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## *SYMPOSIUM: NEW DIRECTIONS IN UNITED STATES OCEAN POLICY*

### INTRODUCTION: ORGANIZING FOR A NATIONAL OCEANS PROGRAM

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Senator Hollings recently referred to the 1960's as "The Decade of Oceans Rhetoric." As a result of the impetus from the extraordinary report of the Stratton Commission in 1969,<sup>1</sup> the 1970's began with greater promise. The highlights of this decade have been creation of the National Oceanic and Atmospheric Administration (NOAA),<sup>2</sup> creation of the National Advisory Committee on Oceans and Atmosphere (NACOA),<sup>3</sup> creation of the Bureau of Oceans and International Environmental and Scientific Affairs in the Department of State,<sup>4</sup>

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This Article is adapted from an address presented to "Oceans 76" on September 13, 1976. The views expressed are the author's and are not a position of the Center for Oceans Law and Policy or the University of Virginia.

1. PANEL REPORTS OF THE COMM'N ON MARINE SCIENCE, ENGINEERING AND RESOURCES (1969). The Commission took the last name of its chairman, Julius A. Stratton.

2. Reorganization Plan No. 4 of 1970, 84 Stat. 2090 (current version found in 5 U.S.C.A. app. II, at 69 (Supp. 1977)).

3. 33 U.S.C. § 857-6 (Supp. I 1971).

4. 22 U.S.C.A. § 2655a (Supp. 1977).

and Senate authorization of the National Ocean Policy Study.<sup>5</sup> These have been significant steps forward. Nevertheless, our nation still does not have a national oceans program. Unless we act firmly and quickly the 1970's may be known as "The Decade of Creeping Oceans Action."

Where are the national technological goals for the oceans comparable to those that gave purpose and excitement to the space program? Such oceans goals could be linked to more immediate benefits for all mankind and could unleash the great energy of our oceans industry. Why must we permit a billion dollar a year balance of payments drain for fishery products when our nation has some of the world's richest fishing grounds off its shores? Where are the programs for the research and monitoring of the marine environment that meet present and future needs? Must we accept as inevitable garbage on Long Island beaches and kepone in Chesapeake Bay bluefish? Should we continue to tolerate serious oil spills, such as those off Nantucket and in the Delaware River? Why should the outer continental shelf oil program languish during a national energy shortage? Why should we permit our once strong merchant marine to decline to the point that it carries less than seven percent of United States world trade? How are we planning for the recreational needs of an expanded population with increased leisure time? How are we planning to meet the special problems of the Arctic? Where are the basic research goals to mobilize our capable marine oceanographic centers? How can we preserve our national interest in the innovative deep seabed mining industry while encouraging the important Law of the Sea negotiations?

These and other problems are familiar to all in the oceans community. Too often, however, answers have not been forthcoming. A principal cause of the malaise is simply the newness of the effort. Even the decade of oceans rhetoric is only eight years past, and our major oceans institutions are in their infancy. On the scale of bureaucratic progress those in charge of these institutions have done a good, and in some cases a superb, job. By now, however, it is abundantly clear that we are not yet organized for a national oceans program.

Although those of us in the oceans community believe in the importance of the oceans and the need for a national oceans program, effective organization and management of the oceans effort is as much a matter of good government as of recognition of oceans needs. Government that fails to determine national goals and priorities encourages the continuation of unmet needs and the misallocation of

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5. S. Res. 222, 93d Cong., 2d Sess., 119 CONG. REC. 42391 (1974).

scarce national resources, and government that fails to provide adequate centralization and direction risks unnecessary duplication and haphazard implementation. One need only glance through a report by the Comptroller General, *Federal Agencies Administering Programs Related to Marine Science Activities and Oceanic Affairs*,<sup>6</sup> to realize that these problems are not merely imaginary.

#### ORGANIZATIONAL NEEDS OF A NATIONAL OCEANS POLICY

The principal organizational needs for a national oceans program include the upgrading of attention given the oceans in overall national priorities, development of clear national oceans goals and programs for their implementation, greater centralization of oceans programs when it would be cost effective and would facilitate improved management, and more effective interagency coordination and White House oversight of oceans programs.

