



April 18, 2005

The Honorable Ted Stevens  
Chairman, Committee on Commerce,  
Science, and Transportation  
United States Senate  
Washington, DC 20510-6125

Dear Mr. Chairman:

This letter provides the views of the Department of Commerce on S. 361, the "Ocean and Coastal Observation System Act of 2005" as reported by the Commerce, Science, and Transportation Committee.

This legislation would provide for the implementation and maintenance of an integrated ocean and coastal observing system. The Department supports the legislation's goals as described in Sec. 2, "Findings and Purposes," which are similar to the goals outlined in the Administration's report to the Congress, *An Integrated and Sustained Ocean Observing System for the United States: Design and Implementation* (February 26, 2003).

S. 361 also generally supports the Administration's broader objectives for development of a Global Earth Observation System of Systems (GEOSS) as reflected in documents and subsequent actions emanating from the Earth Observation Summit held in Washington, D.C., on July 31, 2003. The Committee may want to consider including reference to a broader (terrestrial and atmospheric, as well as oceanic) integrated Earth observing system.

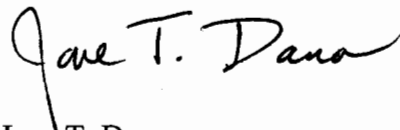
The Department requests that the legislation be consistent with Executive Order 13366 and the U.S. Ocean Action Plan, which were published in December 2004 in response to the report of the U.S. Commission on Ocean Policy. Consistent with the U.S. Ocean Action Plan, interagency coordination is essential for all ocean science and technology priorities and in particular for planning and implementation of an Integrated Ocean Observing System (IOOS). As such an interagency body should provide high level oversight for the IOOS and an interagency program office should develop plans and requirements for that interagency body's ultimate approval.

Each agency that participates in IOOS brings different capabilities and areas of expertise to the program. The roles and responsibilities of each agency need to be clearly defined and explicitly outlined. The Administration, through the Joint Subcommittee on Ocean Science and Technology of the National Science and Technology Council and the Committee on Ocean Policy, is currently working to address this issue. However, for the purposes of implementation and operation of IOOS, the Department and the Administration recognize the importance of having a clear point of accountability. As such, the Department and the Administration believe that the National Oceanic and Atmospheric Administration should be the lead federal agency for the administration and implementation of IOOS.

The Department opposes directing any specific percentage or amount of appropriations for the IOOS to regional associations, and requests that the authorization levels be consistent with the President's FY 2006 Budget Request. The enclosed comments provide a more detailed analysis of the bill.

The Department appreciates the opportunity to present these views on S. 361. The Office of Management and Budget has advised that there is no objection to the transmittal of these views from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink that reads "Jane T. Dana". The signature is written in a cursive style with a large, looped initial "J".

Jane T. Dana  
Acting General Counsel

Enclosure

cc: The Honorable Daniel K. Inouye, Co-Chairman,  
Senate Commerce, Science, and Transportation Committee

The Honorable Olympia Snowe, Chairman,  
Subcommittee on Fisheries and the Coast Guard

The Honorable Maria Cantwell, Ranking Member,  
Subcommittee on Fisheries and the Coast Guard

The Honorable John Sununu, Chairman, National Ocean Policy Study

The Honorable Barbara Boxer, Ranking Member, National Ocean Policy Study

**Comments of the Department of Commerce on  
S. 361, the “Ocean and Coastal Observation System Act of 2005” as reported by  
the Senate Committee on Commerce, Science, and Transportation**

1. Executive Order 13366 and the U.S. Ocean Action Plan provide for a new governance structure to coordinate national ocean policy<sup>1</sup> among Federal agencies, the States, and private and nongovernmental organizations. The structure includes several interagency bodies, including a Committee on Ocean Policy and an Interagency Committee on Ocean Science and Resource Management Integration. The Administration will work with your Committee to ensure the various oversight and coordinating bodies identified in S. 361 are consistent with those being implemented by the Administration.
2. The legislation seeks to integrate and build upon existing infrastructure and capabilities, maximizing the benefits of current investments while at the same time promoting a more dynamic system. This approach is consistent with the goals of the Department and the U.S. Ocean Action Plan.
3. The Administration appreciates and supports the inclusion of the Great Lakes within the scope of the Integrated Ocean Observing System (IOOS) in S. 361.
4. The Department concurs that—
  - a. An interagency body should have high level oversight of IOOS,
  - b. An interagency program office should develop plans and requirements for the interagency body’s ultimate approval, and
  - c. The National Oceanic and Atmospheric Administration (NOAA) should serve as the lead Federal agency for the administration and implementation of IOOS.
5. With respect to section 4(g), the Department is willing to explore alternatives that may address civil liability of regional associations. We note that last year the Department of Justice opposed language similar to section 4(g), which would deem regional associations to be entities of NOAA for purposes of the Federal Tort Claims Act, Suits in Admiralty Act, and Public Vessels Act. Justice opposed such language because it threatens a significant expansion of Federal liability with inadequate Federal control over the regional associations or their employees. Also, while sub-national elements, such as regional associations, can ensure that IOOS meets distinct regional requirements, the legislation does not differentiate between regional and national needs.
6. The primary objective for IOOS is implementation of an *operational* system that provides services to the Nation. One common analogy is that IOOS should provide ocean-related services similar to how existing atmospheric observing systems support weather forecasting and services. In addition, IOOS will provide much needed data for improving ocean resource management decisionmaking. IOOS should support research & development and education & outreach components and these important activities are

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<sup>1</sup> The term “ocean policy” as used herein includes Federal activities concerning the oceans, coasts and Great Lakes of the United States, including international ocean policy matters.

noted in Section 4 along with operational and data management components. It is unclear why a separate Section 5 dedicated solely to research & development and education & outreach is required. Doing so seems to overemphasize these activities in relation to operations and data management. The Department would not oppose provisions allowing for research & development and education & outreach grants to State and local governments, academic, private, and non-profit institutions to support IOOS; however, such support should be distinguished from support provided to regional associations for development of requirements and operational activities.

7. The Department opposes obligating a fixed percentage of IOOS-related appropriations to regional associations. Such a requirement contradicts the underlying premise that such associations must earn and maintain accreditation. Regional associations are to be operational entities and the relationship between the Federal government and regional associations should be contractual. Furthermore, the agency should have discretion to provide funding, such as research grants, to entities other than regional associations.

### **Technical Comments**

**Throughout the legislation:** All references to the scope of the system should be “coastal, ocean and the Great Lakes.”

**Long Title:** The phrase “improve management of coastal and marine resources,” should be included among the purposes of the long title.

**Section 2(b)(1):** Add the word “planning” at the beginning, so it begins “the planning, development and maintenance . . .”

**Section 2(b)(2):** Here and throughout the legislation the word “outreach” should follow the word “education” to clarify that informing the public outside of formal educational institutions is within the scope of the legislation.

**Section 2(b)(3):** Add the phrase “and ensure usefulness of data and information for users” at the end to support the goal of providing data and services that meet users’ needs.

**Section 4(a)(7):** Change the introductory clause to, “Providing information that supports implementation and refinement . . .” because the system is one of many sources of scientific data that will support ecosystem approaches.