



## CALIFORNIA OCEAN PROTECTION COUNCIL

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John Chiang, State Controller, State Lands Commission Chair  
Linda Adams, Secretary for Environmental Protection  
Susan Golding, Public Member  
Geraldine Knatz, Public Member  
Darrell Steinberg, State Senator  
Pedro Nava, State Assemblymember

### MEMORANDUM

TO: Ocean Protection Council

FROM: Drew Bohan, Executive Policy Officer

DATE: July 24, 2008

RE: OPC Position on H.R. 21 before the 110<sup>th</sup> Congress

ATTACHMENTS: (1) [Letter from the council chair](#)  
(2) [H.R. 21, as amended April 23, 2008](#)  
(3) [H.R. 21 Section by Section Analysis](#) (provided by Representative Farr)

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### REQUESTED ACTION:

Staff recommends the council approve the following resolution:

“The Ocean Protection Council supports the specific objectives of House of Representatives bill *Oceans Conservation, Education, and National Strategy for the 21<sup>st</sup> Century Act* (H.R. 21) and directs staff to send the attached letter from the council chair.”

H.R. 21 sets forth a bold vision for our oceans that reflects the findings of the two ocean commissions and the desire of the public to make sure policymakers take the necessary steps to protect our oceans. By most measures, our oceans are in decline. H.R. 21 would help reverse that trend. As currently drafted, H.R. 21 is complex pieces of legislation and several amendments have been made since its initial introduction in January 2007; further amendments are likely. Accordingly, staff recommends that the OPC support the specific objectives of H.R. 21. Additionally, OPC staff will continue to work with the author to address concerns that have been identified, if necessary.

### BACKGROUND:

At the May 15, 2008 meeting of the Ocean Protection Council (OPC), members of the public encouraged the council to assess and comment on the *Oceans Conservation, Education and National Strategy for the 21<sup>st</sup> Century Act* (H.R. 21). The council directed staff to provide a bill summary and convene a meeting to allow the members to assess the bill and potentially vote to express their support.

## ANALYSIS

H.R. 21 is the latest iteration of legislation introduced over the last three years to implement key recommendations from the U.S. Commission on Ocean Policy (2004) and Pew Oceans Commission (2003). As currently drafted, H.R. 21:

- Establishes a national policy to protect ocean resources and creates an organizational framework to better coordinate federal activities related to ocean resources;
- Codifies the National Oceanic and Atmospheric Administration's (NOAA) functions and responsibilities;
- Provides for regional ocean governance and strategic planning; and
- Establishes a national ocean trust fund to provide funding to support ocean and coastal management.

The bill would provide a foundation for coastal states to actively engage federal agencies in coordinated management and protection of ocean resources. This will be important for California in its efforts to implement statutes such as the California Ocean Protection Act, the California Ocean Resources Management Act and the California Coastal Act. H.R. 21 would also implement one of the key recommendations of the *Ocean and Coastal Community Call for Action*, which was endorsed by the OPC in May 2008, by establishing and funding a national ocean trust fund.

### *National Ocean Policy*

H.R. 21 would establish a national, unified policy on ocean governance. The U.S. Commission on Ocean Policy, the Pew Oceans Commissions and other studies have concluded that a unified policy on management of ocean resources is needed to guide federal actions. Section 101 of the bill states:

(a) Policy- It is the continuing policy of the United States to protect, maintain, and restore the health of marine ecosystems in order to fulfill the ecological, economic, educational, social, cultural, nutritional, recreational and other requirements of current and future generations of Americans.

(b) National Standards-

(1) IN GENERAL- To the fullest extent possible, the policies, regulations, and Public Laws of the United States shall be interpreted and administered by any Federal agency in accordance with the policy in subsection (a) for any covered actions.

