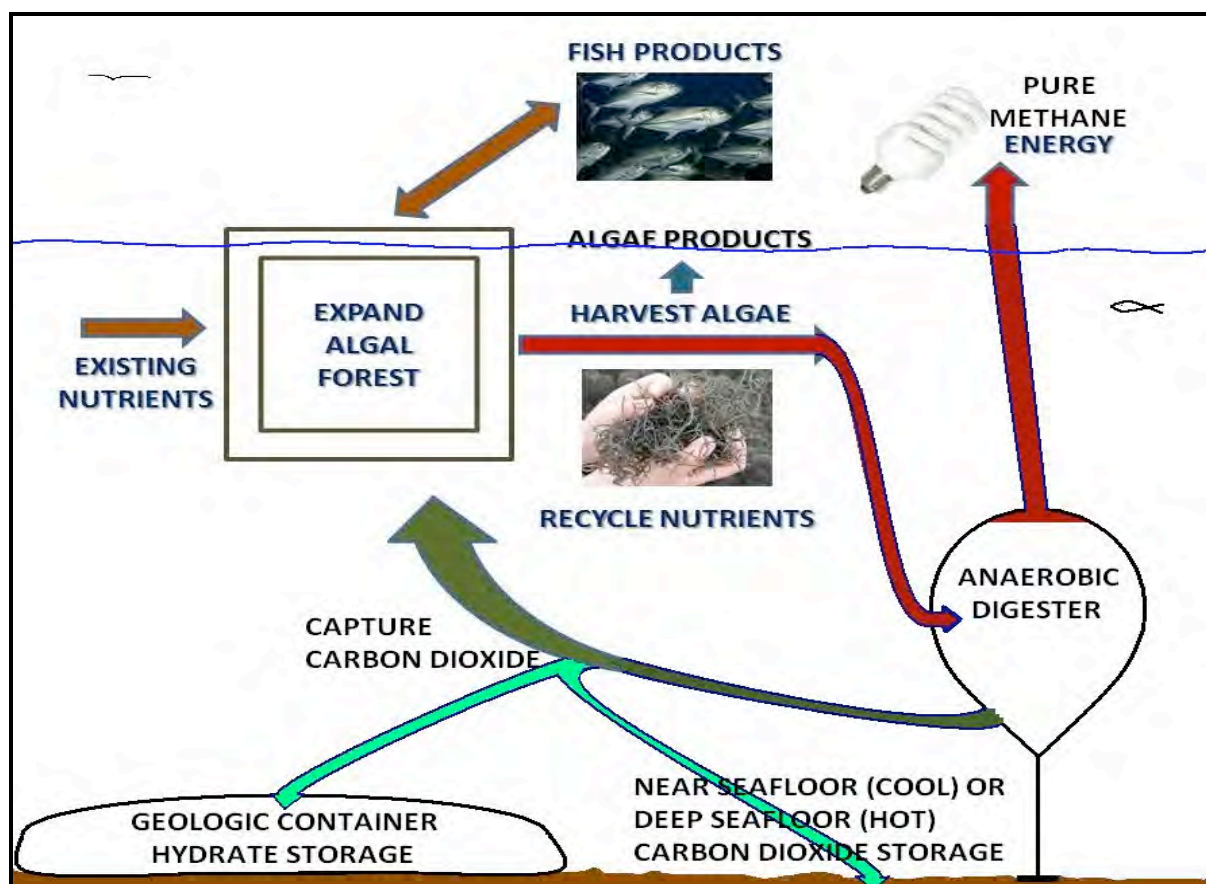


Figure 2 – IMTA+E+CCS or Ocean Algal Afforestation with CCS flow chart

NATIONAL OCEAN COUNCIL

Name: **LESLIE TAMMINEN**

Organization: SEVENTH GENERATION ADVISORS

Path: http://edit.whitehouse.gov/sites/default/files/webform/nopcommentletter2_12.doc

Comment: PLEASE SEE ATTACHED COMMENTS

February 26, 2012

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 Draft Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members,

On behalf of the undersigned organizations and their combined membership, we thank you for developing the *Draft National Ocean Policy Implementation Plan* (Plan). We applaud your efforts in taking a major step forward with President Obama's Executive Order 13547 to ensure sustainability of our oceans, coasts and Great Lakes. We strongly support the National Ocean Council's open process of engaging stakeholders and we appreciate this opportunity to provide you with further comments on the Plan.

As we have stated previously in individual comment letters for the National Oceans Policy (NOP), and in testimony at state, federal and local levels, we believe one of the greatest threats to sustainable healthy waters is plastic marine pollution. We are concerned with the entire spectrum of unfortunate problems currently plaguing our oceans (such as ocean acidification), but we believe man-made plastic packaging pollution to be among the most dire issues that the National Oceans Council faces. Moreover, we believe that leadership from the National Oceans Council can improve this particular problem on a national scale, in a relatively short time-frame, and with significant efficiency, since relevant source reduction policies and regulatory tools to ameliorate plastic marine pollution already exist, and are already in use in some state and local efforts. Accordingly, we wish to call attention to the Water Quality and Sustainable Practices on Land section, Action 6 (p. 71 *et. seq.*): "Reduce the impacts of trash and marine debris on ocean, costal, and Great Lakes waters and associated watersheds, through cooperative efforts aimed at pollution prevention, reduction, and removal." Given the enormous extent of the marine debris problem (and in particular, plastic marine pollution), we are pleased to see the plan for increased interagency coordination and communication on ocean trash issues, and in particular the inclusion of an action related to marine debris and plastic pollution with focus on prevention and source reduction. We support the approach taken in the NOP Implementation Plan that calls for specific actions to prevent and reduce marine debris, which is critical to achieve measurable marine debris reductions. However, we recommend that the Implementation Plan **include specific target reductions of marine plastic pollution** to set a clear goal for achievement of this action. Target reductions are not new to solving environmental problems--governments have implemented similar strategy goals for carbon reduction and water pollution. A target reduction approach has also been successfully used in several trash pollution reduction plans, including many of the Total Maximum Daily Load regulations for trash in California.¹ Specifically, we

¹See, e.g., Amendment to the Water Quality Control Plan – Los Angeles Region to incorporate the TMDL for Trash in the Los Angeles River Watershed Resolution No. 07-012 http://63.199.216.6/larwqcb_new/bpa/docs/2007-012/2007-012_RB_BPA.pdf . We also note that, for example, as in

urge a goal of zero trash to the environment be established in the Implementation Plan.

We support research as an area of focus by the NOP, and are particularly supportive of research that adds to the already large body of work that has been produced assessing marine debris types, concentrations, and locations. For example, focusing on emerging topic areas, such as toxic impacts of plastic pollution to marine life and bioaccumulation of contaminants from plastic pollution, will be greatly beneficial to informing prevention and reduction policies. Additionally, economic research on the cost of plastic marine pollution clean-up and management to local governments, and cost-benefit analyses of single-use plastics and their reusable alternatives, would be extremely helpful to proper assessment of pollution management alternatives. We understand that establishing a marine debris baseline will be helpful in measuring milestones and outcomes; however, we are concerned that focusing on baseline determination will simply prolong federal agency efforts to take decisive action to prevent and reduce plastic marine pollution. We therefore encourage the NOP implementation plan to call for a parallel track, which moves forward with source reduction and prevention priorities *at the same time* as new research areas are initiated. Marine debris issues have been researched for decades, and several reports (as well as decades of citizen data from International and U.S. Coastal Cleanups) exist to support timely implementation of prevention policies.² These efforts, many of which have originated along the West Coast, should be used as a resource for NOP implementation.

We are supportive of many of the milestones outlined within Action 6, yet we believe that a few additional milestones should be added to most effectively prevent and reduce marine plastic pollution. We support the proposed federal marine debris information clearinghouse for scientific literature, as it will be a useful source for groups working at all levels to access the most current information related to plastic marine pollution. We encourage the NOP to keep this clearinghouse updated with new research, specifically research related to monitoring of plastic pollution prevention and reduction strategies, studies on toxicity and bioaccumulation of contaminants associated with marine debris and economic research. Although we support the identification and promotion of non-regulatory measures to reduce and prevent plastic marine pollution (e.g. market-based incentives, proper litter receptacles along shorelines, and installation of collection devices in storm drain systems), we urge the Implementation Plan to include a strong focus on regulatory tools. Regulatory efforts, such as trash Total Maximum Daily Loads, and source reduction regulations such as bans and fees on single-use plastic items that are commonly found in the litter stream, are imperative for achieving measurable reduction in plastic marine pollution. Communities in California are already moving forward with such efforts; over 50 municipalities have adopted polystyrene food container bans, and over 39 municipalities have adopted single-use bag reduction and/or ban ordinances. Furthermore, we strongly support facilitation of community-based grants in the Implementation Plan and encourage these grants to be tied to deliverables beyond volunteer clean-up activities; community groups can be

the Los Angeles River TMDL, a target of “zero trash” does not mean a single piece of litter is equivalent to noncompliance; there is a margin of error established in the TMDL, there is monitoring to establish a baseline, and there are rolling averages for compliance determinations, etc.

² See, e.g., California Ocean Protection Council, “Resolution of the California Ocean Protection Council On Reducing and Preventing Marine Debris,” Adopted February 8, 2009; California Ocean Protection Council, “An Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter,” Adopted November 20, 2008, etc.

instrumental in moving local prevention policies and conducting plastic marine pollution research.

In addition to the above comments, we support the strengthened definition for ecosystem-based management in this draft Plan, but we hope the final Plan will clarify that ecosystem-based management must result in the protection, maintenance and restoration of the health of our oceans' natural ecosystems. Only healthy, functioning, and resilient marine ecosystems can provide the resources and services humans want and need, now and into the future.

The Plan shows great strength in providing government accountability and coordination, and we likewise encourage you to reiterate that the National Ocean Council and every relevant federal agency be engaged in implementation of the National Ocean Policy to the full extent of their statutory responsibility.

We also strongly urge the National Ocean Council to support funding for regional ocean partnerships and suggest that the National Oceans Council use case studies from states/regions as models for pursuing national ocean policy (*e.g.*, OPC marine debris implementation plan, the Marine Life Protection Act guided marine protected area designation in CA, etc.)

To successfully achieve the Plan's goals, we also urge you to:

- Prioritize protecting, maintaining and restoring the health of our oceans, coasts and Great Lakes with an emphasis on achieving conservation milestones that can provide immediate ecological benefit such as the protection and restoration of coastal and marine habitat for priority species;
- Conduct regional ecological assessments that identify important ecological processes and areas and inform the Regional Ocean Partnerships' coastal and marine spatial planning processes;
- Advance the timelines provided for milestones for actions related to these key priorities: ecosystem-based management; prevent and mitigate pollution and harmful impacts to water quality caused by poor land use practices; and protect and restore marine habitat for priority species;
- Analyze potential interagency actions for resiliency and adaptation to climate change and ocean acidification which include regional reduction of carbon emissions;
- Establish regional planning bodies in New England and the Mid-Atlantic in 2012 and in the West Coast in 2013;
- Retain efforts to coordinate financial and educational resources to achieve the Plan's goals;
- Produce a progress report on completion of the milestones in the Plan every two years and an Oceans, Coasts, and Great Lakes Health Report that notes progress on reaching set ecological indicators.

Thank you for all of your efforts to ensure a healthy future for our oceans, coasts, Great Lakes and the millions of people who depend upon them. We look forward to the implementation of the NOP.

Sincerely,

Leslie Tamminen
Ocean Program Director
Seventh Generation Advisors
Los Angeles, California

Sarah Sikich
Coastal Resources Director
Heal the Bay
Santa Monica, California

Jennie R. Romer
Founder & Director
Plastic Bags Laws
San Francisco, California

Stephanie Barger
Executive Director
Earth Resource Foundation
Costa Mesa, California

Angela T. Howe, Esq.
Legal Director
Surfrider Foundation
Costa Mesa, California

Name: **Peter Alexander**

Organization: Northeast Great Waters Coalition

Path: http://edit.whitehouse.gov/sites/default/files/webform/letter_to_nop.pdf

Comment: Please see comments attached. In summary: Restoration of coastal watersheds needs a more significant place in the Plan in order to adequately address coastal and riverine water quality and critically important spawning habitat for migratory fish. These kinds of projects are easily framed as public works projects to protect public health and safety, and are big drivers of jobs and economic development.



New England Coastal Watershed Restoration Initiative

Comments on the Implementation Plan for the National Ocean Policy

One thing that appears to be missing or underemphasized in the Implementation Plan is restoration of spawning habitat for migratory fish. Here in Maine 95% of prime habitat (which tends to be in the upper reaches of watersheds) is blocked by dams (most of them obsolete), and improperly installed culverts. It is a huge problem, estimated to require well over \$1 billion to address just in this region.

A key component of restoration needs to be assessment of the scale of the problems in order to quantify the dollars that will be required. That is what made the Great Lakes Regional Strategy (restoration plan) so effective: with a \$26 billion price tag, both Congress and the Administration knew that a very substantial appropriation was needed--so the Lakes have gotten over \$1 billion for restoration in the past three years while Lake Champlain, whose problems are on a similar scale but have not been quantified in the same way, receives only about \$1.5 million each year in the President's budget.

Assessments are not that difficult to do--at least in broad brushstrokes. Here in the Gulf of Maine we found that reasonable estimates can be procured from state agencies. We started by getting state and federal agencies to sit down together and agree on a template (spreadsheet) of priority issues. Then we circulated the template to all relevant agencies and asked them to fill in estimates based on a 5-year horizon. We had to tell them to think outside the box of their current administrative capacity and focus instead on the real needs of the ecosystem. The estimates that came back are useful, not because they are particularly accurate, but because they provide a measure of the priority issues and the scale of the problems that can be used to educate decision makers and Congress.

Appended to this letter is a summary of restoration needs in the New England Coastal Watersheds, as an example of the above.

All the best,

Peter

Peter Alexander
Northeast Great Waters Restoration Initiative
<http://northeastgreatwaters.org/>
peter@peteralexander.us
(207) 522-7040



New England Coastal Watershed Restoration Initiative

300+ years of development and industrialization in New England has left the region with a legacy of degraded infrastructure and compromised natural systems, and is negatively impacting public health and safety and the region's economy. Thousands of obsolete dams and improperly installed culverts throughout the coastal watersheds not only pose risks of failure and flooding, but also block prime spawning habitat for migratory fish. Efforts to improve water quality in both rivers and the coastal environment are hampered by aging waste and storm water infrastructure that is woefully insufficient to handle the pressures of development and increasingly violent weather events. Rapidly increasing populations of invasive species in near coastal waters are causing alarm among fishermen and natural resource managers. The cost of addressing these and other problems was recently assessed in a pair of studies conducted for the Gulf of Maine and the southern New England coast (from Rhode Island to Cape Cod)¹. They document there is a pressing need for \$20 billion in federal investments in the four New England coastal states (RI, MA, NH & ME) over the next 20 years for infrastructure repairs and upgrades to dams, road crossings, water treatment facilities, and other infrastructure that impacts public safety, public health, and the region's economy. These and other findings were affirmed at a January 2012 meeting of over 60 conservation professionals from throughout the region.

This funding is urgently needed for "shovels in the earth" restoration activities that include 1) stopping raw sewage and pollution from flowing into rivers and bays by repairing or replacing ineffective and failing waste and storm water systems; 2) removing threats to public safety by removing failing dams and upgrading road crossings (culverts); all of which will restore access to prime spawning grounds for migratory fish; 3) protecting populations of valuable fish and wildlife species by conserving and restoring critical habitat²; 4) addressing the growing threat from invasive species, and; 5) conducting science, planning, and communication to ensure efficient and adequate implementation of restoration activities.

There is currently no federal agency or organization poised to coordinate restoration activities specific to this region, and no designated source of federal funding comparable to

How Restoration Creates Jobs

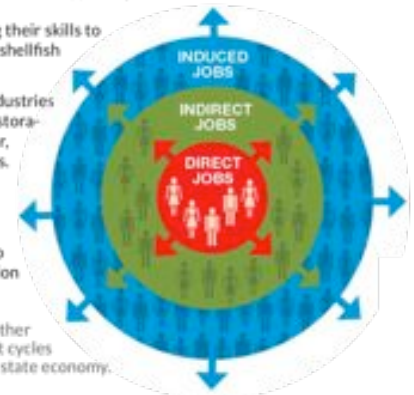


Restoration improves coastal habitats (left), which have great value for fisheries and many other industries. Restoration projects also help local economies by creating jobs (right). Three different types of jobs are created:

DIRECT JOBS: People using their skills to restore damaged wetlands, shellfish beds, and fish passages.

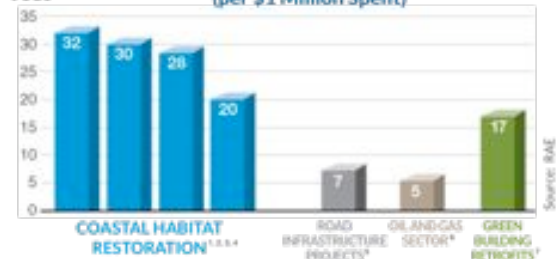
INDIRECT JOBS: Jobs in industries that supply materials for restoration projects, such as lumber, concrete, and nursery plants.

INDUCED JOBS: Jobs in businesses that provide local goods and services, such as clothing and food, to people working on restoration projects.



This is multiplied by other economic activity as it cycles through the local and state economy.

Habitat Restoration Creates More Jobs (per \$1 Million Spent)



¹ NOAA Restoration Center, AFRS Economic Impact Summary Report (in preparation)
² http://www.doi.gov/news/pressreleases/2010_02_23_release.cfm
³ http://www.americanprogress.org/issues/2011/02/pdf/beyond_recovery.pdf
⁴ <http://wilderness.org/files/Green-Jobs-Fact-Sheet.pdf>
⁵ <http://www.bls.gov/news.release/tables/tables.pdf>
⁶ http://www.americanprogress.org/issues/2011/02/pdf/beyond_recovery.pdf
⁷ http://edpartners.org/tables/Job_Creation_for_Investment_-_Garrett-Pattar.pdf

¹The *US Gulf of Maine Habitat Restoration and Conservation Plan* and *The Rhode Island Bays & Coastal Watersheds Great Water: Restoration & Conservation Overview*

² Up to ninety-five percent of prime spawning habitat for migratory fish in New England has been blocked by poorly designed or obsolete dams and culverts, contributing to a sharp decline of commercially and recreationally valuable fish. Restoration will protect critical habitat for important marine species such as alewives, and the commercially important species that depend on them, such as salmon and cod.

what Congress routinely appropriates for restoration of the Great Lakes, Chesapeake Bay, Long Island Sound and other important eco-regions (see table below). There is consensus the region needs Congressional and administrative action to accelerate the pace of restoration work, and that this should take the form of a *Congressionally authorized Program Office and a programmatic line item in the federal budget.*

January 2012 participants were clear that this initiative is not about more regulations, enforcement, and management. Rather it is about repairing the negative economic and public safety impacts from 300 years of poorly planned development and industrial activity throughout the coastal watersheds of New England. They were also clear that a coordinating Program Office had great value in its own right, even if additional funding for restoration activities cannot be found in the short term.

This is an *economic initiative that creates jobs* and boosts economic activity while also improving environmental health and public safety.

The return on investment from restoration projects is huge because these activities create local jobs and fuel local economies. Direct benefits of a \$1 billion investment will produce 32,000 long-term jobs³ in construction, engineering, science and other related fields. Ancillary benefits include increased revenues from recreational activities such as fishing, swimming, and boating, increased property values wherever water quality is improved, and restored populations of commercially important fish.

Detailed Findings of the January 12, 2012 New England Coastal Watersheds Restoration Summit and follow-up conference calls:

- 1) Geographic scope of the initiative is all of New England’s coastal waters and watersheds north of Long Island Sound.⁴
- 2) This is a *RESTORATION* initiative: the focus is on repairing the long-term damage from 300+ years of development and industrialization—NOT on regulations, management, or enforcement.⁵
- 3) As identified by state agency officials and confirmed by federal officials in the region, the restoration needs and economic benefits of implementing solutions are enormous. Projected needs in first 5 years: \$4 Billion. Full implementation estimate: \$20 Billion over 20 years. While there is no realistic expectation of fully funding identified needs in the current economic climate, a major increase in funding – commensurate with that appropriated to other Great Waters regions – is warranted. These funds would be allocated accordingly:

Protect and Restore Fish and Wildlife Habitats and Populations:	\$ 280,138,000
Provide Clean, Healthy Coastal Waters:	\$3,777,626,000
Conduct Science, Planning, and Communication Required for Regional Ocean Management, Marine Spatial Planning, and Ecosystem-Based Management:	\$ 41,425,000
Promote Resilience to Climate Change:	\$ 44,175,000
Prevent and Detect Invasive Species, and Restore Affected Habitats:	\$ 10, 870,000
Total estimated need in first five years:	\$4,154,234,000

- 4) Highest Priority Issues include:
 - a. Restore degraded wetlands, rivers, and riparian lands that provide high-value ecosystem services to people, such as flood reduction, water quality improvement, and habitat connectivity for commercially- and recreationally-important fish species
 - b. Pursue dual-purpose restorations that replace or remove failing and unsafe infrastructure (e.g., old culverts and dams) while also improving environmental conditions
 - c. Upgrade failing and outdated municipal waste and storm water infrastructure
 - d. Abate nutrient inputs from sources such as farms, developed areas, and septic systems

³ Fact sheet from Restore America’s Estuaries

⁴ Lake Champlain and Long Island Sound already have federally designated programs and program offices.

⁵ Experience from Great Lakes and other ecosystems shows that regulatory and management issues can be divisive, while virtually everyone is in favor of restoration.

- e. Protect eel grass beds, salt marshes, coastal buffers, and other critical habitats
 - f. Invest in science and research to inform and coordinate priorities (identify the restoration activities that will produce the biggest “bang for the buck”)
- 5) Restoration funding is currently woefully inadequate to address pressing needs.
 - 6) Without significant investment many of the problems identified will reach or have already reached crisis level, with dire implications for the economy, human health, and food.
 - 7) There is no regional body at the state or federal level currently equipped to deal with coordination and funding of restoration activities.
 - 8) A Federal Program (*Program Office*) is required to coordinate the work of dozens of state and federal agencies involved in restoration in the four states (RI, MA, NH & ME), and to act as a channel for *additional* funding for restoration (*but not as a replacement for current programs and funding channels*). The program office should be located inside EPA Region One, probably within the Ocean and Coastal Protection Unit.
 - 9) Most of the effort outlined in the restoration plans is for land-based issues within the coastal watersheds, and do not fit squarely within the bailiwick of any of the marine-based councils or agencies. Therefore, Northeast Regional Ocean Council, Gulf of Maine Council, Regional Planning Bodies established under the National Ocean Policy, (and others) will be participants and stakeholders but will not have the central (program office) role.
 - 10) The program office should specify sub regions (ie Southern New England and Gulf of Maine) separately.
 - 11) The Program Office will coordinate (facilitate) habitat restoration activities in the region. Among its functions will be to:
 - a. Bring stakeholders together to develop and fund habitat restoration and land conservation plans, including timelines, measures of success, budgets, agency capacities, etc.
 - b. Coordinate federal agency restoration and conservation programs with intent to maximize effect of individual programs
 - c. Communicate w/ federal counterparts in other mature Great Waters programs (such as the Great Lakes) to learn best restoration management practices.
 - d. Provide funding to state agencies to implement projects already prioritized
 - e. Work with state agencies to refine additional priorities across the region
 - f. Communicate with Congress about financial and other implementation needs
 - g. Coordinate and facilitate monitoring and assessment.
 - h. Increase awareness about the region’s habitat restoration and land conservation needs and the environmental and economic impact of these activities.

Federal Funding* for Other “Great Waters”

Numerous restoration programs similar to the one proposed here are already underway in other regions of the country. This is a partial list:

“Great Water”	2012 enacted	2013 (President's Budget)
Great Lakes	\$299,520,000	\$300,000,000
Chesapeake Bay	57,299,000	72,618,000
South Florida	2,058,000	1,700,000
San Francisco Bay	5,838,000	4,857,000
Gulf of Mexico	5,455,000	4,436,000
Lake Champlain	2,395,000	1,399,000
Puget Sound	29,952,000	19,289,000

*These funds are in addition to normal programmatic funding that would otherwise be directed to these ecosystems.

NATIONAL OCEAN COUNCIL

Name: **Greg DiDomenico**

Organization: Garden State Seafood Association

Path: http://edit.whitehouse.gov/sites/default/files/webform/gssa_to_noc_on_draft_nop_plan_02_27_12.doc

Comment: Please accept the attached comments on the draft National Ocean Policy Implementation Plan, on behalf of the member companies and individuals of the Garden State Seafood Association.
Thank you,
Greg DiDomenic0



212 West State Street
Trenton, NJ 08628
Phone: (609) 898-1100

Greg DiDomenico, Executive Director
gregdi@voicenet.com

February 27, 2012

To: National Ocean Council

From: Greg DiDomenico, Executive Director
Garden State Seafood Association

RE: Comments on Draft National Ocean Policy Implementation Plan

Please accept these comments on Draft National Ocean Policy Implementation Plan (“Plan”) on behalf of the Garden State Seafood Association (GSSA). The GSSA is a professional trade organization representing commercial fishing and fishing associated businesses in New Jersey and the mid-Atlantic region.

Stakeholder Input Process

First, while we appreciate the opportunity to submit written comments we note for the record the NOC and White House CEQ convened a “Stakeholder Briefing Call” on the afternoon of the very same day the NOC released the Plan. Unfortunately, no one on the call had time to read the 115-page document to engage senior officials in any substantive manner. The NOC did reconvene the call the following day but clearly there was still not sufficient time for the majority of interested parties to prepare for the discussion.

Secondly, we note the FINAL decision by CEQ to add a single seat to each Regional Planning Body (RPB) for the 8 Regional Fishery Management Councils (RFMCs) was not included in the Plan for public comment. In fact, CEQ made this FINAL announcement just 2 weeks later at the RFMC Coordinating Committee meeting in Silver Spring, MD. Here again, no time for comment to affect the CEQ decision.

We believe these two examples underscore our primary concern with the NOP process -- that it is neither open nor transparent and that the NOC has little real interest in stakeholder input. If this were not the case there would be no Federal Advisory Committee Act limitations; the RPBs would be open to full public involvement; and our comments would be given due consideration. This entire process undermines the Administration’s policies on transparency and scientific integrity.

Adopt Ecosystem-Based Management

While this is a laudable goal and the RFMCs are making progress in many areas, a recommendation to adopt EBM cannot be achieved absent a vast amount of additional scientific information that will take decades to acquire. In addition, the amount of funding required to complete this task is beyond our current and foreseeable fiscal capabilities. Requiring EBM in the absence of these two critical elements results in a heavier reliance on the precautionary approach. Clearly, the precautionary principle is a required component of the NOP. In our opinion, such a major shift in the management process should require additional information and a process to collect it as a prerequisite, not the other way around.

Furthermore, this Administration proves time and time again that their interpretation of EBM in the context of protecting endangered or threatened species and marine mammals is not based on sound wildlife and management principles, a balanced approach to true conservation, or use of sound scientific data but rather -- on a strict philosophy of protectionism. We do not believe that affording particular species a higher degree of protection within an ecosystem is true EBM. In fact, in some ways it is the opposite and why we believe the Administration has a biased interpretation of EBM.

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

We support collecting and using the best possible science. However, as noted above, today we do not have the resources available to collect the information we need to simultaneously manage all the species which interact within a given region. In fact, funding levels are decreasing. For example, the Administration's FY2013 budget *reduces* funding substantially for key activities such as the control and monitoring of aquatic invasive species. How is this consistent with the Plan and efforts to advance our scientific understanding and capabilities?

Promote Efficiency and Collaboration

We support efficiency and collaboration but our primary concern with respect to streamlining existing statutory requirements (i.e. federal fishery management plans) is with Plan implementation.

The National Ocean Policy clearly states that "effective implementation would also require clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component" (*See* NOP page 30). However, "This draft Implementation Plan creates no new regulations, however, within existing authorities, legal and regulatory barriers to full implementation of the National Ocean Policy will be identified and permitting processes will be streamlined." (*See* Plan page 4).

We interpret this uncertainty to mean that the Administration could impose new regulations where necessary in order to eliminate the "regulatory barriers" they identify, and to seek new legislation that would provide the statutory authority. We must convey our serious concerns with this approach.

Here are just a few citations from the Plan that provide further evidence the NOP appears to be a new regulatory program --

- “CMSP is an important tool for implementing EBM.” It will lead to a more “certain decision-making process for managing activities in the ocean” (Page 4)
- “The NOC expects to complete and approve the final Implementation Plan in the Spring of 2012. Federal agencies will then implement its initial set of actions.” (Page 6)
- “Existing regulatory requirements and programs that were developed based on a fundamentally different model may need to be modified” (Page 11)
- “...EBM approach supports adaptive, iterative management.” And “various responses or actions may become necessary given the limits of existing regulatory or statutory authority.” (Page 12)
- Find “opportunities to incorporate EBM principles into Federal laws, regulations, and policies” (Page 13)
- “Establish a process for adaptive resource management” (Page 15)
- “Review the interpretation and, as necessary, propose to strengthen content and/or application of Federal legislation.....to incorporate and better support climate change adaptation efforts.” (page 39)
- The Plan proposes to identify “important marine areas for management or protection”. This includes use of “national marine sanctuaries, national estuary programs, and national marine monuments.” “Priority species” would be protected using “Essential Fish Habitat (EFH) Provisions including Habitat Areas of Particular Concern (HAPC)”. *Nowhere does the document suggest a role for the regional fishery management councils or affected industries as these management measures are imposed. (Pages 51-52)*
- This section discusses Coastal and Marine Spatial Planning and the role of the Regional Planning Bodies. It lays out a detailed process for creation of the nine Regional Planning Bodies, implementation of CMSP, creation of CMS Plans for each region, and the presentation of these plans to the National Ocean Council for certification. This is to be accomplished by 2019. (Pages 85-92)

Strengthen Regional Efforts

The final theme is for the Plan to strengthen regional, state and local ecosystem conservation efforts. We support this approach and encourage the NOC to support existing organizations, such as the RFMCs which have a proven track record on marine resource management.

However, we add a caveat here as well. We are extremely concerned that there is limited possibility for regional stakeholders to participate in the RPB process. We believe that as major stakeholders, the commercial fishing industry has much to offer the Mid-Atlantic RPB process yet we are not at the table. This is a major flaw in the NOP process.

RFMCs and Commercial Fisheries

It appears to the GSSA that the Draft Implementation Plan proposes creation of a new ocean resource management system. The Plan contains the statements that “fisheries can be better managed” and that the NOP “will improve future management decisions.” (See Page 9). We are gravely concerned about the impacts of this process on the federal fisheries management and the RFMC process.

We note here that CEQ unilaterally decided the RFMCs will each have a single seat on the RPBs. However, in order to preserve FACA considerations, the CEQ also requires that the RFMC individual serving in this seat be a governmental representative. This is totally unacceptable to the GSSA and is further indication the NOC intends to override the transparent RFMC process.

It is our intent throughout this process to ensure that we preserve the integrity of the RFMCs and provide them with a full role in the RPB process. However, in light of this strong move by CEQ to allow but severely restrict the RFMC’s we staunchly oppose the recommendation. We suggest the following: (1) revise the RPB process to remove FACA considerations and create a voluntary, transparent regional planning process to include the RFMCs and all legitimate stakeholders; and (2) revise the Plan to clarify there will be no new or modified federal regulations affecting federal fisheries management.

Thank you for the opportunity to comment on development of the Draft National Ocean Policy Implementation Plan.

Sincerely,

Greg DiDomenico

Greg DiDomenico
Executive Director

Cc: New Jersey Congressional Delegation

Name: **Michael Leath**

Organization:

Path: http://edit.whitehouse.gov/sites/default/files/webform/noc_comments.pdf

Comment: We are cadets from the United States Coast Guard Academy. Our class is comprised of Juniors and Seniors who are currently enrolled in a Maritime Strategy course. We appreciate the opportunity presented to us to analyze the Draft National Ocean Policy Implementation Plan. Please find attached various comments we have created in response to the Ecosystem-based Management, Coastal and Marine Spatial Planning, and Changing Conditions in the Arctic sections of the Plan. We are grateful for the opportunity to aid the National Ocean Council in any way we can. Thank you, and Semper Paratus!

National Priority Objectives

1. Ecosystem-Based Management [Team A: 1/c Nick Cosenza, 1/c Mellissa Gilday, 1/c Jacob Shackelford]

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

Action 1: Establish a framework for collaboration and a shared set of goals for Federal implementation of ecosystem-based management.

Outcomes: The shared goals that are created may be too broad to be very effective. A solution for this problem would be to have the regional planning bodies create a mechanism to resolve disputes. The problem with this is then there is a “top-down” feel to the decisions and the collaborative environment will be ruined. More emphasis should be placed on the milestone of completing the review of EBM-relevant statutes like NEPA that offer a legal frame work to accomplish the ideals of EBM. The legal procedures in NEPA, like requiring an environmental impact statement, are more binding than a policy. This forces agencies too at least work through EBM type procedures and by implementing an additional layer of oversight, could help resolve some conflicts.

Additionally, there may be problems understanding what you mean by “consensus.” When you want to come to consensus are you talking about just government officials or all NGO’s, scholars, ect. If you could define what you mean by “consensus” that may help clear up some confusion.

The other recommendation is for you to create a mechanism that can resolve conflicts. When consensus cannot be reached the discussion should shift from which one is more important or will cause the least amount of negative outcomes. Thus, instead of trying to have everyone agree on a single consensus solution, the dilemma becomes choosing between two issues. Doing this will shift the consensus discussion to one based on prioritization.

Agencies: This action item seems to include a large number of agencies with very different stresses, but that is necessary for implementing EBM.

Milestones: The milestones for this action item involve the agencies collaborating to determine shared goals and interagency partnerships by the end of this year or 2013. These milestones seem overly optimistic and nowhere is there a mechanism or procedure for settling disputes. The implementation plan appears to make the assumption that all the interested agencies will be able to collaborate and come to a consensus that they all like on the shared goals for EBM. This is unrealistic because off the widely varying interests that each agency has. For example, one wonders if the Army Corps of Engineers will be able to collaborate with the Environmental Protection Agency and come to a resolution at the policy level. By emphasizing collaboration there is no way to settle the inevitable disputes that will arise. Thus, the 2012 milestone dates may be too fast to implement an effective strategy and should be pushed back at least one year.

Action 2: Establish a science framework to support science-based EBM implementation.

Outcomes: The second action item in the adaptation of ecosystem based management is to establish a science framework to support science-based EBM implementation. As stated before, this action item of EBM encompasses many other action plans as well. In order to identify information requirements to implement EBM and provide guidance on how this data could be used to inform decisions, the development of ocean.data.gov set forth in Action 5 of the Coast Marine Spatial Planning priority will help greatly. The outcome of this action is to enable scientific data and tools to inform management decisions, evaluate trade-offs between decisions, and enhance our ability to balance competing demands.

As with the rest of EBM, the decision making process is through Memoranda of Agreement. While this may be possible for policy agreements, the question remains if scientists will be able to come to an agreement. The use of ocean.data.gov will be beneficial in the gathering and displaying of information, but the scientists ultimately have to come to the same agreement. We recommend that the Memoranda of Agreement not be implemented in this decision making process. We see that if a decision is made, there will always be different science saying that it will adversely affect a different region of ecosystems.

The second recommendation is to include ex-officio scientists from Canada and Mexico in order to sit in the EBM meeting in the areas which they are concerned with (Great Lakes, Gulf of Mexico, etc.). The reason for this is to include their scientific expertise as well as knowledge of certain ecosystems in order to prevent inversely affecting them through our own implementation.

The third recommendation regarding Action 2 is to better align milestones set, to corroborate the full picture of EBM. As of now, they strive to ‘Develop national guidelines and best practices for EBM implementation...should be based on the inventory above and honed considering the results of pilot projects. (OST-IPC; 2013)’ When looking at Action 4, these pilot projects will not be conducted until 2016, with the results being displayed in 2017. To better align the milestones, we suggest rephrasing the end of that milestone into something along the lines of “This should be based on the inventory above and considered following the results of the pilot projects in 2016.”

The fourth recommendation is to specify what “gaps” in regional information they are talking about.

The fifth recommendation is to remove the milestone “Establish a process for adaptive resource management, engaging partners and stakeholders (2013).” This seems like it would fit better into a different action, not necessarily this one.

Action 3: Build capacity to implement EBM through training on principles, best practices, and decision-support tools.

Outcomes: By conducting training that is suited for specific audiences this will allow for EBM to be better understood by a variety of people and with this larger understanding comes the ability for a larger group to voice their opinion and give suggestions on the

best possible practices of EBM through creating an online forum. In the end, the local communities and stakeholders will have an invested interest in EBM because they have been afforded the opportunity to contribute to EBM and make it as efficient as possible.

Agencies: NOAA (takes the lead), DHS (CG Auxiliary)

Milestones:

In order to successfully develop and initiate an outreach and education program to the public and stakeholders it is important to take into consideration what type of training will be most successful with what type of audience. For stakeholders briefings and presentations can be used to educate while media coverage on the television and in newspapers might be more efficient to educate the local communities. Coast Guard Auxiliary members can be used to educate locals on the importance of EBM. They have already established a effective foundation for educating the boating community on safety and possess the public communication skills needed to relate to the locals.

Another aspect that must be carefully explained in the trainings the when, where, and why aspects of EBM must be carefully and fully explained in the trainings in order to convey how important ecosystem based management is to ecosystems. Doing so will give stakeholders and the public a complete understanding of EBM. (NOAA, DHS; 2012)

One of the benefits of educating the public and stakeholders about EBM is so that they are able to form their own opinions about it. This could result with viewers coming up with ideas to better EBM. By creating an online forum that people can field questions and suggestions on EBM can only improve the system. The Coast Guard Auxiliary would be trained and responsible for reviewing the comments and submitting feedback to NOAA. (NOAA, DHS; 2012-2013)

Once the public and stakeholders have an opportunity to have their opinions voiced and incorporated into EBM, introductory and advanced training materials for Federal managers and scientists can be created. As mentioned in the milestone 2 under action 3, the point of this is to obtain a “common understanding of EBM principal, best practices, and latest decision-support tools.” (ORM -IPC; OST-IPC; DHS 2014)

This milestone will remain the same except for a change in the timeframe, “Provide formal training on EBM principles, best practices, and latest decision-support tools to Federal managers and scientists.” (NOAA, EPA, DOI, USDA, DOT; 2014)

Action 4: Identify and implement place-based pilot projects that foster an EBM approach to managing ocean and coastal resources.

Outcomes: Pilot projects in themselves are one of the most important aspects of creating an effective EBM. We recommend that more scientific studies should be conducted in order to determine how long it will take the ecosystems to respond (positively or negatively) to the pilot projects. Doing so will help determine the future deadlines that will need to be made for the projects. Pilot projects will help “Hone EBM best practices, test on-the-ground effectiveness of decision-support tools, and demonstrate the practical utility of the EBM approach.” Extend the current implementation dates to ensure that the pilot project data is quality and not rushed in order to meet deadline set by the plan.

Agencies: AMAS (conducts external audit), pilot projects can be conducted by NOAA with the assistance of DHS.

Milestones:

“Develop criteria for identifying priority geographic areas for pilot implementation of EBM, and use those criteria to identify three locations for pilot projects.” Everything will remain the same as the original milestone 1 except for the timeline that will be changed from 2012 to 2014. (ORM-IPC; 2014)

“Conduct EBM pilot projects in the identified areas, ensuring that EBM data and tools (e.g. Integrated Ecosystem Assessments) are available for use, data/tool gaps are filled, and data are collected in accordance with ocean.data.gov requirements.” (ORM-IPC; 2014-2017) This milestone will also remain the same with the exception of the timeframe. The predicted timeframe has been changed to 2014-2017, however, milestone one will determine how long the pilot projects will need to occur before a change in the ecosystem can be observed.

Have an external audit determine the effectiveness of the pilot projects. Although one of the milestones is to “Compile and disseminate initial EBM best practices and case studies to Federal agencies, non- Federal partners, and stakeholders via the EBM portal developed in Action 3 of “Inform Decisions and Improve Understanding,” and refine best practices based on results of pilot projects,” we feel that the most beneficial and honest feedback will be provided by an external audit rather than any federal or non federal agency. The external audit would be done to ensure that the grading of the pilot projects grading is objective and non-biased. The external auditing company that will take the lead on conducting research on the pilot projects is the UCSD Audit and Management Advisory Services.

Determine come what criteria will be used to evaluate EBM after the external auditing agency has an opportunity to make their recommendations about the pilot projects. (ORM-IPC; 2018)

“Compile and disseminate initial EBM best practices and case studies to Federal agencies, non- Federal partners, and stakeholders via the EBM portal developed in Action 3 of “Inform Decisions and Improve Understanding,” and refine best practices based on results of pilot projects.” This milestone will stay the same with the exception of the timeframe that will change to 2017 to 2019. (ORM-IPC member agencies; 2019)

8. Changing Conditions in the Arctic [Team B: 1/c Chris Martin, 1/c Sean Newmeyer, 1/c Hillary Smith]

Address environmental stewardship needs in the Arctic Ocean and adjacent coastal areas in the face of climate-induced and other environmental changes.

Action 1: Improve Arctic environmental response management.

Outcomes: These comments are directed towards action one of the “Changing Conditions in the Arctic” objective which seeks to improve Arctic environmental and response management. Based on the milestones that are described and previous environmental disasters that have occurred in the Arctic, there are several concerns about

the feasibility and efficiency of the National Ocean Council's (NOC) implementation plan.

First, many of the milestones that are described by the NOC for this particular action seem as if they will be unfeasible given time constraints and the conditions that make working in the Arctic difficult. The milestones that stood out the most to me in this respect was the milestone that called for improved, "oil spill prevention, containment and response infrastructure, plans and technology for use in ice-covered seas using all available sources..."¹ Improving response technology is critical to being able to better manage disasters in the Arctic, but the expectation that the technology will improve substantially in the course of a year is unrealistic.

Response technology has already proved to be a problem for some of our experienced Arctic allies such as Norway. On February 17, 2011 the *Godafoss*, an Icelandic container ship ran aground and began leaking oil. While it is not known how much oil was spilled, the obstacles to effective oil spill response in the Arctic quickly were discovered. One of the biggest issues was oil that was trapped in thin layers of ice, making it impossible to get out and preventing large portions of contaminated area from being cleaned. In addition, the variable weather such as snow, fog and sub-zero temperatures further complicated the oil cleanup by making it difficult to spot oil, and by causing excess amounts of oil to get stuck in ice, preventing responders from being able to take action. Lastly, the impact felt on the environment from this low-scale oil spill was tremendous. Hundreds of seabirds were oiled when the spill reached Aker Island, a seabird reserve on the Norwegian Coast. This example illustrates how even a small spill could seriously hurt the Arctic until response techniques are perfected. In order for this to happen the NOC must be realistic about how long proper response technology for the Arctic will take to develop.

Another issue that is present is the efficiency of the NOC's implementation plan and their milestones set forth for improving environmental response management in the Arctic. While it is important for the timelines to be realistic as mentioned above, it is also important for the timelines to be practical given the activities that are occurring in the Arctic. With Shell Oil set to begin exploratory drilling 70 miles Northwest of Alaska in the Chukchi Sea in the summer of 2012, some of the milestones set forth to improve environmental response seem extremely impractical. The most alarming milestone states that the U.S. should, "Identify resource and infrastructure shortfalls for high-risk scenarios and assess strategies to address those shortfalls," and complete a plan that addresses logistical issues by 2014. While this seems to provide ample time to plan for response strategies, and infrastructure issues in the Arctic, drilling is occurring in 2012. If infrastructure and strategies are not already firmly established to effectively respond to an oil spill, the implementation plan is not serving its purpose.

Lastly, the focus of the action on response seems misguided. As the maritime community has already seen, responding to disasters on the water is extremely difficult. Examining the large scale disaster that occurred in the Gulf Coast this past summer shows just how difficult a task the clean up from a major disaster can be, even with infrastructure in place. Imagining the same type of disaster occurring in the Chukchi Sea with little to no government infrastructure seems like it would be impossible to respond to. With the obstacles to an effective response clear, it seems more appropriate for the

¹ Draft National Ocean Policy Implementation Plan, pg. 78

NOC to focus on prevention measures that would ideally prevent the necessity of a response; but realistically would reduce the damage that would need to be responded to. While prevention is mentioned in the NOC's Draft Implementation Plan, it is not emphasized enough.

There are several things that should be done to address this problem. First, the NOC's focus should be on prevention. By focusing on prevention the U.S. should partner with other Arctic nations to set strict standards for what types of ships are allowed to transit in the Arctic. This can be accomplished by working through the IMO, or possibly adding a section to the United Nations Convention on the Law of the Sea (UNCLOS) that addresses Arctic issues. It should be easy to come to an agreement as many nations stand to profit from resources in the Arctic, and also have a large interest in protecting endangered wildlife and habitats in the region. With strict standards in place, the risk of a disaster taking place can be substantially reduced. Although I believe prevention should be the main focus of the NOC, response is still an essential component of Arctic planning. No matter how many preventive measures are taken, disasters will still happen, making response important. Still, an effective prevention program can provide more time for the U.S. and other Arctic nations to develop response technology that is more effective than the technology currently available.

Action 2: Observe and forecast Arctic sea ice.

Outcomes: Technical Feasibility is high. Various aspects highlighted in this program have been in place for years. NASA has been monitoring Arctic Ice using RADARSAT-1. Nonprofit groups such as the Arctic ROOS of the Nansen Environmental Sensing Center have been monitoring and analyzing Arctic sea ice over time as well. Additional funding and attention could provide more data and more advanced imagery but the technology and capability already exists and is in place. The United States has been reliant on Canada, and Russia anticipates launching a monitoring system in 2014. In order to meet milestones the US will need to invest more time and money in to Arctic monitoring. Deployment of US satellites would provide accurate and reliable satellite imagery of ice movement in an uncertain international security environment. Local sensors and buoys placed on the edge will provide the most accurate and update ice information to monitors which can use models to promulgate that data. The placement and maintenance of these buoys will require the use of icebreakers of which the United States only has one available currently. Lastly, in order to success meet the milestones there will need to be an increased focus on technology for monitoring and forecasting, which will require and additional funding.

Action 3: Implement a distributed biological observatory.

Outcomes: NOAA has undertaken a limited trial of a Distributed Biological Observatory and had some positive results while facing some challenges. The process requires international cooperation and multiple cruises to gather data. This program would benefit from the inclusion of the Coast Guard in the process. CGC Healy is a good platform for

the type of Arctic research the plan is trying to accomplish. Additional ice breaking or reinforced hulled ships capable of operating in icy conditions as well as additional funding would enable the expansion and development of the program. The program has proven viable on a smaller scale but increasing through additional funding and international partnerships would create increasingly positive results and more data. The effects of lost ice coverage on land based animals such as the polar bear will also need to be monitored in addition to the water column. This is a time and manpower intensive plan which requires ships in theater to accomplish goals and meet milestones the inclusion of the USCG, NOAA,USFWS as well as NGOs will allow for efficient completion of a distributed biological observatory.

Action 4: Enhance communication systems in the Arctic.

Outcomes: The outreach side of communications lacked milestones to ensure action goals would be met. Recommend including a milestone of strengthening partnerships with representatives from all Alaskan Native organizations, rather than just one partnership. Furthermore, the Arctic Council is being underutilized. It should be employed as a critical liaison between the federal agencies and native communities. Language and knowledge-sharing barriers exist between government employees and native people diminishing the possibility of cooperation between the two groups. However, the Arctic Council could help to eliminate these barriers and thereby, further communications capabilities in the Arctic.

As far as technical communications goes, developing the Arctic Environmental Response Management Application (ERMA) should be a priority. This is the most advanced GIS-based decision-support tool for the Arctic currently and will make a critical contribution to oil spill response capabilities in the Arctic when completed. It is already being developed and has a high technical feasibility. However, NOAA is the only agency tasked to develop Arctic ERMA, which is not administratively feasible considering the size of NOAA. Other agencies should help in order to finish this tool in a timely manner.

Action 5: Advance Arctic mapping and charting.

Outcomes: Updating nautical charts should not be the responsibility of only NOAA. Pinning this task solely on NOAA is not administratively feasible and decreases the efficiency of the charts.

It seems as if an action is missing from the plan for the Arctic, specifically advancing Arctic Maritime Domain Awareness. In the long term, (2014-2015 timeline) ships should be required to install long-range identification and tracking (LRIT) systems. LRIT would be appropriate for the Arctic because, as opposed to automatic identification system (AIS) whose range is only line-of-sight, it uses satellites, which would provide coverage of a much larger area. Once traffic increases in the Arctic (2015-2016 timeline) it might be cost efficient to implement an American Vessel Traffic Service (VTS) as well which would promote maritime accident prevention. Canada has already implemented a VTS, which the American VTS could collaborate with to further increase Arctic Domain

Awareness. All of these improvements to navigation capabilities in the Arctic would reduce the risk of maritime incidents and increase Arctic Domain Awareness.

9. Coastal and Marine Spatial Planning [Team C: 1/c Feindel, 1/c Sherman, 2/c Bastinck]

Implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States.

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

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

Action 1: Distribute a Handbook for Regional Coastal and Marine Spatial Planning.

We did not look into this action, yet this should be done as soon as possible in order to clarify the other action plans and how CMSP should truly be implemented.

Action 2: Convene regional workshops and CMSP exercises

Outcomes: The regional planning bodies should be divided into subcommittees who will be responsible in meeting prior to the regional workshops to ensure proper preparations for the various parts of the regional planning bodies. Although each regional workshop is already developing “lead agencies” on the federal, state, and tribal levels, the different agencies need to show their full support of CMSP because when multiple agencies are given different amounts of power in different regions, it is likely that some agencies will not take the necessary responsibility that they should in order to ensure CMSP follows through. Furthermore, if the Coast Guard is chosen to head and convene a regional workshop, the Coast Guard should look to expand their Marine Safety Specialist Warrant Officers in both Engineering and Deck who can use their expertise to assist with CMSP. Also, Enlisted Coast Guard members should be asked to learn how to use the GIS program in order to help with EBM and Coastal Marine Spatial Planning.

Action 3: By 2015, all of the applicable non-confidential and other non-classified Federal data identified for inclusion will be incorporated into a National Information Management System and Data Portal (ocean.data.gov).

Action 4: Establish Regional Planning Bodies

Agencies within the nine regional planning bodies need to fully support the establishment of the different regions and reorganize parts of their agency if their own agency’s districts that they operate within have different boundaries. This is to facilitate efficiency and

ensure that CMSP is implemented effectively. If the United States is truly committed to Ecosystem-based management (EBM) and Coastal Marine Spatial Planning (CMSP), the U.S. needs to make a strong effort to enhance partnerships with Canada and Mexico to ensure proper policies that are beneficial for the different ecosystems are being followed. When planning what organizations should act as the lead organizations, regional areas should look at the group's "mission statements" rather than what they have been doing in the past. The regional body agencies in leadership positions need to have mission statements that match with the jobs they are trying to accomplish because the long-term results could possibly lead to problems if the mission statements are ignored.

Action 5: Within 3 to 5 years of their establishment, nine regional planning bodies (i.e., one per region) will have developed Council-certified regional CMS Plans for the sustainable use and long-term protection of the ocean, our coasts, and the Great Lakes.

In order for this to happen, CMSP needs to evolve with Ecosystem Based Management. The time frame is reasonable, yet the different regional planning bodies need to ensure that their lead federal, state and tribal agencies are working together to develop a plan.

Name: **Darci Connor**

Organization: Strategic Earth Consulting

Path: http://edit.whitehouse.gov/sites/default/files/webform/strategic_earth_response_nop_implementation_plan_final.pdf

Comment: The attached document is submitted on behalf of Strategic Earth, and was developed by me and Kelly Sayce (kelly@strategicearth.com). Please send any follow-up correspondences to both of us.

With regards,
Darci Connor and Kelly Sayce



February 27, 2012

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

Re: Draft National Ocean Policy Implementation Plan

Dear National Ocean Council Members,

On behalf of Strategic Earth Consulting, we are pleased to provide the following comments on the *Draft National Ocean Policy Implementation Plan* (draft implementation plan). Our team would like to commend the National Ocean Council (NOC) for its efforts in developing a comprehensive plan to address the complex challenges facing our nation's ocean and coastal waterways by identifying the priority objectives of the National Ocean Policy (NOP). We recognize the NOP presents federal agencies, in collaboration with State, Tribal, and community partners, with a monumental task; a task we believe will be difficult to achieve without the broad support and engagement of a diverse public.

Strategic Earth specializes in a multi-disciplinary approach linking science and policy with community outreach and engagement. We have developed successful stakeholder-focused collaboration and community engagement initiatives around complex science-driven ocean policy issues. Our team approached the review of the draft implementation plan through the "lens" of meaningful public engagement and community relations. It is our experience that effective ocean policy must include a strong foundational core dedicated to engaging the public, coastal communities, and concerned stakeholders. This is integral to all aspects of policy implementation, and developing the necessary relationships to secure continued public involvement and support.

Strategic Earth proposes the following three key recommendations for consideration by the NOC:

1. Highlight the value of public engagement;
2. Revisions to NOP implementation plan framework; and
3. Public comment solicitation process improvements.

1. Value of Public Engagement: Identifying public engagement as integral to the NOP

Page 1 of the draft implementation plan identifies the NOP as providing a "framework for all Federal agencies to work together to pursue [the identified] goals with cohesive actions across the Federal Government, and for **engaging** State, Tribal, and local authorities, regional governance structures, non-governmental organizations, **the public**, and the private sector." However, the draft implementation plan does not provide any guidance for how a comprehensive public engagement and community relations strategy should be considered and/or integrated into the NOP implementation by agency staff, resource managers, or the public themselves.

Rationale

Clearly identifying public engagement and community relations as a foundational component of the policy will help build public support for this national effort. This shift in perspective for how government and managing agencies currently view the public's role in policy reaches beyond traditional approaches to "public outreach." Our new approach is based on an interactive, two-way dialogue between the public and decision makers, which provides an opportunity to increase ocean and coastal literacy, and learn valuable information from the public. This information exchange also serves as an opportunity to integrate the public's experiential and local knowledge with best-readily available science; our experience has found this further strengthens the information and data used in regional planning efforts. Such public

engagement is essential to developing meaningful policy that is understood, supported, and upheld by a diverse array of ocean, coastal, and Great Lakes users.

As the NOC is aware, developing a process without direct input from the public leads to a process wrought with failures and mistrust. In recognition of the public's value in informing policy design, the NOC actively involved the public in drafting the NOP implementation plan. **Strategic Earth strongly recommends the NOC continue these efforts by highlighting the value of public engagement and community relations as integral to the NOP's implementation.**

Action Items

Strategic Earth recommends the following action items to address how the final implementation plan can clearly identify public engagement as integral to the NOP:

- **The NOC must integrate the value and importance of public engagement and community relations as a key component of the final implementation plan.** This could include language that clearly communicates the benefits of public engagement, as well as guidance for how agencies, resource managers, and other partners can work to achieve meaningful public engagement throughout the implementation process.
- **Public engagement and community relations should be identified as one of the final implementation plan's "guiding themes."** This public engagement and community relations theme should then be integrated throughout the final implementation plan and addressed in each of the national priority objectives. Identifying public engagement as a key element to each facet of the plan will help to communicate that it is an integral part of the overall policy and demonstrate how implementation can inform, involve, and inspire members of the public as they launch regional planning efforts and develop tools.
- **The NOC should develop a "National Ocean Policy Public Engagement and Community Relations Strategy."** This strategy would accompany and support the final implementation plan (i.e. included as an appendix), and referenced as a resource for agency staff, resource managers, and the public. It would outline steps for communicating with and engaging the public, but also offer flexibility so engagement could be informed by regional and local community characteristics. It would also provide a defined and interactive role for the public, helping to build the public's understanding of opportunities for input and involvement within the NOP. The development of such a strategy would also be an opportunity to solicit feedback from the public on how best to engage them in these efforts. For an example of what a public engagement and community relations strategy might include, please explore the California Marine Life Protection Act (MLPA) Initiative (http://www.dfg.ca.gov/mlpa/pdfs/agenda_110408a1.pdf).
- **The implementation of the NOP should include a "Joint Fact-Finding" process.** To aid in the NOC's efforts to compile best readily available information and data, we recommend undertaking joint fact-finding with stakeholders and members of the public. It is an opportunity to engage the public in a process to help identify information needs and questions for analysis, where data are pooled to support better informed planning efforts. Accordingly, it is also an opportunity for the public to contribute their own first-hand knowledge. Joint fact-finding will allow the NOC to build a shared understanding of the best readily available information as well as data gaps, and resolve disputes over scientific and technical information and interpretations.

2. Revisions to NOP Implementation Plan Framework: Addressing public engagement throughout the plan

For each identified "priority objective" in the implementation plan, there are a number of corresponding actions and intended outcomes. As stated on Page 2 of the draft implementation plan, "[t]his structure is designed to provide a clear layout of what will be accomplished, when, and **who will be engaged.**" Currently, the implementation plan does not provide a consistent framework on public engagement; there are sections of the report that do mention the public and others that do not. It is our professional opinion

that public engagement should be built into the overall framework of the plan with the subject addressed in each priority objective.

Rationale

We acknowledge the *Inform Decisions and Improve Understanding* chapter includes actions that identify training stakeholders (e.g., in decision-support tools), and improving ocean and coastal literacy through formal and informal educational programming. Strategic Earth applauds these elements of the draft implementation plan. However, the NOC could improve the final implementation plan by including actions that identify public engagement opportunities within each priority objective. Clearly defining such opportunities for agency staff, resource managers, and members of the public will provide a framework for building cross-interest partnerships and lay a foundation for communities to actively participate in NOP implementation.

Action Items

Strategic Earth recommends the following action items to better address public engagement throughout the implementation plan:

- **For each priority objective, include a new section within each “Action” (e.g. Outcomes, Agencies, Milestones) that identifies how agencies and resource managers can consider and incorporate public engagement.** The NOC should direct agency staff and resource managers to consider the public’s needs when developing management tools. Currently, in the draft implementation plan, there are a few chapters that dedicate some attention to stakeholder engagement; however, we recommend the development of a new section within each “Action” that would provide greater detailed information on public engagement. The new proposed section could explain how the public would be engaged in each Action, including suggested methods and tools to promote engagement. Information provided would draw from the proposed *Public Engagement and Community Relations Strategy* and the proposed additional “theme” in the implementation plan’s introduction. The following are some examples of additional information that may be included in the new section:
 - *Designing tools and information with the public in mind.* When developing and reviewing tools and information, it should be criteria that resource managers consider how public interests and needs are met; they should include public-friendly information. For example, with data mapping tools, managing agencies should be diligent to provide data layers on governance structure, ecosystem features, and socioeconomic characteristics. Along with those data layers, the public should be provided with an explanation of the data and contact information.
 - *Providing opportunities for the public to provide feedback and discuss their ideas.* As mapping tools become available, beta testing should be conducted where the public is able to tryout the tool and provide input on how to adapt designs to be more public friendly and intuitive. There should also be an opportunity to incorporate public input on existing data layers as well as local knowledge to develop new data layers.
 - *Appointing “public advisory panels” as appropriate.* This would strengthen regional planning efforts and ensure the overall process was taking into account the public’s perspective, interests, and needs. It would also ensure engagement opportunities were designed in such a way that was appropriate for local communities and citizens.
- **For each priority objective, include a new section called, “For the Public”.** This new section would help frame information for that priority objective in such a way that was appropriate for a general audience, with varying levels of knowledge and understanding. These sections would be easy for the public to access and help improve the public’s understanding of the implementation plan. The information could be presented as a consistent “text box” or graphic, which would be repeated in

each chapter to help guide the public through the document. Information would be written in clear, user-friendly language, and could include such categories/questions as:

- *Chapter highlights*
- *Why is this a priority?*
- *What is my role?*
- *Where do I get more information?*

3. Public Input Solicitation Process Improvements: Making the NOP more public friendly

Page 6 of the draft implementation plan identifies two areas for the public to focus its comments: "...the public is asked to provide comments regarding (1) priorities for the ocean, our coasts, and the Great Lakes and whether this draft Implementation Plan reflects those priorities, and (2) the most effective way to measure outcomes and to detect whether a particular action in the Implementation Plan has achieved its intended outcome." This approach fails to consider/acknowledge the diverse audience that may review the draft implementation plan, and also fails to provide the general public a clear roadmap to navigate this weighty document.

Rationale

To help ensure public comments are well informed and feedback is focused on information that is useful and meaningful to the NOC, it is important to present the public with clear steps and the necessary tools and resources for submitting public comments. This includes avoiding language that may be confusing or inappropriate for a public audience (i.e., "measure outcomes"). Our team commends the NOC for its attention to providing the public with questions for consideration; however the questions posed seem to be intended for a more technical audience and do not help the public to gain an understanding of what feedback would be most appropriate to share. Members of the public also benefit from reviewing a summary or overview of more technical and jargon-heavy documents. Strategic Earth understands the content of draft implementation plan is written primarily for agency staff and resource managers. However, providing the public with support documents to help them wade through the draft implementation plan with help ensure the NOC receives public comments that are useful.

Action Items

Strategic Earth recommends the following action items as opportunities to improve how NOC approaches the public review process, as well as the "public friendliness" of the document's information flow:

- **Create a "How to Submit Public Comments" support document.** This document would lay out key information about the public comment process, including comments submission date, how to submit comments, contact information for follow-up questions/concerns, and identifying what information would be most helpful to the NOC. For the latter, we recommend identifying key user categories (i.e., agency staff, resource managers, scientists, industry, general public) and developing questions that help to draw out specific information. In the case of the general public, such questions might be:
 - *How would you like to be involved in the implementation of the NOP? Is the NOC presenting public engagement methods that resonate with you?*
 - *What is the preferred way to share and exchange information with you?*
 - *What information, resources, or tools would enhance your involvement with the NOP?*
 - *Do you have recommendations for how to improve the process for reviewing draft plans?*

- *How did you hear about the NOP? Would you be willing to have the NOC contact you to get your feedback on public engagement products we are developing? Would you like to sign up for the NOP listserv?*
- **Make the draft implementation plan widely accessible.** Our team commends the NOC for making the draft implementation plan (and other NOP related documents) available online, as well as providing the option to submit public comments electronically. It is unclear, however, if the draft implementation plan was made available in hard copy (e.g., distributed to libraries or publically-accessible reading centers nationwide) so public without access to computers can still review the document.
- **Create a “How to Review This Document” section within document.** To help those less familiar with navigating government-type reports, we recommend creating a section at the start of the implementation plan that serves as a roadmap for the public and describes the various sections of the document, what types of information the NOC would like feedback on, and provide key references (e.g., where to find the list of acronyms). This section could also reiterate information provided in the “How to Submit Public Comments” support document.
- **Develop an Executive Summary.** Strategic Earth strongly recommends the NOC develop an executive summary as part of the final implementation plan. This section differs from the “Introduction” and summarizes key points from each chapter of the document. The inclusion of an executive summary is standard practices for documents of this length and should be considered a high priority change.
- **Develop standard protocol for responding to public inquiries.** Finally, when conducting a public comment process, it is important to have a system in place for how to respond to public inquiries regarding the process. A staff representative(s) should be available to address the public’s questions. A member of our team contacted the NOC via the online contact page with a question regarding the review process and never received a response back. This lack of response is a fundamental issue that needs to be addressed before the NOC can begin building public trust in the process and enhancing its approach to public outreach and engagement. In addition, it is important to provide a clear description to the public of the intended method for reviewing and incorporating public comments. A follow up message should be sent to those who submitted comments to: 1) acknowledge that comments were received, and 2) confirm process for reviewing/incorporating comments. Additional communications should take place as the NOC updates the implementation plan and releases the final version.

We recognize the solicitation process for the draft implementation plan has ended, however we encourage the NOC to consider the above recommendations when public comment is requested for future NOP documents.

Conclusion

The NOC has an opportunity to identify public engagement and community relations as a foundational theme to the *National Ocean Policy Implementation Plan*. Strategic Earth Consulting strongly encourages the NOC to embrace this opportunity to prioritize public involvement by highlighting the value of public engagement as essential to the overall success of implementing this groundbreaking policy. By doing so, the NOC will fully recognize the tremendous opportunities to establish meaningful and lasting connections between federal agencies, State, Tribal, and local authorities, regional governance structures, non-governmental organizations, stakeholders, the public, and the private sector. It is in through the establishment of constructive partnerships that the NOC can effectively detect and measure actions and outcomes.



On behalf of Strategic Earth Consulting, we thank the NOC for the opportunity to review the *Draft National Ocean Policy Implementation Plan*. Our team is confident the NOP will help to lay the groundwork for the much-needed, widely supported, comprehensive management measures required to sustain our ocean, coastal, and Great Lakes resources, dependent economies, and the nation's natural treasures. We trust a more inclusive approach with ongoing public engagement will only enhance the outcomes and secure the long-term success of priority objectives.

Please do not hesitate to contact us with any questions you may have regarding our comments. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads 'Kelly Sayce'.

Kelly Sayce
Principal
Strategic Earth Consulting, LLC
kelly@strategicearth.com
310.876.8087

A handwritten signature in black ink that reads 'Darci Connor'.

Darci Connor
Coastal and Marine Planner
Independent Contractor
darciconnor@gmail.com
413.575.8193

Name: **Megan Mackey**

Organization: Ecotrust

Path: http://edit.whitehouse.gov/sites/default/files/webform/final_ecotrust_nop_implement_letter_feb2012.pdf

Comment:

February 27, 2012

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

Submitted via webform at <http://www.whitehouse.gov/webform/submit-comments-draft-implementation-plan>

Re: Recommendations for Draft NOP Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members:

Ecotrust submits the following comments on the Draft National Ocean Policy Implementation Plan (the Plan). Our mission is to inspire fresh thinking that creates economic opportunity, social equity and environmental well-being. Because social, economic and environmental conditions are all interconnected and interdependent parts of a larger system of life support, only systemic solutions solve our systemic problems.

The National Policy for the Stewardship of our Ocean, Coasts, and Great Lakes created by Executive Order 13547 was a critical step forward for the protection, restoration and sustainable management of our marine and Great Lakes ecosystem, and we thank you for all of your work to ensure a healthy future for our oceans, coasts, Great Lakes and the millions of people who depend upon them.

Ecosystem-Based Management

We appreciate the strengthened definition of ecosystem-based management (EBM) in the Plan; however, we urge you to be explicit in the final Plan that ecosystem-based management must result in the protection, maintenance and restoration of the health of our oceans' natural ecosystems, including human communities dependent upon ocean and coastal resources.

With regard to EBM Action #4, "*Identify and implement place-based pilot projects that foster an EBM approach to managing ocean and coastal resource,*" we suggest looking to the efforts of the West Coast Ecosystem-Based Management Network (www.westcoastebm.org), a partnership of six community-based initiatives focused on working toward successful implementation of EBM along the coasts of Washington, Oregon and California.

In addition, in another EBM approach to management of ocean resources Ecotrust is working together with the Island Institute of Rockland, Maine on the *Community Fisheries Network* to support the development and governance of community-based fishing organizations with the intent of sharing information among fishermen, fishing communities, scientists and others, in order to improve the triple bottom line stewardship of marine ecosystems, viable fishing economies, and vibrant local communities. Network participants also are developing Community Sustainability Plans as outlined in the Magnuson Stevens Fishery Conservation and Management Act, which can provide communities with a means of interacting with marine spatial planning processes and the implementation of the catch shares and other fishery management programs. We would encourage the examination of such plans as a tool to assist communities as participants in the implementation of the National Ocean Policy.

Coastal and Marine Spatial Planning

Since 2001, Ecotrust has worked with federal and state agencies, tribal governments, nonprofit organizations and fishing communities to integrate social, economic and ecological considerations into fishery policy and marine conservation. Our tools and analyses enable local knowledge collection and compilation – including traditional ecological knowledge; real-time, participatory scenario development and visualization; and monitoring of outcomes at appropriate scales.

We are pleased to note the structure of the CMSP regional planning bodies acknowledges the sovereign status of Federally-recognized American Indian and Alaska Native Tribal Governments. The policy level inclusion of tribes in this process will help to ensure the protection of tribal fishing rights and the recognition of tribal jurisdiction in their traditional waters.

Including the series of CMSP actions you have described, we urge you to actively invest in the development, refinement and use of marine spatial planning tools and processes such as Open OceanMap, MarinePlanner and MarineMap, and learn from the success of the state initiatives in California, Oregon and Massachusetts to create effective CMSP processes around the country. The development and use of appropriate technologies is as vital to achieving the NOC's objectives, as are the right processes. There is much to be done, and agencies should invest in the infrastructure for observation of the ocean and great lakes socio-ecological systems, paying particular attention to the deficit in socioeconomic data to support policy decisions, and to the infrastructure for serving up and curating that information, especially spatial information, in effective platforms for use by researchers, stakeholders, and decision-makers.

In addition, we urge you to conduct regional ecological and socio-economic assessments that identify important ecological areas and gather baseline socio-economic data from coastal communities to inform the Regional Ocean Partnerships' coastal and marine spatial planning processes.

Resilience and Adaptation to Climate Change and Ocean Acidification

Oceans play an important role in the global carbon cycle, absorbing carbon dioxide emissions released from human and terrestrial sources. Excess carbon dioxide emissions from fossil fuel combustion, deforestation, and other human economic activities are lowering the pH levels of our oceans. Acidification from fossil fuel emissions is compounded by the effects of local acidifying factors, such as river runoff containing high loads of nitrogen and carbon.

We are pleased to see the action item indicating there will be a detailed analysis of climate change impacts on ecological, economic and social systems. This will help to identify the coastal communities most vulnerable to climate change impacts and to design policies to improve their resilience to climate change related threats. The recent agreement by the Department of Interior to provide new lands for the Quileute Tribe to move tribal people and infrastructure out of harm's way from rising sea levels and tsunami threat is a tangible example of the import of this action item.

In addition, we urge the identification of local acidifying factors, and toxic constituent contributors, and an accompanying estimation of the economic benefits and costs of actions to reduce those sources.

Concluding Comments

To gain the full suite of economic, social and environmental benefits that stem from the Plan's implementation, it should be reiterated that the National Ocean Council and every relevant federal agency be engaged in implementation of the National Ocean Policy to the full extent of their statutory responsibility. And to gauge progress on ecological, economic and social indicators, the NOC should produce a progress report on completion of the milestones in the Plan every two years. Ecotrust would like to assist the Council in the development and production of this progress report.

Finally, we urge the National Ocean Council to support and identify funding for regional ocean partnerships in those regions which are best prepared to begin regional planning and convene stakeholder participation, including the West Coast. Regional ocean partnerships can make the best use of scarce federal funding by bringing federal, state, tribal, scientific, and non-

governmental entities together to start to address ocean management challenges. Specific funding priority should be given to supporting the regional planning process.

We strongly support the National Ocean Council's work towards an inclusive process for engaging all stakeholders and the general public and to craft and implement strategies that address the most pressing challenges facing our ocean, coastal and Great Lakes resources, such as increasing and competing demands on all of these resources, ocean acidification, habitat protection and restoration, water quality, toxics and other pollution.

We thank you for the time and effort that you, your staff, and the agency participants have dedicated to developing the Plan. We appreciate this opportunity to provide you with further comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Astrid J. Scholz". The signature is written in a cursive, flowing style.

Astrid J. Scholz, Ph.D.
Executive Vice President

Name: **Emily Kennedy**

Organization: American Petroleum Institute

Path: http://edit.whitehouse.gov/sites/default/files/webform/api_response_to_the_draft_national_ocean_policy_implementation_plan.pdf

Comment: Please accept the attached comments submitted on behalf of the American Petroleum Institute.

Thank you.



February 27, 2012

National Ocean Council
722 Jackson Place NW
Washington, DC 20503

Re: Comments on the National Ocean Policy Draft Implementation Plan

Submitted via email

Dear Members of the National Ocean Council,

The American Petroleum Institute (API) offers the following comments on the National Ocean Policy Draft Implementation Plan ("Plan"). The API is a national trade association that represents over 490 members involved in all aspects of the oil and natural gas industry, including exploring for and developing oil and natural gas resources in the Gulf of Mexico – a vital part of our nation's economy. The industry supports millions of American jobs and delivers billions of dollars in annual revenue to our government. Last year, it directly contributed more than \$470 billion to the U.S. economy in spending, wages and dividends, and it is one of the few industries creating jobs throughout the recession and the ongoing national economic downturn.

API and its members recognize that, in addition to biological and ecological resources, the oceans also contain significant non-living resources that support many industries crucial to maintaining both the United States' and global economies. A growing global population is creating an increased demand for energy and making the efficient development of all energy sources more important than ever. If properly regulated and managed, our coastal waters and oceans should be, and can be, made available to the American people for multiple uses while retaining healthy ecosystems.

In accordance with these principles, API has been an engaged participant in the activities of the President's Ocean Policy Task Force, the predecessor to the National Ocean Council (NOC). We have submitted comments on the Task Force's Interim Report and Interim Framework for Effective Coastal and Marine Spatial Planning and the NOC's Strategic Action Plans Notice and Request for Recommendations, provided testimony at public meetings held in Anchorage, Alaska, and New Orleans, Louisiana, and participated in Task Force expert briefings.

In keeping with this track record of constructive and detailed involvement in the development of the Administration's national ocean policy, API is pleased to comment on the National Ocean Policy Draft Implementation Plan. API's comments are submitted from the unique and important perspective of offshore oil and gas producers that provide vital employment in key coastal communities-of-interest to the NOC and supply domestic markets with significant quantities of energy needed for the nation's fiscal well-being.

One overarching industry comment, consistently expressed throughout the National Ocean Policy development process, is the lack of detailed information and clarity provided to date regarding the reasons driving the need for this National Ocean Policy and how it will be implemented. This Draft Plan still leaves many of our industry's questions unanswered regarding how offshore energy development will be impacted. Because of this uncertainty and lack of specific details, the API cannot fully judge or support the Plan at this time. We look forward to reviewing additional information as it is made available and will carefully evaluate any further changes that may be made.



Additionally, as a participating member of the National Ocean Policy Coalition, we fully support, and in some cases, expand on the comments provided to you by the Coalition.

COMMENTS

A key challenge to the National Ocean Council is to develop an implementation strategy that fully recognizes and works with the many existing laws and regulations that govern coastal and marine environments. A prime example is the regulation of offshore oil and gas activities under the Outer Continental Shelf Lands Act (OCSLA), which already establishes a framework for “effective coastal and marine spatial planning to address conservation, economic activity, user conflict, and sustainable use.” With regard to offshore oil and gas activities, the OCSLA occupies the statutory and regulatory field and preempts the need and legal justification for any new regulatory mechanisms arising under the NOC.

The NOC should not seek to create a new management regime or develop a new regulatory program for oil and gas activities already covered by the OCSLA to implement the NOP objectives. The role of the Draft Implementation Plan should be as permissive guidelines developed on a consensus basis by all potentially affected stakeholders. Participation of affected stakeholder groups should be taken into consideration in future decision-making by the agencies responsible for administering the existing laws and programs governing the conservation, management, and use of coastal and marine resources.

Ecosystem-Based Management

The API provides the following comments on ecosystem-based management in addition to those comments submitted by the National Ocean Policy Coalition. Ecosystem-based management, based on sound science, can be an effective tool for supporting controlled multiple ocean use, as opposed to limiting ocean use and ocean access. It is therefore a viable way to ensure best use of ocean resources. The term EBM is not a new one and has, for decades, been incorporated into the statutory and regulatory framework governing current uses of coastal and marine areas.¹ OCSLA and other laws that apply to activities in the OCS already provide for EBM; there is no need to reinvent the wheel.

The National Ocean Council has selected a definition for ecosystem-based management within the Draft Implementation Plan and augments this definition with additional elements and characteristics without any explanation as to why they selected this EBM definition and the additional elements. Ecosystem-based management relies on the monitoring of selected, measurable indicators to continuously monitor the health of ecosystem services and key ecosystem functions. This means that from a vast multitude of variables, a limited number of distinct, measurable parameters need to be identified that can serve as meaningful indicators. Key

¹ For example, the following statutes provide for consideration and inclusion of EBM: 1) as discussed above, the OCSLA, 43 U.S.C. §§ 1331 *et seq.*, requires consideration of the marine and coastal environments, and gives the Secretary of the Interior the express authority to develop, approve, and review leases based partly on consideration of potential impacts to the marine and coastal environment; 2) the MMPA 16 U.S.C. §§ 1361 *et seq.*, identifies the marine ecosystem as a priority for federal action, and Section 112 authorizes the Secretary to “prescribe such regulations as are necessary and appropriate to carry out the purposes” of the MMPA, including EBM; 3) the ESA, 16 U.S.C. §§ 1531 *et seq.*, protects endangered and threatened species in the context of conserving the ecosystems on which they depend; 4) the FCMA, 16 U.S.C. §§ 1801 *et seq.*, manages fisheries on a regional scale, balancing the needs of the fish and essential fish habitat, and the economic and other needs of the commercial fishing community and other stakeholders; and 5) the CZMA, 16 U.S.C. §§ 1450 *et seq.*, was designed to balance the conservation and maintenance of healthy ecosystems and provide for the sustainable use and development of coastal resources.

services, functions and indicators vary by region. It would be useful to establish regional work groups that take up the task of compiling a list of measurable indicators for their respective regions. Economic contributions should also be included.

The Draft Implementation Plan, like previous documents produced by the NOC and its predecessor, the Ocean Policy Task force, continues to discuss at great length the benefits of EBM. However, the knowledge base and science needed to fully implement this cornerstone principle of the National Ocean Policy is lacking. Since EBM and Ecosystem Services science will form the foundation for Coastal and Marine Spatial Planning on an ecosystem scale, it is important to continue to develop these scientific disciplines sufficiently so that ecosystem health can be assessed and that the dynamics of change can be measured, again on an ecosystem basis that includes ecosystem services for human use. The API opposes creating CMSPs until the foundational science is developed sufficiently on which to base and operate them. As noted in API's comments on the NOP Strategic Action Plans, "...It would seem that some activities cannot take place until certain milestones are met. For instance, EBM training and skills development for decision makers and managers should be first and foremost before they are asked to identify and make decisions using EBM criteria. Leadership and governance capacity is identified as a gap and it must be filled before proceeding." According to the Draft Implementation Plan, many decisions on using EBM will be made in 2012 prior to any formal training being given in 2013. API is concerned that EBM inventories and pilot projects scheduled for 2012 will be performed by persons who are not scheduled to be formally trained until 2013. It would seem that before any work can be done in relation to EBM there must be agreement on what it is (not what its benefits are) and how it works in practice. In our view this cannot happen until there is formal training provided to the regional planning bodies and there is some level of stakeholder engagement.

Coastal and Marine Spatial Planning

One of the greatest strengths of CMSP is its capacity to recognize the potential for co-use or multiple-use of various areas, a *de facto* reality of current coastal and marine planning under OCSLA and the CZMA. By creating this framework and permitting uses under its auspices, resource users will have greater regulatory predictability. Additionally, agency decisions should not face the level of administrative and judicial challenges that they currently do, as early stakeholder involvement and inter-agency coordination, coupled with the comprehensive nature of CMSP, should result in better decisions that are less susceptible to claims of being "arbitrary and capricious" under the Administrative Procedure Act. This benefit presumes, however, that existing regulatory tools such as those set forth in the OCSLA are not undermined. CMSP is permissible and practically useful only if it defers to current legal regimes.

The Draft Implementation Plan is vague as to how CMSP will work in practice. There is little to no guidance to date on the "standards and methods;" the criteria for decisions on alternatives, tradeoffs, cumulative effects; or what does and does not constitute a "sustainable use." A much more explicit technical basis is required for establishment of such standards. The NOC has indicated both in the Plan and through public dialogue that an Interim "Handbook for Regional Coastal and Marine Spatial Planning" will be issued soon. The API looks forward to the release of this Handbook, but we recommend that the Handbook be subject to public review and comment before it is finalized, since it is expected to include guidance in significant areas, including stakeholder and public engagement, consultation with scientists and technical and other experts, how Coastal and Marine Spatial Plans will be reviewed for national consistency, and how Coastal and Marine Spatial Plans will be incorporated into decision-making processes. It should also specify that determinations as to what constitutes "sustainable" uses adequately account for economic and societal contributions, do not result in decisions that

negatively impact the economy, and build on (rather than detract from) the uses that have taken place in the applicable area over time.

Additionally, API is concerned that the NOC's approach to CMSP seems to be focused on promoting single or exclusionary uses of coastal and marine areas. Of concern is the potential for existing uses to be "rezoned" out of use or to impose new limitations on already-authorized activities. Any application of CMSP should take into account existing uses and infrastructure, such as docks, industry, coastal homes, and municipal and industrial coastline activities. It is impossible to start the CMSP process with a blank slate, and any attempts to do so at the expense of existing industrial and commercial users risks challenges based on a takings claim or a breach of contract.

The final Implementation Plan should make clear that federal entities are not to deny requests or delay decisions pertaining to human use activity due to the absence of a coastal and marine spatial plan. The Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, state that "CMSP is not meant to delay or halt existing or pending plans and projects related to marine and Great Lakes environments or their uses." However, the Draft Implementation Plan fails to make clear this recommendation. In fact, some of its language seems to suggest there may be delays. It states that coastal and marine spatial planning "should strive to improve our ability to characterize the past, present, and if possible, potential future conditions of an ecosystem spatially – *before* any particular new activity is implemented."

Such an approach could harm both new and existing commercial and recreational activities and the jobs and communities they support. If activities deemed to be "new" are not allowed to proceed unless and until a coastal and marine spatial plan and associated studies and analysis have been completed and implemented the impact on economic activity, jobs, and livelihoods could be severe. In addition, conditioning regulatory approvals on the completion of such activities under the National Ocean Policy –when requests for such approvals would otherwise satisfy requirements under existing laws and regulations promulgated pursuant to such laws – likely will raise significant legal questions.

Resiliency and Adaptation to Climate Change and Ocean Acidification

API's *Comments on Development of Strategic Action Plans for the Nine Priority Objectives for Implementation of the National Policy for the Stewardship of the Ocean, our Coasts, and the Great Lakes* dated April 29, 2011² are relevant to this chapter, especially those comments on **Objective 5 – Climate Change and Ocean Acidification**, and we request that the NOC review these comments in context with actions proposed under the Implementation Plan. In addition, we offer the following comments on the actions proposed under this section:

- EPA issued a guidance memorandum ("Integrated Reporting and Listing Decisions Related to Ocean Acidification," Denise Keehner to Water Division Directors, November 15, 2010) that states that data – both local and global – concerning ocean acidification are currently limited, and hence the assessment and listing of ocean waters as impaired for pH is not an elevated regulatory priority at the current time. API concurs with the agency that data on ocean acidification and its effects on marine life are currently limited, and that enhanced monitoring efforts are warranted rather than regulatory measures based on insufficient site-specific data.

² http://www.whitehouse.gov/sites/default/files/microsites/ceq/comments_on_all_9_saps_1.24.11-4.29.11.pdf

- API concurs with the National Research Council (Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean (hereafter “NRC Report”), National Research Council Committee on the Development of an Integrated Science Strategy for Ocean Acidification Monitoring, Research, and Impacts Assessment, National Academies Press, 2010) in its call for a long-term comprehensive ocean acidification monitoring network. Any monitoring sites, including the proposed “sentinel sites” need to be representative and chosen in a scientifically defensible manner.
- According to the NRC report, “to incorporate findings from future research, the National Program should support an adaptive monitoring program to identify biological response variables specific to ocean acidification. In the meantime, measurements should be supported as part of a program for assessing the effects of acidification. These measurements will also have value in assessing the effects of others long-term environmental stressors.” This presents an opportunity to move away from wildly divergent and speculative models toward the apolitical collection and interpretation of actual field data as it relates to climate change and ocean acidification. EPA should not base regulatory decisions on incomplete, insufficient, or non-site-specific data and modeling results.

Stakeholder Coordination

API supports government and stakeholder coordination. An important benefit of government and stakeholder coordination is that it brings all parties to the table and begins a conversation that science and data, rather than agency priorities or political will, would control. This especially benefits existing users of ocean and coastal resources who face heightened scrutiny from some agencies that could be alleviated by bringing other agencies more familiar with the true impacts of their activities to the table.

The oil and gas industry, as one of the the most heavily regulated users of the coastal waters and ocean, is very familiar with stakeholder coordination measures. Indeed, extensive coordination already occurs under OCSLA programs and the mechanisms for doing so could be used as a model for new NOC initiatives in this regard. API encourages the NOC to seek the input of the oil and gas industry and other heavily regulated users, such as the fishing industry, in order to both obtain a working model of how such coordination can occur, as well as to seek the advice and perspectives of those with personal knowledge of how those mechanisms work as applied.

Regional Planning Bodies

The Draft Plan calls for the formation of regional planning bodies charged with developing Coastal and Marine Spatial Plans with membership restricted to Federal, State and Tribal entities. Subsequent to release of the Plan, the National Ocean Council announced that membership would be extended to *voting government* members of Regional Fishery Management Councils. Measures which ensure that impacted stakeholder user groups, including the fishing community, have direct representation in policy and decision-making processes are encouraged and supported. Merely granting certain government officials additional seats at the table, however, is not sufficient to ensure that the National Ocean Policy in practice represents a bottom-up initiative that is grounded in and guided by the actual needs and vision of the regulated community. Regional planning body membership should be open to include representatives of sectors that contribute to the respective region’s economy and could be impacted by the potential Coastal and Marine Spatial Plan.



Data Integrity

The API commends the NOC's recent launch of the prototype ocean.data.gov web portal. However, in order to ensure the integrity of all data relied on in furtherance of activities conducted pursuant to the National Ocean Policy, the data included, referenced, or otherwise endorsed by the National Ocean Council or any entity or system established under the National Ocean Policy should be certified to be in compliance with all federal laws, regulations, and policies pertaining to data quality and integrity. Decision support tools should be externally peer reviewed and should not pre-empt decision-making by the regional planning bodies. In addition, there should be a certification requirement that includes financial disclosures about who funded development of the support tools.

Pilot Projects

And as explained in more detail in the NOPC comments, the Draft Plan calls for pilot projects for several of the objectives. API agrees with the NOPC that proceeding with a pilot project in a limited geographic area rather than nationwide application will reduce the risk of significant and unintended economic and societal consequences emanating from new initiatives carried out under the National Ocean Policy, including coastal and marine spatial planning. The final Plan should extend the use of pilot projects to address actions to be carried out under all components of the National Ocean Policy, including coastal and marine spatial planning.

In closing, the API appreciates the opportunity to comment on the National Ocean Policy Draft Implementation Plan and asks the National Ocean Council to carefully consider our comments and address them as it finalizes the Plan. Should you have any further questions, please contact me at 202-682-8260 or kennedy@api.org.

Sincerely,

A handwritten signature in black ink that reads "Emily Kennedy". The signature is written in a cursive, flowing style.

Emily Kennedy
Policy Advisor
American Petroleum Institute

Name: **Richard Lawson**

Organization: Marine Technology Society

Path: http://edit.whitehouse.gov/sites/default/files/webform/wh_nationaloceanpolicycommentperiod.pdf

Comment: Please find attached our memorandum regarding the comment period.

Kind regards,

Rich Lawson
Executive Director

The Marine Technology Society Submission to National Ocean Policy Comment Period

The Marine Technology Society (MTS) commends the Obama Administration for its focus on a National Ocean Policy.

MTS, headquartered in Washington D.C., is a not-for-profit international professional society with a diverse membership. Our 3,500 individual members include students, professors, engineers, executives, scientists and policy makers. Our 125 organizational members include leading manufacturers of ocean equipment, consultancies and Government laboratories.

We maintain 15 local sections in the U.S. and abroad and 28 professional committees on specific technology topic areas. Together our Society is dedicated to advancing the knowledge and application of marine technology in the global ocean, coastal and freshwater environment. We support a variety of technical conferences including: the world leading Offshore Technology Conference, the specialized Underwater Intervention and the broad OCEANS series of events. Our peer-reviewed journal is published six times per year and covers timely specialized subjects such as ocean observing systems or marine pollution while also offering a rich array of general technical articles.

MTS is the singular resource for information on marine technology and access to the experts necessary to advise government and industry. MTS is dedicated to the core knowledge of marine technology, leaving analysis and policy making to the recipients of that knowledge. Given the significant role marine technology will play in the implementation of the National Ocean Policy MTS encourages the individuals and agencies responsible for this task to engage our professional staff, volunteer leaders and diverse membership.

The MTS motto is “opportunity runs deep.” As the National Ocean Policy evolves, MTS and its experts in ocean technology stand ready to be a resource. Our website is: www.mtsociety.org.



Richard Lawson
Executive Director

Name: **Michelle Jesperson**

Organization: California Coastal Commission

Path: http://edit.whitehouse.gov/sites/default/files/webform/cccomments_draftip_022712final.pdf

Comment:

CALIFORNIA COASTAL COMMISSION

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February 27, 2012

The Honorable Nancy Sutley
Co-Chair, National Ocean Council
Chair, White House Council on Environmental Quality
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

The Honorable John Holdren
Co-Chair, National Ocean Council
Director, White House Office of Science and Technology Policy
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

RE: California Coastal Commission Comments on the National Ocean Policy draft
Implementation Plan

Dear Chairs Sutley and Holdren:

Thank you for the opportunity to comment on the National Ocean Policy (NOP) draft Implementation Plan (IP). We are pleased to provide input to you and the other National Ocean Council Members on how state coastal management programs such as California's can work with the federal government to effectively implement the NOP.

The California Coastal Commission, in partnership with coastal cities and counties, plans and regulates the use of land and water in California's coastal zone. Along with the San Francisco Bay Conservation and Development Commission, and the State Coastal Conservancy, the California Coastal Commission (CCC) is a key coastal management agency authorized with implementing the federal Coastal Zone Management Act (CZMA) in California. Thus, with its partners the CCC plays a central role in achieving federal coastal and ocean management objectives. The CCC also works in partnership with the California Natural Resource Agency and the California Ocean Protection Council on a variety of coast and ocean matters, including our participation in the West Coast Governors Alliance (WCGA) Working Groups. We have provided input to the WCGA on our review of the draft IP; therefore, our comments are reflected in both the WCGA letter to you as well as the comment letter recently provided by the Coastal State Organization (CSO).

We are also providing our comments here, through this letter, in order to reiterate our primary concern with the draft IP. As we stated in our previous comment letters to the Interagency

Ocean Policy Task Force and in our letter to you on the Strategic Action Plans for each of the nine priority objectives, we believe this country and its coastal states have a powerful tool in the CZMA through which to implement the National Ocean Policy. Currently, the CZMA and federally-approved state coastal management programs are on the frontline of coastal land and water use decisions regarding the use and conservation of coastal resources. Through a 40-year federal and state partnership these programs have already achieved significant success, leveraging state and federal resources to undertake actions that further many of the national priority objectives, especially with respect to Ecosystem Based Management, Resilience and Adaptation to Climate Change, and Water Quality and Sustainable Practices on Land. In light of this, we hope that the IP can be augmented to recognize not only the history of success in coastal management but also the central role that CZM programs can play in achieving the priorities of the NOP. It is in this spirit that we attach more specific suggestions on how this might be addressed in some of the Objectives.

Again, thank you for the opportunity to comment. We look forward to working with our federal partners to implement the National Ocean Policy and cooperatively improve the health and stewardship of our coasts and oceans.

Sincerely,



Susan M. Hansch
Chief Deputy Director



Michelle Jespersion
Federal Programs Manager

CCC Specific Suggestions for National Priority Objectives

Objectives: *Ecosystem Based Management and Inform Decisions and Improve Understanding*

Overall, the CCC is pleased to see the focus on Ecosystem Based Management (EBM) in the draft IP and we are also encouraged by federal efforts to improve delivery and consistency in data, information and decision-support tools. We recommend however, that these two objectives include more recognition of similar on-going state and regional efforts and to allow for state and regional input, coordination and collaboration with these efforts.

With respect to the EBM Objective, the CCC would like the IP to describe in more detail how federal agencies will carry out early and regular coordination with state, local, and tribal partners on EBM projects. Many reviews and case studies of successful EBM efforts focus on the importance of substantive involvement and input from stakeholders, indigenous groups and management agencies at a variety of levels during the project. We recommend revising EBM Objective Action 1 milestones to illustrate how federal efforts will integrate local knowledge and coordinate with existing resource management efforts at the state and local levels.

Also, under the Inform Decisions and Improve Understanding Objective, we recommend that efforts to develop information and decision support tools should begin with an assessment of the challenges that may hinder or slow integration of new tools and information into existing institutions and decision-making practices. Such an assessment would allow the subsequent outreach and education efforts to be more focused and refined toward addressing coastal management challenges. Please also consider adding a milestone to Action 3 that calls for coordination of federal data portals with similar state and regional efforts that have recently been completed or are currently underway.

