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

July 18, 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:

A letter was sent to the National Ocean Council (“Council”) on April 19, 2013 requesting that 15 categories of documents and information be provided to the Committee on Natural Resources (“Committee”) by May 10, 2013. The Committee had previously requested much of the same information about the Obama Administration’s ocean zoning plans in the 112th Congress, but the Council never provided it.

At a meeting on May 1, 2013, Committee majority oversight staff specified that the Council should initially focus on providing responses to categories 1-3 and 9-14 of the April 19 request with the remaining information to be provided shortly thereafter. The Council provided a partial written response and only a limited number of supporting documents on May 10, 2013.

Two months have passed, and none of the additional documents have been provided, and the Council has provided no update on when these missing documents will be released.

It is especially troubling to learn that some of the very documents that the Council has been unwilling to provide the Committee have instead been provided to the public under the Freedom of Information Act (“FOIA”).

Among the documents the Council has been unwilling to provide the Committee are ones related to the establishment and activities of the Council's Governance Coordinating Committee and Regional Planning Bodies, the use of detailees and fellows, and the role groups that favor ocean zoning may have had in developing the Policy itself and the draft and final implementation plans.

However, the U.S. Environmental Protection Agency ("EPA"), which is a member of the National Ocean Council, has recently released documents in response to a FOIA request that shed light on the activities of the Council's Governance Coordinating Committee and on the use of staff from non-governmental organizations by the Council on Environmental Quality ("CEQ"), which co-chairs the National Ocean Council.¹

These documents are clearly within the scope of the Committee's April 19 letter, as well as request the February 23, 2012 request, and yet the Council has inexplicably never released them.

One of the documents EPA has released is a partially redacted email sent from Ms. Sutley to the "Principal-level" members of the Council, including then EPA Administrator Lisa Jackson (using her secret "Richard Windsor" email alias), that seeks approval of the membership slate for the Governance Coordinating Committee and of a draft charter for the Ocean Resource Management Interagency Policy Committee.² The email's attachments are provided in full, but several email addresses and recipient names and portions of the email text have been redacted. The FOIA redactions appear, on their face, to be unjustified and would be inappropriate in responding to an oversight request from Congress.³

For example, FOIA Exemption (b)(6), which protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,"⁴ was used to withhold the names or email addresses of at least nine recipients. It is unclear what the basis was for withholding these specific names and email addresses while more than 60 others, including those for senior White House staff and Cabinet secretaries, were disclosed. Without knowing the full list of recipients, it is impossible to know whether the Council was communicating with non-governmental recipients or individuals using personal email accounts, in addition to the official, government employee accounts whose emails and names were disclosed.

In addition, four paragraphs of text were redacted from the Sutley email under FOIA Exemption (b)(5). This exemption allows agencies to withhold from the public internal federal government communications that are protected by a traditional civil discovery privilege, such as the deliberative process privilege or attorney client privilege, but this and other FOIA exemptions cannot be used to shield information from Congress. Given the redacted email information, it is impossible to know if this email was sent only to federal government recipients,

¹ April 15, 2013 letter from Eric Wachter, Director, EPA Office of Executive Secretariat, to Christopher Horner, Senior Fellow, Competitive Enterprise Institute, re: FOIA Request HQ-FOI-01268-12.

² December 28, 2010 2:05 pm email from Nancy Sutley, subject: NOC Principal-level committee virtual action on the GCC Slate and ORM-IPC Charter.

³ Subsection (d) of FOIA specifically prevents citing a FOIA exemption as a basis for withholding

⁴ 5 U.S.C. § 552(b)(6).

or how Ms. Sutley was providing privileged legal advice or recommendations, as opposed to factual information that would not be privileged.

Another of the released documents, a 2009 email exchange⁵ involving Ms. Jackson (again using her “Richard Windsor” email alias), discusses CEQ “negotiating some Rockefeller money to bring people on temporarily” and that CEQ was interested in bringing on a Resources for the Future (“RFF”) employee “as a detailee, still on RFF’s payroll and staff” before the person joined EPA as a political appointee.

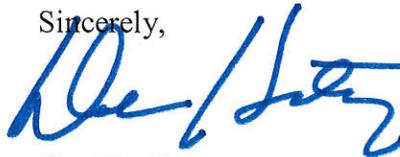
It remains unclear how widespread CEQ’s use of staff from special interest groups is in developing Obama Administration policy, but it is troubling that the Council has been unwilling to explain whether staff from environmental groups that have advocated in favor of the National Ocean Policy and ocean zoning have helped draft the policy itself, the draft or final implementation plan, or other Council activities.

To be clear, the Committee is still awaiting complete and unredacted drafts of the National Ocean Policy itself; complete information about the Council’s use of detailees, fellows, and non-government employees to work on the National Ocean Policy; documents related to the Council’s Governance Coordinating Committee; copies of the FY 2013 and FY 2014 budget submissions provided by participating agencies to the Council; emails and other documents related to the establishment and activities of the Regional Planning Bodies and regional ocean planning organizations; and communications with environmental groups.

Given how specious the EPA redactions are and how information about the Governance Coordinating Committee meetings are now in the public domain, it is expected that the Council will now provide complete and unredacted copies of these and the other missing documents responsive to the Committee’s oversight request without further delay.

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 remaining requested material.

Sincerely,



Doc Hastings
Chairman

⁵ June 19, 2009, 11:06 am email from Michelle Depass <M.Depass@fordfoundation.org> to Richard Windsor <a.k.a. Lisa Jackson>, subject re: CEQ.