

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION ACT

—————
JUNE 29, 2006.—Ordered to be printed
—————

Mr. BOEHLERT, from the Committee on Science,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5450]

[Including cost estimate of the Congressional Budget Office]

The Committee on Science, to whom was referred the bill (H.R. 5450) to provide for the National Oceanic and Atmospheric Administration, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

I. Amendment	2
II. Purpose of the Bill	12
III. Background and Need for the Legislation	12
IV. Summary of Hearings	16
V. Committee Actions	19
VI. Summary of Major Provisions of the Bill, as Reported	21
VII. Section-by-Section Analysis (By Title and Section), as Reported	22
VIII. Committee Views	23
IX. Cost Estimate	27
X. Congressional Budget Office Cost Estimate	28
XI. Compliance With Public Law 104-4 (Unfunded Mandates)	28
XII. Committee Oversight Findings and Recommendations	28
XIII. Statement on General Performance Goals and Objectives	28
XIV. Constitutional Authority Statement	29
XV. Federal Advisory Committee Statement	29
XVI. Congressional Accountability Act	29
XVII. Statement on Preemption of State, Local, or Tribal Law	29
XVIII. Changes in Existing Law Made by the Bill, as Reported	29
XIX. Committee Recommendations	29

XX. Committee Correspondence	30
XXI. Correspondence	33
XXII. Minority Views	49
XXIII. Proceedings of Subcommittee Markup of H.R. 50	54
XXIV. Proceedings of Full Committee Markup of H.R. 50	94
XXV. Proceedings of Full Committee Markup of H.R. 5450	197

I. AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Oceanic and Atmospheric Administration Act”.

SEC. 2. DEFINITIONS.

In this Act:

- (1) The term “Administration” means the National Oceanic and Atmospheric Administration.
- (2) The term “Administrator” means the Administrator of the National Oceanic and Atmospheric Administration.
- (3) The term “Secretary” means the Secretary of Commerce.

SEC. 3. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

(a) IN GENERAL.—There shall be in the Department of Commerce an agency known as the National Oceanic and Atmospheric Administration.

(b) MISSION.—The mission of the Administration is to understand the systems of the Earth’s oceans and atmosphere and predict changes in the Earth’s oceans and atmosphere and the effects of such changes on the land environment, to conserve and manage coastal, ocean, and Great Lakes ecosystems to meet national economic, social, and environmental needs, and to educate the public about these topics.

(c) FUNCTIONS.—The functions of the Administration shall include—

- (1) collecting, through observation and other means, communicating, analyzing, processing, and disseminating comprehensive scientific data and information about weather and climate, solar and geophysical events on the Sun and in the space environment, and about the coasts, oceans, Great Lakes, upper reaches of estuaries, and hydrologic systems;
- (2) operating and maintaining a system for the storage, retrieval, and dissemination of data relating to weather and climate, solar and geophysical events on the Sun and in the space environment, and about the coasts, oceans, Great Lakes, upper reaches of estuaries, and hydrologic systems;
- (3) using observational data and technologies developed by other Federal agencies to improve the Administration’s operations;
- (4) conducting and supporting basic and applied research, development, and technology transfer as may be necessary to carry out the mission described in subsection (b);
- (5) issuing weather, water, climate, space weather, tsunami, and other forecasts and warnings related to Earth’s oceans and atmosphere;
- (6) coordinating efforts of Federal agencies with respect to meteorological services;
- (7) understanding the science of Earth’s climate and related systems, and undertaking research and development to enhance society’s ability to plan for and respond to climate variability and change;
- (8) protecting, restoring, and managing the use of, the coasts, oceans, and Great Lakes through ecosystem-based research, development, demonstration, and management;
- (9) administering public outreach and education programs and services to increase scientific and environmental literacy about weather and climate, solar and geophysical events on the Sun and in the space environment, and the coasts, oceans, Great Lakes, upper reaches of estuaries, and hydrologic systems;
- (10) providing, as appropriate and in cooperation with the Secretary of State, representation at all international meetings and conferences relating to the mission of the Administration, including meteorological, climate, and Earth and ocean observing issues;
- (11) any other function assigned to the Administration by law; and
- (12) such other functions as are necessary to accomplish the mission described in subsection (b).

SEC. 4. ADMINISTRATION LEADERSHIP.**(a) ADMINISTRATOR.—**

(1) **IN GENERAL.**—There shall be, as the Administrator of the Administration, an Under Secretary of Commerce for Oceans and Atmosphere. The Administrator shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall be paid at the rate of basic pay for level III of the Executive Schedule.

(2) **FUNCTIONS.**—The Administrator shall be responsible for—

- (A) general management;
- (B) policy development and guidance;
- (C) budget formulation, guidance, and execution;
- (D) serving as the Department of Commerce official for all ocean and atmosphere issues with other elements of the Department of Commerce and with other Federal agencies, State, tribal, and local governments, and the public; and
- (E) such other duties with respect to the Administration as the Secretary may prescribe.

(3) **DELEGATION OF AUTHORITY.**—The Administrator may, except as otherwise prohibited by law—

- (A) delegate any functions, powers, or duties of the Administrator to such officers and employees of the Administration as the Administrator may designate; and
- (B) authorize such successive redelegations of such functions, powers, or duties within the Administration as the Administrator considers necessary or appropriate.

(4) **AUTHORITIES.**—

(A) **IN GENERAL.**—As may be necessary or proper to carry out the Administration's functions under this Act or as otherwise provided by law, the Administrator may—

- (i) promulgate rules and regulations;
- (ii) enter into and perform contracts, leases, grants, and cooperative agreements with Federal agencies, State and local governments, Indian tribes, international organizations, foreign governments, educational institutions, nonprofit organizations, and commercial organizations;
- (iii) use, with their consent, and with or without reimbursement, the services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government; and
- (iv) conduct education and outreach in direct support of the mission described in section 3(b).

(B) **EXCEPTION.**—The authorities conferred on the Administrator by this paragraph do not include the authority to contract for services that are an inherently governmental function as defined in section 5 of the Federal Activities Inventory Reform Act of 1998 (31 U.S.C. 501 note).

(b) ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE.—

(1) **IN GENERAL.**—There shall be, as Deputy Administrator of the Administration, an Assistant Secretary of Commerce for Oceans and Atmosphere. The Assistant Secretary shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be the Administrator's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code. The Assistant Secretary shall be paid at the rate of basic pay for level IV of the Executive Schedule.

(2) **FUNCTIONS.**—The Assistant Secretary shall perform such functions and exercise such powers as the Administrator may prescribe and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(c) DEPUTY UNDER SECRETARY FOR OCEANS AND ATMOSPHERE.—

(1) **IN GENERAL.**—There shall be, as the Chief Operating Officer of the Administration, a Deputy Under Secretary of Commerce for Oceans and Atmosphere. The Deputy Under Secretary shall be appointed by the Secretary. The position of Deputy Under Secretary shall be a Senior Executive Service position authorized under section 3133 of title 5, United States Code.

(2) **FUNCTIONS.**—The Deputy Under Secretary—

- (A) shall ensure the timely and effective implementation of Administration policies and objectives;
- (B) shall be responsible for all aspects of the Administration's operations and management, including budget, financial operations, information services, facilities, human resources, procurements, and associated services;
- (C) in the absence or disability of the Assistant Secretary, or in the event of a vacancy in such position, shall act in that position; and

(D) shall perform such other duties as the Administrator shall prescribe.

(d) DEPUTY ASSISTANT SECRETARY FOR SCIENCE AND EDUCATION.—

(1) IN GENERAL.—There shall be in the Administration a Deputy Assistant Secretary for Science and Education who shall coordinate and oversee the science and education activities of the Administration and their application to Administration decisions and operations. The Deputy Assistant Secretary for Science and Education shall be appointed by the Secretary. The position of Deputy Assistant Secretary for Science and Education shall be a Senior Executive Service career reserved position as defined in section 3132(a)(8) of title 5, United States Code.

(2) FUNCTIONS.—The Deputy Assistant Secretary for Science and Education shall—

(A) coordinate research and development activities across the Administration;

(B) review the Administration's annual budget to ensure that funding for research and development is adequate, properly focused, and carried out by the appropriate entities across the Administration;

(C) advise the Administrator on how research results can be applied to operational use;

(D) advise the Administrator regarding science issues and their relationship to Administration policies, procedures, and decisions;

(E) participate in developing the Administration's strategic plans and policies and review the science and education aspects of those plans and policies;

(F) serve as liaison to the nongovernmental science community;

(G) develop and oversee guidelines for peer review of research sponsored or conducted by the Administration;

(H) oversee implementation of the strategic plan for research and development required under section 9(b);

(I) oversee management of laboratories in the Administration;

(J) oversee the research and education programs of the Administration; and

(K) perform such other duties as the Administrator shall prescribe.

(3) QUALIFICATIONS.—An individual appointed under paragraph (1) shall be a person who has an outstanding science and education background, including research accomplishments, scientific reputation, and public policy experience.

(4) CONSULTATION.—Before appointing an individual under paragraph (1), the Secretary shall consult with the National Academy of Sciences, the Science Advisory Board of the Administration, and other appropriate scientific organizations.

(e) DEPUTY ASSISTANT SECRETARIES.—There may be in the Administration no more than two additional Deputy Assistant Secretaries whose duties may be designated by the Administrator. The Deputy Assistant Secretaries shall be appointed by the Secretary. The positions of Deputy Assistant Secretaries shall be Senior Executive Service positions authorized under section 3133 of title 5, United States Code.

(f) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be in the Administration a General Counsel. The General Counsel shall be appointed by the Secretary. The General Counsel shall be paid at the rate of basic pay for level V of the Executive Schedule.

(2) FUNCTIONS.—The General Counsel—

(A) shall serve as the chief legal officer of the Administration for all legal matters that arise in connection with the conduct of the functions of the Administration; and

(B) shall perform such other functions and exercise such powers as the Administrator may prescribe.

(g) CONTINUATION OF SERVICE.—Any individual serving on the effective date of this Act in a position provided for in this Act may continue to serve in that position until a successor is appointed under this Act. Nothing in this Act shall be construed to require the appointment of a successor under this Act sooner than would have been required under law as in effect before the effective date of this Act.

SEC. 5. NATIONAL WEATHER SERVICE.

(a) IN GENERAL.—The Secretary shall maintain within the Administration the National Weather Service.

(b) MISSION.—The mission of the National Weather Service is to provide weather, water, climate, tsunami, and space weather forecasts and warnings for the United States, its territories, adjacent waters, and ocean areas for the protection of life and property and the enhancement of the national economy. In carrying out the mission

of the National Weather Service, the Administrator shall ensure that the National Weather Service—

- (1) provides timely and accurate weather, water, climate, tsunami, and space weather forecasts; and
 - (2) provides timely and accurate warnings of natural hazards related to weather, water, climate, and tsunamis, and of space weather hazards.
- (c) FUNCTIONS.—The functions of the National Weather Service shall include—
- (1) maintaining a network of local weather forecast offices;
 - (2) maintaining a network of observation systems to collect weather and climate data;
 - (3) operating national centers to deliver guidance, forecasts, warnings, and analysis about weather, water, climate, tsunami, and space weather phenomena for the Administration and the public;
 - (4) providing information to Federal agencies and other organizations responsible for emergency preparedness and response as required by law;
 - (5) conducting and supporting applied research to facilitate the rapid incorporation of weather and climate science advances into operational tools; and
 - (6) other functions to serve the mission of the National Weather Service described in subsection (b).

SEC. 6. OPERATIONS AND SERVICES.

(a) IN GENERAL.—The Secretary shall maintain within the Administration programs to support efforts, on a continuing basis, to collect data and provide information and products regarding satellites, observations, and coastal, ocean and Great Lakes information.

(b) FUNCTIONS.—To accomplish the mission described in section 3(b), and in addition to the functions described in section 3(c), the operations and service aspects of the Administration shall include—

- (1) acquiring, managing, and operating coastal, ocean, and Great Lakes observing systems;
- (2) contributing to the operation of a global Earth-observing system;
- (3) integrating Administration remote sensing and in situ assets that provide critical data needed to support the mission of the Administration, and providing that data to decisionmakers and the public;
- (4) developing, acquiring, and managing operational environmental satellite programs and associated ground control and data acquisition and delivery facilities to support the mission of the Administration;
- (5) managing and distributing atmospheric, geophysical, and marine data and data products for the Administration through national environmental data centers;
- (6) providing for long-term stewardship of environmental data, products, and information via data processing, storage, reanalysis, reprocessing, and archive facilities;
- (7) issuing licenses for private remote sensing space systems under the Land Remote Sensing Policy Act of 1992;
- (8) administering a national water level observation network, which shall include monitoring of the Great Lakes;
- (9) providing charts and other information for safe navigation of the oceans and inland waters, as provided by law;
- (10) maintaining a fleet of ships and aircraft to support the mission of the Administration; and
- (11) such other operations and services functions to serve the mission of the Administration as the Administrator may prescribe.

SEC. 7. RESEARCH AND EDUCATION.

(a) IN GENERAL.—The Secretary shall maintain within the Administration programs to conduct and support research and education and the development of technologies relating to weather, climate, and the coasts, oceans, and Great Lakes.

(b) FUNCTIONS.—To accomplish the mission described in section 3(b), and in addition to the functions described in section 3(c), the research and education aspects of the Administration shall include—

- (1) conducting and supporting research and development to improve the Administration's capabilities to collect, through observation and otherwise, communicate, analyze, process, and disseminate comprehensive scientific data and information about weather, climate, and the coasts, oceans, and Great Lakes;
- (2) improving ecological prediction and management capabilities through ecosystem-based research and development;
- (3) contributing information on the Earth's climate and related systems, obtained through research and observation, that addresses questions confronting policymakers, resources managers, and other users;

- (4) reducing uncertainty in projections of how the Earth's climate and related systems may change in the future;
- (5) fostering the public's ability to understand and integrate scientific information into considerations of national environmental issues through education and public outreach activities;
- (6) administering the National Sea Grant College Program Act;
- (7) conducting and supporting research and development of technology for exploration of the oceans;
- (8) maintaining a system of laboratories to perform the functions described in this subsection;
- (9) supporting extramural peer-reviewed competitive grant programs to assist the Administration in performing the functions described in this subsection; and
- (10) such other research, development, education, and outreach functions to serve the mission of the Administration as the Administrator may prescribe.

SEC. 8. SCIENCE ADVISORY BOARD.

(a) **IN GENERAL.**—There shall be within the Administration a Science Advisory Board, which shall provide such scientific advice as may be requested by the Administrator, the Committee on Commerce, Science, and Transportation of the Senate, or the Committee on Science or on Resources of the House of Representatives.

(b) **PURPOSE.**—The purpose of the Science Advisory Board is to advise the Administrator and Congress on long-range and short-range strategies for research, education, and the application of science to resource management and environmental assessment and prediction.

(c) **MEMBERS.**—

(1) **IN GENERAL.**—The Science Advisory Board shall be composed of at least 15 members appointed by the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(2) **TERMS OF SERVICE.**—Members shall be appointed for 3-year terms, renewable once, and shall serve at the discretion of the Administrator. An individual serving a term as a member of the Science Advisory Board on the date of enactment of this Act may complete that term, and may be reappointed once for another term of 3 years unless the term being served on such date of enactment is the second term served by that individual. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy, and an individual so appointed may subsequently be appointed for 2 full 3-year terms if the remainder of the unexpired term is less than one year.

(3) **CHAIRPERSON.**—The Administrator shall designate a chairperson from among the members of the Board.

(4) **APPOINTMENT.**—Members of the Science Advisory Board shall be appointed as special Government employees, within the meaning given such term in section 202(a) of title 18, United States Code.

(d) **ADMINISTRATIVE PROVISIONS.**—

(1) **REPORTING.**—The Science Advisory Board shall report to the Administrator and the appropriate requesting party.

(2) **ADMINISTRATIVE SUPPORT.**—The Administrator shall provide administrative support to the Science Advisory Board.

(3) **MEETINGS.**—The Science Advisory Board shall meet at least twice each year, and at other times at the call of the Administrator or the Chairperson.

(4) **COMPENSATION AND EXPENSES.**—A member of the Science Advisory Board shall not be compensated for service on such board, but may be allowed travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(5) **SUBCOMMITTEES.**—The Science Advisory Board may establish such subcommittees of its members as may be necessary. The Science Advisory Board may establish task forces and working groups consisting of Board members and outside experts as may be necessary.

(e) **EXPIRATION.**—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Science Advisory Board.

SEC. 9. REPORTS.

(a) **REPORT ON DATA MANAGEMENT, ARCHIVAL, AND DISTRIBUTION.**—

(1) **CONTENTS.**—Not later than 1 year after the date of enactment of this Act, and once every 5 years thereafter, the Administrator shall do the following:

- (A) Enter into an arrangement with the National Academy of Sciences to review the environmental data and information systems of the Administration and to provide recommendations to address any inadequacies identified by the review. The review shall assess the adequacy of the environmental data and information systems of the Administration to—

(i) provide adequate capacity to manage, archive and disseminate environmental information collected and processed, or expected to be collected and processed, by the Administration, including data gathered by other agencies that is processed or stored by the Administration;

(ii) establish, develop, and maintain information bases, including necessary management systems, which will provide for consistent, efficient, and compatible transfer and use of data;

(iii) develop effective interfaces among the environmental data and information systems of the Administration and other appropriate departments and agencies;

(iv) develop and use nationally accepted formats and standards for data collected by various national and international sources;

(v) integrate and interpret data from different sources to produce information that can be used by decisionmakers in developing policies that effectively respond to national and global environmental concerns; and

(vi) reanalyze and reprocess the archived data as better science is developed to integrate diverse data sources.

(B) Develop a strategic plan, with respect to the environmental data and information systems of the Administration, to—

(i) respond to each of the recommendations in the review conducted under subparagraph (A);

(ii) set forth modernization and improvement objectives for an integrated national environmental data access and archive system for the 10-year period beginning with the year in which the plan is transmitted, including facility requirements and critical new technology components that would be necessary to meet the objectives set forth;

(iii) propose specific Administration programs and activities for implementing the plan;

(iv) identify the data and information management, reanalysis, reprocessing, archival, and distribution responsibilities of the Administration with respect to other Federal departments and agencies and international organizations; and

(v) provide an implementation schedule and estimate funding levels necessary to achieve modernization and improvement objectives.

(2) TRANSMITTAL TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives the initial review and strategic plan developed under paragraph (1). Subsequent reviews and strategic plans developed under paragraph (1) shall also be transmitted to those committees upon completion.

(b) STRATEGIC PLAN FOR RESEARCH AND DEVELOPMENT.—

(1) CONTENTS.—Not later than 1 year after the date of enactment of this Act, and once every 5 years thereafter, the Administrator shall develop a strategic plan for research and development at the Administration. The plan shall include—

(A) an assessment of the science and technology needs of the Administration based on the Administration's operational requirements and on input provided by external stakeholders at the national, regional, State, and local levels; and

(B) a strategic plan that assigns specific programs within the administration the responsibility to meet each need identified under subparagraph (A) and that describes the extent to which each need identified in subparagraph (A) will be addressed through—

(i) intramural research;

(ii) extramural, peer-reviewed, competitive grant programs; and

(iii) work done in cooperation with other Federal agencies.

(2) NATIONAL ACADEMY OF SCIENCES REVIEW.—The Administrator shall enter into an arrangement with the National Academy of Sciences for a review of the plan developed under paragraph (1).

(3) TRANSMITTAL TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives the initial strategic plan developed under paragraph (1) and the review prepared pursuant to paragraph (2). Subsequent strategic plans developed under paragraph (1) shall also be transmitted to those committees upon completion.

SEC. 10. PUBLIC-PRIVATE PARTNERSHIPS.

Not less than once every 5 years, the Secretary shall develop and submit to Congress a policy that defines processes for making decisions about the roles of the Administration, the private sector, and the academic community in providing environmental information, products, technologies, and services. The first such submission shall be completed not less than 3 years after the date of enactment of this Act. At least 90 days before each submission of the policy to Congress, the Secretary shall publish the policy in the Federal Register for a public comment period of not less than 60 days. Nothing in this section shall be construed to require changes in the policy in effect on the date of enactment of this Act.

SEC. 11. EFFECT OF REORGANIZATION PLAN.

Reorganization Plan No. 4 of 1970 shall have no further force and effect.

SEC. 12. SAVINGS PROVISION.

All rules and regulations, determinations, standards, contracts, including collective bargaining agreements, certifications, authorizations, appointments, delegations, results and findings of investigations, and other actions duly issued, made, or taken by or pursuant to or under the authority of any statute or executive order which resulted in the assignment of functions or activities to the Secretary, the Department of Commerce, the Under Secretary of Commerce for Oceans and Atmosphere, the Administrator, or any other officer of the Administration, that is in effect immediately before the date of enactment of this Act, shall continue in full force and effect after the effective date of this Act until modified or rescinded. All suits, appeals, judgments, and proceedings pending on such effective date relating to responsibilities or functions transferred pursuant to this Act shall continue without regard to such transfers, except for the transfer of responsibilities or functions. Any reference in law to a responsibility, function, or office transferred pursuant to this Act shall be deemed to refer to the responsibility, function, or office as so transferred. Nothing in this Act shall be construed to limit the ability of an Administration employee to discuss scientific research performed by that employee. Nothing in this Act shall be construed to alter the responsibilities or authorities of any other Federal agency. Nothing in this Act shall be construed to authorize or prohibit the transfer of any program, function, or project from other Federal agencies to the Administration. Nothing in this Act shall be construed to expand, modify, or supersede the authority that the Administration has immediately before the date of enactment of this Act, nor to provide the Administration with any new regulatory authority. Nothing in this Act shall be construed to grant the Administrator any authority to construct, alter, repair, or acquire by any means a public building, as defined at section 3301 of title 40, United States Code, or to grant any authority to lease general purpose office or storage space in any building; and nothing in this Act shall be construed to diminish any authority the Administrator has immediately before the date of enactment of this Act to construct, alter, repair, or acquire by any means a public building, as defined at section 3301 of title 40, United States Code, or to diminish any authority the Administrator has immediately before the date of enactment of this Act to lease general purpose office or storage space in any building (regardless of whether those authorities are derived from laws, executive orders, rules, regulations, or delegations of authority from the Secretary of Commerce).

SEC. 13. REORGANIZATION PLAN.

(a) SCHEDULE.—(1) Not later than 18 months after the date of enactment of this Act, the Administrator shall develop a reorganization plan for the Administration in accordance with this section and shall publish the plan in the Federal Register. The Federal Register notice shall solicit comments for a period of 60 days.

(2) Not later than 90 days after the expiration date of the comment period described in paragraph (1), the Administrator shall transmit to Congress a revised version of the plan that takes into account the comments received. The Administrator shall also publish the revised plan in the Federal Register. The Administrator shall transmit and publish, along with the plan, an explanation of how the Administrator dealt with each issue raised by the comments received.

(3) The Administrator shall implement the plan 60 days after the plan has been transmitted to the Congress.

(b) CONTENT.—The plan, to the greatest extent practicable, shall—

(1) consistent with section 5 and the other provisions of this Act, maximize the efficiency with which the Administration carries out the functions of—

- (A) operations and services;
- (B) research and education; and
- (C) resource management;

(2) improve the sharing of research and other information that is of use across programmatic themes; and

(3) eliminate duplication of effort or overlapping efforts among offices.

(c) CONSULTATION.—In developing the plan, the Administrator shall consult with interested parties, including the States, academia, industry, conservation organizations, and Administration employees.

SEC. 14. FACILITY EVALUATION PROCESS.

(a) PUBLIC NOTIFICATION AND ASSESSMENT PROCESS.—

(1) IN GENERAL.—The Administrator shall not close, consolidate, relocate, subdivide, or establish a facility of the Administration, unless and until the Administrator has followed the procedures required by this section.

(2) REVIEW PROCESS.—The Administrator shall not close, consolidate, relocate, subdivide, or establish a facility of the Administration with an annual operating budget of \$5,000,000 or greater, or a National Weather Service field office, unless and until—

(A) the Administrator has published in the Federal Register the proposed action and a description of the offices, personnel, and activities of the Administration that would be affected by the proposed change, and has provided for a minimum of 60 days for public comment;

(B) if the proposed change involves a science facility of the Administration, the Science Advisory Board has reviewed the proposed change and provided to the Administrator written findings regarding the proposed change;

(C) if the proposed change involves a National Weather Service field office, the Administrator has prepared a report including—

(i) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(ii) a detailed comparison of the services provided within the service area and the services to be provided after the proposed change;

(iii) a description of any recent or expected modernization of National Weather Service operations which will enhance services in the service area;

(iv) an identification of any area within any State which would not receive coverage (at an elevation of 10,000 feet) due to the proposed change; and

(v) evidence, based on operational demonstration of National Weather Service operations, which was considered in reaching the conclusion that no degradation in service will result from the proposed change;

(D) the Administrator has prepared an analysis of the anticipated costs and savings associated with the proposed facility change, including both costs and savings in the first fiscal year following the change, and changes in operations and maintenance costs and savings over a ten-year period; and

(E) the Administrator has prepared an analysis of the effects of the facility change on operations and research of the Administration, and the potential impacts on cooperative institutes, other external Administration partnerships, partnerships with other Federal agencies, and any State and local partnerships.

(3) NOTICE TO CONGRESS.—(A) The Administrator shall provide to Congress, at least 90 days before any closure, consolidation, relocation, subdivision, or establishment of a facility of the Administration with an annual budget of \$5,000,000 or greater, or any National Weather Service field office, a summary of the public comments received pursuant to paragraph (2)(A), any written findings prepared under paragraph (2)(B), any report prepared under paragraph (2)(C), and the analyses prepared under paragraph (2)(D) and (E).

(B) The Administrator shall provide to Congress, at least 90 days before any closure, consolidation, relocation, subdivision, or establishment of a facility of the Administration not described in subparagraph (A), written notification of the planned closure, consolidation, relocation, subdivision, or establishment.

(b) WEATHER SERVICE MODERNIZATION.—Nothing in this Act shall be construed to alter the Weather Service Modernization Act (15 U.S.C. 313 note).

(c) DEFINITION.—For purposes of this section—

(1) the term “facility” means a laboratory, operations office, administrative service center, or other establishment of the Administration; and

(2) the term “field office” has the same meaning given that term in section 702 of the Weather Service Modernization Act.

SEC. 15. BUDGET REPROGRAMMING.

Whenever the Administrator transmits a budget reprogramming request to the Appropriations Committees of the House of Representatives and the Senate, the Ad-

ministrator shall simultaneously submit a copy of the request to the Committee on Science and the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 16. BASELINES AND COST CONTROLS.

(a) **CONDITIONS FOR DEVELOPMENT.**—

(1) **IN GENERAL.**—The Administration shall not enter into a contract for the development of a major program unless the Administrator determines that—

(A) the technical, cost, and schedule risks of the program are clearly identified and the program has developed a plan to manage those risks;

(B) the technologies required for the program have been demonstrated in a relevant laboratory or test environment; and

(C) the program complies with all relevant policies, regulations, and directives of the Administration.

(2) **REPORT.**—The Administrator shall transmit a report describing the basis for the determination required under paragraph (1) to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate at least 30 days before entering into a contract for development under a major program.

(3) **NONDELEGATION.**—The Administrator may not delegate the determination requirement under this subsection, except in cases in which the Administrator has a conflict of interest.

(b) **MAJOR PROGRAM ANNUAL REPORTS.**—

(1) **REQUIREMENT.**—Annually, at the same time as the President’s annual budget submission to the Congress, the Administrator shall transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that includes the information required by this section for each major program for which the Administration proposes to expend funds in the subsequent fiscal year. Reports under this paragraph shall be known as Major Program Annual Reports.

(2) **BASELINE REPORT.**—The first Major Program Annual Report for each major program shall include a Baseline Report that shall, at a minimum, include—

(A) the purposes of the program and key technical characteristics necessary to fulfill those purposes;

(B) an estimate of the life-cycle cost for the program, with a detailed breakout of the development cost, program reserves, and an estimate of the annual costs until development is completed;

(C) the schedule for development, including key program milestones;

(D) the plan for mitigating technical, cost, and schedule risks identified in accordance with subsection (a)(1)(A); and

(E) the name of the person responsible for making notifications under subsection (c), who shall be an individual whose primary responsibility is overseeing the program.

(3) **INFORMATION UPDATES.**—For major programs for which a Baseline Report has been submitted, each subsequent Major Program Annual Report shall describe any changes to the information that had been provided in the Baseline Report, and the reasons for those changes.

(c) **NOTIFICATION.**—

(1) **REQUIREMENT.**—The individual identified under subsection (b)(2)(E) shall immediately notify the Administrator any time that individual has reasonable cause to believe that, for the major program for which he or she is responsible—

(A) the development cost of the program is likely to exceed the estimate provided in the Baseline Report of the program by 15 percent or more; or

(B) a milestone of the program is likely to be delayed by 6 months or more from the date provided for it in the Baseline Report of the program.

(2) **REASONS.**—Not later than 30 days after the notification required under paragraph (1), the individual identified under subsection (b)(2)(E) shall transmit to the Administrator a written notification explaining the reasons for the change in the cost or milestone of the program for which notification was provided under paragraph (1).

(3) **NOTIFICATION OF CONGRESS.**—Not later than 15 days after the Administrator receives a written notification under paragraph (2), the Administrator shall transmit the notification to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(d) **FIFTEEN PERCENT THRESHOLD.**—Not later than 30 days after receiving a written notification under subsection (c)(2), the Administrator shall determine whether the development cost of the program is likely to exceed the estimate provided in the

Baseline Report of the program by 15 percent or more, or whether a milestone is likely to be delayed by 6 months or more. If the determination is affirmative, the Administrator shall—

(1) transmit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, not later than 15 days after making the determination, a report that includes—

(A) a description of the increase in cost or delay in schedule and a detailed explanation for the increase or delay;

(B) a description of actions taken or proposed to be taken in response to the cost increase or delay; and

(C) a description of any impacts the cost increase or schedule delay, or the actions described under subparagraph (B), will have on any other program within the Administration; and

(2) if the Administrator intends to continue with the program, promptly initiate an analysis of the program, which shall include, at a minimum—

(A) the projected cost and schedule for completing the program if current requirements of the program are not modified;

(B) the projected cost and the schedule for completing the program after instituting the actions described under paragraph (1)(B); and

(C) a description of, and the projected cost and schedule for, a broad range of alternatives to the program.

The Administration shall complete an analysis initiated under paragraph (2) not later than 6 months after the Administrator makes a determination under this subsection. The Administrator shall transmit the analysis to the Committee on Science of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate not later than 30 days after its completion.

(e) **THIRTY PERCENT THRESHOLD.**—If the Administrator determines under subsection (d) that the development cost of a program will exceed the estimate provided in the Baseline Report of the program by more than 30 percent, then, beginning 18 months after the date the Administrator transmits a report under subsection (d)(1), the Administrator shall not expend any additional funds on the program, other than termination costs, unless the Congress has subsequently authorized continuation of the program by law. An appropriation for the specific program enacted subsequent to a report being transmitted shall be considered an authorization for purposes of this subsection. If the program is continued, the Administrator shall submit a new Baseline Report for the program no later than 90 days after the date of enactment of the Act under which Congress has authorized continuation of the program.

(f) **DEFINITIONS.**—For the purposes of this section—

(1) the term “development” means the phase of a program following the formulation phase and beginning with the approval to proceed to implementation.

(2) the term “development cost” means the total of all costs, including construction of facilities and civil servant costs, from the period beginning with the approval to proceed to implementation through the achievement of operational readiness, without regard to funding source or management control, for the life of the program;

(3) the term “life-cycle cost” means the total of the direct, indirect, recurring, and nonrecurring costs, including the construction of facilities and civil servant costs, and other related expenses incurred or estimated to be incurred in the design, development, verification, production, operation, maintenance, support, and retirement of a program over its planned lifespan, without regard to funding source or management control; and

(4) the term “major program” means an activity approved to proceed to implementation that has an estimated life-cycle cost of more than \$250,000,000.

SEC. 17. LIMITATIONS ON OFF-SHORE PERFORMANCE OF CONTRACTS FOR THE PROCUREMENT OF GOODS AND SERVICES.

(a) **CONVERSIONS TO CONTRACTOR PERFORMANCE OF ADMINISTRATION ACTIVITIES.**—Except as provided in subsection (c), an activity or function of the Administration that is converted to contractor performance under Office of Management and Budget Circular A-76 may not be performed by the contractor or any subcontractor at a location outside the United States.

(b) **CONTRACTS FOR THE PROCUREMENT OF SERVICES.**—(1) Except as provided in subsection (c), a contract for the procurement of goods or services that is entered into by the Administrator may not be performed outside the United States unless it is to meet a requirement of the Administration for goods or services specifically at a location outside the United States.

(2) The President may waive the prohibition in paragraph (1) in the case of any contract for which the President determines in writing that it is necessary in the national security interests of the United States for goods or services under the contract to be performed outside the United States.

(3) The Administrator may waive the prohibition in paragraph (1) in the case of any contract for which the Administrator determines in writing that essential goods or services under the contract are only available from a source outside the United States.

(c) EXCEPTION.—Subsections (a) and (b)(1) shall not apply to the extent that the activity or function under the contract was previously performed by Federal Government employees outside the United States.

(d) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—The provisions of this section shall not apply to the extent that they are inconsistent with obligations of the United States under international agreements.

SEC. 18. RECORDKEEPING AND REPORTING REQUIREMENT.

The Administrator shall transmit to Congress, not later than 120 days after the end of each fiscal year beginning with the first fiscal year after the date of enactment of this Act, a report on the contracts and subcontracts performed overseas and the amount of purchases directly or indirectly by the Administration from foreign entities in that fiscal year. The report shall separately indicate—

(1) the contracts and subcontracts and their dollar values for which the Administrator determines that essential goods or services under the contract are available only from a source outside the United States; and

(2) the items and their dollar values for which the Buy American Act was waived pursuant to obligations of the United States under international agreements.

II. PURPOSE OF THE BILL

The purpose of H.R. 5450 is to establish in law the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce and to describe the mission and functions of NOAA.

III. BACKGROUND AND NEED FOR THE LEGISLATION

The creation of NOAA

In 1966, the Marine Resources and Engineering Act established an independent commission to produce a comprehensive study and recommendations for the nation's ocean policy. That commission, chaired by Julius Stratton and known as the Stratton Commission, released its report in 1969. One of its recommendations was that the President should establish an agency to coordinate all Federal, nonmilitary ocean management programs. In response, in 1970 President Nixon established the National Oceanic and Atmospheric Administration (NOAA) by Executive Order within the Department of Commerce.

The Executive Order establishing NOAA, Reorganization Plan No. 4 of 1970, transferred the functions of various agencies, such as the Sea Grant College Program, into the new agency and established its leadership structure. The plan, however, did not provide an overall mission for the agency, and neither has Congress in the years since. Instead, Congress has enacted laws on specific issues. Since that time NOAA has evolved into the central civilian Federal agency for oceans and atmospheric issues.

NOAA has approximately 12,000 employees and an annual budget of about \$3.9 billion, which represents almost 60 percent of the budget for the Department of Commerce. NOAA is structured around the following major offices (also see the organizational chart at the end of this section):

- The National Ocean Service (NOS) is responsible for the observation, measurement, assessment and management of the nation's coastal and ocean areas. This includes providing navigational

charts and performing applied research on coastal and ocean issues, such as harmful algal blooms.

- The National Weather Service (NWS) is the nation's primary civilian source of weather data, forecasts and warnings.

- The Office of Oceanic and Atmospheric Research (OAR) is responsible for providing much of the research into improving understanding of environmental phenomena such as tornadoes, hurricanes, climate variability, ocean currents, and coastal ecosystem health.

- The National Environmental Satellite Data and Information Service (NESDIS) operates the nation's weather and climate satellites and manages the processing and distribution of the data and images from those satellites. NWS relies on these satellites for its data for weather forecasts and warnings.

- The National Marine Fisheries Service (NMFS) protects and preserves living marine resources through fisheries management, enforcement, and habitat conservation.

- The Office of Marine Aviation and Operations manages the NOAA uniformed officer corps. The NOAA corps is one of the nation's uniformed military services and supports the functions of all the line offices in the agency, including operating the planes NOAA uses in hurricane reconnaissance and ships used in fisheries surveys and research expeditions.

- The Office of Program Planning and Integration promotes the development of effective programs by integrating resources across NOAA.

The impetus for a NOAA organic act

Over the past 35 years, Congress has debated many different proposals for a NOAA Organic Act. In 2000, Congress passed the Oceans Act of 2000, which established the U.S. Commission on Ocean Policy to perform a comprehensive review of ocean-related laws and issues facing the Federal government. The Commission released its final report on September 20, 2004.

The Commission confirmed the concerns voiced by many other experts: throughout much of its history, NOAA has lacked a clear and consistent mission; the overlap of the more than 200 issue-specific laws under which NOAA operates causes significant programmatic and functional confusion; and the work of the agency's line offices is not sufficiently coordinated. The Commission concluded that these problems have hampered NOAA's ability to effectively carry out its mandates because the agency becomes mired in questions over whether it has the legal authority to act on any particular matter. NOAA's unclear legal standing in some ocean and atmospheric issues also has hampered its ability to form effective partnerships with other agencies, states, the private sector and academia, according to the Commission. Additionally, in the Commission's view, the lack of a clear mandate from Congress makes NOAA susceptible to uncertainty in its budget process because without clear authorizing language it is difficult for NOAA to justify its budget requests, especially for its education and outreach activities, to both Congress and the Office of Management and Budget.

The Commission, recognizing that NOAA has become the de facto lead Federal agency for oceans issues, strongly recommended that

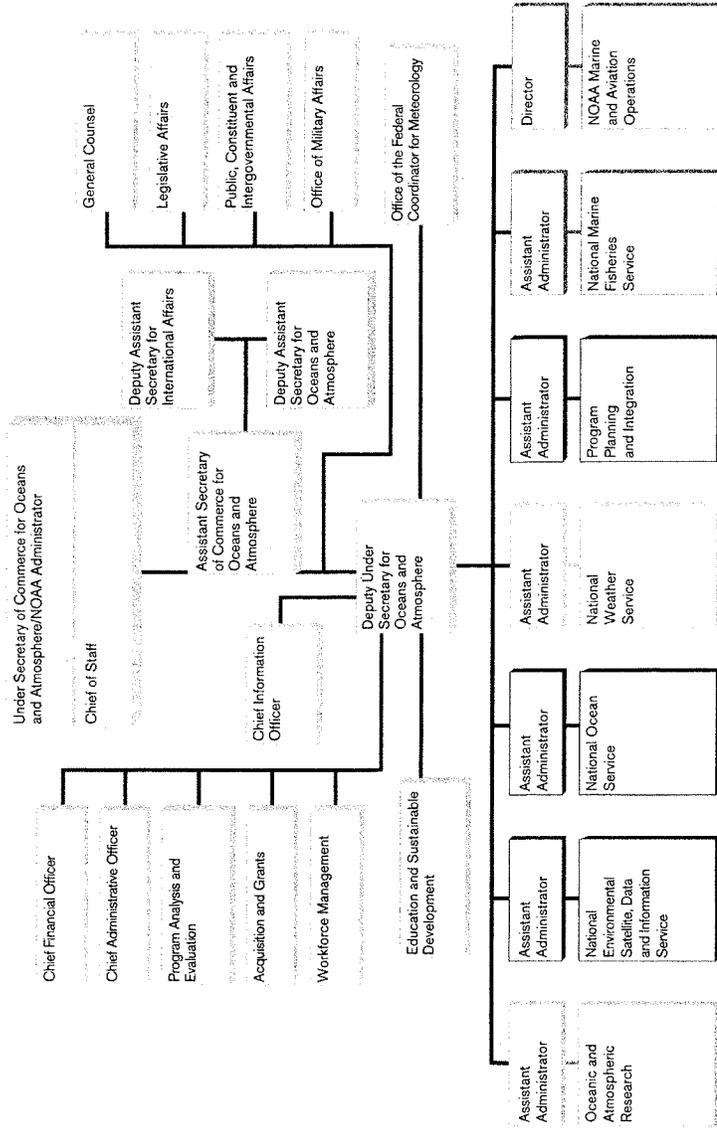
Congress strengthen NOAA by enacting an Organic Act for the agency, giving the agency a clear legal mandate and broad authorities to execute it. The Commission and other experts believe a NOAA Organic Act that describes a science-based, service-oriented agency will help NOAA function more effectively, make it capable of taking on new responsibilities envisioned by the Commission, and provide NOAA a strong foundation for the 21st century. Such an Organic Act, the Commission stated, would help the agency set priorities, operate effectively, form effective partnerships, and strategically plan for its future budget and operations.

To address the communication problems and functional overlaps it found within NOAA, the Commission recommended structuring NOAA around three mission areas in an Organic Act: an operations and services mission to include the current line offices and programs of NESDIS, NWS, and the mapping and charting functions of NOS; a research and education mission to include the current line offices and programs of OAR, the Office of Education, and research programs from the other line offices; and a resource management mission to include the current NMFS and the ecosystem management programs of NOS.

President Bush provided a formal response to the Commission's report in his U.S. Ocean Action Plan, released December 19, 2004. In the Action Plan the President stated that his Administration would seek passage of a NOAA Organic Act. In the 108th Congress the President transmitted to Congress an Administration Organic Act for NOAA that was introduced, by request, as H.R. 4607. In the 109th Congress the President transmitted the same Administration bill, which has not been introduced.



NOAA Organization



IV. SUMMARY OF HEARINGS

In the 109th Congress, there were no hearings in the Committee on Science on H.R. 5450.

In the 108th Congress, the Committee held a hearing about the U.S. Commission on Ocean Policy and a hearing about NOAA Organic Acts.

May 5, 2004—The U.S. Commission on Ocean Policy Preliminary Report

On May 5, 2004, the House Committee on Science held a hearing on the key findings and recommendations of the Preliminary Report of the U.S. Commission on Ocean Policy. In response to pressures on ocean and coastal ecosystems from increased coastal development, over-fishing, pollution and a confusing patchwork of Federal and state legal authorities for ocean and coastal activities, Congress passed the Oceans Act of 2000. The Oceans Act required the President to establish a nonpartisan, diverse commission of experts in ocean policy and charged that commission to establish findings and develop recommendations for a new comprehensive ocean policy, including in research and development. The Report was the first comprehensive review of national ocean policy in more than 30 years.

The committee heard testimony from: (1) Admiral James D. Watkins, USN (Ret.), Chairman, U.S. Commission on Ocean Policy; (2) Dr. Andrew Solow, Director, Marine Policy Center, Woods Hole Oceanographic Institution. Dr. Solow was a member of the U.S. Commission on Ocean Policy Science Advisory Panel Governance Working Group; (3) Dr. Shirley A. Pomponi, Acting Managing Director, Harbor Branch Oceanographic Institution. Dr. Pomponi was a member of the U.S. Commission on Ocean Policy Science Advisory Panel Research, Education and Marine Operations Working Group; (4) Dr. Leonard J. Pietrafesa, Director of External Affairs, College of Physical and Mathematical Sciences, North Carolina State University. Dr. Pietrafesa is chair of the NOAA Science Advisory Board; and (5) Dr. Michael H. Freilich, Associate Dean, College of Oceanic and Atmospheric Sciences, Oregon State University. Dr. Freilich is a member of the National Research Council's Space Studies Board and chair of that Board's Committee on Earth Studies.

Admiral James D. Watkins, USN (Ret.), began the hearing by providing an overview of the key findings and recommendations in the Preliminary Report of the U.S. Commission on Ocean Policy.

- A National Ocean Council, including the leaders of all ocean-related agencies and chaired by an assistant to the President, should be established in the Executive Office of the President to coordinate Federal ocean activities and set national ocean policy.

- A Presidential Council of Advisers on Ocean Policy should be created to provide input and advice from non-Federal experts. The Federal agency structure should be strengthened to increase effectiveness and minimize redundancies.

- The National Integrated Ocean Observing System, (IOOS) led by NOAA and combining a network of regional coastal observations with an array of open ocean observations, should be implemented

to achieve adequate observational and forecasting capabilities for the oceans and coasts.

- To cover costs and supplement existing appropriations and support new and recommended responsibilities, an Ocean Policy Trust Fund should be established.

Dr. Andrew Solow discussed the Report's recommendations to establish a National Ocean Council to coordinate Federal efforts with respect to oceans.

- The main deficiency in Federal ocean and coastal policy is fragmentation, which tends to impede policy coordination. However fragmentation is not, by itself, responsible for the problems on the ground and in the water.

- Although the problems in the Nation's oceans and coasts cannot be solved by better coordination alone, a National Ocean Council could contribute to the formulation and execution of better policies and would elevate the visibility of ocean issues in the Federal government.

- All Federal activities relating to the ocean should undergo common policy and budgetary review within the Office of Management and Budget.

Dr. Shirley A. Pomponi provided testimony about the implications of the Report's recommendation for increased funding for ocean research.

- A NOAA Organic Act should be enacted to clearly lay out an integrated agency structure and mission.

- The overall levels of U.S. investment in ocean research should be doubled to fund such areas as bio-diversity and ecosystem research, development of ocean information systems, climate and ocean modeling, and discovery and development of new marine products. Increases for individual agencies and programs should be based on a careful and comprehensive assessment of national ocean policy and the role of each Federal ocean agency in carrying out those priorities.

Dr. Leonard J. Pietrafesa provided testimony on the Report's recommendations to strengthen NOAA.

- At a minimum, there should be an immediate doubling of the Federal ocean research budget.

- A NOAA Organic Act should be enacted so that NOAA can have clear and specific responsibilities assigned to it with an unambiguous partitioning of these responsibilities.

- An end-to-end, integrated Earth-observing measurement system suite for receipt of data in real time should be implemented.

Dr. Michael H. Freilich provided the committee with comments on the Report's recommendation to transfer some programs from the National Aeronautics and Space Administration (NASA) to NOAA.

- NOAA should be the Nation's lead agency for ocean-related research, education, management, measurements, and predictions that recognizes the equal importance of its research and education, management, and prediction and assessment tasks.

- An interagency coordination group, to address ocean and coastal data and information issues, as well as a Presidential interagency task force to oversee the modernization of the Nation's environmental data and information system, should be established.

- There should be stronger interagency coordination, including moving the Executive's review of NOAA's budget to the Office of Management and Budget's Natural Resources Program, to ease the NASA-NOAA transition from research to operations.

July 15, 2004—National Oceanic and Atmospheric Administration Organic Acts

On July 15, 2004, the Subcommittee on Environment, Technology, and Standards held a hearing on H.R. 4546, the National Oceanic and Atmospheric Administration Act, and H.R. 4607, the National Oceanic and Atmospheric Administration Organic Act of 2004.

The subcommittee heard testimony from: (1) The Honorable Theodore Kassinger, Deputy Secretary of the U.S. Department of Commerce; (2) Dr. James Baker, President and Chief Executive Officer, the Academy of Natural Sciences. Dr. Baker was Administrator of NOAA from 1993-2001; (3) Rear Admiral Richard West (Ret.), President, Consortium for Oceanographic Research and Education. Admiral West was a member of the subcommittee of NOAA's Science Advisory Board that released a review of NOAA's research enterprise on August 6, 2004; (4) Dr. Elbert (Joe) W. Friday Jr., WeatherNews Chair of Applied Meteorology and Director, the Sasaki Applied Meteorology Research Institute, University of Oklahoma. Dr. Friday was the Assistant Administrator of the National Weather Service and the Office of Oceanic and Atmospheric Research at NOAA. Additionally, he is a past-president of the American Meteorological Society; and (5) Mr. Richard Hirn, General Counsel, National Weather Service Employees Organization.

Mr. Theodore Kassinger began the hearing by acknowledging the importance of the Organic Act for the restructuring of NOAA, and highlighting areas where the Administration's bill, H.R. 4607, and the Committee's bill, H.R. 4546 differ.

- H.R. 4607 would codify the Agency's administrative authorities.
- In comparison with H.R. 4546, H.R. 4607 would provide the Agency with greater flexibility for reorganizing its structure and programs.

Dr. James Baker provided testimony on the current strengths and limitations of NOAA and how an Organic Act can help to ensure NOAA's future success.

- NOAA needs more recognition, support, money and independence. The Organic Act will enable NOAA to better meet the nation's changing needs through updating and clarifying its mission and structure.
- The Organic Act should seek to ensure the scientific independence of NOAA, particularly on politically-sensitive issues such as global climate change and fisheries management. Additionally, NOAA should become an independent agency, like the EPA, as it has the maturity to become one.
- More support is needed for NOAA's educational outreach programs. The more the public is educated regarding NOAA issues, the better support NOAA will have when dealing with difficult issues.

- A provision should be added to Title I of H.R. 4546 to formalize the mechanism for research to be conducted and competitively funded at universities and research institutions outside NOAA.

Rear Admiral Richard West (Ret.) discussed the response of the science community to the NOAA Organic Act. He also briefly reviewed applicable recommendations from the NOAA Science Advisory Board's review of NOAA's research programs.

- One major problem with NOAA is that its research, operation, and regulatory bodies do not operate well under its current integrated corporate culture. Another limiting factor is NOAA's placement within the Department of Commerce.

- The research plan set out in H.R. 4546 is important, especially because it recognizes the role of research in NOAA, establishes the goals and process for agency-wide research and investments, and delineates the role of NOAA's external partners. The importance of peer review and competitive awards, improved processes for managing grants and contracts, and integrated research, education and outreach should also be emphasized in this plan.

- The creation of a Deputy Assistant Secretary for Science and Technology, who would be responsible for coordinating and managing the NOAA research enterprise, would provide clear recognition of NOAA as a science-based mission agency.

Dr. Elbert (Joe) W. Friday Jr. testified that an Organic Act should clearly identify research in support of NOAA's mission as a prime NOAA responsibility.

- The creation of the position of the Deputy Assistant Secretary for Science and Technology will benefit NOAA through helping to strengthen the role of science within NOAA and providing NOAA with a credible science voice.

- NOAA's laboratory structure is absolutely critical to the successful modernization of the National Weather Service.

Mr. Richard Hirn discussed the National Weather Service Employees Organization's (NWSEO) response to the NOAA Organic Act.

- The most pressing problem facing NOAA is not its organizational structure but the failure of successive Administrations and Congresses to adequately fund NOAA.

- The NWSEO supports granting distinct legislative authority for the National Weather Service, provided within Section 105 of the Chairman's bill and not in the Administration's bill.

- The consolidation of research and education into one branch of the NOAA mission areas as highlighted in the Chairman's bill may actually result in an overall reduction in education and research. The NOAA's research and education functions should be closely integrated with, instead of separated from its operational role.

V. COMMITTEE ACTIONS

H.R. 5450 is the same as H.R. 50 with minor changes to section 12, savings provision, to reflect an agreement with the House Committee on Transportation and Infrastructure. A description of the Committee actions on both H.R. 50 and H.R. 5450 follows.

Congressman Vernon J. Ehlers introduced H.R. 50, the National Oceanic and Atmospheric Administration Act, on January 4, 2005, at which time the bill was referred to the Committee on Science, and in addition to the Committee on Resources. The Subcommittee

on Environment, Technology, and Standards met on March 15, 2005 to consider the bill. Subcommittee Ranking Member Wu offered an amendment, which clarified that the Administrator may not contract with a private sector organization for an inherently governmental function; that current collective bargaining agreements are not affected by the bill; and that the Administrator must consult with NOAA stakeholders in developing the reorganization plan required by the bill. The amendment was adopted by a voice vote. The Subcommittee favorably reported the bill, H.R. 50, as amended, by a voice vote.

On May 17, 2005, the Committee on Science considered H.R. 50. Congressman Ehlers offered an amendment in the nature of a substitute, which was treated as original text for purposes of amendment. Mr. Ehlers' amendment:

- made technical corrections;
- provided additional authorities to the Administrator of NOAA, such as conducting education and outreach activities;
- emphasized NOAA's role in the forecasting of, and issuing warnings for tsunamis;
- required NOAA to notify Congress when NOAA starts new satellite programs, encounters serious problems with or makes major changes to existing satellite programs;
- clarified the language requiring NOAA to reorganize; and
- clarified that nothing in the bill shall alter the responsibilities or authorities of other Federal agencies.

Congressman Costello offered an amendment to prohibit NOAA from contracting for goods and services with organizations that perform their work outside of the United States. Committee Chairman Boehlert offered a second degree amendment to Mr. Costello's amendment, which ensured that compliance with the Costello amendment would be consistent with international trade agreements. The Committee adopted Mr. Boehlert's amendment by a roll call vote (Y-18; N-17). The Committee adopted Mr. Costello's amendment, as amended, by a voice vote. Then the Committee adopted Mr. Ehlers' amendment in the nature of a substitute, as amended, by a voice vote. Mr. Ehlers moved that the Committee favorably report the bill, H.R. 50, as amended, to the House with the recommendation that the bill, as amended, do pass; that staff be instructed to prepare the legislative report and make necessary technical and conforming changes; and that the Chairman take all necessary steps to bring the bill before the House for consideration. With a quorum present, the motion was agreed to by a voice vote.

Congressman Ehlers introduced H.R. 5450, the National Oceanic and Atmospheric Administration Act, on May 22, 2006, at which time the bill was referred to the Committee on Science, and in addition to the Committee on Resources. H.R. 5450 is nearly identical to H.R. 50 as reported by the Committee on May 17, 2005, with language added in Section 12, savings provision, to clarify the intent of the Organic Act regarding the authority of NOAA with respect to public buildings and regulatory issues.

On June 14, 2006, the Committee on Science considered H.R. 5450. Congressman Udall offered an amendment to establish conditions for the development of major program cost baselines and to require notification to Congress when certain cost increases or schedule delays occur in major programs. The Committee adopted

Mr. Udall's amendment by a voice vote. Congressman Costello offered an amendment to require an annual report on contracts and subcontracts performed overseas. The Committee adopted Mr. Costello's amendment by a voice vote. Mr. Miller offered an amendment to establish penalties for employees who interfere with science, set requirements for science advisory committees, and exempt NOAA from the Information Quality Act. Mr. Miller's amendment was defeated by a roll call vote (Y-13; N-17). Congressman Gordon, on behalf of Congresswoman Jackson-Lee, offered an amendment to require NOAA to communicate weather emergency information to other Federal agencies. The Committee adopted that amendment by a voice vote. Congressman Costello offered an amendment to require NOAA to transmit Congressional reports to Congress directly, without prior review by the President or any other Administration official. Mr. Costello's amendment was defeated by a roll call vote (Y-15; N-19). Mr. Gordon moved that the Committee favorably report the bill, H.R. 5450, as amended, to the House with the recommendation that the bill as amended do pass; that staff be instructed to prepare the legislative report and make necessary technical and conforming changes; and that the Chairman take all necessary steps to bring the bill before the House for consideration. With a quorum present, the motion was agreed to by a voice vote.

VI. SUMMARY OF MAJOR PROVISIONS OF THE BILL, AS REPORTED

The legislation establishes the NOAA within the Department of Commerce.

The legislation maintains the current leadership structure at NOAA except that it creates a new position of Deputy Assistant Secretary for Science and Education. It requires the Secretary of Commerce to maintain the National Weather Service within NOAA. The legislation describes programs to support the operations and services, and the research and education functions of NOAA. The legislation authorizes the NOAA Science Advisory Board.

The legislation requires NOAA to contract with the National Academy of Sciences (NAS) to assess the adequacy of the environmental data and information systems of NOAA. It requires NOAA to provide two strategic plans: one to address any deficiencies identified by the NAS data and information system assessment and the second for intramural and extramural research to support the mission of NOAA. The legislation requires NOAA to review its policy on public-private relationships once every five years. It also requires NOAA to submit a reorganization plan to Congress 18 months after enactment of the legislation.

The legislation repeals the Executive Order that established NOAA in 1970 and includes a savings provision to preserve the status of all current NOAA rules, regulations and other legal matters. The legislation prohibits NOAA from contracting for activities or procurement of goods or services that are performed outside the United States, except in some limited circumstances and when the prohibition would be inconsistent with trade agreements.

The legislation requires NOAA to notify Congress and the public if it plans to close or transfer a NOAA facility. The legislation establishes conditions for development of major program cost base-

lines and requires notification to Congress when certain cost increases or schedule delays occur in major programs.

VII. SECTION-BY-SECTION ANALYSIS, AS REPORTED

Section 1. Short title

“National Oceanic and Atmospheric Administration Act.”

Section 2. Definitions

Defines terms used in the Act.

Section 3. National Oceanic and Atmospheric Administration

Establishes the NOAA within the Department of Commerce and describes the mission and functions of NOAA.

Section 4. Administration leadership

Describes the leadership structure of NOAA, including a new position of a Deputy Assistant Secretary for Science and Education, who shall be responsible for coordinating and managing all research activities across the agency, and which must be a career position. Also, this section designates the Deputy Undersecretary for Oceans and Atmosphere as the Chief Operating Officer of the Administration, responsible for the day-to-day aspects of the Administration’s operations and management.

Section 5. National Weather Service

Directs the Secretary of Commerce to maintain the NWS within NOAA.

Section 6. Operations and services

Directs the Secretary to maintain programs within NOAA to support operational and service functions. This section does not name any organizational units of NOAA, but the functions listed include all the activities of the NESDIS and the mapping and charting activities of the NOS.

Section 7. Research and education

Directs the Secretary to maintain programs within NOAA to conduct and support research and education functions.

Section 8. Science Advisory Board

Establishes a Science Advisory Board for NOAA to provide scientific advice to the Administrator and to Congress on issues affecting NOAA.

Section 9. Reports

Requires two reports from the Administrator. Each report is to be delivered to Congress within 18 months of the date of enactment of the Act. One report requires the National Academy of Sciences to assess the adequacy of the environmental data and information systems of NOAA and then requires NOAA to provide a strategic plan to address any deficiencies in those systems. The other report is a strategic plan for research at NOAA.

Section 10. Public-private partnerships

Requires NOAA to review its policy on public-private partnerships once every five years. Clarifies that no changes in NOAA's current policy are required.

Section 11. Effect of reorganization plan

Repeals the Executive Order that established NOAA in 1970.

Section 12. Savings provision

Clarifies that the Act does not change the legal status of any NOAA rule, regulation or other legal matter.

Section 13. Reorganization plan

Requires NOAA to submit a reorganization plan to Congress not less than 18 months after enactment of this Act.

Section 14. Facility evaluation process

Provides that NOAA cannot expend funds to close or transfer certain facilities without a public comment period, review by the Science Advisory Board (if appropriate), analysis of the anticipated costs and savings and the impact on NOAA services, and notification to Congress.

Section 15. Budget reprogramming

Requires NOAA to submit to the Science Committee a copy of any reprogramming requests submitted to Appropriations Committees.

Section 16. Baselines and cost controls

Establishes conditions for development of major program cost baselines and requires notification to Congress when certain cost increases or schedule delays occur in major programs.

Section 17. Limitations on off-shore performance of contracts for the procurement of goods and services

Prohibits the Administrator from contracting for Administration activities or procurement of goods or services that are performed outside the United States except when the goods or services are necessary for national security or are only available outside the United States, when the activities or function under the contract was previously performed by federal government employees located outside the United States, or when the prohibition is inconsistent with international agreements.

Section 18. Recordkeeping and reporting requirement

Requires an annual report on contracts and subcontracts performed overseas.

VIII. COMMITTEE VIEWS

Overall views

The Committee developed an Organic Act because it believes that providing NOAA with a clear mission and broad authority to execute it will strengthen the agency and improve its ability to carry

out its responsibility as the lead civilian agency for oceans and atmosphere.

The Committee recognizes that an Organic Act, by its very nature, cannot address all the issues currently confronting NOAA. The Committee intends to continue to work, for example, on the many oceans issues raised by the U.S. Commission on Ocean Policy. The Committee also expects that the final version of the Organic Act will deal with the portions of NOAA that are not under the jurisdiction of the Science Committee.

Section 3: National Oceanic and Atmospheric Administration

The Committee does not view this Act as changing the current mission of NOAA. But the Committee emphasizes that education and outreach are vital components of NOAA's mission.

