

Calendar No. 288

105TH CONGRESS }
1st Session }

SENATE

{ REPORT
105-151 }

OCEANS ACT OF 1997

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

ON

S. 1213



NOVEMBER 8, 1997.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

59-010

WASHINGTON : 1997

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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(II)

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NOVEMBER 8, 1997.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 1213]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1213) “A Bill to establish a National Ocean Council, a Commission on Ocean Policy, and for other purposes”, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1213 calls for the development and implementation of a coherent, comprehensive, and long-range national policy to explore, protect, and use ocean and coastal resources. The bill as reported would establish: (1) a 16-member Commission on Ocean Policy (Commission) to provide recommendations for that policy; and (2) the National Ocean Council (Council), a high-level Federal inter-agency working group to advise the President, assist in policy development and implementation, and coordinate budgets relating to ocean and coastal activities.

BACKGROUND AND NEEDS

In 1966, Congress enacted the Marine Resources and Engineering Development Act (1966 Act). The 1966 Act was comprised of three primary elements: (1) a declaration of U.S. policy and objectives with respect to marine science activities; (2) establishment of a National Council on Marine Resources and Engineering Development; and (3) creation of a Presidential commission on marine science, engineering, and resources. Dr. Julius A. Stratton, a former president of the Massachusetts Institute of Technology and

then-chairman of the Ford Foundation, led the commission created in the 1966 Act on an unprecedented, and since unrepeated, investigation of this nation's relationship with the oceans. The Stratton Commission and its congressional advisors, including Senators Warren G. Magnuson and Norris Cotton, worked together in a bipartisan fashion.

The Stratton Commission was established and carried out its mandate during the Administration of Lyndon Johnson. Commission findings were implemented under President Richard Nixon. With a staff of 35, the commissioners heard and consulted over 1,000 people, visited every coastal area of the United States, and submitted 126 recommendations in a 1969 report to Congress entitled *Our Nation and the Sea*. Those recommendations led directly to the creation of the National Oceanic and Atmospheric Administration (NOAA) in 1970, laid the groundwork for enactment of the Coastal Zone Management Act (CZMA) in 1972, and established priorities for federal ocean activities that have guided this nation for almost thirty years.

While the Stratton Commission displayed broad vision, and its work led directly to a variety of important and concrete achievements in U.S. marine policy, the world has changed in numerous ways since 1966. First, over 50 percent of the current U.S. population now lives in coastal areas which account for less than 10 percent of our land area. By the year 2010, 172 million people, about 60 percent of Americans, will live along the coast. Greater understanding and improved management of ocean and coastal ecosystems are essential to maintain healthy coasts and to prepare for and protect communities from natural hazards like hurricanes.

Second, the U.S. legal and bureaucratic framework related to the oceans has grown enormously in the past thirty years. In 1966, neither NOAA nor the Environmental Protection Agency (EPA) had been created. A number of laws with major impacts on the conduct of ocean and coastal activities had yet to be enacted. These include: the CZMA; the Magnuson-Stevens Fishery Conservation and Management Act; the Marine Mammal Protection Act; the Marine Protection, Research, and Sanctuaries Act; the Oil Pollution Act; and the Endangered Species Act. Today, people who work and live on the water face a patchwork of confusing and sometimes contradictory Federal and State regulations. Earlier this year, the National Academy of Sciences issued a report entitled *Striking a Balance, Improving Stewardship of Marine Areas*, which calls for the establishment of a national marine council and the creation of regional marine councils to address such concerns.

Third, ocean and coastal resources once considered inexhaustible today are severely depleted, and wetlands and other marine habitats are threatened by pollution and human activities. In recent years, New England has struggled with the collapse of its traditional cod, haddock, and flounder fisheries. In other regions, overfished stocks include sharks, swordfish, bluefin tuna, salmon, red snapper, grouper, and weakfish. Restoring fisheries could add an estimated \$2.9 billion to the economy each year. In addition, coastal habitat has been declining. Coastal areas are essential spawning, feeding, and nursery areas for over three-quarters of U.S. commercial fish catches. However, about 20,000 acres of coastal wet-

lands are disappearing each year. Louisiana alone has lost half a million acres of wetlands since the mid 1950s, and the Gulf of Mexico now suffers from a 6,000 square mile “dead zone” as a result of huge quantities of pollution flowing from the Mississippi River. NOAA estimates that \$200 million is lost annually in reduced fish catches due to ongoing habitat loss.