The oceans community must be careful not to endorse oceans programs without reference to overall national priorities. National defense, a healthy economy, social welfare, and minimizing the tax bite impose real priorities and constraints. Nevertheless, taking these and other national priorities into account, I believe that we are undervaluing the oceans. Degradation of the oceans environment is a present cost that can be addressed more economically now than later. Failure to provide national technological goals for our innovative oceans industries needlessly squanders a national potential. The problems of our coastal fishing fleet and the failure to develop new markets add to the consumer cost of fish products and our balance of payments drain. Judged even by the most stringent tests of national interest and appropriate governmental role, the oceans deserve increased high level attention and greater national commitment.

Increased White House interest and a higher budget alone are insufficient for an effective oceans program. We must create an enduring organizational structure capable of developing and refining oceans goals and priorities and of effectively managing oceans programs. Despite the effort of the Stratton Commission<sup>7</sup> and the promising work of the National Oceans Policy Study, there is no ongoing governmental mechanism for developing and refining national oceans goals and providing effective oversight of oceans programs. The National Council on Marine Resources and Engineering Develop-

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6. COMPTROLLER GENERAL OF THE U.S., GENERAL ACCOUNTING OFFICE, *FEDERAL AGENCIES ADMINISTERING PROGRAMS RELATED TO MARINE SCIENCE ACTIVITIES AND OCEANIC AFFAIRS* (Feb. 25, 1975).

7. See note 1 *supra*.

ment,<sup>8</sup> under the leadership of former Vice President Humphrey, provided a White House planning and oversight capability for certain oceans issues.<sup>9</sup> Unfortunately, the Council was phased out in 1971 when NOAA began operating.<sup>10</sup> Although NACOA is helpful in formulating national goals, it is a purely advisory body for NOAA and the Congress.

Similarly, oceans programs are insufficiently centralized. Although the Stratton Commission recommended that NOAA be created as an independent oceans agency,<sup>11</sup> it was established within the Commerce Department,<sup>12</sup> and as a result of its organizational structure, failed to realize oceans priorities and to consolidate the oceans effort. Because NOAA was created under the Commerce Department its Administrator does not have direct access to the President, it must compete intra-departmentally for budget allocations, and its subordinate role within the Commerce Department may create a built-in conflict of interest with its environmental functions. NOAA, however, is not the only organization concerned with the oceans. A recent report to the National Oceans Policy Study indicates that marine science activities and oceanic affairs are being co-ordinated by twenty-one organizations in six departments and five agencies.<sup>13</sup> One example of the potential problems engendered by this maze of oceans bureaucracies was NOAA's failure to comply with its statutory mandate<sup>14</sup> to conduct research on the effects and alternatives to ocean dumping.<sup>15</sup> Although the agency desires to avoid duplicating similar activities performed

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8. Marine Resources and Engineering Development Act of 1966, § 3, 33 U.S.C. § 1102 (1970). This Act also authorized establishment of the Stratton Commission. *Id.* § 5, 33 U.S.C. § 1104.

9. For a list of Presidential responsibilities that required the advice and assistance of the Council see *id.* § 4, 33 U.S.C. § 1104.

10. *Id.* § 3(f), 33 U.S.C. § 1102(f), as amended by Act of Sept. 25, 1970, Pub. L. No. 91-414, 84 Stat. 865.

11. 1 PANEL REPORTS OF THE COMM'N ON MARINE SCIENCE, ENGINEERING AND RESOURCES 57 (1969).

12. Reorganization Plan No. 4 of 1970, 5 U.S.C.A. app. II, § 2(a), at 70 (Supp. 1977).

13. COMPTROLLER GENERAL OF THE U.S., GENERAL ACCOUNTING OFFICE, THE NEED FOR A NATIONAL OCEANS POLICY (Oct. 10, 1975). This is a conservative estimate of the number of agencies and bureaus involved; the Law of the Sea Task Force was considerably larger.

