Oceans-21 and the Future of Ocean Policy in the United States

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On November 11, 2010, the Onion News Network published their free parody newspaper with the following headline on the top of the page—“Report: Global Warming Issue From 2 Or 3 Years Ago May Still Be Problem” (Onion 1). The mock report stated:

“Global warming, if you remember correctly, was the single greatest problem of our lifetime back in 2007 and the early part of 2008,” CGD [Center for Global Development] president Nancy Birdsall said. “But then the debates over Social Security reform and the World Trade Center mosque came up, and the government had to shift its focus away from the dramatic rise in sea levels, the rapid spread of deadly diseases, and the imminent destruction of our entire planet.” (Onion 1)

Of course this is a fictional report…partly. The satire employed in this article uses entirely fictional accounts, but one can’t help but realize the truth behind everything said. Seemingly frivolous matters like the location of the Ground Zero mosque take precedence over the greatest challenges this world is facing.

Discussion of climate change blazed through public attention and changed the social and political landscape; but as the heated debate around Al Gore’s An Inconvenient Truth has cooled, attention to the dynamic nature of our planet has declined, leaving our environment and natural resources at increased risk for destruction and depletion. In this paper, I intend to discuss Congressman Sam Farr’s bill, H.R. 21, and its role in protecting our environment and natural resources through ocean conservation. Our federal government must implement functional, cohesive, and enforceable comprehensive ocean policy to address ocean-related issues ranging from landscape aesthetics to fishing practices. I believe that H.R. 21, the Oceans, Conservation, Education, and National Strategy for the 21st Century Act (OCEANS-21), would have provided a framework for establishing a national ocean strategy and would have taken a necessary step to implement progressive ocean policy. However, because of the partisan nature of the current Congress and the demand for funding, OCEANS-21 was partially absorbed into the Consolidated Land, Energy and Aquatic Resources Act (CLEAR). The CLEAR Act serves to press a comprehensive energy agenda and address the Deepwater Horizon oil spill in the Gulf of Mexico, but is largely ineffective in tackling our oceans’ most concerning issues.

In this study I will provide a brief background on major events and motivations for changes to United States ocean policy, briefly summarize and explain the importance of provisions within OCEANS-21, address the prudence of the bill in the current political and world environment, and finally provide an analysis and discussion of problems with its partial incorporation into the CLEAR Act.

Background

The natural placement of the United States of America between the Pacific and Atlantic Oceans grants it several unique advantages: first, the U.S. is naturally protected from attacks and invasions by the benefit of geography; secondly, regions with a coastline are almost always blessed with an abundance of fish, aquaculture and tourist-drawing climates; and third, oil concentrates its massive quantity offshore, deep beneath the surfaces of the Pacific and Atlantic oceans, yielding enormous potential for extraction and economic wealth. However,
America has relatively few enforceable protections for our invaluable ocean territories, and as commissions, conservancies and government agencies explore impacts on ocean regions, human impact on the environment becomes increasingly apparent and frightening in its implications.

Eugene H. Buck and Harold F. Upton, authors of the Congressional Research Service’s report, “Ocean Commissions: Ocean Policy Review and Outlook”, state that the need for a national comprehensive ocean policy directive was recognized as early as 1966, when a presidential Commission on Marine Science, Engineering, and Resources was formed to evaluate the role of the United States government regarding our oceans (Buck i). The Commission recommended that the federal government reorganize and restructure itself to allow for more effective ocean management. Out of this discussion, the National Oceanic and Atmospheric Administration (NOAA) took shape and began to provide an agency arm to help administer regulations and enforcement. This effort proved to be timely, as shortly after NOAA’s formation, Santa Barbara faced a devastating oil spill.

The 1969 oil spill in Santa Barbara, California left 200,000 gallons of oil contaminating beaches, waters and coastline and decimating native bird, porpoise and other sea life populations (sbwcn.org). This spill fell under the jurisdiction of the State of California, having occurred in state waters, but the need for effective disaster relief measure became apparent. The well took eleven and a half days to cap; but it took years for the ecosystem to fully recover. The disaster drew national attention to the spill, prompting Richard Nixon to state:

It is sad that it was necessary that Santa Barbara should be the example that had to bring it to the attention of the American people. What is involved is the use of our resources of the sea and of the land in a more effective way and with more concern for preserving the beauty and the natural resources that are so important to any kind of society that we want for the future. The Santa Barbara incident has frankly touched the conscience of the American people. (sbwcn.org)

The Santa Barbara spill proved to be the first massive ocean disaster motivating a national response. This event led California to develop strong resistance to offshore oil drilling as a method to control these disasters. However the need for federal policy was seen in cleanup efforts, which were performed by civilians, state workers, and Union Co. employees (sbwcn.org). As the next decade passed, more discoveries were made about fish populations and the need for fishing regulations, as well as water pollution levels and oceanic biodiversity, prompting the need for more thorough evaluation and more comprehensive public policy. Buck and Upton state, “By the late 1980s, a number of influential voices had concluded that U.S. ocean management remained fragmented and was characterized by a confusing array of laws, regulations, and practices” (Buck i).