Fourth, environmental threats to the oceans are growing increasingly complex. This past summer, local newspapers reported daily on *Pfiesteria*, the microalgal organism wreaking havoc in the Chesapeake Bay and North Carolina. Tens of thousands of fish have been killed and some fishermen, swimmers, boaters, and scientists exposed to the cell have experienced memory loss, skin lesions, and other troubling symptoms. The technical, legal, and management tools to address *Pfiesteria* may exist collectively within a variety of Federal and State agencies. However, there currently is no structured and effective means to bring this expertise to bear on the problem. Unfortunately, *Pfiesteria* is only one example of a larger phenomenon known as Harmful Algal Blooms (HABs). These blooms, including red and brown tides, affect every U.S. coastal state and territory, causing millions of dollars of lost income in the seafood and tourism industries and threatening public health in many instances. While we know that the incidence of HABs has increased significantly over the past 30 years, our current science cannot tell us why they are increasing.

Fifth, recent technological advances related to the oceans offer important new economic and scientific opportunities. Today only a small fraction of the sea has been explored, but what has been found is truly incredible. For example, hydrothermal vents—hot water geysers on the deep ocean floor—were discovered just 20 years ago by oceanographers trying to understand the formation of the earth’s crust. This discovery has since led to the identification of nearly 300 new types of marine animals with unknown pharmaceutical and biomedical potential. In addition, a greater understanding of the oceans could reduce the costs of natural hazards. Advanced forecasts, for instance, could decrease the agricultural, economic, and social impacts resulting from El Nino by up to \$1 billion.

Finally, international relationships regarding the oceans have changed significantly over the past three decades. On November 16, 1994, the United Nations Convention on the Law of the Sea entered into force for most nations of the world. Although the United States has accepted most provisions of the treaty as customary international law and 120 other nations are party, U.S. ratification remains in question. At issue is whether changes made to the treaty in 1994 adequately address the longstanding concerns of the United States regarding the seabed mining provisions. In addition, the United Nations has declared 1998 to be the International Year of the Ocean, focusing global attention on the state of the world oceans.

LEGISLATIVE HISTORY

Senator Hollings introduced S. 1213 on September 24, 1997, and the bill was referred to the Committee on Commerce, Science, and Transportation. S. 1213 is cosponsored by Senators Stevens, Kerry,

Snowe, Breaux, McCain, Inouye, Kennedy, Boxer, Biden, Lautenberg, Akaka, Murkowski, Thurmond, and Murray.

On November 4, 1997, S. 1213 was considered by the Committee in open executive session. Senator McCain offered an amendment to the bill to address concerns expressed by Senator Hutchison regarding the appointment of Commission members. The McCain amendment provides a substitute for the appointment process in the bill as introduced that would increase the size of the Commission to 16 members and provide for the Presidential appointment of Commission members directly and from lists submitted by the Congressional leadership. The McCain amendment was adopted by voice vote, and the bill, as amended, was unanimously adopted by voice vote.

SUMMARY OF MAJOR PROVISIONS

Major provisions of S. 1213, as reported, include the following:

National Ocean and Coastal Policy.—The bill calls for the development and implementation of a coherent, comprehensive, long-range national ocean and coastal policy to conserve and use sustainably fisheries and other ocean and coastal resources, protect the marine environment and human safety, explore ocean frontiers, create marine technologies and economic opportunities, and preserve U.S. leadership on ocean and coastal issues.

Commission on Ocean Policy.—The bill establishes a 16-member Commission, similar to the 1966 Stratton Commission, to examine ocean and coastal activities and report within 18 months on recommendations for a national policy. In developing its recommendations, the Commission would assess Federal programs and funding priorities, ocean-related infrastructure requirements, conflicts among marine users, and technological opportunities. The bill authorizes appropriations of up to \$6 million over two years to support Commission activities. The Commission would cease to exist 30 days after submission of its final report.

National Ocean Council.—The bill creates a high-level Federal interagency Council that is chaired by the Secretary of Commerce and includes the heads of the Departments of the Navy, State, Transportation, and the Interior, the EPA, the National Science Foundation, the Office of Science and Technology Policy, the Office of Management and Budget, the Council on Environmental Quality, the National Economic Council and such other agencies as the President considers to be appropriate. The new Council would advise the President, serve as a forum for developing and implementing a national ocean and coastal policy, provide for coordination of Federal budgets and programs, and work with non-Federal and international organizations.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate prepared by the Congressional Budget Office:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, November 6, 1997.