Section 3 of the Act lists overarching functions of NOAA. This list of functions (and other lists of functions in the Act) are meant to be exemplary. NOAA may undertake additional functions related to carrying out the agency's mission.

The Committee expects NOAA to work with experts in ecology, social science, and economics, both within and outside the agency, to develop an ecosystem approach to managing, protecting, and researching coastal, ocean and Great Lakes ecosystems. Such an approach should emphasize the protection of ecosystem structure, function and key processes, and should aim to integrate ecological, social, and economic perspectives. Also, the Committee expects NOAA to integrate its ecosystem approach across all offices within the agency.

Section 4: Administration leadership

The Act grants NOAA itself the authority to promulgate rules and regulations; enter into and perform contracts, leases, grants and cooperative agreements; use the services and facilities of other Federal Government organizations; and conduct education and outreach activities. NOAA no longer will derive these authorities through the Secretary of Commerce, and the Committee expects NOAA to use these authorities on its own without seeking permission from the Secretary of Commerce. This should enable the agency to operate more efficiently.

The provision of the Act assigning day-to-day operating responsibility to the Deputy Undersecretary for Oceans and Atmosphere, the highest ranking career employee at the agency, is also designed to improve efficiency.

The Act also creates a Deputy Assistant Secretary (DAS) for Science and Education, following through on a recommendation the NOAA Science Advisory Board made in 2004, after an extensive review of NOAA's research enterprise. This DAS is a career reserve position and the person holding it will be responsible for overseeing science and education activities, and advising the Administrator on integrating research findings into NOAA's operational services and regulatory decisions.

The Act provides NOAA the flexibility to appoint up to two additional Deputy Assistant Secretaries as it sees fit to carry out its mission.

Section 5: National Weather Service

The Act requires NOAA to maintain the NWS as a distinct entity within the agency. The NWS is a vital public service, providing forecasts and warnings of severe weather events such as hurricanes and tornadoes. In addition to the public safety aspect of weather prediction, the NWS provides tremendous economic value to the nation. Weather and climate sensitive industries, both directly and indirectly, account for about one-third of the United States' Gross Domestic Product, or \$3 trillion. These industries range from finance, insurance, and real estate to services, retail and wholesale trade, and manufacturing. The public recognizes, trusts, and relies on the NWS name. Therefore, the Committee believes that NOAA should not dissolve, rename, or alter the major functions of the NWS. The Committee fully supports NOAA's continued role in providing space weather for public use through the Space Environment Center. Space weather affects several industries such as those that provide or utilize wireless services, utilize the Global Positioning System, or rely on the safety of transpolar routes between North America and Asia. As the only provider of space weather forecasts for the government and for public use in the United States, the Space Environment Center is vital for the protection of both our commercial and government space-based assets.

Section 6: Operations and services

The Act directs NOAA to maintain programs to support efforts, on a continuing basis, to collect data and provide information and products regarding satellites, observations, and coastal, ocean and Great Lakes resources. These services include the programs currently performed by NESDIS and the mapping and charting activities of the NOS.

Section 7: Research and education

The Act directs NOAA to maintain basic and applied research programs to support the mission of the agency. The Act also directs NOAA to maintain education and outreach programs to serve NOAA's mission, including promoting greater public understanding of coastal, ocean and Great Lakes ecosystems as well as weather, climate, and earth sciences. The Committee expects NOAA to continue to carry out its full range of education and outreach activities.

Section 9: Reports

The Act requires NOAA to contract with the NAS to assess the adequacy of its environmental data and information systems. NOAA then is required to provide a strategic plan to address any deficiencies in those systems. The Committee expects these documents to be completed on time. The Act requires NOAA to perform this review on a regular basis because the Committee wants NOAA to regularly integrate planning for satellite data use with planning for construction of major satellite systems.

The Committee has good reason to believe that there are serious gaps in the data and information systems that could impair NOAA's ability to carry out its mission. The NOAA Fiscal Year (FY) 1992 Authorization Act (P.L. 102-567) required NOAA to con-

duct a needs assessment for data management, archival, and distribution. The assessment (which NOAA did not deliver until 2001) found that by 2015 the anticipated volume of satellite and other environmental data would far exceed NOAA's archive and assessment capabilities. This is already the case. NOAA's own FY 2003 budget documents state that the agency cannot meet 65 percent of the new requests for satellite data products from the NWS and the Department of Defense in a timely manner. And because of NOAA's lack of planning for data management, archival and distribution, it can now take up to two years from the launch of a new satellite until any data is successfully incorporated into weather forecasting models. Given that the average lifetime of a satellite is five years, such a gap can mean that much of the data collected by a satellite is never used, wasting a multi-million dollar investment.

The Committee believes NOAA must quickly address these deficiencies. The next generation of polar-observing weather satellites at NOAA is currently estimated to cost more than \$11 billion to build. The Committee is very concerned that NOAA is spending a large amount of money to build the new satellite system, but has yet to provide a comprehensive plan, including projected funding requirements, to ensure the maximum use of data from this new series of weather satellites. The Committee expects NOAA to submit such a plan to the Committee no later than February 1, 2007.

The second report required by this section is a strategic plan for research and development activities at NOAA, a requirement recommended by the 2004 NOAA Science Advisory Board report on NOAA research. The Act requires that this plan be updated every five years. The Committee emphasizes that it expects NOAA to specifically describe how the agency will fill its research needs by utilizing each of the following resources: intramural research, extramural peer-reviewed competitive grant programs, and the expertise of other Federal agencies.

Section 10. Public-private partnerships

The Committee supports NOAA's 2006 Policy on Partnerships in the Provision of Environmental Information that defines how the agency will make decisions regarding its relationship to the private sector in providing products, technologies, and services. The Committee expects NOAA to closely consult with the private sector (including the academic community) when updating the policy, but the Committee does not assume that any immediate changes are needed. The Committee believes the current policy conforms with the policy recommendations of the 2003 National Academy of Sciences report "Fair Weather: Effective Partnerships in Weather and Climate Services."

Section 13: Reorganization plan

The Committee is concerned, based on expert testimony and its own experience, that the current line office structure at NOAA leads to duplication of efforts and a lack of communication across programs. The Committee believes NOAA needs to be reorganized to remedy these problems. While the Committee is not dictating a particular organizational structure, it does believe that the new organization should be based on the three functional themes developed by the U.S. Commission on Ocean Policy and listed in the Act.

The Committee expects NOAA to evaluate its structure rigorously and to develop a genuinely redesigned organization that will facilitate work across each of the functional themes. A minor reshuffling or renaming of the existing structure will not suffice. The Committee emphasizes that the Act requires NOAA to maintain the NWS as an entity in the new organizational structure. The Act requires NOAA to closely consult with its stakeholder community throughout the development of the reorganization plan. To meet this consultation requirement, the Committee expects NOAA to meet with stakeholders prior to publication of the plan in the Federal Register.

Section 14: Facility evaluation process

The Act requires NOAA to notify the Committee when NOAA intends to close, consolidate, relocate, subdivide or establish a facility. In the case of facilities with operating budgets greater than \$5 million or if the facility is a local weather forecast office, the Act requires NOAA to undertake a review of the proposed change. The Committee must be kept apprised of proposed changes that could affect NOAA's strong presence and valuable ties to many communities around the country.

Section 16. Baselines and cost controls

The Committee is very concerned about NOAA's management of major satellite programs. These programs represent nearly a quarter of NOAA's annual budget (in the FY2007 President's request for NOAA, satellite procurement costs are \$1 billion, 27 percent of NOAA's total budget request of \$3.7 billion). When problems occur with satellites they are almost always expensive to fix. For example, due to a combination of budget issues and technical challenges, costs for the next generation of polar-orbiting satellites have risen by almost 50 percent (or \$3.7 billion) from the most recent previous estimate of \$7.4 billion.

Effective oversight of NOAA's satellite programs requires that Congress have up-to-date and accurate information on the status of satellites while they are in development. This has not always been the case. The Act requires the submission of baseline cost estimates, annual updates, and notification of cost overruns. It is based on the Nunn-McCurdy provisions of Department of Defense acquisition law (10 U.S.C. 2433) and on section 103 of the National Aeronautics and Space Administration Authorization Act of 2005 (P.L. 109-155). The baseline cost estimates provided by the National Aeronautics and Space Administration pursuant to P.L. 109-155 are a model NOAA should follow in carrying out this provision of the Act.

IX. COST ESTIMATE

A cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted to the Committee on Science prior to the filing of this report and is included in Section X of this report pursuant to House rule XIII, clause 3(c)(3).

H.R. 5450 does not contain new budget authority, credit authority, or changes in revenues or tax expenditures

X. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JUNE 19, 2006.

Hon. SHERWOOD L. BOEHLERT,
*Chairman, Committee on Science,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5450, the National Oceanic and Atmospheric Administration Act.

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

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 5450—National Oceanic and Atmospheric Administration Act

H.R. 5450 would provide statutory authority for the National Oceanic and Atmospheric Administration (NOAA), which was created administratively in 1970. In addition to codifying the agency's functions, authorities, and responsibilities, the bill would require NOAA to prepare new reports and policy statements.

Based on information from NOAA, CBO estimates that implementing H.R. 5450 would have no significant impact on the federal budget and no effect on direct spending or revenues. We estimate that complying with the additional reporting requirements and making the minor changes to personnel authorized by the bill would cost less than \$500,000 annually, subject to the availability of appropriated funds.

H.R. 5450 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would codify the authority of NOAA to enter into grants and cooperative agreements with state, local, and tribal governments. Any costs incurred by those entities as a result of participating in the grants and cooperative agreements would be voluntary.

On May 26, 2005, CBO transmitted a cost estimate for H.R. 50, the National Oceanic and Atmospheric Administration Act, as ordered reported by the House Committee on Science on May 19, 2005. H.R. 50 is very similar to H.R. 5450, and the cost estimates for the two bills are identical.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

XI. COMPLIANCE WITH PUBLIC LAW 104-4 (UNFUNDED MANDATES)

H.R. 5450 contains no unfunded mandates.

XII. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

The Committee on Science's oversight findings and recommendations are reflected in the body of this report.

XIII. STATEMENT ON GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c)(4) of House rule XIII, the goals and objectives of H.R. 5450 are to establish the National Oceanic and At-

ospheric Administration and describe the mission and functions of the agency.

XIV. CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 5450.

XV. FEDERAL ADVISORY COMMITTEE STATEMENT

The advisory committee authorized by H.R. 5450, the National Oceanic and Atmospheric Administration Science Advisory Board, currently exists. The legislation simply codifies its functions.

XVI. CONGRESSIONAL ACCOUNTABILITY ACT

The Committee finds that H.R. 5450 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

XVII. STATEMENT ON PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

This bill is not intended to preempt any state, local, or tribal law.

XVIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

XIX. COMMITTEE RECOMMENDATIONS

On June 14, 2006, a quorum being present, the Committee on Science favorably reported the National Oceanic and Atmospheric Administration Act, as amended, by a voice vote, and recommended its enactment.

XX. COMMITTEE CORRESPONDENCE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE

SUITE 2320 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
TTY: (202) 226-4410
<http://www.house.gov/science/welcome.htm>

June 23, 2006

The Honorable Don Young
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter regarding the consideration of H.R. 5450, the National Oceanic and Atmospheric Administration Act. I appreciate your willingness to work with me to find a way to address your concerns about H.R. 50, a previous version of the National Oceanic and Atmospheric Administration Act that was ordered reported from the Science Committee on May 17, 2005. I am glad we could agree to include savings clause language in H.R. 5450 to address your concerns about H.R. 50, and I appreciate your waiving your Committee's right to request a referral or pursue further action on H.R. 5450 pursuant to that agreement, so that H.R. 5450 can move expeditiously to the floor.

I agree that by not exercising your right to request a referral, the Transportation and Infrastructure Committee does not waive or otherwise affect jurisdiction it may have over H.R. 5450. I further agree to work to retain the agreed upon savings clause language throughout the legislative process. As you requested, the exchange of letters between our two committees will be included in the Committee report on H.R. 5450.

Thank you for your attention to this matter.

Sincerely,


SHERWOOD BOEHLERT
Chairman

cc: The Honorable John V. Sullivan



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

Don Young
Chairman

James I. Oberstar
Ranking Democratic Member

June 23, 2006

Lloyd A. Jones, Chief of Staff
Elizabeth Maglison, Chief Counsel

David Heymsfeld, Democratic Chief of Staff

The Honorable Sherwood L. Boehlert
Chairman
Committee on Science
2320 Rayburn Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing to you concerning the jurisdictional interest of the Transportation and Infrastructure Committee in matters being considered in H.R. 50, the National Oceanic and Atmospheric Administration Act which was ordered reported from the Science Committee on May 17, 2005. This legislation is drafted broadly invoking the jurisdiction of the Committee on Transportation and Infrastructure in the areas of water resources and the environment, public buildings and maritime affairs.

I appreciate your willingness to work with me to satisfy my concerns about the language in H.R. 50 through a savings clause which has been incorporated into a new bill, H.R. 5450 which was ordered reported by the Committee on Science on June 14, 2006. The intent of this savings clause language is to make clear that the provisions of the bill do not expand or modify the authority of the National Oceanic and Atmospheric Administration (NOAA) immediately before the date of enactment and do not provide NOAA with any new regulatory authority which would impinge on the jurisdiction of the Transportation and Infrastructure Committee. It also clarifies that the bill does not confer any new authority on NOAA to lease, alter, construct, repair or acquire federal buildings and that any real property authority the Administrator has before the date of enactment is not diminished. This language begins on page 27, line 9 and ends on page 28, line 4 of the introduced bill.

Our Committee recognizes the importance of H.R. 5450 and the need for the legislation to move expeditiously. Therefore, pursuant to our agreement to incorporate the savings clause language into H.R. 5450, I will not request a sequential referral or pursue further action on the bill. This waiver, of course, is conditional on our mutual understanding that the agreed upon savings clause language continues to remain in the bill or similar legislation throughout the legislative process and that nothing in this legislation or my decision to forego a sequential referral waives, reduces or otherwise affects the jurisdiction of the Transportation and Infrastructure Committee.

I would appreciate it if you would include a copy of this letter and your response in the Committee Report on H.R. 5450.

Thank you for your cooperation in this matter.

Sincerely,


DON YOUNG
Chairman

cc: Hon. James L. Oberstar
Hon. John V. Sullivan

XXI. CORRESPONDENCE



National Association of Marine Laboratories
c/o Marine Biological Laboratory, Woods Hole, MA 02543

Dr. Jeffrey M. Reutter, President	(614) 292-8949; FAX: 292-4364
Ohio Sea Grant College Program & FT Stone Laboratory	Email: reutter.1@osu.edu
The Ohio State University, 1314 Kinnear Rd.	www.naml.org
Columbus, OH 43212	www.sg.ohio-state.edu

May 3, 2005

The Honorable Sherwood L. Boehlert
 Chairman
 Committee on Science
 House of Representatives
 Washington, DC 20515

Dear Chairman Boehlert:

On behalf of the National Association of Marine Laboratories (NAML), I would like to congratulate you and Chairman Ehlers of the Subcommittee on Environment, Technology, and Standards for your leadership with respect to the National Oceanic and Atmospheric Administration (NOAA) Act – H.R. 50. We believe that ocean issues should be elevated to the highest policy level and this legislation is a step in that direction.

NAML is a nonprofit organization of over 120 member institutions representing coastal, marine, and Great Lakes laboratories stretching from Guam to Bermuda and Alaska to Puerto Rico. Members serve as unique "windows on the sea," providing information on the rich environmental mosaic of coastal habitats as well as offshore oceanic regions and the Great Lakes. NAML is comprised of three regional associations which offer access to local communities and legislative representation at the grass roots level. These regional associations include the Northeastern Association of Marine and Great Lakes Laboratories (NEAMGLL), which covers institutions located on the Great Lakes as well as the eastern seaboard north of Maryland; the Southern Association of Marine Laboratories (SAML), which includes laboratories from Maryland to Texas, Bermuda and the U.S. Virgin Islands; and the Western Association of Marine Laboratories (WAML), which encompasses laboratories on the west coast, Hawaii and the U.S. Pacific Islands. Through these unique national and regional networks, NAML encourages wise local land management and the protection of natural resources, and works together to achieve goals that benefit oceanic and Great Lakes research, education and outreach.

We ardently believe that ocean and coastal policy decisions should be based on sound science. Therefore, NAML supports the provisions within H.R. 50 that create a Science Advisory Board within NOAA, establish a new Deputy Assistant Secretary for Science and Technology leadership position, and re-align NOAA's functions to support ecosystem-based management approaches. These provisions will ensure that emerging problems affecting human health, environmental vigor, coastal industries, and port security, to name a few, will be addressed through strong, reliable scientific research.

In addition, NAML is pleased that an entire section of the bill has been dedicated to ocean and coastal science research and education. In order to address ocean and coastal issues appropriately, we need a well-trained and informed workforce. NAML laboratories provide expert training for marine biologists and oceanographers, but their capacity must be enhanced to meet future needs. Therefore, we support the Committee's efforts in enhancing ocean and coastal education and outreach programs at all levels. NAML would also like to see NOAA restructured in a way that allows it to be more engaged with academic university science and education through enhancing competitive grant programs, such as the National Sea Grant College Program and National Ocean Service grants.

We realize that H.R. 50 has been designed with the purpose of providing organization for NOAA. However, the Science Committee should be aware of some of the NOAA programs, as well as many of the recommendations made by the U.S. Commission on Ocean Policy, that are important to NAML but were not incorporated in the bill. Although efforts are made in the organic act to coordinate Federal agencies involved in ocean and coastal research and national and international programs regarding coastal, ocean, and Great Lakes observing systems, further investment is still needed to ensure that these systems are sustained and that they incorporate the long-term monitoring efforts of the nation's coastal and marine laboratories. As you know, integrated observations offer critical information on coastal processes necessary for addressing issues, such as the health of humans and marine life, weather and climate nowcasts and forecasts, homeland security, and resource management.

Coastal and marine laboratories have been addressing this need for many years, however, funding has been difficult to sustain. If such a national observing system is adequately funded, however, NAML could be instrumental in its development, thanks to its collective, diverse array of observing platforms and programs, its strong communication network, and specific connectivity projects, such as CastNet. NAML enthusiastically supports the recommendations made by the U.S. Commission on Ocean Policy to develop a sustained integrated ocean observing system.

Additionally, it is imperative that the U.S. invest in the infrastructure of its coastal and Great Lakes laboratories. Currently, funds are inadequate in supporting basic laboratory facilities, instrumentation, support systems, computing facilities, and ship access. The final report of the U.S. Commission on Ocean Policy makes several recommendations on the need to develop and enhance the national ocean and coastal infrastructure. These recommendations include the creation, by Congress, of a mechanism that ensures a "dedicated funding stream for critical ocean science infrastructure and technology needs." In addition, Congress should establish an Ocean Policy Trust Fund within the U.S. Treasury to support these new coordinated and comprehensive national ocean policies.

NAML would like to thank you for acknowledging the importance of ocean and coastal sciences and the essential role that NOAA plays in advancing marine research, education, and the development of public policy. We are strongly supportive of the work of the U.S. Commission on Ocean Policy and feel that the utilization of its recommendations will ensure that our Nation's oceans and coasts receive the precedence they deserve, as their health directly impacts us all. An organic act for NOAA is essential to the modernization of the agency, and we urge the Committee to take the necessary steps in ensuring that this important piece of legislation is implemented.

Thank you for the opportunity to present these views. If NAML can provide any additional information, please do not hesitate to contact me or Mr. Joel Widder, who handles government relations for NAML, at 202-289-7475.

Sincerely,



Jeffrey M. Reutter, Ph.D.
President
National Association of Marine Laboratories



THE WEATHER
COALITION

May 3, 2005

EXECUTIVE COMMITTEE

Ray Ban, co-chair
Executive Vice President
The Weather Channel

John Snow, co-chair
Director
Oklahoma Weather Center

Richard Anthes
President
University Corporation for
Atmospheric Research

Phillip Ardauy
*Director, Remote Sensing
Applications*
Raytheon Inc.

Edward Bensman
Program Manager
Raytheon Inc.

Peter Casals
Deputy Director
International Association of
Emergency Managers

Walter Dabberdt
Director of Strategic Research
Vaisala

Timothy Killen
Director
National Center for Atmospheric
Research

Neal Lane
Professor and Senior Fellow
Rice University

Frank Nutter
President
Reinsurance Association
of America

Len Pietrafesa
Director
Office of External Affairs North
Carolina State University

Maria Pirone
*Vice President for Product
Development*
Atmospheric and Environmental
Research (AER) Inc.

Harvey Ryland
President and CEO
Institute for Business and Home
Safety

Jeremy Usher
President and CEO
Weathernews, Inc.

The Honorable Vernon Ehlers
Chairman
Subcommittee on Environment, Standards, and Technology
Committee on Science
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Ehlers:

We appreciate the opportunity to provide comments on the National Oceanic and Atmospheric Administration (NOAA) Act (H.R. 50) on behalf of the Weather Coalition. The Weather Coalition comprises a diverse group of representatives (list attached) from industry, academia, science and education consortia and a national laboratory. We are committed to working together to improve the capabilities of the country's weather prediction and warning capabilities and therefore take an active interest in NOAA's research and research-into-operations activities.

We strongly support this effort to provide an Organic Act for NOAA. When enacted, an Organic Act will formalize and legitimize the many activities of the agency required to execute its critical mission on behalf of the nation. We would like to comment on the following content of the Act:

Administration Leadership [Sec. 4]

The academic community is an essential collaborator in NOAA education, research, applications, and outreach efforts. The private sector is especially critical in research applications work and the provision of weather- and climate-related information to consumers at all levels. We believe that NOAA should do more to effectively utilize university and private sector partnerships in the accomplishment of the overall NOAA mission. *Thus, we commend the authority given the Administrator to enter into cooperative agreements with commercial organizations and educational institutions [Sec. 4 (a)(4)], but believe that mechanisms to sustain, leverage, and enhance the advantageous relationships between NOAA and these sectors should be stated more explicitly throughout the Act. We ask that Congress encourage NOAA to develop these mechanisms to strengthen collaborations between NOAA and the private and academic sectors. Further, we suggest that the NOAA mission should more strongly reflect that of its parent organization, so that the Agency works to "create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and stewardship," especially in those areas of research and commerce that are closely linked to the Agency's activities.*

Deputy Assistant Secretary for Science, Technology, Education and Outreach

We support the bill's establishment of a Deputy Assistant Secretary for Science,

⁵⁶ Cynthia Schmidt
P.O. Box 3000
Boulder, CO 80507-3000
303-497-2107

Page 2 of 3
Chairman Ehlers

Technology, Education and Outreach [Sec. 4 (e)(1)] and applaud the authority given this person to coordinate research and development budgets as well as the agency's educational programs. Such a position would provide the leadership necessary to establish clear NOAA-wide research priorities, organize, and coordinate research endeavors, and give NOAA science and technology a more unified voice in the budget process. Unfortunately, funding for NOAA-sponsored research continues to decrease annually. We must reverse this trend if NOAA is to serve the nation at its most efficient and effective capacity.

We strongly support the Deputy Assistant Secretary being charged with developing "guidelines for peer review of science and technology research sponsored by the Administration." A well-run peer review program is essential to maintaining the quality and credibility of NOAA science.

We are also pleased to see that one of the functions of the Deputy Assistant Secretary for Science, Technology, Education and Outreach will be to serve as a liaison to the nongovernmental science and technology community [Sec. 4 (e)(2)(f)]. Establishing a central point of contact in NOAA for the external community will streamline NOAA's interaction with the weather and climate enterprise and should facilitate involvement from nongovernmental experts – involvement that is critical to producing the best research and technological applications possible. Many of the most innovative advances in research and technology come from outside the public sector, and we believe that our nation's weather enterprise will be strongest when these results are integrated into NOAA's research and technology development process.

National Weather Service (NWS) [Sec. 5]

We believe that the National Weather Service's weather, water, climate, and space weather forecasts and warnings are critical to the efficiency, productivity, and national security of our nation as well as the safety of our citizens. *The NWS mission, goals, and functions as outlined in the bill are appropriate to federal government responsibilities.* However, we believe that there are ways in which involvement from the private and academic sectors can enhance the performance of and the critical services delivered by the NWS and other NOAA elements such as NESDIS. We are therefore pleased to see that the language concerning Public-Private Partnerships [Sec. 5 (e)] is included. *We believe that the language should be extended to include all of NOAA and further state that the external community should be involved in offering input and comment on the report that is to be developed by the Secretary.*

Research and Education [Sec. 7]

The Weather Coalition supports the provisions specifically requiring NOAA research programs to support "extramural peer-reviewed competitive grant programs to assist the Administration in performing the functions described in this subsection" [Sec. 7 (b)(9)]. As stated above, funding for NOAA sponsored research continues to decrease annually. This can only weaken NOAA research and, in turn, NOAA technology development and operations. Coalition members believe that increased collaboration, partnering, and fair and open competition among researchers – both those in federal agencies and those outside federal service – will greatly improve the quality and utility of NOAA research activities. *We support the language included in this section, and urge the*

Page 3 of 3
Chairman Ehlers

Committee to do everything possible to work with the Appropriations Committee to ensure that an extramural peer-reviewed competitive grant program continues to exist at NOAA and is enhanced to become far more significant than it is at present.

Science Advisory Board (SAB) [Sec. 8]

We applaud the inclusion of the Science Advisory Board section in the bill. This board provides necessary input directly to the NOAA Administrator to ensure that NOAA science programs are of the highest quality. *In order that the SAB has the utmost credibility and authority, we believe that appointments should be made at the highest level possible and that this should be stated in this section.*

Reports [Sec. 9]

We support the bill's requirement that the Administrator's report on NOAA's environmental data and information systems [Sec. 9 (a)] be reviewed by the National Academy of Sciences (NAS) [Sec. 9 (a)(2)] and that the Strategic Plan for Scientific Research [Sec. 9 (b)] also be reviewed by the NAS [Sec. 9 (b)(2)]. The expertise that NAS reviewers will bring to these important documents will be of great benefit. Of equal importance is the bill's inclusion of input on the Strategic Plan for Scientific Research from external stakeholders at all levels [Sec. 9 (b)(A)]. As stated above, external expertise will enable NOAA to serve the nation at maximum capacity.

Transition [Sec. 12]

We appreciate and support the stated involvement of the external community in reorganization plan consultation.

In closing, we would like to thank you on behalf of the Weather Coalition members for your efforts to create an Organic Act for NOAA. Such a bill is long overdue. We look forward to working with you and your colleagues to move H.R. 50 through the legislative process.

Sincerely,



Raymond J. Ban
Executive Vice President
The Weather Channel



John T. Snow
Director, Oklahoma Weather Center
and Dean, College of Geosciences at
The University of Oklahoma

Co-Chairs of the Weather Coalition

Enclosure



NASULGC National Association of State Universities and Land-Grant Colleges



CONSORTIUM FOR
OCEANOGRAPHIC RESEARCH
AND EDUCATION

June 20, 2005

The Honorable Vernon Ehlers
Chairman, Subcommittee on Environment, Technology and Standards
Committee on Science
2319 Rayburn House Office Building
Washington, DC 20515-6307

Dear Chairman Ehlers:

On behalf of the nearly 300 institutional members of the Consortium for Oceanographic Research and Education (CORE) and the National Association of State Universities and Land-Grant Colleges (NASULGC), we are writing in support of H.R. 50, the National Oceanic and Atmospheric Administration (NOAA) Act. Our two associations collectively represent the nation's leading marine and atmospheric scientists and educators.

We commend you for acting so quickly to implement one of the primary recommendations of the U.S. Commission on Ocean Policy. We believe the legislation offers a unique opportunity to codify NOAA's missions and authorities and set the direction for creating a unified and integrated organization. H.R. 50 clearly recognizes NOAA as a science-based agency with a corporate view of its research programs and should improve partnerships with academic scientists and among NOAA research and operational programs. As you indicated at House committee hearings on the bill, the primary remaining issue is how the legislation should address marine and coastal management responsibilities.

Among the specific provisions of the bill, we endorse the creation of the new career position of Deputy Assistant Secretary for Science and Education to provide a central point of contact for the external research community. We support the bill's designation of education as a central mission and as part of the portfolio of the science deputy. We also endorse authorization of the Science Advisory Board, as well as requirements for NOAA to develop strategic plans for research and data management, archival and distribution. Communication and interaction with external constituencies is essential for the agency to be effective. Involving the academic research community in these agency review and planning activities, as well as in strengthened NOAA-university partnerships, will help to ensure maximum return on the federal investment in NOAA's research, education and outreach programs.

Thank you for your support of oceanic and atmospheric sciences and for taking this important step to strengthen NOAA and address the policy issues facing our nation. We look forward to working with you towards passage of H.R. 50.

Sincerely and
very respectfully,

R. D. West
President
Consortium for Oceanographic Research
and Education

John T. Snow
Co-Chair
National Association of State Universities and
Land Grant Colleges
Board on Oceans and Atmosphere



SECRETARY
 Hon. Ellen F. Rosenblum
 Multnomah County Courthouse
 1021 SW 4th Avenue, Room 512
 Portland, OR 97239-1123
 (503) 988-5029
 FAX: (503) 276-0966
 ellen.f.rosenblum@ojd.state.or.us

AMERICAN BAR ASSOCIATION

Office of the Secretary
 321 N. Clark Street
 Chicago, Illinois 60610-4714
 (312) 988-5160
 FAX: (312) 988-5153

September 6, 2005

The Honorable Sherwood L. Boehlert
 Chairman
 Committee on Science
 U.S. House of Representatives
 Washington, DC 20515

RE: National Oceans Policy

Dear Mr. Chairman:

At the meeting of the House of Delegates of the American Bar Association held August 8-9, 2005, the enclosed resolution was adopted upon recommendation of the Standing Committee on Environmental Law and the Section of Environment, Energy and Resources. Thus, this resolution now states the official policy of the Association.

We are transmitting it for your information and whatever action you think appropriate. If hearings are scheduled involving the subject matter of this policy, I would appreciate your advising Robert D. Evans, Associate Executive Director of the American Bar Association, Governmental Affairs and Public Services Group, 740 15th Street, NW, Washington, DC 20005-1022, 202/662-1765.

Please advise if you need any further information, have any questions or if we can be of any assistance. Such inquiries should be directed to the Chicago office.

Sincerely yours,

Ellen F. Rosenblum

EFR/nmr
 enclosure

cc:

Ronald Golemon
 Phillip A. Proger
 Elissa C. Lichtenstein
 Michael B. Gerrard
 Robert D. Evans

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
August 8-9, 2005

RECOMMENDATION

RESOLVED, that the American Bar Association urges the United States Government to improve the system of federal regulation of the United States' ocean and coastal resources to better protect the integrity of the nation's marine ecosystems and ensure ecologically sustainable use and development of the nation's marine resources.

FURTHER RESOLVED, that the American Bar Association urges Congress and the President to ensure coordination of the national oceans policy and of federal regulatory authority over the United States' ocean waters and resources by enacting an organic act for the National Oceanic and Atmospheric Administration (NOAA) or some other centralized federal oceans agency that:

- (1) Articulates a national oceans policy to protect the integrity of the nation's marine ecosystems and ensures ecologically sustainable use and development of the nation's marine resources;
- (2) Grants the coordinating agency sufficient discretion and authority, and imposes sufficient reporting requirements upon that agency regarding the state of the oceans and that agency's progress in improving their state, to enable the agency to address and be accountable for addressing marine ecosystem and resource issues currently within its jurisdiction and emerging marine issues not currently within the jurisdiction of any federal entity; and
- (3) Provides for consolidation of additional ocean-related regulatory functions within that agency over time, consistent with its demonstrated capacity to effectively address issues within its jurisdiction.

FURTHER RESOLVED, that the American Bar Association urges Congress to enact legislation requiring a federal entity – whether NOAA, some other centralized federal oceans agency, or the Committee on Ocean Policy in the Executive Office of the President – to coordinate all federal department and agency planning and ocean-related activities to ensure proper implementation of the national oceans policy.

REPORT

I. INTRODUCTION

This American Bar Association resolution encourages Congress and the President to take specific legislative, regulatory, and other actions necessary to improve the structure of our country's domestic management and regulation of its marine resources. As discussed more fully below, a consensus is emerging on the need to reform our national oceans policy. Many of the reforms being contemplated require adjustments of current laws and regulations or the creation of new laws and regulations. In keeping with its commitment to the rule of law, based on the expertise and experience of the Association and its members, the ABA can play a constructive role in identifying, evaluating, and proposing measures that hold particular promise for improving the nation's oceans policy and regulatory schemes. This policy resolution offers such advice, as a first step in assisting efforts to develop and adopt such legal measures.

The Pew and U.S. Ocean Commissions, the Administration, members of Congress, and others have made many proposals for reform of national oceans policy. Comprehensive reform is an enormous undertaking. This resolution does not address every proposal in these recommendations that the ABA might consider productive. Instead, the resolution advocates as an important initial step – without limiting future ABA action – restructuring of the relevant federal agencies in order to better implement and coordinate a viable United States regulatory regime and policy program for the nation's oceans.

II. THE NEED FOR CHANGE IN U.S. OCEAN POLICY

A. The Value of the Oceans and Threats They Face

The United States controls more than four million square miles of ocean, an area larger than the nation's land mass. Resources found within these waters are critical to the nation's economic well-being; they also contribute to its recreational diversity and aesthetic beauty. As the Senate committee noted in its proposed 2004 national oceans policy, "the oceans play a critical role in the global water cycle and in regulating climate, sustain a large part of Earth's biodiversity, provide an important source of food and a wealth of other natural products, act as a frontier for scientific exploration, are critical to national and economic security, and provide a vital means of transportation. The coastal regions of the United States have remarkably high biological productivity and contribute approximately 50 percent of the gross domestic product of the United States."¹ The U.S. Commission on Ocean Policy emphasized in 2004 that ocean-related activities provide direct benefits of \$117 billion to the nation's economy and create over two million jobs.²

This resolution recognizes that human activities can have a profound, negative impact on marine resources and the economic benefits that they provide and that regulatory reforms are necessary

¹ S. 2647, 108th Cong., § 101(1) (as enrolled Nov. 10, 2004).

² U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY: FINAL REPORT, *Executive Summary* xxxii (Sept. 20, 2004).

legal and regulatory regimes that would result in a “coordinated and comprehensive national ocean policy”

On September 20, 2004, the U.S. Commission on Ocean Policy issued its final report to Congress and the President, entitled *An Ocean Blueprint for the 21st Century*. The Report recommends several changes in the structure of the federal government and the coordinated implementation of a national oceans policy in order to better protect the nation’s marine resources.

In the non-governmental public interest sector, in June 2000 the Pew Charitable Trusts brought together a 16-person commission, the Pew Oceans Commission, to complete “the first national review of ocean policies in more than thirty years.”⁷ Under the leadership of its Chair, Leon E. Panetta, the Commission issued its Report, *America’s Living Oceans*, in May 2003. As the title suggests, the Pew Oceans Commission was focused on *living* marine resources, a narrower focus than the U.S. Commission on Ocean Policy took. Nevertheless, in reviewing the current legal regimes relating to such resources, the Pew Oceans Commission stressed the “fragmented nature – institutionally, legislatively, and geographically”⁸ – of the current federal regulatory regime.

Consistent with the views of these Commissions, this ABA resolution recommends one major change to the current U.S. ocean regulatory regime – namely, that Congress improve the nation’s ocean governance to create better integration and coordination of federal regulatory authority.

III. ACHIEVING BETTER INTEGRATION AND COORDINATION OF FEDERAL REGULATORY AUTHORITY

A. The Need for Improved Coordination of Marine Resource Regulation

In order to adequately regulate and safeguard our nation’s marine resources, the federal government’s regulatory authority needs to be better coordinated and integrated and needs to take an ecosystem approach to marine resource management. Restructuring is necessary because current federal regulatory authority is fragmented and uncoordinated. For example, the U.S. Commission on Ocean Policy noted in its Report to Congress that “[a]t the federal level, eleven of fifteen cabinet-level departments and four independent agencies play important roles in the development of ocean and coastal policy. These agencies interact with one another and with state, territorial, tribal, and local authorities in sometimes haphazard ways. Improved communication and coordination would greatly enhance the effectiveness of the nation’s ocean policy.”⁹ Even with its more limited focus on living marine resources, the Pew Oceans Commission similarly characterized the current U.S. ocean governance regime as “[n]ot a system at all,” but rather “a hodgepodge of individual laws that has grown by accretion over the years, often in response to crisis. More than 140 federal laws pertain to the oceans and coasts.

⁷ *Id.* at 2.

⁸ *Id.* at 15-16.

⁹ U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY: FINAL REPORT, *Executive Summary* 5 (Sept. 20, 2004).

NOAA's, or any other ocean agency's, ability to coordinate ocean regulation will require that that agency and all of its marine programs be subject to a single, overarching oceans policy instead of – as is currently the case – myriad statutory missions. Currently, these multiple statutory objectives often are poorly coordinated and often work at cross-purposes. For example, the Marine Mammal Protection Act and the marine aspects of the federal Endangered Species Act both work to protect imperiled marine species, but they often clash with the largely pro-fishing policies written into the Magnuson-Stevens Fishery Conservation and Management Act. No overarching national oceans policy currently guides NOAA's implementation and coordination of these often-conflicting statutory goals, hampering conflict resolution and effectively encouraging potentially unsustainable use of ocean resources. In addition, all three of these statutes address ocean resources primarily on a species-by-species basis, effectively discouraging comprehensive and coordinated regulation of marine resources, especially because none of the legislation that NOAA currently implements provides for complete protection of ocean ecosystems and their resources.

An overarching oceans policy also would structure the discretion that NOAA, or any other centralized federal oceans agency, will need to have and thus would help to ensure that the agency responds to new issues and problems in coordination with its other programs and through means that promote the overall sustainable use of all marine resources and preservation of marine ecosystems. The ABA recognizes that, in order for oceans regulation to remain centralized, coordinated, and effective, NOAA or some other centralized federal ocean agency will need sufficient regulatory flexibility to provide efficient, effective solutions to existing issues and to address new issues and problems that it identifies as knowledge of the ocean and its processes increases. For example, the Pew Oceans Commission recognized the need for a flexible framework of governance to address emerging and nontraditional sources of pollution, such as invasive marine species¹⁵ and the new industry of marine aquaculture.¹⁶ The U.S. Commission on Ocean Policy also noted the emerging problem of marine invasive species.¹⁷

However, unfettered discretion in NOAA or any other central federal oceans agency risks regeneration of the current uncoordinated and fragmented marine regulatory regime, especially if that agency seeks to resolve emerging problems in isolation. To ensure the availability and viability of the nation's marine resources for future generations as well as the current one, this overarching oceans policy should be based on the principle of sustainable use and should take an ecosystem-based approach to marine resource management. As a practical matter, therefore, this new national oceans policy also would redress existing concerns regarding NOAA's commitment to sustainable use of marine resources, should Congress choose to redesign NOAA as the centralized federal oceans agency.

At the same time, NOAA's commitment to that overarching policy could be strengthened by giving NOAA greater autonomy within the Department of Commerce.¹⁸ To effectively commit

¹⁵ PEW OCEANS COMMISSION, AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE: SUMMARY REPORT 28 (May 2003).

¹⁶ *Id.* at 28.

¹⁷ U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY: FINAL REPORT, *Executive Summary* 1 (Sept. 20, 2004).

¹⁸ *See, e.g.*, S. 2647 § 206, 108th Cong. (2004).

means of coordination and implementation of U.S. ocean policy.¹⁹ Moreover, the Administration's *U.S. Ocean Action Plan* indicates that the Committee will convene in early 2005 and "develop an 18-month work plan to address a number of the [U.S. Commission on Ocean Policy's] recommendations, including further actions on ocean, coastal, and Great Lakes issues that address governance principles, filling gaps in legislative authority, and streamlining unnecessary overlapping authorities."²⁰

Nevertheless, if Congress chooses the existing Committee on Ocean Policy as the entity to ensure uniform implementation of United States national oceans policy, that Committee needs statutory authorization and duties. Otherwise, as a creature of an Executive Order, the Committee is subject to modification or dissolution at any time, potentially disrupting continuity in the coordination of ocean resource management.

In addition, the Committee requires continued, adequate congressional funding to properly coordinate information and federal agency actions. Currently, the Committee is funded through the Council on Environmental Quality,²¹ and President Bush has suggested that he may significantly reduce the Committee's funding as part of the 2005 budget process.

Regardless of which coordinating entity Congress authorizes, Congress should both grant that entity sufficient authority to obtain the necessary information and establish a duty for it to report to Congress on a regular basis. For example, one option for achieving pan-federal coordination would be to have the coordinating entity certify that the activities of other federal agencies comply with the national oceans policy. This option could be effective in ensuring coordination when federal agency plans and activities reach the action stage and would also supply the coordinating entity with much of the information necessary for its reports.

As with NOAA's reporting requirements, the reporting requirement for the coordinating entity would be among the most important actions Congress could take to make the entity an effective body for coordinating regulatory implementation of the national oceans policy throughout the federal government. The entity should have the duty to report to Congress regularly on: (1) the effectiveness of efforts to coordinate protection of the nation's marine ecosystems and to ensure ecologically sustainable use and development of its marine resources; and (2) the need for legislative action to enable more effective federal efforts, including adjustments to budgetary allocations. Such information will allow Congress and the Administration to monitor federal efforts to implement the national oceans policy and assess how to adjust those efforts to better ensure the proper management of ocean resources. In the 1990s, NMFS and NOAA chose, of their own volition, to report on the state of the United States' living marine resources every two years,²² and a biannual reporting duty seems a reasonable frequency for the coordinating agency, as well.

¹⁹ President George W. Bush, *Executive Order: Committee on Ocean Policy* §§ 1(a), 4 (Dec. 17, 2004).

²⁰ PRESIDENT GEORGE W. BUSH, *U.S. OCEAN ACTION PLAN* 4 (Dec. 4, 2004); *see also id.* at 6-9 (describing the functions and sub-committees of the Committee in more detail).

²¹ President George W. Bush, *Executive Order: Committee on Ocean Policy* § 4(e) (Dec. 17, 2004).

²² National Marine Fisheries Service, National Oceanic and Atmospheric Administration, *Our Living Oceans: Report on the Status of U.S. Living Marine Resources* v (1999) (noting that this was the fifth such report since 1991).



National Association of Marine Laboratories

June 5, 2006

PRESIDENT
Anthony Michaels
Wrigley Institute for Environmental
Studies
University of Southern California
P.O. Box 5069
Avalon, CA 90704
p 213-740-6780 • f 213-740-7620
tony@usc.edu

The Honorable Sherwood L. Boehlert
Chairman, Committee on Science
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Boehlert:

**CHAIRMAN
COMMITTEE ON PUBLIC POLICY**
James Sanders
Skidaway Institute of Oceanography
10 Ocean Science Circle
Savannah, GA 31411
p 912-598-2400 • f 912-598-2310
jim.sanders@skio.usg.edu

On behalf of the National Association of Marine Laboratories (NAML), I would like to congratulate you and Chairman Ehlers of the Subcommittee on Environment, Technology, and Standards for your leadership with respect to the National Oceanic and Atmospheric Administration (NOAA). We believe that issues related ocean, coastal, and Great Lakes research and education should be elevated to the highest policy level. This legislation is a step in that direction and for that reason NAML supports your latest version of a NOAA Organic Act – H.R. 5450.

PAST PRESIDENT
Jeffrey M. Reutter
F. T. Stone Laboratory
Ohio Sea Grant College Program Ohio
State University
1314 Kinnear Rd.
Columbus, OH 43212
p 614-292-8949 • f 614- 292-4364
reutter.1@osu.edu

NAML is a nonprofit organization of over 120 member institutions employing more than 10,000 scientists, engineers, and professionals and representing ocean, coastal and Great Lakes laboratories stretching from Maine to the Gulf of Mexico to the west coast, from Guam to Bermuda and from Alaska to Puerto Rico. NAML labs support the conduct of high quality ocean, coastal and Great Lakes research and education in the natural and social sciences and the effective use of that science for decision-making on the important issues that face our country. Through national and regional networks, NAML labs –

- Promote and support basic and applied research of the highest quality from the unique perspective of coastal laboratories;
- Assist local, regional and state entities with information related to the use and conservation of marine and coastal resources using ecosystem-based management approaches;
- Recognize, encourage and support the unique and significant role that coastal laboratories play in workforce development, enhancing science/ocean literacy, and in conducting education, outreach, and public service programs for K-12 audiences; and
- Facilitate the exchange of information and relevant expertise between NAML member institutions, government agencies, and the private sector.

TREASURER
Alan M. Kuzirian
Marine Biological Laboratory
7 MBL Street
Woods Hole, MA 02543
p 508-289-7480 • f 508-289-7900
akuziria@mbi.edu

SECRETARY
William M. Wise
Marine Sciences Research Center
Stony Brook University
Stony Brook, NY 11794-5000
p 631-632-8656 • f 631-632-9441
wwise@notes.cc.sunysb.edu

WASHINGTON REPRESENTATIVE
Joel Widder
Lewis-Burke Associates, LLC
1341 G Street, NW, 8th Fl
Washington, DC 20005
p 202-289-7475 • f 202-289-7454
jwidder@lewis-burke.com

We ardently believe that ocean and coastal policy decisions should be based on sound science. Therefore, NAML supports the provisions within H.R. 5450 that create a Science Advisory Board within NOAA, establish a new Deputy Assistant Secretary for Science and Technology leadership position, and re-align NOAA's functions to support ecosystem-based management approaches. These provisions will ensure that emerging problems affecting human health, environmental vigor, coastal industries, and port security, to name a few, will be addressed through strong, reliable scientific research.

In addition, NAML is pleased that an entire section of the bill has been dedicated to ocean, coastal, and Great Lakes research and education. In order to address these issues

The National Association of Marine Laboratories (NAML) is a nonprofit organization of over 120 member institutions representing coastal, marine, and Great Lakes laboratories in every coastal state, stretching from Guam to Bermuda and Alaska to Puerto Rico. Members serve as unique "windows on the sea," providing information on the rich environmental mosaic of coastal habitats as well as offshore oceanic regions and the Great Lakes. NAML member laboratories conduct research and provide a variety of academic, education and public service programs to enable local and regional communities to better understand and manage the ocean, coastal and Great Lake environments. NAML is comprised of three regional associations: the Northeastern Association of Marine and Great Lakes Laboratories (NEAMGLL); the Southern Association of Marine Laboratories (SAML); and the Western Association of Marine Laboratories (WAML).

National Association of Marine Laboratories

appropriately, we need a well-trained and informed workforce. NAML laboratories provide expert training for marine biologists and oceanographers, but their capacity must be enhanced to meet future needs. Therefore, we support the Committee's efforts in enhancing ocean, coastal, and Great Lakes education and outreach programs at all levels. NAML would also like to see NOAA restructured in a way that allows it to be more engaged with academic university science and education through enhancing competitive grant programs, such as the National Sea Grant College Program, the National Undersea Research Program (NURP), and other extramural efforts.

We realize that H.R. 5450 has been designed with the purpose of providing organization for NOAA. However, there are a number of programs and issues – recommended by the U.S. Commission on Ocean Policy – that are important to NAML but were not incorporated in the bill. Although efforts are made in the organic act to coordinate Federal agencies involved in ocean and coastal research and national and international programs regarding coastal, ocean, and Great Lakes observing systems, further investment is still needed to ensure that these systems are sustained and that they incorporate the long-term monitoring efforts of the nation's coastal and marine laboratories. As you know, integrated observations offer critical information on coastal processes necessary for addressing issues, such as the health of humans and marine life, weather and climate nowcasts and forecasts, homeland security, and resource management.

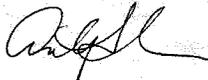
Coastal and marine laboratories have been addressing this need for many years, however, funding has been difficult to sustain. If such a national observing system is adequately funded, however, NAML could be instrumental in its development, thanks to its collective, diverse array of observing platforms and programs, its strong communication network, and specific connectivity projects. NAML enthusiastically supports the recommendations made by the U.S. Commission on Ocean Policy to develop a sustained integrated ocean observing system.

Additionally, it is imperative that the U.S. invest in the infrastructure of its coastal and Great Lakes laboratories. Currently, funds are inadequate in supporting basic laboratory facilities, instrumentation, support systems, computing facilities, and ship access. The final report of the U.S. Commission on Ocean Policy makes several recommendations on the need to develop and enhance the national ocean and coastal infrastructure.

NAML would like to thank you and the Committee for acknowledging the importance of ocean, coastal and Great Lakes research and education and the essential role that NOAA plays in advancing these issues consistent with the agency's mission. NAML is equally supportive of the work of the U.S. Commission on Ocean Policy and believes implementation of its recommendations will ensure that our Nation's oceans and coasts receive adequate support and attention, as their health directly impacts us all. An organic act for NOAA is essential to the modernization of the agency, and we urge the Committee to take the necessary steps in ensuring that this important piece of legislation is implemented.

Thank you for the opportunity to present these views. If NAML can provide any additional information, please do not hesitate to contact me or Mr. Joel Widder, who handles government relations for NAML, at 202-289-7475.

Sincerely,



Anthony F. Michaels
President
National Association of Marine Laboratories



NASULGC National Association of State Universities and Land-Grant Colleges

June 6, 2006

The Honorable Vernon Ehlers
 Chairman, Subcommittee on Environment, Technology and Standards
 Committee on Science
 2319 Rayburn House Office Building
 Washington, DC 20515-6307

Dear Chairman Ehlers:

On behalf of the members of the National Association of State Universities and Land-Grant Colleges (NASULGC) Board on Oceans and Atmosphere, I am writing in support of, the National Oceanic and Atmospheric Administration (NOAA) Act (*H.R. 5450*). The board currently represents approximately 200 members, including some of the nation's most eminent research scientists, chief executive officers of universities, academic deans, and Sea Grant directors.

We commend you for responding to a primary recommendation of the U.S. Commission on Ocean Policy and addressing a longstanding need for providing NOAA with an organic act. We believe H.R. 5450 offers an opportunity to codify NOAA's missions and authorities, set the direction for creating a unified and integrated organization, and provide recognition that NOAA is a science-based agency. Additionally, this legislation is critical to providing NOAA a firm base for justifying budgetary priorities, and illustrates the numerous ways NOAA is an integral agency in maintaining our nation's safety and competitiveness.

Among the specific provisions of the bill, we strongly endorse the creation of the new career position of Deputy Assistant Secretary for Science and Education to provide a central point of contact for the external research and education community. We applaud the bill's designation of education as central to the NOAA mission and as part of the portfolio of the science deputy. We also endorse authorization of the Science Advisory Board, as well as requirements for NOAA to develop strategic plans for research and environmental data information systems. Communication and interaction with external constituencies such as the universities, the private sector – for example in the weather area, and non-governmental organizations, is essential for NOAA to be effective. Involving these external communities in these agency review and planning activities, as well as in strengthened NOAA-university partnerships, will help to ensure maximum return on the federal investment in NOAA's research, education, and outreach programs.

Thank you for your continued and enthusiastic support for oceanic and atmospheric sciences. We urge your colleagues in Congress to support your efforts to strengthen NOAA and address other environmental management policy issues facing our nation. We look forward to working with you towards passage of H.R. 5450.

Sincerely,

John T. Snow
 Co-Chair, Board on Oceans and Atmosphere
 National Association of State Universities and Land-Grant Colleges

XXII. MINORITY VIEWS

Minority views on H.R. 5450 are almost precisely those filed for H.R. 50 because the bill is almost entirely the same text. The Chairman made some small changes in language to accommodate concerns expressed by another Committee and accepted amendments offered by Mr. Costello (on offshoring), Mr. Udall (on cost overruns) and Ms. Jackson-Lee (on NWS support for emergency personnel).

However, two significant amendments offered by Democrats were defeated on party line votes. Mr. Miller (NC) offered an amendment that would have put whistleblower protections in NOAA's organic act for agency scientists. Mr. Costello offered an amendment that would have directed NOAA to provide Congressionally-directed reports to Congress without any outside review or approval by other offices in the Executive branch.

Mr. Miller's amendment comes on the heels of reports that NOAA scientists were told not to discuss global climate change or the possibility that global warming may be a factor in the more deadly hurricane seasons seen in recent years. The Chairman had sent a letter on this very issue earlier this year asking Admiral Lautenbacher, the head of NOAA, to put in place policies that would reaffirm scientists' rights to discuss their science.

The Miller amendment adapted provisions included in H.R. 839, a bill introduced by Mr. Waxman and Mr. Gordon, that are designed to provide some protections to federal scientists from being suppressed or punished for public revelations regarding their work. H.R. 839 was itself the result of widespread reports over the past five years of science being suppressed or actively distorted by political appointees.

While the Bush administration is widely viewed as unusual for the degree of politicization of science in their policy-making, it is likely that the trend will not end with a new administration. Science has become an important area of contention in many, many public policy venues. As the stakes for winning those discussions rise, and as our reliance on scientific findings to help shape outcomes increases, the temptation to skew the science to justify a policy preference will increase as well.

Mr. Miller's amendment recognized these emerging trends and would have provided guarantees for NOAA scientists as part of the organic act of the agency. While opponents of the amendment argued that an organic act was an improper place to insert such guarantees, it is hard to understand what could be more appropriate for a science agency's organic act than to affirm scientific freedoms.

Mr. Costello's amendment was provoked by a recent incident involving another Department of Commerce office, the Technology Administration. The Technology Administration produced a report

at the direction of Congress on workforce globalization in knowledge intensive industries. The report was finished by July 2004 and then went into a black-hole of reviews that included the Secretary of Commerce's office and offices in the White House. A summary was finally released in September 2005.

The Chairman stated that the White House had nothing to do with these reviews, but Minority staff have been told that there was an interagency review process that involved White House actors. We do know that the summary report produced by TA was significantly reduced in length—from 45 pages to just over 12—and the tone of the findings altered in a way that minimized the implications of offshoring American jobs.

The Committee does not know where the new version of the summary was produced, though we do know it was not done by the TA. This specific example illustrates the Minority's concern that the efforts by OMB and others to filter the quality and content of information that comes to Committees of jurisdiction from the agencies under their purview is reducing the quality of Congressional oversight.

The Majority largely evaded discussion of the substance of the amendment, opposing it because Mr. Costello had not shared the amendment 24 hours ahead of the markup. We are hopeful that the next time the Committee holds a markup the Majority will support this small step towards strengthening Congress's oversight powers.

Even without the Miller and Costello amendments, the Minority support H.R. 5450 as a solid basis for an organic act.

With those brief observations, we re-submit our views on H.R. 50, reproduced in their entirety below. Note that the discussion of offshoring below is no longer operative for H.R. 5450 since a new Costello amendment on offshoring was adopted by the Committee. But there are other lessons to be learned from studying the treatment of the original Costello amendment and for that reason we leave it in the text.

INTRODUCTION

The National Oceanic and Atmospheric Administration (NOAA) has operated for over thirty years without the benefit of an organic act. H.R. 50 contains a broad mission statement that encompasses the full range of NOAA's responsibilities. The provisions regarding climate, weather, atmospheric research and education in this Committee's jurisdiction form a solid basis for the continued delivery of high quality forecasting services and research on weather, climate and atmospheric phenomena.

However, until the Committee on Resources completes its consideration of the bill, H.R. 50 remains a job half done. NOAA faces a tremendous challenge in conserving and restoring our coastal areas and our fisheries. We support H.R. 50 as reported by our Committee. We hope the Committee on Resources will produce provisions addressing the ocean and coastal programs that will enable us to maintain our support for this legislation when it comes before the House of Representatives.

NOAA REORGANIZATION

Section 13 of H.R. 50 requires NOAA to publish a Reorganization Plan in the Federal Register within 18 months of the bill's enactment. We commend the Majority for including a mandatory public review process in this section. We believe the Congress as well as the many organizations that maintain an ongoing relationship with NOAA should have an opportunity to shape any reorganization of the Agency that is implemented.

We fully support Section 5 of the bill and concur with the Majority in the view that the National Weather Service should be maintained as a discrete entity in NOAA. We also support H.R. 50's emphasis on NOAA's research programs. In the past, there have been proposals to reorganize NOAA's research laboratories by consolidating them with operational office functions. We believe NOAA's research enterprise should serve the needs of the operational offices, but must also maintain sufficient independence to ensure the continued pursuit of research with mid-to long-term applicability.

FACILITIES CLOSURE AND CONSOLIDATION TRIGGER

H.R. 50 as passed contains language in Section 14 that addresses the issue of possible facility closures. This language, worked out in negotiations prior to the Committee mark-up, sets clear limits on the Administrator's ability to close, consolidate, relocate, subdivide or establish a facility. In a compromise, the language requires a detailed review process associated with any proposed change in a facility that has an annual operating budget of \$5 million or greater, or is a National Weather Service field office. While we were pleased that we were able to draw a clear line around the field offices of NWS, we remain concerned that \$5 million may not mark the right line for requiring a rational, and public, review process prior to a significant change in the status of a facility.

The Committee did no substantive work on the nature of the NOAA complex to fully understand what the impact of the \$5 million trigger would mean. The \$5 million figure was provided by NOAA as a replacement for the original figure of \$1 million adopted during Subcommittee consideration of this legislation in the 108th Congress (in an amendment offered by Mr. Udall). We will continue to work with our colleagues on the Resources Committee to better understand the impact of these provisions and we are prepared to offer an amendment on the floor if we are convinced that the \$5 million figure is inappropriate.

TRANSFER OF EARTH SCIENCES PROGRAMS FROM NASA TO NOAA

H.R. 50 includes a broad mission statement for NOAA. We support a broad mission for NOAA to encompass its present and future research and operational programs. However, the broad mission statement should not be viewed as an open invitation to transfer programs and responsibilities from other federal agencies to NOAA. Section 12 of H.R. 50 includes a savings clause indicating that nothing in H.R. 50 authorizes or prohibits the transfer of any program, function or responsibility to NOAA. We believe that any transfer of responsibilities or programs to NOAA from other federal agencies must only occur in accordance with a transition plan and

when additional resources have been identified and allocated to NOAA's budget to support the transfer and when a programmatic transfer is appropriately justified.

Section 16 of H.R. 50 addresses ongoing problems with satellite development and procurement at NOAA. In addition to the problems NOAA is experiencing, NASA's plans to postpone, terminate and restructure a number of earth sciences missions also have an impact on NOAA. For example, NASA's decision to cancel a dedicated Landsat gap-filler mission has accelerated the schedule for incorporating the Landsat imager on NOAA's new polar satellite, NPOESS. The partnership in earth sciences between NOAA and NASA should continue with sufficient resources provided by each agency to ensure continuity of progress in our global monitoring capability and our earth sciences program.

OUTSOURCING

The Administration has made outsourcing of federal jobs a priority through its aggressive implementation of OMB Circular A-76. The continued trends of increased outsourcing of jobs overseas and the decline in manufacturing jobs here in the U.S. have eroded the standard of living for many U.S. citizens. In order to emphasize the importance of using taxpayer funds to maintain taxpayer jobs and standards of living, Rep. Costello offered an amendment to ensure that any federal job that is converted to a private sector job does not result in the transfer of a U.S. job to a non-U.S. job. Rep. Costello's amendment also directed NOAA to "buy American" when it is possible to do so.

A second-order amendment offered by Chairman Boehlert transformed Rep. Costello's provision from one which emphasized the protection of American jobs to one that emphasized the protection of trade agreements. The Chairman's amendment reads, "The provisions of this section shall not apply to the extent that they are inconsistent with obligations of the United States under international agreements." The amendment was adopted on a near party line vote of 18 to 17, with Mr. Rohrabacher joining 16 Democrats. The Chairman's language pushes the Administration to err on the side of protecting trade agreements at the expense of American jobs. In the balancing of interests, we believe that emphasis is exactly backwards. It is unfortunate the Majority believes that trade agreements deserve a higher level of protection than American jobs. We continue to believe the Costello amendment should have been accepted without the Chairman's amendment.

CONCLUSION

The Committee has provided a solid starting point for the development of a NOAA Organic Act. We also look forward to working with our colleagues on the Committee on Resources to further develop H.R. 50 into a comprehensive organic act that will appropriately define the missions and functions of this important agency.

