

**The U.S. Commission on Ocean Policy: An  
Historical Overview (1997–2005)**

Marc J. Hershman\*

*Professor of Marine Affairs and Adjunct Professor of Law, University  
of Washington, Seattle, Washington, U.S.A.*

John R. Hansen\*

*Master's Candidate, School of Marine Affairs, University of  
Washington, Seattle, Washington, U.S.A.*

**INTRODUCTION**

On September 20, 2004, the U.S. Commission on Ocean Policy (hereinafter “Commission”) officially delivered its final report to the President of the United States and to major officials of the Bush administration.<sup>1</sup> The hour-long presentation occurred in the Roosevelt Room of the White House, and was witnessed by about 20 members of the administration, including cabinet secretaries and White House and agency officials. Later that day the Commission delivered its report to Senators Ernest Hollings and Ted Stevens, the leading proponents for ocean policy reform in the U.S. Senate.

\* Professor Hershman was a member of the U.S. Commission on Ocean Policy during its existence from July 2001 until December, 2004. Mr. Hansen was primarily responsible for the legislative history in Part I and the review of policy responses to the Commission’s report in Part IV.

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1. U.S. Commission on Ocean Policy. *An Ocean Blueprint for the 21st Century*. Final Report. Washington, DC, 2004 [hereinafter Commission Report] Available online: <[http://www.oceancommission.gov/documents/full\\_color\\_rpt/000\\_ocean\\_full\\_report.pdf](http://www.oceancommission.gov/documents/full_color_rpt/000_ocean_full_report.pdf)>.

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These actions culminated a three-year comprehensive study into virtually all aspects of U.S. ocean policy. In the view of Commissioners, commission staff and advisors, and all the people who participated in and followed the Commission's work, this was a very important moment. Thirty-five years had passed since the Stratton Commission issued its influential report in 1969<sup>2</sup> and now the U.S. had a new "blueprint" for its ocean affairs for the next decades.<sup>3</sup>

The purpose of this article is to begin to describe the history of the Commission's work. The assumption is that the Commission's report will influence measurably how the U.S. approaches its ocean and coastal resources, and for this reason it is important to document the Commission and its work. The Commission went out of business officially on December 19, 2004, and the work of implementation passed to others. Part IV of this article shows how federal and state actions have already begun in response to the recommendations of the report.

There are many dimensions to this story—historical, legislative, and political. Prior to the initiation of the Commission's work there was a considerable literature outlining ocean and coastal problems and suggesting approaches to an overhaul of U.S. ocean policy.<sup>4</sup> Over the years there will be lots of commentary in reaction to the Commission report. Debates will ensue over the value of some policy recommendations, over the process followed by the Commission, over the pace and direction of implementation efforts, and over the ultimate question of the state of the ocean and coastal environment and the pace of improvement and/or the rate of decline. An important question will be whether the Commission's work made a difference in the development of U.S. ocean policy.

This article presents an initial first step in the analytical process of determining the Commission's efficacy. What actually happened? The focus is on the Commission itself—how it came about, what work it did, and the results of its labors in the year after the report was initially released.

2. U.S. Commission on Marine Science, Engineering and Resources, *Our Nation and the Sea*, Washington, D.C.: U.S. Government Printing Office, 1969. This Commission is almost always referred to as the "Stratton Commission" after its chairman, Julius Stratton.

3. The PEW Ocean Commission operated approximately during the same timeframe as the U.S. Ocean Commission, and issued its report in April 2003. Pew Ocean Commission, *America's Living Oceans: Charting a Course for Sea Change*. Available online: <<http://www.pewtrusts.org/>>. The two reports are very similar, although the scope of the PEW report is somewhat narrower than the U.S. Commission. This article does not address the PEW report.

4. See B. Cicin-Sain and R. W. Knecht, *The Future of U.S. Ocean Policy* (Washington, D.C.: Island Press, 2000), for a recent review of major natural resource and environmental policy issues affecting oceans and coasts of the U.S., including a valuable reference list.

Attention is given primarily to the official documented record that is widely available and would be of use to future researchers.

What is not done in this article, but which we hope will interest writers in the future, are the detailed stories of certain discrete issues and the individuals and interest groups behind them. For example, the Commission operated at a time when fisheries management issues were hotly debated in the U.S. and around the world. How did the Commission contribute to the understanding and resolution of that issue? Another set of concerns dealt with the future of oceanographic science and its infrastructural, technological and data management needs. Did the Commission's work make a difference? And the problems of global climate change that are inextricably linked to the sea were often raised in testimony before the Commission. To what extent did the Commission try to foresee longer-term problems and prepare society for addressing them?

Another set of stories are needed that address the human dimension of the Commission's work. How did 16 diverse members come together on such a broad set of issues? What were the compromises that had to be reached? How did the Commissioners interact with their staff, science advisors, Congressional and administration leaders? In due course "memoirs" of the years on the Commission ought to be produced by members and those who watched the Commission closely.

Finally, it must be pointed out that the first author of this article was a member of the Commission. The article therefore presents a positive and hopeful perspective. The experience of serving on the Commission was exciting and educational. The Commission heard about the progress that was being made by individuals and groups at all levels of society, the problems that persisted and the damage that resulted, and the many suggestions for improvement that were made. There was a sense that issues could be addressed and problems resolved; that positive opportunities awaited people through better understanding, protection and use of the sea.

The article is organized in four parts. Part I outlines the legislative history of the Oceans Act of 2000 that set up the U.S. Ocean Commission. For almost four years a Commission bill was debated in the Congress. A variety of issues had to be resolved before the bill became law. Interestingly, with the benefit of hindsight, the compromises reached on most of these issues strengthened the Commission and improved its ability to function. Part II deals with that short period of time between the effective date of the law and the first meeting of the Commission. It was at this time that Commissioners were selected, a chair elected, operating procedures established, and an important tone of cooperation and collegiality set for the duration of the Commission's work. Part III deals with an overview of the Commission's output—the Final Report and the supporting materials. Fortunately, there is an excellent record of the Commission's activities and

products that is readily available. This section provides some broad themes advanced by the Commission and a brief review of the “regional ocean governance” recommendation as an illustration of one important issue addressed by the Commission. Part IV addresses the initial reaction of policy-makers in the Executive Office of the President, Congress and the States to the Commission’s work. Although the outcome of this initial flurry of enthusiasm cannot be predicted, one important conclusion is that the Commission was noticed!<sup>5</sup>

### **PART I—LEGISLATIVE HISTORY (1997–2000)**

The Oceans Act of 2000 was signed into law by President Bill Clinton on August 7, 2000, officially establishing the U.S. Commission on Ocean Policy. On the 20th of January, 2001, the law became effective and the process began to conduct the first comprehensive federal review of the ocean and coastal activities and policies of the United States in over thirty years. While the Oceans Act became law in the summer of 2000, the legislative activities that led to the creation of the U.S. Commission on Ocean Policy had begun almost three years earlier. Senator Fritz Hollings of South Carolina formally initiated these activities in September 1997, with the introduction of the Oceans Act of 1997. Over the next four sessions of Congress, six additional versions of the Oceans Act were introduced in both the House of Representatives and the Senate.

The following section will provide a summary and discussion of the legislative history of the Oceans Act during the 105th and 106th U.S. Congresses. First, we provide a description of the seven Oceans Acts introduced during this period. A comparison of the bills will highlight some of the changes to the language of the legislation over time. Second, we present a more thorough discussion of the central issues that arose during the progression of the Oceans Act, drawing attention to some of the concerns that supplied a great deal of debate and exchange between all parties involved. While the discussion of these topics is not meant to be comprehensive, it will provide insight into those issues and disputes that were the most passionately debated in Congress, and how these disagreements were resolved in order to allow the Oceans Act to become law.

5. As measured by media attention alone, the Commission captured considerable attention—especially when the Preliminary report was issued for comment in April 2004. Consultants to the Commission reported approximately 1000 “media hits” (print and electronic) when the Preliminary Report was announced.

### History of Oceans Act Legislation

The first Oceans Act, introduced by Senator Hollings, was modeled after the Marine Resources and Engineering Development Act of 1966.<sup>6</sup> One part of this early piece of legislation formed the Stratton Commission, which provided the most recent comprehensive federal review of ocean policy in the United States. The Act created a 15-member Commission on Marine Science, Engineering, and Resources appointed by the President, as well as National Marine Council to aid the Commission's work and oversee all related federal activities. The Commission was charged with the task of a comprehensive investigation of marine science in the United States, concluding with the submission of a report of their findings within 18 months.<sup>7</sup> The Act called for the Commission and Council to be terminated shortly after the submission of the Commission's final report. It also required the President to respond by providing an annual report to Congress, including an evaluation of United States marine science activities and recommendations on ocean-related legislation.

The Oceans Act of 1997<sup>8</sup> used many of the same legislative components of the 1966 Act, including the creation of a 15-member commission and a National Ocean Council. However, rather than a commission focusing on Marine Science, Engineering and Resources, the Oceans Act of 1997 called for a Commission on Ocean *Policy*, with the charge of creating a national ocean and coastal policy for the United States. The language of the Act expanded the Commission's focus beyond marine science, showing the need for comprehensive study of all aspects of ocean and coastal activities.<sup>9</sup>

A day after the Oceans Act was introduced in the Senate by Senator Hollings, another version of it was also introduced into the House of Representatives.<sup>10</sup> Sponsored by Congressman Sam Farr of California, this version of the Oceans Act was similar to Senator Hollings in many ways, with some distinguishing characteristics. Congressman Farr's version did not create a National Ocean Council, but did create a Commission on Ocean Policy. However, Congressman Farr's version had no termination of the Commission, but rather called for the Commission to continue indefinitely while reporting to the President at least once every five years. Despite some

6. Marine Resources and Engineering Development Act, Pub. L. No. 89-454, 33 U.S.C. §§ 1101-1108 (1966).

7. See Stratton Commission, n. 2 above.

8. S. 1213, 105th Cong. (1997).

9. This reflected the earlier work of the Stratton Commission, which had examined all aspects of U.S. ocean policy despite their legislatively stated focus on scientific endeavors (Marine Resources and Engineering Development Act of 1966, § 5(b)).

10. H.R. 2547, 105th Cong. (1997).

other minor differences, the two versions of the Oceans Act of 1997 were somewhat similar in their central goal of federal ocean policy review.

The final version of the Oceans Act introduced during the 105th Congress was the Oceans Act of 1998,<sup>11</sup> sponsored by Congressman Jim Saxton of New Jersey. Similar to the earlier House version, this Oceans Act legislation created a Commission on Ocean Policy while omitting the creation of a National Ocean Council. This bill called for a commission report within 18 months followed by the termination of the commission within 30 days, the same as Senator Hollings' bill.

These three bills, from Senator Hollings and Congressmen Farr and Saxton, were considered at a hearing before the House Subcommittee on Fisheries Conservation, Wildlife and Oceans, on March 19, 1998. Senator Hollings' original Oceans Act bill had passed the Senate in the previous year,<sup>12</sup> and was being considered by the House Committee on Resources along with the two House versions that had been introduced. Statements were given by Committee members, Federal Agency members, and representatives of non-governmental organizations. After this hearing, Congressman Farr's bill had no further action, and Senator Hollings' bill had one additional hearing before the House Subcommittee on Water Resources and Environment followed by no further House action. Meanwhile, Congressman Saxton's bill was passed by the House of Representatives in September of 1998. However, once received in the Senate, the Saxton Oceans Act had no further action taken upon it. While none of these bills were passed out of Congress, this early legislation provided the foundation in both the Senate and House for the forthcoming Oceans Act that would eventually become law during the 106th Congress.

Senator Hollings initiated Oceans Act legislation during the 106th Congress with his introduction of the Oceans Act of 1999.<sup>13</sup> This version was a reintroduction of the Oceans Act of 1997 that had passed the Senate two years earlier. However, unlike its earlier version, this Oceans Act received no action in the Senate and was later succeeded by a revamped Oceans Act from Senator Hollings that would eventually be signed into law. However, before this would happen, Congressmen Farr and Saxton would again introduce their own versions of the Oceans Act in the House of Representatives, the Oceans Acts of 1999<sup>14</sup> and 2000,<sup>15</sup> respectively. While all three of these bills were similar to their predecessors from the 105th Congress, none of them received very much on-the-record action during the 106th

11. H.R. 3445, 105th Cong. (1998).

12. S. 1213 was passed by the Senate on November 13, 1997.

13. S. 959, 106th Cong. (1999).

14. H.R. 2425, 106th Cong. (1999).

15. H.R. 4410, 106th Cong. (2000).

Congress. Rather, many features of these bills were combined to create what would be the final Oceans Act, Senator Hollings' Oceans Act of 2000.<sup>16</sup> Before introduction of the final version of the Oceans Act, the Senate and House had pre-conferencing<sup>17</sup> meetings to ensure that the views and concerns of both houses of Congress were attended to in this final piece of legislation. This resulted in a bill with a combination of language originating from the earlier Oceans Acts of Senator Hollings, Congressman Saxton, and to a lesser extent Congressman Farr. This conglomeration ultimately resulted in the bill passing Congress and being sent to the President within four months of introduction. The specifics of this process and the changes that occurred will be discussed in detail in the next section.

The final Oceans Act created a U.S. Commission on Ocean Policy with sixteen members all appointed by the President, twelve of which came from lists provided by Congressional leadership, resulting in a Commission with high geographical and institutional diversity. There was no creation of a National Ocean Council, but a Science Advisory Panel was instituted to aid the Commission in their subsequent work. Appropriated with \$9,500,000<sup>18</sup> over three years, the Commission was required to report by June 20th, 2003<sup>19</sup> with findings and recommendations relating to the ocean and coastal policies of the United States. The Commission was to be terminated within 90 days of submission of their final report.<sup>20</sup> Following the submission of the final report, the Act called upon the President to respond to the Commission's findings within 90 days.<sup>21</sup> The Act called for the President to respond by submitting to Congress a statement of proposals to implement or respond to the Commission's recommendations. Further, the President was required to provide a biennial report to Congress summarizing all

16. S. 2327, 106th Cong. (2000).

17. Pre-conferencing refers to the attempt by the staffs of relevant committees in both the House and Senate to agree on the terms of a bill before it is introduced in Congress, so that it may be passed more quickly following introduction without further need for conferencing between the House and Senate versions.

