

A Comprehensive Ocean Governance System in the United States

Testimony

by

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Introduction

Mr. Chairman, members of the Commission, I am honored to appear before you today. As many of you know, ocean policy and marine governance are issues that I have worked on for many years, in many different capacities. Developing a comprehensive ocean governance system to provide a guiding framework for our nation's activities in marine and coastal areas is especially important given the global impacts associated with current patterns of marine resource use and development.

I currently serve as a Vice President of World Wildlife Fund, the world's largest international conservation organization. Since 1961, World Wildlife Fund has helped to establish, fund or manage more than 500 terrestrial or marine parks and reserves worldwide. As a global leader in safeguarding marine ecosystems, we are working to address some of the most devastating threats to our oceans – overfishing, pollution, climate change, coastal development and illegal trade in wildlife. My experience, however, with ocean conservation extends beyond the 12-years that I been with World Wildlife Fund.

In 1995 I was appointed Chairman of the Committee on Marine Area Governance and Management by the National Research Council. In 1997 our Committee published a report entitled “Striking a Balance – Improving Stewardship of Marine Areas” which recommended ways to improve the management and governance of our nation's marine areas and resources. Today I will draw from the major findings of this report and make recommendations on guiding principles for ocean governance. I believe that the work of the National Commission on Ocean Policy is crucial to the future of both our marine and coastal waters and therefore the quality of life for millions of Americans.

The Issue of Governance

I am pleased that you are working to develop a framework for a national ocean policy for the United States. This regional meeting is very important because today we are truly at a critical point in marine resource management and use. The real world challenges that face us today are daunting, yet the benefits of sound governance structures that guide marine resource use and conservation are inextricably linked to the prosperity of Americans, as well as the global population.

I am sure that your Commission has heard time and time again the many gloomy statistics and frightening accounts concerning the state of our oceans. I will not take time to repeat them here, but wish to underscore that if we are to address the numerous demands and stresses on the coastal marine environment we need a coherent and pragmatic national system for ocean governance.

Despite the many programs and regulations that affect coastal and marine resources, areas and activities, there are few, if any, basic principles or processes for establishing authority and accountability in the management of marine resources and the uses of marine space. The United States manages its ocean resources on a sector-by-sector

regulatory basis. One law, one agency and one set of regulations may be applicable to a single issue (e.g., oil and gas development, fisheries management, water quality, or navigation) and a particular ocean area may be subject to an overabundance of regulatory management regimes while others are served by too few. This situation is further compounded when one considers the extent of overlap of similar authorities at various levels of government. These gaps, inadequacies and contradictions in jurisdiction, management authority and oversight must be dealt with if we are to enable a much-needed regulatory framework for current and future activities in the U.S. Exclusive Economic Zone (EEZ). As Bill Reilly, Chairman of the Board of World Wildlife Fund, mentioned during his testimony before your Commission on July 23rd, a system of marine governance, particularly marine zoning regimes, could provide the structure and procedures necessary for carrying out a coherent policy across a multitude of agencies, at both federal, state and local levels.

National Research Council Report – “Striking a Balance”

In the early 1990’s the Marine Board organized a series of meetings for representatives from private industry, public agencies, public interest groups and the academic ocean policy community. The goal was to gather background information and assess opinions on a national strategy to manage U.S. coastal and ocean waters and resources. Based on the findings of that process, the Marine Board determined that defining national goals and plans for the U.S. marine waters is a prerequisite to appropriate economic investment and sound environmental stewardship of the ocean. The Board used their findings as a foundation for discussions with federal agencies to develop guidelines for improving ocean governance and management.

Following these deliberations, in 1995, the Marine Board of the National Research Council appointed the Committee on Marine Area Governance and Management. The committee’s 15 members came from backgrounds in marine resource management and conservation, marine environmental science, economics, law and political science. Representatives were also appointed from state agencies, fisheries, transportation, offshore energy industries and marine protection organizations. Federal agencies responsible for marine area governance and management (including NOAA, U.S. Coast Guard, U.S. Navy and the EPA) designated liaisons that worked closely with the committee. The National Oceanic and Atmospheric Administration (NOAA), the Minerals Management Service and the Environmental Protection Agency (EPA) supported this study.