Objective: *Coordinate and Support*

For Action 1, “Support regional priorities and enhance regional partnership”, it should be noted that the CZM programs have often lead the establishment and growth of the nation’s existing Regional Ocean Partnerships. We encourage you to acknowledge the significant role and support provided by CZM programs in discussing the regional partnerships and urge you to consider adding language to milestones for Action 1 to clarify that any grant or non-monetary opportunities provided by the federal government should not undermine or take funding away from existing programs that support and make up the regional ocean partnerships.

Action 2 should recognize the CZM Program as an existing partnership, worthy of strengthening to enhance the actions within the IP. As such, we recommend highlighting the CZM Program in the background language for Action 2 and including a milestone that reads: “Enhance collaboration with existing CZM Programs to advance NOP Priorities.”

Under Action 5, “Improve efficiency of permitting ocean, coastal and Great Lakes uses”, the CCC would appreciate some assurances in this section that federal consistency authority provided to the states through CZM will not be undermined. It would also be extremely helpful

to include additional information that describes how federal streamlining efforts will be coordinated with states so as not to conflict with state permitting requirements.

Objective: *Resiliency and Adaptation to Climate Change and Ocean Acidification*

We support the actions proposed for this objective; however, the CCC recommends including milestones with more explicit language to indicate that the federal agencies will work through the CZMA and state coastal management programs to implement the proposed actions. This is especially true for Actions 3, 4 and 6. For Action 3, while we commend the NOP for including an action to provide critical projections of climate impacts and oceans on decision-relevant scales, we urge you to include milestones under this Action to describe how this information will also be incorporated into federal programs and activities such as updating FEMA flood hazard maps.

For Action 6, the CCC acknowledges the importance of climate adaptation guidance and is pleased to see that the NOC plans to provide guidance to local jurisdictions that may lack resources and capacity to prepare for climate change. We urge the NOC to ensure that federal adaptation guidance, particularly guidance related to land use activities, is well coordinated with state and local land use laws and policies, as these policies ultimately govern the implementation of on-the-ground adaptation strategies. This is especially true for waterfront properties faced with challenges posed by sea level rise, changes in storm conditions, and shoreline erosion. The CCC also recommends that Action 6 add an additional milestone that states: “Identify Federal policies, programs, and projects that reduce the resilience of coastal ecosystems, infrastructure, and communities, and make changes, as appropriate.”

Objective: *Water Quality and Sustainable Practices on Land*

While the IP acknowledges that there are a “number of programs that exist to address point and nonpoint source pollution within the federal government,” the lack of reference to the Coastal Nonpoint Pollution Program should be corrected. This program has a 20+ year history of coordination and enhancement of two existing programs under the CZMA and CWA, led by NOAA and EPA respectively. The program is playing a vital role toward improving coastal waters and conditions by providing a local liaison that integrates EPA and NOAA objectives. Coastal states, working with local partners, have already made significant progress in implementing green infrastructure, low-impact development projects, and best management practices for constructing roads and other infrastructure. The NOP would be strengthened by including the Coastal Nonpoint Pollution Program and identifying how it may play a central role in furthering the goals of the NOP. NOAA should also be added in the list of agencies assigned to work on Action 2. Finally, we also recommend adding a milestone to Action 2 that states: “Ensure adequate resources are available to implement actions related to improving water quality under existing federal-state partnerships such as the Coastal Nonpoint Pollution Program under the CZMA.”

Name: **William Herz**

Organization: The Fertilizer Institute

Path: http://edit.whitehouse.gov/sites/default/files/webform/tfi_comments_-_draft_interagency_oceans_policy_-_feb_27_2012_-_mk.pdf

Comment:



The Fertilizer Institute

Nourish, Replenish, Grow

William C. Herz
Vice President,
Scientific Programs

February 27, 2012

VIA ELECTRONIC DELIVERY

National Ocean Council
722 Jackson Place, NW
Washington, DC 20503
(202) 456-0753 fax

RE: The Fertilizer Institute Comments on the National Ocean Council's "Draft National Ocean Policy Implementation Plan."

Dear Sir or Madam:

The Fertilizer Institute (TFI), on behalf of its member companies, submits these comments in response to the Council on Environmental Quality's notice of availability and request for comments on the National Ocean Council's draft *National Ocean Policy Implementation Plan* released for public comment in the *Federal Register* on January 18, 2012. 77 Fed. Reg. 2514.

Statement of Interest

TFI represents the nation's fertilizer industry including producers, importers, retailers, wholesalers and companies that provide services to the fertilizer industry. Its membership is served by a full-time Washington, D.C., staff in various legislative, educational and technical areas as well as with information and public relations programs.

TFI members own and operate fertilizer facilities within coastal states. As such, TFI members rely on the extensive infrastructure, including pipelines, ports, navigation routes and commerce centers, concentrated along the Nation's waters. Further, TFI members and their employees live along ocean-border states and are significantly involved in the long-term sustainability of the economic, environmental and community resilience of these areas. Finally, farmers and ranchers using our members' products have a similar interest in preserving the Nation's ocean, coastal, and Great Lakes ecosystems and resources. Thus, TFI and its members have an interest in the *Draft National Ocean Policy Implementation Plan* (Implementation Plan) and offer the following comments.

TFI Comments

TFI generally concurs with the Implementation Plan's stated goals for moving forward in a strategic manner to address some of the most pressing challenges and overlapping issues facing the ocean, coasts, and Great Lakes. TFI also agrees that the National Ocean Policy should "ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests." Exec. Order No. 13547 (July 19, 2010).

However, as set forth below, TFI has significant concerns about the Implementation Plan and its integration with existing federal and state efforts to address environmental issues in the ocean, coastal states, and the Great Lakes, as well as concerns with specific actions identified in the Implementation Plan to implement its delineated goals. Generally, TFI is concerned that the Implementation Plan (1) significantly overlaps with existing water resource protection programs and regulations, (2) may cause some Federal agencies to exceed their regulatory authority while pursuing certain Implementation Plan actions and milestones, and (3) does not address significant budgetary, coordination, and resource implications of the Plan. Specific concerns are delineated below.

I. Implementation Plan Significantly Duplicates Existing Intergovernmental Activities

TFI is concerned that the Implementation Plan, while sincere in its efforts to add value to many extant protection activities for the ocean, coastal states, and the Great Lakes, does not have the formal standing to coordinate among the existing intergovernmental bodies involved in existing activities. TFI believes that without some authorized hierarchy among the participating government agencies, the Implementation Plan may devolve into overlapping and duplicative efforts from another (as yet undefined) task force. This concern is underscored by the fact that the Implementation Plan recites approximately 290 separate milestones for interagency coordination and implementation, most of which are expected to be pursued within the next year. Further, when examined individually, several of these milestones may require much more interagency coordination and longer timeframes than anticipated in the document. *See, e.g.*, Implementation Plan at 68 ("Produce and implement at least 12 State-wide nutrient reduction strategies," which is bounded by a 2013 timeframe).

Given the increasing time demands on Federal agencies and current budget shortfalls felt across all levels of government and the private sector, TFI questions the efficacy of establishing and supporting yet another overreaching Implementation Plan and subsequent Task Force focused on restoration activities in the ocean, coastal states, and the Great Lakes. For instance, broad-based, budget-intensive watershed protection efforts already are underway for several major water bodies that also will be addressed by the draft Implementation Plan; these efforts were initiated through similar Executive Orders. *See, e.g.*, Exec. Order No. 13508 (May 12, 2009) (Chesapeake Bay Protection and Restoration); Exec. Order No. 13340 (May 18, 2004) (Great Lakes Interagency Task Force). Moreover, these efforts are being spearheaded by other task forces, management panels, and similar governmental coordination bodies that antedate the Implementation Plan.

TFI requests that the Implementation Plan clearly delineate a proposal for integrating the existing intergovernmental bodies focused on protection and restoration efforts in the ocean, coastal states, and the Great Lakes, including a hierarchy for decision-making and, wherever possible, integration of existing efforts into a single Task Force. TFI also requests the publication of a rewritten Implementation Plan for formal public notice and comment with an appropriate time period for review.

II. Coastal Wetlands Reduction Action Item is Duplicative and Inefficient

Action 2 under “Regional Ecosystem Protection and Restoration”¹ is duplicative of existing intergovernmental activities focused on coastal wetland protection and restoration. Federal and state water quality programs already commit significant manpower and fiscal resources towards assessing, mapping and otherwise studying the status and trends of coastal wetlands health and loss. Most, if not all, of these programs are acutely aware of the location, efforts and costs necessary to restore and protect coastal wetlands. TFI therefore is concerned that completing new assessments, developing additional analytical frameworks and identifying further pilot assessments will be redundant with existing data and reports across most of the United States. In fact, Action 2 expressly acknowledges that these identification-based “efforts to protect and restore coastal wetland ecosystems” already are “numerous.” However, actual funding and other resources to restore wetlands are in high demand and short supply.

TFI requests that Action 2 be completely rewritten to focus on actual restoration of wetlands, especially in areas such as the Gulf of Mexico and the Chesapeake Bay where the areas of greatest concern have already been identified and specific plans for restoration and protection have been delineated.

III. Implementation Plan Includes Certainty Action Item not Authorized by Clean Water Act

As amended, Section 319 of the Clean Water Act (33 U.S.C. § 1329) authorizes states to develop regulatory programs for non-point source (NPS) pollution. That section sets forth states’ statutory authority to prepare State NPS Assessment Reports and State NPS Management Plans; it also authorizes federal approval of these state programs, and federal provision of technical and financial assistance to states as they develop, implement, and enforce these programs. A state’s Section 319 plan identifies waters with substantial NPS pollution inputs and best management practices (BMPs) to mitigate those inputs. The Clean Water Act (CWA) also provides the states with authority to identify water quality problem areas, and estimate the limits of point-source and NPS loadings (*i.e.*, total maximum daily loads (TMDLs)). Similarly, the 1990 Coastal Zone Management Act Reauthorization Amendments established the Coastal Non-Point Pollution Program that provides for the creation of Section 319 plans in coastal zones (*see* 16 U.S.C. § 1455b).

Therefore, with respect to NPS regulation, the Environmental Protection Agency’s (EPA) role is providing guidance and support to the states for their efforts to manage their own unique NPS

¹ Implementation Plan at 47-49.

challenges,² rather than undertaking efforts to centrally regulate how those challenges will be managed. Section 319 of the CWA does not authorize the federal government to undertake centralized regulation to address NPS pollution.³ Thus, Action 1 for “Addressing Water Quality and Sustainable Practices on Land” in the Implementation Plan conflicts with Congress’s delegation of regulatory authority to the states regarding NPS issues. Specifically, the document’s proposed milestones of establishing priority watersheds for addressing NPS issues, participating in states’ implementation of NPS reduction strategies, and developing “State regulatory certainty programs” through the Implementation Plan appear to run afoul of the CWA. Similarly, the Implementation Plan’s milestone to “[t]arget State CWA Section 319 programs” toward certain regional objectives may interfere with states’ ability to develop, implement, and enforce their respective NPS regulatory programs.

Finally, on a practical level, even though voluntary certainty programs can be successful if implemented correctly at the state level,⁴ a federal-imposed effort to “accelerate” certainty programs most likely will deter participation and raise additional legal and policy problems, as discussed further in the next section of these comments. In any event, a certainty action item that will regulate NPS issues is not authorized by the CWA.

TFI does not support the inclusion of a certainty action item within the Implementation Plan, and requests that Action 1 for “Addressing Water Quality and Sustainable Practices on Land” be rewritten or omitted to conform to the authorized federal activities set forth in Section 319 of the CWA. Further, as discussed below, the inclusion of an NPS-related item regarding certainty raises additional legal and policy concerns.

IV. Certainty Framework⁵ Contains Significant Policy Uncertainties

Even if EPA and/or the courts were to determine that Certainty programs were allowed under the CWA, the framework as currently defined leaves significant policies undefined. This creates significant uncertainty for participating farmers and ranchers as to how supporting agencies would provide assurance that investments in conservation practices will provide returns

² For example, under the Coastal Non-Point Pollution Program, Congress authorized EPA to “publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.” 16 U.S.C. § 1455b(g).

³ See, e.g., *Pronsolino v. Nastri*, 291 F.3d 1123, 1125 (9th Cir. 2002) (“[T]he CWA uses distinctly different methods to control pollution released from point sources and that traceable to nonpoint sources.”), *cert. denied*, 123 S. Ct. 2573 (2003); *Oregon Natural Desert Ass’n v. Dombeck*, 172 F.3d 1092, 1096-97 (9th Cir. 1998) (“Nonpoint source pollution is not regulated directly by the Act . . . the Act provides no direct mechanism to control nonpoint source pollution but rather uses the ‘threat and promise’ of federal grants to the states to accomplish this task.”); see also Congressional Research Service, *Clean Water Act: A Summary of the Law*, at 6 (Apr. 23, 2010) (“Nonpoint sources of pollution . . . are not subject to CWA permits or other regulatory requirements under federal law. They are covered by state programs for the management of runoff, under Section 319 of the act.”), available at <http://www.cnre.org/nle/crsreports/10May/RL30030.pdf>

⁴ See, e.g., The Fertilizer Institute, “*Is an Agricultural Certainty Program a Useful Tool?*” (Nov. 9, 2011), <http://www.tfi.org/voice/agricultural-certainty-program-useful-tool>.

⁵ U.S. EPA, *Certainty Framework* (July 2011), downloaded on Feb. 2, 2012 at http://www.or.nrcs.usda.gov/technical/engineering/environmental_engineering/AFO-CAFO_Workshop/2011/EPANutrientReductionStrategy-CertaintyFramework_.pdf

consistent with state water quality programs including TMDL or other watershed implementation plans.

While the Framework document is careful to use words such as “encourage,” “consider” and “incentives” in terms of agricultural producer participation in Certainty programs, the specific goals, objectives and elements of the Framework are more consistent with a regulatory compliance program. The Framework ties all verified water quality improvements to state water quality programs such as TMDL or other watershed implementation plans. Best Management Practices (BMPs) and schedules are tied to verifiable set of standards. Verification and continued monitoring by state governments, soil and water conservation districts or independent third parties are required. The Framework also delineates noncompliance parameters and loss of accreditation. Taken together, as currently constructed, the Certainty Framework appears to be more similar to a regulatory program than a voluntary partnership.

Further, the elements of implementation and verification have significant policy uncertainties. It is unclear who would be responsible for implementation of which conservation practice system. For example, it is unclear whether a landowner would be ultimately responsible for management practices on leased farmland (*e.g.*, nutrient management plans) and/or whether producers would be accountable for physical BMPs (*e.g.*, riparian area restoration and maintenance) on leased lands. The vague definition of “verification” in the Framework also creates significant uncertainty in terms of whether compliance is defined in terms of existence or efficacy of selected BMPs. Finally, there is uncertainty as to what the process for verification would be, including Agency participation, scheduling, and timeframe delineation, as well as the ramifications of noncompliance status and its implications for continued production on affected lands. The time period for certainty also is defined in vague terms, which provides little incentive for implementation of physical BMPs.

Significant uncertainty also surrounds the concept of “incentives” as used in the Framework. It is unclear how participating agencies can assure economic incentives for BMPs over the time period of certainty. There are important legal uncertainties as to how a state can provide assurance that BMPs will shield producers from compliance with existing or future Federal regulatory actions, and the Framework provides no basis for how BMPs will be tied to specific loading allocations under a TMDL or other watershed program.

TFI cannot support the inclusion of any Certainty Framework within an Implementation Plan and requests that all references to a Certainty Framework be removed from the final Implementation Plan until such time as the above-referenced legal and policy issues are delineated and appropriately vetted through the administrative procedures process.

V. Strategy Should Focus on Goals not Covered under other Regulatory Authorities

If the National Ocean Council does not accept TFI’s recommendation to integrate existing intergovernmental bodies focused on restoration activities in the ocean, coastal states, and the Great Lakes under a single task force, then the Strategy should be rewritten to focus on those specific goals and action items not currently covered under other regulatory frameworks.

Restoring water quality is already authorized and implemented under the CWA and state water quality authorities. Nutrient enrichment is currently being addressed through various state

regulatory programs (e.g., nutrient water quality criteria, TMDLs, etc.) and public/private partnerships (e.g., conservation programs, development of incentives for precision agriculture through the U.S. Department of Agriculture Natural Resources Conservation Service (USDA NRCS) 590 federal and state standards, and nutrient trading programs). TFI is of the opinion that the National Ocean Council, through its Implementation Plan, should focus its time and resources on those goals and activities that most directly impact Ocean water quality and habitat and that are not specifically and actively covered under existing regulatory programs.

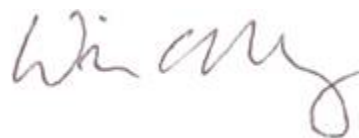
The Implementation Plan states that the rapid rate of coastal land and habitat loss in the ocean, coastal states, and the Great Lakes is threatening to collapse these ecosystems, and yield negative consequences for the marine and terrestrial environment, national commerce, the maritime industry, energy security, and fisheries. All of the goals in the Implementation Plan with the exception of “Water Quality and Sustainable Practices on Land” are focused on pressing issues specific to the ocean, coastal states, and the Great Lakes. While TFI understands and shares the Council’s concerns regarding connections between land use and upstream water quality on ocean ecosystems and water quality, limited manpower and fiscal resources necessitate selection of implementation strategies for which policy needs can be most effectively matched with existing expertise and lack of resources and/or attention. As a microcosm of this, due to existing efforts already ongoing in the Chesapeake Bay and the Great Lakes (and the corresponding Executive Orders noted above), TFI has long expressed to regulatory agencies that prioritization of high risk regions is the most cost effective method for approaching edge of fields nutrient loss reduction.

Given the broad and resource-intensive goals and action items delineated in the Implementation Plan, TFI requests that the Strategy focus on prioritizing those items that most directly impact onshore, near-shore and ocean ecosystem protection and restoration. TFI requests that the Implementation Plan exclude the goals and action items included under “Water Quality and Sustainable Practices on Land,” as significant resources are focused on these issues under other existing Federal and state regulatory programs.

Conclusion

TFI appreciates your consideration of these comments on the National Ocean Council’s draft *National Ocean Policy Implementation Plan*. TFI supports the overall goals of restoring and protecting the ocean, coastal states, and the Great Lakes, but believes that the Implementation Plan should not focus on issues that already are addressed under other regulatory programs, or promote new policy objectives that actually entail the creation of new regulatory programs. Please contact me by telephone at (202) 515-2706 or via e-mail at wcherz@tfi.org if you would like to further discuss our comments.

Sincerely yours,



William C. Herz
Vice President of Scientific Programs

NATIONAL OCEAN COUNCIL

Name: **Michael Yurewicz**

Organization: USGS, and NWQMC

Path: http://edit.whitehouse.gov/sites/default/files/webform/nwqmc_statement_20120227_pdf.pdf

Comment:



NATIONAL WATER QUALITY MONITORING COUNCIL

Working Together for Clean Water

<http://acwi.gov/monitoring>

In Reply Refer To:
413 National Center
Reston, Virginia 20192

February 27, 2012

National Ocean Council

The National Water Quality Monitoring Council (NWQMC) supports the proposed milestone to implement the design of the National Water Quality Monitoring Network for U.S. Coastal waters and their tributaries (NMN) through the NWQMC (page 74, milestone for Action 7 "Identify, seek to protect, and maintain high quality near-shore ocean, coastal, and Great Lakes waters", for the goal "Water Quality and Sustainable Practices on Land"). The NWQMC is taking steps to assess how to further implement the NMN, and welcomes any opportunity to brief the National Ocean Council on activities of the NWQMC and the status of the NMN.

On behalf of the NWQMC,

Michael Yurewicz
Co-Chair, NWQMC

cc: Wendy Norton, Executive Secretary, ACWI
Susan Holdsworth, Co-Chair, NWQMC
Cathy Tate, Executive Secretary, NWQMC
Bernice Smith, EPA
Dennis Apeti, NOAA
Donna Myers, USGS

Name: **Meredith Martino**

Organization: American Association of Port Authorities

Path: http://edit.whitehouse.gov/sites/default/files/webform/aapa_comments_on_ocean_policy_draft_implementation_plan.pdf

Comment: Attached please find the comments of the American Association of Port Authorities.



Alliance of the Ports of Canada, the Caribbean, Latin America and the United States

Comments of

The American Association of Port Authorities

On the National Ocean Policy Draft Implementation Plan

February 27, 2012

The American Association of Port Authorities (AAPA) represents public port agencies throughout the United States, including all major port authorities on the Atlantic, Pacific, Gulf of Mexico and Great Lakes coasts. AAPA is pleased to offer these comments on the National Ocean Policy Draft Implementation Plan on behalf of our U.S. members.

AAPA appreciates the leadership of the National Ocean Council in advancing an ocean policy that is mindful of the nation's rich maritime history and seeks to reduce conflict among ocean users. Public port authorities are well aware of the various users that must coexist in and around our oceans and coasts. Ports themselves are microcosms of their larger coastal environment, a collection of stakeholders including public agencies, private entities, habitat protection interests, waterfront employees and community groups.

AAPA and its member port authorities often seek to achieve many of the same goals laid out in the Draft Implementation Plan: utilizing best practices, promoting efficiency and collaboration and working together regionally. AAPA encourages sustainability as a standard business practice for port authorities, and our members have embraced this approach enthusiastically. Balancing economic, environmental and social concerns, ports know that success in one area is tied to success in others – that environmental programs often yield economic benefits, that economic benefits help fund community outreach, that satisfied employees find ways to improve efficiency and throughput.

Oceans, Mapping and Infrastructure

AAPA appreciates the emphasis in the plan on data that is relevant to port operations, shipping and the maritime transportation system (MTS). Mapping, charting and ocean observance are critical to safe navigation in and around harbors and federal navigation channels. Data provided

by NOAA's National Ocean Service is key to ships passing underneath bridges, and survey work done by NOAA after hurricanes or other weather events is imperative before the Corps of Engineers can reopen federal channels to vessel traffic.

As port authorities plan for the future, many of them know that they must consider possibilities such as sea level rise and increased weather events as they plan for new or expanded terminals. Reliable predictions based on better data will be important to port authorities as they make decisions that will impact the oceans and coasts for decades to come.

Additionally, best available data will be important in decision-making that affects port authorities, from defining habitat for ocean species or permitting offshore renewable energy sites. While data provided by NOAA is critical, AAPA encourages the National Ocean Council to ensure that information from the Coast Guard about navigation channels and vessel movements are integrated into any relevant data sets.

Coastal and Marine Spatial Planning

AAPA supports Coastal and Marine Spatial Planning (CMSP) that protects and recognizes the importance of human uses of the ocean, especially the working waterfront. Critical to the health of coastal communities and to the vibrancy of the nation's economy, ports and the maritime transportation system play a vital role in moving U.S.-manufactured goods to overseas markets and imported components and goods to U.S. factories and consumers.

CMSP must recognize that port authorities need to have certainty in knowing that their landside facilities and waterside infrastructure – including federal navigation channels – can continue to operate unimpeded. Ports also must have the ability to grow their facilities as needed to maximize efficiency, and they need the flexibility to be able to adapt their facilities to the potential effects of climate change.

As regional planning bodies begin the work of implementing CMSP, port authorities should be at the table. As arms of state, local or regional governments, port authorities are charged with facilitating commerce and protecting and preserving valuable coastal resources. Participation in regional planning bodies should not be so narrowly constricted that each state can only name one or two agencies to provide input to the process. States should have the ability to allow their state department of natural resources as well as a state port authority to provide input into regional planning.

Local governments should also have a voice in the CMSP process, as many port authorities are parts of local or municipal governments. Port authorities represent a unique voice in the CMSP process, as they have land- and waterside operations and continually balance the ecological and economic needs of their communities.

AAPA is supportive of CMSP that protects the working waterfront and includes input from port authorities in regional planning bodies, but AAPA does not support funding CMSP at the expense of other coastal and ocean navigation data programs. NOAA's National Ocean

Service provides information that is invaluable to mariners for the safe navigation of vessels in and around federal navigation channels and nearby waterways.

The Physical Oceanographic Real-Time System (PORTS) systems in place at many port authorities are a source of critical real-time data related to tides and currents. NOAA also is the lead agency on surveys, maps and charts used by mariners, and NOAA coordinates with the Army Corps of Engineers to survey navigation channels after they have been closed due to hurricane-caused shoaling. AAPA wants to ensure that any efforts to implement CMSP do not cause cuts in the data provided by NOAA's National Ocean Service.

AAPA is pleased to work with the National Ocean Council on implementation of the National Ocean Policy. Improving efficiency and collaboration will surely yield benefits for ocean and coastal communities, stakeholders and users.

Name: **Lisa DeBruyckere**

Organization: West Coast Governors Alliance on Ocean Health

Path: http://edit.whitehouse.gov/sites/default/files/webform/120227_west_coast_governors_alliance_nop_ip_comment_letter.pdf

Comment:



February 27, 2012

The Honorable Nancy Sutley
Co-Chair, National Ocean Council
Chair, White House Council on Environmental Quality
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

The Honorable John Holdren
Co-Chair, National Ocean Council
Director, White House Office of Science and Technology Policy
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

Re: Comments on the National Ocean Policy Implementation Plan

Dear Chairs Sutley and Holdren:

Thank you for the opportunity to comment on the National Ocean Policy Implementation Plan. Our Governors forged a partnership six years ago to tackle some of the most challenging ocean and coastal issues facing the waters off our states. Although our collaboration began as a commitment between the Governors, the West Coast Governors Alliance (WCGA) is now truly an ongoing partnership between the states, federal agencies, and other key entities in the region. We worked cooperatively in developing our 2008 Ocean Action Plan to identify the priorities for regional action. We've also been privileged to have the participation of several sovereign tribal governments on working groups to help implement the Action Plan. Academia, industry, and non-governmental organizations are also important partners on the working groups implementing the vision for healthy West Coast waters.

We are pleased that the Implementation Plan recognizes the important role that states and regions play in implementing the nine priority areas of the National Ocean Policy (NOP). Many of the priorities identified in the NOP are the same as those identified in our 2008 Ocean Action Plan. We are pleased that you recognize us as key partners in achieving your vision.

Although we recognize the difficult federal budget situation, stable and long-term financial support and incentives will be necessary to implement the NOP, including the ability for partners such as the WCGA to assume additional responsibilities for NOP planning and implementation. We encourage the administration and Congress to keep funding for coastal zone management (CZM) programs stable during this difficult economic time. The Coastal Zone Management Act (CZMA) has often been referred to as the "Constitution for our Coasts" and CZM programs are the backbone of many regional ocean partnerships, such as the WCGA, and form the critical bridge between state, federal, and local governments needed for successful implementation of the NOP.

The WCGA stands ready to work with the federal government to implement the NOP. Building upon existing and established regional partnerships, such as the WCGA, and ensuring funding to the states and

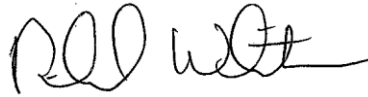
Honorable Nancy Sutley
Honorable John Holdren
Page 2

regional ocean partnerships, will allow the regions to advance their actions plans to take the necessary steps toward NOP implementation.

Sincerely,



John Laird
California Secretary for Natural
Resources



Richard Whitman
Natural Resource Policy
Director, Oregon Governors
Office



Keith Phillips
Energy and Environment
Advisor to Governor Gregoire,
Washington

Ecosystem-Based Management

Ecosystem-based management (EBM) is one of the seven key priorities in the 2008 WCGA Action Plan. Implementation of EBM depends on the ability to share lessons, approaches, and tools; access the health of coastal and marine ecosystems and establish strong standards and indicators; strengthen regional coordination; and protect species at the base of the food webs.

We support the NOC's intention to use EBM as a comprehensive approach to managing coastal and ocean resources as it presents an opportunity to improve, refine, and streamline our national, regional, tribal, and statewide governance regarding the management of shared marine and ocean resources. These EBM efforts must engage state, local, and tribal partners as well as stakeholders; in case studies early and often engagement of these groups has proven to be key to successful implementation of EBM.

The WCGA would like to make the following specific comments on the proposed actions. Additionally, we are concerned that the NOP Implementation Plan for EBM does not consider the interaction of land-based policies and how they affect the coast, ocean and Great Lakes as watershed ecosystems do not end at the shoreline.

Action 1: Establish a framework for collaboration and a shared set of goals for Federal implementation of ecosystem-based management.

- **Establish an interagency working group to ensure that EBM approaches are adopted and embedded within agencies' decision making processes.**
- **Evaluate utility of regulatory mandates to help achieve EBM.**

The WCGA supports this action, but we are concerned that some language from the Strategic Action Plan outlines (SAP), released in April 2011, has been dropped. The original SAP stated that the NOC would establish an interagency working group to help achieve EBM goals; the WCGA would like to see this represented in the implementation plan. The EBM SAP Action 4 included a milestone to '*fully incorporate EBM principles into efforts responsive to legislative and environmental mandates*'. The WCGA recognizes that the current third milestone '*Complete review of EBM-relevant statutes and regulations to identify agency authorities...and potential legislative changes that would fill gaps and support full implementation of EBM*' works toward this same goal, but keeping language about regulatory mandates may further the ability of managers to implement ecosystem-based management.

Action 2: Establish a science framework to support science-based EBM implementation.

- **Prioritize the inclusion of comprehensive seafloor and nearshore mapping in ocean.data.gov, support acquisition of these data where they are currently incomplete, and create derived mapping products such as geology and habitat maps.**
- **Create standards for classification of habitats.**
- **Recommend supporting and improving Regional Fishery Management Councils' ecosystem management plans, and science associated with collecting that data.**
- **Prioritize social science data, assessments, and indicators when establishing a science framework.**

The WCGA appreciates the focus on seafloor mapping in the Observations, Mapping and Infrastructure priority, but we would like to underscore the importance of ensuring these data are coupled with improved seafloor habitat characterization data to better to achieve EBM. Standards and classification systems such as NOAA's Coastal and Marine Ecological Classification Standard will be important to help managers better understand the processes impacting these habitats

Additionally, several regional fishery management councils (e.g. Pacific, Western Pacific, South Atlantic, and New England) have begun to develop ecosystem-based fishery management plans and have a wealth of science and monitoring programs designed to inform those plans. Given the increased role of the FMCs in other aspects of the NOP (i.e. CMSP), we recommend supporting and improving these efforts as a way to make use of existing resources and more closely engage the fishery councils.

Ecosystem-based management incorporates information about the socio-economic characteristics of resource dependent communities. Community dependence on resources and vulnerability to changes in resource availability are indicators of the economic well-being of those communities and their place within the ocean ecosystem.

Action 3: Build capacity to implement EBM through training on principles, best practices, and decision-support tools.

- **Recommend offering EBM training to non-federal state and local managers and scientists.**

Building capacity is critical to develop a shared understanding of how to implement EBM principles in decision making. Given that many of the "on the ground projects" are carried out by local government and community based organizations it is important to build capacity within this level of government.

Action 4: Identify and implement place-based pilot projects that foster an EBM approach to managing ocean and coastal resources.

- **Pilot projects should be distributed throughout the regions.**

The WCGA commends the NOC for the addition of this action, and we hope that the pilot projects will provide opportunities to engage early and often with regional, state, local and tribal partners as well as stakeholders. We also hope that the addition of pilot projects will help alleviate our previous concerns about the lack of attention to developing metrics to evaluate the effectiveness of EBM approaches. The WCGA does recommend that the pilot projects be distributed throughout the different regions of the U.S. and that the pilot projects leverage and take advantage of ongoing efforts such as the West Coast EBM network participants. West Coast coastal and marine scientists, managers, and stakeholders are well-poised to serve as pilot locations for implementing EBM. The three WCGA states represent the entire U.S. coastal section of the California Current Large Marine Ecosystem, and the WCGA has brought a regional unity of purpose in its approach to EBM. The California Current Integrated Ecosystem Assessment is underway and preparing to provide a scientific framework in support of regional EBM decision-making.

Inform Decisions and Improve Understanding

We agree that expanding research, improving understanding, and increasing awareness of coastal resources is critical to the National Ocean Policy. Priorities 5 and 6 in the 2008 WCGA Action Plan, “Ocean Awareness and Literacy among Citizens” and “Expand Ocean and Coastal Scientific Information” align with this NOP objective.

Action 1: Advance fundamental scientific knowledge through exploration and research.

- **Engage regional, state, and local entities early.**

We commend the NOC for committing to additional ocean exploration and research. As the *Science for an Ocean Nation* report is updated, we encourage the NOC to consult with regional, state and local entities on prioritizing research needs.

Action 2: Provide scientific information to support emerging sustainable uses of resources including renewable energy, aquaculture, and biotechnology.

- **Estimate the contribution and impacts of emerging uses.**
- **Promote consultation between federal agencies that funds renewable energy research and those with wildlife protection responsibilities.**

Each of our three states are preparing for the potential siting of renewable ocean energy projects off our coasts. The West Coast could benefit from federal agencies focusing their attention on biological distribution assessments for species potentially impacted by renewable ocean energy, cumulative environmental impact assessments, and economic assessments of those industries.

We also believe it would be beneficial to have agencies such as DOI and DOE consult with wildlife protection agencies (NOAA/FWS) and states in developing research Request for Proposals (RFPs). This would ensure funds can be targeted towards needed information on potential environmental effects and technology development.

Action 3: Provide the data and tools necessary to support science-based decision-making and ecosystem-based management.

- **Support and encourage the development and maintenance of Regional Data Sharing Systems (i.e. regional data portals, Integrated Ocean Observing Systems, etc.) to facilitate ecosystem-based decision-making and data sharing.**

As planning begins on the regional level it will be critical to encourage and support efforts to assemble, analyze, and disseminate regional scale data. Regional Data Networks and Regional Data Portals help serve this valuable data and their efforts should be coordinated with ocean.data.gov.

Action 4: Integrate social and natural scientific information into decision-making.

- **Develop standardized protocols and collection methods for socioeconomic data and work with state and local entities in collecting this data.**

- **Build upon existing programs in analyzing coastal economic statistics and jobs.**
- **Develop indicators of human well-being to be used in integrated ecosystem assessments for coastal communities.**

We also support the federal government investing more resources into economic analyses of the contributions of the ocean and coasts to our economy. Federal agencies should coordinate with and build off existing programs such as the NOAA Economics: National Ocean Watch, NOAA Spatial Trends in Coastal Socioeconomics, and the National Ocean Economics Programs that has been doing these types of analyses for some time. We encourage the NOC to fill the gaps in these national efforts by supporting more detailed economic evaluations and assessments, particularly in rural areas of our coastlines.

We appreciate NOC's commitment to developing a set of "indicators to characterize human interactions with the ocean, coasts." We believe the NOC should clarify that human well-being will be part of those indicators.

Action 5: Develop human capacity and the skilled workforce necessary to conduct ocean research and manage ocean, coastal, and Great Lakes resources.

- **Reinsert milestones related to secondary and post-secondary educational opportunities.**

The WCGA appreciated the two milestones in the SAP; "develop a new post-doctoral program for ocean sciences" and "support underwater and ocean technology programs for secondary and post-secondary education with Federal resources". We believe that these milestones are particularly important for the remote sensing and ocean energy technology fields and would recommend the NOC reinsert these milestones into the final NOP Implementation Plan.

Action 6: Increase ocean and coastal literacy by expanding the accessibility and use of ocean content in formal and informal education programming for students, educators, and the public.

- **Establish a task force to create a national plan to improve ocean literacy.**
- **Focus on efforts that benefit entire nation, or if pursuing a pilot project, clearly articulate how the lessons learned will be used in other regions.**
- **Increase efforts for informal education, including a social marketing campaign to promote ocean and coastal stewardship.**

As we mentioned in our July 2011 letter, we support the establishment of a task force (federal government, universities, Centers for Ocean Sciences Education Excellence (COSEE), and regional governance groups) to develop a national plan for improving ocean awareness and literacy for students, educators, and the general public by:

- Reviewing public opinion surveys, educational research and other sources to determine areas of greatest need and most fruitful approaches to integrating relevant ocean literacy topics into formal and informal education, public outreach programs and state and regional decision-making, including examining innovative and effective programs and strategies in use throughout the country

- Working with public/private entities to conduct additional research, including surveys, as needed, to fully illuminate the needs and opportunities for ocean education, and to establish local and regional baseline public knowledge/attitudes to gauge initiative impacts.
- Identifying how the federal government can better support state ocean literacy (i.e. through individual state environmental literacy plans) and public awareness efforts.

Overall, we support efforts such as including ocean science in the Next Generation Science Standards and the Green Ribbon Schools Initiative. However, we are concerned about milestone 3 as we would like to see NOC efforts focus on actions that can benefit the entire nation, not just those states surrounding Chesapeake Bay. If Chesapeake Bay was chosen because it makes a particularly good pilot project, the milestone should more thoroughly discuss how the lessons learned will be applied to other regions in the country. We would rather the NOC execute formal and informal education strategies for distinct regions of the country, such as Chesapeake Bay, Puget Sound, Gulf of Mexico and the Great Lakes, that have the potential to be extrapolated to other geographic areas in the U.S.

We've noted that the milestones under this action focus predominantly on formal education. While we believe formal education is extremely important, we need to engage all citizens in thinking about how the actions they take in their everyday lives (i.e. choosing a reusable coffee cup instead of a disposable) have a lasting impact on the ocean. We recommend that the California Thank You Ocean campaign, co-chaired by the state and NOAA Office of National Marine Sanctuaries, be explored as a model for a national campaign.

Observations, Mapping, and Infrastructure

Priority Area 6 in the 2008 WCGA Action Plan, “Expand Ocean and Coastal Scientific Information, Research, and Monitoring”, emphasizes the development of a regional research agenda, supporting long-term maintenance of ocean observing systems and monitoring assets on the West Coast, and completing a seafloor map of the bathymetry, benthic substrate, relief, geology, and habitats of all state tidelands and submerged lands out to three miles.

Action 4: Provide local and regional observation systems to support a variety of ocean, coastal, and Great Lake users.

- **Adequately fund the operation and maintenance of Integrated Ocean Observation System (IOOS).**

The West Coast is heavily invested in ocean observations, monitoring, and mapping efforts within state waters. We have comprehensive ocean observation systems (NANOOS, CeNCOOS, and SCCOOS) for the entire coast as part of the US Integrated Ocean Observing System (IOOS) in partnership with federal agencies and academic institutions utilizing various technologies such as high-frequency radar. The three West Coast ocean observation systems recently signed a joint Memorandum of Understanding (MOU) to formalize their commitment to work together and collaborate on projects. With adequate support and funding, ocean observing systems can continue to deliver regional and national benefits and further improve conversion and integration of data into information to support management. For example, to support Coastal Marine Spatial Planning (CMSP), the IOOS system could work with regional planning bodies and regional ocean partnerships to produce mapping products derived from ocean observation data for spill response, search and rescue, and water quality management. In order to further increase coordination, milestones for this action could be created based on priorities identified in the IOOS plans such as the Surface Current Plan and Wave Plan.

Taking on new projects should not come at the expense of such an important initiative as our Integrated Ocean Observing System which underpins the other 8 objectives of the NOP and can be used to make our efforts more streamlined, cost-effective and efficient. As recognized in the plan, moving forward, federal funding will be crucial to continuously improve and maintain this system and infrastructure.

Action 2: Improve unmanned and satellite remote sensing systems.

The WCGA support federal agencies taking a proactive approach to developing a coordinated pool of unmanned assets. This action helps to increase efficiency and coordination among federal and non-federal entities.

Action 5: Coordinate and leverage ocean and coastal mapping efforts to improve access to existing data and efficiently collect future data.

- **Support regional data networks, such as the West Coast data network.**

This support will improve access to existing and future regional data and inform regional planning. Regional data networks are best suited to understanding the specific needs of users and can tailor tools and data products to best meet those needs. There is a need for comprehensive nearshore mapping, as well as seafloor mapping. The LIDAR/topographic data that the California Ocean Protection Council, NOAA, USGS and USACE collaboratively collected needs to be regularly repeated to understand the impacts of wave run up, sea level rise, etc. on a very dynamic shoreline. Furthermore, near-real time observations of storm wave runup on beaches and urban coastal areas are necessary to develop reliable models for these changes.

Coordinate and Support

Action 1: Support regional priorities and enhance regional partnerships.

- **Provide for an additional full-time federal position to coordinate federal agencies, ROPs, tribal governments and other entities.**

We'd like to thank the NOC for recognizing the contributions that regional ocean partnerships (ROPs) have made to effective ocean and coastal management and for recognizing that ROPs can be effective partners in helping to implement national priorities. As noted previously, staff time is often the primary constraint in the ROPs working with each other and other groups. The WCGA has been fortunate to have federal grant money to support a nearly full-time coordinator; however, only about a year to a year and a half of funding remains. We ask that the federal government provide for a full-time federal position tasked with coordinating the ROPs, federal government, tribal governments, and other entities. We would respectfully ask for this position be in addition to, not a reassignment of a current federal position to ensure that other programs are not inadvertently impacted. Alternatively, the federal grants to the ROPs might be longer-term MOUs developed through legislation, as is the case with the Integrated Ocean Observing System, to ensure some longer-term consistency. We'd also like to note that our web site address has changed, it is now <http://www.westcoastoceans.org> and would request that this change be reflected on page 36 of the NOP Implementation Plan.

Action 2: Strengthen existing partnerships and establish new partnerships, as appropriate, to enhance the actions within this Implementation Plan.

- **Reaffirm the need to strengthen and support tribal partnership and participation in NOP initiatives.**

Tribal governments have demonstrated aptitude and ability to manage ocean resources for sustained long-term use. They are integral partners for the Nation and for successful implementation of the NOP. On the West Coast, our success depends on a full partnership with tribal governments.

Action 3: Reduce barriers to implementation of the National Ocean Policy.

We fully support milestone 3 of this action which calls for potentially strengthening the Coastal Zone Management Act (CZMA). The CZMA, often referred to as the "Constitution for our Coasts", is a successful partnership between states and the federal government to enact shared priorities for protecting and managing the nation's coastline. This successful Federal-state partnership should be referenced as such in the NOP IP under Action 2 of the Coordinate and Support Priority. As noted, this federal legislation will be particularly important to enable us to adapt to the effects of climate change.

Action 4: Develop cross-cutting budget analyses that address priority areas in the National Ocean Policy.

- **Obtain new funding for the NOP.**
- **Prioritize the National Ocean Service budget, including reinstatement of funding for the coastal Non-Point Source Pollution Control Program.**

We applaud the NOC's efforts to implement cross-cutting budget analyses and understand the difficult budget situation of the federal government. However, it must be realized that implementation of the NOP, and coastal and marine spatial planning in particular, will require new and sustained federal resources. One particular program, the coastal non-point source pollution control program (section 6217 of CZMA) was completely defunded in 2009. We also note that the budget for National Ocean Services (NOS), which provides many resources to states, is often at the mercy of the needed resources for NOAA weather and satellite programs. If the NOC is to accomplish the goals set forth in the NOP Implementation Plan, it must prioritize the budget of NOS which is specifically aimed at overall (not species specific) ocean management, science, observations and mapping. These programs are essential to the nation's long-term economic and ecological health.

Action 5: Improve efficiency of permitting ocean, coastal, and Great Lakes uses.

- **Clarify that federal consistency authority and state permitting requirements will not be undermined.**

We support efforts to improve the efficiency of permitting activities but seek assurance that federal consistency authority provided to the states through the Coastal Zone Management Act (CZMA) will not be undermined. Federal consistency is an important tool to ensure that federal activities or federally-permitted activities do not jeopardize resources within our respective state waters. Furthermore, it would be helpful to have additional information that describes how federal streamlining efforts will be coordinated so they will not contradict state permitting requirements.

In addition, the state of California may develop a "Guide to Aquaculture Registration, Permits, Licenses, Laws, and Regulations in California" that will help aquaculture developers understand the broader context for aquaculture and the permitting and licensing requirements. Development of this guide could provide the opportunity for state agencies to coordinate more effectively with federal agencies, as California has already done in the area of renewable ocean energy.

Regional Ecosystem Protection and Restoration

We appreciate that the NOC recognizes the importance of ecosystem protection and restoration, as it is a key priority in the 2008 WCGA Action Plan. The WCGA would like to reiterate a previous comment that it would be beneficial to for the NOC to create a common and standardized classification scheme for marine and coastal habitats, and further develop and refine region-wide metrics for the evaluation of marine, estuarine, and coastal habitat conditions (e.g. National Coastal Condition Report, National Eutrophication Report, National Wetlands Inventory, EMAP/CEMPA etc.). Integration of these separate efforts with a unified numerical assessment of the ecological condition of coastal and marine habitats combined with standard classification for habitats will improve and streamline collaboration across states and regions. Additionally, we would like to provide specific comments to Actions 1, 2, 3, 5 and 7.

Action 1: Develop and transfer decision support tools to identify land protection and restoration priorities.

- **We prefer that the NOC not focus on geographically specific areas.**

This action focuses on Chesapeake Bay Region. We prefer that the NOC not focus on a geographically specific area. However, we understand the value in using specific case studies and would recommend that every effort be made so that lessons learned from the Chesapeake Bay case study are readily available and transferable to other regions.

Action 2: Reduce coastal wetland loss and improve understanding of coastal wetland status and trends.

- **Pilot watersheds should be distributed throughout the regions.**

The WCGA appreciates that this action will identify coastal watersheds for pilot assessments, and we think this will be an important step to reverse wetland loss. Vulnerable wetlands are present in all the coastal regions of the United States and can also have different characteristics depending on the region, which should be taken into consideration. An evenly dispersed set of pilot watersheds allows for a more comprehensive and holistic perspective on the state of the nation's watersheds. Because this action addresses wetlands in coastal counties (not just coastal wetlands), agencies such as USDOT, USDA/NRCS, and DOE should be engaged since the greatest wetland losses are typically associated with agriculture, transportation infrastructure, and energy production. We also suggest that more effort be allocated towards coordinated wetlands monitoring and assessment and towards ways for more effective sharing of information across agencies and programs.

Action 3: Incorporate carbon sequestration into coastal habitat conservation.

- **The NOC should ensure that carbon offset projects are ecologically appropriate, designed for multiple benefits, and do not provide harm to ecosystems.**
- **Climate change, especially sea-level rise, will affect carbon sequestration processes.**

The WCGA supports the inclusion of this carbon sequestration into coastal habitat conservation and the acknowledgement that the capability of coastal habitats to sequester carbon is an important but undervalued ecosystem service. Carbon offset projects play an important role, but it is important to be sure that these projects do not provide greater harm to the ecosystem than benefit. Given that climate change, especially sea-level rise, will affect carbon sequestration of coastal habitats, there is a need to understand this on a 100-year time frame. We also need to understand the permanence of carbon sequestration from these habitats and the risk of reversal for carbon offset projects to release the carbon back into the environment.

Action 5: Locate, control, and, where possible, eradicate invasive species.

- **Increase focus on preventing invasions, including incentive programs to strengthen ballast water standards.**
- **Increase capacity of the Aquatic Nuisance Species Task Force (ANSTF) and encourage partnerships with state and local governments.**

First, the WCGA acknowledges and thanks the NOC for incorporating our previous comment to not focus on a single invasive species: the lionfish in the Southeastern U.S. The WCGA and its partners have made great progress towards eradication of invasive *Spartina* on the West Coast. While we appreciate the focus on reducing the threat of aquatic invasive species, it is always more costly to control or eradicate a species than to prevent its introduction in the first place. We encourage the NOC to consider efforts to prevent the introduction of aquatic invasive species, such as supporting ballast water treatments and/or standards, addressing hull fouling, and the trade of live organisms (a largely unmanaged vector). With respect to ballast water, we encourage the NOC to explore innovative ways to strengthen the standards of ballast water discharge in US waters.

As we stated in our July 2011 letter, we support the NOC's recommendation that the Aquatic Nuisance Species Task Force (ANSTF) fulfill a coordinating role amongst federal agencies in implementing fragmented policies for regulating invasive species. While we believe the ANSTF is probably the entity best positioned to take on this role, we are concerned that they do not currently have adequate capacity, particularly if the ANSTF relies upon their regional panels, largely composed of volunteers, to do this work. Our experience has shown that the Western Regional Panel of the ANSTF has focused largely on zebra and quagga mussels, and due to limited capacity, has not been able to address coastal and marine species. We furthermore suggest that the ANSTF reach out to state and local partners to a greater extent.

Action 7: Improve the effectiveness of coastal and estuarine habitat restoration.

- **Add USFWS to the list of federal partners.**
- **Establish baseline characterizations in order to evaluate restoration.**

USFWS manages a significant amount of land through the Reserves and Coastal Program and therefore should be a partner in this endeavor. To assess restoration success it will be paramount to have baseline measurements or reference levels for coastal and estuarine habitats.

Resiliency and Adaptation to Climate Change and Ocean Acidification

Preparing for the effects of climate change is a key action in the 2008 WCGA Action Plan. Assessing West Coast shoreline changes and anticipated impacts to coastal areas and communities due to climate change over the next several decades, and developing actions to mitigate and adapt to the impacts of climate change and related coastal hazards are integral to ensuring the health and economic well-being of coastal communities. In 2010, the WCGA sponsored a West Coast sea level rise study by the National Research Council of the National Academies of Science; this report will be finished in spring/summer 2012. Our governors and the premier of British Columbia also signed an Action Plan for Ocean Conservation and Climate Change Adaptation of the Pacific Coast Collaborative. The WCGA has provided specific comments on the following actions.

Action 1: Strengthen and integrate observations from the Nation's protected areas, research sites, and observing systems into a coordinated network of sentinel sites to track changes in the condition of the ocean, coastal, and the Great Lakes environments and communities.

We support the new milestone under this action to create an interagency plan for topographic and shallow bathymetric mapping (using technologies such as LiDAR). Each of the three West Coast states have invested significant resources in mapping our state waters, yet mapping of the near-shore zone has been difficult to achieve. This mapping is critical to evaluating and predicting how sea-level rise, storm surges, and coastal erosion will affect the shoreline.

Action 2: Determine the impacts of climate change, ocean acidification, and interacting stressors on ecological, economic, and social systems.

- **Develop opportunities, particularly for federal funding, that encourage collaboration among multi-sector key partners to advance research.**
- **Assess how other environmental stressors may interact to exacerbate climate change impacts.**

Collaboration among multi-sector partners (i.e., regional, state, federal, tribal, private) will be particularly important in ensuring the most cost-effective and relevant research on climate change. The impacts of climate change may be magnified by other environmental stressors. For example, hypoxic events can exacerbate acidified waters. The WCGA recommends these synergistic effects of climate change be considered to determine the full impact of climate change effects on ecological, economic, and social systems.

Action 3: Provide critical projections of climate change impacts on coasts and oceans at decision-relevant scales.

- **Incorporate of sea-level rise projections into FEMA flood hazard maps.**
- **Recommend including more explicit language to work through CZMA and states' coastal program.**

- **Fund opportunities to conduct state specific climate change and sea level rise projection research.**

The WCGA would like to commend the changes in this section, particularly the focus on providing projections at decision-relevant scales. We believe that one of the most important ways to ensure that climate change impacts are taken into consideration by land use planners and the insurance industry is for FEMA to revise floodplain mapping to account for predicted changes in flood frequency, intensity, and impact.

Regionally specific studies will be extremely useful in helping regions prepare for climate change. In partnership with NOAA, USGS, and USACE, the WCGA commissioned a study through the National Research Council to evaluate sea level rise for California, Oregon, and Washington for the years 2030, 2050 and 2100; and provide specific values for the regional and local contributions to sea level rise. This study will be disseminated through a series of workshops hosted by the WCGA.

Furthermore, we support the milestone to “Make available coastal inundation and sea-level change visualization and decision-support tools at decision-relevant scales” but feel that this effort should be supported with new funding to build on efforts such as those underway in California by the Coastal Data Information Program (CDIP) and sponsored by the Federal Emergency Management Agency (FEMA) to model wave-driven flooding in coordination with the observational programs outlined above.

Action 4: Assess the vulnerability of coastal and ocean environments and the communities to climate change and ocean acidification.

- **Recommend including more explicit language to work through CZMA and states’ coastal programs.**

Decisions about local land use planning in the face of climate change will be made by local governments. State coastal programs, created by CZMA, are in a unique position of bridging state-local-federal perspectives in assessing vulnerability and encouraging smart investments in future infrastructure.

Action 5: Strengthen interagency coordination on the development and provision of information, training, guidance, tools, and support for adaptation practitioners.

- **Catalogue emerging and state-of-the-art adaptation strategies, both engineering and ecosystem-based approaches.**
- **Strengthen forums for sharing best practices for climate change adaptation.**

As science quickly develops on climate change, the WCGA urges the NOC to make real-time research on adaptation strategies available through a clearinghouse or data portal. Forums to share best practices for climate change adaptation will become increasingly important, and the NOC should build off of existing forums such as NOAA’s Coastal Climate Adaptation website and EcoAdapt’s Climate Adaptation Knowledge Exchange.

Action 6: Design, implement, and evaluate adaptation strategies to reduce vulnerabilities and promote informed decisions.

- **Seek out funding for local governments to implement adaptation strategies.**
- **Include local and state representation on the proposed interagency coordinating framework.**
- **Reinsert milestone regarding pre-disaster mitigation planning.**
- **Reduction of stressors over which we have more direct control is important.**

Guidance about adaptation strategies will be very important and we are glad that the NOC plans to provide guidance to local jurisdictions that may lack the necessary expertise to prepare for climate change. However, appropriate funding (e.g. for revision of local coastal plans) will be necessary in order to implement these adaptation strategies. Engagement with state and local partners will be important to promote informed decisions and the WCGA would like to see these partners represented within the interagency coordinating framework. The previous SAP contained a milestone to *'implement pre-disaster mitigation planning and recovery to prepare for disasters. Revise Federal guidelines to encourage more resilient and sustainable forms of rebuilding and retreat'*. The WCGA supports this sentiment and would like to see this language included in the implementation plan. The SAP also included a milestone to *'reduce the impacts of stressors over which we have more direct control (e.g., pollution, habitat destruction, resource extraction) to enhance the resiliency of coastal, ocean, and Great Lakes ecosystems to climate change and ocean acidification'*. The WCGA would also like to see this milestone included in the implementation plan. For the milestone to *"provide guidance to waterfront property owners on adaptive management options for shoreline erosion"*, we recommend that federal agencies ensure that this guidance is well coordinated with state and local land use policies that ultimately govern implementing such management option.

Water Quality and Sustainable Practices on Land

We thank the NOC for thoroughly covering the complexity of ensuring clean water quality through the many outcomes and milestones listed in the Implementation Plan. Water quality programs that reduce polluted runoff, enhance monitoring and enforcement of water quality regulations, combat nonpoint and point source pollution, better predict harmful algal blooms and hypoxia, reduce marine debris, provide for adequate oil spill prevention, preparedness and response, and set stringent emission standards for oceangoing vessels are key objectives in the 2008 WCGA Action Plan.

We also acknowledge the NOC for highlighting the importance of regional partnerships and collaboration with stakeholders as a beneficial method to address this problem. The WCGA understands the value of clean water and has dedicated two working groups to work on this issue - the Marine Debris Action Coordination Team and Polluted Runoff Action Coordination Team. With adequate support and funding, we look forward to continue working on improving water quality on a regional scale through leveraging existing resources and building partnerships.

Action 1-Reduce rural sources of excessive nutrients, sediments, toxics, and pathogens.

- **Ensure accountability and reductions from rural sources of polluted runoff similar to industrial sources to reduce impacts.**

For agricultural runoff sources measures of accountability and reductions for their impacts similar to industrial pollution sources should be considered and enforced using existing authorities.

Action 2-Reduce urban sources of excessive nutrients, sediments, toxins, and pathogens.

- **Refine permitting, regulation, and interagency coordination to improve navigation of the permitting process and ensure development is consistent with Green Infrastructure (GI) and Low Impact Development (LID).**
- **Establish economic and efficacy analyses of pilot LID projects.**

Incentives and funding should encourage communities to implement integrated planning for storm and wastewater treatment, mass transit systems, green infrastructure (GI), low impact development (LID), and protection or restoration of habitat. Additionally, we need to identify opportunities for refining complex regulatory pathways, aligning GI and LID requirements in permits to follow the prioritized principle of “avoidance, minimization, and mitigation”, and increasing interagency coordination and permitting processing. Economic and effectiveness assessments of pilot LID projects would help drive local ability to meet the actions goals through targeted planning and regulation changes.

Under CZMA, Congress envisioned NOAA having a role in addressing nonpoint source pollution. For example, NOAA’s Coastal Nonpoint Pollution Prevention Program has implemented successful projects at the regional level working with local governments and developers to implement LID. We encourage EPA to partner with NOAA to the greatest extent possible.

Action 3 - Minimize impacts of hypoxia.

- **Ensure adequate monitoring and research for all hypoxic areas, including those not associated with nutrient enrichment from land.**

The West Coast (off of Oregon and Washington, in particular) has had repeated seasonal hypoxic events that may be related to climate changes. Unlike many areas, nutrient enrichment from land is not likely a factor, but resource managers and stakeholders still need improved information on the extent, causes and forecasting for hypoxic events for the West Coast. In particular, this requires more robust monitoring for this vicinity.

Action 4- Minimize impacts of harmful algal blooms.

The WCGA supports this new action item to minimize the impacts of harmful algal blooms. This issue is identified under Priority Area 1: Ensure Clean Coastal Waters and Beaches in the WCGA Action Plan. The WCGA is committed to working with regional partners to better understand the causes and impacts of harmful algal blooms, and disseminating information to help educate stakeholders. For example, through partnerships formed through Ecology and Oceanography of Harmful Algal Blooms (ECOHABS), the West Coast regions has advanced its monitoring, researching, and forecasting of HABs.

Furthermore, we support the milestone for better infrastructure to inform HAB modeling, and would like to emphasize that existing infrastructure such as ocean observing systems (OOS) are valuable resources in researching HABs. Continued federal funding of OOS will provide valuable data to improve predictive HABs models currently under development.

- **Investigate emerging biotoxin threats.**

Researching biotoxin threats will help increase scientific knowledge regarding HAB occurrences and may decrease the exposure of contaminated seafood to humans. Newly present biotoxins in the West Coast region are being researched and support through federal funding will help ensure the continuation of research, monitoring, and forecasting of HABs.

Action 5- Address threats posed by toxic chemicals and land-use practices to human, environmental, and wildlife health.

- **Identify geographic areas most vulnerable to health risks that may require assistance to cope with significant water quality threats.**
- **Enhance and support state and regional strategies to prevent, prepare for, and mitigate oil spills in vulnerable areas.**

Efficiently utilizing our finite resources to maximize protection of the public from health risks will require identifying priority areas in need of assistance and providing the resources (financial and technical expertise) to these key areas, so they can build their capacity and decrease their vulnerability to significant water quality threats.

Action 6 – Reduce the impacts of trash and marine debris on ocean, coastal, and Great Lakes waters and associated watersheds, through cooperative efforts aimed at pollution prevention, reduction, and removal.

- **Establish marine debris location and baselines through standardized monitoring or existing data, and address specific trash and marine debris sources, pathways, and accumulation points.**
- **Determine milestones related to source reduction of trash and marine debris.**
- **Support the creation of a region-wide tsunami debris assistance and tracking program for West Coast states, in coordination with the newly formed West Coast Marine Debris Alliance.**
- **Conduct economic assessment of the costs of marine debris.**

First of all, we'd like to thank the NOC for including greater emphasis within this action on derelict fishing gear. We also believe that establishing a marine debris baseline will be crucial in measuring milestones and outcomes. Without baselines, it is extremely difficult to determine the success of marine debris and trash prevention, reduction, and removal programs. This can be completed in conjunction through quantifying debris when identifying principle sources of debris and areas of accumulation. It is also important to note that several groups along the West Coast are monitoring marine debris and the WCGA is working towards baseline characterization process that will be useful for NOP implementation. Furthermore, preventative actions to address marine debris should be identified and implemented along with establishing a baseline.

West Coast states may be subject to an increased quantity of marine debris in the future as debris from the March 2011 Japanese tsunami travels across the Pacific. States are preparing to deal with this large debris field through state leadership, and leadership of the West Coast Marine Debris Alliance. Although this situation is unique to the West Coast, creating resilience in states along the Pacific Coast is an investment that will provide efficient and cost-effective action for the future. One particular program that would benefit from funding is the Coastal Nonpoint Pollution Control Program (section 6217 of CZMA). Finally, conducting an economic analysis on marine debris impacts could help promote policies, laws, and regulations aimed at reducing source debris input.

Action 7-Identify, seek to protect, and maintain high quality near-shore ocean, coastal, and Great Lakes waters.

- **Continue to improve federal coordination with all stakeholders on prevention, preparedness, and response to coastal and offshore oil/chemical pollution from spills and industrial/shipping operations.**
- **Use case studies, best management practices, and mapping products to educate stakeholders about the importance of sustainable land use practices and policies.**

Looking back on the devastating impacts of the *Cosco Busan* spill in San Francisco Bay in 2007 or the Deep Horizon oil spill in the Gulf of Mexico in the spring of 2010, we commend the NOC for its goal of improving federal coordination on prevention, preparedness, and response to coastal and offshore oil/chemical pollution from spills and industrial/shipping operations. These events further emphasize the importance of protecting high quality offshore and coastal waters of the West Coast and the need for constant improvements to further reduce risks.

Finally, it is crucial that managers and decision makers have easy access to the information such as case studies, lessons learned, and best management practices that demonstrate the successes of integrating land and aquatic planning. This will be important for stakeholders and the public to understand their role not only in protecting coastal waters but also specifically in preventing and removing trash and marine debris (i.e. Action 6)

Coastal and Marine Spatial Planning

The WCGA supports comprehensive planning to protect and manage coastal and ocean resources, and believes Coastal and Marine Spatial Planning (CMSP) can be a valuable tool to achieve regional and national ocean health priorities.

Action 1: Distribute a Handbook for Regional Coastal and Marine Spatial Planning.

- **Allow for flexibility for regions to address their unique circumstance when implementing CMSP.**
- **Include lessons learned from states already engaged in CMSP.**
- **Handbook should be web-based and include CMSP messaging material.**

Distributing handbooks is a good way to provide information and guidance on regional planning efforts. As has been stated in various previous comment letters, we believe that states and regions need to have flexibility to implement a process in a way that addresses their own unique circumstance and needs. We do not believe there is a “one size fits all” approach to coastal and marine spatial planning. For example, regions should be permitted to undertake CMSP on a sub-regional basis if that meets their current needs and is agreed upon by the partners involved.

We also believe it will be helpful if the handbook is web-based and contains “results-oriented” messaging materials to help states and local governments talk about and build buy-in for the planning process.

Action 3: By 2015, all of the applicable non-confidential and other non-classified Federal data identified for inclusion will be incorporated into a National Information Management System and Data Portal (ocean.data.gov).

- **Provide guidelines so that regional data portals can be compatible with the national system.**

WCGA has begun investing resources in developing a regional data portal; NROC and MARCO’s regional data portals have already been developed. As the regions develop or modify their data portals, it will be helpful to better understand how the regional data portals can be compatible with the national system so that data can be displayed more effectively to the public.

Action 4: Establish Regional Planning Bodies.

- **Identify new federal resources to support the comprehensive stakeholder process necessary for CMSP.**

Establishing and managing a Regional Planning Body (RPB) and CMSP process will require adequate and sustained resources and federal agencies should develop and provide a concrete strategy for supporting CMSP and the work of the RPBs.

We would like to thank the NOC for its recent decision to allow for participation of Regional Fishery Management Councils and local government officials as voting members of the RPB. The participation by these two groups was especially important to the West Coast and we applaud your recent decision.

Action 5: Within 3 to 5 years of their establishment, nine regional planning bodies (i.e., one per region) will have developed Council-certified regional CMS Plans for the sustainable use and long-term protection of the ocean, our coasts, and the Great Lakes.

- Clarify the criteria for NOC certification early in the national CMSP process.
- Recommend adding explicit language that affirms supporting and incorporating each state's Plan into regional/subregional plans so that the efforts already underway can be compatible.

We acknowledge the amount of resources and energy to implement CMSP and recommend the NOC to add additional regionally assigned staff to support, coordinate, and serve as a contact for CMSP implementation.

Regarding how CMSP will be implemented, California, Oregon, and Washington have already submitted extensive comments on the composition of the RPBs, the RPB Model Charter, and the RPB Collaborative Decision-making Process through our representatives on the Governance Coordination Committee. As those comments are too extensive to repeat here, we direct your attention to those documents.

Name: **American Society of Civil Engineers American Society of Civil Engineers**

Organization: American Society of Civil Engineers

Path: http://edit.whitehouse.gov/sites/default/files/webform/asce_comments_ocean_plan_february_2012.pdf

Comment:

THE WHITE HOUSE

THE NATIONAL OCEAN COUNCIL

COMMENTS OF THE AMERICAN SOCIETY OF CIVIL ENGINEERS

ON THE

NATIONAL OCEAN POLICY IMPLEMENTATION PLAN

FEBRUARY 27, 2012

The American Society of Civil Engineers (ASCE) is pleased to offer these comments to the National Ocean Council (NOC) on its draft Strategic Action Plan intended to protect the nation's oceans, coastlines, and the Great Lakes. The NOC is working to promote principles of environmental stewardship, science-based decisions, ecosystem-based and adaptive management, balanced resource use, support for research, improved awareness and education, international cooperation and leadership, measurable benchmarks, and integrated, interagency planning.

Coastal Data Collection Program

To begin, ASCE supports the basic coastal data collection programs of the National Oceanic and Atmospheric Agency (NOAA), the U.S. Army Corps of Engineers (USACE) and other government agencies as essential for planning storm-protection systems and coastal restoration. ASCE urges continued support for the climate change and estuarine science programs, including the status and trends program of NOAA, and the National Wetlands Inventory programs of NOAA, USACE, the Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS).

ASCE also supports the USACE Coastal Field Data Collection Programs, which provide critical understanding of waves and currents that are the driving forces of coastal erosion. These data are essential to monitor, model and forecast storm surge and other natural disaster events so that we may adequately assess the risk to our coastal communities. ASCE recommends that USACE and NOAA organize and operate basic coastal data collection programs in all coastal and Great Lakes states to ensure uniform quality and continuous collection of data and coordinate these with long-term hydrologic data collection programs for major watersheds. ASCE encourages state and local governments to initiate, support and participate in these programs.

The basic coastal data collection programs of NOAA, USACE, EPA and other agencies are vitally important to sound coastal zone planning, design, construction and management. Coastal environmental problems continue to increase in number and complexity, thus increasing the need for additional coastal-zone data collection and research. The NOAA, USACE, EPA and other government agencies provide the necessary data, which are the basis for the wise use and protection of coastal wetlands, marshes, estuaries and coasts. New areas of national concern such as climate change and wetlands preservation increase the need for coastal data collection and research, yet these new program directions compete directly with the continuation of long-term basic coastal data collection programs.

The federal government must take the lead in collecting and making available all necessary data to monitor, model, and forecast storm surge and other natural disaster events if we are to avoid a repetition of the problems of Hurricane Katrina. There must be adequate funding on a continuing basis sufficient to allow prediction of storm surges, sediment transport, and risk assessment to allow effective management of changes to established hydrogeomorphological processes (the interaction of the sea with river systems along the coast and in estuaries).

America's coasts are an important asset. The coast is a vital component of our natural hurricane and storm protection systems. A majority of our citizens live, work, and recreate within 50 miles of coasts. Coastal wetlands, marshes and estuaries provide essential nurseries and feeding grounds for an abundance of marine life, birds and other animals. Ports, coastal-related industry, and commerce are vital to our economic survival. There are serious problems that threaten the continued value of the coastal zone to the nation. These problems include beach erosion, loss of coastal wetlands, unmitigated development, degradation of water quality in estuaries and coastal waters, sea level rise, and sedimentation. Solutions to these problems are needed. In many instances, the necessary information required for solutions to these problems is lacking or incomplete. Accurate and complete data, collected in a consistent manner over the long-term, is the basis of accurate modeling of coastal changes and storms and their consequent risk to public health and safety.

To provide the necessary data for solutions to these problems, long-term sufficiently funded programs in observation, monitoring, research and development, and prediction are needed. Sound management and conservation decisions require a thorough understanding of the environment; including coastal processes. Such an understanding can only be developed after thorough observation, through research, and assessment programs based on good data.

Waste Assimilative Capacity of Ocean and Coastal Waters

ASCE also supports the implementation of waste-reduction programs that can significantly decrease the quantity of deleterious wastes disposed in ocean and coastal waters. ASCE further urges the continued study of the environmental effects of disposing wastes into ocean and coastal waters. ASCE supports investigative programs that achieve a greater understanding of the transport and fate of wastes disposed of in ocean and coastal waters.

Rising environmental concerns and costs associated with land disposal of wastes have placed increasing emphasis on marine disposal options; yet engineering and scientific consensus does not exist related to the assimilative capacity of the ocean and the ultimate fate of wastes introduced into the marine environment.

Ocean and coastal waters provide vast resources of enormous ecological and economic value. In the past, disposal of large quantities of wastes in ocean and coastal waters was practiced without adequate knowledge of the ultimate fate of these wastes and their effect on the marine environment. The dumping of waste has been indiscriminate and has resulted in incidents of marine pollution and poisoning of marine biota with chemicals that can ultimately be toxic to humans. In addition, bacterial contamination has resulted in an increase in the number of incidences of beach closures, infections in marine wildlife, and suspensions of harvesting from shellfish beds.

In order to develop adequate marine management programs, more information is needed regarding the assimilative capacity of the ocean and coastal waters and of the ultimate fate of pollutants and chemicals introduced into these waters. In addition, more research on effective methods of reducing the quantity of wastes' being disposed of in coastal and ocean water environments is recommended.

Offshore Facilities Development

ASCE supports the responsible use and development of offshore resources. ASCE recognizes the need for regulatory control of offshore regions. Protection of public health, safety, and welfare and protection of the environment must be appropriately addressed for all offshore development.

ASCE urges government at all levels to incorporate scientific risk management in all decision making processes that affect the public's safety, health, or welfare, and to exercise sound conservation practices and protection of the public health and environment consistent with sustainable offshore development.

ASCE supports creative partnering among federal, state, and local governments to adopt offshore development policies, and to approve offshore development that complies with these policies in a timely manner.

Environmental and public opposition to offshore development, as well as lengthy permitting and approval processes, may stop viable offshore projects from being considered or developed. The impact of hurricanes, natural and anthropogenic disasters, and emerging concern over climate change and its potential impact on ocean levels and coastal development reinforce the need for improved planning, practices, and regulations consistent with sustainable development of offshore resources.

Offshore development projects are viable if the risk to public safety and the environment are adequately addressed through policies and standards addressing the planning, design, and construction of such developments. Delay in the approval of offshore projects that meet all policy and standard

requirements could delay or eliminate valuable projects that may provide access to natural resources.

Civil engineers are largely responsible for the efficient design and operation of offshore facilities such as water supply, transportation, structures, drainage facilities, and pipelines. Civil engineers recognize the benefits of offshore development that has been properly planned, designed, constructed, and operated to ensure public safety, health and welfare are protected, and to ensure the environmental impacts are mitigated and hazards inherent in offshore development are addressed. Civil engineers recognize the need for adequate and protective policies and standards, and further recognize that offshore projects that meet such standards should be approved in a timely manner.

Coordination of Beach Erosion Control with Channel Maintenance

ASCE supports the onshore or near-shore placement of clean sand dredged from navigation projects, tidal inlets and estuaries. Beach-quality sediment and sand dredged from navigation projects and inlets should be placed on beaches that most need nourishment to reduce the effects of erosion. ASCE encourages regional sediment management and coordination among planners of coastal navigation projects and beach erosion control projects to ensure that beach-quality sediment and sand dredged from inlets is not disposed of offshore, but is returned to the coastal system from which it originated.

Often there is little coordination between government agencies concerned with maintaining safe navigation channels through coastal inlets and those agencies and local jurisdictions concerned with beach erosion. Quite often the problem is due to different funding sources for the two projects. The economic feasibility of navigation channel maintenance and beach erosion control projects are usually assessed independently of each other. Thus, minimizing the cost of an inlet navigation project often dictates that sand dredged from the inlet be disposed offshore. At the same time, nearby beaches may experience severe erosion because sand in transport along the shore is trapped by the inlet and removed from the beach and coastal systems.

The most logical source of sand to nourish eroding beaches is often a nearby inlet since inlet sand usually has the same textural characteristics as the beach sand. The combined cost of a coordinated channel dredging and beach nourishment project might often be lower than the sum of the two separate projects. However, because of different funding sources and lack of coordination, the two projects are often executed independently at a higher overall cost and waste of taxpayer's money.

Tidal inlets provide an important physical connection between the ocean and back bay areas. They are both commercially and ecologically significant. They provide a path for fish and fish larvae to travel between the nutrient rich back bays and the ocean as well as a path for recreational and commercial vessels to travel between the ocean and the safety of inland ports. Recreational and commercial vessels require adequate water depths to navigate safely through such inlets. Also, a relatively fixed channel location is important so that it can be adequately marked by buoys and other aids to navigation. To insure safe navigation, periodic dredging of inlet channels is usually necessary.

Tidal inlets also trap sand carried along the shoreline by wave-driven longshore currents. They serve as the conduits that remove sand from the active littoral zone and carry it into sheltered waters behind the inlet where it is deposited. The loss of sand from ocean beaches into inlets contributes to erosion problems near inlets and along downdrift beaches. Thus, sand deposited in inlet navigation channels almost always has as its source the adjacent ocean beaches.

Beneficial Use of Dredged Material

ASCE supports the beneficial use of dredged material. It recommends the following as policy guidance for the beneficial use of dredged material in the United States:

- All dredged sediment should be used beneficially unless it is clearly impractical to do so.
- The federal government should revise its methodology for economic analysis of dredging costs, where applicable, to reflect both gaining the benefits of using dredged material for coastal protection, environmental stewardship and other beneficial uses as well as to avoid disposal costs.
- Government and private entities that develop and execute projects requiring dredging should be stewards for the beneficial use of dredged material.
- Dredged material should be managed as a resource using life-cycle dredged material management plans that consider regional sediment management needs; dredging frequencies, locations, and quantities; as well as landscape use and change.
- Contaminated sediments, considering the contaminant and degree of contamination, should be evaluated for selected beneficial uses.

- ASCE, in collaboration with its Institutes and sister organizations, should enact a system of technological exchange to ensure that best practices and lessons learned in the beneficial use of dredged material can be leveraged in future dredging activities.

Sediment must be dredged for construction and maintenance of developments such as navigation channels, ports and harbors, and placed in designated locations according to existing laws, regulations, and guidelines.

Many confined dredged material disposal sites are at or near capacity. Development of new sites is expensive and can create environmental impacts. Use of the dredged material in these sites as well as alternative sites specifically designed for beneficial purposes provides a valuable resource, as well as capacity for future dredge disposal activities.

There is an imbalance of sediment throughout the United States that is causing coastal land loss at the same time the Federal government dredges about 250,000,000 cubic yards of sediment annually. Dredged sediment is an invaluable resource that can be used to address sediment imbalances and to mitigate coastal land loss, and its coincident economic, environmental and safety consequences. Dredged sediment should not be wasted. It should be beneficially used as a routine method of business.

Beneficial use of dredged material has been a topic of discussion for years but has not received the emphasis needed to change national dredging practice. As a nation, we need to implement the new federal policy on the beneficial use of dredged material as the standard practice for federally sponsored dredging projects. Establishing its own policy is one way ASCE can encourage and assist the development of effective national policy. Beneficial use of dredged material makes economic and environmental sense. ASCE should promote it, with a strong educational and promotional initiative, for all dredging and disposal activities as a sound business practice and as national policy.

Floodplain Management

ASCE supports protection of natural floodplains and the concept of building disaster resistant communities consistent with sustainable development and holding paramount the public's safety, health, and welfare. ASCE urges governments at all levels to adopt proactive floodplain management policies, particularly in vulnerable coastal lowlands and river bottoms, and supports creative partnering between federal, state and local governments to adopt floodplain management policies and to fund the design and implementation of floodplain management policies and flood mitigation projects in a timely manner.

ASCE urges federal, state, and local governments to inform residents of communities in floodplains of the hazards associated with the development or major redevelopment of communities below sea level or in high-risk, flood-prone areas. Such development is inherently unsustainable and puts the public at significant risk of loss of life and property. The multiple-use of flood prone areas and flood mitigation facilities should be pursued, including river restoration, wetland restoration, aquifer recharge, improvements in habitat, ecosystems, and water quality, recreation and open space use, and incorporation of floodplains into comprehensive watershed management programs.

Development and associated infrastructure in flood-prone areas has increased rapidly as people are attracted to historically fertile floodplains and coastal areas. Even though the benefits of preserving the natural floodplains as flood storage areas and wildlife habitat have been recognized, the floodplains continue to be developed and new inhabitants are subjected to periodic flooding and related devastation, as shown by Hurricanes Katrina and Rita. People living and working in flood prone areas often have developed a false sense of security. Once a flood occurs, residents and businesses often expect government to reduce or eliminate the risk of flooding through large capital projects. These populations need the protection of an efficient floodplain management program implemented before the flood occurs. By recognizing the likelihood of future flooding and the beneficial aspects of the natural floodplain, areas can be protected and communities can become disaster resistant.

Floodplain management includes the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations. Methods for evaluating the benefits and costs of mixed systems allow for the consideration of both tangible and intangible benefits and costs and should permit formulating programs, including both structural and nonstructural elements, which provide the greatest return on society's investment.

Civil engineers are largely responsible for the implementation of floodplain management programs and the design and maintenance of flood mitigation systems. Civil engineers recognize the benefits of both floodplain management and flood mitigation and develop projects to educate the public about the importance of first, preserving the natural floodplain, and second, integrating floodplain regulations and flood mitigation projects into comprehensive floodplain management programs.

Sustainable Development

The civil engineering profession recognizes the reality of limited natural resources, the desire for sustainable practices (including life-cycle analysis and sustainable design techniques), and the need for social equity in the consumption of resources.

ASCE defines sustainability as a set of economic, environmental and social conditions in which all of society has the capacity and opportunity to maintain and improve its quality of life indefinitely, without degrading the quantity, quality or the availability of natural resources and ecosystems. Moreover, sustainable development is the process of converting natural resources into products and services that are more profitable, productive, and useful, while maintaining or enhancing the quantity, quality, availability and productivity of the remaining natural resource base and the ecological systems on which they depend.

To achieve these objectives, ASCE supports the following implementation strategies:

- Promote broad understanding of economic, environmental, political, social, and technical issues and processes as related to sustainable development.
- Advance the skills, knowledge and information necessary for a sustainable future; including habitats, natural systems, system flows, and the effects of all phases of the life cycle of projects on the ecosystem.
- Advocate economic approaches that recognize natural resources and our environment as capital assets.
- Promote multidisciplinary, whole system, integrated and multi-objective goals in all phases of project planning, design, construction, operations, and decommissioning.
- Promote reduction of vulnerability to natural, accidental, and willful hazards to be part of sustainable development.
- Promote performance based standards and guidelines as bases for voluntary actions and for regulations in sustainable development for new and existing infrastructure.

The ASCE Code of Ethics requires civil engineers to strive to comply with the principles of sustainable development in the performance of their professional duties. ASCE will work on a global scale to promote public recognition and understanding of the needs and opportunities for sustainable development. Environmental, economic, social and technological development

must be seen as interdependent and complementary concepts, where economic competitiveness and ecological sustainability are complementary aspects of the common goal of improving the quality of life.

Engineers have a leading role in planning, designing, building and ensuring a sustainable future. Engineers provide the bridge between science and society. In this role, engineers must actively promote and participate in multidisciplinary teams with other professionals, such as ecologists, economists, and sociologists to effectively address the issues and challenges of sustainable development.

Water Conservation

ASCE supports conservation as an essential aspect of water resources management. Water conservation, a part of demand management, is the prudent and efficient use of available sources of supply. There should always be a balance between demand management and the development of new water sources.

ASCE encourages suppliers, regulators, legislators and consumers to support laws, regulations, policies and programs for water conservation that achieve:

- Pricing that better reflects the economic and other values of the resource.
- Reduced waste through accurate accounting of water volume from points of withdrawal to points of sale through metering, leakage control, and other measures.
- Water conservation education.
- Research on efficient water use practices.
- Demand management consistent with the climatology of the region and the availability and ease of development of new sources of water.
- Drought preparedness.

Water is a renewable natural resource. Sound management, consistent with the principles of sustainable development, is required to maintain adequate supplies of water for present and future municipal, industrial, agricultural, hydroelectric and instream needs. Water conservation is a critical component of water resources management. Responsibility for implementation of water conservation measures should rest with the government and/or private entities closest to the people who benefit. Legislation incorporating water conservation into water resources programs must be sensitive to regional conditions. Government agencies and water suppliers need to dedicate additional funds for education and research on effective water conservation practices and techniques, and to facilitate technology transfer and sharing.

Water conservation has been incorporated into federal, state and local water resources management programs. This action resulted in important mutual benefits of conservation for water supply, wastewater flow reduction and energy conservation. By minimizing water waste and loss, water conservation programs help reduce peak demands on water systems and the need to expand water supply and wastewater systems to satisfy those peak demands. Conservation programs must be formulated considering established institutional frameworks and regional and local conditions, and must be based on reliable water use data.

Increased competition for available water supplies indicates the need for more intense water conservation efforts. The challenge is to convince the many beneficiaries of water conservation programs (e.g. people, agriculture, business, fishery, wildlife and recreation interests) that the programs are an essential part of balanced water resources management. Balanced management conserves resources, and is cost-effective and environmentally sensitive.

Water conservation measures are being applied successfully in a number of localities and regions for a variety of beneficial uses. This is especially true in regions with rising demands, with rising costs and where competition for water supplies is most intense. By following long-term effective management practices the public, business and agriculture will be better conditioned to implement water shortage response programs in times of drought or emergency water system outage.

Water Reuse

ASCE supports and encourages wastewater reclamation and reuse. Through the cost-effective reclamation and reuse of water the total water resources available can be utilized more effectively to meet growing water needs by incorporating the principles of sustainable development. ASCE recommends the following.

- The use of non-potable water should be encouraged when it can be provided at a reasonable cost and the public health is protected.
- The safe use of reclaimed water should be maximized as part of any plan to develop new water supplies for non-potable uses where technically and economically feasible to do so.
- Incentives, such as federal and state grants and/or loans, should be made available to local utilities for reclamation planning studies, pilot programs, and research and development.

- Requirements set by regulatory agencies for water reuse projects should have a balanced and sound scientific, environmental, engineering and financial basis.

The demand for water, including the need for water to preserve in-stream uses such as aquatic habitat and water-oriented recreation, is increasing. A portion of this demand can be met with reclaimed water when technically and economically feasible. This is particularly true for areas that may experience water shortages or droughts.

Despite increasing growth and higher economic, social and environmental costs of traditional water supply projects, federal and state financial support for water reuse projects has decreased. Incentives, such as grants and/or loans for reclamation planning studies, pilot programs, and research and development are needed to encourage local utilities to make greater use of reclaimed water.

The use of reclaimed water for public recreation and for the recharge of aquifers for potable supply use is allowed under current practice, and the safety of such use has been successfully demonstrated. Treatment technology is already available, and in some cases fully implemented, to provide safe, reliable non-potable water supplies that can be developed from reclaimed wastewater.

Many productive non-potable uses of water can be served with reclaimed water. Because of its higher nutrient content and availability during drought, reclaimed water is often superior for agricultural and landscape irrigation. Recreation, industrial cooling, and manufacturing can be other appropriate uses. Indirect potable uses, such as ground water recharge, which utilize highly treated reclaimed water and meet appropriate health requirements, are able to extend water supplies in groundwater basins subject to overdraft. Augmentation of potable surface water reservoirs with reclaimed water has also been successful in some areas.

In the competition for development of new water supplies of the highest quality, situations often develop where certain water demands are met with water of higher quality than is needed. Where technically and economically feasible, these demands should be met with reclaimed water.

Hydrologic Data Collection

ASCE urges the federal government to continue and expand a long-term hydrologic data collection program for major watersheds and their associated coastal areas, with funding on a continuing basis sufficient to allow prediction of storm surges, major flood events, and sediment transport as well as to allow

effective management of changes to established hydrogeomorphological processes, that is, the interaction of water and soil through river systems.

Hydrologic data, including associated hydraulic data, are vitally important to water resource planning, regional sediment management, and flood-risk management, as well as the design and operation of water projects. Such data are critical for performing risk assessment and economic analysis properly, and for evaluating the impact of water projects on public health, welfare, safety and the environment. Good, consistent historical data are absolutely essential for the modeling necessary to make accurate predictions. Most importantly, because these data must be collected on a regional basis, this is inherently a federal responsibility.

Many U.S. agencies, in particular the National Weather Service and the U.S. Geological Survey, provide the foundation of the basic data collection program for water in the United States. Inadequate and uncoordinated hydrologic data collection, resulting from budget shortages and neglect, has long-term adverse effects on the efficiency and certainty of planning, design, construction, and operation of water and other projects and results in an unnecessary and significant risk to the public safety.

The lack of adequate data impacts the ability to model, predict and plan for catastrophic events. These events, such as floods and droughts, have obvious impacts on public health, safety and our nation's economy.

Civil engineers rely on hydrological, meteorological and water quality data for integrated watershed management, floodplain management, and regional sediment management, as well as the design of water supply, flood control, navigation, and development projects. Collection, analysis and dissemination of continuous hydrologic data are critical for effective modeling, forecasting and all types of water resource management.

Watershed Management

ASCE supports basinwide water resources management. ASCE encourages government institutions to plan and regulate water on a watershed basis, and supports integrating programs and goals across political boundaries. ASCE believes that effective watershed management is facilitated when the government, the public and the private sector work collaboratively on this issue. Federal legislation defining the goals and standards for watershed managers should permit flexibility and accommodate regional needs.

Legislation authorizing and funding water resource management and planning has typically been written for a specific level of government. It has also focused on individual water resources, rather than the interrelated, hydrologic and environmental system which defines the watershed. As a

result, efforts to manage water resources are often limited and single-purpose. Watershed plans should consider the multiple water resources and aquatic habitats comprising the watershed, and should include consideration of water supply, water quality, water conservation, flood protection, land use and protection of fish and wildlife resources. A key component of watershed management is cooperative partnerships between the stakeholders in the watershed.

Many water problems are not amenable to traditional regulatory approaches. Examples include non-point sources, competition for water supplies, dam safety, flood damage reduction, habitat degradation, aquatic sediments and minor sources. With the watershed approach, full use of modern technologies like remote sensing, geographic information systems (GIS), global positioning satellites, the personal computer and the world-wide web can be brought to bear on our remaining water quality and quantity problems.

Furthermore, the diverse nature of these problems suggests that top-down management and standard setting is an inappropriate way to deal with them. Using the watershed approach, all levels of government, the public and private industry are encouraged to participate in the decision-making and implementation process. In this way, management actions which reflect local and regional viewpoints are inherently incorporated in watershed policy.

Regional Sediment Management

ASCE supports regional sediment management for watershed and coastal zones to ensure ecosystem preservation and sustainable development. Regional sediment management is critical to restoring hydrogeomorphic processes within a watershed, which in turn is important to ecosystem vitality, balance and diversity, particularly in threatened ecosystems such as the Mississippi Delta or the South Florida wetlands. ASCE recommends:

- Government and private entities that develop or execute projects and activities affecting water resources or hydrogeomorphic processes, and related regulatory entities, promote a culture of stewardship and partnering to manage sediments effectively.
- Sediment should be managed as a resource by developing regional sediment inventories and sediment budgets that consider inputs, movements, uses, and outputs throughout the system.
- Governments and stakeholders at all levels should collaborate to establish property rights for sediment, and an appropriate legal mechanism to allocate and transfer sediment resources for different

uses, and to resolve conflicts among multiple competing demands for the same sediment source.

- Proponents of projects and activities that affect sediment resources must work collaboratively with regional stakeholders to mitigate adverse impacts to hydrogeomorphic processes and affected sediment regimes.

Regional sediment management is an approach for managing projects that incorporates the principles of integrated watershed resources management and improved dredged material management. It recognizes sediment as a resource, and the need to consider projects and actions affecting sediment in a regional context.

Sediment movement and deposition on a regional scale are integral to the key hydrogeomorphic processes critical to ecosystem health associated with our nation's waterways and aquatic habitats. Long-term alterations of sediment regimes can significantly modify critical habitat, stress ecosystem integrity and vitality, and could cause regional-scale ecosystem collapse in the future. Degraded ecosystem health translates into increased risk to life and property, as well as increased costs to the nation in addressing related social, economic, and environmental problems. Linking sediment management needs and opportunities can enhance the benefits of multiple projects and activities within a region, both economically and environmentally.

Regional sediment management is critical for preserving and restoring wetlands. It is also important to achieving the goal of restoring and maintaining the chemical, physical, and biological integrity and biodiversity of the nation's waters and associated aquatic habitats. It is integral to effective implementation of the watershed approach to managing our nation's water resources. Regional sediment management integrates actions that affect the erosion, transport, deposition, and removal of sediment in a region. Knowledge of the sediment system in a region is essential for making local water resource project decisions and establishing longer-range strategies. Effective implementation of regional sediment management will restore vital hydrogeomorphic processes with concomitant ecological benefits.

Establishing its own policy on regional sediment management is one way ASCE can encourage and assist the development of national and regional policies, projects and approaches that contribute to integrated watershed resources management.

Emergency and Risk Management by Water Providers

ASCE supports the development of emergency plans by water providers to prevent or minimize the disruption of service during emergencies. Such

emergency planning must address resilience, mitigation, and emergency response measures to minimize the risk of water supply disruption due to any cause, whether naturally occurring or man-made.

Such emergency plans should:

- Be developed in conjunction with neighboring water utilities in order to ensure mutual aid when needed;
- Include routine reviews and updates as required; and
- Incorporate resilience and sustainability in design of new, modified, and replacement water systems

While the fundamental responsibility for development of such plans rests with the water-providing organization, stakeholders should be involved. Where possible, such plans should include water-sharing between providers, on a regional basis, to reduce individual risk. Federal and state governments should encourage such planning and provide technical assistance to water providers in the development of such plans. Since emergencies often impact other utility providers whose ability to operate may be impaired simultaneously, it is important to coordinate mitigation and response with these providers as well as with local emergency management planners.

Measures to prevent service disruption should be an essential part of the plan. Plans should assess risks and plan for emergencies in a way that provides equitable distribution of risk and resources throughout the service area. Response plans should be tested periodically to ensure that they are meeting current needs and that personnel are prepared to implement them. Potential problems should be identified and dealt with in advance to achieve equity and continuation of service during an emergency. Such planning will require examination of long-range solutions that involve capital investment or inter-agency agreements, short-term response measures, and issues of risk and vulnerability of sources, treatment plants and transmission systems.

Water providers must be prepared to meet situations in which supply, treatment and power supply capabilities are suddenly threatened. Design of new, modified and replacement water systems must incorporate resilience. Planning for building supplementary sources of supply, redundant transmission mechanisms, emergency water distribution, or arranging for resource-sharing can involve significant investment and long lead times. Advance planning by water providers will help to mitigate impacts to their systems and disruption to service in the event of such situations.

The possibilities of service interruption through loss of the physical integrity of water systems becomes more significant as systems age or are exposed to natural disasters such as droughts, floods, earthquakes, landslides

and hurricanes. In addition, the vulnerability of water supply systems to terrorist attack, leading either to physical destruction of the system or to a contamination event, is a potential risk that has only recently been addressed by most water providers. Since some emergencies are likely to involve the need to coordinate with other services and utilities, the plans should be developed jointly with other public and quasi-public organizations that are likely to be impacted by an emergency.

Non-Point Source Water Quality

ASCE supports efforts to mitigate pollution from non-point source runoff into rivers, lakes, wetlands, riparian habitats, coastal and ocean environments, and ground water basins. The development, for all sectors of society, of educational programs which influence the quality of waters is encouraged. Furthermore, ASCE supports programs or methods to identify best management practices (BMPs) to control non-point source pollution and to implement them at the federal, state, and local levels. ASCE also supports the establishment of water-quality standards for surface and ground water. ASCE supports the improvement of water quality through the use of the most recent models for the development of a federal Total Maximum Daily Load (TMDL) regulation. For impacted ground water basins, ASCE supports the implementation of ground water basin remediation plans to restore the water quality of the basin.

The U.S. Environmental Protection Agency (EPA) has identified non-point source pollution as the nation's largest remaining source of water-quality problems. Non-point source pollution is caused by many sources, including agriculture, forestry, grazing, septic systems, mine runoff, recreational boating, urban runoff, construction, physical changes to stream channels, and habitat degradation. Individuals in their daily activities also contribute to non-point source pollution problems. EPA has reported that agricultural and urban runoff are two of the leading contributors to non-point source pollution.

Inadequate management practices that fail to prevent, eliminate, or reduce the effects of non-point source pollution significantly impact water quality. Polluted waters eventually move through lakes and larger rivers and enter the estuaries and near-shore environments with increasing detrimental effects. Education is the first step in mitigating poor practices, followed by the establishment and implementation of BMPs.

