Testimony: Administrator Jackson, on Behalf of the Environment

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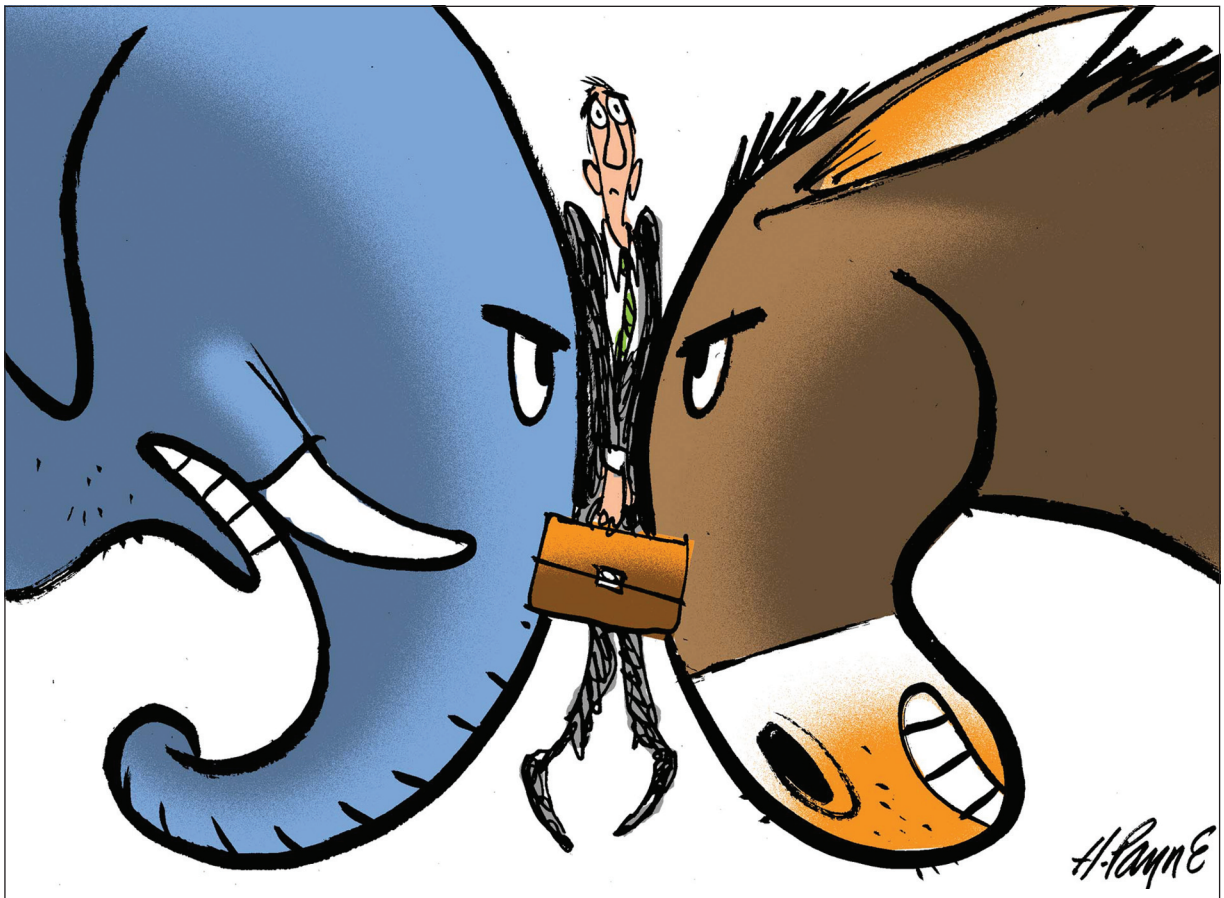

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Making Lemonade

Even before the Deepwater Horizon blowout we were seeking a robust new governance system to protect our oceans. We got marine spatial planning instead

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Last March, President Obama stood in a hangar at Andrews Air Force base and announced his multi-pronged strategy for achieving energy independence and an economy less reliant on fossil fuels. "We'll employ new technologies that reduce the impact of oil exploration," he said. "We'll protect areas that are vital to tourism, the environment, and our national security. And we'll be guided not by political ideology, but by scientific evidence." Obama insisted that development of oil deposits in the Atlantic and Arctic oceans and in the Gulf of Mexico can be accomplished without destroying vital marine habitat.