Hon. JOHN MCCAIN,
 Chairman, Committee on Commerce, Science, and Transportation,
 U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1213, the Oceans Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Gary Brown.

Sincerely,

JAMES L. BLUM
 (For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1213—Oceans Act of 1997

Summary: The stated purpose of S. 1213 is to develop and maintain a coordinated, comprehensive, and long-range national policy with respect to ocean and coastal activities. The bill would repeal and take the place of the Marine Resources and Engineering Development Act of 1966. S. 1213 would:

establish a Commission on Ocean Policy that would examine current ocean and coastal activities and recommend policies for exploring, protecting, and using coastal and ocean resources;

authorize total appropriations of \$6 million for fiscal years 1998 and 1999 for the commission; and

establish a National Ocean Council to advise the President and serve as a forum for developing and implementing an ocean and coastal policy. The council would be made up of federal officials. Federal agencies and departments that are represented on the council would detail employees to the council as needed.

CBO estimates that implementing S. 1213 would result in new spending of \$7 million over the 1998–2002 period, assuming the appropriation of the amounts authorized and estimated to be authorized by the bill. Enacting the bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would not significantly affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: CBO estimates that implementing S. 1213 would result in new spending subject to appropriation of about \$1 million in fiscal year 1998, \$3 million in fiscal year 1999, \$2 million in fiscal year 2000, and less than \$500,000 a year thereafter. No amounts were appropriated in fiscal year 1997 pursuant to the statute that S. 123 would replace. (Similarly, no amounts are included in the House or Senate-passed versions of the bills making appropriations for 1998.) The estimated budgetary impact of S. 1213 is shown in the following table. The

costs of this legislation fall within budget function 300 (natural resources and environment).

| | By fiscal years, in millions of dollars— | | | | |
|--|--|------|------------------|------------------|------------------|
| | 1998 | 1999 | 2000 | 2001 | 2002 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | |
| Estimated Authorization Level | 3 | 3 | (¹) | (¹) | (¹) |
| Estimated Outlays | 1 | 3 | 2 | (¹) | (¹) |

¹ Less than \$500,000.

Basis of estimate: For purposes of this estimate, CBO assumes that the bill is enacted in the next few months and that all amounts authorized or estimated to be authorized are appropriated.

Commission. S. 1213 would authorize the appropriation of \$6 million for the commission; the estimate assumes that the amount would be appropriated in equal installments in 1998 and 1999. CBO anticipates that spending by the commission would be slow initially (not more than \$1 million in 1998), as the President would have up to 3 months after enactment of the bill to select its members, and it would take time for the work of the commission to get under way. The commission would report to the President and the Congress with its finding and recommendations for a comprehensive national ocean and coastal policy within 18 months. We anticipate that the report would be completed in fiscal year 2000. Each member of the 16-member commission who is not an officer or employee of the federal government, or whose compensation is not precluded by a state, local, or tribal government, would receive compensation. The commission also would be able to hire additional paid staff.

Council. S. 1213 does not authorize appropriations for the proposed council. However, CBO estimates that requiring federal officials to serve on the council and detailing federal employees to work with the council would result in additional costs to the affected agencies of less than \$500,000 a year beginning in fiscal year 1998, subject to the availability of appropriated funds. CBO estimates that the total cost of the council over the 1998–2002 period would be about \$1 million.

Pay-as-you-go considerations: None.

Intergovernmental and private sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not significantly affect the budgets of state, local, or tribal governments.

Estimate prepared by: Gary Brown.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

This legislation is intended to aid in the development of an updated national ocean and coastal policy and improve coordination among Federal agencies. It does not require new regulations. However, among the Commission's responsibilities is to review the ocean and coastal activities of Federal agencies and departments. Such a review could result in recommendations for changes in regulations that may affect the number of persons covered.

ECONOMIC IMPACT

Section 6 of the reported bill authorizes appropriations totaling up to \$6 million in fiscal year (FY) 1998 and FY 1999. This funding level is modest and is not expected to have an inflationary impact on the economy. By providing for better interagency coordination and cooperation, S. 1213 should improve the effectiveness of existing Federal programs and activities. The mandated budget coordination should prevent unnecessary duplication of effort and promote more cost-effective use of Federal funds.

PRIVACY

The reported bill will not have any adverse impact on the personal privacy of individuals.

