

**Testimony of Barry Rutenberg,  
Chairman-Elect of the Board,  
On Behalf of the  
National Association of Home Builders**

**Before the  
House Natural Resources Committee**

**Hearing on  
"The President's New National Ocean Policy - A Plan for Further Restrictions on Ocean,  
Coastal and Inland Activities"**

**October 4, 2011**

**Introduction**

Chairman Hastings, Ranking Member Markey and members of the House Natural Resources Committee, I am pleased to appear before you today on behalf of the 160,000 members of the National Association of Home Builders (NAHB) to share our views on President Obama's National Ocean Policy. We appreciate the invitation to appear before the Committee on this important issue. My name is Barry Rutenberg and I am the Chairman-elect of the Board for NAHB and a home builder from Gainesville, Florida.

NAHB recognizes the need to preserve the health of the marine ecosystem as it is one of the many lifelines upon which we as a nation depend. NAHB members are national stewards of the ocean, coasts, and Great Lakes and regularly take steps to improve and promote the long term conservation and use of these resources. Due to the impact that the National Oceans Policy may have on the future of our homes and communities, NAHB has been monitoring its development and on a number of occasions, has provided input to the White House Council on Environmental Quality and the Interagency Task Force on Ocean Policy. In general, NAHB has supported the goals of these programs, but has raised a number of concerns on how the implementation of any oceans policy may affect the health of the home building industry and our nation's overall economy.

**National Oceans Policy**

President Obama and the Interagency Ocean Policy Task Force have developed an ambitious and far-reaching set of policies and actions that are expected to be undertaken over the next several years to "ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to

climate change and ocean acidification, and coordinate with our national security and foreign policy interests.”

Given the significant impacts that may accrue from the implementation of this policy, coupled with its far-reaching effects, NAHB is concerned by the Administration’s attempt to authorize these activities through an Executive Order instead of securing Congressional support and approval. In four separate Congresses, legislation has been introduced to create ocean policy. None of these attempts have ever reported out of Committee. During the 111<sup>th</sup> Congress, NAHB submitted a statement for the record to the Subcommittee on Insular Affairs, Oceans, and Wildlife opposing that legislative effort. It is clear from these unsuccessful attempts that there are differing views on the need for, and scope of, any national oceans policy. Due to these widespread discrepancies, NAHB believes it is imperative that the Administration only implement any such policy after securing specific statutory authority to do so.

Further, it is unclear from the Executive Order and the Final Recommendations of the Interagency Ocean Policy Task Force if or how the Task Force or the agencies will be required to consider the economic impact of their actions. Because we believe the impacts could be significant, NAHB strongly believes some type of economic analysis should be conducted prior to implementing any of the actions. NAHB also believes that the requirement for the agencies to implement the National Oceans Policy “to the fullest extent possible” further limits their ability to conduct a cost-benefit analysis before implementing any new regulation or requirement. Overall, NAHB is concerned that agencies will enact regulations that will only have a minor impact on the environment but a significant cost to private landowners and businesses. Such an outcome is unacceptable and completely contrary to this Administration’s pledge to make regulations more effective and less burdensome.

### **The Oceans Policy Must Preserve Community Choice**

The strength of our communities is their reflection of a diverse range of people, needs, ideals, and locales. Their design and shape are dictated by powerful market forces and realities that reflect the choices consumers make about where they live, work, and play. As communities age, evolve, and grow, community leaders must balance often competing needs, including a wide range of neighborhood and housing options; housing that meets the needs of families across the economic and demographic spectrum; reasonable proximity to jobs, commerce, and recreation; safe neighborhoods and a healthy environment; and open space and access to natural resources. When contemplating how the National Oceans Policy will be implemented, the Administration must take care to ensure its actions do not disrupt or otherwise impede the ability of communities to define themselves how they choose. For example, although a number of coastal communities have recently undertaken efforts to revitalize their waterfronts or downtown areas, strict implementation of the Policy may no longer allow such activities to occur. Further, any potential government policies that will broadly shape the future of our communities must be based on solid research and sound science and data and allow for choices and flexibility in the marketplace.

## **NAHB Is Concerned About Potential Unintended Consequences**

As one of the most highly regulated industries, home builders already comply with numerous federal, state and local environmental statutes and can offer a unique view on how the National Oceans Policy might impact regulated entities. For example, homebuilders must already comply with the Federal Emergency Management Agency's National Flood Insurance Program when siting, designing and constructing their homes; meet the mandates of the Clean Water Act for controlling storm water discharges during their construction activities; demonstrate that their activities are consistent with their state's coastal zone management plan; and meet the requirements of their local zoning, critical areas and/or shoreland protection ordinances. Clearly, governments at all levels have already taken significant steps to protect, maintain, and enhance their waterways and coastal areas. As a result, any National Oceans Policy has the potential to create yet another set of standards and/or approvals that could unnecessarily impose significant impacts on home builders, private landowners, and other businesses while providing minimal benefits.

