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## Pacific Coast Federation of Fishermen's Associations

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## Strongly Ambivalent: A Response to the Oceans Executive Order

By Pietro Parravano, Zeke Grader and Glen Spain

On the 19th of July 2010, President Obama issued an Executive Order for the "Stewardship of the Ocean, Our Coasts, and the Great Lakes." The order had been anticipated; 13 months before he had established his Interagency Ocean Policy Task Force, headed by the White House's Council on Environmental Quality (CEQ), to make recommendations for improving ocean protection and coordination of ocean policy. The timing for his announcement was in the midst of the effort to cap and clean-up oil gushing from BP's well in the Gulf of Mexico.

This month our commentary will be relatively short – our reaction to the Executive Order has, as we will explain, been largely ambivalent and is accompanied by the full text of the Order to allow readers to make their own judgment. We're not telling folks what to think, we're just asking folks to think for themselves.

### Background

The biggest frustration we've had with fishery management following passage of the Fishery Conservation & Management Act of 1976 (what we now call the Magnuson-Stevens Act, or MSA), is that while the nation has gone to great

lengths to regulate fishing – and fishing men and women – in order to conserve fish stocks, it still lacks any comprehensive or coordinated program for protecting fish populations, including their waters and habitat, from a myriad of non-fishing impacts.

The inability to effectively protect fish stocks from non-fishing impacts is well-known to us on the West Coast. The assaults on Pacific salmon have not – at least in recent times – come from fishing but from dams and their operation, poor land uses practices denuding streams of riparian vegetation and filling them with silt, along with pesticides, run-off and other pollution (such as the toxic algae in the reservoirs of the Klamath). The most recent assault on salmon has been the excessive over-pumping by water diverters from the San Francisco Bay/Sacramento-San Joaquin Delta ecosystem – nearly destroying the West Coast's most important estuary, together with major salmon runs migrating through it from the Sierra streams to the Gulf of the Farallones. Fishing closures enacted under the MSA have done nothing to correct any of these problems.

Salmon are not alone. We know the crab and oyster resources of the Chesapeake are as affected by pollution as

they are by fishing. Herring populations in Prince William Sound were not over-fished, but were decimated by the *Exxon Valdez* spill. Now, we're watching the devastation to the Gulf fisheries not from fishing, but from the blow-out of BP's offshore rig.

In the 1985-86 reauthorization of the Magnuson-Stevens Act, PCFFA sought to increase Regional Fishery Council/National Marine Fisheries Service authority to protect fish habitat. The oil industry, timber and big agriculture would have none of it, as Congressman Don Young reminded us at the time, and all we succeeded in was getting habitat at least mentioned in the Act along with language requiring that regional fishery council members have to know something about fisheries.

In subsequent reauthorizations, "Essential Fish Habitat" (EFH) language has been added to the MSA, over the objections of groups such as the Farm Bureau and the American Petroleum Institute. It directs the regional fishery councils to identify and then take measures to protect that habitat critical for maintaining fish stocks under federal management. The problem is that the councils and NMFS have no regulatory authority to do anything about protect-



ing these habitats excepting restricting fishing activities – which, not surprisingly, has been their focus. For all non-fishing impacts, the most we can expect under EFH is a strongly worded letter to the agency whose actions are harming fish habitat.

The very limited regulatory authority of the MSA is one of the reasons we have had to look to other federal statutes to get at non-fishing activities impairing fish stocks and fisheries. These have included the Endangered Species Act, the Clean Water Act, the Coastal Zone Management Act (primarily through its consistency provisions with state laws protecting fish or fisheries) and even the National Marine Sanctuaries Act – the latter as a way of protecting prime fishing areas from offshore drilling or dumping. The problem is that most all of these statutes are limited in scope for fish protection (e.g., the ESA only works once a fish has been listed, meaning the fishery in all likelihood has already been closed, however protecting a listed fish stock can help protect non-listed stocks supporting a fishery).

### **Establishment of Ocean Councils**

We were encouraged by and supported the Pew Oceans Commission recommendation for a national ocean council and the establishment of regional ecosystem councils – which were to involve all the major agencies whose actions affected ocean resources – to better coordinate a national policy to protect the oceans. This was, we saw, an opportunity to ele-

vate the need for fishery protections from non-fishing activities. If Congress was not going to give the regional fishery councils and NMFS regulatory authority over non-fishing activities affecting fish stocks, at least the national and regional ocean councils would give the fish councils and NMFS a seat at the table for addressing non-fishing activity impacts directly with those responsible.

Unfortunately, the response from the fishery councils was shrill when the recommendations from the two ocean commissions came out. Rather than look at this as an opportunity to finally get at the non-fishing impacts that were affecting the ability of the fish councils to conserve fish and fisheries, they saw at it someone “horning in” on their territory of regulating fishermen.