PAPERWORK

The reported bill requires the preparation and submission of biennial reports to Congress on the implementation of the legislation.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states the short title of the reported bill, the Oceans Act of 1997.

Section 2. Congressional findings; purpose and objectives

Subsection (a) of this section of the reported bill provides Congressional findings with regard to the oceans and coasts. The findings recognize that: (1) the oceans and coasts are of considerable physical, ecological, and economic importance; (2) ocean and coastal resources and the benefits they provide are affected by human activities; (3) growing coastal populations result in increased demands on resources and vulnerability to coastal hazards; (4) marine technologies create economic and scientific opportunities; (5) marine research has led to important discoveries with environmental, military, and scientific applications; (6) it has been thirty years since the last comprehensive evaluation of ocean and coastal activities; (7) changes over the past three decades make a review of those activities necessary; and (8) existing Federal programs would benefit from a coherent national ocean and coastal policy.

Subsection (b) of this section specifies that the purpose of the reported bill is to develop a national ocean and coastal policy which will provide for: protection against natural and manmade hazards; stewardship of ocean and coastal resources; marine environmental protection; enhancement of marine-related commerce, transpor-

tation, and national security; resolution of marine user conflicts; improved understanding and education and training programs related to the oceans; investment in marine technologies; better Federal coordination; and the preservation of U.S. ocean and coastal leadership.

Section 3. Definitions

This section of the reported bill defines the terms used throughout the bill. The defined terms are “Commission”, “Council”, “marine research”, “marine environment”, “ocean and coastal activities”, and “ocean and coastal resource”. The four latter terms are defined broadly. The term “marine research” includes not only basic science but research and development, environmental monitoring, and data management activities necessary for the conservation and management of natural resources and for technology development. The term “marine environment” includes both the physical environment of the oceans and coasts and the ocean and coastal resources found in that environment. The term “ocean and coastal activities” encompasses both governmental and nongovernmental activities occurring in the marine environment. Finally, the term “ocean and coastal resource” includes significant historic, cultural, and aesthetic resources in addition to living and non-living natural resources, and it includes the Great Lakes.

Section 4. National ocean and coastal policy

This section of the reported bill establishes the President’s responsibility to develop and maintain a national ocean and coastal policy. Use of the words “develop and maintain” in this section is not intended to imply that the United States currently lacks national policies applicable in many specific areas related to the oceans and coasts such as national security; nor should this section necessarily require substantial changes in such existing policies, but rather their integration into a single coordinated, comprehensive, and long-range national policy. This section also requires the President to review the ocean and coastal activities of Federal agencies and departments and to integrate those activities into a cost-effective program that provides for scientific research, resource management, environmental protection, protection against natural hazards, transportation safety, and encouragement of sustainable businesses, recreation, and tourism. In implementing this Act, the President is encouraged to use available staff and advisory arrangements, and to work with individuals and organizations outside the Federal government that are involved in ocean and coastal activities.

Section 5. National Ocean Council

Subsection (a) of this section of the reported bill directs the President to create a Federal interagency Council that is chaired by the Secretary of Commerce and includes the heads of the Departments of the Navy, State, Transportation, and the Interior, the EPA, the National Science Foundation, the Office of Science and Technology Policy, the Office of Management and Budget, the Council on Environmental Quality, and the National Economic Council. The President could appoint additional members to the

Council as he considers to be appropriate, such as the Commandant of the United States Coast Guard and the Under Secretary of Commerce for Oceans and Atmosphere. To prevent duplication of ongoing coordination activities, an existing interagency group, such as the Ocean Principals, could form the basis for Council establishment.

Subsection (b) addresses a number of administrative issues. The subsection provides for designation of alternates by Council members and for other members to preside over Council meetings in the Chairman's absence. The subsection also authorizes the appointment of an Executive Secretary and directs Federal agencies and departments to provide additional personnel support and to undertake studies on the Council's behalf as appropriate.

Subsection (c) describes the functions of the Council, which are to: (1) serve as the forum for ocean and coastal policy and program development; (2) improve coordination and cooperation and eliminate duplication within the Federal government; (3) work with ocean and coastal stakeholders in conducting periodic policy reviews; (4) cooperate with the Secretary of State on international issues; and (5) provide for coordination of Federal budgets and programs and prepare a biennial report. In serving as a Federal policy forum, the Council will have the capacity to provide the Commission with information and assistance that will be critical for the completion of its review and the timely development of its recommendations.