To those who work to defend sea life and coastal communities, the proposal failed to acknowledge that water flows, species move, and activities that seem too far away to cause harm, can and will. Further, the announcement failed to acknowledge the weaknesses in the U.S. ocean governance system — weaknesses that have since become obvious in the aftermath of the Deepwater Horizon blowout a few short weeks after Obama's call to arms.

Our marine management system is not broken so much as it is fragmented, built piecemeal across federal departments. Right now, a jumble of more than 140 laws and 20 agencies govern ocean activities. Each agency has its own goals, mandates, and interests. There exists no logical framework, no integrated decisionmaking structure, no joint vision of our relationship to the oceans today and the future.

It is time our government treats the devastation of our oceans as an attack on the health and well-being of American citizens and on our national security, and creates a framework of governance and oversight that truly prioritizes ocean health and the long-term well-being of our coastal and marine resources. Of course, the pitfalls of interpretation and implementation of such lofty principles are legion. Perhaps it is time to establish a national ocean defense strategy and clean up a bureaucratic mess that rivals the mess on our beaches.

Since 2003, the private-sector Pew Ocean Commission, the governmental U.S. Ocean Commission, and an interagency task force have articulated the "how and why" for more robust, integrated governance. For all of their potential differences, there is significant overlap among these efforts. Briefly, the commissions propose to upgrade ecological protection; to deploy good governance that is inclusive, transparent, accountable, efficient, and effective; to employ resource management that respects stakeholder rights and responsibilities, that takes account of the market and the effects of growth; to recognize the common heritage of humanity and the value of ocean spaces; and to call for peaceful cooperation of nations to protect the marine environment. Now we may get the logical framework and integrated decisionmaking our ocean policies need, but the president's emphasis in the executive order that followed these efforts last July is on prerequisite marine spatial planning, or MSP. This concept of ocean zoning sounds like a good idea but falls apart under closer inspection, allowing policymakers to avoid the tough decisions required to save the marine ecosystem.

The Deepwater Horizon disaster should be the tipping point forcing us to acknowledge the clear and present danger posed by inadequate management and unrestrained exploitation of our oceans. But what happened was the same as in the West Virginia mine collapse and in the breaching of the levees in New Orleans: A failure to implement and enforce maintenance and safety requirements under existing statutes. Sadly, this failure is not going to disappear just because we have some nicely worded recommendations and a presidential order requiring integrated planning.

President Obama's executive order, which identifies MSP as the means to achieve its governance objectives, was based on the bipartisan recommendations of the interagency task force. But marine spatial planning is just a tool that produces nice maps of how we use the oceans. It is not a governance strategy. It does not itself establish a system that prioritizes the needs of species, including safe migratory routes, food supply, nursery habitat, or adaptation to changes in sea level or temperature or chemistry. It does not produce a unified ocean policy nor resolve conflicting agency priorities and statutory contradictions that increase the potential for disaster. What we need is a national ocean council to force agencies to work together to safeguard marine ecosystems, oriented to conservation and using an integrated statutory framework to implement that policy.

The Governance Vision We Got

Marine spatial planning is a term of art for mapping extant uses of defined ocean areas (e.g., Massachusetts' state waters), with an eye toward using the map to make informed and coordinated decisions about how to use and allocate marine resources. MSP exercises bring together ocean users, including those from the tourism, mining, transportation, telecommunications, fishing, and energy industries, all levels of government, and conservation and recreation groups. Many see this mapping and allocation process as the solution to managing human-ocean interactions, and in particular, as a way to reduce conflicts among users because MSP allows compromises to be made among ecological, social, economic, and governance objectives. For example, the goal of the Massachusetts Ocean Act (2008) is to implement comprehensive resource management that supports healthy ecosystems and economic vitality, while it balances traditional uses and considers future uses. The state plans to accomplish this by determining where specific uses will be permitted and which are compatible. California, Washington, Oregon, and Rhode Island have similar legislation.

President Obama's executive 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. The president ordered the coordination of ocean-related activities under a new national ocean council. As with all planning exercises, the pitfall lies not in identifying what is happening now, but implementing new priorities and enforcing them. MSP alone is not enough to achieve the "protection, maintenance, and restoration" of our coastal and marine resources, as the executive order directs.