18. Amended by Pub. L. 107-372 (2002); original language appropriated \$6,000,000 over three years. \$9,500,000 refers to \$8,500,000 in amendment and initial \$1,000,000 from NOAA appropriations. See n. 90 below.

19. Amended by Pub. L. 107-206 (2002); original language called for a Final Report within 18 months. The Commission submitted their final report on September 20th, 2004, delayed due to the extensive time needed to complete their findings and formulate comprehensive recommendations.

20. Amended by Pub. L. 107-372 (2002); original language terminated the Commission within 30 days.

21. Amended by Pub. L. 107-372 (2002); original language allowed 120 days for Presidential response to the Commission's findings.

federal programs related to the oceans and coasts. On August 7, 2000, President Bill Clinton signed the Oceans Act 2000 into law.<sup>22</sup>

### **Important Issues in Oceans Act Legislation**

While the preceding was a summary of the legislative history of the Oceans Act, the following will highlight five issues that were central to the changes made to the Oceans Act during the 105th and 106th Congress. The five issues to be discussed are the process for appointing Commissioners to the U.S. Commission on Ocean Policy, the proposal to establish a National Ocean Council, the decision not to exclude geographic areas to be considered by the Commission, the creation of a Science Advisory Panel for the Commission, and finally the domestic focus of the Commission's work.<sup>23</sup>

#### ***Procedure for Appointing Commission Members***

Early drafts of Senator Hollings' Oceans Act called for a U.S. Commission on Ocean Policy that would have been created in an almost identical manner to that of the Stratton Commission, with fifteen members appointed by the President, coming from federal and State government and other ocean-related institutions. However, a federal commission appointed entirely by the President was not as politically feasible as it had been three decades earlier. Senator Olympia Snowe of Maine, a co-sponsor of Hollings' original Oceans Act, was concerned by Hollings' draft versions of the legislation that created a commission coming only from the President without any input from Congress.<sup>24</sup> As a result, Senator Hollings' bill,<sup>25</sup> as introduced, created a 15-member commission, but only seven of the fifteen members came directly from the President. The final eight members came from the Congressional leadership, with two members each being appointed directly by the Senate majority and minority leaders, and the Speaker of the House and House minority leader.

22. Pub. L. No. 106-256.

23. While these particular five issues were selected by the authors for discussion, numerous other issues were involved to a lesser extent with the passage of the Oceans Act. These include the proposal to exclude military activities, the President's role in initiating ocean and coastal legislation, a Congressional advisory committee for the Commission, and representation of industry on the Commission, among others.

24. 143 Cong. Rec. S 9893, Vol. 143, No. 129 (September 24, 1997) (statement of Sen. Snowe).

25. S. 1213, 105th Cong. (1997).

This process for establishing the Commission was amended once Hollings' bill was considered by the Senate Committee on Commerce, Science, and Transportation. Senator Kay Bailey Hutchinson of Texas expressed concern over the balance of Democrat and Republican nominees on the Commission, and wanted to ensure that one party's nominees alone could not control the Commission, especially with the possibility of a Democratic President in the White House.<sup>26</sup> In response, Senator John McCain of Arizona offered an amendment for Hollings' bill. The amendment increased the size of the Commission to sixteen members and required the President to select twelve of the sixteen members from lists provided by Congressional leadership.<sup>27</sup> Four members were to come from lists of eight provided by the Senate majority leader and the Speaker of the House, while two members were to come from lists provided by the minority leaders of the Senate and the House. The final four members were appointed by the President without Congressional input. Thus, the resulting legislative language that was later passed by the Senate created a commission with all members being appointed by the President, but with the majority of commissioners coming from Congressional nominees. Similarly, another provision of the bill that was changed in the 106th Congress after pre-conferencing activities addressed the issue of geographic balance of commissioners.<sup>28</sup> A commission coming from Congressional nominees, combined with a requirement for geographic balance, led to a bill that created a commission with members from all regions of the country, with strong ties to Congressional leaders on ocean issues. Conversely, Congressman Farr's Oceans Act of 1997 called for a 15-member commission appointed entirely by the President without Congressional participation, as discussed in draft versions of Hollings bill. This fact might have contributed to Farr's Oceans Act being the only version that was not passed by the House or the Senate during the 105th Congress. As a result, the method for appointing the Commission as amended by Senator McCain in 1997 was adopted in later versions of the Oceans Act, including Hollings' Oceans Act of 2000,<sup>29</sup> which became law and officially established the U.S. Commission on Ocean Policy.

### ***Proposal to Establish a National Ocean Council***

While the Stratton Commission was the most visible outcome of the Marine Resources and Engineering Development Act of 1966, another important

26. Margaret Spring, Senate Committee on Commerce, Science, and Transportation, in Seattle, Wash., pers. comm. (Mar. 11, 2005).

27. S. Rep. No. 105-151 (1997).

28. S. 2327 § 3(a)(1), 106th Cong. (2000).

29. S. 2327, 106th Cong., Pub. L. No. 106-256 (2000).

federal group that was formed by the Act was the National Council on Marine Resources and Engineering Development. The Council, formed in the Executive office of the President, was chaired by the Vice President and was composed of eight additional members who came from the President's cabinet and other federal agencies. This council was charged with overseeing federal marine science activities, the creation of a comprehensive national marine science plan, and providing recommendations for resolving differences between all federal departments and agencies as related to marine science.<sup>30</sup>

In the tradition of following the earlier Stratton Commission legislation, Senator Hollings' original Oceans Act of 1997<sup>31</sup> called for the creation of a similar National Ocean Council, with twelve members coming from the President's cabinet and numerous federal agencies. While the idea of an independent policy commission was agreed upon between all those in support of an Oceans Act, the prospect of creating a National Ocean Council had a cooler reception. There was a high degree of worry throughout many federal agencies as to how a cabinet-level Ocean Council could affect their activities.<sup>32</sup> There was also concern among fellow Senators about the role of a Council as created concurrently with an Ocean Policy Commission. Within two months of Hollings' introduction of the Oceans Act of 1997, an amendment was offered to respond to these concerns.<sup>33</sup> Senator Lincoln Chafee of Rhode Island provided insight into his apprehension with the original version of the bill with a floor statement regarding the need for an amendment: "[T]he creation of a National Ocean Council raised two concerns. First, how would the National Ocean Council affect the execution of existing environmental laws? Second, is it timely now to create a permanent Council prior to the report of the independent National Ocean Commission created in the bill?"<sup>34</sup> The amendment responded to these fears by adding language that the Council's primary function would be to aid the National Ocean Commission, and requiring the Council to take the Commission's final report into consideration when forming a national ocean policy. Further, a clause was added to the amendment terminating the Council within one year of submission of the Commission's final report.

Despite these changes to the legislation, the idea of a National Ocean Council never achieved the same level of acceptance as that of an independent commission. While a commission would form recommendations after extensive study and then go out of business, a National Council

30. Marine Resources and Engineering Development Act of 1966, § 4.

31. S. 1213 § 5, 105th Cong. (1997).

32. Margaret Spring, pers. comm. (n. 26 above).

33. Amendment No. 1639, 105th Cong. (1997).

34. 143 Cong. Rec. S 12700, Vol. 143, No. 160, Part II (Nov. 13, 1997) (statement of Sen. Chafee).

instantly created an additional level of bureaucracy that was unpopular among many members of Congress and the Executive branch. Senator Hollings' statement in regard to the previously discussed amendment sheds some light on why many were worried about such a council, "[I]f, based on experience and the Commission recommendations, the Council proves to be an effective long term mechanism for coordinating federal ocean activities, it could be extended either administratively or legislatively."<sup>35</sup> The formation of a national ocean council that could possibly be continued indefinitely proved unacceptable to many members of Congress. Congressman Saxton did not include such a council in his Oceans Act legislation<sup>36</sup> that was passed by the House during the 105th Congress, and while Congressman Farr did so during the 106th Congress,<sup>37</sup> that bill received no action. Senator Hollings kept language for creating a Council in his first Oceans Act bill<sup>38</sup> introduced during the 106th Congress, as it was a reintroduction of the amended Oceans Act of 1997.<sup>39</sup> However, this bill received no action during this session of Congress. Instead, after pre-conferencing activities with the House regarding Hollings' later Oceans Act of 2000,<sup>40</sup> the language creating a National Ocean Council was removed altogether, and the bill passed both houses of Congress within four months.

#### *Proposals to Exclude Geographic Areas from Commission Consideration*

The Stratton Commission, when formed, was given the freedom to study all areas of the marine environment under United States' jurisdiction. These included public and private coastal waters, offshore areas out to a depth of 200 meters, and all States' shorelands and inland waters.<sup>41</sup> The Stratton Commission was free to formulate recommendations that would apply to all lands and waters in these areas. The political atmosphere in Congress between 1997 and 2000 did not automatically allow for the same level of freedom. Instead, the divergent political agendas of the Senate and House of Representatives led to much discussion over the effect the Commission would have on private property, the inclusion of inland waters and estuaries in the Commission's recommendations, and the role coastal States would play with a federal commission.

35. *Id.* at S 12701 (statement of Sen. Hollings).

36. Oceans Act of 1998, H.R. 3445, 105th Cong. (1998).

37. Oceans Act of 1999, H.R. 2425, 106th Cong. (1999).

38. Oceans Act of 1999, S. 959, 106th Cong. (1999).

39. S. 1213, 105th Cong. (1997).

40. S. 2327, 106th Cong. (2000).

41. Marine Resources and Engineering Development Act of 1966, § 8.

Senator Hollings, using the Stratton Commission as his model, did not include any language restricting the findings and recommendations of the ocean commission created by his first Oceans Act.<sup>42</sup> Nowhere in the bill was there any reference to exclusion of States, language regarding private property, or the restriction on studying inshore waters and estuaries. In contrast, the Oceans Act of 1998<sup>43</sup> introduced in the House of Representatives had language expressly addressing all of these. Many of these provisions of the House bill reflect amendments offered in subcommittee and committee markup sessions. These include a section requiring the Commission's final report to consider effects on private property and requiring that no recommendations have a negative impact on coastal economies.<sup>44</sup> A second section eliminated specific recommendations for selected States, saying none shall be aimed at Alaska or Idaho.<sup>45</sup> Finally, the bill also required that the views of all Governors of coastal States shall be reflected in the final Commission report.<sup>46</sup> These amendments, while offered by Congressman Saxton,<sup>47</sup> reflect the overall conservative makeup of the House Resources Committee. While this language was quite restrictive when compared to Hollings' original Oceans Act, it did not include further restrictions that had been proposed by other members of the House. Congressman Billy Tauzin of Louisiana, a state with extensive estuarine acreage, had proposed removing all estuarine zones, the regions where inland rivers approach and meet marine waters, from the areas to be studied by the Commission.<sup>48</sup> This amendment would have forced the Commission to only study offshore waters, effectively eliminating the majority of coastal zones and greatly reducing any effects of the Commission's recommendations on States. This amendment failed by a vote of 24 to 12.<sup>49</sup>

This contrast between the expansive nature of Hollings' Senate Oceans Act and Saxton's more restrictive House Oceans Act were reflections of the political views of a leading Democratic Senator and a majority Republican House of Representatives. While the Senate was anxious to follow the lead of Senator Hollings and form a commission free to study all areas of the marine environment, the House was wary of a federal commission infringing on private property rights and States' autonomy. As a result, a compromise was reached during the 106th Congress in order to allow the

42. Oceans Act of 1997, S. 1213, 105th Cong. (1997).

43. H.R. 3445, 105th Cong. (1998).

44. *Id.* at § 4(b)(5).

45. *Id.* at § 4(b)(6).

46. *Id.* at § 4(b)(4).

47. H.R. Rep. No. 105-718 (1998).

48. *Id.* at 15.

49. *Id.*

bill to pass. Hollings' first Oceans Act of the 106th Congress<sup>50</sup> did not reflect any of the concerns over private property and States' rights, but his final version implemented much of the language coming from the House during the 105th Congress, most likely a direct result of pre-conferencing activities. The Oceans Act of 2000<sup>51</sup> added a section stating that the Commission's final report shall not be specific to any one State,<sup>52</sup> and another section stating that the Commission shall give equal consideration to environmental, technical, scientific and economic factors.<sup>53</sup> The bill also included requirements for all Governors of coastal States to receive a draft version of the Commission report, and for their views regarding any Commission recommendations to be considered by the Commission and published in the final report.<sup>54</sup>

#### *Use of a Science Advisory Panel*

One area of concern within Congress surrounded the scientific data that an ocean commission would use, and how selective use of information might lead to the Commission reaching biased conclusions. In the scientific community, a widely-accepted method of ensuring that information is unbiased and is the best available is to have it peer reviewed, meaning other experts in the field evaluate the information or study it for any flaws. While not addressed in early Oceans Act legislation, concerns about this issue eventually led to the Commission having its own scientific advisory panel when the Oceans Act of 2000 became law.

The Oceans Act of 1997,<sup>55</sup> as introduced by both Senator Hollings and Congressman Farr, had no mention of scientific peer review or a scientific advisory group. Congressman Saxton addressed this concern in the language of his Oceans Act bill<sup>56</sup> during the 105th Congress. In July of 1998, Congressman Saxton introduced an amendment in full committee to his bill that included language requiring all data used by the Commission to be peer reviewed.<sup>57</sup> This was the first sign that review of the scientific information used by the ocean policy commission was a crucial aspect of any Oceans Act that would be enacted.

