

108TH CONGRESS
2D SESSION

H. R. 4607

To establish the National Oceanic and Atmospheric Administration (NOAA), to amend the organization and functions of the NOAA Advisory Committee on Oceans and Atmosphere, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2004

Mr. EHLERS (for himself and Mr. GILCHREST) (both by request) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish the National Oceanic and Atmospheric Administration (NOAA), to amend the organization and functions of the NOAA Advisory Committee on Oceans and Atmosphere, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—NATIONAL OCEANIC**
2 **AND ATMOSPHERIC ADMINIS-**
3 **TRATION ORGANIC ACT OF**
4 **2004**

5 **SECTION 101. SHORT TITLE.**

6 This Act may be cited as the “National Oceanic and
7 Atmospheric Administration Organic Act of 2004”.

8 **SEC. 102. ESTABLISHMENT.**

9 There is established within the Department of Com-
10 merce, the National Oceanic and Atmospheric Administra-
11 tion.

12 **SEC. 103. DEFINITIONS.**

13 As used in this Act:

14 (1) The terms “NOAA” and “Administration”
15 mean the National Oceanic and Atmospheric Admin-
16 istration established by section 102.

17 (2) The term “Secretary” means the Secretary
18 of Commerce.

19 (3) The terms “Under Secretary” or “Adminis-
20 trator” mean the Under Secretary of Commerce for
21 Oceans and Atmosphere and Administrator of the
22 National Oceanic and Atmospheric Administration.

23 (4) The terms “Assistant Secretary” or “Dep-
24 uty Administrator” mean the Assistant Secretary of
25 Commerce for Oceans and Atmosphere and Deputy

1 Administrator of the National Oceanic and Atmos-
2 pheric Administration.

3 **SEC. 104. POSITIONS.**

4 (a) UNDER SECRETARY.—There shall be within
5 NOAA an Under Secretary of Commerce for Oceans and
6 Atmosphere and Administrator of the National Oceanic
7 and Atmospheric Administration appointed by the Presi-
8 dent by and with the advice and consent of the Senate.
9 Subject to the authority of the Secretary of Commerce,
10 the Under Secretary shall be the head of NOAA and shall
11 have authority, direction and control of NOAA. Any au-
12 thority, power or function vested by law in NOAA, or any
13 officer, employee or part of NOAA, is vested in, and may
14 be exercised by, the Under Secretary. The Under Sec-
15 retary may, without being relieved of the Under Sec-
16 retary's responsibility, perform any of the Under Sec-
17 retary's functions or duties, or exercise any of the Under
18 Secretary's powers through, or with the aid of, such per-
19 sons in, or organizations of, NOAA as the Under Sec-
20 retary may designate.

21 (b) ASSISTANT SECRETARY.—There shall be within
22 NOAA an Assistant Secretary of Commerce for Oceans
23 and Atmosphere and Deputy Administrator of the Na-
24 tional Oceanic and Atmospheric Administration. The As-
25 sistant Secretary shall be appointed by the President, by

1 and with the advice and consent of the Senate. The Assist-
2 ant Secretary shall perform such functions as the Under
3 Secretary may prescribe. The Assistant Secretary shall
4 perform the functions of the Under Secretary during the
5 disability of the Under Secretary or when the office of
6 Under Secretary is vacant.

7 (c) DEPUTY UNDER SECRETARY.—There shall be
8 within NOAA a Deputy Under Secretary of Commerce for
9 Oceans and Atmosphere appointed in the Senior Executive
10 Service, without regard to limitations under section 3133
11 of Title 5, United States Code, by the Secretary. The Dep-
12 uty Under Secretary shall perform the functions of the
13 Assistant Secretary during the disability of the Assistant
14 Secretary or when the office of Assistant Secretary is va-
15 cant.

16 (d) ESTABLISHMENT OF ADDITIONAL POSITIONS.—
17 To carry out the functions of NOAA assigned by law, and
18 consistent with applicable law including title II of the Na-
19 tional Oceanic and Atmospheric Administration Commis-
20 sioned Officer Corps Act of 2002 (Public Law 107–372),
21 the Under Secretary may establish positions within NOAA
22 and prescribe the authorities and duties of such positions.

