

Testimony of W. Jackson Coleman

On Behalf of the National Ocean Policy Coalition

Before the

United States House of Representatives Committee on

Natural Resources

On

“The President’s New National Ocean Policy – A Plan for Further Restrictions on Ocean, Coastal and Inland Activities”

October 4, 2011

I. Introduction

Chairman Hastings, Ranking Member Markey, and Members of the Committee, my name is Jack Coleman and I am Co-Managing Director of the National Ocean Policy Coalition (Coalition). We appreciate the invitation to present the Coalition’s views at this hearing on “The President’s New National Ocean Policy – A Plan for Further Restrictions on Ocean, Coastal and Inland Activities.”

On a personal note, I appreciate the opportunity to testify before this Committee which I served for almost six years from 2003 until 2009, first as Energy and Minerals Counsel and then as Republican General Counsel. My first work on ocean issues began during the period from March 1982 until August 1985 when I was Special Assistant to the Associate Administrator of the National Oceanic and Atmospheric Administration. This was followed by more than 14 years in the Department of the Interior, Office of the Solicitor – first as Senior Attorney for Environmental Protection and later as Senior Attorney for Royalties and Offshore Minerals. So, for most of the last 29 years I have been personally involved in ocean policy issues.

The National Ocean Policy Coalition is an organization of diverse interests united in our desire to ensure that the implementation of the new National Ocean Policy is done in such a way that it is helpful rather than harmful to the National interest, including the interests of commercial and recreational users of the oceans and marine-related natural resources. Please see our website, www.oceanpolicy.com for information on our membership and as a resource for information on ocean policy.

As currently set forth, the National Ocean Policy has the potential to unnecessarily damage both terrestrial and marine economic value by affecting sectors such as agriculture, commercial and recreational fishing, construction, manufacturing, marine commerce, mining, oil and gas and renewable energy, recreational boating, and waterborne transportation, among others. These sectors support tens of millions of jobs and contribute trillions of dollars to the U.S. economy.

The Coalition believes that the justification for many aspects of the policy, including but not limited to coastal and marine spatial planning, has not been adequately established by information based on realities on the ground and scientific data.

In addition, uncertainty continues to abound, in some cases within the Administration, about what the policy means, how it will be implemented, and the potential scope of its impact. As the Administration has acknowledged, the policy “may create a level of uncertainty and anxiety among those who rely on these resources and may generate questions about how they align with existing processes, authorities, and budget challenges.” At the same time, federal entities “whose actions affect the ocean, our coasts, and the Great Lakes” are directed to move aggressively forward with implementation.

Finally, the risk for unintended economic and societal consequences remains particularly high due in part to the unprecedented geographic scale under which the policy is to be established. Given the scope and nature of the policy, the Coalition has consistently maintained--and continues to believe--that a measured approach in which potential impacts are examined in a pilot project in a limited area would be a wiser course of action.

The Coalition has repeatedly brought these concerns to the Administration in great detail. It has filed numerous, lengthy documents raising concerns and suggesting a different approach to solving whatever problems might exist. Recent documents include 16 pages of comments on development of strategic action plans which was submitted on April 28, 2011, and 98 pages of comments on strategic action plan full content outlines which was submitted on July 1, 2011. At this time, however, the policy remains on a fast track for nationwide implementation.

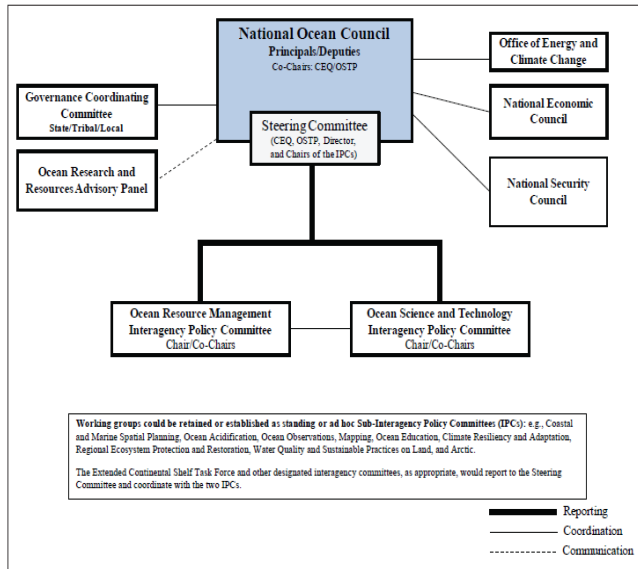
Let me highlight in detail a few of our concerns:

- We are very concerned that the National Ocean Policy will be negatively impactful to U.S. jobs and the economy at large, potentially affecting nearly every major sector of the economy.
- This policy would essentially create exclusionary zones within our Great Lakes, coastal areas, and oceans, making it more burdensome for citizens and organizations to conduct commercial and recreational activities that already must comply with a myriad of environmental regulatory regimes.

- Ocean zoning and the broader National Ocean Policy will not be limited to coastal and marine areas--it could be applied to restrict activities far inland – to the extent of every watershed in the country.
- The Administration itself acknowledges these legitimate concerns: “The Task Force is mindful that *these recommendations may create a level of uncertainty and anxiety among those who rely on these resources and may generate questions about how they align with existing processes, authorities, and budget challenges.*” (Ocean Policy Task Force Final Recommendations)
- Coastal & Marine Spatial Planning (CMSP), a zoning tool, to be used to “better manage” supposed conflicts involving human uses including: **aquaculture, commerce and transportation (e.g., cargo and cruise ships, tankers, and ferries), commercial and recreational fishing, boating, mining (e.g., sand and gravel, oil and gas exploration and development, ports and harbors, recreational fishing, renewable energy, boating, beach access, swimming, surfing, security, emergency response, and military readiness activities, subsistence uses, tourism, and traditional hunting, fishing, and gathering.**
- *Regional planning bodies*, whose decisions and disputes will be vetted in Washington, DC by the National Ocean Council and the President if necessary, *have the authority to include inland areas* when developing coastal and marine spatial plans.
- CMSP is but one of several National Ocean Policy priority objectives that address land-based activity. For example:
 - Ecosystem-Based Management : “an integrated framework that accounts for the interdependence of the land, air, water, ice, and the interconnectedness between human populations and these environments.” Officials within the Administration have stated to us that they are unsure what this means in the context of the National Ocean Policy.
 - Water Quality and Sustainable Practices on Land Objective: to address “major impacts of **urban and suburban development and agriculture**, including **forestry and animal feedlots**,”and “relative contributions of the relative contributions of **land-based sources of pollutants, sediments, and nutrients** to receiving coastal waters and ways to address them...;” “poor **land management practices**” and “**runoff from...streets and lawns, agricultural and industrial uses, transportation activities, and urban development**...negatively impacts water quality...”
 - Climate Change & Ocean Acidification objective: outline cites **resource extraction as one of several “stressors”** whose impacts should be reduced, references regulatory decision-making, and references “feasible alternative scenarios” for the

future operation, maintenance, and **relocation of built infrastructure such as coastal roads, port facilities, and dam operations.**

- Regional Ecosystem Protection & Restoration objective: proposes exploration of policy options for **incorporating carbon sequestration services of coastal wetland habitats into federal decision-making.**
 - Use of the Precautionary Approach or Principle which provides that federal decisionmakers should reject permit applications and other requests if the federal agency determines that information is lacking about some potential impact of a proposed activity.
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- Though a National Ocean Policy could be beneficial, serving as a mechanism for job creation, infrastructure revitalization, and economic growth, this particular effort seems to be guided by a bias toward conservation and against human activity.
 - Rather than conduct analysis of the potential economic impacts *prior to* implementation, the Administration simply states that the National Ocean Council “will address questions and specifics as implementation progresses” and references opportunities for stakeholder and public engagement. (Final Recommendations)
 - In light of the Administration’s own admission that the policy in part represents “a fundamental shift in how the United States manages [ocean, coastal, and Great Lakes] resources,” failing to assess economic consequences prior to mandating and enforcing this broad and sweeping policy threatens federal, state, and local budgets, jobs, and the economy at large.
 - National Ocean Policy and CMSP will require a significant amount of federal human and financial resources, as the administration has acknowledged--complete information as to what the National Ocean Policy-related federal budgetary costs have been and are likely to be (including those at the non-federal level, where applicable) has not been forthcoming.
 - National Ocean Policy creates a new bureaucracy, including a 54-member National Ocean Council with officials from 27 different federal entities, two 27-member interagency policy committees, and nine regional planning bodies covering every coastal region of the United States.
 - Governance structure includes federal officials from entities ranging from the Departments of Defense, Interior, and Homeland Security all the way to Agriculture, Labor, and Health & Human Services.