50. Oceans Act of 1999, S. 959, 106th Cong. (1999).

51. S. 2327, 106th Cong. (2000).

52. *Id.* at § 3(f)(4).

53. *Id.* at § 3(f)(3).

54. *Id.* at §§ 3(g)(1-2).

55. S. 1213, H.R. 2547, 105th Cong. (1997).

56. Oceans Act of 1998, H.R. 3445, 105th Cong. (1998).

57. H.R. Rep. No. 105-718 (1998).

When Hollings first reintroduced his Oceans Act legislation into the 106th Congress,<sup>58</sup> there was still no mention of a requirement for peer review or any other type of oversight of the data that the ocean commission would use in its work. Even in the initial version of the Oceans Act of 2000 introduced into the Senate,<sup>59</sup> any provision requiring peer review was lacking. However, concern was expressed in Congress over the absence of such a requirement.<sup>60</sup> As a result, this facet of the legislation was changed dramatically. Instead of including a simple requirement for peer reviewed data, as with Congressman Saxton's earlier legislation, Hollings' final version of the Oceans Act of 2000<sup>61</sup> added a science advisory panel for the Commission. Included in the section covering resources for the Commission on Ocean Policy, the bill called for the establishment of a multidisciplinary science advisory panel, formed through consultation with the Ocean Studies Board of the National Research Council of the National Academy of Sciences. The advisory board was required to assist the Commission in preparing its report, and ensuring that the scientific information considered by the Commission was based on the best scientific information available.<sup>62</sup>

#### *Role of International Affairs in United States Ocean Policy*

A persistent issue with the language of the numerous Oceans Acts during this period was the role of international policy in a review of U.S. ocean policy. While the ocean commission would be constructed by the federal government and made up of U.S. citizens, the international nature of the oceans and the extensive role of the U.S. in use of the seas suggested to some that international policy concerns should not be overlooked. As a result, some lawmakers included language stressing this belief in their versions of the Oceans Act. However, many of these direct legislative references to international policy were removed in the final version of the Oceans Act of 2000,<sup>63</sup> leading some to believe that the U.S. Commission on Ocean Policy was compelled to have a strongly domestic focus.

Senator Hollings' Oceans Act of 1997<sup>64</sup> had multiple references to international law and policy when describing the findings and recommendations the Commission was to produce. In this version of his bill, Senator

58. Oceans Act of 1999, S. 959, 106th Cong. (1999).

59. S. 2327, 106th Cong. (2000).

60. Pers. comm., Margaret Spring, n. 26 above. The Senate Energy Committee put a hold on the bill until this issue was resolved.

61. S. 2327, 106th Cong. (2000).

62. *Id.* at § 3(c)(3).

63. S. 2327, 106th Cong. (2000).

64. S. 1213, 105th Cong. (1997).

Hollings made specific reference to the United States' National Ocean Policy being "consistent with the obligations of the United States under international law."<sup>65</sup> Later in the same section, the language of the Act instructs the Commission "to consider the relationship of the ocean and coastal policy of the United States to the United Nations Convention on the Law of the Sea and other international agreements."<sup>66</sup> Finally, the bill lists as one of its objectives the preservation of the role of the United States as a leader in ocean and coastal activities, and cooperation with international bodies when it is in the best interest of the country.<sup>67</sup> Further evidence for Congressional concern over the importance of international ocean policy comes from the House of Representatives, in floor statements regarding Congressman Saxton's Oceans Act of 1998.<sup>68</sup> In September of 1998, Congressman Robert Underwood of Guam stated his support for international policy having a strong role in a U.S. ocean commission by calling for the ratification of the UN Convention on the Law of the Sea:

This international arrangement, and collaboration with other developed nations that this treaty represents, goes hand in hand with the national policy we are seeking to create. It is possible to have one without the other, but to only develop a national policy and not address the need for international cooperation in our new global village is not quite responsible.<sup>69</sup>

References to international policy and the UN Convention on the Law of the Sea were also included in Congressman Farr's Oceans Act of 1997, found in the same section that discussed the report the ocean commission was to produce. This language was also included in Senator Hollings' Oceans Act of 1999,<sup>70</sup> introduced in the 106th Congress, with identical references to the United States' obligations under international law and the UN Convention on the Law of the Sea. However, the Oceans Act of 2000<sup>71</sup> that became law was noticeably lacking in these references. Despite the inclusion of explicit references to international law and agreements in earlier legislation, the Oceans Act of 2000 had no mention of international laws, agreements, or the UN Convention on the Law of the Sea when discussing the required matter of the commission on ocean policy's final

65. *Id.* at § 6(b)(1).

66. *Id.* at § 6(b)(8).

67. *Id.* at § 2(b)(9).

68. H.R. 3445, 105th Cong. (1998).

69. 144 Cong. Rec. H 7757, Vol. 144, No. 122 (September 15, 1998) (statement of Rep. Underwood).

70. S. 959, 106th Cong. (1999).

71. S. 2327, 106th Cong. (2000).

report.<sup>72</sup> Instead, only the objective of preserving the United States' role as a leader in ocean and coastal activities and international cooperation when in the national interest remained in the final bill. Interestingly, this simple clause took on a large role in the Commission's work when dealing with international issues. The Commission devoted a full chapter of its final report to international affairs,<sup>73</sup> and made numerous references to U.S. international obligations and programs in other chapters of the report.

### **Conclusion**

The history of the Oceans Act of 2000 can be traced back to 1966, with the passage of the Marine Resources and Engineering Development Act and the formation of the Stratton Commission. While the legislation that created the Stratton Commission was revived for modern times, the political atmosphere of the 1960s differed greatly from that of the late 1990s and the 105th and 106th Congresses. The Oceans Act legislation of Senator Fritz Hollings reflected the political principles of Democrats in the Senate, who were ready for a comprehensive review of U.S. ocean policy with few restrictions. However, the legislation emerging from the House, introduced by Congressmen Sam Farr and Jim Saxton reflected the more conservative Republican makeup of the House of Representatives. While these two representatives were not directly responsible for the conservative nature of their bills, their legislation reveals a House that was more apprehensive about the effects of a federal commission without any constraints. Thus, the Oceans Act of 2000 that was passed by Congress reflected the views of both Democrats and Republicans.

The five issues discussed in this section led to a U.S. Commission on Ocean Policy that had some different characteristics than the Stratton Commission. To start, there was more Congressional involvement in the selection process, leading to a Commission with a diverse geographic base as well as diverse expertise. It also resulted in the appointment of Commissioners with closer political ties to elected officials in certain regions of the country. Secondly, the rejection of a National Ocean Council from the onset resulted in a connection to the Administration through the Council on Environmental Quality, an advisory body within the White House, rather than through line agencies. This led to greater independence for the Commission from the "path dependent" thinking of the bureaucracy that might have resulted from a Council.

72. *Id.* at § 3(f)(2).

73. Commission Report, Chapter 29, n. 1 above.

While geographic areas were not excluded in the final bill, the clauses requiring equal consideration of environmental, economic, scientific and technical factors, and the section allowing States to review a draft report, were valuable to the work of the Commission. The former clause was frequently cited during the Commission deliberations and kept the concept of a balanced policy on the agenda. The latter clause proved invaluable in improving the report and gaining allies at the State and local levels. The inclusion of a science advisory panel for the Commission was very helpful because it allowed the panel to be integrated into the Commission's work, proving far better than creating a potentially contentious separate peer review process. Finally, while international policy was somewhat downplayed in the final law, the inclusion of the objective to preserve the United States' role as a world leader in ocean and coastal activities created a "backdoor" for the Commission to consider aspects of international policy it deemed important. However, for reasons organic to the Commission process, such as Commissioner backgrounds and required hearings around the U.S. where domestic issues were given overwhelming prominence, the Commission gave much greater attention to domestic rather than international affairs.

## **PART II—INITIATING THE COMMISSION AND ITS WORK: JANUARY TO SEPTEMBER 2001**

### **Choosing the Commissioners**

The Oceans Act created a complicated process for choosing commissioners, some of which was discussed in Part I.<sup>74</sup> Specific roles were assigned to 13 political leaders to choose the 16 commissioners. This differed markedly from the Stratton Commission process that gave the job of choosing commissioners to the President. Despite this rather decentralized process, described below, the 16 were officially announced by the President on June 15, 2001,<sup>75</sup> after a process that got underway January 21, 2001, the effective date of the Act.

As discussed above, the Republican controlled House wanted to assure that the commissioners chosen represented a balance among nominees by the Republican and Democratic members of Congress. This resulted in a process that required the President to choose 12 of the 16 commissioners from four lists containing a total of 24 names submitted by the majority and minority leadership of the two houses of Congress (eight names on the

74. See n. 24–29 above.

75. News release, The White House, Release of June 15, 2001, available online: <<http://www.whitehouse.gov/news/releases/2001/06/20010615-14.html>>.

majority lists and four names on the minority lists). But the Act went further than this by requiring consultation with the majority and minority leadership of the primary subject matter committees concerned with ocean and coastal affairs. In the Senate the subject matter committee with jurisdiction was the Senate Committee on Commerce, State and the Judiciary. In the House three committees split jurisdiction over ocean issues: Resources, Science, and Transportation and Infrastructure. Thus, in addition to the Majority leader of the Senate, the Speaker of the House, and the minority leaders in each chamber, the respective chairs and ranking minority members of four substantive committees were part of the process. Thus, twelve members of Congress and the President had the duty to come up with the names of the Commissioners.

In this process it must be noted that the majority party had twice the number of names to nominate as the minority party, and ultimately the President got to choose the commissioners so long as they were nominated. In addition, he had four “picks” of his own. Because the Republicans controlled both houses of Congress and the Presidency in 2001, some commentators argued that the Commission was a “Bush commission,” and a “Republican commission,” and predicted certain policy results because of that.<sup>76</sup> Throughout the deliberation of the Commission the chairman and commissioners referred to the commission as “non-partisan,” even though the selection process involved political partisans. This characterization is the correct one. As the Chairman often said in his presentations, each commissioner had views and opinions on the issues, but they were based on their expertise and experience, not on a political agenda established from the outside.

A number of staffers for congressional committees and key interest groups that watched the process closely referred to the selection of commissioners as inherently a staff-driven, low-visibility, political process.<sup>77</sup> The Administration and the Congress was new and still getting organized. The issue was a tiny one compared to other issues facing the Congress and the Administration. The members were not deluged with nominees. Attempts to “beat the bushes” for names, and to seek high-level people from outside the ocean community (as was done in the case of the Stratton

76. This comment was most frequently heard from environmental interest organizations.

77. The observations on the Congressional selection processes are based on interviews with Margaret Spring, Senate Committee on Commerce, March 11, 2005; David Jansen, House Resources Committee (minority) March 9, 2005; Terry Schaff, Woods Hole Oceanographic Institution, March 15, 2005; Penny Dalton, Committee on Ocean Research and Education, March 2, 2005; Ellen Athas, formerly with CEQ, April 15, 2005; Margaret Davidson, Director NOAA/NOS Coastal Services Center, July 1, 2005.

Commission with Julius Stratton, a University and Foundation President) were not productive. Congressional leaders of substantive committees solicited their members for names, and attempts were made to construct a list that distributed among members (i.e., each interested member gets a name). Lists of preferred members submitted by key ocean-related organizations ultimately had little influence. Some industry groups had “favorites” that they advanced such as in the oil and gas and ports industries. However, in the words of one key staffer, the process was difficult to control and ultimately became political.

No attempt was made for this article to research the nomination strategy and selection process for each successful Commissioner. In many cases individuals with a special interest in serving may have sought to become a “favorite son” candidate. To illustrate the process in one case, here is the story of one commissioner, the first author of this article.

Since U.S. coastal zone management and ocean policy is my academic field of interest and expertise, I was well aware of the move to establish a Commission and decided in late 2000 and early 2001 to seek to become a member. I consulted with colleagues and started a little campaign. I asked Washington State fishery, shipping and port industry lobbyists, University lobbyists, and others to lobby the Washington State Congressional delegation to support my candidacy. They made calls and sent letters. I made direct contact with coast and ocean staffers in the Washington delegation. Both Washington State Senators signed letters of support. One House staffer did the hard work of getting a co-signed letter from all 9 House members (Republicans and Democrats) supporting me, and sending it on to the House Resources Committee, minority side, since 6 of the 9 members from Washington State are Democrats and two of the Democrats were on that committee. (Only one other person from Washington was seeking appointment.) With the co-signed letter in hand, a former student of mine who was the staffer for the minority on House Resources, argued my case to the staff of the ranking minority leader on House Resources, who then wrote a supportive letter to Congressman Gephardt, the Ranking Democrat in the House. This worked, and the next thing I knew I was on his list and my name was submitted as one of four coming from the minority side of the House of Representatives.<sup>78</sup>

78. Personal statement of Marc Hershman as relayed to Frank Muller-Karger, a fellow Commissioner in an e-mail message dated April 7, 2005.

The four Congressional lists were submitted to the White House Office of Personnel on March 3, 2001.<sup>79</sup> The process after this is harder to document. The White House staff was still being organized and the “cognizant agency” with which the Commission would coordinate was not yet clearly established, and the leadership of that office was not in place as yet. (By June 2001, the Council of Environmental Quality (CEQ) had assumed cognizant agency responsibility and Jim Connaughten became CEQ chairman.)