Ground water basins are also polluted by non-point sources. Ground water is becoming a critical component of water-supply portfolios throughout the country as communities search for sustainable and reliable water supplies to meet the demands of industry and agriculture while ensuring that surface-water base flows are maintained to meet environmental requirements for aquatic habitats. Ground water aquifers have been the source for much of the

domestic and stock water supply in rural communities and are now becoming a critical component of water supply in urban areas. Protecting the quality of ground water should be viewed and treated the same as surface water in the control of non-point source pollution.

Civil engineers provide leadership and direction in designing and implementing watershed management projects to control point and non-point source pollution. Civil engineers are involved in the design of erosion and runoff control systems, irrigation and drainage systems and livestock waste management systems. Civil engineers are also involved in water quality and hydrologic modeling, which can identify problem areas and subsequently develop control strategies.

One of ASCE's objectives is to promote technologies and practices that sustain or improve the quality of life. Civil engineers play a major role in the design and construction of facilities and infrastructure that can eliminate, prevent, or reduce point- and non-point source pollution to our nation's rivers, lakes, ground water basins, and oceans. In order to control non-point source pollution throughout the country, ASCE believes that federal agencies, such as the Environmental Protection Agency and the U.S. Department of Agriculture, as well as state and local agencies, must work together to establish BMPs and establish appropriate legal mechanisms to ensure such practices are implemented.

Gulf of Mexico Hypoxia Program

ASCE supports efforts to reduce the incidence and extent of hypoxia in the northern Gulf of Mexico. ASCE urges continued support for the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, and supports the timely development of an action plan to reduce, mitigate, monitor and control the hypoxia.

Hypoxia, the aquatic condition in which levels of dissolved oxygen are so low that aquatic life is disrupted, has recently been found to exist in large areas of the northern Gulf of Mexico during summer months. Three major anthropogenic contributing factors to this problem have been identified, including channelization of the Mississippi River, alterations to the landscape which removed much of the "buffer" for runoff in the Mississippi and its tributaries and dramatic increases in fertilizer nitrogen input into the river.

The effects of hypoxia on the aquatic ecosystem are numerous and include loss of abundance and biomass of fish and shrimp, elimination of bottom-dwelling organisms, mortality of zooplankton with consequences further up the food chain, and the proliferation of opportunistic species such as those responsible for harmful algal blooms.

The man-made modifications of the Mississippi River and its basin have resulted in the river serving as a channel for delivering detrimental nutrient-enriched waters to the Gulf of Mexico, where they stimulate hypoxia conditions. Two major methods to reduce the addition of nutrients to the Gulf are available: 1) reducing inputs of nitrogen to streams and rivers in the Basin; and 2) increasing the acreage of wetlands and riparian buffers within the Basin to allow natural denitrification (transformation of nutrient nitrogen to harmless nitrogen gas) to occur.

Cooperation on Water Resource Projects

ASCE urges federal, state and local governments, and private enterprise to cooperate in planning, designing, constructing, financing, maintaining, and operating sustainable water resource projects. All entities should cooperate on legislative and regulatory affairs involving interstate and intrastate watersheds.

Since there is competition for water, sound management of our water resources is essential to maintain a dependable supply of water for competing demands such as navigation, flood control releases, irrigation, habitat preservation, conservation of drinking-water sources, and other significant uses. Water follows topographical rather than political boundaries, leading to an overlapping of management interests.

One of ASCE's objectives is the wise management of water resources. Since many entities play roles in water management, their cooperation is in the best interest of the nation and its citizens. Cooperation can limit the duplication of effort, resolve conflicting objectives and eliminate excessive delay, unnecessary expenditure and adverse results.

ASCE was founded in 1852 and is the country's oldest national civil engineering organization. It represents 140,000 civil engineers individually in private practice, government, industry, and academia who are dedicated to the advancement of the science and profession of civil engineering. ASCE is a non-profit educational and professional society organized under Part 1.501(c) (3) of the Internal Revenue Code.

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Name: **Miyoko Sakashita**

Organization: Center for Biological Diversity

Path: http://edit.whitehouse.gov/sites/default/files/webform/comments_nop_implementation_plan_2012.pdf

Comment: Please see attachment.



February 27, 2012

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

<http://www.whitehouse.gov/webform/submit-comments-draft-implementation-plan>

Re: National Ocean Policy Implementation Plan

It is great that this administration is providing leadership on ocean and coastal issues. Our support of the Implementation Plan, however, hinges on needed changes to the plan that will bring it in harmony with existing law and will have greater potential of conserving our oceans for generations to come.

Specifically, as detailed in our prior comments on the National Ocean Policy and Strategic Action Plans the Implementation Plan must be revised to address the following concerns:

1. Plan fails to include a strategy for preventing climate change and ocean acidification
2. Plan overlooks the importance of full implementation and compliance with existing laws including the Clean Water Act, National Marine Sanctuary Act, Clean Air Act, Marine Mammal Protection Act, Coastal Zone Management Act and Endangered Species Act, as well as other laws that govern the conservation and management of ocean ecosystems.
3. Plan should include full implementation of National Marine Sanctuary Act and efforts to lift defacto moratorium on new sanctuaries
4. Plan should develop clear goals for the observation and research actions so that it will achieve conservation benefits
5. The goal of coordinating permitting requirements for aquaculture permitting efficiency is misguided. Instead, the goal should be to protect the ocean and coastal ecosystem and fully implement environmental laws with respect to aquaculture.
6. Implementation of marine spatial planning must adequately provide for conservation of the ocean ecosystem and marine wildlife
7. Conservation of coral reef ecosystems will require more than coordination and monitoring, but will also require proactive steps to prevent ocean acidification, global warming, overfishing, and pollution. The best way to achieve these goals is full implementation of existing laws.

Most importantly, responses to ocean acidification and climate change are essential to address in the ocean policy; draft plan fails to commit to true action to address these issues. First and foremost, the plans must emphasize the prevention of dangerous levels of ocean acidification and climate change. Adaptation efforts discussed in the plan will not be effective or have long-term success without comprehensive and rapid mitigation of greenhouse gas emissions to sustainable levels that do not jeopardize marine ecosystems.

To address ocean acidification and ocean climate change the implementation plan should:

- Discuss comprehensive approaches to reducing carbon dioxide pollution to prevent the worst effects of ocean acidification and ocean climate change.
- Develop baselines and monitoring of ocean acidification and its ecological consequences.
- Fully implement environmental laws such as the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, the Magnuson Stevens Act, the Marine Mammal Protection Act, the Endangered Species Act, among others to protect our oceans from ocean acidification and dangerous climate change. Several of these laws can be brought to bear to protect marine habitat and species and to reduce carbon dioxide emissions.
- Protect climate refugia. Identify and protect areas that show resistance and resilience to climate change and ocean acidification.
- Restore impacted ecosystems in order to increase resilience. Restore and preserve the structural complexity, biodiversity, and ecosystem function of coastal and marine ecosystems. Restore degraded coastal ecosystems, including tidal wetlands and estuaries.
- Minimize or eliminate non-climate stressors to increase resilience of species and ecosystems to climate change. In addition to developing new strategies to promote adaptation, comprehensively improving and implementing the range of existing conservation strategies for coastal and ocean species and ecosystems will be critical to increasing their resilience.
- Prevent overexploitation of marine species. Factor in the impacts of climate change and ocean acidification on species and ecosystems when setting harvest quotas: lower harvest quotas and use the precautionary principle by maintaining an additional buffer in quotas). Eliminate trawling, long-lining, and other nonselective fisheries that have high bycatch mortality. Protect forage fish, krill, and other species at the base of the food web, and restore large predatory fish to maintain ecosystem health.
- Reduce pollution of coastal and marine ecosystems. Improve wastewater treatment and sewer discharge; strengthen regulations for controlling agricultural and urban runoff; manage nutrient sources and wetland treatment of nutrients to limit hypoxia and eutrophication; restore marshes that clean runoff; locate some reserves away from major sources of terrestrial pollution; link marine reserves with terrestrial reserves.
- Prevent further habitat loss.
- Control invasive species and prevent new introductions.

Finally the best-available science should be used to inform a comprehensive approach to reducing greenhouse gas emissions to levels that avoid deleterious and irreversible impacts to ocean ecosystems. Several important processes delay the full impacts of greenhouse gas emissions and make climate impacts, including sea level rise, temperature rise, and ocean acidification, extremely long-lasting.

Sincerely,

Miyoko Sakashita
Oceans Director

Name: **Jim Lanard**

Organization: Offshore Wind Development Coalition

Path: http://edit.whitehouse.gov/sites/default/files/webform/offshorewinddc_comment_-_nop_implementation_plan_-_27feb12.pdf

Comment: Please see attached comments



February 27, 2012

VIA NATIONAL OCEAN COUNCIL WEBSITE

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 Draft Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members:

Thank you for the time and effort that you, your staff, and the agency participants have dedicated to developing the Draft National Ocean Policy Implementation Plan. The Draft Implementation Plan is an important step forward in advancing the National Ocean Policy (NOP) and helping to create healthier oceans and coasts and stronger economies for our coastal communities. The Offshore Wind Development Coalition (OffshoreWindDC) and the American Wind Energy Association (AWEA) support this process to craft and implement strategies to address the most pressing challenges to the protection and use of our ocean resources.

OffshoreWindDC represents offshore wind developers and service providers, including environmental consulting firms, law firms, turbine manufacturers, and other supply-chain businesses. OffshoreWindDC's mission is to advocate for policies that support development of a new clean energy industry that will create jobs and economic development opportunities while generating emission-free energy. AWEA is the national trade association representing a broad range of entities with a common interest in encouraging the deployment and expansion of wind energy resources in the United States. AWEA's members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers, and their advocates.

During the development of the NOP, many of our members commented both individually and collectively on how the policy could be tailored to ensure the responsible development of our nation's most significant ocean renewable energy resource, offshore wind. The development of offshore wind resources can play a vital role in the nation's effort to restructure its electrical power sector in a manner that increases employment and manufacturing opportunities, improves national security, reduces price volatility, and combats climate change. In general, our members

have been supportive of the Administration's efforts to create a national oceans policy and implement coastal and marine spatial planning in U.S. waters, and we continue to participate actively in the development of the policy. Our oceans and coasts provide hundreds of billions of dollars of economic benefit each year, and emerging clean energy technologies, such as offshore wind, hold the promise of thousands of new and sustainable jobs. In order to gain the full economic and environmental benefits that can come from the implementation of the NOP, the National Ocean Council, and every relevant Federal agency must be engaged in implementation of the NOP to the full extent of their statutory responsibility.

The Draft Implementation Plan shows great strength in providing a cohesive framework for effectuating the National Ocean Policy, creating an action-oriented plan that provides for government accountability, and establishing specific Federal agency commitments. These are all critical factors to the responsible and timely development of our nation's offshore wind resources. We need to continue to take important steps, such as, approval a final Implementation Plan, to ensure the NOP maintains the momentum established to date and capitalizes on the expertise of the many stakeholders already engaged.

Given the extensive screening studies performed by the U.S. Department of the Interior Bureau of Ocean Energy Management (BOEM) of the Wind Energy Areas proposed for offshore wind, including a Programmatic Environmental Impact Statement (EIS), many state ocean management plans and studies, and Environmental Assessments under the National Environmental Policy Act (NEPA) before leasing and site assessment, as well as anticipated full EIS's prior to construction of any offshore wind farm, we believe the Draft Implementation Plan accommodates the responsible development of offshore wind while moving marine spatial planning forward.

Another critical component of moving the NOP forward is ensuring adequate funding for data collection, stakeholder engagement, administrative needs, and other vital aspects of the program. We urge the National Ocean Council to provide funding to regional ocean partnerships best able to use the resources of the regional planning bodies and enable stakeholder participation. Offshore wind developers in the New England and Mid-Atlantic regions have already made significant investments in the development of their projects, and it would be good for them to interact with the regional planning bodies.


The NOP is founded on sound science; open and transparent public and stakeholder engagement; protection and restoration of habitat and wildlife populations; and federal, state, and local government collaboration. We agree with the goal of enduring environmental stewardship of our ocean, coastal, and Great Lakes ecosystems, as this stewardship is the foundation for healthy communities, economic opportunity, and a secure nation.

We believe the National Ocean Policy can both bring clarity to the management of our oceans and advance the growth of the offshore wind industry. We urge the National Ocean Council to move quickly to enact the Implementation Plan so that protection of marine ecosystems and orderly and economically- and environmentally-sustainable development of ocean resources, in a manner that respects and minimizes conflicts with existing users, can be ensured. We are eager

to support our nation's efforts to create more jobs for U.S. workers and think that thoughtful implementation of the NOP will help achieve that goal.

Thank you for your consideration. Please feel free to contact us with any questions regarding our comments.

Sincerely yours,



Jim Lanard
President
Offshore Wind Development Coalition



Tom Vinson
Senior Director of Federal Regulatory Affairs
American Wind Energy Association

Name: **Steve Davies-Sigmund**

Organization:

Path:

Comment: Dear Chairs Sutley and Holdren and National Ocean Council Members:

The recently released Draft National Ocean Policy Implementation Plan is a giant step forward in advancing the National Ocean Policy and helping to create healthier oceans and coasts and stronger economies for our coastal communities. The Plan shows great strength in providing a cohesive framework for National Ocean Policy implementation and being an action-oriented plan that provides for government accountability. As you move to finalize this plan, please consider the following recommendations:

Protecting, maintaining and restoring the health of our oceans, coasts and Great Lakes must be of primary importance with an emphasis to achieve conservation milestones that can provide immediate ecological benefit such as the protection and restoration of coastal and marine habitat for priority species;

Ensure the plan does not overlook needed new actions and does not only propose existing government plans and programs;

Produce an implementation status report every two years that notes progress on reaching ecological indicators and the actions and milestones in the Plan; and

Fully utilize existing legal authorities to implement the National Ocean Policy.

The National Ocean Council should also prioritize needed funding for regional ocean partnerships in those regions which are best prepared to begin regional planning bodies and convene stakeholder participation. Regional ocean partnerships can create the best value of scarce federal funding by bringing federal, state, tribal, scientific and non-governmental entities together to start to address ocean management challenges.

The National Ocean Policy is founded on sound science, an inclusive and transparent public and stakeholder engagement process, the protection of habitat and wildlife populations, and encourages government at all levels to work together. The Draft Implementation Plan reflects over two years worth of hard work, investment and commitment made by state governments, commercial and industrial ocean users, universities and scientists, 27 federal agencies and departments and tens of thousands of citizens across the country to move our oceans toward better ocean management. I urge the National Ocean Council to operationalize the National Ocean Policy as soon as possible through this Implementation Plan with the goal of creating the enduring environmental stewardship of our ocean, coastal and Great Lakes ecosystems.

Name: **Laura Cantral**

Organization: Meridian Institute

Path: http://edit.whitehouse.gov/sites/default/files/webform/joci_comments_on_draft_nop_implementation_plan_final.pdf

Comment: Comments from the Joint Ocean Commission Initiative are attached.

**The Joint Ocean
Commission Initiative
Leadership Council**

Co-Chairs

The Honorable
William Ruckelshaus

The Honorable
Norman Mineta

Members

The Honorable
Samuel Bodman, Ph.D.

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Admiral James D.
Watkins, U.S. Navy
(Retired)

The Honorable Leon E.
Panetta

Chair Nancy Sutley
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Director John Holdren
Office of Science and Technology Policy
Executive Office of the President
725 17th Street Room 5228
Washington, DC 20502

February 27, 2012

Dear Chair Sutley and Director Holdren,

On behalf of the Joint Ocean Commission Initiative, we applaud the National Ocean Council on its recent release of the *Draft National Ocean Policy Implementation Plan* (draft plan). We strongly support the National Ocean Policy, and the draft plan is an important step toward providing needed specificity and clear, actionable guidance about coordinated implementation of the policy. We are pleased to review a draft plan that offers a cohesive framework for National Ocean Policy implementation and a sound basis for development of an action-oriented final implementation plan that enhances government accountability by establishing specific commitments for agency responsibility and providing timeframes for specific actions. We also look forward to a final plan that commits our nation to better understanding our oceans through regular and long term observations and robust scientific analyses. Improving our understanding of ocean ecosystems will be essential to better managing these resources that are so central to our nation's wellbeing and economy.

Fostering an enduring National Ocean Policy

The National Ocean Policy aims to replace the current single-sector management focus with an integrated, science-based, and efficient approach to managing our coastal and ocean ecosystems. We urge the National Ocean Council to move forward with implementation quickly and decisively to ensure that the promise of the National Ocean Policy will endure through ever-changing political and economic circumstances. Institutionalizing the National Ocean Policy in a timely manner by engraining it in agency policies and processes, as well as agency culture, will be critical. In support of this goal, we recommend that the final implementation plan provide additional detail about how federal agencies will coordinate on the actions outlined in the draft plan and identify resources to support the actions. As the final plan is completed, we encourage the National Ocean Council to require the relevant federal agencies to work together expeditiously to identify further specifics about the actions they will take, how they will coordinate in taking those actions, and what resources can be brought to bear to achieve specific goals. Further, we recommend development of an annual work plan that identifies specific activities, outlines the roles of the various agencies and

partners, and identifies specific performance measures to track progress on the workplan. Moving forward decisively yet thoughtfully will be essential to success.

Supporting states and regions

The National Ocean Policy rightly acknowledges the critical importance of states and regions in our national effort to better manage ocean and coastal ecosystems and economies. In fact, an important purpose of the policy is to coordinate federal support of state-level ocean management efforts. Innovative work is already being conducted in the states and regions, often through collaborative multi-state regional ocean partnerships that are supported by federal agencies. These efforts make a real difference in ocean ecosystems and coastal communities, protecting the resources on which so many jobs depend and bolstering local and state economies. Through these collaborations and other actions, states and regions are taking a leadership role in implementing the National Ocean Policy. Their leadership going forward will be essential for many reasons, including that many on-the-ground actions called for in the draft plan will require collaboration among states, federal agencies, local governments, and tribes in order to fulfill objectives of the National Ocean Policy. For these reasons, the Joint Initiative recommends that the National Ocean Council provide greater detail in the final implementation plan about how federal agencies will enhance their support for multi-state regional ocean partnerships.

Demonstrating renewed efficiency in decision making

The ocean-related business community is another key constituency whose support will be essential to the long-term success of the National Ocean Policy. A major promise of the policy for these stakeholders is more coordinated and efficient agency decision making about uses of ocean resources and ocean space. In our view, many in the business community will remain wary of change until they see a clear connection between the efforts of the National Ocean Council and improvement in the way that government makes decisions about ocean uses. For this reason, we recommend that the National Ocean Council demonstrate the regulatory efficiencies that will be gained through National Ocean Policy implementation through an initial focus on specific sectors or decision making processes. The draft plan calls for bolstering the efficiency of permitting for aquaculture facilities as a starting point for such an effort. While laudable, we encourage the National Ocean Council to expand those efforts by focusing a demonstration effort on an additional sector of the ocean economy that currently makes a major contribution to the broader United States economy. The effort could be advised by a diverse group of stakeholders that hold interests in regulatory efficiency as well as protection of ecosystem health. We believe both these goals can be achieved and that solutions can be found that win support from across broad viewpoints. Such an effort would allow the Administration to showcase ocean policy reforms as part of its national effort to protect and create jobs, improve government decision making processes, and achieve economic growth while still protecting the health of the ecosystems on which all Americans depend.

Facilitating effective ocean planning

Spatially based planning in our oceans is one tool called for by the National Ocean Policy that can foster greater efficiency and better decision making about use and conservation of ocean resources. We

believe that more rational ocean planning can prepare our nation for the ocean economy of the future. It can lead to job creation, ecosystem protection, and greater government efficiency through leveraged resources, and in time be supported by the full diversity of ocean stakeholders. This vision can be realized if ocean planning is carried out with strong stakeholder engagement, robust coordination among federal agencies and states, and timely, clear decision making at the federal level. Additionally, the Joint Initiative believes the use of this tool should be focused on fostering partnerships, leveraging resources, and supporting regional priorities that are grounded in the needs of local communities. The ocean planning effort should also clearly enhance mechanisms for state participation and input into federal decision making and priority-setting processes.

To generate the needed support for ocean planning, the National Ocean Council should focus its efforts in those regions that are ready and eager to participate, including those that have robust existing multi-state regional ocean partnerships. The National Ocean Council should also play a strong leadership role where necessary in helping federal agencies to overcome inter-agency disagreements about how to proceed and ensure they are offering a unified, enthusiastic, and collaborative presence to state partners. This will be easier in some regions than others and may in some cases require the National Ocean Council to guide the federal interagency effort with a firm and steady hand.

Understanding and managing the Arctic

The Arctic is a resource rich, ecologically vulnerable, and strategically important area of the world that the United States, a major Arctic nation, has significant interest in better understanding and managing. The region serves as a bellwether for how our nation and the international community will address a variety of contentious and highly important issues in the coming years related to national security, global stability, climate change, ocean ecosystem protection, and safeguarding vulnerable human communities. We applaud the actions in the draft plan related to enhancing our understanding of physical and biological changes underway in the Arctic ecosystem as well as national and international capabilities for emergency response in the region. We urge the National Ocean Council to maintain a sharp focus on the Arctic region in the coming years and ensure that all available agency resources are brought to bear in a coordinated way to ensure the United States is protecting its economic and national security interests in the region, as well as working with international partners to protect this shared ocean ecosystem.

Emphasizing stakeholder engagement

We continue to emphasize the importance of strong stakeholder engagement as the National Ocean Council leads the effort to implement the National Ocean Policy. This will require providing clear and meaningful opportunities for input and feedback on the implementation process from states and the full diversity of stakeholders. It will also require the clear communication of coordinated messages from across federal and state entities, and, in particular, will require coordination with the existing multi-state regional ocean partnerships to ensure messages are effective, accurate, and delivered through the most appropriate tools to reach stakeholders and key audiences. As a first step, the development of a short, concise version of the final implementation plan will be needed so that the information is accessible and easy for a wide variety of stakeholders to understand.

Prioritizing and coordinating science, research, and ocean education efforts

Implementation of the National Ocean Policy should be grounded in sound science and the Joint Initiative applauds progress currently being made on the actions outlined in the draft plan related to enhancement of ocean observation, mapping, and data collection and management efforts. We encourage the National Ocean Council to move more quickly to complete the Ocean Research Priorities Plan than the timeframe outlined in the draft plan so that decision makers can appropriately prioritize funds for ocean research needs in this difficult budgetary climate. We also recommend emphasis in the final implementation plan on encouraging multi-agency collaboration on ocean science and research efforts through expanded use of the National Ocean Partnership Program, an effective mechanism for coordinating resources across agencies and focusing them on our nation's top ocean science priorities. While the draft plan discusses the importance of ocean observations and we recognize our nation's current budgetary constraints, we continue to urge creation of an Integrated Ocean Observation System that can inform federal, state, and local decision making that impacts ocean ecosystems. Finally, in order to encourage the development of the next generation of ocean scientists and enhance the public's understanding of ocean issues, we urge the National Ocean Council to leverage the existing resources of private not-for-profit informal science education providers, as well as to ensure ocean content is included in the next generation of science standards.

Using resources creatively

Meaningful progress will be difficult to achieve without sufficient resources. And while these times of fiscal austerity make allocation of new funds for programs explicitly connected to National Ocean Policy implementation challenging to secure, states and stakeholders who are supportive and ready to move forward need to see a strong commitment from the Administration for the National Ocean Policy. For this reason, we urge the National Ocean Council to work to identify existing federal funds that can be repurposed and resources that can be leveraged across agencies to support implementation priorities. Agencies should also engage closely and collaboratively with states and stakeholders to identify partnerships that can be enhanced with little or no new funding. Trying times call for creativity and innovation, and we urge the National Ocean Council to lead a robust effort to make the most of every resource available to ensure our oceans and coasts continue to support American jobs and quality of life into the future.

We appreciate the opportunity to provide input to the draft plan and urge the National Ocean Council to move quickly to finalize the plan and proceed with implementing the National Ocean Policy in a timely manner. The Joint Initiative stands ready to support and assist you in this important effort.

Sincerely,



William Ruckelshaus
Co-Chair, Joint Ocean Commission Initiative



Norman Mineta
Co-Chair, Joint Ocean Commission Initiative

Name: **Joe Tyburczy**

Organization: PISCO (Partnership for Interdisciplinary Studies of Coastal Oceans)

Path: http://edit.whitehouse.gov/sites/default/files/webform/pisco_comments_nop_implementation_plan02.27.2012.pdf

Comment:



PISCO

Partnership for Interdisciplinary Studies of Coastal Oceans

Campuses

Oregon State University (OSU)

University of California,
Santa Cruz (UCSC)

Stanford University,
Hopkins Marine Station

University of California,
Santa Barbara (UCSB)

Principal Investigators

Jack Barth (OSU)

Carol Blanchette (UCSB)

Mark Carr (UCSC)

Jennifer Caselle (UCSB)

Francis Chan (OSU)

Robert Cowen (Univ. Miami)

Mark Denny (Stanford)

Steve Gaines (UCSB)

Margaret McManus (UCSC, Univ. Hawaii)

Bruce Menge (OSU)

Steve Palumbi (Stanford)

Pete Raimondi (UCSC)

Robert Warner (UCSB)

Libe Washburn (UCSB)

Program Coordinator

Kristen Milligan (OSU)

Policy & Outreach

Joe Tyburczy (OSU)

Emily Saarman (UCSC)

www.PISCOweb.org

February 27, 2012

The Honorable 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 Draft Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members,

The Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO) appreciates the opportunity to provide input on the Draft National Ocean Policy Implementation Plan (Plan). PISCO is a research consortium involving marine scientists and four universities along the US West Coast (Oregon State University, Stanford University, University of California Santa Cruz, and University of California Santa Barbara). The overall scientific program is directed by fourteen scientists and involves over one hundred staff, postdoctoral researchers and graduate students (www.piscoweb.org).

The PISCO consortium supports the broad goals of the National Ocean Commission (NOC) to improve stewardship of ocean and coastal resources and to promote vibrant, sustainable coastal communities through an open, transparent process and extensive stakeholder engagement. We are pleased to note the Plan's emphasis on science, and its focus on the need not only to fill knowledge gaps by conducting new research, but to gather existing research, and to compile this information into publicly available databases in formats useful to policymakers and stakeholders.

PISCO also endorses the Plan for its definition of Ecosystem Based Management (EBM), the adoption of EBM as a guiding principle that should be integrated into all the other priority objectives of the National Ocean Policy (NOP), and the prioritization of EBM goals into the awarding of Federal grants. PISCO also appreciates the Plan's acknowledgment of Coastal and Marine Spatial Planning (CMSP) as a process that can be used to help achieve EBM, not a goal in itself. Additionally, we believe that EBM is advanced by monitoring both of species that interact directly with targeted fishes (predators, prey, competitors), as well as species that are indicators of ecosystem functions.

The PISCO consortium commends the Plan's recognition that non-Federal partners can play important roles. PISCO is pleased to offer any support, knowledge, and expertise that will advance the goals of the Plan. In particular:

- PISCO is a unique, long-term (10+ year), multidisciplinary monitoring and experimental collaboration focused on the nearshore oceanography and ecology of intertidal and subtidal rocky reefs along the entire California Current Large Marine Ecosystem. We believe these data will provide an invaluable baseline for EBM, for informing Coastal and Marine Spatial Planning, and for distinguishing the ecosystem impacts of human activities from natural variation.
- As a large, multi-institution collaboration, PISCO has experience in data management including: development of databases and data standards to handle disparate types of information (biological, physical, chemical) across multiple investigative units, as well as providing access to these data in a useful, easily-understood format. We are working toward the even more challenging objectives of synthesizing these data to create effective decision-making tools and derived data summaries within the timeframes necessary for management and policy-making.

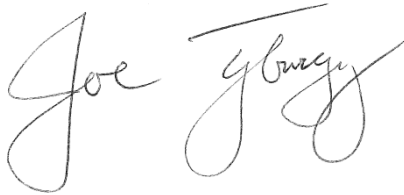
While PISCO agrees that partnerships are an effective way to leverage limited resources, we also re-emphasize that increased funding for nearshore interdisciplinary research and long-term monitoring is essential to generate the type of information needed to implement and inform the NOP. One way for the US to support the necessary unified programs is through the establishment of a national ecosystem-based ocean science program that can support and leverage the existing innovation at our nation's Universities, public agencies, and other centers. The Plan calls for numerous objectives that would contribute to such a program including: taking inventory of projects that use EBM; a standardized ecosystem monitoring network; targeted research to determine impacts of climate change, ocean acidification, and cumulative stressors; a centralized, publicly accessible database; and the participation of non-Federal partners. We suggest explicitly tying these objectives together. To this end, we recommend that an advisory panel of experts from existing programs be convened to scope viable models for an effective national ecosystem-based ocean science program, which would further support our nation's goals of cost-effective, innovative, and meaningful science for marine resource management. A coordinated national ecosystem-based ocean science program would also address the present needs of multiple agencies and their mandates by providing more systematic collaboration, strategic use of financial resources, and integration of effort.

Thank you for this opportunity to provide input on NOP Implementation Plan.
We look forward to future discussions as the process continues.

Sincerely,

A handwritten signature in black ink that reads "Kristen Milligan". The signature is written in a cursive style with a long horizontal flourish at the end.

Kristen Milligan
PISCO Program Coordinator, Oregon State University

A handwritten signature in black ink that reads "Joe Tyburczy". The signature is written in a cursive style with a long horizontal flourish at the end.

Joe Tyburczy
PISCO Policy Coordinator, Oregon State University

A handwritten signature in black ink that reads "Emily Saarman". The signature is written in a cursive style with a long horizontal flourish at the end.

Emily Saarman
PISCO Policy Coordinator, University of California, Santa Cruz

Name: **James Tolbert**

Organization: National Caucus of Environmental Legislators

Path: http://edit.whitehouse.gov/sites/default/files/webform/ncel_member_comments_to_national_ocean_policy_letter.pdf

Comment: The National Caucus of Environmental Legislators is made up of more than 900 legislators with representation in all 50 states and the province of Ontario. Caucus member Senator Kevin Ranker circulated the attached letter to NCEL members for sign-on. Please do not hesitate to contact me if you have additional questions.



Washington State Senate

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Senator Kevin Ranker
40th Legislative District

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February 27, 2012

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 Draft Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members,

As coastal and Great Lakes state legislators, we thank you for the time and effort that you, your staff, and the agency participants have dedicated to developing the National Ocean Policy (NOP) Draft Implementation Plan. The Draft Implementation Plan is a significant step forward in advancing the NOP foundation of science-based stewardship focused on creating stronger economies for our coastal communities by ensuring healthier oceans and coasts.

Our coasts and oceans provide hundreds of billions of dollars of economic benefit each year through shipping, fishing, development and recreation and tourism. In addition, emerging clean energy technologies, such as offshore wind, hold the promise of thousands of new and sustainable jobs. The Draft Implementation Plan shows great strengths in providing a cohesive framework for National Ocean Policy implementation, creating an action-oriented plan that provides for government accountability and establishing specific commitments for agency responsibility. The need for greater federal coordination among agencies, as well as with states and regions, cannot be over emphasized. Our capacity to use state funds to leverage federal resources to fulfill NOP objectives are compromised by divergent demands of federal agencies. Given that most on-the-ground actions called for in the

Draft Implementation Plan will require action in state coastal zones, enhancing the federal-state partnership is crucial to the success of the National Ocean Policy.

We urge the National Ocean Council to prioritize the following as the Draft Implementation Plan is completed:

- Provide greater emphasis on enhancing the mechanisms for state participation and input into federal decision making and priority-setting processes;
- Recognize and support where appropriate existing state and regional efforts;



Washington State Senate

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- Establish regional planning bodies in those regions actively pursuing interstate collaboration;
- Support regional ecological assessments to inform and guide federal, state and local decision-making impacting state and federal waters;
- Provide additional or “repurposed” funding to support NOP implementation priority objectives since progress will be difficult to achieve without a commitment of resources. Specific funding priority should be given to supporting the regional planning process;
- Protecting, maintaining and restoring the health of our oceans, coasts and Great Lakes must be of primary importance with an emphasis to achieve conservation milestones that can provide immediate ecological benefit such as the protection and restoration of coastal and marine habitat for priority species;

The National Ocean Policy is founded on sound science, an open and transparent public and stakeholder engagement process, federal, state, and local government collaboration, and a renewed commitment to fulfilling our stewardship responsibilities as population and economic growth along the nation’s coastline continues. We urge the National Ocean Council to move quickly in enacting the National Ocean Policy Implementation Plan with the goal of creating healthy communities, increased economic opportunities and a secure nation.

Sincerely,

Senator Kevin Ranker
Washington State Senate

Senator Donald McEachin
Minority Caucus Chairman
Virginia State Senate

Senator Jackie Dingfelder
Chairwoman, Environment and Natural Resources
Oregon State Senate

Senator Diane Rosenbaum
Senate Majority Leader
Oregon State Senate

Senator Richard Devlin
Oregon State Senate

Senator Laurie Monnes Anderson
Oregon State Senate

Senator Floyd Prozanski
Oregon State Senate

Senator Christine Rolfe
Vice-Chair, Environment Committee
Washington State Senate



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Senator Nick Harper
Washington State Senate

Senator Fran Pavley
Chairwoman, Natural Resources and Water
California State Senate

Senator William Brownsberger
Chairman, Joint Committee on Public Service
Massachusetts State Senate

Senator Patricia Jehlen
Massachusetts State Senate

Senator Chris Larson
Wisconsin State Senate

Representative Michael Dembrow
Oregon House of Representatives

Representative Alissa Keny-Guyer
Oregon House of Representatives

Representative Mary Lou Dickerson
Chairwoman, Health and Human Services
Washington House of Representatives

Representative Brian Blake
Chairman, Agriculture and Natural Resources

Representative Sherry Appleton
Washington House of Representatives

Delegate Kaye Kory
Virginia House of Delegates

Representative Scott Holcomb
Georgia House of Representatives

Senator Steve Litzow
Washington State Senate

Senator Bob Smith
Chairman, Environment and Energy
New Jersey State Senate

Senator Jamie Eldridge
Vice-Chair, Global Warming and Climate Change
Massachusetts State Senate

Senator Daniel Wolf
Massachusetts State Senate

Representative Jules Bailey
Co-Chair, Energy, Environment and Water
Oregon House of Representatives

Representative Chris Garrett
Oregon House of Representatives

Representative Mary Nolan
Oregon House of Representatives

Representative John McCoy
Chairman, Technology, Energy and Communications
Washington House of Representatives

Representative Marko Liias
Washington House of Representatives

Delegate Mark Keam
Virginia House of Delegates

Delegate Scott Surovell
Virginia House of Delegates

Representative Beth Kertulla
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Representative Elissa Wright
Assistant Majority Leader
Connecticut House of Representatives

Representative Diana Urban
Connecticut House of Representatives

Representative Sharon Treat
Maine House of Representatives

Representative Melissa Walsh-Innes
Maine House of Representatives

Representative Art Handy
Chair, Environment and Natural Resources
Rhode Island House of Representatives

Representative Karen May
Chairwoman, Environmental Health and Environment
Illinois House of Representatives

Delegate James Hubbard
Assistant Majority Leader
Maryland House of Delegates

Delegate Elizabeth Bobo
Maryland House of Delegates

Representative Rick Glazier
North Carolina House of Representatives

Representative Pricey Harrison
North Carolina House of Representatives

Assemblywoman Donna Lupardo
New York General Assembly

Representative Bob Hagan
Ohio House of Representatives

Representative Stephen DiNatale
Vice-Chair, Global Warming and Climate Change
Massachusetts House of Representatives

Representative Frank Smizik
Chair, Global Warming and Climate Change
Massachusetts House of Representatives

Representative Brian Ashe
Massachusetts House of Representatives

Representative Jason Lewis
Massachusetts House of Representatives

Representative Denise Provost
Massachusetts House of Representatives

Representative Chris Walsh
Massachusetts House of Representatives

NATIONAL OCEAN COUNCIL

Name: **Jim Donofrio**

Organization: Recreational Fishing Alliance

Path: http://edit.whitehouse.gov/sites/default/files/webform/noc_implementation_plan_comments_02-27-12.pdf

Comment: please see attached file for comments



February 27, 2012

Nancy H. Sutley, Chair
National Ocean Council
722 Jackson Place NW.,
Washington, DC 20503
facsimile: (202) 456-0753

RE: Comments on the Draft National Ocean Policy Implementation Plan

Dear Ms. Sutley:

Please consider the following comments submitted by the Recreational Fishing Alliance (RFA) on the Draft National Ocean Policy Implementation Plan (Plan). The RFA is a national political action organization with a membership that reflects all aspects of the marine recreational fishing sector. The RFA is very concerned about the implementation of the Plan and how it will affect fishermen, fishing related businesses and the fishery management process.

General Comments on the Plan

While it has long been understood that actions that take place on land have an impact on the marine resources including marine fish, forcing every agency of the federal government to weigh in on every single action that may have an impact on the oceans or marine resources is a fool-hearted solution. Habitat and water quality issues associated with land-based activities are not the main reasons why fishermen are being denied access to important fish stocks. In fact, excessive regulation as opposed to the lack of regulation has been identified as the number one reason why fishermen are spending less time on the water than they did in years past. Ironically, this predicament comes at a time in fisheries management history when the overwhelming majority of stocks are at sustainable levels. The Plan provides absolutely no remedy to this problem and in fact creates numerous other levels of regulation.

The recreational fishing community is facing one of its greatest challenges that stands to forever change the tradition and wellbeing of this centuries old way of life. Recent mandates resultant of the 2006 reauthorization of the Magnuson Stevens Fishery Conservation and Management Act (MSA) forced a management approach upon the recreational sector which simply cannot be implemented in a responsible or fair manner due to the lack of adequate monitoring programs in place. National Oceanographic and Atmospheric Administration (NOAA) has failed to provide the necessary resources to improve monitoring programs to an adequate level. The consequence is that recreational fishermen and fishing businesses in the recreational fishing industry are being unfairly restricted from fisheries that have been rebuilt to levels specified by NOAA to be sustainable. For this reason, the RFA and many others in the recreational fishing community are extremely concerned about any policy that diverts more time

and/or resources away from NOAA in regards to the administration of marine fisheries. The federal budget continues to shrink so any increase in the overlying bureaucracy results in a diversion and further reduction of resources away from the administration of marine fisheries.

Though not specifically stated in the Implementation Plan, the management of marine fisheries in federal and state waters will fall under the authority of the National Ocean Policy. This will give up to 27 different federal agencies oversight on actions taken by the regional fishery management councils. It is undeniable that this will not only add significant cost to the management process but all time. Fishermen and individuals involved in the fishing industry do not have the luxury of traveling all over the country and attending numerous meetings for every action that may directly or indirectly involve marine fisheries. More time away from their businesses while attending government meetings will no doubt result in a loss of productivity and jobs. The massive federal bureaucratic web created through the NOP effectively eliminates the ability of the general public to engage the new process. Furthermore, such a bureaucracy will also put an excessive burden upon state governments who already have a difficult time funding the travel expenses for state personnel to attend all the meetings associated with fisheries management over the course of a year.

These very concerns were shared by Congress whereby a bill, HR21, with a nearly identical policy failed to be released from committee by four different Congresses under both Republican and Democratic majorities. Despite lacking any authorizing legislation, the Obama Administration disregarded this strong message from Congress and implemented the tenants of the failed legislation through Executive Order 13547. RFA has always been critical of the use of executive powers to manage marine resources. An example of the dangers of executive power to fishermen can be seen with the action of President George W. Bush who with the stroke of a pen, prohibited recreational anglers from 139,793 square miles of ocean. This type of arbitrary and capacious action is a very real possibility with the NOP especially under the marine spatial planning objectives.

Adopt Ecosystem-Based Management

The concept of ecosystem based management is sound and an appropriate way to manage marine resources that are known to interact with other species. However, ecosystem based management can only be conducted in a responsible manner when there is information of adequate quality and quantity. When the information used to steer ecosystem based management is poor, there is a profound cascading effect that disrupts our ability to accurately describe relationship between species. Currently, even the best studies fisheries, summer flounder, striped bass, red snapper, and Atlantic cod, still contain significant uncertainty (error) in their assessment. This error compounds as the interaction of other species and/or environmental variables are incorporated. RFA is not opposed to moving forward with the use of ecosystem based management, however, the speed of implementation cannot exceed the limitations of the information on hand.

Ecosystem based management demands a significant amount of information which costs money. RFA has not seen a sincere commitment from the Obama Administration or the National Oceanic and Atmospheric Administration (NOAA) to provide the necessary resources in terms personnel, equipment and funding to gather this necessary information. In fact, NOAA reduced

funding for important programs such as cooperative research which engages the fishing industries in collecting important data. The fishing industry has actually funded several research projects that have resulted in major improvements to the assessment of monkfish, summer flounder, Atlantic sea scallops and king mackerel. Furthermore, the industry funds the North East Marine Assessment Program (NEMAP) through a voluntary forfeiture of quota. NEMAP is program that will have significant importance in moving towards ecosystem based management in the Mid-Atlantic region and yet, fishermen give up their opportunity to land fish to fund this program. The Obama Administration and NOAA needs to make significant commitments to the funding programs to gather the information necessary to move towards an ecosystem based approach. Those commitments have yet to be made.

Finally, on page 9, the Plan states that “over the past century of management, the health of most ocean and coastal resources has severely declined.” RFA is very troubled that the Obama Administration would use such outrageous language considering federal agencies under his administration such as EPA, US Fish and Wildlife and National Marine Fisheries Service find that environmental health indicators such as water quality, biodiversity and stock size of coastal fisheries are in far better condition than just 20 years ago. Intentionally misleading the American people has no place in responsible, sustainable management of the nation’s natural resources.

Coastal and Marine Spatial Planning

The Plan identifies coastal and marine spatial planning as an important tool for implementing ecosystem based management and therefore, our comments expressed above also hold true for the implementation of coastal and marine spatial planning. It has been proposed that the NOP will create a 27-member National Ocean Council, an 18-member Governance Coordinating Committee, and 9 Regional Planning Bodies to carry out the 7 National Goals for Coastal and Marine Spatial Planning and the 12 Guiding Principles for Coastal and Marine Spatial Planning. It is completely unrealistic to expect the fishermen of the nation to engage each authority entity identified above in an attempt to make shore their voice is heard. The Plan creates a system of bureaucracy where only the professional, salaried special interests will be able to afford to engage the process. The voice and needs of the average fisherman will be lost in this complex maze of government oversight.

Fishermen have proven over history that they are extremely adaptable. In the most general sense, fishermen follow the fish. Over time, patterns and timing of fish migrations are in a continuous state of flux in response to both biological and environmental conditions. Just because a fishermen does not fish in one area of the ocean in 2012 does not mean he will not fish there in 2013. Coastal and Marine Spatial Planning aims to suppress this adaptability by potentially limiting fishermen to certain areas of the ocean. Not only does this create uncertainty for the estimated \$30billion a year recreational fishing industry but it disrupts the very free, open-access attributes of recreational fishing which draws millions to the sport. Uncertainty drives away investment thereby disrupting the business plan of the thousands of small business that make up the recreational fishing community. To date, no indications have been give about which areas or activities will be affected by Coastal and Marine Spatial Planning. RFA views this as unacceptable.

As mentioned above, NOAA is delinquent on implementing required recreational data collection programs as mandated by MSA. NOAA has indicated that their budget is not as robust as they would like and choices had to be made with the limited resources. The Plan states under the Coastal and Marine Spatial Planning section that the member agencies of the NOP will “provide further guidance and prioritization towards allocating Federal resources to achieve implementation goals.” RFA is concerned that even less money will be available to conduct necessary improvements to fishery stock assessments and monitoring programs such as recreational data collection programs.

In closing, RFA is very troubled by the Plan and its politically driven ideology. The management of marine fisheries should be free of hysteria and politically dogma geared toward a small but financially powerful interest group. The permitting and regulatory functions of the government will basically come to a halt forcing applicants and stakeholder to spend significantly more time and money. The Plan provides an additional avenue for litigation adding further time and money. A review of NOAA data reviles that fish stocks can be brought to sustainable levels without the need for excessive government bureaucracy as proposed by the Plan. While habitat, water quality, proper stock assessments and adequate monitoring programs are still concerns, the primary problem facing fishermen is the lack of reasonable access to healthy and rebuilt fish stocks.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Donofrio". The signature is fluid and cursive, with a large initial "J" and "D".

Jim Donofrio

Name: **Meghan Jeans**

Organization: New England Aquarium

Path: http://edit.whitehouse.gov/sites/default/files/webform/neaq_nop_draft_implementation_plan_comments_2012_.pdf

Comment:



February 27, 2012

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: Comments and Priorities on the Draft National Ocean Policy Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members,

Thank you for the opportunity to provide comments and recommendations on the Draft National Ocean Policy Implementation Plan (Draft Plan). The New England Aquarium is one of the preeminent aquariums in the United States and a global leader in ocean exploration and marine conservation. In addition to our exhibit halls, which educate over a million visitors a year on marine and aquatic ecosystems and their inhabitants, the New England Aquarium is also a leading ocean conservation organization with research scientists and experts working around the globe for the preservation and sustainable use of ocean resources.

As active stakeholders with institutional expertise on a range of ocean science and management issues, we offer the following comments and recommendations to supplement and strengthen the progressive actions and milestones articulated in the Draft Plan:

General Comments

We applaud the bold vision for a National Ocean Policy (NOP) put forward by Executive Order 13547 and lend our support for the priority objectives outlined in the Draft Plan. In addition to the major themes highlighted in the Draft Plan¹, there are several crosscutting themes that we recommend guide further development and refinement of the NOP. Specifically, the need for greater community and stakeholder engagement, while highlighted in certain sub-sections of the Draft Plan, should be a priority in all aspects ocean management and planning. Likewise, the need to conduct and incorporate cumulative impact analyses into all aspects of ocean policy is critical to enhancing our understanding and ensuring our ability to manage our activities sustainably and effectively.

Ecosystem Based Management

Recognizing the complexities and dynamic interconnectedness of marine species and systems, we fully support the Draft Plan's emphasis on "[a]dopt[ing] ecosystem-based management as a foundational principle for the comprehensive management of the ocean, our coasts, and Great Lakes"² within its "Ecosystem-based Management" chapter.³

¹ Draft Plan, at 2.

² Draft Plan, at 9.

³ Draft Plan, at 9-17.



- ***Establish an independent multi-stakeholder advisory body to guide development and implementation of an inter-agency collaborative framework.***

We strongly agree with the goal identified in Action 1 to “[e]stablish a framework for collaboration and a shared set of goals for Federal implementation of ecosystem-based management.”⁴ To help inform the development, evolution and implementation of a collaborative framework, minimize issues of agency territoriality, encourage consistency in implementation from one administration to the next, and generate greater public support; we suggest that the NOC consider developing an independent multi-stakeholder advisory group.

- ***Prioritize and incorporate cumulative impact analyses.***

We strongly agree with the need identified in Action 2 to “establish a science framework to support science-based EBM implementation.”⁵ As part of this effort, we recommend that the Draft Plan prioritize the development and evaluation of tools to assess cumulative impacts and incorporate those tools and analyses into decision-making frameworks. This could be added as a separate action or as a milestone under Action 2.

- ***Create a clear timeline and action plan for moving forward.***

While the milestones associated with different actions provide a rough timeframe for completion, the precise chronology and relative priorities are less clear. Indeed, the timing of some of the milestones seems inconsistent.⁶ We recommend that the NOC create clear timelines and an action plan that prioritizes the milestones and reorders them chronologically. This will provide greater clarity, reduce inconsistencies and confusion and allow this foundational EBM work to be completed as quickly and efficiently as possible.

Inform Decisions and Improve Understanding

- ***Elevate aquaculture as a priority issue for which greater scientific research and support is needed.***

We strongly support the inclusion of aquaculture as part of a sustainable use strategy and Action 2 goal of providing scientific information to support aquaculture development.⁷ Currently, the United States has a seafood deficit of approximately US \$9 billion for both wild and farmed species. The US lags behind other countries in aquaculture production, although it is the second largest seafood market in the world. NOAA’s recent Aquaculture Policy includes the explicit goal of promoting the development of US aquaculture. Indeed, the domestic production of aquaculture products represents an important opportunity for the US to decrease the trade deficit and food importation issues, and assume a leadership role with the development of progressive environmental regulations and food safety initiatives around aquaculture.

⁴ Draft Plan, at 13.

⁵ Draft Plan, at 14.

⁶ For example, in 2013 agencies are supposed to “identify regional information gaps to fully enable science-based EBM, and develop a plan to fill them.” Draft Plan, at 15. However, the regional gap analysis, to be completed in 2013, calls for use of oceans.data.gov, but the portal is not expected to be fully operational until 2015.

⁷ Draft Plan, at 20.



When done correctly, aquaculture may contribute to food and economic security and improved ecosystem function. Practiced incorrectly, aquaculture has the potential to destroy critical habitat, decrease biodiversity and be a net consumer (as opposed to a producer) of fish protein. As such, it is incumbent upon the US to invest in research and innovative technologies to develop and promote sustainable aquaculture operations at home and abroad.

While we support the first milestone of Action 2 to establish a National Shellfish Initiative⁸ to maximize ecosystem benefits and economic value of commercial aquaculture, we urge the NOC to establish additional research initiatives around the development of sustainable finfish farming operations. We acknowledge that finfish aquaculture is typically associated with higher ecological impacts, however the demand and drive for farmed finfish products is not going away. Including finfish operations as a research priority may help to position the US as a leader in the development of low impact finfish aquaculture operations and reduce demand for imported products.

In addition, support for research around coordinated aquaculture management and large-scale integrated multi-trophic aquaculture is needed. Moreover, research into broader aquaculture sustainability issues, such as feed, mitigation and prevention of fish escapes, and disease control should be identified as priorities.

We recommend that research around domestic aquaculture production be elevated as a priority area within the NOP. As an institution, the New England Aquarium has extensive expertise in this arena and is committed to serving as a resource for industry and government as policies and practices around aquaculture evolve.

- ***Link the development and use of decision support tools with the integration of social and ecological systems in decision-making.***

We commend efforts to develop more effective and efficient decision support tools to support science-based decision-making and EBM as indicated in Action 3.⁹ We also support Action 4 of Draft Plan and its emphasis on integrating both social and natural scientific information into decision-making.¹⁰ These two proposed actions are critical but not mutually exclusive.

To effectively integrate social and ecological systems into the management processes and stakeholder engagement strategies, we need to develop decision support tools that identify the appropriate data inputs and accurately capture the relevant aspects of the human dimension. Indeed, more robust and comprehensive decision support tools that incorporate social, political and economic variables may help us better understand the risks, trade-offs and costs/benefits of different decisions. Therefore, we recommend that the NOC explicitly recognize the link between

⁸ Draft Plan, at 20.

⁹ Draft Plan, at 21

¹⁰ Draft Plan, at 22.



greater integration of social and natural scientific information into decision-making and the provision of the data and tools to support science-based decision-making.

Coordinate and Support

We support the need to “[b]etter coordinate and support Federal, State, Tribal, local, and regional management of the ocean, our coasts, and the Great Lakes.” We also recognize the necessity of improving “coordination and integration across the Federal Government and, as appropriate, engage with the international community.”¹¹ Improved coordination is a cross cutting priority and fundamental to most, if not all, of the goals articulated in the Draft Plan, most notably the move towards EBM and CMSP.

- ***Develop mechanisms for coordinated management between government and stakeholders.***

The first milestone of Action 2 in the “Ecosystem Based Management” chapter commits agencies to conduct an inventory and assessment of programs and projects that use EBM in order to identify the key characteristics of effective EBM.¹² Likewise, the first milestone of Action 2 in the “Coordinate and Support” chapter specifies as a goal the identification and prioritization of specific opportunities to partner with non-Federal entities and organization on NOP priorities.¹³ Towards those ends, we recommend that the US evaluate examples both within and beyond US borders and explore models of collaborative EBM that engage both government decision makers and stakeholders.

In many instances, the perspective, knowledge and insight of local communities, enterprises and industries can provide tremendous value to resource managers and opportunities for co-management can inspire greater stewardship and investment by users of the resource. As such, we support research into and development of mechanisms to enable more coordinated management between government and stakeholders as means of facilitating greater information exchange and garnering support for national ocean policy efforts. In the context of salmon aquaculture operations, the Bay Management Agreements for salmon aquaculture operations in New Brunswick, Canada¹⁴ and the Tripartite Working Group in Scotland¹⁵ are just a few examples of coordinated government/stakeholder partnerships.

¹¹ Draft Plan, at 35.

¹² Draft Plan, at 14.

¹³ Draft Plan, at 38.

¹⁴ While not mandatory, Bay Management Agreements under the Bay of Fundy Marine Aquaculture Site Allocation Policy commits both government and industry “to improving the level of co-operation and communication between aquaculture licensees with respect to local management practices. Both parties wish to encourage the establishment of a management framework that provides flexibility relative to specific conditions in each Bay while ensuring that all licensees agree and comply with established operating standards and practices. The aquaculture industry will develop agreements referred to as Bay Management Agreements in order to establish operating standards for the respective Aquaculture Bay Management Area. These agreements will reflect government and industry standards, plus any applicable local management practices.” (See <http://www.gnb.ca/0177/e-fundy.asp#site>)

¹⁵ “The purpose of the [Tripartite Working Group], Chaired by the Scottish Government, is to address problems common to salmon farming and wild salmon fisheries and to seek solutions for ensuring the maintenance of a healthy stock of wild fish whilst at the same time promoting a sustainable aquaculture industry... Issues faced are how to share common waters in a way



- ***Improve efficiency of aquaculture permitting and establish federal aquaculture regulations.***

We strongly agree with Action 5 regarding the need to reduce “overlapping, redundant, and sometimes conflicting permit review processes” and improve permitting efficiency for aquaculture.¹⁶ There is a growing need to develop a productive and responsible aquaculture industry in US waters, which, in our opinion, is hampered by an inefficient permitting process and incomplete regulation. We recommend that the development and promulgation of federal aquaculture regulations be identified as a priority and included as a milestone under Action 5.

Federal aquaculture regulations should be designed to facilitate the harmonization and coordination of aquaculture permitting at all levels of government. Moreover, regulations should focus on coordinated production strategies (such as large-scale integrated multi-trophic aquaculture systems) in order to maximize production and minimize impacts. In addition to addressing potential environmental impacts, such as species introductions, feed, waste, escapes and disease, it is critical that any federal aquaculture regulatory scheme address cumulative impacts. An effective management framework for aquaculture must account not only for the impact of aquaculture operations in a region but the cumulative impacts of farms and other anthropogenic impacts on the surrounding environment.

- ***Engage fully with the international community to combat illegal, unregulated and unreported (IUU) fishing.***

IUU fishing is a worldwide challenge and one of the primary barriers to sustainable fisheries. IUU fishing threatens food security, species survival, ecosystem health, distorts markets and subverts fair labor standards. As IUU is inherently a global problem, it demands global solutions and improved international coordination. While the Draft Plan makes cursory reference to the importance of engaging with the international community, it does not provide specific actions or milestones or even mention IUU fishing as a priority issue. We recommend that the NOC include domestic and international efforts to combat IUU fishing as a priority in the Draft Plan. On the domestic front, this may include, *inter alia*, full implementation of the IUU provisions of the Magnuson-Stevens Act, ratification of the Port State Measures Agreement, and greater investments and support of monitoring, control and surveillance.

Resiliency and Adaptation to Climate Change and Ocean Acidification

- ***Prioritize minimization and mitigation of anthropogenic stressors to ensure greater resilience and adaptability to climate change.***

We strongly support the need to develop a better understanding of the impacts of climate change on natural and human systems and identify appropriate and effective adaptation strategies. However, to promote greater biological and ecosystem resilience, we recommend that the NOC also

which ensures maintenance of healthy wild fish stocks and a sustainable aquaculture industry and how to build trust and consensus.” (See <http://www.scotland.gov.uk/Topics/marine/Fish-Shellfish/TWG>)

¹⁶ Draft Plan, at 40.



prioritize efforts to minimize and mitigate the impacts of other anthropogenic stressors on animals and ecosystems. This includes, among other things, minimizing runoff (agricultural nutrients and pesticides, oil from urban areas), improving sewage treatment (reducing pathogens and especially pharmaceutical effluent), and reducing ocean noise. Both individual species and ecosystems are suffering from the multiple and cumulative impacts of all these stressors, therefore reducing the human footprint (particularly in the coastal zone) is likely to improve the physiological and ecological buffer needed for animals and ecosystems to adapt to climate change.

- ***Link vulnerability assessments to actionable legal and policy levers.***
The vulnerability assessments called for in Action 4 are critical to our understanding and ability to respond to the impacts of climate change, however these assessments should not exist to simply provide information. Rather, we recommend that the NOC ensure that the information derived from such assessments is actionable. In other words, vulnerability assessments should be linked to existing legal and policy levers (e.g. real estate terms & conditions, fishery management plans, NEPA review, etc.) and/or new mechanisms for action.
- ***Provide avenues and opportunities for community engagement and public participation.***
As noted earlier, stakeholder and community engagement in coastal and ocean conservation and management is critical to the goals of transparency, democracy, and informed stewardship. While the Draft Plan successfully focuses on decision-maker involvement in the climate change adaptation process, it does not address the need or methods for greater community and stakeholder involvement in these processes. For decision-makers confronted with potentially controversial decisions to mitigate and/or adapt to the impacts of climate change, constituent and community support is critical. As such, community engagement, public outreach, and public participation at every step of the planning process are critical for successful climate change mitigation and adaptation. Therefore, we recommend the NOC incorporate as actions or milestones identification of avenues and opportunities for community engagement and public participation.

Coastal and Marine Spatial Planning

We fully support the transition away from the current fragmented system of ocean management to one that is “comprehensive, integrated, [and] ecosystem-based.”¹⁷ Coastal and marine spatial planning is an important and evolving tool for achieving more coordinated management and integrated ocean governance. In 2008, we supported state-level efforts to pass the Massachusetts Oceans Act. The goal of the legislation was to provide state decision makers with the best available scientific information of ocean resources and ecosystems, as provided through research, mapping, monitoring, and other data collection. This would enable them to identify and capitalize on opportunities to encourage desirable activities and development in locations that are well suited for it, while discouraging inappropriate and wasteful activities and development that harm the marine ecosystem. Proactively managing the spatial and temporal distribution of human activities and providing a means to manage potentially conflicting activities and account for cumulative impacts is critical to ensuring sustainable use of marine resources.

¹⁷ Draft Plan, at 85.



- ***Educate and inform agencies and stakeholders about existing tools and strategies for engaging in coordinated ocean management.***

We support the establishment of regional planning bodies (RPBs) to serve as the coordinating entities for CMSP.¹⁸ At the same time, we recognize that for RPBs to be effective there are significant political and logistical hurdles to overcome. Since user-user and user-ecosystem conflicts will persist with or without a functioning RPB in place; it is crucial that we hedge our bets, cultivate awareness and highlight avenues and incentives for agencies and stakeholders to engage in coordinated ocean management. To achieve the objectives identified in Action 2 of building “greater understanding of the value of regional CMSP” and identifying “key challenges, solutions and collaborative strategies for regional CMSP”, we recommend that the NOC utilize the regional workshops or some other vehicle to help RPB members and interested agencies and stakeholders understand existing tools and strategies to for engaging in coordinated ocean management. Indeed, CMSP is not intended to replace or supersede existing regulatory and statutory authorities or agency jurisdictions. Thus, understanding the nature and extent of agency authority under existing laws, the types of information and data that are useful to spatial planning efforts, and what opportunities exist to contribute and influence the process can help agencies and individuals engage constructively in ocean planning processes (whether or not there is an effective and functional RPB in place).¹⁹

Once again, we appreciate this opportunity to comment on the Draft Plan and we look forward to working collaboratively and serving as a resource for the NOC going forward. Thank you for your strong leadership and efforts to improve the health and sustainability of our Nation’s oceans and coasts.

Sincerely,

Bud Ris, President & CEO
New England Aquarium

¹⁸ Draft Plan, at 91.

¹⁹ The [Center for Ocean Solutions](#) (“Coastal and Marine Spatial Planning: Legal Considerations”, 2010), [Environmental Law Institute](#) (“Marine Spatial Planning in US Waters: An Assessment and Analysis of Existing Legal Mechanisms, Anticipated Barriers and Future Opportunities” 2009) and [Fisheries Leadership & Sustainability Forum](#) (“The Role of the Regional Fishery Management Councils in Multi-Sector Spatial Planning: Exploring existing tools and future opportunities”, 2011) have begun to examine these questions in some of the reports they have produced.

NATIONAL OCEAN COUNCIL

Name: **Kathleen Ritzman**

Organization: Scripps Institution of Oceanography, UCSD

Path: http://edit.whitehouse.gov/sites/default/files/webform/scripps_oceanography_nop_feb12.pdf

Comment:



KATHLEEN RITZMAN
ASSISTANT DIRECTOR
SCRIPPS INSTITUTION OF OCEANOGRAPHY

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February 27, 2012

Nancy Sutley
National Ocean Council Co-Chair
Chair of Council on Environmental Quality
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

John Holdren
National Ocean Council Co-Chair
Director of the Office of Science and Technology Policy
New Executive Office Building
17th Street, NW
Washington, DC 20502

Dear Chairs Sutley and Holdren,

Scripps Institution of Oceanography is pleased to have the opportunity to contribute to the National Ocean Council's efforts to craft the comprehensive "National Ocean Policy Implementation Plan." As the world's preeminent center for ocean and earth research and education leading the field in oceanography and marine technology for over a century, Scripps is keenly aware of the importance of a unified strategy to approach the critical questions of ocean science now facing researchers and society as a whole. We appreciate the Administration's renewed focus on science, and in particular on the importance of the oceans and ocean research, and are eager to help realize the goal of a targeted, well-informed research plan that will enable us to not only address immediate problems, but to make the discoveries that will enhance our understanding of the world around us.

Below please find our comments on the University-National Oceanographic Laboratory System (UNOLS) Fleet.

Our knowledge and understanding of the basic features and processes operating in the ocean and their interactions with Earth and atmospheric systems would not be possible without the UNOLS fleet of Research Vessels and the data gathering and science that these have supported. Although new, non ship-based technologies will contribute to our understanding of the coastal and global oceans, the continuation of and accessibility to the fleet are core to furthering our understanding of these processes. To accomplish the high priority objectives of the National Ocean Policy Implementation Plan, this infrastructure in particular needs to be addressed. Flat budgets in times of escalating costs have resulted in a near halving of ship utilization, putting the ships at the brink of unsustainability. Efficiencies and mechanisms for support must be addressed.

Reliable, integrated participation by all federal agencies that collect data using oceanographic research vessels would improve overall costs. For example, NSF and ONR already work well together in coordinating and planning ship utilization, which has resulted in more efficient ship schedules. This in turn leads to more scientific productivity for less cost.

The per-day costs of ships could be reduced for ALL federal ship users by involving other federal agencies (NOAA, USGS, DOE, etc.) in the academic research fleet, so that existing assets are shared and utilized economically. The result would be lower costs, more efficient schedules, and the preservation of America's technological expertise in acquiring oceanographic data.

Recommendation: Distribute operations and maintenance of the UNOLS fleet among all participating agencies.

Thank you for this opportunity to comment. We are in general encouraged by the attention being paid to such a necessary field of scientific research, and are looking forward to continuing to play a role in the development of research policy.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Ritzman". The signature is written in a cursive, flowing style.

Kathleen Ritzman
Assistant Director

Name: **Sean Dixon**

Organization: Clean Ocean Action

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_draft_plan_comments_2.27.pdf

Comment: Please See Attached Comments.

**Clean Ocean Action
Delaware Riverkeeper Network
NY/NJ Baykeeper**

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

RE: National Ocean Policy Draft Implementation Plan Comments

February 27, 2012

To whom it may concern:

These comments, submitted by Clean Ocean Action (COA), the Delaware Riverkeeper Network (DRN), and the NY/NJ Baykeeper are in response to the Request for Comments on the Draft National Ocean Policy (NOP) Implementation Plan (Draft Plan). In addition to general input on the Draft Plan, the National Ocean Council (NOC) asked whether the Draft Plan reflects the actions the public wants taken to address nine priority areas, and what an effective way to measure these outcomes would be. In part, the Draft Plan is a continuance of the discussion started in 2011 at regional “listening sessions” and in requests for input by the NOC on its nine strategic planning priority areas.

Clean Ocean Action is a regional, broad-based coalition of 135 conservation, environmental, fishing, boating, diving, student, surfing, women's, business, service, and community groups with a mission to improve and protect the water quality of the marine waters off 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 through citizen education, political advocacy, and public process involvement. From working on oil and gas development issues to stopping ocean dumping and improving coastal water quality, our region’s citizens have worked hard to promote the resiliency of our clean ocean economy.

The Delaware Riverkeeper Network champions the rights of our communities to a Delaware River and tributary streams that are free-flowing, clean and healthy. This mission is carried out by the Delaware Riverkeeper Maya van Rossum and DRN’s twelve highly-skilled staff members through a variety of programs centered on advocacy, stream and habitat restoration and monitoring, and the law, which includes our River Resources Law Clinic. A nonprofit corporation founded in 1988 (originally as an affiliate and now as an independent entity) with over 8,000 members, DRN gives voice, strength, and protections to the communities and waterways of the Delaware River. DRN is the only grassroots advocacy organization that operates watershed-wide and empowers communities with the engaged interaction and information needed to succeed in protecting and restoring our River and region now and into the future.

The NY/NJ Baykeeper’s mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary – one of the most urban estuaries on the planet. Since 1989 NY/NJ Baykeeper has worked to protect, preserve and restore the Hudson-Raritan Estuary – one of the most urban estuaries in the country.

I. Introduction

Overall the NOC's Draft Plan is a solid concept that blends the need for long-term planning with the diverse facets of ocean and coastal pollution, ecosystem, and development problems. The Draft Plan was clearly built with considerable agency effort – both to ensure that as many programs receive attention as possible and to roll out programs and initiatives over the next few years as they naturally build to conclusion. The Draft Plan clearly lists actions to be taken, identifies the agencies responsible for those actions, and suggests timelines within which those actions should occur. This level of detail allows the public to hold the Administration responsible for carrying out these plans and following through on its promises.

On the other hand, the Draft Plan does not answer the questions 'Will I be able to safely swim at my beach in 5 years?' or 'Will there be new oil rigs or industrial complexes built off my beach in the future?' These are the very real questions citizens want answered. There is no Draft Plan requirement that resource extraction agencies will be bound by the scientific advice of research agencies. There are no requirements that pending projects which may have been initiated in a manner inconsistent with the ideals of openness and public input be put on hold or re-examined for NOP compliance. More directly, the milestones listed and action items to be taken all too frequently are passive – they push agencies toward coming up with conclusions or plans, but do not necessarily mandate that any agency programs, policies, or that regulations be changed or amended bases on those conclusions.

Without triggers that mandate specific performance or changes to the framework within which agencies operate, these implementation goals will lead to – in 2016 – a more detailed idea of what is wrong with ocean governance. The Draft Plan, with its ambitious targets and lofty goals, underscores the need for citizens to get involved in every step of the National Ocean Policy implementation and to support its funding, but without independent, local, and robust oversight and support, this plan could result in a series of reports collecting dust on a bookshelf in D.C.

II. Overarching Implementation Plan Comments

In general, the Draft Plan succinctly lays out the action items to be taken by agencies under each of the nine priority areas. A discussion of those action items and milestones – the NOP implementation *substance* – is below, in Section III. Aside from those specific agency steps-to-be-taken, the Draft Plan attempts to build a framework for the effective use of those milestones and action items. This framework – NOP themes, fiscal issues, and stakeholder involvement – leads to several general comments on NOP implementation *process*.

1. NOP Themes

According to the NOC, the Adopt Ecosystem-Based Management (EBM) Theme of the Draft Plan is “designed to ensure that the necessary collaborative and scientific frameworks are in place, and that training is provided to support an ecosystem-scale approach to management at national, regional, and local levels.” The milestones of the EBM priority area – discussed more below – show how the NOC plans to build this framework as well as determine “how pilot projects will be used to develop best practices for implementing EBM at scales relevant to addressing specific resource management objectives.” Unfortunately this theme leaves out any mention of immediate EBM implementation potential. Several years of effort have gone into building a comprehensive NOP, but over the first two years of this program the only steps toward EBM implementation will be, generally,

- developing policy statements to be adopted by agencies on EBM (which in many cases is already done),
- characterizing successful EBM programs (which already exists in the scientific and policy literature),
- informing stakeholders of EBM benefits (which does not impact whether or not agencies comply with EBM principles), and
- filling data gaps in pilot program areas (which can take several more years).

This theme is one of the most important themes to NOP implementation – resources, uses, and abuse of the oceans and coasts *should* all be examined through a lens of ecosystem impacts. The final Plan should make it much clearer that the form of agency decisionmaking can, and should, be immediately re-focused to include - and be based on - much more robust and wide-ranging ecosystem analyses.

In the Obtain, Advance, Use and Share the Best Science and Data Theme, the NOC states, correctly, that “[i]n many regards, our understanding of marine ecosystems has not kept pace with the cumulative impacts of human uses and the environmental changes that are occurring.” As such, the NOC suggests that the milestones of the “Best Science” Theme will be implemented in order to guide current policy decisionmaking while also “improving upon that knowledge as the basis for future decisions.” Many of the elements of this Theme – found in the *Inform Decisions and Improve Understanding*, and *Observations, Mapping, and Infrastructure* priority areas – are vitally needed in today’s debate on the environmental and economic balance. We look forward to helping the NOC develop ocean and coastal data portals, compiling job statistics about our clean ocean economies, and establishing environmental and economic baselines for use in siting and approval decisionmaking.

In the interim, however, federal agencies continue to make decisions that affect the oceans and coasts without a complete picture of what the science says. From infamous examples of oil and gas spill response plans in the Gulf of Mexico preparing for walrus rehabilitation needs (where there are no walruses) to pending applications for 2,000-megawatt offshore electrical transmission grids, there are dozens of examples of agencies acting without knowing. In the case of the offshore transmission grid, the agency in question (the Bureau of Ocean Energy Management) conducted a study in 2011 that detailed just how little is known about the impacts of such high-voltage offshore energy grids – yet they still are going forward with the approval process of the project. If it is really the mission of the NOC to have science and data inform decisionmaking, there should be absolute mandates not to act without knowing, not to approve without studying, and not to leap before looking. The NOC should also ensure that decisions taken are consistent with what is known, the NOP, and EBM principles. Finally, (a) this should be done individually and cumulatively, and (b) all NOC agencies should be asked to make more – not fewer – investments in education, laboratories, and research (*see below*, Fiscal Responsibility).

The NOC’s theme focuses on making ocean and coastal uses and decisions more streamlined – the Efficiency and Collaboration theme – is found mainly in the Coordinate and Support priority area, but also is “woven through all nine priority areas.” Justifiably stated by the NOC, the “National Ocean Policy depends on coordination across the Federal Government, as well as coordination and collaboration with [] partners.” Without a coherent system of decisionmaking wherein, for example, agencies with scientific expertise are tapped for that expertise and agencies with permitting procedures for particular projects are put in charge of collecting and coordinating ocean and coastal projects, the NOP will just be a well-backed up guidance policy.

Also noted in the Draft Plan is the “potential to improve efficiency by leveraging expertise and resources, identifying and augmenting synergies, reducing redundancies, and streamlining management.” Unfortunately, “reducing redundancies” and “streamlining management” are often taken as euphemisms for program budget cuts and research reductions (*see below*, Fiscal Responsibility). It must be more clearly stated in the final Plan that efficiency does not always mean fewer stages of review, and that redundancies are not always roadblocks to solid decisionmaking.

Finally, in the Strengthen Regional Efforts theme, the NOC states that “[r]egionally based efforts to address ocean and coastal issues are already in place” and that federal agencies are also “engaged in various regions through interagency collaborations focused on regional ecosystem restoration and management.” While these are both true statements – there are indeed regional partnerships and initiatives underway – there are drawbacks to relying on preexisting regional efforts. Primarily, many of these efforts have a limited scope: dredged material planning collaboratives tend not to have the ability to manage sedimentation sources or land use practices that lead to a greater need for maintenance dredging, and governor-led state groups tend to be specifically limited to the policy issues which all member governors deem politically accomplishable. For the NOP’s regional planning theme to work, collaborations must be truly collaborative – where an agency is encouraged to take information gleaned in one work group and commit to making changes in another work group, and where state associations tackle both the achievable and the daunting tasks needed for a clean ocean future.

Beyond supporting existing partnerships and efforts, the NOC plans to use these Draft Plan action items to foster new partnerships and support the development of coastal and marine spatial planning (CMSP). This is a laudable – and achievable – goal, but one that necessarily involves an expansion of the funding and the flexibility of federal agency work. These Draft Plan milestones tend to focus on what federal agencies can do to open their doors to the public and the states, but there are no dedicated funds to ensure more federal agency meetings and that stakeholder sessions are held locally, and there are no plans that will ensure that locally-built solutions are not overruled by policy decisions made by non-local decision-makers. The NOC is committed, and rightly so, to improving the regional focus of ocean uses and policies, but without assurances that these regional partners will have a voice comparable to those at agency headquarters, there will be little improvement on the current decision-making regime.

2. Fiscal Responsibility

In the Draft Plan, the NOC suggests to the public that all proposed milestones and plans “can be achieved based on expected Federal budgets for the coming years.” However, the NOC cautions that “given the constrained fiscal climate and the uncertainty in the budget and appropriations processes, completion of every action and milestone in this draft Implementation Plan within the timeframes expected are contingent on the availability of funds.” The way through this quagmire, according to the plan’s fiscal opening statement is to “leverage existing resources and prioritize use of funds among projects and programs.”

Given these words of warning, the NOC asked agencies to consider, in the drafting of the Draft Plan milestones, what actions could be taken with existing resources, how can resources be repurposed for maximum effectiveness, and where can small increases have “far-reaching” returns? With this in mind, it is shocking that the President cuts three programs in his Fiscal Year (FY) 2013 budget which accomplish all of these directives – to efficiently use existing relationships to make far-reaching impacts on the oceans and coasts.

First, the EPA Beach Program - on which all coastal states rely for protecting beachgoer health – would be cut entirely. This program funds research on swimmer safety, actual beach testing, and advisory notices. If you have ever gone to the beach only to find it closed (often after heavy rains), this program has protected your health. If your township has ever found and fixed leaky sewers fouling your local waterways, this program has likely helped you. The Beach Program informs decisions on coastlines, provides grants for federal-state-locality coordination and support, leads to water quality and sustainability improvements on land, and is a vital component of CMSP (beach uses) – in short, it is an essential element of a national ocean policy. Moreover, taking money from this program will lead to immediate and long-lasting negative impacts; many – if not most – states which receive Beach Program funds, rely on those funds to support their entire Beach Program testing. If these funds are cut, we will see weakened state standards for recreational water public health protections and diminishing investments in pollution-free waterways and beach program innovation.

Second, the President proposes closing the James J. Howard Marine Science NOAA Lab at Sandy Hook, NJ, months after recognizing the Lab for its 50 years of service and after having invested in Lab programs that make it one of the top, most state of the art facilities in the nation for ocean acidification and marine ecosystem research. The Lab is the only ocean research center downstream of the most densely populated urbanized region in the country—the waters between New York and New Jersey – and is a vital part of the local, national, and international marine science community, providing invaluable benefits to the ecosystems of the Atlantic Ocean.

The decision to close this lab could not have been made at a more inopportune time. Our oceans, and the Mid-Atlantic region which this lab directly adjoins, are changing. For the first time in decades, there may be oil drilling in the Mid-Atlantic Ocean, most notably in Virginia. The U.S. Department of Interior recently announced wind-energy lease availability for almost 800 square miles of the Mid-Atlantic Ocean. The shores of this region are the most densely populated in the nation. The fisheries, tourism, and recreation value of the Mid-Atlantic Ocean is nearly incalculable. Algal blooms, sewage spills, sedimentation, and the science of managing the Port of New York all fall within the scientific ambit of this facility.

The bridges of trust that have been built between the scientists at the Howard Lab and recreational and commercial fishermen, businesses, and communities along the Mid-Atlantic coast strengthen the federal government’s ocean policy goals for this ocean basin. Finally, and most importantly, in an era of increasing environmental and economic pressure on our oceans and coasts, it should not be the policy of the United States to limit its own ability to study the ocean, learn about its processes, and educate the public. Communication, stakeholder involvement, education, research, innovation, climate change, CMSP, sustainability, land-based sources of pollution – all are functions of this laboratory, and all are essential elements of the National Ocean Policy. It is not fiscally responsible to make significant investments in a facility and then immediately close it. It is not consistent with the new uses and pressures on the Mid-Atlantic Ocean to take away the NOAA/research presence. It is not consistent with the National Ocean Policy to close the door on research and education.

Third, the President’s proposed budget also de-funds the John H. Prescott Marine Mammal Rescue Assistance Grant Program in its entirety. The Prescott Grant Program provides funding for recovery and treatment of stranded marine mammals, data collection from living or dead stranded marine mammals, and operation costs and staffing needs for stranding centers. In New Jersey, the only facility that handles stranded or stressed marine mammals and sea turtles is the Marine Mammal

Stranding Center (MMSC) in Brigantine, New Jersey. Prescott Grant funding significantly contributes to MMSC's staff salaries, lab costs, and animal food costs. Funding cuts would diminish the facility's capacity to respond to strandings throughout the entire state of New Jersey. Marine Mammals strandings and the subsequent data collection can often be indicators of fish contaminations or ocean pollution therefore serving as a critical first alert to the quality of the water. This grant program directly comports with the ideals of the National Ocean Policy and shouldn't be cut. Marine mammal rescue programs educate the public, handle – daily – endangered and threatened species, and aid in the development of wise multiple-use policies. Cutting this program sets back our national ocean policy.

These cuts cannot be said to be more efficient uses of that money – especially given the reductions in health protection, research, understanding, and ecosystem-based managing that will result. In last year's National Ocean Policy, the President states that coastal “communities and the Nation rely on healthy and resilient ocean and coastal ecosystems.” Given this, it is inconceivable that these program cuts would be the first actions on the list to, as the President noted, “support sustainable, safe, secure, and productive ... uses of the ocean” and to “foster a public understanding of the value of the ocean.”

Knowledge is key to a clean ocean future, but the nation is struggling to find money to invest in adequately monitoring and studying the ocean's problems, let alone the costs involved in reducing sources of pollution and promoting restoration. This policy needs a politics-free operating budget.

3. Stakeholder Involvement & Regional Councils

For the Regional Councils, which will be the entities tracking and implementing many of the policies and plans generated through the Draft Plan's milestones, we also have concerns about the voice of the public. Given the limited memberships on the regional councils, a small number of political appointees will be deciding policy affecting millions of citizens and hundreds of ocean uses. We have concerns about how the Councils will govern and what accountability they will have to the public. As an entity not likely to be endowed with rulemaking authority, few, if any, of the conclusions of these Councils will have public notice and comment requirements. Beyond official actions, there is nothing in this Draft Plan that addresses how a few public meetings and hearings on ocean-wide planning will be conducted to ensure robust and meaningful constitute involvement. On accountability, there are no clear procedures in the Draft Plan for how the Councils will be measured – for example, if a Council endorses offshore oil activities in areas where there is strong opposition from diverse stakeholders, there is no clear map as to how that decision is challenged.

In many NOC and NOP documents, including this Draft Plan, these concerns are assuaged by promises that a member of the public will have a seat on Regional Councils and, that meetings and action items will all be handled in full view of the public. Respectfully, we ask for more clarification on this point. Whether there is one non-governmental voice on a Regional Council or ten, it is likely that there will be legitimate voices that go unheard and unrepresented. Comment periods and meeting question/answer sessions have, historically across the federal government, been ineffective in eliciting responses or policy changes by the agency or council being spoken to. The NOC's own “listening sessions” held in advance of this Draft Plan (and relied upon for the development of this Draft Plan) were a failed opportunity for the NOC's implementation team to answer questions on a host of issues important to the interested public because the NOC opted for a “listening” premise instead of a “discussion” premise.

In sum, public participation must be more robust so that citizens feel that their voices are not lost in a black box of federal rulemaking. The Draft Plan's encouragement of agency data portals, the development of the ocean information hub, and the transparency about what each agency will be studying and analyzing is, indeed, robust disclosure of agency actions, but there must be a simultaneous openness to hearing what the public is saying and room for agencies to change course given the right public input.

4. Other Process Concerns

Short-Term Planning

While "improving our understanding" of the coastal and marine environment is a vital and respectable goal of the NOP, the oceans face immediate threats that require fast action for the long-term viability of our clean ocean economies. Long-term policies must be balanced with short-term programming. In the Draft Plan, significant – and rightly so – attention is paid to rolling out policies over the next 2-5 years that build a robust ocean-wide governance regime. The final Plan, however, should have an addendum that includes an accounting of where these same agencies are with respect to actively pending ocean and coastal plans. If the NOC wants a NOP Implementation Plan to develop a system for the proper siting of offshore wind turbines, for example, it should build into that plan the knowledge that the Department of Interior has several hundred miles of already-applied-for wind facility sites. There are numerous examples of pending projects which could use more involved stakeholder review, more open permit procedures, and more ecosystem-based decision-making. The long-term plans of this Draft Plan might be for naught if pending projects lock in the government to a path that is inconsistent with the NOP.

Predictability and Timelines

Once short-term issues are incorporated into the NOC's plans, long-term plans – which make up the majority of the Draft Plan's milestones – must be made more politically predictable and must ensure they are achieved in a coordinated manner. First, for many action plans and milestones, there is no discussion as to how the work done toward project completion would be affected given changes in federal political leadership or budget circumstances. A contingency plan is vital because, if there is a reversal of priority or a change in funding, a cascade of other program failures and delays may become inevitable. We do not ask that a political-change-proof Plan be developed, but ask that there be some discussion of timelines and action plans given political change – and the importance of the NOP. Similarly, where the federal agencies will be coordinating with state and local governments, the NOC should require MOUs, discrete action steps, or bipartisan collaborations in order to make state and local NOP implementation politically predictable.

Second, the NOC should include in the final Plan a more detailed "map" or "decision tree" as to what milestones build off of other milestones or action items. With a complicated process like NOP Implementation, it is almost a certainty that some agencies will fail to meet deadlines. In this Draft Plan, it is not clearly shown what effects, if any, a failure to meet a timeline would have on later timelines. If the milestones and action plans were presented hierarchically, wherever possible, it would make for a clearer and more predictable timeline.

Agency-Specific Comments

If used as intended, the NOC Draft Plan will be the guiding document for federal agency implementation of the NOP. The specificity of the milestone lists and agency responsibilities is encouraging – especially given the breadth of material covered. In examining the agency roles and responsibilities, however, we had some questions for the NOC to clarify and address in its final Plan:

- (a) For aquaculture milestones, why were the EPA and FDA not included? With missions to protect public health, the environment, and the regulatory control over point source and non-point source pollution, these agencies seem like vital partners in the development of this ‘emerging sustainable use.’
- (b) Why, given the multitude of projects pending on the agencies’ dockets in the Atlantic and Pacific Oceans, as well as the Gulf of Mexico, are BOEM and BSEE solely working on Arctic Ocean issues? With renewable energy leases, offshore energy grids, and renewed interest in oil drilling expansion, these agencies are vital decision-makers in all oceans – and the agencies with the most visible need for improved stakeholder involvement and more informed decision-making.
- (c) With reductions in many of its vital programs already proposed by President Obama, how does the NOC realistically think that NOAA will be able to address all of the action items and milestones assigned to it? For many of the outcomes for which it is at least in part responsible, NOAA is not even the regulatory body with authority over the actual permitting or programs that are under review. The NOC should, for the agencies with the largest roles in the Draft Plan, provide specific agency analyses on how this Plan will be accomplished.
- (d) For almost all milestones, there are multiple agencies and Departments listed. How does the NOC anticipate differences in opinion will be addressed, and will lead agencies be assigned? For milestones that range from the narrow (*Facilitate removal of trash and marine debris through community-based grants and other means*), to the broad (*Improve water quality of the Gulf of Mexico*), there are questions raised as to which agency’s interpretation of the best outcome will be followed. How does the NOC anticipate resolving these conflicts, and how can the NOC ensure that any resolution will ultimately lead to a cleaner, more resilient coastal and marine environment?

III. Priority Area-Specific Comments

Aside from the Process concerns on thematic development, fiscal decisions, stakeholder involvement, and actual immediate action needs, we have several priority area-specific comments on the Draft Plan.

1. Ecosystem-Based Management

Healthy oceans are essential to our survival, providing the food, jobs, biodiversity, transportation, climate, and recreation that we rely on. Oceans create the very air we breathe. The NOC should ensure that the NOP maintains ocean ecosystems in a healthy, productive and resilient condition, so that the ocean can continue to provide the services humans want and need. Ecosystem-Based Management is vital and essential to NOP implementation. As an initial step, the NOC should

support the NJ/NY Clean Ocean Zone initiative that will serve as a model that can be followed in other ocean areas to reduce pollution and protect this valuable ocean region.¹

The NOC must ensure that EBM is not simply adopted as a principle but is implemented in current and future decision-making. EBM is essential to protecting ocean ecosystems and minimizing human impacts and must not be delayed. While the EBM Action Items are critical for developing a solid ocean management framework, the development and integration of EBM needs to be expedited and used immediately for areas where offshore renewable and drilling projects are now being proposed.

Oil exploration and drilling are inconsistent with ecosystem-based management and clean ocean economies. Expanding oil drilling related activities and ocean industrialization should not be allowed under the NOP. In addition, ocean renewable energy sources must be developed responsibly so that marine life is not harmed. The Draft Plan includes implementation of an unspecified number of EBM pilot projects that have unknown scopes and focus areas will not be done until 2016. More specific plans are needed, and these projects should already be ongoing as EBM is needed. EBM is critical for Federal environmental planning and review processes; it is absolutely unacceptable that this milestone will not be completed until 2016.

It is unclear how public participation will be ensured by CEQ and NOC subcommittees in the following milestone and others like it - without agency involvement beyond committee participation: "Develop national guidelines and best practices for EBM implementation based on engagement of non-Federal partners and stakeholders." It seems that it would be rather difficult for the CEQ and these committees alone to engage in national public outreach directly in a sufficient manner. The final Plan should incorporate more specific recommendations and plans on how this will be done at a local level.

The roles of the public and interested groups in the over EBM process should also be explained more explicitly. The example regarding the coastal tourism industry in the EBM section should clarify that the government is seeking support of the coastal tourism industry in promoting and aiding in the protection and maintenance of healthy ecosystems - but is not expecting the tourism industry to take over these government services. The Draft Plan should call the public to take individual and collective actions to support the plan and NOP goals and provide adequate opportunities to become involved in the process.

Implementation of EBM requires Federal agencies not only to work together and provide science-based information to decision-makers but also to make recommendations to decision makers as to what choices will best reflect and contribute to the goals of the NOP and EBM. Federal agencies also need to make federal decisions based on the goals of NOP and EBM. The NOC should already be incorporating EBM into current federal management practices and building on and supporting existing ongoing efforts and then be refining these efforts and the overall framework - as pilot projects, research, and information and knowledge is obtained. The Draft Plan states that "[i]mplementing EBM

¹ The NJ/NY Clean Ocean Zone (COZ) initiative is a citizen-built, ground-up approach to framing and managing the uses and users of the New York Bight (defined as the bend in the shoreline from Cape May, NJ, to the NY Harbor, to Montauk Point, NY, and out to the continental shelf break). The COZ initiative brought stakeholders (including commercial and recreational fishermen, business owners, divers, surfers, boaters, shipping companies, scientists, agencies, and others) together to make a plan for this ocean area that prohibits new sources of point-source pollution directly into the ocean area, promotes existing uses and research, and builds a framework for offshore renewable energy uses.

is an incremental process that builds on existing knowledge and management structures” and yet instead of starting with an EBM approach, steps are outlined to gradually make progress toward this end. It is extremely disappointing to see that a “let’s wait until we have more information compiled” approach is being taken and that EBM will be further delayed in effect, while ocean monitoring and research programs are being cut back and ocean industrialization is moving forward.

2. Inform Decisions and Improve Understanding

Advancing science, ocean technologies, and developing leaders in ocean science and management are all very important to improve decisions and understanding ocean systems. Given the proposed budget cuts to NOAA and EPA and other agencies, it is unclear if Action Items 1 through 5 will be adequately acted on. Overall, these action items and many of these milestones are useful. However, the timeframes are a concern due to proposed offshore drilling and renewable activities – as information compiled after decisions are made does not inform decisions.

Ecological baseline studies, pilot projects, and data standardization should be implemented before the government permits commercial use for the ocean (e.g., for offshore wind) as these are critical for EBM and CSMP. The collection of baseline ecosystem data and identification of areas of economic and environmental importance is critical for siting of offshore renewable projects and for evaluating damages that might occur from offshore activities. In order to understand the ecosystem’s baseline level of functionality and condition, the health of the ecosystem must be determined; phytoplankton and zooplankton population dynamics must be understood; and preferred migratory, feeding, breeding, and nursery habitats for birds, bats, marine mammals, sea turtles, fish, and invertebrates, as well as sensitive benthic habitats must be identified. The siting and operation of these renewable energy projects cannot be adequately planned for without knowing the ocean’s condition before placement of these facilities. Environmental data collection and standardization initiatives, which are currently projects-in-progress, would give states and the federal government the tools to determine the scale, scope, and extent of the data needed to predict, evaluate, and minimize ecological risks and hazards. Standardized collection regime for data will establish consistency in reviewing potential impacts amongst and between facilities and will allow for collaboration across regions and between states. Comparable datasets also allow for properly informed risk assessment models, technology comparisons, and cumulative impact analyses.

Establishing baseline studies and data standards and adopting EMB and using spatial mapping will improve cumulative impact analyses and assessments which are needed for improving decisions by requiring permitting agencies to: 1) recognize and consider the dynamic interconnectedness within and between ecosystems, and 2) consequently evaluate the cumulative effects of different proposed activities on the diversity, abundance and interactions of marine organisms and habitats. Spatial planning results in the physical mapping of human activities and marine resources and provides a tangible documentation of the overlap and potential interactions that occur between and amongst all users (human and non-human). This information can then be used to more accurately identify and reduce or eliminate potential cumulative impacts through proper siting or prohibition of incompatible activities.

Ecosystem-damaging research or activities must not be pursued, and any research should be in accordance with EBM. Large-scale seismic exploration such as been proposed for the South and Mid-Atlantic is not consistent with EBM and should not be conducted in order to inform decisions, as it will result in noise pollution over extensive areas of the ocean and will harm marine life. Noise pollution

from exploratory surveys can have devastating and far reaching environmental impacts and must not be allowed in areas that are not currently drilled, such as the Atlantic Ocean. Airguns can produce 256 decibels of peak pressures of sound.² For comparison, sounds can be hazardous to human hearing at 80 decibels and painful noises for people start at 120 decibels which is equivalent to a jet airplane take-off or a rock concert.³

Because the decibel scale is logarithmic, the peak pressures of air guns are orders of magnitude louder than 120 decibels. Air gun blasts can damage fish hearing organs.⁴ Commercial fishing catch rates have been observed to decrease by 40-80 % over thousands of square kilometers around a single airgun array.⁵ Noise travels farther and about five times faster in seawater than air. Air gun noise from seismic surveys has been recorded over 3,000 km from its origin.⁶ This is more than double the distance of the area envisioned for seismic drilling in the U.S.'s Atlantic Ocean. Repetitive airgun blasts become a continuous noise blocking communication of species such as endangered whales that use low frequency sound to function.⁷ The industrial noise rising in many coastal regions, which has "*increased 100-fold at some locations over the last 50 years*", has been compared by scientists to a continuous fog that is shrinking the sensory range of marine animals.⁸

We are also concerned about the scope of the proposed aquaculture initiative that is in this section. Aquaculture facilities have the potential to significantly affect coastal ecosystems through an increase in marine pollution, damage to habitat, and reductions in biodiversity – depending on the type, scope and location of the operation. The potential water pollution from fish waste, unchecked release of antibiotics, hormones, and biocides, and contamination of benthic habitats beneath and around these facilities are concerns. These pollution threats are greatest for operations located in open water (including fresh, brackish, and saltwater facilities) and those that use open circulatory systems (discharging water directly into the environment). This effort should focus on environmentally-friendly aquaculture projects, especially shellfish initiatives that can have lasting, positive effects on water quality, and avoid potentially harmful aquaculture facilities.

² Weilgart, L. ed. (2010). Report of the workshop on alternative technologies to seismic airgun surveys for oil and gas exploration and their potential for reducing impacts on marine mammals, 31 Aug. – 1 Sept., 2009, Monterey, Calif. Darmstadt: Okeanos – Foundation for the Sea.

³ See, <http://www.asha.org/public/hearing/disorders/noise.htm> (last visited February 27, 2012).

