



March 28, 2012

Submitted Electronically

National Ocean Council
722 Jackson Place NW
Washington, DC 20503

RE: Comments on National Ocean Policy Draft Implementation Plan

Dear Members of the National Ocean Council:

The National Ocean Industries Association (NOIA), the International Association of Drilling Contractors (IADC), and the Independent Petroleum Association of America (IPAA) are pleased to submit comments on the National Ocean Policy Draft Implementation Plan (Plan) on behalf of its member companies. In addition, with members of our associations that are members of the National Ocean Policy Coalition, we would ask that the National Ocean Council review those detailed and comprehensive comments submitted by NOPC as it considers its Plan.

NOIA, founded in 1972, represents more than 270 companies among all segments of the offshore industry with an interest in the exploration and production of both traditional and renewable energy resources on the nation's outer continental shelf (OCS). NOIA's mission is to secure reliable access and a fair regulatory and economic environment for the companies that develop the nation's valuable offshore energy resources in an environmentally responsible manner.

The IADC is dedicated to enhancing the interests of oil-and-gas and geothermal drilling contractors worldwide. The IADC is the sole trade association representing virtually the entire global oil and natural gas drilling industry, both onshore and offshore. IADC's membership of more than 1,600 companies also includes oil-and-gas producers, and manufacturers and suppliers of oilfield equipment and services. Headquartered in Houston, it also has permanent offices in Washington DC, The Netherlands, Dubai and Thailand, and chapters on every continent except Antarctica.

The IPAA is a national trade association representing over 5,000 oil and natural gas producers that drill 90 percent of the nation's oil and natural gas wells. These companies account for 54 percent of America's oil production and 85 percent of its natural gas production. The members of IPAA that operate in the OCS are dedicated to energy production from the domestic offshore and are extremely interested in the development of the OCS.

Our members live, work and recreate in the oceans and coastal areas and clearly understand their tremendous value, as well as that of marine ecosystems to our quality of life. They are important to our nation's health and well-being while also serving as a tremendous economic and energy security benefit to our country. We support the concept of a national ocean policy, but believe that the present policy embodied in EO 13547 has been lacking in meaningful stakeholder involvement both in its development and implementation. In addition, we believe a national ocean policy is incomplete without greater recognition for how increased access to the OCS might help realize national policy objectives of job creation, greater energy security and reliability, and greater federal revenues derived from increased oil and gas activities.

We continue to have substantial concerns with the National Ocean Policy (NOP) and the Plan proposed that would implement it. Chief among those concerns is the anticipated use of coastal and marine spatial planning (CMSP). We continue to be concerned that CMSP poses the likelihood of additional obstacles to access for the oil and natural gas resources of the OCS and that the requirements of "expeditious development" directed under the Outer Continental Shelf Lands Act (OCSLA) will be subjected to limitations through this policy.

We have previously highlighted that there is a potentially serious conflict between the National Ocean Policy and its Plan and the statutory directive outlined in the Outer Continental Shelf Lands Act (OCSLA). The OCSLA states:

"It is hereby declared to be the policy of the United States that ... the Outer Continental Shelf is a vital national resource held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs"

It does not appear that the Plan being considered by the National Ocean Council (NOC) has provided any more detail or recognition of how the NOP will avoid conflict with these or other statutory mandates or how implementation would actually work in practice. In fact, the Plan does not contain a single reference to the Outer Continental Shelf Lands Act. It is disconcerting that with each release of a new policy document, including this Plan, these fundamental questions remain unanswered. It is not surprising then that the uncertainty surrounding the NOP has not been alleviated as new policy documents have been released, but has actually grown.

Underscoring the challenges and concerns of implementing this policy, the 2012-2017 Proposed OCS Leasing Program, has already reduced the pool of geographic areas available for leasing through 2017, citing, at least in part, the National Ocean Policy as justification. Consequently, at

a time when the nation needs more access to the OCS, we are concerned that this policy presents an even more challenging and uncertain outlook for new access. Furthermore, it appears to be nearly certain that the Department of the Interior will be unable to complete its 2012-2017 OCS Leasing Plan before the expiration of the present plan at the end of June 2012. This underscores that now is the wrong time for the administration to move ahead on experimenting with the implementation of a plan that would add new layers of bureaucracy that will lead to further uncertainties and future failures to meet statutory deadlines mandated by law.

OCSLA and other laws such as the Coastal Zone Management Act (CZMA) currently require coordination and cooperation among Federal and State officials in the development of a 5 year plan, and while the Administration suggests that EO 13547 is not intended to usurp existing statutory authority, there remains very little detail or guidance on how implementation of the EO will affect the development or implementation of upcoming or future 5 year plans.

As justification for CMSP, *onshore federal land use planning* [actual citation to be inserted] has been used as a model in an effort to reassure those who may be concerned. Section 364 of the Energy Policy Act of 2005 directed a study to be conducted of federal onshore oil and natural gas and “the extent and nature of any restrictions or impediments to the development of the resources.” This study, often referred to as EPCA III, concluded that more than 62% of the oil and 41% of the gas were entirely inaccessible. An additional 30% of the oil and 49% of the gas were accessible only with restrictions. Only 8% of the oil and 10% of the gas were accessible under standard lease terms. While some of these restrictions were indeed imposed through Congressional withdrawals or executive orders, an examination of the study’s findings demonstrates that the vast majority of the limitations upon access to these resources were implemented through the land use planning process. Once these areas are placed off limits, experience shows these decisions are rarely altered or revisited, leaving the resources inaccessible, or with limitations that may render the resource uneconomic. If this is the model, from an energy access perspective, this is highly disconcerting.