This conclusion proved to be true, as the United States soon witnessed another tragic oil spill and was still without a responsive policy. The 1989 Exxon Valdez oil spill released approximately 250,000 barrels of oil into the water, leaving Prince William Sound toxic to every living and inanimate thing in the area. Everyone from Alaskans to oil executives doubted that any entity was capable of handling a spill of the magnitude of the Exxon Valdez disaster (Davidson 79). The truth about this spill resounds throughout oil spill history: the contingency plans of carriers and oil companies are flawed, baseless and ineffective. Alyeska, the company behind the spill, boasted a disaster management plan that could theoretically recover at least 100,000 barrels of oil within 72 hours; however, at the end of three days
the company was barely able to recover 3,000, prompting Alaska’s Department of Environmental Conservation commissioner, Dennis Kelso, to say that “Alyeska’s contingency plan is the greatest work of maritime fiction since Moby Dick” (Davidson 79-80). Neither the state government nor the oil industry was able to appropriately manage the disaster. Briefly put, the Exxon Valdez spill made evident the neglect of natural resources by U.S. national government; and demonstrated clearly that the future of the United State’s oceans resources should not be left in the hands of inadequate managers.

As even more time passed, government and interested voices continued to recognize the increasing need for an adaptive national ocean strategy. In 2000, Pew Charitable Trusts formed and funded the Pew Oceans Commission to investigate the status of our oceans and to develop a set of political management guidelines with environmental focus. After multiple trial-and-error attempts, the 106th Congress created the United States Commission on Ocean Policy through enactment of Public Law 106-256. The Pew Oceans Commission completed and released its final report, America’s Living Oceans: Charting a Course for Sea Change, and in September of 2004, the U.S. Commission on Ocean Policy released An Ocean Blueprint for the 21st Century, delivering 212 suggestions to help develop appropriate ocean policy (i). These two documents have become today’s canon for comprehensive ocean policy as well as creating the framework for OCEANS-21.

With the release of the Pew and U.S. Commission recommendations the United States was handed hundreds of methods for reform; yet there has still been seemingly little attempt to consolidate fragmented ocean policy into an expansive framework. Why is this? Until recently, there has been no political motivation to develop such costly and expansive law. But with the Deepwater Horizon spill in the Gulf of Mexico this past year, Congress is finally beginning to see the value of renewed investments in both ocean and clean energy policy.

On April 20, 2010 the Deepwater Horizon semi-submersible drilling rig exploded, leaving 11 of the rig’s 126 crew members lost and opening the Gulf to a never-before-seen oil leak (bp.com). As of November 28, 2010, the estimated amount of oil leaked into the Gulf stood at over 190 million gallons (google.com/crisisresponse). The magnitude of this disaster caught the attention of the United States public, Congress, the White House, and people all over the world. BP’s response to the spill seemed fragmented and unsatisfactory, and the well was not capped until August 5th of this past year.

With the world watching, Congress and the White House kicked into gear. The Administration began a strong involvement in Gulf management, touring throughout coastal states and promoting action. President Obama assumed responsibility for the disaster, saying that this is now the time to promote a comprehensive clean energy policy. Secretary of State Hillary Clinton also restated Administrative support for U.S. accession into the United Nations Convention on the Law of the Sea (Buck 12). Much time and energy was spent critiquing BP’s response. A London newspaper, The Telegraph, offered up the following opinion:

Making six conclusions about what the oil industry should learn, the [Oil Spill] commission found that neither BP nor the US government were prepared for the disaster. The committee also noted that too much time had to be spent collecting new data on what was going on beneath the surface of the water. It recommended that in future, safety devices such as blow-out preventers are equipped with information-gathering devices – like the black boxes on aircraft. As well as looking at the post-explosion response, the report criticized the lack of forethought about a potential accident when a well is designed. The
findings are just one of many interim reports issued by the Oil Spill Commission, which last month released documents casting doubt on the cement used to seal the well. There are also numerous other bodies investigating the accident, which killed 11 men and caused the worst ever offshore oil spill on April 20… (telegraph.co.uk).