BART GORDON.
 JERRY F. COSTELLO.
 EDDIE BERNICE JOHNSON.
 LYNN WOOLSEY.

DARLENE HOOLEY.
MARK UDALL.
DAVID WU.
MICHAEL M. HONDA.
BRAD MILLER.
LINCOLN DAVIS.
DANIEL LIPINSKI.
SHEILA JACKSON-LEE.
BRAD SHERMAN.
BRIAN BAIRD.
JIM COSTA.
AL GREEN.
CHARLIE MELANCON.
DENNIS MOORE.
DORIS O. MATSUI.

**XXIII. PROCEEDINGS OF THE MARKUP BY
THE SUBCOMMITTEE ON ENVIRONMENT,
TECHNOLOGY, AND STANDARDS ON H.R. 50,
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION ACT**

TUESDAY, MARCH 15, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT, TECHNOLOGY,
AND STANDARDS,
COMMITTEE ON SCIENCE,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:04 p.m., in Room 2318 of the Rayburn House Office Building, Hon. Vernon Ehlers [Chairman of the Subcommittee] presiding.

Chairman EHLERS. Good afternoon. I am pleased to welcome you to the first—Subcommittee's first markup of the year. Pursuant to notice, we will consider three important measures today that together underlie the breadth of jurisdiction of the subcommittee. Given the number of bills we need to get through today, my opening statement will be brief, and then I will explain each bill in more detail as it is brought up.

First we will consider H.R. 50, the *National Oceanic and Atmospheric Administration Act*. This bill, a reintroduction of legislation I authored last Congress, would create an organic act for NOAA. This is a term that puzzled me when I first got here because, to me, organic had something to do with organic chemistry or organic gardening or organic food stores; but an organic act in the Congress is an act which is an original act establishing an agency and outlining its functions and purposes. This organic act for NOAA would provide the underlying statute of missions and functions to be carried out by NOAA, something that has not existed since the agency was formed by executive order in 1970—established by executive order. It has been modified by executive order and by law since, but we have never had an organic act, so today we are trying to remedy that.

Next, we will consider H.R. 250, the *Manufacturing Technology Competitiveness Act*. This bill is nearly identical to legislation I introduced last Congress and which passed the House last July. Unfortunately, the bill did not receive action in the Senate, and so we are proposing it once again.

The main focus of the bill is an authorization for the Department of Commerce Manufacturing Extension Partnership Program.

And finally, we will consider H.R. 798, the *Methamphetamine Remediation Research Act*. This bill, introduced by Ranking Member Gordon, Representative Calvert, and Chairman Boehlert, would create a research program at the Environmental Protection Agency to study the harmful effects of methamphetamine and to provide important voluntary guidelines for states to use as they try to clean up former meth laboratories. I suspect many people are not aware

of the extent of this problem and the dangers involved, but meth labs are springing up, primarily in rural areas, particularly wooded areas—and I know Oregon is having considerable problems with them; we have in Michigan as well because both states have substantial wooded areas where you can conceal a shack and try to manufacture methamphetamine.

There are several aspects of danger there. One is that very frequently, because of the danger of the components—and in fact, the explosive nature of the components—frequently an explosion occurs, which obliterates the shack and the people within it, so we lose a number of young people every year who are engaged in this dangerous pursuit. Even more frequently, they use a particular structure for this; it becomes very—it collects a lot of toxic materials because there is a great deal of toxic material going into the production of methamphetamine. They actually become not quite superfund sites, but pretty close to it, and local governments are having a great deal of trouble cleaning them up to a reasonable standard, and the expense is substantial for small units of government.

Now, I am pleased that Mr. Wu has introduced this bill, which will deal with this problem, not only in Oregon and Michigan, but throughout the country. With that, I am proud to introduce Mr. Wu from Oregon, the Subcommittee's new Ranking Member. I have worked before with Mr. Wu on a number of issues. I know he has a strong interest and considerable experience in the issues before the Subcommittee. I am very happy that he has joined us in this position.

I want to thank Mr. Udall. He is on the way but not here yet. I want to thank Mr. Udall from Colorado, who was a Ranking Member for the past four years. We had a very productive relationship, and now he is Ranking Member of the Space Subcommittee, where spacey Members end up. And I am sorry to lose him for that purpose, but delighted that Mr. Wu is his replacement. I am pleased that Mr. Udall will continue to be a Member of the Subcommittee.

I am now pleased to yield to Mr. Wu for an opening statement.
[The prepared statement of Chairman Ehlers follows:]

PREPARED STATEMENT OF CHAIRMAN VERNON J. EHLERS

Good afternoon! Welcome to the Subcommittee's first markup of the year. Pursuant to notice, we will consider three important measures today that together underlie the breadth of jurisdiction of the Subcommittee. Given the number of bills we need to get through today, my opening statement will be brief and then I will explain each bill in more detail as it is brought up.

First, we will consider H.R. 50, the *National Oceanic and Atmospheric Administration (NOAA) Act*. This bill, a reintroduction of legislation I authored last Congress, would create an "organic act" for NOAA. This organic act would provide the underlying statute of missions and functions to be carried out by the NOAA, something that has not existed since the agency was formed by executive order in 1970.

Next, we will consider H.R. 250, the *Manufacturing Technology Competitiveness Act*. This bill is nearly identical to legislation I introduced last Congress, and which passed the House last July. The main focus of the bill is an authorization for the Department of Commerce's Manufacturing Extension Partnership (MEP) program.

And finally, we will consider H.R. 798, the *Methamphetamine Remediation Research Act*. This bill, introduced by Ranking Member Gordon, Representative Calvert and Chairman Boehlert, would create a research program at the Environmental Protection Agency (EPA) to study the harmful effects of methamphetamine and pro-

vide important voluntary guidelines for states to use as they try to clean up former "meth" laboratories.

I am proud to introduce Mr. Wu from Oregon, the Subcommittee's new Ranking Member. I know that Mr. Wu has a strong interest and considerable experience in the issues before the Subcommittee, and I am very happy that he has joined us. I want to thank Mr. Udall, from Colorado, who was our Ranking Member for the past four years. We had a very productive relationship and now he is the Ranking Member of our Space Subcommittee. I am pleased he will still be a Member of our subcommittee.

I now yield to Mr. Wu for an opening statement.

Mr. WU. Thank you very much, Mr. Chairman. And I look forward to working with you in a very productive relationship concerning the broad range of this subcommittee's jurisdiction in technology transfer, competitiveness, and other crucial issues for our research, our tech transfer, and our economy. And in your spirit, Mr. Chairman, I will be brief, even laconic. I am very pleased to be here with you to participate in our subcommittee's first markup, markup of the *NOAA Organic Act*, the *Manufacturing Technology Competitiveness Act*, and the *Methamphetamine Remediation Research Act*. And with that, Mr. Chairman, I yield back the balance of my time.

Chairman EHLERS. I thank the gentleman and would just correct myself. I mentioned this was your bill; it is actually Mr. Gordon's bill, joined with the methamphetamine. But it is certainly a bill which is worthy of your attention.

Mister—without object, all Members—all other Members may place statements in the records, and I ask unanimous consent to recess the Subcommittee at any point, and without objection it is so ordered; I hear no objection.

We will now consider the bill H.R. 50, the *National Oceanic and Atmospheric Administration Act*. This bill is identical to the legislation that I introduced last year and that passed the Subcommittee at the end of the Congressional session. Unfortunately, time ran out before we could consider it at Full Committee. H.R. 50 provides NOAA with an organic act. An organic act defines the overall missions and functions of an agency. As an example, H.R. 50 states that the mission of NOAA is, first, to understand and predict changes in the Earth's oceans and atmosphere; second, to conserve and manage coastal, ocean, and great lakes ecosystems; and third, to educate the public about these topics. The bill also describes the specific functions NOAA should carry out to fulfill its mission, such as issuing weather forecasts and warnings.

I should note that H.R. 50 contains very little language about fisheries or research management at NOAA because those topics are under the jurisdiction of the Resources Committee, and particularly the Subcommittee chaired by my colleague from Maryland, Mr. Gilchrest, who is also, now, a Member of this committee. I look forward to working with Mr. Gilchrest, my other colleagues, and the administration, as well as with the full Resources Committee, to pass truly comprehensive legislation for NOAA.

I am pleased to recognize Mr. Wu if he wishes to make any comments about this bill.

Mr. WU. Thank you, Mr. Chairman. I fully support your interest in moving forward to develop legislation that will provide NOAA with a statutory foundation to guide its missions and functions. I congratulate you for introducing H.R. 50.

NOAA is this nation's lead agency charged with conserving and managing our coastal and oceanic resources. NOAA also plays a vital role in public safety through the programs of the National Weather Service to issue weather forecasts and warnings. We must ensure that NOAA has the resources and authorities it needs to meet its statutory responsibilities and to accomplish its resource management and public safety missions.

H.R. 50 makes a good start on this effort, and I look forward to working with you further before this legislation is considered by the full House. And I might add that I also look forward to working with you and Mr. Gilchrest to have a more robust component with respect to fisheries, which are of great interest to us on either coast, and I assume, also, in the Great Lakes.

With that, Mr. Chairman, I yield back the balance of my time.
[The prepared statement of Mr. Wu follows:]

PREPARED STATEMENT OF REPRESENTATIVE DAVID WU

Good afternoon, everyone. Mr. Chairman, I am pleased to be here this afternoon to participate in our subcommittee's first markup of legislation. I realize your interest in moving forward to develop legislation that will provide NOAA with the statutory foundation to guide its missions and functions. I congratulate you for introducing H.R. 50.

NOAA is this nation's lead agency charged with conserving and managing our coastal and oceanic resources. NOAA also plays a vital role in public safety through the programs of the National Weather Service to issue weather forecasts and warnings.

We must ensure that NOAA has the resources and authorities it needs to meet its statutory responsibilities and to accomplish its resource management and public safety missions.

H.R. 50 makes a good start on this effort, and I look forward to working with you further before this legislation is considered by the Full Science Committee.

Chairman EHLERS. I thank you for your comments, and let me just note the presence of Mr. Udall. Mr. Udall, I paid you several compliments in your absence. I won't repeat them, but I expressed my appreciation for your good service as Ranking Member of this subcommittee. We will miss you, and I am happy that you are going to continue to be on the Subcommittee.

Mr. UDALL. Thank you, Mr. Chairman. In the spirit of the old adage, you never get in trouble for something you didn't say. I would just say I think probably those compliments are undeserved, and I do look forward to working with you as a Member of the Committee, and with Ranking Member Wu. Thank you.

Chairman EHLERS. I thank the gentleman for his comments, and I disagree with him; they are deserved.

I ask unanimous consent that the bill is considered as read and open to amendment at any point and that the Members proceed with the amendments in the order of the roster. Without objection, so ordered.

The first amendment on the roster is an en bloc amendment offered by Mr. Wu. Are you ready to proceed with your amendment?

Mr. WU. Yes, Mr. Chairman. I have amendment at the desk.

Chairman EHLERS. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 50 offered by Mr. Wu of Oregon.

Chairman EHLERS. I ask unanimous consent to dispense with the reading. Without objection, so ordered.

Mr. WU. My amendment, Mr. Chairman, does three things. The first part of my amendment clarifies current policy of having the National Weather Service serve as the Nation's source for issuing forecasts and warnings. The public safety function performed by the National Weather Service should not be contracted to outside providers. There are numerous commercial weather providers that also have an important role to play in weather forecasting. They and the National Weather Service have developed a productive partnership that serves our nation well. This language ensures that it will continue to do so.

The second part of my amendment ensures the continuance of the agreements between NOAA and its established employee organization. The final part of my amendment requires NOAA to engage the agency's client base, this Congress, and their own employees in the development of any organizational changes.

NOAA partners include State and local governments, commercial interests in recreation, fishing, navigation, and weather forecasting, the research and education communities, and conservation organizations. NOAA reorganizations should not occur without the involvement of the many organizations that work with NOAA.

Mr. Chairman, I understand that you will be supporting my amendment. I yield back.

Chairman EHLERS. I thank Mr. Wu for working with us on his amendment. It is a worthy amendment. I believe it strengthens the bill, and the Chair is pleased to support this amendment.

Is there any further discussion on this amendment? None?

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Chairman EHLERS. The gentleman may proceed for five minutes.

Mr. UDALL. Mr. Chairman, in the interest of moving the legislation forward, I don't have an amendment, but I would like clarification on an issue of concern to me, and I believe to all of the Members of the Committee. The mission we are defining for NOAA is a broad one, and I certainly agree that NOAA's mission should be defined broadly to include the many important operation and research functions it performs for our nation. However, I am concerned about the potential for overlap with NASA's mission. And as you know, reports have surfaced at various times, indicating the possibility that NASA's Earth science programs might be transferred to NOAA. And I was curious if it was your intention to endorse or facilitate that type of transfer through this legislation.

Chairman EHLERS.—with your comment.

Mr. UDALL. I would be happy to yield to the—

Chairman EHLERS. I thank gentleman for yielding.

There is no intent in this bill to favor that one way or the other and no plans to do any such thing. It is true there is overlap between NOAA and NASA. There is also overlap between NOAA and the armed services with the new satellite program. And I think—my personal opinion is that there is going to have to be much greater effort made in NOAA—and I hope it will occur under this bill—to work more closely with other agencies with which they have joint interests. And that, of course, includes NASA as well as the armed forces and perhaps other government agencies, perhaps the Department of Interior as an example. So my hope is that operating under an organic act, it will be easier for them to develop

interagency agreements to deal with these issues. At this point, it has been pretty much on an ad hoc basis, as far as I can see, particularly with the satellite program.

So there is no ulterior motive in the bill to deal with this, and so far as I know, nothing in the bill would encourage that sort of thing. But it would be something that we would be involved in judging on a case-by-case basis, as they present.

Mr. UDALL. I thank the Chairman. And reclaiming my time, if I could ask just one follow-on question?

I understand we are planning a hearing on NASA's Earth sciences program in the near future, and it would be my hope that—and this is the thrust of my question—we would have that hearing before we markup H.R. 50 in the Full Committee. And I would be happy to yield to the gentleman again.

Chairman EHLERS. I assume that hearing would be on the Space Subcommittee rather than this subcommittee, so I would suggest that since you are on that committee that you make that request known to the Chairman. I would not want to hold up H.R. 50 at any point, but if that Subcommittee wishes to conduct such a hearing early on, that would be most helpful.

Mr. UDALL. Reclaiming my time, I hear the gentleman suggesting that he would be amenable to the Space Subcommittee taking a look at that this, but you don't want to slow down the process that H.R. 50—

Chairman EHLERS. The gentleman is correct, and that is based on consideration of how rapidly or not rapidly bills tend to move through Committee—through the House, through the Senate, and I want to make certain that this gets passed during this Congress and preferably this year if at all possible. But I would be happy to work with the Chair of the Space Subcommittee on a joint hearing if he would wish to do it.

Mr. UDALL. That seems to be the general thrust here, and I will talk to Chairman Calvert as well, and I look forward to working with you, and we will prove, Mr. Chairman, Ross Perot wrong where he said a committee is a cul-de-sac down which great ideas go to die. So we have, I think a bigger load to shoulder here when it comes to proving Mr. Perot wrong.

Chairman EHLERS. Well, you also have to remember that was a goal of the founders of this nation, to make a structure so complicated that very few things would pass, assuming that only the best would survive. But since this bill is so superb, we are not worried about what the process might do to it.

Any further comments on the amendment? Hearing none, the vote occurs on the amendment. All in favor, say aye. Those opposed say no. The yeas have it, and the amendment is agreed to.

Are there any other amendments? Hearing none, the question is on the bill. H.R. 50, *National Oceanic and Atmospheric Administration Act*, as amended—all those in favor will say aye. All those opposed will say no. In the opinion of the Chair, the ayes have it.

I will now recognize Mr. Wu for a motion.

Mr. WU. Thank you, Mr. Chairman. Mr. Chairman, I move that the Subcommittee favorably report the bill H.R. 50, as amended, to the Full Committee. Further, I ask unanimous consent that the staff be instructed to make all necessary technical and conforming

changes to the bill as amended, in accordance with the recommendations of the Subcommittee.

Chairman EHLERS. The question is on the motion to report the bill as amended favorably. Those in favor of the motion will signify by saying aye. Opposed, no. The motion carries, and the bill favorably reported. Without object, the motion to reconsider is laid upon the table.

I thank the Committee very much.

Without objection, the motion to reconsider is laid upon the table. I wish to express my appreciation to all of the Members of the Committee for the rapid action on this group of bills and the good spirit in which we have all approached these bills and trying to improve them. So I appreciate your consideration. I thank the Committee Members for their attendance. This concludes our subcommittee markup.

[Whereupon, at 1:46 p.m., the Subcommittee was adjourned.]

Appendix:

H.R. 50, SECTION-BY-SECTION ANALYSIS, AMENDMENT ROSTER

109TH CONGRESS
1ST SESSION

H. R. 50

To provide for the National Oceanic and Atmospheric Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mr. EHLERS introduced the following bill; which was referred to the Committee on Science, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the National Oceanic and Atmospheric Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Oceanic and
5 Atmospheric Administration Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) The term “Administration” means the Na-
9 tional Oceanic and Atmospheric Administration.

1 (2) The term “Administrator” means the Ad-
2 ministrator of the National Oceanic and Atmos-
3 pheric Administration.

4 (3) The term “Secretary” means the Secretary
5 of Commerce.

6 **SEC. 3. NATIONAL OCEANIC AND ATMOSPHERIC ADMINIS-**
7 **TRATION.**

8 (a) IN GENERAL.—There shall be in the Department
9 of Commerce an agency known as the National Oceanic
10 and Atmospheric Administration.

11 (b) MISSION.—The mission of the Administration is
12 to understand the systems of the Earth’s oceans and at-
13 mosphere and predict changes in the Earth’s oceans and
14 atmosphere and the effects of such changes on the land
15 environment, to conserve and manage coastal, ocean, and
16 Great Lakes ecosystems to meet national economic, social,
17 and environmental needs, and to educate the public about
18 these topics.

19 (c) FUNCTIONS.—The functions of the Administra-
20 tion shall include—

21 (1) collecting, through observation and other
22 means, communicating, analyzing, processing, and
23 disseminating comprehensive scientific data and in-
24 formation about weather and climate, solar and geo-
25 physical events on the Sun and in the space environ-

1 ment, and about the coasts, oceans, Great Lakes,
2 upper reaches of estuaries, and hydrologic systems;
3 (2) operating and maintaining a system for the
4 storage, retrieval, and dissemination of data relating
5 to weather and climate, solar and geophysical events
6 on the Sun and in the space environment, and about
7 the coasts, oceans, Great Lakes, upper reaches of es-
8 tuaries, and hydrologic systems;
9 (3) conducting and supporting basic and ap-
10 plied research and development of technology as may
11 be necessary to carry out the mission described in
12 subsection (b);
13 (4) issuing weather, water, climate, and space
14 weather forecasts and warnings;
15 (5) coordinating efforts of Federal agencies in
16 support of national and international programs with
17 respect to meteorological services;
18 (6) understanding the science of Earth's cli-
19 mate and related systems, and undertaking research,
20 development, and demonstration to enhance society's
21 ability to plan for and respond to climate variability
22 and change;
23 (7) protecting, restoring, and managing the use
24 of the coasts, oceans, and Great Lakes through eco-

1 system-based research, development, demonstration,
2 and management;

3 (8) coordinating efforts of Federal agencies in
4 support of national and international programs with
5 respect to integrated Earth observing systems;

6 (9) administering public outreach and education
7 programs and services to increase scientific and en-
8 vironmental literacy about weather and climate,
9 solar and geophysical events on the Sun and in the
10 space environment, and the coasts, oceans, Great
11 Lakes, upper reaches of estuaries, and hydrologic
12 systems;

13 (10) cooperating with international organiza-
14 tions and scientists in bilateral and multilateral re-
15 search, development, conservation, and service pro-
16 grams related to coastal, ocean, Great Lakes, weath-
17 er, and climate issues; and

18 (11) any other function assigned to the Admin-
19 istration by law.

20 **SEC. 4. ADMINISTRATION LEADERSHIP.**

21 (a) ADMINISTRATOR.—

22 (1) IN GENERAL.—There shall be, as the Ad-
23 ministrator of the Administration, an Under Sec-
24 retary of Commerce for Oceans and Atmosphere.
25 The Administrator shall be appointed by the Presi-

1 dent, by and with the advice and consent of the Sen-
2 ate. The Administrator shall be paid at the rate of
3 basic pay for level III of the Executive Schedule.

4 (2) FUNCTIONS.—The Administrator shall per-
5 form such functions and exercise such powers with
6 respect to the Administration as the Secretary may
7 prescribe, including—

8 (A) general management;

9 (B) policy development and guidance;

10 (C) budget formulation, guidance, and exe-
11 cution; and

12 (D) serving as the Department of Com-
13 merce official for all ocean and atmosphere
14 issues with other elements of the Department of
15 Commerce and with other Federal agencies,
16 State, tribal, and local governments, and the
17 public.

18 (3) DELEGATION OF AUTHORITY.—The Admin-
19 istrator may, except as otherwise prohibited by
20 law—

21 (A) delegate any functions, powers, or du-
22 ties of the Administrator to such officers and
23 employees of the Administration as the Admin-
24 istrator may designate; and

1 (B) authorize such successive redelegations
2 of such functions, powers, or duties within the
3 Administration as the Administrator considers
4 necessary or appropriate.

5 (4) AUTHORITIES.—The Administrator shall
6 have the authority to enter into and perform such
7 contracts, leases, grants, and cooperative agreements
8 with Federal agencies, State and local governments,
9 Indian tribes, international organizations, foreign
10 governments, educational institutions, nonprofit or-
11 ganizations, and commercial organizations, as may
12 be necessary and proper to carry out the Adminis-
13 tration's functions under this Act or as otherwise
14 provided by law.

15 (b) ASSISTANT SECRETARY FOR OCEANS AND AT-
16 MOSPHERE.—

17 (1) IN GENERAL.—There shall be, as Deputy
18 Administrator of the Administration, an Assistant
19 Secretary of Commerce for Oceans and Atmosphere.
20 The Assistant Secretary shall be appointed by the
21 President, by and with the advice and consent of the
22 Senate. The Assistant Secretary shall be the Admin-
23 istrator's first assistant for purposes of subchapter
24 III of chapter 33 of title 5, United States Code. The

1 Assistant Secretary shall be paid at the rate of basic
2 pay for level IV of the Executive Schedule.

3 (2) FUNCTIONS.—The Assistant Secretary shall
4 perform such functions and exercise such powers as
5 the Secretary or Administrator may prescribe and
6 shall act as Administrator during the absence or dis-
7 ability of the Administrator or in the event of a va-
8 cancy in the office of Administrator.

9 (c) DEPUTY UNDER SECRETARY FOR OCEANS AND
10 ATMOSPHERE.—

11 (1) IN GENERAL.—There shall, be as the Chief
12 Operating Officer of the Administration, a Deputy
13 Under Secretary of Commerce for Oceans and At-
14 mosphere. The Deputy Under Secretary shall be ap-
15 pointed by the Secretary. The position of Deputy
16 Under Secretary shall be a Senior Executive Service
17 position authorized under section 3133 of title 5,
18 United States Code.

19 (2) FUNCTIONS.—The Deputy Under Sec-
20 retary—

21 (A) shall ensure the timely and effective
22 implementation of Administration policies and
23 objectives;

24 (B) shall be responsible for all aspects of
25 the Administration's operations and manage-

1 ment, including budget, financial operations, in-
2 formation services, facilities, human resources,
3 procurements, and associated services;

4 (C) in the absence or disability of the As-
5 sistant Secretary, or in the event of a vacancy
6 in such position, shall act in that position; and

7 (D) shall perform such other duties as the
8 Administrator shall prescribe.

9 (d) DEPUTY ASSISTANT SECRETARY FOR OCEANS
10 AND ATMOSPHERE.—

11 (1) IN GENERAL.—There shall be in the Admin-
12 istration a Deputy Assistant Secretary for Oceans
13 and Atmosphere. The Deputy Assistant Secretary
14 for Oceans and Atmosphere shall be appointed by
15 the Secretary. The position of Deputy Assistant Sec-
16 retary for Oceans and Atmosphere shall be a Senior
17 Executive Service position authorized under section
18 3133 of title 5, United States Code.

19 (2) FUNCTIONS.—The Deputy Assistant Sec-
20 retary for Oceans and Atmosphere—

21 (A) shall serve as an advisor to the Admin-
22 istrator on program and policy issues related to
23 environmental policy, strategic planning, and
24 program analysis;

1 (B) shall ensure the timely and effective
2 implementation of Administration policies and
3 objectives related to environmental policy, stra-
4 tegic planning, and program analysis; and

5 (C) shall perform such other duties as the
6 Administrator shall prescribe.

7 (e) DEPUTY ASSISTANT SECRETARY FOR SCIENCE,
8 TECHNOLOGY, EDUCATION, AND OUTREACH.—

9 (1) IN GENERAL.—There shall be in the Admin-
10 istration a Deputy Assistant Secretary for Science,
11 Technology, Education, and Outreach, who shall co-
12 ordinate and oversee the science and technology ac-
13 tivities of the Administration and ensure that Ad-
14 ministration decisions are informed by the results of
15 appropriate and relevant research. The Deputy As-
16 sistant Secretary for Science, Technology, Edu-
17 cation, and Outreach shall be appointed by the Sec-
18 retary. The position of Deputy Assistant Secretary
19 for Science, Technology, Education, and Outreach
20 shall be a Senior Executive Service career reserved
21 position as defined in section 3132(a)(8) of title 5,
22 United States Code.

23 (2) FUNCTIONS.—The Deputy Assistant Sec-
24 retary for Science, Technology, Education, and Out-
25 reach shall—

- 1 (A) coordinate research and development
2 activities across the Administration, including
3 coordination of research and development bud-
4 gets;
- 5 (B) advise the Administrator on how re-
6 search activities can be applied to operational
7 use;
- 8 (C) provide advice to the Administrator re-
9 garding science and technology issues and their
10 relationship to Administration policies, proce-
11 dures, and decisions;
- 12 (D) participate in developing the Adminis-
13 tration's strategic plans and policies and review
14 the science and technology aspects of those
15 plans and policies;
- 16 (E) develop and oversee guidelines for the
17 dissemination to the public of results from re-
18 search and development conducted, sponsored,
19 or cited by the Administration;
- 20 (F) serve as liaison to the nongovern-
21 mental science and technology community;
- 22 (G) develop and oversee guidelines for peer
23 review of science and technology research spon-
24 sored by the Administration;

1 (H) oversee implementation of the stra-
2 tegic plan for science and technology research,
3 development, and demonstration required under
4 section 10(b);

5 (I) oversee management of research labora-
6 tories in the Administration;

7 (J) oversee the research and education
8 programs of the Administration; and

9 (K) perform such other duties as the Sec-
10 retary or Administrator shall prescribe.

11 (3) QUALIFICATIONS.—An individual appointed
12 under paragraph (1) shall be a person who has an
13 outstanding science and technology background, in-
14 cluding research accomplishments, scientific reputa-
15 tion, and public policy experience.

16 (4) CONSULTATION.—Before appointing an in-
17 dividual under paragraph (1), the Secretary shall
18 consult with the National Academy of Sciences, the
19 Science Advisory Board of the Administration, and
20 other appropriate scientific organizations.

21 (f) GENERAL COUNSEL.—

22 (1) IN GENERAL.—There shall be in the Admin-
23 istration a General Counsel. The General Counsel
24 shall be appointed by the Secretary. The General

1 Counsel shall be paid at the rate of basic pay for
2 level V of the Executive Schedule.

3 (2) FUNCTIONS.—The General Counsel—

4 (A) shall serve as the chief legal officer of
5 the Administration for all legal matters that
6 arise in connection with the conduct of the
7 functions of the Administration; and

8 (B) shall perform such other functions and
9 exercise such powers as the Secretary or Ad-
10 ministrator may prescribe.

11 (g) CONTINUATION OF SERVICE.—Any individual
12 serving on the effective date of this Act in a position pro-
13 vided for in this Act may continue to serve in that position
14 until a successor is appointed under this Act. Nothing in
15 this Act shall be construed to require the appointment of
16 a successor under this Act sooner than would have been
17 required under law as in effect before the effective date
18 of this Act.

19 **SEC. 5. NATIONAL WEATHER SERVICE.**

20 (a) IN GENERAL.—The Secretary shall maintain
21 within the Administration a National Weather Service.

22 (b) MISSION.—The mission of the National Weather
23 Service is to provide weather, water, climate, and space
24 weather forecasts and warnings for the United States, its
25 territories, adjacent waters, and ocean areas for the pro-

1 tection of life and property and the enhancement of the
2 national economy.

3 (c) GOALS.—The goals of the National Weather Serv-
4 ice shall include—

5 (1) to provide timely and accurate weather,
6 water, climate, and space weather forecasts; and

7 (2) to provide timely and accurate warnings of
8 weather, water, and climate natural hazards, and of
9 space weather hazards.

10 (d) FUNCTIONS.—The functions of the National
11 Weather Service shall include—

12 (1) maintaining a network of local weather fore-
13 east offices;

14 (2) maintaining a network of observation sys-
15 tems to collect weather and climate data;

16 (3) operating national centers to deliver guid-
17 ance, forecasts, warnings, and analysis about weath-
18 er, water, climate, and space weather phenomena for
19 the Administration and the public;

20 (4) conducting and supporting applied research
21 to facilitate the rapid incorporation of weather and
22 climate science advances into operational tools; and

23 (5) other functions to serve the mission of the
24 National Weather Service.

1 (c) PUBLIC-PRIVATE PARTNERSHIPS.—Not less than
2 once every 5 years, the Secretary shall develop and submit
3 to Congress a policy that defines processes for making deci-
4 sions about the roles of the National Weather Service, the
5 private sector, and the academic community in providing
6 weather-related and climate-related products, tech-
7 nologies, and services. The first such policy shall be com-
8 pleted not less than 12 months after the date of enactment
9 of this Act. At least 90 days before each submission of
10 the policy to Congress, the Secretary shall publish the pol-
11 icy in the Federal Register for a public comment period
12 of not less than 60 days.

13 **SEC. 6. OPERATIONS AND SERVICES.**

14 (a) IN GENERAL.—The Secretary shall maintain
15 within the Administration programs to support operations
16 of ongoing data collection and direct services and products
17 regarding satellite, observations, and coastal, ocean, and
18 Great Lakes information.

19 (b) FUNCTIONS.—To accomplish the mission de-
20 scribed in section 3(b), and in addition to the functions
21 described in section 3(c), the operations and service as-
22 pects of the Administration shall include—

23 (1) acquiring, managing, and operating coastal,
24 ocean, and Great Lakes observing systems;

- 1 (2) ensuring the availability of a global Earth-
2 observing system, integrating remote sensing and in
3 situ assets that provide critical data needed to sup-
4 port the mission of the Administration, and pro-
5 viding that data to decisionmakers and the public;
- 6 (3) developing, acquiring, and managing oper-
7 ational environmental satellite constellations and as-
8 sociated ground control and data acquisition facili-
9 ties to support the mission of the Administration;
- 10 (4) managing and distributing atmospheric,
11 geophysical, and marine data and data products for
12 the Administration through national environmental
13 data centers;
- 14 (5) providing for long-term stewardship of envi-
15 ronmental data, products, and information via data
16 processing, storage, reanalysis, reprocessing, and ar-
17 chive facilities;
- 18 (6) promoting widespread availability of envi-
19 ronmental data and information through full and
20 open access and exchange to the greatest extent pos-
21 sible;
- 22 (7) issuing licenses for private remote sensing
23 space systems under the Land Remote Sensing Pol-
24 icy Act of 1992;

1 (8) administering a national water level obser-
2 vation network, which shall include monitoring of
3 the Great Lakes;

4 (9) providing charts and other information for
5 safe navigation of the oceans and inland waters, as
6 provided by law; and

7 (10) such other functions to serve the oper-
8 ations and services mission of the Administration as
9 the Administrator may prescribe.

10 **SEC. 7. RESEARCH AND EDUCATION.**

11 (a) IN GENERAL.—The Secretary shall maintain
12 within the Administration programs to conduct and sup-
13 port research and education and the development of tech-
14 nologies relating to weather, climate, and the coasts,
15 oceans, and Great Lakes.

16 (b) FUNCTIONS.—To accomplish the mission de-
17 scribed in section 3(b), and in addition to the functions
18 described in section 3(c), the research and education as-
19 pects of the Administration shall include—

20 (1) conducting and supporting research and
21 technology development to improve the Administra-
22 tion’s capabilities in collecting, through observation
23 and otherwise, communicating, analyzing, proc-
24 essing, and disseminating comprehensive scientific

1 data and information about weather, climate, and
2 the coasts, oceans, and Great Lakes;

3 (2) improving environmental prediction and
4 management capabilities through ecosystem-based
5 research and development;

6 (3) improving knowledge of Earth's climate and
7 related systems through research and observation for
8 decision support;

9 (4) reducing uncertainty in projections of how
10 the Earth's climate and related systems may change
11 in the future;

12 (5) fostering the public's ability to understand
13 and integrate scientific information into consider-
14 ations of national environmental issues through edu-
15 cation and public outreach activities;

16 (6) administering the National Sea Grant Col-
17 lege Program Act;

18 (7) conducting and supporting research and de-
19 velopment of technology for exploration of the
20 oceans;

21 (8) maintaining a system of laboratories to per-
22 form the functions described in this subsection;

23 (9) supporting extramural peer-reviewed com-
24 petitive grant programs to assist the Administration

1 in performing the functions described in this sub-
2 section; and

3 (10) such other functions to serve the research,
4 development, education, and outreach mission of the
5 Administration as the Administrator may prescribe.

6 **SEC. 8. SCIENCE ADVISORY BOARD.**

7 (a) IN GENERAL.—There shall be within the Admin-
8 istration a Science Advisory Board, which shall provide
9 such scientific advice as may be requested by the Adminis-
10 trator, the Committee on Commerce, Science and Trans-
11 portation of the Senate, or the Committee on Science or
12 on Resources of the House of Representatives.

13 (b) PURPOSE.—The purpose of the Science Advisory
14 Board is to advise the Administrator and Congress on
15 long-range and short-range strategies for research, edu-
16 cation, and the application of science to resource manage-
17 ment and environmental assessment and prediction.

18 (c) MEMBERS.—

19 (1) IN GENERAL.—The Science Advisory Board
20 shall be composed of at least 15 members appointed
21 by the Administrator. Each member of the Board
22 shall be qualified by education, training, and experi-
23 ence to evaluate scientific and technical information
24 on matters referred to the Board under this section.

1 (2) TERMS OF SERVICE.—Members shall be ap-
2 pointed for 3-year terms, renewable once, and shall
3 serve at the discretion of the Administrator. An indi-
4 vidual serving a term as a member of the Science
5 Advisory Board on the date of enactment of this Act
6 may complete that term, and may be reappointed
7 once for another term of 3 years unless the term
8 being served on such date of enactment is the second
9 term served by that individual. Vacancy appoint-
10 ments shall be for the remainder of the unexpired
11 term of the vacancy, and an individual so appointed
12 may subsequently be appointed for 2 full 3-year
13 terms if the remainder of the unexpired term is less
14 than one year.

15 (3) CHAIRPERSON.—The Administrator shall
16 designate a chairperson from among the members of
17 the Board.

18 (4) APPOINTMENT.—Members of the Science
19 Advisory Board shall be appointed as special Gov-
20 ernment employees, within the meaning given such
21 term in section 202(a) of title 18, United States
22 Code.

23 (d) ADMINISTRATIVE PROVISIONS.—

1 (1) REPORTING.—The Science Advisory Board
2 shall report to the Administrator and the appro-
3 priate requesting party.

4 (2) ADMINISTRATIVE SUPPORT.—The Adminis-
5 trator shall provide administrative support to the
6 Science Advisory Board.

7 (3) MEETINGS.—The Science Advisory Board
8 shall meet at least twice each year, and at other
9 times at the call of the Administrator or the Chair-
10 person.

11 (4) COMPENSATION AND EXPENSES.—A mem-
12 ber of the Science Advisory Board shall not be com-
13 pensated for service on such board, but upon request
14 by the member may be allowed travel expenses, in-
15 cluding per diem in lieu of subsistence, in accord-
16 ance with subchapter I of chapter 57 of title 5,
17 United States Code.

18 (5) SUBCOMMITTEES.—The Science Advisory
19 Board may establish such subcommittees of its
20 members as may be necessary. The Science Advisory
21 Board may establish task forces and working groups
22 consisting of Board members and outside experts as
23 may be necessary.

1 (c) EXPIRATION.—Section 14 of the Federal Advisory
2 Committee Act (5 U.S.C. App.) shall not apply to the
3 Science Advisory Board.

4 **SEC. 9. REPORTS.**

5 (a) REPORT ON DATA MANAGEMENT, ARCHIVAL,
6 AND DISTRIBUTION.—

7 (1) CONTENTS.—Not later than 1 year after
8 the date of enactment of this Act, and once every 5
9 years thereafter, the Administrator shall develop a
10 report on the environmental data and information
11 systems of the Administration. The report shall in-
12 clude—

13 (A) an assessment of the adequacy of the
14 environmental data and information systems of
15 the Administration to—

16 (i) provide adequate capacity to man-
17 age, archive and disseminate environmental
18 information collected and processed, or ex-
19 pected to be collected and processed, by
20 the Administration and other appropriate
21 departments and agencies;

22 (ii) establish, develop, and maintain
23 information bases, including necessary
24 management systems, which will provide

1 for consistent, efficient, and compatible
2 transfer and use of data;

3 (iii) develop effective interfaces among
4 the environmental data and information
5 systems of the Administration and other
6 appropriate departments and agencies;

7 (iv) develop and use nationally accept-
8 ed formats and standards for data col-
9 lected by various national and international
10 sources;

11 (v) integrate and interpret data from
12 different sources to produce information
13 that can be used by decisionmakers in de-
14 veloping policies that effectively respond to
15 national and global environmental con-
16 cerns; and

17 (vi) reanalyze and reprocess the
18 archived data as better science is developed
19 to integrate diverse data sources; and

20 (B) a strategic plan to—

21 (i) set forth modernization and im-
22 provement objectives for an integrated na-
23 tional environmental data access and ar-
24 chive system for the 10-year period begin-
25 ning with the year in which the plan is

1 transmitted, including facility requirements
2 and critical new technology components
3 that would be necessary to meet the objec-
4 tives set forth;

5 (ii) propose specific Administration
6 programs and activities for implementing
7 the plan;

8 (iii) identify the data and information
9 management, reanalysis, reprocessing, ar-
10 chival, and distribution responsibilities of
11 the Administration with respect to other
12 Federal departments and agencies and
13 international organizations; and

14 (iv) provide an implementation sched-
15 ule and estimate funding levels necessary
16 to achieve modernization and improvement
17 objectives.

18 (2) NATIONAL ACADEMY OF SCIENCES RE-
19 VIEW.—The Administrator shall enter into an ar-
20 rangement with the National Academy of Sciences
21 for a review of the plan developed under paragraph
22 (1).

23 (3) TRANSMITTAL TO CONGRESS.—Not later
24 than 18 months after the date of enactment of this
25 Act, the Administrator shall transmit to the Com-

1 mittee on Commerce, Science, and Transportation of
2 the Senate and the Committee on Science of the
3 House of Representatives the initial report developed
4 under paragraph (1) and the review prepared pursu-
5 ant to paragraph (2). Subsequent reports developed
6 under paragraph (1) shall also be transmitted to
7 those committees.

8 (b) STRATEGIC PLAN FOR SCIENTIFIC RESEARCH.—

9 (1) CONTENTS.—Not later than 1 year after
10 the date of enactment of this Act, and once every 5
11 years thereafter, the Administrator shall develop a
12 strategic plan for science and technology research
13 and development at the Administration. The plan
14 shall include—

15 (A) an assessment of the science and tech-
16 nology needs of the Administration based on
17 the Administration's operational requirements
18 and on input provided by external stakeholders
19 at the national, regional, State, and local levels;

20 (B) a strategic plan for coordinating re-
21 search and development activities across the
22 Administration to meet the needs identified in
23 subparagraph (A); and

24 (C) a description of how the Administra-
25 tion plans to utilize extramural, peer-reviewed

1 competitive grant programs to meet its research
2 needs.

3 (2) NATIONAL ACADEMY OF SCIENCES RE-
4 VIEW.—The Administrator shall enter into an ar-
5 rangement with the National Academy of Sciences
6 for a review of the plan developed under paragraph
7 (1).

8 (3) TRANSMITTAL TO CONGRESS.—Not later
9 than 18 months after the date of enactment of this
10 Act, the Administrator shall transmit to the Com-
11 mittee on Commerce, Science, and Transportation of
12 the Senate and the Committee on Science of the
13 House of Representatives the initial report developed
14 under paragraph (1) and the review prepared pursu-
15 ant to paragraph (2). Subsequent reports developed
16 under paragraph (1) shall also be transmitted to
17 those committees.

18 **SEC. 10. EFFECT OF REORGANIZATION PLAN.**

19 Reorganization Plan No. 4 of 1970 shall have no fur-
20 ther force and effect.

21 **SEC. 11. SAVINGS PROVISION.**

22 All rules and regulations, determinations, standards,
23 contracts, certifications, authorizations, appointments,
24 delegations, results and findings of investigations, and
25 other actions duly issued, made, or taken by or pursuant

1 to or under the authority of any statute which resulted
2 in the assignment of functions or activities to the Sec-
3 retary, the Department of Commerce, the Under Secretary
4 of Commerce for Oceans and Atmosphere, the Adminis-
5 trator, or any other officer of the Administration, that is
6 in effect immediately before the date of enactment of this
7 Act, shall continue in full force and effect after the effec-
8 tive date of this Act until modified or rescinded. All suits,
9 appeals, judgements, and proceedings pending on such ef-
10 fective date relating to responsibilities or functions trans-
11 ferred under this Act shall continue without regard to such
12 transfers, except for the transfer of responsibilities or
13 functions. Any reference in law to a responsibility, func-
14 tion, or office transferred under this Act shall be deemed
15 to refer to the responsibility, function, or office as so
16 transferred.

17 **SEC. 12. TRANSITION.**

18 (a) **EFFECTIVE DATE.**—

19 (1) **IN GENERAL.**—Except as provided in para-
20 graph (2) the provisions of this Act shall become ef-
21 fective 2 years after the date of enactment of this
22 Act.

23 (2) **EXCEPTIONS.**—Paragraph (1) shall not
24 apply to sections 9 or 13, or to subsection (b) of this
25 section.

1 (b) REORGANIZATION.—Not later than 18 months
2 after the date of enactment of this Act, the Administrator
3 shall transmit a plan and budget proposal to Congress set-
4 ting forth a proposal for program and Administration re-
5 organization for the program areas outlined in this Act.

6 **SEC. 13. FACILITY EVALUATION PROCESS.**

7 (a) PUBLIC NOTIFICATION AND ASSESSMENT PROC-
8 ESS.— The Administrator shall not close, consolidate, re-
9 locate, subdivide, or establish a facility of the Administra-
10 tion unless the Administrator has completed a public noti-
11 fication and assessment process that includes—

12 (1) publication in the Federal Register of the
13 proposed action and a description of the offices, per-
14 sonnel, and activities of the Administration that
15 would be impacted by the proposed change, and pro-
16 viding for a minimum of 60 days for public com-
17 ment;

18 (2) review of the proposed change by the
19 Science Advisory Board of the Administration, if the
20 proposed change involves a science facility of the Ad-
21 ministration, and preparation of a summary of their
22 findings regarding the proposed change;

23 (3) preparation by the Administrator of an
24 analysis of the anticipated costs and savings associ-
25 ated with the proposed facility change, including

1 both initial costs and savings associated with the
2 change and changes in operations and maintenance
3 costs and savings over a ten year period; and

4 (4) preparation by the Administrator of an
5 analysis of the effects of the facility change on oper-
6 ations and research of the Administration, and the
7 potential impacts on cooperative institutes, other ex-
8 ternal Administration partnerships, partnerships
9 with other Federal agencies, and any State and local
10 partnerships.

11 (b) NOTICE TO CONGRESS.—The Administrator shall
12 provide to Congress, at least 90 days before any closure,
13 consolidation, relocation, subdivision, or establishment of
14 a facility of the Administration, a summary of the public
15 comments received pursuant to subsection (a)(1), any
16 summary prepared under subsection (a)(2), and the anal-
17 yses prepared under subsection (a)(3) and (4), .

18 (c) WEATHER SERVICE MODERNIZATION.—Nothing
19 in this section shall alter procedures established under the
20 Weather Service Modernization Act (15 U.S.C. 313 note).

21 (d) DEFINITION.—For purposes of this section, the
22 term “facility” means a laboratory, operations office, ad-
23 ministrative service center, or other establishment of the

90

29

1 Administration with an annual budget of \$1,000,000 or
2 greater.

○

SECTION-BY-SECTION ANALYSIS OF H.R. 50,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ACT

Section 1. Short Title.

The short title of this Act is the “National Oceanic and Atmospheric Administration Act.”

Section 2. Definitions.

Defines terms used in the Act.

Section 3. National Oceanic and Atmospheric Administration.

Establishes the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce and describes the mission and functions of NOAA.

Section 4. Administration Leadership.

Describes the leadership structure of NOAA, including a new position of a Deputy Assistant Secretary for Science, Technology, Education and Outreach, who shall be responsible for coordinating and managing all research activities across the agency, and must be a career position. Also, this section designates the Deputy Under Secretary for Oceans and Atmosphere as the Chief Operating Officer of the Administration, responsible for the day-to-day aspects of the Administration’s operations and management.

Section 5. National Weather Service.

Directs the Secretary of Commerce to maintain a National Weather Service within NOAA.

Section 6. Operations and Services.

Directs the Secretary to maintain programs within NOAA to support operational and service functions. These functions would include all the activities of NOAA’s National Environmental Satellite Data and Information Service (NESDIS) and the mapping and charting activities of the National Ocean Service.

Section 7. Research and Education.

Directs the Secretary to maintain programs within NOAA to conduct and support research and education functions.

Section 8. Science Advisory Board.

Establishes a Science Advisory Board for NOAA, which would provide scientific advice to the Administrator and to Congress on issues affecting NOAA.

Section 9. Reports.

Requires two reports from the Secretary. Each report is to be delivered to Congress within 18 months of the date of enactment of the Act. One report should assess the adequacy of the environmental data and information systems of NOAA and provide a strategic plan to address any deficiencies in those systems. The other report must provide a strategic plan for research at NOAA. The National Academy of Sciences (NAS) shall review each report prior to delivery to Congress.

Section 10. Effect of Reorganization Plan.

Repeals the Executive Order that established NOAA in 1970.

Section 11. Savings Provision.

Provides that all rules and regulations, and other technical legal topics that were previously assigned to the Administration, remain in effect under this Act.

Section 12. Transition.

Makes the effective date of the Act two years after the date of enactment and requires NOAA to reorganize around the themes outlined in sections five through seven.

Section 13. Facility Evaluation Process.

Provides that NOAA cannot expend funds to close or transfer a facility without a 60-day public comment period, 90 days notification to Congress, review by the Science Advisory Board (if appropriate), preparation of anticipated costs and savings, and preparation of a statement of the impacts of the facility change on NOAA and its part

AMENDMENT TO H.R. 50
OFFERED BY MR. WU OF OREGON

Page 6, line 14, insert “The authority conferred on the Administrator by this paragraph does not include the authority to contract for services that are an inherently governmental function as defined in section 5 of the Federal Activities Inventory Reform Act of 1998 (31 U.S.C. 501 note).” after “provided by law.”.

Page 25, line 23, insert “including collective bargaining agreements,” after “contracts,”.

Page 27, line 5, insert “The plan shall be developed in consultation with interested parties, including representatives of the States, academia, industry, conservation organizations, and Administration employees. The draft plan shall be published in the Federal Register for public notice and comment at least 60 days prior to final submission to Congress.” after “outlined in this Act.”.



XXIV. PROCEEDINGS OF THE FULL COMMITTEE MARKUP OF H.R. 50, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ACT

TUESDAY, MAY 17, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC.

The Committee met, pursuant to call, at 10:08 a.m., in Room 2318 of the Rayburn House Office Building, Hon. Sherwood L. Boehlert [Chairman of the Committee] presiding.

Chairman BOEHLERT. I want to welcome everyone here today for this markup of bills concerning the heavens and the Earth and to the agencies that explore them, NOAA and NASA.

Now let me just say this before I give you the rest of this wonderful statement.

The Committee on Science will come to order. Pursuant to notice, the Committee on Science meets to consider the following measures: H.R. 50, *National Oceanic and Atmospheric Administration Act*; H.R. 2363, *To establish a Science and Technology Scholarship Program to award scholarships to recruit and prepare students for careers in the National Weather Service and in the National Oceanic and Atmospheric Administration marine research, atmospheric research, and satellite programs*; H.R. 426, *Remote Sensing Applications Act of 2005*, and H.R. 1022, the *George E. Brown, Jr. Near-Earth Object Survey Act*.

I ask unanimous consent for the authority to recess the Committee at any point during consideration of these matters, and without objection, it is so ordered.

We will now proceed with the markup beginning with the opening statements, and I will continue mine.

The main bill before us today is the *NOAA Organic Act* introduced by Dr. Ehlers, which we had initially planned to markup last week. This bill will give NOAA a firm legislative grounding, something that was called for by the Ocean Commission, among others. The Administration has also called for an Organic Act for NOAA.

But our bill will do more than merely found NOAA into law. It will raise the profile of science at NOAA and improve its management. The bill also will greatly improve oversight of the agency by ensuring that Congress and the public get the information needed to evaluate NOAA's organizational structure, facilities plans, budgeting, and satellite programs. This is a solid bill that will strengthen the agency.

And now we look forward to working with the Resources Committee, which shares jurisdiction over portions of NOAA, to get this bill to the Floor. Also related to NOAA, we will take up Congressman Rohrabacher's bill to create a Scholarship for Service Program at NOAA. And he is a real leader on that effort, and we applaud that. We have done the same thing with NASA and the Depart-

ment of Energy. Service scholarships are a great way to entice students into science, math, and engineering while also helping the Federal Government develop the workforce it will need. These scholarships have been championed tirelessly by Congressman Rohrabacher, and I congratulate him for that.

We are running the scholarship program through as a separate bill, because specific program authorizations generally are not part of agency Organic Acts. We will also take up two bills related to space today. These were last-minute additions to today's roster, which is something we have generally avoided on this committee. But this seemed like an opportune time to move these bills, and we continue to work on them through manager's amendments on the Floor.

Mr. Udall's bill, which the Committee also passed last Congress, concerns remote sensing. Mr. Udall will offer an amendment that will take care of concerns raised by companies in the remote sensing data business, concerns that have stymied progress on this bill in the past. I know that Mr. Bonner and I, perhaps some others, have some further ideas for perfecting the bill, and we will work on those as the bill moves forward.

Mr. Rohrabacher's bill focuses on near-Earth objects, a subject that has long concerned him and has gotten quite a bit of publicity lately. Congressman Rohrabacher has helped us all understand that asteroids may present a real threat to Earth and that we need to pay greater attention to them. All of these bills will improve our lives through increasing our understanding of the Earth, how it works, and what may threaten it.

As usual, these bills represent a bipartisan effort, and I take pride in that. I look forward to their passage.

The Chair recognizes Mr. Gordon.

Mr. Gordon.

[The prepared statement of Chairman Boehlert follows:]

PREPARED STATEMENT OF CHAIRMAN SHERWOOD L. BOEHLERT

I want to welcome everyone here today for this markup of bills concerning the heavens and the Earth—and to the agencies that explore them, NOAA and NASA.

The main bill before us today is the *NOAA Organic Act*, introduced by Dr. Ehlers, which we had initially planned to mark up last week. This bill will give NOAA a firm legislative grounding, something that was called for by the Ocean Commission among others. The Administration has also called for an Organic Act for NOAA.

But our bill will do more than merely found NOAA in law. It will raise the profile of science at NOAA and improve its management. The bill also will greatly improve oversight of the agency by ensuring that Congress—and the public—get the information needed to evaluate NOAA's organizational structure, facilities plans, budgeting and satellite programs. This is a solid bill that will strengthen the agency.

And now we look forward to working with the Resources Committee, which shares jurisdiction over portions of NOAA, to get this bill to the Floor.

Also related to NOAA, we will take up Congressman Rohrabacher's bill to create a scholarship for service program at NOAA, as we have at NASA and the Department of Energy. Service scholarships are a great way to entice students into science, math and engineering while also helping the Federal Government develop the workforce it will need. These scholarships have been championed tirelessly by Congressman Rohrabacher, and I congratulate him for that.

We are running the scholarship program through as a separate bill because specific program authorizations generally are not part of agency organic acts.

We will also take up two bills related to space today. These were last minute additions to today's roster, which is something we have generally avoided on this committee. But this seemed like an opportune time to move these bills, and we can continue to work on them through manager's amendments on the Floor.

Mr. Udall's bill, which the Committee also passed last Congress, concerns remote sensing. Mr. Udall will offer an amendment that will take care of concerns raised by companies in the remote sensing data business—concerns that have stymied progress on this bill in the past. I know that Mr. Bonner and I and perhaps some others have some further ideas for “perfecting” the bill, and we will work on those as the bill moves forward.

Mr. Rohrabacher's bill focuses on Near-Earth Objects, a subject that has long concerned him and that has gotten quite a bit of press lately. Congressman Rohrabacher has helped us all understand that asteroids may present a real threat to Earth and that we need to pay greater attention to them.

All of these bills will improve our lives through increasing our understanding of the Earth, how it works and what may threaten it. As usual, these bills represent a bipartisan effort. I look forward to their passage.

Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman. You have summed up what we are going to do this morning very well. I just want to concur that it is a good idea, I think, to take up these additional three bills today, and I want to give my thanks to the staff on both sides for the good cooperative work that they have done over the last week in trying to bring NOAA together as well as these three bills, and I look forward to the markup.

And I yield my time back.

[The prepared statement of Mr. Gordon follows:]

PREPARED STATEMENT OF REPRESENTATIVE BART GORDON

I want to thank the Chairman for scheduling this markup.

Originally we were to just take up H.R. 50 today, but I think it is to the advantage of our Members that we will expeditiously take up three other bills, all of which can probably move on suspension on the Floor.

In addition to the NOAA organic act, I am especially pleased to see the Remote Sensing Act move through Committee. We have dealt with this in past Congresses and I am happy the Chairman agrees that we can move that bill forward today.

I don't want to delay the process here this morning with an extensive preliminary statement, but let me take a moment to thank staff on both sides of the aisle for their work to handle these bills. I think the Members have been well served through their efforts.

With that, I yield back, Mr. Chairman.

Chairman BOEHLERT. Thank you very much.

Without objection, Members may place statements in the record at this point.

[The prepared statement of Mr. Wu follows:]

PREPARED STATEMENT OF REPRESENTATIVE DAVID WU

Good morning, everyone. Mr. Chairman, I am pleased to be here today to participate in the Science Committee's markup of H.R. 50. I appreciate your interest in moving forward to develop legislation that will provide NOAA with the statutory foundation to guide its missions and functions.

NOAA is this nation's lead agency charged with conserving and managing our coastal and oceanic resources. NOAA also plays a vital role in public safety through the programs of the National Weather Service to issue weather forecasts and warnings. We must ensure that NOAA has the resources and authorities it needs to meet its statutory responsibilities and to accomplish its resource management and public safety missions. H.R. 50 makes a good start on this effort, and we want to continue to work with Chairman Boehlert and the majority on the dollar figures for facility changes.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF REPRESENTATIVE SHEILA JACKSON LEE

Mr. Chairman,

The *National Oceanic and Atmospheric Administration Act* is an important piece of legislation that deserves strong consideration along with the appropriate Amendments. NOAA was created through the merger of a number of organizations in the 1970s. However, it still has no legislation that establishes it as an Agency or formally defines its missions.

The legislation before this committee today will help to refine the mission of NOAA and allow the agency to succeed in the future. Specifically, the legislation authored by my colleague Mr. Ehlert will define broad mission areas and general authorities and to codify the existing primary administrative positions at NOAA. Based upon text from the Ocean Commission report this bill defines the mission and function of NOAA. The bill codifies the current senior positions of the agency: Administrator/Under Secretary of Commerce for Oceans and Atmosphere and the Assistant Secretary for Oceans and Atmosphere. The current positions of Deputy Under Secretary and Deputy Assistant Secretary for Oceans and Atmosphere are also specifically authorized and Deputy Assistant Secretary for International Affairs.

Among the provisions I am most supportive of is Section 5 of the bill which calls upon NOAA to maintain the National Weather Service as a distinct entity. The National Weather Service Employees Organization (NWSEO) is very supportive of this position. NWS forms a major part of NOAA's operational mission and I have long advocated that accurate weather forecasting is not only useful for planning purposes, but can also be used in possible life saving capacity as the technology continues to develop.

This legislation needs to be clearer on certain issues; I am especially concerned about the issue of separation between the mission of NOAA and the Earth science programs at NASA. As we heard last week from testimony provided by Mr. Diaz of NASA at last week's Full Committee hearing, he indicated NASA's plan for a number of their missions (Landsat, Glory) will be to transfer these Earth science programs to NOAA. In addition, the Ocean Commission Report suggests that NOAA should take on NASA's Earth sciences programs. Firstly, I am against the idea that Earth science programs should be diminished at NASA. Secondly, NOAA's budget cannot absorb these programs in its current budget. The current mission statement in the bill does create overlap with the mission statement for NASA. Clarifying language should be inserted to ensure that these necessary Earth science programs are continued in one fashion or another.

Again, I believe this legislation is pertinent and should be implemented with due consideration for all amendments. NOAA deserves to have proper mission which is achievable under the right parameters.

Thank you.

Chairman BOEHLERT. We will now consider H.R. 50, *National Oceanic and Atmospheric Administration Act*. I recognize Dr. Ehlert to present some introductory remarks.

Mr. EHLERS. Thank you, Mr. Chairman, for the opportunity to explain my bill.

This is certainly an important bill, and I say that not because I have a large ego, but because it is very rare that we have an opportunity to pass an organic act through this committee. And this bill, H.R. 50, establishes an organic act for NOAA, the *National Oceanic and Atmospheric Administration Act*.

An organic act defines the overall mission and functions of an agency. As an example, my bill states that the mission of NOAA is to, first, understand and predict changes in the Earth's oceans and atmosphere; second, conserve and manage coastal, ocean, and Great Lakes ecosystems; and third, educate the public about these topics.

NOAA was created in 1970 by an Executive Order that placed the agency in the Department of Commerce and transferred various oceanic and atmospheric functions from other agencies into the new NOAA. Since that time, NOAA has operated under a confusing collection of issue-specific laws that are not coordinated by an overarching mission, therefore, the need for an organic act.

In September 2004, the U.S. Commission on Ocean Policy released its final report, which called for Congress to pass an organic act for NOAA and clarify in one place the mission and program goals of the agency. The Bush Administration supports Congressional passage of a NOAA and organic act and made it a priority in the Administration formal response to the Ocean Commission report. In the 108th Congress, witnesses at Science Committee hearings strongly endorsed this bill.

Today, I will offer a manager's amendment, which makes technical corrections and reflects negotiations with the minority. I will explain the amendment further when it is offered.

I should note that H.R. 50 contains little language about fisheries management at NOAA, because that topic is under the jurisdiction of the Resources Committee, and in particular, the jurisdiction of the Subcommittee chaired by my colleague from Maryland, Mr. Gilchrest.

I look forward to working with the Members of that committee to join us in passing truly comprehensive legislation for NOAA. I urge my colleagues today to support H.R. 50, and I yield back the balance of my time.

[The prepared statement of Mr. Ehlers follows:]

PREPARED STATEMENT OF REPRESENTATIVE VERNON J. EHLERS

Thank you, Mr. Chairman, for the opportunity to explain my bill. H.R. 50, the *National Oceanic and Atmospheric Administration Act*, is an organic act for NOAA. An organic act defines the overall mission and functions of an agency. As an example, my bill states that the mission of NOAA is to:

- (1) understand and predict changes in the Earth's oceans and atmosphere;
- (2) conserve and manage coastal, ocean, and Great Lakes ecosystems; and
- (3) educate the public about these topics.

