

**WRITTEN STATEMENT OF
JOHN H. DUNNIGAN
ASSISTANT ADMINISTRATOR, NATIONAL OCEAN SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

**HEARING ON
H.R. 1907, the *Coastal and Estuarine Land Protection Act*,
H.R. 3352, the *Hydrographic Services Improvement Act*, and
H.R. 1187, the *Gulf of the Farallones and Cordell Bank National Marine Sanctuaries
Boundary Modification and Protection Act***

**BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
U.S. HOUSE OF REPRESENTATIVES**

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INTRODUCTION

Good afternoon, Mr. Chairman and members of the Committee. I am John H. Dunnigan, Assistant Administrator for Ocean Services and Coastal Zone Management within the National Oceanic and Atmospheric Administration (NOAA). Thank you for the opportunity to testify on the *Coastal and Estuarine Land Protection Act*, the *Hydrographic Services Improvement Act*, and the *Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act*. My testimony will focus on NOAA's efforts to establish and implement the Coastal and Estuarine Land Conservation Program (CELCP), the importance of NOAA's hydrographic and navigation services and the Administration's views on these bills.

COASTAL AND ESTUARINE LAND PROTECTION

In the FY 2002 Appropriations Act for the Departments of Commerce, Justice, State and Related Agencies (P.L. 107-77), Congress directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP). Codified at 16 U.S.C. 1456d, this program was created "for the purpose of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic value, or that are threatened by conversion from their natural or recreational state to other uses."

The CELCP is designed to allow states and local communities to engage willing sellers interested in seeing their land protected for future generations. These projects often have strong community support, including local public and private financial contributions. The CELCP can help states address the wide range of national objectives of the Coastal Zone Management Act, including:

- Protecting natural beach and dune systems to reduce impacts from erosion and storms,

- Protecting ecologically important coastal habitats,
- Controlling non-point source pollution, and
- Improving public access and recreational opportunities in coastal areas.

As directed by Congress, NOAA developed guidelines delineating the criteria for grant awards and for distribution of funds for the CELCP. These guidelines have been used to administer the program to ensure projects provide long-term protection, serve a public benefit, and will be managed to protect the important ecological, conservation, recreational, historical and aesthetic values for which they were acquired. The guidelines also set the framework for distributing available funds, which consists of three elements: (1) development of state coastal and estuarine land conservation plans to guide selection of projects; (2) a state process to identify and nominate projects for competitive funding at the national level; and (3) a national competitive ranking and selection process.

Consistent with H.R. 1907, the CELCP guidelines require each participating state to develop a plan that identifies priority needs for land conservation within the state, including the values to be protected. These state plans were envisioned as the basis for a competitive funding process under the CELCP. They also are a means of bringing together a broad range of stakeholders to identify shared conservation priorities. With NOAA's assistance, most coastal states are developing CELCP plans. So far, 23 states have completed draft plans for NOAA's review.

NOAA has worked with state and local governments to administer more than 149 CELCP grants funded in FY 2002-2007, carrying out 131 projects involving 97 different recipients. These projects have been located in 26 out of the 34 eligible coastal states. Projects have ranged in size from a quarter of an acre to more than 10,000 acres, protecting small urban waterfront properties to large complexes of wetlands and forested uplands. In addition to habitat conservation, these projects have also been used to provide recreational access to the coast by the public. To date, more than 26,000 acres have been acquired in fee and 650 acres through conservation easement.

The CELCP has provided a means to leverage limited conservation dollars through matching contributions. As required by statute, federal funding under the CELCP has been matched 1:1 with non-federal funds. This has been achieved primarily in the form of cash or in-kind acquisition of other conservation properties. In a number of cases, local governments have also established stewardship agreements in partnership with non-governmental organizations, such as local land trusts, to help manage the properties for long-term protection.

COMMENTS ON H.R. 1907

The Department supports the overall goals of this legislation, yet we are concerned that the bill simultaneously reduces the ratio for the non-federal cost share while also significantly expanding the sources for meeting the non-federal share. Building on NOAA's existing Coastal and Estuarine Land Conservation Program established by P.L. 107-77, the bill creates a voluntary,

competitive grant program that gives willing sellers an opportunity to conserve their lands for future generations and gives states a lead role in determining which areas need to be protected. This program would protect important coastal land, such as wetlands, which provide habitat for fish and shellfish, offer protection against coastal flooding and erosion, and filter pollutants.