14. Marine Protection, Research, and Sanctuaries Act of 1972, § 203, 33 U.S.C.A. § 1443 (Supp. 1977).

15. See, e.g., CONGRESSIONAL RESEARCH SERVICE FOR THE USE OF THE SENATE COMM. ON COMMERCE AND THE NATIONAL OCEAN POLICY STUDY, 94TH CONG., 2D SESS., OCEAN DUMPING REGULATION: AN APPRAISAL OF IMPLEMENTATION 66, 72 (Comm. Print 1976).

by the Environmental Protection Agency (EPA), a recent report indicates that in the past NOAA's position may have created a gap in the scope of scientific investigations into ocean dumping.<sup>16</sup>

Organization of our international oceans effort is equally haphazard. The new Bureau of Oceans and International Environmental and Scientific Affairs was forced on a reluctant State Department by a determined Senator Pell. The Department has responded by blending an amalgam of pre-existing offices into a jerry-built patchwork rather than by creating a genuine oceans bureau. The result has been a domination of the new Bureau by non-oceans issues and a narrowly-based office reflecting the fishery and research focus of the pre-existing offices. Although the Bureau has begun a transition to a more broadly-based organization, much remains to be done.

#### PROPOSED ORGANIZATION OF THE OCEANS POLICY PROCESS

We can, I believe, reduce these organizational weaknesses and build toward a national oceans program with three surprisingly modest changes. First, we should create a new Cabinet-level Marine Affairs Council to develop national oceans goals and provide White House oversight of oceans programs.<sup>17</sup> The new Council would be chaired by the Vice President and directed by a Presidentially-appointed Director with adequate staff. In carrying out its mandate the Council would work closely with the Congress, the private sector, and concerned Executive Branch agencies.

Second, we should create an independent "Oceans and Atmosphere Administration" (OAA) reporting directly to the President, and domestic oceans and atmosphere programs should be centralized within OAA.<sup>18</sup> Thus, we should transfer to OAA the Coast Guard, the Maritime Administration, NOAA, the outer continental shelf and deep-seabed mining programs of the Interior Department, the marine

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16. *See id.* at 72-73. NOAA's reluctance to comply with the statutory directive has caused several Senators to propose transferring the responsibility for alternatives research to the EPA. *See CONGRESSIONAL RESEARCH SERVICE FOR THE USE OF THE SENATE COMM. ON COMMERCE, SCIENCE, AND TRANSPORTATION AND THE NATIONAL OCEAN POLICY STUDY, 95TH CONG., 1ST SESS., CONGRESS AND THE OCEANS: MARINE AFFAIRS IN THE 94TH CONGRESS 208 (Comm. Print 1977) [hereinafter cited as CONGRESS AND THE OCEANS].*

17. The chart in Appendix A shows the proposed organization for a national oceans policy, including a new Marine Affairs Council.

18. The chart in Appendix B shows the proposed organization of an independent OAA, with the 1976 structure of NOAA in the Department of Commerce shown in Appendix D. Richard Frank, the new Administrator of NOAA, is expected to announce a new NOAA organization shortly.

and coastal zone activities of the Army Corps of Engineers, some oceans research programs of the National Science Foundation (possibly including the International Decade of Ocean Exploration), most oceans research and monitoring programs of the EPA, the oceans and atmosphere activities of the Bureau of Reclamation, and some oceans-related activities of the Fish and Wildlife Service (particularly programs for anadromous species and marine mammals). These transfers would consolidate most non-defense oceans programs in OAA.<sup>19</sup>

As a genuine oceans and atmosphere agency, OAA would require careful organization for effective management and full utilization of its components. As noted in Appendix B, OAA could be organized along five major divisions: the Oceans, the Atmosphere, Research and the Environment, the Coast Guard, and Maritime Affairs.