NOAA was created in 1970 by an executive order that placed the agency in the Department of Commerce and transferred various oceanic and atmospheric functions from other agencies into the new NOAA. Since that time, NOAA has operated under a confusing collection of issue-specific laws that are not coordinated by an overarching mission.

In September 2004, the U.S. Commission on Ocean Policy released its final report, which called for Congress to pass an organic act for NOAA and clarify in one place the mission and program goals of the agency. The Bush Administration supports Congressional passage of a NOAA organic act, and made it a priority in the Administration formal response to the Ocean Commission report. In the 108th Congress witnesses at Science Committee hearings strongly endorsed my bill.

Today I will offer a manager's amendment which makes technical corrections and reflects negotiations with the minority. I will explain the amendment further when it is offered.

I should note that H.R. 50 contains little language about fisheries management at NOAA because that topic is under the jurisdiction of the Resources Committee, in particular the Subcommittee chaired by my colleague from Maryland, Mr. Gilchrest. I look forward to working with the Members of that committee to join us in passing truly comprehensive legislation for NOAA. I urge my colleagues to support H.R. 50, and I yield back the balance of my time.

Chairman BOEHLERT. Thank you very much, Dr. Ehlers, and a special thanks from all of us for your hard work to bring us to the point where we find ourselves today.

Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman.

Once again, let me say that I think Mr. Ehlers has done a good job in evaluating this bill, and I want to thank him for the work with his staff in putting it together.

A couple of concerns I do have, though, is that we are still trying to determine what is an appropriate value to be triggering the review process. The bill has a \$5 million limit, but I think the Committee needs to do some more work on this to make sure that that really is a valid number, and I am sure we will be doing that before it goes to the Floor. And I do appreciate Mr. Ehlers' work in the past.

Finally, let me just say that the bill defines a broad mission for NOAA to allow this agency to grow and change as needed to serve our resource needs as our nation grows and changes. However, I do not believe the broadly-defined mission in this bill should serve as an invitation to this or future Administrations to transfer programs from other agencies to NOAA without sufficient planning and adequate funding. And I think that is very important.

We look forward to working with you and our colleagues on the Committee of Resources as this bill continues to move forward, and I yield back my time.

[The prepared statement of Mr. Gordon follows:]

PREPARED STATEMENT OF REPRESENTATIVE BART GORDON

Thank you, Mr. Chairman for bringing H.R. 50 before the Committee this morning. I would also like to thank Rep. Ehlers for introducing the *NOAA Organic Act*.

I recognize H.R. 50 is not yet a true organic act for NOAA. The bill does not include important authorities and functions in fisheries, coastal zone management, ocean mapping and charting, and a number of other important operations that are in the jurisdiction of the Committee on Resources.

This committee's programs, however, are well-treated in this legislation. I am especially pleased that we are including explicit language to ensure that the structure and function of the National Weather Service remains unchanged.

The 3,700 employees of the National Weather Service fulfill a vital public safety mission across this nation everyday in cooperation with the network of professionals in the private sector.

We have worked well together on language to try to establish a regular procedure for proposed changes in NOAA facilities. However, I want to keep working to understand what an appropriate dollar value is to trigger that review process. The bill has \$5 million, but I think the Committee needs to do more work before this bill gets to the floor to understand all the implications of this language. We do have some information from NOAA on this, but since they prefer the \$5 million number I think we need to double check some of that information.

We have achieved steady improvements to our weather forecasting through investments in research and technology and the expansion of our system of weather observing satellites. We should ensure continued progress in weather forecasting and understanding the Earth's atmospheric and oceanic systems.

The bill defines a broad mission for NOAA to allow this agency to grow and change as needed to serve our resource needs as our nation grows and changes. However, I do not believe the broadly defined mission in this bill should serve as an invitation to this or a future Administration to transfer programs from other agencies to NOAA without sufficient planning and adequate funding.

We look forward to working with you and our colleagues on the Committee on Resources as this bill moves forward.

Chairman BOEHLERT. Thank you very much.

I ask unanimous consent that the bill be considered as read and open to amendment at any point and that Members proceed with the amendments in the order of the roster. Without objection, so ordered.

The first amendment on the roster is an amendment offered in the nature of a substitute offered by Dr. Ehlers. I ask unanimous consent that the amendment in the nature of a substitute be treated as original text for purposes of amendment under the five-minute rule. Without objection, so ordered.

Dr. Ehlers, are you ready to proceed?

Mr. EHLERS. Yes, Mr. Chairman.

This substitute amendment strengthens and clarifies certain sections of H.R. 50.

Chairman BOEHLERT. Excuse me, Dr. Ehlers.

The Clerk will report the amendment, and then we will hear the eloquent words of Dr. Ehlers.

Mr. EHLERS. I have an amendment at the desk.

Ms. TESSIERI. Amendment in the nature of a substitute to H.R. 50 offered by Mr. Ehlers of Michigan.

Chairman BOEHLERT. I ask unanimous consent to dispense with the reading. Without objection, so ordered.

The gentleman is recognized for five minutes.

Mr. EHLERS. Thank you, Mr. Chairman.

This substitute amendment strengthens and clarifies certain sections of H.R. 50, as it was reported by the Environment, Technology, and Standards Committee. Specifically, as compared to the bill as reported, my amendment first provides technical clarification. It also provides additional authorities of the Administrator of NOAA, such as conducting education and outreach activities. It emphasizes NOAA's role in forecasting of and warning for tsunamis. It also provides for input from the National Academy of Sciences earlier in the process of NOAA developing its strategic plan for management of its environmental data and information systems. It requires NOAA to notify Congress when NOAA starts new satellite programs, encounters serious problems with, or makes major changes to existing satellite programs, and finally clarifies that nothing in the bill shall alter the responsibilities or authorities of other federal agencies.

These changes were developed after careful consultation with the Administration, outside experts, NOAA stakeholders, and other Members of this committee.

I urge my colleagues to support this substitute amendment for H.R. 50 and yield back the balance of my time.

[The prepared statement of Mr. Ehlers follows:]

PREPARED STATEMENT OF REPRESENTATIVE VERNON J. EHLERS

This substitute amendment strengthens and clarifies certain sections of H.R. 50 as it was reported by the Environment, Technology and Standards Committee. Specifically, as compared to the bill as reported, my amendment:

- Provides technical clarifications;
- Provides additional authorities for the Administrator of the NOAA, such as conducting education and outreach activities;
- Emphasizes NOAA's role in forecasting of and warning for tsunamis;
- Provides for input from the National Academy of Sciences earlier in the process of NOAA developing its strategic plan for management of its environmental data and information systems;
- Requires NOAA to notify Congress when NOAA starts new satellite programs, encounters serious problems with or makes major changes to existing satellite programs; and
- Clarifies that nothing in the bill shall alter the responsibilities or authorities of other federal agencies.

These changes were developed after careful consultation with the Administration, outside experts, NOAA stakeholders, and other Members of this committee. I urge my colleagues to support this substitute amendment for H.R. 50 and yield back the balance of my time.

Chairman BOEHLERT. I want to thank Dr. Ehlers for his work on the bill, and the Chair supports his amendment.

Is there further discussion on the amendment?

Mr. UDALL. Mr. Chairman, I would move to strike the last word.

Chairman BOEHLERT. Who seeks recognition?

Mr. Udall, my distinguished colleague and good friend from Colorado.

Mr. UDALL. Thank you, Mr. Chairman.

I will be brief, I hope.

I am pleased to see some of the changes included in my good friend, Dr. Ehlers' amendment regarding the evaluation process for the closures, relocation, or consolidation of NOAA facilities. Particularly, I am pleased to see that the Congress must be notified if any NOAA facility will be closed, relocated, or consolidated. This covers 183 facilities that could have been closed without Congressional notification under the original definition of a facility as having a budget greater than \$1 million.

I am also pleased that the language has been included to evaluate National Weather Service's field offices by involving a similar evaluation process used in the *National Weather Modernization Act*.

These are both good government provisions, and I am pleased that they have been included in Dr. Ehlers' amendment.

However, I would like to express my concern that there are at least 28 NOAA facilities with budgets between \$1 million and \$5 million. NOAA will merely have to notify Congress of closures, relocations, or consolidations of these facilities without going through an evaluation process. I do not believe that we know enough about how this will affect these 28 facilities at this time to set the number at \$5 million.

While I do not want to try to amend this language in an effort to move the bill through Committee, I plan to continue to work on the issue in an effort to ensure that any changes to the organization of NOAA facilities is thoroughly evaluated and services are not degraded.

In conclusion, I would like to thank the Chairman and Dr. Ehlers for working with me on this issue, and I look forward to continuing this working relationship in the future as we move this bill forward.

With that, Mr. Chairman, I would yield back any time I have remaining. Thank you.

[The prepared statement of Mr. Udall follows:]

PREPARED STATEMENT OF REPRESENTATIVE MARK UDALL

Mr. Chairman, I move to strike the last word.

I am pleased to see some of the changes included in this amendment regarding the evaluation process for the closures, relocation, or consolidation of NOAA facilities.

Particularly, I am pleased to see that Congress must be notified if any NOAA facility will be closed, relocated or consolidated. This covers 183 facilities that could have been closed without Congressional notification under the original definition of a facility as having a budget greater than \$1 million.

I am also pleased that language has been included to evaluate National Weather Services field offices by involving a similar evaluation process used in the National Weather Modernization Act.

These are both good government provisions and I am pleased they have been included in Mr. Ehlers amendment.

However, I would like to express my concern that there are at least 28 NOAA facilities with budgets between \$1 and \$5 million. NOAA will merely have to notify Congress of closures, relocations or consolidations of these facilities without going through an evaluation process.

I do not believe that we know enough about how this will affect these 28 facilities at this time to set the number at \$5 million.

While I do not want to try to amend this language in an effort to move the bill through Committee, I plan to continue to work on issue in an effort to ensure that any changes to the organization of NOAA facilities is thoroughly evaluated and services are not degraded.

I would like to thank the Chairman and Mr. Ehlers for working with me on this issue and hope to continue this working relationship in the future.

With that Mr. Chairman, I yield back.

Chairman BOEHLERT. Thank you very much, Mr. Udall, and we will be glad to continue our work with you, because you bring up a very good point. It is one that should concern us all, and we will work cooperatively to get the best possible result.

The vote, then, is on—all right.

The second amendment on the roster is offered by the gentleman from Illinois, Mr. Costello. Are you ready to proceed?

Mr. COSTELLO. Mr. Chairman, I am. My amendment is at the desk.

Chairman BOEHLERT. The Clerk will read the amendment.

Ms. TESSIERI. Amendment offered by Mr. Costello of Illinois.

Mr. COSTELLO. Mr. Chairman, I ask that we dispense with the reading of the amendment.

Chairman BOEHLERT. Without objection, so ordered.

The gentleman is recognized for five minutes to explain his amendment.

Mr. COSTELLO. Mr. Chairman, I thank you.

And Mr. Chairman, my amendment is a “buy American and protect American jobs” amendment. The amendment is straightforward, and it will protect American jobs.

Mr. Chairman, my amendment addresses two contracting issues with NOAA. One, it prohibits federal jobs from being outsourced to foreign nations, and two, it requires NOAA contracts for goods and services to be performed in the United States.

In cases where NOAA issues a contract for goods or services to a private-sector contractor, NOAA would have to ensure that the contract work is being done in the United States. Foreign labor may not be substituted for U.S. labor.

The amendment provides exceptions to this policy. One, the new Administrator may waive the requirement if an essential instrument or service is only produced outside the United States or is only produced by non-U.S. manufacturers. Two, the President may waive the requirement if, in his opinion, it is in the interest of national security. Three, the restriction does not apply to goods or services that are now obtained for use outside of the United States or in case where the functions are performed by U.S. federal workers outside the United States.

Regardless of how Members of the Committee feel about the A-76 process on either side of the aisle, we should have an agreement that tax dollars should not be spent to create jobs in other countries and put Americans out of work. We must look for ways to protect our national economy. NOAA should be getting its goods and services here in America, not abroad. We may not be able to keep

the big multi-national firms from moving offshore or setting up supply chains that stretch from China to our local retailers, but we ought to be able to block NOAA from doing exactly that.

And Mr. Chairman, I ask for your support and ask for the support of Members of the Committee, and I—

Mr. GORDON. Would the gentleman yield?

Mr. COSTELLO. I would be happy to yield to the Ranking Member.

Mr. GORDON. Let me just quickly say that, as you pointed out, we are all aware that the Administration has launched an aggressive effort to cut government jobs through the A-76 circular out of OMB. And we all want to see government work as efficiently as possible, but I think the jury is still out on this outsourcing, whether it really is effective. But clearly, your niche in this of not sending jobs overseas is an important one. I think that it is something that we can all agree upon, and I commend you for this amendment.

Chairman BOEHLERT. Thank you.

The gentleman's time has expired.

I know the gentleman's amendment is well-intended, and none of us would argue with its thrust to keep and create jobs in the United States. I always say that "jobs" is my favorite four-letter word.

But here is the problem with the amendment.

In many ways, it runs afoul of our international trade obligations. We all know the world is flat. We are constantly reminded of that every single day. Specifically, we have signed treaties in which we and the other signatories agree not to limit most government procurements. And guess why we do that. We do it because we think it will help keep and create jobs in the United States by enabling U.S. companies to compete for government contracts abroad. There is no way to know for sure, but it is perfectly likely that this amendment would actually cost jobs in the United States by preventing U.S. companies from winning procurement contracts overseas.

Moreover, the amendment is at odds with our international obligations and possibly endangers American jobs, even though no one can point to a particular problem that this amendment is designed to resolve.

Is there any indication that NOAA has been loose with the taxpayers' money by needlessly sending money overseas? The answer is no. This amendment is a well-meaning, symbolic expression of the concern we all have with outsourcing, but it is not designed to combat a specific known problem.

But it would create specific known problems by conflicting with trade agreements. And I would add that the Administration strenuously objects for that same reason.

So I will offer a second-degree amendment that says that the Costello language can not override an international obligation of the United States. I imagine Mr. Costello will claim, and I know him from long experience working closely with him, and we are very good friends, but he will claim, probably, that this amendment, my second-degree amendment, would gut his amendment. If that is so, then it just confirms that Mr. Costello's language would

create an international trade incident, which may hurt the United States. If my language will not gut Mr. Costello's effort, then there is no reason not to pass it.

So I urge passage of my amendment, which will balance Mr. Costello's good intentions. Let me emphasize that. Good intentions. But we also have to match that with our obligation to ensure that the United States abides by its international commitments.

[The prepared statement of Chairman Boehlert follows:]

PREPARED STATEMENT OF CHAIRMAN SHERWOOD L. BOEHLERT

I know the gentleman's amendment is well intentioned. And none of us would argue with its ostensible purpose—to keep and create jobs in the U.S. I always say that “jobs” is my favorite four-letter word.

But here's the problem with the amendment. In many ways, it runs afoul of our international trade obligations. Specifically, we have signed treaties in which we and the other signatories agree not to limit most government procurements. And guess why we do that? We do it because we think it will help keep and create jobs in the U.S. by enabling U.S. companies to compete for government contracts abroad. There's no way to know for sure, but it's perfectly likely that this amendment would actually cost jobs in the U.S. by preventing U.S. companies from winning procurement contracts overseas.

Moreover, this amendment is at odds with our international obligations and possibly endangers American jobs even though no one can point to a particular problem that this amendment is designed to resolve. Is there any indication that NOAA has been loose with the taxpayers money by heedlessly sending money overseas? No.

This amendment is a well meaning, symbolic expression of the concern we all have with outsourcing, but it's not designed to combat a specific, known problem. But it would create specific, known problems by conflicting with trade agreements. And I would add that the Administration strenuously objects for that same reason.

So, I will offer a second-degree amendment that says that the Costello language cannot override an international obligation of the United States.

I imagine Mr. Costello will claim that this would “gut” the amendment. If that is so, then it just confirms that Mr. Costello's language will create an international trade incident, which may hurt the U.S. If my language will not “gut” Mr. Costello's effort, then there's no reason not to pass it.

So I urge passage of my amendment, which will balance Mr. Costello's good intentions with our obligation to ensure that the U.S. abides by its international commitments.

Mr. COSTELLO. I would ask the Chair to yield.

Chairman BOEHLERT. The Chair is pleased to yield to his good friend and colleague.

Mr. COSTELLO. Mr. Chairman, let me respond, if I may. I was not going to suggest that it guts my amendment, but apparently it does.

Let me make a couple of points.

One, you make the point of a foreign country or someone objecting and challenging this provision because of the international trade agreements that we have through the WTO. And I would just suggest that this committee should not be in the business of attempting to protect trade agreements, and in fact, a provision such as this that we are offering as this amendment has never been challenged at all by the International Trade Commission. There has not been a foreign country ever challenge an issue with the U.S. Government to go to court over this issue before.

Number two is let me suggest that we have offered and debated several amendments to other bills in the past, and the Chair has been very protective in the past of having amendments adopted that would result in referring a bill from this committee to another committee. And it—I would suggest that—I am told at least that

your amendment to my amendment would, in fact, result in this bill being referred to the Ways and Means Committee.

So I would just raise that issue and last say that, you know, Members of the Committee have a choice today regarding NOAA. And the choice is, with exceptions, with—giving the President the exception that if it is in the interest of national security, NOAA would not have to abide by this. If they are buying products now that are only made outside of the United States, there would be an exception. So I am—it is pretty clear to me that, you know, instead of this committee protecting or trying to protect international trade agreements that have never been challenged in the past on this issue, I would just suggest that we have a choice to make today and that is we can either protect American jobs from going overseas through contracts and services or we can sit here and try and protect trade agreements that I think many of us do not support to begin with.

But I would ask again for Members—for their support of my amendment and to respectfully reject the Chairman's amendment.

And I thank you, Mr. Chairman, for your time.

Chairman BOEHLERT. I am glad you noted respectfully.

Let me—first of all, let me just say before we proceed, and the way I would like to proceed, I will just respond initially briefly to you, and then I will have my amendment reported, and then we can continue the debate. Okay.

Our advice from counsel is this will not result in a referral to Ways and Means or any other committee, so we are getting conflicting advice on both sides. But be that as it may—

Mr. COSTELLO. Mr. Chairman, we would like to take our counsel's advice.

Chairman BOEHLERT. I don't blame you, but guess what, I have got the advantage of sitting in the Chair. And my counsel is pretty darn good. But we will get some clarification on that, too.

The Clerk will report—

Ms. BIGGERT. Mr. Chairman.

Chairman BOEHLERT.—the amendment to the amendment.

Ms. BIGGERT. Mr. Chairman.

Chairman BOEHLERT. We are going to—here is what we are going to do. She is going to report, and then we will have further discussion.

Ms. TESSIERI. Amendment offered by Mr. Boehlert of New York to the amendment offered by Mr. Costello of Illinois.

Chairman BOEHLERT. I ask unanimous consent that the amendment be considered as read, and so the Chair is recognized for five minutes. We will continue this.

Ms. Biggert, you are next.

Ms. BIGGERT. Thank you, Mr. Chairman.

I move to strike the last word.

I have just a couple of points.

First of all, to the—to Mr. Costello's amendment, I have concerns when he talks about we will let the courts decide and it can always—or that we are protecting international trade agreements. We are not protecting international trade agreements. Trade agreements are a legal, binding contract on the United States and all

of the other countries involved, and we can't protect them, but we really have to make sure that our actions do not violate the law.

Second of all, the grandfathering in those contracts with others right now, I think that locks us into an old technology that if we can not make new agreements with other countries who might have the quality of goods that we need that the United States doesn't need and we have grandfathered them in, then they are not going to be able to proceed with—we can't go to another country with—that has better technology and that we don't have. So I have concerns just with the way that that is written.

Second of all, with the proposed secondary amendment, I think that that helps to overcome the legality of trade agreements. My only concern with the secondary amendment is that it doesn't say who is going to decide. And in most cases like this, there usually is a provision as—that USTR will be the deciding body whether—you know, whether that would violate the trade agreement whether to be able to go ahead or not.

So with that, I think there is a little bit of the language that would need to be looked at if we decide to go with the secondary amendment.

And with that, I yield back.

Chairman BOEHLERT. Thank you.

Is there anyone—Ms. Jackson Lee has departed.

Mr. Gutknecht.

Mr. GUTKNECHT. Mr. Chairman, I am going to vote for your perfecting amendment here, but I do want to congratulate Mr. Costello for bringing this issue forward. And for those of you who have never been out to NOAA's headquarters out in Colorado, I would encourage you to make a trip out there. And after I was out there, I came back believing that this was an agency that not only had a point of view, but was willing to do whatever it took to prove that particular point of view. And that was discouraging for me.

But I also want to say this. It is also discouraging to me that a lot of our partners around the world are more than eager to allow the United States to shoulder 90 percent of the cost of doing research of this type and then have little to offer except criticism of the United States. And so this may be a ham-fisted way to make a point, but I think it is an important point that Congress needs to make.

And I guess if you boiled it all down, it comes to this: he who pays, plays. And a lot of our trading partners in Europe and in other parts of the world, who are supposedly our allies, will—are not willing to put up much money in terms of doing this kind of research but they are constantly critical of the United States for not doing enough. And so this may not be the perfect way to make a statement to some of our friends around the world, but at least it is an attempt.

I will vote for the Chairman's perfecting amendment, but I would encourage all Members to pay very close attention not only to what NOAA is up to but sometimes to what our friends are up to as well.

Ms. JACKSON LEE. Mr. Chairman.

Chairman BOEHLERT. Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman very much.

I wish my colleagues would look specifically at Mr. Costello's language, and I think it is, if anything, leans toward absolute fairness. It particularly talks about procurement. It talks about contractors and subcontractors located outside of the United States. Time after time, Members have voted for this very same language on the Floor of the House. I hate to use the term "buy American" to defend someone, but I think part of the connection of Mr. Costello's language and intent, and I don't want to read my analysis into his language, but over and over again, we talk about building the science capacity, technology capacity here in the United States, the number of scholars that we can generate to begin to foster a greater involvement in this work. NOAA is a scientific entity. Albeit, it deals with our weather predictions and other scientific efforts. What Mr. Costello is doing is even more far-reaching than the concept of "buy American." It is investing in America. I think he makes provisions if it is to the necessity of national security that he provides an exemption.

And I am concerned, though I appreciate the intent of the Chairman's amendment, I am concerned that this throws this particular legislation into Ways and Means, which has jurisdiction over treaties. And this doesn't speak—he does not speak specifically to treaties, and by its silence, I think that this legislation can track and parallel the obligations of a treaty. What it says, where NOAA can, abiding by law, use the services and goods from within the United States, goods and services from the United States, they should do it. Why should we be against that? All of the protections are in the amendment.

And I would hope that we would see this two-fold: one, investing in America, and three, investing in America's human resources, investing in America's small businesses, investing in America's technology, investing in America's science.

I hope my colleagues will support the amendment, and I yield back.

Thank you.

Chairman BOEHLERT. Thank you very much.

Before going to Mr. Hall, I just want it known that the Parliamentarian's office has confirmed that this will—my substitute amendment, second-degree amendment, will not trigger a referral to Ways and Means, so let us strike that from your thinking.

Mr. Hall.

Mr. HALL. Mr. Chairman, thank you.

You know, the lady from Texas was absolutely correct in saying it is not an unfair thrust, but I was a judge for 12 years, and most of them I ran into wanted a favorable treatment more than they wanted fair treatment. And I think from the manner that you had with Mr. Costello evidences the respect that you have for one another.

But actually, "buy American" is a wonderful thrust and one that we have all supported and voted—all of us have voted for it many times in many shapes and in many forms. And I read this amendment over and looked at it with my advisor in my office. And my thought was if there is some way that the U.S. could get last chance at any underseller or underbuyer, and I don't know what your amendment does, but I would like something like that.

Mr. Chairman, you put it to him pretty hard. If it harms, it should harm, and if it doesn't harm, there is no damage done. I will—you are going to explain your amendment, aren't you, a little more fully, your amendment to his amendment?

Chairman BOEHLERT. I already did.

Mr. HALL. And—well—

Chairman BOEHLERT. Do you want me to repeat?

No, I mean, as the fact—look, we are not—

Mr. HALL. Well, maybe you could just talk louder for some of us older people. You know, your statement to the gentleman who has the amendment, Mr. Costello, is a lot like a guy standing in front of a judge in Texas that is about to condemn him to death and explained his actions, how horrible they were and how many children that the deceased left and what painful death it was for him, and he says, "Now do you have anything to say before I sentence you to death?" And he says, "No, sir. Under the circumstances, I feel like I am getting off pretty light."

So I don't know if Mr. Costello feels that way or not, but I want to vote for his amendment, but I am going to support your correcting amendment, if it corrects the amendment. If it doesn't correct the amendment, it shouldn't correct the amendment. That is taking a page out of your book.

I yield back.

Chairman BOEHLERT. Thank you very much.

And you just, once again, gave us testimony to why it is such a delight to have you serving on this committee.

This—let me just say that this is unlike past "buy American" amendments, which did not supersede trade agreements. What we are saying with my language is that the Costello language can not override an international obligation of the United States. You know, I have been in the ranks with all of us here. We all have the same general intent. We want everybody to buy American. But we have some international agreements that have been entered into, and you know, we want to—we don't want to override those international agreements based on this amendment.

So with that, let us see, who is next up? Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

Will the Chairman, as the author of the second-degree amendment, yield to a question or two?

Chairman BOEHLERT. Will I yield or will—

Mr. MILLER. Yes.

Mr. Chairman, do you agree with Mr. Costello that there is not now any clear provision of treaty or any clear ruling of law that would apply to this amendment to make it either permissible or not permissible under the WTO or any other trade agreement?

Chairman BOEHLERT. Yeah.

Mr. MILLER. You do agree with that?

Chairman BOEHLERT. The answer is essentially yes.

Mr. MILLER. But it is—okay. So then who would decide whether this was consistent or not? Would it simply be the Administration that would decide, and if so, what would be—on what basis would they decide?

Mr. COSTELLO. If the gentleman would yield while the Chairman is conferring, would you yield?

Mr. MILLER. I do yield.

Mr. COSTELLO. That is my whole point.

Mr. MILLER. Right.

Mr. COSTELLO. My whole point in the issue with the—when we are talking about international trade agreements, and my friend from Illinois made the point, I would tell you that, in my judgment, it is not clear what our international trade obligations are under the WTO treaties. And number two, you know, are we going to interpret treaties here, in this committee, or are we going to leave it up to the courts or the International Trade Association to determine what treaties are violated and what treaties are not violated?

And I would just leave you with this thought. Are we going to be cautious about trying to protect trade agreements where we do not even know, as we sit here today, if this violates a trade agreement? I would just say, as opposed to being cautious about trade agreements, we ought to be aggressive about protecting American jobs.

Mr. MILLER. Mr. Costello, it did occur to me that my line of questioning might actually help the point you were making.

Mr. COSTELLO. And I thank the gentleman for that.

Chairman BOEHLERT. Thank you very much, but let me just say we do know that this would violate existing trade agreement, and what would happen under the WTO? And it would be NOAA, in consultation with the U.S. Trade Representative, that would give us guidance and make the initial interpretation.

We are not going to get into the treaty business here in the House. I agree with you on that. But we are involved in a number of treaties, and it seems that we are obligated, under the provisions of those treaties, to honor them, and we don't want to do anything that would be in violation that would trigger an action by WTO.

Mr. MILLER. I am sorry. Was that in answer to the question of who decides and on what basis?

Chairman BOEHLERT. Yeah. Yeah. The—NOAA, in consultation with USTR, and incidentally, WTO procurement agreement would be violated. The CRS review determined that.

Mr. MILLER. Okay. My third—actually, I have just a couple more questions, if I am not—

Chairman BOEHLERT. Have at it.

Mr. MILLER. All right. Thank you, sir.

Mr. Chairman, do you agree with Ms. Biggert's point that Congress can not exempt this from WTO, or any other trade agreement, anyway?

Chairman BOEHLERT. Restate your question, please.

Mr. MILLER. I believe Ms. Biggert made the point that we cannot—Mr. Costello's amendment could not exempt NOAA's procurement from WTO requirements anyway. Is that—do you agree with that? Do you agree with Ms. Biggert?

Chairman BOEHLERT. Yeah, but then there is no reason to oppose my amendment.

Mr. MILLER. But then that also raises the question of whether it is necessary or whether it is redundant, not that redundancy has ever been particularly a political sin. We would all be in deep trouble were it.

Mr. GORDON. Would my friend from North Carolina yield? I think I can maybe sum this up.

Mr. MILLER. All right.

Mr. GORDON. The—in my opinion, in my legal opinion, the fact of the matter is, we can not, through this committee, pass some type of law that would make us be in non-compliance with an international treaty. So, I mean, you know, we can't do that.

And so here is the practical part of this. There is a lot of gray area in this law, and what—and this amendment, or this—by putting this secondary amendment, it really puts us into a burden of proof situation. In other words, we can't pass a law that says that we are going to be in violation of an international treaty. But—that is very vague. And so what this amendment would do, secondary amendment would do, it would put the—really the burden of proof on leaning more toward the international treaties than it would on leaning toward trying to be aggressive and protecting American jobs.

So it is really dealing in that gray area, and the kind of message you are going to send out, it is—under no circumstances are we in this Science Committee going to pass a law that would allow us to violate an international treaty.

Chairman BOEHLERT. Yeah, and it—

Mr. GORDON. And I yield back.

Chairman BOEHLERT. And we are not the people who are going to sit in judgment. It is going to be the Administrator of NOAA in consultation with U.S. Trade Representative. We are not getting into that business.

Mr. MILLER. Mr. Chairman, I did have one more question.

Chairman BOEHLERT. Who else seeks recognition?

Mr. MILLER. Actually, could I just ask—

Chairman BOEHLERT. Ms. Johnson.

Mr. MILLER. I guess I can't ask one more?

Chairman BOEHLERT. Your time is expired now.

Ms. Johnson.

Ms. JOHNSON OF TEXAS. Mr. Chairman, I would like to yield to Mr. Costello before me.

Chairman BOEHLERT. The gentleman is recognized.

Mr. COSTELLO. I thank the gentlelady for yielding. And I would—you know, we could sit here for the next half-hour and go back and forth on this issue, but I think it is pretty clear. The Chairman stated it just a second ago. We are not going to get into the business of determining international treaties in this committee. But any time that we can try and protect American jobs, we should. And if, in fact, this, at some point in time, that it is determined that it is a violation of an international trade agreement, which I doubt very seriously that it is, then we can come back and address that. But today, we ought to be protecting American jobs.

And I yield to the gentleman from North Carolina.

Mr. MILLER. Thank you.

I am sorry, Mr. Chairman. I have one more question for you.

Chairman BOEHLERT. Why am I not surprised?

The gentleman will ask the question.

Mr. MILLER. All of the discussion so far, Mr. Chairman, has been about jobs and about buying American. But does this not also allow

the contracting outside the United States of services? Are we going to be building scientific expertise somewhere other than here? Of course, I prefer to buy American goods, but I am particularly concerned about building scientific expertise in the United States, not somewhere else.

Chairman BOEHLERT. We don't have any problem with Subsection A of the amendment. Get the amendment. Read it. What my second-degree amendment simply says, and I will repeat, "can not override an international obligation of the United States."

Mr. MILLER. Right.

Chairman BOEHLERT. That is not the responsibility of the Science Committee to determine. That is the responsibility of the Administrator of NOAA in consultation with the World—with the U.S. Trade Representative of any Administration.

Who else seeks recognition?

Ms. Biggert.

Ms. BIGGERT. Let me just take that one step further.

The reason that it is so important that we have this secondary amendment is because if we don't, and there is a—we are cited by the—and it goes to court to decide, then what happens is that the World Trade Organization will, if they say yes we are in violation of a trade agreement, then they can sanction us. And it doesn't mean that they are going to sanction NOAA or anything. They can sanction any product in our—in this country, like, say, agriculture or financial services, anything. And so it is so important that we make this decision prior to going to court. And that is why it is so important that it is with NOAA and with the USTR to give us an opinion before this is done whether it would be a violation or not.

Mr. COSTELLO. And I wonder if my friend from Illinois would yield?

The point that I have made, as I am trying to make, is that, to my knowledge, and staff has informed me, that there has never been a challenge to a "buy American" agreement through the World Trade Organization. So there is not a ruling by a court, there is not a ruling by anyone on any of these issues. And what I am saying is, at some point in time, we have to stand up and say enough is enough. And we have to begin to protect American jobs.

Now this is not an amendment that says that NOAA can not contract out for services, can not contract out for other goods to foreign countries or to foreign labor. There are exceptions. If the President determines that it is in the interest of national security or if there are products that are only made outside of the United States that can not be obtained here in the country, or if, in fact, the goods are being made by U.S. workers in other countries, those exceptions are clear in the amendment. And I would say, you know, at some point in time, we need to not be so concerned about protecting a gray area in an international trade agreement and start protecting jobs here at home.

Ms. BIGGERT. If I might reclaim my time.

We also have to be protective of our legal obligations and to make sure that those are not violated. I just think it is one more—all of your exceptions are very good. Your premise is very good of buying American, but this one makes it even better.

Mr. COSTELLO. And I would say that the courts are there for a reason, that we shouldn't be—we are the Judicial Branch. They are the Judicial Branch, we are the Legislative Branch, but the branch that will determine this will be the Judicial Branch, not the Legislative Branch, and if we are going—every action that we take, if we are going to be concerned that it is going to be overruled by a court, you know, I don't think we would ever get anything done around here.

Ms. BIGGERT. I don't think that we are worried about whether what we are doing is legal under the WTO. And this is a global economy, and we are participating.

I yield back.

Chairman BOEHLERT. Thank you very much.

And thank you.

Ms. JOHNSON OF TEXAS. Mr. Chairman.

Chairman BOEHLERT. Ms. Johnson.

Ms. JOHNSON OF TEXAS. Just one more, I guess, comment.

If we get too over concerned about the language of the treaties and not allow the appropriate ones to get concern, it—then I would like to explore what our treaty says with China, because apparently they have an open-ended agreement, if we are going to get into treaty agreements, because they certainly don't respect any of our guidelines.

Chairman BOEHLERT. I was just advised by the distinguished Chief of Staff of the Science Committee that China is not part of WTO and therefore—the procurement agreement, and therefore it wouldn't apply.

But just let me say this in summing up everything. I must admire the skill of the gentleman from Illinois' presentation. I agree with the rhetoric, but not the reasoning. The rhetoric is something we can all identify with. We are all anxious to do as much as we can to protect American jobs. That is the desire of every single Member of this panel, no matter where he or she may sit.

But it is also the intent of this committee not to go forward with anything that would be in violation of existing commitments of the United States of America. And the Costello Amendment violates the WTO procurement agreement on its face, according to the Congressional Research Service, a highly-regarded operation, CRS, non-partisan. We need my language, because the Costello language goes further in contradicting trade agreements than past “buy American” language does.

[The information follows:]



Memorandum

May 18, 2005

SUBJECT: Legal Analysis of the “Costello Amendment” to H.R. 50, the National Oceanic and Atmospheric Administration Act, and its Potential Effect on U.S. International Government Procurement Obligations

FROM: Todd B. Tatelman
Legislative Attorney
American Law Division

This memorandum discusses the proposed “Costello Amendment”¹ to H.R. 50, the National Oceanic and Atmospheric Administration (NOAA) Act,² as it relates to international government procurement obligations entered into by the United States through our participation in the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA), and our other Bilateral Free Trade Agreements (FTAs). Based on a review of our obligations and the language of the proposed amendment, it would appear that, as currently drafted, application of the amendment under certain circumstances would be inconsistent with U.S. international government procurement obligations regarding non-discrimination and national treatment. In addition, the amendment could also be seen as a technical specification on government procurement that creates an “unnecessary obstacle” to international trade.

The “Costello Amendment”

The amendment to H.R. 50 offered by Congressman Costello provides that any NOAA activity converted to contractor performance pursuant to the A-76 Circular³ “may not be performed by the contractor or any subcontractor at a location outside the United States.”⁴ In addition, the proposed amendment also requires that any contract for goods or services entered into by the Administrator of NOAA “may not be performed outside the United States

¹ Proposed Amendment to H.R. 50, dated May, 3, 2005 and provided to CRS by the House Science Committee.

² National Oceanic and Atmospheric Administration Act, H.R. 50, 109th Cong. (2005).

³ For more detail regarding the A-76 Circular and its requirements, see CRS Report RS21489, *OMB Circular A-76: Explanation and Discussion of the Recently Revised Federal Outsourcing Policy*, by John R. Luckey.

⁴ See Proposed Amendment to H.R. 50 at § 16(a).

unless it is to meet a requirement of the Administration for goods or services specifically at a location outside the United States.”⁵ The amendment provides for three exceptions to its general prohibition: first, if the President determines that such a waiver is in the national security interest of the United States; second, if the Administrator determines that the goods or services are only available from sources outside the United States; or third, the activity or function was previously performed by Federal Government employees at a location outside the United States.⁶

U.S. International Government Procurement Obligations

Over the last several decades the United States has played an active role in the development of international trade agreements, including the agreements that have led to the formation of both the WTO and NAFTA. Each of these various agreements has obligated the United States to conform its domestic laws to the agreement’s specific requirements. This section of the memorandum will detail the United States’ obligations under the WTO’s Agreement on Government Procurement, the NAFTA procurement chapter, as well as our other FTAs that contain commitments with respect to government procurement.

1994 Agreement on Government Procurement. The United States’ WTO obligations with respect to government procurement are contained in the WTO Agreement on Government Procurement (AGP).⁷ Generally, the AGP applies the basic WTO national treatment and most-favored-nation obligations to the area of government procurement. The AGP was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), and took effect in the United States on January 1, 1996.⁸ Unlike other provisions of the WTO, which countries must accept as a condition of membership, the AGP is a plurilateral agreement, therefore, AGP parties are only committed to apply the agreement to other AGP parties. Presently, in addition to the United States, the AGP has been accepted by the European Communities (EC), each of the 25 EC Member countries,⁹ Canada, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Netherlands with respect to Aruba, Norway, Singapore, and Switzerland.¹⁰

⁵ *See id.* at § 16(b)(1).

⁶ *See id.* at §§ 16(b)(2)-(3) & 16(c).

⁷ Agreement on Government Procurement, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 4B, Article III, Legal Instruments-Results of the Uruguay Round vol. 31, 1915 U.N.T.S. 103 [hereinafter AGP]; *see also* Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action and Required Supporting Statements, H.R. Doc. 103-116, 103d Cong. 2d Sess. (1994).

⁸ The Uruguay Agreements Act, Pub. L. No 103-465, 108 Stat. 4809 § 101(d)(17) (1994). This act amended the Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 236 (1979), which was the existing U.S. law with respect to implementing government procurement obligations. *See* House Committee on Ways and Means, *Overview and Compilation of U.S. Trade Statutes* 188 (2003 ed.) [hereinafter *Overview of Trade Statutes*].

⁹ These are: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom.

¹⁰ Parties to the AGP are available at http://www.wto.org/english/tratop_e/gproc_e/memobs_e/htm.

The AGP applies to “any law, regulation, procedure or practice regarding any procurement by entities covered by the Agreement.”¹¹ This includes both central and sub-central governmental entities, as well as other government-related entities that a member Party designates.¹² In addition, the AGP governs “procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of products and services.”¹³ It is important to note that the AGP does not apply to all government procurement contracts, but only to those contracts that are covered by a Party’s specific commitments. Furthermore, of the covered contracts, the AGP only applies to those that are valued at or exceed designated monetary thresholds set forth in each Party’s Annexes in terms of Special Drawing Rights (SDRs).¹⁴ In the United States the thresholds are given official dollar amounts in biennial notices issued by the Office of the United States Trade Representative (USTR).¹⁵

There appear to be two provisions that are relevant to the “Costello Amendment.” First, Article III of the AGP, which specifically addresses “National Treatment and Non-discrimination,”¹⁶ a principle that forms the bedrock of all WTO agreements. The national treatment clause requires the United States to provide to all other parties, “[w]ith respect to all laws, regulations, procedures and practices regarding government procurement ... treatment no less favorable than: (a) that accorded to domestic products, services and suppliers; and (b) that accorded to products, services, and suppliers of any other Party.”¹⁷ National treatment “imposes a principle of non-discrimination as between domestically produced goods and the same imported goods.”¹⁸ The principle exists, according to commentators, in large part to “prevent government practices which evade tariff obligations.”¹⁹ In addition, Article VI, which addresses technical specifications,²⁰ requires that they “shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.”²¹

It should also be noted that the AGP contains a number of exceptions, including a national security exception, which is generally patterned after Article XXI of the 1994

¹¹ AGP, *supra* note 7, at Art. I:1.

¹² *Id.*

¹³ *Id.* at Art. I:2.

¹⁴ *Id.* at Art. I:4.

¹⁵ See 68 Fed. Reg. 70861 (December 19, 2003) (setting the 2004 and 2005 U.S. thresholds for procurements by central government entities at \$175,000 for goods and services and \$6,725,000 for construction services) [hereinafter USTR Threshold Notice].

¹⁶ See AGP, *supra* note 7, at Article III (1)(a)-(b).

¹⁷ See *id.*

¹⁸ John H. Jackson, William J. Davey & Allan O. Sykes, *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS: CASES, MATERIALS AND TEXT* 501 (3d Ed. West Group 1995).

¹⁹ *Id.*

²⁰ Article VI defines “technical specifications as including “quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labeling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities.” See AGP, *supra* note 6, at Article VI:1.

²¹ *Id.* at Article VI:1.

GATT.²² The remaining general exceptions, which are to some extent modeled on the general exceptions contained in Article XX of the 1994 GATT, include, but are not limited to, the ability to enact inconsistent measures to protect the public morals, order or safety, intellectual property and/or philanthropic institutions.²³

North American Free Trade Agreement (NAFTA) and Other U.S. Free Trade Agreements. As approved and implemented by Congress, NAFTA entered into force on January 1, 1994.²⁴ Chapter 10 of NAFTA contains extensive government procurement obligations, which generally include non-discrimination and national treatment provisions that are similar to those contained in the AGP.²⁵ Since Mexico is not currently a party to the AGP, its procurement obligations with the United States are governed solely by the provisions contained in NAFTA. Government procurement obligations between the United States and Canada had been, prior to NAFTA, contained in the U.S.-Canada Free Trade Agreement, whose \$25,000 threshold for federal goods contracts has been carried forward into the NAFTA agreement.²⁶

In addition to the AGP and NAFTA, many of the other Free Trade Agreements (FTAs) that the United States has in effect contain provisions with respect to government procurement. The agreements vary in their respective details, but all share provisions in common, including, but not limited to, the principles of non-discrimination and national treatment, as well as exemptions for certain central government procurements and monetary threshold requirements. For example, the U.S.–Israel FTA contains provisions for the waiver of any buy national provisions for contracts with a value greater than \$50,000.²⁷ In addition, our most recent FTAs such as the U.S.–Chile FTA, U.S.–Singapore FTA, U.S.–Morocco FTA and U.S.–Australia FTA²⁸ contain procurement provisions that closely track those contained in the AGP.²⁹ With respect to the monetary threshold requirements, however, some of the newer FTAs contain amounts that are much lower compared to the AGP.³⁰ In addition, the proposed Dominican Republic-Central American Free Trade

²² *Id.* at Article XXIII:1.

²³ *Id.* at Art. XXIII:2.

²⁴ NAFTA Implementation Act, Pub. L. No. 103-182, 107 Stat 2057 (1993).

²⁵ See North American Free Trade Agreement Statement of Administrative Action, H. Doc. 103-159, v.1, 583-88 (providing background information and a discussion on Chapter 10).

²⁶ See *id.* at 584. The NAFTA thresholds as applied to Mexico are generally subject to adjustment for inflation. The thresholds are currently as follows: for federal government entities listed in the U.S. Schedule \$58,550 for goods and services, and \$7,611,532 for construction services; for government enterprises listed in the U.S. Schedule, \$292,751 for goods and services, and \$9,368,478 for construction services. See USTR Threshold Notice, *supra* note 15.

²⁷ U.S.–Israel Free Trade Agreement, available at http://www.us-israel.org/jsource/US-Israel/FTA_Text.html.

²⁸ Due to the fact that neither Chile, Morocco, or Australia are a party to the WTO AGP, the FTAs will be the main source of U.S. government procurement obligations with respect to these countries.

²⁹ See 68 Fed. Reg. 70859 (Dec. 19, 2003) (implementing the U.S.–Chile FTA); see also 68 Fed. Reg. 70860 (Dec. 19, 2003) (implementing the U.S.–Singapore FTA).

³⁰ See Annex 13A of the U.S.-Singapore Free Trade Agreement, available at <http://www.ustr.gov/new/fta/Singapore/final/text%20final.pdf>; see also Annex 9.1, Sec. A of the U.S.–Chile Free

(continued...)

Agreement (DR–CAFTA) also contains provisions relating to government procurement that are similar to those contained in the U.S.–Morocco and U.S.–Australia FTAs.³¹

Analysis

While from the plain language of the amendment it is not clear what specific procurement functions are envisioned, as drafted, the proposed Amendment appears to be inconsistent with the national treatment provisions contained in our international trade agreements. Specifically, by including a requirement that NOAA contracts be performed at locations within the United States, the amendment appears to favor domestic bidders at the expense of similarly situated foreign competitors. In other words, the amendment arguably treats domestic contractors more favorably than their foreign counterparts, because it would appear to require foreign competitors to have, or be willing to invest in, domestically located facilities as a prerequisite to receiving, or being eligible to receive, NOAA procurement contracts. Currently, NOAA, which is a part of the Department of Commerce, is a covered agency for procurement purposes, except with respect to its shipbuilding activities.³² Moreover, to the extent that such a domestic production requirement is seen as a technical specification, it may also be inconsistent with Article VI, as it would appear to be possible to argue that such a requirement creates an “unnecessary obstacle” to international trade.

As mentioned above, while the agreement does contain a number of exceptions,³³ it would appear that none of them would be applicable to this situation. Any NOAA procurement related to the national defense (*i.e.*, shipbuilding) is already exempted, and it appears difficult to see how such a domestic production restriction protects public morals, order and safety, intellectual property and/or philanthropic institutions.

Evaluating the probability of a WTO challenge to this language if it is adopted, or analyzing the potential success or failure of arguments relating to this provision is difficult due to the lack of authoritative precedent with respect to government procurement issues. Since its adoption in 1995, there have only been two WTO challenges brought with respect to government procurement. The first was brought by the United States against Korea regarding airport construction for Incheon International Airport,³⁴ while the second was filed against the United States by Japan and the European Union, and involved a Massachusetts state law prohibiting state entities from procuring goods and services from any person currently doing business with the Union of Myanmar (Burma).³⁵ Only the case involving

³⁰ (...continued)

Trade Agreement, available at <http://www.ustr.gov/new/fta/Chile/final/09.procurement.pdf>.

³¹ See Chapter 9 of the Final Text of DR-CAFTA, available at http://www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/CAFTA-DR_Final_Texts/asset_upload_file766_3926.pdf.

³² See U.S. AGP Annex 1 at 1 available at http://www.wto.org/english/tratop_e/gproc_e/apend_e.htm#us (stating that the “Department of Commerce (not including shipbuilding activities of NOAA, as excluded in Annex 4)” is a covered entity).

³³ See *supra* notes 22-23.

³⁴ See WTO Dispute Settlement Body, Korea-Measures Affecting Government Procurement, WT/DS163/R 2000 WTO DS LEXIS 16 (May 1, 2000).

³⁵ See WTO Dispute Settlement Body, United States - Measure Affecting Government Procurement available at, http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#bkmk54.

Korea produced a dispute panel decision.³⁶ In addition, to date there have been no challenges brought under the government procurement chapters in either the NAFTA or any of our other FTAs.

³⁶ See *supra* note 34.

Chairman BOEHLERT. So with that, the vote will be on—

Mr. GORDON. Mr. Chairman.

Chairman BOEHLERT. Yes.

Mr. GORDON. I know we have got to finish this thing up, and I will try to be quick.

Once again, we can't pass legislation here that is going to be in violation of an international treaty, so we can all, you know, go home comfortable about that tonight.

Let me tell you how it really can make a difference. I had—I have got—the school in my hometown is called Middle Tennessee State University, and they have got a very good dyslexia center there. And they have done some work on treating dyslexia and treating—and also with distant learning in trying to help teachers around the state learn how to treat people with dyslexia. So I was persuasive and had \$1 million put in the Defense budget for—so we could do the same sort of thing with our military schools around the Nation—around the world to try to help—you know, teach those teachers how to deal with dyslexic students. And what wound up happening—and parochially, I will admit, my university was a good one, and so I was thinking they were going to get this bid. But instead, what happened, it—there was a little company in New Jersey that had a front there who got the bid and then shipped everything to India to be done.

And I think this amendment would have given the Defense Department or NOAA or someone else the ability, you know, to take that back. And so I mean, I think this is the kind of—the real war, it is really where are you going to put the burden of proof. And I think that is what Mr. Costello does is puts the burden of proof on keeping the jobs here.

Chairman BOEHLERT. Thank you very much for reminding me of the outstanding work being done at Middle Tennessee State University.

And let me, on behalf of all of us, congratulate you on your ability to get \$1 million earmark in the DOD bill. We are all wondering how you achieved that.

But I would point out that the procurement agreement allows for exceptions for Defense.

And so with that, I think we have pretty much exhausted it.

The vote is on the amendment to the amendment. If—all in favor, say aye. Opposed, no. The ayes appear to have it.

Mr. COSTELLO. Mr. Chairman, I would ask for a recorded vote.

Chairman BOEHLERT. Mr. Costello asks for a recorded vote. The Clerk will call the roll.

Ms. TESSIERI. Mr. Boehlert.

Chairman BOEHLERT. Aye.

Ms. TESSIERI. Mr. Boehlert votes yes.

Mr. Hall.

Mr. HALL. Aye.

Ms. TESSIERI. Mr. Hall votes yes.

Mr. Smith.

[No response.]

Ms. TESSIERI. Mr. Weldon.

[No response.]

Ms. TESSIERI. Mr. Rohrabacher.

Mr. ROHRABACHER. No.
Ms. TESSIERI. Mr. Rohrabacher votes no.
Mr. Calvert.
Mr. CALVERT. Aye.
Ms. TESSIERI. Mr. Calvert votes yes.
Mr. Bartlett.
Mr. BARTLETT. Aye.
Ms. TESSIERI. Mr. Bartlett votes yes.
Mr. Ehlers.
Mr. EHLERS. Yes.
Ms. TESSIERI. Mr. Ehlers votes yes.
Mr. Gutknecht.
Mr. GUTKNECHT. Yes.
Ms. TESSIERI. Mr. Gutknecht votes yes.
Mr. Lucas.
Mr. LUCAS. Yes.
Ms. TESSIERI. Mr. Lucas votes yes.
Mrs. Biggert.
Ms. BIGGERT. Yes.
Ms. TESSIERI. Mrs. Biggert votes yes.
Mr. Gilchrest.
Mr. GILCHREST. Aye.
Ms. TESSIERI. Mr. Gilchrest votes yes.
Mr. Akin.
Mr. AKIN. Aye.
Ms. TESSIERI. Mr. Akin votes yes.
Mr. Johnson.
[No response.]
Ms. TESSIERI. Mr. Forbes.
[No response.]
Ms. TESSIERI. Mr. Bonner.
Mr. BONNER. Aye.
Ms. TESSIERI. Mr. Bonner votes yes.
Mr. Feeney.
Mr. FEENEY. Aye.
Ms. TESSIERI. Mr. Feeney votes yes.
Mr. Inglis.
Mr. INGLIS. Aye.
Ms. TESSIERI. Mr. Inglis votes yes.
Mr. Reichert.
Mr. REICHERT. Yes.
Ms. TESSIERI. Mr. Reichert votes yes.
Mr. Sodrel.
Mr. SODREL. Aye.
Ms. TESSIERI. Mr. Sodrel votes yes.
Mr. Schwarz.
Mr. SCHWARZ. Aye.
Ms. TESSIERI. Mr. Schwarz votes yes.
Mr. McCaul.
Mr. MCCAUL. Aye.
Ms. TESSIERI. Mr. McCaul votes yes.
Mr. Gordon.
Mr. GORDON. No.
Ms. TESSIERI. Mr. Gordon votes no.

Mr. Costello.
 Mr. COSTELLO. No.
 Ms. TESSIERI. Mr. Costello votes no.
 Ms. Johnson.
 Ms. JOHNSON OF TEXAS. No.
 Ms. TESSIERI. Ms. Johnson votes no.
 Ms. Woolsey.
 Ms. WOOLSEY. No.
 Ms. TESSIERI. Ms. Woolsey votes no.
 Ms. Hooley.
 Ms. HOOLEY. No.
 Ms. TESSIERI. Ms. Hooley votes no.
 Mr. Udall.
 Mr. UDALL. No.
 Ms. TESSIERI. Mr. Udall votes no.
 Mr. Wu.
 Mr. WU. No.
 Ms. TESSIERI. Mr. Wu votes no.
 Mr. Honda.
 [No response.]
 Ms. TESSIERI. Mr. Miller.
 Mr. MILLER. No.
 Ms. TESSIERI. Mr. Miller votes no.
 Mr. Davis.
 [No response.]
 Ms. TESSIERI. Mr. Carnahan.
 Mr. CARNAHAN. No.
 Ms. TESSIERI. Mr. Carnahan votes no.
 Mr. Lipinski.
 Mr. LIPINSKI. No.
 Ms. TESSIERI. Mr. Lipinski votes no.
 Ms. Jackson Lee.
 Ms. JACKSON LEE. No.
 Ms. TESSIERI. Ms. Jackson Lee votes no.
 Mr. Sherman.
 Mr. SHERMAN. No.
 Ms. TESSIERI. Mr. Sherman votes no.
 Mr. Baird.
 [No response.]
 Ms. TESSIERI. Mr. Matheson.
 Mr. MATHESON. No.
 Ms. TESSIERI. Mr. Matheson votes no.
 Mr. Costa.
 Mr. COSTA. No.
 Ms. TESSIERI. Mr. Costa votes no.
 Mr. Green.
 Mr. GREEN. No.
 Ms. TESSIERI. Mr. Green votes no.
 Mr. Melancon.
 Mr. MELANCON. No.
 Ms. TESSIERI. Mr. Melancon votes no.
 Mr. Chairman.
 Chairman BOEHLERT. Is there any other Member who seeks recognition?

Mr. HALL. Mr. Chairman.

Chairman BOEHLERT. Mr. Hall.

Mr. HALL. I didn't really understand fully what Mr. Wu said. Like when you were speaking earlier, I couldn't hear you. You weren't talking loud enough for some of us older people, and I didn't understand Mr. Wu, and I would like to know what Mr. Wu said, and then I would also like to really know what he meant. And I would like to see it in writing. I would like to have time to have him——

Chairman BOEHLERT. This is called a filibuster.

Mr. HALL. That is what I was waiting to hear, Mr. Chairman.

Chairman BOEHLERT. The Clerk will record.

Ms. TESSIERI. Mr. Chairman, yes, 18; no, 17.

COMMITTEE ON SCIENCE - ROLL CALL - 109th CONGRESS

DATE: May 17, 2005 SUBJECT: Boehlert Second Degree Amendment To the Costello

Rm.	Phone	Member	Yes	No	Not Voting	Present	Absent
2246	53665	Mr. Boehlert, R-NY	✓				
2405	56673	Mr. Hall, R-TX	✓				
2184	54236	Mr. Smith, R-TX					
2466	52011	Mr. Weldon, R-PA					
2338	52415	Mr. Rohrabacher, R-CA		✓			
2201	51986	Mr. Calvert, R-CA	✓				
2412	52721	Mr. Bartlett, R-MD	✓				
1714	53831	Mr. Ehlers, R-MI	✓				
425	52472	Mr. Gutknecht, R-MN	✓				
2342	55565	Mr. Lucas, R-OK	✓				
1317	53515	Mrs. Biggert, R-IL	✓				
2245	55311	Mr. Gilchrest, R-MD	✓				
117	52561	Mr. Akin, R-MO	✓				
1229	52371	Mr. Johnson, R-IL	✓				
307	56365	Mr. Forbes, R-VA					
315	54931	Mr. Bonner, R-AL	✓				
323	52706	Mr. Feeney, R-FL	✓				
330	56030	Mr. Inglis, R-SC	✓				
1223	57761	Mr. Reichert, R-WA	✓				
1508	55315	Mr. Sodrel, R-IN	✓				
128	56276	Mr. Schwarz, R-MI	✓				
415	52401	Mr. McCaul, R-TX	✓				
2304	54231	Mr. Gordon, D-TN		✓			
2269	55661	Mr. Costello, D-IL		✓			
1511	58885	Ms. Johnson, D-TX		✓			
2263	55161	Ms. Woolsey, D-CA		✓			
2430	55711	Ms. Hooley, D-OR		✓			
240	52161	Mr. Udall, D-CO		✓			
1023	50855	Mr. Wu, D-OR		✓			
1713	52631	Mr. Honda, D-CA		✓			
1722	53032	Mr. Miller, D-NC		✓			
410	56831	Mr. Davis, D-TN		✓			
1232	52671	Mr. Carnahan, D-MO		✓			
1217	55701	Mr. Lipinski, D-IL		✓			
2435	53816	Ms. Jackson Lee, D-TX		✓			
1030	55911	Mr. Sherman, D-CA		✓			
1421	53536	Mr. Baird, D-WA		✓			
1222	53011	Mr. Matheson, D-UT		✓			
1004	53341	Mr. Costa, D-CA		✓			
1529	57508	Mr. Green, D-TX		✓			
404	54031	Mr. Melancon, D-LA		✓			
TOTAL			18	17			

Attest: Victoria A. Tomasi (Clerk)

Chairman BOEHLERT. The amendment is passed, and the vote is on the amendment, as amended. All in favor, say aye. Opposed, no. The ayes have it. The amendment, as amended, is passed.

Are there any other amendments to the amendment in the nature of a substitute? If not, the vote occurs on the amendment in the nature of a substitute, as amended. All in favor, say aye. Those opposed, say no. The ayes have it, and the amendment is agreed to.

Are there any other amendments? Hearing none, the vote is on the bill H.R. 50, *National Oceanic and Atmospheric Administration Act*, as amended. All of those in favor will say aye. Opposed, no. In the opinion of the Chair, the ayes have it.

I recognize Dr. Ehlers to offer a motion.

Mr. EHLERS. Mr. Chairman, I move that the Committee favorably report H.R. 50, as amended, to the House with the recommendation that the bill, as amended, do pass. Furthermore, I move that staff be instructed to prepare the legislative report and make necessary technical and conforming changes and that the Chairman take all necessary steps to bring the bill before the House for consideration.

Chairman BOEHLERT. The question is on the motion to report the bill, as amended, favorably. Those in favor of the motion will signify by saying aye. Opposed, no. The ayes have it, and the bill is favorably reported.

Without objection, the motion to reconsider is laid upon the table.

I move that Members have two subsequent calendar days in which to submit supplemental, minority, or additional views on the measure. I would move pursuant to Clause 1 of Rule 22 of the Rules of the House of Representatives that the Committee authorizes the Chairman to offer such motions as may be necessary in the House to adopt and pass H.R. 50, *National Oceanic and Atmospheric Administration Act*, as amended. Without objection, so ordered.

I want to thank everybody for participating and for your attendance and indulgence.

This concludes our Committee markup.

[Whereupon, at 11:15 a.m., the Committee was adjourned.]

Appendix:

SUBCOMMITTEE ON ENVIRONMENT, TECHNOLOGY, AND STANDARDS
MARKUP OF H.R. 50 MEMORANDUM; H.R. 50, AS AMENDED; SECTION-BY-SECTION ANALYSIS OF H.R. 50, AS AMENDED; AMENDMENT ROSTER; SECTION-BY-SECTION ANALYSIS OF MANAGER'S AMENDMENT

COMMITTEE ON SCIENCE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

March 15, 2005

MEMORANDUM

TO: Sherwood L. Boehlert, Chairman

FROM: Vernon J. Ehlers, Chairman
Subcommittee on Environment, Technology
and Standards

SUBJECT: Subcommittee Markup of H.R. 50, National Oceanic and
Atmospheric Administration Act

On March 15, 2005, the Subcommittee on Environment, Technology, and Standards considered H.R. 50, National Oceanic and Atmospheric Administration Act, and ordered the measure reported, as amended, by a voice vote.

