

**UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST
GUARD**

Hearing On

The Future of Ocean Governance: Building Our National Ocean Policy

November 4, 2009
Senate Russell Building Room 253

Testimony of

Matthew Paxton
Ball Janik
1455 F Street, NW, Suite 225
Washington, DC 20005
(202) 772-5577

On behalf of

Coastal Conservation Association

Thank you for this opportunity to testify on the White House Council on Environmental Quality's Interim Report of the Interagency Ocean Policy Task Force and its recommended framework for effective coastal and marine spatial planning.

The testimony I will provide today is on behalf of the Coastal Conservation Association.

My name is Matthew Paxton. I am an attorney at Ball Janik law firm.

The Coastal Conservation Association (CCA) is the leading marine recreational fishing group in the United States. Formed by a small group of sport fishermen in Houston in 1977, CCA has grown to a seventeen-state operation with over 100,000 members. This volunteer membership that spans from Brownsville, Texas to Portland, Maine to Seattle, Washington has made CCA an organization that prides itself on passionate grassroots efforts to influence policies and laws that promote sustainable fisheries for recreational anglers.

Over the last 20 years, CCA has been active in a number of conservation issues both on the state and federal level, including all of the east and Gulf coast net bans; gamefish status for redfish, speckled trout, tarpon, striped bass, river shad, marlins, spearfish and sailfish; and the reduction of bycatch through the use of technology and time and area closures. CCA has also pushed for the improvement of the fishery management system through the restructuring of state and federal regulatory bodies; the elimination of conflicts of interests by decision-makers, and the active involvement of its membership in the management process.

We commend the Obama Administration for placing such a high priority on ocean policy and committing resources and time of the White House Council on Environmental Quality, the National Oceanic & Atmospheric Administration and numerous other agencies to develop a comprehensive, coordinated strategy to manage our oceans. The extremely aggressive 180-day timeline to develop a national ocean policy that includes an integrated, ecosystem-based framework for marine spatial planning, is a daunting endeavor and if completed will be an historic accomplishment for ocean stewardship.

The urgency to establish such an expansive national policy and framework, however, does raise concern from the recreational community, and other marine user groups, that important concepts and perspectives might be overlooked or simply left out in order to meet arbitrary dead-lines.

The focus of my comments will be on the process to establish a national ocean policy and the role of Congress; maintaining regional ingenuity; ensuring access to the marine environment; and finally promoting marine recreation as a core element of the national ocean policy.

Process – Development of a National Ocean Policy

On July 22, 2004, the Members of the U.S. Commission on Ocean Policy submitted a final report titled *An Ocean Blueprint for the 21st Century* to the President and the Congress. The report was required under the Oceans Act of 2000.¹ This committee held hearings on the report and the 2006 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, developed and passed by this committee, contained many of the recommendations from this important ocean policy report.²

The previous Administration benefited from this ocean policy roadmap and the comprehensive recommendations on how to manage our oceans and marine resources more effectively. The public also benefited from this process – there was a final report with recommendations based on sixteen public meetings and eighteen regional site visits and the commission heard from over 400 witnesses and over 275 invited presentations, resulting in nearly 2,000 pages of testimony.³

The Obama Administration announced in June that it will develop a comprehensive national ocean policy within 180 days. The Administration has held five public meetings and provided opportunities for various ocean user groups to meet in closed door meetings at CEQ and NOAA. I understand the U.S. Ocean Commission report was a much different process and was the result of a federal Act, however, there is some benefit in providing a comparison in the process that took place to develop solid recommendations for ocean policy in the Ocean Commission report and what is taking place today.

As I mentioned earlier, the effectiveness of CCA has been the active involvement of its volunteer membership on the local, state and federal level. Through local boards, state commissions, and federal regulatory and management bodies, recreational users have been able to influence and shape policies and laws that impact fisheries conservation and ocean management. It is a well-worn process that CCA members understand and work within to develop effective policies that embody our conservation ethic and outdoorsman ideals.