- Nine Proposed Regional Planning Areas and Corresponding Minimum State Representation**
1. **Alaska /Arctic Region:** Alaska
 2. **Caribbean Region:** Puerto Rico and U.S Virgin Islands
 3. **Great Lakes Region:** Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin
 4. **Gulf of Mexico Region:** Alabama, Florida, Louisiana, Mississippi, and Texas
 5. **Mid-Atlantic Region:** Delaware, Maryland, New Jersey, New York, Pennsylvania, and Virginia
 6. **Northeast Region:** Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
 7. **Pacific Islands Region:** Hawaii, Commonwealth of the Northern Mariana Islands, American Samoa, and Guam
 8. **South Atlantic Region:** Florida, Georgia, North Carolina, and South Carolina
 9. **West Coast Region:** California, Oregon, and Washington

- Final Recommendations cite some of the many programs and authorities already in place that address ocean and coastal activities, including the Coastal Zone Management Act, Clean Water Act, Clean Air Act, National Environmental Policy Act, Magnuson-Stevens Fishery Conservation and Management Act, and Outer Continental Shelf Lands Act.
- The National Ocean Policy has not been congressionally authorized and Executive Branch has not adequately engaged Congress. Efforts to pass major ocean policy legislation have failed three successive Congresses under both Democrat and Republican control, thus showing that there has been no consensus in Congress for a vast restructuring of laws governing ocean and coastal resources and uses.
- Congress should have an integral role in any effort to address changes to the way that ocean and coastal resources and uses are managed, particularly in light of the fact that governance/management of these resources and uses “span hundreds of domestic policies, laws, and regulations covering international, Federal, State, tribal, and local interests,” (Final Recommendations)
- NOPC represents many of the sectors that are supposedly in conflict with each other, and we have yet to hear any discussion about inherent conflicts that exist in ocean, coastal, or Great Lakes areas that require a response of this magnitude
- While conflicts among various uses and between uses and the environment is cited as justification for the policy, no scientific data is referenced to back up the claims.

- The Administration has stated that it will seek to find funding efficiencies to further the program in light of current budget constraints.
- The Policy has the potential to harm existing jobs and economic activities by diverting funds from existing federal programs and operations (e.g. permitting) that such activities rely on.
- There is a real and growing possibility that NGOs will be empowered to help fill a funding void and influence policy outcomes, potentially blocking stakeholders with user perspectives from contributing to the process.
- The Outline released by the National Ocean Council proposes improved coordination through government-private partnerships to “enable all parties to better leverage limited resources” and calls for the identification and inventory of “specific ways to leverage funding sources among and between” federal agencies and NGOs, among others.
- Ocean zoning has never been attempted at this geographic scale, yet calls for a pilot project have been ignored. As the NOAA Science Advisory Board observed earlier this year, the spatial scale U.S. Coastal and Marine Spatial Planning effort is unprecedented, with the total area of the nine U.S. Regional planning areas equaling the total area of *all* the world’s existing marine spatial plans combined. The Board’s finding that the U.S. effort “argues for consideration of smaller areas (and possibly fewer objectives) that can be nested within larger regions over time” is consistent with NOPC advocacy for a pilot project in a limited geographic area to reduce the risk of unintended consequences.
- Lack of adequate legal analysis raises many concerns about conflicts between the policy and existing federal laws and constitutional questions over matters of state sovereignty, among others.
- Effective policy implementation will require “clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component” (Final Recommendations), and federal entities are ordered to implement policy, based in part on guidance from National Ocean Council.
- The Policy has strong potential to infringe on the power and authority of federal officials by requiring them to always exercise their discretion in favor of the policy.
- The Final Recommendations also state that the National Ocean Policy has been established in part to address “the challenges we face...in the laws, authorities, and governance structures intended to manage our use and conservation” of these resources, and CMSP is to be carried out “under the authority of” existing statutes.