⁴ McCauley, R.D., J. Fewtrell, & A.N. Popper, 2003. High Intensity Anthropogenic Sound Damages Fish Ears, *J. ACOUST. SOC. AM.* 113:1:638-642

⁵ Engås, A., *et al.*, 1996. Effects of seismic shooting on local abundance and catch rates of cod (*Gadus morhua*) and haddock (*Melanogrammus aeglefinus*). *Canadian Journal of Fisheries and Aquatic Sciences* 53: 2238-2249; **see also** Skalski, *et al.*, 1992. Effects of sounds from a geophysical survey device on catch-per-unit-effort in a hook-and-line fishery for rockfish (*Sebastes ssp.*). *Canadian Journal of Fisheries and Aquatic Sciences* 49: 1357-1365.

⁶ Nieukirk, S. *et al.* 2004. Low frequency whale and seismic airgun sounds recorded in the mid-Atlantic Ocean. *Journal of Acoustical Soc. of America*. 115:4:1832-1843.

⁷ Weilgart, L. ed. (2010), *supra* note 2.

⁸ Bode, M., *et al.* 2009. Statement to President Barack Obama of Participants of the Workshop on Assessing the Cumulative Impacts of Underwater Noise with Other Anthropogenic Stressors on Marine Mammals. 2pp. http://www.okeanos-stiftung.org/download/CI_en.pdf (Accessed May 10, 2010.)

3. Observations, Mapping, and Infrastructure

The action items in this section to support ocean observations, mapping, and the various infrastructure for data collection, processing, and integration are generally promising and vitally needed for EBM, CMSP, and decision making as well as for hazard identification, safety, and improving our understanding of ocean ecosystems. These efforts are needed for studying climate change, sea level rise, and ecosystem changes due to multiple stressors. The need for long-term observation systems are recognized and emphasized in the Draft Plan. It is questionable though how all of the items in this section will be funded and is uncertain if information will be generated in time to protect the ocean from industrialization and other threats.

A national inventory of the satellites, autonomous vehicles and other research devices, and research fleet vessels would be a useful first step in ensuring adequate research capabilities and their regional distribution. Research vessels, satellite, and ocean observing technologies, including underwater gliders data collectors, are critical and have been useful for identifying oil spills to documenting sea temperature changes and algal blooms, such as the one last summer off the New Jersey and New York coasts. Regional ocean observing systems are needed to integrate information for science and management purposes and inform the public and users of data collected.

Standardization and best management practices in data collection efforts and improved mapping are critical for EBM and siting renewable energy projects. Integrating and increasing data accessibility is very important, especially for establishing land-ocean connections, improving global-scale understanding, and increasing efficiency in research. A wealth of information has been and hopefully will continue to be collected, but it is difficult to access and examine all of the various types of information and data together. Mapping with data layers is essential to allow for increased and improved understanding of the ocean and human impacts.

It is important that government-supported acquired data and mapping capabilities and products will be accessible to and by the public and users to the maximum extent. What does the central database for public information include and what are its capabilities?

Acoustic seafloor characterization and obtaining “modern high-resolution seafloor mapping data” is a concern (as mentioned above, *Inform Decisions*). While acoustic surveys may be consistent with EBM and the spirit of the NOP “for nautical charting and habitat mapping” purposes, intense air gun seismic surveys required for oil and gas exploration and drilling that damage marine life and ecosystems are not and must not be allowed in ocean areas that are not currently used for offshore drilling as part of this implementation plan.

4. Regional Ecosystem Protection and Restoration

The action items and milestones are useful steps to take to develop needed protection and restoration strategies, however the actual protection and restoration efforts are not clearly implemented beyond pilot projects which may be too little too late for many of the coastal watersheds and ocean waters. Coastal ecosystems drive the open-ocean food webs and should be managed to protect and promote biodiversity, biomass, habitat including wetlands, and threatened and endangered species – across state, federal, and local borders. More protection and restoration efforts are needed now as part of this action item and need to be incorporated into EBM and CMSP and ongoing environmental planning and decisionmaking.

One of the action items should be included is the prohibition of the expansion of ecosystem damaging oil exploration and drilling activities into coastal and ocean areas where these activities are not currently occurring, such as the U.S. Atlantic Ocean.

5. Resiliency and Adaptation to Climate Change and Ocean Acidification

This section in the NOP and Draft Plan must emphasize the need for (1) national greenhouse gas emission reductions and (2) biological carbon sequestration to reduce the long-term impacts of climate change and ocean acidification processes. Additionally, action items for education and outreach should be prioritized to show the public how fossil fuel energy use negatively impacts the ocean and the planet and that effective national energy policies are needed to reduce emissions and increase energy efficiency, if the national ocean policy is to be successful.

There are a number of critical action items in this section; however, the delayed timeframes are again a concern. Climatic changes are already underway and are being adapted too and guidance and support is needed. Much climate-related modeling work has already been conducted. Improved communication to the public of these issues and adaptation needs is crucial and should not be delayed.

Strengthening and integrating ocean and coastal data collection efforts for climate change and ocean acidification are vital to understanding the impacts of these process and how, and if, adaptation is even possible. The recent Presidential Budget proposed closure of the James J. Howard Fisheries Lab on Sandy Hook is contrary to this priority area. The research undertaken at the Howard Lab includes ocean acidification and climate change impacts to marine ecosystems. Indeed, this lab was recently recognized by NOAA leadership as the premier state-of-the-art facility for conducting ocean acidification research on the East Coast. Moreover, research conducted at the lab is instrumental in ongoing planning efforts for the siting of the first offshore wind facilities in the United States.

Many steps can and should be taken immediately to ensure that our coastal infrastructure is adaptable to changing conditions such as more intense storms and rising seas – stormwater systems need to be repaired, coastal wetland dunes need to be allowed to migrate landward, and biodiversity in natural areas needs to be protected and promoted. Wastewater infrastructure and other industrial sites at risk of flooding or storm damage need to be identified and adaptation and risk reduction plans must be implemented. Municipalities, businesses, and homeowners need to be informed of flooding risks and actions that can be taken to adapt.

Although for Action Item #6 (*“Design, implement, and evaluate adaptation strategies”*) includes developing a variety of strategies and frameworks for climate change and acidification adaptation, the actual implementation of these strategies and associated goals are lacking in the milestones.

6. Water Quality and Sustainable Practices on Land

The Action Items to improve water quality are essential for improving degraded coastal and ocean waters and protecting marine life and support healthy ecosystems. The Milestones, however, are vague and devoid of explanations as to how pollution reduction will be achieved. Those that are specific tend to be voluntary. Existing voluntary initiatives and outreach activities have proved inadequate, and regulatory actions that will result in substantial pollution reductions and more sustainable land practices are clearly needed. There are unacceptably high number of coastal waters that are impaired in the U.S.,

and too many state and federal marine waters that are not even assessed for impairment. The Draft Plan should be calling for more federal support of strong state regulatory programs and more effective federal oversight to ensure consistent enforcement of these regulations. Without full compliance with existing laws and programs (from the Clean Water Act to the Coastal Zone Management Act), a new National Ocean Policy would just add to the burden of already over-burdened agencies.

The timeframes should be moved up for many of the action items, such as improving stormwater and land use practices. Many areas – in New Jersey for example – are already at, or close to, “build out.” In New Jersey, as is the case most everywhere, water impairments are associated with both new and existing development – in short, most of the built environment has some significant impact on the surrounding coastal and ocean ecosystems and uses. Redevelopment needs to be promoted by regulations that include improve stormwater management requirements. Land development must be better managed in order to protect natural areas, increase water filtration, reduce stormwater, and reduce pollution. Stricter regulations are needed to make this happen, as voluntary efforts tend to result in continued sprawl and poorly planned development that is costly to society over the long-term. Land preservation and improved stormwater and land practices needs to happen soon or it will be too late.

Both voluntary and regulatory approaches are needed to reduce nutrient sources from point and non-point sources. How will EPA produce and implement 12 statewide nutrient reduction strategies? What nutrients will be targeted? Will these be implemented nationally and will these efforts be effective? In many instances, it is already known that hypoxia can be reduced by reducing nutrient loadings and voluntary efforts have not proved successful. The problem is not a lack of science as suggested in Action Item #3, but a lack of funding to reduce nutrient sources.

Stronger, enforced regulations, and funding for infrastructure and enforcement, are needed for managing land practices for NOP implementation. How will “[i]ncreased scientific knowledge, monitoring, and forecasting” of harmful algal blooms “minimize and mitigate the impacts of harmful algal blooms on regional ecosystems”? Risk to humans can be reduced through identification, notification, and avoidance. However, more knowledge and monitoring will not alter algal blooms; only reductions in pollution sources or changing ecosystem parameters will alter bloom activity. How will a Health Early Warning System for coastal water work, when the President has cut EPA funding for the existing Beach Program which supports states’ coastal monitoring and notification programs? Will new federal funding be obtained? What agency will lead this effort? How are states supposed to pay for an expanded notification program when federal support has been withdrawn and there is inadequate funding available to cover even the existing program? Would the surveillance system include warnings for high levels of sea nettles that thrive in degraded water quality?

The Draft Plan importantly includes Action Items to identify and protect high quality waters. Existing regulations that are designed to protect water quality do not function as well as they are needed and should be strengthened so that these waters are indeed protected.

The amount of permitted pollutants to be released to the air and water must be reduced by regulatory requirements, and efforts must continue to ensure that the illegal discharge and dumping of pollutants is prohibited.

Land and water areas that are highly contaminated need to be remediated. The Draft Plan should support the acceleration of cleanup activities for Superfund sites in marine waters and coastal watersheds.

In addition to protecting and restoring 100,000 acres wetlands, the Draft Plan should be identifying and minimizing the overall loss of wetlands and ensuring that net losses are limited. Wetland provide important habitat and help capture and reduce pollutants from entering waterways. Actions that cause subsidence and wetlands loss, such as the drilling and extraction of oil, should also be prevented.

Efficiency and conservation of freshwater is vital to our ocean policy and should be added as an action item. Efforts are needed to reduce freshwater consumption, reduce pollutants entering waste streams and waterways, recycle wastewater, and alter landscapes to reduce water needs and maximize uptake and infiltration. Excessive water use in many coastal areas has resulted in saltwater inundation of water supplies and has undermined groundwater flows that support surface water flows and healthy coastal ecosystems. Water conservation should be a priority in the Draft Plan.

We strongly support the Action Item to reduce marine debris and plastic pollution. Plastics are now found throughout the global ocean and the ocean impacts are only now beginning to be understood. Plastics harm marine life in multiple ways, including entanglement, ingestion, and habitat degradation and marine plastic pollution must be reduced.

By enforcing and modernizing the Clean Water Act, by requiring and promoting sustainable land use practices and water reuse over waste, as well as, investing in monitoring, infrastructure, and more pollution controls, the NOP can generate jobs and improve water quality.

7. Coastal and Marine Spatial Planning

Within the CMSP priority area, we only have a few comments on the Draft Plan that haven't already been raised above. First, the NOC should add an Action Item that, as an independent track alongside actions #1-5, measures, and if needed addresses, public participation success in the development of CMSPs. There should be an independent entity reviewing the Regional Council efforts to incorporate citizen concerns that can hold those Councils accountable and can establish procedures for public appeals and challenges to findings made by these Councils.

Second, there should be an added focus on land-based planning – to be undertaken in conjunction with EPA and NOAA (under their respective statutory authorities). Efforts to plan for the coordinated use and promotion of the oceans and coasts should not stop at the edge of state waters or at the high-tide mark. As many significant impacts to the marine environment come from land-based sources, no federal action should be taken under CMSP or any other priority area that fails to account for these impacts.

Finally, the NOC should take steps to ensure that CMSP is not used as cover for the approval of otherwise unwanted and unwise industrial intrusion into the coastal and marine environment. For example, if sewage outfalls or oil drilling rigs are not allowed now, the development of an area-wide map of ocean uses should not be the gateway through which those activities are given new life.

IV. Conclusions

In conclusion, the Draft Plan is a clear roadmap of agency plans, actions, and outcomes which will lead, hopefully, to a better-managed coastal and ocean environment. We ask that citizen involvement, present and short-term ocean governance issues, funding issues, agency roles, and other issues discussed herein are incorporated into the final Implementation Plan.

Thank you,

Cindy Zipf
Executive Director
Clean Ocean Action

Maya van Rossum,
Delaware Riverkeeper
Delaware Riverkeeper Network

Deborah A. Mans
Baykeeper & Executive Director
NY/NJ Baykeeper

Name: **William Nurthen**

Organization: Port Authority of New York and New Jersey --Port Commerce Department

Path:

Comment: COMMENTS OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, PORT COMMERCE DEPARTMENT REGARDING THE NATIONAL OCEAN POLICY DRAFT IMPLEMENTATION PLAN SUBMITTED BY WILLIAM NURTHEN, GENERAL MANAGER ENVIRONMENTAL PROGRAMS AND PORT DEVELOPMENT

General Input

Thank you for providing the Port Authority of New York and New Jersey, Port Commerce Department (PANYNJ) the opportunity to comment on the National Ocean Council's Draft National Ocean Policy Implementation Plan. The Plan is critical to organize the various roles for Federal Agencies to ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, and enhance the sustainability of ocean and coastal economies. This plan also captures well the breadth of issues and activities regarding our primary water ecosystems that are colored with strong national and regional interests. Ports cooperatively work with a plethora of supply chain partners to efficiently deliver cargo between domestic and international markets. The Port Authority highly supports the need for stewards of the oceans and Great Lakes ecology to act in concert to develop and share scientific information as well as to prioritize, coordinate and manage water-related ecology. We are stakeholders and often partners (e.g. in dredging activities) with the agencies involved herein to insure that marine systems and their operating milieu are sustainable and advancing our nation's prosperity and quality of life.

The draft plan's combination of vision, themes, objectives and milestones provides a useful framework for implementing the broad of objectives contained in the plan. The Port Authority supports the Plan's recommendations to apply the principles of Ecology Based Management (EBM); to establish shared, high quality databases; to extend regional ocean and Great Lakes partnerships; (ROPs) and to advance Coastal and Marine Spatial Planning (CMSP) to protect and improve the water-based ecology.

The Draft Plan notes that it does not cover all matters involving National Ocean Policy. Nevertheless, there are three elements that we believe deserve greater mention or inclusion.

- Ecosystem issues related the health of major river systems – specifically their integral relationship to the health of the oceans they feed-- should be explicitly highlighted and addressed. These matters receive some coverage in the water quality and objectives section and its references to watershed management elements. Yet, it is not clear where the federal water quality responsibility begins and ends, how its activities are coordinated with local partners and where major rivers fit in.

- The need to coordinate with international organizations and bodies is a paramount

federal responsibility and implicitly acknowledged in the Arctic Ocean section. This responsibility should be more extensively addressed -- given the fact that key environmental concerns and regulation require concerted attention on a worldwide basis.

- Oceans are the essential infrastructure for international and domestic coastal shipping – ecology based programs from mapping to condition monitoring involve safety elements which should be addressed in a National Ocean Policy Implementation Plan.

Comments Regarding Specific Questions Posed by the Council

The National Ocean Council's invitation for comment posed three questions:

- Does the Implementation Plan reflect actions you see are needed to address the nine priorities for the ocean, coasts, and Great Lakes – (Alignment of Actions to Priorities)?

- What is the most effective way to measure outcomes and to detect whether a particular action in the Implementation Plan has achieved its intended outcome? - (Outcome Measurement and Achievement)?

- Would a report card be useful? (Report Card)

Alignment of Actions to Priorities

The comprehensive program assembled under this plan is an important milestone advancing Ecosystem Based Management (EBM) as the primary means to manage the Nation's, complex and diverse water resources stewardship challenges. It reflects the holism of nature and the water based resource sub-element it strives to protect. In doing so, it reveals the complexity of task of bringing multiple agencies together for concerted action –and to do so in a period where Government, still the primary vehicle for broad-based environmental stewardship, faces increased resource constraints.

The strength of the plan is its commitment to comprehensive scientific based goals and objectives to be completed, as necessary, through concerted multi-party action. It lays out actions across jurisdictional borders that, through amalgamation and synthesis, will protect and improve ocean/water resources. Importantly, the identified activities are, in varying degrees, capable of measurement, modification and progressive advancement. Ultimately, this raises prospects for performance-based management, but who creates the report card and who takes responsibility for the results?

The major weakness of the Plan is not a lack of actionable items or alignment with its well-stated priorities. It is the lack of a clear leadership framework – particularly a hierarchy to identify which priorities are paramount and determine overall direction and success. Who at the top of the Administration, and at multi- agency levels, -can be held responsible for the Plan's achievement? If it is every agency and institution named in the Plan – it may as well be no agency.

PANYNJ believes that a logical candidate for the lead role is the Committee on the Marine Transportation System (CMTS). The CMTS is a Cabinet-level, inter-departmental

committee chaired by the Secretary of Transportation. The stated purpose of the CMTS is to create a partnership of Federal departments and agencies with responsibility for the Marine Transportation System (MTS) including its transportation as well as environmental elements. Since the job of the CMTS is to ensure the development and implementation of national MTS policies that are consistent with national needs and to report to the President on ways for improving the MTS, it seems like a logical vehicle to build or provide the framework needed here.

On the technical side, the Plan's presentation lacks an Executive Summary that would apprise the reader on its essential priorities. Seemingly the presentation aims to highlight how each action element is tied to each theme and objective – the result is sometimes confusing and repetitious. Several of the objectives are auxiliary to the key priority -- introducing the EBM system. For example, high quality data sources, mapping and measuring technologies, as well as regional (multi-jurisdictional) partnerships (ROPs), which would conduct Coastal and Marine Spatial Planning are better understood if depicted as building blocks of the EMB rather than independent objectives. Other objectives are geographic or ecosystem target areas to which the EBM is to be applied. A simpler EBM focused outline may make the Plan more understandable and limit redundancies among milestone activities.

No time frame is given for the completion of the plan in its entirety. While action dates are listed among the many milestones -- it is not clear if these are start dates or finish dates or which activities are necessary to be completed for other activities to take place. In sum, the EBM is an important strategic goal-- not a product that can be implemented by this plan alone. It should be acknowledged at the outset that this effort marks the "end of the beginning" not the "beginning of the end" for the challenging goal of EBM implementation.

Outcome Measurement and Achievement

Ways to strengthen the Plan in terms of measuring and advancing outcomes and ensuring effectiveness include:

- Create a companion "Five Year Road Map" to direct accomplishment of the recommendations and milestones within the Implementation plan --
- Array EMB development in priority stages – describing the development plan in terms of essential implementation elements -- for example: establishment of an overarching leadership structure; setting priorities for data base and management tool development regional advancement of Spatial Planning and defining performance improvement expectations for priority areas (e.g. ecosystem protection/restoration, water quality, response to climate change.)
- Organize and Summarize the objectives assigned to each agency, (or agencies working in concert with lead responsibility defined) with a timeline for completion and next steps to be taken. This list can be cross-referenced against resources available for completion and relation to each actor's key mission.

REPORT CARD

☒The additional organizational structure would provide a pathway to performance measures and ultimately a performance report card. However, the Plan as currently presented has too many undifferentiated priorities to make the issuance of a report card useful. Besides, as currently organized the plan has no top leader to set the parameters to be reported and to follow up in areas indicated by the report card.

END

Name: **Meg Caldwell**

Organization: Center for Ocean Solutions

Path: http://edit.whitehouse.gov/sites/default/files/webform/center_for_ocean_solutions_draft_imp_plan_comments_2012-02-27.pdf

Comment:



February 27, 2012

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

Filed electronically via <http://www.whitehouse.gov/webform/submit-comments-draft-implementation-plan>

Re: Comments and Priorities on the Draft National Ocean Policy Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members,

Thank you for the opportunity to submit our comments and recommended priorities on the Draft National Ocean Policy Implementation Plan (Draft Plan or Plan). The purpose of these comments is to provide the National Ocean Council (NOC) with specific suggestions for creating better alignment between the Actions and Milestones and the best available science.

The Center for Ocean Solutions (COS or the Center) is a science-based organization that works to solve ocean problems through interdisciplinary teams. Drawing from our scientific, legal, and policy expertise, we focus our work on three strategic initiatives: (1) Ocean Ecosystem Health; (2) Climate Change; and (3) Land-Sea Interactions. We have identified these initiatives as priorities for increasing overall health of marine social-ecological systems; therefore the comments found on the following pages are organized around these three focal areas.

We provide the following general commentary on the Draft Plan and then progress to specifics under each of the COS focal areas.

(1) CMSP National Priorities: The Draft Plan identifies increased regulatory efficiency and the reduction of cumulative impacts as the two preliminary national objectives for Coastal and Marine Spatial Planning (CMSP).¹ These objectives should apply across all levels of ocean and coastal decision-making, permitting, and regulating – in other words, across all aspects of ocean governance, not just each region’s formal CMSP processes. We therefore urge the NOC to incorporate regulatory efficiency and reduction of cumulative impacts as priorities across all National Ocean Policy objectives.

¹ Draft Plan, at 87.

(2) Decision Support Tools: We support the Draft Plan’s emphasis on developing new, and enhancing current, Decision Support Tools (DSTs).² Our research and direct experience³ with both DST developers and end-users, reveals that (1) DSTs are most effective for users on a local, place-based scale when DSTs are customized for specific user objectives and constraints, and (2) when critical attention is given to capacity-building within user groups and institutions such that both organizations and individual users are equipped to optimize DSTs for their unique conditions.

(3) Social-Ecological Systems: We support the Draft Plan’s emphasis on integrating both social and natural scientific information into decision-making.⁴ We need to better understand the human dimensions of ocean environments, including the cultural, social, and economic relationships that people have with marine habitats and resources, in order to develop more effective policies and stakeholder engagement strategies. Understanding these social dimensions is particularly important given that policy is often focused on managing the resource users and fostering sustainable human behaviors, rather than on the resource alone. The NOC should encourage the change (already underway) toward understanding and managing for marine ecosystems as fully coupled Social-Ecological Systems.

1. Ocean Ecosystem Health

We support the Draft Plan’s emphasis on “[a]dopt[ing] ecosystem-based management as a foundational principle for the comprehensive management of the ocean, our coasts, and Great Lakes”⁵ within its **“Ecosystem-based Management”** chapter.⁶ Identifying and operationalizing ecological principles in the marine environment has comprised a substantial portion of COS’s ecosystem health work to date.⁷ Based on our research and active engagement with regional and national coastal and ocean managers, we provide the following specific comments on the Actions and Milestones included in this chapter.

- The timing of some of the Milestones seems inconsistent and inefficient.⁸ We recommend that the NOC create a clear action plan that both prioritizes the Milestones, and reorders them chronologically based on which Milestones should be completed before later Milestones can be fully accomplished. This will reduce inconsistencies and allow this foundational EBM work to be completed as quickly and efficiently as possible.
- Milestone 3 under Action 1 should include scientific expertise in addition to the legal expertise of the NOC Legal Working Group to identify existing agency authorities that can be used to incorporate EBM thinking into planning decisions. COS has undertaken similar

² Draft Plan, at 15-16; 21-22.

³ Center for Ocean Solutions. 2011. Decision Guide: Selecting Decision Support Tools for Marine Spatial Planning. The Woods Institute for the Environment, Stanford University, California.

⁴ Draft Plan, at 22.

⁵ Draft Plan, at 9.

⁶ Draft Plan, at 9-17.

⁷ Foley, M. M., et al. 2010. Guiding ecological principles for marine spatial planning. *Marine Policy* 34:955-966.

⁸ For example, in 2013 agencies are supposed to “identify regional information gaps to fully enable science-based EBM, and develop a plan to fill them.” Draft Plan, at 15. However, this regional gap analysis, to be completed in 2013, calls for use of oceans.data.gov, but the portal is not expected to be fully operational until 2015.

analysis on the state-level in California, and in our work, it has been instrumental to have both lawyers and scientists heavily involved in the process.

- A cumulative impacts analysis should be prioritized and possibly even receive its own Milestone, with its best fit under Action 2. Language for the milestone could include: “Evaluate emerging tools that quantify ecosystem vulnerability and cumulative impacts and incorporate the tools into decision-making frameworks.”

2. Climate Change

The Center has also been heavily involved in research on adapting to the impacts of climate change and is in the process of developing education and communication strategies to achieve these goals.⁹ Specifically, we have been working with managers on the ground to encourage development of collaborative adaptation strategies within California. We strongly support the Actions and Milestones set forth within the “**Resiliency and Adaptation to Climate Change and Ocean Acidification**” chapter,¹⁰ and provide the following priorities and recommendations for your consideration.

- “Action 5: Strengthen interagency coordination on the development and provision of information, training, guidance, tools, and support for adaptation practitioners,”¹¹ is a critical component of the adaptation process. Therefore, Action 5 should not stand-alone, but should instead be integrated and incorporated into each of the other Actions set forth within the chapter.
- Community engagement, public outreach, and public participation are missing from the “Resiliency and Adaptation to Climate Change and Ocean Acidification” chapter and should be emphasized as priorities. The Draft Plan successfully focuses on decision-maker involvement in the climate change adaptation process. But it fails to include involvement with the community and general public. Recent studies suggest that although informational resources related to climate change are now widely available to the public,¹² the public’s concern around the issue is *diminishing*.¹³ This poses a serious challenge to decision-makers

⁹ For example, the Center for Ocean Solutions recently co-hosted a climate change adaptation planning workshop for local decision-makers in the Monterey Bay coastal region titled, “Preparing for the Future: Climate Change and the Monterey Bay Shoreline.” Information about the workshop and background research and materials are available at <http://centerforoceansolutions.org/preparingforthefuture>. In collaboration with other agencies and organizations, the Center has conducted trainings to help local decision-makers apply climate change science to decision-making, and to apply social science research and best practices in communicating climate change risk and adaptation. COS is also conducting research to improve communication of climate change risk and adaptation; to understand California coastal professionals’ information, planning, and implementation needs in order to tailor educational, training and research programs on coastal adaptation; and to understand how to measure adaptation success.

¹⁰ Draft Plan, at 54-62.

¹¹ Draft Plan, at 60.

¹² Kellstedt, P.M., Zahran, S., & Vedlitz, A. 2008. Personal efficacy, the information environment, and attitudes toward global warming and climate change in the United States. *Risk Analysis*. 208:113-125.

¹³ Leiserowitz, A., Maibach, E. & Roser-Renough, C. 2010. Climate change in the American Mind: Americans’ global warming beliefs and attitudes in January 2010, *available at*, <http://environment.yale.edu/uploads/AmericansGlobalWarmingBeliefs2010.pdf>; Pew Research Center for the People and the Press. January 2010. Energy concerns fall, deficit concerns rise, *available at*, <http://people-press.org/reports/pdf/584.pdf>; and Gallup Institute. March 11, 2010. Americans’ global warming concerns continue to drop, *available at* <http://www.gallup.com/poll/126560/Americans-Global-Warming-Concerns-Continue-Drop.aspx#1>.

who must make potentially controversial decisions to prepare for the impacts of climate change. Community engagement, public outreach, and public participation at every step of the adaptation planning process are critical for successful climate change adaptation and therefore we urge the NOC to incorporate such involvement into the Actions and Milestones throughout this chapter.

- Vulnerability assessments called for in Action 4¹⁴ should not simply provide information; they should also tie that information to existing legal and policy levers (e.g. real estate terms & conditions, fisheries plans, NPDES permits, NEPA review, etc.).¹⁵
- Action 3¹⁶ should be expanded to provide guidance to decision-makers on how to apply the best available regional climate change projections at local scales. Our nation's coastlines are on the front line of climate change and decisions made at the local scale affect our adaptive capacity. However, many local decision-makers are loathe to adopt adaptation measures now, waiting for finer scale data on sea level rise and other climate change impacts. While our understanding of these impacts improves each year, uncertainty in projections will always exist. We therefore recommend that the NOC include a Milestone in Action 3 to develop clear guidance on how to apply the best available regional climate change projections at local scales given inherent uncertainty.
- Throughout this section, lack of data and/or coordination is assumed to be the principal barrier to action. While we agree that additional data collection is necessary for success, it is important to include mechanisms for *action* within the Action items. For example, use-use and use-environment conflicts are likely to be barriers to action and therefore a strategy for prioritizing and resolving these conflicts is needed.¹⁷ We stress the importance of not just *what* we might want to know about the science of climate change and ocean acidification, but also *why* we might want to know it; given perfect information about these changes, what would the Implementation Plan then do with that information? We suggest – consistent with our comments above regarding vulnerability analyses – that the Plan identify specific, existing policies that increased data and coordination are likely to influence. Then, as data become available, it will be clear where such data will plug into the legal and management landscape to mitigate or adapt to climate change and ocean acidification.
- While the chapter appropriately addresses the importance of adaptation at length within the section, mitigation is not even mentioned. We know we can do something about coastal

¹⁴ Draft Plan, at 59.

¹⁵ Vulnerability assessments provide explicit links between climate change and human welfare. The permits required under environmental statutes are logical venues in which such vulnerability analyses could be incorporated into already-existing policy structures: for example, in determining whether a project will have a significant environmental effect under NEPA, or in considering the beneficial uses of receiving waters under NPDES. Requiring disclosure of areas of sea level rise in real estate contracts' terms & conditions would be an application of vulnerability assessments that would be immediately useful for consumer protection and climate change adaptation and mitigation. *See e.g.* Climate Change and Monterey Bay, Real Estate Disclosures, http://www.climatechangemontereybay.org/solutions_adaptation.shtml#disclosures (last visited Feb. 20, 2012)(describing such disclosures).

¹⁶ Draft Plan, at 58.

¹⁷ Draft Plan, at 57.

ocean acidification¹⁸ and therefore the NOC should work to strike a balance between actions that can be undertaken to mitigate climate change impacts as well as actions that can be undertaken to adapt to our changing climate.

3. Land-Sea Interactions

Coastal habitats provide important services, such as sheltering diverse marine organisms, buffering terrestrial habitats from wave action and flooding, and supporting recreation and tourism. Therefore we strongly support the Draft Plan's chapter on "**Water Quality and Sustainable Practices on Land**"¹⁹ and its recognition that one of the ways in which we can enhance ocean and coastal water quality is by promoting sustainable practices on land.²⁰

- Some timelines seem to lag within the chapter. For example, in Milestone 9 of Action 1,²¹ CWA §319 funds could target high-priority programs in 2013, rather than 2015. The Implementation Plan is an opportunity to identify and activate development of funding mechanisms that would allow states to fund high-priority projects as quickly as possible.
- Under Action 1, we recommend an additional Milestone to address the impacts of federal policy on local water quality. For example, the NOC should implement a Milestone to evaluate federal agricultural policy for its impacts on water quality in marine ecosystems.
- We have identified the following priorities and recommendations to enhance the Milestones under "Action 3: Minimize impacts of hypoxia":²²
 - Action 3 asserts that hypoxia occurs when the amount of oxygen in water becomes too low to support life – "usually around 2 mg/L or less." However, this conventional 2 mg/L threshold underestimates the broad impacts of hypoxia in coastal ecosystems. Instead, it has been shown that for those organisms that are rarely exposed to hypoxia, threshold levels may be closer to 4.3 mg/L.²³ We recommend that the NOC take a more precautionary approach to identifying thresholds such as these when addressing hypoxia and its impacts on the ecosystem.
 - Milestone 3 under Action 3 should be prioritized. Milestone 3 calls for the EPA to produce and implement at least 12 State-wide nutrient reduction strategies.²⁴ Of all

¹⁸ R.P. Kelly *et al.*, Mitigating Local Causes of Ocean Acidification with Existing Laws, 332 Science 1036 (2011).; W.-J. Cai *et al.*, Acidification of Subsurface Coastal Waters Enhanced by Eutrophication, 4 Nature Geoscience 766 (2011).

¹⁹ Draft Plan, at 63-74.

²⁰ Draft Plan, at 63.

²¹ Draft Plan, at 66.

²² Draft Plan, at 68-69.

²³ Vaquer-Sunyer, R. and C. M. Duarte. 2008. Thresholds of hypoxia for marine biodiversity. Proceedings of the National Academy of Sciences, vol. 105, no. 40, 15452-15457.

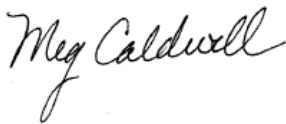
²⁴ Draft Plan, at 68.

the Milestones in Action 3, nutrient reduction has the most potential to quickly and effectively reduce the impacts of hypoxia.²⁵

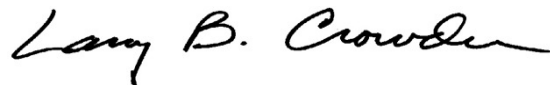
- Milestone 2 under Action 3 should also be prioritized. Milestone 2 calls for NOAA and USGS to advance scenario-based ecosystem models to evaluate hypoxia causes and impacts.²⁶ Ecosystem modeling is the only tool available for scenario-based assessments of marine systems and is an important component of NOAA's Integrated Ecosystem Assessments. Therefore, we urge prioritization of this Milestone to improve our understanding of hypoxia causes and impacts and to improve our integration of this information into ecosystem assessments.
- We recommend that the following additional priority be added as a Milestone to Action 3: "Identify ecologically at-risk species in eutrophic and upwelling driven hypoxic ecosystems to obtain a vulnerability analysis for a subset of coastal species, based on available data." The Center for Ocean Solutions' Working Group on Coastal Hypoxia is conducting such an assessment and it will serve to determine which species are most at risk from increased hypoxia. We know that hypoxia tolerances vary and animals rarely exposed to low oxygen will likely have a lower evolved tolerance, requiring behavioral plasticity or adaptation to avoid population level effects.²⁷

Thank you for your strong leadership toward improving the health and vitality of our Nation's ocean, coasts, and Great Lakes.

Sincerely,



Meg Caldwell, JD
Executive Director
Center for Ocean Solutions



Dr. Larry B. Crowder
Science Director
Center for Ocean Solutions

²⁵ Boesch, D.F., W.R. Boynton, L.B. Crowder, R.J. Diaz, R.W. Howarth, L.D. Mee, S.W. Nixon, N.N. Rabalais, R. Rosenberg, J.G. Sanders, D. Scavia, and R.E. Turner. 2009. Nutrient enrichment drives Gulf of Mexico hypoxia. *EOS Transactions AGU* 90:117-118.

²⁶ Draft Plan, at 68.

²⁷ Vaquer-Sunyer, R. and C. M. Duarte. 2008. Thresholds of hypoxia for marine biodiversity. *Proceedings of the National Academy of Sciences*, vol. 105, no. 40, 15452-15457.

Name: **Heather Stebbings**

Organization: Pacific Northwest Waterways Association

Path: http://edit.whitehouse.gov/sites/default/files/webform/20120227_pnwa_comments_draft_national_ocean_policy_implementation_plan.pdf

Comment: Thank you for the opportunity to comment. Attached are our thoughts on behalf of the Pacific Northwest Waterways Association.

February 27, 2012

Mr. Michael Weiss
Acting Director
National Ocean Council
722 Jackson Place, NW
Washington, DC 20503



PNWA comments on Draft National Ocean Policy Implementation Plan

Thank you for providing the opportunity to comment on the draft implementation plan for the National Ocean Policy. Our comments are being submitted on behalf of the PNWA membership. PNWA represents beneficiaries of ocean development, planning and policy. Our members include port authorities, towboat companies, steamship operators, shippers of cargo, agricultural producers, forest products manufacturers and other economic development interests in Washington, Oregon, Idaho and northern California. A listing of our member organizations is attached to this document.

We have several centrally themed concerns that we respectfully urge the National Ocean Council to consider prior to finalizing their implementation plan.

Inclusion of commercial stakeholders

Private sector and commercial users of our waters must be included in the decisions guiding the National Ocean Policy. Within the draft implementation plan there is a lack of acknowledgement of private sector and commercial uses of our waters. These activities are vital to the economic health of the nation and are rarely identified in the document.

- A key goal of the National Ocean Policy should be effective coordination with the private sector, especially where proven global environmental benefits can be realized by activities such as the expansion of waterborne shipping and offshore renewable energy.
- The final document should include additional and more equal consideration of all ocean uses including fishing, aquaculture, renewable offshore energy, waterborne transportation and recreation.

Funding sources

We request clarity regarding the funding for National Ocean Policy. The draft plan states that it is important to "leverage existing resources and prioritize use of funds among projects and programs" (page 5). For clarification, the document should note:

- The plan will be funded solely by resources specifically appropriated by Congress in support of the National Ocean Policy.
- All funding will be derived from public resources, and no stakeholder cost-share or funding will be required.

Ecosystem-based management

We very much appreciate the emphasis on a science-based approach for EBM, however we have concerns about some of the practical considerations. For example, the draft plan states that runoff "from suburban streets and lawns, agricultural and industrial uses, transportation activities, and urban development—even hundreds of miles away—affects water quality" (page 63). The final plan should:

- More precisely quantify the radius of the areas of potential concern.
- Consider lack of impact to be a benefit derived from using more fuel efficient and environmentally friendly modes of transportation, such as barging and waterborne shipping.

- Take into consideration the local, regional and national economic benefit of activities within impacted area.

Coastal and Marine Spatial Planning

Coastal and Marine Spatial Planning is a centerpiece of the National Ocean Policy and we agree that done responsibly, CMSP can benefit the nation. The working waterfront must remain protected and ports and other navigation stakeholders must be included as regional and national CMS plans are developed. We request that the following are taken into consideration as the National Ocean Council works through its CMSP process:

- Given the far-reaching impacts of the interim “Handbook for Regional Coastal and Marine Spatial Planning”, the document should be available for public comment prior to finalization.
- National and regional plans for CMSP have regulations that are harmonized.
- CMSP must have the ability now and in future to grow and adapt to changing environmental regulations and economic needs.
- Existing uses, including navigation channels and commercial towing lanes, are recognized and preserved in regional and national CMSP.

Observations, Mapping and Infrastructure

We agree with the NOC that data collection and mapping of our oceans is important and will have great benefit to health and safety, as well as environmental and economic well-being of our coastal communities. It should be noted in the final plan this objective will include the integration of data relating to commercial activity and waterborne transportation. This data will include current navigation channels and tow-lanes for commercial users.

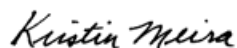
Improving efficiency of permitting

We appreciate the efforts by the National Ocean Council to improve permitting efficiencies. This has been a goal of the Pacific Northwest Waterways Association for many years. We agree that there are a number of redundant and sometimes conflicting processes as well as a lack of predictability for commercial stakeholders. A coordinated approach by the federal agencies to address permitting requests and challenges will be very beneficial to stakeholders nationwide. We request that as part of the plan, the following are considered:

- Expansion of the initial aquaculture focus to improve permitting efficiencies for other ocean uses including navigation and waterborne transportation infrastructure and needs, renewable offshore energy, and recreation infrastructure needs.
- Do not allow the perception that “understanding of marine ecosystems has not kept pace with the cumulative impacts of human uses and the environmental changes that are occurring” (page 3) delay agency response to permit requests.

We look forward to working with you and your colleagues as this plan is finalized and implemented. Please let us know if you have any questions.

Sincerely,



Kristin Meira
Executive Director

Attachment: PNWA membership list

PNWA Membership Roster



AECOM

Allan Rumbaugh

Alaska Assoc. of Port Managers & Harbormasters

Ball Janik LLP

Bell Buoy Crab Co.

Benton County PUD #1

BergerABAM Engineers, Inc.

Bergerson Construction

Bernert Barge Lines

BST Associates

Central Oregon Basalt Products, Inc.

Central Washington Grain Growers, Inc.

Clark Public Utilities

CLD Pacific Grain

Clearwater Paper

Columbia Basin Development League

Columbia Grain

Columbia River Bar Pilots

Columbia River Pilots

Columbia River Steamship Operators Association

Cooperative Agricultural Producers

David Evans & Associates

Dunlap Towing Company

Dutra Group

East Columbia Basin Irrigation District

EGT, LLC

FBB Federal Relations

Foss Maritime Company

Franklin PUD

Gordon Thomas Honeywell Gov't. Affairs

Great Lakes Dredge & Dock

Wally Hickerson

ID Wheat Commission

International Longshore and Warehouse Union (ILWU)

J.E. McAmis, Inc.

Kalama Export Company

KPFF Consulting Engineers, Inc.

Lampson International, LLC

Lewis-Clark Terminal Association

Longview Fibre Company

Mackay & Sposito, Inc.

Manson Construction

Marine Industrial Construction

Maul Foster & Alongi, Inc.

McGregor Company

McMillan

Moffatt & Nichol

Normandeau and Associates

Northwest Grain Growers, Inc.

Northwest Public Power Association (NWPPA)

Oregon Business Development Department

Oregon Int'l Port of Coos Bay

OR Wheat Growers League

Pacific Northwest Farmers Cooperative

Parametrix

Parsons Brinckerhoff

PND Engineers, Inc.

PNGC Power

Pomeroy Grain Growers

Port of Astoria

Port of Bandon

Port of Benton

Port of Camas-Washougal

Port of Cascade Locks

Port of Chelan County

Port of Chinook

Port of Clarkston

Port of Columbia County

Port of Garibaldi

Port of Hood River

Port of Humboldt Bay

Port of Ilwaco

Port of Kalama

Port of Klickitat

Port of Lewiston

Port of Longview

Port of Mattawa

Port of Morrow

Port of Newport

Port of Pasco

Port of Port Angeles

Port of Portland

Port of Ridgefield

Port of Royal Slope

Port of Seattle

Port of Siuslaw

Port of Skagit

Port of St. Helens

Port of Sunnyside

Port of Tacoma

Port of Toledo

Port of Umatilla

Port of Umpqua

Port of Vancouver

Port of Walla Walla

Port of Whitman County

Port of Woodland

Schnitzer Steel

Schwabe, Williamson & Wyatt

Seattle Public Utilities

Shaver Transportation Company

Stoel Rives LLP

Strategies 360

Teevin Brothers

Tidewater Barge Lines

Ukiah Engineering, Inc.

USA Dry Pea & Lentil Council

WA Association of Wheat Growers

WA Public Ports Association

WA State Potato Commission

WA Wheat Commission

Westwood Shipping

Weyerhaeuser Company

Wildlands, Inc.

www.pnwa.net

NATIONAL OCEAN COUNCIL

Name: **Ben Martens**

Organization: Maine Coast Fishermen's Association

Path: http://edit.whitehouse.gov/sites/default/files/webform/national_ocean_policy2.27.12.pdf

Comment:



Rebuilding the Gulf of Maine and the fishing communities that rely on it

Board of Directors

Gerry Cushman, *President*

Gary Libby, *Vice President*

Joe Nickerson, *Treasurer*

Jen Litteral, *Secretary*

Troy Bichrest

Anne Henshaw

Kelo Pinkham

Executive Director:

Ben Martens

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

2/27/2012

Dears Chair Sutley and Chair Holdren:

The Maine Coast Fishermen's Association (MCFA) would like to take this opportunity to comment on the draft implementation plan for the National Ocean Policy as established by Executive Order 13547. MFCA is a non-profit organization that identifies and fosters ways to restore the fisheries of the Gulf of Maine and sustain Maine's historic fishing communities for future generations. Established and run by active fishermen, The Association works to enhance the ecological and financial sustainability of the fishery through balancing the needs of the current generation of fishermen with the long term environmental restoration of the Gulf of Maine. Our membership is predominantly groundfish fishermen, but Maine's small boat fleet cannot rely on groundfish alone. Many fishermen prosecute other fisheries including: shrimp, scallops, urchins, swordfish, tuna, elvers, whiting and lobster, and their individual businesses are as diverse as the harbors that come from. As such, the National Ocean Policy and any suggested changes as to how the Gulf of Maine is managed will have direct and tangible impacts on the businesses, communities, and lives of our fishermen.

The overarching goals of the National Ocean Policy (adopt ecosystem-based management; obtain, use, and share the best science and data; promote efficiency and collaboration; and strengthen regional efforts) are ideas that we as an organization are fully behind. We recognize all too well the issues that have arisen from viewing individual fish species, or even simply the fishing industry, in a bubble and we hope that the federal government will continue to promote movement away from this archaic way of managing our natural resources. That being said, there is a profound fear among our fishing members that this process is one in which our access to a resources is being threatened and that the fishing community's needs are not being recognized. As current users who rely on the marine environment to support our businesses and families, there is seen to be little to gain by being involved Marine Spatial Planning and everything to lose. There is a fear that this process will be used as a way to simply fast track the placing of wind farms in areas that have been used by generations of fishing

Putting The Health Of Our Oceans & Maine's Fishing Communities First

families and history has shown that once access is lost by one segment of the industry to the benefit of another, it is never regained.

As such, we are trying to engage in this process early on to ensure that the fishing community is not ignored. As the National Ocean Council moves forward to implement Comprehensive Ocean Planning we ask that you prioritize developing a process that is open, transparent and engages meaningfully with the individuals and organizations whose livelihoods are connected to the ongoing health of the ocean. The fishing community is out on the water working; they are not paying attention to congressional bills, or Executive Orders and will not be aware of the details of this planning process until it is far too late to have any meaningful impact. Their input will require a more dedicated approach towards public engagement and education but one that is crucial for the National Ocean Policy to succeed. Everything this plan is trying to accomplish will be undermined without the needs of the fishing communities of Maine and beyond understood and recognized by the people and organizations behind this process. If it is not done well, this will simply look like a land-grab from one highly funded industry against struggling small businesses and their communities.

Thank you for the opportunity to comment on these draft plans. I hope that our comments reinvigorate your efforts to develop new ways to engage with the fishing businesses that rely on our shared marine resource so that their expertise is not lost to this process. We look forward to working with the National Ocean Council and the New England regional planning body to create a plan that will ensure the continued prosperity of New England's fishermen and their communities as well as the ecosystems upon which they depend.

Sincerely,

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

Ben Martens
Executive Director

Name: **Meg Caldwell**

Organization: Center for Ocean Solutions

Path: http://edit.whitehouse.gov/sites/default/files/webform/center_for_ocean_solutions_draft_imp_plan_comments_2012-02-27_final.pdf

Comment: Please disregard the letter previously submitted and accept the letter attached here.



February 27, 2012

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

Filed electronically via <http://www.whitehouse.gov/webform/submit-comments-draft-implementation-plan>

Re: Comments and Priorities on the Draft National Ocean Policy Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members,

Thank you for the opportunity to submit our comments and recommended priorities on the Draft National Ocean Policy Implementation Plan (Draft Plan or Plan). The purpose of these comments is to provide the National Ocean Council (NOC) with specific suggestions for creating better alignment between the Actions and Milestones and the best available science.

The Center for Ocean Solutions (COS or the Center) is a science-based organization that works to solve ocean problems through interdisciplinary teams. Drawing from our scientific, legal, and policy expertise, we focus our work on three strategic initiatives: (1) Ocean Ecosystem Health; (2) Climate Change; and (3) Land-Sea Interactions. We have identified these initiatives as priorities for increasing overall health of marine social-ecological systems; therefore the comments found on the following pages are organized around these three focal areas.

We provide the following general commentary on the Draft Plan and then progress to specifics under each of the COS focal areas.

(1) CMSP National Priorities: The Draft Plan identifies increased regulatory efficiency and the reduction of cumulative impacts as the two preliminary national objectives for Coastal and Marine Spatial Planning (CMSP).¹ These objectives should apply across all levels of ocean and coastal decision-making, permitting, and regulating – in other words, across all aspects of ocean governance, not just each region’s formal CMSP processes. We therefore urge the NOC to incorporate regulatory efficiency and reduction of cumulative impacts as priorities across all National Ocean Policy objectives.

¹ Draft Plan, at 87.

(2) Decision Support Tools: We support the Draft Plan’s emphasis on developing new, and enhancing current, Decision Support Tools (DSTs).² Our research and direct experience³ with both DST developers and end-users, reveals that (1) DSTs are most effective for users on a local, place-based scale when DSTs are customized for specific user objectives and constraints, and (2) when critical attention is given to capacity-building within user groups and institutions such that both organizations and individual users are equipped to optimize DSTs for their unique conditions.

(3) Social-Ecological Systems: We support the Draft Plan’s emphasis on integrating both social and natural scientific information into decision-making.⁴ We need to better understand the human dimensions of ocean environments, including the cultural, social, and economic relationships that people have with marine habitats and resources, in order to develop more effective policies and stakeholder engagement strategies. Understanding these social dimensions is particularly important given that policy is often focused on managing the resource users and fostering sustainable human behaviors, rather than on the resource alone. The NOC should encourage the change (already underway) toward understanding and managing for marine ecosystems as fully coupled Social-Ecological Systems.

1. Ocean Ecosystem Health

We support the Draft Plan’s emphasis on “[a]dopt[ing] ecosystem-based management as a foundational principle for the comprehensive management of the ocean, our coasts, and Great Lakes”⁵ within its **“Ecosystem-based Management”** chapter.⁶ Identifying and operationalizing ecological principles in the marine environment has comprised a substantial portion of COS’s ecosystem health work to date.⁷ Based on our research and active engagement with regional and national coastal and ocean managers, we provide the following specific comments on the Actions and Milestones included in this chapter.

- The timing of some of the Milestones seems inconsistent and inefficient.⁸ We recommend that the NOC create a clear action plan that both prioritizes the Milestones, and reorders them chronologically based on which Milestones should be completed before later Milestones can be fully accomplished. This will reduce inconsistencies and allow this foundational EBM work to be completed as quickly and efficiently as possible.
- Milestone 3 under Action 1 should include scientific expertise in addition to the legal expertise of the NOC Legal Working Group to identify existing agency authorities that can be used to incorporate EBM thinking into planning decisions. COS has undertaken similar

² Draft Plan, at 15-16; 21-22.

³ Center for Ocean Solutions. 2011. Decision Guide: Selecting Decision Support Tools for Marine Spatial Planning. The Woods Institute for the Environment, Stanford University, California.

⁴ Draft Plan, at 22.

⁵ Draft Plan, at 9.

⁶ Draft Plan, at 9-17.

⁷ Foley, M. M., et al. 2010. Guiding ecological principles for marine spatial planning. *Marine Policy* 34:955-966.

⁸ For example, in 2013 agencies are supposed to “identify regional information gaps to fully enable science-based EBM, and develop a plan to fill them.” Draft Plan, at 15. However, this regional gap analysis, to be completed in 2013, calls for use of oceans.data.gov, but the portal is not expected to be fully operational until 2015.

analysis on the state-level in California, and in our work, it has been instrumental to have both lawyers and scientists heavily involved in the process.

- A cumulative impacts analysis should be prioritized and possibly even receive its own Milestone, with its best fit under Action 2. Language for the milestone could include: “Evaluate emerging tools that quantify ecosystem vulnerability and cumulative impacts and incorporate the tools into decision-making frameworks.”

2. Climate Change

The Center has also been heavily involved in research on adapting to the impacts of climate change and is in the process of developing education and communication strategies to achieve these goals.⁹ Specifically, we have been working with managers on the ground to encourage development of collaborative adaptation strategies within California. We strongly support the Actions and Milestones set forth within the “**Resiliency and Adaptation to Climate Change and Ocean Acidification**” chapter,¹⁰ and provide the following priorities and recommendations for your consideration.

- “Action 5: Strengthen interagency coordination on the development and provision of information, training, guidance, tools, and support for adaptation practitioners,”¹¹ is a critical component of the adaptation process. Therefore, Action 5 should not stand-alone, but should instead be integrated and incorporated into each of the other Actions set forth within the chapter.
- Community engagement, public outreach, and public participation are missing from the “Resiliency and Adaptation to Climate Change and Ocean Acidification” chapter and should be emphasized as priorities. The Draft Plan successfully focuses on decision-maker involvement in the climate change adaptation process. But it fails to include involvement with the community and general public. Recent studies suggest that although informational resources related to climate change are now widely available to the public,¹² the public’s concern around the issue is *diminishing*.¹³ This poses a serious challenge to decision-makers

⁹ For example, the Center for Ocean Solutions recently co-hosted a climate change adaptation planning workshop for local decision-makers in the Monterey Bay coastal region titled, “Preparing for the Future: Climate Change and the Monterey Bay Shoreline.” Information about the workshop and background research and materials are available at <http://centerforoceansolutions.org/preparingforthefuture>. In collaboration with other agencies and organizations, the Center has conducted trainings to help local decision-makers apply climate change science to decision-making, and to apply social science research and best practices in communicating climate change risk and adaptation. COS is also conducting research to improve communication of climate change risk and adaptation; to understand California coastal professionals’ information, planning, and implementation needs in order to tailor educational, training and research programs on coastal adaptation; and to understand how to measure adaptation success.

¹⁰ Draft Plan, at 54-62.

¹¹ Draft Plan, at 60.

¹² Kellstedt, P.M., Zahran, S., & Vedlitz, A. 2008. Personal efficacy, the information environment, and attitudes toward global warming and climate change in the United States. *Risk Analysis*. 208:113-125.

¹³ Leiserowitz, A., Maibach, E. & Roser-Renough, C. 2010. Climate change in the American Mind: Americans’ global warming beliefs and attitudes in January 2010, *available at*, <http://environment.yale.edu/uploads/AmericansGlobalWarmingBeliefs2010.pdf>; Pew Research Center for the People and the Press. January 2010. Energy concerns fall, deficit concerns rise, *available at*, <http://people-press.org/reports/pdf/584.pdf>; and Gallup Institute. March 11, 2010. Americans’ global warming concerns continue to drop, *available at* <http://www.gallup.com/poll/126560/Americans-Global-Warming-Concerns-Continue-Drop.aspx#1>.

who must make potentially controversial decisions to prepare for the impacts of climate change. Community engagement, public outreach, and public participation at every step of the adaptation planning process are critical for successful climate change adaptation and therefore we urge the NOC to incorporate such involvement into the Actions and Milestones throughout this chapter.

- Vulnerability assessments called for in Action 4¹⁴ should not simply provide information; they should also tie that information to existing legal and policy levers (e.g. real estate terms & conditions, fisheries plans, NPDES permits, NEPA review, etc.).¹⁵
- Action 3¹⁶ should be expanded to provide guidance to decision-makers on how to apply the best available regional climate change projections at local scales. Our nation's coastlines are on the front line of climate change and decisions made at the local scale affect our adaptive capacity. However, many local decision-makers are loathe to adopt adaptation measures now, waiting for finer scale data on sea level rise and other climate change impacts. While our understanding of these impacts improves each year, uncertainty in projections will always exist. We therefore recommend that the NOC include a Milestone in Action 3 to develop clear guidance on how to apply the best available regional climate change projections at local scales given inherent uncertainty.
- Throughout this section, lack of data and/or coordination is assumed to be the principal barrier to action. While we agree that additional data collection is necessary for success, it is important to include mechanisms for *action* within the Action items. For example, use-use and use-environment conflicts are likely to be barriers to action and therefore a strategy for prioritizing and resolving these conflicts is needed.¹⁷ We stress the importance of not just *what* we might want to know about the science of climate change and ocean acidification, but also *why* we might want to know it; given perfect information about these changes, what would the Implementation Plan then do with that information? We suggest – consistent with our comments above regarding vulnerability analyses – that the Plan identify specific, existing policies that increased data and coordination are likely to influence. Then, as data become available, it will be clear where such data will plug into the legal and management landscape to mitigate or adapt to climate change and ocean acidification.
- While the chapter appropriately addresses the importance of adaptation at length within the section, mitigation is not even mentioned. We know we can do something about coastal

¹⁴ Draft Plan, at 59.

¹⁵ Vulnerability assessments provide explicit links between climate change and human welfare. The permits required under environmental statutes are logical venues in which such vulnerability analyses could be incorporated into already-existing policy structures: for example, in determining whether a project will have a significant environmental effect under NEPA, or in considering the beneficial uses of receiving waters under NPDES. Requiring disclosure of areas of sea level rise in real estate contracts' terms & conditions would be an application of vulnerability assessments that would be immediately useful for consumer protection and climate change adaptation and mitigation. *See e.g.* Climate Change and Monterey Bay, Real Estate Disclosures, http://www.climatechangemontereybay.org/solutions_adaptation.shtml#disclosures (last visited Feb. 20, 2012)(describing such disclosures).

¹⁶ Draft Plan, at 58.

¹⁷ Draft Plan, at 57.

ocean acidification¹⁸ and therefore the NOC should work to strike a balance between actions that can be undertaken to mitigate climate change impacts as well as actions that can be undertaken to adapt to our changing climate.

3. Land-Sea Interactions

Coastal habitats provide important services, such as sheltering diverse marine organisms, buffering terrestrial habitats from wave action and flooding, and supporting recreation and tourism. Therefore we strongly support the Draft Plan's chapter on "**Water Quality and Sustainable Practices on Land**"¹⁹ and its recognition that one of the ways in which we can enhance ocean and coastal water quality is by promoting sustainable practices on land.²⁰

- Some timelines seem to lag within the chapter. For example, in Milestone 9 of Action 1,²¹ CWA §319 funds could target high-priority programs in 2013, rather than 2015. The Implementation Plan is an opportunity to identify and activate development of funding mechanisms that would allow states to fund high-priority projects as quickly as possible.
- Under Action 1, we recommend an additional Milestone to address the impacts of federal policy on local water quality. For example, the NOC should implement a Milestone to evaluate federal agricultural policy for its impacts on water quality in marine ecosystems.
- We have identified the following priorities and recommendations to enhance the Milestones under "Action 3: Minimize impacts of hypoxia":²²
 - Action 3 asserts that hypoxia occurs when the amount of oxygen in water becomes too low to support life – "usually around 2 mg/L or less." However, this conventional 2 mg/L threshold underestimates the broad impacts of hypoxia in coastal ecosystems. Instead, it has been shown that for those organisms that are rarely exposed to hypoxia, threshold levels may be closer to 4.3 mg/L.²³ We recommend that the NOC take a more precautionary approach to identifying thresholds such as these when addressing hypoxia and its impacts on the ecosystem.
 - Milestone 3 under Action 3 should be prioritized. Milestone 3 calls for the EPA to produce and implement at least 12 State-wide nutrient reduction strategies.²⁴ Of all

¹⁸ R.P. Kelly *et al.*, Mitigating Local Causes of Ocean Acidification with Existing Laws, 332 Science 1036 (2011).; W.-J. Cai *et al.*, Acidification of Subsurface Coastal Waters Enhanced by Eutrophication, 4 Nature Geoscience 766 (2011).

¹⁹ Draft Plan, at 63-74.

²⁰ Draft Plan, at 63.

²¹ Draft Plan, at 66.

²² Draft Plan, at 68-69.

²³ Vaquer-Sunyer, R. and C. M. Duarte. 2008. Thresholds of hypoxia for marine biodiversity. Proceedings of the National Academy of Sciences, vol. 105, no. 40, 15452-15457.

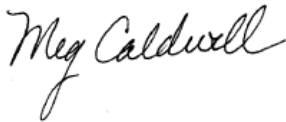
²⁴ Draft Plan, at 68.

the Milestones in Action 3, nutrient reduction has the most potential to quickly and effectively reduce the impacts of hypoxia.²⁵

- Milestone 2 under Action 3 should also be prioritized. Milestone 2 calls for NOAA and USGS to advance scenario-based ecosystem models to evaluate hypoxia causes and impacts.²⁶ Ecosystem modeling is the only tool available for scenario-based assessments of marine systems and is an important component of NOAA's Integrated Ecosystem Assessments. Therefore, we urge prioritization of this Milestone to improve our understanding of hypoxia causes and impacts and to improve our integration of this information into ecosystem assessments.
- We recommend that the following additional priority be added as a Milestone to Action 3: "Identify ecologically at-risk species in eutrophic and upwelling driven hypoxic ecosystems to obtain a vulnerability analysis for a subset of coastal species, based on available data." The Center for Ocean Solutions' Working Group on Coastal Hypoxia is conducting such an assessment and it will serve to determine which species are most at risk from increased hypoxia. We know that hypoxia tolerances vary and animals rarely exposed to low oxygen will likely have a lower evolved tolerance, requiring behavioral plasticity or adaptation to avoid population level effects.²⁷

Thank you for your strong leadership toward improving the health and vitality of our Nation's ocean, coasts, and Great Lakes.

Sincerely,



Meg Caldwell, JD
Executive Director
Center for Ocean Solutions



Dr. Larry B. Crowder
Science Director
Center for Ocean Solutions

²⁵ Boesch, D.F., W.R. Boynton, L.B. Crowder, R.J. Diaz, R.W. Howarth, L.D. Mee, S.W. Nixon, N.N. Rabalais, R. Rosenberg, J.G. Sanders, D. Scavia, and R.E. Turner. 2009. Nutrient enrichment drives Gulf of Mexico hypoxia. *EOS Transactions AGU* 90:117-118.

²⁶ Draft Plan, at 68.

²⁷ Vaquer-Sunyer, R. and C. M. Duarte. 2008. Thresholds of hypoxia for marine biodiversity. *Proceedings of the National Academy of Sciences*, vol. 105, no. 40, 15452-15457.

Name: **Jeff Manker**

Organization: Gilroy High School

Path:

Comment: I would like to complement the organizers for including education in this plan. I would also like to suggest that more could be done by coordinating with the Department of Education. In my own state of California teaching Marine Science has become increasingly harder in that there is no state test for Marine Science that will help our district meet the goals of Federal "No Child Left Behind" Standards. This puts pressure on district officials to ELIMINATE Marine Science and other classes that do not have specific tests (like Biology, Physics or Chemistry). If this policy is to succeed then it must be supported by those with knowledge. To gain that knowledge they must be educated and to be educated in that field, policies must be put in place that welcome, or at the very least, tolerate those subjects that inform our citizens. Please do all you can to ensure that occurs. Thank you for your efforts.

Name: **Thomas Ingram**

Organization: Diving Equipment and Marketing Association (DEMA)

Path: http://edit.whitehouse.gov/sites/default/files/webform/dema_public_comments_-_nop_implementation_plan_2012.pdf

Comment: Please see the attached document. These written comments are submitted on behalf of the Diving Equipment and Marketing Association (DEMA), the world's largest trade association for the recreational scuba diving and snorkeling industries. DEMA is a non-profit association with more than 1,500 business members, established in 1975. DEMA represents scuba diving and snorkeling equipment manufacturers, diver training organizations, the diving media, retail establishments and diving destinations all over the globe. Our mission is to promote sustainable growth in recreational scuba diving and snorkeling while protecting the environment.

NATIONAL OCEAN POLICY IMPLEMENTATION PLAN

COMMENTS SUBMITTED ON BEHALF OF THE RECREATIONAL DIVING AND SNORKELING INDUSTRIES

**Thomas Ingram, Executive Director
Diving Equipment and Marketing Association**

February 27, 2012

These written comments are submitted on behalf of the Diving Equipment and Marketing Association (DEMA), the world's largest trade association for the recreational scuba diving and snorkeling industries. DEMA is a non-profit association with more than 1,500 business members, established in 1975. DEMA represents scuba diving and snorkeling equipment manufacturers, diver training organizations, the diving media, retail establishments and diving destinations all over the globe. Our mission is to promote sustainable growth in recreational scuba diving and snorkeling while protecting the environment.

The professionals who are members of the diving industry include certified diving instructors, credentialed vessel captains, environmental experts, marine biologists, business professionals, underwater photographers, geologists, archaeologists, physical education specialists, health experts and many others. Even the most casual diver is an environmentally-concerned observer, and diving is a healthy activity that includes families, children, retirees, college students, and others.

Recreational scuba diving and snorkeling are NOT inherently consumptive activities. Divers take photographs, study and catalog coral and other underwater structures while leaving them undisturbed, use their navigation and search skills to locate new underwater sites, and share their experiences with others. Divers are educated in controlling buoyancy while in the water, and actively seek ways to improve the diving environment and enjoy the diving experience.

The most active divers today are between the ages of 38 and 53. A majority of active divers enjoy a household income greater than \$100,000, travel extensively throughout the US and overseas, and contribute greatly to the US economy in their purchases of goods and services. DEMA, representing the professionals that service these customers, strives to help divers and all citizens understand the need for responsible use of these precious aquatic resources.

DEMA recognizes and appreciates President Obama's concern for the health of our nation's waterways and the need to develop a national policy for the oceans, our coasts and the Great Lakes. Members of the diving profession and diving participants use these waters daily for healthy, safe recreation, and these bodies of water help to generate thousands of jobs, and produce millions in tax revenues for local, state and federal government.

The small and medium sized businesses that make up the recreational diving industry depend on these bodies of water for their livelihoods. Without healthy lakes, coastal areas and oceans, there is simply no place to scuba dive or snorkel, and consequently, no recreational diving business.

Additional information regarding the economic impact of recreational scuba diving and snorkeling is provided below, with the goal of outlining the need for including understanding the potential economic impact of the National Ocean Policy.

THE ECONOMICS OF RECREATIONAL DIVING AND SNORKELING

There are approximately 2.7 to 3.5 million active divers in the US alone, with estimates as high as 6 million worldwide. According to *Understanding the Potential Economic Impact of SCUBA Diving and Snorkeling: California (2006)*, Linwood H. Pendleton, Associate Professor, Environmental Science and Engineering Program at the University of California, Los Angeles, estimated that there are about 11 million snorkelers in the US. The Professional Association of Diving Instructors (PADI) estimates that there are some 20 million snorkelers worldwide.

Leeworthy and Wiley estimate that about 5.07% of the US population participates in snorkeling (approximately 11 million) and they participate at the rate of 92.5 million diver-days annually. Leeworthy and Wiley further estimate that 1.35% of the US population participates in scuba diving (about 2.79 million) at the rate of 22.8 million diver-days annually (See **EXHIBIT E**).

Studies of certified divers in 2006, 2009 and 2010 all indicate that divers remain active in the sport for a long time. These studies confirm that divers have a participation “half-life” of about 5 years. That is, some five years after receiving their initial training and diver “certification,” about 50% of the diver population will have discontinued their diving activity. Approximately 5 years later an additional 50% of the initial diver population will cease or reduce diving activities, and so on. In the US about 200,000 new divers are trained and certified each year.

Interestingly, many “divers” never actually become “certified.” A large number (by some estimates more than one million globally) participate in “try diving” experiences. These individuals are under the direct supervision of a diving professional, and though they never complete a certification course, they nonetheless participate repeatedly in diving activities, many on living coral reefs in the ocean. Although not counted in the totals of divers certified, these individuals are also part of the economic contribution provided by diving.

Recreational scuba divers and snorkelers contribute to US and international tourism revenue by purchasing dive trips, equipment and other diving-related items, and by spending on ancillary items such as hotels, food, fuel, air transportation, water and ground transportation, and other items while traveling to local and distant dive destinations. Divers contribute to sales tax revenues for local counties, municipalities and states, and to federal and state tax revenues through the creation of diving tourism-related jobs.

Value of Recreational Divers and Snorkelers

Recreational divers, snorkelers, fishers, and others are attracted by the presence and accessibility of coral reefs, making them a significant part of diving tourist and travel promotional strategies. Although not all diving in the US is conducted on coral reefs, the studies cited below do provide some guidance with regard to the economic potential of diving. Since diving is also conducted in colder climates, and in lakes, rivers and quarries, the estimates cited herein are less than the real value of recreational diving.

STUDIES

In the March 2003 *An Assessment of the Socio-Economic Impact of the Sinking of the HMS Scylla* the South West Regional Economy Centre at the University of Plymouth indicated that for every 10,000 diver days, three full time equivalent (FTE) jobs were created, half of which were direct (associated directly with diving) and half of which were indirect (associated with hotels, restaurants and other tourist and service employers). This same study indicates a contribution to the GDP of approximately £669,000 (approximately US\$1,027,800) for every 10,000 diver-days (See EXHIBIT D).

A 2000 report from the World Resources Institute indicates that coral reefs in the Caribbean alone contribute \$2.1 billion for dive-specific tourism. This same presentation recorded more than 8.80 million visitor-days in Florida annually by snorkelers and scuba divers. The annual direct economic value of coral reefs to world tourism is estimated at some \$9.6 billion.

A study of Martin County Florida published in 2004 indicates that snorkeling on Martin County reefs generates about \$465,000 in annual expenditures within the county, of which one-half are spent on boat, oil, and gas. Scuba diving on Martin County reefs generates about \$672,000 in annual expenditures within the county of which about one-half is spent on boat, oil, and gas. For all activities combined, the use of natural reefs generates \$6,886,000 in annual expenditures within the county. Total annual reef-related expenditures, including natural and artificial reefs, are estimated at \$12,000,000.

According to the *Socioeconomic Study of Reefs in Southeast Florida* (October 2001, Florida Fish and Wildlife Conservation Commission, National Oceanic and Atmospheric Administration, in association with Florida State University), reef-related expenditures generated over \$4.395 billion in sales in Palm Beach, Broward, Miami-Dade and Monroe Counties combined, during the 12-month period from June 2000 to May 2001. These sales resulted in generating \$2.047 billion in income to Palm Beach, Broward, Miami-Dade, and Monroe County residents during the same time period. During the same period, reef-related expenditures provided 71,300 full and part-time jobs in these four southeast Florida counties. Two-thirds of the economic contribution was associated with natural reef-related expenditures in Miami-Dade and Palm Beach Counties, seventy five percent of the economic contribution was associated with natural reefs in Monroe County, and about fifty percent was associated with natural reefs in Broward County (See EXHIBIT A – Economic Contribution of Reef-Related Expenditures in Four Florida Counties).

It should be clear that recreational diving and snorkeling contribute significantly to tourism-related businesses, in addition to the revenue contribution from diving activities

derived directly by diving-related businesses. It should also be clear that recreational diving and snorkeling generate jobs in many different sectors, some of which are highly specialized, requiring extensive training.

As noted, it is estimated that three full time equivalent (FTE) jobs are created for every additional 10,000 diver-days. With approximately 115 million combined snorkeling and scuba diver-days annually in the US alone, it is projected that such recreational diving activity, through direct and indirect contributions, delivers about \$11 billion to the US annual GDP (See EXHIBITS D and E) and creates more than 340,000 FTE jobs.

COMMENTS CONCERNING THE NATIONAL OCEAN POLICY IMPLEMENTATION PLAN

The National Ocean Policy Implementation Plan as outlined considers some of the actions and objectives important to members of DEMA, including the need to Make Informed Decisions and Improve Understanding; gathering and examining the science and economic information needed to make critical decisions in this undertaking.

It is this need for peer-reviewed and unbiased science and economic data which, in DEMA's opinion, should be carried out PRIOR to considering the execution of this complex and overarching National Ocean Policy implementation plan. DEMA strongly recommends that all objectives in the Plan be subverted to that objective requiring the acquisition and examination of scientific and economic data. Doing so will provide the opportunity to ensure that the implementation of the National Ocean Policy is conducted using sound scientific and socioeconomic information, and ensure that a need for such a Policy actually exists.

This recommendation is based on a simple premise; the science and economic data will point to the best decision-making possible, including whether this plan and Policy as presented are necessary and properly designed. Although data gathering will be on-going, the need for better data exists PRIOR to implementation.

By creating an administrative structure BEFORE peer-reviewed and sound science and economic data affirm the need for creating such a complex infrastructure, errors in the Policy may cause more harm than good, especially with regard to economic growth. Such a structure will undoubtedly make business permitting more complex and create other administrative delays and difficulty, even though sound science may not exist to indicate such delays and complexity are necessary.

The planning document includes 53 federal actions and almost 300 "milestones" incorporating 26 federal agencies. Almost half of the milestones described are planned for implementation by the year 2016. The plan itself notes the complexity of implementing such an undertaking, and acknowledges that funding for this initiative may not be readily available in the current or near-term economic environment. The plan calls for the creation of extensive administrative oversight and a plethora of administrative offices, and does so ahead of providing the scientific and social science information needed to justify such a large administrative requirement.

While noting the requirement of administrative buildup, the plan incorporates inadequate congressional oversight. There is scant incorporation of coastal, lake and ocean user groups. The plan calls for establishing federal “zoning” boards and regulations which will likely hamper the growth of commercial and recreational interests, while excluding many of these groups from the discussion. As a result, DEMA is concerned that individuals and communities which depend on economic contributions from these activities and resources could be significantly harmed due to the addition of new layers of bureaucracy, as well as unwarranted restrictions on activity. At the very least such a regulatory environment will create uncertainty with regard as to proceed when starting a business or when making changes to an existing one. In addition, the plan itself acknowledges that there are already conflicts with existing federal laws which must be resolved before moving forward. Such conflicts are likely to undo productive legislative efforts of the past and create legislative and bureaucratic conflicts which further delay implementation and create additional economic uncertainty.

Even with assurances from the National Ocean Council that there will be no need for new administrative or financial resources during the initial implementation phase of the National Ocean Policy Plan, it is unrealistic to assume that it is possible to avoid such administrative requirements, resources and cost. With more than two dozen federal agencies involved the complexity of this endeavor should be evident to anyone, and the adverse impact will, in our opinion, be unavoidable.

The National Ocean Policy Implementation Plan provides that Federal agencies will help preserve our maritime heritage and support access to those cultural resources. DEMA strongly recommends that the National Ocean Policy follow the advice of the United Nations Educational Scientific and Cultural Organization (UNESCO) with regard to these cultural resources. These recommendations include encouraging responsible non-intrusive access to observe or document such heritage in situ.

UNESCO notes that it is “the public’s right to enjoy the educational and recreational benefits of responsible non-intrusive access to in situ underwater cultural heritage,” and such observation “shall create public awareness, appreciation, and protection,” where it is compatible with the proper protection and management of the concerned sites.

The UNESCO Convention on the Protection of the Underwater Cultural Heritage further indicates that “leisure divers and non-professional or professional divers interested in the enjoyment of submerged archaeological sites are an important public for the enjoyment of underwater heritage. They can also become the guardians of certain sites and be a valuable help to national authorities.” Further the Convention recommends that, “*Each State Party shall take all practicable measures to raise public awareness regarding the value and significance of underwater cultural heritage and the importance of protecting it under this Convention.*”

In summary, DEMA strongly recommends a balanced approach to preserving the health of aquatic resources and maintaining access for their use, and advocates the need for having sound, peer-reviewed and unbiased science and economic research prior to implementation of the National Ocean Policy. DEMA also recommends that submerged cultural heritage sites remain accessible under the guidelines described by UNESCO, and

strongly suggests that the entire Implementation Plan for the National Ocean Policy receive considerable Congressional oversight.

CONTINUING INTEREST IN PROVIDING SUPPORT TO THE GOVERNMENT REGARDING USE OF AQUATIC RESOURCES

Since its inception DEMA as an organization has worked for the betterment of the environmentally sensitive resources on which our industries depend, while balancing the needs of diving businesses, and encouraging diving consumers to further protect these resources. Our efforts to protect the ocean, create jobs and recruit additional stewards for oceans and coral reefs have been enhanced by programs such as our Ships 2 Reefs program, providing information to those who would create environmentally safe artificial reefs. DEMA has also been privileged to advocate for the reauthorization of the National Marine Sanctuaries Act, and comment on establishment of Marine Life Protected Areas, as well as other efforts to protect the underwater environment.

We openly offer our assistance in understanding the economics of these industries or in other ways that make the most sense to the National Ocean Council.

Thank you for the opportunity to provide input on this important matter.

EXHIBITS

EXHIBIT A – Economic Contribution of Reef-Related Expenditures in Four Southeast Florida Counties

Economic Contribution of Reef-Related Expenditures to Each County
June 2000 to May 2001 – Residents and Visitors

Type of Economic Contribution	Palm Beach County	Broward County	Miami-Dade County	Monroe County
Sales – All Reefs (in millions of 2000 dollars)	\$505	\$2,069	\$1,297	\$490
Artificial Reefs	\$148	\$961	\$419	\$127
Natural Reefs	\$357	\$1,108	\$878	\$363
Income – All Reefs (in millions of 2000 dollars)	\$194	\$1,049	\$614	\$139
Artificial Reefs	\$52	\$502	\$195	\$33
Natural Reefs	\$142	\$547	\$419	\$106
Employment – All Reefs (number of full- and part-time jobs)	6,300	36,000	19,000	10,000
Artificial Reefs	1,800	17,000	6,000	2,000
Natural Reefs	4,500	19,000	13,000	8,000

Source: *Socioeconomic Study of Reefs in Southeast Florida*, Johns, Leeworthy, Bell, Bonn

EXHIBIT B – Florida Coral Reefs Recreational Use

Recreational Use of Coral Reefs in Florida	
Snorkeling	4.24 million visitor days
Scuba Diving	4.56 million visitor days
Fishing	9.72 million visitor days
Glass-bottom Boats	0.12 million visitor days
TOTAL	18.64 million visitor days

Ref: Dr. Vernon R. Leeworthy, Chief Economist, Office of National Marine Sanctuaries

EXHIBIT C - Recreational value of coral reefs in Hawaii in 2001 (US dollars)

	Consumer Surplus	Value Added of Direct Expenditure	Value Added of Indirect Expenditure	Multiplier Effect	Total Value Added
<i>Snorkelers</i>					
Residents	10,053,899	2,318,704	-	579,676	12,952,279
US West	47,833,826	20,882,055	23,136,504	11,004,640	102,857,025
US East	33,174,006	14,482,250	20,450,444	8,733,174	76,839,874
Japan	13,340,508	5,823,854	2,189,058	2,003,228	23,356,648
Canada	5,236,964	2,286,218	3,587,133	1,468,338	12,578,653
Europe	3,809,326	1,662,977	2,246,766	977,436	8,696,505
Other	11,782,791	5,143,826	6,794,101	2,984,482	26,705,200
<i>Subtotal</i>	<i>125,231,322</i>	<i>52,599,883</i>	<i>58,404,007</i>	<i>27,750,973</i>	<i>263,986,183</i>
<i>Scuba Divers</i>					
Residents	3,450,231	5,137,088	-	1,284,272	9,871,591
US West	1,588,179	3,152,878	3,545,777	1,674,664	9,961,498
US East	1,101,444	2,186,603	3,134,126	1,330,182	7,752,355
Japan	1,255,768	2,492,969	2,710,742	1,300,928	7,760,407
Canada	173,878	345,185	549,745	223,733	1,292,541
Europe	126,477	251,085	344,327	148,853	870,742
Other	391,212	776,641	1,041,228	454,467	2,663,548
<i>Subtotal</i>	<i>8,087,190</i>	<i>14,342,448</i>	<i>11,325,946</i>	<i>6,417,099</i>	<i>40,172,682</i>
<i>Total Recreational Value</i>					
Residents	13,504,130	7,455,792	-	1,863,948	22,823,870
US West	49,422,006	24,034,932	26,682,281	12,679,303	112,818,522
US East	34,275,450	16,668,853	23,584,570	10,063,356	84,592,229
Japan	14,596,276	8,316,823	4,899,800	3,304,156	31,117,055
Canada	5,410,842	2,631,403	4,136,878	1,692,070	13,871,193
Europe	3,935,804	1,914,062	2,591,094	1,126,289	9,567,249
Other	12,174,003	5,920,467	7,835,329	3,438,949	29,368,748
Total	133,318,511	66,942,331	69,729,953	34,168,071	304,158,866

Multiplier effect: The total economic contribution of the reefs of Hawaii includes the contribution of reef expenditures to sales, income and employment. Expenditures by visitors generate income and jobs within industries that supply reef-related goods and services, such as charter/party boat operations, restaurants and hotels. These industries are called direct industries. In addition the visitor expenditures create multiplier effects wherein additional income and employment is created as the income earned by the reef related industries and their employees, is re-spent in the local economy. These additional effects of reef-related expenditures are called indirect and induced. Indirect effects are generated as the reef-related industries purchase goods and services from other industries locally. Induced effects are created when the employees of the direct and indirect spend their money locally.

EXHIBIT D - The Impact of Scylla on the South West Economy with Projected US GDP

The Impact of Scylla on the South West Economy					
	Extra Diver Days				US Diver-Days 115,300,000
	2500	5000	7500	10000	
Employment (FTE)					
Direct	3.9	7.7	11.6	15.5	
Indirect	3.5	7.1	10.6	14.2	
Total	7.4	14.8	22.2	29.7	Projected US Employment (FTE) 342,441
GDP (£)					
Direct	66,060	132,120	198,180	264,240	
Indirect	101,275	202,551	303,826	405,102	
Total	167,335	334,671	502,006	669,342	
TOTAL Contribution to GDP					Projected US GDP Contribution (Direct and Indirect) US\$ 11,856,415,621.34

EXHIBIT E – Participation in SCUBA and Snorkeling Recreation (2000)

	Participation Rate (%)*	Number of Participants (millions)*	Number of Days (millions) ***
United States			
Snorkeling	5.07	10.46	92.5
Scuba Diving	1.35	2.79	22.8
California			
Snorkeling	0.34	0.71	3.818
Scuba Diving	0.14	0.29	1.383

From Leeworthy and Wiley (2001), *Percent of the US population that participated in the activity, **Number of participants is equal to the participation rate multiplied by the non-institutionalized population 16-years or older in all households in the US as of September 1999, ***The number of days the respondents participated in each activity over a year. Note figures from top to bottom of table differ due to the use of different base population levels in each report

NATIONAL OCEAN COUNCIL

Name: **Julie Ufner**

Organization: National Association of Counties

Path: http://edit.whitehouse.gov/sites/default/files/webform/national_ocean_council_02_27_12_final.pdf

Comment: Attached are the National Association of Counties, National League of Cities, and the U.S. Conference of Mayors comments for the National Ocean Council's Draft National Ocean Policy Implementation Plan.



February 27, 2012

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

Dear National Ocean Council Members:

On behalf of cities, counties and mayors, we thank you for the opportunity to provide comments on the National Ocean Council's (NOC) Draft National Ocean Policy Implementation Plan.

We would like to thank the NOC for including state, local and tribal governments throughout the process in helping to develop a national ocean policy. The most successful partnerships recognize the unique role each level of government—federal, state, local and tribal—plays in crafting complex proposals. Throughout the document, this vital partnership is emphasized, particularly in the recognition that protection of the environment and wise development of our nation's resources are obligations shared by all levels of government.

We are concerned, however, about the lack of local government representation on the nine proposed planning bodies (coinciding with the nine regional planning areas) for the development of regional Coastal and Marine Spatial Planning (CMSP). We believe this omission is a significant oversight of NOC that could undermine the process and spirit of the effort. The membership plan for CMSP is as follows:

"The membership of each regional planning body will consist of Federal, State, and Tribal authorities relevant to CMSP for that region..."

According to the draft plan, the benefits of this regional group, comprised of federal, state and tribal members will:

"Define local and regional objectives and develop and implement CMSP in a way that is meaningful to regionally specific concerns... Leverage, strengthen, and magnify local planning objectives through integration with regional and national planning efforts."

While the plan is vague on how the regional CMSP groups may impact local planning policies, processes and/or decisions, we would oppose any federal attempt to preempt a local government's authority in these areas.

Barring local government representation on the CMSP invites a top-down approach to regional and local planning and processes. Cities and counties are highly diverse communities with immense variation in natural resources, social and political systems, cultural, economic and

National Ocean Council

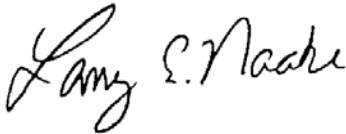
February 27, 2012

Page Two

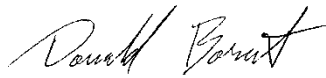
structural circumstances, and public health and environmental concerns. It is important that local governments be involved as a significant partner in the formative stages of developing standards, policies and guidance and have the ability to tailor such measures to meet their communities' unique needs, where appropriate. We would urge you to reconsider local government's representation on the CMSP.

As you move forward with this process, we encourage you to continue to include local government representation in ensuring the protection, maintenance, and restoration of oceans, our coasts and the Great Lakes.

Sincerely,



Larry E. Naake
Executive Director
National Association of Counties



Donald J. Borut
Executive Director
National League of Cities



Tom Cochran
CEO and Executive Director
The United States Conference
of Mayors

Name: **James Olson**

Organization: Chair, Flow for Water

Path: http://edit.whitehouse.gov/sites/default/files/webform/12-01-11_edited_12-06-11_report_to_ijn_on_public_trust_principles_w_cover_pg.pdf

Comment:

Dear Chairperson National Ocean Council: Please accept the attached as FLOW for Water's substantive comments and requests to incorporating time-tested public trust principles in Ocean and especially Great Lakes policy and implementation, including integrating these principles into CEQ and NEPA reviews of major federal actions. Thank you,
James M. Olson, Chair, www.Flow for Water.org.

**Request for Great Lakes Commons and Public Trust Principles
for the International Joint Commission**

**Report to the International Joint Commission
on the Principles of the Public Trust Doctrine**

November 30, 2011

**Submitted on Behalf of Counsel of Canadians (Le Conseil des Canadiens)
and
Flow for Water (Couler pour L'eau)**

Maude Barlow, Chair
Council of Canadians



James M. Olson, Chair
Flow for Water



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**Background Report to the International Joint Commission on the Principles
of the Public Trust Doctrine**

**Submitted on Behalf of Council of Canadians(Le Conseil des Canadiens)
and
Flow for Water (Couler pour L'eau)¹**

November 30, 2011

I. OVERVIEW AND SUMMARY OF THE REQUEST FOR PUBLIC TRUST PRINCIPLES

This Report to the International Joint Commission² provides legal and policy background and information to assist the Commission in its consideration of the adoption of a new guiding principle based on the public trust doctrine for the exercise of its authority or responsibilities under the Boundary Water Treaty of 1909,³ and in the implementation of the Great Lakes Water Quality Agreement.⁴

Under the English common law, members of the public enjoyed a paramount right of public use of the sea, bays, inlets, foreshore and tributary navigable waters for public uses, including

¹ This Report was prepared by James M. Olson, Chair, Flow for Water, Public Trust Water Policy Center, with Jeff Jocks, J.D., Ross Hammersley, J.D., Kate Redman, J.D., and William Rastetter (Of Counsel), of Olson, Bzdok & Howard, P.C. (Traverse City, Michigan), and in conjunction with Maude Barlow, Chair of the Council of Canadians, *Our Great Lakes Commons* report, as part of the Presentation to the IJC on the Great Lakes as a Commons Protected by Public Trust Principles (hereinafter “Presentation”).

² Referred to throughout this Report as “IJC,” “Commission,” or “International Joint Commission.”

³ Treaty Between the United States and Great Britain Relating to the Boundary Waters Between the United States and Canada, Jan. 11, 1909, 36 Stat. 2448 (1909) (hereafter referred to as “Treaty” or “Boundary Waters Treaty”). The Treaty covers the waters shared by the countries as a common border or waters that flow north or south across the border, and established the International Joint Commission and basic principles guiding boundary water relations and decisions or recommendations for Canada and the United States.

⁴ Great Lakes Water Quality Agreement of 1972, U.S.-Can., Apr. 15, 1972, 23 U.S.T. 301. It was later amended in 1978 and 1987. See Great Lakes Water Quality Agreement of 1978, U.S.-Can., Nov. 22, 1978, and Great Lakes Water Quality Agreement of 1987, U.S.-Can., Nov. 18, 1987 (collectively referred to hereinafter as the “Great Lakes Water Quality Agreement” or “GLWQA”), available at <http://www.ijc.org/rel/agree/quality.html>.

navigation, boating, and fishing – often referred to as the *jus publicum*.⁵ The crown held the waters in trust for the public, and the crown or the crown’s grantees of the foreshore or beds of these waters could not sell or alienate this public right or interfere with the public uses protected by it. Canadian and American common law and statutes have recognized this ancient principle – known modernly as the “public trust doctrine.”⁶ The right of public use and these commons continue to be held by both governments in a “solemn and perpetual trust.”⁷

The public right of protected public uses of navigable waters could form a much needed comprehensive approach for unifying and integrating the protection and management of uses, quantity, and quality of water of the Great Lakes, St. Lawrence River, or other boundary waters, for the 21st century. This public right has been, continuously from the settling of both Canada and the United States, part of the daily life of every person, business, farmer, government leader, and community on the boundary waters and Great Lakes and St. Lawrence River. Although the governments and inhabitants have confronted many challenges to the Great Lakes, never before have the Great Lakes Commons – air, water, wildlife, inhabitants, and ecosystems – been so threatened by so many losses, harms or risks of such overwhelming magnitude.

The Great Lakes and its tributaries and ecosystem, including fisheries and aquatic organisms and habitat, are in ecological crisis and facing many challenges, including a rapidly increasing demand and competition for freshwater; continuing influxes of invasive species such as quagga mussels; dead zones; loss of fish populations; climate change; increasing energy and food demands;

⁵ Lord Chief Justice Hale of England authored the seminal treatise on this topic. See Sir Matthew Hale, *DE JURE MARIS*, in Stuart Moore, *HISTORY OF THE FORESHORE* (3d Ed. 1888).

⁶ Sax, Joseph L., *The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention*, 68 Mich L. Rev. 471, 474 (1970).

⁷ *Obrecht v National Gypsum Co.*, 105 NW2d 143 (Mich.1960.)

and increasing drinking water demand.⁸ These threats challenge the very core of our existing water and environmental regulatory framework.

Most pollution, environmental, or water use regulatory frameworks address specific actions that result in localized harms to water quality, quantity, biological conditions. As a result there often is an absence of enforceable overarching principles that compliment or fill the gaps of narrower, fragmented regulatory frameworks. There is a need for a comprehensive approach that brings back to center stage these inclusive public trust values and concerns, which are so essential to the protection of long term community, environmental, and economic stability from generation to generation. When core public trust interests are ignored, the demands of special more narrow interests⁹ on our public and common resources take the spotlight. This, in turn, inevitably leads to suppression and eventual disappearance or loss of the public trust values and resources and the obfuscation of a conscious exercise of the right to public use of these common waters and natural resources.

The rights, duties, and principles embedded in the public trust doctrine could offer just such a comprehensive, unifying, and overarching guideline, tested by the thousands of disputes over the centuries. Public trust principles have been and can be used to face and resolve complex, if not terrifying, threats to the Great Lakes boundary waters and ecosystem. The public trust would

⁸ For a summary of losses and threats to the Great Lakes boundary waters and ecosystem, see Tab 10, attached to the Presentation, and Maude Barlow, *Our Great Lakes Commons: A Peoples' Plan to Save the Great Lakes Forever* (Council of Canadians, 2011), pp. 9-14, attached to this Report and the Presentation, hereinafter referred to as "Commons Report."

⁹ Robin Kundis Craig, *Climate Change, Regulatory Fragmentation, and Water Triage*, 79 COLO. L. REV. 825, 831 (2008); Carole Necole Brown, *Drinking from a Deep Well: The Public Trust Doctrine and Western Water Law*, 34 FLA ST. U. L. REV. 1 (2006); Melissa K. Scanlan, *Implementing the Public Trust Doctrine: A Lakeside View into the Trustees' World*, 39 Ecology Law Quarterly __ (forthcoming Spring 2012); James M. Olson, *Navigating the Great Lakes Compact, Water, Public Trust, and International Trade Agreements*, 2006 MICH. ST. L. REV. 1103, 1139-1140 (2006).

provide a duty to account for broader and more common or trust values to hold governments and individuals responsible, when these values have been brushed aside for lack funding or fallen outside the lens of their regulated concern.¹⁰ Perhaps the time, place, and importance of the public trust in the Great Lakes Commons, finally, have reemerged.¹¹

The IJC has the natural capacity to build upon a legacy of public trust that will over the long term protect these common waters and their paramount public uses. It could also provide the flexibility to allow the parties and interests to adapt to the changing conditions and needs of future generations.¹² The IJC has a strong historical commitment under the Boundary Waters Treaty to resolve disputes between the countries and their inhabitants and to protect the integrity of the quantity and quality of the boundary waters,¹³ their related ecosystems, and the rights of the public

¹⁰ Jeffrey W. Henquinet and Tracy Dobson, *The Public Trust Doctrine and Sustainable Ecosystems: A Great Lakes Fisheries Case Study*, 14 N.Y.U. Envtl. L.J. 322, 344-48 (2006).

¹¹ Ralph Pentland, *The Public Trust Doctrine: Potential In Canadian Water and Environmental Management*, POLIS Discussion Paper 09-03 (Polis Project on Ecological Governance, British Columbia, June 2009), available at [http://poliswaterproject.org/sites/default/files/public trust doctrine.pdf](http://poliswaterproject.org/sites/default/files/public%20trust%20doctrine.pdf); John C. Maguire, *Fashioning Vision for Public Resource Protection and Development in Canada: The Public Trust Doctrine Revisited and Reconceptualized*, 1997 J. ENVTL. L. & POL'Y 7, 1-42 (1997); Oliver M. Brandes and Randy Christensen, *The Public Trust Doctrine and the Modern BC Water Act*, Legal Issues Brief 2010-1 (Polis Water Sustainability Project, 2010), available at [http://poliswaterproject.org/sites/default/files/public trust brief 2010-1.pdf](http://poliswaterproject.org/sites/default/files/public%20trust%20brief%202010-1.pdf); Scanlan, *supra* note 10; Olson, *supra* note 10; Brown, *supra* note 8; Alexandra Klass, *Modern Public Trust Principles: Recognizing Rights and Integrating Standards*, 82 NOTRE DAME L. REV. 699 (2006).