This policy is consistent with the state policy for ocean management established in the California Ocean Protection Act:

It is the state's policy that all public agencies shall consider the following principles in administering the laws established for the protection and conservation of coastal waters:

(1) State decisions affecting coastal waters and the ocean environment should be designed and implemented to conserve the health and diversity of ocean life and ecosystems, allow and encourage those activities and uses that are sustainable, and recognize the importance of aesthetic, educational, and recreational uses.

...

(5) State and local actions that affect ocean waters or coastal or ocean resources should be conducted in a manner consistent with protection, conservation, and maintenance of healthy coastal and ocean ecosystems and restoration of degraded ocean ecosystems.<sup>1</sup>

Federal agencies would be directed to interpret and administer their existing authorities in accordance with the national policy to the fullest extent possible, consistent with other laws.

The bill would create an executive position of National Ocean Advisor.<sup>2</sup> The Advisor would be charged with issuing policy guidance based on principles described in this section which are drawn from the Guiding Principles for a National Ocean Policy found in the U.S. Commission on Ocean Policy report.

The bill also stipulates that the National Ocean Advisor would be supported by a 20-member advisory group made up of a diverse group of stakeholders<sup>3</sup> and the Committee on Ocean Policy. The Committee on Ocean Policy would be comprised of the heads of ten federal agencies involved in ocean-management issues,<sup>4</sup> representatives from the National Science Foundation and National Research Council, and six state representatives chosen by the National Governors' Association. Four of the state representatives would be from coastal states.<sup>5</sup> The Committee on Ocean Policy would review federal laws, make recommendations regarding new resources or authorities and budgets to implement the national ocean policy, and coordinate with Regional Ocean Partnerships.<sup>6</sup> Within two years of passage, the Committee would devise a plan to coordinate federal activities in coastal and ocean waters, implement the national policy, and work with the regional partnerships to integrate regional plans into the national policy.<sup>7</sup>

### *An Organic Act for the National Oceanic and Atmospheric Administration*

In 1969 the Stratton Commission recommended creating a new *independent* agency to administer the nation's civil marine and atmospheric programs. NOAA was established within the Department of Commerce (DOC) by executive order in 1970, but has never had a legislatively defined purpose or structure. H.R. 21 would establish NOAA by law and define its mission and responsibilities. The rationale for this was identified in the Executive Summary to the report of the U.S. Commission on Ocean Policy:

The National Oceanic and Atmospheric Administration (NOAA) is the nation's primary ocean agency. Although it has made significant progress in many areas, there is widespread agreement that the agency could manage its activities more effectively.

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<sup>1</sup> Pub. Res. Code § 35610.

<sup>2</sup> H.R. 21, Sec. 102.

<sup>3</sup> The council of Advisors on Ocean Policy is comprised of representatives from local government, Indian tribes, marine science research, marine science education, commercial fishing, commercial seafood, recreational fishing, energy development, agriculture, watershed organizations and other nongovernmental organizations. H.R. 21 Sec. 105(c).

<sup>4</sup> These people are: the Secretary of Commerce, the Secretary of State, the Secretary of Interior, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of Homeland Security, the Secretary of Energy, and the Administrator of the Environmental Protection Agency.

<sup>5</sup> H.R. 21, Sec. 103(d)(3).

<sup>6</sup> *Id.* Sec. 103(b).

<sup>7</sup> *Id.* Sec. 104.

...

As an initial step in a phased approach, Congress should pass an organic act that codifies the existence of NOAA. This will strengthen the agency and help ensure that its structure is consistent with three primary functions: management; assessment, prediction, and operations; and research and education.<sup>8</sup>

H.R. 21 would make NOAA principally responsible for: (1) providing the nation with oceanic, weather, atmospheric, and climate services; and (2) supporting research, conservation, management, and education regarding ocean and coastal resources. It would also require that NOAA be significantly involved in the development of national ocean policy and Regional Ocean Strategic Plans.

