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## Oceans Report

ALAN D. WIENER\*

### GOVERNMENT REORGANIZATION

President Carter's efforts to follow through on his campaign promises for a government-wide reorganization have prompted a full scale discussion of the national ocean policy and its priorities. Harrison Wellford, Chairman of the President's Reorganization Project (PRP), has called for the creation of a cabinet level Department of Natural Resources. Another Presidential advisory panel, the National Advisory Committee on Oceans and Atmosphere, stated their vehement opposition to the creation of a Department of Natural Resources and advocated the establishment of a new oceans agency.<sup>1</sup>

The Department of Natural Resources would draw together work presently being done by the Department of Interior, the National Oceanographic and Atmospheric Administration (NOAA), the Soil Conservation Service and the Forest Service of the Department of Agriculture, the Water Resources Council, the Marine Mammal Commission, and any civil planning functions of the Army Corp of Engineers. The President supported PRP's recommendation in his State of the Union Address to Congress but has yet to unveil the exact specifications of his proposal. The Secretary of the Department of Commerce, Juanita Kreps, has advocated the retention of such programs as fisheries and NOAA within the Department of Commerce. There is near universal agreement that some coordination and consolidation of ocean and coastal related activities, which presently involve over 471 federal agencies, is needed.<sup>2</sup>

The National Advisory Committee on Oceans and Atmosphere recommended that the new oceans agency include NOAA, the Coast Guard, the Maritime Administration, other ocean-oriented programs in the Army Corp of Engineers, and the Departments of Commerce, Interior, Agriculture, and Transportation.<sup>3</sup> The Committee suggested that perhaps the National Aeronautics and Space Administration might also be included in the new department. In a letter to the President on November 27, 1978, the Committee warned that

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1. OCEANS, No. 1, at 64 (1979).

2. [1978] 9 ENVIR. REP. (BNA) 1355.

3. *Id.* at 1462.

placing ocean programs under a new Department of Natural Resources would be counterproductive and “[i]n our opinion, such a move would leave us a nation ill prepared to meet the global challenge to our national oceanic and atmospheric interest that is now unfolding.”<sup>4</sup> The Committee’s statement was based on the fear that a Department of Natural Resources might be too land-oriented and unable to effectively pursue U.S. interests in the oceans, coastal areas, polar regions, and atmosphere.

The PRP responded with assurances that ocean related programs would be given high priority in the new Department of Natural Resources and also pointed to the possibility of having an Under Secretary of Oceans and an Assistant Secretary for Fisheries within the new agency.<sup>5</sup> The President’s proposal may be rejected or amended by both the Senate and the House of Representatives. Consequently, the future framework for the administration of U.S. ocean related programs still remains a mystery.

On January 22, 1979, Secretary Kreps responded to a Presidential request by issuing a major study of U.S. ocean policy and programs. The study, entitled “U.S. Ocean Policy in the 1970’s: Status and Issues,” examines the following major areas of U.S. ocean policy: marine fisheries, coastal resources, marine transportation, marine environment, marine science and technology, and marine employment, education, and training. According to the report, the major ocean policy issues focus on:

The need for an overall national ocean policy framework that can be used for effective long term management of ocean and coastal resources under U.S. jurisdiction; the extent to which the U.S. will exercise jurisdiction over ocean and seabed resources; and the need for national policy in developing ocean and coastal resources.<sup>6</sup>

The Commerce Department foresees an increasing dependence upon the ocean and its resources. Accordingly, the study calls for the creation of a consistent national policy for both the protection and exploitation of resources in fresh water and inland areas, the coastal zone, the outer continental shelf, and the adjacent deep ocean. The study concludes that “effective execution and administration of existing law is likely to be of paramount importance in resolving emerging ocean problems and capitalizing on emerging opportunities.”<sup>7</sup> The

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4. *Id.* at 1463.

5. OCEAN SCI. NEWS, February 12, 1979, at 3.

6. [1979] 9 ENVIR. REP. (BNA) 1840.