According to the Oceans Act, Commissioners should be:

... knowledgeable in ocean and coastal activities, including individuals representing State and local governments, ocean-related industries, academic and technical institutions, and public interest organizations involved with scientific, regulatory, economic, and environmental ocean and coastal activities. The membership of the Commission shall be balanced by area of expertise and balanced geographically to the extent consistent with maintaining the highest level of expertise on the Commission.<sup>80</sup>

Thus there were a variety of criteria spelled out in the Oceans Act, as well as considerations special to the administration as the basis for choice.<sup>81</sup> However, the Administration had four picks of its own and this added to the calculations since they could make up for “holes” in the coverage based on geography, areas of expertise, and other factors.<sup>82</sup>

As it turned out a big hole related to diversity—no women or minorities were on the lists submitted through the Congressional process. This is an interesting failing in this form of constructing a Commission. None of the four Congressional leaders had the responsibility of considering the makeup of the entire group—from their perspective that would be someone else’s responsibility. It fell to the Administration to seek some level of gender and ethnic diversity. To the Administration’s credit they ended up appointing two women with special expertise and a Hispanic person to the Commission. In the case of the Commissioner with Hispanic roots, the

79. Pers. Comm., from Arthur Nowell to Marc Hershman, dated March 7, 2001, forwarding information on submitted names from Scott Sparks of Consortium for Oceanographic Research and Education (CORE).

80. Pub. L. No. 106–256, § 3(b)(1).

81. A special assistant to the incoming Bush administration, John Howard, was overseeing CEQ while the Administration was being organized and represented the political perspective in making choices. His criteria for selection are not known. Interview with Ellen Athas, April 15, 2005.

82. CEQ convened an interagency panel to suggest names for the President’s four picks. Since this panel was aware of the names being considered by Congressional leaders, there was an attempt to use the four to balance the Congressional nominees. Margaret Davidson, pers. comm., July 1, 2005.

administration actively solicited for nominees through Hispanic networks and an oceanographer with special expertise in ocean observation applied and was selected.<sup>83</sup>

### **The 16 Commissioners**

As noted above, the names of the 16 Commissioners were announced by the White House on June 15, 2001,<sup>84</sup> and official appointments followed shortly thereafter. Table 1 presents summary information about the Commissioners. A brief biography of each Commissioner is posted on the Commission's web site.<sup>85</sup> As envisioned in the Oceans Act, the group came from different regions of the country—New England (2), mid-Atlantic (3), Great Lakes (1), Washington DC (1), Southeast (1), Gulf of Mexico (4), West coast (3) and Alaska (1). The diversity of expertise among Commissioners was also evident, including marine academic scientists and explorers, fisheries managers, marine transportation experts, marine educators, offshore oil and gas operators and analysts, environmental lawyers and policy experts, bankers, local government officials, and Naval officers (retired).

Most striking is the senior level policy and administrative leadership experience of so many of the Commissioners. The leadership experience included major assignments in the Navy, federal government agencies, State resource and port agencies, major corporations, industry associations, local governments, and academic departments, institutes and colleges. The majority of Commissioners have been in charge of large organizations in public and private life, with extensive experience at organizational management, budgeting, policy development, and organizational change. They were savvy at dealing with external constituents, with political forces, and with financial pressures. Most importantly, they understood how large organizations and government agencies operated.

83. Commissioner Frank Muller-Karger is of Puerto Rican, Venezuelan and German descent. In an e-mail message to the author dated April 7, 2005, Muller-Karger described the way in which he heard about the Commission opportunity through an e-mail message circulated within the Hispanic Community, and after replying was sent application forms and interviewed by telephone before being nominated by the President.

Congressional leaders also were concerned about diversity on the Commission when the list of names became public. There was a meeting in Spring 2001 to discuss the potential to amend the Oceans Act to require that minority, women, fisheries and environmental group categories be considered even if the number of commissioners increased. When counter-proposals came forward requiring that certain additional groups be represented, the process became unwieldy and the attempt to amend the law was dropped. See n. 26 above.

84. White House Press Release of June 15, 2001. See n. 75 above.

85. Available online: <<http://www.oceancommission.gov/commission/commissionbios.html#top>>.

**Table 1.—U.S. Ocean Commissioners**

Name	Geographic Region	Commission Working Group	Expertise	Experience
Admiral James. D. Watkins, U.S.N. (Ret.)	Wash., D.C.	Chairman (ex-officio on all committees)	U.S. governmental affairs, Navy operations, ocean research policy	Chief of Naval Operations, Chair of U.S. Aids Commission; Sec'y of Energy; President of CORE
Robert Ballard, Ph.D.	New England (RI)	Research, Education, Operations	Oceanography, ocean exploration, marine education	Director of ocean exploration labs; developer of ROV systems; founder of ocean education programs; professor of Oceanography
Ted A. Beattie	Great Lakes (ILL)	Research, Education, Operations	Marine education	CEO of Shedd Aquarium; past president American Zoo and Aquarium Society
Lillian Borrone	Mid-Atlantic (NJ)	Governance	Port development and administration, maritime policy	Former Port Commerce Director, Port Authority NY/NJ; Board Chair, Eno Transportation Foundation
James M. Coleman, Ph.D.	Gulf of Mexico (LA)	WG Chmn., Research, Education, Operations; Investment and implementation	Oceanography; marine research administration/operations	Boyd Professor, LSU; former chair, Marine Board, NAS; member, National Academy of Engineering
Ann D'Amato	West Coast (CA)	Stewardship	Local government administration	Chief of Staff to Los Angeles City Atty; former Deputy Mayor, Los Angeles

Lawrence Dickerson	Gulf of Mexico (Tx)	Governance	Oil and gas operations	COO Diamond Offshore Drilling; Executive Comm. Nat'l Ocean Industries Ass'n
V-Admiral Paul G. Gaffney II, USN (Ret.)	Mid-Atlantic (NJ)	Stewardship; Investment and implementation	Ocean Engineering, U.S. Navy operations/administration	President, Monmouth U.; former Pres., Nat'l Defense U.; former chief of Naval research
Marc J. Hershman	West Coast (WA)	Governance	U.S. coast and marine law; coastal zone management	Professor and former Director, UW School of Marine Affairs; editor, Coastal Mgmt Journal
Paul L. Kelly	Gulf of Mexico (Tx)	Stewardship; Investment and implementation	Marine resources law; oil and gas policy	Sr. V.P., Rowan Cos; former Chair, U.S. DOI OCS Policy Comm.
Christopher Koch	Mid-Atlantic (VA)	Governance; Investment and implementation	Maritime law and policy; U.S. fisheries law and policy	CEO, World Shipping Council; former Chair, FMC; former Gen. Counsel, Sea-Land Svc.
Frank Muller-Karger, Ph.D.	Gulf of Mexico (Fl)	Stewardship	Oceanography; remote sensing	Prof. of biological oceanography; Director of Inst. for Marine Remote Sensing
Edward B. Rasmuson	West Coast (AK)	Research, Education, Operations; Investment and implementation	Banking; commercial fisheries policy	Former CEO, Nat'l Bank of Alaska; philanthropist, formerly Bd. of Regents, U. of Alaska

Name	Geographic Region	Commission Working Group	Expertise	Experience
Andrew A. Rosenberg, Ph.D.	New England (NH)	Governance	Fisheries science; fisheries management/administration	Prof., UNH; former Dean, Coll. of Life Sciences, UNH; formerly Reg. Dir. and Deputy Dir., NMFS
William D. Ruckelshaus	West Coast (WA)	WG Chmn., Governance; Investment and implementation	Environmental law and policy; fisheries restoration policy	Dir., Madrona Venture Group; chair World Resources Inst.; former Admin U.S. EPA
Paul A. Sandifer, Ph.D.	Southeast (SC)	WG Chmn, Stewardship; Investment and implementation	Fisheries Science; aquaculture; fisheries management and administration	Sr. Scientist, NOAA; former Dir., SC Dept. Natural Resources
Thomas R. Kitsos, Ph.D.	Wash., D.C.	Executive Director	U.S. Congressional leadership, minerals management, public administration and political science	Former Acting Dir., MMS; former staff member for Merchant Marine Fisheries Comm. of U.S. House of Representatives

### **Choosing the Chairman**

The statute was clear that the Chair of the Commission was to be selected by the Commissioners.<sup>86</sup> This differed from the Stratton Commission that called for the chair and vice chair to be chosen by the President. In an initial conversation by telephone among a number of the Commissioners in early August 2001, the choice of Chair was discussed. Although no formal decision could be made until a first official meeting, it was clearly a crucial step in the process and nominations for Chairman were taken.

It was no secret that Admiral James Watkins was a frontrunner. No communication to the Commissioners about chairmanship came from the White House or Congressional leaders. Nor was there a “campaign” or lobbying of Commissioners by the Admiral or any other Commissioners on his behalf. As it turned out Admiral Watkins was the only official nominee and was elected unanimously during the first official meeting on September 17, 2001. His extensive experience in national policy and administrative affairs (Chief of Naval Operations, Chair of the AIDS Commission, Secretary of Energy, President of the national Consortium on Oceanographic Research and Education), his seniority (four star Admiral, colleague to many members of Congress and the Administration), his technical knowledge in ocean research and leadership in advancing the National Ocean Partnership Act in 1996, and in lobbying for the Ocean Policy Commission, made him a logical choice. Furthermore, he wanted the job and was available to provide virtually his full time to the effort. Almost every other Commissioner had a “day job” of some significance.

During initial discussions in August of 2001, Bill Ruckelshaus was nominated for chair as well. His credentials were powerful—twice administrator of the Environmental Protection Agency (EPA), leadership in the Nixon administration in the early 1970s (CIA Director and a very brief stint as U.S. Attorney General), member of the Brundtland Commission that reshaped environmental affairs for the world, CEO of a major corporation, U.S. representative to negotiate the Salmon Treaty with Canada, leader in salmon restoration in the Pacific Northwest, and Board member for many corporations and national and international environmental and natural resources NGOs. His skill as a lawyer and national policy leader in environmental affairs would be extremely valuable to the Commission in dealing with its extensive mandate to address governance issues in U.S. ocean affairs.

After a few days’ reflection and discussion with Admiral Watkins and other Commissioners, Ruckelshaus declined consideration as chair and urged all Commissioners to support the Admiral. His reasoning was that the Commission should not start out its work with a “contest” for leadership, but rather begin its work with unanimous support behind its leader. He argued that the Admiral’s skills and knowledge, his investment in the ocean issues, his willingness to give it the time needed, his willingness to rely on

86. Pub. L. No. 106–256, § 3(b)(3).

other Commissioners for the expertise he did not possess, and his residence in Washington D.C. would serve all of us well.

Thus, the very first, and perhaps one of the most important initial decisions of the Commission, was done through open and reasoned discussion involving virtually all Commissioners, and resulted in a common understanding and consensus support for the nomination of chairman. This established a “tone” for open deliberation, for acting in unison when the case was clear, and for seeing the importance of the collective effort over individual aspirations.

### **Preparing the First Meeting**

Those first unofficial telephone conversations among Commissioners also addressed a variety of substantive and procedural issues—how to structure and run the Commission’s day-to-day affairs. This included the issues of how to choose the Executive Director and other staff, establishing an office for the Commission, complying with a wide range of official rules of the U.S. government on budget, personnel, ethics, and financial disclosure, and deciding on meeting protocols and relations with the public. It also dealt with how the Commissioners would organize themselves into sub-committees or work groups to undertake consideration of the issues laid out in the Oceans Act. Much of this was done to prepare for the first official meeting of the Commission on September 17 and 18, 2001.<sup>87</sup> The discussion and resolution of these issues between August and November of 2001 set a tone for openness and dialogue between the Chairman and the Commissioners on many aspects of the management of the Commission’s work.

With regard to procedural matters, the statute provided little guidance. The chairman is responsible for hiring the Executive Director (subject to confirmation by a majority of Commissioners), hiring other staff as needed, assigning duties to the staff, and for budget expenditures.<sup>88</sup> Open meetings, advanced notice in the Federal Register, public participation at meetings, record keeping and availability, are addressed as well.<sup>89</sup>

Fortunately for the Commission advance steps were taken to assure that the Commission had a rapid start. In 1998, the National Oceanic and Atmospheric Administration (NOAA) received a \$1 million appropriation to help prepare for the Commission’s work.<sup>90</sup> Since a bill had passed the Senate that year, it was anticipated that start-up work would be needed. Between then and 2001 when the Commission was a reality, NOAA/NOS used part of the funds for substantive work such as producing reports about the Stratton Commission, issues analysis, future challenges, and an interac-

87. The record of the first official meeting of the Commission is available online: <[http://oceancommission.gov/meetings/sep17\\_18\\_01/sep17\\_18\\_01.html](http://oceancommission.gov/meetings/sep17_18_01/sep17_18_01.html)>.

88. Pub. L. No. 106–256 §§ 3(b)(3) and (d).

89. *Id.* at § 3(e).

90. Pub. L. No. 105B235 at 150.

tive web page.<sup>91</sup> Once the Commissioners were appointed, NOAA staff spent three or four months from August 2001 to October/November 2001 helping with a transition phase while the Commission got organized. NOAA's National Ocean Service (NOS) officials facilitated the first telephone discussions among Commissioners, handled administrative arrangements for the first meeting on September 17 and 18, 2001, and assisted with details such as office space, posting notices for meetings and staff positions, arranging for recording and transcribing the minutes of the meeting, and establishing a web presence.<sup>92</sup>

In addition to NOAA's role, two other organizations assisted the Commission in its start-up. The first was CEQ, designated as the "cognizant agency" for the Bush administration on matters of policy.<sup>93</sup> A number of meetings were held at CEQ involving NOAA and the Admiral after he secured the nomination as Chair. CEQ provided initial assistance for recruiting an Executive Director by drafting a job description, and determined that the Commission should hold its first meeting as planned on September 17, so close after the 9/11 terrorist attacks.<sup>94</sup>

The second agency helping in the start-up phase was the U.S. General Services Administration (GSA), the official body charged with supporting independent commissions. GSA officials and lawyers discussed such issues as Commissioner compensation, Commissioner financial disclosure, proper procedures for meetings, security clearances, ethics rules for special government employees, and application of Federal Advisory Committee Act (FACA) rules.<sup>95</sup> According to staff assisting the Admiral at this juncture, these meetings were crucially important.<sup>96</sup> The Admiral wanted the Commission to fully and accurately comply with the rules so that no criticism could be leveled in the future. It was already apparent that environmental organizations were watching closely because they had written to the President and the Commission in May and June 2001, protesting the lack of a member of the Commission representing the national environmen-

91. "NOAA Activities of the National Ocean Service in support of the Commission on Ocean Policy," memorandum circulated at the first meeting of the Commission, on file with the first author.