### *Regional Ocean Management*

H.R. 21 provides a foundation for developing a comprehensive plan for regional ocean management. For the Pacific Ocean, the bill establishes the Pacific Regional Partnership (California, Oregon and Washington), North Pacific Regional Partnership (Alaska), and Western Pacific Region Partnership (Hawai'i, Guam, American Samoa and the Northern Mariana Islands). Inland states with waters that flow to the ocean also may have representatives on the regional partnerships and each region may establish sub-regions as necessary. The purpose of each regional partnership is to assist in the implementation of the national ocean policy and develop and implement a Regional Ocean Strategic Plan which guides funding decisions from the national ocean trust fund. The Committee on Ocean Policy would be charged with coordinating with the Partnerships in developing national policies.

The Partnerships would be comprised of representatives of the regional fisheries management councils, other federal agency representatives appointed by NOAA, state representatives, local and tribal representatives, representatives of foreign governments as authorized by the Secretary of State, and, where appropriate, inland-state representatives. Committee amendments to the bill now allow for the Partnerships to build on existing regional partnerships:

EXISTING REGIONAL EFFORTS.—For any ocean region for which a regional ocean governance effort already exists, the relevant coastal States shall work with the Administrator to determine whether the Partnership established or designated for the ocean region should build upon and expand that effort, or whether the Administrator should initiate a new effort.

Should NOAA and the West Coast states agree, the West Coast Governors' Agreement on Ocean Health would evolve to become the Pacific Regional Partnership, with some likely modifications. Under the current version of the bill, each Regional Partnership may appoint a "Steering Committee" to provide leadership with respect to the development and implementation of the Regional Ocean Strategic Plan; the regional plan will serve as the basis for regional spending of funds appropriated to the national ocean trust fund.<sup>9</sup>

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<sup>8</sup> U.S. Commission on Ocean Policy, AN OCEAN BLUEPRINT FOR THE 21<sup>ST</sup> CENTURY: FINAL REPORT OF THE U.S. COMMISSION ON OCEAN POLICY, *Executive Summary* p. 10 (2004).

<sup>9</sup> *Id.* Sec. 404(b) & (c).

Each Partnership would conduct a regional ocean assessment,<sup>10</sup> and each plan would provide for long- and short-term goals for the improvement of marine ecosystem health, recommendation of actions, identification of priority issues, solutions for improving ocean conditions, identification of performance measures, identification of responsibilities, and identification of research and data needs.<sup>11</sup> NOAA would be responsible for creating regulations for plan development<sup>12</sup> and final review and approval of each regional plan.<sup>13</sup> The West Coast Governors' Agreement on Ocean Health Action Plan will likely form the basis of the Regional Ocean Strategic Plan if this bill is enacted.

### *National Ocean Trust Fund*

The U.S. Commission on Ocean Policy, the Pew Oceans Commission, and now the Joint Ocean Commission Initiative have outlined the need for a national trust fund to support the activities necessary for ocean and coastal management and protection. H.R. 21 establishes the “Ocean and Great Lakes Conservation Trust Fund,” a permanent source of revenue to provide annual funding for the implementation of this bill. The bill specifies that funds should be used to supplement existing appropriations for ocean and coastal programs at either the national or state level,<sup>14</sup> consistent with the Ocean Commissions’ recommendation that funding be increased for ocean management activities. The bill suggests that the Trust Fund include money generated from a “healthy oceans” stamp, general revenue amounts not dispersed, and interest from invested monies to provide \$1.3 billion over a three-year period and thereafter.<sup>15</sup> States would be eligible for funding for the development and implementation of a Regional Ocean Strategic Plan; for providing assistance to NOAA’s Administrator in conducting the initial ocean region assessment; and for implementing other regional efforts that also implement the National Ocean Policy. Regional planning entities must have an approved spending plan and budget to receive funding. The bill would authorize \$40,000,000 for fiscal years 2010, 2011, and 2012 for conducting and updating Regional Ocean Assessments and supporting efforts of the Regional Partnerships to develop their Regional Ocean Strategic Plans.