Third, the State Department's oceans effort should be reorganized into a genuine Bureau of Oceans and Environment.<sup>20</sup> The new Bureau would be primarily responsible for international oceans and environmental issues; thus, it should be strengthened to provide a full range of leadership in this area. This would require a new departmental structure for the present Bureau's science activities and a shift of the Office of Maritime Affairs activities from the Bureau of Economics and Business Affairs into the new oceans unit.

These changes alone, of course, would not provide a national oceans program. No amount of reorganization will substitute for retaining and acquiring the most capable leaders and experts. Similarly, the difficult substantive choices still would lie ahead. Comprehensive reformation of our oceans effort, however, is a prerequisite to a national oceans program.

### *Reasons for Proposed Changes*

Our lack of clear oceans goals is the single greatest problem of present policy. Indeed, a lack of clear goals is a frequent shortcoming in efforts at effective planning. A new White House Marine Affairs Council would be ideally suited to minimize this problem. In addition, it would serve to upgrade the oceans in overall national priorities and to provide continuing oversight of oceans programs.

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19. In contrast to the present NOAA budget of slightly over \$500 million, the transfers would provide an OAA budget of about \$2 billion. This fourfold budgetary increase itself provides a rough measure of the scattering of oceans programs under the present structure.

20. The chart in Appendix C shows the proposed organization of the State Department Bureau of Oceans and Environment.

To be most effective the new Marine Affairs Council should be positioned at Cabinet level and chaired by the Vice President. Other Cabinet officers possess built-in biases that would complicate the mediation of interagency disputes. Similarly, the Council must have a director with political clout and an effective staff. A single Interagency Task Force on Oceans Policy chaired by the Director of the new Marine Affairs Council would offer the best opportunity for White House coordination and oversight in support of national oceans goals. In addition, a policy planning office within the proposed OAA and a policy planning staff within the State Department Bureau of Oceans and Environment would help to provide goal direction and planning.

Greater centralization of domestic oceans projects is another priority requirement of a national oceans program. Although decentralization is not necessarily wrong, lack of planning and management, unnecessary duplication, and jurisdictional uncertainties are simply poor government. Generally, the oceans community recognizes that effective oceans management will require a greater degree of centralization of domestic oceans programs. We should avoid an "oceans dogma" approach, however, and perhaps some programs should remain elsewhere. For example, the experience of the National Park Service in managing national parks and wildlife refuges suggests that it should continue its present role even though OAA would be concerned with coastal recreational activities. Similarly, some duplication in research programs might be desirable if its purpose was to avoid bureaucratic uniformity or to speed potential breakthroughs of critical problems. Thus, there should be ample room for the retention of separate oceans research roles by the National Science Foundation and possibly by the EPA. In contrast, deep ocean mining and the outer continental shelf programs should be included within OAA jurisdiction. Similarly, neither the Coast Guard nor the Maritime Administration should be excluded from an independent and strengthened oceans agency. Both entities could profit from their inclusion in OAA because they no longer would be competing for a budget in their present non-oceans bureaucracies.

In an alternative proposal to the establishment of an independent oceans agency, Senator Hollings has suggested that NOAA should be combined with EPA into a new Cabinet-level Department of the Environment and Oceans.<sup>21</sup> Others seem content to leave NOAA within the Commerce Department.<sup>22</sup> My own preference is the creation

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21. CONGRESS AND THE OCEANS, *supra* note 16, at 307-08.

22. For a discussion of the diverse views on this issue see CONGRESSIONAL RESEARCH SERVICE FOR THE USE OF THE HOUSE COMM. ON MERCHANT MARINE AND FISHERIES, 94TH CONG., 2D SESS., AN OVERVIEW OF NATIONAL OCEAN POLICY 16-26 (Comm. Print 1976).



of a strengthened and independent OAA as a genuine oceans and atmosphere agency. Despite NOAA's generally good working relations within Commerce, the agency's present position creates an inevitable tension between its ocean and environmental roles, invites budgetary trade-offs, and lowers the priority given the oceans. A combined NOAA and EPA, therefore, might perpetuate this conflict and submerge either the oceans or the environmental issues, or perhaps both. There has long been tension within NOAA between oceans and the atmosphere, despite the logic of the two topics' combination and the leadership of Dr. Robert White. A combined NOAA and EPA could magnify this kind of problem. Nevertheless, I do not believe that the atmosphere and oceans should be placed in separate agencies. The interface of these two subjects is sufficiently great to suggest that they be retained in a single entity.