23 **SEC. 105. PURPOSES AND AUTHORITIES.**

24 (a) PURPOSES.—NOAA’s purposes shall be to:

1 (1) observe, assess and predict the status of
2 and changes in ocean, coastal, and Great Lakes eco-
3 systems, and in the atmosphere, including the near-
4 space environment;

5 (2) manage, protect and restore the Nation's
6 ocean, coastal and Great Lakes areas, living and
7 nonliving marine resources, including fisheries, and
8 vulnerable species and habitats, including ecosystem
9 approaches;

10 (3) collect, store, analyze and provide reliable
11 scientific data and information through means in-
12 cluding research, observations (in-situ and remotely
13 sensed), forecasts and assessments relating to
14 weather (including space weather), climate, air qual-
15 ity, water, marine resources and ecosystems that can
16 be used as a basis for sound management and public
17 safety decisions;

18 (4) protect lives and property and expand eco-
19 nomic opportunities; and

20 (5) pursue its purposes complementary to, and
21 in partnership with, Federal agencies, instrumental-
22 ities and laboratories; State and local governments;
23 Native American tribes and organizations; inter-
24 national organizations; foreign governments; edu-
25 cational institutions; nonprofit organizations; com-

1 mercial organizations; and other public and private
2 persons or entities, as appropriate.

3 (b) BASIC AUTHORITIES.—In addition to any other
4 authority provided to the Under Secretary by law or by
5 delegation from the Secretary, the Under Secretary shall
6 have the following authorities with respect to NOAA and
7 the implementation of this Act:

8 (1) Authorities that were, immediately prior to
9 the enactment of this Act, vested by law, including
10 under Reorganization Plan No. 4 of 1970 (5 U.S.C.
11 App. 1), in NOAA, or in the Secretary with respect
12 to NOAA.

13 (2) Authority to promulgate rules and regula-
14 tions as necessary or appropriate.

15 (3) Without regard to section 3324(a) and (b)
16 of Title 31, authority to enter into and perform such
17 contracts, leases, grants, cooperative agreements, or
18 other transactions (without regard to 31 U.S.C.
19 6301 et seq.), as may be necessary to carry out
20 NOAA's purposes and authorities, on terms it deems
21 appropriate, with Federal agencies, instrumentalities
22 and laboratories; State and local governments; Na-
23 tive American tribes and organizations; international
24 organizations; foreign governments; educational in-
25 stitutions; nonprofit organizations; commercial orga-

1 nizations; and other public and private persons or
2 entities.

3 (4) Authority to accept from any source, hold,
4 administer, invest, dispose of and utilize gifts, be-
5 quests, or devises of services, money, securities or
6 property (whether real, personal, intellectual or of
7 any other kind) or any interest therein, and the in-
8 come therefrom or the proceeds upon disposition
9 thereof, without regard to section 1342 of Title 31,
10 United States Code, and such money, income or pro-
11 ceeds shall be available to NOAA for obligation and
12 expenditure to carry out the purposes of NOAA
13 under this Act.

14 (5) Authority to use, with their consent, and
15 with or without reimbursement, the services, equip-
16 ment, personnel, and facilities of: Federal agencies,
17 instrumentalities and laboratories; State and local
18 governments; Native American tribes and organiza-
19 tions; international organizations; foreign govern-
20 ments; educational institutions; nonprofit organiza-
21 tions; commercial organizations; and other public
22 and private persons or entities.

23 (6) Authority to disseminate information and
24 conduct education and outreach in direct support of
25 the purposes outlined under section 105(a).

1 (7) Authority to—

2 (A) acquire (by purchase, lease, or other-
3 wise), lease, invest, sell, dispose of or convey
4 services, money, securities or property (whether
5 real, personal, intellectual or of any other kind)
6 or interest therein; and

7 (B) construct, improve, repair, operate,
8 maintain and dispose of real or personal prop-
9 erty, including but not limited to buildings, fa-
10 cilities, and land.

11 (8) Authority to—

12 (A) purchase or hire passenger motor vehi-
13 cles as necessary for the implementation of this
14 Act;

15 (B) procure the services of experts or con-
16 sultants (or of organizations of experts or con-
17 sultants) as described in and in accordance with
18 the first two sentences of section 3109(b) of
19 Title 5, and, when determined necessary by the
20 Under Secretary, without regard to the time
21 limitation in the first sentence of section
22 3109(b), at respective daily rates of pay for in-
23 dividuals which are not more than the daily
24 equivalent of the rate of basic pay then cur-
25 rently paid for Level III of the Executive

1 Schedule of section 5313 of Title 5, and pay in
2 connection with such services travel expenses of
3 individuals, including transportation and per
4 diem in lieu of subsistence while such individ-
5 uals are traveling from their homes or places of
6 business to official duty stations and return as
7 may be authorized by law;

8 (C) install, repair, and maintain telephones
9 and telephone wiring and pay telephone service
10 tolls or other charges with respect to residences
11 owned or leased by the United States Govern-
12 ment and, to the extent necessary to implement
13 this Act, other private residences, without re-
14 gard to section 1348 of Title 31, United States
15 Code; and

16 (D) expend appropriations for official re-
17 ception and representation.

