

COMMENTS ON THE DRAFT
NATIONAL OCEAN POLICY IMPLEMENTATION PLAN

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Comments Submitted February 27, 2012

INTRODUCTION

These comments are being submitted in response to the request for public input on the Draft National Ocean Policy Implementation Plan which was released on January 12, 2012. This document was released as part of the Administration's continuing effort to impose a new national regulatory process for zoning ocean activities and regulating the actions of ocean user groups.

The commercial fishing and processing organizations submitting these comments represent numerous companies which participate in the federally managed fisheries in the Exclusive Economic Zone off Alaska, Washington, Oregon and California, along with businesses that rely on these companies. These fisheries comprise over 55% of the annual commercial seafood harvest of the United States. The yearly direct value is over two billion dollars, with hundreds of millions of dollars of secondary economic effects resulting from our expenditures in other sectors such as shipyards, marine equipment, seafood packaging, insurance and finance, and transportation providers.

These associations, and the dozens of companies they represent, have been involved in this issue for well over a decade since the ocean policy commissions began preparing their reports. We have offered our views each step of the way since then. When the recommendations of the oceans commissions were put into legislative form by various environmental groups (H.R. 4900/108th Congress, H.R. 2939/109th Congress, H.R. 21 in the 110th and 111th Congresses) we provided comments and testimony along with many other ocean user groups. After Congress repeatedly refused to enact this legislation, the approach of the environmental community changed and H.R. 21 reappeared in the form of the Administration's National Ocean Policy (NOP). The NOP was given life through the President's proclamation of Executive Order 13547 on July 19, 2010. We now are being offered another opportunity to provide comments on the NOP Implementation Plan, the Administration's effort to impose a new regulatory program for the oceans and Great Lakes.

Although we are again submitting comments, we are disappointed that despite the importance of our industry to the nation's economy, and despite our familiarity with ocean ecosystems, our comments at each step in this process have been ignored. We continue to present what we think is an obvious case: the NOP's Coastal Marine Spatial Planning/Regional Planning Body structure is an unauthorized new regulatory program aimed at imposing a new ocean governance structure which conflicts with successful Congressionally authorized programs such as regional fishery management. Nevertheless, we remain committed to participating in the process and we hope that the Administration will eventually make this as transparent and collaborative a process as has been claimed all along.

THE IMPLEMENTATION PLAN

The Draft Implementation plan proclaims four overarching themes. We will briefly address each.

Adopt Ecosystem-Based Management

This has been a goal of resource managers for many years. It is a goal that we support. But, as any oceanographer will tell you, it is also a goal that cannot be fully achieved without vast amounts of additional scientific data that will take decades to collect and interpret, even assuming that funding is available. In the meantime, resource managers must use the best available data to manage our ocean resources. Progress has definitely been made in moving from single species management to using ecosystem principles. In fact, the fishery management process used by the North Pacific Fishery Management Council incorporates consideration of ecosystem effects for almost all decisions they make and the Pacific Fishery Management Council is well along on adopting a similar process. Nevertheless, we are a long way from being able to claim that we understand any ecosystem well enough to be able to simultaneously manage all the species which interact within a given region. This is especially true given that current law requires specific actions – rebuilding overfished stocks, protecting endangered or threatened species, protecting marine mammals – which elevate certain species to a higher plane than others within an ecosystem.

Obtain, Advance, Use, and Share the Best Science and Data

As we just pointed out, everyone supports collecting and using the best possible science. But doing so requires large amounts of money and time. We hope that the federal budget will soon allow a greater allocation of funds toward this goal. But, in the meantime, scientists and resource managers will have to do the best job they can with the data that is available. To the extent that funding is not available to provide precise, accurate and current data which allows the best management of ocean resources, we need to be careful not to set goals which are technically unobtainable.

Promote Efficiency and Collaboration

Once again, we are all in favor of greater cooperation and coordination among the agencies which regulate ocean activities. Interestingly, when discussing this theme the document states, “This draft Implementation Plan creates no new regulations, however, within existing authorities, legal and regulatory barriers to full implementation of the National Ocean Policy will be identified and permitting processes will be streamlined.” This statement is as close as we have seen to an admission that there is no specific

statutory authority for this program. It also suggests that the Administration intends to impose new regulations where necessary in order to eliminate the “regulatory barriers” they identify, and to seek new legislation that would provide the statutory authority.