Finally, we anticipate that CMSP may result in decisions being made about setting significant areas of the OCS off limits to future access without the benefit of knowing what oil and natural gas resources lie underneath those areas. The Plan does not include any detail for what efforts might take place to ensure that CMSP efforts will not be conducted with major data gaps that would otherwise be avoidable were the administration to have made policy choices to have opened those same areas to the gathering of that data. Language included in Section 2 of the EO indicates that the best available science and knowledge is to be used to inform decisions affecting the oceans. However, due to federal limitations on the activities necessary to collect new data, the only available seismic based data, other than in areas of the Western and Central Gulf of Mexico and some areas of Alaska, is approximately 30 years old. New technological methods are now available that might give us a much better view of the potential for oil and gas development, yet the EO directs implementation of CMSP without the benefit of this knowledge. While, of course, the only fully precise measure of oil and gas potential is actual exploration, it should be noted that in the mid-eighties, many felt that that Gulf of Mexico had reached its oil and gas potential. However, due to new technology and the entrepreneurial spirit of those in the industry, actual production and verified resources are now at least more than five times as much

as those decades' old resource estimates. While no one can predict similar results in the rest of the OCS, the premature zoning out of oil and gas development is likely to place that potential off the table. It would be very shortsighted to make CMSP decisions without the benefit of new data. At a minimum, new geological and geophysical data should be obtained before conducting any planning decisions that may place these areas off limits to future access.

In addition, due to the lifting of both Congressional and Executive oil and gas exploration moratoriums, nearly all of the OCS may be made available for oil and gas exploration if first approved either through the OCSLA five year planning process or through further Congressional action. While the proposed 2012-2017 OCS Leasing Program makes no new areas available, it is hard to envision how a new zoning process would result in a better access picture following the zoning process implemented through EO 13547. The end result may very well be de-facto exploration moratoria established by regional committees and not through direct Presidential or Congressional action.

We believe there are ample policy and statutory tools to ensure that ocean resources are conserved and protected and that potential conflicts are managed without imposing a cumbersome new layer of federal bureaucracy upon an already time intensive and uncertain regulatory process.

We believe that one of the major weaknesses of the draft Implementation Plan is that it leaves many important questions unanswered. The lack of detail has been raised since the inception of the EO, but remains unresolved. We believe that a suspension in implementation of this policy until such time as the public, the industry, relevant agencies, and the Congress have had the time to openly and fully study and discuss the initiative and its potential impacts would be the prudent course of action. In the event that the administration insists on moving forward with implementation of this particular policy--either now or after a recommended suspension, we support the idea that a pilot project in just one of the regions would be preferable and ensure a greater likelihood of meaningful stakeholder involvement and fewer unintended consequences.

While we appreciate the opportunity to provide comments, unfortunately the draft Implementation Plan continues to lack any meaningful detail as to how the policy will be implemented within the context of key statutes such as the OCSLA and the CZMA that make it very difficult to adequately address the questions presented by the NOC. To ensure a sound and balanced NOP that is based on well-informed input with regard to the policy's nine national priority objectives, policy implementation should be suspended in order to allow for comprehensive studies—coupled with the full engagement of Congress—that are subject to public review and comment and carefully analyze all potential economic, societal, and legal implications associated with implementation. The need for such analyses is highlighted by numerous statements in previous NOC documents about recognition of the uncertainty and anxiety regarding policy implementation. This is coupled with the hundreds of policies, laws, and regulations that are implicated, the fundamental shift in resource management that the policy represents, as well as the significant concerns that exist regarding statutory authorities and the lack of understanding of the full costs associated with implementation. The analyses will help

ensure that the policy is fully vetted regarding potential harm to economic activities prior to implementation and reduce the risk of litigation.

Furthermore, given the many federal laws and resulting potential conflicts involved, and the inevitable reinterpretation of those statutes in light of the mandate that federal entities implement the NOP to the maximum extent allowed by existing statutes, it is wrong that Congress has been preempted. Congress has a meaningful role to play, and at minimum, should have an integral role in advising the Executive Branch on the legislative intent of existing statutes.

The absence of such studies and engagement prior to implementation could result in significant harm to economic and societal interests in marine, coastal, and even inland areas, and would serve as an obstacle to achieving the national priority objectives. Without such analyses, issues related to the economy and jobs, budget constraints at all levels of government, statutory authorities, and questions of state sovereignty, among others, will not have been adequately addressed.

In conclusion, we reiterate our support for a national ocean policy that serves as a mechanism for job creation, infrastructure revitalization, and economic growth, and relies on full utilization of existing programs and well-established authorities that are already in place, rather than the creation of new bureaucracies, procedures, and regulations that only serve to create additional uncertainty and unnecessary restrictions and delay. Suspending policy implementation until studies analyzing the potential economic, societal, and legal impacts have been carried out (and been made subject to public review and comment) and full engagement with Congress has taken place will help ensure that the policy is based on informed input, is legally sound, and fully recognizes and accounts for the critical role our oceans, coastal areas, and marine ecosystems play in our nation's economy, national security, culture, health, and well-being. After such time, testing the implementation of the NOP in a pilot project in a limited geographic area, rather than starting nationwide, will allow for any necessary adjustments and further mitigate the risk for unintended consequences that could accompany a policy of this magnitude.

Again, we appreciate the opportunity for comment and hope that our recommendations for how a NOP might be better implemented will be carefully considered.

Sincerely,



Luke Johnson, NOIA



Brian Petty, IADC



Dan Naatz, IPAA