7. *Id.* at 1841.

implication of this study's findings is that more than 350 separate provisions of federal law would have to be coordinated.

NOAA has established several new organizations which are to implement the provisions of the National Climate Act<sup>8</sup> signed by President Carter late in 1978. Climate programs operating under other government agencies will continue to do so under the direction of the Oceanic and Atmospheric Services Assistant Administrator, who runs the National Weather Service and is Chairman of the NOAA Climate Program Coordinating Council.<sup>9</sup>

#### MARINE POLLUTION

On November 22, 1978, the United States and Canada signed the Great Lakes Water Quality Agreement of 1978 to coordinate the environmental management of the Great Lakes. This agreement significantly revised and strengthened the antipollution measures delineated in the Great Lakes Water Quality Agreement of 1972. The new agreement will rigorously enforce the identification, surveillance, and monitoring of airborne and land-based pollutants that enter the Great Lakes. Other provisions are directed at the further reduction of phosphorus loadings and the limitation of radioactivity.

The 1972 Agreement contained a provision for review of the program's effectiveness, and the new agreement is a direct product of that review. In its Fifth Annual Report on Great Lakes Water Quality, the International Joint Commission concluded that the two governments had successfully halted the continued degradation of water quality in the Great Lakes, but that, nevertheless, there was room for improvement.<sup>10</sup> The International Joint Commission, the Eight Great Lakes States, the Provinces of Ontario and Quebec, and the federal governments of the United States and Canada all participated in negotiations preceding the 1978 Agreement.

The 1978 Agreement contains five major improvements over the 1972 Agreement. The water quality objectives have been revised, both generally and specifically, to reflect the goal of higher water quality standards. Provisions have been included for strictly limiting the discharge of toxic substances into the Great Lakes and for establishing a warning system. The Agreement also sets deadlines for the

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8. National Climate Act of 1978, Pub. L. No. 95-367, 92 Stat. 601 (1978) (to be codified in 15 U.S.C. 2901).

9. OCEAN SCI. NEWS, November 6, 1978, at 5.

10. DEP'T. STATE BULL., January 1979, at 23.

completion of programs by both municipalities (December 31, 1982) and industry (December 31, 1983). Monitoring and surveillance efforts will be stepped-up to determine the effectiveness of the remedial programs under the Agreement. Finally, the Agreement provides for dealing with pollution from land-use activities and also from airborne pollutants.<sup>11</sup>

The United States Congress passed the Outer Continental Shelf Lands Act Amendments of 1978, which made several major changes to the original 1953 statute.<sup>12</sup> The Amendments streamline the procedures required for obtaining leases, in the case of private lessors, to exploit mineral resources on the United States outer continental shelf.<sup>13</sup>

The Amendments will also mandate that the Interior Department supervise oil and gas drilling activities to insure that they do not violate air quality standards.<sup>14</sup> The Interior Secretary is to promulgate regulations for compliance with the national ambient air quality standards under the Clean Air Act "to the extent that activities authorized under the Outer Continental Shelf Act significantly affect the air quality of any state."<sup>15</sup>

The Environmental Protection Agency (EPA) and NOAA announced the formation of an inter-agency committee for program coordination. The purpose of this committee is to "formally coordinate research and regulatory activities related to the use and protection of oceanic and coastal waters."<sup>16</sup> The committee will also study the possibility of joint use of facilities for research of ocean dumping, pollution, monitoring, and meteorology. A first priority of the committee will be to coordinate efforts to enforce the Clean Water Act. Under the Act, the EPA must set standards for the disposal of municipal waste water discharges which have not received secondary treatment.<sup>17</sup>

The House of Representatives passed the Marine Protection, Research, and Sanctuaries Authorization Bill which would transfer the authority for researching alternatives to ocean dumping from the NOAA to the EPA. The measure also amends the Ocean Dumping

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11. *Id.*

12. [1978] 9 ENVIR. REP. (BNA) 698.

