

**Committee on Natural Resources
United States House of Representatives**

"The President's New National Ocean Policy"

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Chairman Hastings, Ranking Member Markey, and members of the Committee. I am Christopher Guith, vice president for policy of the Institute for 21st Century Energy (Energy Institute), an affiliate of the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region.

The mission of the Institute is to unify policymakers, regulators, business leaders, and the American public behind common sense energy strategy to help keep America secure, prosperous, and clean. In that regard we hope to be of service to this Committee, this Congress as a whole, and the Administration.

Thank you for convening this hearing. From my vantage point, The National Ocean Policy is the most significant issue affecting energy security, job creation, and economic growth that no one has heard about. This policy has been promulgated with little fanfare from the administration and with little notice from the American households and businesses that the policy could impact the most. Congress should and must utilize its oversight function to examine the National Ocean Policy to ensure it is consistent with the administration's statutory authority, and that it would not create new and unnecessary barriers that would jeopardize economic growth or energy security.

The potential impacts on offshore energy like oil and natural gas production and renewable electricity generation are clear. However, while this policy is focused on oceans, the Final Recommendations of the Interagency Ocean Policy Task Force makes it clear that the policy's impacts do not stop at the coastline. Through a myriad of drawn-out arguments, the recommendations allow for regulatory coverage of virtually every bit of land and any entity operating or living on it. Onshore energy operations like mining, oil and natural gas production, and electricity generation are also vulnerable to new regulatory actions. The potential impacts do not hit just the energy sector but also agriculture, manufacturing, and construction. To be sure, the reach could be economy wide.

The Chamber's Energy Institute, and many of the other organizations represented on this panel, have spent a great deal of time educating our members and the public about the potential impacts of this policy. While they are quick to understand the potential implications, the unfortunate reality is that this represents just one of dozens of actions in a historical regulatory onslaught that has undercut any semblance of the certainty required to foster the investments that will create jobs and economic growth.

RATIONALE

Healthy and sustainable oceans are absolutely in our nation's interests. The federal government has seen fit to enact dozens of laws to ensure that interest. Together with hundreds of state laws, a framework has been created to do precisely what the President's National Ocean Policy presupposes it will do. The administration argues that the authority to implement such a policy is based in this myriad of federal statutes. However at no point does the administration suggest this policy is what Congress intended under any statute, or combination of statutes. The administration suggests that amongst other things, the creation of this new regulatory structure is needed to allocate ocean use through Coastal and Marine Spacial Planning and to "strengthen the governance structure." Both purposes should give pause to every Governor, anyone who ever intends to enjoy the beach or ocean, and anyone concerned about jobs and economic growth.

Coastal and Marine Spacial Planning is a concept that would limit specific areas of ocean for particular use. This is a solution to a problem that does not appear to currently exist. It is true some areas of ocean are already designated for uses that may preclude additional uses. For example, significant swaths are designated for use by the Department of Defense. However, if a specific use of ocean waters otherwise precludes another use, there are existing avenues through statute and common law to resolve such a question. Allowing unelected regional planning authorities to essentially "zone" state and federal waters, as in the case of the National Ocean Policy, is not authorized in any statute, nor remotely envisioned by any previous Congressional action. At a time of prolonged unemployment and anemic economic growth, Congress should take note that these planning authorities would be expressly empowered to limit commercial endeavors at will without such statutory authority.

I do not desire to play the role of alarmist, but I am left with little option given the vagueness of the policy itself and the non-transparent fashion in which it was created. The President's Task Force provides little analysis or even description for the problems its recommendations allege to address. More troubling however, the Task Force Recommendations and the subsequent Executive Order provide little insight or detail about how the recommendation will be implemented. Nor do the recommendations provide any facet of constraint or even oversight which might otherwise allay concern over potentially sever negative impacts. The policy is overly vague throughout which only magnifies the concerns any current or potential ocean user should have.

BREADTH

The facet of this policy that inspires our greatest concern is its potential breadth. On several occasions, the policy explicitly suggests that any and all activities on shore could come under the regulatory reach of the regional planning authorities. The policy explicitly calls for addressing, "urban and suburban development," as well as "land based source pollutants." Given the

administration's existing regulatory overreach on numerous "land based pollutants," that in many cases are explicitly authorized by statute, it does not require a vivid imagination to foresee an unchecked regional planning authority attempting to take action on inland activities that it finds are having an impact on ocean waters.

The Coastal and Marine Spatial Planning section explicitly allows for the regional planning authorities to include upland areas. In fact, this policy finds that current conditions, "necessitate connecting land-based planning efforts with ocean, coastal, and Great Lakes planning." The policy continues to find that existing statutory authorities such as the Clean Air Act and the Clean Water Act should be harnessed by the planning authorities when allocating ocean use.

The policy utilizes the overly broad and vague term "industries" when describing "human activities" that are ultimately impacting the oceans, which presumably then can fall under the regulatory reach of this action. However, it also explicitly targets certain specific industries by name including energy, agriculture, forestry, and development.

The policy provides the following concern as context for why and how action should be taken:

"Urban and suburban development, including the construction of roads, highways, and other infrastructure... can adversely affect the habitats of aquatic and terrestrial species."