92. Pers. comm., Glenn Boledovich to Marc Hershman, dated March 11, 2005.

93. Pers. comm., Ellen Athas, April 15, 2005. Ms. Athas suggests that the choice of CEQ as the cognizant agency was probably a joint decision among the primary interested federal agencies rather than a top-down directive since the agencies already had been working on the issue and were the only ones with a strong interest.

94. Pers. comm., Terry Schaff, March 15, 2005.

95. Federal Advisory Committee Act, 86 Stat. 770. See Commission on Ocean Policy Inaugural Meeting Briefing Book for Commissioners, September 17 and 18, 2001.

96. Pers. comm., Terry Schaff, March 15, 2005. Mr. Schaff assisted the Admiral closely during the organizational phase of the Commission. He was adamant in expressing the Admiral's determination that administrative details be handled accurately and thoroughly to avoid any criticism of the Commission.

tal organizations.<sup>97</sup> Similarly, the national fishing organizations, both commercial and recreational, were cautious because none of their members had a seat on the Commission.<sup>98</sup>

One indication of the desire to comply as fully as possible was the Admiral's decision that the Commission would comply with all relevant FACA rules even though the law said that many of those provisions of administrative law were not applicable to the Commission.<sup>99</sup> This resulted in more detailed record keeping and availability of information than the Oceans Act itself would require.<sup>100</sup>

Another indication of the desire to go beyond the terms of the law was the Admiral's desire to involve all Commissioners in the choice of Executive Director and the make-up of subcommittees of Commissioners. The statute allowed him to move forward independently on the choice of Executive Director so long as a majority would concur. In the early telephone conversations the Commissioners and the Admiral encouraged NOAA and CEQ to move ahead with describing a position and advertising it so that applications might be available for the first official meeting of the Commission. That worked and an initial eight qualified applicants (out of 73 received) were available on September 17 and the Commission was able to discuss a procedure for interviews. Eight Commissioners volunteered to conduct the interviews and provide advice to the Admiral and all Commissioners as soon as possible. This expedited process allowed for the choice of an Executive Director to become official at the November meeting.

The decision to establish sub-committees of Commissioners was an important initial step in addressing substantive issues. The agenda for the first meeting included a proposal for three committees—governance, research and marine operations, and investment.<sup>101</sup> Review by the full Commission noted the need for an additional subcommittee on stewardship, dealing with the use and protection of natural resources. This was accepted and added, and the leaders of each subcommittee were identified, thus spreading the leadership wider than the chair. Again, a pattern of dialogue and discussion, and willingness to adjust, was established early in the Commission's work.

97. A coalition of 13 environmental groups argued in a letter to the President, dated May 14th 2001, that the Commission should include "strong representation from the national marine conservation community." Another letter of concern was later sent protesting the failure to include such a representative. Once the Commission was organized, the Chairman met with representatives of the coalition to assure them that the process would include ample opportunity for their participation (Terry Schaff, pers. comm., March 15, 2005). In general, the national marine conservation community was very pleased with the final report.

98. Pers. comm., Terry Schaff, *id.*

99. Pub. L. No. 106-256 § 3(a).

100. See n. 96 above.

101. See n. 87 above.

**PART III—THE WORK OF THE U.S. COMMISSION ON OCEAN POLICY (2001–2004)**

**Overview of the USCOP Products**

The output of the USCOP is well documented. This was particularly required in the Oceans Act,<sup>102</sup> and is required for all advisory bodies to the federal government under the Federal Advisory Committee Act (FACA).<sup>103</sup> In addition to its Final Report, the Commission produced 14 appendices, a video illustrating the work of the Commission, and a voluminous set of archived materials filed with the Library of Congress and the NOAA library in Silver Spring, Maryland. The official web site of the Commission, which contains all of the reports, interim reports, record of meetings, and other materials, will be maintained for the foreseeable future, remaining in its static state as of the end of 2004, after which a CD-ROM of the web site will be added to the archives.<sup>104</sup>

The Final Report of the Commission, which is available in hard copy, CD and on the Commission's official web site, is 522 pages, containing 31 chapters and 212 recommended actions.<sup>105</sup> (See Table 2) To make it more user friendly the report includes a 26-page Executive Summary, a text box on page 25 titled "Critical Actions Recommended by the U.S. Commission on Ocean Policy" that puts the major themes on one page, and a final chapter listing all the recommendations categorized by individual or organization directed to take action as well as by chapter. The report is organized into nine parts addressing the following areas: ocean assets and challenges, improved governance, education, coastal resources, water quality, ocean uses and preservation, science, international policy, and implementation. Table 2 displays the nine parts, the chapters within each part, and a brief description of the scope of each chapter and its recommendations. Thus, the Final Report is a lengthy document, covering a great many topics, each of which includes background information, discussion of problems and issues, and recommendations for change.

102. Pub. L. No. 106–256, § 3(e)(2).

103. Pub. L. 92–463, 86 Stat. 770, 5 USCA App. 2.

104. "A Guide to the Archives of the U.S. Commission on Ocean Policy," memorandum to Commissioners sent electronically by the Executive Director, Tom Kitsos, October 12, 2004.

105. See n. 1 above, and <<http://www.oceancommission.gov>>.

**Table 2.—Content and Scope of USCOP Report**

<b>Part I: Our Oceans: A National Asset</b>	
Ch. 1 Recognizing Ocean Assets and Challenges	The value of the ocean and coastal economy; employment; lost value from environmental degradation; reduced resource base; losses from land use, hazards, climate change
Ch. 2 Understanding the Past to Shape a New National Ocean Policy	History of U.S. ocean policy from WWII to present; the USCOP mandate, members, process and products
Ch. 3 Setting the Nation's Sights	The vision for the future; guiding principles; putting principles into policy
Primer on Ocean Jurisdictions: Drawing Lines in the Water	Defining offshore zones: the baseline, seaward boundaries of states; territorial sea; contiguous zone; exclusive economic zone; continental shelf; high seas
<b>Part II: Blueprint for Change: A New National Ocean Policy Framework</b>	
Ch. 4 Enhancing Ocean Leadership and Coordination	Proposal for National Ocean Council; Assistant to the President for Oceans; Presidential Council of Advisors (non-federal)
Ch. 5 Advancing a Regional Approach	Bottom-up regional ocean councils; federal support for regional efforts; regional research and information services; regional ecosystem assessments
Ch. 6 Coordinating Management in Federal Waters	Expanding uses of offshore waters; clarifying offshore management responsibilities; creating a coordinated offshore management regime; gaining fair return from the offshore; using marine protected areas as a management tool
Ch. 7 Strengthening the Federal Agency Structure	Reorganization proposals of the past; strengthening NOAA (phase 1); consolidating some ocean and coastal programs (phase 2); managing all natural resources through an ecosystem-based approach (phase 3)
<b>Part III: Ocean Stewardship: The Importance of Education and Public Awareness</b>	
Ch. 8 Promoting Lifelong Ocean Education	Strengthening the nation's ocean awareness; building a collaborative ocean education network through a new national ocean education office; linking the research and education communities; incorporating ocean education into K-12 curriculum; investing in higher education and the future ocean workforce; advancing informal education for all Americans
<b>Part IV: Living on the Edge: Economic Growth and Resource Conservation Along the Coast</b>	
Ch. 9 Managing Coasts and their Watersheds	Population and tourism growth in the coastal zone; need for a stronger CZMA addressing watersheds, smart growth and offshore management; focus attention on coastal watersheds; Consolidation needed in area-based coastal management programs

Ch. 10 Guarding People and Property against Natural Hazards	Assessing the growing cost of natural hazards; changing inappropriate federal incentives; changes needed in the national flood insurance program
Ch. 11 Conserving and Restoring Coastal Habitat	Dedicated funding needed for coastal land conservation; regional ocean councils should set priorities for habitat conservation and restoration; coastal wetlands require a comprehensive protection framework
Ch. 12 Managing Sediment and Shorelines	Sediment as resource or problem; changing sediment quantities and quality; sediment management at a regional level; costs and benefits of dredging; improved implementation of dredged material management plans by national and regional dredging teams; improve management capabilities for contaminated sediments
Ch. 13 Supporting Marine Commerce and Transportation	Prepare the U.S. Marine transportation system for future growth; design a new national freight transportation strategy; upgrade emergency preparedness planning
<b>Part V: Clear Waters Ahead: Coastal and Ocean Water Quality</b>	
Ch. 14 Addressing Coastal Water Pollution	Improve control of point source pollution through advanced treatment, better on-site treatment and improved infrastructure, incentives and enforcement; increase attention to non-point sources of pollution and introduce enforceable management measures; improve controls of atmospheric sources of water pollution
Ch. 15 Creating a National Monitoring Network	Expand and better coordinate the existing monitoring network; include coastal areas in monitoring and link to the emerging ocean observing system; develop an effective system design that includes goals, periodic review and user input
Ch. 16 Limiting Vessel Pollution and Improving Vessel Safety	Use incentives to develop a culture of vessel safety, security and environmental compliance; work to enhance flag state oversight and compliance and strengthened port state control programs; Congress should act to manage waste water discharges from cruise ships; improve management of air emissions and sanitary waste; reduce risk of oil spills through better prevention programs and places of refuge
Ch. 17 Preventing the Spread of Invasive Species	Assess status of the problem and existing diverse approaches; identify and control pathways for introduction of non-native species; better coordinate and streamline efforts to control already introduced species

Ch. 18 Reducing Marine Debris	Sources and consequences of marine debris; adding a NOAA-based marine debris management program; expanding the EPA and NOAA efforts at enforcement and outreach; improve programs to address derelict fishing gear and port reception facilities for waste
<b>Part VI: Ocean Value and Vitality: Enhancing the Use and Protection of Ocean Resources</b>	
Ch. 19 Achieving Sustainable Fisheries	Upgrade use of scientific findings and capacity of scientific and statistical committees in fisheries management; require that harvest limits be at or below the ABC set by the SSC; expand cooperative research programs between scientists and fishers; authorize additional interstate fishery management plans; broaden membership and improve appointment process for fishery management councils; authorize use of dedicated access privileges and establish national guidelines; repeal programs that encourage overcapitalization; expand cooperative fisheries enforcement programs; maximize use of vessel monitoring systems and other technologies in enforcement; further advance ecosystem-based management through enhanced attention to essential fish habitat and by-catch reduction; aggressive steps to advance the Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fishing
Ch. 20 Protecting Marine Mammals and Endangered Species	Assess the threats to marine mammals, sea turtles, salmonids and seabirds; place protection of all marine mammals under NOAA; enhance cooperation among jurisdictions under the ESA; clarify the definitions of "take" and "harassment"; implement programmatic permitting for activities affecting marine mammals; expand programs that mitigate human impacts on marine mammals and endangered species including effects of noise; apply ecosystem-based regional approaches as appropriate
Ch. 21 Preserving Coral Reefs and Coral Communities	Congress should pass a comprehensive law for coral reef protection, management and restoration; NOAA should take the lead for the management of deep water coral communities; establish standards that ensure sustainable harvest of coral reef resources
Ch. 22 Setting a Course for Sustainable Marine Aquaculture	Minimize the multiple environmental impacts potentially caused by marine aquaculture; develop a new marine aquaculture legal framework led by NOAA; create the Office of Sustainable Marine Aquaculture for regulation, guideline development, R&D and education

<p>Ch. 23 Connecting the Oceans and Human Health</p>	<p>Enhance interagency and private sector work to discover new marine micro-organisms; improve understanding, detection and prevention of harmful algal blooms, harmful marine bacteria and viruses, and contaminated seafood; improve methods for monitoring and identifying pathogens and chemical toxins; apply new knowledge in work of regional ocean councils</p>
<p>Ch. 24 Managing Offshore Energy and Other Mineral Resources</p>	<p>Assess trends in offshore oil and gas production including deep-water oil production, natural gas from shallow water, and LNG carriers and offshore LNG ports; share federal oil and gas revenues from the OCS with all coastal states for investment in renewable coast and ocean resources; expand the MMS Environmental Studies Program and integrate the offshore oil and gas industry into the ocean observing program; review gas hydrates research for future potential in meeting national needs; Congress should establish an offshore renewable energy regime</p>
<p><b>Part VII: Science-Based Decisions: Advancing our Understanding of the Oceans</b></p>	
<p>Ch. 25 Creating a National Strategy for Increasing Scientific Knowledge</p>	<p>Make the oceanographic partnership program an integral part of the new ocean policy framework; double the ocean and coastal research budget over the next five years; design a national research strategy for basic and applied research, including a specific program for social science and economic research; expand the national ocean exploration program; better coordinate federal ocean and coastal mapping and charting activities; re-establish the Congressional Office of Technology Assessment</p>
<p>Ch. 26 Achieving a Sustained, Integrated Ocean Observing System (IOOS)</p>	<p>Promote development of IOOS through strong partnerships; create a national lead office and regional associations that includes user participation; establish core variables, incorporate research observatories and new technologies; incorporate added satellite observing into IOOS; insure production of useful end products; insure that IOOS can be integrated in global Earth Observing System</p>
<p>Ch. 27 Enhancing Ocean Infrastructure and Technology Development</p>	<p>Develop a national infrastructure strategy for facilities, new technology and technology transfer; ensure dedicated funding for critical infrastructure needs including the UNOLS fleet, fisheries research vessels, ocean exploration infrastructure, and others; support technology needs essential for ocean and coastal management; create virtual marine technology centers</p>