18 (c) PROTECTION AGAINST MISUSE OF NAME, INI-
19 TIALS AND SEAL.—

20 (1) No person may, except with the written per-
21 mission of the Under Secretary, knowingly use the
22 words “National Oceanic and Atmospheric Adminis-
23 tration”, the initials “NOAA”, the seal of NOAA, or
24 the name, acronym or seal of any component or pro-
25 gram of NOAA, or any colorable imitation of such

1 words, initials, or seal in connection with any mer-
2 chandise, impersonation, solicitation, or commercial
3 activity in a manner reasonably calculated to convey
4 the impression that such use is approved, endorsed,
5 or authorized by NOAA, or is likely to cause confu-
6 sion as to the source or origin of goods or services
7 provided therewith.

8 (2) Whenever it appears to the Attorney Gen-
9 eral that any person is engaged or is about to en-
10 gage in an act or practice which constitutes or will
11 constitute conduct prohibited by subparagraph (1),
12 the Attorney General may initiate a civil proceeding
13 in a district court of the United States to enjoin
14 such act or practice. Such court shall proceed as
15 soon as practicable to the hearing and determination
16 of such action and may, at any time before final de-
17 termination, enter such restraining orders or prohi-
18 bitions, or take such other action as is warranted, to
19 prevent injury to the United States or to any person
20 or class of persons for whose protection the action
21 is brought.

22 **SEC. 106. CONFORMING AMENDMENTS, REPEALS AND**
23 **TRANSITION.**

24 (a) The Reorganization Plan No. 4 of 1970 (5 U.S.C.
25 App. 1) is repealed.

1 (b) Any reference, in any law, rule, regulation, direc-
2 tive, or instruction, or certificate or other official docu-
3 ment, in force immediately prior to enactment of this
4 Act—

5 (1) to the National Oceanic and Atmospheric
6 Administration shall be deemed to refer and apply to
7 the National Oceanic and Atmospheric Administra-
8 tion established by section 102 of this Act;

9 (2) to the Under Secretary of Commerce for
10 Oceans and Atmosphere, or to the Administrator of
11 the National Oceanic and Atmospheric Administra-
12 tion, shall be deemed to refer and apply to the
13 Under Secretary of Commerce for Oceans and At-
14 mosphere and Administrator of the National Oceanic
15 and Atmospheric Administration to whom subsection
16 104(a) of this Act refers; and

17 (3) to any other position in NOAA shall be
18 deemed to refer and apply to that same position in
19 the National Oceanic and Atmospheric Administra-
20 tion established by section 102 of this Act.

21 (c) Subsections 407(a) and 407(b) of Public Law 99–
22 659 (15 U.S.C. 1503b and 1507c) are repealed.

23 (d) CONFORMING AMENDMENTS TO EXECUTIVE
24 SCHEDULE.—Title 5 of the United States Code is amend-
25 ed—

1 (1) in section 5314, by striking “Under Sec-
2 retary of Commerce for Oceans and Atmosphere, the
3 incumbent of which also serves as Administrator of
4 the National Oceanic and Atmospheric Administra-
5 tion.” and inserting in lieu thereof “Under Secretary
6 of Commerce for Oceans and Atmosphere and Ad-
7 ministrator of the National Oceanic and Atmos-
8 pheric Administration.”; and

9 (2) in section 5315, by striking “Assistant Sec-
10 retary of Commerce for Oceans and Atmosphere, the
11 incumbent of which also serves as Deputy Adminis-
12 trator of the National Oceanic and Atmospheric Ad-
13 ministration.” and inserting in lieu thereof “Assist-
14 ant Secretary of Commerce for Oceans and Atmos-
15 phere and Deputy Administrator of the National
16 Oceanic and Atmospheric Administration.”.

