

**JIM GILMORE, DIRECTOR OF PUBLIC AFFAIRS
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TESTIMONY AT THE HOUSE NATURAL RESOURCES COMMITTEE'S HEARING ON:
"THE PRESIDENT'S NEW NATIONAL OCEAN POLICY:
A PLAN FOR FURTHER RESTRICTIONS ON OCEAN,
COASTAL, AND INLAND ACTIVITIES"
OCTOBER 4, 2011**

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

I am testifying today on behalf of ten West Coast and Alaska fishing and fish processing associations. The organizations are: the Alaska Bering Sea Crabbers; Alaska Crab Coalition; At-sea Processors Association; Crab Group of Independent Harvesters; Deep Sea Fishermen's Union; Fishing Vessel Owners Association; Freezer Longline Coalition; Groundfish Forum; Pacific Seafood Processors Association; and United Catcher Boats.

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

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

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

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

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

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

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

Federal fisheries are managed under the authority of the Magnuson-Stevens Act, or MSA. The MSA created eight Regional Fishery Management Councils tasked with developing plans and regulations necessary to conserve and manage fishery resources in federal waters out to 200 miles. Each Council is composed of one federal official, a state official from each state in the region, and private citizens with requisite fisheries experience who are nominated by Governors and appointed by the Commerce Secretary. The Regional Fishery Management

Councils involve affected users directly in the decision making process. Private citizen appointees constitute a voting majority on the Councils. This unique public role in federal fisheries management in waters off Alaska and the West Coast has worked well since the MSA's enactment in 1977.

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

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

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

It is simply not good public policy to create an additional regulatory process, to confuse lines of authority, and to likely end up fostering litigation due to inevitable inconsistencies in regulations developed under different processes. NOP proponents argue unconvincingly that Coastal and Marine Spatial Plans do not supersede current statutory authorities. The Interagency Ocean Policy Task Force report states, however, *“Where pre-existing legal constraints, either procedural or substantive, are identified for any Federal agency, the NOC would work with the agency to evaluate the necessary and appropriate legislative solutions or **changes to regulations** to address the constraints. In the interim, agencies would comply with existing legal requirements **but should endeavor, to the maximum extent possible**, to integrate their actions with those of other partners to a CMS Plan.”*

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

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

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

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

Need for Legislation

President Obama issued a memorandum on June 12, 2009 establishing an Interagency Ocean Policy Task Force and directing the Task Force to develop recommendations for a National Ocean Policy. Those recommendations were published on July 19, 2010 and implemented that same day without public review through Executive Order 13547. A National Ocean Council has been formed and it is being advised by the intergovernmental Governance Coordinating Committee. The next planned step is to establish Regional Planning Bodies

composed of federal, state and tribal interests, and these entities will design regional ocean-zoning plans.

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

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

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

We propose that Congress explicitly prohibit the expenditure of federal funds to establish Regional Planning Bodies or to develop any plans identified within the scope of E.O. 13547. We urge Congress to request the Administration to provide a budget for the cost of implementing the Order and to define the scope and structure of activities provided for under the NOP. Finally, we urge the Administration to address the concerns stated repeatedly by the ocean user community before attempting to proceed further.

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