



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

April 8, 2003

The Honorable John McCain, Chairman
The Honorable Ernest F. Hollings,
Ranking Minority Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Wayne T. Gilchrest, Chairman
The Honorable Frank Pallone, Jr.,
Ranking Minority Member
Subcommittee on Fisheries Conservation,
Wildlife, and Oceans
Committee on Resources
United States House of Representatives
Washington, D.C. 20515

Gentlemen:

I write to request that Congress take action to rectify the status of most officers of the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA).

We have learned that, for reasons still being investigated, over the past decade the NOAA commissioned corps regularly made appointments and promotions internally, without complying with the legal requirements of Presidential action and Senate consent. The status of these officers must be corrected. Our first objective, for which we seek your prompt assistance, is to remedy any infirmities in the positions of the NOAA commissioned corps personnel, so that they can continue to execute NOAA's mission. Our second objective, which we are already addressing internally, is to determine precisely how the errors occurred, affix accountability for them, and to ensure that no errors in appointment occur again.

We respectfully request action on the following provision:

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That all actions in the line of duty by, and all Federal agency actions in relation to (including with respect to pay, benefits, and retirement), a de facto officer of the commissioned corps of the National Oceanic and Atmospheric Administration who was not properly appointed in or promoted to that office, are hereby ratified and approved if otherwise in accord with the law, and the President alone may, without regard to any other law relating to appointments or promotions in such corps, appoint or promote such a de facto officer temporarily, without change in the grade currently occupied in a de facto capacity, as an officer in such corps for a period ending not later than 180 days from the date of enactment of this section.

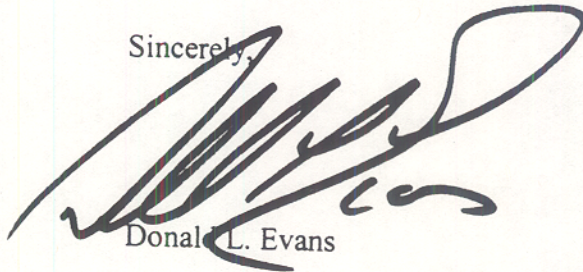
This provision would accomplish three things. First, it would ratify the actions taken by the NOAA commissioned corps personnel not properly appointed or promoted ("de facto officers"), to the extent that the only flaw in such actions is that the de facto officer was not properly

appointed or promoted. Second, it would ratify the governmental actions taken in relation to the de facto officers, such as providing them with pay, benefits, and retirement pay or service credit, again to the extent that the only flaw in such actions is that the de facto officer was not properly appointed or promoted. Finally, it would allow the President acting alone to make temporary appointments and promotions as officers in the NOAA commissioned corps for the de facto officers, at their current purported grades, that will expire no later than 180 days after the enactment of the general provision. During that 180-day period, the President can submit nominations for all these officers to the Senate; the Senate Committee on Commerce, Science, and Transportation and the full Senate can consider the nominations; and, if the Senate consents, the President can appoint or promote them permanently.

The Office of Management and Budget advises that Congressional action on the provision set forth would be in accord with the Administration's program.

We appreciate very much your support in promptly correcting the situation with respect to our uniformed service.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald L. Evans", written in a cursive style.

Donald L. Evans