Infrastructure developers must already negotiate a byzantine regulatory labyrinth that often leads to costly delays. Superimposing the will of a regulatory planning authority on top of this process has the very real potential of precluding many of the infrastructure projects which the country needs and the administration itself has been clamoring.

Not only does the President's National Ocean Policy allow for the inclusion of virtually every sector of private enterprise to fall under new regulation, but it also brings to bear the "precautionary approach," a new prism by which the prospective regulatory actions should be taken. The precautionary approach—also commonly referred to as the Precautionary Principle—was adopted in 1992 by the United Nations Conference on Environment and Development in Rio De Janeiro, Brazil ("The Rio Declaration").

The Rio Declaration states, "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." The intent of employing this "precautionary approach" is to preclude, stop, or otherwise take regulatory action against human activity when there exists the possibility that future scientific conclusions may find such activity is linked to environmental degradation. To put it differently, the principle states, unless there is current conclusory scientific finding that a specific proposed human activity does not cause environmental degradation, it should be limited.

While similar regulatory formulas are explicitly called for in statute where Congress intended to preserve the status quo, they are few and far between. By preemptively utilizing the "precautionary approach" in such a broad context, this policy reorders our existing regulatory

construct by shifting the burden of disproving environmental harm to those intending to engage in a specific activity as opposed to allowing such activities until environmental harm is proven. Since the policy clearly seeks to include land-based human activities under its regulatory purview, the “precautionary approach” may presumably be applied to any such activities. This reversal is not sanctioned under any statutory authority and has previously been rejected by Congress. This is a significant shift in regulatory policy and law, and will undoubtedly have a chilling effect on many forms of enterprise and economic activity, most especially technological innovation.

IMPACTS

The President’s National Ocean Policy will result in a plethora of impacts on the country. The stated impact of healthier and more sustainable oceans may or may not be one of them. However, one impact that is most likely to come from this policy is increased regulatory uncertainty. The recent regulatory overreach has permeated so many areas of commercial enterprise already, ranging from healthcare to financial services to labor relations to energy production to name just a few.

Businesses of all sizes and sectors are impacted by these regulatory actions and will be attempting to determine the ultimate impacts on their operations for years, if not decades, to come. We estimate that nearly 2,500 rules were proposed in 2010 requiring some \$1 trillion in compliance costs on the back of American businesses. The impact of these costs is greatest on small businesses. Businesses with fewer than 20 employees incur regulatory costs 42% higher than larger businesses of up to 500 employees. The average regulatory cost for each employee of a small business exceeds \$10,000 per year. Ultimately, this uncertainty makes it difficult, if not impossible, for any business to modify its operations to ensure both compliance and profitability with any level of surety.

The most visible effect of this environment is a lack of capital investment. This is the foundation of what some economists have described as a “job-less recovery”. The country is experiencing some economic growth, but the private sector is not creating jobs at a rate that should correspond with that growth or to ensure future growth. It is estimated that throughout the recovery some \$2 trillion has remained liquid, without being invested. The uncertainty caused by the recent regulatory overreach is a primary reason so many are not comfortable investing this capital.

The President’s National Ocean Policy will exacerbate this uncertainty and add yet another maze of real or de facto regulation for businesses to attempt to navigate. This may in turn lead to even less investment in areas such as infrastructure construction, manufacturing, and energy production. These are all areas that have significant track records of generating economic growth for the nation, as well as creating millions of jobs. By discouraging investment into energy production, this policy has the additional impact of harming our energy security by forcing the country to continue to import energy when we could be producing significantly more of it domestically.

CONCLUSION

At a time of anemic economic growth and persistently high unemployment, the country is looking to its leaders to reverse these trends. The single most impactful action that can be taken is to increase the level of regulatory certainty to encourage private investment again. This investment will not only generate economic growth, but create jobs in nearly all sectors. The President's National Ocean Policy is a step in the wrong direction and will only increase the level of uncertainty for years to come.

We would encourage the administration to back away from this current policy and look to Congress to determine the scope and breadth of any changes in current ocean policy. The administration's time would be better served reversing its record of decreasing energy production on federal lands and forcing the country to import more energy. Hundreds of thousands of jobs have been created in the energy industry over the past five years supporting energy exploration and production on private and state lands. Millions more could be created in the immediate future if the administration made domestic energy production a priority once again.

Additionally, we would encourage the administration to increase its efforts to ensure ratification and adoption of the United Nations Convention on the Law of the Sea (also referred to as the Law of the Sea Treaty), which will provide not only an environmental benefit by ensuring America's arctic territory is officially identified and defined (and thus protected by U.S. law), but also pave the way for tremendous investment into those areas.

American business has been the target of a regulatory onslaught of historic proportions. Much of Congress' time, especially in the House of Representatives, has rightfully been devoted to oversight of these regulatory actions, and in many cases attempting to pass legislation to reverse final actions taken by the administration. However, in the case of the President's National Ocean Policy, Congress still has time to act before the initial impact of the administration's actions are realized. We would encourage you to take such action immediately.