This candid take on the spill response is jarring; internationally, the United States’ response can be seen as unprepared and non-cohesive. BP’s slow-acting and ineffective response, however, seems to be usual and expectable, especially when compared to Alyeska’s response during the Exxon Valdez crisis. After decades of oil spills and responses, progress has been non-existent, and as the spills increase in magnitude we need larger, more appropriate solutions. BP failed, as did the U.S. government at the federal level. With this background fueling current debates regarding our oceans and the demand for energy, it is possible to track and understand better why we need OCEANS-21.

**OCEANS-21: Provisions and Analysis**

H.R. 21 was introduced 6 January 2009 by Representative Sam Farr. At the time, the bill had accumulated 71 co-sponsors and was largely based upon the recommendations from the Pew Oceans Commission and the U.S. Commission on Ocean Policy. H.R. 21 initially incorporated the following provisions:

* Declares that the purpose behind the bill was to secure for all coming generations healthy marine ecosystems.

* Declares and specifies a national ocean policy and requires federal agencies to act within the regulations of that policy.

* Reestablishes NOAA and consolidates the powers of the National Weather Service and the Science Advisory Board under NOAA.

* Establishes a National Ocean Advisor in the Executive Office of the President.

* Reestablishes the Committee on Ocean Policy, originally established by executive order.

* Establishes a Council of Advisors on Ocean Policy within the Presidential Cabinet.

* Designates nine regions in which coordinated regional efforts are to be taken to implement a U.S. national ocean policy.

* Requires the NOAA Administrator to establish a Regional Ocean Partnership within each of the 9 regions and prepare a Regional Ocean Strategic Plan for each specific area.

* Establishes the Ocean and Great Lakes Conservation Trust Fund to accumulate and manage monies in the event of a natural disaster or the necessity of restoration efforts.

* Mandates payments to coastal states to assist in the development and upkeep of Regional Ocean Strategic Plans.

* Requires the Postal Service to print a stamp that would allow the public to voluntarily opt-in to purchasing a special stamp that would allocate revenues to marine conservation and restoration efforts.

These provisions are a good start, but do they go far enough? Prior to its assimilation into the CLEAR Act, OCEANS-21 directed legislative attention to the oceans themselves. Implementing the bill would have meant lawmakers and enforcers would be pursuing long-term goals, and policy would no longer be piecemeal attempts at resolving singular problems. But are the above measures enough to adequately address changing ocean environments?

Domestically, there are more improvements that can be made to the prescribed ocean policy within H.R. 21. Upton and Buck state in their CRS report that after more than half a decade since the Pew and U.S. Commissions’ published their
recommendations, some progress has been made; however, hundreds of the Commission’s concerns have never been addressed (Buck 13). Biliana Cicin-Sain and Robert W. Knecht discuss the necessary steps to shaping the future of a national ocean policy in their book “The Future of U.S. Ocean Policy: Choices for the New Century”. Cicin-Sain and Knecht list the seven necessary areas of improvement: 1. Create area-based approach methods as a structural basis for U.S. policy; 2. Develop a national policy of goals and principles for sustainable fishing and resource management practices; 3. Implement an ethical system to structure codes of stewardship; 4. Implement conflict resolution and decision-making devices for international ocean policy; 5. Create a proactive, anticipatory response system to address potential crises and conflicts; 6. Achieve a level of “horizontal integration” by establishing agencies, committees, and interagency coordination efforts; 7. Achieve a level of “vertical integration” by creating a system of joint state-federal management and revenue sharing (Knecht 286). OCEANS-21 provides provisions for 1, 2, 4, 6 and partially 7. The bill would have provided launched a well-balanced and strong infrastructure for a National Ocean Policy. However, establishing a domestic policy would only partially address oceanic needs.