Ch. 28 Modernizing Ocean Data and Information Systems	Establish a lead federal organization for ocean and coastal data and information management; NOAA and the Navy should establish an information management and communications partnership; improve access to ocean data including use of the National Virtual Ocean Data System; clarify requirements for accessing data from federally funded academic research and newly declassified naval oceanographic data
<b>Part VIII: The Global Ocean: U.S. Participation in International Policy</b>	
Ch. 29 Advancing International Ocean Science and Policy	Accede to the UN Convention on Law of the Sea; review Convention on Biological Diversity for possible ratification; establish an interagency committee to support ocean-related international policy; enhance support for international research in ocean science and management
<b>Part IX: Moving Ahead: Implementing a New National Ocean Policy</b>	
Ch. 30 Funding Needs and Possible Sources	Congress should establish the Ocean Policy Trust Fund using unallocated revenues from offshore uses; disburse trust resources to state and federal agencies to support new or expanded ocean and coastal management activities; produce the biennial report on ocean funding called for in the Oceans Act of 2000
Ch. 31 Summary of Recommendations	[Listing of all recommendations in the report; index of recommendations organized by primary implementing entity: Congress, Executive branch, Federal government agencies, interagency groups, regional bodies, states, international]

The 14 appendices contain considerable additional useful information. Some appendices can be characterized as “data” on which recommendations were based, e.g., inventories of marine educators, academic infrastructure, ocean and coastal facilities, ocean and coastal laws, and Congressional Committees with jurisdiction (Appendices 3, 4, 5, 6 and F, respectively). Others are an elaboration of particular parts of the report such as a paper on demographic trends and ocean and coastal economic value, an expansion of the proposed structure for federal coordination, and detailed costs associated with implementation (Appendices C, E and G, respectively). An especially valuable set of appendices present syntheses of testimony before the Commission organized by topic and by presenter, and a volume including the comments from 37 Governors who responded to the draft report of the Commission (Appendices 1 and 2, respectively, and a “Special Addendum” for the Governors’ comments). Taken together the Report and the appendices provide a small library of published information serving as a baseline for U.S. ocean policy development.

Finally the archives of the Commission, including documents and the CD of the official web site, contain such information as mid-term and preliminary reports, briefing books and transcripts from each official Commission meeting, all testimony presented, follow-up written questions and answers between the Commission and presenters, official public comments, reports on Commission site visits, summaries of Commissioner working groups and their draft policy options, press releases, public statements and official correspondence between Commissioners and the Commission Chairman on substantive matters.

This record provides future researchers and historians a wealth of information as U.S. ocean policy evaluation and development moves forward.

### **Highlights from the Report—Major Themes and Regional Ocean Governance**

#### *Major Themes*

The following discussion focuses on the major themes and the regional ocean governance recommendation of the USCOP. The discussion first focuses on major themes<sup>106</sup> and then discusses the specific recommendations of Chapter 5 “Advancing a regional approach” and related chapters that refer to the regional ocean governance concept. The regional ocean governance recommendation is but one of many. It is of particular interest to the first author of this article. It also illustrates how a number of the broader themes of the report might be applied.

The first theme that permeates the report is a desire to substantially upgrade and provide focus to the attention the nation gives to its oceans and coasts. The nation’s public policy agenda is crowded with so many worthy issues that it takes hard work to make the case for greater attention, increased resources and reform. At virtually every step in the analysis—economic contribution, resource depletion and degradation, governance, education, technology, international affairs, and others—the Commission showed why society needed to pay more attention to this extensive resource area.

Secondly, the Oceans Act calls for a “coordinated and comprehensive” ocean policy. The call for increased “coordination” occurs throughout the

106. The discussion of major themes is an interpretation of the entire report by the authors, in the style of an essay rather than an account of specific provisions. For this reason detailed references are omitted since the observations are derived from many aspects of the report.

report, but receives direct attention organizationally in Chapters 4–7 dealing with an improved governance structure for ocean and coastal affairs. This concept recognizes that many governmental and non-governmental organizations now pay attention to virtually every issue raised in the report, but the degree of overlap, redundancy, and sometime conflicting approaches leads to inadequate results and increased costs. Further, the Commission called for an “integrated” ocean policy as well as one that is “coordinated and comprehensive.” This means that the parts of an ocean policy connect to, and support, one another. A conscious effort was made to link the recommendations to one another as much as possible. This is most apparent in the linkage of marine science to management and policy. This is expressed strongly in the fisheries recommendations, in the promotion of regional ocean governance, in the recommendations that ocean observing and monitoring serve management, and in many others.

Thirdly, and related to the above, the chapters of the report are divided fairly equally between proposals for “capacity building” and attention to “problem-solving.” “Capacity-building” looks to the future and addresses preparation for the problems to come, even if they are not clearly on the policy agenda as yet. This perspective led to the major governance and financial recommendations as well as to those relating to science, ocean observing and monitoring, and education. A more coordinated and robust governance framework, a more educated workforce, and better information prepares us for dealing with tomorrow’s issues. On the other hand, 16 chapters deal with “problem-solving” and how management can achieve better results. The problems normally are specific to the issue and often are concerned with contradictory or overlapping laws and management standards, a need to better coordinate or combine efforts of agencies, the need for improved research on a specific issue, or the recognition that trends will require adjustments in management philosophy.

Fourthly, the report reflects a balanced view toward resource protection and the need for economic development. A specific section of the Oceans Act requires that equal consideration be given to environmental, technical feasibility, economic and scientific factors in the Commission’s assessment and recommendations.<sup>107</sup> This part of the bill was occasionally mentioned in Commission deliberations, but the diversity of interests and expertise among the Commissioners insured that this breadth of view would be maintained. As explained earlier, economic, scientific, technical and governmental experts were represented among the Commissioners and virtually all discussions reflected those perspectives.

Fifthly, an explicit theme articulated throughout the report is the need to approach coastal and ocean management from an ecosystem-based

107. Pub. L. 106–256, § 3(f)(3).

perspective, and to apply management within areas defined by ecosystems, rather than jurisdictional criteria. This concept is defined in Chapter 3 and related closely to other principles such as the use of the precautionary approach, adaptive management, biodiversity goals, application of scientific information, and others.

Finally, the Commission had a healthy respect for the work of the many professionals currently engaged in coastal and ocean affairs. This led to a preference for finding ways to make the system work better by overcoming obstacles, resolving identified problems, and creating mechanisms for improvement. Rarely did the notion of “wipe the slate clean and start over” arise. In this sense the Commission kept a keen eye on recommendations that could be implemented by building on activities already underway or for which there was a clear precedent for change.

### ***Regional Ocean Governance***

The concept of regional ocean governance is outlined in Chapter 5 of the report. The focus of the first part of that chapter is on the establishment of voluntary, flexible regional ocean councils that are formed from the “bottom-up,” and initiated by Governors of States. They do not supplant existing authorities but are squarely aimed at the challenge of coordination among many diverse players with authority and interest in the issues. Regional ocean councils are an integral part of a new “National Ocean Policy Framework” that is discussed throughout the report as the vehicle for implementing many of the recommendations.

Regional ocean councils could perform a number of tasks, take on a variety of shapes, and define themselves in ways most suited to the identified problems of the region. They may be built on existing regional initiatives, or regional leaders could create new entities. The rationale is that the regions of the U.S. differ radically on many dimensions and they have to decide for themselves the appropriate structure, scope and functions for their region. The report suggests some minimum characteristics for regional ocean councils:<sup>108</sup>

- Boundaries that approximate Large Marine Ecosystems or other appropriate ecosystem-based areas;
- Geographic area that extends from coastal watersheds to the offshore boundary of the exclusive economic zone (EEZ);
- Agenda that considers a wide range of ocean and coastal issues; and

108. See Commission Report, n. 1 above, at 59, Box 5.2.

- Membership that includes all levels of government and non-governmental interests.

The report also outlines some core functions of regional ocean councils:

- Defining regional goals and priorities;
- Facilitating coordinated and collaborative responses to regional issues; and
- Communicating regional concerns to the federal government entities overseeing ocean affairs.

The formation of regional ocean councils can be seen as one possible structure for effective State, local and interest group participation in ocean affairs. But the report recommends a number of other mechanisms to support a regional perspective to ocean affairs. One is a more coordinated set of federal agencies operating within a region. The report called for a Presidential Executive Order to require improved coordination and outreach by federal agencies within regions. Another is the formation of a multi-organizational regional ocean information program to provide research, data collection, product development and outreach. This program is to be closely linked with regional ocean observing systems proposed in Chapter 26. Further, regional ecosystem assessments, to be coordinated by NOAA and EPA, are to be developed for each region. These assessments, to be updated periodically, are to be integrated with the National Environmental Policy Act guidelines for environmental impact statements within regions. Finally, as outlined in Chapter 6, and discussed further in Chapter 9, increased use of the offshore federal waters, from 3–200 nautical miles is becoming increasingly common yet there are many regulatory gaps, agency overlaps and conflicts. The report calls “for a broad dialogue among stakeholders at the national, regional, and State levels on a more coordinated and deliberate approach to managing activities in offshore areas.”<sup>109</sup>

This vision for a regional approach to ocean and coastal management brings together a number of the themes developed within the report. As noted above, if the regions of the U.S. had a regional ocean council that defined and characterized the region as well as articulated its goals and objectives it would do much to advance the visibility of the ocean as an integral part of our area of responsibility as a nation within the world community. The existence of the councils, and the products, information and discussion they stimulate would add immeasurably to the “ocean literacy” goal advanced in the report.

109. Commission Report, n. 1 above, at 102.

Further, regional ocean councils embody the notion of building a coordinated, comprehensive and integrated ocean policy. It is clear that the primary purpose of the regional approach is to build a bridge among jurisdictions and to advance toward common goals and objectives. The aim is to consider many coastal and ocean uses within a common framework within the region, and to advance the region's needs at the federal level.

The regional structure combines capacity building and problem solving in its conception. The capacity comes from the development of the regional ocean information system that is linked with the region's ocean observation system. Related is the call for regional ecosystem assessments to establish an information baseline. The products from these efforts, if designed to meet the goals and objectives laid out by the regional ocean councils, create opportunities for an integration between science and policy that can serve the region in many ways as it addresses existing, and new, unanticipated marine problems.

Regional ocean councils also can be the vehicle for considering multiple uses of the seas and coasts within an ecosystem-based framework. If the membership includes multiple levels of government and all major stakeholders, then the economic and environmental interests of the local communities, state coastal zone and submerged land managers and federal agencies can be considered jointly. If such a broad-based plan includes the region's goals and objectives, occurs within a defined ecosystem, and is preceded by an ecosystem assessment, then the result can be a comprehensive, coordinated and integrated regional ocean and coastal policy, as laid out in the USCOP report.

Further, the regional ocean council mechanism becomes a vehicle for the integration of a wide range of the USCOP recommendations. The regional ocean council mechanism is specifically mentioned in nine chapters of the report in addition to its detailed treatment in Chapter 5. It is referenced in Chapter 6 dealing with offshore uses including marine protected areas; Chapter 9 addressing linkages between coastal and offshore uses; Chapter 11 calling for regional input on priorities for conserving and restoring resource habitat; Chapter 19 dealing with linking fisheries management with other regional concerns including essential fish habitat; Chapter 20 suggesting the need for a regional ecosystem-based approach for marine mammal and endangered species management; Chapter 21 suggesting that regional ecosystem-based plans for coral reef protection and management; Chapter 23 noting the importance for regional ecosystem assessments to assess algal blooms and bacteria particular to their area; Chapter 26 concerning melding regional ocean observing systems with ocean information systems proposed for U.S. regions; and Chapter 28 discussing priority needs for ocean information programs.

Although the vision of a regional approach to ocean and coastal affairs is described in the report, and can provide a goal, a potential structure and

a set of criteria by which to assess progress, there are formidable obstacles in the path of actual implementation.<sup>110</sup> Conceptual and practical issues arise around the question of institutional change. Governmental or behavioral institutions and practices do not change easily. It takes tremendous pressure (economic, political, legal, or social), compelling reasons and strong positive or negative incentives (for example, funding, power advantages and/or threat of sanctions) to bring it about. Additionally, designing new institutions, especially in ocean and coastal affairs, requires analysis of three dimensions of institutional change—the fit of the institution to the problem being addressed, the interplay of the new institution with other institutional players within vertical or horizontal relationships, and the question of the appropriate scale at which to design the institution.<sup>111</sup> These are challenging analytical tasks.

Applying the regional ocean governance concept in places around the U.S. will be a long-term and challenging exercise. Some regions have a head start, such as the Gulf of Maine Council on the Marine Environment,<sup>112</sup> the many regional institutions that have emerged in the Great Lakes,<sup>113</sup> and the Gulf of Mexico that has an intergovernmental EPA/Gulf of Mexico Program<sup>114</sup> addressing water quality issues. Other regions are just beginning to examine regionalism in ocean affairs, including the Pacific Northwest and the mid-Atlantic States.