Section 6. Commission on Ocean Policy

This section of the bill as reported directs the establishment of a 16-member Commission on Ocean Policy within 90 days of enactment of this Act. Subsection (a) provides for appointment of Commission members. Members may be drawn from State and local governments, industry, academic and technical institutions, as well as public interest organizations involved with ocean and coastal activities. Appointment of at least one individual who is knowledgeable about coastal management issues at the State and local levels is particularly important, given the role of State and local governments in the implementation of any national coastal policy. In addition, the diversity, number, and complexity of issues that the Commission will address require balanced membership from a broad range of backgrounds.

The Commission members will be appointed by the President as follows: (1) four will be appointed directly by the President; (2) four will be selected from a list of eight proposed members submitted by the Majority Leader of the Senate in consultation with the Chairman of the Senate Committee on Commerce, Science, and Transportation; (3) four will be selected from a list of eight proposed members submitted by the Speaker of the House of Representatives in consultation with the Chairmen of the House Committee on Resources and the House Committee on Science; (4) two will be selected from a list of four proposed members submitted by the Minority Leader of the Senate in consultation with the Ranking Member of the Senate Committee on Commerce, Science, and Transportation; and (5) two will be selected from a list of four proposed members submitted by the Minority Leader of the House of

Representatives in consultation with the Ranking Members of the House Committee on Resources and the House Committee on Science. The President will select a Chairman and Vice Chairman from among those members. In addition, he will appoint four Congressional advisory members, in consultation with the Congressional leadership. This appointment process should ensure bipartisan balance on the Commission without making political party affiliation a required criterion in selecting members. It also should provide the President with adequate flexibility in making appointments to the Commission to balance its membership among stakeholders.

Subsection (b) requires the Commission to report to the President and the Congress with its findings and recommendations for a national ocean and coastal policy, and it outlines eight areas for Commission consideration. These areas are as follows: (1) existing U.S. laws, regulations, and practices; (2) infrastructure and human resource investments related to ocean and coastal activities; (3) Federal programs and activities; (4) interrelationships among ocean and coastal activities, the legal and regulatory framework in which they occur, and their impacts; (5) demand for ocean and coastal resources; (6) division of responsibility among the Federal, State, local, and private sectors for ocean and coastal activities; (7) marine-related technological or market opportunities; and (8) international relationships. As part of its review of Federal programs and activities, the Commission must identify any such activities in need of reform to improve efficiency and effectiveness in Federal operations.

The following subsections of this section deal with a variety of administrative issues. Subsection (c) gives responsibility to the Commission Chairman for the Commission budget and for supervision and tasking of the Commission staff. Subsection (d) provides for compensation of non-Federal members while involved in Commission activities at the rate payable to a Federal employee at Level IV of the Executive Schedule. Subsection (e) addresses staffing issues, providing for: (1) appointment of an executive director; (2) salary limits on Commission personnel; (3) Federal employees to serve as detailees on the Commission staff; and (4) use of volunteers and consultants. Subsection (f) would exempt the Commission from the Federal Advisory Committee Act but would require that the public be notified of and permitted to attend Commission meetings, and that the Commission make meeting records and information it receives available to the public. Subsection (g) provides the Commission with authority to: (1) obtain information from Federal agencies and departments; (2) be treated as a Federal agency for the purposes of using the U.S. mails and securing services from the General Services Administration; and (3) enter into contracts.

Subsection (h) requires the Commission to submit a final report to Congress and the President within 18 months. The subsection also would terminate the Commission 30 days after submission of the report.

Subsection (i) authorizes appropriations to support the activities of the Commission. A total of up to \$6 million is authorized to be appropriated for FY 1998 and FY 1999, to remain available without fiscal year limitation until expended.

Section 7. Report and budget coordination

Subsection (a) directs the President, through the Council, to transmit to Congress a biennial report describing and evaluating the recent activities and accomplishments of the United States with respect to ocean and coastal activities. The first report would be required in January 1999.

Subsection (b) directs the Council to facilitate the coordination of federal budgets with regard to ocean and coastal activities. The President is directed to identify in each annual budget those elements of each agency or department budget that contribute to the implementation of a national ocean and coastal policy.

Section 8. Repeal of 1966 statute

This section repeals the Marine Resources and Engineering Development Act of 1966. Provisions of the reported bill are patterned after and would replace the 1966 Act.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.

