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THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Enrolled Bill H.R. 2809 -- National Fish and Wildlife Foundation Establishment Act

Richard Darman has asked for comments by 10:00 a.m. March 22 on the above-referenced enrolled bill. We have also received communications from Ted Olson and Bob McConnell conveying Justice's serious reservations about this bill.

H.R. 2809, opposed by the Administration during consideration by Congress, would establish a National Fish and Wildlife Foundation. According to the bill, the Foundation "is a charitable and nonprofit corporation and is not an agency or establishment of the United States." The Foundation is to accept and administer gifts for the benefit of the U.S. Fish and Wildlife Service, and otherwise promote conservation of fish and wildlife. The Secretary of the Interior appoints the nine-member Board of Directors of the Foundation, and the Attorney General is authorized to sue the Foundation to compel it to discharge its statutory obligations.

Justice objects to the hermaphroditic nature of the Foundation, which is neither purely private nor purely governmental in character. Despite the express statement in the bill that the Foundation "is not an agency or establishment of the United States," Olson concludes that it must be regarded as an agency within the Executive branch, because of the manner in which the directors are appointed and the various authorities of and exemptions for the Foundation. If the Foundation is an executive agency, section 7(c), authorizing the Attorney General to sue the Foundation, is constitutionally suspect, since the Executive does not sue itself.

Justice thinks a veto is justified but stops short of insisting on one. As an alternative, Justice proposes a signing statement asserting that the Foundation is an executive agency and that its compliance with the statute will be enforced by removal of the directors rather than suit by the Attorney General. The assertion that the Foundation is an agency is, of course, directly contradicted by the language of the bill itself.

I am not inclined to recommend a veto of the bill on the legal grounds discussed above, particularly since Justice's opposition to the bill is so lukewarm. On the other hand, it must be recognized that the proposed signing statement is exceedingly awkward, since it employs an assumption expressly contradicted by the bill -- that the Foundation is an executive agency -- to read out another express provision of the bill, the authorization of suit by the Attorney General. It would seem more logical to conclude that the Foundation is not a government agency, precisely because the bill specifies that it may be sued by the Attorney General.

I suppose our institutional interests lie on the side of arguing that the Foundation is an executive agency, if the President is going to sign the bill, and accordingly I have no objection to the Justice signing statement. My point is that I doubt the Justice position will prevail if challenged in court. The test would come if the President or the Secretary of the Interior were to attempt to remove directors of the Foundation. I can easily see a court disagreeing with the Justice interpretation and ruling that the directors are not removable, because they are given fixed terms, the bill states that the Foundation "is not an agency or establishment of the United States," and the Attorney General is authorized to sue the Foundation, which would be totally unnecessary were the directors removable by the Executive. In light of the limited responsibilities of the Foundation, however, it seems likely that a serious confrontation can be avoided.

The attached memorandum for Darman notes our dubitante concurrence with Justice's recommended signing statement.

Attachment

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2809 -- National Fish
and Wildlife Foundation Establishment Act

Counsel's Office has reviewed the above-referenced enrolled bill and proposed signing statement. We agree with the Department of Justice that the ambiguous character of the Foundation raises serious legal concerns. We are less confident than Justice that a court will determine that the governmental character of the Foundation predominates, rendering the directors removable and making unnecessary any resort to the provision authorizing suit by the Attorney General -- a constitutionally suspect provision if the Foundation is an agency. Indeed, it seems at least as probable that a court would determine that the Foundation is not a government agency, as stated in the bill, and that the directors are not removable, precisely because the bill authorizes suit by the Attorney General.

If the President is to sign the bill, however, it is in our institutional interest to resolve the ambiguities in the Foundation's status in favor of it being treated as a government agency. Justice's proposed signing statement does so, putting the best face on what must be conceded to be an awkward argument. Largely because serious confrontations over the Foundation's status seem unlikely, we acquiesce in approval of the bill and issuance of the Justice signing statement.

We recommend adding "I have not done so because the Attorney General has advised that the bill can be given a constitutional construction" at the bottom of the first page of the signing statement. This sentence seems to have been inadvertently dropped from the draft submitted by Justice.

FFF:JGR:aea 3/21/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

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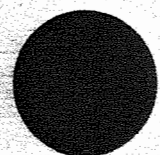
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cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1/1



Name of Correspondent: Richard Dauman

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Enrolled Bill H.R. 2809 - National Fish and Wildlife Foundation Establishment Act.

ROUTE TO:	ACTION	DISPOSITION	
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code Completion Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>84 03 21</u>	<u>1 1</u>
<u>CUAT 18</u>	Referral Note: <u>D</u>	<u>84 03 21</u>	<u>5 84 03 22</u> <u>10:00 AM</u>
_____	Referral Note: _____	<u>1 1</u>	<u>1 1</u>
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_____	Referral Note: _____	<u>1 1</u>	<u>1 1</u>
_____	Referral Note: _____	<u>1 1</u>	<u>1 1</u>

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/21/84 ACTION/CONCURRENCE/COMMENT DUE BY: 10:00 tomorrow, 3/22/84

SUBJECT: ENROLLED BILL H.R. 2809 - NATIONAL FISH AND WILDLIFE FOUNDATION
ESTABLISHMENT ACT

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	ELLIOTT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
JENKINS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

MAY WE HAVE YOUR COMMENTS ON THE ATTACHED BILL AND SIGNING STATEMENT BY 10:00 A.M. TOMORROW, THURSDAY, 3/22. THANK YOU.

RESPONSE:

Richard G. Darman
 Assistant to the President
 Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Received SS
1984 MAR 21 AM 10:38

MAR 21 1984

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2809 - National Fish and Wildlife
Foundation Establishment Act
Sponsors - Rep. Breaux (D) Louisiana and nine others

Last Day for Action

March 26, 1984 - Monday

Purpose

Establishes the National Fish and Wildlife Foundation to accept and administer gifts to aid in the conservation of fish and wildlife.

Agency Recommendations

Office of Management and Budget

Approval (Signing
Statement attached)

Office of Personnel Management
Department of the Interior
Department of Justice

Approval
No objection
Cites serious
reservations

Discussion

Description of the Enrolled Bill

H.R. 2809 would establish the National Fish and Wildlife Foundation as a nonprofit corporation to encourage, accept, and administer private gifts to further the programs of the United States Fish and Wildlife Service and other activities to conserve fish, wildlife, and plant resources. The Secretary of the Interior would select the nine Directors of the Foundation, six of whom must have a background in fish and wildlife conservation, and three of whom must have education and experience in fish and wildlife management. The Director of the Fish and Wildlife Service would serve as an ex officio nonvoting member of the Board of Directors.

The bill would also:

- grant the Foundation the usual powers of a corporation acting as a trustee in the District of Columbia;
- authorize the Secretary of the Interior to provide administrative services to the Foundation for five years on a reimbursable basis;
- authorize the Secretary to consider the Foundation's Board and staff as Interior volunteers, which would extend them coverage under the Federal Tort Claims Act and Workers' Compensation;
- require the Foundation to transmit an annual financial report to Congress;
- release the United States from any liability for debts, defaults, or other actions of the Foundation; and
- authorize appropriations of \$1,000,000 to the Secretary of the Interior for the ten-year period beginning October 1, 1984, for administrative services and to match private contributions to the Foundation on a one-to-one basis.

Legislative History

The Administration opposed H.R. 2809 in testimony and reports to the Committees with jurisdiction over this bill in each House of Congress, because a new organization is not necessary to encourage the conservation of fish and wildlife. Indeed, the Fish and Wildlife Service exists for just this purpose, and can already accept gifts to further its objectives. The only new authority in the bill is the authority in the Foundation to solicit gifts and invest and manage them as a trust for conservation purposes.

Moreover, the Department of Justice also advised the Congress before final floor action on the bill that section 7(c), which would authorize the Attorney General to file suit if the Foundation violates the purposes and policies of the Act, is "inappropriate." The bill states that the Foundation "is a charitable and nonprofit corporation and is not an agency or establishment of the United States." Nevertheless, the functions that would be assigned to the Foundation lead Justice to conclude that it is a close question whether it ought to be viewed as a Federally-chartered corporation or as an organ of the Executive branch. To the extent that the Foundation may be considered as an Executive agency, the bill "raises serious constitutional issues" whether the Attorney General could bring lawsuits against

it, since Article II of the Constitution places undivided Executive power with the President and the bill purports to divide it; and because under Article III there would be no case or controversy. To alleviate this concern, Justice recommended that the bill be amended to remove the section authorizing suits by the Attorney General and explicitly to empower the Secretary of the Interior to remove Directors from the Board as an alternative enforcement measure, although such removal authority may be inherent in the Secretary's appointment authority. Subsequent floor action on this legislation dealt only with minor amendments each body had made to the bill as enacted by the other body. Justice's concerns were neither met nor discussed on the House or Senate floor.