¹² The evidence of climate change and its affects on flows or levels of water bodies, like the Great Lakes or their tributary waters, suggests that climate change or global warming may be the largest diversion of these waters of all. In this sense, while current regulatory efforts concerning the Great Lakes focus on surface waters or groundwater, these are but a small portion of the arc of the entire water or hydrological cycle. Properly viewed as a single hydrologic system, the water cycle itself could be viewed at least for considering the affects on flows or levels as a public trust for purposes of considering diversions and uses of the Great Lakes boundary waters. See generally Robin K. Craig, *Adapting to Climate Change: The Potential Role of the Common Law Public Trust Doctrine*, 34 VT. L. REV. 781-853 (2009).

¹³ Treaty Between the United States and Great Britain Relating to Boundary Waters Between the United States and Canada, Jan. 11, 1909, U.S.-Gr.Brit., art. III, 36 Stat. 2448 (hereinafter (continued...))

to use these shared waters.¹⁴ Article 1 of the Treaty, like court decisions of both countries, recognizes that the boundary waters should be kept free and open for public use. Decisions under Article III, and References and other reports regarding pollution, flows and levels, and related issues under Articles III, IV, VIII, and IX, have applied a cooperative and commons-based approach of governance for Great Lakes and the many interests, including rights of the public, who use or depend on the integrity of these waters. Public uses or interests protected by the public trust doctrine have also been the subject of numerous IJC decisions, reports, and recommendations: navigation; boating; fishing; swimming; other forms of recreation; fish, habitat and food chain; wetlands, and the integrity of the ecosystem. The IJC's strong commitment is unique and critical for both countries, provinces and states, and their communities, businesses, and citizens who face the complex myriad existing and future threats to the Great Lakes and St. Lawrence River waters.

The balance of this report will demonstrate that a commons and public trust approach fits elegantly within the common law of the two countries, the provinces and states, the shared heritage of their people, and the Boundary Waters Treaty.

II. THE HISTORICAL DEVELOPMENT OF THE PUBLIC TRUST IN THE UNITED STATES AND CANADA

The principles of the public trust, derived from English common law and ancient Roman law principles, have been integrated into both Canadian and American common law, as well as in the

¹³ (...continued)
“Boundary Waters Treaty” or “Treaty”), available at <http://bwt.ijc.org/index.php?page=boundary-waters&h1=eng> (last visited Nov. 28, 2011); attached as Tab 9 to the Presentation.

¹⁴ Great Lakes Water Quality Agreement; IJC Statement of Mission and Goals, Guiding Principles No. 10; Lee Botts and Paul Muldoon, *Evolution of the Great Lakes Water Quality Agreement* (Michigan State University Press 2005), pp. 191-95.

civil law system of Quebec.¹⁵ These legal systems recognize special public properties or natural resources in which the whole public has an interest as part of the *jus publicum*, i.e., the public trust doctrine. Public trust principles impose outer limits on how and to what extent governments can reallocate and transfer property falling within the ambit of the public trust with the goal of ensuring the long term survival or sustainability of these commons and the people and life that depend on them.¹⁶

A. Ancient Roots of the Public Trust Doctrine

The theory of a commons and the right to public use of water in Canada and the United States can be traced to the principle of *jus publicum* in the Justinian Codes of Rome in 529 A.D.:

The following things are by natural law *common to all* – the air, running water, the sea, and consequently the sea shore... But they cannot be said to belong to any one as private property, but rather are subject to the same law as the sea itself, with the soil or sand which lies beneath it.¹⁷

¹⁵ Quebec has enacted a “*patrimoine commun*” principle in its new water law, that declares water a “collective resource” that is a “common heritage,” protected by a principle *l’etat gardien*, making the province “custodian” of its water resources. Sarah Jackson, Oliver M. Brandes, and Randy Christensen, *Lessons from an Ancient Concept: How the Public Trust Doctrine Will Meet Obligations to Protect the Environment and the Public Interest in BC Water Management*, pp. 10-11 *Our Common Heritage* (forthcoming, November 2011).

¹⁶ The recent presentation at the IJC Biennial Meeting, Town Hall Session, by U.S. Co Chair Lana Pollock is a good example of how public trust principles could provide a residual exercise of power and recommendation by the IJC as an outer limit. Co Chair Pollock illustrated the data showing, convincingly, the loss of 85% of the tiny shrimp (*diporeia*) in the last 15 years from invasive quagga mussels. The oil spill that continues to plague the shore in the Gulf of Mexico is another example; See also discussion in Section IV, *infra*. To a greater or lesser extent, each of the magnitude of these losses and threats overwhelm or exceed the capacity of the public trust waters and ecosystem to sustain itself as needed for changing and important public needs for both present and future generations. If this question and principle is not ever present in decision making, the true nature of the values at risk and the limits imposed by a fiduciary duty to future generations is lost or breached.

¹⁷ See THE INSTITUTES OF JUSTINIAN, bk. 2, tit. 1, sec. 1 (J. Thomas trans. 1975 (529 A.D.)). Canadian John C. Maguire traces the Justinian Code’s public right or commons in water to the 2nd (continued...)

Common natural resources, like moving water, were understood to be held by government for the benefit of the people, imposing upon the government a responsibility to safeguard the public's free use of these natural commons.¹⁸

The principle passed down into English common law through the Magna Carta.¹⁹ Under English common law, the sea, the soil under the sea and over which the sea ebbled and flowed, and the seashore between the low and high water marks, was held by the Crown; but it was considered to be held in trust for the protection of the public's uses of these waters and as common property.²⁰ Neither the Crown nor private persons could interfere with or alienate the natural and fundamental right of the public to use navigable waters and their foreshore for public uses, including navigation, boating or fishing.²¹ As one court described the English doctrine in 1821:

Other [forms of property] remain *common to all the citizens*.... Of this latter kind...are the air, the running water, the sea, the fish, and the wild beasts.... But inasmuch as the things which constitute this *common property* are things in which a sort of transient usufructuary possession, only, can be had; ...therefore, the wisdom of that law has placed it in the hands of the sovereign power, to be held, protected, and regulated for the common use and benefit.²²

¹⁷ (...continued)
century and the Institutes and Journal of Gaius. *See also* Maguire, *supra*, note 11; Scanlan, *supra* note 10; Helen Althaus, *Public Trust Rights* 23 (1978); Sax, *supra* note 6, at 475-78.

¹⁸ Allan Kanner, *The Public Trust Doctrine, Parens Patriae, and the Attorney General as the Guardian of the State's Natural Resources*, 16 DUKE ENVTL. L. & POL'Y F. 57 (2005).

¹⁹ The Magna Carta (because of its principle of liberty and people's fundamental rights and limitation on the power of the Crown) became instrumental in protecting the public's right to use and depend on navigation, the sea, and waters for fishing and survival. *See* Sax, *supra* note 6, at 476.

²⁰ *Lowe v. Govett*, 3 B. & Ad. 863; *King v. Montague*, B.&C. 598; *Commonwealth v. Alger*, 61 Mass. 53, 83 (1851).

²¹ *See* Sax, *supra* note 6, at 476; *Martin v. Waddle's Lessee*, 41 U.S. 367 (1842).

²² *Arnold v. Mundy*, 6 N.J.L. 1, 71 (1821) (internal citations omitted and emphasis in (continued...))

B. The Public Trust Doctrine in the United States

The courts in the United States have generally protected the public's use of navigable waters and the lands beneath them from sale, interference or harm under the common law.²³ When the colonies won independence from England, ownership and control over navigable waters, shores, and common natural resources, like air and wildlife, vested in each of the states as sovereign for the benefit of their citizens.²⁴ The federal government reserved for itself and all citizens a right of navigation over navigable waters and the power to pass laws to improve and manage navigation, including the power of Congress to pass laws to regulate commerce.²⁵ Based on principles of sovereignty and the public's rights in common public natural resources, courts ruled that water and related natural resources were held in trust for the security and protection of the public rights in navigation and fisheries. State courts also generally decided that these public trust resources could not be sold or alienated by the state or owned or controlled by private persons or interests.²⁶ Thus, while the scope or standards of the public trust may vary from state to state, all recognized and

²² (...continued)
original); *Martin*, 41 U.S. at 382. Professor Joseph L. Sax, as recently quoted by Melissa Scanlan in a critique of the Compact, said, "[w]ater is and always has been a public resource." Melissa Kwaterski Scanlan et al., *Realizing the Promise of the Great Lakes Compact: A Policy Analysis for State Implementation*, 8 VT.J. ENVTL. L. 39, 44 (2006) (quoting Joseph L. Sax, *The Limits of Private Rights in Public Waters*, 19 ENVTL. L. 473, 475 (1989)). See also *Strobel v. Kerr Salt Co.*, 164 N.Y. 303 (1900).

²³ *Alger*, 61 Mass. at 58, 82-83; *Arnold*, 6 N.J.L. at 71. See also, Section II.B.ii, *infra* (discussing how courts throughout the Great Lakes states have also recognized and applied the public trust doctrine. See, e.g., *Strobel v. Kerr Salt Co.*, 164 N.Y. 303 (1900); *Moore v Sanborn*, 2 Mich. 519 (Mich.1853)).

²⁴ *Alger*, 61 Mass. at 82; *New Orleans v. United States*, 10 Pet. 662, 737; *Pollard v. Hagan*, 3 How. 212.

²⁵ *Alger*, 61 Mass. at 81-83.

²⁶ *Id.* at 82-83; See also Section II.B.ii., *infra*.

followed this principle that protected the rights of the public to use navigable waters for navigation, boating, and fishing.

i. *Illinois Central Railroad v. Illinois: “Lodestar” of Public Trust Law*²⁷

In the seminal case of *Illinois Central Railroad Co v. Illinois*,²⁸ the United States Supreme Court affirmed the foundational nature of the public trust doctrine and its applicability to the Great Lakes and navigable waters. The question before the Court was whether the state legislature of Illinois had the authority to convey to a private railroad company one square mile of Lake Michigan, including lands formerly submerged by the lake, for expansion of the company’s industrial operations.²⁹ The Court ruled that the conveyance was beyond the authority of the state Legislature because all of the Great Lakes, including Lake Michigan, were owned by the states as sovereign at the time of admission to statehood, and that the waters and land beneath them were held in trust for the benefit of citizens for navigation and other public uses.³⁰ The Court reasoned that under the public trust doctrine it was beyond the power of the state to transfer or convey public trust waters and land for private purposes, or in a manner impairing the public trust and the public’s protected right of public use.³¹

The *Illinois Central* case is viewed as an essential statement on the public trust doctrine not only because of its holding but in addition because the *Illinois Central* Court discussed the attributes of the public trust doctrine at length, including the underlying purposes of the doctrine and how the

²⁷ Sax, *supra* note 6, at 489.

²⁸ 146 U.S. 387 (1892)(hereinafter “*Illinois Central*”).

²⁹ *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387, 433-34 (1892).

³⁰ *Id.* at 452-53.

³¹ *Id.*

scope of the doctrine may change to fit different circumstances as necessary to ensure the that invaluable purposes of the doctrine were protected.

To begin with, the Court explained that in the United States the public trust doctrine applied not only to tidal bodies but also navigable waters such as the Great Lakes because the underlying rationale of the public trust doctrine applied to both:

At one time the existence of tide waters was deemed essential in determining the admiralty jurisdiction of courts in England. That doctrine is now repudiated in this country as wholly inapplicable to our condition. In England the ebb and flow of the tide constitute the legal test of the navigability of waters. There no waters are navigable in fact, at least to any great extent, which are not subject to the tide....

* * *

But in this country the case is different. Some of our rivers are navigable for great distances above the flow of the tide,-indeed, for hundreds of miles,-by the largest vessels used in commerce. As said in the case cited: "There is certainly nothing in the ebb and flow of the tide that makes the waters peculiarly suitable for admiralty jurisdiction, nor anything in the absence of a tide that renders it unfit. If it is a public, navigable water, on which commerce is carried on between different states or nations, the reason for the jurisdiction is precisely the same, and, if a distinction is made on that account, it is merely arbitrary, without any foundation in reason, and, indeed, would seem to be inconsistent with it."³²

Further, the Court explained that the scope of the public uses protected by the public trust and the manner in which the state exercised its authority might change over time, as the needs of the public changed, in light of the fact that the underlying purpose of the doctrine is to ensure the freedom of public use in navigable waters as is necessary to be consistent with the public interest:

The public being interested in the use of [navigable] waters, the possession by private individuals of lands under them could not be permitted except by license of the crown, which could alone exercise

³² *Id.* at 435-36 (internal citations omitted).

such dominion over the waters as would insure freedom in their use so far as consistent with the public interest. The doctrine is founded upon the necessity of preserving to the public the use of navigable waters from private interruption and encroachment....³³

The Court compared the public trust doctrine to the general police power held by the states.

It concluded that while the state may delegate to and allow private interests to use public resources in a manner that the state determines to enhance the public interest, so long as it does not substantially impair the public interest, it could never permanently delegate away such power and would always retain a right to regulate the use of the water as needed to serve the public interest.

It explained the nature of the state's title in water and submerged lands as follows:

It is a title held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties. The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks, and piers therein.... It is grants of parcels of lands under navigable waters that may afford foundation for wharves, piers, docks, and other structures in aid of commerce, and grants of parcels which, being occupied, do not substantially impair the public interest in the lands and waters remaining, that are chiefly considered and sustained in the adjudged cases as a valid exercise of legislative power consistently with the trust to the public upon which such lands are held by the state. But that is a very different doctrine from the one which would sanction the abdication of the general control of the state over lands under the navigable waters of an entire harbor or bay, or of a sea or lake.... A grant of all the lands under the navigable waters of a state has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. *The state can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the improvement of the navigation and use of the waters, or when parcels can be disposed of without impairment of the public interest in what remains, than it can abdicate its police powers*

³³ *Id.* at 436.

*in the administration of government and the preservation of the peace. In the administration of government the use of such powers may for a limited period be delegated to a municipality or other body, but there always remains with the state the right to revoke those powers and exercise them in a more direct manner, and one more conformable to its wishes. So with trusts connected with public property, or property of a special character, like lands under navigable waters; they cannot be placed entirely beyond the direction and control of the state....*³⁴

The public trust doctrine has continued to grow and evolve since *Illinois Central* was decided. Although different states, and different legal commentators and historians, have given the doctrine different slants, the United States Supreme Court has continued to consistently affirm that *Illinois Central* and the public doctrine are essential and foundational components of law, explaining recently that it is “the ‘settled law of this country’ that the lands under navigable freshwater lakes and rivers were within the public trust given the new States upon their entry into the Union.”³⁵ The essential tenet of the public trust doctrine in *Illinois Central* remains unchanged and foundational principles are applied in most every state: the Great lakes, and other navigable waters, are held in trust by the state for the benefit of the public. Although the state’s determination of what serves the public interest may vary over time, and use of the property may even be delegated to private parties to the extent it enhances or does not substantially impair the public interest, the state’s duty to hold these waters in the interest of the public cannot be abdicated and such waters can never be “placed entirely beyond the direction and control of the state” to protect and provide for the public interest the free use of navigable waters.

Accordingly, *Illinois Central* is viewed as affirming three foundational principles of the public trust:(1) The public trust can never be alienated or subordinated unless it has the express

³⁴ *Id.* at 453-54 (emphasis added).

³⁵ *Phillips Petroleum Co v. Mississippi*, 484 US 469, 479 (1988).

“assent of the State;”³⁶ (2) the “assent of the state” is unlawful where the legislature transfers public trust resources to a private person for non public purposes, or (3) a transfer or authorized use can not impair the public’s interest in the trust or its trust resources.³⁷ In addition, the Court left the door open for other public resources of a “special character, like navigable waters and the soils under them” that might be protected by the public trust doctrine. Finally, the Court made it clear that a state would be held accountable for abdicating its duty to protect the public trust from such alienation or impairment. Professor Joseph Sax describes the principles this way:

First, the property subject to the public trust must not only be used for a public purpose, but it must be held available for use by the general public; second the property may not be sold, even for a fair-cash equivalent; third, the property [water or public trust resource] must be maintained for particular types of uses.³⁸

These principles have remained constant and flourished over time in the states, including all of the Great Lakes states.

³⁶ *Id.* at 413.

³⁷ *Id.* at 412.

³⁸ Sax, *supra* note 6, at 477.

ii. The Public Trust Doctrine in Great Lakes States

Today, virtually all eight Great Lakes states have adopted the public trust doctrine for the Great Lakes and navigable lakes and streams.³⁹ The constitutions or laws of several of the states have recognized a public trust in navigable waters or public natural resources. The following is a state-by-state summary of each of the Great Lakes states' statutory, constitutional, and/or jurisprudential recognition of the public trust doctrine.⁴⁰

Illinois

As described above, the 1892 decision by the United States Supreme Court in *Illinois Central Railroad* is widely seen as having adapted the public trust principles long-established in English common law to the United States, forming a baseline for state-based recognition of the public trust doctrine throughout the country, as well as in Illinois. Illinois later amended the state Constitution to include the following public-trust declarations in Sections 1 and 2 of Article XI :

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations.⁴¹

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private,

³⁹ This is not surprising, since five of the states were carved out of the Northwest Ordinance of 1787, which declared, “the navigable waters leading to the Mississippi and St. Lawrence... shall be common highways and forever free....” Northwest Ordinance of 1787, 1 Stat. 41, 444 Stat 1851.

⁴⁰ As ably described by Professor Robin Kundis Craig, there is a “richness and complexity of public trust philosophies” that is revealed upon review of the application of the public trust doctrine on a state by state basis. Robin Kundis Craig, *A Comparative Guide to the Eastern Public Trust Doctrines: Classifications of States, Property Rights, and State Summaries*, 16 PENN. ST. ENVTL. L. REV. 1 (2007). For other brief synopses of public trust law in the states, see Henquinet and Dobson, *The Public Trust Doctrine and Sustainable Ecosystems: A Great Lakes Fisheries Case Study*, 14 N.Y.U. Envtl. Law J. 323, 348-362 (2006); Klass and Ling-Yee, *Restoring the Public Trust: Water Resources and the Public Trust Doctrine, A Manual for Advocates* (Center for Progressive Reform, White Paper No. 908, Sept. 2009).

⁴¹ ILL. CONST. ART. XI, § 1 (“Public Policy – Legislative Responsibility”).

through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.⁴²

The Illinois Supreme Court later recognized that these constitutional amendments clearly and unambiguously connect the public trust doctrine to public health and environmental concerns.⁴³

That case, *People ex rel Scott v. Chicago Park District*, is also noteworthy for the Illinois Supreme Court's willingness to build upon the ruling in *Illinois Central* by adopting a view that the public uses protected by the public trust doctrine may evolve over time in order to adapt to changing conditions, and the doctrine does not permit a transfer of control of public trust resources for primarily private purposes.⁴⁴ Illinois has also applied the public trust doctrine to parks and conservation areas,⁴⁵ and has declared an attempted grant of submerged lands by the state to be a violation of the public trust where the project had a solely private purpose.⁴⁶ As to the public trust portions of the Great Lakes specifically, the Illinois Supreme Court sets the high-water mark of Lake Michigan for demarcation of the line between public and private ownership.⁴⁷ The state has also

⁴² ILL. CONST. ART. XI, § 2 (“Rights of Individuals”).

⁴³ *People ex rel Scott v. Chicago Park Dist.*, 360 N.E.2d 773, 780 (Ill. 1976).

⁴⁴ *Scott*, 360 N.E.2d at 780.

⁴⁵ *Paepcke v. Public Bldg. Comm’n of Chicago*, 263 N.E.2d 11 (Ill. 1970); *Timothy Christian Schools v. Village of Western Springs*, 675 N.E.2d 168 (Ill. App. Ct. 1996).

⁴⁶ *Friends of the Parks v. Chicago Park Dist.*, 786 N.E.2d 161 (Ill. 2003).

⁴⁷ *Revell v. People*, 52 N.E. 1052 (Ill. 1898).

enacted numerous statutes recognizing the public trust doctrine,⁴⁸ as well as others which regulate the use of public trust resources such as the Great Lakes.⁴⁹

Indiana

By statute, Indiana has reserved to the public “a vested right in ... (A) [t]he preservation, protection, and enjoyment of all the public freshwater lakes of Indiana in their present state,” and (B) [t]he use of the public freshwater lakes for recreational purposes.”⁵⁰ Indiana has also declared that “the natural resources and scenic beauty of Indiana are a public right,”⁵¹ that the state has the capability to enforce these rights, and that the state “holds and controls all public freshwater lakes in trust for the use of all of the citizens of Indiana for recreational purposes.”⁵²

Courts in Indiana have recognized that these statutes make no distinction between navigable and non-navigable lakes, and that therefore, the public trust extends to all such public freshwater lakes.⁵³ A variety of uses are protected in public waters, including navigation, recreation, fishing,

⁴⁸ These Illinois statutes recognizing the public trust doctrine include: the Submerged Lands Act (5 ILL. COMP. STAT. ANN. §§605/1 and 605/2 (West 2005)) and the Rivers, Lakes and Streams Act (615 ILL. COMP. STAT. ANN. §§5/4.9 - 5/30 (West 2005)).

⁴⁹ Illinois statutes regulating public trust resources include: the Level of Lake Michigan Act (615 ILL. COMP. STAT. ANN. §50/1 *et seq.* (West 2007)), the Navigable Waterways Obstruction Act (615 ILL. COMP. STAT. ANN. §§20/1 to 20/5 (West 2007)), the Illinois Waterways Act (615 ILL. COMP. STAT. ANN. §§10/0.01 to 10/28 (West 2007)), the Water Use Act of 1983 (525 ILL. COMP. STAT. ANN. §§45/1 to 45/7 (West 2007)), the Lincoln Park Submerged Lands Act (70 ILL. COMP. STAT. ANN. §§1575/0.01 to 1575/2 (West 2007)), and the Chicago Submerged Lands Act (70 ILL. COMP. STAT. ANN. §§1550/0.01 to 1555/1.1 (West 2007)).

⁵⁰ IND. CODE §14-26-2-5(c) (2003).

⁵¹ IND. CODE §14-26-2-5(c)(1) (2003).

⁵² IND. CODE §14-26-2-5(d) (2003).

⁵³ *Bath v. Courts*, 459 N.E.2d 72, 75 (Ind. Ct. App. 1984).

and sand and gravel mining (unless otherwise regulated),⁵⁴ and the state holds title to any lake that is considered a public lake.⁵⁵ The Indiana Supreme Court has stated that the distinction between a public and a private freshwater lake depends upon its navigability,⁵⁶ and the public's right of navigation is considered superior to the rights of riparian landowners.⁵⁷ However, the state's Court of Appeals has also recognized that "Indiana courts have failed to clearly define 'navigable'" for such lakes.⁵⁸

Michigan

While Michigan's constitution does not contain language explicitly recognizing the public trust doctrine, the Michigan Court of Appeals has stated that "[t]he importance of this trust is recognized by the People of Michigan in our Constitution,"⁵⁹ based on the following constitutional provision:

The conservation and development of the natural resources of the State are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people.⁶⁰

The state also has a number of statutes recognizing the public trust doctrine, including this provision relating to Great Lakes Preservation:

⁵⁴ *Lake Sand Co. v. State*, 120 N.E. 714, 715-16 (Ind. App. 1918). Interestingly, Indiana courts have also declared that foreign corporations who are not citizens of the state are not entitled to these same public rights. *Lake Sand Co.*, 120 N.E. at 716.

⁵⁵ *Parkinson v. McCue*, 831 N.E.2d 118, 130 (Ind. Ct. App. 2005)

⁵⁶ *Carnahan v. Monah Property Owners Ass'n, Inc.*, 716 N.E.2d 437, 440-41 (Ind. 1999).

⁵⁷ *Bissell Chilled Plow Works v. South Bend Mfg. Co.*, 111 N.E. 932, 939 (Ind. App. 1916).

⁵⁸ *Bath*, 459 N.E.2d at 75.

⁵⁹ *People ex rel. MacMullan v. Babcock*, 196 N.W.2d 489, 497 (Mich. Ct. App. 1972)

⁶⁰ MICH. CONST., ART. IV, §52.

The waters of the state are valuable public natural resources held in trust by the state, and the state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.⁶¹

As with several other Great Lakes states, Michigan follows the public trust principles set forth in *Illinois Central Railroad Co. v. Illinois*.⁶² Michigan's judicial recognition and implementation of the public trust doctrine, however, actually pre-dates *Illinois Central*, dating back to early decisions such as the Michigan Supreme Court's 1853 opinion in *Moore v. Sanborne*, which both recognized that the original public trust doctrine from English common law applied in the state, and that the true scope of the public trust doctrine is broader based on its dynamic in nature and changing public needs.⁶³ The state Supreme Court has also recognized the state's "duty and responsibility as trustee" to protect public trust resources.⁶⁴ For example, in *Obrecht v. National Gypsum Co.*, the court prohibited leasing of public trust bottomlands and waters of Lake Huron for a private commercial dock facility absent due consideration and a recorded determination that the project promoted a public purpose and did not impair public trust and uses.⁶⁵

Michigan presumes the substantial value of the public trust resource(s) at issue, and the burden of proof that a public trust resource has no public value and that it will not be impaired is on

⁶¹ MICH COMP. LAWS §§324.32702(1)(c). *See, e.g.*, the Great Lakes Submerged Lands Act (MICH COMP. LAWS §§324.32502), the Michigan Environmental Protection Act (MICH COMP. LAWS §§324.1701 to 324.1705), the Inland Lakes and Streams Act (MICH COMP. LAWS §§324.30106), and the "Part 341" regulations pertaining to irrigation districts (MICH COMP. LAWS §§324.34105).

⁶² *See Obrecht v. National Gypsum Co.*, 105 N.W.2d 143 (Mich. 1960).

⁶³ *Moore v. Sanborne*, 2 Mich. 519, 525 (Mich. 1853)(holding that "[t]he servitude of the public interest depends rather upon the purpose for which the public requires the use of its streams, than upon any particular mode of use ... the public claim to a right of passage along its streams must depend upon their capacity for the use to which they can be made subservient.")

⁶⁴ *Obrecht*, 105 N.W.2d at 149.

⁶⁵ *Id.* at 151.

the proponent of a use thereof.⁶⁶ The state Supreme Court has also rejected a *de minimis* defense to impairment of public trust resources, ruling that the precedent of “nibbling effects” of impairment of public trust waters or uses violated the public trust.⁶⁷

In *Glass v. Goeckel*, the Court recognized the state’s responsibility “to protect and preserve the waters of the Great Lakes and the lands beneath them for the public,” including for public uses such as fishing, hunting, boating (“for commerce or pleasure”), shoreline walks below the high-water mark, cutting ice, gathering of shellfish and seaweed, bathing.⁶⁸ Michigan has its own rule marking the line between upland private property and the state’s public trust bottomlands and shore, applying the “‘ordinary high water mark’ from the common law of the sea and applies it to our Great Lakes.”⁶⁹ For other navigable waters, such as inland lakes and streams, Michigan courts have followed a “log floating” test to define the reach of public trust doctrine for inland lakes and streams.⁷⁰ Once a lake or stream is navigable, the public enjoys reasonable use of the entire surface of the waters for boating, fishing, swimming and other recreation.⁷¹ The public trust doctrine also includes fish and game and their habitat.⁷²

⁶⁶ *Gross Ile Twp. v. Dunbar & Sullivan Dredging Co.*, 167 N.W.2d 311, 316 (Mich. App. 1969).

⁶⁷ *People v. Broedell*, 112 N.W.2d 517, 518-19 (Mich. 1961).

⁶⁸ *Glass v. Goeckel*, 703 N.W.2d 58, 64-64, 73-75.

⁶⁹ *Glass*, 703 N.W.2d at 71.

⁷⁰ *Collins v. Gerhardt*, 211 N.W. 115 (Mich. 1926); *Bott v. Natural Res. Comm’n*, 327 N.W.2d 838 (Mich. 1982).

⁷¹ *Higgins Lake Prop. Owners Ass’n v. Gerrish Twp.*, 662 N.W.2d 387 (Mich. Ct. App. 2003).

⁷² *People v. Zimberg*, 238 Mich 130, 143 (1927); *Friends of Crystal River v Kuras Properties*, 554 N.W.2d 328, 335 (Mich. Ct. App. 1996), *rev’d on other grounds*, 577 N.W.2d 684 (Mich. 1998).

Minnesota

Article II, Section 2 of the Minnesota Constitution states:

The state of Minnesota has concurrent jurisdiction on the Mississippi and on all other rivers and waters forming a common boundary with any other state or states. Navigable waters leading into the same, shall be common highways and forever free to citizens of the United States without any tax, duty, impost or toll therefor.⁷³

Chapter 103G of Minnesota's statutes declares that the "ownership of the bed and the land under the waters of all rivers in the state that are navigable for commercial purposes are in the state in fee simple, subject only to the regulations made by the United States with regard to the public navigation and commerce and the lawful use by the public while on the waters."⁷⁴ Other statutes subject public waters to regulation and govern their use and preservation.⁷⁵

⁷³ MINN. CONST. ART. II, § 2. The provisions is nearly identical to the Northwest Ordinance of 1787. Northwest Ordinance, *supra* note 39. The state also has a permanent, constitutionally established "environment and natural resources trust fund" to be used "for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources. MINN. CONST. ART. XI, § 14.

⁷⁴ MINN. STAT. ANN. §103G.711 (West 2007). Another portion of that statute also includes a thorough, eleven-point definition of "public waters" that includes items such as "waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction," "water basins assigned a shoreland management classification...," "water basins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership," and "water basins where there is a publicly owned and controlled access that is intended to provide for public access to the water basin," among others. MINN. STAT. ANN. §103G.005(15) (West 2007).

⁷⁵ Minnesota statutes regulating public waters also include: Chapter 103A "Water Policy and Information" (MINN. STAT. ANN. §103A.001 to 103A.43 (West 2007)), Chapter 103B "Local Water Resources Protection and Management Program" (MINN. STAT. ANN. §103B.3361 to 103B.355 (West 2007)), Chapter 103F "Shoreland Development" (MINN. STAT. ANN. §103F.201 to 103F.227 (West 2007)), and "Lake Preservation and Protection" (MINN. STAT. ANN. §103F.801 to 103F.805 (West 2007)). Minnesota has enacted a citizen suit provision that grants the right of a person to bring a lawsuit to protect the air, water and natural resources from pollution or impairment. MINN. STAT. ANN. §116.B.03 (2007).

The Supreme Court of Minnesota has also declared that “[a] riparian owner’s rights are qualified, restricted, and subordinate to the paramount rights of the public,”⁷⁶ which include such uses as “commercial navigation, the drawing of water for various private and public purposes, recreational activity, and similar water-connected uses.”⁷⁷ Once established, the state holds title “in a sovereign capacity, as trustee for the public good, and not in a proprietary sense.”⁷⁸

New York

While New York does not have a constitutional public trust declaration, the state’s Environmental Conservation Law declares:

All the waters of the state are valuable public natural resources held in trust by this state, and this state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.⁷⁹

Similarly, other sections of New York’s Environmental Conservation, Navigation, and Public Lands statutes reference the public trust doctrine and the public’s use rights in navigable waters.⁸⁰

⁷⁶ Nelson v. De Long, 7 N.W.2d 342, 346 (Minn. 1942).

⁷⁷ State v. Slotness, 185 N.W.2d 530, 532 (Minn. 1971). Minnesota utilizes the federal “navigable in fact” test for determining the existence of public rights in all waters, and requires that commercial use of such waters be established as of the admission of the state into the Union on May 11, 1858. State v. Adams, 89 N.W.2d 661, 665 (Minn. 1957).

⁷⁸ Pratt v. State Dep’t of Natural Res., 309 N.W.2d 767, 771 (Minn. 1981)(citing Lamprey v. State, 53 N.W. 1139, 1143 (Minn. 1893)).

⁷⁹ N.Y. ENVTL. CONSERV. LAW § 15-1601 (McKinney 2011).

⁸⁰ New York statutory references to the public trust doctrine and public trust resources can be found in the following provisions of state law: N.Y. ENVTL. CONSERV. LAW ART. 13 (McKinney 2011) (“Marine and Coastal Resources”), N.Y. ENVTL. CONSERV. LAW § 15-1713 (McKinney 2011) (“Waters impounded by dams constructed for power purposes impressed with a public interest”), N.Y. ENVTL. CONSERV. LAW ART. 15 (McKinney 2011) (“Water Resources”), N.Y. ENVTL. CONSERV. LAW § 24-0103 (McKinney 2011) (“Freshwater Wetlands”), N.Y. PUB. LANDS. LAW § 75 (McKinney 2011) (“Grants of Lands Under Water”), N.Y. NAV. LAW §§ 37-30 to 37-39 (continued...)

As stated in *Adirondack League Club Inc. v. Sierra Club*,⁸¹ “[p]ursuant to the public trust doctrine, the public right of navigation in navigable waters supersedes ... [a riparian’s] private right in the land under the water.” New York courts have found violations of the public trust doctrine in instances involving “interference with the public’s right to fish or with the public’s right of access for navigation, or [where] the land under the stream has been improperly alienated.”⁸² Furthermore, courts have recognized a special state duty “to safeguard wetlands within the State,” based on the public trust doctrine and the state’s Freshwater Wetlands Act.⁸³ While New York applies the public trust doctrine to parkland,⁸⁴ it has not extended the doctrine to non-navigable waterways.⁸⁵ For a stream to be owned exclusively by a riparian owner, it “must be too small to be navigable, in fact.”⁸⁶

Ohio

(...continued)
(McKinney 2011) (“Navigable Waters of the State”).

⁸¹ 615 N.Y.S.2d 788, 792 (N.Y. Sup. Ct. 1994).

⁸² *Evans v. City of Johnstown*, 410 N.Y.S.2d 199, 207 (N.Y. Sup. Ct. 1978)

⁸³ *Bisignano v. Dep’t of Env’tl. Conservation*, 132 Misc. 2d 850, 851-52 (N.Y. Sup. Ct. 1986)(citing *Flacke v. Freshwater Wetlands Appeals Bd.*, 428 N.E.2d 380 (N.Y. 1981)).

⁸⁴ *Brooklyn Bridge Park Legal Defense Fund, Inc., v. N.Y. State Urban Development Corp.*, 825 N.Y.S.2d 347, 354-55 (N.Y. Sup. Ct. 2006).

⁸⁵ *Evans*, 410 N.Y.S.2d at 207. It should also be noted that just because a stream is not navigable for purposes of denying public access over the private bed of a stream, does not mean the water itself is not public to the extent water is capable of ownership and subject to the government’s duty to protect public trust waters, fish, the ecosystem from harm. *Collins v Gerhardt*, 211 NW 115 (Mich. 1926); *In re Water Use Applications (Waihole I)*, *infra*, 9 P3d 409 (Haw’i 2000).

⁸⁶ *Fulton Light, Heat & Power v. State of New York*, 94 N.E. 199, 202 (N.Y. 1911). Although New York considers the tidal, ebb-and-flow rule for title purposes to be “discredited,” it was begrudgingly accepted in *People v. Sys. Properties*, 120 N.Y.S.2d 269, 280 (N.Y. App. Div. 1953), where the court declared, “[v]estigial as the rule may be, it is a settled rule of property law and we must respect it as such.” However, both the Mohawk River (“a fresh water stream”) and the Hudson River (“above the ebb and flow of the tide”) are exceptions to this rule and are considered to be publicly owned. *Fulton Light, Heat & Power*, 94 N.E. at 202-03.

The Supreme Court of Ohio, building off of *Illinois Central*, declared in 1979 that “[i]t is clear that the trust doctrine of state control over the submerged lands of Lake Erie and its bays from the beneficial ownership of the public, which originated in England and has been reinforced in this country by judicial decision, has existed in this state since Ohio was admitted to the Union in 1803.”⁸⁷ Although, Ohio has no constitutional public trust declaration, its statute declares that the public trust doctrine applies to Lake Erie:

It is hereby declared that the waters of Lake Erie consisting of the territory within the boundaries of the state, extending from the southerly shore of Lake Erie to the international boundary line between the United States and Canada, together with the soil beneath and their contents, do now belong and have always, since the organization of the state of Ohio, belonged to the state as proprietor in trust for the people of the state, for the public uses to which they may be adapted, subject to the powers of the United States government, to the public rights of navigation, water commerce, and fishery, and to the property rights of littoral owners, including the right to make reasonable use of the waters in front of or flowing past their lands.⁸⁸

Protected public uses include “all legitimate uses, be they commercial, transportational, or recreational.”⁸⁹ Over time, the Ohio courts have applied a “gradually changing concept of navigability,” such that a capacity for use by nearly any type of watercraft would be demonstrative of “the availability of the stream for the simpler types of commercial navigation,” and not only in its natural condition, but also “after the making of reasonable improvements,” even if not “actually

⁸⁷ *Thomas v. Sanders*, 413 N.E.2d 1224, 1228 (Ohio Ct. App. 1979).

⁸⁸ OHIO REV. CODE ANN. § 1506.10 (West)(recognized in *Beach Cliff Board of Trustees v Ferchill*, 2003 WL 21027604, at *2 (Ohio Ct. App., 8th Dist., 2003)(“Codified now at R.C. Chapter 1506, the ‘public trust’ doctrine delineates the property rights of those whose property abuts a lake, otherwise known as littoral owners.”)).

⁸⁹ *State ex rel. Brown v. Newport Concrete Co.*, 336 N.E.2d 453, 457-58 (Ohio Ct. App. 1975).

completed or even authorized.”⁹⁰ Most recently, in the matter of *State ex rel. Merrill v. Ohio Dep’t of Natural Resources*,⁹¹ Ohio’s Supreme Court declared that the “boundary of the public trust does not ... change from moment to moment as the water rises and falls; rather, it is at the location where the water usually stands when free from disturbing causes.”⁹²

Pennsylvania

Article 1, Section 27 of Pennsylvania’s Constitution includes a clear public trust declaration:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all of the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people.⁹³

The Pennsylvania Supreme Court has stated that this provision “installs the common law public trust doctrine as a constitutional right to environmental protection susceptible to enforcement by an action in equity.”⁹⁴ Based, at least in part, on the fact that this provision was held not to be self-executing,⁹⁵ references to the public trust doctrine may be found in various Pennsylvania statutes as well, including the declaration that it is “the purpose of this section [related to “Water Resources

⁹⁰ *Coleman v. Schaeffer*, 163 Ohio St. 202 (Ohio 1955). The Supreme Court of Ohio declared long ago that “it may be regarded as settled in this state that all navigable rivers are public highways,” applying the “navigable in fact” rule to such rivers relative to their “capacity of being used by the public for purposes of transportation and commerce.” *Hickok v. Hine*, 23 Ohio St. 523, 527 (Ohio 1872).

⁹¹ 955 N.E.2d 935 (2011).

⁹² *State ex rel. Merrill v. Ohio Dep’t of Natural Resources*, 955 N.E.2d 935, 949 (2011)(citing *Sloan v. Biemiller*, 34 Ohio St. 492 (Ohio 1878)).

⁹³ PA. CONST. ART. I, §27. *See also*, *Payne v. Kassab*, 312 A.2d 86 (Pa. 1973).

⁹⁴ *Commonwealth by Shapp v. Nat’l Gettysburg Battlefield Tower, Inc.*, 311 A.2d 588, 596 (Pa. 1973)(Jones, B., dissenting).

⁹⁵ *Id.* at 594-95.

Planning”] to provide additional and cumulative remedies to protect the public interest in the water resources of this Commonwealth.”⁹⁶

As in other states, courts held that the primary rights the public trust doctrine protected in applicable waterways were related to navigation and fishing, although recent case law has recognized other rights in public trust waters, include gathering stones, gravel, and sand, taking fish, ice, or driftwood, and bathing (with certain limitations).⁹⁷ Under Pennsylvania law, “[i]f a body of water is navigable, it is publicly owned and may only be regulated by the Commonwealth; ownership of the land beneath would not afford any right superior to that of the public to use the waterway.”⁹⁸ The application of the public trust in such waterways therefore results in use rights that extend to the high-water mark,⁹⁹ although recreational or tourism use is not sufficient for purposes of attempting to establish navigability.¹⁰⁰ It is also the law of the Commonwealth that “[r]ivers are not determined to be navigable on a piecemeal basis. It is clear that once a river is held to be navigable, its entire length is encompassed.”¹⁰¹

Wisconsin

⁹⁶ 27 PA. CONS. STAT. ANN. §§3135(b) (West 2011). Other such references can be found in the following sections: “Water Resources Planning,” 27 PA. CONS. STAT. ANN. §§3101 (West 2011), *et seq.*; “Water Rights,” 32 PA. CONS. STAT. ANN. §§631 to 641 (West 2011); and “Encroachments in Streams,” 32 PA. CONS. STAT. ANN. §§675 (West 2011).

⁹⁷ *See, e.g.*, *Shrunk v President, Managers & Co. Of Schuylkill Navigation Co.*, 1826 WL 2218 (Pa. 1826); *Yoffee v. Pennsylvania Power & Light Co.*, 123 A.2d 636 (Pa. 1956); *Hunt v. Graham*, 1900 WL 5301 (Pa. 1900); and *Solliday v. Johnson*, 1861 WL 5929 (Pa. 1861).

⁹⁸ *Mountain Props., Inc. v. Tyler Hill Realty Corp.*, 767 A.2d 1096, 1099 (Pa. Super. Ct. 2001).

⁹⁹ *Fulmer v. Williams*, 15 A. 726, 727 (Pa. 1888).

¹⁰⁰ *Mountain Props., Inc.*, 767 A.2d at 1100.

¹⁰¹ *Lehigh Falls Fishing Club v. Andrejewski*, 735 A.2d 718, 722 (Pa. Super. Ct. 1999).

In *Hilton ex rel. Pages Homeowners' Assoc. v. Dep't of Natural Resources*,¹⁰² the Supreme Court of Wisconsin recognized that the public trust doctrine in the state is “rooted in” the following provision of the state Constitution:

The state shall have concurrent jurisdiction on all rivers and lakes bordering on this state so far as such rivers or lakes shall form a common boundary to the state and any other state or territory now or hereafter to be formed, and bounded by the same; and the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.¹⁰³

Wisconsin’s public trust doctrine is well developed and protects a broad array of uses of public trust waters, including navigation, fishing, swimming, enjoyment of scenic beauty, hunting, recreation, “any other lawful purpose,” and the right to “preserve natural resources such as wetlands.”¹⁰⁴ The courts have developed a number of core public trust standards.¹⁰⁵ The public is even held to have an “interest in navigable waters, including promoting healthful water conditions conducive to protecting aquatic life and fish,”¹⁰⁶ while the state’s duty under the trust doctrine has been held to include “a duty to eradicate the present pollution and to prevent further pollution in its navigable waters.”¹⁰⁷ A recently decided case by the Wisconsin’s Supreme Court also ruled that the

¹⁰² 717 N.W.2d 166, 173 (Wis. 2006).

¹⁰³ WIS. CONST. ART. IX, § 1. There is a close resemblance to the Northwest Ordinance of 1787. *See* Northwest Ordinance, *supra* note 39.

¹⁰⁴ *Just v. Marinette County*, 201 N.W.2d 761, 768 (Wis. 1972). *See also*, *Meunch v. Pub. Serv. Comm’n*, 53 N.W.2d 514, 519 (Wis. 1952); *State v. Trudeau*, 408 N.W.2d 337, 343 (1987).

¹⁰⁵ *See e.g.*, *State v. Pub. Service Comm’n*, 81 N.W.2d 71, 73 (Wis. 1957); Scanlan, *supra* note 10.

¹⁰⁶ *FAS, LLC v. Town of Bass Lake*, 733 N.W.2d 287, 295 (Wis. 2007).

¹⁰⁷ *Just*, 201 N.W.2d at 768.

state's public trust doctrine imposes an affirmative duty upon the Department of Natural Resources to "consider whether a proposed high capacity [groundwater] well may harm waters of the state."¹⁰⁸

The public trust doctrine has been determined to apply "to land under the stream of the navigable water so long as [it] constitutes part of the bed of the stream,"¹⁰⁹ but this is not applicable to an artificial lake or body of water is concerned¹¹⁰ unless it involves "artificial waters that are directly and inseparably connected with natural, navigable waters."¹¹¹ The courts have also recognized that "the state 'holds the beds underlying navigable waters in trust for all of its citizens,'" and that the state's "title to submerged lands beneath natural lakes" extends "up to the ordinary high-water mark."¹¹² based on navigability if the water body is "capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes."¹¹³ The state also has a number of statutory provisions recognizing the importance of the public trust doctrine, and governing its application with respect to public trust resources in Wisconsin.¹¹⁴

¹⁰⁸ *Lake Beulah Mgmt. Dist. v. State of Wisconsin Dep't of Natural Res.*, 799 N.W.2d 73, 76 (Wis. 2011).

¹⁰⁹ *Muench*, 53 N.W.2d at 518.

¹¹⁰ *Mayer v. Grueber*, 138 N.W.2d 197, 203 (Wis. 1965).

¹¹¹ *Kligeisen v. Wis. Dep't of Natural Res.*, 472 N.W.2d 603, 606 (Wis. Ct. App. 1991).

¹¹² *In re Annexation of Smith Property*, 634 N.W.2d 840, 843 (Wis. Ct. App. 2001)(quoting *State v. Trudeau*, 408 N.W.2d 337, 341 (1987), and *Muench*, 53 N.W.2d at 517, and citing *R.W. Docks & Slips v. State*, 628 N.W.2d 781 (Wis. 2001)).

¹¹³ *Muench*, 53 N.W.2d at 519.

¹¹⁴ The following statutes recognize and govern the application of the public trust doctrine in Wisconsin: WIS. STAT. ANN. §§ 30.01 to 30.99 (West 2011)("Navigable Waters, Harbors and Navigation"); WIS. STAT. ANN. §§ 31.06(3(c)) (West 2011)("Regulation of Dams and Bridges Affecting Navigable Waters"); WIS. STAT. ANN. §§ 33.01 to 33.60 (West 2011)("Public Inland Waters"); WIS. STAT. ANN. §§ 281.11 to 281.35 (West 2011)("Water and Sewage"). It is this last provision, in fact, which defines "navigable waters" as follows:

Lake Superior, Lake Michigan, all natural inland lakes within this

(continued...)

C. The Trust to Protect the Right to Public Use of Navigable Waters in Canada

The principles of public trust have been historically recognized in Canada, and in recent years there has been growing momentum calling for the express adoption of the doctrine.

The *jus publicum* or paramount right of the public to use navigable waters for navigation, boating, and fishing has been recognized by Canadian common law since The Constitution Act, 1867.¹¹⁵ While the right of public use and protection of these waters has not been expressly labeled a “public trust,” as it has in the United States, in the late 1800s and early 1900s Canadian courts recognized a paramount public right to use navigable waters and imposed a “trust for the public uses which nature intended of them.”¹¹⁶ Canadian court decisions, around the time of the Boundary Waters Treaty and the U.S. Supreme Court’s 1892 decision in *Illinois Central Railroad*, recognized that the public’s right to use navigable waters was protected by a trust:¹¹⁷

[T]he Great Lakes and the streams which are in fact navigable, and which empty into them in these provinces, must be regarded as vested in the Crown in trust for the public uses for which nature intended them – that the Crown, as the guardian of public rights, is entitled to prosecute and to cause the removal of any obstacle which obstruct the exercise of the public right and cannot by force of its prerogative

¹¹⁴ (...continued)

state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state.

WIS. STAT. ANN. § 281.31 (West 2011).

¹¹⁵ Constitution Act, 1867, 30 & 31 Vict. Ch. 3 (U.K.), as reprinted in R.S.C., No. 5 (Appendix 1985).

¹¹⁶ *City of Vancouver v. Canadian Pacific Railway*, [1894] 23 S.C.R. 1, 6, 17-19; *Nickerson v Atty General of Canada*, [1999] S.H. 150869 (N.S.S.C.).

¹¹⁷ *In R. v. Meyers*, [1853] 3 U.C.C.P. 305.

curtail or grant that which it is bound to protect and preserve for public use.¹¹⁸

Indeed, the public right to use waters like the Great Lakes and their tributary streams was as much alive in Canada at the of the signing of the Treaty as the public trust doctrine in the United States.

Although these background principles were recognized by Canadian courts, the legal framework governing water rights and evolution of public trust law differs somewhat from the American system. In Canada, the Crown owns the water.¹¹⁹ Ownership and control of public water is distributed by the *Constitution Act* between the federal government and provinces, with some delegation of control to local governments. Provinces have power over local works, property, and natural resources, and electrical energy production.¹²⁰ The federal government has ownership and control for purposes of navigation and shipping, sea cost and fisheries, federal works, canals and harbors, and lake improvements.¹²¹ Significantly, there is no private ownership of water. In Ontario, navigable waters are determined by a “navigability” test that consists of several factors, which indicate both flexibility and a range of uses, such as fishing and small craft, that includes recreation,

¹¹⁸ *Id.* at para. 123. The Canadian Court recognizes its “guardian” responsibility, and that it cannot itself violate the limitation on its power to alienate these Great Lakes navigable waters to private persons or purposes. Guardianship implies duty and responsibility, and the limitation on alienation or interference implies a right in citizens, at least those whose use has been or is threatened with harm and would have standing. See, generally, Jackson, et al., *supra* note 15, at 10-11.

¹¹⁹ Constitution Act, 1867, 30 & 31 Vict. Ch. 3 (U.K.); Constitution Act, 1982, Schedule B to the Canada Act, 1982 (U.K.) 1982 Ch. 11.

¹²⁰ Constitution Act, 1867, 30 & 31 Vict. Ch. 3 (U.K.), Secs. 92, 109; Resource Library for the Environment and the Law, Resources for the Environment and Law Catalogue - Canada Water Legislation FAQs (January 2004), available at <http://www.ecolawinfo.org/WaterFAQ-CanWatLeg.aspx> (last visited Nov. 29, 2011).

¹²¹ Constitution Act, 1867, 30 & 31 Vict. Ch. 3 (U.K.), Secs. 30, 31; Constitution Act, 1982, Secs. 91, 92, 108, Schedule B to the Canada Act, 1982 (U.K.) 1982 Ch. 11.

not just navigation.¹²² Private rights to use of water are generally gained by a license or grant for a specific limited purpose consistent with the right of public use, except for common law rights to use a lake or stream associated with ownership of riparian property.

Although Canadian courts did not historically do so, the idea of expressly adopting the public trust doctrine has received growing support in recent years. Leading water and natural resource law scholars, lawyers, policy experts and government leaders have encouraged the adoption of modern public trust principles to fulfill government's obligation to protect the quality, flows and levels, and natural resources that make up the living ecosystem that are part of our dependent on lakes, rivers, and other bodies of water, including groundwater.¹²³ John Maguire noted that public trust principles could be effective in imposing a duty on the Crown to protect and manage Canada's water and public resources.¹²⁴ Ralph Pentland, water policy expert and former co-chair of the IJC Water Studies Board, has urged that Canada more fully develop the public trust doctrine as an important principle to manage and protect water resources and the environment in the face of the complex transboundary water issues faced by the Great Lakes and North America.¹²⁵ The Polis Institute has also called for public trust principles for Canada and its western provinces as a means to ensuring

¹²² *Canoe Ontario v Reed* [1989] 69 O.R. 2d. 494 (Ontario Supreme Court sets out seven factors to determine navigability, which in sum suggest a flexible test for navigability and recognition that public access and navigation include recreational uses [e.g. "small craft" and "fishing"]).

¹²³ Brandes and Christensen, *supra* note 11; Maguire, *supra* note 11; Pentland, *supra* note 11.

¹²⁴ Maguire, *supra* n. 11; Pentland, *supra* note 11.

¹²⁵ Pentland, *supra* note 11, at 7; Ralph Pentland, Notes and Remarks at the Conference on Water as a Human Right (Oct. 14, 2009) entitled "Fixing Canada's Failing Water Contract" (urging Canadian water policy centered on overall public trust principal to impose a "fiduciary duty to sustain those resources for the entire population."); Ralph Pentland and James Olson, *One Issue, Two Voices, Decision Time: Water Diversion Policy in the Great Lakes Basin*, Woodrow Wilson International Center for Scholars, Canada Institute (Sept. 2004), available at <http://www.powi.ca/pdfs/waterdiversion/water.pdf> (last visited Nov. 28, 2011).

strong governance through a fiduciary duty to ensure long-term protection of water and ecosystems.¹²⁶

The public trust doctrine and public trust principles have also started appearing in Canadian law. Recently, the Canadian Supreme Court has suggested the public trust doctrine may be worthy of exploration in cases involving public resources, like water and forests, in future cases.¹²⁷ Public trust principles have also been incorporated into more recent Canadian legislation. The Yukon Territory declared the government “the trustee of the public trust to protect the natural environment” in its Environment Act.¹²⁸ The Northwest Territory Environmental Rights Act declared that there is a “collective interest of the people of the Territories in the quality of the environment and the protection of the environment for the future,” and granted residents the right to bring an action in court to protect the “public trust.”¹²⁹

Given the historical and modern legal and political support for public trust principles in Canada, and its consistency with Canadian law, there should be no theoretical or doctrinal impediment for a legislative or governmental body like the IJC to adopt or follow public trust principles. In fact, Canadian common law embraces the right to public use of navigable waters, like

¹²⁶ Brandes and Christensen, *supra* note 11, at 2-4, 9-10 (“Centuries-long recognition of these [public] rights is not mere historical happenstance and goes beyond just public access. The Public Trust Doctrine recognizes and reflects the fundamental need to safeguard public rights and interests by ensuring long-term protection of limited and vulnerable resources necessary for survival and well-being.”).

¹²⁷ *Canadian Forest Products v. R. in Right of British Columbia*, [2004] S.C.R. 38. The opinion of Justice Brinney, speaking for the Court, discusses and cites U.S. court decisions on the public trust doctrine and the Maguire article cited in footnote 9.

¹²⁸ R.S.Y. 2002, c. 76, preamble.

¹²⁹ R.S.N.W.T. 1988, c. 83. Only one court has interpreted the provision, in a case involving the duties under a wildlife hunting act. The court noted that government and the hunter had a public trust responsibility. “[W]ith special privileges comes the special responsibility” (quoted in Jackson, et al., *supra* note 13).

the Great Lakes boundary waters, a principle that, as it has in the U.S., forms the core of the public trust doctrine. As observed by water policy expert Ralph Pentland, “the time may be ripe” to implement public trust principles to ensure the quantity and quality of our water for present and future generations.¹³⁰

D. The Public Trust and Treaty Rights of Indigenous People

The public trust doctrine is compatible with and would protect the rights of the indigenous peoples who inhabited the Great Lakes region before settlement by Europeans. The rights of these Canadian First Nations and American Indian Tribes to preservation of the quality and quantity of the Great Lakes Waters was never relinquished under their numerous treaties involving the lands and adjacent waters within the Great Lakes and St. Lawrence River basins. These indigenous Nations strongly believe that water must be protected and preserved for future generations.¹³¹ In the past decade Canadian First Nations and American Indian Tribes have asserted that existing legal mechanisms do not adequately protect their indigenous rights. Embracing the public trust doctrine would be a means of addressing those concerns. While determination of Canadian First People or

¹³⁰ Pentland, *supra* note 125, at 13.

¹³¹ Frank Ettawageshik (Excerpt), *Little Traverse Band, Michigan, Boundary Waters Treaty Centennial Symposium: Panel III – The Boundary Waters Treaty and Protecting Freshwater Resources in North America: Remarks of Tribal Chairman Frank Ettawageshik*, 54 WAYNE L. REV. 1477 (2008): “What comes to mind is to speak of the value that we place in the water. We are taught that water is the life-blood of Mother Earth and that water is essential to life.... Water is different from other things that we consider; water is not a commercial commodity, but rather it is required for our very existence; it flows in our veins; we all spend time in the water in our mother’s womb; it flows in the veins of Mother Earth.” Ontario tribes declare that waters include “rain waters, waterfalls, rivers, streams, creeks, lakes, mountain springs, swamp springs, bedrock water veins, snow, oceans, icebergs, the sea,” and “women are the keepers of the waters ... they have the responsibility to care for the land and water...” Water Declaration of the Anishnaabek, Mushkegowuk and Onkewehonwe, Oct. 2008.

American Indian tribal treaty rights in water may not be within the jurisdiction of the IJC,¹³² the adoption of public trust principles would be compatible with and protect their treaty rights and uses of the Great Lakes in the same way that these principles would protect the rights of rights of the public to use these waters.¹³³

E. Public Trust in International Agreements and Great Lakes

The public trust has also been recognized in several international declarations agreements.¹³⁴ The words “held in trust” were incorporated into the Great Lakes Charter,¹³⁵ an agreement signed by all eight states and Ontario and Quebec, and the originally proposed draft Annex 2001 negotiated by the governors and provinces as part of an effort to adopt a compact or at least a common standard or conservation measure to implement the Charter’s goals and the Federal Water Resources Development Act, which bans diversions or exports from the Great Lakes basin unless all eight

¹³² *Protection of the Waters of the Great Lakes*, IJC Final Report (Feb. 22, 2000), p. 38.

¹³³ Memorandum, William Rastetter, Tribal Attorney for the Grand Traverse Band of Ottawa and Chippewa Indians, attached to Presentation as TAB 5.

¹³⁴ In addition to those provisions pertaining to the Great Lakes, see the U.N. General Assembly’s declaration of access to clean water as a human right. United Nations 108th Meeting of the 64th General Assembly, *Resolution Recognizing Access to Clean Water, Sanitation as a Human Right*, July 28, 2010 (declaring that “the right to drinking water and sanitation was essential for the full enjoyment of life.” See, UN News Center, *General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation as a Human Right, By Recorded Vote of 122 in Favour, None Against, 41 Abstentions*, (July 28, 2010), available at <http://www.un.org/News/Press/docs/2010/ga10967.doc.htm> (last visited Nov. 28, 2011).

¹³⁵ See Council of Great Lakes Governors, Great Lakes Charter (Feb. 11, 1985), Findings, available at <http://www.cglg.org/projects/water/docs/GreatLakesCharter.pdf> (last visited Nov. 28, 2011). Other than this general “finding” of “held in trust” the Charter is silent about applying public trust principles as a standard, even though the doctrine’s principles are embedded in the common law and several constitutional and statutory provisions of the states.

governors of the Great Lakes states consent.¹³⁶ Similarly, the Great Lakes-St. Lawrence River Basin Water Resources Compact signed by all eight Great Lakes states and approved and signed into United States law in 2008, finds that the waters of the basin are “a public resource held in trust.”¹³⁷ However, the public trust does not appear in the decision making standard of the Compact, despite the fact that rights of public use or public trust in the Great Lakes and navigable waters remains a substantive limitation on use and diversions and is deeply anchored in the common law of water and sovereignty of both countries, the states, and provinces.¹³⁸

III. THE MODERN REACH OF THE PUBLIC TRUST DOCTRINE

A. Basic Principles of the Public Trust Doctrine

Although public trust principles have been adopted in many different contexts, several identifiable principles repeatedly emerge. As stated by Professor Sax, in his seminal article on public trust law, courts take a dim view of actions the effects of which are “either to reallocate that resource to more restricted uses or to subject public uses to the self-interest of private parties.”¹³⁹

There are three fundamental substantive principles that are often recognized.¹⁴⁰

¹³⁶ Pub. L. No. 99-662, 100 Stat. 4082, 42 U.S.C. 1963d-20(d) (2006). The diversion ban and governor’s consent made findings, but did not impose standards, and was silent about public trust in Great Lakes waters as recognized by the courts.

¹³⁷ Great Lakes-St. Lawrence River Basin Water Resources Compact, Sec. 1.3(1)(a), Dec. 8, 2008, Pub. L. No. 110-342, 122 Stat. 3739 (2008), *available at* <http://www.cglg.org/projects/water/>.

¹³⁸ *See* Olson, *supra* note 10, at 1113-1116, 1121-1122.

¹³⁹ Sax, *supra* note 6, at 490. *See also* People *ex rel* Scott v. Chicago Park Dist., 360 N.E.2d 773 (Ill. 1976) (holding a disposition of parklands for business and jobs was not a public purpose).

¹⁴⁰ Other water and public trust law experts have classified the principles differently under public trust law. Scanlan, *supra* note 10. For discussion of principles in Michigan and Wisconsin, see James M. Olson, *The Public Trust Doctrine: Procedural and Substantive Limitations on the* (continued...)

i. Non Alienation and Need for Valid Public Purpose

First, under *Illinois Central*, the Canadian Supreme Court's decision in *Vancouver v Canadian Pacific Railroad* and earlier cases, and state and provincial court decisions, navigable waters are held in trust for public use and, therefore, cannot be alienated by government or owned and exclusively occupied by private persons.¹⁴¹ This has been characterized by the courts as prohibiting the sale, transfer, or control of public trust waters or natural resources for private purposes, or stated conversely, as requiring that a proposed use or transfer of public trust waters be for a primarily public purpose.¹⁴²

ii. No Interference or Impairment

Second, neither the government nor a private person can authorize or engage in a use that would interfere with or impair public trust waters or the public's use of such waters and their bottomlands and foreshore.¹⁴³ An ancillary principle is that even if a private person enjoys a right to use water resources, such as a riparian owner's right to a dock or a landowner's right to remove groundwater, the private right or use, known as the *jus privatum*, sits side-by-side with the public right, *jus publicum*, so long as the private use does not interfere with or impair the public use or rights.¹⁴⁴

iii. Duty to Account for Protection of Public Trust Waters and Uses

¹⁴⁰ (...continued)
Governmental Reallocation of Natural Resources, 1975 Det. Col. L. Rev. 161, 173, 190-99 (1975).

¹⁴¹ See discussion and accompanying notes *supra* Section (II)(B).

¹⁴² See discussion and accompanying notes *supra* Section (II)(B). See also Sax, *supra* note 6.

¹⁴³ See discussion and accompanying notes *supra* Section (II)(B) and (C).

¹⁴⁴ *Tweetie v R.*, [1915] 52 S.C.R. 197, p 214.

Third, as is implied necessarily from the public purpose and no impairment principles, government has a duty to ensure, based on facts and findings, that a proposed use of public trust waters or resources will not violate these standards.¹⁴⁵ For this reason, courts in the United States have recognized and enforced this principle as a fundamental component of the public trust doctrine, although different courts have recognized the duties in differing ways.¹⁴⁶ Courts in Hawai'i have imposed a duty on the state to assure that the water would be used in the public interest, not impair the public trust, and not serve an improper private or even public purpose, and to engage in long term planning to protect the public trust waters, uses, and the ecosystem.¹⁴⁷ In North Dakota, the supreme court ruled that this duty included a duty to evaluate and establish a long term water plan to ensure no impairment of water resources under the state's public trust responsibility.¹⁴⁸ In Michigan courts have imposed procedural duty to account based on duly record findings of fact that public trust standards or principles have been met.¹⁴⁹ California courts have also consistently recognized a duty to protect the integrity of flows and levels, waters and ecosystem.¹⁵⁰

¹⁴⁵ See e.g., *Obrecht v. Nat'l Gypsum Co.*, 105 N.W.2d 143, 149-151 (Mich. 1960).

¹⁴⁶ *Lake Beulah Mgmt. Dist. v. State of Wisconsin Dep't of Natural Res.*, 799 N.W.2d 73, 76 (Wis. 2011)(imposing a duty on the state natural resource agency to consider the effects on a navigable lake from the withdrawal of groundwater from a nearby high- capacity well); *Ariz. Cent. for Law and Policy v. Hassell*, 837 P.2d 158, 170 (1991) (holding that the state had a duty and obligation to maintain the public trust and uses for the enjoyment of present and future generations).

¹⁴⁷ *In re Water Use Permit Applications (Waihole I)*, 9 P.3d 409 (Haw. 2000); *Kelly v Oceanside Partners*, 140 P.3d 985, 1001-1003 (Haw. 2006)(recognizing state's affirmative duty to implement adequate water protection measures to assure developer's stormwater plan did not violate or impair public trust in adjacent waters).

¹⁴⁸ *United Plainsmen Ass'n v. Water Conservation Comm'n*, 247 N.W.2d 457 (N.D. 1976).

¹⁴⁹ *Obrecht v. Nat'l Gypsum Co.*, 105 N.W.2d 143 (Mich. 1960).

¹⁵⁰ *Nat'l Audubon Soc'y v. Superior Ct. of Alpine Co. (Mono Lake)*, 658 P.2d 709 (Cal. 1983); *Cent. for Biological Diversity v. FPL Group*, 83 Cal. Rptr. 3d 588 (Cal. Ct. App. 2008).

B. Corollary Principles

In addition to the basic principles, corollary principles have been widely recognized.

i. Burden of Proof.

When faced with the issue, courts have readily imposed a burden of proof on the person proposing a use or transfer of a public trust resource.¹⁵¹ The burden is based on the government's duty to ensure there is no improper alienation or impairment and the fact that the public value of public trust waters or resources in quality, quantity and uses is presumed to be substantial or immeasurable.¹⁵² This derives from the fact that the public value and uses cannot be subordinated, so an applicant who wants to use public trust waters must affirmatively demonstrate public purpose and no harm. This is akin to the precautionary principle,¹⁵³ in that it would require as a result of the nature of the public trust itself a denial of the application until adequate information was submitted to establish no violation of the basic public trust principles.

ii. “Nibbling” or Cumulative Effects

Some courts have ruled that the government's affirmative duty to protect the public trust includes the duty to take into account the cumulative effects of a use that would impair the public trust waters or uses.¹⁵⁴ This, in effect, is related to the burden of proof, because the presumption is that if the entity proposing the use cannot show that there are no cumulative effects, and if there is

¹⁵¹ *Grosse Isle Twp v Dunbar & Sullivan Dredging Co.*, 167 N.W.2d 311, 316 (Mich. Ct. App. 1969) (holding that substantial public value of navigable waters for public use is presumed); *In re Water Use Applications (Waihole II)*, 93 P.3d 643, 657-658 (Haw. 2004).

¹⁵² *Obrecht*, 105 N.W.2d at 149-151; *Ill. Cent. R.R..Co. v. Illinois*, 146 U.S. 387 (1892).

¹⁵³ International Joint Commission, *Statement of Mission and Goals and Guiding Principles*, Guiding Principle No. 10, 1998 (stating “it may sometimes be necessary to adopt a precautionary approach... where prudence is essential to protect the public welfare”).

¹⁵⁴ *In re Water Use Applications (Waihole II)*, 93 P.3d 643, 658 (Haw. 2004).

a lack of scientific data, studies, or other information to show “nibbling” or cumulative effects, then there can be no recorded finding that the use will not impair the public trust waters or uses.

For example, the Michigan Supreme Court rejected a developer’s argument that filling a few lots was de minimis in relation to the whole of Lake St. Clair and the Great Lakes, and ruled “[a]pplication of the [de minimis] doctrine . . . may involve making it equally so elsewhere. In total consequence, the state’s trust interests . . . public rights could be effected to an extent . . . considerably more than a trifling matter.”¹⁵⁵ Similarly, in Hawai’i’s *Waihole* water diversion cases the court held “the public trust compels the state duly to consider the cumulative impact of existing and proposed diversions on public trust purposes.”¹⁵⁶

iii. Affirmative Duty to Protect Flows, Level, and Water Quality.

While similar to the duty for procedural findings or to account principle for core principles iii, above, government also has a continuing substantive duty to protect public trust waters, their flows, levels, quality, and the integrity of the ecosystem itself.¹⁵⁷ Thus, in addition to basic principles, the duty consider and determine effects on public trust resources and uses includes effects on flows, levels, quality, and integrity or purity of waters or ecosystems connected to the public trust resources at issue.

iv. Accommodation or Balancing Uses

Courts balance competing public uses, assuring that traditional public trust uses, such as boating, swimming, boating, and recreation, are not harmed by another public use. In cases where

¹⁵⁵ Michigan v. Broedell, 112 N.W.2d 517, 518-519 (Mich. 1965). See also Hixon v. Pub. Serv. Comm’n, 146 N.W.2d 577, 589 (Wis. 1966).

¹⁵⁶ In re Water Use Permit Applications (Waihole I), 9 P.3d 409 (Haw. 2000).

¹⁵⁷ Kelly, *supra*, 140 P3d at 1002, Waihole I, *supra*, 9 P3d at 450; Omya Solid Waste Facility, Vt. Sup. C. - Enviro Div., *infra*, footnote immediately below.

courts have recognized a public trust in groundwater or non navigable water issues, which are not traditional public trust in navigable waters cases, courts have accommodated or balanced uses so long as any one use does not alienate or impair a public purpose or use that is protected by the public trust.¹⁵⁸ In other words, in these circumstances courts exercise strict scrutiny over competing uses to ensure compliance with public trust obligations. This is particularly the case in western appropriation or modified allocation water law jurisdictions or in reasonable use jurisdictions in the east involving balancing of private and public uses,¹⁵⁹ although a similar balancing approach is generally applied to private uses and protected public uses regardless of the water law regime.¹⁶⁰

C. Flexible Nature of the Public Trust Doctrine

As reflected in *Illinois Central*, the scope and form of the public trust doctrine is flexible and has evolved over time. The body of the trust traditionally applied to navigable waters and their bottomland, shoreline, fish and aquatic resources. Today it has been extended to all aspects of the inextricably connected ecosystem that is part of or essential to the common body of water and the public's use of the resource.¹⁶¹ As aptly stated:

¹⁵⁸ *Ariz. Cent. for Law and Policy v. Hassell*, 837 P.2d 158, 170 (1991); *In re Water Use Applications (Waihole II)*, 93 P.3d 643, 657-658 (Haw. 2004).

¹⁵⁹ *See e.g.*, *Thompson v. Enz*, 154 N.W.2d 473 (Mich. 1967)(balancing private riparian reasonable use of lake in light of correlative public uses protected by public trust).

¹⁶⁰ *Wisconsin v. Pub. Service Comm'n*, 81 N.W.2d 71, 71-73 (Wis. 1957).

¹⁶¹ Allan Kanner, *The Public Trust Doctrine, Parens Patriae, and the Attorney General as the Guardian of the State's Natural Resources*, 16 DUKE ENVTL. L. & POL'Y F. 57, 82-85 (2005); Charles F. Wilkinson, *Headwaters of the Public Trust: Some Thoughts on the Source and Scope of the Traditional Doctrine*, 19 ENVTL. L. 425, 453 (1989).

The public trust doctrine ... should not be considered fixed or static, but should be molded and extended to meet the changing conditions and needs of the public it was created to benefit.¹⁶²

As a result, the public trust doctrine or its principles have been applied to non-navigable waters, groundwater, beaches, wetlands, and other uses of special public resources, or to protect bathing, swimming, drinking or domestic use, recreation, parklands, and public lands.¹⁶³ Moreover, almost without exception, courts have accepted and applied the public trust doctrine to uses of non-traditional waters or other public natural resources if the water and public resources have been protected by state constitutional or statutory provisions.

For example, the public trust doctrine has been applied in the context of non-navigable streams as well as ground water, either because of the effects on navigable water or because statutory or constitutional provisions recognized the waters as being protected by the public trust. For example, in California's notable *Mono Lake* case, the court held that the diversion of water from non-navigable tributaries violated the public trust because of its impact on a connected, navigable lake that was already over-taxed from diversions and related impacts.¹⁶⁴ Additionally, courts have readily applied the public trust doctrine to non-traditional waters or other public natural resources where protected by state constitutional¹⁶⁵ or statutory provisions.¹⁶⁶ For example, the Wisconsin

¹⁶² *City of Neptune v. Avon-by-the-Sea*, 294 A.2d 47 (N.J. 1972); *Daytona Beach v. Tona-Rama*, 271 So.2d 65 (La. Ct. App. 1972); *Paepcke v Pub. Bldg. Comm'n*, 459 N.E.2d 577 (Ill. 1972); Olson, *supra* note 138, at 173, 179-182. *Accord* *Moore v. Sanborn*, 2 Mich 529, 625 (1853) (stating the “servitude of the public interest [the trust] depends rather on the purpose for which the public requires the use of its stream, than any particular mode of its use”).

¹⁶³ Kanner, *supra* note 161; James M. Olson, *Toward a Public Lands Ethic: A Crossroads in Publicly Owned Natural Resource Law*, 56 J. URBAN LAW 739, 853-861.

¹⁶⁴ *Nat'l Audubon Soc'y v. Superior Ct. of Alpine Co. (Mono Lake)*, 658 P.2d 709 (Cal. 1983). *See also* *Ariz. Cent. for Law and Policy v. Hassell*, 837 P.2d 158, 170 (1991) (protection of non navigable waters as public trust).

¹⁶⁵ *See e.g.*, CAL. CONST. ART 10, § 4 (stating that no person or entity “shall be permitted to
(continued...)

Supreme Court recently ruled that, under its common and constitutional law, the public trust doctrine imposed a duty on the state to consider the effects of its actions on public trust waters or uses when reviewing a proposal for a high capacity groundwater well.¹⁶⁷ In a case involving a dispute over groundwater for a land development and interests of the public, the Hawai'i Supreme Court ruled that its Constitutional language providing that ["a]ll public natural resources are held in trust by the State for the benefit of the people"] applied to groundwater of the state.¹⁶⁸ Similarly, in 2008, Vermont passed a statute recognizing that "groundwater resources of the state are held in trust for the public," and the first trial court to interpret the law ruled that in light of the statute, groundwater was subject to the state's common law public trust doctrine, and remanded for application of public

¹⁶⁵ (...continued)
exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water"); HAWAI'I CONST. ART. IX, § 1 ("All public resources are held in trust by the State for the benefit of the people"); PA. CONST. ART I, § 27 ("public natural resources are the common property of all the people... As trustee the Commonwealth shall conserve and maintain ... for benefit of the people"); ALASKA CONST. ART. 8, § 3 ("... wildlife, fish, and all waters are reserved to people for common use"). *See also* Robin K. Craig, *A Comparative Guide to the Western States' Public Trust Doctrines: Public Values, Private Rights, and Evolution Toward an Ecological Public Trust*, _____ Ecology Law Quarterly _____, 69-70 (2010); Robin K. Craig, *A Comparative Guide to the Eastern Public Trust Doctrines: Classifications of States, Property Rights and State Summaries* (2007).

¹⁶⁶ *See e.g.*, ARIZ. REV. STAT. ANN. § 37-1130 (1992)("[t]his state may obtain any water that is necessary to maintain and protect public trust values"); VT. STAT. ANN. tit. 10 §1390(5)(2008)("the groundwater resources of the state are held in trust for the public" and "manage groundwater resources ... for the benefit of citizens who hold and share rights n those waters"); N.H. REV. STAT. ANN. § 233-A:1 ("... bodies of freshwater...[more than 10 acres] ... held in trust by the state for public use"); N.H. REV. STAT. ANN. § 481:1 ("[W]ater of New Hampshire whether located above or below ground constitutes ... invaluable public resource which should be protected, conserved, and managed in the interest of present and future generations. The state as trustee ... careful stewardship over all the waters..."); N.J. STAT. ANN. § 58:11A-2 ("...to restore and maintain the chemical, physical and biological integrity of the waters of the state, including groundwaters, and the public trust therein..."); N.Y. ENVTL. CONSERV. LAW § 15-1601 ("All the waters of the state are valuable public natural resources held in trust by this state, and this stage has a duty as trustee to manage its waters for the use and enjoyment of present and future residents...").

¹⁶⁷ *Lake Beulah Mgmt. Dist. v. State of Wis. Dep't of Natural Res.*, 799 N.W.2d 73, 76 (Wis. 2011); Scanlan, *supra* note 10.

¹⁶⁸ *In re Water Use Permit Applications (Waihole I)*, 94 Hawai'i 97, 9 P 3d 409 (2000), interpreting Hawai'i Const. art. IX..

trust principles.¹⁶⁹ These applications of public trust principles demonstrate the inherent flexibility scope of the water and purpose protected by the doctrine as is necessary to fulfill the fundamental purposes of the public trust.

IV. THE IJC, BOUNDARY WATERS TREATY, AND PUBLIC TRUST PRINCIPLES

A review of the IJC's history and the Boundary Waters Treaty supports the idea that a commons framework and public trust principles are consistent with, and perhaps inherent in, the authority, purposes, and principles of the Treaty and Canadian and United States public trust law. In addition, such a framework and principles would compliment the goals and special concerns of the IJC's decades of work implementing the Great Lakes Water Quality Agreement.¹⁷⁰ Public trust principles are inherent in the Treaty and could expressly be blended into the guiding principles adopted by the IJC and the provisions of the Great Lakes Water Quality Agreement.

A. Public Trust Principles Inherent in the Boundary Waters Treaty

Under the Boundary Waters Treaty, the Great Lakes common boundary waters are shared equally by the two countries and their respective states and provinces and citizens.¹⁷¹ The purpose of establishing the IJC was to prevent disputes regarding the use of boundary waters, and the Preamble states that the treaty was designed to prevent disputes and settle questions "involving

¹⁶⁹ In re Omya Solid Waste Facility Final Certification, Vt. Sup. Ct. - Enviro. Div., Docket No. 96-6-10 Vtec, pp 8-19, 11 (Feb. 28, 2011), *available at* <http://www.vermontjudiciary.org/gtc/Environmental/ENVCRT%20Opinions/10-096c.OmyaSWCertif.sjo.pdf> (last visited Nov. 28, 2011), interpreting VT. STAT. ANN. tit. 10, §§1416-1419 (2008); VT. STAT. ANN. tit. 10, §§1390(1)-(5) (2008).

¹⁷⁰ Maude Barlow, *Our Great Lakes Commons: A People's Plan to Protect the Great Lakes Forever*, pp. 31-33 (March 24, 2011), *available at* <http://www.blueplanetproject.net/resources/reports/GreatLakes-0311.pdf> (last visited Nov. 28, 2011).

¹⁷¹ Boundary Waters Treaty, *supra* note 13.

rights, obligations, and interests” of both countries, their state governments, and the citizens who are inhabitants of these countries.¹⁷² This, by itself, seems to contemplate some integration of public trust principles to the extent they arise out of the common law right of public use of navigable waters that has evolved into the public trust obligations, limitations, and principles. More generally, public trust principles, or principles consistent with the public trust, are found throughout the treaty, and the adoption of the public trust doctrine would blend well with the principles inherent in the treaty.

To begin with, Article I of the Treaty reflects the background public trust principle of the *jus publicum* – paramount right of the public to use these navigable waters for navigation, boating, fishing and other public uses under English common law - which was recognized in court decisions from both countries at the time of the signing of the Treaty in 1909.¹⁷³ Article I declares that this general right of the public to use the boundary waters is to be preserved and continue “forever free and open:”

[T]he navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.¹⁷⁴

¹⁷² *Id.* Notably, boundary waters under the Treaty do not include tributary rivers, streams, or groundwater, the IJC has recognized that these tributary waters are a single hydrological system, and that the interaction of uses, flows, levels of these waters and their tributaries are directly related to the quantity and quality and integrity of the ecosystem. See the International Joint Commission, *The Protection of the Waters of the Great Lakes: Final Report to the Governments of Canada and the United States*, pp. 20-21, 26 (February 22, 2000), available at <http://www.ijc.org/php/publications/html/finalreport.html> (last visited Nov. 28, 2011). See also Lee Botts and Paul Muldoon, *Evolution of the Great Lakes Water Quality Agreement* (Michigan State University Press 2005), pp. 191-95.

¹⁷³ See, e.g., cases cited *supra* note 24.

¹⁷⁴ Treaty, *supra* note 13, at Art. 1. This is strikingly similar to both common law recognitions of the right of public use for navigation, boating, and fishing, the primary uses made
(continued...)

Article III of the Treaty requires that decisions on proposed uses, obstructions, or diversions “affecting flows and levels” of the boundary waters or waters crossing the boundary must be approved by the IJC.¹⁷⁵ Public works for navigation and commerce can continue but cannot “affect the flow and level of the boundary waters of the other” or “interfere with the ordinary use of such waters for domestic and sanitary purposes.”¹⁷⁶ This has been applied in a manner consistent with public trust principles. In its first decision under the Treaty, in 1913, the IJC characterized the principles in Article III as “plain, simple and direct.”¹⁷⁷ In 1965 St. Croix Paper Company requested the IJC to approve a replacement storage dam and fish passage facility at the base of Spednik Lake that would lower water levels of the lake and impair fish, water quality, and downstream recreation.¹⁷⁸ In approving the project as “one of a kind,” the IJC imposed a condition requiring “remedial protective works” that would protect these public interests and use from harm.¹⁷⁹

¹⁷⁴ (...continued)
of navigable waters in the 1800s and early 1900s. Article I of the Treat is strikingly similar to the Ordinance of the Northwest Territories of 1787, from which the boundaries of five Great Lakes were established on their admission as a state.

¹⁷⁵ Treaty, *supra* note 13, at Art. III.

¹⁷⁶ *Id.*

¹⁷⁷ *In the Matter of Rainy River Improvement Co., Approval of Plans at Kettles Falls* (Apr. 13, 1913) Order of Approval, Docket 1A, p. 7, available at <http://www.ijc.org/php/publications/pdf/ID23.pdf> (last visited Nov. 28, 2011). See also TAB 3 of the Presentation, pp. 2-4.

¹⁷⁸ *In the Matter of St. Croix Paper Co. Woodland, Maine, & New Brunswick* (Oct. 15, 1965) Order of Approval, Docket No. 80, p. 2, available at http://bwt.ijc.org/docket_table/attachments/Docket%2080/Docket%2080%20Order%201965-10-15.pdf (last visited Nov. 28, 2011).

¹⁷⁹ *Id.* at 9. See also, *In the Matter of Grand Coulee Dam and Reservoir* (Dec. 15, 1941) Order of Approval, Docket 44A, available at <http://www.ijc.org/php/publications/html/columbia/columbiaord.htm> (last visited Nov. 28, 2011).

Article IV of the Treaty unequivocally directs that waters defined as boundary waters and waters flowing across the boundary “shall not be polluted.”¹⁸⁰ The IJC has used its powers of “Reference” under Article IX to implement the “no pollution” standard. to prevent harm to public health, drinking water, and exposure to those who swim or use the waters. In one of its first decisions under the Treaty, the IJC determined that this included a “probability” of harm to life, health, and property from pollution.¹⁸¹ The IJC has also reported that this includes conditions that would “adversely affect” water used for drinking, navigation, fish and wildlife, bathing, recreation, farming, supply for industry, and riparian activities.¹⁸² Several of these uses, such boating, fishing, bathing, recreation, are uses that are protected by the public trust doctrine.¹⁸³

Article VIII takes a common and shared use approach to boundary waters by adopting principles that govern the IJC’s decisions when passing on matters affecting flows or levels under Articles III and IV. Generally, each party has “equal and similar rights” in the use of waters on their side of the international boundary.¹⁸⁴ However this principle is subject to an order of preference, with the exception that existing uses on either side of the boundary are not subject to these

¹⁸⁰ Treaty, *supra* note 13, at Art. IV. Article IV also requires IJC approval for remedial and protective works in waters flowing across the boundary, or in waters at a lower level than the boundary in rivers flowing across the boundaries, that raise the water level.

¹⁸¹ International Joint Commission, *Final Report of the International Joint Commission in the Matter of the Reference by the United States and the Dominion of Canada Relative to the Pollution of Boundary Waters*, p. 27 (Sept. 10, 1918) Docket 4R, available at http://bwt.ijc.org/docket_table/attachments/Docket%204/Docket%204%20Final%20Report.pdf (last visited Nov. 28, 2011).

¹⁸² International Joint Commission, *Report of the International Joint Commission United States and Canada on the Pollution of Boundary Waters*, p. 6 (Oct. 11, 1950) Docket 54R, available at http://bwt.ijc.org/docket_table/attachments/Docket%2054-55/Dokcet%2054%20Pollution%20of%20GL%20Channels%20Final%20Report%201950.pdf (last visited Nov. 28, 2011).

¹⁸³ See discussion and accompanying notes *supra* Sections I and II.

¹⁸⁴ Treaty, *supra* note 13, at Art. VIII.

preferences. A lower-ordered use may not materially conflict with the higher preferred use in the following order of preference: (1) domestic and sanitary uses, (2) navigation and servicing of canals for navigation, and (3) use for power and irrigation.¹⁸⁵ All other uses, presumably, are based on the general shared equal or similar uses principle, unless a temporary diversion is required based on local conditions and does not diminish the amount of water available for use on the other side. Finally, in matters that involve temporary variation in the equal use principle or public works that affect the natural level of water, the IJC can impose conditions or remedial orders that guard against injury to “any interests” on either side.¹⁸⁶

The Boundary Waters Treaty treats the boundary waters, including the Great Lakes, as a commons that is to be equally shared by both countries and their inhabitants. Moreover, IJC Decisions and References under the Treaty over the past 100 years have shown a strong interest in applying the principles of equal and shared use, protecting public uses, and balancing public and private uses, many of which are recognized under the public trust doctrine.¹⁸⁷ The IJC has looked, at least some cases, to the equality of uses, the common law of the provinces or states where the use or effects would occur, and the protection of public uses, fish, wildlife, ecosystems.¹⁸⁸ As a result, the IJC’s recognition of public trust principles is consistent with principles inherent in the Treaty itself and the IJC’s application of the treaty overtime. In addition, the express adoption of the public trust principles could provide a needed framework for the IJC’s evaluation and decision-making regarding a number of critical issues facing the Great lakes and the boundary waters today.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See TAB 3 (*Selected Historical Analysis of IJC Decisions Related to Commons and Public Trust Approach*).

¹⁸⁸ *Id.*

B. Integration of Public Trust Principles into the Boundary Waters Treaty and Great Lakes Water Quality Agreement

The public trust doctrine could be integrated into either the implementing principles of the Treaty or the Great Lakes Water Quality Agreement.¹⁸⁹ Under the Boundary Waters Treaty and/or the GLWQA and its integrated ecosystem approach, the adoption of a public trust principle for the IJC or in the GLWQA could be instrumental in promoting research, exploration, public education, and oversight of the affects of uses, diversions, exports, obstructions, climate change, and other activities on the flows, levels and ecosystem of the Great Lakes. It would also form a basis to integrate water quantity, quality and ecosystem protection. Finally, it would provide a basis from which the IJC can request parties, states, provinces, and others to be more accountable consistent with the duty under public trust law to consider and determine effects and harms before any approval of a use, diversion, or obstruction or other proposed action is approved.

The basis for evaluating these claims has already begun. The pioneering work of the IJC and its Science Advisory and Water Quality Boards has focused on critical water pollution issues, including phosphorous, toxics, non point and direct discharges, sewage, invasive species, and shipping impacts. More recently the focus has turned to the integrity of the ecosystem or “interacting components of air, land, water, and living organisms, including humans, within the drainage basin ...”¹⁹⁰ One of the IJC’s specific goals adopts an “Ecosystem Objective” that seeks to “maintain the chemical, physical and biological integrity of the waters of the Great Lakes Basin

¹⁸⁹ Hereinafter “GLWQA”.

¹⁹⁰ Great Lakes Water Quality Agreement, Art. 1.

Ecosystem.”¹⁹¹ In addition, the underlying goal of the GLWQA is a long-term effort to protect the boundary waters, and it has evolved into an ecosystem approach that integrates water quality with water and land uses, air deposition, direct and non point discharges, and overland stormwater drainage and run off. The GLWQA recognizes that flows and levels, whether induced or caused by human activities, are an integral part of water quality and the health and integrity of the Great Lakes ecosystem.¹⁹² Public trust principles would provide a framework to continue to build upon this work, and more fully integrate protection of water quantity, quality, and ecosystems.¹⁹³ At the same time, these principles would declare as a background principle the paramount inalienable right of public use or trust that exists in these waters as a safeguard against unforeseen claims and challenges by special or private interests; this would protect the Great Lakes and their uses from threats of diversions or exports and ensure government control and protection for the many public and private uses that enjoy the Great Lakes and St. Lawrence River.

C. Potential Application of the Public Trust Doctrine

The public trust doctrine could help address current gaps in the IJC’s ability to systemically address threats facing the Great Lakes and the boundary waters. The IJC’s mission and goals are centered on the protection of water quantity, water quality, and the chemical, biological and physical

¹⁹¹ *Id.*

¹⁹² The IJC already collects data on flows and levels of boundary waters.

¹⁹³ One example of how public trust principles fit within the existing work of the IJC is “Plan 2007,” the Order of Approval for a hydropower project in the St. Lawrence River below Lake Ontario. Evaluation of the proposed order has involved passing on changes in flow patterns and lake levels, including the order of preference for domestic uses, hydro electric power, and a number of existing uses and new conditions and effects on the ecosystem. The public trust doctrines provides a backdrop on which all of these issues could be considered in the context of the sovereign duty to hold the waters in trust for public use.

integrity of the ecosystem. The IJC's work involves decisions regarding flows and levels and related water and ecosystem effects directly under the Boundary Waters Treaty or the GLWQA. Overall, the IJC has evolved objectives focused on both water quality and ecosystem to implement its responsibilities and programs under the Treaty and GLWQA but has not formally integrated water quantity with water quality issues. Yet in the past 10 years, the magnitude and layers of the threats to waters of the Great Lakes have become so compressed and multi-dimensional that IJC finds itself in a position of having to put out the fires of specific or localized harms and threats, while even larger threats gather overhead. The size, rate of change, intensity, and transboundary nature of many systemic threats to the Great Lakes and ecosystem overwhelm the existing framework.¹⁹⁴ The IJC could be even more effective at performing its overall responsibilities to protect flows and levels and prevent pollution if it adopted an overarching framework or principles by which to evaluate issues in order to fill the gaps and compliment existing programs.

Adopting the public trust doctrine as an overarching guideline could be just such a proactive step. It would ensure that the background principles of the waters being held in trust for public use are always part of the discussion and provide a mechanism for integrative and comprehensive consideration of risks to public trust based on the sovereign duty of the government to ensure protection of the water and ecosystem for both present and future generations. Public trust principles impose solemn and perpetual limits and duties to protect public trust waters, uses, and ecosystem, and offer an approach and principles to catch up to or get ahead of the problem. By imposing public trust principles to protect the Great Lakes, its public uses, and ecosystem, the IJC

¹⁹⁴ As concluded in a recent, troubling study on the difficulty of protecting local and regional place features in light of the decline in overall biodiversity, the pressures and demand on water and natural resources is so great that "the problem is running away from the solution." Stephen Leahy, *All of Earth's Systems in Rapid Decline*, Inter Press Service, Aug. 4, 2011. Available at: <http://ipsnews.net/news.asp?idnews=56685> (last visited Nov. 30, 2011)..

can work closer to the source of the losses and threats, including those yet unknown,¹⁹⁵ at the same time provide an umbrella or backstop protection from unanticipated demands or claims on the public trust in these waters and public natural resources.

The influx of invasive species into the Great Lakes provides one example of how the public trust doctrine could be integrated with the Treaty and the GLWQA to address current challenges facing the Great Lakes and the IJC. Invasive species threaten the Great Lakes ecosystem as well as business in the region.¹⁹⁶ Public trust principles, read in conjunction with the Treaty, could provide the IJC with a comprehensive framework for advising and recommending governmental actions. Evaluating uses such as fishing and navigation in light of public trust principles would require an overall integrative look at the impacts of uses, diversions, obstructions or dams in the context of water levels, flows, or biological pollution, as well as requiring a consideration of the magnitude of the risk of harm and alternative measures that would prevent that risk in the context of future generations. This requires viewing the costs and risks of exchanging ballast water beyond the St. Lawrence and Great Lakes not just in terms of economics or even scientific markers, but in

¹⁹⁵ Jeffrey W. Henquinet and Tracy Dobson, *The Public Trust Doctrine and Sustainable Ecosystems: A Great Lakes Fisheries Case Study*, 14 NYU Env'tl. Law J. 323, 344-48 (2006) (suggesting the public trust doctrine would better address multi-jurisdictional and layered water and ecosystem problems like fisheries).

¹⁹⁶ Since the 1800s, more than 160 aquatic nuisance species have entered the Great Lakes ecosystem. The U.S. Fish and Wildlife Service estimates that the economic losses over the last decade from one particularly dangerous ANS, the quagga mussel, are at about \$5 billion within the Great Lakes region alone. See Ash-har Quraishi, *Great Lakes Invasion: Quagga Mussels Wreak Havoc on Ecosystem*. Chicago Tonight/WTTW-TV. November 15, 2011, available at: <http://chicagotonight.wttw.com/2011/11/15/great-lakes-invasion>. It has been predicted that the Asian Carp, another significant danger to the Basin, would cripple the 7-billion-dollar-a-year Great Lakes fishing industry. Nicole Thompson, *Asian carp called the biggest threat to Great Lakes in years*. Daily Herald. February 14, 2011, available at: <http://www.dailyherald.com/article/20110213/news/799999463/>. See also Lewis Croley, Ray, et al, *Enhancing Resilience in a Changing Climate (ERCC) Program; Water Levels in the Great Lakes: A Cross-Border Problem* (Natural Resources Canada); Lester Brown, *World on Edge* (Earth Policy Institute, 2011)(discusses rising temperatures of Earth are melting away global food security).

light of what the outer limit is on the risk and magnitude of harm that the Basin can withstand. It perhaps provides an outer limit after which the magnitude of threatened harm is unacceptable based on public trust principles.