In addition to holding a number of meetings around the country in order to hear from regional experts, our committee commissioned three in-depth case studies to examine existing systems of marine governance and resource management. The three cases focussed on the different circumstances and management requirements found within the Florida Keys National Marine Sanctuary, the Gulf of Maine, and the Southern California Coast. The committee paid particular attention to root causes of success or failure of management or governance structures in each of these cases. The committee also reviewed the Coastal Zone Management Program, the National Estuary Program, the

Fishery Management and Conservation Act, gas and oil leasing through the Outer Continental Shelf as well as existing programs within coastal states' jurisdictions.

Based on lessons learned from these background studies, the expert opinion of our committee members, and the views we heard from interested stakeholders, the committee made a series of recommendations for improving the governance of marine areas in the United States. Below I summarize some of the major findings of the committee and hope that these will be considered as you prepare your final report to Congress and the President.

The Need for Improved Governance

A broad spectrum of coastal and marine issues must be considered for managing resources and safeguarding ecosystem integrity while minimizing conflict. Better integrated governance is essential for the coastal and marine areas of the U.S. Many problems in the present ocean governance arrangements can be attributed, at least partially, to the fragmentation of the present system. The current arrangements often operate under rather narrowly focussed legislation and regulations, which often do not consider the broader spectrum of overlapping issues and conflicts. Fragmentation among federal and local agencies and the lack of participation and coordination of interests at the local level are two fundamental flaws to the existing systems of ocean governance and management. Single-purpose and uncoordinated laws that characterize the present system of various local, state and federal authorities should be addressed as a starting point for developing a coherent and purposeful national ocean policy.

Despite the numerous authorities and regulations that oversee U.S. coastal and marine areas and resources, there is not a coherent national system that enables authority over, and accountability for, ocean management. In the absence of an ocean governance system, management inefficiencies are perpetuated, conflicts and disputes become more entrenched and destructive practices continue.

The current system of ocean governance, despite some notable merits at local and even state levels, has resulted in the perpetuation of entrenched problems. Real issues and longstanding conflicts that affect the health and productivity of our oceans, such as overfishing, loss of habitat, offshore development and pollution continue to go unresolved. Conflicting agency policies and overlapping, or worse yet, gaps in jurisdictions are at the heart of the matter. Two very significant impacts of the current structure are the decline of critical biological resources (and associated ecological processes) and the loss of vital economic opportunities. As U.S. citizens concerned about the future of our marine areas and resources, we must work to enact a national system of accountability that enables conflicts to be resolved in a timely manner and truly protects the oceans and resources contained within them.

The Committee on Marine Area Governance and Management found that the traditional, hierarchical approaches to addressing management and policy issues does not suit the complex problems facing marine area governance. The capacity for ocean governance, at

both the state and the federal level, although increasing, has not been able to keep pace with the needs posed upon the systems. Ever more complex legislation continues to weigh upon state and local responsibilities, and these complexities are only exacerbated by the lack of a coherent system of governance that articulates clear multi-jurisdictional roles and responsibilities.

Not all is wrong with the current system governing ocean policy in the United States. Some critical pieces of the puzzle are already in place. A few durable mechanisms have been created to coordinate policy, identify and resolve conflicts and ensure the undertaking of good marine stewardship. These bodies include the Coastal Zone Management program, the National Marine Sanctuary program and the National Estuary program. These three programs demonstrate that it is possible, under the existing legislative framework and in certain situations, to improve marine area governance.

A Comprehensive Marine Governance System

At the beginning of its study, the Committee on Marine Area Governance and Management determined that there are two dimensions of marine area governance. The first is a political dimension, or governance, which captures authority and accountability. The second is an active dimension, or management, which extends from analysis to action. In practice, there is a continuum from governance to management. There are many tools that are presently applied to address ocean management issues. There are not, however, similar attributes of a system of governance based on overarching principles.

The United States is in need of a coherent system of governance that is based on a set of overarching principles and processes. A necessary complement to this is an appropriate set of management tools focused on marine resources that will be vigorously applied within the governance system. A comprehensive system of ocean governance will build upon and coalesce the great number of existing authorities and relationships presently deployed for marine and coastal management in the United States.

Guiding Principles - A Federalist System

A monolithic system for national ocean governance will not work. A single federal authority will be overburdened by its own bureaucracy and unable to respond to important regional concerns and variations. On the other hand, a decentralized system with decision-making authority left entirely up to local entities would be hard pressed to identify and properly respond to national interests, work under common standards or manage issues that extend beyond local regions. Reconciling these issues requires a hybrid system that contains both an overarching coordinating and priority-setting structure and implementing mechanisms for decentralized planning and action. The committee found that an ocean governance system based on the federalist model (which is well developed for land-based resource management) that distributes authority between the federal government and states would be appropriate. The top level within a federalist system ensures that broad national objectives are met while being responsive to, and

building the capacity of, regional and local parties to ensure that they can properly address unique issues and circumstances.

