PRIORITIES FOR A NATIONAL POLICY FOR THE OCEANS, COASTS & GREAT LAKES

The Coastal States Organization (CSO) applauds the Presidential Memorandum of June 12, 2009 creating an Interagency Policy Task Force to make recommendations for a National Policy for the Oceans, Our Coasts, and Great Lakes. Since 1970, CSO has represented the interests of the Governors of the nation's thirty-five coastal states and territories, including the Great Lakes states, on issues relating to the sound management and development of coastal and ocean resources,

The Nation's economy and security depend on the health of oceans and coasts and especially on the resilience of coastal communities and marine and coastal environments. A growing population, the need for new marine and coastal energy sources, and continuing development demands threaten marine and coastal habitats and resources, increase exposure to hazards and create challenges in balancing public and private interests. The oncoming threat of climate change complicates and exacerbates the significant and ongoing pressures of managing and protecting national coastal assets. An effective National Policy for the Oceans, Coasts, and Great Lakes can ensure that the nation has the resources, governance structure, and tools that it needs to address these challenges.

The states are on the front lines of the work of balancing competing uses in the coastal zone, managing the development of traditional and renewable energy sources, and adapting to climate change impacts. Because states work with all levels of government – federal, regional partnerships, other states and local governments - the states strongly support a National Policy that prioritizes, clarifies and strengthens the role of states and territories in coastal and ocean policy and management. In this paper, CSO is pleased to offer the vital role of states as sovereign entities and partners to the federal government in implementing a policy, the enormous impact of the coastal economy on the health of the nation's economy and nine specific recommendations for a National Policy for the Oceans, Coasts and Great Lakes.

I. The Vital Role of States in Creating and Implementing a National Policy

The thirty-five coastal states and territories have unique Constitutional authorities and jurisdictions over coastal resources and activities. Coastal states and territories have Public Trust responsibilities for the nation's coastal submerged lands and state ocean waters and for protecting fish and wildlife resources in these areas. These responsibilities are exercised on behalf of all citizens, including future generations. States regulate and manage these marine and coastal resources, often in partnership or consultation with federal agencies. In addition, coastal states and territories have specific authority delegated to them under the Coastal Zone Management Act to ensure that activities and permits of federal agencies that may affect their coastal zone are consistent with approved state policies.

Thus, CSO recommends that the National Policy reflect these unique Constitutional responsibilities and the states' major role in managing ocean and coastal resources. CSO recommends that the National

Policy clearly state it is the policy of the United States that the programs and authorities of coastal states for managing and protecting ocean and coastal resources are and will be principal components of a national framework for stewarding the Nation's ocean and coastal assets. Without such an affirmative statement, the state/federal partnership will continue to be variable around the nation. Some federal agencies incorrectly place states in the "stakeholder" category rather than including them in relevant policy-making as sovereign governments.

II. The Importance of Coasts and Oceans to the National Economy

The U.S. economy is a coastal economy, which reflects its critical location linking the nation's land and sea. Coastal counties produce more than 40% of the nation's economic output. Three quarters of all U.S. trade passes on ships and barges through our estuary ports. The natural amenities of our coasts support more than $70 billion annually in tourism and recreation spending. Coasts and oceans also add to the quality of life of nearly half of all Americans who visit the seashore each year.

The coastal economy is also the most complex sector of the U.S. economy. This complexity is due to the dynamic, fluid and highly variable factors of the coasts, oceans, watersheds, estuaries and coastal shorelands. Valuable fishery resources swim from sea to estuary and sometimes up into rivers. Beaches and coastal shorelands shift naturally with the seasons and over time in response to weather, climate and human modification. The coastal ocean tethers local coastal economies to one another and to economies upstream, sometimes hundreds of miles away. Well managed coasts benefit Americans from all states and all walks of life and for future generations; an investment in governance, funding and policy for the nation's coasts is a good investment for the country.

III. Recommendations for a National Policy

As the Task Force develops its recommendations, CSO urges the Task Force to incorporate the following priorities in a National Policy for the Oceans, Coasts, and Great Lakes.

1. Adopt a Policy that Reflects States' Unique Constitutional and Public Trust Responsibilities and their Major Role in Managing Ocean and Coastal Resources
2. Adopt a Policy to Support Marine, Coastal, Estuarine, and Great Lakes Ecosystems
3. Support the Creation of a National Ocean and Coastal Trust Fund to Implement the National Policy
4. Support Reauthorization of the Coastal Zone Management Act
5. Adopt an Ocean Governance Framework that Builds on Existing State, Regional, and Federal Partnerships
6. Support State and Local Efforts to Adapt to Climate Change
7. Support States in Managing Renewable Energy Development
8. Enhance Ecosystem Based Management through Improved Tools including Adaptive Management and Marine Spatial Planning
9. Acknowledge Public Trust Responsibilities of Federal Agencies

