

**Testimony of Dan Keppen  
Executive Director  
Family Farm Alliance**

**Before the Committee on Commerce, Science and Transportation  
Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard  
United States Senate**

**Oversight Hearing  
“National Ocean Policy: Stakeholder Perspectives”**

**Washington, D.C.  
December 12, 2017**

Chairman Sullivan, Ranking Member Peters and Members of the Subcommittee:

My name is Dan Keppen, and on behalf of the Family Farm Alliance (Alliance), I thank you for this opportunity to present this testimony on the implications of the Obama Administration’s National Ocean Policy (NOP). The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts, and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. We are also committed to the fundamental proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental, and national security reasons – many of which are often overlooked in the context of other national policy decisions.

The Family Farm Alliance is respected for its reputation in helping to solve Western water challenges in a constructive manner. The Western family farmers and ranchers who we represent are confronted with many critical issues today. At the top of the list is the daunting number of administrative policy and regulatory initiatives that our Western agricultural producers face daily.

Some of you today may be wondering – why is an organization that represents family farmers and ranchers in the mostly inland West concerned with a policy that would appear to apply more to the ocean and coastal communities? We have actually monitored this issue for some time and have formally raised concerns with how the Obama Administration’s ocean policy would be implemented. Specifically, we were concerned with the role states and stakeholder user groups would play within this policy. We had questions about whether the potential impact on the economy, budget, and existing statutes and regulatory processes had been assessed. For example, how would this complement or conflict with the authority of states? Many of our farmers and ranchers have been impacted by implementation of federal environmental laws intended to protect ecosystems far-removed from their operations. For these reasons, we remain concerned that this policy could dramatically increase the role of federal agencies on inland rivers and adjacent lands, as further outlined in this testimony.

## **Importance of Western Irrigated Agriculture and Key Challenges**

Irrigated agriculture in the West not only provides a \$172 billion annual boost to our economy, it also provides important habitat for western waterfowl and other wildlife, and its open spaces are treasured by citizens throughout the West. Family farmers and ranchers are willing to partner with constructive conservation groups and government agencies, especially if there are opportunities to both help strengthen their businesses and improve the environment.

Still, many Western producers face significant regulatory and policy related challenges, brought on – in part – by federal agency implementation of environmental laws and policies. The challenges are daunting, and they will require innovative solutions. The Family Farm Alliance and the farmers and water management organizations we work with are dedicated to the pragmatic implementation of actions that seek to find a sustainable balance of environmental protection and economic prosperity. Farmers are producers; when farmers set out to do something, their mindset is to get results, to get something done, and generate a tangible output for the effort. That is why farmer and ranchers and certain constructive environmental groups work well together.

All too often, unfortunately, environmental policy is not driven to achieve meaningful results. That is why our organization seeks to collaborate with those groups that also seek positive results as an objective. The foundation for some true, collaborative solutions will be driven from the constructive “center”, one that steers away from the conflict that can ensue between new regulatory overreach and grassroots activism intended to resist any changes to existing environmental and natural resource laws, regulations, and policies.

## **Background of Executive Order 13547**

On July 19th, 2010 President Obama signed Executive Order 13547 to adopt the final recommendations of the Interagency Ocean Policy Task Force to implement a new NOP. The policy set up a new level of federal management intended to improve the way inland, ocean and coastal activities are managed. Unfortunately, this has the potential to impose impacts – intended or not – across a spectrum of sectors, including the Western agricultural organizations we represent.

The National Ocean Policy made it clear that activities that might adversely affect the ocean ecosystems might also be impacted – no matter how far inland they may occur<sup>1</sup>. While the NOP stated that this policy or marine planning “creates or changes regulations or authorities”, it also proposed that agencies would “coordinate to use and provide scientifically sound, ecosystem-based approaches to achieving healthy coastal and ocean habitats.” The NOP further stated that

---

<sup>1</sup> The [Final Recommendations](#), which were adopted by the 2010 Executive Order (see language in [Section 9\(c\)](#)) state: “...the geographic scope of the CMSP (Coastal and Marine Spatial Planning) area in the United States would not include upland areas *unless a regional planning body determines to include them.*” (emphasis added). “The geographic scope [of CMSP] would include inland bays and estuaries in both coastal and Great Lakes settings.... Additional inland areas may be included in the planning area as the regional planning bodies...deem appropriate. Regardless, consideration of inland activities would be necessary to account for the significant interaction between upstream activities and ocean, coastal, and Great Lakes uses and ecosystem health.”