The concern, in particular for potentially new concepts like marine spatial planning or ocean zoning, is these concepts will be developed entirely within the bureaucracy of the Administration and not subject to any further comment or review. Our recommendation would be to provide the Senate Committee on Commerce, Science and Transportation and the House Committee on Natural Resources the opportunity to hold oversight hearings on the final report and consider legislation for any ocean management proposals that do not have statutory authority. We do not want the national ocean policy to enforce new legal mandates under the auspices of some existing legal authority.

A recent example of this was the approval by Department of Commerce of a fishery management plan authorizing commercial offshore aquaculture under a very expansive legal view of “harvesting” under the Magnuson-Stevens Act (the federal fishery law for

¹ Oceans Act of 2000 (P.L. 106-256).

² Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (P.L. 109-479).

³ U.S. Commission on Ocean Policy Final Report, *An Ocean Blueprint for the 21st Century*, (Executive Summary, pg. xxxiii).

managing commercial and recreational catch). Nowhere in MSA is there even a reference to aquaculture. This is a clear example of how a policy that does not have legal authority may be shoe-horned under some other existing authority and implemented without a fully transparent, vetted and public process to develop the appropriate law.

Again, the policy must balance the equities of those that will be affected. In the instance of offshore commercial aquaculture, we will not know until after the fact if the appropriate legal and regulatory protections were put in place to manage these commercial enterprises in the ocean environment.

Maintain Regional Input – No Top-Down Mandates

The Interim Report places a substantial focus on coordinating the numerous agencies and laws that ultimately intersect with the stewardship of our oceans. The report recommends a policy coordination framework that would provide a structure to strengthen ocean governance and coordination by “providing clear and visible leadership and sustained high-level engagement within the Federal Government.”⁴ Within this policy coordination framework, the report does recommend greater participation by local and regional governance structures. Maintaining regional input and expertise is absolutely critical for establishing a balanced and uniquely responsive national ocean policy. We are encouraged by these core recommendations on coordinating the laws and agencies to improve ocean management.

However, a national ocean policy should not be a mechanism to establish an overarching bureaucracy that consists entirely of governmental officials implementing federal-down mandates. This approach could require important laws that come from this committee to fall under one national ocean policy approach, requiring such laws as the Coastal Zone Management Act, the Marine Sanctuaries Act, MSA and others to simply enforce a single national ocean management mandate. All these laws maintain regional input as a core legal step in establishing complex ocean and fisheries management regulations and policies and this should not change in an effort to establish a national ocean policy.

The Interim Report provides encouraging references to maintaining local and regional input, however, in an effort to dictate change in ocean policy it might become expedient to simply mandate that all actions relating to the ocean environment meet one federal standard. The national ocean policy must encourage better coordination between agencies and promote policies that focus the stewardship of our oceans, but not at the expense of regional ingenuity.

For instance, the report requires a national ocean policy that implements ecosystem based management. The various Regional Fishery Conservation and Management Councils currently implement varying forms of ecosystem based management. Naturally, this approach to ecosystem based management is inherently regional and reflects the unique ocean conditions and fishery dynamics in that area. The federal/state process in MSA that established the Regional Councils is not perfect, but it does provide for ample

⁴ Interim Report of the Interagency Ocean Policy Task Force, pg. 18.

opportunity for critical regional input. In addition, this Act allows for the direct involvement of anglers to either sit on the various Councils developing the fishery regulations or the opportunity to provide numerous recommendations on how best to manage our shared fishery resources. Ecosystem-based management should not be a federal mandate under a national ocean policy.

The reauthorization of the MSA in 2006 required a report on the “state of the science for advancing concepts and integration of ecosystem considerations in regional fishery management”.⁵ I would encourage this committee to request this report from the Administration to help inform how ecosystem-based management can be implemented and whether additional legal authority is necessary.