17 (e) TRANSITION; INITIAL APPOINTMENTS.—Notwith-
18 standing any provision in subsections 104(a) and (b) of
19 this Act to the contrary, the first individual appointed to
20 the position of Under Secretary, and the first individual
21 appointed to the position of Assistant Secretary, shall be
22 appointed by the President alone.

23 **SEC. 107. SAVINGS PROVISION.**

24 All rules and regulations, determinations, standards,
25 contracts, certifications, authorizations, appointments,

1 delegations, results and findings of investigations, or other
 2 actions duly issued, made, or taken by or pursuant to or
 3 under the authority of any statute which resulted in the
 4 assignment of functions or activities to the Secretary, the
 5 Department of Commerce, the Under Secretary, or any
 6 other official of NOAA, as are in effect immediately before
 7 enactment of this Act shall continue in full force and effect
 8 after enactment of this Act until modified or rescinded.

9 **SEC. 108. NO EFFECT ON OTHER AUTHORITIES.**

10 This Act does not amend or alter the provisions of
 11 other applicable acts unless otherwise noted. Nothing in
 12 this Act shall derogate from the duties and functions of
 13 any other agency or otherwise alter current authorities re-
 14 lating to those agencies.

15 **TITLE II—NOAA ADVISORY COM-**
 16 **MITTEE ON OCEANS AND AT-**
 17 **MOSPHERE**

18 **SEC. 201. AMENDMENTS.**

19 Sections 2 through 8 of the National Advisory Com-
 20 mittee on Oceans and Atmosphere Act of 1977 (Public
 21 Law 95–63, as amended, 33 U.S.C. 857–13 through 857–
 22 18) are amended as follows:

23 (1) In section 2 (33 U.S.C. 857–13), delete the
 24 phrase “18 members to be”.

1 (2) Subsection 3(a) (33 U.S.C. 857–14(a)) is
2 amended to read as follows:

3 “(a) APPOINTMENT AND QUALIFICATIONS.—

4 “(1) The members of the Committee, who may
5 not be full-time officers or employees of the United
6 States, shall be appointed by the Under Secretary of
7 Commerce for Oceans and Atmosphere (hereinafter
8 the Under Secretary). Members shall be appointed
9 only from among individuals who are eminently
10 qualified by way of knowledge and expertise in one
11 or more of the purposes of the National Oceanic and
12 Atmospheric Administration.

13 “(2) The Under Secretary shall appoint, as
14 original members, any current members of the Na-
15 tional Oceanic and Atmospheric Administration
16 Science Advisory Board who wish to serve in such
17 capacity, together with any additional qualified indi-
18 viduals necessary to fulfill the purposes of the Com-
19 mittee.”.

20 (3) Subsection 3(b) (33 U.S.C. 857–14(b)) is
21 revised to read as follows:

22 “(b) TERMS.—

23 “(1) The term of office of a member of the
24 Committee shall be 3 years; except that initial terms

1 of the original appointees shall be staggered to as-
2 sure continuity of administration.

3 “(2) Any individual appointed to fill a vacancy
4 occurring before the expiration of the term for which
5 his or her predecessor was appointed shall be ap-
6 pointed for the remainder of such term. No indi-
7 vidual may serve for more than two consecutive
8 three-year terms. A member may serve after the
9 date of the expiration of the term of office for which
10 appointed until his or her successor has taken of-
11 fice.”.

12 (4) In subsection 3(c) (33 U.S.C. 857–14(c)),
13 delete “President” and insert in lieu thereof “Under
14 Secretary”.

15 (5) Subsection 3(d) (33 U.S.C. 857–14(d)) is
16 revised to read as follows:

17 “(d) DUTIES.—The Committee shall advise the
18 Under Secretary with respect to the programs adminis-
19 tered by the National Oceanic and Atmospheric Adminis-
20 tration.”.

21 (6) Delete sections 4 and 6 (33 U.S.C. 857–15
22 and 857–17, respectively), and renumber the re-
23 maining sections accordingly. In new section 4, de-
24 lete “for a GS–18” and insert in lieu thereof “pro-

1 vided for Level IV of the Executive Schedule Pay
2 Rates”.

3 (7) By striking “National Advisory Committee
4 on Oceans and Atmosphere” wherever that term
5 may appear in sections 2 through 8 of the National
6 Advisory Committee on Oceans and Atmosphere Act
7 of 1977 (Public Law 95–63, as amended, 33 U.S.C.
8 857–13 through 857–18) and substitute in lieu
9 thereof “NOAA Advisory Committee on Oceans and
10 Atmosphere”.

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