“effective implementation would also require clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component”<sup>2</sup> and that the Executive Order mandates that federal agencies make all their actions consistent with the NOP and any related plans”<sup>3</sup>. From our standpoint, this presented some uncertainty as to how the Federal government in the future intended to either revise existing regulations or impose new regulations on activities that were already permitted.

### **Support for Voluntary Incentive-Driven Provisions**

The Family Farm Alliance has long advocated a voluntary, incentive-driven philosophy to advance conservation, and thus we supported the NOP’s intent to provide financial assistance to private landowners seeking to apply voluntary conservation practices. While we were pleased to see the NOP acknowledge that “collaborative watershed restoration efforts are important to the overall success of coastal and marine habitat conservation,”- a principle we also embrace -this acknowledgement did little to alleviate our over-arching concerns about the uncertainties associated with the expansive and uncertain nature of the NOP. We continue to strongly believe that, rather than creating new processes and planning groups to tackle pressing marine challenges, existing collaborative programs that have proven successful should be given emphasis and perhaps be used as templates to duplicate that success elsewhere.

The NOP points to restoration efforts for Pacific Northwest salmon as an “excellent example of collaborative, voluntary upland watershed conservation and restoration.” We agree that there are good examples of successful partnerships involving farmers and ranchers and anadromous fish recovery projects on the West coast, to wit:

- The NOAA Fisheries Recovery Plan for Oregon Coast Coho Salmon calls for public-private partnerships to conserve habitat for the threatened species, positioning coho for possible removal from the federal list of threatened and endangered species within the next 10 years. The plan is voluntary, not regulatory, and hinges on local support and collaboration. The plan promotes a network of partnerships that integrate the needs of Oregon Coast coho with the needs of coastal communities.
- The Yakima River Basin Integrated Plan in Washington State is the result of a collaborative effort on the part of irrigators, environmentalists, local governments, the Yakama Nation, the federal government, and the State of Washington. The plan looks to improving water for farms, fish and the environment in a manner that does not pit one use against another. Anadromous fish runs are already benefiting from this forward-thinking partnership.

Unfortunately, in other parts of the Northwest, this collaborative philosophy approach is less visible, as underscored by last year’s decision by U.S. District Judge Michael H. Simon, who ruled the government hasn’t done nearly enough to improve Northwest salmon runs on the Columbia River. “These efforts have already cost billions of dollars, yet they are failing,” he

---

<sup>2</sup> [https://obamawhitehouse.archives.gov/files/documents/OPTF\\_FinalRecs.pdf](https://obamawhitehouse.archives.gov/files/documents/OPTF_FinalRecs.pdf)

<sup>3</sup> See Section 6(a) at <https://obamawhitehouse.archives.gov/files/documents/2010stewardship-eo.pdf>

wrote in May 2016. Now, certain environmental groups say the Lower Snake River Dams – which fuel much of the Northwest’s power supply and make possible irrigation for farms and navigation for agricultural commodities – are the problem, and must come down. As further described below, our members fear that the “federal regional planning bodies” proposed under the Ocean Policy framework could dramatically increase the role of federal agencies on inland rivers and adjacent lands, including all uses (agriculture, irrigation, ports, etc.), at a time when Northwest hydropower dams are the topic of ongoing litigation driven by certain litigious environmental groups.

### **Concerns of Western Family Farmers and Ranchers**

The Family Farm Alliance certainly supports the goals of the NOP, which are intended to guide federal agencies 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." However, we have some grave concerns that extend beyond this broad intent.

#### **Funding concerns**

We believe NOP will affect already budget-strapped agencies that interact closely with Western agricultural irrigators, including the U.S. Department of Agriculture (USDA), the National Oceanic and Atmospheric Administration (NOAA), the Departments of Commerce and the Interior, the Environmental Protection Agency (EPA), and the Army Corps of Engineers. Despite USDA’s involvement in the National Ocean Policy over the past four, the full extent of the department’s activities and role in the process is not clear. As federal budgets are further reduced or remain flat, it is unclear how much funding the agencies are taking from existing programs to develop and implement this new initiative.