As another example, the Great Lakes is facing increasing risks of large-scale water diversions. Although a 2002 Report from the IJC International Water Use Task Force concluded that diversions from the Great Lakes were not on the horizon and would not likely happen,¹⁹⁷ this conclusion must now be reevaluated in light of the increasing energy and food demands for water and shifts in water law regimes in the Great Lakes states. Changing demands have greatly increased the potential for diversions or exports of water to the west or elsewhere, particularly as the United States contemplates producing oil from shale rock in the western states.¹⁹⁸ Simultaneously with increases in demand, changes in law over the past decade, and international treaties such as NAFTA and the GATT,¹⁹⁹ have created increased legal risk for large-scale water diversion from the Great

¹⁹⁷ *Protection of the Waters of the Great Lakes: Three Year Review*, Prepared for the IJC by International Water Uses Review Task Force, Nov. 8, 2002, pp. 55-57, available at <http://www.ijc.org/php/publications/pdf/ID1560.pdf> (last visited Nov. 30, 2011).

¹⁹⁸ Former New York Times journalist Keith Schneider has spent the last two years in China and the Western states looking at the demands for energy for Circle of Blue. He has concluded that the demand for water for shale oil and gas production - as well as for water and food needs in the west and midwest - will be met, inevitably, from pipelines in Lake Superior. See Keith Schneider, *Chokepoint US*, Water News (Sept. 2010), available at: <http://www.circleofblue.org> (last visited Nov. 30, 2011).

¹⁹⁹ Under the “Harmonizing Code System” in the General Agreement on Tariffs and Trade (GATT), Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, as amended in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1125 (1994), a “good” is defined to include water, and all water other than the sea, whether or not clarified or purified. A side agreement to the North American Free Trade Agreement (NAFTA), signed by the U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993), itself does not expressly make “water” a “good” or “product,” a side agreement, between Canada, Mexico, and the United States may do so. 1993 Statement of the Governments of Canada, Mexico, and the United States. Jon R. Johnson, *North American Free Trade Agreement: A Comprehensive Guide* 109 (1994).

Lakes.²⁰⁰ The public trust doctrine could provide a framework by which to evaluate and prioritize these issues on the backdrop of the government's duty to protect the Great Lakes for public uses protected by the public trust doctrine. Indeed, now more than ever it will be valuable for an international body like the IJC, to expressly declare that any use, diversion, or obstruction of navigable waters is subject to the limitations of the public trust and subject to inherent rights of public use in these waters, and to affirm the continuing duty of governments to protect these waters for the health, safety, and welfare of its citizens.

V. CONCLUSION: AN OVERARCHING GUIDING PRINCIPLE OF PUBLIC TRUST

Based on the above, the Council of Canadians and Flow for Water submit that the IJC should adopt, or refer for study and recommendation for adoption, a declaration or guiding principle that the Great Lakes Boundary waters and its directly connected public natural resources are held in public trust for the benefit of the citizens of the two countries and states who live in the Great Lakes basin, and for those who visit and use and enjoy the waters of the Great Lakes Basin. In addition, or in the alternative, it is submitted that the IJC should adopt and include provisions that (1) recognize public trust principles and (2) integrate the public trust principles into decisions and references and all matters and programs under the Great Lakes Water Quality Agreement and the Treaty, so that water quantity issues under Article III of the Treaty and water quality issues under Article IV of the Treaty and the Great Lakes Water Quality Agreement are integrated and made part of the ecosystem approach of the Great Lakes Water Quality Agreement.

²⁰⁰ For example, the Great Lakes-St. Lawrence River Basin Water Resources Compact, as adopted in the United States, bans diversions of water from the Great Lakes but also creates a couple of significant exceptions that leave the potential for significant diversions from the Lakes as a "product." See James M. Olson, *Navigating the Great Lakes Compact, Water, Public Trust, and International Trade Agreements*, 2006 MICH. ST. L. REV. 1103, 1122-1126 (2006).

NATIONAL OCEAN COUNCIL

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Path: http://edit.whitehouse.gov/sites/default/files/webform/27feb2012_htbtonoc_nationaloc_eanplan.pdf

Comment: Please see attachment for our comments. Thank you.



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February 27, 2012

The Honorable Nancy Sutley
Co-Chair, National Ocean Council
Chair, White House Council on Environmental Quality
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

The Honorable John Holdren
Co-Chair, National Ocean Council
Director, White House Office of Science and Technology Policy
Executive Office of the President
722 Jackson Place NW
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Re: Comments on the National Ocean Policy Implementation Plan

Dear Chairs Sutley and Holdren:

On behalf of Heal the Bay, a non-profit environmental organization with over 13,000 members dedicated to making Santa Monica Bay and southern California coastal waters and watersheds safe and healthy for people and local ecosystems, we respectfully submit our comments on the National Ocean Policy Implementation Plan (NOP).

Heal the Bay has been deeply involved in ocean issues in California for over 25 years through education, outreach, scientific research, and policy work. We work on a diverse and wide-ranging set of challenges to our ocean, including preventing harmful and wasteful runoff from urban storm drain systems in Los Angeles County and greater southern California. In our early days, Heal the Bay worked hard to ensure that Hyperion Sewage Wastewater Treatment Plant upgraded its sewage treatment systems to meet Clean Water Act standards, which has resulted in significant habitat and water quality improvements in the Santa Monica Bay. We have been actively engaged at the local and state level in the reduction and elimination of ocean pollution. As part of the Fish Contamination Education Collaborative under the Montrose Settlements Restoration Program, we run a Pier Angler Outreach program to educate pier anglers about health issues associated with PCB and DDT contaminated fish, and species-specific recommended limits for consumption. Through this United States Environmental Protection Agency award winning program, we have educated over 100,000 anglers at 8 piers throughout Los Angeles and Orange Counties. We also participated in California's Marine Life Protection Act implementation process through membership on the South Coast Regional Stakeholder Group and Statewide Interests Group on the establishment of a network of marine protected areas along California's coast. In 1990, Heal the Bay published the first Los Angeles area Beach Report Card, an analysis of fecal indicator bacteria levels, which educates beachgoers on an A-F scale about how safe the beach is for swimming. Today we grade almost 500 beaches along the coasts of California, Oregon, and Washington each week.



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We are excited about opportunities to assist in NOP implementation and believe that building upon established regional partnerships and ensuring funding to states will allow coastal regions to advance action plans to take the necessary steps toward NOP implementation. Overall, we support the themes and actions as proposed, but recommend the following revisions and additions to ensure that our country's water resources, marine ecosystems, fisheries, and American citizens benefit from this program.

Ecosystem-based management

We support that the NOP Implementation Plan for Ecosystem Based Management (EBM) includes adoption of EBM as a foundational principle, and especially that it will be based on science. EBM is a comprehensive approach to managing coastal and ocean resources as it presents an opportunity to improve, refine, and streamline our national, regional, tribal, and statewide governance regarding the management of shared marine and ocean resources. We stress that the successful implementation of EBM includes embracing the precautionary principle, and support the NOP language to be science-based and place-based.

Inform Decisions and Improve Understanding

Action 6: We strongly support **Action 6** of the NOP (within the *Inform Decisions and Improve Understanding* section) to “increase ocean and coastal literacy by expanding the accessibility and use of ocean content in formal and informal education programming for students, educators, and the public.” Ocean education remains a paramount concern. Children must understand the ocean and its relevance to their lives before they can become future stewards. California’s Education and the Environment Initiative (EEI), that was developed as a requirement of a law sponsored by Heal the Bay in 2003, is a landmark curriculum and national model that includes environmental principles and concepts to examine the interactions and interdependence of human societies and natural systems, while being explicitly tied to standards. It provides the framework to build environmental literacy. The EEI is one model effort that could provide some federal guidance for how to leverage education about oceans in K-12 schools.¹ Moreover, significant work has been done by The National Geographic Society and others on a K-12 Scope and Sequence for Ocean Literacy Principles. These principles should be formalized into National Ocean Literacy standards, which would give states consistent, accurate, and pedagogically sound guidance in developing individual curricula, texts and frameworks, etc.

Coordinate and Support

Action 3: We fully support Milestone 3 of **Action 3** of the NOP (within the *Coordinate and Support* section) to “reduce barriers to implementation of the National Ocean Policy” which calls for potentially strengthening the Coastal Zone Management Act (CZMA). The CZMA is a successful partnership between states and the federal government to enact shared priorities for protecting and managing the nation’s coastline. This federal legislation will be particularly important for climate change adaptation efforts. We encourage the Administration and Congress to keep funding for coastal zone management (CZM) programs stable during this difficult economic time, as CZM programs are the backbone of many regional ocean partnerships.

Action 5: Under **Action 5** (within the *Coordinate and Support* section), to improve efficiency of permitting ocean, coastal, and Great Lakes uses; we support efforts to improve the efficiency of

¹ California Education and the Environment Initiative <http://www.calepa.ca.gov/education/eei/>



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permitting activities. However, we recommend including language in the final NOP that clarifies that federal consistency authority provided to the states through the Coastal Zone Management Act (CZMA) will not be undermined. Federal consistency is an important tool to ensure that federal activities or federally-permitted activities do not jeopardize resources within our respective state waters.

Regional Ecosystem Protection and Restoration

Action 1: Under **Action 1** (within the *Regional Ecosystem Protection and Restoration* section), to develop and transfer decision support tools to identify land protection and restoration priorities, we recommend that the NOC broaden its focus beyond the geographically specific areas for this action outlined in this draft. For instance, this action focuses on Chesapeake Bay Region. However, there are several other important watershed/wetlands restoration projects that are critical to protect coastal ecosystem health and the US ocean economy. Successful restorations in Carpinteria Salt Marsh², one of the largest and most ecologically important coastal estuaries in California; and the Bolsa Chica Lowlands Restoration Project, where nearly 600 acres of marine and wetland habitat in Orange County were restored, constituting the largest restoration in California history; are two restoration projects that the NOC could reference as learning opportunities.³

The Ballona Wetlands in Los Angeles County are one specific area besides the Chesapeake Bay region that we recommend as a focus for restoration efforts. Southern California is in grave need of wetlands restoration; more than 95% of southern California's wetlands have been lost due to human development – the largest loss of any state in the nation.⁴ The Ballona Wetlands once occupied a 2,000-acre expanse of critical coastal habitat in Los Angeles. However, over the past century, habitat values and ecosystem function in this area has been highly degraded due to fill of the wetlands with dredge spoils that cut off connection between the ocean and freshwater creek. This area also suffers from numerous water quality issues, which habitat restoration would greatly improve. Restoration plans are currently being developed for the Ballona Wetlands.⁴ We strongly urge the NOP to consider this area as a restoration priority, as it is one of the largest and most promising opportunities for coastal wetland restoration in southern California.

Action 2: We fully support **Action 2**, (within the *Regional Ecosystem Protection and Restoration* section), to reduce coastal wetland loss and improve understanding of coastal wetland status and trends, as this action will identify coastal watersheds for pilot assessments, which we believe is an important step to reverse wetland loss. However, we suggest that an evenly dispersed set of pilot watersheds allows for a more comprehensive and holistic perspective on the state of the nation's watersheds. Vulnerable wetlands are present in all the coastal regions of the United States. Focusing on geographically disparate watersheds will provide a broader understanding about the challenges for restoration, as watersheds in different areas have different characteristics; this will also lead to a more representative set of case studies for future projects. Under Milestone 3, where coastal watersheds for pilot assessments will be identified using the pilot assessment selection strategy, we stress that pilot projects should be selected

² Carpinteria Salt Marsh, Land Trust for Santa Barbara County <http://www.sblandtrust.org/carpmarsh.html>

³ Bolsa Chica Lowlands Restoration Project <http://www.bolsachicarestoration.org/>

⁴ Ballona Wetlands Restoration Project

<http://www.santamonicabay.org/smbay/ProgramsProjects/HabitatRestorationProject/BallonaWetlandsRestoration/BallonaProjectOverview/tabid/184/Default.aspx>



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from different regions in the nation, some examples of which we have included in the previous paragraph.

Action 3: Under **Action 3**, (within the *Regional Ecosystem Protection and Restoration* section), to incorporate carbon sequestration into coastal habitat conservation, we agree that carbon offset projects play an important role, but we stress that it is important that these projects do not provide greater harm to the ecosystem than benefit. We believe that the NOC should ensure that carbon offset projects are ecologically appropriate, designed for multiple benefits, and do not provide harm to ecosystems. We agree that coastal habitats have the ability to sequester carbon and that it is an important but undervalued ecosystem service. However, given that climate change, especially sea-level rise, will affect carbon sequestration of coastal habitats, there is a need to understand the permanence of carbon sequestration from these habitats, and the risk of reversal for carbon offset projects to release the carbon back into the environment. Furthermore, it is also important that the effects of increased carbon sequestration in coastal habitats on biogeochemistry are researched and understood. For example, research regarding whether carbon sequestration is likely to increase acidification of bays, inlets, and coastal lagoons will be important information for understanding biological response to carbon sequestration, especially for shellfish fisheries and aquaculture, which often occur in these areas.

Action 4: Under **Action 4** (within the *Regional Ecosystem Protection and Restoration* section), we support that this action aims to strengthen interagency collaboration to protect and conserve coral reef ecosystems, but suggest that the NOC consider including actions targeted at protecting and conserving rocky reefs and kelp forests as well. The kelp forests off southern California are considered to be some of the most diverse and productive ecosystems on the planet, however they are less extensive and lush than their historic extent.⁵ These ecosystems would benefit from federal recognition and support, especially a similar watershed approach as is identified for coral reef ecosystems, to address land-based sources of pollution and facilitate a more consistent approach to evaluating, assessing, and mitigating impacts to kelp forest and rocky reef ecosystems.

Action 5: Under **Action 5** (within the *Regional Ecosystem Protection and Restoration* section), to locate, control, and, where possible, eradicate invasive species, we support NOC's changes to the previous draft by including several invasive species threats (not just one), but further suggest that the NOP focus on preventing invasions. It is always more costly to control or eradicate a species than to prevent its introduction in the first place. We encourage the NOC to consider efforts to prevent the introduction of aquatic invasive species, such as by supporting ballast water management and/or treatment, addressing hull fouling, and tackling the trade of live organisms. We recommend that the NOC look to the California State Lands Commission's Marine Invasive Species Program⁶ as a model for preventing the introduction of invasive species via the commercial shipping vector. California's Marine Invasive Species Act and Coastal Ecosystems Protection Act could help guide the NOP's direction on ballast water regulations, including treatment technologies and testing; vessel fouling and antifouling strategies; and ship-mediated introductions.

⁵ University of California, Davis. "California's ancient kelp forest." *ScienceDaily*, 11 Nov. 2009

⁶ California State Lands Commission Marine Invasive Species Program

http://www.slc.ca.gov/spec_pub/mfd/ballast_water/Ballast_Water_Default.html



Action 6: Under **Action 6** (within the *Regional Ecosystem Protection and Restoration* section), we fully support this action to identify nationally significant marine and Great Lakes areas in need of protection. However, we suggest that NOC also consider supporting already-protected areas. In order to prevent “paper parks” and poaching, NOC should support various levels of marine protected areas – both state-level and national – through support for enforcement and monitoring, thereby increasing the effectiveness of protected areas.

Also under **Action 6**, when identifying significant areas for protection, we strongly urge the NOC to consider a network-based string of marine protected areas, such as the recent adoption of a marine protected area network along the California coast under the Marine Life Protection Act (MLPA).⁷ We recommend that the NOC collaborate with the National Marine Protected Areas Center, using the MLPA as a model for a nationwide network of MPAs. It is imperative that protected areas be science-based and function as a network, as sometimes a single MPA is not sufficient in size or scope to protect marine life. A network of MPAs where a string of MPAs protect representative habitats found within the broader area and have established connectivity with one another, are key attributes for effective marine conservation.⁸ In addition, when considering the establishment of MPAs, diverse stakeholder engagement is important to include as a part of the process. An important lesson learned from the design and implementation of MPAs around the world is that social factors are the primary determinants of the success of MPAs⁹, making stakeholder involvement an essential feature.¹⁰

Resiliency and Adaptation to Climate Change and Ocean Acidification

Actions 5 & 6: We support this initiative, especially **Actions 5 and 6** (within the *Regional Ecosystem Protection and Restoration* section), to design adaptation strategies and support adaptation to climate change. Guidance about adaptation strategies will be very important and we are glad that the NOC plans to provide guidance to local jurisdictions that may lack the necessary expertise to prepare for climate change. Adaptation and preparation for the effects of climate change, especially shoreline changes and sea-level rise, will continue to impact coastal areas and communities over the next several decades. Developing actions to mitigate and adapt to the impacts of climate change and related coastal hazards are integral to ensuring the health and economic well-being of coastal communities.

Under the 5th milestone in **Action 6** in the NOP, to “provide guidance to waterfront property owners on adaptive management options for shoreline erosion,” we suggest that the NOP include and highlight the most environmentally-sensitive options as suggestions for adaptive management, such as managed retreat, and consider including a policy that specifies that hardening of the coastline is not a sustainable or preferred option. Decisions about how to deal with rising sea level, inundation, and associated impacts will have a profound impact on the future of our coasts. Coastal managers and policymakers will consider both environmentally-destructive strategies such as coastal armoring and harmful beach

⁷ Marine Life Protection Act <http://www.dfg.ca.gov/mlpa/>

⁸ The National Marine Protected Areas Center Special Issue Focused on Networks of Marine Protected Areas in *Current: The Journal of Marine Education*. Volume 26, June 2010 http://www.mpa.gov/pdf/helpful-resources/education/current/current_jun_2010.pdf

⁹ Mascia, M.B. 2003. “The Human Dimension of Coral Reef Marine Protected Areas: Recent Social Science Research and Its Policy Implications.” *Conservation Biology*. Volume 17. Pages 630 to 632.

¹⁰ Stakeholder Participation: A Synthesis of Current Literature Prepared by the National Marine Protected Areas Center in cooperation with the National Oceanic and Atmospheric Administration Coastal Services Center
Brianna Leigh Kessler, Primary Investigator September 2004 www.mpa.gov



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nourishment, and more sustainable, “soft” protection solutions such as barrier beaches and wetlands.¹¹ If harmful armoring structures, such as sea walls and levees, become the default approach to deal with sea level rise, it would significantly alter the functioning of coastal habitats, which could in turn decrease the overall adaptive capacity of coastal ecosystems. Instead of focusing solely on reducing the vulnerability of existing shoreline developments, the NOP should direct agencies to focus on coastal resilience¹² as the overriding goal of adaptation strategies. The NOC’s guidance about how to manage sea level rise will either enhance and protect critical coastal shoreline areas, beaches, and wetlands—or allow the irrevocable loss of these critical economic and environmental resources.

Additionally, we are concerned that language was removed from this Draft that was in previous iterations of the NOP. Previous versions included focus on the reduction of stressors over which coastal managers have more direct control; we recommend that this language be reinstated in the final NOP. Therefore, we recommend the inclusion of a milestone to *‘reduce the impacts of stressors over which we have more direct control (e.g., pollution, habitat destruction, resource extraction) to enhance the resiliency of coastal, ocean, and Great Lakes ecosystems to climate change and ocean acidification’*. In addition, appropriate funding (e.g. for revision of local coastal plans) will be necessary in order to implement these adaptation strategies.

Water Quality and Sustainable Practices on Land

Action 1: Under **Action 1** (within the *Water Quality and Sustainable Practices on Land* section), to reduce rural sources of excessive nutrients, sediments, toxics, and pathogens, we suggest that the NOP include an additional milestone to enhance the nonpoint source regulatory program.

The Section 319 Nonpoint Source Pollution (NPS) program under the Clean Water Act (CWA) is largely voluntary and, as a result, has been largely ineffective at reducing pollutant loads, concentrations and beneficial use impairments from pollution discharges not currently addressed under the National Pollutant Discharge Elimination System (NPDES) program. One of the few regulatory tools to reduce NPS pollution is TMDLs, but the TMDL program was intended to be a backstop, not a pollution prevention measure. Moreover, TMDLs are not being used for NPS abatement due to the limitations of the federal CWA in regulating non-NPDES controlled pollution.

Until Congress appropriately amends the Clean Water Act to mandate full controls on NPS, the NOP should direct the EPA to regulate stormwater discharges from NPS-generating activities under municipal or general stormwater permits including discharge from: equipment yards where major earth moving equipment, construction equipment, and trucks are stored; pleasure boats and commercial boats; and agricultural, silvicultural and mining operations. Until these sources are directly addressed, our nation’s most critical water quality problems will be allowed to persist and worsen. For instance, failure to regulate agriculture, mining and silviculture has resulted in numerous waters being impaired through eutrophication, Harmful Algal Blooms, sedimentation and contamination by pesticides, fungicides and herbicides. The NOP should require EPA to place a special emphasis on enhancing the NPS regulatory

¹¹ California Natural Resources Agency, “2009 California Climate Adaptation Strategy: A Report to the Governor of the State of California in Response to Executive Order S-13-2006” (California Climate Adaptation Strategy). p. 75.

¹² Beatley, Timothy, *Planning for Coastal Resilience: Best Practices for Calamitous Times*. Washington DC: Island Press (“Planning for Coastal Resilience”) (2009).



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program and mandating cleanup of waterways contaminated by such runoff; just as industrial and construction sites have been covered through EPA's stormwater permitting program through municipal MS4 permits or general permits, significant nonpoint sources of pollution should be regulated through such permits as well.

In addition, we suggest including a milestone in this section for implementing green infrastructure programs, as green infrastructure can be utilized in both rural and urban areas.

Action 2: Under **Action 2** (within the *Water Quality and Sustainable Practices on Land* section), to reduce urban sources of excessive nutrients, sediments, toxins, and pathogens, we agree it would be beneficial to determine the number of significant municipal wastewater treatment plants with permit limits for nitrogen and phosphorus, and to encourage information sharing about reduction levels among States, Tribes, and regional partners. However, the plan should go further and contain a milestone to ensure dischargers that currently do not have numeric limits for phosphorus and nitrogen receive these limits, and to ensure that these limits are set at protective levels. Also, the plan should identify other significant discharges to the ocean in addition to treatment plants, such as coastal areas with a high density of onsite wastewater treatment systems and upstream industrial dischargers.

We strongly support the milestone for implementing an effective storm-water control program that promotes green infrastructure and low impact development ("LID") approaches. In addition, the milestone date should be sooner than 2015, as EPA has been working on the stormwater rulemaking that includes LID approaches for several years. In addition, the NOC should specify that LID and green infrastructure requirements be included in all municipal and other stormwater permits. As an example, the City of Los Angeles has LID requirements that require new and redevelopment projects to capture 100% of the 85th percentile storm.¹³ The NOP should specify similar goals. The NOC should also look at ways to encourage retrofit of existing development to promote green infrastructure improvements and to prioritize retrofits for funding. Post-development requirements alone will not mitigate stormwater pollution because stormwater discharge from currently developed areas is a significant contributor to water quality impairments. Funding for retrofit can be found through much closer coordination of public investments by other agencies, such as federal highway funds administered by the Department of Transportation.

In addition to taking inventory and evaluating best management practices (BMPs) for addressing stormwater runoff, the NOP should also contain a milestone for creating BMP performance standards to ensure that BMPs that are utilized will actually lead to water quality standards attainment. One of the most effective ways to ensure the success of stormwater programs and the attainment of water quality standards is to require performance-based criteria. Flow, and corresponding BMP size, is only one factor determining BMP effectiveness. The NOP should include a milestone for EPA to develop design and performance standards based on effluent quality in the municipal stormwater permits. This element should expand upon the current SUSMP design standards requirements that are part of many California MS4 permits.

¹³ Development Planning for Storm Water Management: a Manual for the Standard Urban Stormwater Mitigation Plan (SUSMP) September 2002 Revision. http://ladpw.org/wmd/npdes/SUSMP_MANUAL.pdf



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Management of contaminated sediment is notably absent in the NOP. This is another important challenge that many coastal areas face, as some developed coastal areas require regular maintenance dredging to maintain access for navigation. This action should include a milestone to promote beneficial reuse of dredged sediment by investigating contaminated sediment treatment technologies and methods of reuse.

Action 3: Under **Action 3** (within the *Water Quality and Sustainable Practices on Land* section), to minimize the impacts of hypoxia, we support that the NOP intends to identify collaborative measures with regional partners to improve water quality in the Gulf of Mexico to minimize impacts of hypoxia. We encourage the NOC to expand these efforts to other parts of the country, as this is a need in California as well as other areas.

Action 5: Under **Action 5** (within the *Water Quality and Sustainable Practices on Land* section), to address threats posed by toxic chemicals and land-use practices to human, environmental, and wildlife health, we suggest that the NOP should contain a milestone for addressing fish contamination, which results from both legacy contamination and current inputs into the ocean. In southern California, there are fish consumption advisories on 19 fish species, five of which are on the most recent “do not eat” list issued by USEPA and California’s Office of Health and Hazard Assessment (OEHHA) in 2009.¹⁴

The NOP should also contain milestone to increase and improve beach water quality monitoring, as the EPA has estimated that up to 3.5 million people become ill from contact with raw sewage from sanitary sewer overflows alone each year.¹⁵ For instance, there is a need for increased monitoring of beach water for fecal indicator bacteria (FIB) at beaches frequented by visitors. Also, the NOP should support the development of rapid methods for quantifying bacteria (which give more timely relevant water quality data than current FIB detection methods) and should give incentives for their use. At a minimum, rapid methods should be required nationally at high-use beaches and areas with known pollution problems by a date certain and no later than 2015. In order to realize the full benefit of rapid methods, these methods must be used more than once per week to be more protective of public health than current methods. Every couple of years, rapid methods should be reevaluated to incorporate advancements in rapid method technology in order to ensure that the best methods available are being utilized. Also, data resulting from beach water quality should be easily accessible and easily understandable to the public by implementing the equivalent of Heal the Bay’s Beach Report Card on a national level.¹⁶

Heal the Bay supports the milestone that seeks to enhance contaminant monitoring. We believe comprehensive monitoring of toxicity in impacted areas and monitoring of contaminants of emerging concern should be specified as part of this action. Improved pesticide management and regulation should be another goal of this section, as this is necessary to prevent banned pesticides from being replaced with other more toxic and environmentally destructive unregulated chemicals. For instance the use of pesticides such as fipronil and pyrethroids in southern California has increased dramatically in

¹⁴ Fish Contamination Collaborative Website <http://pvsfish.org/index.php/southern-california-fish-consumption-advisory>

¹⁵ U.S. EPA, Advanced Notice of Proposed Rulemaking, NPDES Permit Requirements for Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, and Sanitary Sewer Overflows (Jan. 4, 2001)

¹⁶ Heal the Bay’s Beach Report Card <http://brc.healthebay.org/>



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recent years as the use of organophosphate pesticides has been phased out.¹⁷ Pyrethroid pesticides are a contaminant of emerging concern that have been found to be the leading source of toxicity in the Ballona Creek watershed

Action 6: Under **Action 6** (within the *Water Quality and Sustainable Practices on Land* section), to reduce the impacts of trash and marine debris on ocean, coastal, and Great Lakes waters and associated watersheds, through cooperative efforts aimed at pollution prevention, reduction, and removal, we suggest that a marine debris baseline and locations be established through standardized monitoring or existing data, and address specific trash and marine debris sources, pathways, and accumulation points. Given the enormous extent of the marine debris problem (and in particular, plastic marine pollution), we are pleased to see the plan for increased interagency coordination and communication on ocean trash issues, and in particular the inclusion of an action related to marine debris and plastic pollution with focus on prevention and source reduction. We support the approach taken in the NOP that calls for specific actions to prevent and reduce marine debris, which is critical to achieve measurable marine debris reductions. However, we recommend that the NOP include specific target reductions of marine debris to set a clear goal for achievement of this action. This approach is not new to solving environmental problems, as governments have implemented similar strategy goals for carbon reduction and water pollution. This approach is also taken within several trash pollution reduction plans, including many of the Total Maximum Daily Load regulations for trash in California.¹⁸ Specifically, we recommend a goal of zero trash to the environment be established in the NOP.

We support research as an area of focus by the NOP, and are particularly supportive of research that adds to the already large body of work that has been produced assessing marine debris types, concentrations, and locations. For example, focusing on emerging topic areas, such as toxic impacts of marine debris to marine life and bioaccumulation of contaminants from marine debris, will be greatly beneficial to informing prevention and reduction policies. Additionally, economic research on the cost of marine debris clean-up and management to local governments, and cost-benefit analyses of single-use plastics and their reusable alternatives, will be instrumental in revealing the sense of urgency about this issue. We understand that establishing a marine debris baseline will be helpful in measuring milestones and outcomes; however, we are concerned that focusing on baseline determination will be used as an excuse to prolong federal agency efforts to take more decisive action to prevent and reduce marine plastic pollution. We encourage the NOP to call for a parallel track, which moves forward with source reduction and prevention priorities at the same time as new research areas are initiated. Marine debris issues have been researched for decades, and several reports exist to support timely implementation of prevention policies.¹⁹ These efforts, many of which have originated along the West Coast, should be used as a resource for NOP implementation.

¹⁷ Southern California Coastal Water Research Project: Development of Toxicity Identification Methods for Current-use Pesticides.

<http://www.sccwrp.org/ResearchAreas/Contaminants/ToxicityAssessmentAndIdentification/ToxicityIdentificationMethodsForPesticides.aspx>

¹⁸ Los Angeles River Watershed Trash TMDL; Ballona Creek Trash TMDL; San Gabriel East Fork Trash TMDL; Malibu Creek Trash TMDL; Legg Lake Trash TMDL; Lake Elizabeth, Munz Lake, Lake Hughes Trash TMDL; Ventura River Estuary Trash TMDL; Revolon Slough & Beardslly Wash Trash TMDL; Machado Lake Trash TMDL.

http://63.199.216.6/larwqcb_new/bpa/tmdl_listW.php.

¹⁹ California Ocean Protection Council, "Resolution of the California Ocean Protection Council On Reducing and Preventing Marine Debris," Adopted February 8, 2009; California Ocean Protection Council, "An Implementation Strategy



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We are supportive of many of the milestones outlined within **Action 6** (within the *Water Quality and Sustainable Practices on Land – Marine Debris* section), yet we believe that a few additional milestones should be added to most effectively prevent and reduce marine plastic pollution. We support the proposed federal marine debris information clearinghouse for scientific literature, as it will be a useful source for groups working at all levels to access the most current information related to marine plastic pollution. We encourage the NOP to keep this clearinghouse updated with new research, specifically research related to monitoring of plastic pollution prevention and reduction strategies, studies on toxicity and bioaccumulation of contaminants associated with marine debris and economic research. Although we support the identification and promotion of non-regulatory measures to reduce and prevent marine debris (e.g. market-based incentives, proper litter receptacles along shorelines, and installation of collection devices in storm drain systems), we urge the NOC to include a strong focus on regulatory tools, and recommend the addition of a specific milestone that focuses on regulatory tools. Regulatory efforts, such as trash Total Maximum Daily Loads and local bans and fees on single use plastic items that are commonly found in the litter stream, are imperative for achieving measurable reduction in marine plastic pollution. Communities in California are already moving forward with such efforts; over 50 municipalities have adopted polystyrene food container bans²⁰, and over 39 municipalities have adopted single-use bag reduction and/or ban ordinances.²¹ Furthermore, we strongly support facilitation of community-based grants in the Implementation Plan and encourage these grants to be tied to deliverables beyond volunteer clean-up activities; community groups can be instrumental in moving local prevention policies and conducting marine plastic pollution research.

Action 7: Under **Action 7** (within the *Water Quality and Sustainable Practices on Land* section), to identify, seek to protect, and maintain high quality near-shore ocean, coastal, and Great Lakes waters, we commend the NOC for the goal of improving federal coordination on prevention, preparedness, and response to coastal and offshore oil/chemical pollution from spills and industrial/shipping operations. We would like to further emphasize the importance of this outcome for protection of the high quality offshore and coastal waters of the West Coast. We further suggest that managers and decision makers have easy access to information such as case studies, lessons learned, and best management practices that demonstrate successes of watershed approaches to management.

Other: Industrial Intakes

As Heal the Bay mentioned in our comment letter on the NOP in 2009, we suggest that the NOC specify a policy that requires the cessation of the use of Once-through Cooling (OTC) at coastal and estuarine power plants. Cooling water intake structures operated by the electric utility industry are “[t]he single largest predators of our Nation’s waters.”²² The impacts of using an arcane energy technology on our

for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter,” Adopted November 20, 2008, available at: http://www.plasticdebris.org/CA_Action_Plan_2006.pdf; Proceedings from the 5th International Marine Debris Conference, available at: <http://www.5imdc.org/>; California Coastal Commission and California State Water Resources Control Board, “Eliminating Land-based Discharges Of Marine Debris In California: A Plan of Action from The Plastic Debris Project,” June 2006, available at: http://www.plasticdebris.org/CA_Action_Plan_2006.pdf.

²⁰ Clean Water Action Polystyrene Ban Website, <http://www.cleanwateraction.org/feature/banning-styrofoam>.

²¹ Chico Bag Track the Movement Map: <http://www.chicobag.com/track-movement>; Plastic Bag Laws Website: <http://plasticbaglaws.org/>.

²² May, J.R., and van Rossum, M. K. “*The Quick and the Dead: Fish Entrainment, Entrapment, and the Application of Section 316(b) of the Clean Water Act.*” 20 Vermont Law Review 376 (1995).



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nation's fisheries have been devastating. Noting the tremendous negative environmental impact of once-through cooling systems, the U.S. Court of Appeals for the Second Circuit upheld the United States Environmental Protection Agency's (USEPA) regulation mandating *closed-cycle cooling* as the national minimum technology for new power plants and factories, while striking down a provision that would have sanctioned inferior technology and attempts to replace damaged resources.²³ We recommend using California's "*Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling*" as a starting point for the NOC to consider when including once-through cooling language in the NOP. This policy establishes technology-based standards to implement federal Clean Water Act section 316(b) and reduce the harmful effects associated with cooling water intake structures on marine and estuarine life, with a specific compliance timeline for all California OTC power plants.²⁴

We also urge the NOC to consider adding a section in the NOP specifically on desalination, as there are more environmentally responsible ways to address water supply, and irresponsible desalination efforts pose a threat to the United States' coasts and oceans. In considering the nation's future water portfolio, alternative sources of fresh water, including water conservation and reuse, should be maximized before considering the expensive, energy-demanding, and environmentally-destructive alternative of desalination. If desalination is pursued, it must be well-researched in advance and minimize environmental impacts. More ecologically sound alternatives to co-located desalination, such as subsurface intakes, and should be preferred over co-locating desalination facilities in an environmentally destructive manner with once-through cooling intake pipes. Co-located desalination at once-through cooled power plants poses a significant threat to the nation's coastal and marine resources because it relies on existing seawater intake structures that cause substantial impingement and entrainment of marine life. For example, the 19 coastal power plants in California are permitted to withdraw more than 16 billion gallons of cooling water daily and kill an estimated 79 billion fish and other marine life annually.²⁵ When considering only recreational fish species, impingement from coastal power plants in the southern California was somewhere between 8-30% of the number of fish caught in the Southern California Bight.²⁶ In addition to impingement and entrainment of marine wildlife, co-locating desalination facilities with once-through cooled power plants links water supply to outdated and environmentally harmful technology, is costly, and has high energy demands.

We strongly recommend that the NOC include industrial intake issues and desalination in the NOP, as states are currently considering proposals related to once-through cooling and desalination, both of which will have devastating impacts on our valuable biological ocean resources if not adequately assessed, planned for, and managed.

²³ Riverkeeper vs. U.S. Environmental Protection Agency, No. 02-4005 (2nd Cir. Feb. 3, 2004).

²⁴ California's *Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling* http://www.swrcb.ca.gov/water_issues/programs/ocean/cwa316/

²⁵ State Water Resources Control Board, Scoping Document: *Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling* (March 2008)

http://www.waterboards.ca.gov/plans_policies/docs/coastal_estuarine/scope_doc031808.pdf

²⁶ Clean Water Act Section 316(b); California Energy Commission Issues and Environmental Impacts Associated with Once-Through Cooling at California's Coastal Power Plants: Staff Report. (2005) www.energy.ca.gov/2005publications/CEC-700-2005-013/CEC-700-2005-013.PDF



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Conclusion

Thank you for the opportunity to provide these comments on the NOP Implementation Plan. We applaud the NOP development as a major step forward with President Obama's Executive Order 13547 to ensure sustainability of our oceans, coasts and Great Lakes. We appreciate your work to protect and manage our oceans and Great Lakes for a healthy future for the millions of people who depend on them. We look forward to working with you on these important issues and the implementation of the NOP. Please contact us if you have any questions regarding our comments.

Sincerely,

Sarah Abramson Sikich, MESM
Coastal Resources Director

Dana Roeber Murray, MESM
Marine & Coastal Scientist

Kirsten James, MESM
Water Quality Director

W. Susie Santilena, MS, EIT
Environmental Engineer

Name: **Christine Lewis**

Organization:

Path:

Comment: Dear Chairs Sutley and Holdren, National Ocean Council Members:

I would like to share my support for National Ocean Policy draft Implementation Plan. I believe that a strong Implementation Plan will help protect marine ecosystems and encourage sustainable ocean uses. I am an avid hiker, love to kayak, and spend as much time as I can at Oregon's coast. I am an active volunteer with several environmental groups, national and local. One of the local groups has assigned a mile of coast line for me to informally monitor on every trip out- so I have taken note of even minor changes in the near-shore environment over the past few years.

The draft National Ocean Policy Implementation Plan establishes a strong blueprint for taking action and fostering agency coordination to sustain our ocean, coastal and Great Lakes resources. I am told that the draft plan has successfully incorporated the needs and concerns of governmental, non-profit, and commercial groups and provides clarifying details to improve accountability and monitor progress toward improved ocean management.

I support the plan, but have hopes that a final draft might go a few steps farther in a few areas. One, in efficiency and making use of all available resources. We should fully utilize all available authorities for habitat protection and management. Many agencies have a stake in the program, it would be great to see a plan for them to work together more. Second, on-the-water activities should be included along with baseline studies in prioritized regions. And finally, Federal agencies should continue to ask for input from other levels of the government and the public and incorporate this new information into implementation of the plan.

With these additions, President Obama's Implementation Plan will provide a better guide for achieving the goals of protecting, maintaining, and restoring the nation's oceans, coasts, and Great Lakes and ensuring resilient coastal economies. I look forward to the release of the final plan and hope to see policy translated into action on the water soon.

Sincerely,

Christine Lewis
1790 5th Ave
West Linn OR 97068

503-319-1986 cell

Name: **Lisa Levin**

Organization: Center for Marine Biodiversity and Conservation, Scripps Institution of Oceanography

Path:

Comment: The Draft National Ocean Policy fails to acknowledge the significance and stewardship needs of the US deep waters. The deep ocean within the US EEZ represents a vast expanse of ocean that remains relatively understudied, but is an important economic and scientific frontier and provides significant climate regulation services. With expanding oil and gas extraction activities, deep-water fishing, debris deposition, and climate change affecting deep-water habitats in the US EEZ, there is growing pressure from direct and indirect stressors. The only mention of deep water in the draft document refers to deep-Argo profiling floats that are a valuable component of deep-water observing. The National Ocean Policy should highlight the deep ocean needs. These include further exploration, multisectoral, multidisciplinary stewardship efforts that engage stakeholders, and an urgent need for training of social and natural scientists to carry this out. The deep sea must be managed via focus on ecosystem-based principles, greater use of marine spatial planning and marine protected areas, adoption of sustainable industry and science practices, and incorporation of climate change issues.

Name: **dennis phelan**

Organization: Northwest and Alaska Seafood Industry

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_implementation_plan_final_comments_2-27-2012.doc

Comment: Please replace our earlier submission with these comments. There was an error in the earlier version.

Thank you.

COMMENTS ON THE DRAFT
NATIONAL OCEAN POLICY IMPLEMENTATION PLAN

Released January 12, 2012

Comments Submitted By:

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

Comments Submitted February 27, 2012

INTRODUCTION

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

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

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

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

THE IMPLEMENTATION PLAN

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

Adopt Ecosystem-Based Management

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

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

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

Promote Efficiency and Collaboration

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

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

Strengthen Regional Efforts

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

Fiscal Responsibility

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

Treatment of Commercial Fisheries

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

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

The Nine Priority Objectives

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

Overly Ambitious Action Proposals (target date)

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

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

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

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

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

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

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

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

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

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

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

Evidence that NOP is a Regulatory Program

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

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

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

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

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

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

Page 15 --- “Establish a process for adaptive resource management”

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

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

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

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

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

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

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

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

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

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

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

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

February 27, 2012

Name: **Jordan West**

Organization:

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_resiliency_public_comments.pdf

Comment:

Resiliency and Adaptation to Climate Change and Ocean Acidification

Comments:

Page 54, opening sentence: “We have an opportunity and a responsibility to reduce the vulnerability and increase the resilience of human and natural systems to climate change impacts.” What does it mean to say we have “an opportunity”? The word is not used again in this chapter, except in one sentence referring to training opportunities. What is the nature of the special opportunity (singular?) here?

Page 56, first Milestone: What is a “framework for indicators”, and how will it be different from how we currently track resilience and vulnerability through time?

Page 60, Action 5: The title refers to interagency *coordination* on the development of information, but the discussion in the second paragraph that follows focuses only on information *sharing*, which is not at all the same thing. Coordination among agencies to identify and fill information gaps and develop the right information in the right form for decision-making is highly desirable, but a much bigger prospect than simply sharing information by dumping disparate databases and other information into a shared clearinghouse.

Page 60, Action 5 Milestones: Re: the third milestone: What does it mean to say that we will *integrate* tools and services *into* an online information system?

Page 60, Action 5 Milestones: The dates for most of these milestones seem unrealistically soon, and sometimes counterintuitive. For instance, it seems like you would want to complete the integration of information, tools and services before developing accessible, standardized guidance and training for incorporating that information into management activities; yet both are slated to be completed in 2014? There are some similarly puzzling dates in Action 4 that refer to trainings coming out in the same year as methods development – both in 2013, which isn’t much time!

Thanks for the opportunity to comment, and good luck.

NATIONAL OCEAN COUNCIL

Name: **John Weber**

Organization: Northeast Regional Ocean Council, NERACOOS, GOMC

Path: http://edit.whitehouse.gov/sites/default/files/webform/nroc-neracoos-gomc_comments.pdf

Comment:



**Gulf of Maine
Council on the
Marine
Environment**

February 27, 2012

The Honorable Nancy H. Sutley
Chair, Council on Environmental Quality
Co-Chair, National Ocean Council
Executive Office of the President
National Ocean Council
Washington, D.C. 20503

The Honorable John P. Holdren
Director, Office of Science & Technology Policy
Co-chair, National Ocean Council
Executive Office of the President
National Ocean Council
Washington, D.C. 20503

Dear Chair Sutley and Director Holdren:

On behalf of the Northeast Regional Ocean Council (NROC), the Northeast Regional Association of Coastal and Ocean Observing Systems (NERACOOS), and the Gulf of Maine Council on the Environment (GOMC), the purpose of this letter is to express our appreciation for the work being done by you and the National Ocean Council staff to implement the National Ocean Policy. The three organizations recognize the extensive amount of work it has taken to produce the draft Implementation Plan and the importance of this step toward achieving the goals of the National Ocean Policy.

The National Ocean Policy brings long-needed national attention and resources to support nine priority objectives that address the most pressing challenges facing our coasts and oceans. As NROC, NERACOOS, and the GOMC have been focused on many related regional issues, the National Ocean Policy appropriately complements and reinforces such work and provides an important framework for continued federal support.

With respect to coastal and marine spatial planning, but also with other activities that states and regional ocean partnerships have undertaken, the National Ocean Policy has the potential to substantially advance regional and state initiatives that have already identified ocean planning and management as a priority. The National Ocean Policy provides an opportunity for these existing efforts to benefit from federal support and synchronization while appropriately enabling regions to prioritize which issues will be addressed and lead the planning efforts. As you are aware, in the Northeast U.S. we are underway in our ocean planning efforts and look to continued coordination and cooperation with the National Ocean Council.

New England states have participated in the development of the comments prepared by the Coastal States Organization, and support those comments in general. More specifically, recognizing that the

National Ocean Council is currently working on documents related to coastal and marine spatial planning, we offer the following comments:

1. The Implementation Plan appropriately realizes and should further incorporate regional interests, including engaging with regions to strengthen messaging of benefits and successes associated with the National Ocean Policy.
2. NROC reiterates recent comments provided to the Governance Coordinating Committee with respect to guidance and procedural documents being developed related to Coastal and Marine Spatial Planning, with an emphasis on incorporating maximum flexibility and minimizing overly prescriptive procedures and protocols.

These comments are elaborated upon below.

The Implementation Plan realizes and can further incorporate regional (and state and local) interests.

In the Northeast US, NROC, NERACOOS, and GOMC have been engaged in identification of regional coastal and ocean management, policy, science, and data needs, and have developed work plans in response to these needs. In many of its sections and identification of action items, the Implementation Plan appropriately recognizes the need to build upon existing work such as this, especially in an era of limited financial resources.

However, the Implementation Plan could be strengthened by building in stronger ties to such regional efforts, as there are similar efforts underway across the US. For example, in the section on “Observations, Mapping, and Infrastructure,” several of the items in this section mention the need to work locally or regionally, such as the IOOS regional inventories and plans in Action 4: “Provide local and regional observation systems to support a variety of ocean, coastal, and Great Lakes users.” However, Action 5: “Coordinate and leverage ocean and coastal mapping efforts to improve access to existing data and efficiently collect future data,” should include a stronger component in support of regional efforts. An additional example is throughout the section on Inform Decisions and Improve Understanding, which appropriately identifies the need for additional foundational science and data but does not include a clear link to working with regions and states to do so. There are numerous instances where science and data needs will be, or already have been, identified at a state or regional-level, and we encourage the National Ocean Council to coordinate with the regions and states to identify such opportunities to address already-defined priorities.

Similarly, there are opportunities in management and policy development to work with regions and states to address similarly-held objectives. For example, we suggest working with regions and states to help achieve the third Action “Reduce barriers to implementation of the National Ocean Policy” under “Coordinate and Support.” We note that the first Action 1 in this section is to “Support regional priorities...” and are grateful for that acknowledgement.

Finally, this level of overall coordination between the National Ocean Council and the regions is vital to achieving success and support for the National Ocean Policy. We believe that if the primary focus is on communicating tangible, substantive results of ocean planning that respond to regional needs, the

message will have greater appeal with many interests in the region. Therefore, we urge the National Ocean Council to build upon these regional efforts to help identify benefits of the National Ocean Policy.

NOC Guidance and Procedural Documents related to Coastal and Marine Spatial Planning

Based on discussions with Governance Coordinating Committee representatives and National Ocean Council staff, NROC is appreciative that many of the issues we have raised regarding forthcoming National Ocean Policy guidance (e.g., composition and function of Regional Planning Bodies, and the model charter) have been addressed. In general, NROC's previous comments were to ensure that: final guidance documents will be compatible with and flexible enough to meet New England's needs; process elements associated with the National Ocean Policy and ocean planning will enhance and not burden NROC's efforts; and implementation of the National Ocean Policy will improve and enhance existing programs (e.g. Coastal Zone Management Programs). As has been suggested by other regions, NROC requests that the National Ocean Council work with each region to ensure that each Regional Planning Body builds upon existing partnerships and future work plans, thus supporting regional goals and efforts already underway, as this particular aspect of the National Ocean Policy is implemented.

Specifically, NROC reiterates the following comments:

- Guidance for decision-making and dispute resolution for Regional Planning Bodies raises questions for NROC state members regarding the effect of National Ocean Council decisions on Regional Planning Body disputes and how binding such decisions would be. NROC requests responses to these issues, which were discussed during recent Governance Coordinating Committee exchanges.
- NROC's current understanding is that the intention of the draft guidance for local-government representation on the Regional Planning Body is to help ensure the very important role of municipalities. However, NROC feels that the suggested approach to this issue is overly prescriptive. We suggest that regions discuss and decide on a local coordination mechanism that makes sense in that region, provided that there is consensus on the RPB that the methods will ensure adequate representation.
- National Ocean Council review of regional CMSP development agreements should offer regions a maximum amount of flexibility in response to regional differences.

NOC guidance on Observations, Mapping, and Infrastructure

In the Northeast US much progress has been made in developing capacity and infrastructure for observing and mapping our coastal ocean. In the Implementation Plan, Action 2 identifies the need to "improve unmanned and satellite remote sensing systems" and to "advance observation and sampling technologies ...". However, these actions should not be prioritized above the need for "sustained observing systems" providing "the information for sound planning and decision-making" as identified in Action 4: "provide local and regional observation systems to support a variety of ocean, coastal, and Great Lakes users." Maintaining and expanding current observing systems in the Northeast are vital for decisions ranging from safe marine operations to climate variability. These systems need to be brought "to a baseline operational level" but often not in terms of information return but in capacity to observe

and model. The needed information system comprises the observations and models working synergistically to minimize model uncertainty and optimize observing system design.

While there is much information and plans about monitoring the sea surface, no comprehensive national plan exists for subsurface monitoring. The need for such a plan, that is inclusive of all technologies, was clearly highlighted by the Deep Water Horizon spill where a lack of in place observational capacity decreased direct knowledge of oceanographic conditions and increased model uncertainty. This should be included as a milestone for Action 4.

In summary, NROC, NERACOOS, and GOMC welcome the progress being made through the release of the draft Implementation Plan. We recommend further coordination with regions and states be incorporated into the draft Implementation Plan, as described above. Additionally, NROC reiterates previous comments that have been made on behalf of NROC as part of the Governance Coordinating Committee.

We appreciate your close attention to our concerns and for your openness in receiving input from the regions. We look forward to continuing our close working relationship with the National Ocean Council. Again, thank you for your efforts to bolster regional approaches to priority coastal and ocean concerns.



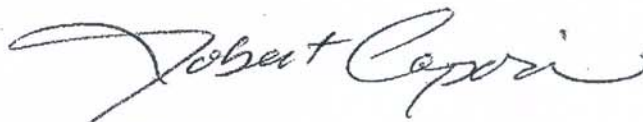
Bruce Carlisle
Northeast Regional Ocean Council State Co-Chair
Director, Massachusetts Office of Coastal Zone
Management



Robert LaBelle
Northeast Regional Ocean Council Federal Co-Chair
Science Advisor to the Director, DOI Bureau of
Ocean Energy Management



J. Ru Morrison
Executive Director
NERACOOS



Robert Capozzi
Working Group Chair
Gulf of Maine Council

Cc: Michael Weiss, Acting Director, National Ocean Council

Name: **Brent Greenfield**

Organization: National Ocean Policy Coalition

Path: http://edit.whitehouse.gov/sites/default/files/webform/nopc_comments_on_draft_implementation_plan.pdf

Comment: Comments attached.



February 27, 2012

Submitted Electronically

National Ocean Council
722 Jackson Place NW
Washington, DC 20503

RE: Comments on National Ocean Policy Draft Implementation Plan

Dear Members of the National Ocean Council:

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

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

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

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

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

I. INTRODUCTION

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

ECOSYSTEM-BASED MANAGEMENT

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

BUDGETARY REQUIREMENTS AND FUNDING SOURCES

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

REGULATIONS AND RESTRICTIONS UNDER THE NATIONAL OCEAN POLICY

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

COASTAL AND MARINE SPATIAL PLANNING NATIONAL OBJECTIVES

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

PILOT PROJECTS FOR NATIONAL OCEAN POLICY OBJECTIVES

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

FLEXIBILITY WITH COASTAL AND MARINE SPATIAL PLANNING

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

http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC_Comments_on_SAP_Development_4_28_11_.pdf, and National Ocean Policy Coalition's July 1, 2011 Comments on Strategic Action Plan Outlines, available at http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC_Comments_on_SAP_Outlines.pdf.

COMPOSITION OF REGIONAL PLANNING BODIES

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

STAKEHOLDER ENGAGEMENT

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

COASTAL AND MARINE SPATIAL PLANNING HANDBOOK

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

PERMITTING EFFICIENCIES

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

ARCTIC CONSIDERATIONS

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

DATA INTEGRITY

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

II. DETAILED COMMENTS

ECOSYSTEM-BASED MANAGEMENT

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

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

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

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

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

³ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 9, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

⁴ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 10-11, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

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

BUDGETARY REQUIREMENTS AND FUNDING SOURCES

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

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

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

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

⁶ See Appendix to Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 108, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

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

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

To address concerns by stakeholders¹⁰ about the possibility that decisions may be made based on biases of outside groups with unique interests, the final Implementation Plan should clarify that all funding for National Ocean Policy implementation activities rely solely on government resources. This will ensure that stakeholders with user perspectives are not blocked from participating in the process. In addition, the final Implementation Plan should make clear that new taxes, fees, or other funding mechanisms will not be imposed on commercial and recreational interests without congressional authorization.

REGULATIONS AND RESTRICTIONS UNDER THE NATIONAL OCEAN POLICY

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

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

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

⁹ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 5, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

¹⁰ See e.g. Comments on Coordinate and Support Strategic Action Plan Outline Submitted by Quinault Indian Nation (“...leveraging nonprofit and private dollars to achieve federal action has potential bias issues”...), *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf.

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

¹² See Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, Page 30, *available at* http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf.

¹³ See Draft Programmatic Environmental Impact Statement, Outer Continental Shelf Oil and Gas Leasing Program:2012-2017, U.S. Interior Department, Bureau of Ocean Energy Management, November 2011, Page 4-54 and 4-58, *available at* http://www.boem.gov/uploadedFiles/BOEM_2012-2017_OCS_Oil_and_Gas_Leasing_Draft_Programmatic_EIS.pdf.

¹⁴ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 63-64, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

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

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

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

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

¹⁵ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 13, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

¹⁶ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 39, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

¹⁷ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 73, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

¹⁸ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 74, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

¹⁹ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 79, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

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

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

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

COASTAL AND MARINE SPATIAL PLANNING NATIONAL OBJECTIVES

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

The draft Implementation Plan proposes the following two national objectives:

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

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

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

National Objective 1

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

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

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

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

²⁴ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 87-88, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf

²⁵ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 87, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf

²⁶ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 87, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

National Objective 2

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

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

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

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

²⁷ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 88-89, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

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

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

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

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

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

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

PILOT PROJECTS FOR NATIONAL OCEAN POLICY OBJECTIVES

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

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

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

³⁰ See Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, Page 63, *available at* http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf.

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

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

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

FLEXIBILITY WITH COASTAL AND MARINE SPATIAL PLANNING

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

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

http://www.whitehouse.gov/sites/default/files/microsites/ceq/full_website_public_comments_6_30_11_to_7_2_11_final_0.pdf; and July 1, 2011 Comments on Strategic Action Plan Outlines Submitted by the West Coast Governors' Agreement on Ocean Health ("...consider implementing pilots..."), available at

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

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

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

http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

³⁴ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 90, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

³⁵ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 92, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

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

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

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

COMPOSITION OF REGIONAL PLANNING BODIES

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

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

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

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

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

³⁹ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 91, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

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

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

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

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

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

STAKEHOLDER ENGAGEMENT

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

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

⁴¹ See Appendix to Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 110, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

⁴³ See National Coastal and Marine Spatial Planning Workshop Summary Report, Page 30, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_cmsp_workshop_summary_report.pdf.

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

COASTAL AND MARINE SPATIAL PLANNING HANDBOOK

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

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

PERMITTING EFFICIENCIES

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

Specifically, the draft Implementation Plan proposes to focus initially on one sector, while waiting to address others until as late as 2015.⁴⁸ While attempts to streamline federal permitting activities are laudable, such efforts should be given a high priority and carried out under existing management regimes that have been established by statute.

ARCTIC CONSIDERATIONS

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

⁴⁴ See Final Recommendations of the Interagency Ocean Policy Task Force, released July 19, 2010, Page 70, *available at* http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf.

⁴⁵ See Strategic Action Plan Outline for Coastal and Marine Spatial Planning, released June 2, 2011, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/sap_2_cmssp_full_content_outline_06-02-11_clean.pdf.

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

http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf

⁴⁷ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 40, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

⁴⁸ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Pages 40, 41, *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

FEDERAL EMISSIONS MANAGEMENT

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

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

DATA INTEGRITY

The recent launch of the prototype ocean.data.gov web portal⁵² highlights the need for data used, referenced, or otherwise relied upon in support of decisions made pursuant to the National Ocean Policy to be compliant with all federal laws pertaining to data quality and information integrity.

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

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

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

⁴⁹ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 49, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

⁵⁰ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 49, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

⁵¹ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 67, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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

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

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

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

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

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

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

III. CONCLUSION

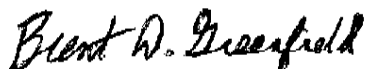
The Coalition continues to strongly support a National Ocean Policy that serves as a mechanism for job creation, infrastructure revitalization, and economic growth, and relies on full utilization of existing programs and well-established authorities that are already in place. Moving forward with such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

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

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

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

Sincerely,



Brent D. Greenfield
Executive Director
National Ocean Policy Coalition

⁵⁷ See Draft National Ocean Policy Implementation Plan, National Ocean Council, released January 12, 2012, Page 39, available at http://www.whitehouse.gov/sites/default/files/microsites/ceq/national_ocean_policy_draft_implementation_plan_01-12-12.pdf.

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Organization: Wiltshire & Grannis, on behalf of North American Submarine Cable Association

Path: http://edit.whitehouse.gov/sites/default/files/webform/nasca_comments_on_national_ocean_policy_dip.pdf

Comment:

Before the
NATIONAL OCEAN COUNCIL
Washington, D.C.

In the Matter of

National Ocean Policy
Draft Implementation Plan

Executive Order 13,547

**COMMENTS OF
THE NORTH AMERICAN SUBMARINE CABLE ASSOCIATION**

To achieve an effective National Ocean Policy, the National Ocean Council's Draft Implementation Plan must account for the extensive presence, critical importance, and unique legal status of undersea fiber-optic telecommunications cables. Undersea cables carry more than 95 percent of the international voice, data, and Internet traffic of the United States, a percentage that is expected to continue to increase. Without undersea cable infrastructure, the global Internet would not function. Customary international law and various international treaties grant to undersea cables unique rights and freedoms not granted to any other activities in the marine environment. Undersea cable operators have also developed a set of private coordination and cooperation mechanisms permitting shared – and sometimes cooperative – use of important coastal and marine regions, to the mutual benefit of all parties.

Unfortunately, the Draft Implementation Plan fails to account for the presence, importance, or unique legal characteristics of undersea cables. This may be due in part to a

decision by the National Ocean Council not to consult with the telecommunications industry as part of its industry roundtables or to identify undersea cable operators and suppliers as critically important stakeholders. It might also reflect the fact that many of the federal agencies involved in regulating undersea cables have also not been directly involved in the development of the Draft Implementation Plan. In these comments, NASCA provides background and recommendations to remedy these oversights.

NASCA is a nonprofit association of the principal undersea-cable owners, undersea-cable maintenance authorities, and prime contractors for undersea-cable systems operating in North America.¹ NASCA members' cables land in 14 U.S. states and territories. NASCA seeks to ensure efficient government regulation of cable installation and maintenance, coordinate with other marine industries, and educate the public regarding the importance of undersea cables. For decades, NASCA's members have worked with federal, state, and local government agencies, as well as other concerned parties—such as commercial fishermen and private environmental organizations—to ensure that undersea cables do not harm the marine environment or unreasonably constrain the operations of others in that environment. NASCA's members have been practicing coastal and marine spatial planning for more than 150 years.

These comments are divided into two parts. First, NASCA provides background on undersea cables, explaining their presence in marine areas, their critical economic and national-security importance, their unique legal status, and existing mechanisms used by undersea cable operators, suppliers, and maintenance providers to coordinate with other marine activities.

¹ NASCA's members are: Alaska Communications System; Alaska United Fiber System Partnership; Alcatel-Lucent Submarine Networks; AT&T Corp.; Brasil Telecom of America, Inc. / Globenet; Columbus Networks; Global Marine Systems Ltd.; Hibernia Atlantic; Level 3 Communications, LLC; Reliance GlobalCom; Southern Cross Cable Network; Sprint Communications Corporation; Tata Communications; Tyco Electronics Subsea Communications LLC; and Verizon Business.

Second, NASCA proposes specific modifications to the Draft Implementation Plan to address undersea cable operators, suppliers, and maintenance providers as critically important stakeholders in order to achieve a more effective National Ocean Policy.

I. BACKGROUND ON UNDERSEA CABLES

A. Undersea Cables Are Critically Important to the U.S. Economy and U.S. National Security

Contrary to popular perception, more than 95 percent of U.S. international voice, data, and Internet traffic travels by undersea cable—a percentage that has increased consistently over time.² Undersea cables provide higher-quality, more reliable and secure, and less expensive communications than do communications satellites. Undersea cables also provide the principal connectivity between the contiguous United States and Alaska, Hawaii, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands, and also significant connectivity within Alaska, Hawaii, and the U.S. Virgin Islands.

Undersea cables play a critical role both in ensuring that the United States can communicate with itself and the world and in supporting the commercial and national security endeavors of the United States and its citizens. Undersea cables support U.S.-based commerce abroad and provide access to Internet-based content, a substantial proportion of which is located in the United States, as evidenced by international bandwidth build-out. They also carry the vast majority of civilian and military U.S. Government traffic, as the U.S. Government does not generally own or operate undersea cable systems.³

² See *Submarine Cables and the Oceans: Connecting the World*, UNEP-WCMC Biodiversity Series No. 31, U.N. Environment Programme World Climate Monitoring Centre and International Cable Protection Committee, 2009, at 8 (“ICPC-UNEP Report”).

³ See, e.g., John Cummings, *Contract Awarded for Kwajalein Cable System*, U.S. ARMY NEWS, June 13, 2008, <http://www.army.mil/-news/2008/06/13/9972-contract-awarded-for-kwajalein-cable-system-kcs/> (describing Defense Information Systems Agency’s contract for

Undersea cables—which typically have the diameter of a garden hose—are laid and repaired by cable ships built specifically for cable-related operations and designed for covering vast distances and multi-month deployments. Cable ships are crewed by highly trained and experienced merchant mariners, submersible engineers, and cable operations staff. These ships use a variety of remotely-operated vehicles (“ROVs”), sea plows, lines, and grapnels for manipulating cable and repeaters beyond the ship.

Although damage to undersea cables is rare, it most often caused by commercial fishermen (whose nets and clam dredges ensnare cables), vessel anchors, hurricanes, underwater landslides, and seismic events such as earthquakes and tsunamis resulting therefrom.⁴ Timely repairs are critical given the economic and national-security significance of traffic carried by these cables. Consequently, maintenance providers and cable ships must be prepared to respond rapidly, with continuously-qualified personnel, vessels on stand-by, and appropriate equipment. Recent damage to undersea cables following the Tohoku earthquake in 2011, and in east Asia, south Asia, and western Africa in July and August of 2009, only underscores the importance of such maintenance operations.⁵

service on the privately-owned HANTRU1 system, which will connect Guam with the U.S. Army Kwajalein Atoll/Reagan Test Site in the Republic of the Marshall Islands); Naval Facilities Engineering Command, *Capabilities*, https://portal.navfac.navy.mil/portal/page/portal/navfac/navfac_ww_pp/navfac_hq_pp/navfac_che_pp/navfac_che_ocean/tab4000467.

⁴ See ICPC-UNEP Report at 43-48 (citing statistics showing that fishing accounted for 44.4 percent of faults (cable damage incidents severe enough to affect transmission) and that anchoring accounted for 14.6 percent of faults).

⁵ See Owen Fletcher and Juro Osawa, *Rush to Fix Quake-Damaged Undersea Cables*, WALL ST. J., Mar. 15, 2011, <http://online.wsj.com/article/SB10001424052748704893604576199952421569210.html>; *Typhoon disrupts Asia Internet, phone service*, Assoc. Press, Aug. 14, 2009, http://www.msnbc.msn.com/id/32419348/ns/tech_and_science-tech_and_gadgets/t/typhoon-disrupts-asia-internet-phone-service (describing damage likely caused by Typhoon Morakot off the Taiwanese coast); Jayanta Gupta, *16-hr link failure spurs Bangladesh coup fears*,

Cable maintenance providers contract with individual owners of undersea cable systems and with regional maintenance authorities for the provision of long-term maintenance services. They also occasionally contract with system owners for one-off maintenance operations. Cable and repeaters for repairs are typically manufactured on a system-specific basis and kept on hand for immediate use by the maintenance provider.

B. Numerous Federal Agencies Regulate Undersea Cables

Undersea cables landing in the United States and/or its territories are regulated by a significant number of federal, state, and local government agencies. At the federal level, the principal licensing and permitting requirements involve the following agencies:

- Federal Communications Commission (“FCC”): An undersea cable operator must be granted a cable landing license for the installation and operation of any undersea cable in U.S. territory pursuant to the Cable Landing License Act.⁶ Before granting any cable landing license, the FCC must seek the views of the U.S. Department of State (acting through its Office of International Communications and Information Policy), the U.S. Department of Commerce’s National Telecommunications and Information Administration, and the Defense Information Systems Agency.⁷

TIMES OF INDIA, Aug. 15, 2009, <http://timesofindia.indiatimes.com/news/world/south-asia/16-hr-link-failure-sparks-Bangladesh-coup-fear/articleshow/4895302.cms> (noting that disruption of the SEA-ME-WE-4 undersea cable serving Bangladesh had provoked coup fears among other governments and intelligence agencies); *Cable Fault Cuts off West Africa*, BBC NEWS, July 30, 2009, <http://news.bbc.co.uk/2/hi/8176014.stm> (describing damage to SAT-3 cable system serving western Africa).

⁶ 47 U.S.C. §§ 34-39; 47 C.F.R. § 1.767.

⁷ Executive Order No. 10,530, *codified at* 3 C.F.R. 189 (1954-1958), *reprinted in* 3 U.S.C. § 301 app. (1988); 47 C.F.R. § 1.767(j); U.S. Department of State, Media Note, Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests (Dec. 20, 2001).

- “Team Telecom”: For undersea cables connecting the United States with foreign points or with significant foreign ownership, the U.S. Departments of Defense, Homeland Security, and Justice and the Federal Bureau of Investigation (collectively known as “Team Telecom” in this context) review and often require the FCC to impose security-related conditions in the cable landing license in order to assure both infrastructure security and information security.⁸
- Army Corps of Engineers (“ACOE”): The ACOE must authorize the installation of any undersea cable in U.S. waters pursuant to the Rivers and Harbors Act of 1899, as well as the installation of any undersea cable in an estuary pursuant to the Clean Water Act.⁹ These cables are sometimes authorized under the ACOE’s Nationwide Permit Program. In other cases, they involve the issuance of individual permits following the submission and review of draft environmental impact statements.
- National Oceanic and Atmospheric Administration (“NOAA”): For any commercial undersea cable transiting a national marine sanctuary, NOAA requires a special use permit for the installation of any undersea cable in a national marine sanctuary pursuant to the National Marine Sanctuaries Act.¹⁰

⁸ The Team Telecom review process is not governed by any particular law, and the member agencies have not, individually or collectively, promulgated any regulations to govern their process. Instead, they rely on assertions of the President’s foreign affairs powers and the willingness of the FCC to defer to them on national security, law enforcement, and public safety issues. *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23,891, 23,919 ¶ 63 (1997) (stating that the FCC “will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us”).

⁹ 33 U.S.C. § 403 *et seq.*

¹⁰ 16 U.S.C. §§ 1431-1439.

All of these federal licenses and permits are subject to the consistency certification requirements of the Coastal Zone Management Act to ensure consistency with state coastal zone management plans approved by the Secretary of Commerce.¹¹ NASCA notes that most of these agencies are not identified as stakeholders in the Draft Implementation Plan.

C. Undersea Cables Enjoy Unique Treaty Rights and Protections Granted to No Other Activity in the Marine Environment

U.S. and international law recognize unique freedoms for the installation and maintenance of submarine cables. These rights and freedoms are not accorded to energy-related activities, commercial fishing, or marine transport, and sometimes these rights and freedoms can trump those of other marine activities. Consequently, it is critical that the National Ocean Policy's Draft Implementation Plan recognize that different marine activities have different legal rights and freedoms.

Various international treaties dating back to 1884 guarantee unique freedoms to lay, maintain, and repair submarine cables—freedoms not granted for any other marine activities—and restrict the ability of coastal states (*i.e.*, countries) to regulate them.¹² Principles articulated in these treaties have since been recognized as customary international law.

¹¹ 16 U.S.C. § 1451 *et seq.*

¹² *See* Convention for the Protection of Submarine Telegraph Cables, Mar. 14, 1884, 24 Stat. 989, 25 Stat. 1424, T.S. 380, (entered into force definitively for the United States on May 1, 1888) (“1884 Convention”); Geneva Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82 (entered into force definitively for the United States on Sept. 30, 1962) (“High Seas Convention”); Geneva Convention on the Continental Shelf, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311 (entered into force definitively for the United States on June 10, 1964) (“Continental Shelf Convention”); Law of the Sea Convention, Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force on Nov. 16, 1994) (“LOS Convention”).

Specifically, these treaties guarantee:

- The freedom to install submarine cables on the high seas beyond the continental shelf and to repair existing cables without impediment or prejudice;¹³
- The freedom to install and maintain submarine cables on the continental shelf,¹⁴ subject to reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources;¹⁵

¹³ High Seas Convention, arts. 2 (“Freedom of the high seas is exercised under the conditions laid down by these Articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States: . . . Freedom to lay submarine cables and pipelines.”), 26(1) (“All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas”), 26(3) (“When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.”); LOS Convention art. 112(1) (“All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.”).

¹⁴ LOS Convention arts. 79(1) (“All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article”), 79(5) (“When laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.”). *See also* LOS Convention, art. 78(2) (“The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.”).

¹⁵ Continental Shelf Convention, art. 4 (“Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipe lines on the continental shelf.”); LOS Convention, art. 79(2) (“Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines”); *id.*, art. 79(4) (“Nothing in this Part affects the . . . [coastal state’s] jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.”). The course of a pipeline on the continental shelf is subject to coastal-state consent, while the course of a submarine cable is not. *See id.*, art. 79(3) (“The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.”).

- The freedom to install and maintain submarine cables in the exclusive economic zone of all states;¹⁶
- The ability to install submarine cables in a state's territory or territorial sea subject to conditions and exercise of national jurisdiction;¹⁷ and
- The freedom to maintain existing submarine cables passing through the waters of an archipelagic state without making landfall.¹⁸

These treaty obligations are now treated as customary international law,¹⁹ even by states that have not ratified them.²⁰

For purposes of the EEZ and the continental shelf, submarine cables are distinguished from (1) artificial islands, (2) structures and installations used for exploration or exploitation of living or nonliving natural resources or for “other economic purposes,” and (3) installations and structures which may interfere with the exercise of the rights of the coastal state in the EEZ or on the continental shelf.²¹ Although these treaties permit coastal states to take reasonable measures

¹⁶ *Id.*, art. 58(1) (“In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines.”).

¹⁷ *Id.*, art. 79(4) (“Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea”).

¹⁸ *Id.*, art. 51(2).

¹⁹ *Delimitation of the Maritime Boundary of the Gulf of Maine (Can. v. U.S.)*, 1984 I.C.J Rep. 246, 294 ¶ 94 (Oct. 12).

²⁰ The United States recognized these freedoms starting in 1983, even though the United States has never ratified the LOS Convention (it signed only in 1994) and even though the Convention did not enter into force for those states that had ratified it until 1994. Presidential proclamations by two different U.S. presidents expressly stated that the establishments of an EEZ and a contiguous zone, respectively, did not infringe on the high-seas freedoms to lay and repair submarine cables. *See* Presidential Proclamation No. 5030, 48 Fed. Reg. 10,605 (Mar. 10, 1983) (establishing the U.S. EEZ); Presidential Proclamation No. 7219, 64 Fed. Reg. 48,701 (Aug. 2, 1999) (establishing the U.S. contiguous zone).

²¹ LOS Convention, arts. 56, 60(1), 80.

respecting natural resource exploitation on the Continental Shelf, they bar states from taking such measures with respect to submarine cables, the construction and repair of which are not undertaken for natural resource exploration or exploitation.²² These treaty provisions are reflected in the official position of the United Nations' Office of Legal Affairs of the Division for Ocean Affairs and the Law of the Sea, which states that:

[B]eyond the outer limits of the 12 nm territorial sea, the coastal State may not (and should not) impede the laying or maintenance of cables, even though the delineation of the course for the laying of such pipelines [but not submarine cables] on the continental shelf is subject to its consent. The coastal State has jurisdiction only over cables constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.²³

Thus, a coastal nation must forbear from imposing any restrictions on the installation or maintenance of submarine cables unless those submarine cables themselves are used for natural resource exploration or exploitation.

Coastal states also have obligations to prevent willful or negligent damage to cables.²⁴

And all states "shall have due regard to cables or pipelines already in position."²⁵ Submarine

²² *Id.*, art. 79(2); Continental Shelf Convention, art. 4.

²³ *Maritime Space: Maritime Zones and Maritime Delimitations—Frequently Asked Questions*, United Nations Department of Oceans and Law of the Sea, Office of Legal Affairs (responding to Question #7, "What regime applies to the cables and pipelines?"), http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/frequently_asked_questions.htm.

²⁴ LOS Convention, art. 113 ("Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done willfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.").

cables are thus afforded a great degree of protection from regulation or interference by coastal states, reflecting the vital role that submarine cables play in facilitating communications, commerce, and government. Nevertheless, as described below, it is the submarine cable operators themselves who have developed industry standards and private contractual arrangements for managing marine spatial conflicts, including cable-crossing agreements and minimum separation distances between cables.²⁶

D. Undersea Cable Operators Already Use a Variety of Coordination and Cooperation Mechanisms

Undersea cable operators already use a variety of coordination and cooperation mechanisms to minimize conflicts with other marine activities. First and foremost, undersea cable operators engage in coastal and marine spatial planning. At the outset of a cable project, a cable operator, working with its supplier, chooses an appropriate route. This process requires extensive “desktop studies” to gather data about potential routes and landing points and a “route survey,” which uses state-of-the-art electronic survey equipment to map details of the route, including the nature and depth of sediment (rock/mud/coral, etc.), as well as detailed depth contours. It also identifies and avoids areas where existing activities may cause damage to a

²⁵ *Id.*, art. 79(5).

²⁶ Industry standards have been developed over many decades to facilitate cable installation, retrieval, and repair operations above and below the ocean surface. These standards minimize the risk of damage to neighboring cables during installation and maintenance operations and ensure access to a damaged cable with both a cable ship and other equipment to be used on the sea floor. *See, e.g.*, International Cable Protection Committee Recommendation No. 2, at 5 (providing that when cables must cross, they should do so at 90-degree angles in order to minimize the length of cable that is immediately adjacent to another cable), 10 (providing that two parallel cables are to be separated by a distance equal to the lesser of three (3) times the depth of water or nine (9) kilometers, and that if both operators of parallel cables agree, those two cables may be separated by a distance equal to the lesser of two (2) times the depth of water, or six (6) kilometers—and in shallow waters a minimum separation such as 500 meters may be specified), available from the International Cable Protection Committee at www.iscpc.org.

cable (fishing areas, anchorages, etc.). If such risks are unavoidable, cable operators must mitigate them in coordination with other marine activities.

As with crossings between cables, cable owners enter into crossing agreements with pipeline owners to minimize conflict and maximize access for maintenance purposes.²⁷ Cable owners and suppliers have also established collaborative mechanisms with commercial fisherman, including mechanisms for compensating fishermen for sacrificing gear snagged on cables (rather than have fisherman try to free such gear, with potential damage to the cable).²⁸

II. SPECIFIC COMMENTS ON, AND RECOMMENDED REVISIONS TO, THE NATIONAL OCEAN POLICY DRAFT IMPLEMENTATION PLAN

NASCA offers the following comments on, and recommended revisions to, the Draft Implementation Plan. The comments and recommended revisions are organized according to the sections of the Draft Implementation Plan, as identified in the headers below.

A. Inform Decisions and Improve Understanding

The National Ocean Council should revise Actions 1 through 4²⁹ to note the key role played by undersea cables and the need to include undersea cable operators, suppliers, maintenance providers, and regulators as necessary stakeholders. Otherwise, the National Ocean Council will lack key data necessary to make informed decisions about the nation's ocean policy. As noted in part I.A above, undersea cables power the Internet, and the communications and economic activity that the Internet enables. Undersea cables play a crucial role in the nation's economic and national security framework.

²⁷ See, e.g., International Cable Protection Committee Recommendation No. 3, available from the International Cable Protection Committee at www.iscpc.org.

²⁸ See, e.g., Oregon Fishermen's Cable Committee, <http://www.ofcc.com>.

²⁹ Draft Implementation Plan at 19-23.

B. Coordination and Support

The National Ocean Council should revise Actions 1 through 3³⁰ to include undersea cables in any alignment between a national coastal/marine spatial plan (“CMSP”) and regional plans/activities. As noted in NASCA’s earlier comments,³¹ NASCA members have long engaged in coastal and marine spatial planning. The National Ocean Council should also revise Action 1³² to ensure inclusion of undersea cables and the telecommunications industry in any assessment of the impact of coordination and support on “economic health.”

NASCA strongly supports the Draft Implementation Plan’s call for “permitting efficiency” but urges the National Ocean Council to revise Actions 5 and 6³³ to include undersea cables and their regulators in the calls for reducing redundancy, administrative burdens, and delay in the permitting process and for better international coordination.

C. Regional Ecosystem Protection and Restoration

The National Ocean Council should revise Actions 4 and 6 to ensure that proposals for marine protected areas are consistent with U.S. law and treaty obligations as they pertain to activities within or beyond the EEZ. As noted in part I.C above, undersea cable installation and maintenance are subject to rights and freedoms unavailable to other marine activities, and are protected by various treaty freedoms.

³⁰ Draft Implementation Plan at 36-39.

³¹ See NASCA, Comments on Development of Strategic Action Plans for the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes, (Apr. 29, 2011), 38-39, http://www.whitehouse.gov/sites/default/files/microsites/ceq/cmsp_comments_and_attachments_1.24.11-4.29.11.pdf (“NASCA CMSP Comments”).

³² Draft Implementation Plan at 36.

³³ Draft Implementation Plan at 40-42.

D. Water Quality and Sustainable Practices on Land

The National Ocean Council should modify Action 6³⁴ to consider the impact of marine debris and trash on other marine activities, including undersea cables. “Ghost fishing” by abandoned nets may increase the risk to undersea cables due to a greater possibility of additional fishing gear snags.³⁵ Any attempts to recover ghost fishing gear must also consider potential impacts on undersea cables from grapnels and other equipment used to recover such gear.

E. Changing Conditions in the Arctic

The National Ocean Council should revise Action 4 to account for undersea cables and the agencies that regulate undersea cables, particularly the FCC. As currently drafted, the Draft Implementation Plan discusses only satellite and terrestrial mobile connectivity (the latter of which must depend either on undersea cables or satellites for backhaul).³⁶ There are currently two proposed trans-Arctic undersea cable projects, and more are likely to be developed.³⁷ The National Ocean Council should also modify Action 1³⁸ to include the FCC in efforts to coordinate a response to Arctic resource management, including communications infrastructure and access issues.

³⁴ Draft Implementation Plan at 72-73.

³⁵ See generally Andrew Smith, Issues Fact Sheet: Ghost Fishing, FAO Fisheries and Aquaculture Dep’t, U.N. Food and Agriculture Org., May 27, 2005, <http://www.fao.org/fishery/topic/14798/en>.

³⁶ Draft Implementation Plan at 79-83.

³⁷ See Arctic Fibre, <http://www.arcticfibre.com>; Polarnet, <http://www.polarnetproject.ru> (in Russian); Zao ‘Polarnet Project’ Invites Tenders For Russian Optical Trans Arctic Submarine Cable System, SUBTEL FORUM, Jan. 17, 2012, <http://www.subtelforum.com/articles/2012/zao-polarnet-project-invites-tenders-for-russian-optical-trans-arctic-submarine-cable-system>.

³⁸ Draft Implementation Plan at 78-79.

F. Coastal and Marine Spatial Planning

With respect to Actions 2 and 3,³⁹ and consistent with NASCA's earlier comments,⁴⁰ the National Ocean Plan should explicitly identify telecommunications and undersea cables among the specific industry sectors and infrastructure operating in the marine environment. Failure to do so risks leaving such a key sector and infrastructure out of planning activities.

The National Ocean Council also should revise National Objective 1 to identify communications regulation within the scope of efforts to promote regulatory efficiency. At present, this discussion makes no mention of communications regulation or the agencies that regulate undersea cables.⁴¹ Finally, with respect to Actions 4 and 5,⁴² undersea cable operators and the FCC should be included in the regional planning bodies to be tasked with collaborative CMSP.

³⁹ Draft Implementation Plan at 89-91.

⁴⁰ See NASCA CMSP Comments.

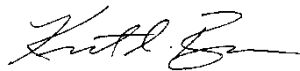
⁴¹ Draft Implementation Plan at 87-88.

⁴² Draft Implementation Plan at 91-92.

CONCLUSION

For the reasons stated above, NASCA urges the National Ocean Council to revise its National Ocean Policy Draft Implementation Plan to account for the extensive presence, critical importance, and unique legal status of undersea fiber-optic telecommunications cables and thereby ensure a more effective National Ocean Policy.

Respectfully submitted,



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NATIONAL OCEAN COUNCIL

Name: **Amanda Aspatore**

Organization: National Mining Association

Path: http://edit.whitehouse.gov/sites/default/files/webform/nma_noc_draft_ocean_plans_comments_final.doc

Comment:



February 27, 2012

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 the National Mining Association on the National Ocean Council's Draft National Ocean Policy Implementation Plan

Dear Mr. Wackler:

The National Mining Association (NMA) appreciates this opportunity to comment on the National Ocean Council's (NOC) draft National Ocean Policy Implementation Plan (plan). *77 Fed. Reg.* 2514 (Jan. 18, 2012). NMA is the national trade association representing the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering, transportation, financial and other businesses that serve the mining industry.

NMA supports the NOC's goals of protecting the ocean, US. coasts and Great Lakes, and improving efficiencies and coordination between the various state, federal and local agencies responsible for their management. However, NMA is concerned that in trying to obtain such broad and high level goals, the NOC has developed an implementation strategy that ignores and is at times inconsistent with the many existing statutes and regulations already in place governing the ocean, coasts and Great Lakes. Additionally, while the plan identifies the government leads and agencies involved in the proposed activities, it seems to actually impose a new management structure that would, in addition to impinging upon the statutory authority of the named agencies, be antithetical to the stated aims of efficiency and transparency. It is with these concerns in mind that NMA submits the following comments to assist the NOC in developing an effective national ocean policy that is consistent with existing laws, ecosystem health and responsible resource development.

The Draft Plan Must Work Within Existing Legal Frameworks and Not Conflict with Statutory Mandates

Mining activities are subject to a vast number of state and federal statutory schemes that ensure adequate environmental protection and water quality standards. For example, the National Environmental Policy Act (NEPA), 42 U.S.C. §§4321 *et seq.*, requires the analysis of any major federal actions that may significantly impact the environment; the Clean Water Act (CWA), 33 U.S.C. §§1251 *et seq.*, ensures strict regulation of the discharge of pollutants into waters of the United States; the Endangered Species Act (ESA), 16 U.S.C. §§1531 *et seq.*, protects threatened and endangered species and their habitat; and the Clean Air Act (CAA), 42 U.S.C. §§7401 *et seq.*, requires the attainment and maintenance of protective air quality standards. However, several of the goals and proposed actions contained in the draft plan do not take into account these multiple regulatory structures that are already in place to protect the ocean, Great Lakes and coasts.

By way of example, under the “Water Quality and Sustainable Practices on Land” section, the plan calls on agencies to implement storm-water control programs that promote green infrastructure; reduce air deposition of mercury and other toxic pollution to help achieve water quality standards; protect, restore or enhance 100,000 acres of wetlands; protect 2 million acres of lands identified as high conservation priorities; and develop water quality protection measures aimed at assessing and mitigating the impact of future climate change within existing ocean and coastal programs. However, water quality standards are clearly and effectively addressed through the CWA and its implementing regulations. Likewise, through NEPA, the Federal Land Policy and Management Act (FLPMA), the Multiple-Use Sustained Yield Act (MUSYA) and the ESA, among others, federal agencies ensure environmental protection and appropriate mitigation efforts on federal lands. Water quality standards, wetlands protections and storm-water control programs must be based on sound science and developed properly by means of the CWA and any other appropriate statute, not pre-determined via blanket proposals in an ocean implementation plan.

Similarly, the plan aggressively calls on all of the participating agencies to develop ecosystem-based management (EBM), and to modify existing regulatory requirements and programs where necessary. According to the NOC, this is because “traditional approaches to management of natural resources focus on single species or uses” which is “inherently inadequate, and often results in resource depletion, economic hardships, and environmental risks.” As an initial matter, NMA disagrees with the notion that the prevailing resource approach focuses on single-use. Indeed, FLPMA and the MUSYA both expressly require federal lands to be managed under

the principles of multiple use and sustained yield. Additionally, the Department of the Interior, U.S. Forest Service and Department of Agriculture all have developed land management approaches pursuant to this multiple use mandate, and it is inappropriate for the NOC to attempt to systemically replace – or, as the plan states, “change” - long-established and statutorily mandated management approaches through the proposed extremely broad implementation of EBM. The NOC does not have the legal authority to modify existing regulatory programs, nor will such an approach lead to the transparency and efficiency that the plan seeks to obtain, but instead would likely lead to increased bureaucracy and stakeholder confusion. Several times throughout the plan, the NOC points to working within existing statutory frameworks – any final implementation plan must ensure that this is indeed the approach espoused.

In short, there is no need for the NOC to reinvent the wheel in an attempt to regulate activities already heavily regulated under existing statutes, nor does the NOC have the authority to do so. Instead, the NOC, as the plan at times recognizes, should work within existing statutory authorities and should lay out general goals that can then be specifically worked towards through the proper regulatory channels and taking into consideration any applicable procedural protections and statutory requirements.

The Draft Plan Cannot Expand Federal Authority

NMA strongly supports the goal of the draft plan to resolve “inconsistencies and duplications in statutory authorities, policies, and regulations,” especially where there is a “lack of coherency among differing agency mandates, policies, regulations, practices, or funding.” The mining industry, being heavily regulated by multiple agencies, embraces efforts to form streamlined and compatible ocean policies. However, as stated above, NMA would like to stress that such actions must be taken within the context of existing statutes. In particular, statutes governing mining operations are designed to protect environmental and ecological health as well as economic and social health. Mining provides vital energy resources, minerals, jobs and revenues that are essential for the economic and societal well-being of America. The NOC plan, with its sole concern resting on the health of the ocean, coasts and Great Lakes, must not promote its objectives to the detriment of responsible resource and economic development, nor in contradiction to the statutory mandates under which the various implementing agencies operate. The plan must therefore be more careful not to be overly proscriptive or to override the final decision-making authority of the implementing agencies.

It is also important that the plan not call upon agencies to act contrary to the statutory obligations laid out in the Mining Law of 1872, as amended, 30 U.S.C. §§21 *et seq.* and the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§181 *et seq.*, regarding the exploration for and extraction of mineral resources on federal lands. For example, the Mining Law establishes the right to access public lands to explore and develop locatable minerals, and the NOC cannot materially interfere with prospecting, mining, and other incidental uses on those lands in the course of its guidance concerning the management of ocean, coastal or Great Lakes resources. Likewise, the disposition of solid minerals subject to the leasing laws cannot be impaired by unilateral action by the NOC under the guise of its formulation of guidance for federal agencies to follow.

The Draft Plan Should Encourage Appropriate Stakeholder Involvement

NMA is supportive of the goal of expanding the understanding of traditional economic sectors and science, and of encouraging public participation. In addition to aiding informed decision-making, early coordination between regulators, regulated entities and the public can help prevent costly litigation by allowing for the resolution of conflicts before any final decisions are made and implemented. The mining industry in particular has an important role to play and much to offer in helping to inform decision-making under the draft plan. This includes highlighting and informing issues in the context of both domestic and international policies, and helping decision-makers understand the importance of efficient maritime transport in the context of economic growth and security.

However, the draft plan goes too far in stating that “public attitudes and preferences will be routinely incorporated into ecosystem assessments, policy, and management decisions.” Plan at p. 22. While public participation is a necessary and informative part of the resource management process, ultimately agencies must base their decisions within the applicable statutory framework. Sound science and statutory mandates – not “public attitudes” – must provide the basis for agency actions.

Additionally, while appearing to acknowledge the need to better understand the economic aspects related to ocean, coastal and Great Lakes management, the accompanying milestones appear to take a very narrow view of the economic and socio-economic information that can be enhanced and better understood. For example, one of the milestones integrating social and natural scientific information into decision-making is to “complete an initial analysis of ocean and coastal economic statistics and jobs.” Plan at p. 22. While this is an important milestone, this or another milestone should

also articulate an effort to improve the understanding of the importance of the broad national commercial and economic aspects of issues such as transportation and shipping for import and export and jobs throughout the nation beyond the direct ocean and coastal areas. Mineral producers, for example, rely extensively on the oceans and ports for the transport of their products as well as other raw material inputs or equipment, and such considerations should be examined by the NOC.

Ocean Acidification and Climate Change Impacts Cannot Form the Basis for Agency Action Without Further Study

The plan appears to appropriately recognize the need for further study concerning the potential impacts of climate change, ocean acidification and interacting stressors on ecological, economic and social systems. However, NMA is concerned that the plan nevertheless seems to mandate that agencies incorporate climate change and ocean acidification into their management approaches before any such study is completed.

Ocean Acidification

According to the National Research Council (NRC) of the National Academy of Sciences: “Ocean acidification research is still in its infancy.” *Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean*, (2010), at 6. As a result, “present knowledge is insufficient to guide federal and state agencies in evaluating potential impacts for management purposes.” NRC Report, at 7. Exacerbating this issue is the fact that changes in the pH of ocean waters are not related to atmospheric levels of CO₂ alone, but can be highly variable and are affected by water chemistry, temperature and biological processes. For example, deep ocean waters that are naturally lower in pH can upwell due to ocean currents and change the pH of surface waters, or phytoplankton can die and sink from euphotic surface waters, causing natural physical and biological processes to lower the pH of coastal waters.

Furthermore, scientists are debating whether the effects of ocean acidification on marine organisms will be beneficial or detrimental.¹ Even the U.S. Environmental Protection Agency (EPA) has determined that currently available data on the effects of pH on marine life do not at this time indicate a need to revise water quality criteria. EPA’s guidance

¹ See, e.g., Iglesias-Rodriguez, M.D., Halloran, P.R., Ricaby, R.E.M., Hall, I.R., Colmenero-Hidalgo, E., Gittins, J.R., Green, D.R.H., Tyrell, T., Gibbs, S.J., von Dassow, P., Rehm, E., Armbrust, E.V., Boessenkool, K.P. 2008. Phytoplankton Calcification in a High-CO₂ World. *Science* 320:336-340. See also, Riebesell, U., Richard G.J. Bellerby, Anja Engel, Victoria J. Fabry, David A. Huchins, Thorsten B.H. Reusch, Kai G. Schulz, and Francois M. M. Morel Comment on “Phytoplankton Calcification in a High-CO₂ World” Dec. 2008, *Science* 322 (5907), 1466b.

memorandum entitled "Integrated Reporting and Listing Decisions Related to Ocean Acidification" states that both local and global data on ocean acidification are currently limited. "Integrated Reporting and Listing Decisions Related to Ocean Acidification," Denise Keehner to Water Division Directors, Nov. 15, 2010.

There therefore needs to be a better understanding of the causes of ocean acidification and how it affects marine organisms before agencies can incorporate any concerns regarding ocean acidification into their management plans. More and better monitoring data are needed to help fill the knowledge gaps, and research should be conducted to help understand impacts to biological processes, particularly marine calcification, and environmental monitoring should include oceanographic parameters such as temperature, irradiance, hydrodynamics, nutrients and atmospheric parameters such as surface winds and pressures.

Additionally, in light of the fact that the EPA is listed as an agency that should "provide accessible, standardized guidance and training for incorporating climate change and ocean acidification into ecosystem management, restoration, and CMSP activities,"² NMA would also like to again stress its objections to the use of the CWA to address ocean acidification. In addition to the uncertainties listed above, the CWA is an inappropriate tool to address ocean acidification as the CWA regulates point source discharges into waters of the United States. CO₂ emissions, however, do not constitute point source pollutant discharges regulated under the CWA, as CO₂ emitted from stationary sources is an uncontained gas emitted into the air, not a waste discharged into a water of the United States. Additionally, CO₂ emissions are global in nature. Point source discharges that are within the purview of the CWA are subject to permit limitations on pH, and there is no evidence that such discharges are failing to meet water quality standards for pH or are causing any adverse impacts as to ocean acidification. As such, EPA cannot and should not regulate ocean acidification via the CWA.