Agency Views

The Department of Justice has serious reservations whether you should approve H.R. 2809, but stops short of recommending a veto. Instead, Justice offers language that could be used in a veto message, as well as language for a signing statement. The Department would have you either veto the bill because the status of the Foundation is ambiguous, or sign the bill because "the Foundation must be regarded as an establishment within the Executive Branch." In the latter case, Justice would have you publicly direct the Secretary of the Interior to exercise his removal power as an alternative enforcement mechanism to the Attorney General's litigating authority.

In its enrolled bill views letter, the Department of the Interior recites how it recommended that this legislation not be enacted in previous communications with the Congress on H.R. 2809 and its Senate companion, S. 1271 (Chafee (R) Rhode Island and six others, including Domenici and Baker). The Department, however, recognizes the importance of private initiative in solving natural resource problems, and notes that the Foundation could augment Interior's ability to encourage and use private donations. Therefore, Interior has no objection to your approval of H.R. 2809.

Conclusion and Recommendation

This is a difficult bill because its effects are likely to be small and it does have its adherents, but it is wholly unnecessary and it creates a constitutional ambiguity. It is of interest to a very few people if signed, but can be exploited for partisan purposes if vetoed.

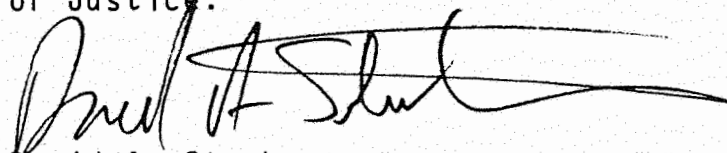
In the absence of a clear conclusion by the Department of Justice as to whether or not the Foundation would be within the Executive branch, without a definite veto recommendation by the Department,

and because (1) the exercise of Justice's enforcement authority would be discretionary and (2) the Secretary can prevent the need for its use by removing the Directors of the Foundation, a decision on the grounds of Justice's concerns does not appear compelling.

On programmatic grounds the Foundation is not essential to the pursuit of fish and wildlife conservation, and its creation could lead to diffusion of responsibility for that objective. There are already several private foundations and other organizations that do this work, in addition to the agencies of the Federal and State Governments. The organization after which the new Foundation is patterned (with the exception of Justice's authority to sue), the National Park Foundation, has been encouraging and administering gifts for the benefit of the National Park Service since its establishment under P.L. 90-209 in 1967. While on small issues the Park Foundation has preempted Federal priorities in land acquisition and opposed the Administration from time to time, it has created no major problems. We would expect no national problems to result from the creation of the Fish and Wildlife Foundation.

Thus, since the Foundation would augment the Government's ability to use private donations for conservation purposes, the Administration's previous objections to the bill as unnecessary do not seem to be sufficient to warrant a veto.

Accordingly, I recommend that you approve H.R. 2809, which passed both Houses of Congress by voice vote, and issue a signing statement, along the lines of the one attached, to address the concerns raised by the Department of Justice.



David A. Stockman
Director

Enclosures

STATEMENT BY THE PRESIDENT

I have signed today, H.R. 2809, a bill "To establish a National Fish and Wildlife Foundation."

H.R. 2809 would establish the National Fish and Wildlife Foundation to encourage and administer donations of real or personal property, in connection with U.S. Fish and Wildlife Service programs and other activities to conserve fish, wildlife, and plant resources of the United States. The Foundation's governing Board of nine Directors would be appointed by the Secretary of the Interior. H.R. 2809 would also authorize the Attorney General to sue the Foundation if it should appear that the Foundation's actions are inconsistent with the purposes of the Act.

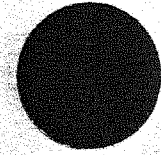
Although I have signed H.R. 2809, I must note my reservations about it. Before this bill was passed, the Department of Justice advised the Congress that the bill's provisions, taken together, create ambiguity about whether the Foundation is to be a private entity or an establishment within the Executive branch. The statements in the bill to the effect that the Foundation shall be a nonprofit, charitable corporation and that it shall not be an agency or establishment of the United States are contradicted by the facts that the Foundation is established by Congress, funded by Congress, and endowed with the sole purpose of assisting and benefiting a Federal agency, the U.S. Fish and Wildlife Service; its property is made exempt from condemnation by State and local governments; and its Directors are all appointed by the Secretary of the Interior. Moreover, the bill exempts the Foundation from certain provisions of the United States Code which would be clearly inapplicable if the Foundation were truly nongovernmental.

Entities which are neither clearly governmental nor clearly private should not be created. The Supreme Court has recently warned against constitutional innovations merely because they seem to be expedient. Establishment of the Foundation under the terms of the bill is an unwise and dangerous precedent. I have, therefore, given serious consideration to vetoing the bill.

I have been advised by the Attorney General that the governmental character of the Foundation predominates. Under the Supreme Court's cases, the character of an agency will be determined by its functions, not its label. Buckley v. Valeo, 424 U.S. 1 (1976). On this basis, the Foundation must be regarded as an establishment within the Executive branch. The Directors of the Foundation, therefore, will be removable at the discretion of the Secretary of the Interior, because they are appointed by him and they exercise no powers which insulate them from removal at will. Accordingly, I will direct the Secretary to ensure compliance by the Directors of the Foundation with their statutory purposes through the exercise of the removal power. It will not be necessary to enforce compliance through suit by the Attorney General, an aspect of the bill which raises significant constitutional issues. In addition, I have directed the Attorney General and the Secretary to examine the other provisions of the bill to determine how they should be given effect consistent with constitutional principles.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
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Date Correspondence Received (YY/MM/DD) 1 / 1 /



Name of Correspondent: Robert A. McConnell

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: DOJ concerns re: H.R. 2809, a bill "to establish the United States Fish and Wildlife Foundation"

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CW Holland</u>	<u>ORIGINATOR</u>	<u>84.03.17</u>			<u> 1 / 1 / </u>
<u>CW AT18</u>	<u>Referral Note: A/D</u>	<u>84.03.17</u>			<u>S 84.03.17</u>
	<u>Referral Note:</u>	<u> 1 / 1 / </u>			<u> 1 / 1 / </u>
	<u>Referral Note:</u>	<u> 1 / 1 / </u>			<u> 1 / 1 / </u>
	<u>Referral Note:</u>	<u> 1 / 1 / </u>			<u> 1 / 1 / </u>
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U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 16, 1984

Honorable Fred F. Fielding
Counsel to the President
The White House
Washington, D.C. 20500

Dear Fred:

On March 14, 1984, H.R. 2809, a bill "To establish the United States Fish and Wildlife Foundation", was enrolled for presentation to the President. The Department of Justice has serious reservations about the bill. Our concerns are outlined in the attached letter to Director David A. Stockman.

H.R. 2809 is troublesome because it is ambiguous with regard to the status of the U.S. Fish and Wildlife Foundation. The bill could be read to characterize the Foundation as a federally chartered corporation, or the Foundation could be characterized as a part of the Executive Branch.

Although we certainly feel a veto would be appropriate, we also realize that other concerns must necessarily be taken into account. Therefore, if a veto is not utilized, we are particularly anxious to see that language is included in the President's signing statement that will resolve this ambiguity. If the following language is included in the President's signing statement, it will remedy this problem:

Before this bill was passed, the Department of Justice advised the House of Representatives that the bill's provisions, taken together, create ambiguity about whether the Foundation is to be a private entity or an establishment within the Executive Branch. The statements in the bill to the effect that the Foundation shall be a non-profit, charitable corporation and that it shall not be an agency or establishment of the United States are contradicted by the facts that the Foundation is established by Congress, funded by Congress, and endowed with the sole purpose of assisting and benefiting a federal agency, the U.S. Fish

and Wildlife Service; its property is made exempt from condemnation by State and local governments; and its Directors are all appointed by the Secretary of the Interior. Moreover, the bill exempts the Foundation from certain provisions of the United States Code which would be clearly inapplicable if the Foundation were truly nongovernmental.

Entities which are neither clearly governmental nor clearly private should not be created. The Supreme Court has recently warned against constitutional innovations merely because they seem to be expedient. Establishment of the Foundation under the terms of the bill is an unwise and dangerous precedent. I have therefore given serious consideration to vetoing the bill, even though I support its laudable objectives. I have not done so because the Attorney General has advised that the bill can be given a constitutional construction.