13. *Id.* at 526.

14. *Id.* at 673.

15. *Id.* at 698.

16. *Id.* at 993.

17. *Id.*

Act to prohibit the discharge of certain industrial substances after December 31, 1981. Furthermore, the Bill mandates that the Commerce Department must allow Federal and State agencies an opportunity to comment before designating a marine sanctuary.<sup>18</sup>

In the EPA's Annual Report to Congress, given pursuant to the Marine Protection, Research and Sanctuaries Act, it was reported that during 1977, the dumping of municipal and industrial waste at sea, off the coast of the United States, declined by almost twelve percent. The EPA is responsible for regulating and issuing permits for the dumping of sludge and industrial waste in the ocean. The report points out that sewage sludge amounted to almost sixty-nine percent of the total tonnage dumped in 1977, but that under the amendment to the Act, all ocean dumping of sewage sludge must terminate by December 31, 1981.<sup>19</sup>

Of the total 7.4 million tons of waste dumped into the ocean during 1977, more than 7.3 million tons were dumped off the Northeast Atlantic coastline, 60,200 tons were dumped into the Gulf of Mexico, and no dumping reportedly occurred in the Pacific Ocean. The EPA claims that since the program's inception in 1973, the amount of industrial waste dumped annually has decreased by over sixty-three percent. During that same period, however, the dumping of sewage sludge increased from approximately 4.9 million tons to around 5.1 million tons.<sup>20</sup>

Although the report points to evidence of damage to the marine environment at dumping sites, the EPA contends that they have still not found acceptable methods of measuring and predicting the effect of ocean dumping on the environment. As a result, the EPA has recommended that there be no relocation of present sludge ocean dumping sites. It is the agency's position that the 1981 deadline for termination is close enough so that the benefits derived from relocating dumping sites could not justify the possible environmental hazard to any new sites that would be selected.<sup>21</sup>

Under the National Ocean Pollution Research and Development and Monitoring Act of 1978, NOAA is required to prepare a five-year plan for federal ocean pollution research, development, and monitoring. To this end, the NOAA and EPA have jointly sponsored meet-

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18. *Id.* at 1063.

19. *Id.* at 523.

20. *Id.*

21. *Id.*

ings at which industrial, environmental, and state specialists were invited to comment. Five areas of priority were identified at the meeting: 1) more extensive planning for oil spills, including containment, cleanup, and long-term assessment of spill effects; 2) greater availability of ocean pollution data to environmental managers and the public; 3) recognition of the difficult ocean pollution problems in the Arctic; 4) consideration of the effects of sediment plumes in marine mining operations; and 5) more intensive efforts to identify presently unknown pollutants, particularly toxic substances.<sup>22</sup>

### FISHING

A number of conflicting claims to jurisdiction have emerged since the United States and other nations announced their recognition of 200-mile economic zones off their coasts.

The United States signed agreements to set maritime boundaries with Mexico (May 4, 1978), with Venezuela (March 28, 1978), and with Cuba (December 16, 1978). President Carter announced that these treaties are consistent with the United States position and interpretation of international law and "will facilitate law enforcement activities and provide for certainty in resource development."<sup>23</sup>

The United States and Canada have agreed to a fisheries treaty for their east coast but will refer disagreements over setting the boundary in the Gulf of Maine to a third party for binding arbitration. In a statement issued February 14, 1979, the two countries said, "the agreements reached will be set out in two separate but related treaties, one on fisheries and the other on third party resolution of the boundary limitation issue, which would enter into force simultaneously."<sup>24</sup> Issues regarding the Pacific coast are not part of the agreement.

The fisheries agreement creates a joint fisheries commission "to implement the agreement and to provide for cooperative management of fish stocks of mutual interest."<sup>25</sup> A procedure for the resolution of disputes will also be part of the agreement. The agreement on the division of several fish stocks in the Georges Bank area includes provisions, *inter alia*, for scallops, cod, haddock, and herring. Pursuant to the agreement, each nation's share will be subject to review every

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22. *Id.* at 1471.

