



February 9, 2004

The Honorable Richard Pombo  
Chairman, Committee on Resources  
United States House of Representatives  
Washington, DC 20515-6201

Dear Mr. Chairman:

This letter responds to your request for the views of the Department of Commerce on S. 1400, the "Ocean and Coastal Observation Systems Act", as engrossed by the Senate and referred to the Committee on Resources in the U.S. House of Representatives.

This legislation would provide for the development, implementation, and maintenance of an integrated ocean and coastal observing system. The Department supports the purposes of this legislation and has actively supported improved ocean observations. For example, the Department is a member of the National Ocean Research Leadership Council, and S. 1400 reflects many of the Council's ocean observing objectives. These objectives were outlined in an Administration report to the Congress, *An Integrated and Sustained Ocean Observing System (IOOS) for the United States: Design and Implementation* (May 23, 2002), which after appropriate review, was sent to the Congress on February 26, 2003, by the Office of Science and Technology Policy.

The observing system proposed in the legislation also generally supports the Administration's broader Earth observing objectives as reflected in documents from the Earth Observation Summit held in Washington, D.C., on July 31, 2003. The Summit was not limited solely to ocean observing, but discussed other necessary Earth observations, such as atmospheric and terrestrial observations. The Committee may want to consider including a broader set of observing systems in this or other legislation to ensure that all Earth observing needs are met.

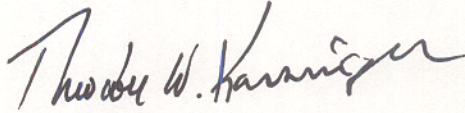
While the Department supports the goals of S. 1400, it is awaiting the recommendations of the U.S. Commission on Ocean Policy, which is expected to issue its ocean policy report early in 2004. At this time, the Department is enclosing preliminary comments with this letter.

The Department requests that all funding levels be consistent with the President's FY 2005 budget request.

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The Department appreciates the opportunity to present these views on S. 1400. The Office of Management and Budget has advised that there is no objection to the transmittal of these views from the standpoint of the Administration's program.

Sincerely,



Theodore W. Kassinger

Enclosure

cc: The Honorable Nick J. Rahall II  
Ranking Member, House Resources Committee

The Honorable Wayne Gilchrest  
Chairman, Subcommittee on Fisheries Conservation, Wildlife and Oceans

The Honorable Frank Pallone, Jr.  
Ranking Member, Subcommittee on Fisheries Conservation, Wildlife and Oceans

**Preliminary Comments of the Department of Commerce on  
S. 1400, the Ocean and Coastal Observation Systems Act,  
as passed by the Senate**

1. The legislation would integrate national capabilities and build on the existing infrastructure, maximizing the benefits of current investments while at the same time promoting a more robust system.
2. The Department is a major participant in Administration efforts to promote a more robust global-scale, Earth observation system. This legislation is for the most part consistent with this effort, but seems to emphasize coastal observations over global ocean observations.
3. The legislation refers to the Great Lakes in the subsection on regional observing systems, but should be more specific about whether the Great Lakes are or are not within the scope of the proposed ocean and coastal observing system. The Department recommends that the Great Lakes be included.
4. The Department of Justice has advised that it opposes the inclusion of Section 3(f)(3), which would treat regional associations and their staff as Federal employees for purposes of the Federal Tort Claims Act, because this section threatens a very significant expansion of Federal liability with no apparent Federal control over the regional associations or their employees.
5. The legislation provides no clear role for Federal agencies to participate in the regional associations. Many Federal research and observing capabilities are located in regions, which will need to be linked to the associations if a truly integrated system is to be achieved.
6. In general, the process for carrying out this legislation should be consistent with existing laws, rules, and policies governing administrative procedures. For example, the legislation would require the National Oceanic and Atmospheric Administration to make 51 percent of the appropriated funds available as *grants*. Because this funding is intended in part to support regional systems, this provision should state “grants, contracts, or other appropriate agreements . . .”
7. As drafted, the legislation would authorize significant levels of new funding to build, operate, and maintain the observing system. The legislation should ensure that the recipients of funds under grants, contracts or other appropriate agreements are held accountable. Some type of routine, independent analysis (e.g., performance, efficiencies, cost/benefit) would ensure the system provides an adequate return to the Nation.

8. Section 3(c) establishes an "Interagency Program Office," but then refers to an "interagency planning office." To avoid confusion, the bill should be amended to use the same name when referring to this office.
9. Section 3(b)(5) refers to "Federal agencies" and Section 3(c)(1) refers to "agencies." The term "agencies" either needs to be defined or otherwise preceded with the term "Federal" unless it is the intent to expand the scope of the term.
10. In section 3(a), the bill refers to the National Ocean Research Leadership Council (NORLC) that is authorized under Section 7902(a) of Title 10, United States Code, but does not mention all of the agencies represented on the NORLC. While this reference to another law that lists the agencies may be sufficient, the legislation should include a listing of all the agencies authorized under its provisions. This would include all previous members, such as the Environmental Protection Agency and others, and new members, such as the Department of Homeland Security.
11. Section 4 authorizes interagency financing, which will be fundamental to supporting an integrated system. The language used in this section may not be sufficient to achieve this objective. The Department may provide more comment on this section after it has an opportunity to review the recommendations of the U.S. Commission on Ocean Policy.