I have been advised by the Attorney General that the governmental character of the Foundation predominates. Under the Supreme Court's cases, the character of an agency will be determined by its functions, not its label. Buckley v. Valeo, 424 U.S. 1 (1976). On this basis, the foundation must be regarded as an establishment within the Executive Branch. The Directors of the Foundation will be removable at the discretion of the Secretary of the Interior because they are appointed by him and they exercise no powers which insulate them from removal at will. Accordingly, I will direct the Secretary to ensure compliance by the directors of the Foundation with their statutory purposes through the exercise of the removal power. It will not be necessary to enforce compliance through suit by the Attorney General, an aspect of the bill which raises significant constitutional issues. In addition, I have directed the Attorney General and the Secretary to examine the other provisions of the bill to determine how they should be given effect consistent with constitutional principles.

In addition to clarifying the status of the Foundation, this signing statement might assist in deterring Congress from

continuing to create these hybrid entities. In recent months Congress has acted favorably on a number of similar proposals. It is imperative that we send a strong signal to the Congress that these entities are unconstitutional.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. McConnell', written over a horizontal line.

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Attachments

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 / 1

Name of Correspondent: Theodore Olson

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: H.R. 2809, The National Fish and Wildlife Foundation Establishment Act

ROUTE TO:

ACTION

DISPOSITION

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<u>CWAT 18</u>	<u>D</u>	<u>84,03,14</u>		<u>S 84,03,15</u>
		<u>1 / 1</u>		<u>1 / 1</u>
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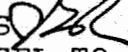
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THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR ROB STEINBERG
SPECIAL ASSISTANT TO THE ATTORNEY GENERAL

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3655

Attached for your information is a copy of the signing statement for H.R. 3655 as delivered by the President. Many thanks for your help in pulling this together.

Attachment

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

March 19, 1984

STATEMENT BY THE PRESIDENT

I am pleased to approve H.R. 3655, a bill that will create seven new judgeships on the Superior Court of the District of Columbia, and also raise the mandatory retirement age from 70 to 74 for judges on that Court and on the District of Columbia Court of Appeals. The Superior Court is a unique Federal Court with important judicial responsibilities in the Nation's Capital. The growing backlog of criminal and civil litigation in the Superior Court is accordingly a matter of both local and Federal concern, and this legislation will help alleviate the backlog. It is my hope that the District of Columbia Judicial Nomination Commission will act promptly in submitting lists of qualified individuals for nomination to these new judgeships, so that the new judges can be in place, reducing the backlog, as soon as possible.

While this legislation will ease the caseload problem in the Superior Court, it does not provide a cure for that problem or the similar problems plaguing most of our Nation's courts. The staggering increase in litigation has strained the capacity of our courts and threatened their ability to settle disputes. One of America's greatest lawyers, Abraham Lincoln, once said: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses, and waste of time." We must continue to search for alternative means of settling disputes. If we fail to do so, the costs and delays of litigation in our overcrowded courts will effectively close the courthouse doors to all but the wealthy and those that seek to use delay to their advantage. We must not permit meritorious claims deserving of prompt judicial resolution to become lost in a sea of frivolous suits or disputes that could more quickly and efficiently be resolved in other forums.

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THE WHITE HOUSE

WASHINGTON

March 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

H.R. 3655 -- District of Columbia
Judges for Superior and Appeals Court

Richard Darman has asked for comments by today on the above-referenced enrolled bill. The bill would add seven new judges to the D.C. Superior Court, and would increase the mandatory retirement age for judges on that court and the D.C. Court of Appeals from 70 to 74. The bill allows the D.C. Judicial Nomination Commission to take up to 90 days to submit nominations for the new judgeships, rather than the usual 30 days for a vacancy. OMB, the District, and Justice recommend approval. I have reviewed the memorandum for the President prepared by OMB Assistant Director for Legislative Reference James M. Frey, and the bill itself, and have no objections.

At our request Justice submitted a draft signing statement. Mr. Hauser and I have revised the statement, and accordingly our memorandum to Darman attaches our redraft.

Attachment

THE WHITE HOUSE

WASHINGTON

March 14, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3655 -- District of Columbia
Judges for Superior and Appeals Court

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective. A revised signing statement prepared by this office is attached.

Attachment

FFF:JGR:aea 3/14/84
cc: FFFielding
JGRoberts
Subject
Chron.

THE WHITE HOUSE

WASHINGTON

March 14, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3655 -- District of Columbia
Judges for Superior and Appeals Court

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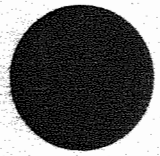
I am pleased to approve H.R. 3655, a bill that will create seven new judgeships on the Superior Court of the District of Columbia, and also raise the mandatory retirement age from 70 to 74 for judges on that Court and on the District of Columbia Court of Appeals. The Superior Court is a unique Federal Court with important judicial responsibilities in the Nation's Capital. The growing backlog of criminal and civil litigation in the Superior Court is accordingly a matter of both local and Federal concern, and this legislation will help alleviate the backlog. It is my hope that the District of Columbia Judicial Nomination Commission will act promptly in submitting lists of qualified individuals for nomination to these new judgeships, so that the new judges can be in place, reducing the backlog, as soon as possible.

While this legislation will ease the caseload problem in the Superior Court, it does not provide a cure for that problem or the similar problems plaguing most of our Nation's courts. The staggering increase in litigation has strained the capacity of our courts and threatened their ability to settle disputes. One of America's greatest lawyers, Abraham Lincoln, once said: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses, and waste of time." We must continue to search for alternative means of settling disputes. If we fail to

do so, the costs and delays of litigation in our overcrowded courts will effectively close the court house doors to all but the wealthy and those that seek to use delay to their advantage. We must not permit meritorious claims deserving of prompt judicial resolution to become lost in a sea of frivolous suits or disputes that could more quickly and efficiently be resolved in other forums.

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1/1



Name of Correspondent: Richard Dorman

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: H.R. - 3655 - District of Columbia
Judges for Superior and Appeals Court.

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	Tracking Date YY/MM/DD	DISPOSITION	
			Type of Response	Completion Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>84,03,13</u>		<u>1 1</u>
<u>CUAT 04</u>	Referral Note: <u>D</u>	<u>84,03,13</u>		<u>5 84,03,14</u>
	Referral Note:	<u>1 1</u>		<u>1 1</u>
	Referral Note:	<u>1 1</u>		<u>1 1</u>
	Referral Note:	<u>1 1</u>		<u>1 1</u>
	Referral Note:	<u>1 1</u>		<u>1 1</u>

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
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to be used as Enclosure
- I - Info Copy Only/No Action Necessary
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FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
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Comments: _____

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/12/84 ACTION/CONCURRENCE/COMMENT DUE BY: Wednesday, 3/14/84

SUBJECT: H. R. 3655 - DISTRICT OF COLUMBIA JUDGES

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
JENKINS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide any comments/recommendations by Wednesday, March 14th.

Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702

1984 MAR 13 AM 7:30



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAR 12 1984

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 3655 - District of Columbia Judges
Sponsor - Rep. Fauntroy (D) District of Columbia

Last Day for Action

March 19, 1984 - Monday

Purpose

Increases the mandatory retirement age for judges of the District of Columbia Superior and Appeals Courts; adds seven more judges to the D.C. Superior Court; and allows the D.C. Judicial Nomination Commission 90 days from the date of enactment of the bill to develop lists of potential nominees to the new judgeships for consideration of the President.

Agency Recommendations

Office of Management and Budget

Approval

D.C. Government
Department of Justice

Approval
Approval (signing
statement attached)

Discussion

H.R. 3655 was enacted by the Congress at the request of the District of Columbia Judicial branch and passed both Houses by voice vote.

Judges on the District of Columbia Superior and Appeals Courts are appointed by the President, by and with the advice and consent of the Senate, for 15-year terms. The Court of Appeals comprises a Chief Judge and eight associate judges, and the Superior Court a Chief Judge and 43 associate judges. The President designates the Chief Judge for both District of Columbia Courts.