23. OCEAN SCI. NEWS, January 29, 1979, at 5.

24. OCEAN SCI. NEWS, February 19, 1979, at 3.

25. *Id.*

ten years. While the United States and Canada believe that the Atlantic Coast Treaty should "provide momentum for the continuation of negotiations directed toward the resolution of the Pacific and Arctic coast issues in an equally amicable fashion,"<sup>26</sup> the boundary limitation question in the Gulf of Maine remains unresolved. If binding arbitration fails to resolve this matter "for any reason" within two years after the fisheries treaty enters into force, the entire agreement may be cancelled by either party upon six months notice.<sup>27</sup>

#### ANTARCTIC RESOURCES

During September 1978, a working group of representatives of the Antarctic Treaty nations participated in negotiations regarding a future Antarctic Marine living resources convention. Informal drafts were prepared which incorporated the ideas discussed at the negotiations; they are currently being studied by the governments to determine whether there exists a basis for continued negotiations.

A threshold issue plaguing the convention concerns which nations are eligible to participate. At present, there is considerable controversy over whether the European Economic Community will be allowed to attend and participate. Some nations support the "activity criterion" which would allow only those countries presently involved in researching or harvesting to participate. The broad view espoused by the United States is that the convention should be open to all nations, but only those nations which meet the "interest criterion" should be included in the decision-making process.<sup>28</sup> Although the informal drafts of the convention have been classified as confidential, U.S. State Department officials have stated that the major obstacles to ratification of the convention are issues related to territorial claims, the proposed conservation standard (a possible ceiling on harvesting), the creation of a conservation regime, and the mechanism for the treaty's enforcement.

A similar convention on Antarctic mineral resources was thought to be on the distant horizon. At the Ninth Annual Antarctic Treaty Consultative meeting in London, however, it was the consensus of the nations in attendance that they should urge their own citizens to refrain from the exploitation of these mineral resources in order to

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26. *Id.*

27. *Id.*

28. OCEAN SCI. NEWS, November 13, 1978, at 5.



allow the political process to freely continue negotiations.<sup>29</sup> The United States House of Representatives passed the Antarctic Conservation Act of 1979, which is aimed at the conservation of Antarctic fauna and flora. The United States, Australia, and Japan were consultative parties to the 1959 Antarctic Treaty, but have not formally adopted the measures which were agreed to at the Third Antarctic Treaty Consultative meeting in 1964. The Treaty's purpose is to protect plant and wildlife in the Antarctic from the invasion of human activity.<sup>30</sup>

#### MARINE TRANSPORTATION

The United States Coast Guard has announced that they will issue regulations which will require all new tank barges to be constructed with double hulls in order to protect against the danger of oil spills. The Coast Guard has presently certified over 2,660 American barges for oil transportation in ocean, coastal, Great Lakes, and inland waterways transportation. The Coast Guard will also consider regulations regarding the danger presented by barges without double bottom hulls which are presently in service.<sup>31</sup>

The Coast Guard issued regulations for mobile offshore drilling units, effective January 3, 1979. These new regulations apply uniformly to units which float while engaged in drilling and to those which rest upon the seabed. The new regulations govern inspection and certification, design and equipment, and the operation of the units. The Coast Guard contends that these new regulations parallel those of the Intergovernmental Maritime Consultative Organization's (IMCO) "Draft Code for Mobile Off Shore Drilling Units." The Coast Guard also contends that the new regulations are fully consistent with the rules issued by the United States Geological Survey for units operating on the outer continental shelf.<sup>32</sup>

An amendment to the Merchant Marine Act which would have required coordination and formal meetings between the United States Navy, the Maritime Administration, and Maritime Interest of the Nation with the issuance of an annual report, was vetoed by President Carter. President Carter explained that the amendment unduly infringed upon the powers of the executive branch of government. The President further asserted that coordination among these agencies was