The response among the regional fishery councils, along with NOAA/NMFS behavior over the years when it came to addressing non-fishing impacts on fish stocks, got us wondering whether, indeed, the regional fish councils through NOAA/NMFS would be the advocates we needed at the table to demand action to protect fish stocks and fisheries from the impacts of non-fishing activities (oil spills, pollution, water diversions, etc.). Or, will NOAA/NMFS merely be lap dogs, obsequious in the face of offending agencies. It is the latter we’re fearful of.

If NOAA/NMFS refuses to be a forceful presence on the national ocean council for protecting fish stocks and fisheries then we’re screwed. And, the situation will only

be worse if NOAA’s vision for our nation’s fisheries continues to center on catch shares and open-ocean aquaculture. The former endangers fishing communities; the latter endangers wild fish populations.

We are encouraged by language in the Executive Order acknowledging jobs and food production as an ocean service. However, fishing men and women have a serious challenge ahead making sure NOAA/NMFS works on behalf of fishing communities and fish stocks, including improving shore-based infrastructure and expanding on jobs in fishing communities. The question is whether NOAA/NMFS will do it. Hence, our ambivalence about the National Council and regional ocean councils.

### **Moving on Spatial Planning**

Another reason for our ambivalence is related to ocean zoning, or what is being referred to as “marine spatial planning.” In the past we thought zoning ocean uses – particularly with plans for offshore wind and wave-energy going forward – made some sense in separating the spatial needs for those activities from intrusion into important fishing grounds. Indeed, in some fisheries there has been an informal zoning process in place for decades, such as agreements among trap fishermen on where each will set their gear, or between fisheries, such as trappers and trawlers working to minimize interference with each others’ operations to avoid gear loss. Establishment of shipping lanes has been another form of zoning, historically, because of the

high risk of collisions.

While there is much to be said for planning for ocean uses and establishing zones for such uses, much as we do on land, there are also some serious concerns.

*Spatial Needs of Fishing.* Most fisheries have to follow the fish, which do not recognize human boundaries or zones. Thus there will have to be, in any planning effort, a recognition of the spatially expansive needs of fisheries.

*Zoning Not a Substitute for Other Protections.* Spatial planning will not take care of some of the other critical problems facing oceans such as pollution, or even governance, that were identified in the two ocean commission reports. While planning and zoning may be useful, the first priority has to be protecting water quality, habitat, etc., which zoning mostly cannot affect.

*Inappropriate Ocean Uses.* Some proposed uses for the ocean are simply inappropriate. Merely because some person, agency or business enterprise proposes them does not mean those uses have to be planned or zoned for. As Nancy Reagan said, “Just say no.”

New offshore oil and gas development, particularly for energy uses as we noted in last month’s PCFFA column, is totally inappropriate. Likewise aquaculture, particularly for finfish, has no place in our oceans or coastal waters. Wild fish have plenty of challenges to their survival already, so why add to their demise.

There is ample opportunity – from vacant farm land and within the old industrial sections and rustbelt of our nation – to put in all



the aquaculture facilities we need without having to go to the ocean. On-shore aquaculture development could prevent harm to our oceans, minimize the carbon footprint of farmed fish, revitalize depressed urban and rural areas, create new jobs, and foster sustainable fish production. Marine spatial planning cannot become a backdoor means to permit inappropriate ocean uses.

*Requires Good Science.* Marine spatial planning requires good science and a transparent public process upon which to base decisions. Unless the nation substantially increases its commitment to marine research and data collection, marine spatial planning will be haphazard at best – and potentially damaging to traditional maritime uses such as fishing, while failing to protect impor-

tant ocean resources.

### Conclusion

So there you have it – our thoughts on the President's oceans Executive Order. Much of its contents are what we've called for over the decades. The Order has the potential for greatly improving management of fisheries and helping fishing communities. On the other hand, if our advocates at the table – NOAA/NMFS – are weak or pursuing wrongheaded policies, then the Executive Order becomes problematic and just adds a new layer of bureaucracy at best. Our reaction, thus, is mixed – ambivalent. But we deeply care, so call it strongly ambivalent.

Perhaps what's needed now is for the President to sit down with some fishermen over a beer, maybe during a Seahawks-Redskins game or

at one of our better seafood establishments, and figure out how best we can make this Order work for our fish, our fishing communities and the nation.

We hope that this Executive Order will at least provide better coordination among the many government agencies that have partial authority over ocean issues, as was recommended in both ocean commission reports. We need an urgent awareness of the struggles that currently define the state of our fisheries. We know that it is in everyone's interest to have healthy oceans. It is our encompassing wish that this Executive Order speaks for all Americans, and does not fall short of its mission.