H.R. 3655 would raise the mandatory retirement age applicable to judges on both courts from age 70 to 74. In addition, it would increase the number of associate judges on the Superior Court from 43 to 50, to help reduce a mounting caseload. Finally, the

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/12/84 ACTION/CONCURRENCE/COMMENT DUE BY: Wednesday, 3/14/84

SUBJECT: H. R. 3655 - DISTRICT OF COLUMBIA JUDGES

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
JENKINS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide any comments/recommendations by Wednesday, March 14th, on the attached Enrolled Bill and suggested signing statement.
Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702

1984 MAR 13 AM 9:18

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

RAH - suggest adding to sign-off. Urgent Commission's fact action. → 1/8

- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1/1

Name of Correspondent: Robert A. McConnell

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Enrolled bill H.R. 3655 - a bill "To raise the retirement age for judges of the Superior Court of the District of Columbia and judges of the District of Columbia Court of Appeals"

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>W Holland</u>	ORIGINATOR	<u>84103108</u>
<u>WAT04</u>	Referral Note: <u>AD</u>	<u>8410309</u>
	Referral Note:	<u>59#103112</u>
		<u>1 1</u>
	Referral Note:	<u>1 1</u>
		<u>1 1</u>
	Referral Note:	<u>1 1</u>
		<u>1 1</u>
	Referral Note:	<u>1 1</u>

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 12 1984

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 3655 - District of Columbia Judges
Sponsor - Rep. Fauntroy (D) District of Columbia

Last Day for Action

March 19, 1984 - Monday

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Increases the mandatory retirement age for judges of the District of Columbia Superior and Appeals Courts; adds seven more judges to the D.C. Superior Court; and allows the D.C. Judicial Nomination Commission 90 days from the date of enactment of the bill to develop lists of potential nominees to the new judgeships for consideration of the President.

Agency Recommendations

Office of Management and Budget	Approval
D.C. Government	Approval
Department of Justice	Approval (signing statement attached)

Discussion

H.R. 3655 was enacted by the Congress at the request of the District of Columbia Judicial branch and passed both Houses by voice vote.

Judges on the District of Columbia Superior and Appeals Courts are appointed by the President, by and with the advice and consent of the Senate, for 15-year terms. The Court of Appeals comprises a Chief Judge and eight associate judges, and the Superior Court a Chief Judge and 43 associate judges. The President designates the Chief Judge for both District of Columbia Courts.

H.R. 3655 would raise the mandatory retirement age applicable to judges on both courts from age 70 to 74. In addition, it would increase the number of associate judges on the Superior Court from 43 to 50, to help reduce a mounting caseload. Finally, the

bill would allow the existing District of Columbia Judicial Nomination Commission 90 days, instead of the present 30, to develop a list of potential Presidential nominees for the new judgeships created by the bill. The President has 60 days after receiving the list to submit his nominations to the Senate.

Funding of \$2.8 million was earmarked for the seven new judgeships last October in the D.C. 1984 Appropriations Act, Public Law 98-125, contingent upon enactment of this authorizing bill.

At the request of the Office of the White House Counsel, the Department of Justice has drafted a signing statement for your consideration, which is enclosed with the Department's letter on the enrolled bill.

(S) James M. Frey,

Assistant Director for
Legislative Reference

Enclosures

H.R. 3655 - PROPOSED SIGNING STATEMENT

I am pleased to approve H.R. 3655, a bill which will increase the number of judges on the Superior Court of the District of Columbia and also raise the mandatory retirement age to 74 for judges on this court and on the District of Columbia Court of Appeals. The District of Columbia Superior Court and Court of Appeals are federal courts which have important judicial responsibilities in the Nation's capital. Because these courts are the courts of general jurisdiction in the Federal City, the growing backlog of criminal and civil litigation is a federal concern. This legislation will help to alleviate that backlog in the Superior Court. While I endorse this effort, we must, of course, continue to seek other means to alleviate the heavy caseloads which plague the Nation's courts.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

8 MAR 1984

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

In compliance with your request, I have examined a facsimile of enrolled bill H.R. 3655, a bill "To raise the retirement age for judges of the Superior Court of the District of Columbia and judges of the District of Columbia Court of Appeals." The Department of Justice recommends Executive approval of H.R. 3655.

H.R. 3655, in addition to raising the retirement age to 74 for judges of the Superior Court and Court of Appeals of the District of Columbia, would increase the number of Superior Court judges by seven. It also provides that the District of Columbia Judicial Nomination Commission shall be given a period of ninety days to submit lists for nominations and appointments for the judicial positions created under H.R. 3655.

This legislation will assist in the reduction of the case backlog currently plaguing the District of Columbia court system. Accordingly, we recommend Executive approval of H.R. 3655. A proposed signing statement to accompany Executive approval is enclosed for your consideration.

Sincerely,

(Signed) Robert A. McConnell

ROBERT A. McCONNELL
Assistant Attorney General

cc: Fred Fielding ✓
Counsel to the President

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Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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Office of Management and Budget
Washington, D.C. 20503

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(Signed) Robert A. McConnell

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Assistant Attorney General

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THE WHITE HOUSE
WASHINGTON

3/7/84

TO: JGR

FROM: *Richard A. Hauser*
Deputy Counsel to the President

FYI: X

COMMENT: _____

ACTION: _____

Ninety-eighth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-third day of January,
one thousand nine hundred and eighty-four

An Act

To raise the retirement age for judges of the Superior Court of the District of Columbia and judges of the District of Columbia Court of Appeals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1502 of title 11 of the District of Columbia Code is amended by striking out "70" and inserting in lieu thereof "74"

SEC. 2. Section 903 of title 11 of the District of Columbia Code is amended by striking out "forty-three" and inserting in lieu thereof "fifty"

SEC. 3. Notwithstanding the time limitations of section 434(d)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, the District of Columbia Judicial Nomination Commission shall submit lists, pursuant to such section, for initial nominations and appointments to judicial positions created under this Act, within ninety days after the date of enactment of this Act.

only for these 7 initial nominations

*= makes a total of
51 judges
50 + 1 Chief Judge
Pres. appoints 59
judges, D.C. Jud.
Nom. Comm. designates
the Chief.*

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

Post 3/3

my
D.A.
day
C.

RGE

Bill on New D.C. Judges Goes to the White House

By Sandra Evans Teeley
Washington Post Staff Writer

The Senate yesterday gave final congressional approval to a bill creating seven new judgeships for the D.C. Superior Court, which has faced a massive and growing backlog of cases.

The legislation now goes to President Reagan, who is expected to sign it. It will raise the number of judges from 44 to 51.

District officials had wanted to tie the new judgeships to a transfer of appointment authority from the president to the mayor, but they did not succeed in getting this change.

D.C. Del. Walter E. Fauntroy has said he is disturbed at the Reagan administration's record on appointments to the D.C. Superior Court, saying it "raises serious questions of fairness and equal opportunity."

Reagan has appointed 14 D.C. Superior Court judges, but only two have been black, Fauntroy said.

"There is no promise that this pattern and practice will improve, and that is more than unfortunate," Fauntroy said in a recent statement. A nominations panel has sent Reagan the names of 14 qualified blacks for consideration for the court, he added.

Under the current system, a nominations panel chooses three candidates for each judgeship, and the president nominates one of the three. Because of the need to find 21 qualified candidates to send to the president, Congress decided to give the nominations panel 90 days rath-

er than the usual 30 days to submit its list.

"This will substantially aid the court in dealing with an ever-increasing number of cases," said Sen. Charles McC. Mathias (R-Md.), chairman of the Senate Governmental Affairs subcommittee on D.C. through an aide. "We will do our best to see that when the nominations are made, they will be dealt with in an expeditious manner in the Senate."

Sen. Arlen Specter (R-Pa.), who has been pushing for the judgeships for nearly a year, predicted the new jobs could be filled by summer. Others said this is optimistic given the few working days the Senate has before adjourning for the November elections.

Specter had added \$2.8 million in federal funds to the D.C. appropriations bill last year to pay for the salaries of the new judges and for courtroom improvements. The money could not be spent until the judges were authorized under separate legislation, however.

Superior Court Judge H. Carl Moultrie I had warned of an impending crisis in the court system if judges were not added.

While the city was not able to get Congress to transfer nomination authority from the president to the mayor, Mayor Marion Barry said recently that he took heart in the commitment by key Republicans, including Specter, that they would support such a move.

The additional judges were part of a bill to raise the retirement age of D.C. judges from 70 to 74.



Associated Press
Hampton, Va., to be charged in the slaying of a
five similar crimes in the Tidewater area.