Attached is copy of the measure as reported by the Subcommittee, as well as a section-by-section analysis.

I look forward to working with you to bring this bill before the Committee for consideration.

Attachments (2)

H.R. 50, AS AMENDED
BY THE SUBCOMMITTEE ON ENVIRONMENT, TECHNOLOGY, AND STANDARDS ON MARCH 15, 2005

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Oceanic and
3 Atmospheric Administration Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) The term “Administration” means the Na-
7 tional Oceanic and Atmospheric Administration.

8 (2) The term “Administrator” means the Ad-
9 ministrator of the National Oceanic and Atmos-
10 pheric Administration.

11 (3) The term “Secretary” means the Secretary
12 of Commerce.

13 **SEC. 3. NATIONAL OCEANIC AND ATMOSPHERIC ADMINIS-
14 TRATION.**

15 (a) IN GENERAL.—There shall be in the Department
16 of Commerce an agency known as the National Oceanic
17 and Atmospheric Administration.



1 (b) MISSION.—The mission of the Administration is
2 to understand the systems of the Earth's oceans and at-
3 mosphere and predict changes in the Earth's oceans and
4 atmosphere and the effects of such changes on the land
5 environment, to conserve and manage coastal, ocean, and
6 Great Lakes ecosystems to meet national economic, social,
7 and environmental needs, and to educate the public about
8 these topics.

9 (c) FUNCTIONS.—The functions of the Administra-
10 tion shall include—

11 (1) collecting, through observation and other
12 means, communicating, analyzing, processing, and
13 disseminating comprehensive scientific data and in-
14 formation about weather and climate, solar and geo-
15 physical events on the Sun and in the space environ-
16 ment, and about the coasts, oceans, Great Lakes,
17 upper reaches of estuaries, and hydrologic systems;

18 (2) operating and maintaining a system for the
19 storage, retrieval, and dissemination of data relating
20 to weather and climate, solar and geophysical events
21 on the Sun and in the space environment, and about
22 the coasts, oceans, Great Lakes, upper reaches of es-
23 tuaries, and hydrologic systems;

24 (3) conducting and supporting basic and ap-
25 plied research and development of technology as may



1 be necessary to carry out the mission described in
2 subsection (b);

3 (4) issuing weather, water, climate, and space
4 weather forecasts and warnings;

5 (5) coordinating efforts of Federal agencies in
6 support of national and international programs with
7 respect to meteorological services;

8 (6) understanding the science of Earth's cli-
9 mate and related systems, and undertaking research,
10 development, and demonstration to enhance society's
11 ability to plan for and respond to climate variability
12 and change;

13 (7) protecting, restoring, and managing the use
14 of the coasts, oceans, and Great Lakes through eco-
15 system-based research, development, demonstration,
16 and management;

17 (8) coordinating efforts of Federal agencies in
18 support of national and international programs with
19 respect to integrated Earth observing systems;

20 (9) administering public outreach and education
21 programs and services to increase scientific and en-
22 vironmental literacy about weather and climate,
23 solar and geophysical events on the Sun and in the
24 space environment, and the coasts, oceans, Great



1 Lakes, upper reaches of estuaries, and hydrologic
2 systems;

3 (10) cooperating with international organiza-
4 tions and scientists in bilateral and multilateral re-
5 search, development, conservation, and service pro-
6 grams related to coastal, ocean, Great Lakes, weath-
7 er, and climate issues; and

8 (11) any other function assigned to the Admin-
9 istration by law.

10 **SEC. 4. ADMINISTRATION LEADERSHIP.**

11 (a) ADMINISTRATOR.—

12 (1) IN GENERAL.—There shall be, as the Ad-
13 ministrator of the Administration, an Under Sec-
14 retary of Commerce for Oceans and Atmosphere.
15 The Administrator shall be appointed by the Presi-
16 dent, by and with the advice and consent of the Sen-
17 ate. The Administrator shall be paid at the rate of
18 basic pay for level III of the Executive Schedule.

19 (2) FUNCTIONS.—The Administrator shall per-
20 form such functions and exercise such powers with
21 respect to the Administration as the Secretary may
22 prescribe, including—

23 (A) general management;

24 (B) policy development and guidance;



1 (C) budget formulation, guidance, and exe-
2 cution; and

3 (D) serving as the Department of Com-
4 merce official for all ocean and atmosphere
5 issues with other elements of the Department of
6 Commerce and with other Federal agencies,
7 State, tribal, and local governments, and the
8 public.

9 (3) DELEGATION OF AUTHORITY.—The Admin-
10 istrator may, except as otherwise prohibited by
11 law—

12 (A) delegate any functions, powers, or du-
13 ties of the Administrator to such officers and
14 employees of the Administration as the Admin-
15 istrator may designate; and

16 (B) authorize such successive redelegations
17 of such functions, powers, or duties within the
18 Administration as the Administrator considers
19 necessary or appropriate.

20 (4) AUTHORITIES.—The Administrator shall
21 have the authority to enter into and perform such
22 contracts, leases, grants, and cooperative agreements
23 with Federal agencies, State and local governments,
24 Indian tribes, international organizations, foreign
25 governments, educational institutions, nonprofit or-



1 ganizations, and commercial organizations, as may
2 be necessary and proper to carry out the Adminis-
3 tration's functions under this Act or as otherwise
4 provided by law. The authority conferred on the Ad-
5 ministrator by this paragraph does not include the
6 authority to contract for services that are an inher-
7 ently governmental function as defined in section 5
8 of the Federal Activities Inventory Reform Act of
9 1998 (31 U.S.C. 501 note).

10 (b) ASSISTANT SECRETARY FOR OCEANS AND AT-
11 MOSPHERE.—

12 (1) IN GENERAL.—There shall be, as Deputy
13 Administrator of the Administration, an Assistant
14 Secretary of Commerce for Oceans and Atmosphere.
15 The Assistant Secretary shall be appointed by the
16 President, by and with the advice and consent of the
17 Senate. The Assistant Secretary shall be the Admin-
18 istrator's first assistant for purposes of subchapter
19 III of chapter 33 of title 5, United States Code. The
20 Assistant Secretary shall be paid at the rate of basic
21 pay for level IV of the Executive Schedule.

22 (2) FUNCTIONS.—The Assistant Secretary shall
23 perform such functions and exercise such powers as
24 the Secretary or Administrator may prescribe and
25 shall act as Administrator during the absence or dis-



1 ability of the Administrator or in the event of a va-
2 cancy in the office of Administrator.

3 (c) DEPUTY UNDER SECRETARY FOR OCEANS AND
4 ATMOSPHERE.—

5 (1) IN GENERAL.—There shall, be as the Chief
6 Operating Officer of the Administration, a Deputy
7 Under Secretary of Commerce for Oceans and At-
8 mosphere. The Deputy Under Secretary shall be ap-
9 pointed by the Secretary. The position of Deputy
10 Under Secretary shall be a Senior Executive Service
11 position authorized under section 3133 of title 5,
12 United States Code.

13 (2) FUNCTIONS.—The Deputy Under
14 Secretary—

15 (A) shall ensure the timely and effective
16 implementation of Administration policies and
17 objectives;

18 (B) shall be responsible for all aspects of
19 the Administration's operations and manage-
20 ment, including budget, financial operations, in-
21 formation services, facilities, human resources,
22 procurements, and associated services;

23 (C) in the absence or disability of the As-
24 sistant Secretary, or in the event of a vacancy
25 in such position, shall act in that position; and



1 (D) shall perform such other duties as the
2 Administrator shall prescribe.

3 (d) DEPUTY ASSISTANT SECRETARY FOR OCEANS
4 AND ATMOSPHERE.—

5 (1) IN GENERAL.—There shall be in the Admin-
6 istration a Deputy Assistant Secretary for Oceans
7 and Atmosphere. The Deputy Assistant Secretary
8 for Oceans and Atmosphere shall be appointed by
9 the Secretary. The position of Deputy Assistant Sec-
10 retary for Oceans and Atmosphere shall be a Senior
11 Executive Service position authorized under section
12 3133 of title 5, United States Code.

13 (2) FUNCTIONS.—The Deputy Assistant Sec-
14 retary for Oceans and Atmosphere--

15 (A) shall serve as an advisor to the Admin-
16 istrator on program and policy issues related to
17 environmental policy, strategic planning, and
18 program analysis;

19 (B) shall ensure the timely and effective
20 implementation of Administration policies and
21 objectives related to environmental policy, stra-
22 tegic planning, and program analysis; and

23 (C) shall perform such other duties as the
24 Administrator shall prescribe.



1 (e) DEPUTY ASSISTANT SECRETARY FOR SCIENCE,
2 TECHNOLOGY, EDUCATION, AND OUTREACH.—

3 (1) IN GENERAL.—There shall be in the Admin-
4 istration a Deputy Assistant Secretary for Science,
5 Technology, Education, and Outreach, who shall co-
6 ordinate and oversee the science and technology ac-
7 tivities of the Administration and ensure that Ad-
8 ministration decisions are informed by the results of
9 appropriate and relevant research. The Deputy As-
10 sistant Secretary for Science, Technology, Edu-
11 cation, and Outreach shall be appointed by the Sec-
12 retary. The position of Deputy Assistant Secretary
13 for Science, Technology, Education, and Outreach
14 shall be a Senior Executive Service career reserved
15 position as defined in section 3132(a)(8) of title 5,
16 United States Code.

17 (2) FUNCTIONS.—The Deputy Assistant Sec-
18 retary for Science, Technology, Education, and Out-
19 reach shall—

20 (A) coordinate research and development
21 activities across the Administration, including
22 coordination of research and development budg-
23 ets;



1 (B) advise the Administrator on how re-
2 search activities can be applied to operational
3 use;

4 (C) provide advice to the Administrator re-
5 garding science and technology issues and their
6 relationship to Administration policies, proce-
7 dures, and decisions;

8 (D) participate in developing the Adminis-
9 tration's strategic plans and policies and review
10 the science and technology aspects of those
11 plans and policies;

12 (E) develop and oversee guidelines for the
13 dissemination to the public of results from re-
14 search and development conducted, sponsored,
15 or cited by the Administration;

16 (F) serve as liaison to the nongovern-
17 mental science and technology community;

18 (G) develop and oversee guidelines for peer
19 review of science and technology research spon-
20 sored by the Administration;

21 (II) oversee implementation of the stra-
22 tegic plan for science and technology research,
23 development, and demonstration required under
24 section 10(b);



11.

1 (I) oversee management of research labora-
2 tories in the Administration;

3 (J) oversee the research and education
4 programs of the Administration; and

5 (K) perform such other duties as the Sec-
6 retary or Administrator shall prescribe.

7 (3) QUALIFICATIONS.—An individual appointed
8 under paragraph (1) shall be a person who has an
9 outstanding science and technology background, in-
10 cluding research accomplishments, scientific reputa-
11 tion, and public policy experience.

12 (4) CONSULTATION.—Before appointing an in-
13 dividual under paragraph (1), the Secretary shall
14 consult with the National Academy of Sciences, the
15 Science Advisory Board of the Administration, and
16 other appropriate scientific organizations.

17 (f) GENERAL COUNSEL.—

18 (1) IN GENERAL.—There shall be in the Admin-
19 istration a General Counsel. The General Counsel
20 shall be appointed by the Secretary. The General
21 Counsel shall be paid at the rate of basic pay for
22 level V of the Executive Schedule.

23 (2) FUNCTIONS.—The General Counsel—

24 (A) shall serve as the chief legal officer of
25 the Administration for all legal matters that



1 arise in connection with the conduct of the
2 functions of the Administration; and

3 (B) shall perform such other functions and
4 exercise such powers as the Secretary or Ad-
5 ministrator may prescribe.

6 (g) CONTINUATION OF SERVICE.—Any individual
7 serving on the effective date of this Act in a position pro-
8 vided for in this Act may continue to serve in that position
9 until a successor is appointed under this Act. Nothing in
10 this Act shall be construed to require the appointment of
11 a successor under this Act sooner than would have been
12 required under law as in effect before the effective date
13 of this Act.

14 **SEC. 5. NATIONAL WEATHER SERVICE.**

15 (a) IN GENERAL.—The Secretary shall maintain
16 within the Administration a National Weather Service.

17 (b) MISSION.—The mission of the National Weather
18 Service is to provide weather, water, climate, and space
19 weather forecasts and warnings for the United States, its
20 territories, adjacent waters, and ocean areas for the pro-
21 tection of life and property and the enhancement of the
22 national economy.

23 (c) GOALS.—The goals of the National Weather Serv-
24 ice shall include—



1 (1) to provide timely and accurate weather,
2 water, climate, and space weather forecasts; and

3 (2) to provide timely and accurate warnings of
4 weather, water, and climate natural hazards, and of
5 space weather hazards.

6 (d) FUNCTIONS.—The functions of the National
7 Weather Service shall include—

8 (1) maintaining a network of local weather fore-
9 cast offices;

10 (2) maintaining a network of observation sys-
11 tems to collect weather and climate data;

12 (3) operating national centers to deliver guid-
13 ance, forecasts, warnings, and analysis about weath-
14 er, water, climate, and space weather phenomena for
15 the Administration and the public;

16 (4) conducting and supporting applied research
17 to facilitate the rapid incorporation of weather and
18 climate science advances into operational tools; and

19 (5) other functions to serve the mission of the
20 National Weather Service.

21 (e) PUBLIC-PRIVATE PARTNERSHIPS.—Not less than
22 once every 5 years, the Secretary shall develop and submit
23 to Congress a policy that defines processes for making deci-
24 sions about the roles of the National Weather Service, the
25 private sector, and the academic community in providing



1 weather-related and climate-related products, tech-
2 nologies, and services. The first such policy shall be com-
3 pleted not less than 12 months after the date of enactment
4 of this Act. At least 90 days before each submission of
5 the policy to Congress, the Secretary shall publish the pol-
6 icy in the Federal Register for a public comment period
7 of not less than 60 days.

8 **SEC. 6. OPERATIONS AND SERVICES.**

9 (a) IN GENERAL.—The Secretary shall maintain
10 within the Administration programs to support operations
11 of ongoing data collection and direct services and products
12 regarding satellite, observations, and coastal, ocean, and
13 Great Lakes information.

14 (b) FUNCTIONS.—To accomplish the mission de-
15 scribed in section 3(b), and in addition to the functions
16 described in section 3(e), the operations and service as-
17 pects of the Administration shall include—

18 (1) acquiring, managing, and operating coastal,
19 ocean, and Great Lakes observing systems;

20 (2) ensuring the availability of a global Earth-
21 observing system, integrating remote sensing and in
22 situ assets that provide critical data needed to sup-
23 port the mission of the Administration, and pro-
24 viding that data to decisionmakers and the public;



1 (3) developing, acquiring, and managing oper-
2 ational environmental satellite constellations and as-
3 sociated ground control and data acquisition facili-
4 ties to support the mission of the Administration;

5 (4) managing and distributing atmospheric,
6 geophysical, and marine data and data products for
7 the Administration through national environmental
8 data centers;

9 (5) providing for long-term stewardship of envi-
10 ronmental data, products, and information via data
11 processing, storage, reanalysis, reprocessing, and ar-
12 chive facilities;

13 (6) promoting widespread availability of envi-
14 ronmental data and information through full and
15 open access and exchange to the greatest extent pos-
16 sible;

17 (7) issuing licenses for private remote sensing
18 space systems under the Land Remote Sensing Pol-
19 icy Act of 1992;

20 (8) administering a national water level obser-
21 vation network, which shall include monitoring of
22 the Great Lakes;

23 (9) providing charts and other information for
24 safe navigation of the oceans and inland waters, as
25 provided by law; and



1 (10) such other functions to serve the oper-
2 ations and services mission of the Administration as
3 the Administrator may prescribe.

4 **SEC. 7. RESEARCH AND EDUCATION.**

5 (a) **IN GENERAL.**—The Secretary shall maintain
6 within the Administration programs to conduct and sup-
7 port research and education and the development of tech-
8 nologies relating to weather, climate, and the coasts,
9 oceans, and Great Lakes.

10 (b) **FUNCTIONS.**—To accomplish the mission de-
11 scribed in section 3(b), and in addition to the functions
12 described in section 3(c), the research and education as-
13 pects of the Administration shall include—

14 (1) conducting and supporting research and
15 technology development to improve the Administra-
16 tion's capabilities in collecting, through observation
17 and otherwise, communicating, analyzing, proc-
18 essing, and disseminating comprehensive scientific
19 data and information about weather, climate, and
20 the coasts, oceans, and Great Lakes;

21 (2) improving environmental prediction and
22 management capabilities through ecosystem-based
23 research and development;



1 (3) improving knowledge of Earth's climate and
2 related systems through research and observation for
3 decision support;

4 (4) reducing uncertainty in projections of how
5 the Earth's climate and related systems may change
6 in the future;

7 (5) fostering the public's ability to understand
8 and integrate scientific information into consider-
9 ations of national environmental issues through edu-
10 cation and public outreach activities;

11 (6) administering the National Sea Grant Col-
12 lege Program Act;

13 (7) conducting and supporting research and de-
14 velopment of technology for exploration of the
15 oceans;

16 (8) maintaining a system of laboratories to per-
17 form the functions described in this subsection;

18 (9) supporting extramural peer-reviewed com-
19 petitive grant programs to assist the Administration
20 in performing the functions described in this sub-
21 section; and

22 (10) such other functions to serve the research,
23 development, education, and outreach mission of the
24 Administration as the Administrator may prescribe.



1 **SEC. 8. SCIENCE ADVISORY BOARD.**

2 (a) IN GENERAL.—There shall be within the Admin-
 3 istration a Science Advisory Board, which shall provide
 4 such scientific advice as may be requested by the Adminis-
 5 trator, the Committee on Commerce, Science and Trans-
 6 portation of the Senate, or the Committee on Science or
 7 on Resources of the House of Representatives.

8 (b) PURPOSE.—The purpose of the Science Advisory
 9 Board is to advise the Administrator and Congress on
 10 long-range and short-range strategies for research, edu-
 11 cation, and the application of science to resource manage-
 12 ment and environmental assessment and prediction.

13 (c) MEMBERS.—

14 (1) IN GENERAL.—The Science Advisory Board
 15 shall be composed of at least 15 members appointed
 16 by the Administrator. Each member of the Board
 17 shall be qualified by education, training, and experi-
 18 ence to evaluate scientific and technical information
 19 on matters referred to the Board under this section.

20 (2) TERMS OF SERVICE.—Members shall be ap-
 21 pointed for 3-year terms, renewable once, and shall
 22 serve at the discretion of the Administrator. An indi-
 23 vidual serving a term as a member of the Science
 24 Advisory Board on the date of enactment of this Act
 25 may complete that term, and may be reappointed
 26 once for another term of 3 years unless the term



1 being served on such date of enactment is the second
2 term served by that individual. Vacancy appoint-
3 ments shall be for the remainder of the unexpired
4 term of the vacancy, and an individual so appointed
5 may subsequently be appointed for 2 full 3-year
6 terms if the remainder of the unexpired term is less
7 than one year.

8 (3) CHAIRPERSON.—The Administrator shall
9 designate a chairperson from among the members of
10 the Board.

11 (4) APPOINTMENT.—Members of the Science
12 Advisory Board shall be appointed as special Gov-
13 ernment employees, within the meaning given such
14 term in section 202(a) of title 18, United States
15 Code.

16 (d) ADMINISTRATIVE PROVISIONS.—

17 (1) REPORTING.—The Science Advisory Board
18 shall report to the Administrator and the appro-
19 priate requesting party.

20 (2) ADMINISTRATIVE SUPPORT.—The Adminis-
21 trator shall provide administrative support to the
22 Science Advisory Board.

23 (3) MEETINGS.—The Science Advisory Board
24 shall meet at least twice each year, and at other



1 times at the call of the Administrator or the Chair-
2 person.

3 (4) COMPENSATION AND EXPENSES.—A mem-
4 ber of the Science Advisory Board shall not be com-
5 pensated for service on such board, but upon request
6 by the member may be allowed travel expenses, in-
7 cluding per diem in lieu of subsistence, in accord-
8 ance with subchapter I of chapter 57 of title 5,
9 United States Code.

10 (5) SUBCOMMITTEES.—The Science Advisory
11 Board may establish such subcommittees of its
12 members as may be necessary. The Science Advisory
13 Board may establish task forces and working groups
14 consisting of Board members and outside experts as
15 may be necessary.

16 (e) EXPIRATION.—Section 14 of the Federal Advisory
17 Committee Act (5 U.S.C. App.) shall not apply to the
18 Science Advisory Board.

19 **SEC. 9. REPORTS.**

20 (a) REPORT ON DATA MANAGEMENT, ARCHIVAL,
21 AND DISTRIBUTION.—

22 (1) CONTENTS.—Not later than 1 year after
23 the date of enactment of this Act, and once every 5
24 years thereafter, the Administrator shall develop a
25 report on the environmental data and information



1 systems of the Administration. The report shall
2 include—

3 (A) an assessment of the adequacy of the
4 environmental data and information systems of
5 the Administration to—

6 (i) provide adequate capacity to man-
7 age, archive and disseminate environmental
8 information collected and processed, or ex-
9 pected to be collected and processed, by
10 the Administration and other appropriate
11 departments and agencies;

12 (ii) establish, develop, and maintain
13 information bases, including necessary
14 management systems, which will provide
15 for consistent, efficient, and compatible
16 transfer and use of data;

17 (iii) develop effective interfaces among
18 the environmental data and information
19 systems of the Administration and other
20 appropriate departments and agencies;

21 (iv) develop and use nationally accept-
22 ed formats and standards for data col-
23 lected by various national and international
24 sources;



1 (v) integrate and interpret data from
 2 different sources to produce information
 3 that can be used by decisionmakers in de-
 4 veloping policies that effectively respond to
 5 national and global environmental con-
 6 cerns; and

7 (vi) reanalyze and reprocess the
 8 archived data as better science is developed
 9 to integrate diverse data sources; and

10 (B) a strategic plan to—

11 (i) set forth modernization and im-
 12 provement objectives for an integrated na-
 13 tional environmental data access and ar-
 14 chive system for the 10-year period begin-
 15 ning with the year in which the plan is
 16 transmitted, including facility requirements
 17 and critical new technology components
 18 that would be necessary to meet the objec-
 19 tives set forth;

20 (ii) propose specific Administration
 21 programs and activities for implementing
 22 the plan;

23 (iii) identify the data and information
 24 management, reanalysis, reprocessing, ar-
 25 chival, and distribution responsibilities of



1 the Administration with respect to other
2 Federal departments and agencies and
3 international organizations; and

4 (iv) provide an implementation sched-
5 ule and estimate funding levels necessary
6 to achieve modernization and improvement
7 objectives.

8 (2) NATIONAL ACADEMY OF SCIENCES RE-
9 VIEW.—The Administrator shall enter into an ar-
10 rangement with the National Academy of Sciences
11 for a review of the plan developed under paragraph
12 (1).

13 (3) TRANSMITTAL TO CONGRESS.—Not later
14 than 18 months after the date of enactment of this
15 Act, the Administrator shall transmit to the Com-
16 mittee on Commerce, Science, and Transportation of
17 the Senate and the Committee on Science of the
18 House of Representatives the initial report developed
19 under paragraph (1) and the review prepared pursu-
20 ant to paragraph (2). Subsequent reports developed
21 under paragraph (1) shall also be transmitted to
22 those committees.

23 (b) STRATEGIC PLAN FOR SCIENTIFIC RESEARCH.—

24 (1) CONTENTS.—Not later than 1 year after
25 the date of enactment of this Act, and once every 5



1 years thereafter, the Administrator shall develop a
2 strategic plan for science and technology research
3 and development at the Administration. The plan
4 shall include—

5 (A) an assessment of the science and tech-
6 nology needs of the Administration based on
7 the Administration's operational requirements
8 and on input provided by external stakeholders
9 at the national, regional, State, and local levels;

10 (B) a strategic plan for coordinating re-
11 search and development activities across the
12 Administration to meet the needs identified in
13 subparagraph (A); and

14 (C) a description of how the Administra-
15 tion plans to utilize extramural, peer-reviewed
16 competitive grant programs to meet its research
17 needs.

18 (2) NATIONAL ACADEMY OF SCIENCES RE-
19 VIEW.—The Administrator shall enter into an ar-
20 rangement with the National Academy of Sciences
21 for a review of the plan developed under paragraph
22 (1).

23 (3) TRANSMITTAL TO CONGRESS.—Not later
24 than 18 months after the date of enactment of this
25 Act, the Administrator shall transmit to the Com-



1 mittee on Commerce, Science, and Transportation of
 2 the Senate and the Committee on Science of the
 3 House of Representatives the initial report developed
 4 under paragraph (1) and the review prepared pursu-
 5 ant to paragraph (2). Subsequent reports developed
 6 under paragraph (1) shall also be transmitted to
 7 those committees.

8 **SEC. 10. EFFECT OF REORGANIZATION PLAN.**

9 Reorganization Plan No. 4 of 1970 shall have no fur-
 10 ther force and effect.

11 **SEC. 11. SAVINGS PROVISION.**

12 All rules and regulations, determinations, standards,
 13 contracts, including collective bargaining agreements, cer-
 14 tifications, authorizations, appointments, delegations, re-
 15 sults and findings of investigations, and other actions duly
 16 issued, made, or taken by or pursuant to or under the
 17 authority of any statute which resulted in the assignment
 18 of functions or activities to the Secretary, the Department
 19 of Commerce, the Under Secretary of Commerce for
 20 Oceans and Atmosphere, the Administrator, or any other
 21 officer of the Administration, that is in effect immediately
 22 before the date of enactment of this Act, shall continue
 23 in full force and effect after the effective date of this Act
 24 until modified or rescinded. All suits, appeals, judgments,
 25 and proceedings pending on such effective date relating



1 to responsibilities or functions transferred under this Act
2 shall continue without regard to such transfers, except for
3 the transfer of responsibilities or functions. Any reference
4 in law to a responsibility, function, or office transferred
5 under this Act shall be deemed to refer to the responsi-
6 bility, function, or office as so transferred.

7 **SEC. 12. TRANSITION.**

8 (a) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2) the provisions of this Act shall become ef-
11 fective 2 years after the date of enactment of this
12 Act.

13 (2) EXCEPTIONS.—Paragraph (1) shall not
14 apply to sections 9 or 13, or to subsection (b) of this
15 section.

16 (b) REORGANIZATION.—Not later than 18 months
17 after the date of enactment of this Act, the Administrator
18 shall transmit a plan and budget proposal to Congress set-
19 ting forth a proposal for program and Administration re-
20 organization for the program areas outlined in this Act.
21 The plan shall be developed in consultation with interested
22 parties, including representatives of the States, academia,
23 industry, conservation organizations, and Administration
24 employees. The draft plan shall be published in the Fed-



1 eral Register for public notice and comment at least 60
2 days prior to final submission to Congress.

3 **SEC. 13. FACILITY EVALUATION PROCESS.**

4 (a) PUBLIC NOTIFICATION AND ASSESSMENT PROC-
5 ESS.— The Administrator shall not close, consolidate, re-
6 locate, subdivide, or establish a facility of the Administra-
7 tion unless the Administrator has completed a public noti-
8 fication and assessment process that includes—

9 (1) publication in the Federal Register of the
10 proposed action and a description of the offices, per-
11 sonnel, and activities of the Administration that
12 would be impacted by the proposed change, and pro-
13 viding for a minimum of 60 days for public com-
14 ment;

15 (2) review of the proposed change by the
16 Science Advisory Board of the Administration, if the
17 proposed change involves a science facility of the Ad-
18 ministration, and preparation of a summary of their
19 findings regarding the proposed change;

20 (3) preparation by the Administrator of an
21 analysis of the anticipated costs and savings associ-
22 ated with the proposed facility change, including
23 both initial costs and savings associated with the
24 change and changes in operations and maintenance
25 costs and savings over a ten year period; and



1 (4) preparation by the Administrator of an
2 analysis of the effects of the facility change on oper-
3 ations and research of the Administration, and the
4 potential impacts on cooperative institutes, other ex-
5 ternal Administration partnerships, partnerships
6 with other Federal agencies, and any State and local
7 partnerships.

8 (b) NOTICE TO CONGRESS.—The Administrator shall
9 provide to Congress, at least 90 days before any closure,
10 consolidation, relocation, subdivision, or establishment of
11 a facility of the Administration, a summary of the public
12 comments received pursuant to subsection (a)(1), any
13 summary prepared under subsection (a)(2), and the anal-
14 yses prepared under subsection (a)(3) and (4), .

15 (c) WEATHER SERVICE MODERNIZATION.—Nothing
16 in this section shall alter procedures established under the
17 Weather Service Modernization Act (15 U.S.C. 313 note).

18 (d) DEFINITION.—For purposes of this section, the
19 term “facility” means a laboratory, operations office, ad-
20 ministrative service center, or other establishment of the
21 Administration with an annual budget of \$1,000,000 or
22 greater.



SECTION-BY-SECTION ANALYSIS OF H.R. 50,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ACT, AS AMENDED

Section 1. Short Title.

“National Oceanic and Atmospheric Administration Act.”

Section 2. Definitions.

Defines terms used in the Act.

Section 3. National Oceanic and Atmospheric Administration.

Establishes the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce and describes the mission and functions of NOAA.

Section 4. Administration Leadership.

Describes the leadership structure of NOAA, including a new position of a Deputy Assistant Secretary for Science, Technology, Education and Outreach, who shall be responsible for coordinating and managing all research activities across the agency, and must be a career position. Also, this section designates the Deputy Under Secretary for Oceans and Atmosphere as the Chief Operating Officer of the Administration, responsible for the day-to-day aspects of the Administration’s operations and management.

Section 5. National Weather Service.

Directs the Secretary of Commerce to maintain a National Weather Service within NOAA.

Section 6. Operations and Services.

Directs the Secretary to maintain programs within NOAA to support operational and service functions. These functions would include all the activities of NOAA’s National Environmental Satellite Data and Information Service (NESDIS) and the mapping and charting activities of the National Ocean Service.

Section 7. Research and Education.

Directs the Secretary to maintain programs within NOAA to conduct and support research and education functions.

Section 8. Science Advisory Board.

Establishes a Science Advisory Board for NOAA, which would provide scientific advice to the Administrator and to Congress on issues affecting NOAA.

Section 9. Reports.

Requires two reports from the Secretary. Each report is to be delivered to Congress within 18 months of the date of enactment of the Act. One report should assess the adequacy of the environmental data and information systems of NOAA and provide a strategic plan to address any deficiencies in those systems. The other report must provide a strategic plan for research at NOAA. The National Academy of Sciences (NAS) shall review each report prior to delivery to Congress.

Section 10. Effect of Reorganization Plan.

Repeals the Executive Order that established NOAA in 1970.

Section 11. Savings Provision.

Provides that all rules and regulations, and other technical legal topics that were previously assigned to the Administration, remain in effect under this Act.

Section 12. Transition.

Makes the effective date of the Act two years after the date of enactment and requires NOAA to reorganize around the themes outlined in sections five through seven.

Section 13. Facility Evaluation Process.

Provides that NOAA cannot expend funds to close or transfer a facility without a 60-day public comment period, 90 days notification to Congress, review by the Science Advisory Board (if appropriate), preparation of anticipated costs and savings, and preparation of a statement of the impacts of the facility change on NOAA and its part.

**COMMITTEE ON SCIENCE
FULL COMMITTEE MARKUP**

May 17, 2005

AMENDMENT ROSTER

H.R. 50, National Oceanic and Atmospheric Administration Act

--Motion to adopt the bill, as amended: agreed to by a voice vote.

--Motion to report the bill, as amended: agreed to by a voice vote.

No.	Sponsor	Description	Results
1.	Mr. Ehlers	Amendment in the Nature of a Substitute to H.R. 50.	--Adopted, as amended, by a voice vote.
2.	Mr. Costello	Amendment to prohibit NOAA from contracting for goods and services with organizations which perform their work outside of the United States.	--Adopted, as amended, by a voice vote.
3.	Mr. Boehlert	Second degree amendment to the Costello amendment.	--Adopted by a roll call vote: Y-18; N-17.

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 50
OFFERED BY MR. EHLERS OF MICHIGAN**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Oceanic and
3 Atmospheric Administration Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) The term “Administration” means the Na-
7 tional Oceanic and Atmospheric Administration.

8 (2) The term “Administrator” means the Ad-
9 ministrator of the National Oceanic and Atmos-
10 pheric Administration.

11 (3) The term “Secretary” means the Secretary
12 of Commerce.

13 **SEC. 3. NATIONAL OCEANIC AND ATMOSPHERIC ADMINIS-
14 TRATION.**

15 (a) IN GENERAL.—There shall be in the Department
16 of Commerce an agency known as the National Oceanic
17 and Atmospheric Administration.

1 (b) MISSION.—The mission of the Administration is
2 to understand the systems of the Earth's oceans and at-
3 mosphere and predict changes in the Earth's oceans and
4 atmosphere and the effects of such changes on the land
5 environment, to conserve and manage coastal, ocean, and
6 Great Lakes ecosystems to meet national economic, social,
7 and environmental needs, and to educate the public about
8 these topics.

9 (c) FUNCTIONS.—The functions of the Administra-
10 tion shall include—

11 (1) collecting, through observation and other
12 means, communicating, analyzing, processing, and
13 disseminating comprehensive scientific data and in-
14 formation about weather and climate, solar and geo-
15 physical events on the Sun and in the space environ-
16 ment, and about the coasts, oceans, Great Lakes,
17 upper reaches of estuaries, and hydrologic systems;

18 (2) operating and maintaining a system for the
19 storage, retrieval, and dissemination of data relating
20 to weather and climate, solar and geophysical events
21 on the Sun and in the space environment, and about
22 the coasts, oceans, Great Lakes, upper reaches of es-
23 tuaries, and hydrologic systems;

- 1 (3) using observational data and technologies
2 developed by other Federal agencies to improve the
3 Administration's operations;
- 4 (4) conducting and supporting basic and ap-
5 plied research, development, and technology transfer
6 as may be necessary to carry out the mission de-
7 scribed in subsection (b);
- 8 (5) issuing weather, water, climate, space
9 weather, tsunami, and other forecasts and warnings
10 related to Earth's oceans and atmosphere;
- 11 (6) coordinating efforts of Federal agencies
12 with respect to meteorological services;
- 13 (7) understanding the science of Earth's eli-
14 mate and related systems, and undertaking research
15 and development to enhance society's ability to plan
16 for and respond to climate variability and change;
- 17 (8) protecting, restoring, and managing the use
18 of, the coasts, oceans, and Great Lakes through eco-
19 system-based research, development, demonstration,
20 and management;
- 21 (9) administering public outreach and education
22 programs and services to increase scientific and en-
23 vironmental literacy about weather and climate,
24 solar and geophysical events on the Sun and in the
25 space environment, and the coasts, oceans, Great

1 Lakes, upper reaches of estuaries, and hydrologic
2 systems;

3 (10) providing, as appropriate and in coopera-
4 tion with the Secretary of State, representation at
5 all international meetings and conferences relating
6 to the mission of the Administration, including mete-
7 orological, climate, and Earth and ocean observing
8 issues;

9 (11) any other function assigned to the Admin-
10 istration by law; and

11 (12) such other functions as are necessary to
12 accomplish the mission described in subsection (b).

13 **SEC. 4. ADMINISTRATION LEADERSHIP.**

14 (a) ADMINISTRATOR.—

15 (1) IN GENERAL.—There shall be, as the Ad-
16 ministrator of the Administration, an Under Sec-
17 retary of Commerce for Oceans and Atmosphere.
18 The Administrator shall be appointed by the Presi-
19 dent, by and with the advice and consent of the Sen-
20 ate. The Administrator shall be paid at the rate of
21 basic pay for level III of the Executive Schedule.

22 (2) FUNCTIONS.—The Administrator shall be
23 responsible for—

24 (A) general management;

25 (B) policy development and guidance;

1 (C) budget formulation, guidance, and exe-
2 cution;

3 (D) serving as the Department of Com-
4 merce official for all ocean and atmosphere
5 issues with other elements of the Department of
6 Commerce and with other Federal agencies,
7 State, tribal, and local governments, and the
8 public; and

9 (E) such other duties with respect to the
10 Administration as the Secretary may prescribe.

11 (3) DELEGATION OF AUTHORITY.—The Admin-
12 istrator may, except as otherwise prohibited by
13 law—

14 (A) delegate any functions, powers, or du-
15 ties of the Administrator to such officers and
16 employees of the Administration as the Admin-
17 istrator may designate; and

18 (B) authorize such successive redelegations
19 of such functions, powers, or duties within the
20 Administration as the Administrator considers
21 necessary or appropriate.

22 (4) AUTHORITIES.—

23 (A) IN GENERAL.—As may be necessary or
24 proper to carry out the Administration's func-

1 tions under this Act or as otherwise provided by
2 law, the Administrator may—

3 (i) promulgate rules and regulations;

4 (ii) enter into and perform contracts,
5 leases, grants, and cooperative agreements
6 with Federal agencies, State and local gov-
7 ernments, Indian tribes, international or-
8 ganizations, foreign governments, edu-
9 cational institutions, nonprofit organiza-
10 tions, and commercial organizations;

11 (iii) use, with their consent, and with
12 or without reimbursement, the services,
13 equipment, personnel, and facilities of
14 other departments, agencies, and instru-
15 mentalities of the Federal Government;
16 and

17 (iv) conduct education and outreach
18 in direct support of the mission described
19 in section 3(b).

20 (B) EXCEPTION.—The authorities con-
21 ferred on the Administrator by this paragraph
22 do not include the authority to contract for
23 services that are an inherently governmental
24 function as defined in section 5 of the Federal

1 Activities Inventory Reform Act of 1998 (31
2 U.S.C. 501 note).

3 (b) ASSISTANT SECRETARY FOR OCEANS AND AT-
4 MOSPHERE.—

5 (1) IN GENERAL.—There shall be, as Deputy
6 Administrator of the Administration, an Assistant
7 Secretary of Commerce for Oceans and Atmosphere.
8 The Assistant Secretary shall be appointed by the
9 President, by and with the advice and consent of the
10 Senate. The Assistant Secretary shall be the Admin-
11 istrator's first assistant for purposes of subchapter
12 III of chapter 33 of title 5, United States Code. The
13 Assistant Secretary shall be paid at the rate of basic
14 pay for level IV of the Executive Schedule.

15 (2) FUNCTIONS.—The Assistant Secretary shall
16 perform such functions and exercise such powers as
17 the Administrator may prescribe and shall act as
18 Administrator during the absence or disability of the
19 Administrator or in the event of a vacancy in the of-
20 fice of Administrator.

21 (c) DEPUTY UNDER SECRETARY FOR OCEANS AND
22 ATMOSPHERE.—

23 (1) IN GENERAL.—There shall, be as the Chief
24 Operating Officer of the Administration, a Deputy
25 Under Secretary of Commerce for Oceans and At-

1 mosphere. The Deputy Under Secretary shall be ap-
2 pointed by the Secretary. The position of Deputy
3 Under Secretary shall be a Senior Executive Service
4 position authorized under section 3133 of title 5,
5 United States Code.

6 (2) FUNCTIONS.—The Deputy Under
7 Secretary—

8 (A) shall ensure the timely and effective
9 implementation of Administration policies and
10 objectives;

11 (B) shall be responsible for all aspects of
12 the Administration's operations and manage-
13 ment, including budget, financial operations, in-
14 formation services, facilities, human resources,
15 procurements, and associated services;

16 (C) in the absence or disability of the As-
17 sistant Secretary, or in the event of a vacancy
18 in such position, shall act in that position; and

19 (D) shall perform such other duties as the
20 Administrator shall prescribe.

21 (d) DEPUTY ASSISTANT SECRETARY FOR SCIENCE
22 AND EDUCATION.—

23 (1) IN GENERAL.—There shall be in the Admin-
24 istration a Deputy Assistant Secretary for Science
25 and Education who shall coordinate and oversee the

1 science and education activities of the Administra-
2 tion and their application to Administration deci-
3 sions and operations. The Deputy Assistant Sec-
4 retary for Science and Education shall be appointed
5 by the Secretary. The position of Deputy Assistant
6 Secretary for Science and Education shall be a Sen-
7 ior Executive Service career reserved position as de-
8 fined in section 3132(a)(8) of title 5, United States
9 Code.

10 (2) FUNCTIONS.—The Deputy Assistant Sec-
11 retary for Science and Education shall—

12 (A) coordinate research and development
13 activities across the Administration;

14 (B) review the Administration's annual
15 budget to ensure that funding for research and
16 development is adequate, properly focused, and
17 carried out by the appropriate entities across
18 the Administration;

19 (C) advise the Administrator on how re-
20 search results can be applied to operational use;

21 (D) advise the Administrator regarding
22 science issues and their relationship to Adminis-
23 tration policies, procedures, and decisions;

24 (E) participate in developing the Adminis-
25 tration's strategic plans and policies and review

1 the science and education aspects of those plans
2 and policies;

3 (F) serve as liaison to the nongovern-
4 mental science community;

5 (G) develop and oversee guidelines for peer
6 review of research sponsored or conducted by
7 the Administration;

8 (H) oversee implementation of the stra-
9 tegic plan for research and development re-
10 quired under section 9(b);

11 (I) oversee management of laboratories in
12 the Administration;

13 (J) oversee the research and education
14 programs of the Administration; and

15 (K) perform such other duties as the Ad-
16 ministrator shall prescribe.

17 (3) QUALIFICATIONS.—An individual appointed
18 under paragraph (1) shall be a person who has an
19 outstanding science and education background, in-
20 cluding research accomplishments, scientific reputa-
21 tion, and public policy experience.

22 (4) CONSULTATION.—Before appointing an in-
23 dividual under paragraph (1), the Secretary shall
24 consult with the National Academy of Sciences, the

1 Science Advisory Board of the Administration, and
2 other appropriate scientific organizations.

3 (c) DEPUTY ASSISTANT SECRETARIES.—There may
4 be in the Administration no more than two additional
5 Deputy Assistant Secretaries whose duties may be des-
6 ignated by the Administrator. The Deputy Assistant Sec-
7 retaries shall be appointed by the Secretary. The positions
8 of Deputy Assistant Secretaries shall be Senior Executive
9 Service positions authorized under section 3133 of title 5,
10 United States Code.

11 (f) GENERAL COUNSEL.—

12 (1) IN GENERAL.—There shall be in the Admin-
13 istration a General Counsel. The General Counsel
14 shall be appointed by the Secretary. The General
15 Counsel shall be paid at the rate of basic pay for
16 level V of the Executive Schedule.

17 (2) FUNCTIONS.—The General Counsel—

18 (A) shall serve as the chief legal officer of
19 the Administration for all legal matters that
20 arise in connection with the conduct of the
21 functions of the Administration; and

22 (B) shall perform such other functions and
23 exercise such powers as the Administrator may
24 prescribe.

1 (g) CONTINUATION OF SERVICE.—Any individual
2 serving on the effective date of this Act in a position pro-
3 vided for in this Act may continue to serve in that position
4 until a successor is appointed under this Act. Nothing in
5 this Act shall be construed to require the appointment of
6 a successor under this Act sooner than would have been
7 required under law as in effect before the effective date
8 of this Act.

9 **SEC. 5. NATIONAL WEATHER SERVICE.**

10 (a) IN GENERAL.—The Secretary shall maintain
11 within the Administration the National Weather Service.

12 (b) MISSION.—The mission of the National Weather
13 Service is to provide weather, water, climate, tsunami, and
14 space weather forecasts and warnings for the United
15 States, its territories, adjacent waters, and ocean areas for
16 the protection of life and property and the enhancement
17 of the national economy. In carrying out the mission of
18 the National Weather Service, the Administrator shall en-
19 sure that the National Weather Service—

20 (1) provides timely and accurate weather,
21 water, climate, tsunami, and space weather fore-
22 casts; and

23 (2) provides timely and accurate warnings of
24 natural hazards related to weather, water, climate,
25 and tsunamis, and of space weather hazards.

1 (c) FUNCTIONS.—The functions of the National
2 Weather Service shall include—

3 (1) maintaining a network of local weather fore-
4 cast offices;

5 (2) maintaining a network of observation sys-
6 tems to collect weather and climate data;

7 (3) operating national centers to deliver guid-
8 ance, forecasts, warnings, and analysis about weath-
9 er, water, climate, tsunami, and space weather phe-
10 nomena for the Administration and the public;

11 (4) conducting and supporting applied research
12 to facilitate the rapid incorporation of weather and
13 climate science advances into operational tools; and

14 (5) other functions to serve the mission of the
15 National Weather Service described in subsection
16 (b).

17 **SEC. 6. OPERATIONS AND SERVICES.**

18 (a) IN GENERAL.—The Secretary shall maintain
19 within the Administration programs to support efforts, on
20 a continuing basis, to collect data and provide information
21 and products regarding satellites, observations, and coast-
22 al, ocean and Great Lakes information.

23 (b) FUNCTIONS.—To accomplish the mission de-
24 scribed in section 3(b), and in addition to the functions

1 described in section 3(c), the operations and service as-
2 pects of the Administration shall include—

3 (1) acquiring, managing, and operating coastal,
4 ocean, and Great Lakes observing systems;

5 (2) contributing to the operation of a global
6 Earth-observing system;

7 (3) integrating Administration remote sensing
8 and in situ assets that provide critical data needed
9 to support the mission of the Administration, and
10 providing that data to decisionmakers and the pub-
11 lic;

12 (4) developing, acquiring, and managing oper-
13 ational environmental satellite programs and associ-
14 ated ground control and data acquisition and deliv-
15 ery facilities to support the mission of the Adminis-
16 tration;

17 (5) managing and distributing atmospheric,
18 geophysical, and marine data and data products for
19 the Administration through national environmental
20 data centers;

21 (6) providing for long-term stewardship of envi-
22 ronmental data, products, and information via data
23 processing, storage, reanalysis, reprocessing, and ar-
24 chive facilities;

1 (7) issuing licenses for private remote sensing
2 space systems under the Land Remote Sensing Pol-
3 icy Act of 1992;

4 (8) administering a national water level obser-
5 vation network, which shall include monitoring of
6 the Great Lakes;

7 (9) providing charts and other information for
8 safe navigation of the oceans and inland waters, as
9 provided by law;

10 (10) maintaining a fleet of ships and aircraft to
11 support the mission of the Administration; and

12 (11) such other operations and services func-
13 tions to serve the mission of the Administration as
14 the Administrator may prescribe.

15 **SEC. 7. RESEARCH AND EDUCATION.**

16 (a) **IN GENERAL.**—The Secretary shall maintain
17 within the Administration programs to conduct and sup-
18 port research and education and the development of tech-
19 nologies relating to weather, climate, and the coasts,
20 oceans, and Great Lakes.

21 (b) **FUNCTIONS.**—To accomplish the mission de-
22 scribed in section 3(b), and in addition to the functions
23 described in section 3(e), the research and education as-
24 pects of the Administration shall include—

- 1 (1) conducting and supporting research and de-
2 velopment to improve the Administration's capabili-
3 ties to collect, through observation and otherwise,
4 communicate, analyze, process, and disseminate
5 comprehensive scientific data and information about
6 weather, climate, and the coasts, oceans, and Great
7 Lakes;
- 8 (2) improving ecological prediction and manage-
9 ment capabilities through ecosystem-based research
10 and development;
- 11 (3) contributing information on the Earth's cli-
12 mate and related systems, obtained through research
13 and observation, that addresses questions con-
14 fronting policymakers, resources managers, and
15 other users;
- 16 (4) reducing uncertainty in projections of how
17 the Earth's climate and related systems may change
18 in the future;
- 19 (5) fostering the public's ability to understand
20 and integrate scientific information into consider-
21 ations of national environmental issues through edu-
22 cation and public outreach activities;
- 23 (6) administering the National Sea Grant Col-
24 lege Program Act;

1 (7) conducting and supporting research and de-
2 velopment of technology for exploration of the
3 oceans;

4 (8) maintaining a system of laboratories to per-
5 form the functions described in this subsection;

6 (9) supporting extramural peer-reviewed com-
7 petitive grant programs to assist the Administration
8 in performing the functions described in this sub-
9 section; and

10 (10) such other research, development, edu-
11 cation, and outreach functions to serve the mission
12 of the Administration as the Administrator may pre-
13 scribe.

14 **SEC. 8. SCIENCE ADVISORY BOARD.**

15 (a) IN GENERAL.—There shall be within the Admin-
16 istration a Science Advisory Board, which shall provide
17 such scientific advice as may be requested by the Adminis-
18 trator, the Committee on Commerce, Science and Trans-
19 portation of the Senate, or the Committee on Science or
20 on Resources of the House of Representatives.

21 (b) PURPOSE.—The purpose of the Science Advisory
22 Board is to advise the Administrator and Congress on
23 long-range and short-range strategies for research, edu-
24 cation, and the application of science to resource manage-
25 ment and environmental assessment and prediction.

1 (c) MEMBERS.—

2 (1) IN GENERAL.—The Science Advisory Board
3 shall be composed of at least 15 members appointed
4 by the Administrator. Each member of the Board
5 shall be qualified by education, training, and experi-
6 ence to evaluate scientific and technical information
7 on matters referred to the Board under this section.

8 (2) TERMS OF SERVICE.—Members shall be ap-
9 pointed for 3-year terms, renewable once, and shall
10 serve at the discretion of the Administrator. An indi-
11 vidual serving a term as a member of the Science
12 Advisory Board on the date of enactment of this Act
13 may complete that term, and may be reappointed
14 once for another term of 3 years unless the term
15 being served on such date of enactment is the second
16 term served by that individual. Vacancy appoint-
17 ments shall be for the remainder of the unexpired
18 term of the vacancy, and an individual so appointed
19 may subsequently be appointed for 2 full 3-year
20 terms if the remainder of the unexpired term is less
21 than one year.

22 (3) CHAIRPERSON.—The Administrator shall
23 designate a chairperson from among the members of
24 the Board.

1 (4) APPOINTMENT.—Members of the Science
2 Advisory Board shall be appointed as special Gov-
3 ernment employees, within the meaning given such
4 term in section 202(a) of title 18, United States
5 Code.

6 (d) ADMINISTRATIVE PROVISIONS.—

7 (1) REPORTING.—The Science Advisory Board
8 shall report to the Administrator and the appro-
9 priate requesting party.

10 (2) ADMINISTRATIVE SUPPORT.—The Adminis-
11 trator shall provide administrative support to the
12 Science Advisory Board.

13 (3) MEETINGS.—The Science Advisory Board
14 shall meet at least twice each year, and at other
15 times at the call of the Administrator or the Chair-
16 person.

17 (4) COMPENSATION AND EXPENSES.—A mem-
18 ber of the Science Advisory Board shall not be com-
19 pensated for service on such board, but may be al-
20 lowed travel expenses, including per diem in lieu of
21 subsistence, in accordance with subchapter I of
22 chapter 57 of title 5, United States Code.

23 (5) SUBCOMMITTEES.—The Science Advisory
24 Board may establish such subcommittees of its
25 members as may be necessary. The Science Advisory

1 Board may establish task forces and working groups
2 consisting of Board members and outside experts as
3 may be necessary.

4 (e) EXPIRATION.—Section 14 of the Federal Advisory
5 Committee Act (5 U.S.C. App.) shall not apply to the
6 Science Advisory Board.

7 **SEC. 9. REPORTS.**

8 (a) REPORT ON DATA MANAGEMENT, ARCHIVAL,
9 AND DISTRIBUTION.—

10 (1) CONTENTS.—Not later than 1 year after
11 the date of enactment of this Act, and once every 5
12 years thereafter, the Administrator shall do the fol-
13 lowing:

14 (A) Enter into an arrangement with the
15 National Academy of Sciences to review the en-
16 vironmental data and information systems of
17 the Administration and to provide recommenda-
18 tions to address any inadequacies identified by
19 the review. The review shall assess the adequacy
20 of the environmental data and information sys-
21 tems of the Administration to—

22 (i) provide adequate capacity to man-
23 age, archive and disseminate environmental
24 information collected and processed, or ex-
25 pected to be collected and processed, by

1 the Administration, including data gath-
2 ered by other agencies that is processed or
3 stored by the Administration;

4 (ii) establish, develop, and maintain
5 information bases, including necessary
6 management systems, which will provide
7 for consistent, efficient, and compatible
8 transfer and use of data;

9 (iii) develop effective interfaces among
10 the environmental data and information
11 systems of the Administration and other
12 appropriate departments and agencies;

13 (iv) develop and use nationally accept-
14 ed formats and standards for data col-
15 lected by various national and international
16 sources;

17 (v) integrate and interpret data from
18 different sources to produce information
19 that can be used by decisionmakers in de-
20 veloping policies that effectively respond to
21 national and global environmental con-
22 cerns; and

23 (vi) reanalyze and reprocess the
24 archived data as better science is developed
25 to integrate diverse data sources.

1 (B) Develop a strategic plan, with respect
2 to the environmental data and information sys-
3 tems of the Administration, to—

4 (i) respond to each of the rec-
5 ommendations in the review conducted
6 under subparagraph (A);

7 (ii) set forth modernization and im-
8 provement objectives for an integrated na-
9 tional environmental data access and ar-
10 chive system for the 10-year period begin-
11 ning with the year in which the plan is
12 transmitted, including facility requirements
13 and critical new technology components
14 that would be necessary to meet the objec-
15 tives set forth;

16 (iii) propose specific Administration
17 programs and activities for implementing
18 the plan;

19 (iv) identify the data and information
20 management, reanalysis, reprocessing, ar-
21 chival, and distribution responsibilities of
22 the Administration with respect to other
23 Federal departments and agencies and
24 international organizations; and

1 (v) provide an implementation sched-
2 ule and estimate funding levels necessary
3 to achieve modernization and improvement
4 objectives.

5 (2) TRANSMITTAL TO CONGRESS.—Not later
6 than 18 months after the date of enactment of this
7 Act, the Administrator shall transmit to the Com-
8 mittee on Commerce, Science, and Transportation of
9 the Senate and the Committee on Science of the
10 House of Representatives the initial review and stra-
11 tegic plan developed under paragraph (1). Subse-
12 quent reviews and strategic plans developed under
13 paragraph (1) shall also be transmitted to those
14 committees upon completion.

15 (b) STRATEGIC PLAN FOR RESEARCH AND DEVELOP-
16 MENT.—

17 (1) CONTENTS.—Not later than 1 year after
18 the date of enactment of this Act, and once every 5
19 years thereafter, the Administrator shall develop a
20 strategic plan for research and development at the
21 Administration. The plan shall include—

22 (A) an assessment of the science and tech-
23 nology needs of the Administration based on
24 the Administration's operational requirements
25 and on input provided by external stakeholders

1 at the national, regional, State, and local levels;
2 and

3 (B) a strategic plan that assigns specific
4 programs within the administration the respon-
5 sibility to meet each need identified under sub-
6 paragraph (A) and that describes the extent to
7 which each need identified in subparagraph (A)
8 will be addressed through—

9 (i) intramural research;

10 (ii) extramural, peer reviewed, com-
11 petitive grant programs; and

12 (iii) work done in cooperation with
13 other Federal agencies.

14 (2) NATIONAL ACADEMY OF SCIENCES RE-
15 VIEW.—The Administrator shall enter into an ar-
16 rangement with the National Academy of Sciences
17 for a review of the plan developed under paragraph
18 (1).

19 (3) TRANSMITTAL TO CONGRESS.—Not later
20 than 18 months after the date of enactment of this
21 Act, the Administrator shall transmit to the Com-
22 mittee on Commerce, Science, and Transportation of
23 the Senate and the Committee on Science of the
24 House of Representatives the initial strategic plan
25 developed under paragraph (1) and the review pre-

1 pared pursuant to paragraph (2). Subsequent stra-
2 tegic plans developed under paragraph (1) shall also
3 be transmitted to those committees upon completion.

4 **SEC. 10. PUBLIC-PRIVATE PARTNERSHIPS.**

5 Not less than once every 5 years, the Secretary shall
6 develop and submit to Congress a policy that defines proe-
7 cesses for making decisions about the roles of the Adminis-
8 tration, the private sector, and the academic community
9 in providing environmental information, products, tech-
10 nologies, and services. The first such submission shall be
11 completed not less than 3 years after the date of enact-
12 ment of this Act. At least 90 days before each submission
13 of the policy to Congress, the Secretary shall publish the
14 policy in the Federal Register for a public comment period
15 of not less than 60 days. Nothing in this section shall be
16 construed to require changes in the policy in effect on the
17 date of enactment of this Act.

18 **SEC. 11. EFFECT OF REORGANIZATION PLAN.**

19 Reorganization Plan No. 4 of 1970 shall have no fur-
20 ther force and effect.

21 **SEC. 12. SAVINGS PROVISION.**

22 All rules and regulations, determinations, standards,
23 contracts, including collective bargaining agreements, cer-
24 tifications, authorizations, appointments, delegations, re-
25 sults and findings of investigations, and other actions duly

1 issued, made, or taken by or pursuant to or under the
2 authority of any statute or executive order which resulted
3 in the assignment of functions or activities to the Sec-
4 retary, the Department of Commerce, the Under Secretary
5 of Commerce for Oceans and Atmosphere, the Adminis-
6 trator, or any other officer of the Administration, that is
7 in effect immediately before the date of enactment of this
8 Act, shall continue in full force and effect after the effec-
9 tive date of this Act until modified or rescinded. All suits,
10 appeals, judgments, and proceedings pending on such ef-
11 fective date relating to responsibilities or functions trans-
12 ferred pursuant to this Act shall continue without regard
13 to such transfers, except for the transfer of responsibilities
14 or functions. Any reference in law to a responsibility, func-
15 tion, or office transferred pursuant to this Act shall be
16 deemed to refer to the responsibility, function, or office
17 as so transferred. Nothing in this Act shall be construed
18 to limit the ability of an Administration employee to dis-
19 cuss scientific research performed by that employee. Noth-
20 ing in this Act shall be construed to alter the responsibil-
21 ities or authorities of any other Federal agency. Nothing
22 in this Act shall be construed to authorize or prohibit the
23 transfer of any program, function, or project from other
24 Federal agencies to the Administration.

1 SEC. 13. REORGANIZATION PLAN.

2 (a) SCHEDULE.—(1) Not later than 18 months after
3 the date of enactment of this Act, the Administrator shall
4 develop a reorganization plan for the Administration in
5 accordance with this section and shall publish the plan in
6 the Federal Register. The Federal Register notice shall
7 solicit comments for a period of 60 days.

8 (2) Not later than 90 days after the expiration date
9 of the comment period described in paragraph (1), the Ad-
10 ministrator shall transmit to Congress a revised version
11 of the plan that takes into account the comments received.
12 The Administrator shall also publish the revised plan in
13 the Federal Register. The Administrator shall transmit
14 and publish, along with the plan, an explanation of how
15 the Administrator dealt with each issue raised by the com-
16 ments received.

17 (3) The Administrator shall implement the plan 60
18 days after the plan has been transmitted to the Congress.

19 (b) CONTENT.—The plan, to the greatest extent prac-
20 ticable, shall—

21 (1) consistent with section 5 and the other pro-
22 visions of this Act, maximize the efficiency with
23 which the administration carries out the functions
24 of—

25 (A) operations and services;

26 (B) research and education; and

- 1 (C) resource management;
- 2 (2) improve the sharing of research and other
- 3 information that is of use across programmatic
- 4 themes; and
- 5 (3) eliminate duplication of effort or overlap-
- 6 ping efforts among offices.

7 (c) CONSULTATION.—In developing the plan, the Ad-

8 ministrator shall consult with interested parties, including

9 the States, academia, industry, conservation organiza-

10 tions, and Administration employees.