As can be seen from Appendix B, the proposed organization for an independent OAA incorporates the Coast Guard and the Maritime Administration as separate divisions. These are major, established oceans units, and they certainly should retain their strong identity. The internal organization of OAA would restructure the present NOAA into separate Oceans and Atmosphere Divisions, but a third division concerned with research and environmental functions would address itself to both oceans and atmospheric issues. In addition, the proposed organization should be structured functionally within divisions to obtain a clear focus on each issue. For example, living resources and non-living resources could be divided into separate bureaus, and a new Bureau of Technology Development added to the Research and Environment Division. This new Bureau would give major impetus to a much needed goal-oriented development of oceans engineering and technology. The outer continental shelf and deep-seabed mining programs could be placed within the new Bureau of Non-Living Resources. The present coastal activities of the Bureau of Reclamation and some Army Corps of Engineers programs would be located in the new Bureau of Coastal Zone Management. EPA's oceans research and monitoring programs and any of the National Science Foundation's oceans programs that are transferred should be organized under the new Research and Environment Division. The oceans-related activities transferred to OAA from the Fish and Wildlife Service would be placed within the Bureau of Living Resources. This proposed structure would greatly simplify and improve the present oceans effort.

If OAA is to assume most of the oceans research and monitoring activities of EPA, it should be structured in a manner that gains the full confidence of the environmental community. OAA therefore must be an independent agency to avoid a built-in conflict of interest

between commerce and conservation. Similarly, research and the environment should be a separate major division of OAA. Finally, we should provide an EPA liaison officer for high level consultation within OAA. With these safeguards, an independent OAA, with direct access to the President, can be made the appropriate agency for implementing much of the environmental policy of the United States with respect to the oceans.

Several other changes might assist in modernizing the OAA structure and providing additional public service. For example, a small Office of State/Federal Relations (particularly important in fisheries, environment, continental shelf, and coastal zone problems) and a consumer component in a reorganized Office of Public and Consumer Services might be incorporated into the OAA structure.<sup>23</sup>

In addition to these suggestions for a more effective oceans effort, we should give priority to the important Law of the Sea negotiations. The appointment of Elliot Richardson to head the United States negotiating team was well received and gave the Conference new hope. Unfortunately, the deep seabed impasse continued during the spring 1977 session, and until this issue is resolved, the Conference will continue to yield meager results. Nevertheless, it is in the best interests of the United States to urge continuing negotiations and to achieve international consensus with respect to such issues as deep seabed mining, the nature of the economic zone, a state's navigational and security needs, and marine scientific research. But we also must remember that compromises that sacrifice the interests of the United States are likely to lead only to Senate rejection.

These suggestions have not dealt with the organization of the Congressional oceans process. We should not forget that Congressional organization may be crucial. Certainly we must not permit the organization of a national oceans program to be dictated by the accidents of committee jurisdiction. Organizational decisions must be principled and rooted in national needs. Fortunately, Senator Hollings and many other Congressional leaders are aware of this problem.

### CONCLUSION

Great strides have been made in the 1970's toward the development of a national oceans program. Although progress has been made, we