#### **Uncertain Impacts to Inland Areas**

The NOP proposes that, working through the U.S. Coral Reef Task Force, agencies will coordinate to address key threats to coral reef ecosystems, including impacts from land-based sources of pollution. Through “more effective use” of voluntary programs, partnerships, and pilot projects, agencies will work to “reduce excessive nutrients, sediments, and other pollutants”. The NOP would also establish a framework for collaboration and a shared set of goals to promote “ecosystem-based management”, where agencies will “develop principles, goals, and performance measures” that support this management philosophy.

The ‘Ecosystem-based management’ authority created by this executive order would allow federally-dominated Regional Planning Bodies to reach as far inland as they deem necessary to protect ocean ecosystem health. It could potentially impact all activities that occur on lands adjacent to rivers, tributaries or watersheds that drain into the ocean. For example, although the policy was portrayed by the Obama Administration as primarily targeting ocean-related activities, the National Ocean Policy Final Recommendations adopted by the 2010 Executive

Order specifically stated that the policy plans to address “the major impacts of urban and suburban development and agriculture—including forestry and animal feedlots.”<sup>4</sup>

The ‘ecosystem based management’ authority involves vague and undefined objectives, goals, and policies that we know from experience can be used by critics of irrigated agriculture as the basis for negative media or lawsuits to stop or delay Federally-permitted activities. For example, the National Marine Fisheries Service (NMFS) has determined that Central Valley salmon populations will go extinct unless government agencies change their water operations in California. In a draft biological opinion, NMFS concluded that the southern resident population of killer whales might go extinct because its primary food – salmon – is imperiled by California’s network of dams and canals. Similar linkages between these orcas and potato farmers (located hundreds of miles from the Pacific Ocean) were contemplated as a biological opinion was being drafted by NMFS for the Klamath Irrigation Project, located in the high desert of southern Oregon. The NOP opens the possibility of further emphasizing such ‘ecosystem-based’ relationships. Further, the NOP sets up ‘pre-application consultations’ where requested federal permits would be subject to additional consultation processes prior to any formal consideration.

Another example of federal overreach in my home state of Oregon, NMFS is being criticized for issuing land use commands to local governments in the name of protecting anadromous species. NMFS is currently under fire for insisting that communities adopt federally-driven land use restrictions meant to help endangered species like salmon and steelhead in order to be eligible for federal flood insurance program coverage<sup>5</sup>. This, even though neither the flood insurance program nor FEMA, which administers it, has any power over land use. In an editorial last year, the *Eugene Register-Guard* noted that the NMFS restrictions had the potential to “place floodplains in 271 communities off-limits to development, agriculture and forestry.” Affected regions, the paper wrote, would include not just significant municipal areas, but “swaths of farm and forest land.”

Traditionally, land use is a local and regional responsibility. At the Family Farm Alliance, we strongly advocate that the best decisions in resources management are made at the local level. In a state where local communities must adhere to some of the most extensive land use regulations in the country, some point to the NMFS actions in Oregon as proof positive that future implementation of the vague NOP will lead to similar expanded intrusion by other federal interests.

Finally, we believe there is a high risk of unintended economic and societal consequences associated with implementing this policy, due in part to the unprecedented geographic scale under which the policy is to be established. As set forth, the National Ocean Policy creates the potential for unforeseen impacts to inland sectors such as agriculture, which is connected via the “ecosystem”- based approach to the ocean. The family farmers and ranchers we represent are

---

<sup>4</sup> [https://obamawhitehouse.archives.gov/files/documents/OPTF\\_FinalRecs.pdf](https://obamawhitehouse.archives.gov/files/documents/OPTF_FinalRecs.pdf)

<sup>5</sup> “Feds turn flood insurance into a tool for land grabs in Oregon”, Damien Schiff for the Capital Press, November 20, 2017.

part of a \$172 billion annual contribution – made up of direct irrigated crop production, agricultural services, and the food processing and packaging sectors – the “Irrigated Agriculture Industry” makes to our economy every year. Our producers also contribute to the fact that our nation’s citizens spend less of their disposable income on food than anywhere else in the world – a luxury only Americans enjoy.

