

## **Douglas S. Vincent-Lang**

Acting Director, Division of Wildlife Conservation  
Alaska Department of Fish and Game  
State of Alaska

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Testimony on “Alaska’s Sovereignty in Peril: The National Ocean Policy’s Goal to Federalize Alaska”

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Good morning Mr. Chair, members of the committee. My name is Doug Vincent-Lang. I am the Acting Director of the Division of Wildlife Conservation of the Alaska Department of Fish and Game. Today I am testifying on behalf of the State of Alaska.

Let me begin by stating that Alaska has a strong interest in assuring the continued health and productivity of its marine and coastal resources. We rely on these areas for commercial and sport fisheries, subsistence uses, recreation, transportation, shipping, and a multitude of other uses. Marine and coastal resources are vital to our economy, supporting a vibrant fishing industry that produces almost six billion dollars in economic activity in our state annually, accounts for approximately 60 percent of the nation's seafood production, and is our largest private sector employer. Coastal and marine areas also provide abundant development opportunities, such as; offshore oil and gas, renewable energy, shipping, and tourism. The Alaska Outer Continental Shelf (OCS) is a large area, roughly the size of Texas and California combined, and is largely untapped as a natural resource. This area holds an estimated 27 billion barrels of oil and 132 trillion cubic feet of natural gas, and is a key to our nation’s energy security. With 44,500 miles of shoreline - more mileage than the other eight proposed planning areas combined - and an expansive Exclusive Economic Zone, Alaska’s interest in managing ocean and coastal resources cannot be overstated.

The implementation of the President’s National Ocean Policy appears to be focused on developing a new federal regulatory framework to govern marine and coastal activities. Upon inspection, it appears to federalize decision processes regarding marine and coastal activities and to embed authority into regional governance boards dominated by federal agencies and federal decision processes. What is most troubling is that this governance overlays state lands and waters and directly threatens our sovereign authorities.

Alaska’s marine and coastal resources and their uses are already tightly regulated by a vast and diverse array of federal, state, and local authorities. This existing oversight has a proven track record and is fully capable of ensuring the long-term health and viability our marine and coastal resources. We do not believe additional federal regulatory oversight is needed and we oppose creation of additional federal bureaucracy and regulation and view this as an unnecessary threat to our sovereignty. We also do not

support use of this process for zoning or regulated marine use planning purposes. Instead, we support achieving efficiency by relying on the effective proven processes and authorities that are already in place.

The State is not aware of a single law granting the President authority to amend or supplement existing statutes with a new National Ocean Council to be guided by the conservation principles of Executive Order 13537 while controlling the decisions of federal agencies and seeking to limit resource development to certain designated ocean or coastal zones. On its face, the Executive Order does not cite any federal statute as a source of such authority. If the Executive Order is based on existing authority the legal cite(s) should be provided. Otherwise, the authority to proceed should be through Congressional action. We urge that before imposing any new regulations, policies or strategies the federal executive branch seek express and clear authority for such changes through the passage of a bill by Congress. Congress has a keen awareness of the current multi-jurisdictional structure and respect for the traditional role of states in managing their marine and coastal resources.

Congress has already “occupied the field” of management of the nation’s coastal and ocean resources with the many laws now in place. In so doing 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 national ocean policy on top of the existing statutory and regulatory framework creates uncertainty and conflict, both of which are problematic if the goal is 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”. As such, the Executive Order mandates that agencies 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? This raises the question as to whether a permitting agency deciding whether to grant a permit needs to follow the policy of the regional ocean plan or 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. Specifically, how would a permitting agency with that Congressional statutory framework fit that framework with the President’s Executive Order which says the policy federal agencies should be following are the stewardship principles designed to protect oceans and bolster conservation, (Section 1 of Executive Order) and to follow the guidance of the National Ocean Council (Section 1 of the Executive Order) not Congress, or States or local communities or stakeholders.

If the Executive Order did not mandate federal agencies to follow the direction and policy, if it said federal agencies “may” apply the policies and principles of the Executive Order if the action they are contemplating is not already covered by an act of Congress, and if the Executive Order 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 Executive Order avoids 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 Executive Order from becoming authoritative and stipulative.

Given this, 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 Executive Order, or how much weight it gave to specific factors in its decision making process? If an entity does not know which factors were relied on and to what degree, then federal agencies can just follow the principles of the Executive Order and give lip service to the actual laws and regulations that are on the books now. And states 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.

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 Executive Order because it imposes a new national ocean policy which is significant action.

Jurisdiction and management decisions for marine waters and submerged lands and responsibility for marine and coastal activities and ecosystems is divided between the states and the federal government. Alaska's jurisdiction includes uplands, wetlands, tide and submerged lands and extends out three nautical miles to the territorial limit. Within these areas, Alaska manages and leases lands, and with federal and local agencies, permits or restricts activities on them that could impact the environment. Alaska shares a common responsibility with the federal government to maintain healthy, resilient, and sustainable marine and coastal resources. Any adopted program must recognize and respect Alaska's jurisdiction and sovereign authorities.