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THE WHITE HOUSE

WASHINGTON

March 22, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: S. 1098 as Passed by the House
to Include H.R. 2853 (Establishing
a National Oceans Policy Commission)

OMB has asked for our views by close of business on S. 1098 as passed by the House to include H.R. 2853. S. 1098 is basically an authorization bill for certain activities conducted by the National Oceanic and Atmospheric Administration within the Department of Commerce, and raises no significant legal issues. H.R. 2853, however, tacked on to S. 1098 in the House, would create a National Oceans Policy Commission. The Commission would be comprised of five Cabinet members and 14 members appointed by the President, including three from nonprofit organizations, five from commercial organizations, two Governors from coastal states, two academics, and two individuals chosen "at large." The Speaker of the House and Majority Leader of the Senate are each to submit lists of 14 names, and the President is to choose seven members from each list. The Speaker and Majority Leader are also to select seven members from their respective Houses to serve as "Congressional advisers" to the Commission. The Chairman is to be "jointly selected" by the President, the Speaker, and the Majority Leader.

All of the foregoing would raise serious Constitutional concerns if the members of the Commission were considered officers of the United States. The functions of the Commission appear to be purely advisory, however, so its members would not be officers in the Constitutional sense. Nonetheless, we should still note that the bill should be interpreted as meaning that the President retains ultimate responsibility for his appointments, so that he can require additional lists from the Speaker and Majority Leader if he is dissatisfied with the lists presented to him. On June 27, 1983, the Justice Department sent a letter to the Chairman of the House Committee considering H.R. 2853, making this point and several other less significant ones. I recommend that we advise OMB that we share the concerns raised in that letter, none of which have yet been addressed by Congress. As noted, the purely advisory character of the Commission basically relegates these concerns to the level of policy rather than Constitutional objections.

THE WHITE HOUSE

WASHINGTON

March 22, 1984

MEMORANDUM FOR WILLIAM A. MAXWELL
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: S. 1098 as Passed by the House
to Include H.R. 2853 (Establishing
a National Oceans Policy Commission)

You have asked for our views on S. 1098, as passed by the House to include H.R. 2853. The Administration previously recommended several changes in H.R. 2853 in a June 27, 1983 letter from the Department of Justice to Chairman Jones of the House Committee on Merchant Marine and Fisheries. Those changes have not as yet been made, and they should be reiterated in any expression of Administration views.

FFF:JGR:aea 3/22/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 22, 1984

MEMORANDUM FOR WILLIAM A. MAXWELL
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

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WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
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Date Correspondence Received (YY/MM/DD) 1 / 1 /

Name of Correspondent: William A. Drapnell

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: S. 1098 as passed by the House to include H.R. 2853 (Established a National Ocean Policy Commission)

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>EW Holland</u>	ORIGINATOR	<u>84/103/19</u>
<u>WAT 18</u>	Referral Note: <u>D</u>	<u>84/103/19</u>
	Referral Note:	<u>S 84/103/21</u>
	Referral Note:	<u>1 1</u>
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 16, 1984

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Commerce
Department of the Interior
Department of Justice
Department of Transportation
Department of Defense
National Security Council
General Services Administration
Department of State

S. 1098 as passed by the House to include H.R. 2853 (Establishes a
SUBJECT: National Oceans Policy Commission)

See Congressional Record, March 15, 1984, pp. H. 1649 - 53

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

COB Thursday, March 22, 1984. ORAL COMMENTS ACCEPTABLE.

Direct your questions to William A. Maxwell (395-3890), the legislative analyst in this office.


James C. Murr for
Assistant Director for
Legislative Reference

cc: S. Gudes
P. Schleuter

R. Moran
D. Allen

E. Wilson

oil companies and many in Congress strongly favor the extension.

(From the MacNeil/Lehrer NewsHour, Mar. 9, 1984)

REACTIONS TO PERSIAN GULF OIL DEVELOPMENTS

ROBERT MACNEIL. The war between Iran and Iraq brought about a struggle over insurance rates today. Since Iraq launched missile attacks last week on ships sailing in the Persian Gulf war zone, insurance premiums have doubled. Iran is concerned that higher insurance premiums will make ship owners unwilling to send their vessels to Iranian oil ports without charging higher prices, thus producing the effect of a blockade. So today Iran deposited \$100 million in a London bank and deferred—or offered to insure all oil tankers visiting Iranian ports for lower premiums, about a third less than Lloyd's of London is charging.

In Washington, Energy Secretary Donald Hodel said the United States should use its strategic reserve of petroleum to stabilize the oil market if there's any even minor interruption of supplies from the Persian Gulf.

(Mr. BROYHILL asked and was given permission to revise and extend his remarks, and include extraneous matter.)

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Michigan.

Mr. DINGELL. It is the extension of the antitrust exemptions.

Mr. BROYHILL. The IEA antitrust defense provided to U.S. company officials subject to the review of Federal antitrust authorities.

Mr. DINGELL. I would like to stand with my first statement.

Mr. BROYHILL. Mr. Speaker, I withdraw my reservations of objection.

THE SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

THE SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see prior proceedings of the House of today.)

Mr. DINGELL (during the reading). Mr. Speaker, I ask unanimous consent that the statement be considered as read.

THE SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

THE SPEAKER. The gentleman from Michigan (Mr. DINGELL) will be recognized for 30 minutes and the gentleman from North Carolina (Mr. BROYHILL) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Speaker, I have no requests for time, and I move the

previous question on the conference report.

The previous question was ordered. The conference report was agreed to. A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on H.R. 4194.

THE SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OCEAN AND COASTAL PROGRAM AUTHORIZATION ACT

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1098) to consolidate and authorize certain ocean and coastal programs and functions of the National Oceanic and Atmospheric Administration under the Department of Commerce, with a Senate amendment to the House amendment, and concur in the Senate amendment to the House amendment with amendments.

The Clerk read the title of the Senate bill.

The Clerk read the House amendments to the Senate amendment to the House amendment, as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE I—POLYMETALLIC SULFIDE ANALYSES AND RESEARCH AUTHORIZATION

Sec. 101. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its poly-metallic sulfide analyses and research duties under the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a), and any other law involving such duties, \$2,000,000 for fiscal year 1984, and \$2,500,000 for fiscal year 1985.

At the end of the Senate amendment, insert the following:

"Strike out line 3 on page 2 of the House engrossed amendment and all that follows to line 2, page 11, and insert the following:

TITLE II—NATIONAL SEA GRANT COLLEGE PROGRAM

AUTHORIZATION

Sec. 201. (a) Section 212 of the National Sea Grant Program Act (33 U.S.C. 1131) is amended by inserting immediately after paragraph (3) the following new paragraph: "(4) Not to exceed \$36,500,000 for fiscal year 1984 and not to exceed \$42,000,000 for fiscal year 1985."

(b) Section 3(c) of the Sea Grant Program Improvement Act of 1976 (33 U.S.C. 1124a(c)) is amended by inserting immediately after paragraph (3) the following new paragraph:

"(4) For fiscal years 1984 and 1985, not to exceed \$1,000,000 in each fiscal year appropriated pursuant to section 212 of the Na-

tional Sea Grant Program Act may be available to carry out this section."

TITLE III—OCEAN THERMAL ENERGY CONVERSION ACT

AUTHORIZATION

Sec. 301. Section 406 of the Ocean Thermal Energy Conversion Act of 1980 (Public Law 96-320) is amended by—

- (1) striking out "and"; and
- (2) striking out "1983." and inserting in lieu thereof "1983, not to exceed \$480,000 for the fiscal year ending September 30, 1984, and not to exceed \$630,000 for the fiscal year ending September 30, 1985."

MISCELLANEOUS

Sec. 302. (a) The Ocean Thermal Energy Conversion Act of 1980 (Public Law 96-320) is amended—

- (1) in section 2(a)(1) by striking out "located in the territorial sea" and inserting in lieu thereof "located in whole or in part between the highwater mark and the seaward boundary of the territorial sea";

- (2) in section 3(11) by striking out "standing or moored in or beyond the territorial sea of the United States" and inserting in lieu thereof "standing, fixed or moored in whole or in part seaward of the highwater mark";

- (3) in the first sentence of section 101(a) by striking out "located in the territorial sea" and inserting in lieu thereof "located in whole or in part between the highwater mark and the seaward boundary of the territorial sea";

- (4) in section 101(b)(2) by striking out "located in the territorial sea" and inserting in lieu thereof "located in whole or in part between the highwater mark and the seaward boundary of the territorial sea";

- (5) in section 101(c)(7) by striking out "will not be documented under the laws of the United States," and inserting in lieu thereof "will be documented under the laws of a foreign nation";

- (6) in section 108(e)(2)(C)(ii) by striking out "moored or standing" and inserting in lieu thereof "moored, fixed or standing";

- (7) in section 108(e) by adding a new paragraph (4) to read as follows:

"(4) For the purposes of this subsection the term 'ocean thermal energy conversion facility' refers only to an ocean thermal energy conversion facility which has major components other than water intake or discharge pipes located seaward of the highwater mark."