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29. *Id.*

30. OCEAN SCI. NEWS, October 16, 1978, at 5.

31. OCEAN REP., August 1978, at 4.

32. OCEAN SCI. NEWS, January 8, 1979, at 4.

an administrative responsibility of the Navy, the Department of Commerce, and the Maritime Administration.<sup>33</sup>

On November 4, 1978, President Carter vetoed a bill designed to stop the granting of rebates by transport lines to ocean shippers. The President explained that he vetoed the measure because he believed it would create a disparity in the enforcement of the United States' anti-rebate laws against U.S. flag carriers while foreign flag operators would escape punishment. The President stated, however, that he would view favorably legislation aimed at the elimination of rebates by both United States flag carriers and foreign flag carriers.<sup>34</sup>

### DEEP SEA MINING

While the United Nations Law of the Sea Conference has stressed that mineral resources in the deep sea are the "common heritage of mankind," the United States Congress and various industrial entrepreneurs have become impatient with the prolonged negotiations of the conference. On July 26, 1978, the United States House of Representatives passed H.R. 3350, which laid the framework for setting up environmental standards and a revenue sharing program for deep sea mining by United States concerns in international waters.<sup>35</sup> This bill is intended to serve as interim legislation until the United Nations Law of the Sea negotiators reach agreement. It preserves the right of the United States to act unilaterally and contains a grandfather clause. The House bill, according to Congressman Breaux, "provides the kind of investment climate, without investment guarantees, in which deep seabed mining may be assured of going forward."<sup>36</sup>

There was strong opposition to the bill. Several congressmen felt it betrayed the "common heritage of mankind" doctrine which had been approved by the U.S. delegates to the United Nations. Congressman Dellums felt unilateral action by the United States was "blatant arrogance" that was "based on narrowly focused self-interest."<sup>37</sup> In response to this criticism, the House bill created a trust fund for the "sharing among nations of the revenues from deep seabed mining."<sup>38</sup>

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33. OCEAN SCI. NEWS, November 6, 1978, at 5.

34. CONG. Q., November 11, 1978, at 3282.

35. H.R. 3350, 95th Cong., 2d Sess. (1978).

36. [1978] 9 ENVIR. REP. (BNA) 554.

37. OCEAN REP., August 1978, at 2.

38. [1978] 9 ENVIR. REP. (BNA) 554.

The United States Senate reviewed Senate Bill S. 2053 which was approved by the Senate Energy, Interior, and Commerce Committees.<sup>39</sup> The Senate bill required all vessels engaged in deep seabed mining to comply with the Clean Water Act. The Senate proposal contains the following provisions: a trust fund higher than that proposed by the House bill but consistent with the United States negotiating position in the Law of the Sea Conference; a much weaker grandfather clause than offered in the House bill, and the designation of the Energy Department instead of the NOAA as the principle regulatory agency.<sup>40</sup>

No action was taken on the Senate bill, however, as Senator Abourezk effectively stopped the bill from reaching the floor for debate. The Senator was successful notwithstanding strong support for the bill by the mining industry and statements by Elliot Richardson, U.S. Ambassador to the Law of the Sea Conference, supporting unilateral U.S. legislation during the interim period. Abourezk took the position that the bill was "special interest" legislation that should not be considered until the United Nations Law of the Sea Conference had resolved all of the issues concerning deep seabed mining.<sup>41</sup>

Unless the United Nations Law of the Sea Conference moves rapidly toward a definitive and acceptable regulatory scheme for deep seabed mining, unilateral action by the industrial entrepreneurs is eminent. Although there is some prospect for a "mini-treaty" or a limited multilateral agreement, it is apparent that the patience of the industrialists has worn thin.

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39. S. 2053, 95th Cong., 2d Sess. (1978).

40. *Id.* at 841.

41. *Id.* at 1184.