- Since Coastal and Marine Spatial Plans are expected to vary by region, application of the federal laws used to allegedly authorize such plans may vary by region as well, causing such federal statutes to no longer be uniformly applied in national manner as originally intended.
- Constitutional concerns regarding: (1) the inclusion of non-advice and consent officials on the National Ocean Council; and (2) the authority provided to regional planning bodies. (potential conflicts with the Appointments Clause resulting from non-federal officials sitting on bodies issuing policies binding on federal officials)
- The Policy also intrudes into the sovereignty of coastal and inland states, including in part through establishing the geographic scope of CMSP to include state waters, inland bays, estuaries, and additional inland areas if deemed appropriate.
- By ordering federal entities to implement the policy, based in part on guidance from the National Ocean Council, there is a real potential for contravention of Administrative Procedure Act and Regulatory Flexibility Act provisions, which respectively require agency consideration of all comments on an equal basis prior to issuing a regulation and agency consideration of potential impacts on small entities and less burdensome alternatives.
- The Administration has severely limited opportunities to express concerns, and stakeholder concerns have not been adequately addressed.
- The Administration has called for a robust and meaningful stakeholder engagement process, but so far, stakeholder engagement has been largely defined by document dumps of voluminous yet vague information with fast-approaching deadlines to respond, both of which have helped inhibit the development of informed comments.
- The Administration began holding “listening sessions” on 92 pages of Strategic Action Plan outlines on the policy within seven days of their release.
- Draft Strategic Action Plan outlines were written before the public comment period on the development of Strategic Action Plans had even come to an end.
- Town Hall meetings held on the policy last year in Alaska, Massachusetts, New Jersey, and Virginia were announced not via Federal Register or web announcements, but rather through agency e-mail lists, greatly limiting the amount of public notice.
- The recent national workshop on CMSP limited public participation to the first day of the three-day workshop, with only 200 pre-screened members of the public allowed in; audio/video or written materials from the non-public portion of the workshop has not been made available.

- Comments submitted by stakeholders who are not biased against human uses and activities have for the most part been ignored (e.g. calls for a pilot project, more openness and transparency, and greater engagement with user groups).
- The policy is not voluntary: administration plans to implement it wherever federal jurisdiction exists over activities deemed to affect the oceans, coasts, or Great Lakes.
- The Administration has implied that the policy is really just a voluntary program that will be whatever the regions decide they want it to be. As they have stated privately, and in a few cases publicly, however, this is not voluntary, and the Administration intends to vigorously implement the policy pursuant to the Executive Order wherever they have jurisdiction. (federal waters, state waters, inland)
- The Policy has already been cited in December 2010 Interior Department announcement (Revised OCS Leasing Program) restricting certain economic activity in certain areas through 2017.
- The policy creates new vehicles for attempts to further restrict domestic economic activity. We are already seeing the potential for this to occur.
- In June, groups led by the Center for Biological Diversity, citing in part the National Ocean Policy as legal justification, filed a petition with NOAA seeking to restrict the speed for vessels greater than 65 feet in length to 10 knots when traveling through national marine sanctuaries offshore California . Petition calls this “an excellent opportunity to implement the sort of coordinated, forward-looking marine spatial planning called for by President Obama’s National Ocean Policy initiative.” If the petition is granted, it could more than double the time it takes to transit through these areas, adding that there’s no clear science that there is any benefit to whales (the petition’s purported goal).

It is for all of these reasons that, consistent with previous Coalition statements, we and other signatories wrote a letter of support for the Flores amendment to HR 2584, Interior, Environment, and Related Agencies appropriations bill, to achieve a pause in policy implementation. Such a suspension would provide additional time to allow for the careful consideration of all potential economic, societal, and legal implications associated with implementation, well-informed stakeholder input, and adequate congressional engagement.

To be clear, the Coalition is not opposed to a National Ocean Policy. The Coalition supports the development of a sound, balanced, and effective 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, rather than the creation of new bureaucracies, procedures, and regulations that only serve to create additional

uncertainty, unnecessary restrictions, and delay. A pause in policy implementation will help reduce the risk of detrimental economic and societal impacts and ensure a policy that fully recognizes and accounts for the critical role our oceans, coastal areas, and marine ecosystems play in our nation's economy, national security, culture, health, and well-being.

Thank you for the opportunity to testify and I would be pleased to answer any questions.