11 **SEC. 14. FACILITY EVALUATION PROCESS.**

12 (a) PUBLIC NOTIFICATION AND ASSESSMENT PROC-

13 ESS.—

14 (1) IN GENERAL.—The Administrator shall not

15 close, consolidate, relocate, subdivide, or establish a

16 facility of the Administration, unless and until the

17 Administrator has followed the procedures required

18 by this section.

19 (2) REVIEW PROCESS.—The Administrator

20 shall not close, consolidate, relocate, subdivide, or es-

21 tablish a facility of the Administration with an an-

22 nual operating budget of \$5,000,000 or greater, or

23 a National Weather Service field office, unless and

24 until—

1 (A) the Administrator has published in the
2 Federal Register the proposed action and a de-
3 scription of the offices, personnel, and activities
4 of the Administration that would be affected by
5 the proposed change, and has provided for a
6 minimum of 60 days for public comment;

7 (B) if the proposed change involves a
8 science facility of the Administration, the
9 Science Advisory Board has reviewed the pro-
10 posed change and provided to the Administrator
11 written findings regarding the proposed change;

12 (C) if the proposed change involves a Na-
13 tional Weather Service field office, the Adminis-
14 trator has prepared a report including—

15 (i) a description of local weather char-
16 acteristics and weather-related concerns
17 which affect the weather services provided
18 within the service area;

19 (ii) a detailed comparison of the serv-
20 ices provided within the service area and
21 the services to be provided after the pro-
22 posed change;

23 (iii) a description of any recent or ex-
24 pected modernization of National Weather

1 Service operations which will enhance serv-
2 ices in the service area;

3 (iv) an identification of any area with-
4 in any State which would not receive cov-
5 erage (at an elevation of 10,000 feet) due
6 to the proposed change; and

7 (iv) evidence, based on operational
8 demonstration of National Weather Service
9 operations, which was considered in reach-
10 ing the conclusion that no degradation in
11 service will result from the proposed
12 change;

13 (D) the Administrator has prepared an
14 analysis of the anticipated costs and savings as-
15 sociated with the proposed facility change, in-
16 cluding both costs and savings in the first fiscal
17 year following the change, and changes in oper-
18 ations and maintenance costs and savings over
19 a ten-year period; and

20 (E) the Administrator has prepared an
21 analysis of the effects of the facility change on
22 operations and research of the Administration,
23 and the potential impacts on cooperative insti-
24 tutes, other external Administration partner-

1 ships, partnerships with other Federal agencies,
2 and any State and local partnerships.

3 (3) NOTICE TO CONGRESS.—(A) The Adminis-
4 trator shall provide to Congress, at least 90 days be-
5 fore any closure, consolidation, relocation, subdivi-
6 sion, or establishment of a facility of the Adminis-
7 tration with an annual budget of \$5,000,000 or
8 greater, or any National Weather Service field office,
9 a summary of the public comments received pursu-
10 ant to paragraph (2)(A), any written findings pre-
11 pared under paragraph (2)(B), any report prepared
12 under paragraph (2)(C), and the analyses prepared
13 under paragraph (2)(D) and (E).

14 (B) The Administrator shall provide to Con-
15 gress, at least 90 days before any closure, consolida-
16 tion, relocation, subdivision, or establishment of a
17 facility of the Administration not described in sub-
18 paragraph (A), written notification of the planned
19 closure, consolidation, relocation, subdivision, or es-
20 tablishment.

21 (b) WEATHER SERVICE MODERNIZATION.—Nothing
22 in this Act shall be construed to alter the Weather Service
23 Modernization Act (15 U.S.C. 313 note).

24 (c) DEFINITION.—For purposes of this section—

1 (1) the term “facility” means a laboratory, op-
2 erations office, administrative service center, or
3 other establishment of the Administration; and

4 (2) the term “field office” has the same mean-
5 ing given that term in section 702 of the Weather
6 Service Modernization Act.

7 **SEC. 15. BUDGET REPROGRAMMING.**

8 Whenever the Administrator transmits a budget re-
9 programming request to the Appropriations Committees
10 of the House of Representatives and the Senate, the Ad-
11 ministrator shall simultaneously submit a copy of the re-
12 quest to the Committee on Science and the Committee on
13 Resources of the House of Representatives and the Com-
14 mittee on Commerce, Science, and Transportation of the
15 Senate.

16 **SEC. 16. SATELLITE NOTIFICATION.**

17 (a) IN GENERAL.—The Administrator shall notify
18 the Congress—

19 (1) prior to initiating the expenditure of any
20 funds on a satellite for which the Administration
21 had not expended funds as of the date of enactment
22 of this Act;

23 (2) within 3 days whenever the Administrator
24 has reasonable cause to believe that the development
25 cost of a satellite is likely to exceed the most recent

1 baseline estimate of development costs by more than
2 15 percent;

3 (3) within 3 days whenever the Administrator
4 has reasonable cause to believe that the delivery of
5 a satellite for launch is likely to be delayed by 6
6 months or more; or

7 (4) within 3 days whenever the Administrator
8 intends to make a significant alteration to a sat-
9 ellite.

10 (b) EVALUATION.—After providing a notification
11 under subsection (a), the Administrator shall—

12 (1) have the satellite, revised cost, revised
13 schedule, or significant alteration that was the sub-
14 ject of the notice evaluated in accordance with sub-
15 section (c) by—

16 (A) a panel of experts selected by the Ad-
17 ministrator that does not include any employees
18 of the Administration; or

19 (B) an independent entity; and

20 (2) within 120 days, transmit the evaluation to
21 the Committee on Science of the House of Rep-
22 resentatives and the Committee on Commerce,
23 Science, and Transportation of the Senate, along
24 with an explanation of how the Administration will
25 provide the funds to cover the costs determined by

1 the evaluation conducted under paragraph (1) and
2 responses to any concerns raised by the evaluation.

3 (c) CRITERIA.—An evaluation conducted pursuant to
4 subsection (b)(1) shall review—

5 (1) the cost and schedule of a satellite for
6 which the Administration had not previously ex-
7 pended funds, along with the appropriateness of the
8 intended mission for the satellite and its likelihood
9 of success;

10 (2) the revised cost or delivery schedule pro-
11 posed for a satellite or the additional cost imposed
12 by a significant alteration;

13 (3) the impact on launch schedule of a proposed
14 significant alteration;

15 (4) the impact a proposed significant alteration
16 would have on the success of a satellite's original
17 mission; and

18 (5) the likelihood that the intended purpose of
19 the significant alteration would be accomplished.

20 (d) DEFINITIONS.—For the purposes of this section,
21 the term—

22 (1) “development cost” means all costs related
23 to a satellite through the launch of a satellite;

24 (2) “satellite” includes the spacecraft (but not
25 the launch vehicle), instruments, and sensors; and

- 1 (3) "significant alteration" means a change in
- 2 the objectives or capabilities of a satellite, including
- 3 the addition or removal of instruments or sensors.

**AMENDMENT OFFERED BY MR. COSTELLO OF
ILLINOIS
TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE**

At the end of the bill, add the following new section:

**1 SEC. 16. LIMITATIONS ON OFF-SHORE PERFORMANCE OF
2 CONTRACTS FOR THE PROCUREMENT OF
3 GOODS AND SERVICES.**

4 (a) CONVERSIONS TO CONTRACTOR PERFORMANCE
5 OF ADMINISTRATION ACTIVITIES.—Except as provided in
6 subsection (c), an activity or function of the Administra-
7 tion that is converted to contractor performance under Of-
8 fice of Management and Budget Circular A-76 may not
9 be performed by the contractor or any subcontractor at
10 a location outside the United States.

11 (b) CONTRACTS FOR THE PROCUREMENT OF SERV-
12 ICES.—(1) Except as provided in subsection (c), a contract
13 for the procurement of goods or services that is entered
14 into by the Administrator may not be performed outside
15 the United States unless it is to meet a requirement of
16 the Administration for goods or services specifically at a
17 location outside the United States.



1 (2) The President may waive the prohibition in para-
2 graph (1) in the case of any contract for which the Presi-
3 dent determines in writing that it is necessary in the na-
4 tional security interests of the United States for goods or
5 services under the contract to be performed outside the
6 United States.

7 (3) The Administrator may waive the prohibition in
8 paragraph (1) in the case of any contract for which the
9 Administrator determines in writing that essential goods
10 or services under the contract are only available from a
11 source outside the United States.

12 (c) EXCEPTION.—Subsections (a) and (b)(1) shall
13 not apply to the extent that the activity or function under
14 the contract was previously performed by Federal Govern-
15 ment employees outside the United States.



**AMENDMENT OFFERED BY MR. BOEHLERT OF
NEW YORK
TO THE AMENDMENT OFFERED BY MR. COSTELLO
OF ILLINOIS**

At the end of the amendment, add the following new subsection:

- 1 (d) CONSISTENCY WITH INTERNATIONAL AGREE-
2 MENTS.—The provisions of this section shall not apply to
3 the extent that they are inconsistent with obligations of
4 the United States under international agreements.

SECTION-BY-SECTION ANALYSIS OF MANAGER'S AMENDMENT TO
H.R. 50, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ACT

Section 1. Short Title.

“National Oceanic and Atmospheric Administration Act”

Section 2. Definitions.

Defines terms used in the Act.

Section 3. National Oceanic and Atmospheric Administration.

Establishes the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce and describes the mission and functions of NOAA.

Section 4. Administration Leadership.

Describes the leadership structure of NOAA, including a new position of a Deputy Assistant Secretary for Science, Technology, Education and Outreach, who shall be responsible for coordinating and managing all research activities across the agency, and which must be a career position. Also, this section designates the Deputy Under Secretary for Oceans and Atmosphere as the Chief Operating Officer of the Administration, responsible for the day-to-day aspects of the Administration's operations and management.

Section 5. National Weather Service.

Directs the Secretary of Commerce to maintain the National Weather Service within NOAA.

Section 6. Operations and Services.

Directs the Secretary to maintain programs within NOAA to support operational and service functions. This section does not name any organizational units of NOAA, but the functions listed include all the activities of NOAA's National Environmental Satellite Data and Information Service (NESDIS) and the mapping and charting activities of the National Ocean Service.

Section 7. Research and Education.

Directs the Secretary to maintain programs within NOAA to conduct and support research and education functions.

Section 8. Science Advisory Board.

Establishes a Science Advisory Board for NOAA, which would provide scientific advice to the Administrator and to Congress on issues affecting NOAA.

Section 9. Reports.

Requires two reports from the Secretary. Each report is to be delivered to Congress within 18 months of the date of enactment of the Act. One report, by the National Academy of Sciences should assess the adequacy of the environmental data and information systems of NOAA and provide a strategic plan to address any deficiencies in those systems. The other report is strategic plan for research at NOAA.

Section 10. Public-Private Partnerships.

Requires NOAA to review its policy on public-private partnerships once every five years. Clarifies the no changes in NOAA's current policy are required.

Section 11. Effect of Reorganization Plan.

Repeals the Executive Order that established NOAA in 1970.

Section 12. Savings Provision.

Provides that the Act does not change the legal status of any NOAA rule, regulation or other legal matter.

Section 13. Reorganization Plan.

Requires NOAA to submit a reorganization plan to Congress not less than 18 months after enactment of this Act.

Section 14. Facility Evaluation Process.

Provides that NOAA cannot expend funds to close or transfer certain facilities without a public comment period, review by the Science Advisory Board (if appro-

prate), analysis of anticipated costs and savings and impact on NOAA services, and notification to Congress.

Section 15. Budget Reprogramming.

Requires NOAA to submit to the Science Committee a copy of any reprogramming requests submitted to Appropriations Committees.

Section 16. Satellite Notification.

Requires NOAA to notify Congress when NOAA starts new satellite programs, encounters serious problems with, or makes major changes to existing satellite programs.

XXV. PROCEEDINGS OF THE FULL COMMITTEE MARKUP OF H.R. 5450, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ACT

WEDNESDAY, JUNE 14, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC.

The Committee met, pursuant to call, at 10:05 a.m., in Room 2318 of the Rayburn House Office Building, Hon. Sherwood Boehlert [Chairman of the Committee] presiding.

Chairman BOEHLERT. I want to welcome everyone today to this markup and I am going to keep my remarks brief because the bill we are marking up today is very important, but not particularly controversial and we have reported it out before. Pursuant to notice, the Committee on Science meets to consider the following measure, H.R. 5450, the *National Oceanic and Atmospheric Administration Act*.

I ask unanimous consent for the authority to recess the Committee at any point during consideration on these matters and without objection, that is so ordered.

Virtually every group that has looked at ocean issues has concluded that the National Oceanic and Atmospheric Administration would be able to function better if it had a clear basis in law. And that is what this bill, a NOAA Organic Act, would provide. It would give this key science agency, which was created by executive order, a firm legal basis for its full range of activities and responsibilities. That is hard to argue with. The bill which was introduced by Dr. Ehlers, who has been its tireless champion, would also strengthen science at NOAA, which makes sense since NOAA is a major science agency.

We reported this bill out earlier as H.R. 50 and the only difference between the reported version of that bill and today's is language we negotiated with the Transportation and Infrastructure Committee. That language makes clear that we are not intending to give NOAA any new authority in areas of concern to that committee, such as new authority to build buildings or to issue new kinds of regulations. So that jurisdictional hurdle behind us, this bill should move forward. We will continue to work with the Resources Committee, which shares jurisdiction over NOAA, to bring the bill to the Floor. The Resources Committee has it also on hold pending the resolution of the Transportation Committee issue.

I assume that most of our debate today will not be on the bill, but on the Miller amendment and I will hold my comments on that until we get it, get to it. I want to thank the Members on both sides of the aisle who have contributed to this bill and I look forward to its passage.

The Chair recognizes Mr. Gordon of Tennessee.

[The prepared statement of Chairman Boehlert follows:]

PREPARED STATEMENT OF CHAIRMAN SHERWOOD L. BOEHLERT

I want to welcome everyone today to this markup, and I'm going to keep my remarks brief because the bill we're marking up today is very important but not particularly controversial, and we've reported it out before.

Virtually every group that has looked at ocean issues has concluded that the National Oceanic and Atmospheric Administration (NOAA) would be able to function better if it had a clear basis in law. And that's what this bill, a NOAA Organic Act, would provide. It would give this key science agency, which was created by Executive Order, a firm legal basis for its full range of activities and responsibilities. That's hard to argue with.

The bill, which was introduced by Dr. Ehlers, who has been its tireless champion, would also strengthen science at NOAA, which makes sense since NOAA is a major science agency.

We reported this bill out earlier as H.R. 50 and the only difference between the reported version of that bill and today's is language we negotiated with the Transportation and Infrastructure Committee. The language makes clear that we are not intending to give NOAA any new authority in areas of concern to that committee—such as new authority to build buildings or to issue new kinds of regulations.

So with that jurisdictional hurdle behind us, this bill should move forward. We will continue to work with the Resources Committee, which shares jurisdiction over NOAA, to bring the bill to the Floor. The Resources Committee has also been on hold pending the resolution of the Transportation Committee issue.

I assume that most of our debate today will not be on the bill, but on the Miller amendment, and I'll hold my comments on that until we get to it.

I want to thank the Members on both sides of the aisle who have contributed to this bill, and I look forward to its passage.

Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman. It was about a year ago that we marked up or reported this bill on the number H.R. 50. Since that time a variety of situations relating to NOAA have come to our attention. Thus, some of our Members have amendments to further improve this bill. I believe it is important to get this legislation right. The Organic Act for the agency must include the tools the agency needs today and to the future to allow this agency to grow and change as needed to serve our resource needs as our nation grows and changes.

NOAA has currently experienced serious problems with the procurement of its new polar satellite series. The long-term implications of the cost overrun and schedule delay in this program are likely to impact all other NOAA programs for years to come. Representative Udall had an amendment to offer that will address this problem for future procurements, as well as continue to work together to find a solution for the current NPOESS problem.

As in the case of H.R. 50, this bill does not include important authorities and functions in fisheries, coastal zone management, ocean mapping and charting, and a number of other important operations that are in the jurisdiction of the Committee on Resources. Until our colleagues complete their work, we will not have a true Organic Act for NOAA.

I understand you will not be supporting all of our amendments today. I regret that, especially in the case of the amendment to be offered by Mr. Miller, which would ensure that open scientific dialogue and debate is standard operating procedure at NOAA. I look forward to a constructive debate on this amendment as we proceed this morning.

We thank you for this second opportunity to further improve this legislation. We look forward to working with you and your colleagues on the Committee, on our colleagues on the Committee of

Resources, as this bill continues through the legislative process. I yield back my time.

[The prepared statement of Mr. Gordon follows:]

PREPARED STATEMENT OF REPRESENTATIVE BART GORDON

Mr. Chairman, I believe it was about one year ago that we marked up and reported this bill under the number, H.R. 50.

Since that time, several situations relating to NOAA have come to our attention. Thus, several of my Members have amendments to further improve this bill.

I believe it is important to get this legislation right. The Organic Act for the Agency must include the tools the Agency needs today and into the future to allow this agency to grow and change as needed to serve our resource needs as our nation grows and changes.

NOAA is currently experiencing serious problems with the procurement of its new polar satellite series. The long-term implications of the cost overrun and schedule delay in this program are likely to impact all other NOAA programs for years to come.

Rep. Udall has an amendment to offer that will address this problem for future procurements as we continue to work together to find a solution for the current NPOESS program.

As in the case of H.R. 50, this bill does not include important authorities and functions in fisheries, coastal zone management, ocean mapping and charting, and a number of other important operations that are in the jurisdiction of the Committee on Resources. Until our colleagues complete their work, we will not have a true Organic Act for NOAA.

I understand you will not be supporting all of our amendments today. I regret that—especially in the case of the amendment to be offered by Rep. Miller which would ensure that open scientific dialogue and debate is standard operating procedure at NOAA. I look forward to a constructive debate on this amendment as we proceed this morning.

We thank you for this second opportunity to further improve this legislation. We look forward to working with you and our colleagues on the Committee on Resources as this bill continues through the legislative process.

Chairman BOEHLERT. All right. Without objections, Members may place statements in the record at this point.

[The prepared statement of Ms. Johnson follows:]

PREPARED STATEMENT OF REPRESENTATIVE EDDIE BERNICE JOHNSON

Thank you, Mr. Chairman and Ranking Member.

The National Oceanographic and Atmospheric Association has an important place in America's scientific and weather enterprises.

NOAA funds and implements research critical for predicting floods, tornadoes and hurricanes. It disseminates information on how to avoid rip-tides for summer beachgoers.

Texas is unfortunately well-acquainted with natural disasters. A clear vision and mission for NOAA is a necessary step for the agency to run smoothly and with clear guidance from Congress.

Thank you, Mr. Chairman. I yield back.

Chairman BOEHLERT. We will now consider H.R. 5450, the *National Oceanic and Atmospheric Administration Act*. I recognize Dr. Ehlers to describe the bill.

Mr. EHLERS. Thank you, Mr. Chairman, for the opportunity to explain my bill. H.R. 5450, the *National Oceanic and Atmospheric Administration Act*, is an organic act for NOAA. It is long overdue. NOAA has operated for years without it and it is clearly needed. An organic act defines the overall mission and functions of an agency. As an example, my bill states that the mission of NOAA is to understand and predict changes in the Earth's oceans and atmosphere, are committed to conserve and manage coastal, ocean and Great Lakes ecosystems, and third, educate the public about these topics.

Since 1970, when NOAA was created by executive order, the agency has operated under a confusing collection of issue-specific laws that are not coordinated by an overarching mission. In September 2004, the final report of the U.S. Commission on Oceans called for Congress to pass an organic act for NOAA and clarify in one place the mission and program goals of the agency. The Administration supports Congressional passage of a NOAA Organic Act and made it a priority in the Administration formal response to the Ocean Commission report.

In the 108th Congress, witnesses at Science Committee hearings strongly endorsed my NOAA Organic Act. In a new report released just yesterday, the Joint Oceans Commission Initiative reiterated the need for NOAA to codify in law and this bill embodies specific priorities outlined in their report. And yet, the Organic Act has languished for the past year over a jurisdictional claim by another committee. This new version of my bill makes a simple addition to the language in Section 12 to address these jurisdictional claims so that we can pass this bill and let the Resources Committee do their part.

The Resources Committee will add language about fisheries management and other NOAA issues that are under their jurisdiction. I look forward to working with the Members of the Committee to join us in passing truly comprehensive legislation for NOAA into law. I urge my colleagues to support H.R. 5450 and I also would like to just offer a brief comment regarding the amendments, particularly the amendment by Mr. Miller, which the previous speaker mentioned.

I am in sympathy with that amendment. I do not believe, in fact, I strongly believe that this is not the appropriate place to offer an amendment. An organic act is good for the agents. We don't need to address a short-term immediate question which has already been largely taken care of and accomplished by adding an amendment to an organic act. If we did do so, for years from now on people would say why did they add that stupid little amendment to this wonderful organic act? And so what we are proposing here is to pass it without the Miller amendment and we will address the concerns of the Miller amendment in a separate way.

With that, Mr. Chairman, I yield back the balance of my time.
[The prepared statement of Mr. Ehlers follows:]

PREPARED STATEMENT OF REPRESENTATIVE VERNON J. EHLERS

Thank you, Mr. Chairman, for the opportunity to explain my bill. H.R. 5450, the *National Oceanic and Atmospheric Administration Act*, is an organic act for NOAA. An organic act defines the overall mission and functions of an agency. As an example, my bill states that the mission of NOAA is to:

- (1) understand and predict changes in the Earth's oceans and atmosphere;
- (2) conserve and manage coastal, ocean, and Great Lakes ecosystems; and
- (3) educate the public about these topics.

Since 1970 when NOAA was created by executive order, the agency has operated under a confusing collection of issue-specific laws that are not coordinated by an overarching mission.

In September 2004, the final report of the U.S. Commission on Ocean called for Congress to pass an organic act for NOAA and clarify in one place the mission and program goals of the agency. The Administration supports Congressional passage of a NOAA organic act, and made it a priority in the Administration formal response to the Ocean Commission report. In the 108th, witnesses at Science Committee

hearings strongly endorsed my NOAA organic act. In a new report released just yesterday, the Joint Oceans Commission Initiative reiterated the need for NOAA to be codified in law, and this bill embodies specific priorities outlined in their report.

And yet, the Organic Act has languished for the past year over a jurisdictional claim by another committee. This new version of my bill makes a simple addition to the language in Section 12 to address these jurisdictional claims so that we can pass this bill and let the Resources Committee do their part. The Resources Committee will add language about fisheries management and other NOAA issues that are under their jurisdiction. I look forward to working with the Members of that committee to join us in passing truly comprehensive legislation for NOAA into law. I urge my colleagues to support H.R. 5450, and I yield back the balance of my time.

Chairman BOEHLERT. Dr. Ehlers, I want to thank you for your leadership on this and I want to thank Mr. Wu, who is not yet here, for working so effectively and cooperatively with you. You are a good team and you produced a good product. Since Mr. Wu is not here, I would like to recognize Mr. Gordon for any comments he might make.

Mr. GORDON. Thank you, Mr. Chairman. Let me also congratulate Mr. Ehlers for his work in bringing forth this important legislation, but I would say to him, since he raises the question of the Miller amendment, if scientific integrity is not a part of the Organic Act, the basis for this agency, where in the world is it legitimate? I mean, this is the place to develop the scientific integrity of the agency. I yield back my time.

Chairman BOEHLERT. Thank you. I think we are forewarned that the Miller amendment is going to be the subject of some serious discussion and my thought is we had originally scheduled, Mr. Miller, your amendment to be first. I would rather defer on that and go with some of the other less contentious, if you will, amendments because that will give the opportunity for our colleagues to get here to join us to hear the eloquent words that are going to come from both sides of the podium.

With that in mind, I ask unanimous consent that the bill be considered as read and open to amendment at any point and that the Members proceed with the amendment in the revised order of the roster. Without objection, so ordered.

The first amendment on the roster is an amendment offered by the gentleman from Illinois, Mr. Costello. Mr. Costello, are you ready?

Mr. COSTELLO. Mr. Chairman, I am and Mr. Chairman, I have an amendment at the desk.

Chairman BOEHLERT. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 5450 offered by Mr. Costello of Illinois.

Chairman BOEHLERT. I ask unanimous consent to dispense with the reading. Without objection, so ordered. I recognize the gentleman from Illinois for five minutes.

Mr. COSTELLO. Mr. Chairman, thank you. Mr. Chairman, when we last considered this bill, I offered an amendment to ensure that taxpayers' funds are used to sustain and promote jobs here in the United States whenever possible. Unfortunately, my amendment was weakened by the adoption of a secondary amendment offered by the Chairman. Mr. Chairman, you expressed your concern at the time that my amendment would have an impact on WTO agreements that we have with the World Trade Organization. I made the point at the time that we should be more concerned

about protecting jobs here in the United States and let the courts decide on what may or may not violate our trade agreements.

Unfortunately, at the time we did not, this committee did not have the benefit of knowing the number or the magnitude of NOAA's contracts that are being performed overseas. The amendment I am offering today is designed to obtain this information on an ongoing basis. My amendment establishes an annual reporting requirement. The identical language was included in the NASA authorization bill that was signed into law at the end of last year. NOAA would be required to provide a report listing the contracts and subcontracts performed overseas. The report must also include an accounting of the purchases made by NOAA from foreign entities.

The report will indicate which goods and services were only available for purchase through foreign sources and it will include information about waivers issued by the Administration of the Buy American Act. We have heard repeatedly that we do not have accurate information about off-shoring of jobs. This report will provide us some information about the extent to which NOAA contracts and subcontracts are subject to the trend of moving more jobs overseas.

With that, Mr. Chairman, I urge all Members to support this straightforward amendment.

Chairman BOEHLERT. Thank you very much for that description. This is a classic example of how we should work together, with consultation, with give and take back and forth. We have dealt with a subject that is uppermost on all of our minds. It deals with my favorite four letter word, and don't get nervous, you can use it in public, jobs. And my interest is in American jobs. And so we have no objection to the amendment; we appreciate the spirit of cooperation that has been so evident and the Chair is prepared to accept the amendment. Is there any further discussion? If no, the vote occurs on the amendment. All in favor say aye. Aye. No? The ayes have it. The amendment is adopted.

We will do Mr. Udall. Are you prepared? Next amendment on the roster is the amendment by Mr. Udall.

Mr. UDALL. Mr. Chairman, I have an amendment at the desk.

Chairman BOEHLERT. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 5450 offered by Mr. Udall of Colorado.

Chairman BOEHLERT. I ask unanimous consent to dispense with the reading and without objection, that is so ordered. The gentleman is recognized for five minutes.

Mr. UDALL. Thank you, Mr. Chairman. Mr. Chairman, the last few weeks the Committee has held two hearings on the NPOESS program and concerns were raised on both sides of the aisle that NPOESS was not properly managed and that warning signs were apparent, though not taken seriously by those responsible for the oversight of the program. As a result, we have a \$6.8 billion program that unaltered was estimated to be \$7 billion over budget and with current program changes, it is expected to total \$11.5 billion, \$4.7 billion over the original projections.

It is with this in mind that I offer my amendment to include greater oversight of large programs at NOAA. There have been

many developments in the status of NPOESS since we last marked up the NOAA Organic Act and as NOAA begins to make plans for the next series of the GOES satellite, I believe it is important that proper oversight is in place. My amendment would implement a Nunn-McCurdy-like oversight process for programs that have budgets of \$250 million or more. In fact, the language in this amendment is almost identical to that included in the NASA Authorization Act which was signed into law late last year.

Specifically, it would require detailed information provided to Congress up front about the cost and schedule of any major program at NOAA and establishes a process to follow for yearly oversight over these programs. It requires NOAA to notify Congress if a major program is 15 percent over budget or delayed six months, at which point, the agency must develop cost projections for several different scenarios. If the program's cost exceeds 30 percent of its budget, all spending on the program must end within 18 months. At this point, the only way the program can proceed is if Congress were to authorize it again.

I hate to continue to harp on NPOESS, but I think it is an important example of how budget can hamstring when it has problems, an agency's goals. NOAA's annual budget is usually in the realm of \$4 billion. While NOAA will not be the only agency having to cover these cost overruns, it will need to provide significantly more funding than expected as the program moves forward. And this begs the question now that NOAA will continue to do all of its other vital work in atmospheric and oceanic research while trying to cover the cost of NPOESS.

Looking at this situation more broadly, I think it is important to discuss how over-budget programs can affect NOAA's mission. With the fiscal climate over the past few years, NOAA's world renowned laboratories have had to endure instability in their budgets. I don't need to tell the Members of the Committee the importance of the models and research produced by those labs. They are integral to understanding our climate as well as predicting our daily weather. In the last appropriations cycle, we saw NOAA programs such as the Space Environment Center have their budgets cut by nearly half for reasons unknown to most in Congress and the American public.

With an estimated one-third of our economy dependent on weather, we cannot ignore the impact this research has on our economy. Yet one program's cost overruns can indirectly affect the research in programs at NOAA for forcing the agency to shift money in order to continue the over-budget program. Further reducing those budgets will jeopardize the quality of NOAA's research. By not properly monitoring major programs, there are many unattended consequences that will have lasting effects on NOAA's ability to perform its mission.

Mr. Chairman, I see this as a good government amendment that ensures major programs at NOAA do not potentially derail other efforts at the agency and that taxpayer dollars are spent wisely. I would ask my colleagues to join me in supporting this amendment. I thank you and I yield back any time I have remaining.

Chairman BOEHLERT. Thank you very much for this good beneficial amendment which the Chair is prepared to accept and I

would say to Mr. Udall don't apologize for what you referred to as harping on NPOESS. I prefer to call it constructive and vigorous engagement and we are going to continue to either harp or constructively and vigorously be engaged, but it is something that is critically important. Oversight of procurement is something that we don't take lightly and we will continue to be constructively engaged.

This is a good amendment. We will have to tweak it maybe a little bit in the language, but we will work with you on that to make sure it complies with the NASA language and our original intent. But the chair thanks the gentleman for his addition, valued addition to this bill and the Chair is prepared to accept it. Is there anyone else who cares to be heard on the amendment? If not, the vote is on the amendment. All in favor say aye. Aye. No? The ayes appear to have it and the amendment is adopted.

Now we go to the main act. The Chair is prepared to recognize Mr. Miller. Are you prepared?

Mr. MILLER. I am, Mr. Chairman.

Chairman BOEHLERT. The Clerk will report.

The CLERK. Amendment to H.R. 5450 offered by Mr. Miller of North Carolina.

Chairman BOEHLERT. I ask unanimous consent to dispense with the reading. Without objection, it is so ordered and the gentleman from North Carolina is recognized to explain his amendment.

Mr. MILLER. Thank you, Mr. Chairman. The purpose of this stupid little amendment is to safeguard the integrity of science at NOAA, something that should be true across all agencies of government, but this would apply the provisions of free-standing legislation that Mr. Waxman and Mr. Gordon have introduced that many of us have co-sponsored that would provide protections and legal requirements that scientific research not be tampered with, it not be censored and that nobody in NOAA, at least, would disseminate any scientific findings that they knew to be false or misleading.

Most important, Mr. Chairman, it is more than an exhortation to the executive branch of government not to do it. It provides real protection for the employees who are in the position to blow the whistle when it does happen. It provides real protections to them, it prohibits any personnel action directed at an employee who blows the whistle so that they may not lose their job or be demoted or have any other adverse personnel action taken with respect to them.

Mr. Chairman, you have spoken eloquently on many occasions on the importance of scientific integrity, that this Congress and all policy-makers in government should be able to rely upon the findings of neutral, honest scientific inquiry, that we should not decide what our policy is first or what politics dictates first and then make it clear to those who do scientific research on federal funding, with federal funding, what conclusions they are to come to, to support those findings.

Whatever conclusion we may reach on what the policy should be, we should have good, honest scientific research to rely upon. Mr. Chairman, I applaud your letter to Admiral Lautenbacher earlier this year. In that letter you referred to articles in the *Washington Post* in which NOAA scientists complained of being told to shut up

about global warming, not to talk about global climate change, it was very similar to earlier reports coming out of NASA.

And Mr. Chairman, you said, in your letter to Admiral Lautenbacher, that this was not an isolated incident and in fact, the Members of this committee and the staff of this committee have heard many reports from NOAA that the reports in the *Post* were representative of what was going on generally.

This is not simply a short-term problem. I hope it is a short-term problem, Mr. Chairman. I hope that this does not continue to occur, but this amendment would make sure that there are lasting protections; if any administration, this one or the next one, decides that they are going to have scientific research results flow from politics, that those scientists who blow the whistle on that will be protected. Mr. Chairman, I urge the adoption of this amendment.

Chairman BOEHLERT. Thank you very much, Mr. Miller. I am going to take some time to lay out my position on this amendment because it raises an important issue that is too often subject to demagoguery. I think it is fair to say that no one in this Congress has been more vocal than I have about the need for federal agencies and the Congress, for that matter, to encourage open scientific communication. I have strenuously objected when agencies or Congressional committees have appeared to unfairly constrain or intimidate science, scientists.

You know, policy should be informed by science rather than have science being influenced by policy, so I am not denying that such situations occur. In the case of NOAA, the agency has frankly developed an unfortunate reputation as a place where scientists are not always able to communicate freely and fully with the general public on sensitive topics. That said, it has been a little difficult to pin down specific, clear-cut cases in which scientists have been muzzled. One gets more of a sense that scientists are sort of walking on eggshells when discussing issues like climate change. There seems to be a problem with the atmosphere at NOAA.

At the same time, NOAA scientists have continued, without constraint, to conduct their research and participate in scientific conferences and NOAA has had what is generally viewed as a model policy governing communications. Finally, Admiral Lautenbacher has issued very clear statements urging open communications and no one has accused him of personally trying to shut down communications. So what we have is an agency that clearly has some problems where scientists clearly sometimes feel constrained, for whatever reasons, but where the problem seems to originate with discreet steps taken by mid-level and some more senior officials, in particular instances, and worries that other steps might be taken in the future.

This is a situation that cries out for a remedy, but it hardly cries out for legislation. In fact, the last thing needed to create a more settled atmosphere at NOAA is a legalistic regime that would send everyone to their lawyers each time there is a question or a misunderstanding about how exactly to communicate with the public or what to do when a scientist is talking about policy as opposed to pure science. What is needed, instead, in my view, is more active engagement on the communication issue at the top level of NOAA and Dr. Ehlers and I have sent, and you have referred to it, a very

clear and strong letter to Admiral Lautenbacher outlining the steps we think need to be taken and we will make that letter public today.

[The information follows:]

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE
SUITE 2320 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
TTY: (202) 226-4410
<http://www.house.gov/science/welcome.htm>
June 13, 2006

Vice Admiral Conrad C. Lautenbacher, Jr. (Ret.)
Under Secretary of Commerce for Oceans and Atmosphere
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
14th Street & Constitution Avenue NW
Room 5128
Washington, D.C. 20230

Dear Admiral Lautenbacher:

We are writing in response to continuing concerns we have heard about scientific communications at the National Oceanic and Atmospheric Administration (NOAA). Leaving aside the extent to which these concerns are valid, the mere fact that they continue can hurt the credibility of the agency and your ability to attract the best scientists.

We know that NOAA has a policy on communication that is generally well regarded and that the Department of Commerce is in the process of developing a Department-wide policy. We know that you have issued statements to NOAA employees and the public reiterating your own commitment to open scientific communication. These are important steps that have set the right tone and have been a model for other agencies, but they are clearly not enough to put concerns to rest.

Therefore, we are writing to urge you to take several important additional steps. First, we believe that NOAA should formally or informally survey its scientists to determine how widespread concerns are and why they are occurring. This would be an important baseline for moving forward, and it would demonstrate genuine concern with the problem. Second, we believe top NOAA staff, including you, must get out to meet with NOAA scientists around the nation to discuss their concerns and your commitment to openness. Third, NOAA must have a clear process in place to enable scientists (or public affairs officers) to express their concerns when they think the commitment to openness is being violated and a process to resolve such concerns.

These additional steps would go a long way to ensuring that NOAA truly exemplifies the principles of openness that you have espoused. There will always be some complaints, fair or not, but there should not be a continuing stream of concerns expressed about openness of communication by scientists.

We look forward to working with you on this issue.

Sincerely,



VERNON J. EHLERS
Chairman
Subcommittee on Environment,
Technology and Standards



SHERWOOD BOEHLERT
Chairman
Committee on Science

Chairman BOEHLERT. This follows up on a letter that I sent to the Admiral as far back in April. These communication issues are subtle and each one is a little different and they need to be handled through oversight, not through legislation. I would add that this strategy seems to be working at NASA. When NASA had a problem, Mr. Gordon and I worked very effectively and very closely and very cooperatively with NASA, mostly behind the scenes, to get the situation straightened out. That doesn't mean there will never again be an issue there. Oversight has to be done on a continuing basis and we are committed to that proposition, but no one has argued that the situation at NASA hasn't vastly improved to the credit of Administrator Griffin and Deputy Administrator Dale, who, I might add, got her training on this committee, as well as to all of us.

So I don't think legislating in this area is a good idea, in general. But let me outline my specific concerns about this particular amendment. First, this amendment would sidetrack this bill by sending it to the Government Reform Committee. Needless to say, this language is rather controversial in that committee or they already would have acted on the bill on which this amendment is based, a bill that has been sitting in that committee for most of this Congress. I point out that this bill also still needs to go through the Resources Committee, and that is perhaps not the ideal venue to debate this subject.

Second, for the reasons I have already described, I don't think this is a problem that is best solved by legislation. And third, the language of the amendment doesn't even address the issues that have been raised at NOAA. The amendment language is based on a bill that was drafted largely in response to allegations about science issues related to human health. No one, no one at NOAA has been accused of tampering with scientific research or censoring findings, a vague term, in any event, or disseminating information known to be false. Yet those are the formal offenses created by this amendment.

So this amendment would have the perverse effect of forcing anyone with a complaint about communications at NOAA to try to de-

scribe their problem in the terms used in this amendment. That would hardly help resolve these issues. The amendment also deals with advisory bodies, again using language designed to apply to different panels than the ones NOAA has. The NOAA advisory bodies tend to be, in part, policy bodies, not purely scientific ones. We are not talking primarily about an advisory panel to determine, say, a safe level for lead in blood. And I won't even get into the peer review guidelines issues raised by the amendment, which is an entirely separate, complex issue that shouldn't be fought out on this bill for one agency.

So I strongly oppose this amendment. It would kill this organic act while only making worse the problems at NOAA that its sponsor claims to want to resolve. It is based on a bill drafted by and for another committee that didn't have the NOAA situation in mind when it was drafting. I think we should swiftly and soundly defeat this amendment, pass the bill and continue, continue to monitor NOAA's communications policy as part of our oversight responsibilities.

And let me add, we take those responsibilities seriously, both Mr. Gordon and I in a bipartisan basis. I wish some other committees would follow the lead of this committee and do the same thing. With that, I urge strongly that this amendment be defeated. Now, is there anyone else who seeks to be recognized? Mr. Gordon.

[The prepared statement of Chairman Boehlert follows:]

PREPARED STATEMENT OF CHAIRMAN SHERWOOD L. BOEHLERT

I'm going to take some time to lay out my position on this amendment because it raises an important issue that is too often subject to demagoguery.

I think it's fair to say that no one in this Congress has been more vocal than I have been about the need for federal agencies—and the Congress, for that matter—to encourage open scientific communication. I have strenuously objected when agencies or Congressional committees have appeared to unfairly constrain or intimidate scientists.

So I'm not denying that such situations occur. In the case of NOAA, the agency has frankly developed an unfortunate reputation as a place where scientists are not always able to communicate freely and fully with the general public on sensitive topics. That said, it's been a little difficult to pin down specific, clear-cut cases in which scientists have been muzzled. One gets more of a sense that scientists are "walking on egg shells" when discussing issues like climate change. There seems to be a problem with the atmosphere at NOAA.

At the same time, NOAA scientists have continued without constraint to conduct their research and participate in scientific conferences. And NOAA has had what is generally viewed as a model policy governing communications. Finally, Admiral Lautenbacher has issued very clear statements urging open communications, and no one has accused him of personally trying to shut down communication.

So what we have is an agency that clearly has some problems, where scientists clearly sometimes feel constrained, for whatever reasons, but where the problem seems to originate with discrete steps taken by mid-level and some more senior officials in particular instances and worries that other steps might be taken in the future.

This is a situation that cries out for remedy, but it hardly cries out for legislation. In fact, the last thing needed to create a more settled atmosphere at NOAA is a legalistic regime that would send everyone to their lawyers each time there's a question or misunderstanding about exactly how to communicate with the public or what to do when a scientist is talking about policy, as opposed to "pure" science.

What's needed instead is more active engagement on the communication issue at the top level of NOAA, and Mr. Ehlers and I have sent a letter to Admiral Lautenbacher outlining the steps we think need to be taken, and we'll make that public today. This follows up on a letter that I sent to the Admiral back in April. These communications issues are subtle, and each one is a little different, and they need to be handled through oversight, not legislation.

I'd add that that strategy seems to be working at NASA. When NASA had a problem, Mr. Gordon and I worked very effectively with NASA, mostly behind the scenes, to get the situation straightened out. That doesn't mean there will never again be an issue there—oversight has to be done on a continuing basis—but no one has argued that the situation at NASA hasn't vastly improved—to the credit of Administrator Griffin and Deputy Administrator Dale, as well as to us.

So I don't think legislating in this area is a good idea, in general. But let me outline my specific concerns about this amendment.

First, this amendment would sidetrack this bill by sending it to the Government Reform Committee. Needless to say, this language is rather controversial in that committee, or they already would have acted on the bill on which this amendment is based, which has been sitting in that committee for most of this Congress.

I'd also point out that this bill also still needs to go through the Resources Committee, perhaps not the ideal venue to debate this subject.

Second, for the reasons I've already described, I don't think this is a problem that is best solved by legislation.

Third, the language of the amendment doesn't even address the issues that have been raised at NOAA. The amendment language is based on a bill that was drafted largely in response to allegations about science issues related to human health. No one at NOAA has been accused of (quote) "tampering" with scientific research or (quote) "censoring" findings—a vague term, in any event—or disseminating information known to be false. Yet those are the formal offenses created by this amendment.

So this amendment would have the perverse effect of forcing anyone with a complaint about communications at NOAA to try to describe the problem in the terms used in this amendment. That would hardly help resolve these issues.

The amendment also deals with advisory bodies—again, using language designed to apply to different panels than the ones NOAA has. The NOAA advisory bodies tend to be, in part, policy bodies, not purely scientific ones. We're not talking primarily about an advisory panel to determine, say, a safe blood level for lead.

And I won't even get into the peer review guideline issues raised by the amendment, which is an entirely separate complex issue that shouldn't be fought out on this bill for one agency.

So I strongly oppose this amendment. It would kill this Organic Act while only making worse the problems at NOAA that its sponsor claims to want to resolve. It is based on a bill drafted by and for another committee that didn't have the NOAA situation in mind when it was drafting.

I think we should swiftly and soundly defeat this amendment, pass this bill, and continue to monitor NOAA's communication policies as part of our oversight responsibilities.

Mr. GORDON. Thank you, Mr. Chairman. I think Mr. Miller laid out the merits of this bill very well, so I won't proceed to elaborate there. What I would like to do is concur with the Chairman in a couple of ways. First of all, I want to concur with the Chairman in saying that we have had some difficulty with scientific integrity at NOAA and secondly, I want to concur with the Chairman in saying he has been a champion in trying to work through these problems. Unfortunately, he is going to be leaving us soon and let me just say I don't consider this a partisan bill.

Although I may not see another Democrat in my lifetime, certainly Ralph Hall is likely to find one and when that occurs, I think that you are going to want, both parties are going to want best information from these agencies without any kind of filtering. This is not a partisan issue, this is an issue of trying to allow Congress to do its job and if we don't do it here, I don't know where we are going to get it done. Again, I concur with Mr. Miller's amendment, think that it is a nonpartisan amendment, it is an amendment that each side of this roster is going to want at the appropriate times so that we can do our job. Thank you, Mr. Chairman.

Chairman BOEHLERT. Thank you very much for the complimentary words, but I wish to point out that I never, never use the word partisan in referring to this amendment and we work, this com-

mittee works on a bipartisan basis and my view is that we have got sort of two choices. We can do as some committees do where the Majority runs roughshod over the Minority, not even taking into consideration the views of the Minority.

I am proud to say that that is not the model we follow on this committee. And when I look across to your side of the aisle, I look across not only to see people I work with and am friendly with on a personal basis, but people I work with and am cooperative with on a professional basis. This committee can hold its head high and say we are not part of the problem. You refer to the fact that I am going to be leaving and I am going to be—that wasn't a draft invitation, was it? But there are many reasons why I am leaving, but one of the reasons that I announced in my statement on March 17 was that I came to this Hill 42 years ago as a starry-eyed young staffer and for the past 24 years it has been my privilege to serve as a Member of this great institution.

I have never, never seen a higher level of partisanship or a lower level of tolerance for another point of view. Fortunately, in this committee, that situation doesn't exist, nor will it as long as I am privileged to be in this chair. Dr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman. I would like to discuss in some detail why I think it would be inappropriate to adopt this amendment at this point. This organic act that we have before us has been in preparation for more than six years. We have spent a great deal of time on it in subcommittee. I have personally devoted a lot of time to it. We have had innumerable roadblocks, including the latest, which was a claim of jurisdiction by another committee which took us several months to resolve.

My time, Mr. Chairman, on this subcommittee is coming to an end. The time of getting this passed through both the House and the Senate is coming to an end. It is going to be touch and go the way it is. I would not want to see this bill sidetracked in any way and assigned to another committee other than the Resources Committee, which is going to add their part of the organic act to this bill. So I urge that we reject this amendment.

I would also like to point out the nature of an organic act and why we have worked so hard on this and we have touched base with so many different segments. An organic act is, in a sense, almost a constitution for a committee. There are very few organic acts out there. The best example is the National Science Foundation, which has had the same organic act for roughly 50 years. It has very seldom, if at all, been amended by the Congress. It is regarded as the guiding act and any laws pertaining to the National Science Foundation have avoided amending the organic act.

Similarly, we are trying to write that type of "constitution" for NOAA and all its activities. It is a very concise document, contains a great deal, but we have tried to deal with the issue that the amendment addresses in the act, in the following words, "Nothing in this Act shall be construed to limit the ability of an administration employee to discuss scientific research performed by that employee." That says it in one sentence what the essence of the amendment is. Yet, the amendment goes on for 11 pages. It is one-third the length of our entire bill and I just think it is inappropriate to insert that detail in an organic act.

If the author of the amendment would wish to offer this as a bill which would apply to all the various scientific agencies, NIH, NASA, NSF, NOAA and so on down the line, Department of Energy, that might be an appropriate move to go into that kind of detail for a general statement of all governmental science agencies. But as I say, it is inappropriate to put something of that length, of that detail in an organic act which applies to only one agency and certainly not to the largest scientific agency of the Federal Government.

So I encourage the defeat of the amendment and I believe we have taken care of it as fully as we need to or should in this organic act with that one sentence which I read. It is very complete, very thorough, "Nothing in this Act shall be construed to limit the ability of an administration employee to discuss scientific research performed by that employee." NASA, or pardon me, NOAA already has in place a policy. It is a good enough policy that when NASA developed some problems on this, they referred to the NOAA policy and made their new policy based on the NOAA policy.

It is not that there is a pressing need in this particular agency for this and as I said, to repeat myself, if this is a serious problem that has to be addressed in this detail, an 11-page amendment, it should be done with a bill that applies to all science agencies and not just to one agency, which has not demonstrated any major problems. So I urge the defeat of this amendment and urge that we pass the organic bill in the form as submitted to this committee.

Mr. GORDON. Would my friend yield for just a moment?

Mr. EHLERS. Yes, I would yield.

Mr. GORDON. If I could address your specific question. For your information, there has been a bill introduced specifically dealing with scientific integrity across the board. It is the bill I introduced over a year ago. It has been referred, in part, to this committee and there have been no hearings on it.

Mr. EHLERS. May I ask what other committee—

Mr. GORDON. I yield back to my time.

Mr. EHLERS. Just reclaim my time. Could the gentleman inform me what other committees it has been referred to? And I yield to him for that answer.

Mr. GORDON. Government Reform, as well as this committee and Mr. Miller's amendment is based almost entirely on that bill, but being more specific to this committee since this committee has not had hearings on the bill that you requested.

Mr. EHLERS. I reclaim my time. I would simply state that illustrates precisely the problem. We do not want the organic act to go to the Government Reform Committee; we would never see it again.

Chairman BOEHLERT. That is part of the problem when you refer it to other committees. Other committees don't follow our example. They don't lead and get things done. They sit on legislation for far too long and the second thing I would observe is that Dr. Ehlers is a very distinguished scientist in his own right, a physicist, Ph.D., a fellow of the American Physical Society. No one values unfettered scientific inquiry more than the scientific community that we are here to try to help and Dr. Ehlers, I thank you for your input.

Mr. GORDON. May I address that quickly?

Chairman BOEHLERT. Be glad to recognize Mr. Gordon.

Mr. GORDON. Let me first concur Dr. Ehlers is a great asset to this committee and his integrity should not be challenged in any way. But in terms of jurisdiction, let me point out that already this year this committee has had 26 bills. We have exchanged letters in lieu of referrals between the Science Committee and other committees and I am sure there is going to be additional letters of exchange and as you just mentioned, you have already done that on this bill already once, so I feel sure this could be worked out if there was an effort, since this bill is specific to NOAA.

Chairman BOEHLERT. Thank you. The Chair recognizes Mr. Gilchrest.

Mr. GILCHREST. I thank the Chair for recognizing me, and I would like to reiterate the comment that the Chairman and Mr. Ehlers have made. The NOAA Organic Act is highly recommended by the Pew Oceans Commission and led by Leon Panetta, and the National Ocean Commission led by Admiral Watkins. NOAA right now is contained in the Department of Commerce and it is a poor second cousin of the Department of Commerce. As a result of this structure, the frame that NOAA exists under, the United States has no coherent ocean policy. It is not a separate independent agency like NASA. It doesn't have the same kind of clout in Congress that other independent agencies have. That is just the way it works. It is the human condition. I said NOAA—the U.S. has no coherent ocean policy. We have no ocean policy. There is a myriad of committees that deal with these kinds of issues and not just Government Reform or Transportation or Science or Resources, but we are talking about Commerce, we are talking about Ways and Means, we are talking about Armed Services. This goes across the board. It is vital at this point to keep the momentum going for good Science to take that Ocean Commission report so it doesn't gather dust, like other reports do around here and it is completely ignored, to set the stage for NOAA Organic Act so they can be a separate independent agency and we can begin the process of developing clear ocean policy. The other issues that are brought out here today can be dealt with, they must be dealt with, but they can be dealt with more effectively outside this particular bill and I, unfortunately, at this point urge a no vote on Mr. Gordon—Mr. Miller's amendment.

Chairman BOEHLERT. Thank you very much, Mr. Gilchrest. Mr. Wu.

Mr. WU. Thank you, Mr. Chairman. And I want to commend the way that the Chairman and Ranking Member Gordon have worked together very, very well on a range of issues, including this one. And I also want to recognize that Chairman Ehlers and I, on the Subcommittee, have worked together on this bill. And I want to lay out the reasons why I think it is important to support Mr. Miller's amendment today. And, Mr. Chairman, I think that you have been very forthright in your statements about the importance of scientific integrity and making those views known to folks at NASA and NOAA and other agencies. But if you go back to June of 2005, the Union of Concerned Scientists, in a survey of NOAA fishery scientists, found that half of all respondents were aware of instances of political interference with scientific opinions, and over half were

aware of cases where Commerce appointees “inappropriately altered NOAA fisheries determinations.”

Now fast forward to April of this year and, Mr. Chairman, you sent a letter to Admiral Lautenbacher, highlighting some of the issues and I believe that one of the statements was, our staff has heard concerns about politicization repeatedly and the problem goes beyond just a few instances.

Chairman BOEHLERT. Will the gentleman yield?

Mr. WU. Once I finish, I would be happy to yield. But after you sent the letter, Mr. Chairman, Greenway reported that NOAA directed all media inquiries on salmon to go through several political appointees. And the reason why I am pointing it out, there is this problem with NOAA fisheries. It also applies to the National Weather Service, on climate research, which is a part of NOAA. It was my personal experience to have met with NOAA folks on the Klamath salmon issue and their proposal to prohibit all sport and commercial fishing in the Pacific Ocean. And the prohibition on all ocean salmon fishing would have saved, at most, 500 salmon; whereas all the studies show that the up-river policies were killing 85,000 salmon, 85,000 spring Chinook salmon every year. And this is not a threatened run, this is not an endangered run, but NOAA was proposing to close down the entire fishery to close—to protect this one run in one river, the Klamath River, and I struggled with the NOAA administrators back and forth, back and forth, and it was like a debate to get them to admit that it was up-river policies that was causing this problem.

And I asked them a direct question several times: wouldn't water—changing water management solve this problem much more effectively, and they repeatedly answered no. And finally I got the form of the question right and I said, well, if we change up-river water management and ecosystem recovery in the water basin, would that solve the problem? And the answer magically became yes. And without contact, direct contact with NOAA scientists, I never would have been able to form that question and get that admission out of the folks at NOAA. I think it is very, very important, it is very, very important, specifically, in a policy instance and in direct dealings with the folks at NOAA. But I think Mr. Miller's amendment is also important for one other reason and that is the Supreme Court case which came out, I believe, after your letter, Mr. Chairman, *Garcetti v. Ceballos*, which dramatically cut back on the protection which whistleblowers have. In that particular case, Mr. Ceballos, a district deputy district attorney in Los Angeles, found that a deputy sheriff had lied in order to get a search warrant and brought it to the attention of his superiors, he was ignored and when, as required by Bar rules, disclosed this to the defense, he was removed from the case, demoted and transferred. And the Supreme Court ruled that he was not protected, and the law has changed just recently. This is May 30. And it is appropriate to provide statutory protection when the traditional protections have been cut back. I understand the Chairman's concern and Dr. Ehlers' concern about a referral to another committee, but I think that it is extremely important that we get this right, especially with the underlying change in the law because of the Su-

preme Court Case. I would like to yield to Mr. Gilchrest and Mr. Miller.

Chairman BOEHLERT. There is no more time. Your time has expired, the red light is on, and Mr. Gilchrest graciously consented not to go further. Let me point out that both sides, I think, have fairly well capsulized and expanded on their respective positions, and so we will go to a vote, but before we go to the vote, Dana—Mr. Rohrabacher asked for a minute.

Mr. ROHRABACHER. I will just go very quickly. I don't believe that what we are talking about here is politics within this committee, but I do believe it is based on political posturing that happened outside of this committee, and this is, frankly, the charges that this Administration has been stifling people on the issue of global warming is just total nonsense. But based on some actions that were politically-based actions by certain scientists, especially at NASA, let me note that the very first action taken by the Clinton Administration was to fire the head of the—the chief scientist at the Department of Energy because he was skeptical of global warming. I will put in the record at this point a number of references and articles by scientists who have noted that they have not received, they have not been able to receive grants in recent years since the Clinton Administration and into this Administration because of their skepticism of global warming. And if there is any type of muzzling going on, it is the opposite of what is being presented here today and this is turning, you know, reality on its head, and that is why even though I understand——

[The information follows:]

Discover Dialogue: Meteorologist William Gray

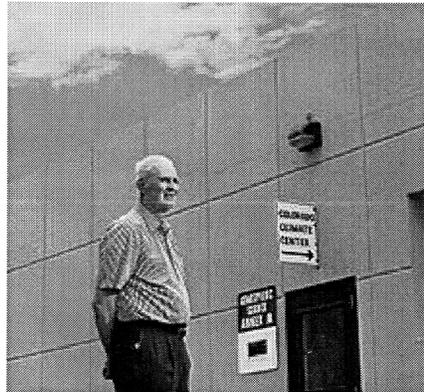
Weather Seer: 'We're Lucky'

'Eight of the last 10 years have been very active—we've never had as much activity. Yet we went from 1992 until last year with no hurricanes coming through Florida'

By Kathy A. Svitil

DISCOVER Vol. 26 No. 09 | September 2005 | Environment

Meteorologist William Gray may be the world's most famous hurricane expert. More than two decades ago, as professor of atmospheric science and head of the Tropical Meteorology Project at Colorado State University, he pioneered the science of hurricane forecasting. Each December, six months before the start of hurricane season, the now 75-year-old Gray and his team issue a long-range prediction of the number of major tropical storms that will arise in the Atlantic Ocean basin, as well as the number of hurricanes (with sustained winds of 74 miles per hour or more) and intense hurricanes (with winds of at least 111 mph). This year, Gray expects more activity, with 15 named storms, including 8 hurricanes. Four of them, he says, will be intense.



Photograph by Jeff Wilson

How did you get involved in predicting hurricanes?

G: It was an outgrowth of my teaching. We always wanted to know when we went to Florida whether the Atlantic basin would have an active season or not, because it has the most variable season of the global basins. There are some years with very few storms and other years with a large number of them. Twenty-five years ago, there was no way to tell. We tried studying local variation in the sea surface temperatures in the western Atlantic, the surface pressures, the wind shears, and various other things, but we could not develop a scheme that worked very well. Then I discovered that the secret

was to look globally. I found that if there is an El Niño in the Pacific, the Atlantic seasons tend to be rather weak; if there is not an El Niño, they tend to be stronger. Then we found that if the global stratospheric winds blow from the west, we tend to have more storms. We looked at West African rain—we hadn't been doing that—and found that had a precursor signal to it too. The more we learned, the better the predictions got.

How can you predict hurricanes six or nine months in advance but not the weather next week?

G: We don't say where or when the storms are going to occur. We give a number for the season. It is a different prediction.

What is the point in predicting the severity of the season if you can't say where a storm will hit, or when?

G: People want to know what the odds look like, and we can say something about that by looking at the conditions that existed before the active season in prior years and comparing those to what we see now.

A few years ago when there were quite a few light seasons in a row, you said Florida had just been lucky—and that it was going to end.

G: They've been extremely lucky. The last major storm to come through Florida, before hurricane Andrew hit in 1992, was hurricane Betsy in 1965, which went through the Keys. Eight of the last 10 years have been very active—in fact, we've never had as much activity on the records, going back to about 1870 or so, as in the past 10 years—and yet we went from 1992 until last year with no hurricanes coming through Florida. If we look back earlier, from 1931 through 1965, Florida was hit 11 times with major storms. The major storms, the category 3, 4, and 5 hurricanes, only account for about 25 percent of the number of named storms, but they cause about 80 to 85 percent of the damage.

There was a lot of devastation last year. That doesn't seem very lucky.

G: Although last year was a terrible year for them, it could have been worse because none of the four storms that affected the Florida region went into a highly populated area.

What do you expect over the next few years?

G: Our feeling is that the United States is going to be seeing hurricane damage over the next decade or so on a scale way beyond what we have seen in the past.

Is there a reason so many storms reached land last year?

G: What made last year so unusual were the steering currents. In 9 of the previous 10 years from 1995 through 2003, we tended to have this upper-level trough—or low-pressure area—off the northeast United States, and that brought the westerly winds down into the tropics, where they curved the storms out to sea before they could hit the United States. On average, about one in 3 major Atlantic storms hits land, so by all reckoning we should have had 9 or 10 major storms hitting the United States since 1995. We only had 3 because of this trough. Last year, the thing changed. Instead of a trough off the northeastern United States, we had this high-pressure ridge, and that kept the westerly winds far north of the tropical Atlantic storms. The storms didn't curve away; they just kept coming westward.

What will happen this year?

G: We think that this year we probably won't curve all the storms, but we are not as confident of that as we are that this will be a pretty active year—a lot like last year.

How accurate can hurricane prediction get?

G: There are two types of prediction. The type we do is with climate, where we don't say when and where but we say the number. I think that will get slightly better if we keep working on it. The critical prediction is in the short range, 12 to 48 hours, of the track of the storm and of its intensity. Track prediction is getting a little better because researchers have been flying planes around the outside of the storm, measuring the steering currents. The errors in three-day track prediction now are equivalent to the errors you used to see in two-day predictions. But the skill at intensity predictions is still very small. That is a tougher nut to crack because it involves the complexity of the inner core of the storm.