Greenhouse Gas Impacts

The draft plan also calls upon agencies to "develop tools, models, and methods for quantifying greenhouse gas (GHG) impacts of coastal habitat alteration to improve the ability of Federal and State agencies to implement effective protection and restoration programs." Plan at p. 48. However, NMA is concerned that this requirement would create costly regulatory hurdles and ultimately raise more questions than it answers. Specifically,

² Plan at p. 61.

these types of tools and methods for measuring the impacts of GHGs would involve, at a minimum, a complex quantification of cumulative emissions, identification and assessment of relevant scientific literature, consideration of climate models and scenarios, evaluation of scientific uncertainties associated with projections and consideration of mitigation measures and reasonable alternatives to reduce action-related GHG emissions. However, due to the global nature of climate change and the fact that GHGs do not have readily identifiable and quantifiable cause and effect impacts, such analyses would require so much speculation as to be confusing and unhelpful. As with ocean acidification, more study is needed in the context of GHGs and climate change before agencies are asked to undertake specific costly actions or analyses related to these issues.

Conclusion

NMA appreciates the opportunity to help the NOC develop a National Ocean Policy Implementation Plan that will achieve the goals of improving ocean health while encouraging economic growth and responsible resource development. NMA supports the current draft plan's emphasis on research, scientific development and interagency coordination. However, NMA is deeply troubled by the plan's lack of acknowledgement of the existing statutory and regulatory frameworks already in place that govern many of the activities listed in the draft plan. While the implementation of a national plan to protect the ocean, coasts and Great Lakes is a laudable goal, such a plan cannot provide a vehicle for agencies to ignore their statutory mandates or expand their jurisdiction. Nor can such a plan be used to require agencies to adopt policies based on anything other than sound science and statutory authority. As such, NMA hopes that the NOC will include in any final ocean plan clear delineations between the goals of the plan and the authority of the covered agencies, as well as clarification regarding the current status of the science surrounding GHGs and ocean acidification.

Sincerely,



Amanda E. Aspatore
Assistant General Counsel
National Mining Association

Name: **Laura Schmidt**

Organization: Our Ocean

Path:

Comment: Dear Chairs Sutley, Holdren, and National Ocean Council Members:

I would like to share my support for National Ocean Policy draft Implementation Plan.

I am a third-generation Oregonian and proud to be from a state that protects and values our precious natural resources and diverse ecosystems. My family has served our state and prospered through the last hundred years by means of agriculture, forestry, animal husbandry, veterinary medicine, engineering, and teaching. I have a deep and sustained environmental ethic that is a result of my parents and grandparents teaching me that we must use our land, air, and water wisely, to provide health and opportunity for future generations. For this and many other reasons, I believe that a strong Implementation Plan will help protect marine ecosystems and encourage sustainable ocean uses, including recreation and tourism.

The draft National Ocean Policy Implementation Plan establishes a strong blueprint for taking action and fostering agency coordination to sustain our ocean, coastal and Great Lakes resources. The draft plan has successfully incorporated the needs and concerns of governmental, non-profit, and commercial groups and provides clarifying details to improve accountability and monitor progress toward improved ocean management. Frequent notations on how implementing actions are related to one another provide confidence that activities will be coordinated and make good use of limited resources.

Nonetheless, the plan could be improved to achieve even more progress. It should more fully utilize all available authorities for habitat protection and management. Many of the milestones could be extended beyond cataloguing and planning to include action, with tangible, on-the-water activities. Regional need, support, and capacity should guide where coordinated actions should first take place. Federal agencies must continue to ask for input from other levels of the government and the public and incorporate this new information into implementation of the plan.

With these additions, President Obama's Implementation Plan will provide a better guide for achieving the goals of protecting, maintaining, and restoring the nation's oceans, coasts, and Great Lakes and ensuring resilient coastal economies. I look forward to the release of the final plan and hope to see policy translated into action on the water soon.

Sincerely,

Laura Schmidt

Name: **Richard Cameron**

Organization: Port of Long Beach

Path: http://edit.whitehouse.gov/sites/default/files/webform/02-27-12_noc_comment_letter_2_27_12_final.pdf

Comment: Dear National Ocean Council:

The Port of Long Beach (POLB) appreciates the opportunity to review and comment on the National Ocean Council's (NOC's) Draft Implementation Plan (Plan). The POLB supports the NOC's approach of developing an Implementation Plan which provides the initial steps in a path towards accomplishing the vision set forth in the National Ocean Policy. The POLB also supports the organization of the Plan around the four themes of ecosystem-based management (EBM), using best available science and data, promoting efficiency and collaboration, and strengthening regional efforts.

The POLB works very aggressively as an environmental steward to implement strategies that reduce the negative impacts of port operations, improve the well-being of our community, and increase the security and prosperity of our nation. With the adoption of our Green Port Policy in 2005, our Clean Air Action Plan in 2006, and our Water Resources Action Plan in 2009, the POLB has distinguished itself as an environmental leader among ports. The POLB's Water Resources Action Plan, Ballast Water Management Program, Kelp and Eelgrass Protection efforts, Black-Crowned Night Heron Habitat Restoration, and restoration projects at Bolsa Chica Wetlands, the National Wildlife Refuge in Seal Beach, California, and Upper Newport Bay Ecological Preserve have established the Port's role as a leader in water quality management and habitat restoration.

In keeping with the Plan's theme of promoting efficiency and collaboration, the POLB expects that the NOC will seek to build upon ongoing efforts of the POLB and other ports as it implements the actions set forth in the Plan. The POLB has devoted years on the ground working with local, regulatory, and industry stakeholders to develop our environmental programs. While we strongly support the development of federal and international regulations that are as stringent, or more stringent, than our state and local regulations, the POLB will work to ensure that federal actions do not contradict our existing environmental programs, as our programs are firmly based on use of the best science, a main theme of the Plan. As the NOC seeks to implement the Plan's actions related to water quality, ecosystem-based management, regional ecosystem protection and restoration, and coastal and marine spatial planning, the POLB expects that NOC actions will build upon and work in concert with our existing programs, in keeping with the NOC's articulated commitment to leverage existing resources.

The POLB is supportive of EBM and asks that the NOC's approach to implementing EBM include full consideration of the human dimensions of ecosystems, including the social and economic benefits that ecosystems provide. The POLB further encourages the NOC to fully characterize the economic and social benefits of existing ecosystem services, including the ability of restored wetlands to sequester carbon, mitigate natural hazards, and filter pollutants. In addition, the POLB encourages the NOC to consider the interactions

between the diverse range of human uses present within our oceans and coasts. Finally, the POLB supports the NOC's recognition that "clean, navigable oceans enable marine transportation and commerce, and are vital to national and homeland security."

In all actions related to increasing ocean and coastal literacy, the POLB asks that a strong working waterfronts component be included in such efforts, to ensure that the importance of these ocean and coastal uses is fully represented in these education and outreach efforts.

The POLB supports a watershed approach to water quality management. To that end, the POLB supports the Plan's action related to reducing urban sources of excessive nutrients, sediments, toxins, and pathogens at a watershed scale. The POLB further supports the Plan's action aimed at reducing the impacts of trash and marine debris in the ocean, and encourages the NOC to consider the POLB's Litter Reduction Program as one example of how ports can contribute to the successful implementation of this action.

The POLB encourages the NOC to address the critical need of adapting the nation's gateway ports, including the POLB, to climate change. Port resiliency to climate change is a critical issue for the goods movement industry, global supply chains, and the national economy. To prepare for climate change in a meaningful way, ports require scaled down, spatially relevant information on specific projected climate change impacts, such as sea level rise, as well as sufficient technical capacity, tools, and funding. To that end, the POLB is supportive of the NOC's intention to provide projections of climate change impacts on coasts and oceans at decision-relevant scales, and the POLB encourages the NOC to consider impacts to built environments and shorelines as well as impacts to natural shorelines and systems. A recent study found that the global construction industry lacks the capacity, both in construction materials and equipment required, to sufficiently protect the world's major ports against rising sea levels. Given this information, the POLB encourages the NOC to work with the appropriate federal agencies to begin preparing the nation's Marine Transportation System for climate change today.

The POLB recognizes that Coastal and Marine Spatial Planning (CMSP) is an effective way to advance EBM, and so is supportive of CMSP, as long as all users of coastal and marine resources are adequately and meaningfully engaged throughout the planning process. In particular, the POLB expects that ports will be regularly solicited for input and feedback as the regional planning bodies work to develop CMS plans for the regions. Since membership on each regional planning body is reserved for federal, state, and tribal entities, and since there is no established state agency to represent the ports sector in California, the POLB believes it is especially important for the West Coast regional planning body to regularly engage port stakeholders as the CMS Plan for the West Coast is developed.

As one stated benefit of CMSP in the Plan is to "leverage, strengthen, and magnify local planning objectives," the POLB sees CMSP as a way to highlight and build upon our ongoing environmental efforts.

Regarding the CMSP national objective of reducing cumulative impacts, the POLB seeks

clarity on how these reductions in cumulative impacts, resulting from the CMSP process, would be addressed in the context of the National Environmental Policy Act (NEPA), and the California Environmental Quality Act (CEQA).

One of the previously stated national goals of CMSP is to promote compatibility among uses and to reduce user conflict, and one of the previously stated guiding principles is to implement CMSP in accordance with customary international law, including navigational rights and freedoms. To that end, the POLB will remain engaged throughout the development of CMSP to ensure our shipping lanes remain unaffected and that user conflicts are resolved in a manner consistent with the POLB's interests.

The POLB supports the NOC's commitment to strengthen existing regional efforts. As an active member of the West Coast's Regional Ocean Partnership—the West Coast Governors' Alliance on Ocean Health (WCGA)—the POLB is familiar with challenges and opportunities that a regional approach to ocean governance provides. The WCGA has made great strides towards addressing critical issues at the regional scale, including undertaking the development of a Regional Data Network, which will be essential for the effective implementation of CMSP. The WCGA has completed its early successes with extremely limited funds. To ensure that initial accomplishments like those achieved by the WCGA are upheld, the POLB encourages the NOC to identify substantial and sustained federal funding to support regional efforts going forward. Increased access to federal data and information, as identified in the NOC, is also essential for the enduring success of regional efforts.

As stated in previous comment letters to the NOC, the Port will work continuously to ensure that steps taken to implement the National Ocean Policy are consistent with the Port's existing regulatory and statutory obligations. As a California port, the Port of Long Beach is subject to the California Coastal Act and the California Marine Life Protection Act. Under Section 8 of the California Coastal Act, explicit port and coastal land uses are clearly defined. Specifically, the Coastal Act stipulates that "all port-related developments shall be located, designed and constructed so as to give highest priority to the use of existing land space within harbors for port purposes, including but not limited to, navigational facilities, shipping industries and necessary support and access facilities." In keeping with the Plan's theme of promoting efficiency, the Port encourages the NOC to implement the Plan's actions within the context of existing regulations to the greatest extent feasible.

The POLB encourages the NOC to proceed with the Plan's implementation using a coordinated and transparent process, soliciting regular stakeholder input. The Plan mentions that local authorities will be regularly engaged. To that end, the POLB asks that the NOC continually engage ports and other maritime stakeholders to ensure the vital economic and security interests of the shipping sector are taken into consideration.

The actions set forth in the NOC's Draft Implementation Plan are consistent with the POLB's environmental goals, as identified in our Green Port Policy and other environmental planning and policy documents. We thank the NOC for its efforts to date and look forward to our continued collaborative efforts to protect our oceans and coasts.

Sincerely,

Richard D. Cameron
Director of Environmental Planning

AF:s

cc: Robert Kanter, POLB, Managing Director of Environmental Affairs and Planning



February 27, 2012

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

Subject: Comment Letter on the Draft National Ocean Policy Implementation Plan

Dear National Ocean Council:

The Port of Long Beach (POLB) appreciates the opportunity to review and comment on the National Ocean Council's (NOC's) Draft Implementation Plan (Plan). The POLB supports the NOC's approach of developing an Implementation Plan which provides the initial steps in a path towards accomplishing the vision set forth in the National Ocean Policy. The POLB also supports the organization of the Plan around the four themes of ecosystem-based management (EBM), using best available science and data, promoting efficiency and collaboration, and strengthening regional efforts.

The POLB works very aggressively as an environmental steward to implement strategies that reduce the negative impacts of port operations, improve the well-being of our community, and increase the security and prosperity of our nation. With the adoption of our Green Port Policy in 2005, our Clean Air Action Plan in 2006, and our Water Resources Action Plan in 2009, the POLB has distinguished itself as an environmental leader among ports. The POLB's Water Resources Action Plan, Ballast Water Management Program, Kelp and Eelgrass Protection efforts, Black-Crowned Night Heron Habitat Restoration, and restoration projects at Bolsa Chica Wetlands, the National Wildlife Refuge in Seal Beach, California, and Upper Newport Bay Ecological Preserve have established the Port's role as a leader in water quality management and habitat restoration.

In keeping with the Plan's theme of promoting efficiency and collaboration, the POLB expects that the NOC will seek to build upon ongoing efforts of the POLB and other ports as it implements the actions set forth in the Plan. The POLB has devoted years on the ground working with local, regulatory, and industry stakeholders to develop our environmental programs. While we strongly support the development of federal and international regulations that are as stringent, or more stringent, than our state and local regulations, the POLB will work to ensure that federal actions do not contradict our existing environmental programs, as our programs are firmly based on use of the best science, a main theme of the Plan. As the NOC seeks to implement the Plan's actions

related to water quality, ecosystem-based management, regional ecosystem protection and restoration, and coastal and marine spatial planning, the POLB expects that NOC actions will build upon and work in concert with our existing programs, in keeping with the NOC's articulated commitment to leverage existing resources.

The POLB is supportive of EBM and asks that the NOC's approach to implementing EBM include full consideration of the human dimensions of ecosystems, including the social and economic benefits that ecosystems provide. The POLB further encourages the NOC to fully characterize the economic and social benefits of existing ecosystem services, including the ability of restored wetlands to sequester carbon, mitigate natural hazards, and filter pollutants. In addition, the POLB encourages the NOC to consider the interactions between the diverse range of human uses present within our oceans and coasts. Finally, the POLB supports the NOC's recognition that "clean, navigable oceans enable marine transportation and commerce, and are vital to national and homeland security."

In all actions related to increasing ocean and coastal literacy, the POLB asks that a strong working waterfronts component be included in such efforts, to ensure that the importance of these ocean and coastal uses is fully represented in these education and outreach efforts.

The POLB supports a watershed approach to water quality management. To that end, the POLB supports the Plan's action related to reducing urban sources of excessive nutrients, sediments, toxins, and pathogens at a watershed scale. The POLB further supports the Plan's action aimed at reducing the impacts of trash and marine debris in the ocean, and encourages the NOC to consider the POLB's Litter Reduction Program as one example of how ports can contribute to the successful implementation of this action.

The POLB encourages the NOC to address the critical need of adapting the nation's gateway ports, including the POLB, to climate change. Port resiliency to climate change is a critical issue for the goods movement industry, global supply chains, and the national economy. To prepare for climate change in a meaningful way, ports require scaled-down, spatially relevant information on specific projected climate change impacts, such as sea level rise, as well as sufficient technical capacity, tools, and funding. To that end, the POLB is supportive of the NOC's intention to provide projections of climate change impacts on coasts and oceans at decision-relevant scales, and the POLB encourages the NOC to consider impacts to built environments and shorelines as well as impacts to natural shorelines and systems. A recent study found that the global construction industry lacks the capacity, both in construction materials and equipment required, to sufficiently protect the world's major ports against rising sea levels.¹ Given this information, the POLB encourages the NOC to work with the appropriate federal agencies to begin preparing the nation's Marine Transportation System for climate change today.

¹ Becker, Austin, David Newell, Martin Fischer, and Ben Schwegler. "Will Ports Become Forts? Climate Change Impacts, Opportunities and Challenges," *Terra et Aqua*, No 122, March 2011.

The POLB recognizes that Coastal and Marine Spatial Planning (CMSP) is an effective way to advance EBM, and so is supportive of CMSP, as long as all users of coastal and marine resources are adequately and meaningfully engaged throughout the planning process. In particular, the POLB expects that ports will be regularly solicited for input and feedback as the regional planning bodies work to develop CMS plans for the regions. Since membership on each regional planning body is reserved for federal, state, and tribal entities, and since there is no established state agency to represent the ports sector in California, the POLB believes it is especially important for the West Coast regional planning body to regularly engage port stakeholders as the CMS Plan for the West Coast is developed.

As one stated benefit of CMSP in the Plan is to “leverage, strengthen, and magnify local planning objectives,” the POLB sees CMSP as a way to highlight and build upon our ongoing environmental efforts.

Regarding the CMSP national objective of reducing cumulative impacts, the POLB seeks clarity on how these reductions in cumulative impacts, resulting from the CMSP process, would be addressed in the context of the National Environmental Policy Act (NEPA), and the California Environmental Quality Act (CEQA).

One of the previously stated national goals of CMSP is to promote compatibility among uses and to reduce user conflict, and one of the previously stated guiding principles is to implement CMSP in accordance with customary international law, including navigational rights and freedoms. To that end, the POLB will remain engaged throughout the development of CMSP to ensure our shipping lanes remain unaffected and that user conflicts are resolved in a manner consistent with the POLB’s interests.

The POLB supports the NOC’s commitment to strengthen existing regional efforts. As an active member of the West Coast’s Regional Ocean Partnership—the West Coast Governors’ Alliance on Ocean Health (WCGA)—the POLB is familiar with challenges and opportunities that a regional approach to ocean governance provides. The WCGA has made great strides towards addressing critical issues at the regional scale, including undertaking the development of a Regional Data Network, which will be essential for the effective implementation of CMSP. The WCGA has completed its early successes with extremely limited funds. To ensure that initial accomplishments like those achieved by the WCGA are upheld, the POLB encourages the NOC to identify substantial and sustained federal funding to support regional efforts going forward. Increased access to federal data and information, as identified in the NOC, is also essential for the enduring success of regional efforts.

As stated in previous comment letters to the NOC, the Port will work continuously to ensure that steps taken to implement the National Ocean Policy are consistent with the Port’s existing regulatory and statutory obligations. As a California port, the Port of Long Beach is subject to the California Coastal Act and the California Marine Life Protection Act. Under Section 8 of the California Coastal Act, explicit port and coastal

land uses are clearly defined. Specifically, the Coastal Act stipulates that “all port-related developments shall be located, designed and constructed so as to give highest priority to the use of existing land space within harbors for port purposes, including but not limited to, navigational facilities, shipping industries and necessary support and access facilities.” In keeping with the Plan’s theme of promoting efficiency, the Port encourages the NOC to implement the Plan’s actions within the context of existing regulations to the greatest extent feasible.

The POLB encourages the NOC to proceed with the Plan’s implementation using a coordinated and transparent process, soliciting regular stakeholder input. The Plan mentions that local authorities will be regularly engaged. To that end, the POLB asks that the NOC continually engage ports and other maritime stakeholders to ensure the vital economic and security interests of the shipping sector are taken into consideration.

The actions set forth in the NOC’s Draft Implementation Plan are consistent with the POLB’s environmental goals, as identified in our Green Port Policy and other environmental planning and policy documents. We thank the NOC for its efforts to date and look forward to our continued collaborative efforts to protect our oceans and coasts.

Sincerely,



Richard D. Cameron
Director of Environmental Planning

AF:s

cc: Robert Kanter, POLB, Managing Director of Environmental Affairs and Planning

Name: **Matt LaPine**

Organization: Colby College Student

Path:

Comment: Though this policy is ground breaking for taking an ecosystem based, holistic, approach, it is important to remember the root cause of environmental issues associated with our seas: economics. If we are successfully implement programs on a country wide level it is going to be fought. The driving economic force behind ocean based industries and the concern over those very economics is going to cause major delays no matter what the intended outcome. I, of course, am speaking mainly of fisheries, and the issues associated with common pool resources. There seems to be a deliberate neglect of specific resource management (aside from the pursuit of regional management of ecosystems). Does a species have to be on the verge of extinction to get our attention? Is it not enough that our "best science" indicates overfishing of nearly every commercially viable fish species? Again, it is incredibly important to pursue ecosystem level conservation, but that pursuit should also involve a greater focus on specific species conservation for the future our fishing communities, and not necessarily for the short run.

Name: **Diane Bellis**

Organization: AgSource, Inc.

Path: http://edit.whitehouse.gov/sites/default/files/webform/soy_industry_comments_on_national_ocean_policy_draft_implementation_plan.pdf

Comment:



If you believe, belong.



The United States soybean industry, representing more than 600,000 U.S. soybean farmers, welcomes the opportunity to provide comments on the draft National Ocean Policy Implementation Plan.

The Implementation Plan states... “Since long before our Nation was founded, the ocean has been a source of nourishment...” For providing nourishment, the ocean has become as much a highway as a source. More than anything else we eat, our seafood has traveled a long way - 84% is imported.

Globally, growing population continues to increase pressure on the natural resources we use to provide food - including the ocean. Wild fish stocks are in decline at the same time that Americans eat only half as much seafood as USDA recommends and research on the significant health benefits of long chain omega-3 fatty acids continues to emerge.

The seafood trade deficit in the U.S. rose 14.4% from 2010 to almost \$11 billion in 2011. The export of U.S. soybeans – in large part for aquaculture in China – is about \$9 billion. We are using terrestrial resources in the U.S. to grow soybeans to ship to Asia to grow fish to ship back to the U.S. Aside from questions about the safety of our seafood and the economic realities, this cannot make sense environmentally.

While production of seafood in the U.S. has remained stagnant for many years,¹ global production of fish from aquaculture grew more than 60 percent between 2000 and 2008. There are myriad opportunities for rural communities with long traditions of harvesting nourishment from the sea to repurpose or upgrade production systems - including aquaculture systems - to produce seafood; to replace imported seafood with product from the U.S.; and to create jobs in the U.S. rather than overseas. However, the Implementation Plan does not appear to fully consider or encourage these opportunities.

¹ --despite the following declaration stated in the National Aquaculture Act of 1980, “Congress declares that aquaculture has the potential for reducing the United States trade deficit in fisheries products, for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States...”

Given this, we submit the following comments:

Action 2: Provide scientific information to support emerging sustainable uses of resources including renewable energy, aquaculture, and biotechnology. (Page 20)

The U.S. soybean industry continues to invest significant farmer dollars to develop highly efficient alternatives to fishmeal and oil, the historical basis of formulated aquaculture feed. We work closely with NOAA, USDA, aquaculture producers, seed genetics companies and non-profit organizations. While we continue to work overseas to introduce aquaculture producers to soy-based aquaculture feeds and to expand the export of U.S. soybeans, the industry faces significant hurdles to working within the U.S. to expand the supply of domestically produced seafood.

With this in mind, we note the absence of a marine finfish initiative. In particular, a finfish pilot project under which aquaculture and food production systems opponents would work with producers (fish and feed) to collect data using the wide variety of technologies that have been developed by years of Federally-funded R&D might be of great benefit in expanding the supply of domestically-produced seafood to meet global demand. Technologies are available to monitor prototype aquaculture operations as the basis for science-based regulations and to make the information available to the public in real time. This initiative would complement ongoing efforts of federal, state, and academic sectors working with the private sector to build the technological and scientific basis to expand the U.S. aquaculture industry.

Leadership and focus from the National Ocean Council for a finfish aquaculture initiative might provide the impetus necessary for growth of an economically and environmentally-sound industry.

Action 5: Develop human capacity and the skilled workforce necessary to conduct ocean research and manage ocean, coastal, and Great Lakes resources. Action 6: Increase ocean and coastal literacy by expanding the accessibility and use of ocean content in formal and informal educational programming for students, educators, and the public. (Page 24)

“Developing human capacity and the skilled workforce” (Action 5) is, to a large extent, dependent exposure to ocean science (Action 6) in and out of schools. And Action 6, to a large extent, depends on whether science is taught in a way that piques curiosity or suppresses it.

The soy industry wishes to share its experience in developing and funding a “research experiences for teachers” (RET) project with the University of Nebraska. RET projects aim to make K-6 teachers into science lovers and more effective science teachers. The teachers were given the tools to use plant science, resource management and food production to

deliver existing science curriculum. The industry has demonstrated that this method piqued curiosity and might serve as a model for teaching ocean and coastal literacy, including aquaculture.

Action 5: Improve efficiency of permitting of ocean, coastal, and Great Lakes uses. (Page 40)

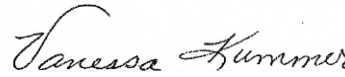
We note the proposal that the Interagency Working Group on Aquaculture (IWGA- formerly known as the Joint Sub-Committee on Aquaculture or JSA) under the National Science and Technology Council will “facilitate and ensure interagency coordination” and will collaborate with the NOC to create a senior-level interagency coordinating task force to improve permitting efficiencies for aquaculture and address key milestones.

Given the importance of the aquaculture to the soybean industry, the industry notes the importance and urgency of this action. This includes the need to quickly implement such coordination, to ensure that those participating on the task force are in position to make decisions for their agency, and the wisdom of securing input from the industry and non-federal sectors, which are likely to bring greater practical experience in understanding the application of regulations to commercial-scale fish farms.

We welcome the opportunity to discuss these comments in more detail. Thank you for considering them.



Steve Wellman, President
American Soybean Association



Vanessa Kummer, Chairman
United Soybean Board

Name: **Andrew Hartsig**

Organization: Ocean Conservancy et al

Path: http://edit.whitehouse.gov/sites/default/files/webform/2012_2_27_final_arctic_noc_comment_letter.pdf

Comment: Please see the attached comment letter, which focuses on the Arctic section of the draft National Ocean Policy Implementation Plan.

**Alaska Wilderness League • Audubon Alaska • Center for Biological Diversity
Eyak Preservation Council • Friends of the Earth • Natural Resources Defense Council
Northern Alaska Environmental Center • Ocean Conservation Research
Ocean Conservancy • Oceana • Pacific Environment • Pew Environment Group
Sierra Club • The Wilderness Society • WWF**

February 27, 2011

Co-Chair Nancy Sutley
Co-Chair John Holdren
Members of the National Ocean Council
National Ocean Council
722 Jackson Place, NW
Washington, DC 20503

Re: Comments on the “Changing Conditions in the Arctic” section of the Draft National Ocean Policy Implementation Plan.

Dear Co-Chair Sutley, Co-Chair Holdren, and Members of the National Ocean Council:

Thank you for the opportunity to submit comments on the National Ocean Council’s (NOC) Draft National Ocean Policy Implementation Plan (Draft Implementation Plan or Plan).¹ The following comments focus on the “Changing Conditions in the Arctic” section of the Draft Implementation Plan,² and are submitted by Alaska Wilderness League, Audubon Alaska, Center for Biological Diversity, Eyak Preservation Council, Friends of the Earth, Natural Resources Defense Council, Northern Alaska Environmental Center, Ocean Conservation Research, Ocean Conservancy, Oceana, Pacific Environment, Pew Environment Group, Sierra Club, The Wilderness Society, and WWF.

I. Introduction

We appreciate the time and effort that you spent developing the “Changing Conditions in the Arctic” section of the Draft Implementation Plan. The Arctic section of the Plan calls for a series of actions relating to emergency response, sea ice observation and forecasting, biological observations, communications, and mapping and charting.³ These actions, if implemented, will result in advances for the region.

At the same time, however, the Draft Implementation Plan’s Arctic action items are limited in scope and do not address some of the critical challenges confronting the region. It remains unclear how this plan will protect and maintain the health of Arctic marine ecosystems in the face of rapid climate change and industrialization of the region. Without management and stewardship measures designed to protect ecosystem health and resilience, actions to increase emergency response and conduct specific scientific studies may fall short of protecting the Arctic. We encourage the NOC to strengthen the Arctic section of the Plan so that it does more

¹ See National Ocean Policy Draft Implementation Plan Notice of Availability and Request for Comments, 77 Fed. Reg. 2514, 2514-15 (Jan. 18, 2012).

² National Ocean Council, Draft National Ocean Policy Implementation Plan (Jan. 2012), at 75-84.

³ *Id.* at 78-84.

to ensure healthy, resilient marine ecosystems and continued opportunities for the subsistence way of life in the rapidly changing region. As described below, our priority recommendations include:

- (1) incorporating proactive management and stewardship measures such as indentifying and protecting important ecological and subsistence use areas;
- (2) calling for a long-term, comprehensive scientific research and monitoring program;
- and
- (3) giving greater prominence to the role of local communities, governments, tribes, co-management organizations, and similar Alaska Native organizations.

II. Priority recommendations

A. Include proactive management and stewardship measures in addition to disaster response and mitigation.

The Final Recommendations of the Interagency Ocean Policy Task Force call for the Arctic Plan to “[a]ddress environmental stewardship needs in the Arctic Ocean and adjacent coastal areas in the face of climate-induced and other environmental changes.”⁴ Yet the Arctic section of the Draft Implementation Plan calls for few, if any, proactive steps to advance Arctic stewardship. Instead, the Plan emphasizes disaster response and mitigation.⁵ While actions such as the completion and deployment of Arctic ERMA[®] and participation in spill-response training and workshops are worthy goals, they are after-the-fact reactions to industrial development. The Arctic section of the implementation plan should include measures designed to provide up-front protection to Arctic ecosystems and opportunities for the subsistence way of life.

The NOC Implementation Plan should call on individual federal agencies to use their existing authorities to protect and maintain the health and resilience of Arctic marine ecosystems.⁶ Instead of allowing development to unfold in a haphazard manner, the Implementation Plan should call for careful consideration of whether, when, where, and under what conditions industrial activities should take place in Arctic waters.⁷ Federal managers should use their discretion under existing law to identify and protect areas of the Arctic Ocean that are especially

⁴ Council on Environmental Quality, Final Recommendations of the Interagency Ocean Policy Task Force (July 19, 2010), at 6-7.

⁵ See, e.g., National Ocean Council, Draft National Ocean Policy Implementation Plan (Jan. 2012), at 78-79 (envisioning success as “[a] coordinated and prepared response management system [that] will mitigate the impacts of pollution events . . .”)

⁶ Federal agencies must comply with the National Ocean Policy’s stewardship standards “to the fullest extent consistent with applicable law.” Executive Order 13547 of July 19, 2010: Stewardship of the Ocean, Our Coasts, and the Great Lakes, 75 Fed. Reg. 43,023, 43,026 (July 22, 2011). The Implementation Plan should call for federal agencies to develop and issue regulations—or at a minimum, policy guidance—that ensures that they effectively integrate the National Ocean Policy’s stewardship principles into existing processes, practices, and mandates.

⁷ Due to Alaska’s unique challenges, Coastal and Marine Spatial Planning (CMSP) may not be feasible in the near-term. However, that should not preclude federal agencies from acting immediately to identify and protect important ecological and subsistence use areas in order to preserve options for the future. Data collection (including research and monitoring), mapping, and stakeholder engagement should also be near-term priorities.

important due to their ecological or subsistence values.⁸ Important ecological and subsistence use areas should receive meaningful protections—such as permanent closures, time/area closures, and buffer zones—that will help preserve their role in the functioning of the ecosystem. To ensure that interim management decisions do not foreclose future or pending conservation options, the Implementation Plan should prioritize the identification and protection of important ecological and subsistence use areas.

On February 17, the Department of the Interior announced that the Interagency Arctic Working Group will pursue “implementation of an ecosystem-based management framework for the Alaska Arctic that would focus on particularly important ecological areas that support special wildlife, land or water resources, as well as areas important for the subsistence and culture of local communities.”⁹ The NOC should include, explain and expand upon the Working Group process in the Arctic section of the Implementation Plan, and in particular how that process will be used to help protect, maintain and restore Arctic marine ecosystem health.

B. Call for a long-term, comprehensive scientific research and monitoring program.

Several components of the Arctic section in the Draft Implementation Plan relate to scientific research and observation. For example, the Plan calls for the implementation of a distributed biological observatory, increased study of sea ice, improvements in sea ice forecasting, updates to environmental sensitivity indices, and improvements to tidal and hydrodynamic modeling.¹⁰ These actions, if implemented, would advance our knowledge and understanding of the Arctic marine environment. However, they fall short of what is needed to support informed decision-making in the region.

The Implementation Plan should outline a more ambitious and comprehensive science program for the Arctic region. Federal agencies—including NOAA, FWS, USGS, BOEM, the U.S. Arctic Research Commission, and others—should develop an Arctic science program designed to fill existing information gaps and provide an understanding of the spatial and temporal variability of Arctic ecosystems, their components, and their functioning. The program should include and build on the recent USGS report, the *Evaluation of the Science Needs to Inform Decisions on Outer Continental Shelf Energy Development in the Chukchi and Beaufort Seas, Alaska*. To track changes in the Arctic, the science program should be supported by a comprehensive, long-term monitoring program with dedicated funding.

A long-term scientific research and monitoring program could be conducted in three phases over the next five to seven years:

- (1) gap analysis and planning (2012–2013);
- (2) research and monitoring (2013–2016, with monitoring continuing into the future); and
- (3) integrating new and older information to provide decision-makers the basic understanding needed to make effective decisions (2016–2017).

⁸ For example, the Department of the Interior must prepare a five-year oil and gas leasing program for the Outer Continental Shelf. See 43 U.S.C. § 1344(a). It should use that program to identify and exclude from leasing areas of the Arctic Ocean that are known to be important for their ecological or subsistence value.

⁹ See Department of the Interior News Release, “Obama Administration Announces Major Steps toward Science-Based Energy Exploration in the Arctic: BSEE Issues Approval for Shell Chukchi Sea Oil Spill Response Plan (Feb 17, 2012).

¹⁰ National Ocean Council, Draft National Ocean Policy Implementation Plan (Jan. 2012), at 79-84.

The goal of the long-term scientific research and monitoring program is not endless study, but targeted research and analysis relevant to decisions about conservation and development. A long-term scientific research and monitoring program would enable managers to determine if, when, where, and under what conditions industrial activities should occur. In addition, a long-term scientific research and monitoring program should be designed to identify areas that are important to the functioning of Arctic ecosystems and the support of subsistence resources. While we already know that certain areas of the Arctic Ocean are important for ecological or subsistence purposes, our knowledge is incomplete, and the Arctic is changing rapidly. As a result, identification of important ecological areas should be an ongoing concern. Identification of additional important ecological areas—based on essential habitats and functions in the Arctic ecosystem along with traditional cultural activities—is a necessary step toward protecting traditional-use areas and critical wildlife habitats and ensuring ecosystem functionality.

Local and traditional knowledge must be an integral part of the long-term scientific research and monitoring program. Local and traditional knowledge is a different but equally valid knowledge system that can help expand understanding of the Arctic and supplement and enhance existing knowledge. Indigenous peoples who have lived in the Arctic Ocean region for millennia have developed a wealth of knowledge about the region. Residents of the region depend on local plants and animals for food, clothing, and shelter, and know a great deal about the species they use and see. Traditional knowledge can help fill some of the gaps in our understanding of Arctic ecosystems as well as guide future efforts to collect necessary information.

C. Give greater prominence to the role of local communities, governments, tribes, co-management organizations, and similar Alaska Native organizations.

Indigenous residents of the U.S. Arctic depend on resources from the ocean to maintain a subsistence way of life. In addition, they have valuable knowledge about their environment and its resources that can help inform planning and decision-making. And in the end, residents of the Arctic must live with the consequences of Arctic policy and management decisions. In spite of all this, the Arctic section of the Draft Implementation Plan hardly acknowledges residents of the Arctic. The NOC should revise the Arctic section of the Plan to give greater prominence to, and ensure a larger role for, indigenous communities in the Arctic.

The Implementation Plan should acknowledge the diversity of Alaska Native organizations and establish practical guidelines to ensure that agencies take adequate measures to obtain advice and counsel from local communities, governments, tribes, co-management organizations, and similar Alaska Native organizations.¹¹ In addition, the Plan should ensure that federal agencies satisfy government-to-government consultation requirements established in Executive Order 13175¹² and President Obama's Memorandum of November 5, 2009.¹³ Simply holding a hearing

¹¹ A recent report of the Aspen Institute noted the need for nations to improve the ability of Arctic indigenous people to participate in management and policy decision-making processes. See The Aspen Institute Energy and Environment Program, *The Shared Future: A Report of the Aspen Institute Commission on Arctic Climate Change* (2011) at 27.

¹² Executive Order of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, 65 Fed. Reg. 67249, 67249–52 (Nov. 9, 2000).

¹³ Office of the White House, *Memorandum for the Heads of Executive Departments and Agencies re: Tribal Consultation* (Nov. 5, 2009) available at <http://www.justice.gov/otj/pdf/obama-executive-memo110509.pdf>.

in a Native community does not satisfy an agency's obligation to engage in government-to-government consultation.

The Implementation Plan should make clear that local communities, governments, tribes, co-management organizations, and similar Alaska Native organizations must have meaningful opportunities to give direct input into proposed decisions, actions, and planning processes that may affect the Arctic. Agencies must improve on existing outreach and consultation processes, and should consider modifying standard National Environmental Policy Act (NEPA) procedures to better conform to the needs of Arctic communities. For example, when calendaring comment periods and public hearings that may affect Arctic communities, agencies should consider the timing of subsistence activities or other events and adjust comment and hearing schedules to allow full participation by local residents. They should also coordinate with other agencies to minimize the confusion and burden associated with overlapping or conflicting public comment periods. Agencies should strive to hold meetings and hearings in local Arctic villages, not just Anchorage or other hub communities. If meeting in local villages is not possible, agencies should explore alternative outreach tools, such as video- or teleconference systems. These alternative outreach tools should not be the preferred or default method, and to the extent that agencies must rely on such tools, they must make every effort to give communities ample notification, encourage broad participation, and ensure that the selected communication technology functions as intended. Finally, agencies should report back to the communities to explain the rationale for their final decisions.

Representatives from local communities, governments, tribes, co-management organizations, and similar Alaska Native organizations should be given meaningful opportunity to provide and review information associated with scientific or ecological research, monitoring, synthesis, and mapping. Just as important, agencies must ensure that they incorporate information and recommendations from these local and Native organizations into their decision-making and planning. The Implementation Plan should consider calling for partnerships with Arctic school districts, the North Slope Borough Department of Wildlife Management, Ilisagvik College, and other appropriate entities to help teach students about Arctic environmental management issues and to employ their skills in ongoing collection of environmental, human use, and impacts monitoring data.

III. Conclusion

The Arctic Section of the Draft Implementation Plan calls for a number of positive actions that, if implemented, will improve our understanding of the region and our ability to respond to emergencies when they arise. However, we recommend the NOC improve the Plan by (1) including actions that would promote proactive management and stewardship in the region, (2) calling for a more comprehensive, long-term scientific research and monitoring program, and (3) giving more prominence to local communities, governments, tribes, co-management organizations, and similar Alaska Native organizations.

As the NOC revises the Arctic section of the Plan, it may benefit from consulting the recently released *Findings and Recommendations of the Alaska Northern Waters Task Force*.¹⁴ Among other things, the Task Force document recommends development of a comprehensive U.S. Arctic strategy to implement current policy;¹⁵ adoption of "formal processes for Alaskans to

¹⁴ Alaska State Legislature, *Findings and Recommendations of the Alaska Northern Waters Task Force* (Jan. 2012), available at http://housemajority.org/coms/anw/pdfs/27/NWTF_Full_Report_Color.pdf.

¹⁵ *Id.* at 5.

receive information and provide input on Arctic and oceans issues”;¹⁶ and enhanced data collection, monitoring, and sharing in the Arctic.¹⁷ The NOC should consider identifying areas where the Alaska Northern Waters Task Force document supports the actions called for in the Arctic section of the Implementation Plan.

Sincerely,

Eric F. Myers
Policy Director
Audubon Alaska

Andrew Hartsig
Arctic Program Director
Ocean Conservancy

Leah Donahey
Western Arctic and Oceans
Program Director

Susan Murray
Senior Director, Pacific
Oceana

Rebecca Noblin
Alaska Director
Center for Biological Diversity

Shawna Larson
Alaska Program Director
Pacific Environment

Carol Hoover
Executive Director
Eyak Preservation Council

Marilyn Heiman
Director, U.S. Arctic Program
Pew Environment Group

John Kaltenstein
Marine Program Manager
Friends of the Earth

Dan Ritzman
Alaska Program Director
Sierra Club

Charles M. Clusen
Director, Alaska Project
Natural Resources Defense Council

Lois N. Epstein, P.E.
Engineer & Arctic Program Director
The Wilderness Society

Pamela A. Miller
Arctic Program Director
Northern Alaska Environmental Center

Roberta Elias
Deputy Director, Marine and Fisheries Policy
WWF

Michael Stocker
Director
Ocean Conservation Research

¹⁶ *Id.* at 7.

¹⁷ *See, e.g., id.* at 24-26.

Name: **Heather Leslie**
Organization: Brown University
Path: http://edit.whitehouse.gov/sites/default/files/webform/leslie_nop_implementation_plan_comment_27feb12.pdf
Comment: 27 February 2012

Dear Colleagues:

I'm delighted to have the opportunity to comment on the draft implementation plan for the US National Ocean Policy (NOP). The authors did an excellent job capturing cutting edge marine ecosystem science, and I was particularly pleased to read explicit acknowledgement of humans as part of ocean ecosystems throughout the document. This perspective bodes well for the progress of the proposed implementation activities.

In addition, I was encouraged to see repeated mention of the importance of 'sharing the results and lessons learned' from pilot studies, and presumably, earlier state and locally led efforts in the US to implement ecosystem-based management approaches.

For your information, I have attached two recent publications that delve more deeply into what we can learn from earlier EBM efforts, particularly in terms of how and when natural and social science knowledge bases are most effectively combined (Sievanen et al. 2011, Sievanen et al in press).

In answer to the first question – Does the draft Implementation Plan reflect actions you see are needed to address the nine priorities for the ocean, coasts, and the Great Lakes? - I say yes. I was impressed by the comprehensive, integrated nature of the draft plan, and the efforts that authors made to link each of the nine priority objectives with specific actions and milestones.

However, it is unclear how these important activities will be prioritized, which seems particularly critical given current fiscal and political constraints. Lack of prioritization within and among the nine priority objectives could pose both substantive and communication challenges. For example, as agencies within the federal family track expenditures relevant to the NOP and the achievement of particular milestones (as stated in Action 4, under the objective 'Coordinate and Support'), redundancy among the objectives and lack of clear prioritization among them will make it difficult to monitor progress. Lack of clear priorities among the nine objectives also creates challenges for communicating the goals and anticipated outcomes of NOP implementation, both to external audiences (state governments, regional planning bodies, and stakeholders in science and industry) as well as within the federal family itself. Verbal and visual summaries of the nine objectives and connections among them could be very, very helpful. A possible model for the visual summary is attached (Leslie_NOP Implementation Visual.pdf)

In answer to the second question, What is the most effective way to measure outcomes and to detect whether a particular action in the Implementation Plan has achieved its

intended outcome? the articulation of explicit actions and milestone are a step in the right direction. However, there is still a need to articulate the one-to-one or one-to-many links between the nine priority objectives, the actions, milestones and heretofore unspecified indicators of success. It also will be important to be explicit about on what time scales the milestones and associated actions likely will be achieved. While this level of detail may not be appropriate for the Implementation Plan, the current structure seems a bit half-done – it may be better to include less at this stage and save the discussion of milestones, indicators, and timelines to another document.

In addition to tracking success on an action and objective-specific basis, it is critical that implementers and stakeholders are able to get a repeated and integrated snapshot of progress under the NOP. The diverse benefits provided by our coasts, oceans, and Great Lakes could provide such an integrated set of indicators.

As part of a working group sponsored by the US National Science Foundation-initiated National Center for Ecological Analysis and Synthesis working group, I have contributed to the development of an ocean health index based on these benefits, including food provision, recreation, and sense of place. The goal of our framework, which is led by Dr. Karen McLeod of COMPASS (Communication Partnership for Science and the Sea) and Dr. Ben Halpern of University of California at Santa Barbara, is to provide a flexible tool that can be used at multiple scales – from the local to the global – to support marine planning and other ocean decisionmaking, to track progress under the NOP and more targeted efforts, and to raise public awareness about the myriad values provided by healthy oceans. To learn more, please contact Dr. McLeod.

Thank you for your efforts to improve the health of our coasts, oceans, and Great Lakes, including the people who are part of these places.

Sincerely,

Heather Leslie, PhD
Peggy and Henry D. Sharpe Assistant Professor of Environmental Studies and Biology
Dept of Ecology & Evolutionary Biology and Center for Environmental Studies

Enclosed: Three attachments (Sievanen et al 2011; Sievanen et al in press; and Leslie_NOP Implementation Visual)



BROWN

CENTER FOR
ENVIRONMENTAL STUDIES

27 February 2012

Dear Colleagues:

I'm delighted to have the opportunity to comment on the draft implementation plan for the US National Ocean Policy (NOP). The authors did an excellent job capturing cutting edge marine ecosystem science, and I was particularly pleased to read explicit acknowledgement of humans as part of ocean ecosystems throughout the document. This perspective bodes well for the progress of the proposed implementation activities.

In addition, I was encouraged to see repeated mention of the importance of 'sharing the results and lessons learned' from pilot studies, and presumably, earlier state and locally led efforts in the US to implement ecosystem-based management approaches.

For your information, I have attached two recent publications that delve more deeply into what we can learn from earlier EBM efforts, particularly in terms of how and when natural and social science knowledge bases are most effectively combined (Sievanen et al. 2011, Sievanen et al in press).

In answer to the first question – *Does the draft Implementation Plan reflect actions you see are needed to address the nine priorities for the ocean, coasts, and the Great Lakes?* - I say yes. I was impressed by the comprehensive, integrated nature of the draft plan, and the efforts that authors made to link each of the nine priority objectives with specific actions and milestones.

However, it is unclear how these important activities will be prioritized, which seems particularly critical given current fiscal and political constraints. Lack of prioritization within and among the nine priority objectives could pose both substantive and communication challenges. For example, as agencies within the federal family track expenditures relevant to the NOP and the achievement of particular milestones (as stated in Action 4, under the objective 'Coordinate and Support'), redundancy among the objectives and lack of clear prioritization among them will make it difficult to monitor progress. Lack of clear priorities among the nine objectives also creates challenges for communicating the goals and anticipated outcomes of NOP implementation, both to external audiences (state governments, regional planning bodies, and stakeholders in science and industry) as well as within the federal family itself. **Verbal and visual summaries of the nine objectives and connections among them could be very, very helpful. A possible model for the visual summary is attached (Leslie_NOP Implementation Visual.pdf)**

In answer to the second question, *What is the most effective way to measure outcomes and to detect whether a particular action in the Implementation Plan has achieved its intended outcome?* the articulation of explicit actions and milestone are a step in the right direction. However, there is still a need to articulate the one-to-one or one-to-many links between the nine priority objectives, the actions, milestones and heretofore unspecified indicators of success. It also will be important to be explicit about on what time scales the milestones and associated actions likely will be achieved. While this level of detail may not be appropriate for the Implementation Plan, the current structure seems a bit half-done – it may be better to include less at this stage and save the discussion of milestones, indicators, and timelines to another document.

In addition to tracking success on an action and objective-specific basis, it is critical that implementers and stakeholders are able to get a repeated and integrated snapshot of progress under the NOP. The diverse benefits provided by our coasts, oceans, and Great Lakes could provide such an integrated set of indicators.

As part of a working group sponsored by the US National Science Foundation-initiated National Center for Ecological Analysis and Synthesis working group, I have contributed to the development of an ocean health index based on these benefits, including food provision, recreation, and sense of place. The goal of our framework, which is led by Dr. Karen McLeod of COMPASS (Communication Partnership for Science and the Sea) and Dr. Ben Halpern of University of California at Santa Barbara, is to provide a flexible tool that can be used at multiple scales – from the local to the global – to support marine planning and other ocean decisionmaking, to track progress under the NOP and more targeted efforts, and to raise public awareness about the myriad values provided by healthy oceans. To learn more, please contact Dr. McLeod at karen.mcleod@compassonline.org or (541) 737-9822.

Thank you for your efforts to improve the health of our coasts, oceans, and Great Lakes, including the people who are part of these places.

Sincerely,

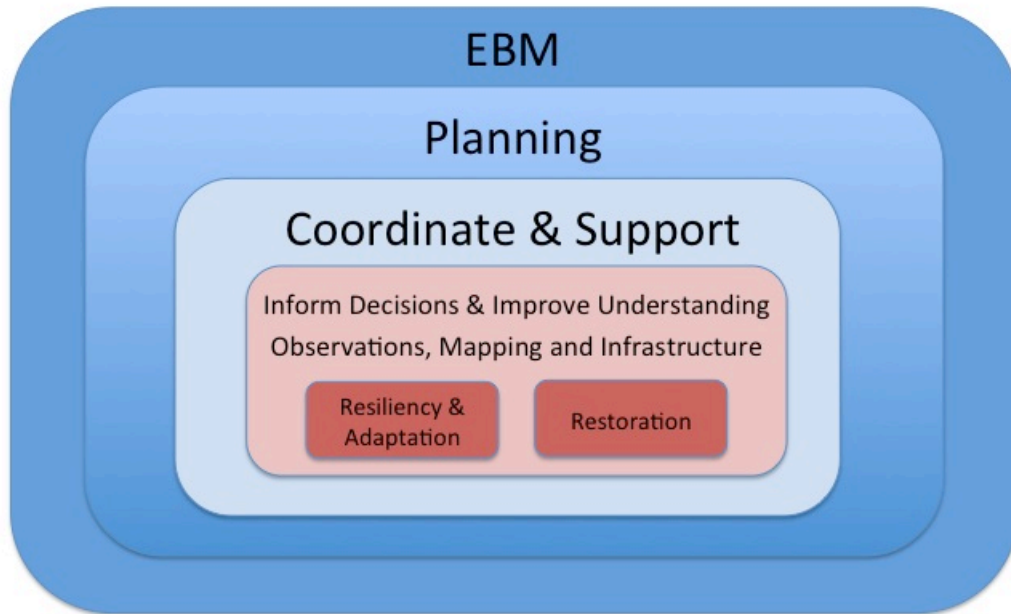


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Enclosed: Three attachments (Sievanen et al 2011; Sievanen et al in press; and Leslie_NOP Implementation Visual)

Seeing the forest through the trees of the NOP Implementation Plan
Heather_Leslie@brown.edu / 2.27.12



(See caption on the next page)

Seeing the forest through the trees of the NOP Implementation Plan
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The nine priority objectives of the US National Ocean Policy (and recently released draft Implementation Plan) are all important. Together, though, they are overwhelming and provide little guidance on how to prioritize actions by federal partners engaged in ocean policy implementation.

I suggest acknowledging the nested nature of these objectives, and capitalizing on that to provide focus for the first stages of implementation of the plan. Ecosystem-based management (EBM) is the over arching framework within which all the other priority objectives – and the ocean policy itself – are situated. The policy called out coastal and marine spatial planning (planning) as a first step in implementing the President’s Executive Order – and separate planning documents and frameworks and listening sessions devoted to this planning are a down payment on that focus. Coastal and marine spatial planning incorporates many of the other objectives, including regional ecosystem protection and restoration and water quality and sustainable practices on land.

Within the planning domain, federal partners must first coordinate and support actions by state and regional partners, particularly the regional planning bodies (RPBs). These efforts already are underway. In order for the RPBs to function they need adequate information on which to develop CMSP, as well as guidance and resources related to public awareness and outreach. For this reason, I nest ‘Inform Decisions’ within this Coordination and Support objective. Finally, the draft implementation plan, and the documents that preceded it, called out Ecosystem Protection and Restoration & Adaptation as critical needs, within the overall ecosystem-based approach. These are logical pilot areas – in place and in theme – for the CMSP activities of the RPBs and supporting federal partners. Changing Conditions in the Arctic and Resilience also was highlighted as an area of special focus; however, it’s not clear how that will play out in practice at this stage.

Linking top-down and bottom-up processes through the new U.S. National Ocean Policy

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Keywords

Ecosystem-based management; marine conservation; marine management; marine policy; marine spatial planning; National Ocean Policy.

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Abstract

Two of the priority objectives in the new U.S. National Ocean Policy are “ecosystem-based management” (EBM) and “coastal and marine spatial planning” (CMSP). Drawing from several studies demonstrating these concepts in practice in the United States and elsewhere, we provide recommendations for those engaged in implementing the new policy. We describe the types of strategic policy actions and management choices currently being used in ecosystem-based management efforts to provide opportunities for learning and problem-solving, enable capacity for action, and enhance coordination among existing initiatives. We show that implementation of this ambitious national policy at local to regional scales—where people are most closely linked with coastal and marine systems—will require close attention to these social, political, and institutional issues, as well as to ecological constraints and objectives.

Introduction

In the face of continued marine pollution, biodiversity loss, coastal development, increasing interest in new ocean uses such as wind and wave energy, and concerns about climate change, a National Ocean Policy was established in the United States on July 19, 2010 to develop a proactive, comprehensive, and participatory framework for ecosystem-based ocean stewardship and management (E. O. 13547). The new U.S. National Ocean Policy provides a much-needed, high-level policy framework that addresses the “failure of governance” (Lubchenco & Sutley 2010) that has either stymied or simply not encouraged comprehensive and deliberate stewardship of the marine environment. It is a top-down directive

that establishes national and regional ocean councils, mandates the use of ecosystem-based approaches including coastal and marine spatial planning, and requires annual reporting of activities and accomplishments by federal agencies. It is a critical step forward, establishing a comprehensive policy where one did not previously exist. Parallel efforts are developing in states such as Massachusetts and California and in the legal structures of other countries, including Canada’s Oceans Act. Given such a strong and complementary set of efforts to reform ocean policy, it is important to learn from these experiences in order to design effective policies and institutional arrangements, and identify implementation strategies to facilitate achieving the goals of the new U.S. National Ocean Policy.

Here we report key observations from multiple studies of the experiences of over 25 marine initiatives that incorporated ecosystem-based management approaches, including, in some cases, coastal and marine spatial planning. Ecosystem-based management (EBM) is an integrated approach to management that considers the entire ecosystem, including humans (Yaffee 1996; McLeod & Leslie 2009). The core goal of EBM is to sustain the long-term capacity of these systems to deliver a range of ecosystem services, with a focus on ecosystem health and human well-being (McLeod *et al.* 2005). EBM differs from current approaches that usually focus on a single species or type of activity. Instead, management plans and strategies incorporate the cumulative impacts of multiple activities on entire ecosystems. Ultimately, EBM requires (1) a common, overarching, ecosystem-level goal, (2) explicit ways of assessing tradeoffs among multiple objectives, and (3) opportunities for learning and adaptation. Coastal and marine spatial planning (CMSP) is a comprehensive, adaptive, integrated, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas. CMSP identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives (Ehler & Douvère 2009; CEQ 2010).

Our studies have used semistructured interviews, document analysis, and in-depth case studies. Many of the examples are drawn from a set of 27 case studies that were the subject of a 2-year investigation. In the interest of brevity, we do not provide details of the case studies here. Extensive narratives of each case and cross-cutting lessons learned for EBM and CMSP will be featured on a website (www.snre.umich.edu/emi/mebm) to be launched in mid 2011. This website will feature the 27 case studies as well as summaries of 30 additional cases. The cases show how various marine EBM projects were initiated, engaged diverse stakeholders, bridged multiple jurisdictions, conducted research and monitoring efforts, implemented CMSP and other ecosystem-based approaches. While all cases inform the insights we share here, we highlight examples from the 15 U.S. cases, given the opportunity to inform policy development in that context.

Linking top-down with bottom-up efforts

Marine EBM initiatives often are based on the planning unit of the “ecosystem” rather than political or administrative units, and thus require coordination between multiple agencies, jurisdictions, and communities. Existing

initiatives have pursued a range of approaches to bridge regulatory and nonregulatory processes, long-standing and nascent initiatives, and multiple levels and scales. This article will not discuss the full range of these linkages. As our aim is to provide lessons regarding how the new national policy can enable and encourage new and existing efforts, here we focus on how existing successful EBM initiatives have combined top-down and bottom-up strategies.

The success of policies emerging from higher levels—like the National Ocean Policy—requires enabling a mix of strategies along a spectrum from formal authority (whether federal, state, or local) to informal motivations to collaborate (often building on a sense of place or an economic or cultural stake). We use the terms “top-down” to mean formal authority and “bottom-up” to mean informal motivation. We do not use the terms in the dichotomous sense of large-scale and government-led versus small-scale and community-led. Indeed, in many of the cases we examined, nonlegally binding cooperative efforts occur on large scales such as the Gulf of Maine Council, and many government-sponsored efforts, such as the National Estuary Program (NEP), have no formal authority and are purely voluntary.

Policy-makers are in a position to provide top-down incentives, legitimacy, and authority that enable and encourage new and existing efforts. Below we highlight how the implementation of the new National Ocean Policy, such as through drafting of the nine strategic action plans (Federal Register Notice 2011-1316, 1/2011)—can capitalize on the lessons learned from top-down and bottom-up strategies pursued to date.

Recommendations for implementing the U.S. National Ocean Policy

First, **Provide Opportunities for Learning and Problem-Solving.** All of our cases demonstrate the simple yet essential role that a “meeting place” plays, both literally and figuratively, in building relationships, enabling learning and problem-solving, and linking different jurisdictions and authorities. Simply put, people work together when they are together. Marine EBM initiatives have adopted a number of institutional innovations that should be promoted including collaborative scientific efforts, advisory councils, and nested institutional arrangements.

Collaborative fact-finding efforts

While policy decisions have traditionally been highly influenced by the advice of experts, the credibility of

scientific expertise has been contested for decades, particularly in fisheries management. In many cases, centralized top-down fisheries management has been blamed for both ecological failures and socioeconomic hardships. Tensions between fishing communities, scientists, and managers are common. In some cases, these tensions result partly from fishers' perceptions that the data produced by scientists do not match their experiential knowledge based on their interactions with the resource. In response to these tensions, a few of the marine EBM efforts are experimenting with collaborative research between fishers and scientists. In Morro Bay (CA), managers are employing what Wilson (1999) has coined the "community science" model of collaboration (Wendt & Starr 2009). This model recognizes that fishers and scientists will hold competing constructions of the resource base but that collaboration can still happen through open communication, participation, and collaborative fact-finding efforts. Using a fully collaborative approach (NRC 2004), fishers are involved in all phases of the research process—framing of the issues and concerns, forming research questions and hypotheses, and interpreting the data. In the Northwest Straits (WA), scientists and citizens are working together in innovative ways to better understand the Puget Sound ecosystem and to identify community-level restoration projects. While these collaborations are not instant solutions to tensions between fishing communities, scientists, and managers, the extent to which those affected by decisions participate in the generation of knowledge and decision-making processes can help to develop trust among these actors and to strengthen legitimacy of the process and increase compliance (Wondolleck & Yaffee 2000; Izeta & Wilson 2006; Feeney *et al.* 2010), particularly if those affected see new rules as reasonable within the local context (Jentoft 2000).

Advisory councils

Community representatives, user groups, elected officials, and other agency representatives should collaborate to set objectives at an early stage. Standing Committees or Advisory Councils have served an important function in a number of our cases, bringing a diverse spectrum of parties together on a regular basis to assess and discuss issues, resolve conflicts, monitor resources, and provide advice. For example, the first attempt in 1999 by the California Department of Fish and Game to implement the Marine Life Protection Act (MLPA) to improve the marine protected area (MPA) network along the California coast conformed to a top-down approach. The public resisted these efforts. (Similar reactions have occurred to top-down impositions of MPAs in the North-

west Straits, Florida, and Delaware). It was not until a multistakeholder collaborative process was used in the third attempt to implement the MLPA that MPAs were established along the California coast. Incorporating a range of interests early can ensure that conservation priorities set at higher levels are not at odds with local priorities and preexisting initiatives.

Nested institutional arrangements

The concept of "nesting" recognizes that there will be different levels of decision-making from top-down legal frameworks that regulate and constrain activities to bottom-up day-to-day rules controlling resource management (Ostrom 1990). The current institutional structure regulating coastal and ocean-related activities in the United States often does not match the scales at which key ecological, social, and economic dynamics operate (Wilson 2006; Leslie & McLeod 2007). While ocean ecosystems operate at multiple scales, human activities, like fisheries and energy development, are often managed at a single, geographically broad scale. For example, the coast-wide management scale of the New England and West Coast groundfish fisheries does not match the finer scale ecological, social, and economic heterogeneity of these coupled human and natural systems (Wilson 2006; Gunderson *et al.* 2008; Francis *et al.* 2009). While many recognize the need for multiscale institutions that mirror the spatial organizations of ecosystem, as well as human patterns of use, this is difficult in practice. Several of the marine EBM efforts, such as Morro Bay (CA) and Port Orford (OR), are creating fine-scale knowledge better adapted to ecological and social scales of activity, as communities become more involved in scientific assessment and monitoring of local resources (Francis *et al.* 2009; Wendt & Starr 2009). In the northeast U.S., the Gulf of Maine Council brings together representatives of government, resource user groups, science and civil society to maintain and enhance environmental quality in the Gulf to allow for sustainable resource use by existing and future generations (GoMC 2011). Although it has no regulatory authority, the Council's ability to convene representatives from three U.S. states and two Canadian provinces and connect with more local scale initiatives has enabled development of common goals and collaborative projects. This kind of nested approach, with associated high user participation and integration with larger-scale research and management activities, can help to match the spatial scales of biological populations, ecological communities, and human communities for particular management issues. The regional planning bodies that will be convened under the new national policy could provide an opportunity to better coordinate and support similar multiscale management efforts.

Second, **Encourage Capacity for Action.** In many ecosystem-based approaches, planning occurs at large spatial scales that involve many organizations and agencies. Because action occurs by individuals and organizations in specific places, the crux of these approaches lies in the juncture when planning ends and action begins (Dietz *et al.* 2003; Agardy 2005; Crowder *et al.* 2006; Young *et al.* 2007). Incentives for action include economic and noneconomic approaches such as federal restoration programs, payments for ecosystem services, and learning networks.

Economic approaches

In some cases, conservation and management priorities set at higher levels are ambitious with no financial support. The provision of top-down incentives in the form of funding for ecosystem-scale activities can motivate organizations and individuals to take action. Existing programs, such as the NEP and federal restoration programs, and emerging opportunities, such as payments for ecosystem services and ocean energy and carbon taxes, can help to underwrite development of a shared information base, create small successes that motivate action, and enable the multiparty communication and negotiation that are at the heart of these processes. For example, in Morro Bay, California, new monetary resources and emphasis on the watershed scale provided by the NEP facilitated the development of a local network composed of local government officials, private citizens, and representatives from other federal agencies, academic institutions, industry, and estuary user-groups who worked together to identify problems in the estuary, develop specific actions to address those problems, and create and implement a formal management plan to restore and protect the estuary.

Social and institutional approaches

On-the-ground progress is facilitated by a range of factors other than funding. Building on a sense of crisis or a shared commitment to a specific place was often powerful. For example, in response to increased top-down restrictions that contributed to the loss of fisheries-related employment, the remote fishing community of Port Orford, Oregon, realized that local livelihoods could only be sustained through management activities that reflected ecosystem dynamics. Also, agency managers from New England states and Canadian provinces in the Gulf of Maine Council recognized their shared concern and responsibility for an increasingly stressed Gulf of Maine ecosystem and voluntarily organized to begin advancing EBM objectives there. Additionally, the presence of ded-

icated, charismatic champions of EBM in the San Juan Islands of Washington State played a central role in catalyzing initiatives. Political will was one of the most significant factors facilitating action. At times, high-level officials' endorsement of marine EBM was critical to push projects forward; Florida Governor Jeb Bush's leadership resurrected a floundering Gulf of Mexico marine EBM initiative, drawing the engagement and sustained commitment of his counterparts in the four other Gulf States. In contrast, bottom-up action was stymied in other cases by opposition or inattention by leaders.

It also helps to have a cadre of agency individuals and stakeholder groups trained both in collaboration and the science underlying ecosystem-scale action, and able to facilitate complex decision making processes. Trainings and convenings can provide a basis for development of relationships and trust that are critical to forward progress. Additionally, they can build critical networks that can help sustain marine EBM efforts. In interviews, many managers expressed that they felt isolated and unaware of what others were experiencing and accomplishing. "We felt very alone," commented one manager; "We live in a remote area on the coast, in a little town, and we need to know other people are doing this and to learn from them." The West Coast EBM Network provides an important support function for its six partner groups. Network participants repeatedly expressed that the collaboration, information-sharing, and support that the Network provides has been a major asset to their own EBM and community-based projects.

Third, **Build on Current Initiatives.** By embracing many pathways toward marine EBM, an adaptive and evidence-based process can be used to move the science and practice of marine EBM forward. As the U.S. CMSP framework (as described in CEQ 2010) is further developed and implemented by the Obama administration, particular effort should be made to encourage innovation and regional differentiation.

There is an impressive array of marine EBM-related activity occurring throughout the United States today; this reality begs both caution and encouragement. Caution is warranted so as not to take the wind out of the sails of these existing initiatives. In a number of our cases, managers mentioned the fatigue, diminishing focus and accomplishment and, at times, demoralization when their efforts were "transformed" by a new administration's priorities and directives. In Morro Bay, some managers of the existing NEP process initially perceived the EBM project as a redirection of their efforts rather than a productive integration, which created a somewhat rocky start for the project. This was later smoothed out through further collaboration, communication, and increased recognition of shared interests. New governors'

successive initiatives can both elevate and invigorate marine EBM activities but they can also consume time, energy, resources and, sometimes, enthusiasm as those involved regroup, reorganize, and begin anew. For example, in Washington State the salmon recovery program was replaced by the “Shared Strategy” which was then replaced by the “Puget Sound Partnership.” One manager, a central player in several Puget Sound initiatives, retired early because he could not endure yet another organizational transition. Similarly, the Gulf of Maine Council is beginning to feel the effects of the Northeast Regional Ocean Council (NROC) as its U.S. members now have less time and fewer resources to participate in both initiatives. This issue of organizational fatigue and overlap is not trivial and decision makers will need to confront it as the regional planning bodies form in the coming months.

The take-away lesson of this article is that there are numerous initiatives to link to and build upon, but care needs to be taken to ensure that doing so enhances or complements the efforts, and does not undermine them. Decision makers and stakeholders from the local to federal levels are moving quickly to implement the new National Ocean Policy, and coastal and marine spatial planning and other ecosystem-based approaches are central to these efforts. These principles reinforce the need for new research and synthesis by biophysical and social scientists to better understand social–ecological linkages; collection of information at finer spatial scales; and multiscale institutions that are cognizant of variable social, ecological, and economic scales. We have described the types of innovations already in use by ecosystem-based initiatives to achieve similar aims in the United States. Encouraging learning networks, advisory councils, and institutional nesting can facilitate social learning, provide feedback regarding pertinent federal legislation, and sustain these efforts.

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Challenges to Interdisciplinary Research in Ecosystem-Based Management

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Abstract: *Despite its necessity, integration of natural and social sciences to inform conservation efforts has been difficult. We examined the views of 63 scientists and practitioners involved in marine management in Mexico's Gulf of California, the central California coast, and the western Pacific on the challenges associated with integrating social science into research efforts that support ecosystem-based management (EBM) in marine systems. We used a semistructured interview format. Questions focused on how EBM was developed for these sites and how contextual factors affected its development and outcomes. Many of the traditional challenges linked with interdisciplinary research were present in the EBM projects we studied. However, a number of contextual elements affected how mandates to include social science were interpreted and implemented as well as how easily challenges could be addressed. For example, a common challenge is that conservation organizations are often dominated by natural scientists, but for some projects it was easier to address this imbalance than for others. We also found that the management and institutional histories that came before EBM in specific cases were important features of local context. Because challenges differed among cases, we believe resolving challenges to interdisciplinary research should be context specific.*

Keywords: collaboration, marine conservation, natural resource management, social science

Retos para la Investigación Interdisciplinaria en el Manejo Basado en Ecosistemas

Resumen: *A pesar de que es necesaria, la integración de las ciencias naturales y sociales para informar esfuerzos de conservación ha sido difícil. Examinamos los puntos de vista de 63 científicos y practicantes involucrados en el manejo marino en el Golfo de California en México, la costa central de California y el Pacífico occidental sobre los retos asociados con la integración de la ciencia social en los esfuerzos de investigación que sostienen el manejo basado en ecosistemas (MBE) en sistemas marinos. Utilizamos un formato de encuesta semiestructurada. Las preguntas se centraron en como se desarrolló el MBE en esos sitios y como afectaron su desarrollo y resultados los factores contextuales. Muchos de los retos tradicionales relacionados con la investigación interdisciplinaria se presentaron en los proyectos MBE que estudiamos. Sin embargo, un número de elementos contextuales afectó la manera en que se interpretaron e implementaron los mandatos para incluir la ciencia social y la facilidad con que se abordaron los retos. Por ejemplo, un reto común es que las organizaciones de conservación a menudo están dominadas por científicos naturales, pero para algunos proyectos fue más fácil abordar este desbalance que para otros. También encontramos que las historias de manejo e institucionales previas al MBE en casos específicos fueron aspectos importantes del contexto local. Debido a que los retos fueron diferentes en todos los casos, consideramos que la resolución de retos para la investigación interdisciplinaria debe ser específica para cada contexto.*

Palabras Clave: ciencia social, colaboración, conservación marina, manejo de recursos naturales

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Introduction

The need to pursue interdisciplinary approaches to marine management, including conservation, is recognized (Hilborn & Ludwig 1993; Christie et al. 2003; Mascia et al. 2003). One contemporary framework for management—ecosystem-based management (EBM)—reflects this recognition and specifies that the “the entire ecosystem, including humans” be part of the management process (McLeod et al. 2005). We explored what “including humans” means, what research needs arise as a result of such mandates, and, what kinds of challenges there are to including humans in EBM. We examined six marine EBM projects in four different geographic areas: Fiji, Palau, Mexico, and California. Although humans can be included in EBM in a number of ways, we focused on the integration of social science into research projects that support EBM.

Our research is part of a more comprehensive project exploring how marine EBM theory translates into practice. Ecosystem approaches have a history in terrestrial systems (e.g., Yaffee et al. 1996), but have been applied only recently to marine systems. Ecosystem-based management (sensu McLeod et al. 2005) acknowledges the central role of humans in ecosystems. Also, EBM proponents recognize that a wide range of knowledge bases are needed to inform management of human interactions with nonhuman components of ecosystems (McLeod & Leslie 2009). We focused on the challenges arising from the integration of social and natural science in EBM efforts. We define social science as any of the academic disciplines that study humans and their social behavior, including anthropology, economics, geography, psychology, political science, and sociology. Interdisciplinary efforts meld epistemologies, skills, and methods across disciplines (Klein 1990).

There are a number of common challenges associated with interdisciplinary research and practice. However, there are also challenges specific to project and location which add complexity to the general obstacles to interdisciplinary research. Because EBM is becoming a dominant approach to marine management (e.g., Ruckelshaus et al. 2008; McLeod & Leslie 2009; CEQ 2010), a better understanding of how the research challenge of including humans varies as a function of context may enable more effective policies and outcomes. Later we review the challenges associated with integrating social science into research efforts supporting EBM and describe the more comprehensive project of which our research is a part. We organized our results around different categories of challenges experienced in each of the six projects and detail how these challenges manifested themselves and how they need to be understood as part of each particular project.

Challenges of Interdisciplinary Research

Articles by social scientists on interdisciplinary research to inform conservation tend to describe either the ideal contribution of social science and humanities to conservation (Endter-Wada et al. 1998; Christie et al. 2003; Brosius 2006) or the obstacles to integrating social and natural science in conservation (Pickett 1999; Campbell 2005; MacMynowski 2007). Few authors present empirical research on barriers to interdisciplinary research (although see Fox et al. 2006; Welch-Devine & Campbell 2010).

Challenges identified in this literature are structural and conceptual in nature. Structural barriers include poor and infrequent communication among disciplines; lack of institutional incentives for interdisciplinary research; spatial and temporal incompatibility of natural and social scientific data; the practice of involving few social scientists in interdisciplinary projects late in the process; and lack of clear frameworks for integrating social and natural sciences (Endter-Wada et al. 1998; Christie et al. 2003; Campbell 2005).

Conceptual barriers include the different perspectives on conservation held by social and natural scientists; expectations by natural scientists about the results of social science research; a tendency by natural scientists to see social scientists primarily as educators, people who can remove political obstacles to change, or community facilitators, and outreach coordinators (as opposed to scholarly researchers); the social context in which biophysical science has developed (with humans seen as separate from nature); power dynamics in interdisciplinary teams; and a lack of shared understanding about what is meant by including humans in EBM (Endter-Wada et al. 1998; Campbell 2005; MacMynowski 2007).

Much has been written about these challenges, and there have been a number of solutions proposed. For example, Eigenbrode et al. (2007) developed a “toolbox for philosophical dialogue,” and Boulton et al. (2005) promoted an “explicit knowledge” framework to guide the work of interdisciplinary teams. In addition, frameworks are being developed to support the integration of different types of data (e.g., Ostrom 2009) and to clarify links between human and natural systems (e.g., McLeod & Leslie 2009). In marine systems, in addition to EBM, contemporary management frameworks include integrated coastal management (ICM), which is designed to overcome the fragmentation in sectoral management approaches (Cicin-Sain & Knecht 1998), and community-based management (Western & Wright 1994) and co-management (Olsson et al. 2004) both of which stress active participation of coastal communities. Although our focus here is on EBM, many contemporary management approaches rely to some extent on interdisciplinary research. We believe that the challenges of

interdisciplinary research need to be considered in light of existing governance and management frameworks.

Methods

Our study is part of a more comprehensive research project that is examining how social, institutional, and ecological context influences the transition of EBM from theory to practice. In 2004, seven projects were launched to “demonstrate EBM on the ground” in California (two sites), Fiji, Indonesia, Mexico (two sites), and Palau (Packard Foundation 2007). The goal of the projects was to “demonstrate EBM models of success by combining both natural and social scientific understanding of EBM and conservation action” with the expectation that “investments in science will be fully integrated into active efforts to reform policies and management practices” (Packard Foundation 2007).

Between July 2009 and April 2010, we interviewed 120 scientists and practitioners at six of the seven sites. The Indonesia project was not included due to logistical constraints. Because not all interviewees were able to address the role of social science in the projects, we based our analyses on 63 semistructured interviews in which social science was discussed. These interviews occurred in 3–4 weeks of fieldwork in each of the six sites. As part of the more comprehensive research project, interviewees were aware of activities at the other project sites and sometimes explicitly compared their project to others during interviews. The average length of an interview was 1 h. Interviews for all sites except Mexico were conducted in English.

We made audio recordings of all interviews. We transcribed the interviews and used the qualitative-data analysis software NVIVO 8 to code the responses. Coding and categorization of responses arose from the responses themselves (Glaser & Strauss 1967; Glaser 1992), rather than from an a priori coding scheme.

The interviews consisted of 27 open-ended questions. Here, we studied the responses to the following four interview questions: What kind of information is needed to support EBM here? Is that information being collected? How are you using the social and ecological data that you are collecting? and What is the definition of EBM that you are using here? Part of each project’s mandate from the funders was to include social science. Some discussion also arose during interviews about the challenges to implementing EBM. We analyzed not only interview data, but also project documents to determine goals of, motivations behind, and the role of social science in the projects.

The nature of in-depth interviewing is such that conversations evolve in multiple and unpredictable ways. Not all respondents covered all topics, and our quantification of results (i.e., specifying how many respondents provided particular answers) should be taken as broad

Table 1. Information on conservation professionals who participated in marine management and were interviewed to determine their views on ecosystem-based management.

<i>Interviewee locations and characteristics</i>	<i>Number</i>	<i>Total</i>
Location		
Palau	13	63
Fiji	12	
Elkhorn Slough, California	12	
Morro Bay, California	11	
Gulf of California, Mexico (shrimp fisheries)	8	
Upper Gulf of California, Mexico (artisanal fisheries)	7	
Affiliation		
nongovernmental	29	63
government	18	
university	13	
private	3	
Scientist area of expertise		
science	35	63
policy	9	
science and policy*	10	
neither science nor policy	9	
Type of science		
natural	36	63
none	18	
social	9	

*Those included in this category were mostly employees of nongovernmental organizations not directly involved in either policy making or scientific research.

rather than exact measures of opinion. For example, that five interviewees agree on something does not imply all others did not agree. For some, the topic might not have been addressed at all, or interviewees may have discussed both sides of an issue.

To preserve their anonymity, we refer to interviewees by the unique number we assigned to each and by the project with which they were affiliated. We abbreviated projects as follows: Elkhorn Slough, California, CA-ES; Morro Bay, California, CA-MB; Fiji, FI; Mexico shrimp fisheries, MX-SF; Mexico artisanal fisheries, MX-AF; and Palau, PA (Table 1).

Results

Project Objectives and Role of Social Science

The motivating factors, primary goals, and role of the social sciences varied across projects (Table 2). The objectives of social scientists associated with projects in Elkhorn Slough and the shrimp fisheries in Mexico were

Table 2. Ecosystem-based management projects in which interviewees participated.

<i>Location</i>	<i>Motivation*</i>	<i>Primary objective</i>	<i>Role of social science</i>
Elkhorn Slough, California	erosion of salt marsh	understand links between hydrological, ecosystem, and social and economic factors to inform restoration strategies	evaluate potential economic effects of restoration alternatives and the legal and political constraints of each
Morro Bay, California	declines in water quality, function of coastal ecosystem, and fisheries	determine connections among biophysical, social, and economic systems to improve ecosystem and coastal community well-being	determine connections between ecological health and economic health
Upper Gulf of California, Mexico (artisanal fisheries)	decreased condition of coral reef	build local scientific and management capacity related to small-scale fisheries	social network analysis and institutional analysis
Gulf of California, Mexico (shrimp fisheries)	decline of ecosystem function	develop scenarios of alternative management approaches for the shrimp fishery that includes both ecological and economic effects	evaluate potential economic effects of alternative fisheries strategies
Fiji	decreased status of coral reefs	generate scientifically informed designs for marine and terrestrial protected area networks	determine perceptions of, compliance with, and perceived impacts of protected areas on human communities
Palau	coral and seagrass smothering	investigate links between watershed discharge, land and resource use, and decreased status of coral reefs	identify decision makers to guide project communication

*While undesirable environmental changes motivated all of the projects, each articulated both conservation and human well-being objectives, to varying degrees. For example, projects in Fiji, Mexico, and Palau linked coral reef declines to fisheries health. In Morro Bay restoring healthy fisheries was an objective, and in Elkhorn Slough there were efforts to link slough function with the economic stability of nearby communities. There were efforts in the California projects to develop a set of economic indicators of coastal ecosystem function to measure effects of environmental change on associated coastal regions and outcomes of management and restoration. In the other projects the objective was mainly to develop indicators of ecological functioning (forests and coral reefs in Palau, shrimp stocks in Mexico, marsh and slough in Elkhorn Slough, and the bay in Morro Bay).

to determine the potential economic effects of different policy options and to present this information to decision makers. Policy analysts researched the constraints to implementing particular policy options. In Fiji social scientists gathered social and economic data that were used to reconfigure a protected area network. In the Morro Bay and Palau projects, the goal was to assess the linkages between ecosystem structure and functioning, the benefits provided to humans by functioning ecosystems (i.e., ecosystem services), and human well being. Only in the artisanal fisheries in Mexico did social scientists examine theoretical questions. They examined social networks among fishers and the social institutions within which fishing decisions were being made. Some projects did not fully accomplish their goals. For example, implementers in Palau originally wanted social scientists to determine linkages between ecosystem function and economic stability as well as identify decision makers for communication purposes; only the latter was accomplished (Table 2).

Challenges to Integrating Social Science

There were both conceptual and structural challenges to integrating social science into research projects supporting EBM, as identified by interviewees or in project documents (Table 3). Structural challenges are those rooted in the institutional, political, and cultural contexts in which the projects are being implemented. Conceptual challenges emerged from divergent worldviews among project participants.

Conceptual Challenges

Most interviewees agree that EBM includes social and economic, in addition to ecological, elements. However, there was difference of opinion and sometimes confusion about the knowledge needed to implement EBM. In theory, EBM requires the use of inferences from natural and social sciences and, where applicable, traditional and local knowledge. Interviewees, however, often stressed the distance between social and natural sciences. In the Elkhorn Slough project, there was a communication gap

Table 3. Challenges to integrating social and natural science, as specified by interviewed management professionals at six locations.

Challenges	Locations ^a
Conceptual	
confusion over meaning and role of social science	all six sites
different definitions of ecosystem management	CA-ES, FI, MX-AF, MX-SF
different expectations of natural and social scientists of social and economic research results	CA-ES, FI, MX-SF
competing integrative frameworks (ICM, CBM, EBM) ^b	FI
communication challenges among disciplines	CA-ES
disagreement over utility of ecosystem-services concept	CA-ES
Structural	
lack of social scientists on staff	CA-ES, CA-MB, MX-SF, PA
social scientists chosen through convenience	CA-ES, PA
little interdisciplinary training research in project	FI, MX-AF, MX-SF
compartmentalized	CA-ES, CA-MB, PA
lack of framework for integration of social and natural science data	CA-ES, CA-MB, MX-AF
data limitations	CA-ES, PA

^aAbbreviations: CA-ES, Elkhorn Slough, California; CA-MB, Morro Bay, California; FI, Fiji; MX-SF, shrimp fisheries, Mexico; MX-AF, artisanal fisheries, Mexico; PA, Palau.

^bAbbreviations: ICM, integrated coastal management (designed to overcome the fragmentation in sectoral management approaches; CBM, community-based management (stresses the active participation of communities in natural resource management); EBM, ecosystem-based management (goal of maintaining an ecosystem in a condition that allows it to provide the services humans want and need).

between social and natural scientists. One respondent (CA-ES1) said, “I hear questions like, ‘What are the social science and economics people doing? Is that a good use of the money?’ But when the reports from the people on the social side come out, the technical people say ‘that’s not my forte, I don’t want to review that’ . . . the two sides aren’t communicating well.” Another respondent (CA-ES2) said, “It was like we were in different worlds and (the social scientists) never really (understood) what we were doing and we never (understood) what they were doing.” Respondent MX-AF1 said, “In Mexico, when you talk about EBM, humans tend to be left out of the picture completely. So that idea is not shared in the region; it’s either one or the other.” Respondent MX-AF2 said, “In general people who do EBM are oriented toward the natural sciences. In California I think this is the case, but in Mexico, this is even more exaggerated.”

In some cases, interviewees stressed that in marine systems, EBM places more emphasis on humans and understanding humans’ roles in the ecosystem than do other

forms of management. Respondent CA-MB1 said, “It’s almost a social definition—talk to all the people involved and bring scientists on board that are open enough to talk to the stakeholders.” For example, the Morro Bay project included collaboration between scientists and fishers to collect fisheries data at finer resolution than existing, centralized, fisheries-management data.

In contrast, 5 of the 12 interviewees involved in marine management in Fiji thought EBM was guided more by natural science than by social and economic aspects central to current community-based management and ICM approaches that are in place. For example, respondent FI1 said,

Calling it EBM makes it sound more biological and less human—the project in Fiji was more focused on the ecological aspects, had stronger ecologically oriented personnel, and more money spent on that than on social economic aspects, unlike ICM which has equal inputs of cultural, ecological, social, and economic considerations in projects.

Among the 30 interviewees who clearly articulated the ideal role of a social scientist, 80% described the ideal social scientist as someone who can produce social and economic information that can be used to inspire behavioral change. Seventy percent did not distinguish between the scholarship associated with producing such information versus facilitating behavioral change through education or public participation. Of those who did highlight scholarship, 15 emphasized the role of economics in persuading decision makers and others to take action. Respondent CA-MB2 said, “I think in some cases social science research might be more valuable than technical information about nutrient cycling. I think research on economic indicators can be critical to getting politicians and decision makers to help us protect the bay.” Similarly, PA1 explained,

We need more cost-benefit analyses in Palau. . . If you put a dollar sign by how much water is being wasted, their eyes light up. . . I don’t understand why we can’t simply say, we’re going to run out of water in 10 years if you leave your hose on all the time. But that dollar sign is a big deal. And not just for Palau, people in loaning agencies want to see that too.

Interviewees associated with projects in Fiji and Mexico also desired social science research that would stimulate behavioral change. Respondent FI2 explained, “We used our research on the shifting baseline phenomenon to introduce the concept of conservation and motivate the community to manage their resources. The older people were aware that fish size had decreased over time, but the younger generation was not.” Respondent FI3 expressed optimism about the results of future

social science research: “What I’m hoping is that when we have the data from all 20 catchments, there will be a strong correlation between ecological health and human health.” Respondent MX-SF1 said, “It would be positive if there was an independent study that could say that the government is implementing solutions that address social problems but not environmental problems.” The latter two statements reflect an assumption that results of social science research can be used to advocate for a particular behavioral change or policy. In only one case did interviewees reflect on the possibility that social science research might yield results that do not directly support their efforts.

In Fiji there were different views regarding the relation among natural science, social science, and traditional knowledge in decision making. Three interviewees stated that social criteria should guide the decision making process, whereas three others stated that natural science should play a guiding role. These disagreements are rooted in different marine-management frameworks currently in use in Fiji. In the CBM approach, “social and other community criteria, rather than explicitly ecological factors, guide [marine managed area] selection” (respondent FI4). In contrast, the ecosystem-based approach in Fiji applied ecological criteria first and then integrated social and economic information and traditional knowledge. Respondent FI5 explained, “A lot of marine managed areas were established based on what communities thought was important. EBM takes a scientific approach to emphasize that without biodiversity conservation, communities won’t achieve food security.”

Interestingly, the ecosystem services concept (sensu Daily et al. 2009) was not embraced by all interviewees. In Elkhorn Slough, although respondent CA-ES1 explained that it is a “mystery” why, despite the early inclusion of social scientists in the project, “they haven’t been central players in the process so far,” others expressed an aversion to the ecosystem-services approach the social scientists adopted, which was interpreted as managing primarily for human uses. When asked whether this aversion was shared by others in the project, respondent CA-ES2 clarified, “(the social scientists) found that there was importance to thinking about ecosystem services but we never found a way to incorporate what they were doing into the larger process. . . it would have been a huge outreach tool if we could tell people that the reason we need good water quality is because the fish they eat depend on it.” However, because the slough is already managed for conservation, respondent CA-ES2 saw the quantification of ecosystem services as a step backward. This respondent was concerned that if ecosystem benefits were described monetarily, industrial uses might be favored over less overtly lucrative values, such as aesthetics.

Structural Challenges

Historically natural scientists have staffed institutions that produce knowledge to achieve conservation objectives, and this is largely true of the projects we studied. Thus, although the goal to conduct social science research existed at the beginning of the EBM projects in Mexico, Palau, and California, these goals were often unrealized due to the inability to recruit social scientists. In the Mexico shrimp fisheries, 2 years after the project started, it was still unclear who was going to carry out the social and economic components of the project. Respondent CA-ES3 stated, “We’d like to figure out how our decisions will affect people who use the slough, but it’s a challenge because we don’t have that expertise right here on staff. We need to seek it out.” However, it was easier to recruit social scientists to projects in Elkhorn Slough than in Palau. In Palau, one of the original project goals was to inform land-use policy by integrating economics and ecology. However, this integration did not occur because “it (was) really challenging to find someone with [economic] expertise willing to spend time in Palau” (respondent PA2). The main social science research in Palau was limited to tailoring an outreach plan, to determine “the best way to communicate a particular thing” (respondent PA3). Only in Fiji was there a staff dedicated to social and economic surveys and managing alternative livelihood programs.

Although social scientists were easier to engage in projects in California and Mexico than in Palau, the integration of social science into research supporting EBM remained difficult. In California and Mexico, social and natural scientific research was compartmentalized. Respondent CA-ES5 explained, “Our meetings don’t focus on social science topics so if [the social scientists] did come I don’t know if they would be bored or if they would be engaged.” Similarly in Morro Bay, respondent MB2 said, “The 5 projects seemed to be happening independently of each other. We came up with a conceptual model, but in practice we didn’t integrate the work we did. . . This is common in academic situations where researchers come together to write a proposal, but then return to their institutions. I wasn’t there to attend the meetings.” This lack of interdisciplinary integration was described for Palau as well. A challenge in Palau was how to operationalize EBM. This project sought a framework so that they could “have more than a collection of various research projects” (respondent PA2).

In other cases, difficulties integrating social and natural science data arose despite definition of a common conceptual framework at the beginning. Respondent CA-ES3 explained,

There is no way to integrate the multidisciplinary information. I don’t think anyone has solved this in EBM. We

incorporated information from the other reports in our policy and economics report – but it was difficult for the chemistry, biology, ecology reports to link to the policy and economic forums . . . EBM is supposed to be interdisciplinary, but it's not there yet.

The artisanal fisheries project in Mexico used the institutional analysis and development framework, a systematic approach for analyzing institutional arrangements, to guide research (after Ostrom 2005). However, coordinators found this approach did not identify clear objectives for policy and management. Respondent MX-AF3 elaborated, “It's one thing to understand the ecosystem, including biological and social connectivity, but how do you combine these for management—which rules are you going to put in place?”

At least 15 interviewees ascribed the lack of interdisciplinary frameworks to the compartmentalization of disciplines in the educational systems in which researchers are trained. Respondent F16 said,

Somehow, scientists initially thought ‘this is a biological problem, let's study the biology.’ Then they had to start from zero and bring in social scientists, which actually is almost as bad as only including biologists. . . there's another compartment that we've got to worry about. . . Well actually, it's the big picture that we really have to worry about, but unfortunately we still don't produce big-picture people at universities so that's going to take a long time.

This compartmentalization extends to research and management cultures as well. Respondent MX-AF4 explained, “In Mexico, there aren't many people working on social issues associated with management.” Respondent MX-AF2 stated, “Either you're an economist or a biologist here. The research culture has never considered interdisciplinary questions. It takes a lot of resources to even get economists and biologists together—much less integrate social, economic and cultural questions. . .” In Fiji, socially and environmentally oriented management institutions traditionally have not interacted. Respondent F13 said, “. . .you have a Ministry of Forestry, a Ministry of Fisheries, a Ministry of Health; they're very discrete. I think that a much better working example would be something that thought about all of those things simultaneously to see how they affect one another.”

Social scientists thought data restricted what they were able to accomplish. Respondent PA3 explained that in Palau, “We're pretty weak on the social data when it comes to GIS layers.” Similarly, the lack of baseline data posed a challenge in Elkhorn Slough. Respondent CA-ES6 said, “We didn't even have an understanding of what people were doing in the slough.” Also, predicting the economic effects of different policy options required natural and social scientific data not yet available. One social scientist explained,

We weren't able to predict the economic impacts of restoration alternatives in Elkhorn Slough accurately, but we were able to say these are the uses and these areas require further study. We came up with [estimates of] their possible impacts. The ecological science wasn't advanced enough to determine, for example, how otter viewing contributes to the economy (CA-ES6).

Discussion

Many of the traditional challenges associated with interdisciplinary research were present in the EBM projects we examined, including integrating social and natural scientific data, confusion and sometimes disagreement within projects about the role of social sciences, and the tendency for natural scientists to expect that results of social science research could be used to support conservation or inform policy makers (e.g., Endter-Wada et al. 1998; Campbell 2005). These challenges are partly explained by other common criticisms of applying interdisciplinary research to conservation: that conservation organizations are dominated by natural scientists and that social science is often added on to a predefined research agenda (Christie et al. 2003). In all the projects, natural scientists historically staffed the organizations pursuing EBM. Thus, natural scientists led these projects, there was more funding for natural than social sciences, and there were more publications that resulted from the six projects in natural than in social scientific journals. Social scientists were generally not involved in framing the research objectives, often were hired as contractors, and were constrained by lack of baseline data.

This emphasis on natural science was reflected in the way interviewees talked about the different roles of natural and social sciences. The dominance of natural science was not lost on many of the social scientists involved in the projects. Although we cannot fully present how they spoke about natural science, it was described as integral to understanding the system. In contrast, social science was mainly sought to help change human and institutional behavior. Some perceive a need to better understand what drives human behavior (e.g., Endter-Wada et al. 1998; McSweeney 2005), but there was little perception of this need by natural scientists in our interviews.

Although our results are consistent with the structural and conceptual challenges associated with interdisciplinary research noted in the literature, many of these challenges were specific to the project and its location. The dominance of natural scientists in these projects could be addressed more easily in some projects than others. In Elkhorn Slough, for example, local social scientists were recruited, whereas in Palau, social scientists were not locally available.

Interviewees associated with the Elkhorn Slough project spent more time than those associated with the other projects explaining the challenges of integrating social science into their project. Earlier, program evalu-

ators had criticized all of the EBM projects for not adequately incorporating social science (Rowe & Hersher 2009). Respondent CA-ES1, who identified lack of communication between social and natural scientists as a problem, commented that he or she did not know whether engaging social scientists would ultimately result in better management. This perception could be due in part to social scientists being brought in before the natural and social scientific data required for their analyses had been collected. One social scientist (CA-ES6) noted, "We learned that science needs to be done before the policy and economics gets done... starting at the same time doesn't work well because we didn't have all of the information we needed for our piece to be informative." However, several interviewees explained that social science at Elkhorn Slough may be less important than natural science because the project did not seek to balance development with conservation. The slough has been managed as a natural area for 100 years. Respondent CA-ES4 said, "Economics in Elkhorn Slough is not a consideration. It's not as if our project is going to affect someone else's bottom line." Respondent CA-ES2 contrasted the slough with a coastal system in Indonesia, "where you have to convince people that their fishing take would increase or that their house would be safer if you don't cut down the mangroves."

