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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

April 19, 2013

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The Honorable Nancy Sutley
Co-Chair, National Ocean Council
Chairwoman, Council on Environmental Quality
722 Jackson Place
Washington, DC 20503

The Honorable John P. Holdren
Co-Chair, National Ocean Council
Director, Office of Science and Technology Policy
Executive Office of the President
725 17th Street Room 5228
Washington, DC 20502

Dear Chairwoman Sutley and Director Holdren:

Over the past two years, the Obama Administration has repeatedly limited public transparency and frustrated attempts to obtain information about the cost, legal authority, activities, and staffing involved with developing and implementing regional ocean zoning plans and other parts of the National Ocean Policy.

The Administration's final plan for implementing the National Ocean Policy, released Tuesday, continues this pattern of secrecy and reaffirms the Administration's sweeping, unilateral expansion of federal bureaucracy through increased regulation of economic and recreational activities affecting the oceans, even those occurring far inland.

Ms. Sutley's testimony yesterday before the Subcommittee on Fisheries, Wildlife, Oceans and Insular Areas did little to provide clarity or allay concerns about the funding sources, regulatory impact, mandatory nature, and role of States, local governments, Tribes, and interested groups in implementing the National Ocean Policy.

Without mentioning "coastal and marine spatial planning," the final implementation plan makes clear that the Obama Administration is moving forward with its plans to regulate and zone the oceans, Great Lakes, coastal, and inland areas. In fact, an endnote in the final

implementation plan notes that the final plan “is intended to be read in conjunction with Executive Order 13547 and the Final Recommendations of the Interagency Ocean Policy Task Force, July 19, 2010.” Those two documents require the established of Regional Planning Bodies and the development of coastal and marine spatial plans in nine regions of the country. The Final Recommendations of the Interagency Ocean Policy Task Force also leave it to each Regional Planning Body to determine the geographic scope of the coastal and marine spatial plan. The final implementation plan, however, fails to answer a number of important questions about what role the National Ocean Council, participating federal agencies, and Regional Planning Bodies will play in overseeing the management and zoning of ocean, coastal, and inland areas, especially in areas where a state has declined to participate, noting additional guidance still needs be issued at some unspecified date.

The final implementation plan requires that Regional Planning Bodies complete development of marine plans by the end of 2017. The National Ocean Council, in turn, is to be responsible for reviewing the regional plans and certifying that they are consistent with the national plan. The final implementation plan is silent on whether the National Ocean Council will have the authority to disapprove a regional plan or trump regional choices for how the ocean or coastal area is to be managed, as the draft plan had suggested. Although states may decline to participate, the final implementation plan makes clear that the Regional Planning Body will continue to proceed in developing and implementing a regional plan “to ensure that Federal actions support and advance both regional and national objectives.”

At least one Regional Planning Body has already begun to organize and hold meetings, but it has been unclear for what purpose, with what federal resources, and under what guidance given the uncertainty and lack of details contained in the final implementation plan over these regional efforts. In addition, regional ocean planning organizations have been, in some cases in coordination with federal agencies, using federal funds to begin the process of coastal and marine spatial planning. It is especially troubling that a number of these meetings held to date were on an invitation-only basis and without full participation by all interested or affected stakeholders, despite assurances that these regional zoning efforts would be inclusive and transparent and despite the meetings being at least partially funded by federal funds and in coordination with federal agencies.

As discussed at yesterday’s hearing, the Committee on Natural Resources (“Committee”) has been conducting oversight of the National Ocean Policy since it was first announced through an Executive Order in 2010. The Committee has already held five oversight hearings to learn about the budgetary, economic, and regulatory impact of the National Ocean Policy, and last year sent three oversight letters requesting documents and information to the National Ocean Council. However, the National Ocean Council has repeatedly failed to provide all of the information and underlying documents as was requested and failed to meet a single deadline. As a result, Congress has been frustrated in its efforts to conduct meaningful oversight of how the National Ocean Policy is being authorized, implemented, and funded and whether it is diverting resources from and negatively affecting programs that have received specific Congressional authorization and funding.

To be clear, the Committee has jurisdiction over matters concerning fisheries and wildlife, marine affairs, including coastal zone management, international fishing agreements, oceanography, public lands generally, and mineral resources of public lands, among others. In order for the Committee to better understand the activities, costs, impacts, and burdens associated with implementation of the National Ocean Policy, it is requested that you provide the following information and documents no later than close of business on May 10, 2013:

- 1) A list of all Regional Planning Bodies that have been appointed as of this date, what agency or individual approved the appointments, how and when these appointments were made public, what criteria were used to appoint these individuals, what agencies have been designated as co-leads and whether such agencies are responsible for providing resources and support to the Regional Planning Body, and how nominations were solicited and received.
- 2) The final implementation plan states the National Ocean Council is expected to issue additional guidance to Regional Planning Bodies. Please describe what this additional guidance will cover, whether participation is required for all states in each region for the RPB to be convened, whether the guidance will be voluntary for States and Tribes, what are the consequences for not following such guidance, and the timeline for its issuance.
- 3) Ms. Sutley testified yesterday that the National Ocean Policy is not regulatory and is not mandatory for states to participate. Please describe whether a Regional Planning Body would continue to develop and implement a regional plan in a way that would affect a state that has declined to participate. For example, would a state that has declined to participate in a Regional Planning Body be exempt from any requirements or programs that result from a regional plan, or would the regional plan still apply to activities within a state that has declined to participate?
- 4) All drafts of the final implementation plan for the National Ocean Policy, including all versions provided to National Ocean Council's Governance Coordinating Committee and any comments or edits to such drafts.
- 5) The names and titles of any employees of the National Ocean Council, the Council on Environmental Quality ("CEQ") and/or the Office of Science and Technology Policy ("OSTP"), as well all individuals serving on a detail, fellowship, or temporary assignment to the White House from another federal agency or department or from a non-federal entity under the Intergovernmental Personnel Act who has worked on any aspect of the National Ocean Policy, or participated in developing the draft and/or final plan to implement the National Ocean Policy.
- 6) Copies of all agendas, briefing papers, presentation materials, meeting minutes, invitee and/or attendance lists, and any travel payments and/or reimbursements for any meetings of the National Ocean Council's Governance Coordinating Committee.

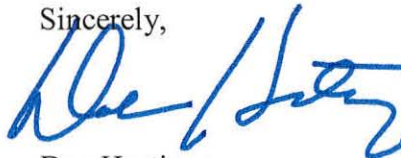
- 7) Copies of all FY 2013 and FY 2014 budget submissions provided by National Ocean Council participating agencies or otherwise in the possession of CEQ and OSTP concerning the implementation of National Ocean Policy.
- 8) Copies of all emails and other documents related to the establishment or activities of any Regional Planning Bodies, including all guidance issued to Regional Planning Bodies, briefing and/or presentation materials for meetings of any Regional Planning Bodies, invitee and/or attendance lists, travel payments and/or reimbursements, and minutes for any Regional Planning Body meetings and workshops.
- 9) Ms. Sutley has previously testified before the Committee that the Regional Planning Bodies and Governance Coordinating Committee would not be subject to the Federal Advisory Committee Act because they are composed only of governmental representatives. Although the final implementation plan encourages outreach and stakeholder involvement, please explain why the Regional Planning Bodies and Governance Coordinating Committee have been organized in a way to avoid the Federal Advisory Committee Act, which would ensure greater transparency about their activities and meetings.
- 10) Copies of all emails and other documents related to the activities of any regional ocean planning organization which has received any federal funding, or meetings or workshops sponsored by regional ocean planning organizations and attended by federal employees using federal funds, including all guidance regarding coastal and marine spatial planning given to the organization, applicability of the Federal Advisory Committee Act, briefing and/or presentation materials provided for the meetings, invitee and/or attendance lists, travel payments and/or reimbursements, minutes the meetings or workshops, and a list of other funding sources used to convene the meeting or workshop.
- 11) Please describe what legal authority if any authorizes the National Ocean Council and participating agencies to accept voluntary contributions or donations of in-kind services related to the activities of any Regional Planning Bodies, including those related to travel, meetings, and workshops.
- 12) The final implementation plan states that federal agencies have processes for identifying marine areas for management protection under existing authorities and are directed to support reactivation of the National Marine Sanctuary Site Evaluation List. Please identify any ecologically important or culturally significant areas that the National Ocean Council or participating agencies are considering or have identified as being suitable for protection under federal law.
- 13) Section 6(b) of Executive Order 13547 requires each agency, department and office responsible for taking action under the National Ocean Policy to prepare an annual report and make it publicly available describing actions taken in the

previous year to implement policy, summaries of any comments on the agency's activities and any responses thereto. Your letter of March 30, 2012 states that "government wide ocean-related funding is catalogued in the biennial Federal Ocean and Coastal Activities Report mandated by Section 5 of the Oceans Act of 2000." Is it your position that the issuance of this biennial report satisfies the annual reporting requirement under the Executive Order? Have any reports been prepared for calendar years 2010, 2011, or 2013 pursuant to the Executive Order? If not, why? If yes, please provide copies of all such reports.

- 14) Copies of any contracts, cooperative agreements, grants, or memoranda of agreement/understanding between the National Ocean Council or participating agencies and the Meridian Institute related to the development and implementation of the National Ocean Policy.
- 15) Copies of all emails and other documents related to communications between employees of the National Ocean Council, CEQ, or OSTP and the Meridian Institute, the Moore Foundation, Oceana, the Natural Resources Defense Council, and/or the Pew Charitable Trusts concerning:
 - a. Development of the draft or final implementation plan for the National Ocean Policy; and/or
 - b. The organization, establishment, attendance, and activities of any Regional Planning Bodies, regional ocean partnerships, or meetings thereof.

As I discussed at yesterday's hearing, your cooperation in providing complete and timely responses to these document requests and questions is expected. Enclosed with this letter are instructions and definitions for complying with this request. Please have your staff contact Byron R. Brown in the Office of Oversight and Investigations with any questions regarding this request, or to make arrangements for the production of the requested material.

Sincerely,



Doc Hastings
Chairman

Enclosure

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), instant message, notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization, or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author, and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.
9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.

12. Production materials should be delivered to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington D.C. 20515