The feeling is that we may gain more checks and balances among agencies if we have really comprehensive regional plans in place. And it sounds good, in theory. We already have various place-based designations and activity-restricted marine areas (e.g., for conservation or defense). But our visualization tools are not up to the complexity of a multi-dimensional space with interacting and overlapping uses (some of which may be conflicting) that change with seasonal and biological cycles. It is also difficult to generate a map that will accurately predict how uses and needs must adapt in response to the effects of climate change.

We can hope that the plans and maps that come from MSP can be modified over time as we learn, and as new sustainable uses arise, or as organisms change behavior in response to temperature or chemistry. Yet, we know that commercial fishermen, anglers, aquaculture operators, shippers, and other users are often adamant once an initial mapping process is complete. For example, when the conservation community suggested changing shipping routes and speeds to protect the North Atlantic Right Whale, there was significant and prolonged opposition.

Drawing boxes and lines on maps creates allocations that are akin to ownership. We could hope that the sense of ownership could foster stewardship, but this is unlikely in the ocean commons where all space is fluid and three-dimensional. We can instead expect this sense of ownership to result in cries of takings when anyone's favored use has to be hedged in or-

der to accommodate a new or unanticipated use. In the case of siting a windfarm off the coast of Rhode Island, the MSP process failed and the location was established with a stroke of the governor's pen.

Marine spatial planning looks a lot like every consensus-building effort, where everyone comes into the room beaming because "we are all at the table." In reality, everyone in the room is there to find out how much their priority is going to cost them. And too often, the fish, whales, and other resources are not fully represented, and become victims of the compromises that reduce conflicts among human users.

Using the MSP tool

In an ideal world, ocean governance would begin with a sense of the whole ecosystem and integrate our various uses and needs. Ecosystem-based management, whereby all components of a habitat that support marine life are protected, is enshrined in fisheries management law. Now that we have an MSP executive order, we need to move toward whole-system thinking about the ocean. If the result is to protect some important places, MSP "can eliminate fragmentation, spatial and temporal mismatches caused by 'siloed' sectoral management, where agencies that regulate different sectors in the same places largely ignore the needs of other sectors," according to Elliott Norse.

Again, there are good models to draw on. Among those are UNESCO and The Nature Conservancy, organizations known for their reliance on planning as a conservation tool. The UNESCO marine spatial planning process recommendations assume that if our goal is to do integrated ecosystem based management well, we need MSP. It provides an overview of MSP, with a review of the challenges facing the concept, and the need for high standards for implementation. It also links MSP and coastal zone management. In examining the evolution of MSP worldwide, it notes the importance of implementation, stakeholder participation, and long-term monitoring and evaluation. It envisions a separation from the political process to define sustainable development goals (ecological, economic, and social) via a public stakeholder process. It sets forth a guide to bring marine management in line with land use management.

TNC's model is a more pragmatic "how to" for managers who undertake MSP. It seeks to translate its land use management expertise to the marine environment as a public process of analyzing ocean areas to achieve ecological, economic, and social objectives. The idea is to create a template that will foster collaboration among stakeholders, including those in conflict, relying on the "best available science data." TNC's how-to document provides planning advice for multiple objectives, interactive decision support, geographic boundaries, scale and resolution, and data collection and management.

However, neither UNESCO nor TNC really address the questions MSP creates. To gain the most from MSP, we must have clear and compelling goals. These include preserving the commons for future generations; showcasing natural processes; preparing for species' needs as their environment changes due to global warming; showing human uses to engage stakeholders in a transparent process to work as ocean stewards; identifying cumulative impacts from multiple uses; and obtaining financial resources to implement plans. As with all such efforts, just because you have the law does not mean you do not need policemen. Inevitably, conflicts will emerge over time.

Silver-bullet thinking

To embrace MSP as more than a useful visualization tool is to embrace a placebo on behalf of the health of ocean ecosystems — in place of real, determined, and focused action in defense of the resources that cannot speak for themselves. The rush to overstate the potential of MSP represents the kind of silver bullet thinking that may lead to greater declines in ocean health. The risk we face is that it is an expensive investment that pays off only if we are willing to invest significantly more in real action.

Marine spatial planning would not have prevented the Deepwater Horizon disaster, nor will it protect and restore the Gulf of Mexico's rich biological resources going forward. Navy Secretary Ray Mabus has been assigned to coordinate the recovery and restoration of the gulf. In a recent guest editorial in the New Orleans *Times Picayune,* he wrote: "What is clear is that the people of the Gulf Coast have seen more plans than they care to count — especially since Katrina and Rita. We do not need to reinvent the wheel or start the planning process from scratch. Instead, together, we must create a framework that will ensure restoration of the gulf based on years of examination and experience." Planning is not the beginning; it is the step before the beginning. We must ensure that the implementation of the president's executive order uses MSP to establish and identify agency roles and statutory directives, and ways to integrate programs, reduce contradictions, and institutionalize a robust national ocean defense strategy.