Further, while the focus of the policy is to protect ocean health, because its scope is currently undefined and also references coastal areas, it has the potential to link land based activities, without limit, to the health of the ocean whether or not such activities have an actual impact. For example, even though they already contain stringent standards to guard against environmental degradation, any type of permit issued under the Endangered Species Act or Clean Water Act could be impacted by the National Ocean Policy. Instead of blindly adopting blanket policies that are far-reaching and may not meet their intended goals, the Interagency Task Force must identify where the gaps in coverage exist across the range of federal, state, and local environmental, land-use, and zoning requirements rather than putting new regulations on top of existing regulations.

Likewise, because a portion of the Policy concerns the use of coastal areas, NAHB has significant concerns about the potential for the federal government to overstep its bounds with regard to land use planning. Currently, state and local governments have the ability to plan for and determine appropriate uses for their entire communities, including coastal areas. If a local government deems an area fit for residential development and the site/project meets all of the existing federal requirements, construction may be allowed to occur. This practice allows homebuyers and homeowners the opportunity to live in a home of their choice in a location of their choice. The National Oceans Policy, however, has the potential to significantly change this standard practice. Past experience suggests that caution must be taken to ensure that local governments are free to continue to direct their community growth without any federal interference or coercion.

Finally, although one goal of the National Oceans Policy is to better coordinate and plan for competing uses of the oceans, Great Lakes, and coastal areas, NAHB cautions against planning for that objective alone. Planning is not simply about managing resources with one objective in mind, but about optimizing multiple community or society goals. Solutions that seem simple to some may be complex and fraught with tradeoffs that make them far from ideal. A proposal

that may solve one problem may generate new problems. Indeed, placing too much emphasis on one objective may not result in success, thus policymakers must seek to balance the full range of policy goals and should not address ocean health (or any other issue) to the exclusion of other crucial concerns. Clearly, decision makers must also be mindful of unintended consequences as they develop solutions to address this complex web of issues.

Based on past efforts, it is likely that the agencies will struggle with the scope, definitions and implementation of the National Oceans Policy, making regulatory compliance a great challenge for not only the nation's home builders, but other stakeholders, as well. Given the number of existing policies specifically designed to protect our nation's oceans, coastlines, and watersheds, the efforts already taken at the federal, state, and local levels, and the need to preserve the rights of local governments to make their own decisions about the fate of their communities, NAHB questions the need for an additional layer of regulation. At a minimum, NAHB suggests that any action that would impact or impeded the ability of the housing sector to recover be avoided and/or delayed until the industry is back on sound footing.

## **Climate Change**

The Task Force has implicated climate change as part of its rationale for the need for the National Oceans Policy. Over the past two decades, concerns in the United States have increased over the potential impacts of greenhouse gas (GHG) emissions on water resources. Research, however, has yielded mixed results regarding the direct impacts of emissions on global resources, atmospheric events and atmospheric particle deposition on aquatic resources. Likewise, due to limited knowledge, dependency on forecasting models, and contradictory evidence, there is a high degree of uncertainty associated with climate change findings and assumptions. For example, estimating future impacts on precipitation events and aquatic resource availability have proven to be difficult. Similarly, research on anthropogenic impacts on climate change and water availability has been hypothesized to fluctuate, but definitive research has not yet proven to what degree.

Additionally, research regarding the hydrologic (and other) impacts of climate change and the subsequent preventative measures needed must be an interagency effort. NAHB commends the Task Force for collaborating with the various agencies that have climate change policies currently in place. At a minimum, a holistic approach to research, programmatic strategy development, and coordinated implementation oversight will help to reduce duplication and improve overall results.

Until the true causes and effects of human interaction with the marine biological and ecosystem cycles are better understood, any major actions to mitigate or adapt to the effects of climate change should be undertaken with extreme caution to avoid onerous or duplicative regulations that fail to provide adequate water protection or ensure efficient use. The Administration must commit to performing research on the effects of climate change on ocean health and water availability and supporting existing policies that can be adapted to address the

research findings. It is vital to continue to research the development of cooperative solutions in the face of scientific uncertainty, not adopt additional regulations based upon minimal data. There must be definitive science that fully supports policy and policy implementation.

## **Conclusion**

NAHB's members are stewards of the environment. Many builders go above and beyond current requirements of the Endangered Species Act, Clean Water Act, and other federal, state and local environmental statutes in order to build an environmentally friendly home. NAHB's members take their responsibilities under the ESA, Clean Water Act, and other federal and state environmental statutes seriously.

As you are well aware, the deep recession that has pervaded all segments of the housing industry since 2008 continues to hold back economic recovery in the United States. The already-battered housing industry, however, cannot successfully face the forthcoming challenges while weighed down by additional regulatory burdens that do little to further protect the nation's natural resources, including our oceans, Great Lakes, and coastal areas. While we support the overall intent of the National Oceans Policy, we cannot currently support any actions that would impede recovery of this important economic sector.

NAHB appreciates the opportunity to provide comments on the implementation of the President's Executive Order and the Task Force's recommendations on the National Oceans Policy. Protecting, maintaining and restoring the health of the oceans, Great Lakes, and coastal areas, as well as planning for their sustainability, is of great importance and we look forward to continued opportunities to participate in this undertaking.