

**Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard  
Committee on Commerce, Science, and Transportation  
United States Senate**

**National Ocean Policy: Stakeholder Perspectives**

**Testimony of**

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Thank you, Chairman Sullivan, Ranking Member Peters, and members of the Committee. I am Christopher Guith, senior vice president of the Global Energy Institute (Institute), an affiliate of the U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system.

The mission of the Institute is to unify policymakers, regulators, business leaders, and the American public behind a 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. The business community views the National Ocean Policy, which was set in motion by an Executive Order from President Obama, as an unnecessary, bureaucratic, and unauthorized regulatory action that creates significant risk and uncertainty to both private and public sector investment and legal regulatory processes already in place. This policy has been developed with little transparency and notice from the American businesses and other stakeholders that the policy could impact most. We applaud this Subcommittee, and Congress at large, for utilizing its oversight function to examine the National Ocean Policy and highlight the new and unnecessary barriers it has created that jeopardize economic growth.

The impacts on fishing, shipping, infrastructure development, and offshore energy, like oil and natural gas production and wind generation, are clear. While this policy is putatively focused on oceans, the Final Recommendations of the Interagency Ocean Policy Task Force make it clear that the policy's impacts eventually will 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. Agriculture, construction, and manufacturing

are squarely within the potential reach of this policy. Moreover, onshore energy operations like mining, oil and natural gas production, and electricity generation are also vulnerable to new regulatory actions. To be sure, the reach could be economy-wide. These actions will be taken not only without statutory authorization, but in the face of continued Congressional opposition as expressed via the appropriations process.

## **RATIONALE**

Healthy and sustainable oceans are absolutely in the national interest. Congress has seen fit to enact dozens of laws to ensure this interest. Together with hundreds of state laws, a framework has been created to do precisely what the National Ocean Policy ostensibly will do. The authority to implement such a policy is purportedly based on many federal statutes. At no point in this policy's promulgation, however, did the Obama Administration suggest that it was explicitly supported by Congressional intent under any individual statute or combination of statutes. The regulatory record argues the creation of this new regulatory structure is needed to allocate ocean use through Coastal and Marine Spatial Planning and to "strengthen the governance structure." Both purposes should give everyone pause, including, anyone who ever intends to enjoy the beach or ocean, and anyone concerned about jobs and economic growth.

Coastal and Marine Spatial Planning under the National Ocean Policy is a concept that, if implemented, would limit specific areas of an ocean for particular uses. This is a solution to a problem that does not appear to currently exist. It is true some areas of the ocean are already designated for uses that may preclude additional uses. For example, significant swaths are designated for use by the Department of Defense and National Marine Sanctuaries. If, however, 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 Bodies to essentially "zone" state and federal waters, as in the case of the National Ocean Policy, is not authorized in any statute, nor is it remotely envisioned by any previous Congressional action. If economic growth is a priority, Congress should take note that these planning authorities are expressly empowered by the policy to limit commercial endeavors at will, despite no clear statutory authority.

This may sound alarmist, but it is the obvious outcome given the vagueness of the policy itself and the non-transparent fashion in which it was created. The previous administration's Interagency Policy Task Force provided little analysis or even description for the problems its recommendations allege to address. More troubling still is that the Task Force Recommendations and the subsequent Executive Order provide little, if any, constraint or even oversight that might otherwise allay concern over potentially severe negative impacts. While technically not regulations per se, the Executive Order mandates that agencies implement marine plans and the National Ocean Policy overall to the fullest extent, including through regulations. The entire policy is overly vague, which only magnifies the concerns any current or potential ocean user should have.

These concerns are no longer prospective. In the seven years since its creation, implementation of the National Ocean Policy has shown these concerns are well-founded. The

creation and operation of Regional Planning Bodies in the Northeast and Mid-Atlantic have already given rise to forced and exclusionary efforts to create regional plans that can be used to preclude recreation and economic activity. In ordaining these bodies, the federal government committed to ensuring agency actions, “use the Plan[s] to inform and guide its actions and decisions.” These bodies consist solely of governmental officials with no representation of the industries they intend to regulate.

## **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 previous administration’s well-documented regulatory overreach on numerous “land based pollutants”—some of which were at least nominally authorized by statute—it does not require a vivid imagination to foresee future administrations using this policy as 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 the country needs. As Congress and the Trump administration continue preliminary plans to bolster infrastructure investment, the National Ocean Policy stands as an unnecessary and unauthorized obstacle.

Not only does the 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 are viewed.

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. As a practical matter, then, the precautionary principle states that unless there is currently accepted scientific finding that a specific proposed human activity does not cause environmental degradation, it should be limited at least until such a finding is determined.

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 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. One impact that has already 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, labor relations, and energy production, to name just a few. While the National Ocean Policy was first being implemented, the previous administration cited it as justification for placing more than 94% of federal waters off-limits for energy development.

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 more than 190,000 regulations have been promulgated since 1976. The National Association of Manufacturers concluded that the total cost of federal regulations to the U.S. economy in 2012 was over \$2 trillion. The National Small Business Association estimates

the average regulatory cost for each employee of a small business exceeds \$12,000 per year and an astounding \$83,000 for a start-up. Ultimately, additional 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 National Ocean Policy exacerbates this uncertainty and adds yet another maze of real or de facto regulation for businesses to attempt to navigate. As an illustration, the attached flow chart provides a daunting visual representation of how byzantine and over-broad this new bureaucracy is. 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 ocean policy has the potential to close off even more off-shore areas, harming our energy security by forcing the country to continue to import energy we could be producing domestically. It is no secret that oil and natural gas production on federal lands has been flat or declining while production on private lands has been soaring. This policy could make this disparity even worse to the detriment of our energy security.

## **CONCLUSION**

At a time everyone desires greater economic growth, the country is looking to its leaders to put an end to unnecessary red tape and get the economy moving again. Comprehensive tax reform would be a tremendous step forward towards making the United States more competitive, and we encourage Congress to pass tax reform now. Additionally, regulatory relief is crucial for encouraging greater capital investment. This investment will not only generate economic growth, but create jobs in nearly all sectors. The National Ocean Policy is a step in the wrong direction and is already increasing the level of uncertainty, and left intact, will for years to come.

Over the last decade, American business has been the target of a regulatory onslaught of historic proportions. The National Ocean Policy is only one example. Fundamentally, it is an aggressive regulatory action in search of a problem. It lacks statutory authority, is overly-broad, and will add layers of bureaucracy that will stifle economic growth and job creation. It should be rescinded. Until and unless that occurs, Congress should continue to aggressively review its implementation and deny it funding.