A few years ago, you almost called it quits because you'd lost so much funding. What made you continue?

G: I don't have the budget that I had, so I have cut my project way back. I am in retirement. I'm still working every day, but I don't teach and I don't have as many graduate students and as much financial need. I've got a little money from Lexington Insurance out of Boston, and I have some National Science Foundation money. For years I haven't had any NOAA, NASA, or Navy money. But I'm having more fun. Right now I'm trying to work on this human-induced global-warming thing that I think is grossly exaggerated.

You don't believe global warming is causing climate change?

G: No. If it is, it is causing such a small part that it is negligible. I'm not disputing that there has been global warming. There was a lot of global warming in the 1930s and '40s, and then there was a slight global cooling from the middle '40s to the early '70s. And there has been warming since the middle '70s, especially in the last 10 years. But this is natural, due to ocean circulation changes and other factors. It is not human induced.

That must be a controversial position among hurricane researchers.

G: Nearly all of my colleagues who have been around 40 or 50 years are skeptical as hell about this whole global-warming thing. But no one asks us. If you don't know anything about how the atmosphere functions, you will of course say, "Look, greenhouse gases are going up, the globe is warming, they must be related." Well, just because there are two associations, changing with the same sign, doesn't mean that one is causing the other.

With last year's hurricane season so active, and this year's looking like it will be, won't people say it's evidence of global warming?

G: The Atlantic has had more of these storms in the last 10 years or so, but in other ocean basins, activity is slightly down. Why would that be so if this is climate change? The Atlantic is a special basin? The number of major storms in the Atlantic also went way down from the middle 1960s to the middle '90s, when greenhouse gases were going up.

Why is there scientific support for the idea?

G: So many people have a vested interest in this global-warming thing—all these big labs and research and stuff. The idea is to frighten the public, to get money to study it more. Now that the cold war is over, we have to generate a common enemy to support science, and what better common enemy for the globe than greenhouse gases?

Are your funding problems due in part to your views?

G: I can't be sure, but I think that's a lot of the reason. I have been around 50 years, so my views on this are well known. I had NOAA money for 30 some years, and then when the Clinton administration came in and Gore started directing some of the environmental stuff, I was cut off. I couldn't get any NOAA money. They turned down 13 straight proposals from me.

Mr. HONDA. Will Mr. Rohrabacher yield?

Mr. ROHRABACHER. You know what? I promised the Chairman I would be less than two minutes and that is it, so I have had my say. Thank you.

Chairman BOEHLERT. Thank you very much. And, Mr. Honda, did you have a brief intervention?

Mr. HONDA. Mr. Chairman, I would like to move to strike the last word.

Chairman BOEHLERT. Yes, and——

Mr. HONDA. And I would like to yield my time Mr. Miller.

Chairman BOEHLERT. But not for the full five minutes. Look, here is what the Chair is trying to do, recognize that a number of Members of the Committee have other committees competing with us and some of those committees are actually voting and require their attendance, so we would like to get on with it. But, Mr. Miller, for a brief intervention.

Mr. MILLER. Mr. Chairman, I will defer. I will not use——

Chairman BOEHLERT. Thank you very much, and that is the spirit of cooperation that is so evident. Both sides have laid out the case, so now the vote is on the Miller Amendment. All in favor say aye. Opposed, no. The noes appear to have it.

Mr. MILLER. Mr. Chairman, I ask for a recorded vote.

Chairman BOEHLERT. A recorded vote has been requested. The Clerk will call the roll.

The CLERK. Mr. Boehlert.

Chairman BOEHLERT. No.

The CLERK. Mr. Boehlert votes no. Mr. Hall.

Mr. HALL. No.

The CLERK. Mr. Hall votes no. Mr. Smith.

[No response.]

The CLERK. Mr. Weldon.

[No response.]

The CLERK. Mr. Reichert.

Mr. REICHERT. No.

The CLERK. Mr. Reichert votes no. Mr. Rohrabacher.

Mr. ROHRABACHER. No.

The CLERK. Mr. Rohrabacher votes no. Mr. Calvert.

Mr. CALVERT. No.

The CLERK. Mr. Calvert votes no. Mr. Bartlett.

[No response.]

The CLERK. Mr. Ehlers.

Mr. EHLERS. No.

The CLERK. Mr. Ehlers votes no. Mr. Gutknecht.

Mr. GUTKNECHT. No.

The CLERK. Mr. Gutknecht votes no. Mr. Lucas.

Mr. LUCAS. No.

The CLERK. Mr. Lucas votes no. Ms. Biggert.

Ms. BIGGERT. No.

The CLERK. Ms. Biggert votes no. Mr. Gilcrest.

Mr. GILCREST. No.

The CLERK. Mr. Gilcrest votes no. Mr. Akin.

[No response.]

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Johnson votes no. Mr. Forbes.
Mr. FORBES. No.
The CLERK. Mr. Forbes votes no. Mr. Bonner.
[No response.]
The CLERK. Mr. Feeney.
Mr. FEENEY. No.
The CLERK. Mr. Feeney votes no. Mr. Neugebauer.
Mr. NEUGEBAUER. No.
The CLERK. Mr. Neugebauer votes no. Mr. Inglis.
Mr. INGLIS. No.
The CLERK. Mr. Inglis votes no. Mr. Sodrel.
Mr. SODREL. No.
The CLERK. Mr. Sodrel votes no. Mr. Schwarz.
Mr. SCHWARZ. No.
The CLERK. Mr. Schwarz votes no. Mr. McCaul.
[No response.]
The CLERK. Mr. Diaz-Balart.
[No response.]
The CLERK. Mr. Gordon.
The CLERK. Mr. Costello. Mr. Gordon votes yes. Mr. Costello.
Mr. COSTELLO. Aye.
The CLERK. Mr. Costello votes yes. Ms. Johnson.
[No response.]
The CLERK. Ms. Woolsey.
[No response.]
The CLERK. Ms. Hooley.
Ms. HOOLEY. Aye.
The CLERK. Ms. Hooley votes yes. Mr. Udall.
Mr. UDALL. Aye.
The CLERK. Mr. Udall votes yes. Mr. Wu.
Mr. WU. Aye.
The CLERK. Mr. Wu votes yes. Mr. Honda.
Mr. HONDA. Yes.
The CLERK. Mr. Honda votes yes. Mr. Miller.
Mr. MILLER. Yes.
The CLERK. Mr. Miller votes yes. Mr. Davis.
Mr. DAVIS. Yes.
The CLERK. Mr. Davis votes yes. Mr. Lipinski.
[No response.]
The CLERK. Ms. Jackson Lee.
[No response.]
The CLERK. Mr. Sherman.
[No response.]
The CLERK. Mr. Baird.
[No response.]
The CLERK. Mr. Matheson.
[No response.]
The CLERK. Mr. Costa.
Mr. COSTA. Yes.
The CLERK. Mr. Costa votes yes. Mr. Green.
Mr. GREEN. Yes.
The CLERK. Mr. Green votes yes. Mr. Melancon.
Mr. MELANCON. Yes.
The CLERK. Mr. Melancon votes yes. Mr. Moore.

[No response.]

The CLERK. Ms. Matsui.

Ms. MATSUI. Yes.

The CLERK. Ms. Matsui votes yes. Mr. Sherman, you are not recorded. Mr. Sherman votes yes.

Chairman BOEHLERT. The Clerk, when the Clerk is prepared, will report.

The CLERK. Yes, 13. No, 17.

COMMITTEE ON SCIENCE - ROLL CALL - 109th CONGRESS

DATE: 6/14/06 SUBJECT: Amendment by Mr. Miller to H.R. 5450

Rm.	Phone	Member	Yes	No	Not Voting	Present	Absent
2246	53665	Mr. Boehlert, R-NY		✓			
2405	56673	Mr. Hall, R-TX		✓			
2184	54236	Mr. Smith, R-TX					
2466	52011	Mr. Weldon, R-PA					
2338	52415	Mr. Rohrabacher, R-CA		✓			
2201	51986	Mr. Calvert, R-CA		✓			
2412	52721	Mr. Bartlett, R-MD		✓			
1714	53831	Mr. Ehlers, R-MI		✓			
425	52472	Mr. Gutknecht, R-MN		✓			
2342	55565	Mr. Lucas, R-OK		✓			
1317	53515	Ms. Biggert, R-IL		✓			
2245	55311	Mr. Gilchrest, R-MD		✓			
117	52561	Mr. Akin, R-MO					
1229	52371	Mr. Johnson, R-IL		✓			
307	56365	Mr. Forbes, R-VA		✓			
315	54931	Mr. Bonner, R-AL					
323	52706	Mr. Feeney, R-FL		✓			
429	54005	Mr. Neugebauer, R-TX		✓			
330	56030	Mr. Inglis, R-SC		✓			
1223	57761	Mr. Reichert, R-WA		✓			
1508	55315	Mr. Sodrel, R-IN		✓			
128	56276	Mr. Schwarz, R-MI		✓			
415	52401	Mr. McCaul, R-TX					
313	52778	Mr. Diaz-Balart, R-FL					
2304	54231	Mr. Gordon, D-TN	✓				
2269	55661	Mr. Costello, D-IL	✓				
1511	58885	Ms. Johnson, D-TX					
2263	55161	Ms. Woolsey, D-CA					
2430	55711	Ms. Hooley, D-OR	✓				
240	52161	Mr. Udall, D-CO	✓				
1023	50855	Mr. Wu, D-OR	✓				
1713	52631	Mr. Honda, D-CA	✓				
1722	53032	Mr. Miller, D-NC	✓				
410	56831	Mr. Davis, D-TN	✓				
1217	55701	Mr. Lipinski, D-IL					
2435	53816	Ms. Jackson Lee, D-TX					
1030	55911	Mr. Sherman, D-CA	✓				
1421	53536	Mr. Baird, D-WA					
1222	53011	Mr. Matheson, D-UT					
1004	53341	Mr. Costa, D-CA	✓				
1529	57508	Mr. Green, D-TX	✓				
404	54031	Mr. Melancon, D-LA	✓				
1727	52865	Mr. Moore, D-KS	✓				
2310	57163	Ms. Matsui, D-CA	✓				
TOTAL			13	17			

Attest:  (Clerk)

Chairman BOEHLERT. The amendment is defeated. Next, the Chair recognizes Ms. Matsui.

Ms. MATSUI. Thank you, Mr. Chairman. I am glad that the NOAA Organic Act is once again moving forward today. The research information that NOAA provides on our coastal resources, climate and weather is critical to policy-making and particularly to my home State of California. This agency is certainly deserving of an explicit authorization and I applaud Chairman Boehlert, Dr. Ehlers, Ranking Member Gordon, and Representative Wu for their hard work on this legislation. I was glad to work with the Committee on report language which ensures that we are leveraging NOAA's scientific and technical expertise to support the competitiveness goals this committee advanced during last week's markup. NOAA's day-to-day operational mission is to protect our coastal resources, manage our fisheries, and forecast weather, provide excellent illustrations of the real-world application of science. I want to make sure we continue to take advantage of that opportunity; therefore the language we have agreed to will ensure that NOAA continues to promote public understanding of these critical issues.

The world is always changing. My granddaughter is two and a half years old and I know she has been born in a very different world than I was. I want her to be able to understand the changes going on around her and what they mean to her future and her children's future. This language directs NOAA to continue to provide the research and information that will allow Anna and all her friends to have such a comprehension of these important issues. I thank the Chairman for his willingness to include this report language and I look forward to working with him and other Members of the Committee to advance these goals and future legislation. And I yield back the balance of my time.

Chairman BOEHLERT. Well, I thank the gentlelady for the excellent point she has made regarding this bill and I am pleased she is already proving to be a very active Member of this committee and I appreciate how cooperative she and her staff have been in working this out, the report language, with the majority staff.

The next amendment on the roster is an amendment offered by Ms. Jackson Lee. I don't see her here.

Mr. COSTELLO. Mr. Chairman.

Chairman BOEHLERT. Yes.

Mr. COSTELLO. Mr. Chairman, since Ms. Jackson Lee is not here, I have an amendment that I would like to offer at this time.

Chairman BOEHLERT. Which is not on the roster. Let us proceed with the amendment on the roster. We will deal with that, then we will get to you, Mr. Costello.

Mr. COSTELLO. Thank you, Mr. Chairman.

Chairman BOEHLERT. Mr. Gordon, would you like to offer the amendment on behalf of Ms. Jackson Lee?

Mr. GORDON. Mr. Chairman, I will and with your indulgence, I would like to reserve her right to comment on it at some later time.

Chairman BOEHLERT. Without objection, so ordered.

Mr. GORDON. We have an amendment at the desk, H.R. 5450, introduced by Ms. Jackson Lee of Texas.

Chairman BOEHLERT. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 5450 offered by Ms. Jackson Lee of Texas.

Chairman BOEHLERT. I ask unanimous consent to dispense with the reading, and without objection, that is so ordered. And now for a brief explanation of an amendment that we find in good order and we are prepared to accept. Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman. And with that, I don't want to mess up a good thing. Since you said you are going to accept this, let me just congratulate Ms. Jackson Lee on bringing forth this amendment. We all know that the Weather Service has a vital role to play by communicating warnings and watches of several weather events, within the Federal Government, as well as the State and local governments and the general public, and I think you do a very good job of this. This amendment will help them do that and I thank you for accepting it. And we would like to reserve her right to make a comment, if we are still in when she arrives.

Chairman BOEHLERT. That is fine. The vote will be on the amendment offered by Ms. Jackson Lee. The vote is on the amendment. All in favor say aye. Opposed, no. The ayes have it and the amendment is adopted.

Are there any further amendments?

Mr. COSTELLO. Mr. Chairman.

Chairman BOEHLERT. Mr. Costello.

Mr. COSTELLO. Mr. Chairman, I offer an amendment and send the amendment to the Clerk's desk.

Chairman BOEHLERT. Well, this is a late entry in the race, so let us have the distribution of the amendment so we can look at it.

Mr. COSTELLO. It is indeed. Mr. Chairman, can I explain the amendment while it is being distributed?

Chairman BOEHLERT. I look forward to your eloquent words of explanation. Well, wait.

Mr. COSTELLO. Mr. Chairman, thank you.

Chairman BOEHLERT. The Clerk needs to designate. First of all, Clerk, will you designate the amendment?

The CLERK. Amendment to H.R. 5450 offered by Mr. Costello of Illinois.

Chairman BOEHLERT. Would you read it, please, because we don't have it.

The CLERK. "In Section 9, add at the end of the following new subsection: (C) Direct Transmittal of Reports. All reports the Administration is required to transmit to the Congress shall be transmitted directly by the Administration, without prior review by the President or any other federal agency or official."

Chairman BOEHLERT. The gentleman is recognized to explain his amendment.

Mr. COSTELLO. Mr. Chairman, I thank you and, Mr. Chairman, this is a very simple amendment, it is very clear and right to the point, and I am sure it is an amendment that the Chairman can accept. Mr. Chairman, this provision requires NOAA to provide the committees of jurisdiction of the Congress with reports the agency has prepared at our direction, that those reports come directly to the Committee without prior approval comments or review by other officers or agencies of the government. In other words, Mr. Chairman, when the Committee requests information from NOAA, it

should come directly from NOAA. We should not receive information that has been filtered, edited and manipulated by this Administration, or future administrations, through interagency and OMB review processes.

If we are to exercise our constitutional responsibility, craft legislation, authorize and appropriate funds for agency programs, and oversee the activities and expenditures of these agencies within our jurisdiction, we must have information. The Executive Branch does not have the right to bar Congress from obtaining information from agencies. While this problem is not unique to this Administration, I must say, the Bush Administration has routinely used procedures of interagency and OMB review to bury, delay or alter information requested by the Congress. We could cite several examples, but I am attempting to be brief here.

The report on off-shoring of jobs produced by the Technology Administration is a perfect example. Somehow a 250-page report produced by analysts at TA was transformed into a 13-page pamphlet, devoid of any substantial information. This editing process was done with the participation of offices such as OMB and the National Economic Council. It took a resolution and an inquiry and numerous letters and conversations between Members of this committee and the Chairman, as well as the Department of Commerce, to obtain the report that we should have been given months ago. Mr. Chairman, the Executive Branch has the right to assert its policy preferences; however, they do not have the right to manipulate information coming to the Congress to eliminate or distort information that does not conform to their policies. That applies to this Administration or future administrations.

Mr. Chairman, the amendment is simple, it is clear, it is to the point, and that is, when the Congress of the United States or committees of jurisdiction order an agency to produce a report, that report should come directly from the agency to the committee of jurisdiction. It should not be filtered through the OMB and other agencies of the Congress. With that, Mr. Chairman, I urge Members to support my amendment and reserve the balance of my time.

Chairman BOEHLERT. Thank you very much, Mr. Costello. You are correct, the amendment proposed is simple, it is clear, it is to the point. It is also very late. And let me tell you the position of the Chair. We have held up marking up this NOAA Organic Act for sometime so that we could have the good interaction between majority and minority, the staffs could work together, and only when we thought we were in a position to go forward and everyone was satisfied that we had heard each other out, did we go forward. The Chair would probably oppose this late entry, if it suggested that we make apple the national fruit. In other words, I would be very much in favor of apples the national fruit, but I don't want this committee to deviate from what has been the norm, working things out before we come into this room. I don't like last-minute entries in the race. We don't have a chance to evaluate it. We don't have a chance to discuss it. That is not the way this committee or Congress should work. So with that explanation, the Chair will oppose it.

And let me point out that the one report you cite that was sort of delayed, the delay came from within, not because it was vetted

across the Administration lines or had to be sent down to Pennsylvania Avenue, it came from within. That was the delay. And with that, are there any others who seek recognition on this amendment?

Mr. COSTELLO. Mr. Chairman, let me say that this amendment is a late entry. It was not done intentionally to go around the process or not to give you notice, but it was—I decided to offer the amendment actually last evening when I was reviewing the legislation. There are other examples, not just with the TA report that came directly to this committee, but there are specific examples. And I know that you are interested in attempting to move the process along because Members have other committees to go to, but I could cite reports with Health and Human Services and two other agencies where they have been filtered through OMB and other governmental agencies. I think it is pure and simple and I don't understand why any Member of this committee or the Congress would oppose. When the Congress orders a report from an agency, they ought to be able, that committee of jurisdiction, to get the report unfiltered, without going through several other agencies. And I think the TA, I would disagree with my friend, the Chairman of the Committee, that the 250-page report that was edited down to 13 pages, it is one example and I think we should have seen the 250-page report, and I don't think that OMB and other agencies of the government ought to be deleting or amending reports done by agencies ordered by this Congress.

Chairman BOEHLERT. Well, in that specific instance, Mr. Costello, let me point out, that was within the agency, the delay and the summation, if you will, that condensation, it came from within, not from without. Secondly, I have the highest regard for the gentleman from Illinois, as you well know, but I beg to differ with your description about the lateness of it and the reason for it. Quite frankly, I am informed that our staff was told very specifically that there would be a late entry and we should be prepared to deal with an amendment, not knowing what the amendment would be about, not knowing the specifics of the amendment, and we were told, quite honestly, that we could not have the specifics of the amendment. Now, maybe it was because there was difficulty in drafting what you explain as a simple, clear and to-the-point amendment, so I will give you the benefit of the doubt in that. But the Chair will vigorously oppose something like this, simply because it deviates from standard accepted Committee procedures, where we work across the center aisle, where we invite input, where we sometimes listen instead of talking to the minority, because I find that when we listen instead of talking to the Minority, we often learn from the Minority, and I take great pride in the manner in which this committee operates. And therefore, because it is a deviation from the standard practice, and among other reasons, I will vigorously oppose it.

Is there anyone else who seeks recognition on this? Dr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman. And I will oppose this for much the same reason I opposed the Miller Amendment. Once again, it is not an appropriate place to put it; secondly, it should apply to all governmental agencies, not just to NOAA; and I would encourage the gentleman to consider offering this as a separate bill

to the Government Reform Committee so that it would, in fact, apply to all government agencies. Frankly, I would like to see it take a different form, as well as this—I think the Administration should have the right to review, but I would insist that whatever review is given, whatever happens to it, the original report from the department or the agency should accompany the final report which is submitted to us by the President. And I think that would be a much better way to go, to allow the full administration of the country to state their point of view, as well as listening to the report from the specific government agency producing it. So I oppose this amendment for both reasons.

Chairman BOEHLERT. Thank you, Dr. Ehlers. Mr. Gordon.

Mr. GORDON. I would ask to strike the last word.

Chairman BOEHLERT. The gentleman is recognized.

Mr. GORDON. Mr. Chairman, I want to concur with you that I think best policy is to notice amendments as well as secondary amendments; however, that is not always happens in this committee on either side. That is what markups are for. This is not a complicated amendment. Honestly, I don't know all that has gone back and forth on this. You mentioned that our staff, which I didn't know about, put you on notice that something was coming up and I am glad that that was done. But let me point out, this is a very simple amendment. Dr. Ehlers pointed out that this should be introduced in Government Reform and brought up as, you know, Congress-wide. But let me point once again, just like Mr. Miller, that was done. I introduced that bill, it was sent to Government Reform, and it was referred to this committee and this committee has refused to have hearings on it. So I mean, it doesn't help to follow the rules if you are not going to follow through on it. So I don't think that holds water.

Let me also point out that CRS has given us a legal opinion, something that ought to be common knowledge to all of us and that is, that if Congress requests an agency to do a study, that Congress has a right to have that. Now all Mr. Costello is doing is saying, you know, as CRS said is our right, for that not to be filtered. Once again, this is not a partisan issue. You know, I think Congress, whichever party, regardless of who is in charge, wants to get good information, and let me give you some examples why you want that information. We had this problem with—as we were trying to investigate the *Columbia* loss, with OMB and NASA refusing to provide information, saying it was budgetary. The same thing happened with NOAA. And something that I guess we should all remember, if you remember back when we were talking about the Medicare prescription drug bill, they, OMB, refused to give us the information on what it is going to cost. I think that if we had had that information, many of us might have voted a different way. We certainly would have had a better bill. Again, this is not a partisan issue, this is a matter of trying to let Congress have full information to do its job and when that occurs, we are all better off. And I yield back the—well, I ask that the CRS opinion be made a part of the record, and I yield back my time.

Chairman BOEHLERT. Without objection, so ordered.

[The information follows:]



Memorandum

June 2, 2006

SUBJECT: Legal Substantiality of Direct Reporting Requirements
FROM: Morton Rosenberg
 Specialist in American Public Law
 American Law Division

Direct or concurrent statutory reporting requirements on departments and agencies have long been important instruments in the legislature's overall scheme of oversight by providing congressional committees with timely, undiluted and expert information on legislation and budgetary concerns. The Executive, through opinions of the Department of Justice's Office of Legal Counsel (OLC) and presidential signing statements has, particularly since the 1980's, raised a variety of constitutional and legal objections to such requirements, which it perceives as "an effort [by the Congress] to insert itself into the executive branch decisionmaking process." A typical example of such an objection is found in a 1989 OLC opinion:

Concurrent reporting requirements may breach the separation of powers by disrupting the chain of command within the executive branch and preventing the President from exercising his constitutionally guaranteed right of supervision and control over executive branch officials. Moreover, such provisions infringe upon the President's authority as head of a unitary executive to control the presentation of the executive branch's views to Congress. Accordingly, such concurrent reporting requirements should be opposed. However, if enacted, the requirement to transmit reports to Congress should be construed as applying only to "final" recommendations that have been reviewed and approved by the appropriate superiors within the executive branch, including OMB, and if necessary, the President.¹

Our review of applicable and pertinent constitutional and legal precedents indicates that direct reporting provisions are well within the Congress' constitutional authority to inform itself in order to perform its legislative function, which has been consistently acknowledged

¹ "Common Legislative Encroachments on Executive Branch Authority," 13 Op. OLC 248, 255 (1989).

by Supreme Court decisions, and dates back to the early enactments of the First Congress in 1789.

1. Introduction

Congress' prerogative over the administrative bureaucracy, while not unlimited, is broad and far-reaching, encompassing the power to create, abolish and locate agencies and to define the powers, duties, qualifications, tenure, compensation, and other incidents of the offices within them. Only where the object of the exercise of legislative power is clearly seen in the particular situation as an attempt to effect an unconstitutional purpose, *e.g.*, congressional appointment or removal of an officer, or to unduly control or influence the exercise of executive functions, have the courts felt constrained to intervene. Thus in *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court found unconstitutional Congress' attempt to vest in the Speaker of the House and the President pro tempore of the Senate the appointment of four of the six members of the Federal Election Commission, who would have performed substantial functions under the law. The attempt by Congress to control executive decisionmaking by means of a legislative veto was ruled invalid in *INS v. Chadha*, 462 U.S. 919 (1983), since it allowed Congress to exercise legislative power without conforming to the constitutionally prescribed lawmaking process of bicameral passage and presentment to the President. In *Bowsher v. Synar*, 478 U.S. 714, 732 (1986), the Court ruled that because Congress has retained removal authority over the Comptroller General, a legislative branch officer, he could not constitutionally be entrusted with executive powers to implement the Granum-Rudman-Hollings Act, which included directing the President to sequester appropriated funds. In another ruling, in *Metropolitan Washington Airports Authority v. Citizens for Abatement of Aircraft Noises, Inc.*, 501 U.S. 252 (1991), the High Court held that a Board of Review composed of Members of Congress that could exercise veto power over the operational decisions of the Airports Authority was unconstitutional.

More recently, the Court of Appeals for the District of Columbia Circuit, reviewing Congress's subsequent effort to repair the defects found by the Supreme Court in the *Washington Airports* case, held that the new scheme--creating a Board of Review which could only recommend, but not veto, the operational decisions of the Authority--to be unconstitutional as well. The appeals court found the review board continued to be an agent of the Congress, allowing for a direct exercise of congressional influence which was deemed sufficient to thereby taint the scheme. *Hechinger v. Metropolitan Washington Airports Authority Board of Review*, 36 F.3d 97 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1126 (1995). In this latter regard, the appeals court was following its recent holding in *Federal Election Commission v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *cert. dsmsd. for want of jurisdiction*, 513 U.S. 88 (1994), in which it invalidated an arrangement whereby the Congress appointed two of its agents, the Clerk of the House and Secretary of the Senate, as non-voting *ex officio* members of the Commission who could attend all business meetings of the agency.

But beyond such direct congressional intrusions on agency decisionmaking, the courts have been generous in broadly defining congressional authority to structure the administrative bureaucracy. In the following sections, the constitutional source of Congress's power is identified, and various pertinent exercises of that prerogative, such as mandating the direct communication of an agency with Congress on such matters as budget requests and proposed legislation and testimony, and implementing such provisions by means of civil penalties, are reviewed and discussed.

2. Constitutional Source of Congress's Power

While the infrastructure of the executive branch and other entities charged with the execution of the law is not specified by the Constitution, it is clear that the Framers intended to vest the task of creating the governmental structure in the Congress alone. See, e.g., Article II, sec. 2 cl. 2 (the President “shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and counsels, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for and which shall be established by law.”). Thus it is well established that Congress, in exercising its powers to legislate under Article I, sec. 8, and other provisions of the Constitution, is empowered to provide for the execution of those laws by officers appointed pursuant to the Appointments Clause, and under the Necessary and Proper Clause, Art., sec. 8, cl. 18, it has authority to create offices, determine the qualification of officeholders, prescribe their appointments, tenure, pay, duties, and powers, and generally promulgate the standards for the conduct of the offices. *Myers v. United States*, 272 U.S. 52, 129 (1926) (“To Congress under its legislative power is given the establishment of offices, the determination of their functions and jurisdiction, the prescribing of reasonable and relevant qualifications and rules of eligibility of appointees, and the fixing of the term for which they are to be appointed, and their compensation – all except as otherwise provided by the Constitution.”); *Buckley v. Valeo*, 424 U.S. 1, 134-35 (1976); *Morrison v. Olson*, 487 U.S. 654, 685-93 (1988); *Mistretta v. United States*, 488 U.S. 361, 385-86, 412 (1989); *Touby v. United States*, 500 U.S. 160, 165-68 (1991); *Crenshaw v. United States*, 134 U.S. 99, 105-6 (1890); *Perkins v. United States*, 116 U.S. 483, 489-90 (1886).

3. Direct Reporting Requirements

Congress has often required agencies to make reports, recommendations, testimony, comments, or budget requests directly to Congress without prior approval, comment or review by any executive branch official including the Director of the Office of Management and Budget (OMB). The Department of Justice has repeatedly objected to such provisions, asserting essentially two constitutional grounds. First, that the transmittal of reports, views and recommendations directly to Congress without prior review and approval by the President, or his delegates, unconstitutionally interferes with the President’s authority to supervise and direct the Executive Branch, and with its internal deliberative and decisionmaking processes; and, second, that requiring an agency to directly submit legislative recommendations violates the President’s exclusive authority under the Recommendation Clause, Article II, sec. 3 which provides that the President “shall from time to time . . . recommend” to Congress “such measures as he shall judge necessary and expedient.” See, e.g., “Common Legislative Encroachments of Executive Branch Constitutional Authority,” 13 OLC 248, 254-55 (1989). Each of these contentions appear to be without substantial merit.

The Supreme Court has long, and uniformly, recognized Congress’ virtual plenary power to inform itself and the public as to the operations of the agencies it creates and oversees. The informing power has been deemed so essential to the legislative function as to be implied from the general vesting of legislative power in Congress. *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 505 (1975); *Barenblatt v. United States*, 360 U.S.

109, 116-23 (1959); *Watkins v. United States*, 354 U.S. 178, 187 (1957); *McGrain v. Daugherty*, 273 U.S. 135, 137 (1927).

With particular regard to the Congress' informing functions, the Supreme Court in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), had occasion to note that "there is abundant statutory precedent for the regulation and mandatory disclosure of documents in the possession of the Executive Branch" and that "[s]uch regulation of material generated in the Executive Branch has never been considered invalid as an invasion of its autonomy." 433 U.S. at 447. There the Court cited with approval the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, the Federal Records Management Act, and provisions concerned with census data and tax returns as appropriate instances of such regulations.

In *Nixon*, the Court upheld the Presidential Recordings and Materials Preservation Act, which protects, among other things, public access to former President Nixon's presidential papers from presidential claims of violation of the doctrine of separation of powers and executive privilege. In *INS v. Chadha*, *supra*, the Court reaffirmed Congress's authority to legislate "report and wait" provisions, distinguishing them from otherwise unconstitutional legislative veto provisions there under review. 461 U.S. at 935 n.9, 955 n. 19. More recently, the Court in *Morrison v. Olson*, *supra*, reaffirmed Congress's authority to require the submission of reports and other information to it from executive branch officials, as an exercise of oversight over agencies "that we have recognized generally as being incidental to the legislative function of Congress." 487 U.S. at 694.

Direct reporting provisions are hardly novel innovations of the modern era. When Congress established the Department of the Treasury in 1789 it assigned the Secretary specific statutory duties, including requiring the Secretary to report to Congress "and generally to perform all services relative to finances, as he shall be directed to perform." Such direction, the context makes clear, was to come from Congress, not the President. Act of Sept. 2, 1789, ch. 12, sec. 2, 1 Stat. 65, 66. Pursuant to such mandates, Alexander Hamilton, the first Secretary of the Treasury, submitted seminal reports to the Congress at the direction of the House of Representatives. Each report begins with an acknowledgment of the order of the House which had directed him to report: "The Secretary of the Treasury, in obedience to the order of the House of Representatives ..." See, 2 *Annals of Cong.* 1991 (1790) (Report of Public Credit); 2 *Annals of Cong.* 2031 (1790) (Report on a National Bank); 3 *Annals of Cong.* 971 (1791) (Report on Manufacturers).²

OMB has often been the particular object of such bypass provisions, which have sought to insulate an agency, or a particular agency function, from presidential scrutiny prior to submission to Congress, and it has been argued by the Justice Department that such review by a close political advisor to the President cannot lawfully be so evaded.

But OMB is itself a creature of the Congress and has never been deemed constitutionally immune from congressional adjustment and tailoring of its mission, powers, or the manner in which it operates. A brief background of the agency and a resume of a

² The Supreme Court has often expressed the view that the contemporary practices of the Founding Fathers are weighty evidence of what is acceptable within the framework of the doctrine of separation of powers. See, e.g. *Mistretta v. United States*, 488 U.S. 363, 398-99 (1989); *Bowsher v. Synar*, 478 U.S. 714, 723-24 (1986).

variety of actions taken by Congress to modify powers it has delegated to OMB is instructive. Prior to the passage of the Budget and Accounting Act of 1921, 42 Stat. 20 (1921), which established the President's authority over the agency budget process, each agency had submitted its annual budget request directly to Congress. Finding this process inefficient and unwieldy, Congress created the Bureau of the Budget (now the Office of Management and Budget) to review the morass of agency budgetary information and to approve agency budget requests. See, generally, Fisher, *Presidential Spending Power*, ch. 1 (1975). In addition to authority to review and approve agency budget requests, the Bureau was subsequently authorized to clear proposals for legislation or agency comments on proposed legislation. See Reorganization Act of 1939, ch. 36, Tit. II, 53 Stat. 565 (*codified at* 31 U.S.C. 1108 (2000)).

However, Congress's voluntary relinquishment of this authority has not been unequivocal and, of course, it is not irretrievable. Either House may request an agency official to submit directly to it "an appropriation estimate or request, a request for an increase in that estimate or request, or a recommendation on meeting the financial needs of the Government". 31 U.S.C. 1108(e)(2000). Also, Congress has selectively required simultaneous or unaltered submission of budget requests and legislative proposals and comments that limit review by OMB of budget requests, legislative proposals, review of proposed agency rules, and other required reports and documents. Thus, since 1973, Congress has mandated that the budget requests of the U.S. Postal Service, see Act of June 30, 1974, Pub. Law No. 93-328, 23 88 Stat. 28 (*codified at* 39 U.S.C. 2009 (2000)); the U.S. International Trade Commission, see Trade Act of 1974, Pub. L. No. 93-618, 175(a)(1), 88 Stat. 1978 (1975)(*codified at* 19 U.S.C. 2232 (2000)); the Social Security Administration, Pub. L. 103-296, title I, sec. 102, August 15, 1994, 108 Stat. 1465, (*codified at* 42 U.S.C. 902(a)(3), 904(b)(1)(A) (2000)); and the Surface Transportation Board, Pub. L. 104-88, title II, sec. 201(a), 109 Stat. 934, December 29, 1995 (*codified at* 49 U.S.C. 703(g) (2000)), be submitted to Congress without revision. Others provisions of law have required that budget requests and/or legislative proposals of agencies be submitted concurrently to OMB and the Congress.³

Also, Congress has exempted the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, and the National Credit Union Administration from OMB clearance

³ See, e.g., Privacy Act of 1974, Pub. L. No. 93-579, S. 5(a)(5), 88 Stat. 1896 (*reprinted in* 5 U.S.C. 552a App., at 318 (1976)) (Privacy Protection Study Commission); Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, 101(a)(3), 88 Stat. 1389 (1974)(*codified at* 7 U.S.C. 2(a)(9)(A)(B) (2000)) (Commodity Futures Trading Commission); Consumer Product Safety Act, Pub. L. No. 92-573, sec. 27(k), 86 Stat. 1207, 1229 (1972) (*codified at* 15 U.S.C. 2076(k) (2000)); (Consumer Product Safety Commission); Hazardous Materials Transportation Act Pub. L. No. 93-633, 304(b)(7), 88 Stat 2156 (1975)(*codified at* 49 U.S.C. 1113(c) (2000)) (National Transportation Safety Board); Civil Service Reform Act, Pub. L. No. 95-454, 202(a), 92 Stat 1122 (*codified at* 5 U.S.C. 1205 (2000)) (Merit Systems Protections Board); Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 311, 90 Stat. 60 (*codified at* 31 U.S.C. 1108(f) (2000)) (Interstate Commerce Commission); Department of Energy Act, Pub. L. No. 95-91, 401, 91 Stat. 582 (*codified at* 42 U.S.C., 717(j) (2000)) (Federal Energy Regulatory Commission); Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 2021, 87 Stat 990 (*codified at* 45 U.S.C. 712(f)(2000)) (U.S. Railway Association); Pub. L. 102-550, title XIII, sec. 1311, Oct. 28, 1992, 106 Stat. 3944 (*codified at* 12 U.S.C. 4513(e) (2000)) (Office of Federal Housing Enterprise Oversight).

of their legislative proposals and comments. Act of Oct. 28, 1974, Pub. L. 93-111, 88 Stat. 1500, as amended in 1994 and 1999 (codified at 12 U.S.C. 250 (2000)).

OMB also has been precluded from imposing E.O. 12291 (now E.O. 12866) review on Agricultural Marketing Orders of the Department of Agriculture and regulations of the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department⁴. Executive Office Appropriations Act, 1987, as included in Public Laws 99-500 and 99-591, section 101(m). OMB may review reports to Congress required of the Secretary of Health and Human Services, but it may not revise them or delay their timely submissions. 42 U.S.C. 242(a)(3)(2000). And no clearance is required for reports to Congress of the Chief Counsel of the Office of Advocacy of the Small Business Administration. 15 U.S.C. 634f (2000).

Further, when Congress concluded in 1974 that OMB had become a political instrument of the President, replacing its historical image as a bipartisan, neutral technical adviser on fiscal organizational matters, it acted to subject the Director and Deputy Director to Senate confirmation. Pub. L. No. 93-250 (codified at 31 U.S.C. 502(a)-(b) (2000)). Perceived overreaching also moved Congress in 1973 to deny OMB the authority it had under the Federal Reports Act (the predecessor to the Paperwork Act) to clear information-gathering requests of independent regulatory agencies. Pub. L. No. 93-153, Title IV, sec. 409. The veto authority was restored to OMB in the 1980 Paperwork Reduction Act, but only in modified form: an OMB veto may now be overridden by a majority vote of the subject commission. 44 U.S.C. 3507(f)(2000).

Finally, it may be noted that Congress has directed OMB to promulgate rules pursuant to the public participatory procedures of the Administrative Procedure Act under the Paperwork Reduction Act, 44 U.S.C. 3516 (2000) and the Privacy Act, 5 U.S.C. 552a(f) (2000), and to make publicly available any communications from or to Office of Information and Regulatory Affairs employees from either non-governmental persons or agencies respecting a proposed information collection request. 44 U.S.C. 3507(e)(1)-(2) (2000). In 2000 Congress required OMB to provide it with an annual report detailing the costs and benefits of federal regulations. The law requires OMB to publish the draft of the report in the Federal Register and to invite public comment. The final report to Congress is to reflect the public comments. See Treasury and General Appropriations Act, 2001, Pub. L. 106-554, sec. 1(a)(3) [Title VI, sec. 624, 114 Stat. 2763, 2763A-161], codified at 31 U.S.C. 1105 note.

Finally, it may be noted that the various types of direct reporting provisions have been directed at independent, single headed agencies (e.g., Social Security Administration, Office of Thrift Supervision) and entities and offices within departments and agencies (e.g., Office of Federal Housing Oversight, Comptroller of the Currency), as well as independent regulatory agencies and other multi-member boards and commissions.

With respect to the President's recommendatory duty under Article II, sec. 3, it is evident that only a direct prohibition of the President from presenting his views with respect to any recommendation or plan submitted by an agency directly to the Congress would raise constitutional difficulties. The Article II duty to recommend, as with the duty to "take care" that the laws be faithfully executed, which appears in the same clause, is not a source of substantive presidential power and claims to that effect have consistently been rejected by

⁴ The Bureau was transferred to the Department of Justice by the Homeland Security Act, Pub. L. 107-296, and is now known as the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

the courts. See, e.g., *Kendall ex rel Stokes v. United States*, 37 U.S. (12 Pet.) 522, 612-13 (1838) (“To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid execution, is a novel construction of the Constitution, and entirely inadmissible.”); *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) (“... [T]he President’s power to see that the laws are faithfully executed refutes the idea he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.”); *National Treasury Employees Union v. Nixon*, 492 F.2d 587, 604 (D.C. Cir. 1974) (“That constitutional duty does not permit the President to refrain from executing laws duly enacted by the Congress as those laws are construed by the judiciary.”). Again, this does not appear to be a substantial legal objection. But, c.f., Sidak, *The Recommendation Clause*, 77 *Geo. L.J.* 2079 (1989) (arguing that appropriations limitations that prevent the Executive from deploying resources to study or advocate a change in government policy on a particular issues violates that Recommendation Clause).

4. Conclusion

Congress has a wide array of options in tailoring the way in which a government entity will accomplish its statutory mission. Often those choices will be driven by the nature of the task to be accomplished: Is there a need for expertness or specialization in administration? Is the mission one which, inherently or as shown by experience, is politically or ethically sensitive thereby requiring some degree of insulation of the agency decisionmakers from the Executive? Or is a principal concern the efficiency, effectiveness and continuity of management leadership? In some instances, one such concern may predominate; in others, a combination of them are present. Congress in the past has responded in the past with variety, ingenuity, and often subtlety, in addressing and fashioning the appropriate vehicle to effectuate its purposes.

As has been indicated in the foregoing review, apart from the limitation on congressional appointment, removal or direct involvement in executive decisionmaking, Congress is virtually unconstrained in shaping the structure and decisionmaking processes of the executive branch entities it creates to carry out its will. In particular, the foregoing review of established constitutional principles, case law and legislative practice with respect to direct reporting requirements and the imposition of civil penalties indicates that it is likely that a reviewing court would find that such requirements pass constitutional muster as appropriate means of Congress enforcing its oversight and informing prerogatives.

Appendix**A. Statutes that Require the Direct Submission of Legislative Materials ***

1. Advisory Council on Historic Preservation (16 U.S.C. § 470r, 470t(b))
2. Chemical Safety and Hazard Investigation Board (42 U.S.C. § 7412(r)(6)(R))
3. Commodity Futures Trading Commission (7 U.S.C. § 2(a)(10))
4. Consumer Product Safety Commission (15 U.S.C. § 2076(k)(1-2))
5. Farm Credit Administration (12 U.S.C. sec. 2252(a)(3))
6. Federal Aviation Administration (Transportation) (49 U.S.C. sec. 48109)
7. Federal Election Commission (2 U.S.C. V 437d(d)(1-2))
8. Federal Energy Regulatory Commission (42 U.S.C. § 7171(j))
9. Federal Retirement Thrift Investment Board (5 U.S.C. § 8472(i)-(j))
10. Merit Systems Protection Board (5 U.S.C. § 1205)
11. National Transportation Safety Board (49 U.S.C. § 1113(c))
12. Office of National Taxpayer Advocate (Treasury) (26 U.S.C. § 7803(c))
13. Office of Special Counsel (5 U.S.C. § 1217)
14. Railroad Retirement Board (45 U.S.C. § 231f(f))
15. Small Business Administration (Chief Counsel for Advocacy) (15 U.S.C. § 634f)
16. Surface Transportation Board (Transportation) (49 U.S.C. sec. 703(g))
17. Federal Deposit Insurance Corporation (12 U.S.C. § 250)
18. Federal Reserve Board of Governors (12 U.S.C. § 250)
19. National Credit Union Administration (12 U.S.C. § 250)
20. Office of the Comptroller of the Currency (Treasury) (12 U.S.C. § 250)
21. Office of Federal Housing Enterprise Oversight (HUD) (12 U.S.C. § 250)

CRS-9

22. Office of Thrift Supervision (Treasury) (12 U.S.C. § 250)

23. Securities and Exchange Commission (12 U.S.C. § 250)

*** Some of these statutes also require the direct submission of budget materials.**

B. Statutes that Require the Direct Submission of Budget Materials

1. Court of Appeals for Veterans Claims (38 U.S.C. § 7282)

2. International Trade Commission (19 U.S.C. § 2232)

3. Legal Services Corporation (42 U.S.C. § 2996d (e))

4. State Justice Institute (42 U.S.C. § 10704(c))

5. United States Institute of Peace (22 U.S.C. § 4608(a))

6. United States Postal Service (39 U.S.C. § 2009)

7. Social Security Administration (42 U.S.C. §904(b)(1)(A))

8. Internal Revenue Service Oversight Board (26 U.S.C. § 7802)

9. District of Columbia Courts (Pub. L. No. 105- 33, § 11242)

Chairman BOEHLERT. The vote is on the amendment. All in favor say aye. Opposed, nay. The nays appear to have it.

Mr. COSTELLO. Mr. Chairman, with that, I ask for a recorded vote.

Chairman BOEHLERT. Mr. Costello requests a recorded vote; therefore, would the Clerk please call the roll.

The CLERK. Mr. Boehlert.

Chairman BOEHLERT. No.

The CLERK. Mr. Boehlert votes no. Mr. Hall.

Mr. HALL. No.

The CLERK. Mr. Hall votes no. Mr. Smith.

[No response.]

The CLERK. Mr. Weldon.

[No response.]

The CLERK. Mr. Rohrabacher.

[No response.]

The CLERK. Mr. Calvert.

[No response.]

The CLERK. Mr. Bartlett.

Mr. BARTLETT. No.

The CLERK. Mr. Bartlett votes no. Mr. Ehlers.

Mr. EHLERS. No.

The CLERK. Mr. Ehlers votes no. Mr. Gutknecht.

Mr. GUTKNECHT. No.

The CLERK. Mr. Gutknecht votes no. Mr. Lucas.

Mr. LUCAS. No.

The CLERK. Mr. Lucas votes no. Ms. Biggert.

Ms. BIGGERT. No.

The CLERK. Ms. Biggert votes no.

Chairman BOEHLERT. Mr. Rohrabacher, how is he recorded?

The CLERK. Mr. Rohrabacher is not recorded.

Chairman BOEHLERT. Mr. Calvert, how is he recorded?

The CLERK. Mr. Rohrabacher votes no. Mr. Calvert is not recorded.

Chairman BOEHLERT. Mr. Calvert.

The CLERK. Mr. Calvert votes no.

Chairman BOEHLERT. How is Mr. Smith recorded?

The CLERK. Mr. Smith is not recorded. Mr. Smith votes no.

Chairman BOEHLERT. Continue the roll.

The CLERK. Mr. Gilchrest.

Mr. GILCHREST. No.

The CLERK. Mr. Gilchrest votes no. Mr. Akin.

Mr. AKIN. No.

The CLERK. Mr. Akin votes no. Mr. Johnson.

[No response.]

The CLERK. Mr. Forbes.

Mr. FORBES. No.

The CLERK. Mr. Forbes votes no. Mr. Bonner.

[No response.]

The CLERK. Mr. Feeney.

Mr. FEENEY. No.

The CLERK. Mr. Feeney votes no. Mr. Neugebauer.

[No response.]

The CLERK. Mr. Inglis.

Mr. INGLIS. No.
The CLERK. Mr. Inglis votes no. Mr. Reichert.
[No response.]
The CLERK. Mr. Sodrel.
Mr. SODREL. No.
The CLERK. Mr. Sodrel votes no. Mr. Schwarz.
Mr. SCHWARZ. No.
The CLERK. Mr. Schwarz votes no. Mr. McCaul.
[No response.]
The CLERK. Mr. Diaz-Balart.
[No response.]
Chairman BOEHLERT. How is Mr. Johnson recorded?
The CLERK. Mr. Johnson is not recorded.
Chairman BOEHLERT. Mr. Johnson.
The CLERK. Mr. Johnson votes no.
Chairman BOEHLERT. How is Mr. Neugebauer recorded?
The CLERK. Mr. Neugebauer is not recorded. Mr. Neugebauer
votes no. Mr. Gordon.
Mr. GORDON. Aye.
The CLERK. Mr. Gordon votes yes. Mr. Costello.
Mr. COSTELLO. Aye.
The CLERK. Mr. Costello votes yes. Ms. Johnson.
[No response.]
The CLERK. Ms. Woolsey.
[No response.]
The CLERK. Ms. Hooley.
Ms. HOOLEY. Aye.
The CLERK. Ms. Hooley votes yes. Mr. Udall.
Mr. UDALL. Aye.
The CLERK. Mr. Udall votes yes. Mr. Wu.
Mr. WU. Aye.
The CLERK. Mr. Wu votes yes. Mr. Honda.
Mr. HONDA. Yes.
The CLERK. Mr. Honda votes yes. Mr. Miller.
Mr. MILLER. Yes.
The CLERK. Mr. Miller votes yes. Mr. Davis.
Mr. DAVIS. Yes.
The CLERK. Mr. Davis votes yes. Mr. Lipinski.
Mr. LIPINSKI. Yes.
The CLERK. Mr. Lipinski votes yes. Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee votes yes. Mr. Sherman.
[No response.]
The CLERK. Mr. Baird.
[No response.]
The CLERK. Mr. Matheson.
Mr. MATHESON. Aye.
The CLERK. Mr. Matheson votes yes. Mr. Costa.
Mr. COSTA. Yes.
The CLERK. Mr. Costa votes yes. Mr. Green.
Mr. GREEN. Yes.
The CLERK. Mr. Green votes yes. Mr. Melancon.
Mr. MELANCON. Yes.
The CLERK. Mr. Melancon votes yes. Mr. Moore.

[No response.]

The CLERK. Ms. Matsui.

Ms. MATSUI. Aye.

The CLERK. Ms. Matsui votes yes.

Chairman BOEHLERT. The Clerk will report.

The CLERK. Yes, 15. No, 19.

COMMITTEE ON SCIENCE - ROLL CALL - 109th CONGRESS

DATE: 6/14/06 SUBJECT: Amendment by Mr. Costello to H.R. 5450

Rm.	Phone	Member	Yes	No	Not Voting	Present	Absent
2246	53665	Mr. Boehlert, R-NY		✓			
2405	56673	Mr. Hall, R-TX		✓			
2184	54236	Mr. Smith, R-TX		✓			
2466	52011	Mr. Weldon, R-PA					
2338	52415	Mr. Rohrabacher, R-CA		✓			
2201	51986	Mr. Calvert, R-CA		✓			
2412	52721	Mr. Bartlett, R-MD		✓			
1714	53831	Mr. Ehlers, R-MI		✓			
425	52472	Mr. Gutknecht, R-MN		✓			
2342	55565	Mr. Lucas, R-OK		✓			
1317	53515	Ms. Biggert, R-IL		✓			
2245	55311	Mr. Gilchrest, R-MD		✓			
117	52561	Mr. Akin, R-MO		✓			
1229	52371	Mr. Johnson, R-IL		✓			
307	56365	Mr. Forbes, R-VA		✓			
315	54931	Mr. Bonner, R-AL					
323	52706	Mr. Feeney, R-FL		✓			
429	54005	Mr. Neugebauer, R-TX		✓			
330	56030	Mr. Inglis, R-SC		✓			
1223	57761	Mr. Reichert, R-WA					
1508	55315	Mr. Sodrel, R-IN		✓			
128	56276	Mr. Schwarz, R-MI		✓			
415	52401	Mr. McCaul, R-TX					
313	52778	Mr. Diaz-Balart, R-FL					
2304	54231	Mr. Gordon, D-TN	✓				
2269	55661	Mr. Costello, D-IL	✓				
1511	58885	Ms. Johnson, D-TX					
2263	55161	Ms. Woolsey, D-CA					
2430	55711	Ms. Hooley, D-OR	✓				
240	52161	Mr. Udall, D-CO	✓				
1023	50855	Mr. Wu, D-OR	✓				
1713	52631	Mr. Honda, D-CA	✓				
1722	53032	Mr. Miller, D-NC	✓				
410	56831	Mr. Davis, D-TN	✓				
1217	55701	Mr. Lipinski, D-IL	✓				
2435	53816	Ms. Jackson Lee, D-TX	✓				
1030	55911	Mr. Sherman, D-CA					
1421	53536	Mr. Baird, D-WA					
1222	53011	Mr. Matheson, D-UT	✓				
1004	53341	Mr. Costa, D-CA	✓				
1529	57508	Mr. Green, D-TX	✓				
404	54031	Mr. Melancon, D-LA	✓				
1727	52865	Mr. Moore, D-KS	✓				
2310	57163	Ms. Matsui, D-CA	✓				
TOTAL			15	19			

Attest:  (Clerk)

Chairman BOEHLERT. The amendment is defeated. Now, there are no other amendments on the roster, but we are graced by the presence of Ms. Jackson Lee. Let me report to you that in your absence, and I know you had a competing committee assignment, Mr. Gordon eloquently explained your amendment. He was so convincing that the Chair adopted it and we passed it, but I will recognize you for a couple of minutes for any comments you might care to make to further enlighten us.

Ms. JACKSON LEE. Well, Mr. Chairman, thank you very much. My first word is to thank both the Ranking Member, the Ranking Member for offering it and protecting my amendment, and the Chairman, and to acknowledge that you are absolutely right. I did come to the Science Committee hearing markup and of course the time conflicted with a vote in another committee, and so I want my colleagues to know that I have great affection and respect for this committee and the offering of amendments. I would also like to welcome our colleague, Ms. Matsui, and thank her for her vote on my amendment.

I will briefly say this, Mr. Chairman. There are those of us who are seasoned hurricane participants. If you spoke to the regions in the Gulf Coast two years ago, Florida and Alabama, Louisiana and Texas, and other places, we would say we know about hurricanes and we are able to weather the storm, but Hurricane Katrina woke us up, and my amendment simply allows the local first responders to have direct information from NOAA. And I believe that the amendment, with the science that NOAA has the opportunity and the ability to possess and evidence, gives a much more secure and much more—a much greater opportunity, if you will, for the Gulf region to be more prepared than we have ever been. Katrina, Wilma and Rita gave us a wakeup call in their collective power, and I believe that this amendment will help us to be more secure and more knowledgeable regarding the pending storms that we are to face in the coming season.

So with that, Mr. Chairman and Mr. Ranking Member, thank you for protecting the amendment. And to my colleagues, thank you for supporting the Jackson Lee Amendment. And if I had been present, I would have voted aye for the Miller Amendment. With that, I don't have to call for a vote. A vote doesn't have to be called for, and I yield back my time. Thank you.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF REPRESENTATIVE SHEILA JACKSON LEE

Mr. Chairman, I have an amendment at the desk.

Thank you, Mr. Chairman. The amendment that I am offering states that it is within the National Weather Service's functions and responsibilities to provide information to federal agencies and other organizations responsible for emergency preparedness and response as required by law.

Over the last year, we have seen powerful reminders not only of the crucial and vital functions of the National Weather Service and the National Oceanic and Atmospheric Administration (NOAA), but of the disaster that can befall our communities when the modes of communication breakdown. As diligent and capable as our emergency preparedness teams are, we are always vulnerable to Mother Nature and the havoc she can wreak.

I have a great amount of respect for both the National Weather Service and NOAA, both for the quality of science that they demonstrate, as well as for the integrity of information that they produce. Their accuracy in detecting and tracking storm systems is admirable and impressive. Although they are not and cannot be

perfect predicting mechanisms, they are in many ways our best first line of defense against natural disasters.

Much of the work that I have done in the Homeland Security Committee has been to help foster open communications lines and inter-operability standards and capabilities. In almost every major national security emergency that we have seen in the last several years, it is the communications system that has been the most crucial element, and yet the greatest failure.

In this instance, I felt that it was important to underscore the role that the National Weather Service has in trying to prevent catastrophes such as what we saw from Hurricane Katrina. With this amendment, I simply contribute language that makes it explicit that the National Weather Service must be able to provide information to national emergency stakeholders when necessary.

I thank the Chairman for continuing the bipartisan collaboration of this committee, and for his friendly and even-handed efforts to engage all of us in the progress made by this committee. Thank you, Mr. Chairman, and I yield the balance of my time.

Chairman BOEHLERT. Thank you very much. Are there any other amendments? Hearing none, the vote is on the bill, H.R. 5450, the *National Oceanic and Atmospheric Administration Act*, as amended. All in favor say aye. Opposed, no. In the opinion of the Chair, the ayes have it and the bill is passed.

I recognize Mr. Gordon for a motion.

Mr. GORDON. Mr. Chairman, I move that the Committee favor report H.R. 5450 as amended, although it has been further amended, to the House, with recommendation that the bill as amended do pass. Furthermore, I move that the staff be instructed to prepare the legislative report and make necessary technical and conforming changes, and that the Chairman will take all the necessary steps to bring the bill before the House for consideration.

Chairman BOEHLERT. The question is on the motion to report the bill, as amended, favorably. Those in favor of the motion will signify by saying aye. Opposed, no. The ayes have it and the bill is favorably reported. Without objection, the motion to reconsider is laid upon the table. I move that Members have two subsequent calendar days in which to submit supplemental Minority or additional views on the measure. I move pursuant to Clause 1 of Rule 22 of the Rules of the House of Representatives, that the Committee authorize the Chairman to offer such motions as may be necessary in the House to adopt and pass H.R. 5450, the *National Oceanic and Atmospheric Administration Act*, as amended. Without objection, so ordered.

I want to thank the Members for their participation. This hearing is adjourned.

[Whereupon, at 11:25 a.m., the Committee was adjourned.]

Appendix:

H.R. 5450, SECTION-BY-SECTION ANALYSIS, BILL SUMMARY,
AMENDMENT ROSTER

109TH CONGRESS
2D SESSION

H. R. 5450

To provide for the National Oceanic and Atmospheric Administration, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2006

Mr. EHLERS (for himself, Mr. BOEHLERT, and Mr. GILCREST) introduced
the following bill; which was referred to the Committee on Science, and
in addition to the Committee on Resources, for a period to be subse-
quently determined by the Speaker, in each case for consideration of such
provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the National Oceanic and Atmospheric
Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Oceanic and
5 Atmospheric Administration Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) The term “Administration” means the Na-
9 tional Oceanic and Atmospheric Administration.

1 (2) The term “Administrator” means the Ad-
2 ministrator of the National Oceanic and Atmos-
3 pheric Administration.

4 (3) The term “Secretary” means the Secretary
5 of Commerce.

6 **SEC. 3. NATIONAL OCEANIC AND ATMOSPHERIC ADMINIS-**
7 **TRATION.**

8 (a) IN GENERAL.—There shall be in the Department
9 of Commerce an agency known as the National Oceanic
10 and Atmospheric Administration.

11 (b) MISSION.—The mission of the Administration is
12 to understand the systems of the Earth’s oceans and at-
13 mosphere and predict changes in the Earth’s oceans and
14 atmosphere and the effects of such changes on the land
15 environment, to conserve and manage coastal, ocean, and
16 Great Lakes ecosystems to meet national economic, social,
17 and environmental needs, and to educate the public about
18 these topics.

19 (c) FUNCTIONS.—The functions of the Administra-
20 tion shall include—

21 (1) collecting, through observation and other
22 means, communicating, analyzing, processing, and
23 disseminating comprehensive scientific data and in-
24 formation about weather and climate, solar and geo-
25 physical events on the Sun and in the space environ-

1 ment, and about the coasts, oceans, Great Lakes,
2 upper reaches of estuaries, and hydrologic systems;

3 (2) operating and maintaining a system for the
4 storage, retrieval, and dissemination of data relating
5 to weather and climate, solar and geophysical events
6 on the Sun and in the space environment, and about
7 the coasts, oceans, Great Lakes, upper reaches of es-
8 tuaries, and hydrologic systems;

9 (3) using observational data and technologies
10 developed by other Federal agencies to improve the
11 Administration's operations;

12 (4) conducting and supporting basic and ap-
13 plied research, development, and technology transfer
14 as may be necessary to carry out the mission de-
15 scribed in subsection (b);

16 (5) issuing weather, water, climate, space
17 weather, tsunami, and other forecasts and warnings
18 related to Earth's oceans and atmosphere;

19 (6) coordinating efforts of Federal agencies
20 with respect to meteorological services;

21 (7) understanding the science of Earth's cli-
22 mate and related systems, and undertaking research
23 and development to enhance society's ability to plan
24 for and respond to climate variability and change;

1 (8) protecting, restoring, and managing the use
2 of, the coasts, oceans, and Great Lakes through eco-
3 system-based research, development, demonstration,
4 and management;

5 (9) administering public outreach and education
6 programs and services to increase scientific and en-
7 vironmental literacy about weather and climate,
8 solar and geophysical events on the Sun and in the
9 space environment, and the coasts, oceans, Great
10 Lakes, upper reaches of estuaries, and hydrologic
11 systems;

12 (10) providing, as appropriate and in coopera-
13 tion with the Secretary of State, representation at
14 all international meetings and conferences relating
15 to the mission of the Administration, including mete-
16 orological, climate, and Earth and ocean observing
17 issues;

18 (11) any other function assigned to the Admin-
19 istration by law; and

20 (12) such other functions as are necessary to
21 accomplish the mission described in subsection (b).