- (8) in section 110(1) by striking out "aboard" and inserting in lieu thereof "in or aboard";

- (9) in section 301 by striking out "on board" and inserting in lieu thereof "in or on board", by striking out "or other" and inserting in lieu thereof "or on board any", and by striking out in paragraph (2) thereof "to board" and inserting in lieu thereof "to enter or board";

- (10) in section 303(b) by striking out "on board" and inserting in lieu thereof "in or on board", by striking out "or other" and inserting in lieu thereof "or any", and by striking out in paragraph (1) thereof "board and inspect" and inserting in lieu thereof "enter or board, and inspect, any ocean thermal energy conversion facility or plant-ship or";

- (11) in the first sentence of section 403(a)(1) by inserting "and all of which is located seaward of the highwater mark," immediately after "licensed under this Act"; and

- (12) in the first sentence of the section 403(c)(2) by inserting "documented under the laws of the United States and" immediately after "ocean thermal energy conversion facility or plantship".

(b) Such Act is further amended—

(1) in section 101(c)(1) by striking out "cannot and will not" and inserting in lieu thereof "cannot or will not";

(2) in section 101(c)(5) by striking out "has expired;" and inserting in lieu thereof "has not expired;"

(3) in section 101(c)(10) by striking out "each" and inserting in lieu thereof "any";

(4) in section 101(c)(13) by striking out "and" after the semicolon and inserting in lieu thereof "or"; and

(5) in section 101(c)(10) by striking out "(33 U.S.C. 1451 et seq.)" and inserting in lieu thereof "(16 U.S.C. 1451 et seq.)".

(c) Section 405 of such Act is amended by striking out "3" and inserting in lieu thereof "five".

(d) Such Act is further amended by adding the following new section:

"Sec. 408. Within 18 months after the date of enactment of this provision, the Administrator shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing what steps the United States Government is taking and plans to take to promote and enhance the export potential of ocean thermal energy conversion components, facilities, and plantships manufactured by United States industry. Such report shall include—

"(1) the relevant views of the National Oceanic and Atmospheric Administration, International Trade Administration, Maritime Administration, Department of Energy, Small Business Administration, United States International Development Cooperative Agency, the Office of the Special Trade Representative, and other relevant United States Government agencies;

"(2) the findings of studies conducted by the Administrator to fulfill the intent of this section;

"(3) a summary of activities, including consultations held with representatives of both the ocean thermal energy conversion and financial industries conducted by the Administrator to fulfill the intent of this section; and

"(4) such recommendations as the Administrator deems appropriate for amending the Ocean Thermal Energy Conversion Act of 1980 (Public Law 96-320) or other relevant Acts to better promote and enhance the export potential of ocean thermal energy conversion components, facilities and plantships manufactured by United States industry."

(e) Such Act is further amended—

(1) in the first sentence of section 108(d)(1) by striking out "reorganizational safety" and inserting in lieu thereof "navigational safety";

(2) in section 109(b)(2) by striking out "natural" and inserting in lieu thereof "national";

(3) in section 112(b) by striking out "confidential commercial and financial information" and inserting in lieu thereof "commercial or financial information which is privileged or confidential";

(4) in section 116(a) by striking out "facility or platform" and inserting in lieu thereof "facility or plantship";

(5) in section 302(b)(1) by inserting "to halt" immediately after "injunction";

(6) in the first sentence of section 403(c)(2) by striking out "Treasury" and inserting in lieu thereof "Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19, United States Code,";

(7) in section 3(11) by striking out "freshwater," and inserting in lieu thereof "fresh water,";

(8) in section 101(c)(4) by striking out "enforcement" and inserting in lieu thereof "regulatory";

(9) in section 101(c)(6) by striking out "for license" and inserting in lieu thereof "for a license";

(10) in section 101(c)(14) by striking out "when" and inserting in lieu thereof "if";

(11) in section 101(d)(2) by striking out "licensee" and inserting in lieu thereof "applicant, licensee";

(12) in the first sentence of section 105(a)(2) by striking out "that (A)" and inserting in lieu thereof "(A) that";

(13) in the first sentence of section 105(b)(1) by striking out "of adjacent" and inserting in lieu thereof "of an adjacent";

(14) in the third sentence of section 105(b)(1) by striking out "is" and inserting in lieu thereof "are";

(15) by inserting the text of section 109(b)(3) as a new paragraph (3) immediately after the end of paragraph (2) of section 108(d), and by repealing section 109(b)(3);

(16) in section 109(c) by striking out "such of" and inserting in lieu thereof "of such", and by striking out "impingement" and inserting in lieu thereof "impingement";

(17) in section 111(b) by striking out "environment established by any treaty or convention," and inserting in lieu thereof "environment"; and

(18) in section 112(b)(2)(B) by striking out "administrator" and inserting in lieu thereof "Administrator".

(f) Section 102(h) of such Act is amended to read as follows:

"(h) The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee, which shall be deposited into miscellaneous receipts of the Treasury. The amount of the fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration in reviewing and processing the application."

TITLE V—NATIONAL OCEANS POLICY COMMISSION ACT OF 1984

PURPOSE

SEC. 401. The purpose of this title is to establish a commission that will develop recommendations for Congress and the President on a comprehensive national oceans policy that will encourage and promote:

(1) the development of international oceans law in a manner that will promote the peaceful uses of the oceans and balance the interests of the United States and all nations;

(2) United States leadership in oceans law and policy;

(3) the continued leadership of the United States in conducting research on, and in conserving, managing, and developing living and nonliving marine resources, and in protecting the marine environment;

(4) the wise use and compatible development of marine resources;

(5) United States investments in the research, exploration and development of marine resources and technologies; and

(6) the equitable allocation of the responsibilities for marine resource research, conservation, management, and development among various levels of government and the private sector, and promote the efficient use of limited fiscal resources for such research, conservation, management, and development.

ESTABLISHMENT OF COMMISSION

SEC. 402. To carry out the purpose of this title there is hereby established a commission to be known as the National Oceans Policy Commission (referred to in this title as the "Commission").

DUTIES OF THE COMMISSION

SEC. 403. (a) RECOMMENDATIONS.—(1) The Commission shall develop recommendations

on a comprehensive national oceans policy to carry out the purpose of this title.

(2) The Commission shall develop recommendations on the international and domestic ocean policies, laws, regulations, and practices of the United States that are required to define and implement the comprehensive national ocean policy recommended pursuant to paragraph (1). Such recommendations shall—

(A) address international ocean policy issues associated with developments in international oceans law, including those issues relating to:

(i) geographical areas within national resource jurisdiction; and

(ii) geographical areas beyond national resource jurisdiction;

(B) include any modifications in existing United States policies, laws, regulations, and practices necessary to develop efficient long-range programs for research on, the conservation, management, and development of, marine resources, and the protection of the marine environment;

(C) address the most equitable allocation of responsibilities for research on, and the conservation, management, and development of, marine resources among Federal agencies, appropriate levels of subnational government, and the private sector; and

(D) address any other aspects of United States marine-related policies, laws, regulations, and practices deemed necessary by the Commission in carrying out its duties pursuant to subsection (a).

(b) PREPARATORY ANALYSES.—In developing its recommendations under subsection (a), the Commission shall:

(1) take into account the Presidential Proclamation of an Exclusive Economic Zone on March 10, 1983;

(2) consider the relationship of United States policies to the Convention on the Law of the Sea and the range of actions available to the United States to influence favorably the practice of other nations so as to promote the objectives in section 401;

(3) survey all significant ocean activities of Federal agencies and departments including those relating to navigation, marine research, the conservation, management, and development of marine resources; and the protection of the marine environment;

(4) assess the existing and projected research and administrative requirements for conserving, managing, and developing marine resources;

(5) evaluate the relationships among Federal agencies, appropriate levels of subnational government, and the private sector for fulfilling the research and administrative requirements identified pursuant to paragraph (4); and

(6) engage in any other preparatory work deemed necessary to carry out its duties pursuant to subsection (a).

MEMBERSHIP OF COMMISSION

SEC. 404 (a) NUMBER AND APPOINTMENT.—The Commission shall consist of nineteen members who shall be appointed by the President, within sixty days after the enactment of this title, in accordance with the provisions of this section.

(b) FEDERAL AGENCY MEMBERS.—Five members of the Commission shall be the Secretaries of the following Federal departments, or their designees who shall be employees of such departments and knowledgeable and experienced in oceans policy:

- (1) the Department of State;
- (2) the Department of Defense;
- (3) the Department of Commerce;
- (4) the Department of Interior; and
- (5) the Department of Transportation.