In his article “Abandoned Seas: Reversing the Decline of the Oceans,” Peter Weber discusses the need for international ocean policy:

In addressing high-profile environmental issues, oceans law has advanced steadily in recent decades. International negotiators have worked out agreements on oil spills, ocean dumping, whaling and sealing. Some types of marine pollution have abated, as has the exploitation of some marine mammals. But the major treaties have largely overlooked the less charismatic but more pervasive issues of land-based sources of pollution, habitat destruction, and overfishing, even in terms of setting standards. Without global agreements to address these critical issues, the broader goal of protecting Earth’s greatest commons will be difficult, if not impossible, to achieve. International law will not guarantee protection, but it will provide a basis for responsible and effective management by individual nations. (Weber 39-40)

Weber is correct. The United States may be able to control its own impact upon its own ocean territories if a bill like OCEANS-21 were ever signed into law, but steps must be taken on a world scale to address the greater problems of overarching world-health. However, introducing and implementing a National Ocean Policy provided in legislation like H.R. 21 would provide the backdrop for U.S. involvement in international ocean policy.

Edward Wenk, Jr. echoes Weber’s sentiments, saying, “We must consider another set of players in this game—the 111 other nations who front on the sea… it is now a matter of deliberate United States policy to do everything possible to make exploration of the oceans a global, multinational affair, and this necessarily brings in a number of countries” (English 170). The truth of the matter seems to be that introducing domestic ocean policy is only the first step to solving the global ocean problem. Entering into an international agreement would allow the U.S. to prioritize ocean issues on its own agenda and begin work on pressing ocean issues.

Discussion: The Urgent Need for Change

Modern problems with ocean management come from a variety of sources: because of vague rules and divided authority, enforcement is deflated; fishing practices are often unregulated, and there is an abundance of illegal fishing occurring outside government view; and marine pollution both on and off-site threatens the very ecosystem.
Other major management tools have not been significantly updated for decades. All of these matters should be of primary importance to the federal government, yet no major change is in sight. The world is changing and with the changes the demand for marine resources is skyrocketing. Population increase, trade and the globalization of the world economy have placed enormous stress on our oceans. Mário Soares, in his 1998 book “The Ocean Our Future”, describes some of the various pressures the modern world has placed on the seas:

Such costs [of resource exploitation] may be localized and the effects of relatively short duration, as is the case with some oil spills… But they may also be widespread, highly uncertain, and have long-lasting or irreversible effects, such as the fundamental change that has taken place in the ecology of semi-enclosed seas as a result of land based pollution… An estimated 70% of the world’s fish stocks are already being exploited at or beyond sustainable limits, but fishing generally continues unabated despite extensive regulatory arrangements. The pressure on the oceans is not only due to over-harvesting but also to the cumulative impact of land-based activities. This includes many of the effects of coastal development, especially the destruction of wetlands, mangroves and coral reefs, sedimentation and the dredging of sediments, damage to watersheds and the impounding of water supplies to support urban development in coastal areas. (Soares 97-8)

Without doubt these problems illustrate the need for change. The increasing acidification of the ocean is warping the development and life-cycle patterns of species, and the cause is oceanic absorption of carbon. One report published by NOAA states that oceans have absorbed about 50% of carbon pollution from the burning of fossil fuels, and this creates a chemical reaction ultimately resulting in higher concentrations of hydrogen ions in ocean environments (pmel.noaa.gov). Effects of acidification include softening of shells in creatures like lobsters, crabs and urchins as well as decreased survival rates amongst these species, and replacement and growth of skeletons in reef-building corals. Larval marine species, algae and plankton, and other species suffer from life-cycle decreases. Although current science is too uncertain to allow for quantitative analysis, the damage from this problem alone could greatly affect the U.S. seafood economy, which is currently the third largest in the world yielding approximately $60 billion annually (pmel.noaa.gov). According to NOAA’s “State of the Science Fact Sheet,” nearly 50% of federally managed fisheries utilize coral reefs and related habitats to support their fisheries and aquaculture, and damage to the phytoplankton and algae can potentially reduce food supplies for species within the food web, leaving the ocean to be a wasteland of bacteria and microscopic organisms (pmel.noaa.gov). This sort of environmental change is real, problematic and potentially devastating to U.S. environment and industry.

Fishing practices are another area of concern, as the abuse of aquatic resources generates problems, not just for the U.S., but also for world markets. Soares says, “World-wide, the value of ocean resources ignored in market transactions is very high, and the potential cost to humanity when markets for coastal and marine resources fail is significant enough to warrant serious international concern” (Soares 104). Adjusting the presence and diversity of species jeopardizes the state of ocean ecosystems, and by extension, oceanic markets:

More generally, a change in the composition of species will simultaneously change both the ecology and economics of the system. The most sensitive components of food webs, energy flows and biogeochemical cycles are those where the number of species carrying out key functions is very small. There are limits to
the depletion of species or pollution of such systems beyond which they lose resilience and are unable to deliver ecologically or economically valuable goods and services...
The management problem is how to ensure that the institutions governing the allocation of coastal and marine resources... protect the resilience of coastal and marine ecosystems (104).