## **SUPPORT AND OPPOSITION TO THE BILL**

The bill is supported by many California Congressional Representatives, as identified at the end of Attachment 3. A variety of public and private entities support H.R. 21, including the Joint Ocean Commission Initiative (the successor to the Pew Oceans Commission and the US Commission on Ocean Policy), the Coastal States Organization, and numerous national and state conservation and fishermen’s groups: Alaska Wilderness League, Bayshore Regional Watershed Council, Blue Ocean Institute, California Coastkeeper Alliance, Citizens Campaign for the Environment, Conservation Law Foundation, Conservation Council for Hawai’i, Defenders of

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<sup>10</sup> *Id.* Sec. 303(b)(2)(a).

<sup>11</sup> *Id.* Sec. 303(b)(2).

<sup>12</sup> *Id.* Sec. 304.

<sup>13</sup> *Id.* Sec. 303(e).

<sup>14</sup> *Id.* Sec. 401, 402.

<sup>15</sup> *Id.* Sec. 406 . Note that the \$1.3 billion is not an appropriation, which would have to come through the federal budget or some other mechanism.

Wildlife, Earthjustice, Environment America, Environment Michigan, Environment New Jersey, Environment Rhode Island, Environment Texas, Environmental Advocates of New York, Environmental Defense Fund, Friends of the Bay – Oyster Bay, Greenpeace USA, Gulf Restoration Network, Hawai'i Audubon Society, League of Conservation Voters, Marine Conservation Biology Institute, National Audubon Society, National Coalition for Marine Conservation, Natural Resources Defense Council, New Jersey Audubon Society, New Jersey Environmental Federation, New Jersey Environmental Lobby, New York New Jersey Baykeeper, Ocean Champions, Ocean Conservancy, Oceana, Pacific Coast Federation of Fishermen's Associations, Pacific Marine Conservation Council, Pew Environment Group, Planning and Conservation League, Reef Relief, Restore America's Estuaries, San Francisco Baykeeper, Save the Bay – Narragansett Bay, Sea Turtle Survival League, Shores for all Coalition, Sierra Club, Surfrider Foundation, Texas Conservation Alliance, and World Wildlife Fund.

Several groups, including the Recreational Fishing Alliance, the Seafood Coalition and the American Farm Bureau, have expressed opposition to H.R. 21. One concern expressed by multiple groups is that the H.R. 21 would subordinate numerous federal acts to the goal of ocean protection and would inappropriately elevate NOAA's role. H.R. 21, as currently drafted, does not propose modifying these federal acts, though it does encourage federal agencies to interpret existing law consistent with the national ocean policy "[t]o the fullest extent possible."

Another significant concern expressed in the letters of opposition state that terms such as "biological diversity," and "ecologically sustainable," are not well defined. One commenter argued that substantial litigation resulted when the 1996 Sustainable Fisheries Act was enacted with poorly defined terms. This is an area where the OPC staff and other stakeholders could work with the author's office to determine if additional definitions are necessary and help provide them if necessary.

#### **CONSISTENCY WITH CALIFORNIA OCEAN PROTECTION ACT:**

The OPC support of the major objectives of H.R. 21 is consistent the Ocean Protection Act, Division 26.5 of the Public Resources Code, in that the bill addresses changes in federal law and policy that are necessary to improve protection, conservation and restoration of ocean ecosystems in federal and state waters off the state's coast.

#### **CONSISTENCY WITH OPC'S STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):**

Support of the objectives of the bill will help implement specific provisions of the OPC's Five-year Strategic Plan. Specifically, Goal A – Governance, Objective 5b calls for the Council to actively engage in efforts to support increased funding for state and federal programs. The plan urges the OPC to work with the President, Congress, the Council on Environmental Quality, the National and Western Governors' Associations, and the Coastal States Organization to achieve this goal.