The views of Elkhorn Slough interviewees reflect two issues. First, for this project, including social science was seen as a project requirement, rather than something project personnel believed was important. The inclusion of social science in interdisciplinary research will likely be difficult in such circumstances. Second, the management and institutional histories that have come before EBM in specific sites are important features of the local context. The importance of what has come before is further illustrated in the case of Fiji, where EBM was perceived by some as less community based than preexisting management regimes. Fiji is globally recognized for its implementation of successful community-based management. Community-based management defines the roles of science and society on the basis of participatory theories and methods (e.g., Chambers 1994; Pretty 1995), whereas EBM can encompass a variety of science-society interactions (McLeod & Leslie 2009). Respondent FI1 explained that in community-based management, "It's always the community making the decisions... it's their ownership, and we feel that's probably as important, if not more important, than being ecologically correct." Although most EBM proponents in Fiji stated that it strengthened community-based approaches, several supporters of community-based management held that this bottom-up process is by definition antithetical to the EBM process, which places more emphasis on natural science in this context. This belief could reflect the fundamental philosophical differences rooted in the histories and theoretical influences of these integrative-management models described by Christie (2011).

As calls for interdisciplinary research to support comprehensive management frameworks become increasingly institutionalized and tied to specific funding streams, a number of contextual variables will affect how these mandates are interpreted and implemented. In the marine EBM projects we studied, challenges differed on the basis of how EBM was interpreted by project workers, how EBM was shaped by specific social, political, and institutional contexts at the location, and how context defined the kinds of social science involved. On one hand, in Morro Bay EBM was seen as a democratizer of science and included the interests of stakeholders formerly excluded from decision making under centralized management regimes. On the other hand, in Fiji EBM put more emphasis on natural science than existing management. In Elkhorn Slough, including humans in management was seen by some as both irrelevant and potentially detracting from the level of protection of the slough that project personnel worked hard to sustain.

Some general insights can be derived from our results. In general, interdisciplinary research was weighted toward the natural sciences. Ensuring that both natural and social sciences are equally represented in research will likely require more than proportional funding for natural and social sciences (Christie 2011). Equal representation will also require addressing power imbalances among scientists (MacMynowski 2007). One way this can be addressed is by ensuring that both social scientists and natural scientists are involved in problem identification and all other aspects of research throughout the process (Christie 2011). The probability that representation will be equal may be increased by early and clear discussions between social and natural scientists about research assumptions and how social and natural scientific data will be integrated to inform management. Discussing the appropriate time to begin social science research may increase equity; social scientists in Elkhorn Slough thought that certain natural science data should have been collected prior to their research. The following are some key questions that might be included in planning discussions: How can one understand (not just change) the human behavior of interest? Which disciplines within the social sciences can best contribute to this understanding? How might research be structured if different knowledge bases—traditional ecological knowledge, social science, and natural science—support different understandings of the coupled natural and human systems or possible policy or management alternatives? What theoretical or analytical frameworks can be used to bring different data sets together?

Our results also point to the need to move beyond general recommendations for resolving challenges to interdisciplinary research. Because these challenges are not of equal import in all cases, solutions need to be context specific. For example, the dearth of social scientists who can be recruited to studies in Palau may require reframing research questions that account for their lack of avail-

ability, and the philosophical differences between natural and social scientists in Elkhorn Slough may require meetings that specifically address epistemological differences so that productive exchanges can occur. As interdisciplinary research frameworks continue to evolve, confronting these challenges will allow for a more substantial role for social scientists. This, in turn, should allow for understanding the structure and functioning of ecosystems as products of human-nature interactions.

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Supporting Information

The survey instrument (Appendix S1) is available online. The authors are solely responsible for the content and functionality of these materials. Queries (other than absence of the material) should be directed to the corresponding author.

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Name: **Grace O'Connor**

Organization:

Path:

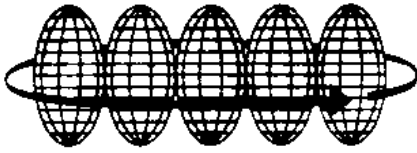
Comment: The National Ocean Policy is a policy that the United States needs. The Deepwater Horizon-BP spill was a focusing event that brought awareness to the issues of that exist in the ocean. The United States relies heavily on the coast, for both food and for ecosystem services, both of which are irreplaceable and need specific attention. There is an urgent need to revise the preexisting policies to ensure that the coasts, oceans, and Great Lakes are used in a sustainable way. There is undisputable scientific evidence that costal and oceanic ecosystems are being depleted and this leads to serious consequences for human well-being. While the United States currently has laws in place to address many individual issues, these policies do not address the extremely important interconnectedness that exists among these diverse and important ecosystems. There is a fluidity that exists in the oceans that makes the ocean often seem as if it is unaffected. From the surface the ocean may look unharmed, while the reality is often much different. The fluidity that exists in the ocean creates connectivity not only among organisms living in the ocean, but also in the transport of chemicals, etc. This policy would for the first time, provide a cohesive national approach to these issues. The policy recommends ecosystem-based management (EBM), which is a place based ecosystem approach to management that considers the connections between people and ecosystems, which is vitally important. The interconnectedness that exists between humans and the natural world is something that has long needed attention, and this policy would make a step in the right direction.

Name: **Richard Berkowitz**

Organization: Transportation Institute

Path: http://edit.whitehouse.gov/sites/default/files/webform/nopc_draft_rec._comments_to_the_obama_administration_by_trans_inst..doc

Comment:



TRANSPORTATION INSTITUTE

Pacific Coast Office
Seattle World Trade Center
2200 Alaskan Way Suite 110
Seattle, WA 98121
(206) 443-1738

February 27, 2012

On behalf of the Transportation Institute (T.I.), I wish to provide comments on the National Ocean Council's Draft National Ocean Policy Implementation Plan. The Transportation Institute was established in 1967 as a Washington-based, non-profit organization dedicated to maritime research education and promotion. The Institute companies participate in all phases of the nation's deep sea foreign and domestic shipping trades, and barge and tugboat operations on the Great Lakes and on the 25,000 mile network of America's inland waterways. These operations embrace deep-sea and river passenger vessels, and liquid, dry-bulk, container and special purpose ships. Many are contracted to the U.S. military services. All are of U.S. registry -- crewed by American citizens operating under the world's highest safety standards, and proudly flying the American flag.

The Institute has spent the last eighteen months following the work of the National Ocean Policy Task Force (NOP) and remains concerned of the project scope, multi-layered structure, and activities being promoted by the NOP. This effort creates great apprehension among commercial maritime interests who have already been buffeted by a whirlwind of new and ongoing regulatory interventions on oil spill prevention and response, ballast water, air emissions, vessel discharges, crew documentation, and vessel speed --to name a few--in recent years. This is at a time of difficult economic circumstances, diminishing cargo opportunities, and ever-increasing fuel costs.

To begin on a positive note, we wish to endorse and fully support the NOP's call for the United States ascension to the 1982 U.N. Convention on the Law of the Sea and ratification of its 1994 Implementing Agreement. Through this vehicle the Institute believes our nation can participate in and influence international law and policy related to the ocean. Without ratification the U.S. will not have a voice in establishing a governing system over fishing, deep sea mining, and navigation. Furthermore, our nation may very well be faced with uncontrolled harvesting of nearby fisheries, uncertain new shipping routes, and unprotected ocean resources.

U.S. maritime interests are particularly concerned with the NOP's call for wide scale Coastal and Marine Spatial Planning. This form of ocean zoning will threaten a long-established process of careful analysis, including significant input from industry stakeholders, with well-informed regulators to determine Areas-To-Be-Avoided, Mandatory Vessel Traffic Routes, Vessel Traffic Separation Schemes, Lightering Areas, Particularly Sensitive Sea Areas, Pilot Boarding Areas, Safety Zones Around Vessels and Terminals, Anchoring and No Anchoring Grounds or Areas, and Security Zones in Ports and Waterways. This method of collaborative rule-making and risk-avoidance has helped to create an unprecedented record of oil spill reductions in the coastal waters of the United States in the past two decades. While U.S. oil imports and consumption have steadily risen, oil spill incidents and the volume of oil spilled have not followed suit. In general, the annual number and volume of oil spills have shown declines -- in many cases, dramatic declines. The best practices established through local port-based Harbor Safety Committees, maritime trade organizations, and individual company initiatives are clearly working and could be placed in jeopardy by newly-minted authorities whose vision is far narrower than those who have helped to create this enviable achievement. A multi-layered bureaucratic system with the likelihood of dubious edicts and regulatory uncertainty created by regional planning bodies should not be the reward for this record of accomplishment.

Working for a strong maritime capability

The maritime community shares the interest stated by the National Ocean Policy Task Force in recognizing and reducing the impact that non-point sources of pollution and run-off have on our marine ecosystem. For many years we have advocated for increasing the volume of freight carried by vessel operators on our rivers, Great Lakes, and coastal waters. The federal Department of Transportation's Maritime Administration has begun significant planning and initiating programs to fulfill the promise of what is referred to as the Marine Highway System. Shifting cargo from truck and rail to the more sustainable and environmentally friendly marine transport of such loads will reduce toxic road and highway run-off and dramatically decrease harmful air emissions per ton/mile. The commercial uncertainty of this cargo shift will be ever more risky if coastal zoning, bans on shoreline development, and severe limits on dredging –among other impediments-- create stifling regulatory burdens and complexity.

The Obama Administration has justifiably sought a strategy to increase and diversify alternative energy output. Not least of which is the potential to harness offshore wind and ocean current power. The U.S. maritime industry has long been interested in partnering to fulfill the promise of these alternative power sources. The offshore wind industry has the potential to create thousands of jobs in construction, installation, and operation/maintenance of wind farms. Many of these new positions will be made up of experienced mariners employed by our member companies. In addition, the industry will require the construction of purpose-built vessels. Our shipyards are relying on such new construction (and the burgeoning promise of vessels for the Marine Highway Initiative) to sustain the skills of their workers and help cover the capital costs of their equipment and infrastructure. All of this is critical for shipyard/repair facilities and the myriad of vendors they use to be available and commercially vigorous when called upon to build or service vessels for the merchant marine or Department of Defense/Homeland Security.

As many oil-producing nations become even more unreliable and oil prices rise to threatening levels, we share a great concern that the NOP's recommendations and proposed structure will be manipulated by some to stifle the promise of responsible offshore oil and gas exploration –particularly in the Gulf of Mexico and Arctic. Many of our member carriers serve the Alaskan consumer market and Alaska's resource development sector. Over 90 percent of Alaska's state tax revenue is a function of oil and gas exploration and development. A full third of its job-base relies on resource development and much of this is centered offshore or near shorelines. Consequently, there is great anxiety over advocacy organizations using the NOP as yet another institution to shut down all resource development in Alaska and forsake the economic and energy needs of Alaska and our nation.

The Transportation Institute trusts the Obama Administration will take heed to our concerns and seek to remedy these issues as it considers the recommendations of the NOP Task Force. The Institute also encourages the Administration to seek greater review of the structure and scope of the NOP Initiative by Congress. We appreciate this opportunity to share our point of view and look forward to further constructive engagement on this matter.

Sincerely yours,

Richard Berkowitz

Director, Pacific Coast Operations

Name: **Sue Rocca**

Organization: Whale and Dolphin Conservation Society

Path: http://edit.whitehouse.gov/sites/default/files/webform/wdcs_comments_on_nopidip.doc

Comment:

February 27, 2012

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

RE: Comments on the National Ocean Policy Draft Implementation Plan

On behalf of the Whale and Dolphin Conservation Society (WDCS), I offer the following comments on the National Ocean Policy Draft Implementation Plan (NOPDIP). WDCS is heartened to see new approaches applied to the management of our oceans, our coasts, and the Great Lakes. In particular, an ecosystem-based management approach taking cumulative impacts into consideration and acknowledging interconnectedness between air, land, and sea. We commend the National Ocean Council for including Water Quality and Sustainable Practices on Land as one of the nine priority objectives under the National Ocean Policy.

However, we are concerned that a key recommendation of the Ocean Policy Task Force was not incorporated into the NOPDIP. Specifically, the Interagency Ocean Policy Task Force stated that decision-making will be guided by a precautionary approach as well as listing the precautionary approach as a principle within the framework itself. Yet, this guiding principle is notably absent in the NOPDIP, referenced only in the appendix of public comments.

Omitting a precautionary principle approach to our National Ocean Policy is in direct conflict with the intent of the President's charge to the Ocean Policy Task Force- *'with developing recommendations to enhance our ability to maintain health, resilient, and sustainable ocean, coasts, and Great Lake resources for the benefit of present and future generations'*. We believe that this must be incorporated into the Plan to make it meaningful and ensure the sustainability of our ocean, on which we all depend.

We further believe that activities presenting an uncertain potential for significant harm should be prohibited unless the proponent of the activity shows it presents no appreciable risk of harm. We have learned much since the Rio Declaration of 1992, yet even twenty years ago the pertinent language in that document states: "*[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation*". It states nothing about using lack of scientific certainty as a reason to proceed with potentially harmful activities.

The United States should take this opportunity of developing a National Ocean Policy as a chance to learn from our past. When expanding West much of the land and water rights and uses were based on a "use it or lose it" doctrine. Now with the increasing industrialization of the oceans it is time we, as a nation, underpin management with the precautionary principle.

Another point of concern is that actions and milestone in the NOPDIP are contingent on the availability of funds. We understand the fiscal climate and the uncertainty in budget appropriations and agree with leveraging and repurposing existing resources to maintain fiscal responsibility. However, extensive research is needed to understand the complex relationships among climate systems, oceans, coasts, the Great Lakes, their habitats, and human impacts. Specifically, we more funding needs to be allocated to large whales carcass retrieval and necropsies to determine cause of death of endangered marine mammals.

WDCS also believes the NOPDIP does not go far enough in combating the effects of climate change and ocean acidification upon our oceans, coasts, and Great Lakes. It is not enough to study, prepare for and respond to the impacts climate change. The NOPDIP needs to go farther to include actions and milestones designed to lessen the amount of greenhouse gases released into the atmosphere and oceans by the American public. The **Resiliency and Adaptation to Climate Change and Ocean Acidification** objective contains actions only to track, to determine impacts of and to assess vulnerability to climate change and ocean acidification. None of the actions address the source of this cataclysmic vulnerability by calling for work on reducing our consumption of fossil fuels.

Climate-related research has focused on potential shifts in distribution and abundance based on temperature for years¹. However, increasing carbon dioxide levels in our marine ecosystems may effect much more than distribution. Important oceanographic factors potentially affected include, but are not limited to: physically driven changes like sea level rise and stronger wind fields, responses to UV² and reduction in pH³. While there is much to study and monitor, we have to act to slow the rate at which climate change and ocean acidification impact our oceans, coastlines and Great Lakes. Realizing the Kyoto Protocol's aim for developed countries to reduce their emissions on average by 5.2% below 1990 levels is an important step towards the long-term health of our oceans, coastlines and Great Lakes.⁴

Thank you for this opportunity to comment.



Biologist
Whale and Dolphin Conservation Society
Sue.Rocca@wdcs.org

¹ Lubchenco et al. 1993. Possible ecological responses to global climate change: near- shore benthic biota of Northeastern Pacific coastal ecosystems. In: Earth System Responses to Global Climate Change: Contrasts between North and South America (eds Mooney, H.A., Fuentes, E.R. & Kronberg, B.I.). Academic Press, San Diego, CA, pp. 147–166.

² Peachey, R.B.J. (2005). The synergism between hydrocarbon pollutants and UV radiation: a potential link between coastal pollution and larval mortality. *J. Exp. Mar. Biol. Ecol.*, 315, 103–114.

³ Michaelidis et al. (2005). Effects of long-term moderate hypercapnia on acid-base balance and growth rate in marine mussels *Mytilus galloprovincialis*. *Mar. Ecol. Prog. Ser.*, 293, 109–118.

⁴ Harley et al. 2006. The impacts of climate change in coastal marine systems. *Ecology Letters*. Vol 9, issue 2, 228-241.

Name: **Tierney Dodge**

Organization: Colby College, student

Path:

Comment: I believe that using ecosystem-based management should be the biggest priority within the National Ocean Policy. There can be many different policies and committees on supporting single organisms; however, in order to make a significant change, we need to start focusing on the whole ecosystem. A policy targeted towards a single species can have detrimental affects on the larger ecosystem. For example, in the Northwest, the protection of pinnipeds can ultimately add to the degradation of salmon. Policy goals should be to conserve and sustain entire ecosystems- along with the natural food web that may be inside them. While we don't like the idea of certain organisms being killed, it is best to restore the entire functioning ecosystem. That way, a targeted species will hopefully maintain a sustainable level, and natural predators will keep it from over populating and depleting other resources. I believe the National Ocean Implementation Policy does a good job focusing on ecosystem-based management. I am also glad that the organization and collaboration of different government agencies is included in the plan. This collaboration will be extremely important in researching, implementing, and enforcing ecosystem-based management plans across the nation's oceans.

Name: **John Hansen**

Organization: West Coast Ecosystem-Based Management Network

Path: http://edit.whitehouse.gov/sites/default/files/webform/westcoastebmnetwork_nopimplmentation_comments.pdf

Comment: On behalf of the West Coast Ecosystem-Based Management Network, I am pleased to submit the following comments on the draft Implementation Plan for the new National Ocean Policy.

Thank you for the opportunity to provide our input.

February 27, 2012

The Honorable Nancy Sutley
Co-Chair, National Ocean Council
Chair, White House Council on Environmental Quality
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

The Honorable John Holdren
Co-Chair, National Ocean Council
Director, White House Office of Science and Technology Policy
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

Dear Chairs Sutley and Holdren,

On behalf of the West Coast Ecosystem-Based Management Network, I am pleased to submit the following comments on the National Ocean Council's (NOC) draft Implementation Plan for the National Ocean Policy (NOP).

These comments are based on the input of our member projects, which are place-based local initiatives working to engage coastal stakeholders and apply EBM principles to management at the community level throughout the West Coast. Our comments focus largely on EBM, but are driven by the desire to see innovative national-level policies have a meaningful impact on coastal communities and stakeholders.

We invite you to contact the Network to follow up on the points included in our comments, to learn about the on-the-ground successes of our member projects that may benefit from a new NOP, and to increase local stakeholder support for its implementation.

(1) Look to West Coast region to carry out NOP Part 1, Action 4: "Identify and implement place-based pilot projects that foster an EBM approach to managing ocean and coastal resources."

- *An early focus of the West Coast EBM Network was to identify examples of successful EBM implementation at the community and project level.*

The Network was originally organized in 2008 to link existing community-focused initiatives along the West Coast that were working to apply the principles of EBM, and demonstrate tangible management outcomes supported by stakeholders. In 2009 the Network released a guide summarizing core steps towards implementing EBM in West Coast communities, and highlighting success stories of community-driven outcomes. The Network is building on these

local successes and expanding its membership to other sites, and would be an ideal partner for the NOC to achieve this action within the NOP Implementation Plan.

(2) The NOC and Regional Planning Bodies, where applicable, should assess existing and needed decision-support tools for EBM implementation in coastal communities (NOP Part 2, Action 3).

- *Local-level projects can provide examples of the most immediate project needs for applicable tools and data, and link them to project outcomes that will directly benefit communities.*

To date, approaches such as ecosystem-based management and coastal and marine spatial planning have struggled to gain traction with local stakeholders largely due to a lack of understanding of how these concepts link to actual management. Active outreach and capacity building by the NOC and regional planning efforts would be extremely valuable in strengthening local activities related to data and decision-support tools, while also illustrating how broader management approaches (such as EBM and CMSP) can have tangible benefits for community-level issues and build public support.

(3) The NOC should actively encourage Regional Planning Bodies to explore innovative models for including coastal communities in policy, management and capacity-building efforts.

- *Since its inception, the West Coast EBM Network has worked with the West Coast Governors' Alliance (Agreement) on Ocean Health (WCGA) to demonstrate EBM implementation in coastal communities, while also striving to represent the perspective of local stakeholders in regional efforts.*

The implementation of a new NOP provides a rare opportunity to highlight new innovative approaches to management, while also build public support for their application. While national and regional-level planning is integral to achieving robust new approaches for coastal resource management, there is a critical need to rally public support from coastal communities and local stakeholders to build sustainable momentum. The West Coast EBM Network is hopeful that the NOC will actively encourage regional entities, like WCGA, to engage coastal communities. This engagement should include both technical efforts such as Integrated Ecosystem Assessments and Regional Data Portal development, as well as broader management and policy discussions that will increase public support and build political will to achieve the goals of the NOP.

(4) The NOC should undertake outreach to each region of the US to highlight the benefits of implementing a new NOP, and work to connect directly with coastal community stakeholders in 2012 and beyond.

- *Building on its efforts to align federal agencies and activities within a new NOP framework, the NOC would be greatly served by making itself more visible to coastal communities and stakeholders, and explicitly define the perceived benefits of new national-level planning.*

As with many federal-level efforts, there are questions, misconceptions and doubts about overall process, and whether there will be tangible outcomes at a community level with any impact for local stakeholders. While it is understood that much of this outreach and collaboration is meant to take place within the regions themselves, the potential benefits of coastal communities having opportunities to hear and see the NOC in person (members,

support staff, etc.) cannot be overstated. As the NOC works to implement and build support for the new NOP, it should make its best effort to move beyond standard tools such as releasing policy documents, hosting web-based public comment, and summaries of input received, to active engagement with stakeholders and on-the-ground activities. To this end, the West Coast EBM Network would eagerly welcome NOC members and staff to its Annual Meeting (Fall 2012), which brings together coastal communities, the three West Coast states, WCGA, federal agencies, and a number of other partners. This type of forum would allow the NOC to hear about the most pressing issues for coastal communities in a given region, while also providing a unique opportunity to underscore how the new NOP is working to address those very issues from a national perspective and build support.

For more information about the Network, please visit our website (www.westcoastebm.org) or contact Network Coordinator John Hansen at john.hansen@westcoastebm.org.

We thank you for the opportunity to submit these comments, and look forward to the continued development of the National Ocean Council's activities and the successful implementation of our new National Ocean Policy.

Best regards,



John Hansen
West Coast EBM Network Coordinator

Name: **David Helvarg**

Organization: Blue Frontier Campaign

Path:

Comment: Dear Nancy Sutley, John Holdren and National Ocean Council Members:

The Blue Frontier Campaign fully supports the President's commitment to a commonsense National Ocean Policy for the United States, recognizing that healthy oceans and coasts are vital to the nation's security, economy and to promoting vibrant livable communities from sea to shining sea. We've worked with thousands of other citizen groups and stakeholders who have been overwhelmingly supportive of the process through task force hearings and public discussions over the last three years. We helped organize over a dozen 'Wear Blue for the Ocean,' day rallies from Washington D.C. to Honolulu, including hundreds of school children, to encourage the President to sign the Ocean Policy Executive Order which he did in the summer of 2010.

The Draft National Ocean Policy Implementation Plan is the result of a long and transparent public process that we believe has helped make it a strong, viable document. Despite some who believe government action is unnecessary (in all spheres) we see the focus on improved coordination and on restoring ecosystem health in this plan as being very much in the public interest.

If you look to protect, maintain and restore the health of our oceans, coasts and Great Lakes you will guarantee safe, sustainable jobs and economies well into the future, under the present system of extraction and pollution, not so much. As you move to implement this plan, please consider our following recommendations:

- The plan must be flexible enough to respond to the best available science as it emerges around a range of marine and ocean/land interface issues.
- Metrics are needed to measure progress. An implementation status report produced every two years that notes progress on reaching ecological goals, increased collaboration among agencies and those they license and regulate, and status of regional efforts to carry out actions in the water column are essential.
- The policy should incorporate existing law including the Clean Water Act, Endangered Species Act, Coastal Zone Management and other tools to achieve progress.
- Initial focus areas should include regions like New England and the West Coast where state and regional marine planning partnerships are already underway. Here federal funds could help strengthen collaborative efforts between the 27 federal agencies within the Ocean Council, these regional planning efforts (such as the West Coast Governors Agreement) and the millions of stakeholders who use our Oceans and Great Lakes for recreation, transportation, trade, energy, protein, security, medicine and solace, knowing America still has a new blue frontier to explore and protect.

The Draft Implementation Plan is a good start but we urge you to begin realizing real change on the shore and in the water as soon as possible given the old principle that, like a shark, you either move forward or you die. And like those overfished keystone predators our public seas and Great Lakes are also endangered. So please accept our support in your efforts to restore the blue in our red, white and blue.

☐

David Helvarg,

NATIONAL OCEAN COUNCIL

Executive Director
Blue Frontier Campaign.

Name: **Susan Farady**

Organization: Marine Affairs Institute/RI Sea Grant Legal Program

Path: <http://edit.whitehouse.gov/sites/default/files/webform/faradynocomments.feb12.pdf>

Comment: Please see my comments in the attached. Thank you for the opportunity to comment on the Plan.



Marine Affairs Institute, RWU School of Law, Bristol RI

February 27, 2012

Dear members of the National Ocean Council,

Thank you very much for the opportunity to offer comments on the National Ocean Policy Draft Implementation Plan. This Plan is an important, long overdue step in implementing the National Ocean Policy and improving ocean governance. My name is Susan Farady. I am an attorney, and director and adjunct faculty of the Marine Affairs Institute in Rhode Island. Housed at the Roger Williams University School of Law and in partnership with Rhode Island Sea Grant and the University of Rhode Island, the Institute is dedicated to educating the next generation of marine law and policy professionals, and providing convening and research services to the professional marine management community. We are one of a handful of law schools in the country specializing in ocean, coastal and maritime law, and one of only four Sea Grant Legal Programs in the country. Our partnerships allow us to be nimble, leveraged, and interdisciplinary, all excellent qualities during this very busy and challenging time in ocean governance. My expertise is in ocean governance and policy, particularly as relates to marine spatial planning, marine protected areas and intersections of law, policy and science.

I am largely supportive of the Draft Plan, its' emphasis on better integration of science into management, and innovation in governance amidst complex laws, regulations and agency structures. The Plan's focus on CMSP, EBM and flexibility in governance is, in my opinion, what is needed right now to match management needs to government structure. I will comment specifically on three areas within the Plan:

1. Ecosystem-Based Management, Action 1
2. Coordination and Support, Action 3
3. Regional Ecosystem Protection and Restoration, Action 6

Ecosystem-Based Management, Action 1, framework for collaboration and shared goals

This action item is, in my opinion, of overarching importance to the success of all other parts of the Plan. I would encourage the Council to accelerate the implementation of the Milestones indicated for completion in 2013 to 2012. I would also suggest a more open and transparent means of conducting this work beyond the NOC Legal Working Group, which is not clearly defined in this document. For example, the law school and Sea Grant program that I am

affiliated with are neutral, affordable forums of expertise that can research issues and convene stakeholders, and it is unclear from this document how we could offer our expertise and participate in this initiative. The Milestones identified in this Action Item are imperative for the Plan to be successful and I would encourage the Council to build a big, inclusive tent in order to execute them.

Coordination and Support, Action 3, reduce barriers to implementation of the National Ocean Policy

I am fully in support of this Action item and the associated milestones. It is critical, as soon as possible, to identify and resolve legal and regulatory impediments to implementing the Policy, and make it as easy as possible for agencies to implement innovative governance. I would encourage the Council to affirmatively enlist the services that academia can provide to the interagency NOC Legal Working Group.

Regional Ecosystem Protection and Restoration, Action 6, identify nationally significant marine and Great Lakes natural and cultural areas in need of protection

While philosophically in support of this action item, I offer a pragmatic critique. The intersection between fisheries management under the Magnuson-Stevens Act and ecosystem management under the National Marine Sanctuaries Act has proved troublesome at best in practice in New England. As a long-time member of the Stellwagen Bank National Marine Sanctuary Advisory Council and observer of New England Fisheries Management Council (NEFMC) activities, I would describe the interaction between managers under these two different legal mandates as difficult, at best. Under current political tensions and fiscal constraints, it is nearly impossible for managers under these two laws to come to any common understanding that could benefit stakeholders and marine ecosystems without clear leadership and guidance.

The current situation in Stellwagen Bank Sanctuary is a real-time example of the need for clarity and leadership in ongoing management that I would hope the Ocean Council can provide in advancing a comprehensive Ocean Plan. The NEFMC is in the process of updating EFH and HAPC designations, including consideration of research reserve areas, through an extensive Omnibus Habitat Amendment. An area of the Stellwagen Sanctuary has operated as a de facto research reserve area for the past 14 years by virtue of an NEFMC closed area, the Western Gulf of Maine Closed Area, overlapping into the Sanctuary's boundaries. In the course of the development of the Omnibus Habitat Amendment, Sanctuary personnel have proposed a designation for the Sanctuary that will achieve NEFMC objectives, implement the Sanctuary's Management Plan, and truly provide the "most bang for the buck" in achieving many objectives in one line-drawing exercise. Yet conflicts within NOAA have made the full consideration of the Sanctuary proposal within the NEFMC process difficult at best. It will not serve any New

England constituents well, much less advance a National Ocean Policy, for a separate Sanctuary management action to be introduced after the Omnibus Habitat process is concluded. If indeed an overarching purpose of the Policy and Plan is to facilitate multiple statutory objectives in the same geographic location, then resolution of the stalemate between all Sanctuary sites and their respective Fishery Management Councils should be a high priority.

This action item is also troublesome to me because three different legal instruments operating within the same areas are implicated, the Magnuson-Stevens Act, the Sanctuary Act, and the National Historic Preservation Act, without any acknowledgment that coordination between these different legal authorities is necessary, how that coordination should take place nor how conflicts between multiple statutory regimes in effect in one geographic location should be resolved. Additionally, while philosophically supportive of a more energetic use of the Sanctuary Evaluation List (SEL), I am concerned that absent a more vigorous resolution of conflicts between statutes in existing Sanctuaries such as Stellwagen Bank, identifying new sites on the SEL will only inflame tensions.

In conclusion, I submit that the Draft Plan is a good step forward in implementing the National Ocean Policy, and I support your efforts. Thank you again for this opportunity to comment on the Draft Plan.

Sincerely,

Susan E. Farady

Susan E. Farady, J.D.

Director, adjunct faculty
Marine Affairs Institute/Rhode Island Sea Grant Legal Program

NATIONAL OCEAN COUNCIL

Name: **Susan Avery**

Organization: Woods Hole Oceanographic Institution

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop-dip_who_comments_draftfinal.pdf

Comment:

Woods Hole Oceanographic Institution
Comments
National Ocean Policy
Draft Implementation Plan
February 27, 2010

Woods Hole Oceanographic Institution greatly appreciates the significant time and resources devoted to the development of the Draft Implementation Plan (Draft Plan) and its strong commitment to science-based decision making. Increasing demand by policy makers and the public for information that is credible and timely will require a renewed commitment to scientific infrastructure and a workforce supporting the collection, synthesis, analysis, and delivery of information and forecasts. The Institution recognizes that enhancing ocean science capabilities will require significant funding, yet we believe that this investment will result in the delivery of information that provide significant economic and social benefits while reducing environmental and social costs. This is most clearly evident in improving our understanding of the oceans role in climate processes, including the complex and dynamic coupled ocean/atmosphere relationship, which drives extreme events such as hurricanes and drought and also will help guide important public and private infrastructure investments, national defense strategies, and the evaluation of the efficacy and effectiveness of greenhouse gas reduction strategies.

Given the global to local impact of the ocean, the overall organization of the document could be made more coherent and compelling by including a section in the introduction, prior to discussion of the themes that highlights the global importance of ocean and ocean-related processes and their impact on the national and regional focus of the Draft Plan. This discussion would provide a coherent framework placing the U.S. National Ocean Policy implementation in the global and international context. It would also help make ocean's connection to other parts of the earth system by emphasizing its role as a primary driver of the hydrologic and carbon cycles. The large-scale global changes underway provide an important context for almost all of the Draft Plan's topics; restoration of a coastal wetland must take into account sea level rise, regional ecosystems should not be addressed without the context of global and large-scale changes in temperature and precipitation, and efforts to understand and address regional changes in the Arctic are fundamentally global influenced.

NOP Coordination and External Input Mechanisms

Three NOP-related processes that merit greater recognition and attention are the Ocean Research Priorities Plan (ORPP) and the roles of the National Ocean Partnership (NOPP) and the Ocean Research Advisory Panel (ORAP). The delayed release of the ORPP

significantly handicaps the ocean science community's capacity to provide substantive input on the Draft Implementation Plan. The Draft Plan highlights science-based policy priorities. However, lack of the Administration's articulation of the underlying science priorities requires the science community to make assumptions regarding the relationship between science and policy objectives. Given the difficult funding environment it would be preferable to evaluate the priorities of these two documents simultaneously, not sequentially.

Regarding NOPP, the Draft Plan should highlight and more fully utilize the unique mechanism this program provides for coordinating and channeling multi-agency resources in support of science priorities. NOPP has been highly effective in leveraging expertise and resources across the federal science community and the Draft Plan should include an action and milestones that incentives greater utilization of the NOPP funding mechanism. This could include a commitment to doubling NOPP funded projects by 2014. This would provide agencies with an incentive to seek funding in the budget formulation process dedicated to multi-agency collaboration, and OMB with the opportunity to reward this behavior.

Similarly, the Draft Plan should more fully recognize and include discrete milestones related to the role of ORAP, again incentivizing agency utilization of a management tool that is well positioned to encourage and leverage greater cross-agency as well as federal/non-federal collaboration. While ORAP is technically an advisory body, its membership represents prominent members of the ocean science community who are active in many other public and private scientific and policy forums and are well positioned to help influence and guide these processes in support of Draft Plan priorities. Greater recognition of ORAP (and NOPP) under the Coordinate and Support priority section would be appropriate, perhaps identifying discrete milestones for each of these entities. One possibility is to identify ORAP as having co-responsibility with the NOP Executive Council for oversight of the prioritization of the Ocean Research Priorities Plan, if this plan is truly to reflect national ocean science community priorities and not just federal agency priorities. Additionally, the Draft Plan should accelerate the time frame for identifying science priorities –sooner than 2013-- or we face the risk of missing the opportunity to highlight science needs during a critical budget negotiations period that will occur late in 2012 and early 2013.

Ecosystem Based Management

The recommendation to move beyond single species or single resource management is a good one, but the called for 'holistic approach' must also take into consideration the intersection of ecosystems and the physical/chemical environment undergoing change (trends and variability) as part of climate change. Warming, acidification, changes in cloud cover, insolation, and UV radiation reaching the surface, and the increased levels of pollution and debris in the ocean should explicitly be taken into account in ecosystem

based management. A fish stock response to change in fishing practices may well happen at the same time scale as interannual to decadal change in the hydrography of a region. Decision tools thus must factor in climate variability and change; a coastal ecosystem might, for example, see change due to sea level rise as well as to other impacts such as land-use change.

Inform Decisions and Improve Understanding

The Draft Plan should explicitly include text providing the large-scale context for decision-making introduced by the ocean. Specifically, with the ocean covering 70 percent of the earth's surface and with change in evaporation and surface wind speed being observed, one anticipates changes in the large-scale hydrological cycle that may have strong regional impacts. Briefings by NCAR and NOAA investigators to the Western Governor's Association made that group aware of links between sea surface temperature at global sites far from the U.S. and the 1930's drought in the central U.S. The push to improve regional decision-making needs to be more clearly set in the context of improved understanding of large-scale modes of variability and their projection on to regional and local domains, including the effects of sea level rise, and ocean acidification on state and regional protection and restoration of ecosystems. Further, ocean-driven climate variability may lead to drought and other crises at sites beyond the nation's borders that have impacts on the security and economy of the U.S. DOD has recognized the potential national security implications of these changes and has called for greater understanding of the processes driving them so they can plan for varying contingencies. These concerns reinforce the importance of enhancing global and regional observation, monitoring and modeling capacity, a point that will be elaborated on in the following section.

Action 4: Integrate information into decision making should mention that the foundation for improved decision making will be a combination of sustained ocean observations and improved large-scale coupled ocean-atmosphere models. Observations are essential for initialization, for tracking change, and for the improvement of models.

Under Action 5: Develop human capacity goes beyond the goal of having a population better informed about the ocean, there needs to be a plan for activities that require the recommended "skilled workforce". Regional ocean observing has struggled to grow and become established; U.S. investments in global observing are flat. The U.S. no longer has clear leadership in ocean research and development and application to best management approaches. Other nations are more aggressive at education and training, and are also building global and ice capable ships and increasing their investment in observing systems. So absent a plan for the U.S. that creates demand for a skilled workforce, the rationale for this Action is weakened. Establishing and maintaining a skilled workforce is essential to the future success of the U.S. economy, and to

advancing ocean science and technology in particular. However, the lack of a clear commitment to establishing a substantially expanded sustainable operational observation system significantly diminishes the attractiveness of oceans sciences as a career path.

Under Action 6: This action should expand beyond “educational programming” to incorporate a broader approach to enhancing the visibility of the ocean, such as provision of material to TV weather people to show ocean temperature, color, and other events with more realism, such as highlighting the impacts of La Nina on U.S. weather and agricultural production.

Observations, Mapping, and Infrastructure

WHOI strongly concurs with the need for modernization of ocean science infrastructure, including recognition of the importance of technology development. Advances in technology can greatly decrease the cost of observations while simultaneously increasing the number of variable and size of area that can be continuously monitored. Additional milestones incentivizing this transition would strengthen this section. In addition, the blue water ocean is a global commons and the introductory text would benefit from more explicitly emphasis on the need to integrate and coordinate U.S. efforts with international partners.

Action 1: Ocean science is inherently infrastructure intensive, which includes a glaring need is access to icebreakers and global class ships. The sole U.S. icebreaker, the Healy, was pulled from science to address the fuel crisis in Nome. The U.S. academic fleet plans to retire global ships in 2014 and no comparable replacements are planned. NOAA is understrength in ship resources to address its climate-related ocean missions. The Draft Plan should recognize these needs and also endorse the exploration of formal bartering agreements with other nations.

Action 2: Unmanned in-water remote sensing systems are complementary components to remote sensing instruments, providing in situ sensing for calibration and validation of space-based system in addition to access to unique subsurface physical and biogeochemical variable. This symbiotic relationship should be more explicitly recognized in the Draft Plan, along with an acknowledgement of the need to balance investment in these areas. This action should also acknowledge the pressing need for global class ships--as noted under Action-- to deploy and sustain ocean and coastal observing infrastructure.

Action 3: WHOI fully endorses the need to advance ocean observing and sampling technologies. However it is not clear how U.S. agencies coordinate on the development and refresh of technology and the ensuring sustained uses of observing technology. There must be a sustain process and investment to avoid excessive operation,

maintenance and high recapitalization costs. While NSF has a relatively effective capital investment strategy for its research infrastructure, this has not been the case for operational infrastructure. Perhaps this is better addressed in the refresh of the Ocean Research Priorities Plan, but given the lack of investment in in-situ scientific observing and monitoring systems, and the relative importance of this information to guide management and policy decision making highlighted in this document, the Draft Plan should acknowledge this need and more explicitly identify milestones to address this requirement. Also, the NSF Oceans Observatories Initiative is written in as a test bed for ocean observing technology; however, it is much more than that. OOI has a core suite of instrumentation that will collect vital records at key high latitude and coastal locations. To avoid jeopardizing the continuity of important baseline data collected by systems such as OOI (and NASA earth observing systems) The Draft Plan should recognize the need to support the transition of research systems into operational programs.

Actions 3 and 4: Some of the milestones in action 4, such as inventories of observing assets, are good ideas and the same should be done for U.S. blue water observing assets and be set in the context of international blue water observing assets. These inventories should support a milestone to assess how well is the U.S. doing in cooperating with other nations to share the burden of blue water observing. The milestone should clearly indicate U.S. support for an integrated GEOSS plans for a Blue Planet ocean initiative.

Action 7: There have been many investments in data management systems, some of which are duplicative. However, there has been too little investment in systems that facilitate access to ocean data to broad user communities, which deserves greater attention.

Coordinate and Support

Greater emphasis should be placed on enhancing coordination on an international scale as one approach to helping share the burdens of supporting high cost assets such as global class ships and ice breakers. Stronger coordination between NOPP and the EU ocean funding should be encouraged, as well as a stronger U.S. national effort on coordination with bodies such as JCOMM (WMO/IOC Joint Commission on Oceanography and Marine Meteorology), DBCP (Data Buoy Cooperation Panel), and sustained observing structures such as ARGO and OceanSITES. This echo the point reiterated throughout our comments emphasizing the importance of global observation and monitoring capacity and the need to enhance US international partnerships to leverage the deployment, operation and maintenance of these systems.

Action 1: The regional ocean partnerships (ROPs) discussion should include recognition of their direct relationship to global information needs, as reflected in the global hydrologic cycle influence on regional drought and flooding.

Action 2: See the recommendation at the beginning of the document to strengthen the role of NOPP in coordinating and focusing multi-agency funding on key ocean science requirements by identifying a baseline funding level for NOPP and increasing the level of commitment in future years. NOPP provides an effective mechanism for leverage multi-agency funding with non-federal entities.

Action 4: The proposed budget analyses should provide much greater detail than the “Ocean and Coastal Activities” report required by the Ocean Act of 2000. Solid baseline funding accounts for science, management and education, broken down further into core activities, will be essential for tracking support and balancing resources against performance metrics. The lack of a comprehensive and coherent funding baseline for ocean and coastal programs significantly hampers the community’s capacity to provide meaningful evaluation of progress in resource intensive activities, such as the deployment and operation of core observation, monitoring and modeling assets. The budget analysis should also be cognizant of international investments. In some cases, other nations may bring support (e.g. China in the TAO array) or there may be a complementarity arrangement with an international partner that increases the relative priority of a U.S. investment. Action 6 helps address this, but tracking funding under Action 4 is necessary as well.

Action 6: The milestones under this action should be significantly strengthened. Greater specificity should be provided regarding the activities the U.S. will engage in and who has the tasking in the U.S. The role of the U.S. in the GEO Blue Planet initiative and other GEO efforts should be clearly stated. Resolution of the U.S. funding issue with the IOC should be identified as a milestone given the importance of the IOC in coordinating international ocean science.

Regional Ecosystem Protection and Restoration

A unifying theme for the Draft Plan is recognition of the relationship of its various elements to broader global drivers. The effectiveness of regional ecosystem protection and restoration objectives are dependent on understanding of the rates of change associated with larger-scale external influences, such as sea level change and shifts in the global hydrological cycle. While this may be implicit in the intent of the actions identified in this (and other) sections, it is too easily overlooked if not explicitly articulated.

Action 1: Decision support for a region needs to have an awareness of global modes of variability. For example, NOAA and NASA and an awareness of the global water cycle could be addressed in this action.

Action 2: Coastal wetlands need explicit awareness of sea level rise and links to large scales of variability, again requiring the participation of agencies charged with monitoring and modeling this information.

Action 4: Coral reefs need explicit awareness of the larger scale and drivers for warming/bleaching and acidification, requiring recognition of agencies responsible for providing this contextual information.

Resiliency and Adaptation to Climate Change and Ocean Acidification

This section would also benefit from greater discussion of the influence of larger scales ocean related processes, expanding upon the points integrated into preceding sections. Given the recommendation for increased emphasis on the relative role and influence of global ocean processes on virtually all of the other section, it may be appropriate to move this section up in the document and elaborate on the global-to-local relationship. This would help provide greater coherence and a framework for the integration of the subsequent sections of the Draft Plan.

Water Quality and Sustainable Practices on Land

Greater attention must be directed at awareness and integration of the global water cycle and the large-scale drivers of drought and climate change.

Action 3: This action would benefit from greater recognition of the large-scale drivers contributing to hypoxia, including volume flow in rivers, restratification limiting mixing and other factors.

Action 4: The text should place the need for diverse observations to improve the physical/biological models to improve HAB prediction in the broader context of coastal regional observing, reinforcing the benefits of a comprehensive observing system.

Action 7: This action should acknowledge the impact of large-scale drivers such as sea level rise and/or coastal subsidence and glacial rebound.

Changing Conditions in the Arctic

The five action items here do not come across as a part of a coordinated, interagency approach meshed with international partners that requires a broader integrated approach to Arctic observing and modeling.

Coastal and Marine Spatial Planning

Greater recognition of how these regional efforts and groups link to the larger, global ocean context is also needed here given the projection of global modes of variability on to regional weather and climate. The failure to acknowledge the growing expectations and demands on national and international information systems will hamper, and in many cases prevent effective implementation of regional, state and local management strategies, resulting in public frustration and inefficient use of limited financial resources.

The success of the Draft Plan is directly linked to meaningful actions that go beyond the current focus on improving the efficiency of governmental processes. Establishing milestones that will require additional resources and the reevaluation of the distribution of current funding are essential to stimulating forward progress towards greater collaboration at all levels of government and their partners.

Name: **Karen Vertanen**

Organization:

Path: http://edit.whitehouse.gov/sites/default/files/webform/reserve_20_of_ocean_in_mpa.pdf

Comment: I am a citizen that is extremely concerned about our oceans and it's protection. Please read my attached paper.

If you have time, please watch <http://vimeo.com/27379202> It is so amazing what they have done.

Reserve 20% of the Ocean into Marine Protected Areas

In 1995, after decades of intense fishing and with an ocean area depleted of marine life, the local community at Cabo Pulmo rallied to protect their coral reefs with a No-Take Marine Reserve. Located in the Gulf of California, Mexico, the Cabo Pulmo National Park is one of the best enforced no-take reserves. No one is allowed to touch anything in the reserve or even anchor in the 7,111 hectare area. Four years later in 1999, there was no significant increase in size or mass of fish in this Marine Protected Area as compared to other MPAs or open access areas nearby. But by 2009, the fish biomass had increased by 460%, top predators increased 11 times and carnivores increased 4 times. Other nearby MPAs or open access areas did not show this increase. That increase is the largest measured in a marine reserve and is attributed to strong community leadership and effective enforcement. (Aburto-Oropeza 2011)

The worldwide fishing catch declined significantly in 1988 and has dropped by an average of more than ½ million tons /year every year since. Fisheries have collapsed to 10% of their peak levels. This demands urgent implementation of unconventional approaches, notably the establishment of marine reserves - areas that are most restrictive to human actions. (Pauly 2005)

Marine Reserves are the marine equivalent of U.S. National Parks. Dr. Sylvia Earle calls them “hope spots” – spots that have the ability to restore marine life and marine ecosystems. Marine Reserves, often called no-take reserves, are a specific type of Marine Protected Area.

These have no fishing, no touching, sometimes no entry by humans and are considered to be our most powerful tool for rebuilding our depleted marine life and ecosystem. Marine Reserves are one of the three types of Marine Protected Area. The other two MPA are Marine Parks with limited recreational access, but no commercial fishing, and Marine Conservation Area with specific recreational and commercial fishing usage.

Marine Reserves work to replenish marine life and restore the ecology that is destroyed from trawling, overfishing, and man's pollution. Marine life increases in number, grows bigger, and spills over to adjacent areas where commercial fishing does have access. (Fogarty 2005) The Great Barrier Reef in Australia is one example of how Marine Protected Areas work and thrive, consisting of member groups that include fishing, boating, tourism, aquaculture, local government authorities, conservation interests, and anyone who demonstrates a significant interest in marine resources. The aim is to have balanced representation in management of the marine reserve. 33% of the Great Barrier Reef is in protected areas with more planned to set aside. (Graham 2003) The Big Island of Hawaii closed 35% of its coastline in 2000 due to depleted yellow tang fish. In ten years the fish biomass had increased 57% and consequently, also proved reserves work through seeding and overflow of larval dispersal 100 km from the reserve area. Commercial fisheries flourished. (Christie 2010)

Marine Protected Areas focus on sustainable development and integrated management with a precautionary approach as guide. The World Summit on Sustainable Development in 2002 recommended 20-30% of the ocean be set aside in reserve. 193 of 196 nations of the U.N. endorsed reserving 10% of the ocean into protected areas by 2012 with resounding agreement that this needs to be accomplished to protect the world's oceans. (Wells 2008) But currently

1.7% of the ocean is protected in reserve, according to the International Union for Conservation of Nature (IUCN 2012).

Last June 2011, NOAA released the fact sheet “Marine Reserves in the United States” revealing that 3% of U.S. waters are in marine reserve but 95% of that is in a single reserve Papahānaumokuākea Marine National Monument. Without that, we have only one tenth of 1% in marine reserve. (NOAA 2011)

Most marine reserves around the world were created small, to protect specific breeding grounds or as part of a national park system. Advocates like Dr. Sylvia Earle, Enric Sala, Carl Safina, and Jean-Michel Cousteau are now promoting a strategy of largesse – “Go Big”. The Pews’ Global Oceans Legacy Project is working to create six massive marine reserves. Three of them are already in some type of marine protection – the northern Hawaiian Islands, the Marianas Trench region, and the Chagos Archipelago in the Indian Ocean. The final three under proposal are 630,000 sq. km waters around New Zealand waters, 900,000 sq. km in the Coral Sea of Australia, and the biggest is 5 million sq. km of Sargasso Sea near Bermuda. (Pews 2012)

We are a long way from our goals – consumption of fish continues to surpass growth, damaging marine ecosystems with current practices. This is why we need to be bold. Creation of reserves with a target of 20% of the ocean as set aside will allow the ocean ecosystems to recover from damaging practices. In the words of Mario Castro, “We want to preserve Cabo Pulmo to protect its marine life ...for future generations.” This should be our example to follow, to preserve and protect the ocean.

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http://www.unep-wcmc.org/biodiversity-series-30_95.html

Name: **Paul Favoranti**

Organization:

Path:

Comment: Why are the great lakes included in an (ocean) by definition marine environment? Bargain with the UN to extend the EEZ. Create more marine parks. Add funding. Cut industrialized fishing to a few stocks regulate the rest as strictly recreational (more bang for your buck). Vet prime areas for marine aquaculture now.

Name: **margaret pilaro barrette**

Organization: Pacific Coast Shellfish Growers Association

Path: http://edit.whitehouse.gov/sites/default/files/webform/nop_letter_02272012.pdf

Comment: Please accept these comments on behalf of the Pacific Coast Shellfish Growers Association. Thank you for allowing us to review the document and offer comments.

February 27, 2012

Michael Weiss, Acting Director
National Ocean Council
722 Jackson Place, NW
Washington, DC 20503



Re: Comments on the National Ocean Policy Draft Implementation Plan

Dear Mr. Weiss:

On behalf of the Pacific Coast Shellfish Growers Association (PCSGA) thank you and your staff for meeting with us and shellfish growers from around the country while we were in Washington DC on February 9th. Following up on that meeting we're taking this opportunity to provide you with additional written comments on the NOP Draft Implementation Plan (Plan). We appreciate the President and the National Ocean Council (NOC) creating a national plan devoted to ocean issues and your efforts to solicit input during the process from shellfish growers and other stakeholders.

The Pacific Coast Shellfish Growers Association, founded in 1930, represents shellfish growers from Alaska, Washington, Oregon, Hawaii and California who sustainably produce oysters, clams, mussels, scallops and geoduck. These dedicated individuals pride themselves not only on the quality and freshness of their shellfish but also in their role as environmental stewards, mindful of the dynamic conditions in the marine environment. PCSGA represents both private and tribal shellfishing interests and most members farm because their parents, grandparents and even great-grandparents did – demonstrating a longstanding commitment to natural resources. We ask NOC, through this process and the implementation of the Plan, to ensure that existing sustainable uses, such as shellfish aquaculture, are not impacted by new emerging uses.

Shellfish growers know that it is absolutely critical to have stakeholder input in order to achieve support for Coastal and Marine Spatial Planning. Stakeholder engagement is an effective way to educate decision makers and results in a truly “bottom-up” approach to policy development. To that end, while stakeholder engagement is noted at the bottom of page 92 as critical for the Regional Planning Bodies (RPBs) there is not an associated action in the Plan that directs RPBs to include stakeholder representation. Keeping stakeholders at arm's length and subordinate to the process fosters distrust and fear that it will be a top down process. In 2011 Washington State created the Advisory Group for Ocean Policy. This Advisory Group is to advise the interagency State Ocean Caucus on ocean policy and management issues along the state's Pacific Coast. We're currently attempting to more formally recognize the Advisory Group, and its function and relationship with marine spatial planning efforts with [pending legislation](#) in Washington State. We request that the National Ocean Policy Implementation Plan address this as well.

As we discussed with you on February 9th, we are pleased the NOP has prioritized improving efficiency of permitting of ocean, coastal, and Great Lakes uses (page 40). In particular, we are VERY pleased you have opted to address aquaculture permitting first. You will recall from our February 9th meeting, a high level of frustration from the West Coast shellfish growers over our inability to get new farms permitted. Multiple individual permit applications for new shellfish farms have been pending in the Army Corps of Engineers, Seattle District for several years. The Seattle District has not issued a single individual permit for a new commercial shellfish farm since NWP 48 first went into effect in 2007.¹ The District's inability to issue individual permits has halted the expansion of shellfish farming in Washington, forcing Washington companies to locate farms in other states and foreign countries to meet the tremendous demand they are experiencing for their products.

PCSGA likes that the Plan proposes to integrate the aquaculture permit review processes as well as identify and pursue efficiencies. Once again, we see value in stakeholder involvement. No one knows better the problems and inefficiencies of the permitting process than proponents who have navigated or are stuck in it. We recommend the NOC consider adding ex-officio stakeholder members to the Interagency Working Group on Aquaculture. If you are not willing to do that, we recommend you define a process that would allow the shellfish growing community to engage the Working Group to identify road blocks, inconsistencies and inefficiencies.

PCSGA also recommends this effort include an in-depth analysis of state aquaculture regulations and related environmental protection and conservation regulations with the goals of 1) eliminating redundant federal environmental reviews, requirements or permits and 2) creating a federal appreciation and recognition for state laws, rules and programs. The 2012 Army Corps Nationwide Permits have just been released. To the Corps' credit, the permit is trying to simplify permitting for shellfish aquaculture. To this point of eliminating redundant federal reviews, requirements or permits, the Corps is allowing new farms to be programmatically permitted by the NWP48 when there are adequate state or local permits already required. This is a very positive step towards the NOP's goal of achieving permit efficiencies.

Similar and parallel to this national effort to improve permitting, the [Washington State Shellfish Initiative](#) (launched December 9, 2011) is encouraging local, state and federal agencies to collaborate to develop a Model Permit Program (MPP). The Shellfish Interagency Permit Team (SIP) that is developing the MPP is currently finalizing a Business and Operations Plan which could serve as a template for the Interagency Working Group on Aquaculture, if one doesn't already exist. If you are interested, please contact Alan Bogner in Governor Gregoire's Office of Regulatory Assistance at (360) 407-6957 or alan.bogner@ora.wa.gov.

PCSGA is very pleased to see the National Shellfish Initiative called out as a milestone under Action 2 of Inform Decisions and Improve Understanding (page 20). As mentioned above, on December 9th 2011 Washington State's Governor Gregoire and NOAA Administrator Jane Lubchenco launched the [Washington State Shellfish Initiative](#). The Washington Shellfish Initiative is a powerful partnership between the federal government, state government, Tribes,

¹ The Seattle District has processed an application for a floating shellfish nursery and an application for a community shellfish farm. Those are obviously different activities than typical intertidal shellfish farming.

and the shellfish industry to promote critical clean-water commerce, elevate the role that shellfish play in keeping our marine waters healthy, and create family wage jobs. The positive press and momentum garnered by the launch of Washington's initiative is something the shellfish community is interested in repeating in other states and regions. PCSGA is prepared to assist and would appreciate anything that the NOC can do to facilitate this. During our Hill visits the week of February 6th we urged leadership from NOAA, DOC and USDA to consider jointly reaching out to Governor's and Delegates for the coastal states and regions, informing them of the National Shellfish Initiative and encouraging their participation to stimulate coastal jobs and shellfish resources. Perhaps the NOC could facilitate this outreach.

On page 20 you list the partner agencies for establishing the National Shellfish Initiative. We urge you to add EPA to this list. Clearly EPA has a role in keeping the country's waters clean. We believe they also have a role in facilitating the use of shellfish to naturally mitigate eutrophication of our coastal estuaries. After meeting with you on February 9th, we met with EPA Administrator Jackson and informed her of the opportunity presented by the National Shellfish Initiative. In addition, shellfish as a natural mitigation tool for reducing nitrogen in coastal waters should be included as a milestone in the water quality section under Action 1. An appropriate milestone might read:

Conduct a review of available filter feeding models to quantitatively evaluate the capacity of cultivated and restored shellfish to mitigate nitrogen pollution in coastal estuaries. Explore the possibility of implementing a nitrogen credit system using shellfish for pollution reduction.

Also under Action 2 of Inform Decisions and Improve Understanding, PCSGA strongly agrees that quality scientific information is critical to ensuring aquaculture is economically and ecologically sustainable. To that end we urge the NOC and its participating agencies to maintain and strengthen their commitments to funding research. USDA's ARS, NIFA and Regional Aquaculture Centers provide critical support in this regard as do their SBIR grants. NOAA's Marine Aquaculture Initiative, SBIR and Saltonstall Kennedy (SK) grants are also critical to advancing domestic aquaculture production. NOAA should be discouraged from redirecting SK funds for administrative purposes and urged to use them for aquaculture and fisheries research they are intended for.

The final milestone on page 20 calls for estimating the contribution and impacts of emerging uses including aquaculture on the economies of the communities and regions dependent on marine and coastal resources. Since this is not scheduled until 2015 we wanted to make you aware of a NOAA funded project currently being conducted by the [Pacific Shellfish Institute](#) titled: [West Coast Shellfish Aquaculture - Economic Impacts, Barriers to entry, and Opportunities for Expanded Production](#). The results of this research should be informative to your effort.

As already mentioned in our meeting on February 9th, we are pleased to see the Plan addressing ocean acidification (page 54). This is a critical issue for the shellfish industry particularly in the Pacific Northwest where we're already experiencing production problems associated with corrosive sea water upwelling off our coast. Monitoring and research have already significantly

helped our industry adapt. We're fortunate that much of our production relies on hatchery produced seed and that we can dodge or manipulate corrosive sea water. The actions and milestones proposed in the NOC Plan will facilitate continued understanding and development of critical adaptation strategies.

Relative to ocean acidification, there are two activities we'd like you to be aware of for coordination with NOC Plan efforts. Under the Washington State Shellfish Initiative, Governor Gregoire and NOAA Administrator Jane Lubchenco are co-convening an Ocean Acidification Blue Ribbon Panel. The Panel will make recommendations to the Governor and Administrator, regional research groups, and other policy-makers regarding additional research and monitoring needs and actions to understand, prevent/mitigate, and adapt to acidification of Washington State marine waters. The second activity is the work of the [California Current Acidification Network \(C-CAN\)](#). This is a collaborative effort between members of the West Coast shellfish industry and scientists to explore what is causing shellfish losses on the Pacific coast, what role ocean acidification and other factors might be playing in this problem, and how to adapt to these changes in order to sustain West coast shellfish resources.

It goes without saying that the PCSGA supports and appreciates the attention the Plan puts on addressing water quality and sustainable practices on land (pages 63-77). Action 1 on page 65 calls for the reduction of rural sources of excessive nutrients, sediments, toxics, and pathogens. For shellfish growers, pathogens are perhaps our greatest concern. Ensuring pathogens are not present in our shellfish growing waters is one of most critical functions of the National Shellfish Sanitation Program and the [Interstate Shellfish Sanitation Conference](#). Unfortunately, all of the milestones listed under Action 1 are targeting nutrient pollution and not pathogens. To some extent if you eliminate the source of nutrients you will also address pathogens, but not always. In addition to agricultural runoff, pathogens are introduced from failing on-site sewage systems, pet waste, overboard discharges from vessels and shoreline recreation without adequate toilet facilities. Agriculture-related pathogens will likely be addressed with the nutrient milestones in the Plan however pathogens from these other sources may not. PCSGA requests the NOC consider specific milestones to address the sources of pathogens to shellfish growing areas.

Thank you again for meeting with us earlier this month and for considering our comments on the Plan. As an industry that totally relies on a healthy ocean and responsible planning we applaud your efforts. If and when you and/or your staff are planning to be in the Pacific Northwest please contact me so I can arrange to get you out to experience shellfish farming at its finest!

Respectfully,

A handwritten signature in blue ink, appearing to read "Margaret P. Barrette".

Margaret Pilaro Barrette
Executive Director

NATIONAL OCEAN COUNCIL

Name: **Kent Satterlee**

Organization: Shell Exploration & Production Company

Path: http://edit.whitehouse.gov/sites/default/files/webform/shell_comments_on_the_noc_draft_implementation_plan_-_final_2-28-12.pdf

Comment: See comments attached in pdf format

Shell Exploration & Production Company

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February 27, 2012

SUBJECT: Shell Comments on the Draft National Ocean Policy Implementation Plan

Dear Members of the National Ocean Council:

Shell Exploration & Production Company, along with its affiliates supporting offshore exploration and production (Shell), is pleased to provide comments on the *Draft National Ocean Policy Implementation Plan* (Draft Plan). Shell is one of the largest leaseholders in the U.S. Outer Continental Shelf (OCS), including the Gulf of Mexico and Alaska, and producers of oil and natural gas. The OCS is a significant domestic source of oil and natural gas and a key component to ensuring the Nation's energy security.

Shell supports many important concepts upon which the Draft Plan is based, such as collaboration, communication, efficiency, robust technology and infrastructure, conservation, and scientific excellence to support decision-making. At the same time, Shell continues to have serious and unresolved concerns with the National Ocean Policy, as articulated through the Draft Plan, which preclude us from endorsing this version of it. We describe, herein, those concerns and recommend that the National Ocean Council (Council) moves forward only after revising the Draft Plan as described below. Additionally, we support and endorse the comments submitted by the American Petroleum Institute.

Policy Goals: The First Step

A clear set of national goals around energy, economic, and social development and conservation should come first.

As articulated by the Council in the Draft Plan, and as previously described in the work of the U.S. Commission on Ocean Policy and the Pew Oceans Commission, the oceans are complex natural

systems that provide a wide array of ecosystem services and economic benefits upon which humans depend. Oceans are the site of important activities for energy and natural resource production, security, and defense; serve as a means of moving goods and laying infrastructure; and provide scenic recreation to countless people drawn to the coasts. Oceans do not exist in isolation of these other vital activities; therefore, the Council should explicitly recognize the interdependencies between the National Ocean Policy and national policies on energy, defense and homeland security, and economic development. Such policies should be developed in tandem and articulate a clear, collective, and complementary set of policy goals to guide activities. Doing so would enable the Council to ensure that the contents of the Draft Plan contribute to and align with multiple national goals, including those in energy, economics, and national security.

The importance of national goal setting as a first step is also evident early in the Draft Plan. Priority 1, "Ecosystem-based Management," remains a highly ambitious goal for the scientific community in general, largely based on the sheer complexity of interrelating variables that affect ecosystems of interest. Shell agrees with the Council's characterization of ecosystem-based management as a process, informed by rigorous natural and social sciences, which consider the elements that, are integral to ecosystem functioning, including humans. The Council also promotes long-term sustainable use of natural resources, emphasizes place-based activities and adaptation, and acknowledges system complexity and interconnectedness – all of which are important components of effective resource management. Moreover, the Council's emphasis on science-based, information-driven management that considers "diverse ecological social, economic, cultural and institutional perspectives...and assesses trade-offs among diverse management objectives" (p. 11) highlights perhaps the most crucial elements of ecosystem-based management: the information and analytical processes needed to define ecosystem management goals.

The goals of ecosystem management must be set first because they inform each subsequent phase of the management process. Ecosystems provide a diverse range of benefits and services, and each one of those benefits and services can be managed through careful understanding of how ecosystem variables are interrelated. Ecosystem management, however, does not inherently tell us which of those variables (i.e., which species, habitat, or use) to manage for; that is a societal decision. Society can choose to maximize certain products or services through ecosystem-based management, or it can seek to manage for compatible uses among alternative ecosystem services and benefits. The Flower Garden Banks National Marine Sanctuary is one example in which oil and gas development and coral reef protection have proven to be compatible. Managing ecosystems, therefore, requires society to evaluate and understand the trade-offs inherent in selecting to optimize some ecosystem services and benefits over others, and to acknowledge that these trade-offs are sometimes best addressed by promoting compatible ecosystem uses and services.

The Council, as part of its first action, would have the Council on Environmental Quality (CEQ) and two forthcoming advisory committees to establish a shared set of goals, associated principles, and

performance measures for Federal implementation of ecosystem-based management. Shell supports goal-setting as a necessary first step, yet we note that the process of defining the operative management goals is, in and of itself, very complicated and contentious. While the Council emphasizes the role of science and data in guiding ecosystem management, these alone will not point to the answers, especially when scientific uncertainty exists and alternative uses of ecosystem resources are linked to divergent value systems held by diverse stakeholders. Decision-makers must frequently address situations in which data are lacking, user group competition is fierce, and economic and ecological trade-offs and compatible uses are poorly understood.

The CEQ and advisory committees will have a formidable challenge in putting forth goals, principles, and performance measures that will have meaningful effect in the actual application of ecosystem management, and the Regional Planning Bodies envisioned under Coastal and Marine Spatial Planning will likely have even more challenges. Therefore, Shell recommends that the Council only proceeds down this path after establishing, with a level of clarity as yet unseen, a process for establishing a shared set of ecosystem management goals based on objective cost-benefit analyses associated with alternative ecosystem benefits and services. The process must also include meaningful and transparent methods for incorporating – not merely considering – the input of affected stakeholders, as well as recognition of the legal, regulatory, and financial constraints affecting management options. The process must articulate how goals will be adapted over time as new information and interests evolve, as well as mechanisms for resolving disputes among stakeholders. Shell is very interested in being part of this process.

Information to Support Decision Making

Shell, the oil and gas industry, and resource management agencies have significant knowledge and operational experience to contribute to the development of policy goals.

Priorities 2 and 3, “Inform Decisions and Improve Understanding” and “Observations, Mapping, and Infrastructure,” are based on concepts that are widely accepted in the applied sciences. We agree that “strong science, technology, and engineering capabilities are the foundation for making informed decisions and improving our understanding of how best to manage” (p. 18) our resources. We also agree that observation and mapping infrastructure built on sound data integration and archiving systems, is essential to this effort. These points are carried further in Priority 6, “Resiliency and Adaptation to Climate Change and Ocean Acidification,” and Priority 8, “Changing Conditions in the Arctic,” which would apply observation and mapping data and technologies to support forecasts and decision-making around specific issue areas: climate change, ocean acidification, and Arctic transformation.

The primary purpose of these priorities is to obtain and utilize accurate scientific information and support the intellectual, financial, and educational investments necessary to build increasingly sophisticated and effective management and problem solving capability. The outcomes described

herein – advancing knowledge and its application through observation and other technologies, pursuing informed and real-time decision-making via coordinated support tools and information services, assessing infrastructure assets and making plans to bolster monitoring and response plans, integrating data and information products about social and natural sciences, and promoting ocean science education and training – are all important functions for the Council to support. Shell supports these outcomes as well.

At the same time, we observe that these priority areas, and the actions and milestones contained therein, are lacking in two critical pieces: (1) good faith estimates of what the proposed actions will cost the nation, and (2) recognition of the role of and significant contributions of private industries, including the oil and gas industry. First, a statement of policy intended to achieve specified outcomes – in this case expand the pursuit of scientific research, ocean exploration and observations, infrastructure development, and technological advancement – should demonstrate knowledge of the investment required to achieve those outcomes and over what timeline those investments must be sustained. Other than inter-agency budget coordination efforts (p. 39) that would come *after* the plan is implemented, the Draft Plan does not provide sufficient up-front insight into the financial resources required to achieve the outcomes, nor does it convey a plan for building these resources in the face of competing and costly national priorities. This gap in the National Ocean Policy will likely, in effect, preclude the Nation from building and dedicating enough money to the effort, and it may allow those responsible in the White House and the agencies to evade accountability. Shell recommends, therefore, that the Council articulate a financial path forward for these elements of the National Ocean Policy before it is implemented, based on clear and coordinated budget requests that guide the existing Congressional appropriations process.

Second, in its Draft Plan, the Council does not acknowledge the past, current, and future investments in these priority areas of members of the oil and gas industry, especially those active in the OCS. While some of our scientific data are proprietary, the industry has significant environmental and economic information and data that supports the goals and actions of the Council and should be properly recognized in the Draft Plan. For example, in February 2008, John Hofmeister, then President of Shell Oil Company, and VADM Conrad Lautenbacher, U.S.N. (Ret.), then National Oceanographic and Atmospheric Administration (NOAA) Administrator signed a partnership agreement to collaborate on studies of hurricanes and tropical storms. Through this partnership, Shell and NOAA have provided benefits to the people of the Gulf Coast, supported the safety of offshore personnel, and provided a framework for sustained collaboration. The goal of this public-private partnership is to advance observational quantity, quality, and diversity to meet shared interests in improving operational forecasts and understanding of the Gulf of Mexico environment, particularly during hurricane season.

Additionally, in August of 2011, NOAA, Shell Exploration & Production, ConocoPhillips, and Statoil USA E&P Inc. signed an agreement to enhance collaboration on ocean, coastal and climate science for the Arctic. The agreement calls for sharing a number of scientific data sets including weather and

ocean observations, biological information, and sea ice and sea floor mapping studies. As stated by the current Under Secretary of Commerce and NOAA Administrator, Jane Lubchenco, "This innovative partnership will significantly expand NOAA's access to important data, enhance our understanding of the region and improve the United States' ability to manage critical environmental issues efficiently and effectively as climate change continues to impact the Arctic." Conditional approval of Shell's exploration program in the Beaufort and Chukchi Seas in 2012 also requires significant data sharing on marine mammal routes, sea current, ice and weather forecasting, and data about ecosystem and cultural resources.

Shell's contributions to ocean science go far beyond data sharing, as we are also a world leader in developing technologies and building infrastructure for safely extracting oil and gas resources and preventing and responding to potential oil spills in the deepwater Gulf of Mexico (where we have lead roles in the Center for Offshore Safety and the Marine Well Containment Company) and in the Arctic. Our investments in safe production, spill prevention, and response – especially in the Arctic – align well with Priority 8, which focuses on the need for Arctic collaboration, cooperation, science, and technology. Since returning to Alaska in 2005, Shell has made Arctic science and technology a critical component of its success case, and we aggressively pursue a robust understanding of the existing environmental conditions and how to best operate under these conditions. Our science program is integrated to take full advantage of shared learning and data transfer from multiple areas of investigation, including baseline science, operational science, and engineering and technology. Through shared learning and formal data transfers, Shell supports safe operations that minimize impact to human and natural resources of the Arctic, and also provide much broader benefits by contributing to the general advancement of scientific understanding of the Arctic.

For example, Shell's Science program has advanced the understanding of marine ecosystems of the Chukchi and Beaufort Seas, monitored and characterized the impacts of exploration activities to marine mammals, assessed the long-term consequences of drilling discharges, and developed new environmental monitoring and response technologies to enable safe offshore operations. Some of Shell's more significant multi-year programs include:

- Marine mammal monitoring and mitigation program using a three-tiered strategy of acoustic recorders, aerial observers, and vessel-based observers;
- Met-ocean program including state-of-the-science ice and weather forecasting and physical oceanography measurements;
- Offshore ecosystem-based baseline investigations focused on assessing the trends and underlying dynamics at multiple levels of the food web;
- Onshore environmental baseline surveys focused on habitat assessment, hydrology, and cultural resources;

- Drilling discharge program that has characterized the long-term fate of historical discharges and that will also monitor planned 2012 discharges;
- Regional offshore and nearshore air quality monitoring program;
- Various programs designed to gather and incorporate Traditional Knowledge;
- Ice forces program, including surveys of strudel scour and ice gouge features on the seafloor in order to better understand engineering design loads;
- Sound mitigation program focused on developing engineering controls to minimize sound energy exposures in the marine environment;
- Laboratory research program on the toxicity and biodegradation potential associated with the use of chemical dispersants in the arctic;
- Field experiments on various arctic-specific spill response technologies, including in-situ burning, chemical dispersion, mechanical recovery, remote sensing, and unmanned aerial systems; and autonomous underwater vehicle programs.

We believe that Shell and the oil and gas industry could play a significant role in each of the priorities related to information to support decision-making and science and technology development, yet the Council does not sufficiently include industry as either a source of information/observations or as a potential research and training partner. Shell recommends that the Council revises these sections of the plan to recognize the oil and gas industry as a significant partner in pursuit of scientific data and information, operational expertise, and infrastructure and technology development. The Council should articulate ways, such as science roundtables and other collaborative fora, to develop effective working relationships with industry so that we can address shared goals and work through specific challenges at a technical and scientific level.

Legal and Institutional Frameworks

The National Ocean Policy should not interfere with existing legislative and statutory responsibilities.

Priorities 4 and 5, "Coordinate and Support" and "Regional Ecosystem Protection and Restoration," begin to address some of the most crucial elements of the National Ocean Policy: the legislative, jurisdictional, and other institutional factors that shape the regional and national context in which the policy is to be implemented. Priority 7 and 8, "Water Quality and Sustainable Practices on Land" and "Changing Conditions in the Arctic," go a step further and emphasizes the need to work across legal, regulatory, and jurisdictional lines to address specific issues related to water quality and Arctic stewardship. The laws, authorities, mandates, and governance structures for resource management

and pollution protection do, in fact, vary at different levels of government. They can also conflict or be redundant within the same level of government – perhaps most obviously at the Federal level, as the Council acknowledges. Shell understands how these institutional differences can have far-reaching impacts across government operations and the stakeholders that depend on government services. Policies intended to “increase communication, streamline processes, leverage resources, resolve disparities, and enhance synergies” (p. 35) within and between government programs at all levels is an important part of serving the public trust.

Within these priority items, we support the intent underlying several of the action items, and we hope to see many of the associated outcomes realized. For example, Shell understands that improving inter-jurisdictional cooperation and collaboration can make government more effective and efficient, in terms of saved time, reduced costs, and increased responsiveness to stakeholders. We find, however, that the Draft Plan remains vague about how these will be realized. On the issue of using collaboration to streamline permit processes, all we know is that agencies will “work together” to see how to coordinate the processes; however, what criteria and methods will they use, how much time and money will they devote to this, and how will they involve regulated industries in this process? How and when will the Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska achieve its goals?

On the issue of collaborative partnerships, it is unclear how different types of partnerships (e.g., existing regional ocean partnerships and the ways they work with stakeholders) will relate to other elements of the policy, such as the Regional Planning Bodies (RPBs) under Coastal and Marine Spatial Planning. Exactly how would our resources – and those of other groups – be leveraged, for what purposes, and how would transparency and accountability of partnerships between any non-governmental group, the RPBs, the Council, and independent agencies be addressed? Would partnerships only be pursued where currently authorized by law, and would partners be granted any additional abilities to influence the directions of activities they financially contribute to? Shell recommends that the Council provides additional clarity in the Draft Plan on how inter-governmental efforts to streamline permits, promote partnerships, and otherwise pursue collaboration and efficiencies would work. The Council should consult with the users of the ocean, specifically the oil and gas industry, to build upon existing best practices and promote predictability, accountability, and transparency.

It is also unclear how individual agencies will simultaneously support efforts to broaden the reach of local, regional, and Federal inter-agency efforts and cross jurisdictional lines, while still working within their statutory mandates and limited budgets to uphold their existing responsibilities. Likewise, it is not clear to us that the Council has completed, *prior* to the issuance of the Draft Plan, a comprehensive analysis of existing ocean resource management and conservation laws, associated regulations, and resulting regional programs (e.g., Chesapeake Bay, wetlands, coral reefs, invasive species, estuarine habitats, harmful algal blooms and hypoxia, pollution reduction) and identified why *current*

responsibilities are – in many cases – not being met by agencies. It may be the case that the Administration can meet most of its ocean policy goals through close examination and more effective implementation of the Outer Continental Shelf Lands Act (which provides a well-established framework for managing ecosystems and utilizing multiple-use spatial planning) and other existing statutes, without undertaking a resource and time-intensive process for expanding laws and regulations in which the outcomes are highly unclear.

While Shell understands that the Draft Plan and the potential Coastal and Marine Spatial Plans do not, in and of themselves, initiate any rulemaking processes, Action 3 on page 38 describes how the Council’s Legal Working Group will seek areas in which laws and regulations can be modified or expanded to achieve the President’s ocean policy goals. Instead of seeking new or expanded authorities, a more logical approach would be to work within the *existing* suite of laws and regulations, identifying the limiting factors to achieving their goals, and developing targeted or strategic plans (including realistic budget and staffing estimates) for resolving any shortcomings. This would provide a needs-based justification for moving forward on necessary issues, as opposed to basing a policy on a wish list of statutory, regulatory, and budget modifications that may or may not receive Congressional approval. Recognizing the primacy of existing legal and institutional factors in affecting ocean resource management and sustainability, Shell recommends that agencies focus on achieving clarity and efficiency of operations under existing law before implementing a policy that would introduce additional complexity and confusion through discussions of legal and regulatory expansion.

Moreover, the Council should clarify how the National Ocean Policy relates to processes for moving forward with pending activities or other programs (existing or new) associated with the policy. Again, clear lines of distinction should clarify that the National Ocean Policy will not supersede, further complicate, or delay the implementation of Congressional statutes; nor will the policy seek to re-interpret the intent of Congress on existing laws. Shell recommends that the Council includes a statement in the Final Plan clarifying that it will respect and uphold current statutes, seek Congressional approval for any new actions for implementing the Draft Plan, and assure stakeholders that it will not delay any currently-authorized activities.

Preserving Multiple Use Options

Coastal and Marine spatial Planning should fundamentally be about facilitating multiple uses of marine resources and environments.

In Priority 9, “Coastal and Marine Spatial Planning” (CMSP), the Council presents CMSP as a way to advance ecosystem-based management. CMSP would also provide a framework for advancing the other concepts built into the National Ocean Policy, such as compiling information through research, observation, and mapping technologies to support sound decision-making, as well as promoting collaboration, cooperation, and efficiencies across institutional and jurisdictional lines. As in the

sections and paragraphs above, Shell understands the intent and concepts built into this part of the National Ocean Policy, and we share many goals such as streamlining permit processes. We remain, however, concerned about how these concepts would be translated into reality. The lack of clarity we describe above extends to CMSP, and this lack of clarity prevents Shell from supporting the version of CMSP articulated to date. In fact, given the potentially far-reaching consequences of CMSP and the sheer complexity of actions required for its implementation, Shell recommends that the Council revises the Draft Plan in a way that acknowledges the complexity of its proposal, the risks of leaving key questions unresolved, and the necessary information on CMSP structures and processes that will help inform meaningful public comment.

We understand that the Council proposes to achieve CMSP by having nine RPBs develop Coastal and Marine Spatial Plans (Plans) for their respective regions. The RPB members would represent local, state, Federal, and Tribal governing bodies, who would have expertise in resource management, science, homeland and national security, transportation, and public health. The Plans they develop would be informed by science, research, and mapping efforts via ocean.data.gov, yet it appears the RPBs would use that information to achieve two primary goals pre-determined by the Council: sustainable use and long-term protection of the oceans and coasts. Beyond that, the information about CMSP in the Draft Plan is open-ended, leaving the door open to a range of outcomes – some of which may be highly undesirable. Shell is concerned that some of these outcomes could disenfranchise key user groups, limit transparency and accountability, reduce options and access to coastal and marine resources (even those that would be compatible with sustainable use and protection goals), increase delays and investment uncertainty, and otherwise undermine a range of other activities in the national interest.

The Council's vision for CMSP needs clarity in several critical areas. For example:

- What interest groups would be included in the CMS planning process, and how would the RPBs incorporate their input in a meaningful (not just symbolic) way?
- Considering that the RPB members would have expertise in many subject areas, but the Draft Plan does not explicitly include the energy sector as a RPB member subject area, how would oil and gas experts be effectively represented?
- How would RPB operation, deliberation, decision making, conflict resolution, reviews, and other work not cause additional delays in the governing process; and how would the RPBs ensure transparency in how they work with external groups?
- How will RPBs relate to existing inter-agency collaborations and joint programs on oceans issues, without duplicating or slowing down progress of these other efforts?

- How will RPB members deal with competing mandates among their respective agencies, differences in data interpretation, and other disagreements on process and substance?
- If RPBs cannot reach consensus in what it puts forth, under what authority will the President resolve disputes while not interfering with statutory authorities held by agencies?
- How will RPBs build in predictable mechanisms for keeping their natural resource use options open, such as allowing for future seismic surveys in areas with currently unknown oil and gas potential?
- What criteria and methods will RPBs use to determine *multiple* and *compatible* uses and how will the plans ensure maximum flexibility and compatibility in uses?
- Beyond the known costs and benefits of alternative uses, how will the RPBs address unknown factors such as the value of ecosystem services and the opportunity costs of foregone economic activity? How would those be factored into cost-benefit analyses for evaluating trade-offs?
- How will each RPB be held accountable for the consequences of their decisions, and how would they achieve all their responsibilities without incurring additional costs and delays?
- Are the CMS Plans “advisory” in nature only, without any requirements for agencies to follow them in their independent decision making such as permit application approval, or would some degree of agency discretion be lost or subservient to the Executive Order establishing the National Ocean Policy and the resulting CMS Plans?
- Besides issuing CMS Plans, what additional activities will the RPBs undertake – will they have power to review and approve agency actions taken in relation to the plan, recommending budgets, or proceed with self-directed initiatives?
- How do CMS Plans relate to the Department of Interior 5-Year Program? Does one supersede the other? How are current oil and gas leases treated in the CMS Plans? How are future lease sales identified in a current 5-Year Program treated in the CMS Plans?


When raising these questions over the last two years, we have received unclear and contradictory responses. The Draft Plan notes that many CMSP issues will be addressed in a forthcoming Handbook, to be issued soon after the Draft Plan’s comment period closes; however, this Handbook may or may not resolve all these questions. Regardless, Shell finds that the answers to these questions are critical and must be open, transparent, and available for public comment. Shell recommends that the contents of the Handbook, and the manner in which it informs RPB deliberations, be subject to public review and comment before any action is taken by any RPB pursuant to the plan.

Concluding Remarks

The Council should suspend its actions to implement the Draft Plan until it is able to clarify these critical questions surrounding CMSP and other aspects of the National Ocean Policy. If the Council continues to pursue the National Ocean Policy, and especially CMSP, it should ensure that the policy supports and aligns with other national goals, including those articulated in national policies for energy, economics, and national and homeland security. The Council should include strong directives for CMS Plans to enhance multiple uses of coastal and marine resources based on meaningful cost/benefit analyses, reflect transparent input of affected stakeholders, and uphold and reinforce the existing legal and regulatory framework established by Congress. Industries, including the oil and gas industry, should have a clear and significant role in RPBs under CMSP, as well as all other aspects of the National Ocean Policy. The Council should uphold collaboration, cooperation, and efficiency as overarching goals to guide such planning, along with the goal of integrating information – of the highest scientific caliber – into visual and other types of decision support tools.

We appreciate this opportunity to comment on the *Draft National Ocean Policy Implementation Plan*, and we look forward to seeing and reviewing the draft CMSP Handbook in the near future. We are hopeful that the Council will provide an opportunity for the public to comment on the handbook. Please contact me or Kris Lynch (Kristine.lynch@shell.com) if we can provide any additional or clarifying information to help you consider our comments.

Yours sincerely,
Shell Exploration & Production Company

A handwritten signature in black ink, appearing to read "Kent Satterlee III". The signature is stylized and cursive.

Kent Satterlee III
Manager Regulatory Policy – Offshore
Upstream Americas

Name: **Justus Stewart**

Organization:

Path:

Comment: Dear Chairs Sutley, Holdren, and National Ocean Council Members:

I would like to share my support for National Ocean Policy draft Implementation Plan. As an outdoor enthusiast from the Pacific Northwest, I believe that a strong Implementation Plan will help protect marine ecosystems and encourage sustainable ocean uses, including recreation and tourism.

The draft National Ocean Policy Implementation Plan establishes a strong blueprint for taking action and fostering agency coordination to sustain our ocean, coastal and Great Lakes resources. The draft plan has successfully incorporated the needs and concerns of governmental, non-profit, and commercial groups and provides clarifying details to improve accountability and monitor progress toward improved ocean management. Frequent notations on how implementing actions are related to one another provide confidence that activities will be coordinated and make good use of limited resources.

Nonetheless, the plan could be improved to achieve even more progress. It should more fully utilize all available authorities for habitat protection and management. Many of the milestones could be extended beyond cataloguing and planning to include action, with tangible, on-the-water activities. Regional need, support, and capacity should guide where coordinated actions should first take place. Federal agencies must continue to ask for input from other levels of the government and the public and incorporate this new information into implementation of the plan.

With these additions, President Obama's Implementation Plan will provide a better guide for achieving the goals of protecting, maintaining, and restoring the nation's oceans, coasts, and Great Lakes and ensuring resilient coastal economies. I look forward to the release of the final plan and hope to see policy translated into action on the water soon.

Sincerely,
Justus Stewart, Seattle WA

Name: **daphne stewart**

Organization: West Coast

Path:

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Sincerely, daphne stewart

Name: **Cora Campbell**

Organization: Alaska Department of Fish and Game

Path: http://edit.whitehouse.gov/sites/default/files/webform/draft_noc_implementation_plan_comments_3-2-12.pdf

Comment: Please see the attached cover letter and comments from Commissioner Cora Campbell on behalf of the State of Alaska.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR
Cora Campbell, Commissioner

P.O. BOX 115526
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March 2, 2012

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

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

Dear Council:

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

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

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

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

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

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

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

Sincerely,



Cora Campbell
Commissioner

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

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

Coastal and Marine Spatial Planning (p. 85)

General Comments:

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

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

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

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

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

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

Specific Comments:

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

Ecosystem-based Management (p. 9)

General comments:

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

Specific comments:

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

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

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

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

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

Name: **Monty Hawkins**

Organization:

Path:

Comment: In the Mid-Atlantic Bight commercial fishers caught 28K MTs of sea bass from 1950 to 1959 -- and 24K MT in all decades since combined.
In our part of the ocean hard & soft corals (star coral & sea whip) are not recognized as fish habitat -- and THAT, mud & sand with a few growths that don't form habitat anyway, is present-day cutting edge seafloor habitat science in the MAB.
Looks to me like fishery restoration could use some help.
Wasn't until windmills that someone from the Government said, "Hey, those are corals."
Essential Fish Habitat remains undiscovered; Habitat restoration's vital role in fisheries restoration unused.
Reef Restoration Makes Fishery Restoration Simple
..but first we have to learn we have reefs.

Name: **Angela Licata**
Organization: NYC Environmental Protection
Path:
Comment: Attachment, via email.



**Environmental
Protection**

Carter H. Strickland Jr.
Commissioner

Angela Licata
Deputy Commissioner
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Submitted electronically
February 22, 2012
<http://www.WhiteHouse.gov/oceans>

Copy to:
National Ocean Council
722 Jackson Place NW
Washington, DC 20503

Re: Comments on draft *National Ocean Policy Implementation Plan*

Dear Sir/Madam:

The draft National Ocean Policy Implementation Plan is a welcome effort to streamline the procedures and tools of various federal agencies as well as the programmatic requirements for State, regional and local government agencies. The New York City Department of Environmental Protection (DEP) sincerely commends this important effort. DEP appreciates that this Plan's outcomes, including streamlined compilation of data, data availability at one website, and increased emphasis on ecosystem valuation-based approach to coastal management, will be useful to local governments. In particular, the City believes that ecosystem-based management (EBM) is the best approach to quantifying the monetary and non-monetary benefits of water quality projects. Following are a number of questions or comments on this document, by which DEP requests additional guidance or clarification in the final Implementation Plan.

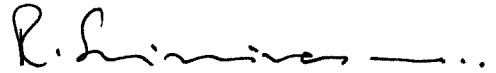
1. DEP suggests a minimization of the use of acronyms to enhance readability of the text. Acronyms that are used infrequently should be avoided.
2. Various federal entities are currently working on dozens of guidance documents or collaborative decision documents, anticipated to be issued in the next 1-10 years, which will benefit the existing ecosystem restoration programs undertaken by local, regional and state government agencies. DEP recommends that the production of these guidance documents be expedited to capture significant efficiency gains and cost savings. As an example, development of guidance for all federal agencies regarding implementation of EBM is slated for completion in 2013, and EBM is anticipated to be incorporated into federal agencies' planning and review processes by 2016. However, existing, ongoing coastal restoration projects can benefit from use of this unified EBM framework.
3. The Implementation Plan envisions the identification of three EBM pilot implementation areas. Can local governments volunteer as potential EBM pilot areas?

4. DEP supports the integration of observation systems and data maintained by various federal and other agencies, as well as universities and volunteer organizations. To facilitate this process, DEP recommends the development of a uniform protocol for data collection and compilation, along with consistent procedures for quality assurance.

5. On Page 58, precipitation data projections should be clearly identified under Action 3, similarly to the manner in which sea level rise projections are identified. Precipitation data projections are a major concern for the Northeast region, and particularly for local governments such as NYC; regional and local projections at 10-15 minute intervals will be beneficial as NYC's urban drainage systems are very vulnerable to increases in precipitation intensities. Models need to be enhanced to provide projections at this time-scale, and additional guidance should be provided on scientific sensitivity analyses to assess vulnerability.

DEP appreciates the opportunity to comment on the draft Plan as well as your consideration of our comments.

Sincerely,



for Angela Licata
Deputy Commissioner for
Sustainability

cc: A. McCamphill
M. Sherer

NATIONAL OCEAN COUNCIL

Name: **Peter Sergienko**

Organization:

Path:

Comment: Attachment, via mail.

February 23, 2012

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 Draft Implementation Plan

Dear Chairs Sutley and Holdren and National Ocean Council Members,

On behalf of the undersigned organizations and their combined membership, we thank you for the time and effort that you, your staff, and the agency participants have dedicated to developing the *Draft National Ocean Policy Implementation Plan* (Plan). The Plan is a major step forward in advancing the vision laid out in President Obama's Executive Order 13547: "To achieve an America whose stewardship ensures that the ocean, our coasts, and the Great Lakes are healthy and resilient, safe and productive, and understood and treasured so as to promote the well-being, prosperity, and security of present and future generations." We strongly support the National Ocean Council's work towards an inclusive process for engaging all stakeholders and the general public and to craft and implement strategies that address the most pressing challenges facing our ocean, coastal and Great Lakes resources, such as ocean acidification, habitat protection and restoration, water quality and pollution, and appreciate this opportunity to provide you with further comments on the Plan.

We are pleased to see a strengthened definition for ecosystem-based management in this draft Plan; however, we urge you to be explicit in the final Plan that ecosystem-based management must result in the protection, maintenance and restoration of the health of our oceans' natural ecosystems. Only healthy, functioning, and resilient marine ecosystems can provide the resources and services humans want and need, now and into the future.

The Plan shows great strength in providing government accountability and coordination. In addition, to gain the full suite of economic and environmental benefits that stem from the Plan's robust implementation, it should be reiterated that the National Ocean Council and every relevant federal agency be engaged in implementation of the National Ocean Policy to the full extent of their statutory responsibility.

To successfully achieve the Plan's goals, we also urge you to:

- Prioritize protecting, maintaining and restoring the health of our oceans, coasts and Great Lakes with an emphasis on achieving conservation milestones that can provide immediate ecological benefit such as the protection and restoration of coastal and marine habitat for priority species;
- Conduct regional ecological assessments that identify important ecological processes and areas and inform the Regional Ocean Partnerships' coastal and marine spatial planning processes;

- Advance the timelines provided for milestones for actions related to these key priorities: ecosystem-based management; prevent and mitigate pollution and harmful impacts to water quality caused by poor land use practices; and protect and restore marine habitat for priority species;
- Analyze potential interagency actions for resiliency and adaptation to climate change and ocean acidification which include regional reduction of carbon emissions;
- Establish regional planning bodies in New England and the Mid-Atlantic in 2012 and in the West Coast in 2013;
- Retain efforts to coordinate financial and educational resources to achieve the Plan's goals;
- Produce a progress report on completion of the milestones in the Plan every two years and an Oceans, Coasts, and Great Lakes Health Report that notes progress on reaching set ecological indicators.

We also strongly urge the National Ocean Council to support funding for regional ocean partnerships in those regions which are best prepared to begin regional planning and convene stakeholder participation. Regional ocean partnerships can make the best use of scarce federal funding by bringing federal, state, tribal, scientific, and non-governmental entities together to start to address ocean management challenges.

Thank you for all of your efforts to ensure a healthy future for our oceans, coasts, Great Lakes and the millions of people who depend upon them.

Sincerely,



Peter A. Sergienko
2127 NW Irving Street Apt 101
Portland, Oregon 97210