The committee put forth the following recommendations to provide a framework for improving the nation's stewardship of marine areas and resources:

1. There must be a clear statement of goals, especially where different entities must be brought together in a cooperative management effort.
2. The geographic area to be managed needs to be carefully delineated.
3. Mechanisms need to be designated for involving all relevant stakeholders.
4. In most situations, the process should be initiated as a joint state-federal effort.
5. Systems should foster innovative responses to management needs.
6. Science should be incorporated into all aspects of decision making.
7. An overarching system of monitoring and evaluation needs to be enacted to measure success.

Institutional Arrangements and Responsibilities

The idea of the federalist system originated from the committee's agreement that authority and decision-making power must be shared between national government and individual states. States are often best suited to act at a local level because of their proximity to and intimate knowledge of the problems and issues. While the issue of involving state authorities in marine governance beyond the traditional extent of their authority (usually the three-mile limit) is subject to legal debate, in practical terms some states have shown increasing initiative in playing a role in offshore governance of marine areas and resources.

An improved ocean governance system must denote the fundamental values that the nation as a whole embrace for the protection and use of the marine environment. It must provide mechanisms for identifying and reconciling competing interests. The basic components of a federalist marine governance system include a National Marine Council, Regional Marine Councils and targeted improvements to the existing programs and management approaches.

- **A National Marine Council**

The committee recommended the creation of a National Marine Council with decision-making authority and accountability for the state of the nation's oceans. The council would be made up of directors of federal ocean and coastal agencies and would report directly to the President. Activities would include developing policies to resolve marine governance issues, review existing federal legislation and balance ocean protection with appropriate resource use. The National Marine Council would work to ensure that the United States has clearly identified global marine issues and has mobilized adequate resources to address them.

Critical to the success of the National Marine Council would be its tasks to set national-level policy, monitor and evaluate achievements and empowerment of the regional

structures to define and solve problems. The role of the National Marine Council would be to minimize delays associated with the processes of centralized authority and maximize the effectiveness of local actions to achieve national objectives. As the central governing partner of the federalist system, the National Marine Council would be responsible for the following functions:

1. Define national interest and strategic priorities in marine areas;
2. Monitor and report on the marine environment;
3. Identify marine area problems and conflicts;
4. Protect the national interest if regional efforts do not address significant risks to important resources;
5. Encourage regional innovation and problem-solving.

- **Regional Marine Councils**

The creation of regional marine councils is needed to provide innovative approaches to complex marine governance issues at the operational level. Regional councils would provide technical assistance on marine management issues, ensure the application of scientific and monitoring information, develop alternative processes for resolving disputes, and encourage participation by local interests in governance decisions. These regional bodies would coordinate planning among federal and state agencies, mediate disputes and ensure that regional problems are addressed in the most appropriate manners.

Regional councils should encompass whole coastal ecosystems regardless of political boundaries. The role of the regional councils could include the following issues:

1. Coordinate planning and management among state and federal agencies;
2. Coordinate fiscal planning including pooling funding from government programs or agencies;
3. Mediate and resolve disputes among agencies and stakeholders;
4. Facilitate intergovernmental agreements;
5. Waive some regulatory requirements to achieve performance-based goals;
6. Execute stakeholder contracts;
7. Provide technical assistance and training;
8. Ensure accountability.

- **Improvements to existing systems**

Enhancing the ability of individual federal programs to succeed in meeting their missions of ocean protection and use is of great importance to a national ocean policy. Generally speaking, all existing programs could become more effective by coordinating their activities with other federal, state and local agencies that have jurisdictional or management responsibilities. Broadening the participation of stakeholders in decision making and enabling a more diverse range of management of tools for dealing with problems and conflicts is needed. Improvements to existing programs and processes, such as the Coastal Zone Management Program, National Marine Sanctuary Program, National

Estuary Program, Fisheries Management Program and the Outer Continental Shelf Oil and Gas Leasing Program are described in the 1997 report.

- **Improvements to management tools**

Adoption of management tools would increase the effectiveness of regional councils and individual agencies. Institutions charged with designing and applying policies have a variety of management tools with which to address ocean-related problems. No single instrument is appropriate under all circumstances, and the political, economic social and biological factors should all be weighed before choosing the best option. However, of particular interest is zoning and the creation of refuges for the improvement of the health and productivity of our oceans.