The above passage perfectly summarizes the role of ocean governance: to protect the ability of ocean resources and environment to regenerate—to heal itself and continue supporting the diversity of life it does, human beings included. Mankind is just as tied to the ocean as the fish harvested for consumption. If practices cannot be regulated and made sustainable, then neither can humans depend upon these resources. Sustainability is equivalent to ensuring the presence of this industry for succeeding generations; in one sense the need for sustainability is a need to establish a legacy, and without it the composition and culture of the world may be permanently damaged.

Conclusion

I believe the motivation and strength behind OCEANS-21 to be admirable and powerful. Introducing a National Ocean Policy like that in H.R. 21 would be hugely beneficial to the United States on multiple levels. Not only does an intensified regulatory process allow for environmental recovery, it also provides a structure for government to actively govern on an important issue. It is good policy, but the necessary steps to orchestrate the proposed National Ocean Policy proved too extensive and costly for the current political environment.

The needs described in the previous section should be motivating Congress to take appropriate action. But the legislative process is not friendly to legislation like H.R. 21 outside of times of great prosperity. H.R. 21 introduced too much potential for high-cost without the promise of a revenue return. This high-investment, no fiscal benefit approach led the bill to be diluted and placed on the back burner. The importance of this bill, however, is especially relevant in the 111th Congress, which was forced to approach the BP oil spill from an innovative angle. Preventative and anticipatory disaster relief planning could have greatly assisted the communities, industries and environments affected by the largest oil spill to date; and it comes as no surprise that in the absence of any plan all the public saw was private industry and government entering into another responsibility dispute.

The inability of our government to deal with an issue like Deepwater Horizon demonstrates an inept policy-making core. I believe that we are fast approaching a time when it will be too late to make the fixes necessary to repair environmental damage to sustainability. Our process, designed for long-term stability over reactive, responsive approaches, does not allow us opportunities for enough action within a short period. The demand for funding immediately removes support for a measure, even if it is good policy, thereby ending the potential for truly world-altering legislation. Additionally, introducing expansions to government (i.e. National Ocean Advisor, U.S. Committee on Oceans, consolidation of powers to NOAA, etc) is unwelcome, especially in the current environment of conservative tea-party sentiment.

As I progressed through an internship in which I witnessed the failure of the few big bills that were discussed, like the Defense Appropriations Act, I began to feel that our government is no longer friendly to progress; it seems that good policy is ignored so that the politics of the day are allowed to thrive. I believe the Onion article referenced earlier addresses just this point. My belief has always been that the role of government is to lead the world to health and wellbeing, and that this has not been accomplished in recent years.
Instead, leaders are frightened of election losses and are therefore at the mercy of the public and their parties; the time period of each Congress is too short, and each one adjourns long before differences can be resolved. There need to be systemic changes that lead to compromise and facilitate a reevaluation of legislative ethics. Currently, it seems more important to not-vote on a bill and allow it to expire until the next Congress can attempt it once again.

If the public is to be served, and the important aspects of our nation truly sustained for celebration now and in the future, then the United States must prove that its system allows for forward-moving action. When OCEANS-21 was absorbed into the CLEAR Act, most of its substance was lost. Suddenly, the necessity of comprehensive ocean policy evaporated, and the motivation behind ocean policy reform stood to address the BP spill. The only true evidence of OCEANS-21 in CLEAR falls to Title V, which creates a specific Gulf Coast Restoration Fund to help fund the marine disaster in the Gulf (H.R. 3534 Title V). CLEAR, however, represents a solid comprehensive clean-energy policy with great potential for public benefit; it passed the House of Representatives on July 30, 2010 with a vote of 209-193 and has since been placed on the Senate calendar, where it will remain, inactive, and most likely die, unless a sweeping progressive wind carries it through during the remainder of this lame-duck session. In one fell swoop, our process has left two solid and necessary pieces of legislation wounded and dying on the Capitol steps.

There is much that needs to be done if the United States is going to take steps to ensure the continuing wellbeing of the geography, biology and industry that make it a world power. Currently, we are losing sight of national and international needs and our perspective is shrinking down to a tunnel vision narrowly focused on political sound bites and a handful of hot topics. Progress can only come from process, and right now, our government is providing neither.
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Translucent Balance
Monterey Bay Aquarium — Jim T