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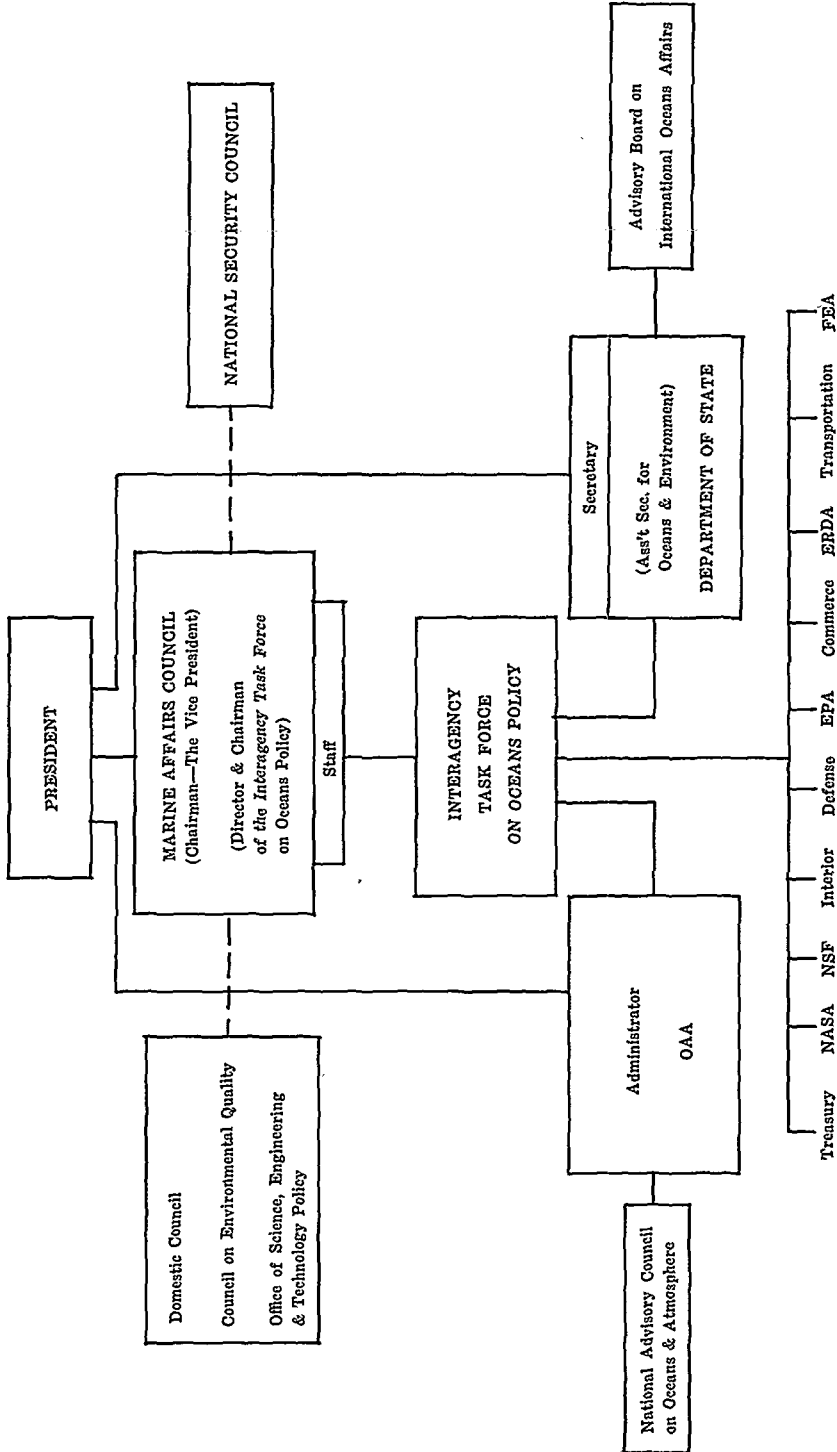
23. The chart in Appendix B of an independent OAA incorporates these suggestions and also adds tentative subdivisions along functional lines. Others more familiar with particular NOAA programs may wish to refine these proposals further.

are today at a critical crossroads in oceans policy. Without a national oceans program we will continue to drift toward increased pollution of our beaches and lagging oceans development. With a national program we can hope for a renaissance of the oceans in the interest of all mankind.