Marine Zoning – An Effective Tool

The use of zoning for the management and protection of marine resources is not a new practice. For centuries communities around the world have been using a variety of access and use restrictions in order to protect resources and safeguard their livelihoods. Marine zoning for the protection of ocean resources is increasingly seen as a powerful management tool for addressing current problems we are facing. Zoning in the near shore environment is a relatively low-cost, effective management option of dealing with conflicting uses and interests. The concept of Marine Management Areas (MMAs) based on a comprehensive system of zoning to can provide a variety of options for the management of species, habitats and uses of marine resources and waters. The objectives of marine zoning can help to systematically address the management challenges that are posed by the vast nature of marine waters and the multiple user groups that are dependent on marine resources. Marine Management Areas can:

1. Protect critical and sensitive habitat and ecological processes;
2. Help provide protection for declining fisheries stocks and aid in sustainable fisheries management;
3. Delineate boundaries suitable for particular uses;
4. Bolster local economies through alternative income generation.

The end goal of a Marine Management Area is long-term resource protection and sustainable use, by all involved. A critical aspect of MMAs is the integrated nature in which they can be established, monitored and managed. The participation of a wide variety of stakeholders, from scientists to legal authorities and managers to resource users, can help to define, and more importantly maintain, a successful zoning scheme. Effective marine zoning relies on a balance of defined uses that have been developed through a collaborative process, driven by sound science and tempered with the social and political realities of the site. The entire spectrum of stakeholders must be involved in the process of determining appropriate zoning mechanisms lest the user groups that are most directly dependent on marine resource use/extraction will not be brought into compliance with new regulations and management objectives. By drawing on the lessons learned from experiences such as the Florida Keys National Marine Sanctuary, we can move forward with developing pragmatic solutions to marine resource use and protection through zoning.

Refugia, or no-take-zones, are our “Parks of the Sea.” Closed areas, or harvest refugia, designated to protect specific resources or habitat types, play a critical role in conservation and sustainable management of marine biodiversity. The objective of refugia is to allow for the replenishment of species populations or fisheries stocks through harvest/extraction moratorium or strict prohibition of human activities. In recent years many marine refugia have been closely analyzed in an effort to quantify their benefits. Scientific research indicates that well located no-take-zones are beneficial tools for conservation of marine biodiversity as well as fisheries management. These “Parks of the Sea” help sustain marine biodiversity as well as ecosystem functions, thereby improving the likelihood of healthy and productive oceans for future generations.

A Guiding Example - Australia's National Ocean Policy

When requested to undertake as bold an effort as charting a national ocean policy for the United States, I think it would be useful to draw on similar experiences from around the world. In particular, I would like to draw attention to the efforts of our colleagues in Australia to develop a national system for protecting their oceans. In 1998, the Government of Australia released its National Ocean Policy, a comprehensive planning and management. This ocean policy is based on a system of integrated and ecosystem-based planning and management for all of Australia's marine jurisdictions. It builds on the existing management structures and mechanisms but calls for an integrated series of arrangements that guide both policy and implementation.

Australia's Oceans Policy calls for the development of regional marine plans to ensure coordination and consistency across various marine jurisdictions. This national oceans policy establishes four different institutional arrangements:

1. A National Oceans Ministerial Board;
2. A National Oceans Advisory Group;
3. Regional Marine Plan Steering Committees;
4. National Oceans Office.

Despite being in the initial stages of implementation, this innovative approach to setting a national framework for ocean policy in Australia could prove useful in assisting our own government in creating an appropriate U.S. ocean policy.

Conclusions

Today I have spoken about the importance of establishing a system of national ocean governance. The current governance and management of our coastal waters continues to result in the alarming loss of both natural and economic resources. The existing system is characterized by a confusing array of laws, regulation, and practices at the federal, state and local levels, and agencies that implement and enforce existing systems operate with mandates that often conflict with each other. No mechanism exists for establishing a common vision and a common set of objectives. Establishing basic principles and effective processes for the governance of the ocean and coastal areas is a prerequisite

both to economic investment and to sound environmental stewardship and would make a more reasonable, less adversarial approach to resolving conflicts possible.

I hope the findings of the Committee on Marine Area Governance and Management report will be considered as you formulate your recommendations. Regional marine councils and coordinating bodies, in conjunction with a system of marine zoning could help our nation address the precipitous productivity declines and degradation of our oceans. Once again, I appreciate this opportunity to speak before you. I hope that the Commission has found my remarks to be helpful.

Thank you.