1. Adopt a Policy that Reflects States' Unique Constitutional and Public Trust Responsibilities and their Major Role in Managing Ocean and Coastal Resources

As stated above, the thirty-five coastal states and territories are in a unique partnership position to the U.S. Like the federal government, coastal states and territories are sovereigns, landowners, regulators, and managers of marine and coastal resources. The jurisdiction of coastal states extends seaward to encompass significant ocean areas, resources, and uses, out to three miles in most cases and, in a few cases, beyond three miles. Under the Public Trust Doctrine, coastal states and territories have trust responsibilities over these resources. Finally, under the Coastal Zone Management Act, coastal states and territories have the responsibility to manage coastal resources within the coastal zone and review activities outside of the coastal zone that might affect it.

Given these significant roles, the National Policy should express its intent that the federal government work with the states as equal partners in managing ocean resources. CSO recommends that the National Policy clearly state it is the Policy of the United States that the programs and authorities of coastal states for managing and protecting ocean and coastal resources are and will be principal components of a national framework for stewarding the Nation's ocean and coastal assets.

2. Adopt a Policy To Support Marine, Coastal, Estuarine and Great Lakes Ecosystems

CSO urges the Administration to take executive action, and support Congressional action as needed, to direct all federal agencies to support a national coastal and ocean policy that includes the following:

- Ecosystem-based management approaches to the extent possible under applicable law;
- Partnership with the states and implementation at the state and local level reflecting shared public trust and economic interests in coastal and ocean resources;
- Regional coordination among federal programs and support for efforts by states to address certain issues at a regional scale;
- Support for programs and activities that will result in ecologically and economically sustainable uses of ocean and coastal resources, incorporating a precautionary approach;
- Adaptive management based on sound science; and
- Increased public stewardship and understanding of coastal and ocean resources.

Ecosystem based management relies upon an effective approach to setting priorities for science based on management needs and committing to the use of sound science in decisions. An effective National Policy will reflect the fact that achieving ecosystem based management requires a commitment to the use of scientific information to support decisions and investments in the infrastructure needed to acquire, assess, and deliver this information.

3. Support the Creation of a National Ocean and Coastal Trust Fund to Implement the National Policy

The National Policy should be supported by the creation of a National Ocean and Coastal Trust Fund to provide a substantial and consistent source of funds to support programs by local, state, and federal governments and regional partnerships to meet these significant coastal and ocean challenges. CSO recommends that this fund be based on a portion of revenues generated from offshore drilling, renewable energy sources such as wind, wave and current occurring on the outer continental shelf and revenues from future carbon tax revenues and other sources. Funding from the Trust Fund can support management needed for marine, coastal and Great Lakes resources. Funds allocated from the Trust Fund should be prioritized for (1) adaptation to climate change activities, including natural resources, habitat, and infrastructure improvements; (2) research, observing, monitoring and mapping to support understanding of the impacts of energy activities; (3) science and technology to understand and predict ocean and climate impacts; and (4) ocean and coastal resource management programs.

If the Task Force determines that a Trust Fund is not an appropriate mechanism to fund the implementation of the National Policy, CSO recommends that the Task Force selects a mechanism that reinvests revenues from the extraction and use of coastal and marine resources back into the management of those resources.

4. Support Reauthorization of the Coastal Zone Management Act

Coastal States strongly urges a National Policy to incorporate and support the Coastal Zone Management Act. The Coastal Zone Management Act of 1972 (CZMA) has been a landmark program to help states to reverse the assault on coastal resources and decline in the environmental health and economic productivity of our coastal zone. The CZMA has done much to enable states to revive America's waterfronts, stem the loss of coastal wetlands and dunes, and restore other economically important coastal areas. The National Estuarine Research Reserve Program, a critical component of the CZMA, has anchored the Nation's commitment to scientific research and education to restore and protect estuaries nationwide.

The National Policy should support a reauthorized and reinvigorated CZMA as a top priority to improve governance of the nation's vital ocean and coastal resources. CSO recommends that a reauthorized CZMA focus on four national priorities: (1) healthy communities and economies, (2) ecosystem protection and restoration, (3) climate change adaptation, and (4) improving government integration and cooperation.

Specifically, a National Policy should call for:

- Maintaining State Federal Consistency Review authority under the CZMA;
- Increased funding for CZM grants to all eligible states and raising of the current cap on administrative grants;

- Incentives to enable states to address significant issues in coastal watersheds that affect the coastal zone;
- Periodic state coastal resources assessments, with program monitoring and performance indicators established through those assessments;
- Coastal and Estuarine Land Conservation Program grants; and,
- Coastal restoration and community assistance grants through the State CZM Programs to address climate change, coastal hazards, the effects of land use and urban growth, and coastal pollution.