As a cost-sharing program, this legislation leverages federal funding with state, local and private sources, and provides an incentive for cooperative conservation efforts at the state and local level. However, H.R. 1907 reduces the non-federal cost share for this coastal grant program, which limits the leveraging power of these funds. The statute (P.L. 107-77) currently requires a 50 percent contribution from non-federal sources for each grant. H.R. 1907 would reduce the amount of the non-federal share required for matching grants awarded to 25 percent and also expand the types of costs and in-kind contributions that could be counted as a non-federal match. To date, participating states, communities, and other non-federal entities have generally been able to meet the matching requirements of the CELCP by contributing cash or other in-kind value. It is important to maintain high levels of non-federal support for grants awarded under the program to ensure that limited federal funds go further to protect more of these important lands. As such, we support the current CELCP matching ratio of 1:1.

Also, H.R. 1907 expands the sources of non-federal costs by allowing the value of land that is held by a nongovernmental organization to be used as a non-federal match if it is held in perpetuity by a qualified conservation organization. We are concerned that such a “third party” match would create a financial liability for the grant recipient, who will not own or have control over the management of the property. We are also concerned that there is no exchange of value between the “third party” and the grant recipient. Further, we would like to see section 3(g) expanded to provide assurances that lands used as in-kind match will be managed in perpetuity and not converted to other uses. This provision currently applies only to lands acquired with funds under the program.

Finally, the Department recommends that H.R. 1907 either amend or replace the existing language from the FY 2002 Appropriations Act, as codified at 16 U.S.C. 1456d, that established the existing CELCP. This change would provide a single authority under which the program would operate and a seamless transition from NOAA’s current CELCP guidelines and program implementation.

NOAA’s HYDROGRAPHIC AND NAVIGATION SERVICES

NOAA’s hydrographic services have a long and rich history. Two hundred years ago, when President Jefferson signed the legislation creating the Survey of the Coast, he knew that efficient maritime commerce and border defense were essential to the nation’s prosperity and security. Today the need for accurate nautical charts and NOAA’s hydrographic services has never been more important. Thousands of vessels enter America’s ports daily, carrying cargo to drive our

economy and provide our energy needs. Waterborne commerce is a backbone of the U.S. economy; it is a one trillion dollar industry supporting more than 13 million U.S. jobs. Over 98 percent of the tonnage and more than 50 percent of the value of our foreign trade is conveyed via the maritime transportation system.

Without the hydrographic services and products provided by NOAA, these seemingly routine transits would face the threat of costly delays and safety risks. The role of hydrographic services in preventing economic disruptions and protecting coastal populations and resources goes largely unnoticed until devastating events like the Exxon Valdez spill or hurricane Katrina occur. It is imperative that NOAA's programs that provide these valuable hydrographic services continue to be supported through reauthorization of the *Hydrographic Services Improvement Act (HSIA)*.

The *HSIA* was first enacted in 1998 and amended in 2002. The *HSIA* authorizes the NOAA Administrator to fulfill the hydrographic data gathering and dissemination duties of the Administration required to ensure safe navigation for the Nation. More specifically, the *HSIA* provides the NOAA Administrator the authority to:

- Promulgate standards for hydrographic data,
- Ensure comprehensive geographic coverage of hydrographic services,
- Maintain a national database of hydrographic data,
- Provide hydrographic services in uniform, easily accessible formats (i.e. nautical charts),
- Enter into and award contracts for the acquisition of hydrographic data and services,
- Procure, lease, evaluate, test, develop, and operate vessels, equipment, and technologies necessary to maintain operational expertise in hydrographic data acquisition and hydrographic services,
- Use hydrographic data to support the conservation and management of coastal and ocean resources, and
- Provide hydrographic data and services in response to natural and man-made disasters.

COMMENTS ON H.R. 3352

NOAA appreciates your work to reauthorize *HSIA* and supports the general intent of H.R. 3352. In addition to reauthorizing the underlying mission to support safe and efficient commerce, H.R. 3352 supports the other diverse applications of NOAA's hydrographic data and services. However, NOAA cannot fully support H.R. 3352. Of primary concern, is the requirement in Section 3(2)(B) that NOAA "shall" contract for the acquisition of hydrographic data through "sub-chapter VI of Chapter 10 of title 40, United States Code," commonly referred to as the *Brooks Act*. NOAA should have discretion in using the *Brooks Act* or other contracting mechanisms. This discretion would allow NOAA to use qualifications-based selection procedures while achieving best value. The Administration recommends "shall" be replaced with "may" to provide NOAA with this discretion.