#### **PART IV—POLICY RESPONSE TO THE COMMISSION REPORT (2004–2005)**

The following section will discuss governmental responses to the final report of the U.S. Commission on Ocean Policy by the Executive Office of the President, by the Congress, and by the U.S. coastal States. President George W. Bush released the U.S. Ocean Action Plan, and signed an executive order creating a federal Committee on Ocean Policy. Numerous bills have been introduced into Congress regarding many aspects of ocean gover-

110. See P. Hoagland and A. R. Solow, “Regional Ocean Governance: A Critique of Two Recent Proposals,” *Marine Technology Society Journal* 38, 4 (2005): 61–68; for a response article, see also M. Hershman and F. Muller-Karger, “Crosstalk: A Dialogue on Regional Ocean Governance: Moving Toward Ecosystem-based Management,” *Marine Technology Society Journal* 39, 1 (2005): 3–5.

111. See O. R. Young, *The Institutional Dimensions of Environmental Change: Fit, Interplay and Scale* (Cambridge, MA: MIT Press, 2002).

112. See <<http://www.gulfofmaine.org>>.

113. See <<http://www.glc.org/>> and <<http://www.glfc.org/>> for discussion of two of the Great Lakes regional efforts, the Great Lakes Commission and the Great Lakes Fishery Commission.

114. See <<http://www.epa.gov/gmpo>>.

nance, all directly related to the recommendations of the Commission. Finally, many coastal States have responded to the Commission's report by initiating new ocean policy and governance activities. While many of these programs are in their very early stages, the large volume of action highlights the wide range of ocean policy activities directly responding to the Commission's work.

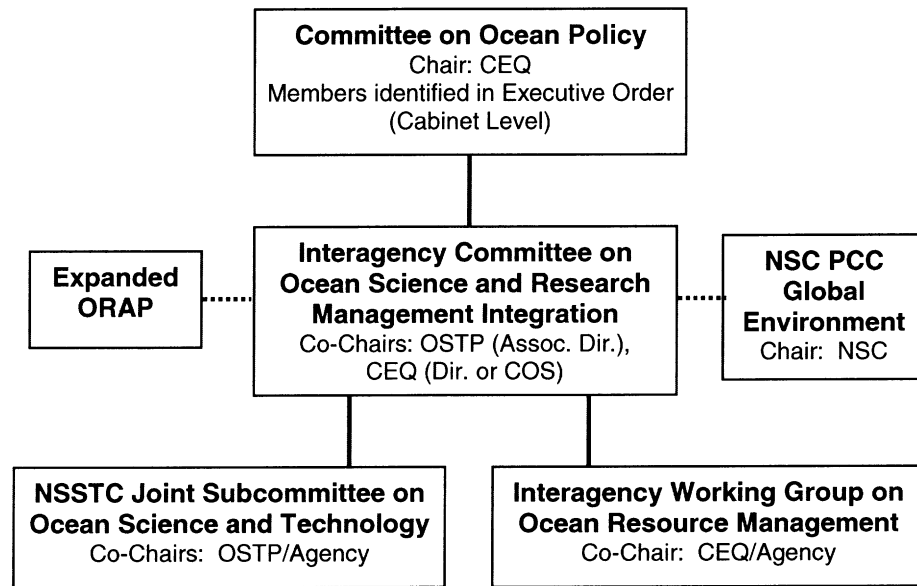
### **Executive Office of the President Ocean Policy Activities**

On December 17th 2004, President George W. Bush submitted to Congress his response to the Commission's final report, the U.S. Ocean Action Plan.<sup>115</sup> Coinciding with the release of the Action Plan, President Bush also signed an executive order<sup>116</sup> establishing a national ocean policy for the U.S. and forming a cabinet-level Committee on Ocean Policy. The national ocean policy set forth in the executive order calls for improved coordination of federal ocean-related activities and facilitated coordination among federal, State, tribal, and local governments, along with the private sector, foreign governments and international organizations. The majority of the executive order is devoted to the creation of the Committee on Ocean Policy. The Committee was created as a part of the Council of Environmental Quality (CEQ), and is chaired by the Chairman of the CEQ. The Committee is to consist of 24 designated members, including the Secretaries of State, Defense, the Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy and Homeland Security. The Committee will also include the Attorney General, the Administrators of the EPA and the National Aeronautics and Space Administration (NASA), the Directors of the Office of Management and Budget, National Intelligence, Office of Science and Technology Policy and the National Science Foundation, and the Chairman of the Joint Chiefs of Staff.

The Committee on Ocean Policy is charged with the duty of overseeing policies related to ocean-related matters for the President, as well as advising heads of executive departments. Included in the plan is a diagram outlining the new coordinated governance structure to be established by the Committee on Ocean Policy within the Executive Branch (Figure 1). The Committee is also responsible for obtaining advice and information from State, local and tribal representatives on ocean and coastal matters. These activities are in place to allow the Committee to facilitate certain activities

115. U.S. Ocean Action Plan: The Bush Administration's Response to the U.S. Commission on Ocean Policy [hereinafter Action Plan], available online: <<http://ocean.ceq.gov/actionplan.pdf>>.

116. Exec. Order No. 13,336. 69 Fed. Reg. 76,591 (Dec. 17, 2004).

**FIG. 1.—Bush Action Plan Ocean Governance Structure**

Source: See Action Plan, n. 115 above, at 10. More information available at: <<http://ocean.ceq.gov/about/welcome.html>>.

relating to U.S. Ocean Policy. These include the development and implementation of common ocean-related goals, the use of science in establishment of ocean-related policy, and the overall efficient exchange of ocean-related information.

The U.S. Ocean Action Plan covers a wide range of ocean and coastal topics, totaling almost forty pages. Such topics as market-based fisheries and ocean observation and research are highlighted by the Action Plan, however, there are few explicit policy statements or calls for new funding found within the plan. Regional Ocean Governance, as discussed in Part three of this article, is addressed in both the Executive Order and the U.S. Ocean Action Plan. The Executive Order calls for voluntary regional approaches to be used with ocean-related matters.<sup>117</sup> Within the Action Plan, there are three specific regional activities identified for further attention: Great Lakes Regional Collaboration,<sup>118</sup> Regional Partnership in the Gulf of Mexico,<sup>119</sup> and the Southeast Aquatic Resources Partnership.<sup>120</sup> Additionally, the plan calls for the establishment of an Interagency

117. *Id.* § 4(d)(ii), at 45.

118. See Ocean Action Plan, n. 115 above, at 10.

119. *Id.*, Action Plan, at 11.

120. *Id.*

Committee on Ocean Science and Resource Management Integration, with duties that include resolving statutory and regulatory redundancies on the regional level, as well as conflict resolution and recognition of emerging ocean issues for national and regional benefit.<sup>121</sup> Finally, regional ocean management is also mentioned in a recommendation regarding the advancement of the use of Large Marine Ecosystem-based (LME) management within the United Nations Environment Programme's Regional Seas Programmes.<sup>122</sup>

The Committee on Ocean Policy had its first official meeting on April 5, 2005.<sup>123</sup> The organizational structure and initial priorities for the three working committees of the Committee on Ocean Policy has recently been developed and published.<sup>124</sup> Meanwhile, the Legislative branch has been very active in responding to the U.S. Commission on Ocean Policy by introducing a wide range of ocean-related legislation.

### **Federal Ocean Legislation**

Once the U.S. Commission on Ocean Policy released its Preliminary report, and in some cases preceding it, Congressional supporters have responded by introducing numerous bills related to ocean policy (See Table 3). These bills, beginning in the 108th Congress, cover a wide array of issues, but have mainly fallen into three main areas of ocean policy: governance, stewardship, and science. These three areas reflect the main areas of findings and recommendations of the final Commission report. Governance is reflected in bills such as the NOAA Organic Act,<sup>125</sup> Office of Ocean and Coastal Policy Creation Act of 2003,<sup>126</sup> the National Ocean and Policy Leadership Act,<sup>127</sup> and the Oceans Conservation, Education, and National Strategy for the 21st Century Act,<sup>128</sup> also known as the "Big Ocean Bill." Stewardship is

121. *Id.*, Action Plan, at 7.

122. *Id.*, Action Plan, at 36.

123. A reference to this meeting is a press release from the Office of the Governor of Rhode Island; available online: <<http://www.governor.ri.gov/pr.php?ID=398>>.

124. Information and membership for the Interagency Committee on Ocean Science and Resource Management Integration, NSTIC Joint Subcommittee on Ocean Science and Technology, and the Subcommittee on Integrated Management of Ocean Resources are available online: <<http://ocean.ceq.gov/about/welcome.html>>.

125. H.R. 50, 109th Cong. (2005).

126. H.R. 3627, 108th Cong. (2003).

127. S. 2647, 108th Cong. (2004).

128. H.R. 4900, 108th Cong. (2004).

highlighted in bills concerning estuarine land protection,<sup>129</sup> oceans and human health,<sup>130</sup> ballast water,<sup>131</sup> and marine debris,<sup>132</sup> and aquatic invasive species.<sup>133</sup> Marine science is the focus of many bills, regarding both ocean observation<sup>134</sup> and exploration.<sup>135</sup>

In the 108th Congress, Senator Hollings introduced the Oceans and Human Health Act, which was the only bill passed by Congress directly relating to the Commission's report.<sup>136</sup> Senator Hollings also introduced a bill calling for a national ocean policy and additional partnerships to further advance ocean policy throughout the U.S.,<sup>137</sup> among others. However, this bill did not pass, and Senator Hollings, the chief proponent in the Senate for ocean policy reform, retired at the end of the 108th Congress. Table 3 provides a summary of ocean-related bills introduced in the 108th and 109th Congresses.

**Table 3.—Federal Ocean Legislation Introduced in the 108th and 109th Congresses in Response to USCOP Recommendations<sup>138</sup>**

<i>Bill #</i>	<i>Title</i>	<i>Sponsor</i>
Governance		
H.R. 3627 (108th Cong.)	Office of Ocean and Coastal Policy Creation Act of 2003	Saxton (R-NJ)
Establishes in the Executive Office of the President the Office of Oceans and Coastal Policy. Directs Office of Oceans and Coastal Policy to develop comprehensive ocean and coastal policy, and to advise President on ocean and coastal policy.		
S. 2647 (108th Cong.)	National Ocean Policy and Leadership Act	Hollings (D-SC)
Establishes a national ocean policy, sets forth the missions of NOAA, and ensures effective interagency coordination. Directs the Administrator of NOAA to report to Congress on status of nation's oceans and atmosphere, and establishes a Council on Ocean Stewardship in the Executive Office of the President.		

129. S. 861, 108th Cong. (2003).

130. S. 1218, 108th Cong. (2003); see n. 133 below.

131. S. 363, 109th Cong. (2005).

132. S. 362, 109th Cong. (2005).

133. H.R. 1592, 109th Cong. (2005).

134. S. 361, H.R. 1489, H.R. 1584, 109th Cong. (2005); S. 2489 108th Cong. (2004).

135. S. 39, 109th Cong. (2005).

136. Passed as Title IX of H.R. 4818, Consolidated Appropriations Act, 2005, 108th Cong. (2004). See n. 129 above.

137. National Ocean Policy and Leadership Act, S. 2647, 108th Cong. (2004).

138. This table summarizes those bills introduced in the 109th Congress, many of which are reintroductions of earlier bills from the 108th Congress, as well as bills from the 108th Congress that have not as yet been reintroduced. This list is current as of June 16, 2005.

<i>Bill #</i>	<i>Title</i>	<i>Sponsor</i>
H.R. 4900 (108th Cong.)	Oceans Conservation, Education, and National Strategy for the 21st Century Act	Greenwood (R-PA)
Establishes a national policy for the oceans, establishes national standards for any Federal ocean-related activities. Directs President to submit to Congress recommendations for reorganizing functions of existing federal agencies, and establishes a National Oceans Advisor, Council, and Council of Advisors.		
H.R. 50 (109th Cong.)	National Oceanic and Atmospheric Administration Act	Ehlers (R-MI)
Reestablishes the National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce. Among other requirements, the bill creates programs to support ongoing operations of data collection of information regarding ocean, coastal, and Great Lakes information.		
Stewardship		
S. 861 (108th Cong.)	Coastal and Estuarine Land Protection Act	Hollings (D-SC)
Permanent acquisitions of coastal lands through federal grants, given to coastal States or to the National Estuarine Research Reserve in that State. Amends the Coastal Zone Management Act of 1972 to allow the Secretary of Commerce to implement management strategies based on input from outside sources.		
S. 1218 (108th Cong.)	Oceans and Human Health Act	Hollings (D-SC)
Provides for Presidential support and coordination of interagency ocean science programs and development and coordination of a comprehensive and integrated U.S. research and monitoring program. Authorizes the Secretary of Commerce to establish an Oceans and Human Health Initiative.		
S. 362 (109th Cong.)	Marine Debris Research Prevention and Reduction Act	Inouye (D-HI)
Establishes within NOAA a Marine Debris Prevention and Removal Program of project grants to reduce and prevent the occurrence and adverse impacts of marine debris on the marine environment and navigation safety.		
S. 363 (109th Cong.)	Ballast Water Management Act of 2005	Inouye (D-HI)
Amends the Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990 to revise certain aquatic invasive species prevention requirements to apply them to certain U.S. and foreign vessels using U.S. ports, and to establish ballast water and sediment management standards for vessels of the armed forces.		
H.R. 1431 (109th Cong.)	Fisheries Science and Management Act of 2005	Rahall (D-WV)
Amends the Magnuson-Stevens Fishery Conservation and Management Act to revise requirements for the appointment and training of the voting members of the eight Regional Fishery Management Councils. Requires each science and statistical committee established by a Council to include a fishery and marine science sub-committee.		