Strengthen Regional Efforts

The final theme is to strengthen regional, state and local ecosystem conservation efforts. We doubt anyone would be opposed to this goal, and as long as the resources are available it is something we would support. At the same time, we suggest that since federal funds are scarce, the Administration should focus on supporting existing organizations with a record of success, such as the regional fishery management councils and the federal scientists on whom they rely.

Fiscal Responsibility

There is a discussion of Fiscal Responsibility on page 5 of the document. It says that the National Ocean Council will issue an annual memorandum on how federal resources should be allocated. We think it would be more useful if a detailed NOP implementation budget were developed and presented to Congress. Given federal budget constraints, it is almost certain that Congress will continue to refuse funding for the NOP initiative unless such a budget plan is offered. Providing a budget proposal that is subject to public scrutiny and debate will also increase transparency of the process. The document itself even admits that carrying out the Implementation Plan is, “contingent on the availability of funds”. This is one of the reasons we have argued since the beginning of this process that if NOP is to be pursued it should involve small steps and pilot projects. We fear that if various agencies attempt to implement this massive program within their current budgets, large amounts of money will be diverted from ongoing, Congressionally mandated programs. An example of the threat posed by such a diversion of funds is the possibility that certain fishery stock assessment surveys done in the North Pacific could switch from being done annually to being done bi-annually. Lowering the quality of the data available to fishery managers would threaten economic activity worth over one billion dollars annually. As an affected industry, we and our employees are not ready to see our livelihoods threatened should implementation of the National Ocean Policy result in funds being siphoned off from existing NOAA fishery programs.

Treatment of Commercial Fisheries

As we said earlier, the commercial fishing industry has now participated in this process for over a decade, through the oceans commissions, H.R. 21, its predecessor legislation, and now NOP. Our goal all along has been to preserve and strengthen the system of regional, stakeholder-driven fishery management that has worked so well in our part of the country. Even after all our attempts to participate, the Draft Implementation Plan ignores the points we have made and proposes the creation of a new ocean resource

management system that appears to have few limits. Page 9 of the report states that “fisheries can be better managed” and that NOP “will improve future management decisions.” Our question is: Decisions made by whom? We suggest that either the Regional Fishery Management Council process be exempted from this entire program or that the NOP/CMSP/RPB process be revised so that it genuinely becomes the voluntary planning process we have been told it was intended to be.

The Nine Priority Objectives

The bulk of the Draft Implementation Plan describes specific actions the Administration intends to take to achieve the nine priority objectives. There are numerous milestones and deadlines for each. We will not take the time to go through the scores of actions and milestones laid out in the plan. However, we will highlight some which we believe are overly ambitious/costly or which seem to lead to the inescapable conclusion that NOP is more of a regulatory program as opposed to the transparent, collegial planning process we keep hearing about.

Overly Ambitious Action Proposals (target date)

Page 19 --- Explore “the 95-percent of the ocean that remains poorly known.” (2014)

Page 23 --- Enhance ocean education so that “a highly competent workforce is available for U.S. employers.” (2014-2017)

Page 25 --- Assess the environmental knowledge of middle school students. (2017)

Page 27 --- Develop and deploy within ten years a fleet of unmanned air, sea surface and underwater research systems. (2022)

Page 32 --- Map the entire EEZ and continental shelf. (2017)

Page 50 --- Address “planned and unplanned activities impacting coral reef ecosystems.” (2012)

Page 56 --- “Integrate relevant socioeconomic monitoring information with ecosystem monitoring information to understand changes in coupled human-natural systems in selected areas.” (2013) [Perhaps this would be a more appropriate task for academia?]

Page 57-58 --- Conduct research to assess direct and indirect impacts of climate change and ocean acidification on coastal communities, including estimations of mean sea-level rise, impacts on jobs, and effects on marine species. (2013-2015)

Page 65 --- Provide funding to private landowners to help them reduce nutrient and sediment runoff. (2012)

Page 67 --- Reduce air pollutants (sulfur, nitrogen, mercury) to the oceans and Great Lakes. (2012) Control storm-water runoff from the federal highway system. (2015)

Page 74 --- “Protect 2 million acres of lands identified as high conservation priorities” (including 700,000 acres of forest) (2015)

Evidence that NOP is a Regulatory Program

Page 4 --- “CMSP is an important tool for implementing EBM.” It will lead to a more “certain decision-making process for managing activities in the ocean”

Page 6 --- “The NOC expects to complete and approve the final Implementation Plan in the Spring of 2012. Federal agencies will then implement its initial set of actions.”

Page 11 --- “Existing regulatory requirements and programs that were developed based on a fundamentally different model may need to be modified”

Page 12 --- “an EBM approach supports adaptive, iterative management.”