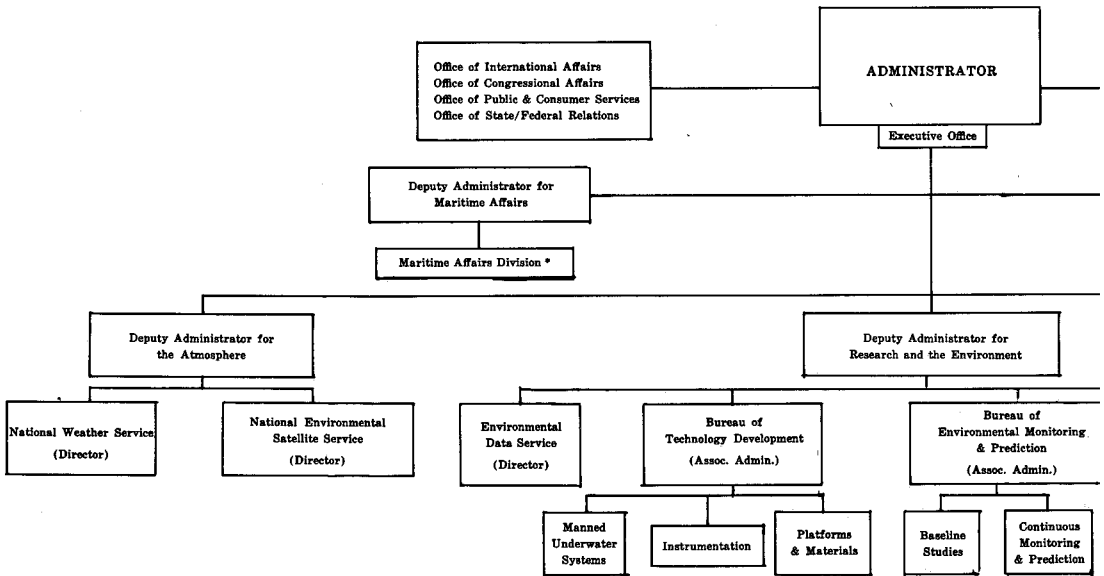
APPENDIX A

PROPOSED ORGANIZATION OF THE OCEANS POLICY PROCESS

(A White House Marine Affairs Council)

