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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

August 15, 2012

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The Honorable Nancy Sutley
Co-Chair, National Ocean Council
Chairwoman, Council on Environmental Quality
722 Jackson Place
Washington, DC 20503

The Honorable John P. Holdren
Co-Chair, National Ocean Council
Director, Office of Science and Technology Policy
Executive Office of the President
725 17th Street Room 5228
Washington, DC 20502

Dear Chairwoman Sutley and Director Holdren:

More than two years have passed since President Obama unilaterally issued a new National Ocean Policy that created an expansive federal bureaucracy to manage ocean activities and resources without any specific Congressional approval, and more than eight months have passed since a draft plan was released containing more than 50 proposed actions for implementing the National Ocean Policy and mandatory zoning of the ocean and coastal areas. Despite this passage of time, Congress and the American public are still left questioning the legal justification, regulatory burdens, funding sources, and economic impacts of the National Ocean Policy.

Since last year, a number of specific questions and requests for information have gone unanswered. Based on the lack of specificity in earlier responses and the failure to provide all of the requested information and documentation, it seems apparent the Administration is intent on avoiding scrutiny of its plans to establish this new federal bureaucracy to manage economic and recreational activities affecting the oceans, including those occurring far inland. It is imperative that the National Ocean Council provide the long-requested information before the draft implementation plan is finalized.

In response to an October 2011 request for a summary of the legal authorities to support the National Ocean Policy's proposed ocean zoning initiative, Chairwoman Sutley responded with only vague generalities that the President's actions were in line with the Constitution and numerous environmental laws. However, in none of the laws cited did Congress authorize the President to establish this new federal bureaucracy to manage ocean activities or recourses or to create new regulations and policies that could close off parts of the ocean and stifle American job creation.

In February 2012, a letter was sent requesting detailed answers to 19 questions and supporting documentation in order to better understand the role environmental groups and other non-governmental entities have had in developing the National Ocean Policy and draft implementation plan, the amount of funding and number of staff that the various Federal agencies have devoted to developing and implementing the National Ocean Policy, and the organization and operation of the National Ocean Council itself. This information was requested to be provided in advance on the Committee's March 7, 2012 hearing on the Council of Environmental Quality's FY 2013 budget request. The hearing came and went without the requested information.

On March 20, 2012, a follow up letter was sent reiterating the request for the previously sought information, as well copies of any budget planning guidance provided to National Ocean Council participating agencies.

Your March 30 response selectively answered only some of the questions from the original February request and provided none of the supporting documentation.

Especially troubling is the lack of transparency about how the National Ocean Policy will impact the Federal budget. Although agencies were directed to explain in their FY 2013 budget submissions to the White House how they plan to direct resources to implement the National Ocean Policy, none of the President's budget requests submitted to Congress actually appeared to identify the specific appropriation amounts that would be needed to implement the National Ocean Policy. Information about how agencies are to prepare their FY 2014 budget requests has not been provided, as was requested in March 2012. It is unclear whether agencies will be diverting resources from Congressionally mandated priorities and programs to fund the National Ocean Policy programs and regulations.

In February 2012, you were requested to provide the names and titles of any Federal officials who participated in developing the draft plan to implement the National Ocean Policy, including whether any of the individuals were serving on a detail, fellowship, or temporary assignment to the White House from another federal agency or department or from a non-federal entity under the Intergovernmental Personnel Act. Without the requested information, Congress and the American public are left not knowing whether only political appointees have been working to implement the National Ocean Policy at the exclusion of career scientists with the requisite technical expertise and the extent to which your agencies rely on detailees and fellows for this work to the possible detriment of these individuals' home agencies and other programs.

In addition, information was requested concerning the use of contractors and grantees to develop the draft implementation plan, including the payments to a non-profit group to facilitate a public workshop on coastal and marine spatial planning. Your March 30 response stated the National Ocean Council partnered with the Udall Foundation, which contracted with the Meridian Institute to facilitate the workshop, and that the federal government contributed \$270,000 toward the workshop, an additional \$181,000 in federal money for travel by unspecified non-federal “partners and panelists,” and additional unspecified expenses paid by the Udall Foundation and Meridian Institute. However, your response did not include any of the supporting documents that were requested and otherwise lacked transparency about the federal expenditures that went toward the workshop and role the Meridian Institute and other organizations played in developing and implementing the National Ocean Policy. Your response does not allow Congress to review the appropriateness of using a group like the Meridian Institute as a facilitator given its ocean advocacy and funding from sources that also favor the National Ocean Policy.

The original February request also sought information and documents about the activities of and participation on the National Ocean Council’s Governance Coordinating Committee, including details about past Committee meetings and participation on the Committee by inland states who may nonetheless be affected by the National Ocean Policy. Your March 30 response also suggests that several inland states were asked to participate in the Governance Coordinating Committee but apparently declined to do so without identifying which states were contacted or providing any supporting documentation. The response also did not provide any agendas, presentation materials, or minutes from any Committee meetings, as was requested.

It is troubling that your agencies have to date refused to provide the requested information or comply with the document production instructions attached to the original February 23 letter, notwithstanding President Obama’s stated commitment to create “an unprecedented level of openness in Government.” The previously requested information is necessary for Congress to understand the activities and funding of the National Ocean Council, and whether certain ocean advocacy organizations have had undue influence over the development and implementation of the National Ocean Policy at the expense of commercial and recreational ocean users whose livelihoods is at stake.

Notwithstanding this lack of transparency about legal authorities, funding, and staffing, it appears the Obama Administration has been continuing apace its efforts to zone the ocean and establish this new federal bureaucracy well before the implementation plan is finalized and released to the public. In order to understand what steps the Administration has already under taken to organize the Regional Planning Bodies that will oversee this massive bureaucracy, please provide copies of all documents related to (1) the legal authority to establish Regional Planning Bodies, (2) invitations to serve on any Regional Planning Bodies, (3) membership on any Regional Planning Bodies, (4) funding for the activities and operations of any Regional Planning Bodies, and (5) and meetings of the National Ocean Council or workgroups thereof concerning the activities, membership, and operations of any Regional Planning Bodies.

Please contact Byron R. Brown, Senior Counsel for Oversight, Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production of the requested material. Please provide the requested information and documents no later than September 5, 2012.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", written in a cursive style.

Doc Hastings
Chairman