(c) **NON-FEDERAL MEMBERS.**—The remaining fourteen members of the Commission shall be knowledgeable and experienced in oceans policy. The fourteen members shall be appointed from the following categories of qualifications:

(1) three members shall be from private sector nonprofit organizations involved with national oceans policy (including, but not limited to, those with consumer and environmental interests);

(2) five members shall be from private sector commercial organizations involved with national oceans policy (including, but not limited to, those with marine transportation and living and nonliving marine resource interests);

(3) two members shall be Governors of coastal States from different geographic regions and political parties;

(4) two members shall be specialists in ocean policy from the academic community; and

(5) two members shall be selected from at large, at least one of whom shall be knowledgeable in international oceans policy.

(d) **METHOD OF APPOINTMENT.**—(1) The Speaker of the House of Representatives (referred to in this title as the "Speaker") shall prepare a list of fourteen nominees for appointment to the Commission.

(2) The Majority Leader of the Senate (referred to in this title as the "Majority Leader") shall prepare a list of fourteen nominees for appointment to the Commission.

(3) Each list of nominees:

(A) shall not contain any of the same nominees;

(B) shall contain nominees that conform to the requirements of subsection (c); and

(C) shall not contain more than seven individuals from the same political party.

(4) The list of nominees required by this subsection shall be submitted to the President within thirty days after the enactment of this title.

(5) The President shall appoint seven members of the Commission from the list submitted by the Speaker and seven members from the list submitted by the Majority Leader. No more than four members appointed from each list may be members of the same political party, and no more than seven members of the Commission appointed pursuant to subsection (c) may be members of the same political party.

(e) **CHAIRMAN AND VICE CHAIRMAN.**—The President, the Speaker, and the Majority Leader shall jointly select a Chairman and Vice Chairman of the Commission from members referred to in subsection (c).

(f) **CONGRESSIONAL ADVISERS.**—Congressional advisers shall be composed of:

(1) seven Members of the House of Representatives selected by the Speaker, no more than four of whom shall be from the same political party; and

(2) seven Members of the Senate selected by the Majority Leader, no more than four of whom shall be from the same political party.

(g) The Chairman of the Joint Chiefs of Staff or his designee shall serve in an advisory capacity to the Commission.

(h) **DESIGNEES OF GOVERNORS.**—Governatorial appointees may designate an officer or employee of their State, who is knowledgeable and experienced in oceans policy, to act in their place as a member.

(i) **TERMS.**—Except as may be required by electoral changes, members shall be appointed for the life of the Commission.

(j) **VACANCIES.**—A vacancy shall be filled in the same manner in which the original appointment was made. A vacancy in Federal members shall be filled by appointment in accordance with subsection (b). A vacancy in

non-Federal members shall be filled by appointment by the President in accordance with subsections (c) and (d). The new member shall be selected from the same category of qualifications as the members who has vacated the position and shall be selected from a new list of at least two nominees prepared by the Speaker or the Majority Leader, as appropriate.

(k) **PAY OF MEMBERS.**—(1) Except as provided in paragraph (2), members of the Commission may each be paid at a rate not to exceed the rate of basic pay payable for GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties of the Commission.

(2) Members of the Commission who are officers or employees of the United States may not receive pay by reason of their service on the Commission.

(3) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as may be authorized by law for persons in Government service employed intermittently.

(l) **MEETINGS.**—The Commission shall meet at the call of the Chairman or a majority of its members.

DIRECTOR AND STAFF OF COMMISSION

SEC. 405. (a) **DIRECTOR.**—The Commission shall have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of basic pay payable for GS-18 of the General Schedule. The Director shall be knowledgeable and experienced in oceans policy and administration.

(b) **STAFF.**—Subject to such rules as may be prescribed by the Commission, the Director may hire staff for the Commission and shall fix their compensation as appropriate.

(c) **PROCEDURES.**—(1) The hiring and compensation of the Director and staff under this section may occur without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.

(2) The Commission may establish rules and procedures to evaluate the performance of its staff and employees. Chapter 43 of title 5, which pertains to performance ratings of employees, shall not apply to the Commission.

(d) **EXPERTS AND CONSULTANTS.**—Subject to the rules that may be prescribed by the Commission, the Director may procure the temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code, but at rates not to exceed the rate of pay for GS-18 of the General Schedule.

(e) **STAFF OF FEDERAL AGENCIES.**—Upon request of the Commission, the head of any Federal agency shall detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title. To the extent feasible, such detail shall be on a reimbursable basis.

(f) **VOLUNTARY SERVICES.**—The Commission is authorized to accept and use the services of volunteers serving without compensation, and to reimburse volunteers for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Except for the purposes of chapter 81 of title 5, relating to compensation for work injuries, and chapter 171 of title 28, relating to tort claims, a volunteer shall not be considered an employee of the United States for any purpose.

POWERS OF COMMISSION

SEC. 406. (a) **MEETINGS.**—(1) All meetings of the Commission shall be open to the public, except when the Chairman determines that the meeting or any portion of it may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Interested persons shall be permitted to appear at open meetings and present oral or written statements on the subject matter of the meeting. The Commission may administer oaths or affirmations to any person appearing before it.

(2) All meetings of the Commission shall be preceded by timely public notice in the Federal Register of the time, place, and subject of the meeting.

(3) Minutes of each meeting shall be kept and shall contain a record of the people present, a description of the discussion that occurred, and copies of all statements filed. Subject to section 552 of title 5, United States Code, the minutes and records of all meetings and other documents that were made available to or prepared for the Commission shall be available for public inspection and copying at a single location in the offices of the Commission.

(4) The Federal Advisory Committee Act (5 U.S.C. App. 1) shall not apply to the Commission.

(b) **POWERS OF MEMBERS AND AGENTS.**—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) **OBTAINING OFFICIAL DATA.**—The Commission may secure directly from any Department or agency of the United States information necessary to enable it to carry out this title. Subject to existing laws and upon request of the Chairman of the Commission, the head of the Department or agency shall furnish such information to the Commission.

(d) **MAILS.**—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) **ADMINISTRATIVE SUPPORT SERVICES.**—The General Services Administration shall provide to the Commission on a reimbursable basis the administrative support services that the Commission may request.

(f) **CONTRACTS.**—(1) The Commission is authorized to enter into contracts with Federal and State agencies, private firms, institutions, and individuals for the conduct of surveys or research, the preparation of reports, and for other activities that may be necessary to discharge its duties. The Commission may purchase and contract without regard to section 252 of title 41, United States Code, pertaining to advertising and competitive bidding, and may arrange for printing without regard to Government Printing and Binding Regulations.

(2) The contracting authority of the Commission under this title is effective for any fiscal year only to the extent that appropriations are available for contracting purposes.

REPORTS BY COMMISSION

SEC. 407. (a) The Commission shall submit to the President and to each House of the Congress within six months after the Commission first meets an interim report pursuant to its duties provided under section 403, giving special consideration to section 403(a)(2)(A)(i).

(b) The Commission shall submit a final report to the President and to each House of the Congress not later than two years after the Commission first meets. The final report shall contain the recommendations formulated by the Commission in accord-

ance with section 403(a)(1) and (2), the suggested legislative and administrative actions that the Commission deems appropriate, and a detailed statement of the findings and conclusions on which the recommendations are based.

REPORTS BY FEDERAL AGENCIES

Sec. 408. The head of each Federal Department, agency, or instrumentality that is responsible for any law or program that relates to the Exclusive Economic Zone of the United States shall submit a brief report to Congress, the President, and the Commission describing such law or program within two months after enactment of this title.

TERMINATION OF COMMISSION

Sec. 409. The Commission shall cease to exist on the thirtieth day after the day on which the final report is submitted under section 407.

AUTHORIZATION OF APPROPRIATIONS

Sec. 410. To carry out this title, there is authorized to be appropriated to the Commission not to exceed \$1,500,000 for fiscal year 1984 and \$1,500,000 for fiscal year 1985. Sums appropriated pursuant to this section shall remain available until expended.

TITLE V—DEEP SEABED HARD MINERAL RESOURCES ACT

AUTHORIZATION

Sec. 501. Section 310 of the Deep Seabed Hard Minerals Resources Act (30 U.S.C. 1470) is amended by—

- (1) striking out the word "and" after "1983"; and
- (2) striking out "1984" and inserting in lieu thereof "1984, and \$1,307,000 for the fiscal year ending September 30, 1985."