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## The following is the complete text of the President's Executive Order of 19 July:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. Purpose.** The ocean, our coasts, and the Great Lakes provide jobs, food, energy resources, ecological services, recreation, and tourism opportunities, and play critical roles in our Nation's transportation, economy, and trade, as well as the global mobility of our Armed Forces and the maintenance of international peace and security. The Deepwater Horizon oil spill in the Gulf of Mexico and resulting environmental crisis is a stark reminder of how vulnerable our marine environments are, and how much

communities and the Nation rely on healthy and resilient ocean and coastal ecosystems. America's stewardship of the ocean, our coasts, and the Great Lakes is intrinsically linked to environmental sustainability, human health and well-being, national prosperity, adaptation to climate and other environmental changes, social justice, international diplomacy, and national and homeland security.

This order adopts the recommendations of the Interagency Ocean Policy Task Force, except where otherwise provided in this order, and directs executive agencies to implement those recommendations under the guidance of a National Ocean Council. Based on those rec-

ommendations, this order establishes a national policy to ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests.

This order also provides for the development of coastal and marine spatial plans that build upon and improve existing Federal, State, tribal,

local, and regional decision making and planning processes. These regional plans will enable a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to planning and managing sustainable multiple uses across sectors and improve the conservation of the ocean, our coasts, and the Great Lakes.

**Sec. 2. Policy.** (a) To achieve an America whose stewardship ensures that the ocean, our coasts, and the Great Lakes are healthy and resilient, safe and productive, and understood and treasured so as to promote the well-being, prosperity, and security of present and future generations, it is the policy of the United States to:



(i) protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources;

(ii) improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies;

(iii) bolster the conservation and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;

(iv) use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes, and enhance humanity's capacity to understand, respond, and adapt to a changing global environment;

(v) support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes;

(vi) respect and preserve our Nation's maritime heritage, including our social, cultural, recreational, and historical values;

(vii) exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security;

(viii) increase scientific understanding of ocean, coastal, and Great Lakes ecosystems as part of the global interconnected systems of air, land, ice, and water, including their relationships to humans and their activities;

(ix) improve our understanding and awareness of changing environmental conditions, trends, and their

causes, and of human activities taking place in ocean, coastal, and Great Lakes waters; and

(x) foster a public understanding of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.

(b) The United States shall promote this policy by:

(i) ensuring a comprehensive and collaborative framework for the stewardship of the ocean, our coasts, and the Great Lakes that facilitates cohesive actions across the Federal Government, as well as participation of State, tribal, and local authorities, regional governance structures, nongovernmental organizations, the public, and the private sector;

(ii) cooperating and exercising leadership at the international level;

(iii) pursuing the United States' accession to the Law of the Sea Convention; and

(iv) supporting ocean stewardship in a fiscally responsible manner.

Sec. 3. Definitions. As used in this order:

(a) "Final Recommendations" means the Final Recommendations of the Interagency Ocean Policy Task Force that shall be made publicly available and for which a notice of public availability shall be published in the Federal Register.

(b) The term "coastal and marine spatial planning" means a comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas. Coastal and marine spatial plan-

ning identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives. In practical terms, coastal and marine spatial planning provides a public policy process for society to better determine how the ocean, our coasts, and Great Lakes are sustainably used and protected – now and for future generations.

(c) The term "coastal and marine spatial plans" means the plans that are certified by the National Ocean Council as developed in accordance with the definition, goals, principles, and process described in the Final Recommendations.

Sec. 4. Establishment of National Ocean Council. (a) There is hereby established the National Ocean Council (Council).

(b) The Council shall consist of the following:

(i) the Chair of the Council on Environmental Quality and the Director of the Office of Science & Technology Policy, who shall be the Co-Chairs of the Council;

(ii) the Secretaries of State, Defense, the Interior, Agriculture, Health & Human Services, Commerce, Labor, Transportation, Energy, and Homeland Security, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of the Office of Management & Budget, the Under Secretary of Commerce for Oceans & Atmosphere (Administrator of the National Oceanic & Atmo-

spheric Administration), the Administrator of the National Aeronautics & Space Administration, the Director of National Intelligence, the Director of the National Science Foundation, and the Chairman of the Joint Chiefs of Staff;

(iii) the National Security Advisor and the Assistants to the President for Homeland Security & Counterterrorism, Domestic Policy, Energy & Climate Change, and Economic Policy;

(iv) an employee of the Federal Government designated by the Vice President; and

(v) such other officers or employees of the Federal Government as the Co-Chairs of the Council may from time to time designate.

(c) The Co-Chairs shall invite the participation of the Chairman of the Federal Energy Regulatory Commission, to the extent consistent with the Commission's statutory authorities and legal obligations, and may invite the participation of such other independent agencies as the Council deems appropriate.