State government is in a good position to evaluate how proposed national marine and coastal policies will work, or not work, in different ecosystems and communities around the state. With a state as large and diverse as Alaska, it will be critically important to capture the experience and knowledge of the state in developing and implementing marine and coastal policies. We encourage that these policies be developed from the ground up, and not top down as is currently proposed. Durable, reliable, and implementable national policies require an understanding of local issues and a public process sufficient to ensure local support.

There are already numerous successful partnerships in Alaska among federal, state, and local governments, tribes, organizations, and concerned citizens. National policies should recognize and build upon these existing partnerships and avoid supplanting them with management or direction coming from outside the state. The best decisions are those that are local, not made by bureaucrats 3,000 miles

away. We believe state driven efforts like those of the Northern Waters Task Force are best suited to addressing the issues facing Alaska, not new federal programs.

Alaska's experience and record demonstrates that a strong state model can be very effective when implemented responsibly and, therefore, national policies must recognize the need for state-based decision-making. Our record of sustainable management of Alaska's marine and coastal resources has led to national and international recognition of Alaska as a leader in these fields. A prime example is fisheries management which is shared between the Alaska Board of Fisheries and the North Pacific Fisheries Management Council. The management of fisheries by these bodies is perhaps the best in the world. In Alaska, significant progress has been made to strengthen and enhance marine research, coastal and marine observing, and habitat protection.

Rather than development and implementation of new regulatory programs, a better focus would be investment in Arctic research, monitoring, and infrastructure. In short, we need more resources, not more rules, to ensure conservation of our coastal and marine resources. This effort is draining agency resources at a time when core agency functions are struggling for funding due to declining federal budgets. We would prefer to see the federal government focus its resources on the many needs in the Arctic and to focus on much needed fisheries research rather than expending resources on an unnecessary and duplicative planning effort.

Needed infrastructure include aids to navigation, new polar-class icebreakers, ports in the Bering Sea and the Arctic Ocean, and forward basing for the U.S. Coast Guard (USCG) and Air National Guard aircraft. We also encourage the development of safe, secure, and reliable shipping regimes envisioned by the U.S. Arctic Policy.

A national commitment to provide adequate and sustained funding for Arctic research and infrastructure is also needed. Alaska would benefit greatly from access to high resolution mapping and imagery. For example, much of Alaska's coastline lacks complete navigational and bathymetric data. Resources are also needed to increase our knowledge of ocean acidification and the effects of climate change on the marine environment and fish stocks, for stock assessments, and improved observing and monitoring of oceans conditions. We endorse the Sustained Arctic Observing Network and urge full U.S. participation.

We also strongly recommend allocation of resources for enforcement and monitoring, especially full funding for the USCG to fulfill its responsibilities in international boundary enforcement and emerging responsibilities in the Arctic. The USCG's "High Latitudes" study and recommendations need to be released by the administration and key infrastructure recommendations presented to Congress for funding. Alaska is unique among states in that we share maritime boundaries with multiple foreign nations and manage fish stocks and marine mammals that migrate across international boundaries.

From an international perspective, implementation of marine and coastal policy must recognize that different legal regimes, with their associated freedoms, rights and duties, apply in different maritime zones of foreign countries. Due to our shared boundaries with Canada and Russia in the Arctic this is a very important issue. For example, activities in the adjacent Canadian Beaufort Sea currently operate

under the jurisdiction of the Arctic Waters Pollution Prevention Act. While we do not have a specific proposal to endorse at this time, we encourage discussion of an Arctic high-seas fisheries agreement.

Rather than direct implementation of the provisions of an international treaty through executive order, we urge the Senate to ratify the United Nations Convention on the Law of the Sea. Once ratified, this treaty will allow the U.S. to claim jurisdiction over the offshore continental shelf beyond the 200-mile limit. As a result, U.S. boundaries could grow into areas that may hold large deposits of oil, natural gas, and other resources. Russia, Canada, Denmark, and Norway already have claims to Arctic territory and the U.S. needs a seat at the table to protect its interests.

Finally, to ensure an effective outcome, it is important that any planning effort have clearly defined expected outcomes, an appropriate timeline, and provides both the states and the users of marine and coastal resources with primary authority to develop ocean and coastal policies. Despite numerous requests by the state to provide such specifics, they have yet to be provided. The health and management of our marine and coastal resources is simply too critical to engage in a process that does not provide clear policy direction and a meaningful avenue for both state and public input and support. Also, the process, including all decision processes, must be locally driven and not vested in federal bureaucrats in Washington DC. Coastal states must be recognized as equal partners with sovereign jurisdictions and authorities, not relegated to stakeholder status in marine and coastal policy development and implementation.

In closing, while well-intentioned, this policy is simply not ready for implementation. Until requested details are provided, especially with respect to governance and regulated use, the State cannot support this effort as currently proposed. We urge the National Ocean Council to delay implementation of this policy and to have more meaningful dialogue to address state and other affected users concerns.

Thank you for the opportunity to speak with you today.