TITLE VI—PAY INCREASE AUTHORIZATION

MISCELLANEOUS

Sec. 601. There are authorized to be appropriated to the Department of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out its duties indicated under this Act, such additional sums as may be necessary for increases in salary, pay, and other employee benefits authorized by law.

Mr. JONES of North Carolina (during the reading). Mr. Speaker, I ask unanimous consent that the House amendments to the Senate amendment to the House amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

Mr. PRITCHARD. Mr. Speaker, reserving the right to object, I do so to ask the gentleman from North Carolina (Mr. JONES) to explain the bill.

Mr. JONES of North Carolina. Mr. Speaker, will the gentleman yield?

Mr. PRITCHARD. I yield to the gentleman from North Carolina.

Mr. JONES of North Carolina. Mr. Speaker, as the gentleman knows, S. 1098 was considered and unanimously passed by the House last year. The basic legislation involves the reauthorization of the national sea grant college program, the ocean thermal energy conversion program (OTEC), the National Advisory Committee on Oceans and Atmosphere (NACOA), and an environmental research program on nonliving marine resources.

The amendments I am proposing today would change all of the fiscal

year 1984 authorization levels to reflect the actual appropriations for this year.

The fiscal year 1985 authorization levels have generally been reduced to reflect the realities of the budget process. For example, some \$4 million has been cut from the authorization for the sea grant college program. This still leaves an authorization of \$42 million which, in the judgement of the committee, allows for a substantial increase in the program's appropriations. Our commitment to a strong network of sea grant research and universities has not, in any way, changed.

The amendments also replace the NACOA reauthorization with a title that establishes a National Oceans Policy Commission. As my colleagues will recall, the House, with administration support, overwhelmingly passed H.R. 2853 on October 31, 1983—that bill was a legislative proposal to establish the Commission.

Some questions about the relationship of this new entity with NACOA remain. Our proposal would provide the House with an opportunity to discuss and resolve these outstanding questions in conference with the other body by insuring that legislation affecting both NACOA and the Commission fall within the scope of a conference.

The amendments also add a 1-year reauthorization of the Deep Seabed Hard Mineral Resources Act, as recommended by the administration. The act gives NOAA responsibility for developing and administering a regime for licenses and permits to explore and develop minerals from the deep seabed. NOAA is also responsible, in cooperation with the State Department, for recognizing other nations that have comparable seabed mining programs.

Both the Ocean Policy Commission title and the authorization of the deep seabed program are matters that the Merchant Marine Committee shares with the Committees on Interior and Foreign Affairs. The leadership of those committees have concurred in these amendments.

Finally, I would like to point out that the amendments proposed today significantly reduce the costs of the bills originally considered by the House and the amendment passed by the other body. For the 2-year period covered by the legislation, our amendments result in authorizations that are over \$10 million under the amendment passed by the Senate and over \$7 million under the original House bill—for those components of S. 1098. Even with adding the Oceans Policy Commission and seabed mining, our amendments today result in a total authorization package that is some \$6 million under the Senate amendment and \$3 million lower than the original House bill.

I believe that we have shown significant fiscal restraint in the reauthorization of these NOAA programs

while, at the same time, protecting the integrity of our Nation's ocean and coastal initiatives. I urge the support of my colleagues for this legislation.

Does that answer the gentleman?

Mr. PRITCHARD. Yes it does.

Mr. Speaker, I would like to assure my colleagues that I do support S. 1098, which reauthorizes and brings together five important ocean programs of the National Oceanic and Atmospheric Administration (NOAA) under the Department of Commerce. These programs include the polymetallic sulfide research and evaluation program of NOAA, the national sea grant college program, the Ocean Thermal Energy Conversion Act, and the Deep Seabed Hard Minerals Act. Additionally, the bill provides for the establishment of a blue ribbon commission to assess U.S. oceans policy.

I would like to emphasize the importance of S. 1098 and the five ocean programs of NOAA that are included in this legislation.

I strongly support this legislation.

Mr. JONES of North Carolina. Mr. Speaker, if the gentleman will yield further, I include at this point in the RECORD a copy of a letter from the chairman of the Committee on Foreign Affairs regarding this legislation.

COMMITTEE ON FOREIGN AFFAIRS

Washington, D.C., March 15, 1984

HON. WALTER B. JONES,

Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR WALTER: I am writing you in regard to S. 1098, the National Oceanic and Atmospheric Administration Ocean and Coastal Program Authorization Act. My understanding is that S. 1098 consolidates a number of House passed bills reported by your Committee, including H.R. 1381 (The Ocean Thermal Energy Conversion Act Reauthorization), H.R. 1643 (National Sea Grant College Program Reauthorization), and H.R. 2722 (the National Advisory Committee on Oceans and Atmosphere Reauthorization Act), and also provides an authorization for polymetallic sulfide analysis and research.

Staff advises that S. 1098 is at the Speaker's Table and that you wish to make a unanimous consent motion to take S. 1098 from the Table and offer two amendments to it. One amendment would delete the National Advisory Committee on Oceans and Atmosphere (NACOA) and insert in lieu thereof the National Ocean Policy Commission which the House adopted as a separate bill (H.R. 2853) on October 31, 1983. As you know, the Committee on Foreign Affairs held a hearing on the National Ocean Policy Commission and favorably reported it. Several members of the Committee including myself co-sponsored the bill. While I understand that the Senate has not acted on H.R. 2853, preferring to support the National Advisory Committee on Ocean and Atmospheric Affairs (NACOA), I believe that so amending S. 1098 would achieve our joint aim of having the Commission proposal raised and discussed in a House-Senate Conference. It was the Committee's judgment that the National Ocean Policy Commission as adopted by the House would be preferable to NACOA, which is not equipped to conduct the international assessment called for in H.R. 2853.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

March 23, 1984

The President has signed S. 820 which authorizes appropriations for fiscal years 1984 and 1985 for earthquake hazards reduction programs and for fire prevention and control programs.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

March 26, 1984

STATEMENT BY THE PRESIDENT

I have signed today H.R. 2809, a bill "To establish a National Fish and Wildlife Foundation."

H.R. 2809 would establish the National Fish and Wildlife Foundation to encourage and administer donations of real or personal property, in connection with U.S. Fish and Wildlife Service programs and other activities to conserve fish, wildlife, and plant resources of the United States. The Foundation's governing Board of nine Directors would be appointed by the Secretary of the Interior. H.R. 2809 would also authorize the Attorney General to sue the Foundation if it should appear that the Foundation's actions are inconsistent with the purposes of the Act.

I have signed H.R. 2809 because it promotes important conservation and preservation goals and encourages private sector initiative to aid us in attaining those goals. I must note my serious reservations about the approach taken in the bill. Before this bill was passed, the Department of Justice advised the Congress that the bill's provisions, taken together, create ambiguity about whether the Foundation is to be a private entity or an establishment within the Executive branch. The statements in the bill to the effect that the Foundation shall be a nonprofit, charitable corporation and that it shall not be an agency or establishment of the United States are contradicted by the facts that the Foundation is established by Congress, funded by Congress, and endowed with the sole purpose of assisting and benefiting a Federal agency, the U.S. Fish and Wildlife Service; its property is made exempt from condemnation by State and local governments; and its Directors are all appointed by the Secretary of the Interior. Moreover, the bill exempts the Foundation from certain provisions of the United States Code which would be clearly inapplicable if the Foundation were truly nongovernmental.

Entities which are neither clearly governmental nor clearly private should not be created. The Supreme Court has recently warned against constitutional innovations merely because they seem to be expedient. Establishment of the Foundation under the terms of the bill is an unwise and dangerous precedent. I have, therefore, given serious consideration to vetoing the bill even though I support its laudable objectives. I have not done so because the Attorney General has advised that the bill can be given a constitutional construction.

I have been advised by the Attorney General that the governmental character of the Foundation predominates. Under the Supreme Court's cases, the character of an agency will be determined by its functions, not its label. Buckley v. Valeo, 424 U.S. 1 (1976). On this basis, the Foundation must be regarded as an establishment within the Executive branch. The Directors of the Foundation, therefore, will be removable at the discretion of the Secretary of the Interior, because they are appointed by him and they exercise no powers which

more

(OVER)

insulate them from removal at will. Accordingly, I will direct the Secretary to ensure compliance by the Directors of the Foundation with their statutory purposes through the exercise of the removal power. It will not be necessary to enforce compliance through suit by the Attorney General, an aspect of the bill which raises significant constitutional issues. In addition, I have directed the Attorney General and the Secretary to examine the other provisions of the bill to determine how they should be given effect consistent with constitutional principles.

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