Page 12 --- “various responses or actions may become necessary given the limits of existing regulatory or statutory authority.”

Page 13 --- Find “opportunities to incorporate EBM principles into Federal laws, regulations, and policies”

Page 15 --- “Establish a process for adaptive resource management”

Page 39 --- “Review the interpretation and, as necessary, propose to strengthen content and/or application of Federal legislation.....to incorporate and better support climate change adaptation efforts.”

Page 51- 52 --- The Plan proposes to identify “important marine areas for management or protection”. This includes use of “national marine sanctuaries, national estuary programs, and national marine monuments.” “Priority species” would be protected using “Essential Fish Habitat (EFH) Provisions including Habitat Areas of Particular Concern (HAPC)”. This passage provides some of the strongest and clearest language that RPB’s, comprised principally of federal officials with no expertise in fisheries management, will develop CMS Plans that usurp the responsibilities of regional fishery management councils. Contrary to the stated intent of the NOP, the Plan creates confusion and ambiguity on EFH and HAPC responsibilities, as well as other areas of fishery management authorities, where none now exists.

Pages 85 – 92 --- This section discusses Coastal and Marine Spatial Planning and the role of the Regional Planning Bodies. It lays out a detailed process for creation of the nine Regional Planning Bodies, implementation of CMSP, creation of CMS Plans for

each region, and the presentation of these plans to the National Ocean Council for certification. This is to be accomplished by 2019.

One of the stated goals of CMSP is empowering coastal communities through a public planning process to make decisions about activities in their regions. This sounds fine until you realize that the membership of the RPB's consists entirely of government officials, dominated by Federal representatives. The document states that "Members will be of an appropriate level of responsibility within their respective governing body to be able to make decisions and commitments throughout the process." This sounds less like planning and more like regulation to us. The system is then removed even further from public/local control by the fact that once the RPB's have developed their CMS Plans, these plans are submitted to the National Ocean Council (a group of 27 Federal officials). This Federal entity then decides if the plan is worthy of "certification". Our presumption is that the next step would be implementation of the plan through new or modified federal regulations. Otherwise, what would be the point of the exercise? We make this statement despite the following discussion that appears on Page 109 of the document (the "Summary of Public Comments" section).

Public Comment: "The Administration should clarify that it will not be the purpose of the Regional Planning Bodies to override the duties of regional fishery management councils."

Response: "The Executive Order expressly provides that Federal agencies will implement NOC-certified CMS Plans consistent with existing statutory authority, including the Magnuson-Stevens Act. Regional planning bodies will be established to develop these plans. They do not have any legal authority or mandate that would override the statutory or regulatory duties of any existing entity, including Regional Fishery Management Councils."

We understand that the Regional Planning Bodies do not have independent legal/regulatory authority. The point is that the CMS Plans they create then go to the NOC for approval and implementation by every agency throughout the federal government. This process is clearly stated in the "Final Recommendations of the Interagency Ocean Policy Task Force" (July 19, 2010...page 65) ---

"Agencies would incorporate components of the CMS Plan into their respective regulations to the extent possible. Adherence with CMSP would be achieved through Federal and State agencies and tribal authorities incorporating CMS Plans into their pre-planning, planning, and permitting processes, to the extent consistent with existing laws and regulations. The CMS Plan signatories would periodically review these processes and where legal constraints are identified, would seek to remedy these constraints, including by working with the NOC to evaluate whether a legislative solution or changes to regulations are necessary or appropriate."

This clearly states that CMS Plans will be implemented government-wide, and that if new regulations are required to achieve the goals of the NOC, they will be pursued. We are not comforted by the boilerplate language about the process being “consistent with existing laws and regulations”. If an agency implements the NOP/CMSP plans in a way which, in our view, conflicts with an existing law or regulation, our only option would be to go to court. As the Administration is aware, few entities have the resources to file court challenges on a regular basis. All ocean user groups, not just the seafood industry, would have little chance of preventing the imposition of CMS Plan regulations.

As we said earlier, we would prefer that the Regional Fishery Management Council process be exempted from this program. If not, then we request that the final NOP Implementation Plan categorically state that nothing in the plan will lead to either new or modified Federal regulations. If this is a collegial, voluntary planning process, as we have repeatedly been told, we are happy to participate. If this is a new Federal bureaucracy whose aim is to regulate virtually all ocean activities, then we prefer to opt out until such time as Congress has provided specific authorization for such a program.

Thank you for the opportunity to once again comment on development of the NOP/NOC/CMSP/RPB program.

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