5. Adopt an Ocean Governance Framework that Builds on Existing State, Regional, and Federal Partnerships

The management of U.S. coasts and oceans has been characterized by a sector-by-sector, agency-by-agency approach and one that, despite best efforts, is primarily reactive rather than proactive. In recent years, regional initiatives by the governors of coastal states have helped to build partnerships among states and federal agencies. A national policy and framework will enable federal agencies and states to be better positioned to plan for as well as respond to the emerging uses of the nation's public trust resources, including the increasing demand for both traditional as well as renewable energy in coastal and offshore areas, restoring and maintaining vital ocean fisheries, and adapting to the effects of climate change.

Governors of the coastal states are leading the way in implementing regional initiatives to enhance ocean governance. The Great Lakes Commission, the Gulf of Mexico Alliance, the Northeast Regional Ocean Council, the West Coast Governors Agreement, the Southeast Governors' Alliance, and the Mid-Atlantic Regional Council on the Ocean are state-led efforts that are helping to transition management of ocean and coastal resources from a state-by-state approach to a regional one. The National Policy should capitalize on the accomplishments of these partnerships and provide clear directions and expectations for federal agencies.

CSO urges that the National Policy:

- Create a national framework to advance and support regional efforts by states, territories and federal agencies to develop and implement integrated ecosystem-based plans for ocean stewardship;
- Support regionally-based plans that are action-oriented and directed toward achieving shared goals and priorities;
- Encourage and facilitate significant opportunities for public input and involvement in regional ocean governance initiatives;
- Create mechanisms to acquire additional information needed to improve management of oceans, coasts and estuaries; and,
- Support a mechanism such as the Ocean Trust Fund to develop, fund and implement regional plans.

In addition to improved regional governance, an essential outcome of the National Policy must be improved coordination and integration among the federal agencies. Currently, the ocean uses are regulated by individual agencies. No single federal government agency or body is charged with a comprehensive, coordinated policy and management purview across these individual programs. The CSO recommends that the National Policy:

- Establish leadership for oceans and coasts by creating the position of a National Ocean Advisor to the president and strengthening NOAA's capacity through organic legislation;
- Designate a lead federal agency for the U.S. EEZ;
- Ensure that management of the nation's EEZ compliments and coordinates with existing State Coastal Zone Management Programs;
- Increase federal agency integration with respect to coastal management, watershed protection and water quality programs;
- Ensure that management of the nation's EEZ compliments and coordinates with existing regional ocean governance efforts (which are largely focused on state waters); and,
- Assure that federal infrastructure investments on the nation's coasts are consistent with state coastal and ocean management plans.

While the current framework of high-level federal agency collaboration and partnerships (e.g. SIMOR, JSOST and the creation of the ORRAP) has improved communication at the federal level, the new framework should provide a clearer mechanism for state involvement to reflect the states' authorities and Public Trust responsibilities in the nearshore ocean. An effective approach would be to have each governor-created regional partnership have a seat on these interagency groups.

6. Support State and Local Efforts to Adapt to Climate Change

Coastal areas and islands are particularly vulnerable to the impacts of climate change, especially with respect to accelerated sea level rise and lake level changes, shoreline erosion, increased storm frequency and/or intensity, and changes in rainfall and related flooding. Coastal states and territories are beginning to develop strategies for adapting to climate change at the state and local level. Federal agencies are collecting useful data and information about, and administering programs for, adaptation to climate change. A number of federal agencies have begun to make funding available for local climate change-related activities, including NOAA, EPA, USACE, FEMA, USGS and others but these need to be more strategically aligned with state needs. Intergovernmental coordination is needed to ensure the most effective implementation of strategies and efficient use of funds and to provide opportunities for complementary efforts among local, state, regional or national programs. A key component of this federal strategy for coastal adaptation should be a new and stronger focus on interagency cooperation between NOAA, state coastal management programs, FEMA, and state floodplain managers.

The National Policy should:

- Result in a national coastal adaptation strategy to enhance coordination and integration among the Nation's federal, state, and local coastal and ocean agencies to address climate change on the

nation's coasts. This strategy should clearly define the roles of various agencies and identify the mechanisms by which federal programs will coordinate with states on adaptation issues. It should also coordinate federal agency activities, research, and data collection efforts related to coastal impacts of climate change with coastal states;

- Increase the federal commitment to coastal and ocean mapping and other research and making data and information easily available to the public and to coastal managers;
- Develop a strategy to identify the information needs of coastal states to effectively respond to natural hazards and ecosystem changes resulting from climate change and ensure consultation with coastal states in climate change programs and research; and,
- Direct development and implementation of state and local adaptation plans for coastal areas that will experience the significant effect of sea level rise and lake level change, storms, and environmental changes.