### **The Need to Consolidate – and not Complicate – Existing Fisheries Management Efforts**

Western watersheds that drain to the Pacific Ocean are home to many species of fish, some of which are listed as “endangered” or “threatened” under the federal Endangered Species Act (ESA) and fall under the responsibility of NMFS and U.S. Fish and Wildlife Service (USFWS) but have different migration patterns or life histories, often leading to duplicative and sometimes overlapping actions by each of the agencies under the ESA. Several of these species – like the Lost River and Short Nose suckers in the Upper Klamath Basin, the Delta Smelt in the Sacramento-San Joaquin River & San Francisco Bay-Delta, and the bull trout in the Upper Snake River – spend their entire lives in freshwater. Other anadromous species – such as the coho salmon in the Lower Klamath River, chinook salmon in California’s Central Valley, and salmon and steelhead in the Columbia River – spawn in freshwater, migrate to the ocean to mature, and return to spawn in freshwater. Still other species are polymorphic: an individual *O.mykiss* may live its entire life in freshwater, in which case the fish is a rainbow trout, or that fish may ultimately spend part of its life in the ocean, in which case it is a steelhead and potentially subject to NMFS jurisdiction if listed under the ESA.

The scope of similar or identical ESA actions performed by each agency can be extensive, and include designating critical habitat, developing and implementing recovery plans for endangered and threatened species, and more. It would seem intuitive to many that these functions would most effectively and efficiently be conducted under the roof of one government agency and not be arbitrarily split between two different agencies housed in two completely different federal departments. In fact, up and down the West coast – from California’s Central Valley Project, to the Upper Snake River Basin in Idaho, to the Klamath Irrigation Project in Oregon and California – duplicative bureaucracies are generating ESA plans that sometimes compete with one another. When push comes to shove, water users are left to wonder, “how do we do satisfy both agencies, and still provide water for our farms and communities?” In some cases, the farms and communities don’t get the water, as demonstrated by the devastating, regulatory-driven curtailment of water to rural communities in California’s Central Valley (in 2009, and 2014-2016) and the Klamath Project in 2001.

The NOP – in our view – provides potential to further these types of unfortunate examples. Instead, we should be looking for ways to streamline, improve and consolidate federal resource management efforts. We need to be sure that new planning groups and programs are necessary and do not waste public resources. One example of a proposal that would streamline and improve management of fisheries on the West coast is embedded in H.R. 3916, the “*Federally Integrated Species Health (FISH) Act*.” This bill would amend the ESA to vest in the Secretary of the Interior functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters. We believe that by combining the ESA implementation responsibilities of both NMFS and FWS under one federal roof, we would promote more efficient, effective, and

coordinated management of all ESA responsibilities for anadromous and freshwater fish in Western watersheds, from the highest reaches of our headwaters to the Pacific Ocean.

### **Recommendations**

Rather than expend federal funds to support policies that create new bureaucracies, procedures and regulations that could lead to further uncertainty, restrictions and delays, scarce taxpayer dollars should be allocated to existing entities, programs and activities that have been authorized by Congress and are necessary for businesses and the economy to properly function. Given these concerns, the Family Farm Alliance earlier this year signed letters to U.S. House and Senate Appropriations Committee leadership and President Trump in support of (1) appropriations language that would be restrictive of the National Ocean Policy; and (2) executive action to vacate the Obama-era National Ocean Policy Executive Order and alternatively engage stakeholders to ensure effective, transparent, and beneficial ocean policies under existing statutory frameworks. We reiterate our call for these actions in this testimony.

### **Conclusions**

In a time when our nation is beginning to return to the path of economic prosperity, we cannot support the creation of an expansive, new federal watershed planning program, particularly for those states that have existing, productive watershed programs in place. Federal participation should be channeled through existing state and local programs, rather than creating uncertainty through potentially cumbersome new federal requirements which threaten to derail important water quality and water conservation projects already underway. And, we need to focus federal ESA-listed fish management within one agency.

American family farmers and ranchers for generations have grown food and fiber for the world, but we will have to muster even more innovation to continue to meet this critical challenge. That innovation must be encouraged by our government rather than stifled with new federal regulations and uncertainty over water supplies for irrigated farms and ranches in the rural West.

We welcome this committee's leadership to help make that possible. We look forward to working with you and other Members of Congress towards this end.

Thank you for this opportunity to provide this testimony today.