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<i>Bill #</i>	<i>Title</i>	<i>Sponsor</i>
H.R. 1592 (109th Cong.)	Aquatic Invasive Species Research Act	Ehlers (R-MI)
Establishes marine and freshwater research, development, and demonstration programs to support efforts to prevent, control, and eradicate invasive species, as well as to educate citizens and stakeholders, and restore ecosystems.		
S. 1195 (109th Cong.)	National Offshore Aquaculture Act of 2005	Stevens (R-AK)
Support and provide for an offshore aquaculture industry in the Exclusive Economic Zone of the United States, by providing the necessary authorities, procedures, and permitting processes to encourage investment in aquaculture operations, demonstrations, and research while protecting marine ecosystem quality.		
S. 1224 (109th Cong.)	National Oceans Protection Act of 2005	Boxer (D-CA)
An act to secure, for present and future generations of people of the United States, the full range of environmental, economic, educational, social, cultural, nutritional, and recreational benefits of healthy marine ecosystems.		
H.R. 2939 (109th Cong.)	Oceans Conservation, Education, and National Strategy for the 21st Century Act	Weldon (R-PA)
Establishes a national policy to protect, maintain, and restore the health of marine ecosystems and national standards for implementing the policy to ensure that federal agency actions are consistent with the policy.		
Marine Science		
S. 2489 (108th Cong.)	Coastal and Ocean Mapping Integration Act	Inouye (D-HI)
Directs the Administrator of NOAA to establish an integrated coastal and ocean mapping program for the Great Lakes, coastal State waters, territorial sea, the exclusive economic zone, and the U.S. continental shelf, in hopes of furthering U.S. conservation, management and research efforts in these areas.		
S. 39 (109th Cong.)	National Ocean Exploration Program Act	Stevens (R-AK)
Directs the Secretary of Commerce to establish a national ocean exploration program within NOAA. Among other requirements, the bill calls for the program to promote development of oceanographic research, conduct education and outreach activities that improve public understanding of ocean science, resources, and processes.		

Bill #	Title	Sponsor
S. 361 (109th Cong.)	Ocean and Coastal Observation System Act of 2005	Snowe (D-ME)
Directs the President, acting through the National Ocean Research Leadership Council, to establish and maintain an integrated system of ocean and coastal observations, data communication and management, analysis, modeling, research and education.		
H.R. 1489 (109th Cong.)	Coastal Ocean Observation System Integration and Implementation Act of 2005	Gilchrest (R-MD)
Directs the Secretary of Commerce to establish within NOAA a Coastal Ocean Observation System to support coastal and fishery management activities and an integrated national ocean observation system. The system will include end-use products to support coastal and fishery management, data management and communication systems, and forecast models.		
H.R. 1584 (109th Cong.)	Ocean and Coastal Observation System Act of 2005	Weldon (R-PA)
Directs the Committee on Ocean Policy, acting through the National Ocean Research Leadership Council, to establish and maintain an integrated system of coastal and ocean observations, data communication and management, analysis, modeling, research and education, designed to provide for detection and prediction of ocean and coastal changes impacting the nation's social, economic, and ecological systems.		

**State Activities**

While Congress has begun to introduce federal legislation in response to the U.S. Commission on Ocean Policy's work, States around the U.S. have responded by initiating their own ocean policy activities. Some States have built on existing activities, some have begun new comprehensive ocean programs, and some have introduced State legislation to accomplish State goals for ocean governance. Table 4 summarizes these activities, highlighting the type of activity, how it has been established or proposed, and its timeframe. All of these actions demonstrate the desire of States to both mirror and support the ocean policy activities occurring at the federal level, through both the report of the U.S. Commission on Ocean Policy and resulting federal actions.

**Table 4.—State Ocean Policy Activities\***

State	Organization	Scope	Authority	Effective Date
California	California Ocean Protection Council	Coordination and improvement of the protection and management of California's ocean and coastal resources.	California Ocean Action Plan, California Public Resources Code, Division 26.5 §35500–35650	December 2004
Massachusetts	Comprehensive Ocean Resources Management Act	A bill to implement the recommendations of the Massachusetts Ocean Management Task Force to enable proactive planning for stewardship of these ocean resources held in trust for the public.	Senate Bill No. 529, 2005	January 2005
Oregon	Oregon Ocean Policy Advisory Council	Coordinated collaboration of State agencies involved in ocean and coastal management.	Oregon Revised Statute Title 19, 196.438	January 2004
Alaska	Alaska Ocean Policy Cabinet	Coordinated collaboration of State agencies involved in ocean and coastal management.	Governor Murkowski, Administrative Order No. 223	December 2004

\* This table summarizes recent State Ocean Policy activities, as discussed above. See ns. 139–144 above.

Hawaii	Hawaii Ocean and Coastal Council	Gather information and provide advice and recommendations on direction and planning for addressing Hawaii's ocean and coastal matters to foster coordinated approaches that support local initiatives on ocean and coastal concerns.	Governor Lingle, Executive Order No. 5	January 2005
Washington	Washington State Ocean Policy Working Group	Identify recommendations of the U.S. Commission on Ocean Policy report appropriate for immediate implementation; provide comprehensive report on State ocean resource policies.	Washington ESSB 6090, PL § 116 (7)	April 2005
Florida	Florida Oceans and Coastal Council	Develop a research plan and performing a resource assessment, including patterns of use, natural resource features, location of research and monitoring infrastructure, commercial and recreational transit patterns, and socioeconomic trends of the state's oceans and coastal economy.	Florida Statutes, Part IV of Chapter 161, §§161.70-161.76	May 2005

Two new states, New York and New Jersey, have initiated state ocean policy activities since the original drafting of this manuscript. Also, the Washington State Ocean Policy Working Group has released its initial report, available online: <[http://courses.washington.edu/oceanogv/OPWG\\_Docs/WashingtonOPWGReport.pdf](http://courses.washington.edu/oceanogv/OPWG_Docs/WashingtonOPWGReport.pdf)>.

Of those coastal States that have responded to the Commission's findings, California has taken the lead on comprehensive ocean policy review.<sup>139</sup> As with many coastal issues, other States are once again looking to California as the leader in groundbreaking policy and management activities. After submitting his response to the draft Commission report, Governor Arnold Schwarzenegger released California's Ocean Action Plan,<sup>140</sup> outlining a comprehensive plan for ocean activities in the State. State legislation created the California Ocean Protection Council, with the charge of overseeing California's ocean policy activities and providing concentrated leadership for future State actions. The California Ocean Action Plan includes other aspects of ocean governance, such as education programs, ocean monitoring, science coordination, and financing. In a similar fashion, Massachusetts has built upon its existing ocean management programs through Governor Romney's Ocean Management Initiative,<sup>141</sup> which established an Ocean Management Task Force. This task force has worked a great deal on ocean management and policy issues on the State level, working to improve ocean and coastal management and to support federal activities affecting Massachusetts. Florida has recently passed its own legislation that will establish the Florida Oceans and Coastal Council, with the initial charge of developing an ocean research plan as well as a natural resource assessment.

Alaska has responded to the Commission's work by establishing its own Ocean Policy Cabinet, an agency that will spearhead ocean policy activities for the state.<sup>142</sup> The State of Hawaii created an Ocean and Coastal Council to oversee the State's ocean management activities, formed by executive order of Governor Linda Lingle in January 2005.<sup>143</sup> The State of Oregon has an Ocean Policy Advisory Council, formed before the Oceans Act and the U.S. Commission on Ocean Policy. This Council has recently been reconstituted, and is expected to begin a review of State ocean policies in the near future.<sup>144</sup> Washington State has begun an ocean policy review within the Governor's Office, designed to respond to the Commission's report, and recommend future State ocean policy activities. Thus, all western states have State ocean policy oversight activities taking place. The groundwork is laid institutionally for a State and federal dialogue about future ocean policies and activities.

139. California Ocean Resources Management Program, available online: <<http://resources.ca.gov/ocean/>>.

140. Available online: <[http://resources.ca.gov/ocean/Cal\\_Ocean\\_Action\\_Strategy.pdf](http://resources.ca.gov/ocean/Cal_Ocean_Action_Strategy.pdf)>.

141. Available online: <<http://www.mass.gov/czm/oceanmgtinitiative.htm>>.

142. Governor Murkowski, Administrative Order No. 223, December 17, 2004. Available online: <<http://gov.state.ak.us/admin-orders/223.html>>.

143. Governor Lingle, Executive Order No. 5, January 6, 2005.

144. Oregon Revised Statute, Title 19, 196.438.

## CONCLUSION

Part I of this article illustrated how the Oceans Act of 2000 differed from the 1966 law establishing the Stratton Commission and changed it to suit the political climate of the late 1990s. The Stratton commissioners and the commission chair and vice chair were all chosen by the President. Further, the Stratton Commission worked closely with a National Marine Council composed of cabinet officials, and the law emphasized improving the nation's science and technology capabilities. The Oceans Act, on the other hand, reflected a concern by many Congressional leaders that constituency interests heavily invested in ocean resources and issues should be an integral part of the process. Thus we see an Oceans Act requiring extensive Congressional participation in Commissioner selection, geographic representation, requirements for hearings in many parts of the country, a mandatory review of a preliminary report by Governors, a requirement that environment and economic development be equally considered, and other provisions decentralizing and broadening the participation and factors to consider. Whereas the era in which the Stratton Commission was formed might be characterized as "top-down" and technocratic, with considerable faith in highly trained specialists and national leadership for change, the Oceans Act sought to elevate the role of the States and interested constituents to a level equaling that of the Executive and Congress.

Part II of this article presented the process of Commissioner selection that was highly political but resulted in a broadly representative and highly qualified Commission. Commissioners had a mix of marine-oriented specialties and leadership experience, and the four Commissioner choices by the Bush administration added diversity as well as extensive policy experience. More importantly, the choice of chairman, the preparation for the initial meeting, and Commission organizational procedures established a high standard that lasted throughout the three-year process. Much of the credit goes to Admiral James Watkins, the Commission chairman, who established a leadership style that insisted upon thoroughness, accuracy, and collegiality in all aspects of the Commission's work. In retrospect, the success of these organizational steps can be attributed to an "organic" process in which the marine science and policy community was given relative freedom to organize itself for this task with no apparent external policy agenda being forced upon them. The support of Congress, especially Senator Ernest Hollings, in providing the structure and the funding was essential.

Part III of this article provided an overview of the results of the Commission's labors, much of which is readily available in published and electronic forms. In addition to a comprehensive treatment of many topics, the report is a balance among capacity-building and problem-solving analysis and recommendations. As much attention is given to science,

technology, educational development and governance reform as is given to matters of policy in fisheries, environment and other topics. The theme of “ecosystem-based management”<sup>145</sup> is a thread that runs throughout the report and is particularly evident in the recommendations for a regional approach to ocean management, including regional ocean councils. Ocean use and ocean protection are addressed, and a theme of sustainable multiple use of the seas is clear. Ultimately, the report represents a “blueprint” for the future—a guide to policy development and reform for many years to come.

Part IV of the article shows promising first steps already taken by the Executive Office of the President, Congress and the States in response to the final report that was released September 20, 2004. The Bush Administration issued an Executive Order and an Ocean Action Plan outlining a number of areas of interest and importance that they intend to pursue. Most importantly they established a cabinet-level Committee on Ocean Policy, including a number of sub-committees that reorganizes the structure for consideration of ocean policy by the Executive Office of the President. The Committee on Ocean Policy held its first meeting in April, 2005. Many bills have been introduced in the Congress in response to the Commission recommendations, only one of which has been enacted so far. A number of states have initiated ocean policy reform at their level, with California leading the way. It is too early to tell if a lasting trend of implementation steps is underway.

This article presented an overview of selected topics important to understanding and advancing U.S. ocean policy. Emphasis was placed on the legislative and administrative processes surrounding the work of the Commission on Ocean Policy. It acted as an introduction to a field that deserves further research in a number of areas.

First, the Commission report creates a policy baseline as well as a proposed blueprint for the future, and should lead to an explicit process to track changes in U.S. ocean policy as they occur. These changes could be specific policy outputs such as new laws, organizations, program activities and budget initiatives on various topics. It could also track outcomes that assess the status of ocean resources and activities, such as changes to fish resources, environmental quality, and marine economic development indicators.

Secondly, the review of legislative and administrative steps needs to be amplified with discussion of policy debate and reform for specific topics of

145. Ecosystem-based management is defined and described by the Commission at pages 63–67 of the final report (see n. 1 above). Its components include: defining new management boundaries; aligning decision making within ecosystem boundaries; precautionary and adaptive management; clear goals and objectives for ecosystem-based management plans; and the consideration of biodiversity.

marine policy. There is a rich history centering on the economic, social and political dimensions of such topics as fisheries policy, marine transportation, ocean research, marine protection, coastal management, ocean energy development, and many others that deserve careful review. Of particular interest will be the role of the U.S. Commission report and aftermath in policy change, should any occur.

Thirdly, policy researchers and analysts need to address how highly visible ocean issues of immediate concern might incorporate the longer range principles advanced in the report, especially those dealing with capacity building. At the time of this writing, the U.S. Congress is focused on tsunami detection, warning and emergency response; fisheries management and policy; and new offshore energy and aquaculture development. If these issues can be addressed in ways that advance the broader themes of the Commission report, then progress will have been made, even if in subtle and more hidden ways.

Fourthly, the success of efforts like those of the Commission often reflects the vision, leadership and management skills of particular individuals. The specific role of Senator Ernest Hollings, Senator Ted Stevens, Admiral James Watkins, and the Working Group chairs of the Commission (Bill Ruckelshaus, Paul Sandifer and James Coleman) deserve special recognition by those chronicling the Commission's work in the future.

Finally, the Commission operated within a public policy framework and a political and social environment that influenced the way it proceeded. Similarly, the successful Stratton Commission and the companion National Marine Council that existed between 1966 and 1971 operated in a different political context. Fortunately, Professor Edward Wenk, the Executive Secretary of the National Marine Council wrote an insightful book about that earlier era.<sup>146</sup> The time is ripe for a study of the politics of U.S. ocean policy at the dawn of the 21st century.

146. E. Wenk, *The Politics of the Ocean* (Seattle: University of Washington Press, 1972).