7. Support States in Managing Renewable Energy Development

Development and production of traditional and renewable energy resources on the coasts and nearshore ocean waters must be balanced with protection of other economic uses of the ocean, such as fisheries, and with protection of coastal and marine ecosystems and resources. Increased investments in research, baseline data, mapping and modeling will be crucial to support sound decision-making that achieves a balance between energy development and protection of coastal resources. More could be done through regional ocean entities to ensure coordination and mutual objectives consistent with the characteristics of regional ecosystems and economies. Regional assessments of the effects and benefits of various techniques and technologies would provide a proactive basis for planning and assessing environmental effects. States would also benefit from clarification of authorities and roles of various federal agencies in developing new energy resources in the marine and coastal environment. Specifically, a National Policy should:

- Promote consistent, standard methodologies for assessing risks and environmental impacts within a regional context;
- Require federally coordinated cumulative impact assessments by region and in collaboration with relevant states;
- Provide assistance to states to gather needed data to fill information gaps such as human uses and natural resources; and,
- Foster and maintain strong collaboration and outreach with state and tribal governments, regional entities and local communities.

8. Enhance Ecosystem Based Management through Improved Tools including Adaptive Management and Marine Spatial Planning

As oceans become more crowded with increasing demands on space and resources it is increasingly clear that not all uses are compatible with one another or with the need for a healthy and sustainable environment. The effects of uses such as energy facilities, submarine cables, shipping routes, fishing,

and recreation on the environment and on economies cannot be accurately accounted for with existing information. In order to maximize the wide variety of benefits oceans provide, it is essential to improve the capacity of federal, state, and local governments to make informed decisions.

New strategies, such as adaptive management that allows development of ocean technologies and industries to proceed at an acceptable pace, are needed. Such strategies will help to preserve the commercial viability of needed uses while ensuring that the design and deployment of technologies can be modified as knowledge is gained about impacts to the marine environment. Such strategies and techniques require shared objectives among governmental entities, the capacity to acquire needed information in a timely way, and management processes that enable uncertainties to be addressed in a step-wise fashion.

In addition, new information technologies can enhance planning and management of the marine environment. Geospatial information about ocean resources, uses, and conditions applied through Marine Spatial Planning (MSP) can provide federal, state, and local governments with the ability to focus on the spatially explicit nature of activities and resources and can help decision-makers evaluate tradeoffs to meet objectives. Development and application of MSP and related technologies in ocean decision-making should be an objective of the National Policy.

The National Policy should:

- Support the development of and advances to resource management tools including Adaptive Management and Marine Spatial Planning;
- Recognize the need for consensus building tools, processes to resolve conflicts, transparency and broad participation during planning, implementation, and adaptation of resource management tools;
- Support the development, conversion, collection, and standardization of new and best available data and information in a spatially explicit format;
- Build upon or integrate with the efforts of existing Regional Ocean Partnerships, recognizing that these Partnerships have a broad and diverse portfolio of activities and goals specific to a region;
- Provide robust management capacity at all governance levels; and,
- Provide a flexible approach for management tools.

9. Acknowledge Public Trust Responsibilities of Federal Agencies

The Public Trust Doctrine provides that public trust lands, waters, and living resources in a state are held by the states in trust for the benefit of its citizens and establishes the right of the public to enjoy public trust lands, waters, and living resources for the purposes of commerce, navigation, fishing and recreation. Many states have formally adopted public trust doctrine principles in statute or state constitutions while others' doctrine emerges from judicial precedent. The state public trust doctrine exists in state waters, out to three miles (and farther in a few cases). While there is no formal Federal Public Trust Doctrine for the EEZ, Congress has assigned public trust responsibilities to federal agencies through statutes, including the Clean Water Act and Oil Pollution Act.

The Oil Pollution Act offers a clear instance of federal public trust duties being applied to the EEZ. The Act authorizes the President to designate federal officials to act on behalf of the public as trustees of natural resources; this jurisdiction includes the living and non-living resources of the Outer Continental Shelf and of ocean waters out to 200 miles. Section 311 of the Clean Water Act also extends out to 200 miles and requires the President or authorized representatives of the States to act "on behalf of the public as trustee of the natural resources" for purposes of recovery for the costs of replacing or restoring natural resources that had been lost. Legislative history indicates that the provisions' drafters intended to provide for the protection of public resources, such as beaches and fisheries, which are not privately owned, and to provide for their restoration on behalf of the public interest.

Based on the existence in federal statute and policies, CSO recommends that these Federal Public Trust Responsibilities be included in the National Policy as a confirmation that federal agencies have the responsibility to manage ocean and coastal resources to guarantee preservation, access and use for future generations.

For more information, contact:
Kristen M. Fletcher, Executive Director
Coastal States Organization
Hall of the States
444 N Capitol St NW, Suite 322
Washington, DC 20001
(202) 508-3860
kfletcher@coastalstates.org
www.coastalstates.org