(d) The Co-Chairs of the Council, in consultation with the National Security Advisor and the Assistant to the President for Homeland Security & Counterterrorism, shall regularly convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to address particular subject matters, establish and direct committees of the Council that shall consist exclusively of members of the Council.

(e) A member of the Council may designate, to perform committee functions of the member, any person



who is within such member's department, agency, or office and who is (i) an officer of the United States appointed by the President, (ii) a member of the Senior Executive Service or the Senior Intelligence Service, (iii) a general officer or flag officer, or (iv) an employee of the Vice President.

(f) Consistent with applicable law and subject to the availability of appropriations, the Office of Science & Technology Policy and the Council on Environmental Quality shall provide the Council with funding, including through the National Science & Technology Council or the Office of Environmental Quality. The Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative support necessary to implement this order.

(g) The day-to-day operations of the Council shall be administered by a Director and a Deputy Director, who shall supervise a full-time staff to assist the Co-Chairs in their implementation of this order.

**Sec. 5. Functions of the Council.** (a) The Council shall have the structure and function and operate as defined in the Final Recommendations. The Council is authorized, after the Council's first year of operation, to make modifications to its structure, function, and operations to improve its effectiveness and efficiency in furthering the policy set forth in section 2 of this order.

(b) To implement the policy set forth in section 2 of this order, the Council shall provide appropriate direction to ensure that executive departments', agencies', or offices' decisions and actions affect-

ing the ocean, our coasts, and the Great Lakes will be guided by the stewardship principles and national priority objectives set forth in the Final Recommendations, to the extent consistent with applicable law. The Council shall base its decisions on the consensus of its members. With respect to those matters in which consensus cannot be reached, the National Security Advisor shall coordinate with the Co-Chairs and, as appropriate, the Assistants to the President for Energy & Climate Change, and Economic Policy, and the employee of the United States designated by the Vice President, subject to the limitations set forth in section 9 of this order, to present the disputed issue or issues for decision by the President.

**Sec. 6. Agency Responsibilities.** (a) All executive departments, agencies, and offices that are members of the Council and any other executive department, agency, or office whose actions affect the ocean, our coasts, and the Great Lakes shall, to the fullest extent consistent with applicable law:

(i) take such action as necessary to implement the policy set forth in section 2 of this order and the stewardship principles and national priority objectives as set forth in the Final Recommendations and subsequent guidance from the Council; and

(ii) participate in the process for coastal and marine spatial planning and comply with Council certified coastal and marine spatial plans, as described in the Final Recommendations and subsequent guidance from the Council.

(b) Each executive department, agency, and

office that is required to take actions under this order shall prepare and make publicly available an annual report including a concise description of actions taken by the agency in the previous calendar year to implement the order, a description of written comments by persons or organizations regarding the agency's compliance with this order, and the agency's response to such comments.

(c) Each executive department, agency, and office that is required to take actions under this order shall coordinate and contribute resources, as appropriate, to assist in establishing a common information management system as defined in the Final Recommendations and shall be held accountable for managing its own information assets by keeping them current, easily accessible, and consistent with Federal standards.

(d) To the extent permitted by law, executive departments, agencies, and offices shall provide the Council such information, support, and assistance as the Council, through the Co-Chairs, may request.

**Sec. 7. Governance Coordinating Committee.** The Council shall establish a Governance Coordinating Committee that shall consist of 18 officials from State, tribal, and local governments in accordance with the Final Recommendations. The Committee may establish subcommittees chaired by representatives of the Governance Coordinating Committee. These subcommittees may include additional representatives from State, tribal, and local governments, as appropriate to provide for greater collaboration and diversity of views.

**Sec. 8. Regional Advisory Committees.** The lead Federal department, agency, or office for each regional planning body established for the development of regional coastal and marine spatial plans, in consultation with their nonfederal co-lead agencies and membership of their regional planning body, shall establish such advisory committees under the Federal Advisory Committee Act, 5 U.S.C. App., as they deem necessary to provide information and to advise the regional planning body on the development of regional coastal and marine spatial plans to promote the policy established in section 2 of this order.

**Sec. 9. General Provisions.** (a) Nothing in this order, the establishment of the Council, and the Final Recommendations shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department or agency or the head thereof; or

(ii) functions assigned by the President to the National Security Council or Homeland Security Council (including subordinate bodies) relating to matters affecting foreign affairs, national security, homeland security, or intelligence.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management & Budget relating to budgetary, administrative, or legislative proposals.

(c) In carrying out the provisions of this order and implementing the Final Recommendations, all actions of the Council and the executive



departments, agencies, and offices that constitute it shall be consistent with applicable international law, including customary international law, such as that reflected in the Law of the Sea Convention.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments,

agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 10. Revocation.  
Executive Order 13366 of December 17, 2004, is hereby revoked. 🐟

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