22 **SEC. 4. ADMINISTRATION LEADERSHIP.**

23 (a) ADMINISTRATOR.—

24 (1) IN GENERAL.—There shall be, as the Ad-
25 ministrator of the Administration, an Under Sec-

1 retary of Commerce for Oceans and Atmosphere.
2 The Administrator shall be appointed by the Presi-
3 dent, by and with the advice and consent of the Sen-
4 ate. The Administrator shall be paid at the rate of
5 basic pay for level III of the Executive Schedule.

6 (2) FUNCTIONS.—The Administrator shall be
7 responsible for—

8 (A) general management;

9 (B) policy development and guidance;

10 (C) budget formulation, guidance, and exe-
11 cution;

12 (D) serving as the Department of Com-
13 merce official for all ocean and atmosphere
14 issues with other elements of the Department of
15 Commerce and with other Federal agencies,
16 State, tribal, and local governments, and the
17 public; and

18 (E) such other duties with respect to the
19 Administration as the Secretary may prescribe.

20 (3) DELEGATION OF AUTHORITY.—The Admin-
21 istrator may, except as otherwise prohibited by
22 law—

23 (A) delegate any functions, powers, or du-
24 ties of the Administrator to such officers and

1 employees of the Administration as the Admin-
2 istrator may designate; and

3 (B) authorize such successive redelegations
4 of such functions, powers, or duties within the
5 Administration as the Administrator considers
6 necessary or appropriate.

7 (4) AUTHORITIES.—

8 (A) IN GENERAL.—As may be necessary or
9 proper to carry out the Administration's func-
10 tions under this Act or as otherwise provided by
11 law, the Administrator may—

12 (i) promulgate rules and regulations;

13 (ii) enter into and perform contracts,
14 leases, grants, and cooperative agreements
15 with Federal agencies, State and local gov-
16 ernments, Indian tribes, international or-
17 ganizations, foreign governments, edu-
18 cational institutions, nonprofit organiza-
19 tions, and commercial organizations;

20 (iii) use, with their consent, and with
21 or without reimbursement, the services,
22 equipment, personnel, and facilities of
23 other departments, agencies, and instru-
24 mentalities of the Federal Government;
25 and

1 (iv) conduct education and outreach
2 in direct support of the mission described
3 in section 3(b).

4 (B) EXCEPTION.—The authorities con-
5 ferred on the Administrator by this paragraph
6 do not include the authority to contract for
7 services that are an inherently governmental
8 function as defined in section 5 of the Federal
9 Activities Inventory Reform Act of 1998 (31
10 U.S.C. 501 note).

11 (b) ASSISTANT SECRETARY FOR OCEANS AND AT-
12 MOSPHERE.—

13 (1) IN GENERAL.—There shall be, as Deputy
14 Administrator of the Administration, an Assistant
15 Secretary of Commerce for Oceans and Atmosphere.
16 The Assistant Secretary shall be appointed by the
17 President, by and with the advice and consent of the
18 Senate. The Assistant Secretary shall be the Admin-
19 istrator's first assistant for purposes of subchapter
20 III of chapter 33 of title 5, United States Code. The
21 Assistant Secretary shall be paid at the rate of basic
22 pay for level IV of the Executive Schedule.

23 (2) FUNCTIONS.—The Assistant Secretary shall
24 perform such functions and exercise such powers as
25 the Administrator may prescribe and shall act as

1 Administrator during the absence or disability of the
2 Administrator or in the event of a vacancy in the of-
3 fice of Administrator.

4 (c) DEPUTY UNDER SECRETARY FOR OCEANS AND
5 ATMOSPHERE.—

6 (1) IN GENERAL.—There shall, be as the Chief
7 Operating Officer of the Administration, a Deputy
8 Under Secretary of Commerce for Oceans and At-
9 mosphere. The Deputy Under Secretary shall be ap-
10 pointed by the Secretary. The position of Deputy
11 Under Secretary shall be a Senior Executive Service
12 position authorized under section 3133 of title 5,
13 United States Code.

14 (2) FUNCTIONS.—The Deputy Under Sec-
15 retary—

16 (A) shall ensure the timely and effective
17 implementation of Administration policies and
18 objectives;

19 (B) shall be responsible for all aspects of
20 the Administration's operations and manage-
21 ment, including budget, financial operations, in-
22 formation services, facilities, human resources,
23 procurements, and associated services;

1 (C) in the absence or disability of the As-
2 sistant Secretary, or in the event of a vacancy
3 in such position, shall act in that position; and

4 (D) shall perform such other duties as the
5 Administrator shall prescribe.

6 (d) DEPUTY ASSISTANT SECRETARY FOR SCIENCE
7 AND EDUCATION.—

8 (1) IN GENERAL.—There shall be in the Admin-
9 istration a Deputy Assistant Secretary for Science
10 and Education who shall coordinate and oversee the
11 science and education activities of the Administra-
12 tion and their application to Administration deci-
13 sions and operations. The Deputy Assistant Sec-
14 retary for Science and Education shall be appointed
15 by the Secretary. The position of Deputy Assistant
16 Secretary for Science and Education shall be a Sen-
17 ior Executive Service career reserved position as de-
18 fined in section 3132(a)(8) of title 5, United States
19 Code.

20 (2) FUNCTIONS.—The Deputy Assistant Sec-
21 retary for Science and Education shall—

22 (A) coordinate research and development
23 activities across the Administration;

24 (B) review the Administration's annual
25 budget to ensure that funding for research and

1 development is adequate, properly focused, and
2 carried out by the appropriate entities across
3 the Administration;

4 (C) advise the Administrator on how re-
5 search results can be applied to operational use;

6 (D) advise the Administrator regarding
7 science issues and their relationship to Adminis-
8 tration policies, procedures, and decisions;

9 (E) participate in developing the Adminis-
10 tration's strategic plans and policies and review
11 the science and education aspects of those plans
12 and policies;

13 (F) serve as liaison to the nongovern-
14 mental science community;

15 (G) develop and oversee guidelines for peer
16 review of research sponsored or conducted by
17 the Administration;

18 (H) oversee implementation of the stra-
19 tegic plan for research and development re-
20 quired under section 9(b);

21 (I) oversee management of laboratories in
22 the Administration;

23 (J) oversee the research and education
24 programs of the Administration; and

1 (K) perform such other duties as the Ad-
2 ministrator shall prescribe.

3 (3) QUALIFICATIONS.—An individual appointed
4 under paragraph (1) shall be a person who has an
5 outstanding science and education background, in-
6 cluding research accomplishments, scientific reputa-
7 tion, and public policy experience.

8 (4) CONSULTATION.—Before appointing an in-
9 dividual under paragraph (1), the Secretary shall
10 consult with the National Academy of Sciences, the
11 Science Advisory Board of the Administration, and
12 other appropriate scientific organizations.

13 (e) DEPUTY ASSISTANT SECRETARIES.—There may
14 be in the Administration no more than two additional
15 Deputy Assistant Secretaries whose duties may be des-
16 ignated by the Administrator. The Deputy Assistant Sec-
17 retaries shall be appointed by the Secretary. The positions
18 of Deputy Assistant Secretaries shall be Senior Executive
19 Service positions authorized under section 3133 of title 5,
20 United States Code.

21 (f) GENERAL COUNSEL.—

22 (1) IN GENERAL.—There shall be in the Admin-
23 istration a General Counsel. The General Counsel
24 shall be appointed by the Secretary. The General

1 Counsel shall be paid at the rate of basic pay for
2 level V of the Executive Schedule.

3 (2) FUNCTIONS.—The General Counsel—

4 (A) shall serve as the chief legal officer of
5 the Administration for all legal matters that
6 arise in connection with the conduct of the
7 functions of the Administration; and

8 (B) shall perform such other functions and
9 exercise such powers as the Administrator may
10 prescribe.

11 (g) CONTINUATION OF SERVICE.—Any individual
12 serving on the effective date of this Act in a position pro-
13 vided for in this Act may continue to serve in that position
14 until a successor is appointed under this Act. Nothing in
15 this Act shall be construed to require the appointment of
16 a successor under this Act sooner than would have been
17 required under law as in effect before the effective date
18 of this Act.

19 **SEC. 5. NATIONAL WEATHER SERVICE.**

20 (a) IN GENERAL.—The Secretary shall maintain
21 within the Administration the National Weather Service.

22 (b) MISSION.—The mission of the National Weather
23 Service is to provide weather, water, climate, tsunami, and
24 space weather forecasts and warnings for the United
25 States, its territories, adjacent waters, and ocean areas for

1 the protection of life and property and the enhancement
2 of the national economy. In carrying out the mission of
3 the National Weather Service, the Administrator shall en-
4 sure that the National Weather Service—

5 (1) provides timely and accurate weather,
6 water, climate, tsunami, and space weather fore-
7 casts; and

8 (2) provides timely and accurate warnings of
9 natural hazards related to weather, water, climate,
10 and tsunamis, and of space weather hazards.

11 (c) FUNCTIONS.—The functions of the National
12 Weather Service shall include—

13 (1) maintaining a network of local weather fore-
14 cast offices;

15 (2) maintaining a network of observation sys-
16 tems to collect weather and climate data;

17 (3) operating national centers to deliver guid-
18 ance, forecasts, warnings, and analysis about weath-
19 er, water, climate, tsunami, and space weather phe-
20 nomena for the Administration and the public;

21 (4) conducting and supporting applied research
22 to facilitate the rapid incorporation of weather and
23 climate science advances into operational tools; and

1 (5) other functions to serve the mission of the
2 National Weather Service described in subsection
3 (b).

4 **SEC. 6. OPERATIONS AND SERVICES.**

5 (a) IN GENERAL.—The Secretary shall maintain
6 within the Administration programs to support efforts, on
7 a continuing basis, to collect data and provide information
8 and products regarding satellites, observations, and coast-
9 al, ocean and Great Lakes information.

10 (b) FUNCTIONS.—To accomplish the mission de-
11 scribed in section 3(b), and in addition to the functions
12 described in section 3(c), the operations and service as-
13 pects of the Administration shall include—

14 (1) acquiring, managing, and operating coastal,
15 ocean, and Great Lakes observing systems;

16 (2) contributing to the operation of a global
17 Earth-observing system;

18 (3) integrating Administration remote sensing
19 and in situ assets that provide critical data needed
20 to support the mission of the Administration, and
21 providing that data to decisionmakers and the pub-
22 lic;

23 (4) developing, acquiring, and managing oper-
24 ational environmental satellite programs and associ-
25 ated ground control and data acquisition and deliv-

1 ery facilities to support the mission of the Adminis-
2 tration;

3 (5) managing and distributing atmospheric,
4 geophysical, and marine data and data products for
5 the Administration through national environmental
6 data centers;

7 (6) providing for long-term stewardship of envi-
8 ronmental data, products, and information via data
9 processing, storage, reanalysis, reprocessing, and ar-
10 chive facilities;

11 (7) issuing licenses for private remote sensing
12 space systems under the Land Remote Sensing Pol-
13 icy Act of 1992;

14 (8) administering a national water level obser-
15 vation network, which shall include monitoring of
16 the Great Lakes;

17 (9) providing charts and other information for
18 safe navigation of the oceans and inland waters, as
19 provided by law;

20 (10) maintaining a fleet of ships and aircraft to
21 support the mission of the Administration; and

22 (11) such other operations and services func-
23 tions to serve the mission of the Administration as
24 the Administrator may prescribe.

1 **SEC. 7. RESEARCH AND EDUCATION.**

2 (a) IN GENERAL.—The Secretary shall maintain
3 within the Administration programs to conduct and sup-
4 port research and education and the development of tech-
5 nologies relating to weather, climate, and the coasts,
6 oceans, and Great Lakes.

7 (b) FUNCTIONS.—To accomplish the mission de-
8 scribed in section 3(b), and in addition to the functions
9 described in section 3(c), the research and education as-
10 pects of the Administration shall include—

11 (1) conducting and supporting research and de-
12 velopment to improve the Administration’s capabili-
13 ties to collect, through observation and otherwise,
14 communicate, analyze, process, and disseminate
15 comprehensive scientific data and information about
16 weather, climate, and the coasts, oceans, and Great
17 Lakes;

18 (2) improving ecological prediction and manage-
19 ment capabilities through ecosystem-based research
20 and development;

21 (3) contributing information on the Earth’s cli-
22 mate and related systems, obtained through research
23 and observation, that addresses questions con-
24 fronting policymakers, resources managers, and
25 other users;

1 (4) reducing uncertainty in projections of how
2 the Earth's climate and related systems may change
3 in the future;

4 (5) fostering the public's ability to understand
5 and integrate scientific information into consider-
6 ations of national environmental issues through edu-
7 cation and public outreach activities;

8 (6) administering the National Sea Grant Col-
9 lege Program Act;

10 (7) conducting and supporting research and de-
11 velopment of technology for exploration of the
12 oceans;

13 (8) maintaining a system of laboratories to per-
14 form the functions described in this subsection;

15 (9) supporting extramural peer-reviewed com-
16 petitive grant programs to assist the Administration
17 in performing the functions described in this sub-
18 section; and

19 (10) such other research, development, edu-
20 cation, and outreach functions to serve the mission
21 of the Administration as the Administrator may pre-
22 scribe.

23 **SEC. 8. SCIENCE ADVISORY BOARD.**

24 (a) IN GENERAL.—There shall be within the Admin-
25 istration a Science Advisory Board, which shall provide

1 such scientific advice as may be requested by the Adminis-
2 trator, the Committee on Commerce, Science, and Trans-
3 portation of the Senate, or the Committee on Science or
4 on Resources of the House of Representatives.

5 (b) PURPOSE.—The purpose of the Science Advisory
6 Board is to advise the Administrator and Congress on
7 long-range and short-range strategies for research, edu-
8 cation, and the application of science to resource manage-
9 ment and environmental assessment and prediction.

10 (c) MEMBERS.—

11 (1) IN GENERAL.—The Science Advisory Board
12 shall be composed of at least 15 members appointed
13 by the Administrator. Each member of the Board
14 shall be qualified by education, training, and experi-
15 ence to evaluate scientific and technical information
16 on matters referred to the Board under this section.

17 (2) TERMS OF SERVICE.—Members shall be ap-
18 pointed for 3-year terms, renewable once, and shall
19 serve at the discretion of the Administrator. An indi-
20 vidual serving a term as a member of the Science
21 Advisory Board on the date of enactment of this Act
22 may complete that term, and may be reappointed
23 once for another term of 3 years unless the term
24 being served on such date of enactment is the second
25 term served by that individual. Vacancy appoint-

1 ments shall be for the remainder of the unexpired
2 term of the vacancy, and an individual so appointed
3 may subsequently be appointed for 2 full 3-year
4 terms if the remainder of the unexpired term is less
5 than one year.

6 (3) CHAIRPERSON.—The Administrator shall
7 designate a chairperson from among the members of
8 the Board.

9 (4) APPOINTMENT.—Members of the Science
10 Advisory Board shall be appointed as special Gov-
11 ernment employees, within the meaning given such
12 term in section 202(a) of title 18, United States
13 Code.

14 (d) ADMINISTRATIVE PROVISIONS.—

15 (1) REPORTING.—The Science Advisory Board
16 shall report to the Administrator and the appro-
17 priate requesting party.

18 (2) ADMINISTRATIVE SUPPORT.—The Adminis-
19 trator shall provide administrative support to the
20 Science Advisory Board.

21 (3) MEETINGS.—The Science Advisory Board
22 shall meet at least twice each year, and at other
23 times at the call of the Administrator or the Chair-
24 person.

1 (4) COMPENSATION AND EXPENSES.—A mem-
2 ber of the Science Advisory Board shall not be com-
3 pensated for service on such board, but may be al-
4 lowed travel expenses, including per diem in lieu of
5 subsistence, in accordance with subchapter I of
6 chapter 57 of title 5, United States Code.

7 (5) SUBCOMMITTEES.—The Science Advisory
8 Board may establish such subcommittees of its
9 members as may be necessary. The Science Advisory
10 Board may establish task forces and working groups
11 consisting of Board members and outside experts as
12 may be necessary.

13 (e) EXPIRATION.—Section 14 of the Federal Advisory
14 Committee Act (5 U.S.C. App.) shall not apply to the
15 Science Advisory Board.

16 **SEC. 9. REPORTS.**

17 (a) REPORT ON DATA MANAGEMENT, ARCHIVAL,
18 AND DISTRIBUTION.—

19 (1) CONTENTS.—Not later than 1 year after
20 the date of enactment of this Act, and once every 5
21 years thereafter, the Administrator shall do the fol-
22 lowing:

23 (A) Enter into an arrangement with the
24 National Academy of Sciences to review the en-
25 vironmental data and information systems of

1 the Administration and to provide recommenda-
2 tions to address any inadequacies identified by
3 the review. The review shall assess the ade-
4 quacy of the environmental data and informa-
5 tion systems of the Administration to—

6 (i) provide adequate capacity to man-
7 age, archive and disseminate environmental
8 information collected and processed, or ex-
9 pected to be collected and processed, by
10 the Administration, including data gath-
11 ered by other agencies that is processed or
12 stored by the Administration;

13 (ii) establish, develop, and maintain
14 information bases, including necessary
15 management systems, which will provide
16 for consistent, efficient, and compatible
17 transfer and use of data;

18 (iii) develop effective interfaces among
19 the environmental data and information
20 systems of the Administration and other
21 appropriate departments and agencies;

22 (iv) develop and use nationally accept-
23 ed formats and standards for data col-
24 lected by various national and international
25 sources;

1 (v) integrate and interpret data from
2 different sources to produce information
3 that can be used by decisionmakers in de-
4 veloping policies that effectively respond to
5 national and global environmental con-
6 cerns; and

7 (vi) reanalyze and reprocess the
8 archived data as better science is developed
9 to integrate diverse data sources.

10 (B) Develop a strategic plan, with respect
11 to the environmental data and information sys-
12 tems of the Administration, to—

13 (i) respond to each of the rec-
14 ommendations in the review conducted
15 under subparagraph (A);

16 (ii) set forth modernization and im-
17 provement objectives for an integrated na-
18 tional environmental data access and ar-
19 chive system for the 10-year period begin-
20 ning with the year in which the plan is
21 transmitted, including facility requirements
22 and critical new technology components
23 that would be necessary to meet the objec-
24 tives set forth;

1 (iii) propose specific Administration
2 programs and activities for implementing
3 the plan;

4 (iv) identify the data and information
5 management, reanalysis, reprocessing, ar-
6 chival, and distribution responsibilities of
7 the Administration with respect to other
8 Federal departments and agencies and
9 international organizations; and

10 (v) provide an implementation sched-
11 ular and estimate funding levels necessary
12 to achieve modernization and improvement
13 objectives.

14 (2) TRANSMITTAL TO CONGRESS.—Not later
15 than 18 months after the date of enactment of this
16 Act, the Administrator shall transmit to the Com-
17 mittee on Commerce, Science, and Transportation of
18 the Senate and the Committee on Science of the
19 House of Representatives the initial review and stra-
20 tegic plan developed under paragraph (1). Subse-
21 quent reviews and strategic plans developed under
22 paragraph (1) shall also be transmitted to those
23 committees upon completion.

24 (b) STRATEGIC PLAN FOR RESEARCH AND DEVELOP-
25 MENT.—

1 (1) CONTENTS.—Not later than 1 year after
2 the date of enactment of this Act, and once every 5
3 years thereafter, the Administrator shall develop a
4 strategic plan for research and development at the
5 Administration. The plan shall include—

6 (A) an assessment of the science and tech-
7 nology needs of the Administration based on
8 the Administration’s operational requirements
9 and on input provided by external stakeholders
10 at the national, regional, State, and local levels;
11 and

12 (B) a strategic plan that assigns specific
13 programs within the administration the respon-
14 sibility to meet each need identified under sub-
15 paragraph (A) and that describes the extent to
16 which each need identified in subparagraph (A)
17 will be addressed through—

18 (i) intramural research;

19 (ii) extramural, peer-reviewed, com-
20 petitive grant programs; and

21 (iii) work done in cooperation with
22 other Federal agencies.

23 (2) NATIONAL ACADEMY OF SCIENCES RE-
24 VIEW.—The Administrator shall enter into an ar-
25 rangement with the National Academy of Sciences

1 for a review of the plan developed under paragraph
2 (1).

3 (3) TRANSMITTAL TO CONGRESS.—Not later
4 than 18 months after the date of enactment of this
5 Act, the Administrator shall transmit to the Com-
6 mittee on Commerce, Science, and Transportation of
7 the Senate and the Committee on Science of the
8 House of Representatives the initial strategic plan
9 developed under paragraph (1) and the review pre-
10 pared pursuant to paragraph (2). Subsequent stra-
11 tegic plans developed under paragraph (1) shall also
12 be transmitted to those committees upon completion.

13 **SEC. 10. PUBLIC-PRIVATE PARTNERSHIPS.**

14 Not less than once every 5 years, the Secretary shall
15 develop and submit to Congress a policy that defines proc-
16 esses for making decisions about the roles of the Adminis-
17 tration, the private sector, and the academic community
18 in providing environmental information, products, tech-
19 nologies, and services. The first such submission shall be
20 completed not less than 3 years after the date of enact-
21 ment of this Act. At least 90 days before each submission
22 of the policy to Congress, the Secretary shall publish the
23 policy in the Federal Register for a public comment period
24 of not less than 60 days. Nothing in this section shall be

1 construed to require changes in the policy in effect on the
2 date of enactment of this Act.

3 **SEC. 11. EFFECT OF REORGANIZATION PLAN.**

4 Reorganization Plan No. 4 of 1970 shall have no fur-
5 ther force and effect.

6 **SEC. 12. SAVINGS PROVISION.**

7 All rules and regulations, determinations, standards,
8 contracts, including collective bargaining agreements, cer-
9 tifications, authorizations, appointments, delegations, re-
10 sults and findings of investigations, and other actions duly
11 issued, made, or taken by or pursuant to or under the
12 authority of any statute or executive order which resulted
13 in the assignment of functions or activities to the Sec-
14 retary, the Department of Commerce, the Under Secretary
15 of Commerce for Oceans and Atmosphere, the Adminis-
16 trator, or any other officer of the Administration, that is
17 in effect immediately before the date of enactment of this
18 Act, shall continue in full force and effect after the effec-
19 tive date of this Act until modified or rescinded. All suits,
20 appeals, judgments, and proceedings pending on such ef-
21 fective date relating to responsibilities or functions trans-
22 ferred pursuant to this Act shall continue without regard
23 to such transfers, except for the transfer of responsibilities
24 or functions. Any reference in law to a responsibility, func-
25 tion, or office transferred pursuant to this Act shall be

1 deemed to refer to the responsibility, function, or office
2 as so transferred. Nothing in this Act shall be construed
3 to limit the ability of an Administration employee to dis-
4 cuss scientific research performed by that employee. Noth-
5 ing in this Act shall be construed to alter the responsibil-
6 ities or authorities of any other Federal agency. Nothing
7 in this Act shall be construed to authorize or prohibit the
8 transfer of any program, function, or project from other
9 Federal agencies to the Administration. Nothing in this
10 Act shall be construed to expand, modify, or supersede the
11 authority that the Administration has immediately before
12 the date of enactment of this Act, nor to provide the Ad-
13 ministration with any new regulatory authority. Nothing
14 in this Act shall be construed to grant the Administrator
15 any authority to construct, alter, repair, or acquire by any
16 means a public building, as defined at section 3301 of title
17 40, United States Code, or to grant any authority to lease
18 general purpose office or storage space in any building;
19 and nothing in this Act shall be construed to diminish any
20 authority the Administrator has immediately before the
21 date of enactment of this Act to construct, alter, repair,
22 or acquire by any means a public building, as defined at
23 section 3301 of title 40, United States Code, or to dimin-
24 ish any authority the Administrator has immediately be-
25 fore the date of enactment of this Act to lease general

1 purpose office or storage space in any building (regardless
2 of whether those authorities are derived from laws, execu-
3 tive orders, rules, regulations, or delegations of authority
4 from the Secretary of Commerce).

5 **SEC. 13. REORGANIZATION PLAN.**

6 (a) SCHEDULE.—(1) Not later than 18 months after
7 the date of enactment of this Act, the Administrator shall
8 develop a reorganization plan for the Administration in
9 accordance with this section and shall publish the plan in
10 the Federal Register. The Federal Register notice shall
11 solicit comments for a period of 60 days.

12 (2) Not later than 90 days after the expiration date
13 of the comment period described in paragraph (1), the Ad-
14 ministrator shall transmit to Congress a revised version
15 of the plan that takes into account the comments received.
16 The Administrator shall also publish the revised plan in
17 the Federal Register. The Administrator shall transmit
18 and publish, along with the plan, an explanation of how
19 the Administrator dealt with each issue raised by the com-
20 ments received.

21 (3) The Administrator shall implement the plan 60
22 days after the plan has been transmitted to the Congress.

23 (b) CONTENT.—The plan, to the greatest extent prac-
24 ticable, shall—

1 (1) consistent with section 5 and the other pro-
2 visions of this Act, maximize the efficiency with
3 which the Administration carries out the functions
4 of—

5 (A) operations and services;

6 (B) research and education; and

7 (C) resource management;

8 (2) improve the sharing of research and other
9 information that is of use across programmatic
10 themes; and

11 (3) eliminate duplication of effort or overlap-
12 ping efforts among offices.

13 (c) CONSULTATION.—In developing the plan, the Ad-
14 ministrator shall consult with interested parties, including
15 the States, academia, industry, conservation organiza-
16 tions, and Administration employees.

17 **SEC. 14. FACILITY EVALUATION PROCESS.**

18 (a) PUBLIC NOTIFICATION AND ASSESSMENT PROC-
19 ESS.—

20 (1) IN GENERAL.—The Administrator shall not
21 close, consolidate, relocate, subdivide, or establish a
22 facility of the Administration, unless and until the
23 Administrator has followed the procedures required
24 by this section.

1 (2) REVIEW PROCESS.—The Administrator
2 shall not close, consolidate, relocate, subdivide, or es-
3 tablish a facility of the Administration with an an-
4 nual operating budget of \$5,000,000 or greater, or
5 a National Weather Service field office, unless and
6 until—

7 (A) the Administrator has published in the
8 Federal Register the proposed action and a de-
9 scription of the offices, personnel, and activities
10 of the Administration that would be affected by
11 the proposed change, and has provided for a
12 minimum of 60 days for public comment;

13 (B) if the proposed change involves a
14 science facility of the Administration, the
15 Science Advisory Board has reviewed the pro-
16 posed change and provided to the Administrator
17 written findings regarding the proposed change;

18 (C) if the proposed change involves a Na-
19 tional Weather Service field office, the Adminis-
20 trator has prepared a report including—

21 (i) a description of local weather char-
22 acteristics and weather-related concerns
23 which affect the weather services provided
24 within the service area;

1 (ii) a detailed comparison of the serv-
2 ices provided within the service area and
3 the services to be provided after the pro-
4 posed change;

5 (iii) a description of any recent or ex-
6 pected modernization of National Weather
7 Service operations which will enhance serv-
8 ices in the service area;

9 (iv) an identification of any area with-
10 in any State which would not receive cov-
11 erage (at an elevation of 10,000 feet) due
12 to the proposed change; and

13 (v) evidence, based on operational
14 demonstration of National Weather Service
15 operations, which was considered in reach-
16 ing the conclusion that no degradation in
17 service will result from the proposed
18 change;

19 (D) the Administrator has prepared an
20 analysis of the anticipated costs and savings as-
21 sociated with the proposed facility change, in-
22 cluding both costs and savings in the first fiscal
23 year following the change, and changes in oper-
24 ations and maintenance costs and savings over
25 a ten-year period; and

1 (E) the Administrator has prepared an
2 analysis of the effects of the facility change on
3 operations and research of the Administration,
4 and the potential impacts on cooperative insti-
5 tutes, other external Administration partner-
6 ships, partnerships with other Federal agencies,
7 and any State and local partnerships.

8 (3) NOTICE TO CONGRESS.—(A) The Adminis-
9 trator shall provide to Congress, at least 90 days be-
10 fore any closure, consolidation, relocation, subdivi-
11 sion, or establishment of a facility of the Adminis-
12 tration with an annual budget of \$5,000,000 or
13 greater, or any National Weather Service field office,
14 a summary of the public comments received pursu-
15 ant to paragraph (2)(A), any written findings pre-
16 pared under paragraph (2)(B), any report prepared
17 under paragraph (2)(C), and the analyses prepared
18 under paragraph (2)(D) and (E).

19 (B) The Administrator shall provide to Con-
20 gress, at least 90 days before any closure, consolida-
21 tion, relocation, subdivision, or establishment of a
22 facility of the Administration not described in sub-
23 paragraph (A), written notification of the planned
24 closure, consolidation, relocation, subdivision, or es-
25 tablishment.

1 (b) WEATHER SERVICE MODERNIZATION.—Nothing
2 in this Act shall be construed to alter the Weather Service
3 Modernization Act (15 U.S.C. 313 note).

4 (c) DEFINITION.—For purposes of this section—

5 (1) the term “facility” means a laboratory, op-
6 erations office, administrative service center, or
7 other establishment of the Administration; and

8 (2) the term “field office” has the same mean-
9 ing given that term in section 702 of the Weather
10 Service Modernization Act.

11 **SEC. 15. BUDGET REPROGRAMMING.**

12 Whenever the Administrator transmits a budget re-
13 programming request to the Appropriations Committees
14 of the House of Representatives and the Senate, the Ad-
15 ministrator shall simultaneously submit a copy of the re-
16 quest to the Committee on Science and the Committee on
17 Resources of the House of Representatives and the Com-
18 mittee on Commerce, Science, and Transportation of the
19 Senate.

20 **SEC. 16. SATELLITE NOTIFICATION.**

21 (a) IN GENERAL.—The Administrator shall notify
22 the Congress—

23 (1) prior to initiating the expenditure of any
24 funds on a satellite for which the Administration

1 had not expended funds as of the date of enactment
2 of this Act;

3 (2) within 3 days whenever the Administrator
4 has reasonable cause to believe that the development
5 cost of a satellite is likely to exceed the most recent
6 baseline estimate of development costs by more than
7 15 percent;

8 (3) within 3 days whenever the Administrator
9 has reasonable cause to believe that the delivery of
10 a satellite for launch is likely to be delayed by 6
11 months or more; or

12 (4) within 3 days whenever the Administrator
13 intends to make a significant alteration to a sat-
14 ellite.

15 (b) EVALUATION.—After providing a notification
16 under subsection (a), the Administrator shall—

17 (1) have the satellite, revised cost, revised
18 schedule, or significant alteration that was the sub-
19 ject of the notice evaluated in accordance with sub-
20 section (c) by—

21 (A) a panel of experts selected by the Ad-
22 ministrator that does not include any employees
23 of the Administration; or

24 (B) an independent entity; and

1 (2) within 120 days, transmit the evaluation to
2 the Committee on Science of the House of Rep-
3 resentatives and the Committee on Commerce,
4 Science, and Transportation of the Senate, along
5 with an explanation of how the Administration will
6 provide the funds to cover the costs determined by
7 the evaluation conducted under paragraph (1) and
8 responses to any concerns raised by the evaluation.

9 (c) CRITERIA.—An evaluation conducted pursuant to
10 subsection (b)(1) shall review—

11 (1) the cost and schedule of a satellite for
12 which the Administration had not previously ex-
13 pended funds, along with the appropriateness of the
14 intended mission for the satellite and its likelihood
15 of success;

16 (2) the revised cost or delivery schedule pro-
17 posed for a satellite or the additional cost imposed
18 by a significant alteration;

19 (3) the impact on launch schedule of a proposed
20 significant alteration;

21 (4) the impact a proposed significant alteration
22 would have on the success of a satellite's original
23 mission; and

24 (5) the likelihood that the intended purpose of
25 the significant alteration would be accomplished.

1 (d) DEFINITIONS.—For the purposes of this section,
2 the term—

3 (1) “development cost” means all costs related
4 to a satellite through the launch of a satellite;

5 (2) “satellite” includes the spacecraft (but not
6 the launch vehicle), instruments, and sensors; and

7 (3) “significant alteration” means a change in
8 the objectives or capabilities of a satellite, including
9 the addition or removal of instruments or sensors.

10 **SEC. 17. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
11 **CONTRACTS FOR THE PROCUREMENT OF**
12 **GOODS AND SERVICES.**

13 (a) CONVERSIONS TO CONTRACTOR PERFORMANCE
14 OF ADMINISTRATION ACTIVITIES.—Except as provided in
15 subsection (c), an activity or function of the Administra-
16 tion that is converted to contractor performance under Of-
17 fice of Management and Budget Circular A-76 may not
18 be performed by the contractor or any subcontractor at
19 a location outside the United States.

20 (b) CONTRACTS FOR THE PROCUREMENT OF SERV-
21 ICES.—(1) Except as provided in subsection (c), a contract
22 for the procurement of goods or services that is entered
23 into by the Administrator may not be performed outside
24 the United States unless it is to meet a requirement of

1 the Administration for goods or services specifically at a
2 location outside the United States.

3 (2) The President may waive the prohibition in para-
4 graph (1) in the case of any contract for which the Presi-
5 dent determines in writing that it is necessary in the na-
6 tional security interests of the United States for goods or
7 services under the contract to be performed outside the
8 United States.

9 (3) The Administrator may waive the prohibition in
10 paragraph (1) in the case of any contract for which the
11 Administrator determines in writing that essential goods
12 or services under the contract are only available from a
13 source outside the United States.

14 (c) EXCEPTION.—Subsections (a) and (b)(1) shall
15 not apply to the extent that the activity or function under
16 the contract was previously performed by Federal Govern-
17 ment employees outside the United States.

18 (d) CONSISTENCY WITH INTERNATIONAL AGREE-
19 MENTS.—The provisions of this section shall not apply to
20 the extent that they are inconsistent with obligations of
21 the United States under international agreements.

○

SECTION-BY-SECTION ANALYSIS OF H.R. 5450,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ACT,
AS INTRODUCED ON MAY 22, 2005

Section 1. Short Title.

“National Oceanic and Atmospheric Administration Act”

Section 2. Definitions.

Defines terms used in the Act.

Section 3. National Oceanic and Atmospheric Administration.

Establishes the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce and describes the mission and functions of NOAA.

Section 4. Administration Leadership.

Describes the leadership structure of NOAA, including a new position of a Deputy Assistant Secretary for Science and Education, who shall be responsible for coordinating and managing all research activities across the agency, and which must be a career position. Also, this section designates the Deputy Under Secretary for Oceans and Atmosphere as the Chief Operating Officer of the Administration, responsible for the day-to-day aspects of the Administration’s operations and management.

Section 5. National Weather Service.

Directs the Secretary of Commerce to maintain the National Weather Service within NOAA.

Section 6. Operations and Services.

Directs the Secretary to maintain programs within NOAA to support operational and service functions. This section does not name any organizational units of NOAA, but the functions listed include all the activities of NOAA’s National Environmental Satellite Data and Information Service and the mapping and charting activities of the National Ocean Service.

Section 7. Research and Education.

Directs the Secretary to maintain programs within NOAA to conduct and support research and education functions.

Section 8. Science Advisory Board.

Establishes a Science Advisory Board for NOAA, which would provide scientific advice to the Administrator and to Congress on issues affecting NOAA.

Section 9. Reports.

Requires two reports from the Administrator. Each report is to be delivered to Congress within 18 months of the date of enactment of the Act. One report, by the National Academy of Sciences, should assess the adequacy of the environmental data and information systems of NOAA and provide a strategic plan to address any deficiencies in those systems. The other report is strategic plan for research at NOAA.

Section 10. Public-Private Partnerships.

Requires NOAA to review its policy on public-private partnerships once every five years. Clarifies the no changes in NOAA’s current policy are required.

Section 11. Effect of Reorganization Plan.

Repeals the Executive Order that established NOAA in 1970.

Section 12. Savings Provision.

Clarifies that the Act does not change the legal status of any NOAA rule, regulation or other legal matter.

Section 13. Reorganization Plan.

Requires NOAA to submit a reorganization plan to Congress not less than 18 months after enactment of this Act.

Section 14. Facility Evaluation Process.

Provides that NOAA cannot expend funds to close or transfer certain facilities without a public comment period, review by the Science Advisory Board (if appropriate), analysis of anticipated costs and savings and impact on NOAA services, and notification to Congress.

Section 15. Budget Reprogramming.

Requires NOAA to submit to the Science Committee a copy of any reprogramming requests submitted to Appropriations Committees.

Section 16. Satellite Notification.

Requires NOAA to notify Congress when NOAA starts new satellite programs or encounters serious problems with, or makes major changes to existing satellite programs.

Section 17. Limitations on Off-Shore Performance of Contracts for the Procurement of Goods and Services.

Prohibits the Administrator from contracting for Administration activities or procurement of goods or services that are performed outside the United States except when the goods or services are necessary for national security or are only available outside the United States, when the activities or function under the contract was previously performed by Federal Government employees located outside the United States, or when the prohibition is inconsistent with international agreements.

BILL SUMMARY OF H.R. 5450,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ACT,
AS INTRODUCED ON MAY 22, 2005

The legislation establishes the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce.

The legislation maintains the current leadership structure at NOAA except that it creates a new position of Deputy Assistant Secretary for Science and Education. It requires the Secretary of Commerce to maintain the National Weather Service within NOAA. The legislation describes programs to support the operations and services, and the research and education functions of NOAA. The legislation authorizes the NOAA Science Advisory Board.

The legislation requires NOAA to contract with the National Academy of Sciences (NAS) to assess the adequacy of the environmental data and information systems of NOAA. It requires NOAA to provide two strategic plans: one to address any deficiencies identified by the NAS data and information system assessment and the second for intramural and extramural research to support the mission of NOAA. The legislation requires NOAA to review its policy on public-private relationships once every five years. It also requires NOAA to submit a reorganization plan to Congress 18 months after enactment of the legislation.

The legislation repeals the Executive Order that established NOAA in 1970 and includes a savings provision to preserve the status of all current NOAA rules, regulations and other legal matters. The legislation prohibits NOAA from contracting for activities or procurement of goods or services that are performed outside the United States, except in some limited circumstances and when the prohibition would be inconsistent with trade agreements.

The legislation requires NOAA to notify Congress and the public if it plans to close or transfer a NOAA facility, and if it starts a new satellite programs, encounters problems with a current satellite program, or makes major changes to a satellite program.

**COMMITTEE ON SCIENCE
FULL COMMITTEE MARKUP**

June 14, 2006

AMENDMENT ROSTER

H.R. 5450, National Oceanic and Atmospheric Administration Act

–Motion to adopt the bill, as amended: agreed to by a voice vote.

–Motion to report the bill, as amended: agreed to by a voice vote.

No.	Sponsor	Description	Result
1.	Mr. Costello	Requires an annual report on contracts and subcontracts performed overseas.	–Adopted by a voice vote.
2.	Mr. Udall	Establishes conditions for development of major program cost baselines and requires notification to Congress when certain cost increases or schedule delays occur in major programs (based on NASA Authorization Act of 2005 language).	–Adopted by a voice vote.
3.	Mr. Miller	Establishes penalties for employees who interfere with science, sets requirements for science advisory committees, and exempts NOAA from the Information Quality Act.	–Defeated by a roll call vote: Y-13; N-17.
4.	Ms. Jackson-Lee	Requires NOAA to communicate weather emergency information to other Federal agencies.	–Adopted by a voice vote.
5.	Mr. Costello	To require NOAA to transmit Congressional reports to Congress directly without prior review by the President or any other Administration official.	–Defeated by a roll call vote: Y-15; N-19.

AMENDMENT TO H.R. 5450
OFFERED BY MR. COSTELLO OF ILLINOIS

At the end of the bill, add the following new section:

1 **SEC. 18. RECORDKEEPING AND REPORTING REQUIRE-**
2 **MENT.**

3 The Administrator shall transmit to Congress, not
4 later than 120 days after the end of each fiscal year begin-
5 ning with the first fiscal year after the date of enactment
6 of this Act, a report on the contracts and subcontracts
7 performed overseas and the amount of purchases directly
8 or indirectly by the Administration from foreign entities
9 in that fiscal year. The report shall separately indicate—

10 (1) the contracts and subcontracts and their
11 dollar values for which the Administrator determines
12 that essential goods or services under the contract
13 are available only from a source outside the United
14 States; and

15 (2) the items and their dollar values for which
16 the Buy American Act was waived pursuant to obli-
17 gations of the United States under international
18 agreements.



AMENDMENT TO H.R. 5450
OFFERED BY MR. UDALL OF COLORADO

Amend section 16 to read as follows:

1 **SEC. 16. BASELINES AND COST CONTROLS.**

2 (a) CONDITIONS FOR DEVELOPMENT.—

3 (1) IN GENERAL.—The Administration shall
4 not enter into a contract for the development of a
5 major program unless the Administrator determines
6 that—

7 (A) the technical, cost, and schedule risks
8 of the program are clearly identified and the
9 program has developed a plan to manage those
10 risks;

11 (B) the technologies required for the pro-
12 gram have been demonstrated in a relevant lab-
13 oratory or test environment; and

14 (C) the program complies with all relevant
15 policies, regulations, and directives of the Ad-
16 ministration.

17 (2) REPORT.—The Administrator shall trans-
18 mit a report describing the basis for the determina-
19 tion required under paragraph (1) to the Committee
20 on Science of the House of Representatives and the



1 Committee on Commerce, Science, and Transpor-
2 tation of the Senate at least 30 days before entering
3 into a contract for development under a major pro-
4 gram.

5 (3) NONDELEGATION.—The Administrator may
6 not delegate the determination requirement under
7 this subsection, except in cases in which the Admin-
8 istrator has a conflict of interest.

9 (b) MAJOR PROGRAM ANNUAL REPORTS.—

10 (1) REQUIREMENT.—Annually, at the same
11 time as the President’s annual budget submission to
12 the Congress, the Administrator shall transmit to
13 the Committee on Science of the House of Rep-
14 resentatives and the Committee on Commerce,
15 Science, and Transportation of the Senate a report
16 that includes the information required by this sec-
17 tion for each major program for which the Adminis-
18 tration proposes to expend funds in the subsequent
19 fiscal year. Reports under this paragraph shall be
20 known as Major Program Annual Reports.

21 (2) BASELINE REPORT.—The first Major Pro-
22 gram Annual Report for each major program shall
23 include a Baseline Report that shall, at a minimum,
24 include—



1 (A) the purposes of the program and key
2 technical characteristics necessary to fulfill
3 those purposes;

4 (B) an estimate of the life-cycle cost for
5 the program, with a detailed breakout of the
6 development cost, program reserves, and an es-
7 timate of the annual costs until development is
8 completed;

9 (C) the schedule for development, including
10 key program milestones;

11 (D) the plan for mitigating technical, cost,
12 and schedule risks identified in accordance with
13 subsection (a)(1)(A); and

14 (E) the name of the person responsible for
15 making notifications under subsection (c), who
16 shall be an individual whose primary responsi-
17 bility is overseeing the program.

18 (3) INFORMATION UPDATES.—For major pro-
19 grams for which a Baseline Report has been sub-
20 mitted, each subsequent Major Program Annual Re-
21 port shall describe any changes to the information
22 that had been provided in the Baseline Report, and
23 the reasons for those changes.

24 (c) NOTIFICATION.—



1 (1) REQUIREMENT.—The individual identified
2 under subsection (b)(2)(E) shall immediately notify
3 the Administrator any time that individual has rea-
4 sonable cause to believe that, for the major program
5 for which he or she is responsible—

6 (A) the development cost of the program is
7 likely to exceed the estimate provided in the
8 Baseline Report of the program by 15 percent
9 or more; or

10 (B) a milestone of the program is likely to
11 be delayed by 6 months or more from the date
12 provided for it in the Baseline Report of the
13 program.

14 (2) REASONS.—Not later than 30 days after
15 the notification required under paragraph (1), the
16 individual identified under subsection (b)(2)(E) shall
17 transmit to the Administrator a written notification
18 explaining the reasons for the change in the cost or
19 milestone of the program for which notification was
20 provided under paragraph (1).

21 (3) NOTIFICATION OF CONGRESS.—Not later
22 than 15 days after the Administrator receives a writ-
23 ten notification under paragraph (2), the Adminis-
24 trator shall transmit the notification to the Com-
25 mittee on Science of the House of Representatives



1 and the Committee on Commerce, Science, and
2 Transportation of the Senate.

3 (d) FIFTEEN PERCENT THRESHOLD.—Not later
4 than 30 days after receiving a written notification under
5 subsection (c)(2), the Administrator shall determine
6 whether the development cost of the program is likely to
7 exceed the estimate provided in the Baseline Report of the
8 program by 15 percent or more, or whether a milestone
9 is likely to be delayed by 6 months or more. If the deter-
10 mination is affirmative, the Administrator shall—

11 (1) transmit to the Committee on Science of the
12 House of Representatives and the Committee on
13 Commerce, Science, and Transportation of the Sen-
14 ate, not later than 15 days after making the deter-
15 mination, a report that includes—

16 (A) a description of the increase in cost or
17 delay in schedule and a detailed explanation for
18 the increase or delay;

19 (B) a description of actions taken or pro-
20 posed to be taken in response to the cost in-
21 crease or delay; and

22 (C) a description of any impacts the cost
23 increase or schedule delay, or the actions de-
24 scribed under subparagraph (B), will have on



1 any other program within the Administration;
2 and

3 (2) if the Administrator intends to continue
4 with the program, promptly initiate an analysis of
5 the program, which shall include, at a minimum—

6 (A) the projected cost and schedule for
7 completing the program if current requirements
8 of the program are not modified;

9 (B) the projected cost and the schedule for
10 completing the program after instituting the ac-
11 tions described under paragraph (1)(B); and

12 (C) a description of, and the projected cost
13 and schedule for, a broad range of alternatives
14 to the program.

15 The Administration shall complete an analysis initi-
16 ated under paragraph (2) not later than 6 months
17 after the Administrator makes a determination
18 under this subsection. The Administrator shall
19 transmit the analysis to the Committee on Science
20 of the House of Representatives and Committee on
21 Commerce, Science, and Transportation of the Sen-
22 ate not later than 30 days after its completion.

23 (e) THIRTY PERCENT THRESHOLD.—If the Adminis-
24 trator determines under subsection (d) that the develop-
25 ment cost of a program will exceed the estimate provided



1 in the Baseline Report of the program by more than 30
2 percent, then, beginning 18 months after the date the Ad-
3 ministrator transmits a report under subsection (d)(1),
4 the Administrator shall not expend any additional funds
5 on the program, other than termination costs, unless the
6 Congress has subsequently authorized continuation of the
7 program by law. An appropriation for the specific program
8 enacted subsequent to a report being transmitted shall be
9 considered an authorization for purposes of this sub-
10 section. If the program is continued, the Administrator
11 shall submit a new Baseline Report for the program no
12 later than 90 days after the date of enactment of the Act
13 under which Congress has authorized continuation of the
14 program.

15 (f) DEFINITIONS.—For the purposes of this section—

16 (1) the term “development” means the phase of
17 a program following the formulation phase and be-
18 ginning with the approval to proceed to implementa-
19 tion.

20 (2) the term “development cost” means the
21 total of all costs, including construction of facilities
22 and civil servant costs, from the period beginning
23 with the approval to proceed to implementation
24 through the achievement of operational readiness,



1 without regard to funding source or management
2 control, for the life of the program;

3 (3) the term "life-cycle cost" means the total of
4 the direct, indirect, recurring, and nonrecurring
5 costs, including the construction of facilities and civil
6 servant costs, and other related expenses incurred or
7 estimated to be incurred in the design, development,
8 verification, production, operation, maintenance,
9 support, and retirement of a program over its
10 planned lifespan, without regard to funding source
11 or management control; and

12 (4) the term "major program" means an activ-
13 ity approved to proceed to implementation that has
14 an estimated life-cycle cost of more than
15 \$250,000,000.



**AMENDMENT TO H.R. 5450
OFFERED BY MR. MILLER OF NORTH CAROLINA**

At the end of the bill, add the following new section:

1 **SEC. 18. RESTORING SCIENTIFIC INTEGRITY TO RESEARCH**
2 **AND POLICYMAKING.**

3 (a) PROHIBITION OF POLITICAL INTERFERENCE
4 WITH SCIENCE.—

5 (1) INTERFERENCE WITH SCIENCE.—

6 (A) PROHIBITION.—An employee of the
7 Administration may not engage in any of the
8 following:

9 (i) Tampering with the conduct of
10 Federally funded scientific research or
11 analysis.

12 (ii) Censorship of findings of Feder-
13 ally funded scientific research or analysis.

14 (iii) Directing the dissemination of
15 scientific information known by the direct-
16 ing employee to be false or misleading.

17 (B) PENALTIES.—An employee who vio-
18 lates this paragraph shall be subject to appro-
19 priate disciplinary action by the Administration.

20 (2) PROHIBITED PERSONNEL PRACTICE.—



1 (A) PROHIBITION.—An employee of the
 2 Administration who has authority to take, di-
 3 rect others to take, recommend, or approve any
 4 personnel action shall not, with respect to such
 5 authority, take or fail to take, or threaten to
 6 take or fail to take, a personnel action with re-
 7 spect to any employee of the Administration be-
 8 cause of the development or dissemination,
 9 within the scope of employment, of scientific re-
 10 search or analysis that the employee reasonably
 11 believes to be accurate and valid.

12 (B) PENALTY.—A violation of subpara-
 13 graph (A) shall be penalized as if it were a vi-
 14 olation of section 2302(b) of title 5, United
 15 States Code.

16 (b) DISCLOSURES RELATING TO INTERFERENCE
 17 WITH SCIENCE.—

18 (1) PROHIBITED PERSONNEL PRACTICE.—

19 (A) PROHIBITION.—An employee of the
 20 Administration who has authority to take, di-
 21 rect others to take, recommend, or approve any
 22 personnel action shall not, with respect to such
 23 authority, take or fail to take, or threaten to
 24 take or fail to take, a personnel action with re-
 25 spect to any employee of, or applicant for em-



1 ployment with, the Administration because of
 2 any disclosure of information which the em-
 3 ployee or applicant reasonably believes evi-
 4 dences tampering with the conduct of Federally
 5 funded scientific research or analysis, censoring
 6 the findings of Federally funded scientific re-
 7 search or analysis, or directing the dissemina-
 8 tion of scientific information known by the di-
 9 recting employee to be false or misleading.

10 (B) PENALTY.—A violation of subpara-
 11 graph (A) shall be penalized as if it were a vio-
 12 lation of section 2302(b) of title 5, United
 13 States Code.

14 (2) OFFICE OF SPECIAL COUNSEL.—The Office
 15 of Special Counsel established under subchapter II
 16 of chapter 12 of title 5, United States Code, shall
 17 receive, review, and where appropriate, forward to
 18 the Attorney General or the Administrator disclo-
 19 sures by an employee of the Administration of tam-
 20 pering with the conduct of Federally funded sci-
 21 entific research or analysis, censoring the findings of
 22 Federally funded scientific research or analysis, or
 23 directing the dissemination of scientific information
 24 known by the directing employee to be false or mis-
 25 leading. Section 1213 of title 5, United States Code,



4

1 shall apply to any disclosure described in this para-
2 graph.

3 (c) REQUIREMENTS RELATING TO SCIENTIFIC ADVI-
4 SORY COMMITTEES.—

5 (1) BAR ON LITMUS TESTS.—All appointments
6 to scientific advisory committees that report to the
7 Administration shall be made without regard to po-
8 litical affiliation, unless required by Federal statute.

9 (2) DESIGNATION OF MEMBERS AS SPECIAL
10 GOVERNMENT EMPLOYEES OR REPRESENTATIVES.—

11 (A) An individual appointed to a scientific advisory
12 committee that reports to the Administration who is
13 not a full-time or permanent part-time officer or em-
14 ployee of the Federal Government shall be des-
15 ignated by the Administration as either—

16 (i) a special Government employee, if the
17 individual is providing advice based on the indi-
18 vidual's expertise or experience; or

19 (ii) a representative, if the individual is
20 representing the views of individuals or entities
21 outside the Federal Government.

22 (B) The Administration shall review the mem-
23 bers of each scientific advisory committee that re-
24 ports to the Administration to determine whether
25 each member's designation is appropriate, and to re-



1 designate members if appropriate. Such review shall
2 be made when the committee's charter expires or, in
3 the case of a committee with an indefinite charter,
4 every 2 years.

5 (3) ENSURING INDEPENDENT ADVICE AND EX-
6 PERTISE.—(A) The Administration shall, to the ex-
7 tent permitted by law, appoint individuals to sci-
8 entific advisory committees that report to the Ad-
9 ministration as special Government employees.

10 (B) The Administration shall make its best ef-
11 forts to ensure that—

12 (i) no individual appointed to serve on a
13 scientific advisory committee that reports to the
14 Administration has a conflict of interest that is
15 relevant to the functions to be performed, un-
16 less such conflict is promptly and publicly dis-
17 closed and the Administration determines that
18 the conflict is unavoidable; and

19 (ii) each report of the advisory committee
20 will be the result of the advisory committee's
21 independent judgment and include a statement
22 indicating the process used by the advisory
23 committee in formulating the recommendations
24 or conclusions contained in the report.



1 (C) The Administration shall require that indi-
2 viduals that the Administration appoints or intends
3 to appoint to serve on a scientific advisory com-
4 mittee that reports to the Administration inform the
5 Administration of the individual's conflicts of inter-
6 est that are relevant to the functions to be per-
7 formed.

8 (D) If the Administration determines that rep-
9 resentative members are required on a scientific ad-
10 visory committee that reports to the Administration,
11 the Advisory Committee Management Officer of the
12 Administration shall consult with the designated eth-
13 ics official of the Administration to ensure that the
14 designation is appropriate and necessary to fulfilling
15 the committee's purpose.

16 (E) The designated ethics official of the Admin-
17 istration shall issue guidance to ensure that sci-
18 entific advisory committees that report to the Ad-
19 ministration are providing sufficiently independent
20 advice and expertise.

21 (F) The Administrator of General Services shall
22 conduct an annual review of compliance by the Ad-
23 ministration with this paragraph and shall submit to
24 the Committee on Science of the House of Rep-
25 resentatives and the Committee on Commerce,



1 Science, and Transportation of the Senate a report
2 on the results of the review.

3 (4) DISCLOSURE OF INFORMATION.—

4 (A) ITEMS REQUIRED TO BE DISCLOSED.—

5 With respect to each scientific advisory com-
6 mittee that reports to the Administration estab-
7 lished before, on, or after the date of the enact-
8 ment of this Act, the Administration shall make
9 available as described in subparagraph (B) the
10 following information, at a minimum:

11 (i) The charter of the committee.

12 (ii) A description of the committee
13 formation process, including at least—

14 (I) the process for identifying
15 prospective members;

16 (II) the process of selecting mem-
17 bers for balance of viewpoints or ex-
18 pertise; and

19 (III) a justification of the need
20 for representative members, if any.

21 (iii) A list of all current members, in-
22 cluding, for each member, the following:

23 (I) The name of any person or
24 entity that nominated the member.



8

1 (II) Whether the member is des-
2 ignated as a special Government em-
3 ployee or a representative.

4 (III) In the case of a representa-
5 tive, the individuals or entity whose
6 view point the member represents.

7 (iv) A list of all special Government
8 employees who have received conflict of in-
9 terest waivers under section 208(b) of title
10 18, United States Code, under regulations
11 issued by the Office of Government Ethics,
12 a summary description of the conflict ne-
13 cessitating the waiver, and the reason for
14 granting the waiver.

15 (v) A summary of the process used by
16 the committee for making decisions.

17 (vi) Transcripts of all meetings of the
18 committee.

19 (vii) Notices of future meetings of the
20 committee.

21 (B) METHODS OF DISCLOSURE.—

22 (i)(I) Except as provided in subclause
23 (II), the information required to be dis-
24 closed by the Administration under this
25 paragraph shall be available electronically,



1 including on the official public Internet site
 2 of the Administration, at least 7 calendar
 3 days before each meeting of a scientific ad-
 4 visory committee that reports to the Ad-
 5 ministration.

6 (II) In the case of a transcript of a
 7 meeting of a scientific advisory committee
 8 that reports to the Administration, the
 9 transcript shall be disclosed by the Admin-
 10 istration under this paragraph not later
 11 than 7 calendar days after the meeting.

12 (ii) The Administrator of General
 13 Services shall provide, on the official public
 14 Internet site of the General Services Ad-
 15 ministration, electronic access to the infor-
 16 mation made available by each agency
 17 under clause (i).

18 (d) PEER REVIEW.—

19 (1) AGENCY-DIRECTED PEER REVIEW.—The
 20 Administration shall determine a peer review process
 21 appropriate for the Administration’s functions and
 22 needs.

23 (2) INEFFECTIVENESS OF INFORMATION QUAL-
 24 ITY BULLETIN FOR PEER REVIEW.—The Informa-
 25 tion Quality Bulletin for Peer Review, issued in final



1 form by the Office of Management and Budget on
2 December 16, 2004 (70 Fed. Reg. 2664; January
3 14, 2005), shall have no force or effect as of the
4 date of the enactment of this Act with respect to the
5 Administration, and shall not apply to information
6 disseminated by the Administration to the public be-
7 fore, on, or after such date.

8 (e) DEFINITIONS.—In this section:

9 (1) ADVISORY COMMITTEE.—The term “advi-
10 sory committee” has the meaning provided in section
11 3(2) of the Federal Advisory Committee Act (5
12 U.S.C. App.).

13 (2) ADVISORY COMMITTEE MANAGEMENT OFFI-
14 CER.— The term “Advisory Committee Management
15 Officer” means the officer designated under section
16 8(b) of the Federal Advisory Committee Act (5
17 U.S.C. App.).

18 (4) CENSORSHIP.—The term “censorship”
19 means improper prevention of the dissemination of
20 valid and nonclassified scientific findings.

21 (5) DESIGNATED ETHICS OFFICIAL OF THE AD-
22 MINISTRATION.—The term “designated ethics offi-
23 cial of the Administration” means the designated
24 agency ethics official (within the meaning of section



1 109(3) of the Ethics in Government Act of 1978 (5
2 U.S.C. App.) of the Administration.

3 (6) SCIENTIFIC.—The term “scientific” means
4 relating to the natural, medical, or social sciences or
5 engineering, encompassing, but not limited to, the
6 fields considered related to science and engineering
7 by the National Science Foundation.

8 (7) SCIENTIFIC ADVISORY COMMITTEE THAT
9 REPORTS TO THE ADMINISTRATION.—The term “sci-
10 entific advisory committee that reports to the Ad-
11 ministration” means any advisory committee estab-
12 lished in whole or in part to provide expert scientific
13 advice, or to provide policy advice based in whole or
14 in part on an assessment of scientific information, to
15 the Administration.

16 (8) SPECIAL GOVERNMENT EMPLOYEE.—The
17 term “special Government employee” has the same
18 meaning as in section 202(a) of title 18, United
19 States Code.

20 (9) TAMPERING.—The term “tampering”
21 means improperly altering or obstructing so as to
22 substantially distort, or directing others to do so.



AMENDMENT TO H.R. 5450
OFFERED BY MS. JACKSON-LEE OF TEXAS

Page 13, after line 20, insert the following new paragraph (and redesignate the following paragraphs accordingly):

- 1 (4) providing information to Federal agencies
- 2 and other organizations responsible for emergency
- 3 preparedness and response as required by law;



AMENDMENT TO H.R. 5450
OFFERED BY MR. COSTELLO OF ILLINOIS

In section 9, add at the end the following new sub-
section:

1 (c) DIRECT TRANSMITTAL OF REPORTS.—All reports
2 the Administration is required to transmit to the Congress
3 shall be transmitted directly by the Administration, with-
4 out prior review by the President or any other Federal
5 agency or official.