Marine Spatial Planning – Maintaining Public Access

Pursuant to the Interim Report, officials within CEQ, NOAA and other agencies are charged with developing a marine spatial planning framework that will provide a “comprehensive, integrated, ecosystem-based approach that addresses conservation, economic activity, user conflict, and sustainable use of ocean, coastal, and Great Lakes resources”.⁶ Marine spatial planning must be a policy that seeks to better inform decision-making in the ocean environment and address gaps in science and data to improve conservation and management objectives. Marine spatial planning must not be a means to catalogue, map and designate vast marine areas as marine restricted set-asides.

The Interim Report makes numerous references to ambiguous terms such as “healthy,” “pristine,” and “resilient” and articulates broad management concepts that call for the protection of biological diversity. The report then couples these hard-to-define terms and concepts with a precautionary approach when there is scientific uncertainty.⁷ Marine spatial planning under this approach would lead to the preservation of the ocean based entirely on precautionary principles and arbitrarily exclude users – primarily recreational users, we fear – from the marine environment and its resources.

Recreational interests and access to the marine environment must be a core element of any marine spatial planning policy and proposal. Too often recreational interests are afterthoughts of marine policy, when under the Magnuson-Stevens Act, the recreational community has equal legal standing as commercial interests to fishery resources and access to the marine environment. For marine spatial planning to be effective it must not ignore recreational interests at the outset, but instead have a strong focus on maintaining and encouraging public access and recreation in the marine environment.

This committee developed and ultimately created the law that provided important rules for how all future marine restricted areas can be established. We would encourage this Administration, and recommend that this committee ensure, that the legal requirements in the Magnuson-Stevens Act are strictly followed before establishing any marine restricted

⁵ Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1882(f) (P.L. 109-479).

⁶ Interim Report, pg. 2.

⁷ Id., pg. 14.

area under a marine spatial planning policy. Any marine restricted area should: 1) be based on sound science; 2) be the smallest marine area possible to achieve an articulated conservation goal, and 3) be continuously reviewed to determine whether the marine restricted area is necessary to achieve these conservation goals.⁸

It should not be the goal or result of marine spatial planning to determine or catalogue marine areas that should be simply set-aside as marine reserves or no-go zones. Any policy to set-aside large areas of the marine environment to access or recreation creates disproportionate, negative impacts to the fishing and private boating public by simply locking them out of the oceans. Marine spatial planning should not be a means to lock-up the ocean to public access and recreation.

Promote Recreation as a Core National Ocean Policy

Sustainable recreational use should not only be supported within a national ocean policy, it should be actively promoted. Under principle three of the Interim Report – Current and Future Uses of Ocean Ecosystems – there should be a specific recommendation for “the promotion of recreational uses of the ocean.”

We believe, for example, that the efforts and outreach made by the Department of Interior, which are designed to get kids outdoors with their families, increase physical activities, and reacquaint the public with their natural resources is a good model. Hunting, fishing, boating, and being outdoors are laudable things. The recreational community believes that stewardship of our ocean environment involves sustainable human uses.

Recreating in America’s oceans is big business and supports hundreds of thousands of jobs, but it is also more than that. It allows Americans to utilize America’s public marine resources as they do so with terrestrial resources. Such outdoor activities strengthen the family, improve public health, re-link people with natural resources and invest in them a stewardship ethic.

We strongly encourage this Administration and this committee to take advantage of this opportunity to promote the outdoorsman conservation ethic in the ocean environment and make recreational uses a core principle of both the final report and the framework for marine spatial planning in a national ocean policy.

As the Senate committee with the primary jurisdiction over the laws that impact ocean management, you have a significant role to play in overseeing this national ocean policy and whether laws are being expanded or constricted without Congressional approval. I commend you for holding this hearing today, I would recommend that further hearings be held by this committee once the Administration issues its final report next month and thank you for this opportunity to testify.

⁸ MSA, 16 U.S.C. 1853(b)(2)(C) (P.L. 109-479).