By itself, MSP will not save a single fish, whale, or dolphin. The challenge lies in the priorities inher-

ent in the process: True sustainability must be the lens through which all other activities are viewed, not just a lonely voice at a crowded table where the human users already jostle for space.

Going Forward

The day after the 2010 election, House Natural Resources Committee ranking member Doc Hastings of Washington issued a press release to outline the broad priorities for the incoming Republican majority. "Our goal will be to hold the administration accountable and get much needed answers on a range of issues including the . . . plans to lock up vast portions of our oceans through an irrational zoning process." As David Helvarg of Blue Frontier wrote in *Grist,* "In the 112th Congress, expect to see President Obama's newly established Ocean Council come under attack as another wasteful government bureaucracy." In addition to being in the gunsights of the incoming committee chair, we have to be realistic about funding for enhanced ocean protections in the new Congress. One does not have to do any math to know that new programs are unlikely to be funded through new appropriations.

Thus, to have any chance, we must clearly articulate how MSP and improved ocean governance relate to more jobs, and to turning the economy around. We would also have to clarify how implementing improved ocean governance could reduce our budget deficit. This may be possible by consolidating the responsible agencies and rationalizing any redundancies. Unfortunately, it seems unlikely that the newly elected representatives, who are seeking limits on government activity, will see any benefit in improved ocean governance.

We can look at another nation's example for potential guidance. After returning from a diplomatic tour of offshore renewable energy facilities, Washington State Senator Kevin Ranker commented that MSP "properly administered can protect numerous existing jobs while promoting exciting new offshore renewable energy opportunities." In the United Kingdom, the Crown Estate's efforts to complete a comprehensive MSP throughout the British Isles, integrated with the UK renewable energy policy, has identified specific sites while protecting existing fishing and recreational opportunities. This, in turn, has created thousands of jobs in small port towns in Wales, Ireland, and Scotland. When the Conservatives took power from the Labor Party this year, the need to continue advancing the MSP efforts and the promotion of renewable energy did not decrease in priority.

Achieving integrated governance of our ocean resources requires consideration of all its complexities of animals, plants, and other resources on and beneath the sea floor, within the water column, its interface with coastal areas, and the airspace above. If we are to make the most of MSP as a tool, there are questions that we must answer in the process.

First and foremost, we must be prepared to defend the ocean resources on which so much of our economic and social well-being depends. How can "thoughtful planning" minimize conflicts between manatees and boats; dead zones and fish life; overfishing and marine biomass; algal blooms and oyster beds; ship groundings and coral reefs; long range sonar and the beached whales who fled it; or the oil slicks and the pelicans?

We must identify the political and financial mechanisms to be used to ensure that MSP maps remain up to date, as new data become available or conditions change. We must further work to ensure that we keep the governments, NGOs, and funders focused on implementation and enforcement of the laws and regulations that we already have on the books as well as on any allocation or zoning plan that emerges from an MSP process, to ensure that it is more robust than terrestrial zoning has been.

Should the mapped uses need to be shifted or reallocated, we must be ready to defend against charges of takings. Likewise, the legal structure must frame insurance, chain of custody, and damage reimbursement guidelines within MSP that solve the issues of destroyed resources and yet do not involve taxpayer dollars for reimbursement. In addition, MSP processes must help identify ways to balance risk management and ecological protection for activities that have a finite probability of industry-related environmental accidents, especially when the probability of the accident is very small, but the scope and scale of the harm is huge, such as in the case of the Deepwater Horizon impact on thousands of jobs, 50,000 square miles of ocean and shores, millions of cubic feet of sea water, hundreds of species, and 30-plus years, not to mention the loss of the energy resource.

Within the framework of addressing these issues lies the potential to make the most of MSP as a tool. It can help protect existing jobs and support the creation of new jobs in our coastal states, even as it promotes the health of those ocean resources on which our nation depends. With vision, collaboration, and recognition of its limitations, we can use this tool to achieve what we really need: integrated ocean governance across agencies, governments, and stakeholders of all species. •