NOAA believes very strongly that the findings and purposes in the Administration's bill should

be included in H.R. 3352. The findings and purposes make important statements about the value and ongoing importance of NOAA's hydrographic and navigation services and the ocean and coastal mapping and observing programs under the Office of Coast Survey (OCS), National Geodetic Survey (NGS), and the Center for Operational Oceanographic Products and Services (CO-OPS). NOAA's hydrographic activities and expertise ensure the American public of federal support for navigation safety in U.S. waters, efficient maritime commerce, and economic security for the U.S. Marine Transportation System and homeland security.

NOAA would prefer the language provided in the Administration's bill "The Administrator shall have the authority to create, support and maintain such joint centers, and to enter into and perform such contracts, leases, grants, or cooperative agreements as may be necessary to carry out the purposes of this Act" to replace Section 3(2)(D)(5). This authority bolsters and will facilitate NOAA's ability to deliver timely hydrographic information and tools (i.e., nautical charts and accurate water levels).

NOAA applauds H.R. 3352 Section 3(3) for recognizing the role hydrographic data and services play in support of ocean and coastal resource management, saving life and property, emergency response, and homeland security. The programs and activities authorized by the *HSIA* are important in the national response to natural and man-made disasters. For example, NOAA experts discovered the submerged wreckage of TWA Flight 800, took some of the first aerial images of Ground Zero after 9/11, and provided a substantial and vital response to hurricanes Katrina and Rita, including surveying affected waterways to facilitate the reopening of 13 major ports to commerce and relief efforts. Hydrographic and navigation services are linked to maritime technology development and transportation improvements. The oceanographic and geospatial information provided by NOAA's hydrographic data and services also supports habitat conservation and fishery management, as well as oil and hazardous spill responses.

H.R. 1187: THE GULF OF THE FARALLONES AND CORDELL BANK NATIONAL MARINE SANCTUARIES BOUNDARY MODIFICATION AND PROTECTION ACT

NOAA agrees with the underlying purpose of H.R. 1187, the *Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act*, which is to protect sensitive and nationally significant marine areas along the California coast. The concept of extending sanctuary protection to the Sonoma County coast has enjoyed broad constituent support in the region. The advisory councils for the Cordell Bank and Gulf of the Farallones national marine sanctuaries have expressed support for extending sanctuary protections to the entire Point Arena upwelling system. In addition, many constituents along the Sonoma Coast have voiced support for sanctuary expansion during the process to revise the management plans for the three central California national marine sanctuaries.

However, we are concerned: (1) that pursuing these changes through statute rather than

regulation presents a number of disadvantages (2) that some of the prohibitions and related exemptions in the bill are too specific to allow for adaptive management; and (3) with some technical aspects of the boundary adjustment for Cordell Bank National Marine Sanctuary.

As a general matter, NOAA prefers to manage human activities in national marine sanctuaries through the federal regulatory process rather than through statutory requirements. NOAA's regulations for national marine sanctuaries are developed through public process where stakeholders and other constituents are given multiple opportunities to provide input. Although the regulatory model can take more time to complete, we feel it encourages much higher levels of participation and compliance by the regulated public. In addition, this process would allow NOAA to evaluate the appropriateness of new potential uses of Sanctuary resources. For example, the area considered for inclusion in sanctuaries has potential for both wind and wave energy projects as it includes a large upwelling region which is made possible by the strong winds that characterize Point Arena. The area is also adjacent to a major urban center with substantial energy needs as well as a high interest in meeting those needs with renewable resources. A full public process provides NOAA a mechanism to weigh the needs and priorities of the region and the goals and objectives of the Sanctuary in an open and transparent setting. Moreover, working through this process would allow NOAA to more fully consider any additional resource requirements, which could then be evaluated and prioritized in developing Presidential Budget requests.

NOAA is also concerned with the specificity of the new statutory prohibitions and related exemptions that would be established by the bill. The statutory prohibitions listed in section 6 of the bill would become effective immediately upon enactment of the bill and without any opportunities for public input.

Finally, NOAA would like to identify two technical issues with the proposed boundary adjustment for the Cordell Bank National Marine Sanctuary. First, the boundary adjustment appears to cut off part of the existing sanctuary in the southwest corner adjacent to the shared boundary with the Gulf of Farallones National Marine Sanctuary. Second, the proposed new boundary appears to cut the Bodega Canyon in half along the north-south axis. This latter issue was brought to our attention by the advisory council for the sanctuary. Both of these technical boundary issues could be easily addressed by moving the western boundary further to the west. This adjustment would ensure the new boundaries include all nationally significant resources in the vicinity.

Again, NOAA supports the goals of H.R. 1187 and looks forward to working with the committee to address our concerns as the bill moves forward.

CONCLUSION

Thank you again for the opportunity to offer my thoughts on this legislation. I will be glad to answer any questions.