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Alaska's Sovereignty in Peril: The National Ocean Policy's Goal to Federalize Alaska

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Thank you for the opportunity to testify on the potential impacts of the new National Ocean Policy.

My name is John Sturgeon and I am a Director for the Alaska Forest Association. The AFA is the statewide association representing companies engaged in forest practices including support companies. We have 115 members and represent timber companies, loggers, trucking and towing companies, suppliers, and other members who have a stake in the future of a vital and hopefully healthy timber economy in Alaska.

We have several concerns with President Obama's ocean zoning executive order.

The lands in Alaska are mostly undeveloped and the lands that have been and are being developed are managed responsibly and in conformance with State and federal regulations. There is no need for "restoration" of the lands in our State; we have abundant wetlands, excellent air and water quality, we have increased our fisheries and our wildlife is doing well. This new Policy will likely result in new regulatory burdens without significant environmental improvements for our State.

The National Oceans Policy purports to be a framework for coordinating the efforts of many federal agencies, but the draft Implementation Plan appears to encourage significant changes in federal regulations and programs. For instance, the "ecosystem-based management" concept in the implementation Plan seems to assume there is some critical need to address climate change issues and sequester carbon. Yet the plan seems to mostly ignore the costs impacts of taking dramatic action on this hypothetical crisis. The draft Plan indicates that implementation will require grants, new funding for National Ocean Policy priorities and directs that new management practices be developed; but there seems to be no mention of any cost-benefit analysis for these expenditures. Additionally, the draft Plan promotes the expansion of the Coastal Zone Management Act, but that Act is not currently utilized in Alaska.

The draft Plan discusses improved efficiency of permitting, but it would be a more helpful plan if it were more clearly aimed at reducing the permitting requirements and eliminating redundant permitting and regulatory processes. The draft Plan indicates there will be a "special-planning" effort, but we don't need additional land planning help in Alaska. Instead, we need to foster a more friendly business climate so we can continue to develop our resources in a responsible manner. The loss of thousands of

timber industry jobs in Southeast Alaska is a good example of federal planning gone awry. In the Southeast region of our State, the federal government has monopoly power over the timber resources, but excessive environmental zeal in the national forest planning process has resulted in the loss of 90% of our timber supply from federal lands. Since the State and private lands in the region are very limited, we have lost about 85% of our industry employment due to the loss of access to federal timber resources.

The summary in the draft Plan states that this planning “will be done without creating new bureaucracy and without negative economic impacts”, but that doesn’t seem likely. This new Policy appears to be headed toward more costly, restrictive rules and regulations.

Congress has already decided what laws and requirements apply to coastal and ocean development and what policies and criteria federal agencies should use to decide whether to grant a permit for a particular project. Overlaying the President’s ocean zoning policy and plan on top of the existing statutory and regulatory framework creates uncertainty and conflict. Both of which are problematic if you are trying to encourage economic development, jobs, and certainty in permitting.

Section 5(b) of the Executive Order says that “executive departments’, agencies’ or office’s decisions and actions affecting the oceans and coasts ... will be guided by the stewardship principles and national priority objectives set forth in the Final Recommendations”. So the Executive Order says agencies must follow the President’s policies and objectives when making decisions. This mandatory language is followed by language in the Executive Order that says “to the extent consistent with applicable law” but what does that mean?

Does that mean that a permitting agency deciding whether to grant a permit follows the direction of Congress in the Outer Continental Shelf Lands Act which sets out a policy with Congressional direction to promote development and to work with States and local communities in making permitting and leasing decisions on a case by case basis? How does a permitting agency with that Congressional statutory framework fit that framework with the President’s EO which says the policy federal agencies should be following are the stewardship principles designed to protect oceans and bolster conservation, (Section 1 of EO) and to follow the guidance of the National Ocean Council (Section 1 of the EO) not Congress, or States or local communities or stakeholders.

If the EO did not mandate federal agencies to follow the direction and policy, if it said federal agencies “may” apply the policies and principles of the EO if the action they are contemplating is not already covered by an act of Congress **and** if the EO said federal agencies must continue to give deference to, and cooperate and coordinate with states, local communities, and stakeholders as set out in current laws and regulations then the EO would avoid conflict and uncertainty in federal decision-making. But it does not say that. It uses mandatory language and while it contains some catch all language

“consistent with applicable law” the language is not enough to save the EO from becoming a problem.

How would any member of the public or industry supportive of a permit or development know if the federal agency made its decision based on the policy and requirements in statute or those set out in the EO, or how much weight it gave to specific factors in its decision making process? If you do not know which factors were relied on and to what degree, then federal agencies can just follow the principles of the EO and give lip service to the actual laws and regulations that are on the books now. And companies looking to invest and create jobs are going to be concerned at a minimum that it is uncertain what factors will be brought to bear on their project.

This EO is trying to act in an area Congress has already acted in and given direction to federal agencies. If the President wants to create a new framework for federal action in the ocean and coastal areas he should follow the proper procedure and introduce a bill that sets a national policy on oceans like H.R. 21 was introduced in the 110th Congress and allow the issues to be openly debated.

The federal government should also be required to follow the procedures of the Administrative Procedure Act which require federal agencies to follow rules and provide an opportunity for the public to comment, the Regulatory Flexibility Act which requires an estimate of the impacts on businesses from federal agency action, and the National Environmental Policy Act, which requires studies and analysis of any major federal action, which a new national ocean policy certainly qualifies for. (Since a timber sale for 10 acres qualifies) All these protections should apply to this federal action in this EO because imposing a new national ocean policy is very significant.