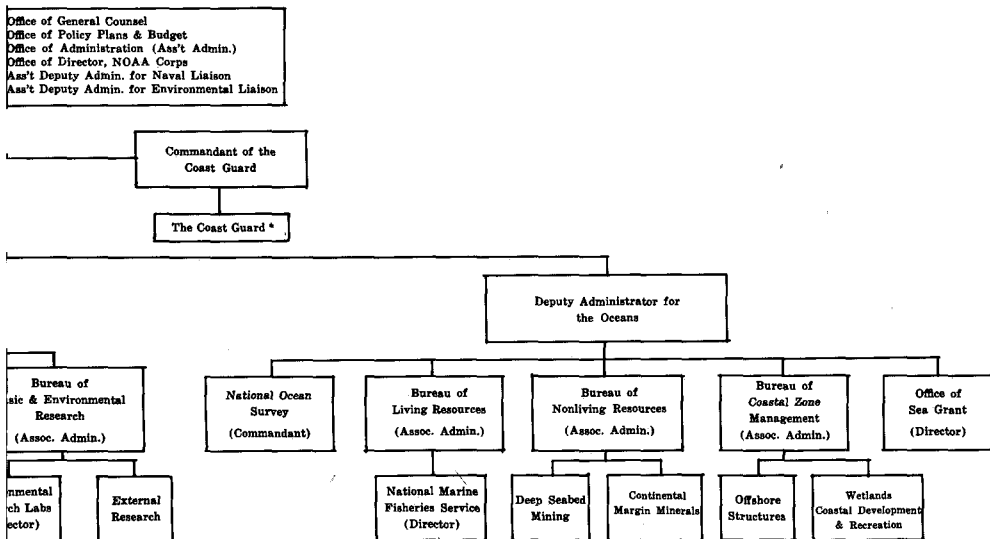


# PROPOSED ORGANIZATION OF AN INDEPENDENT OCEANS & ATMOSPHERE ADMINISTRATION



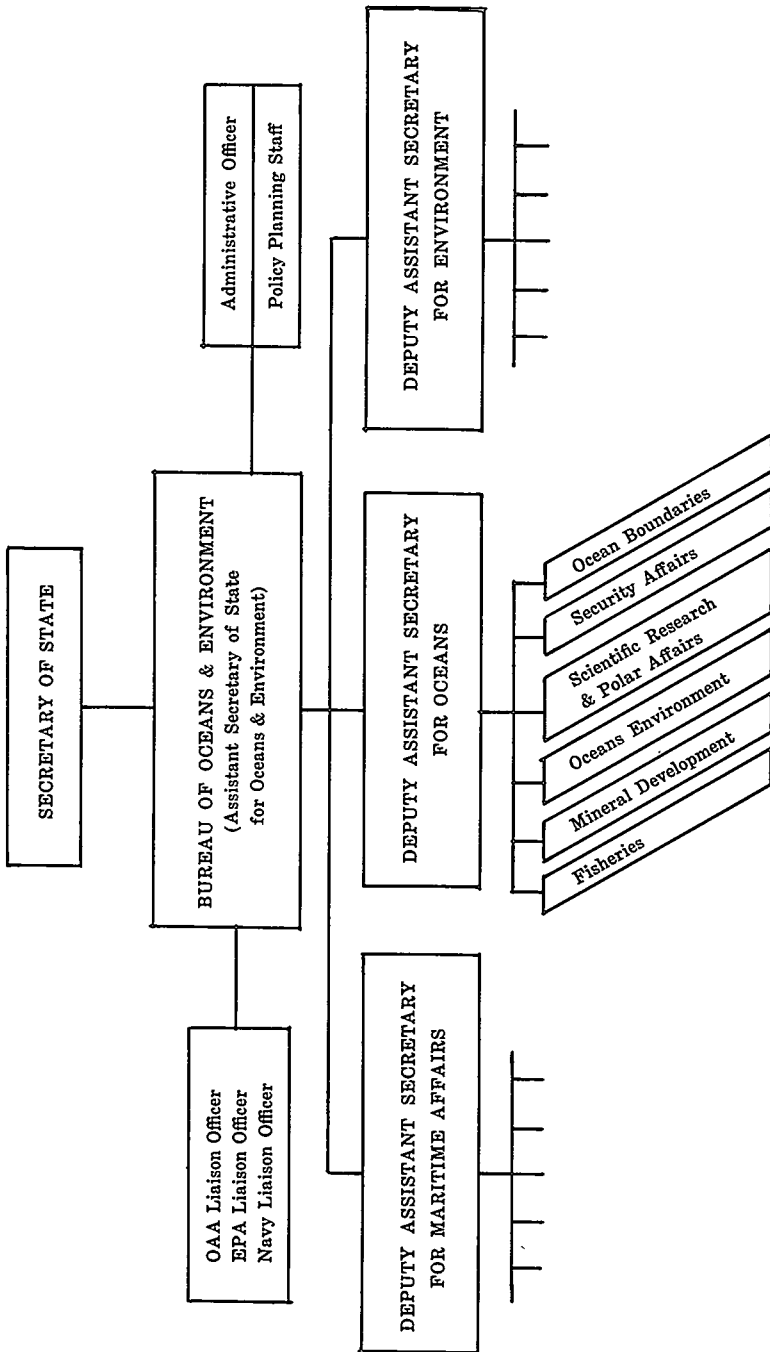
\* Note: Subdivisions are not shown for the Coast Guard and Maritime Affairs Division (MARAD). OAA is not intended to be a blending of the Coast Guard and MARAD into NOAA but rather a creation of a new independent Oceans and Atmosphere Administration in which the Coast Guard and MARAD will play major roles.

APPENDIX B



APPENDIX C

PROPOSED ORGANIZATION OF THE STATE DEPARTMENT BUREAU OF OCEANS & ENVIRONMENT



APPENDIX D

1976 ORGANIZATION OF THE NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION IN THE DEPARTMENT OF COMMERCE

