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REPORT
105–485

# HYDROGRAPHIC SERVICES IMPROVEMENT ACT OF 1998

APRIL 21, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

# R E P O R T

[To accompany H.R. 3164]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3164) to describe the hydrographic services functions of the Administrator of the National Oceanic and Atmospheric Administration, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Hydrographic Services Improvement Act of 1998".

**SEC. 2. DEFINITIONS.**

In this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(2) ADMINISTRATION.—The term "Administration" means the National Oceanic and Atmospheric Administration.

(3) HYDROGRAPHIC DATA.—The term "hydrographic data" means information acquired through hydrographic or bathymetric surveying, photogrammetry, geodetic measurements, tide and current observations, or other methods, that is used in providing hydrographic services.

(4) HYDROGRAPHIC SERVICES.—The term "hydrographic services" means—

(A) the management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data;

(B) the development of nautical information systems; and

(C) related activities.

(5) ACT OF 1947.—The term "Act of 1947" means 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 et seq.).

**SEC. 3. FUNCTIONS OF THE ADMINISTRATOR.**

(a) RESPONSIBILITIES.—To fulfill the data gathering and dissemination duties of the Administration under the Act of 1947, the Administrator shall—

(1) acquire hydrographic data;

(2) promulgate standards for hydrographic data used by the Administration in providing hydrographic services;

(3) promulgate standards for hydrographic services provided by the Administration;

(4) ensure comprehensive geographic coverage of hydrographic services, in cooperation with other appropriate Federal agencies;

(5) maintain a national database of hydrographic data, in cooperation with other appropriate Federal agencies;

(6) provide hydrographic services in uniform, easily accessible formats;

(7) participate in the development of, and implement for the United States in cooperation with other appropriate Federal agencies, international standards for hydrographic data and hydrographic services; and

(8) to the greatest extent practicable and cost-effective, fulfill the requirements of paragraphs (1) and (6) through contracts or other agreements with private sector entities.

(b) AUTHORITIES.—To fulfill the data gathering and dissemination duties of the Administration under the Act of 1947, and subject to the availability of appropriations, the Administrator—

(1) may procure, lease, evaluate, test, develop, and operate vessels, equipment, and technologies necessary to ensure safe navigation and maintain operational expertise in hydrographic data acquisition and hydrographic services;

(2) may enter into contracts and other agreements with qualified entities, consistent with subsection (a)(8), for the acquisition of hydrographic data and the provision of hydrographic services;

(3) shall award contracts for the acquisition of hydrographic data, in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.);

(4) may, subject to section 5, design and install where appropriate Physical Oceanographic Real-Time Systems to enhance navigation safety and efficiency; and

(5) may enter cost-sharing agreements with State or local governments or other public entities for the purpose of acquiring hydrographic data or providing hydrographic services.

**SEC. 4. QUALITY ASSURANCE PROGRAM.**

(a) DEFINITION.—For purposes of this section, the term "hydrographic product" means any publicly or commercially available product produced by a non-Federal entity that includes or displays information that includes or displays hydrographic data.

(b) PROGRAM.—

(1) IN GENERAL.—The Administrator may—

(A) develop and implement a quality assurance program, under which the Administrator may certify hydrographic products that satisfy the standards promulgated by the Administrator under section 3(a)(3);

(B) authorize the use of the emblem or any trademark of the Administration on a hydrographic product certified under subparagraph (A); and

(C) charge a fee for such certification and use.

(2) LIMITATION ON FEE AMOUNT.—Any fee under paragraph (1)(C) shall not exceed the costs of conducting the quality assurance testing, evaluation, or studies necessary to determine whether the hydrographic product satisfies the standards adopted under section 3(a)(3), including the cost of administering such a program.

(c) LIMITATION ON LIABILITY.—The Government of the United States shall not be liable for any negligence by a person that produces hydrographic products certified under this section, if that liability is based solely on certification of such data or product under subsection (b).

(d) HYDROGRAPHIC SERVICES ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the Treasury a separate account, which shall be known as the Hydrographic Services Account.

(2) CONTENT.—The account shall consist of—

(A) amounts received by the United States as fees charged under subsection (b)(1)(C); and

(B) such other amounts as may be provided by law.

(3) USE.—Amounts in the account shall be available to the Administrator, without further appropriation, for hydrographic services.

(e) LIMITATION ON NEW FEES AND INCREASES IN EXISTING FEES FOR HYDROGRAPHIC SERVICES.—After the date of the enactment of this Act, the Administrator may not—

(1) establish any fee or other charge for the provision of any hydrographic service except as authorized by this section; or

(2) increase the amount of any fee or other charge for the provision of any hydrographic service except as authorized by this section and section 1307 of title 44, United States Code.

**SEC. 5. OPERATION AND MAINTENANCE OF PHYSICAL OCEANOGRAPHIC REAL-TIME SYSTEMS.**

(a) NEW SYSTEMS.—After the date of enactment of this Act, the Administrator may not design or install any Physical Oceanographic Real-Time System, unless the local sponsor of the system or another Federal agency has agreed to assume the cost of operating and maintaining the system within 90 days after the date the system becomes operational.

(b) EXISTING SYSTEMS.—After October 1, 1999, the Administration shall cease to operate Physical Oceanographic Real-Time Systems, other than any system for which the local sponsor or another Federal agency has agreed to assume the cost of operating and maintaining the system by January 1, 1999.

**SEC. 6. REPORTS.**

(a) PHOTOGRAMMETRY AND REMOTE SENSING.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Administrator shall report to the Congress on a plan to increase, consistent with this Act, contracting with the private sector for photogrammetric and remote sensing services related to hydrographic data acquisition or hydrographic services. In preparing the report, the Administrator shall consult with private sector entities knowledgeable in photogrammetry and remote sensing.

(2) CONTENTS.—The report shall include the following:

(A) An assessment of which of the photogrammetric and remote sensing services related to hydrographic data acquisition or hydrographic services performed by the National Ocean Service can be performed adequately by private-sector entities.

(B) An evaluation of the relative cost-effectiveness of the Federal Government and private-sector entities in performing those services.

(C) A plan for increasing the use of contracts with private-sector entities in performing those services, with the goal of obtaining performance of 50 percent of those services through contracts with private-sector entities by fiscal year 2003.

(b) PORTS.—Not later than 6 months after the date of enactment of this Act, the Administrator shall report to the Congress on—

(1) whether or not implementation of real-time tide and current data systems could enhance economic competitiveness and environmental protection in United States ports;

(2) the status of implementation of those systems;

(3) existing safety and efficiency needs in United States ports that could be met by increased use of those systems; and

(4) a plan for expanding those systems to meet those needs, including an estimate of the cost of implementing those systems in priority locations.

(c) MAINTAINING FEDERAL EXPERTISE IN HYDROGRAPHIC SERVICES.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Administrator shall report to the Congress on a plan to ensure that Federal competence and expertise in hydrographic surveying will be maintained after the decommissioning of the 3 existing National Oceanic and Atmospheric Administration hydrographic survey vessels.

(2) CONTENTS.—The report shall include—

(A) an evaluation of the seagoing capacity, personnel, and equipment necessary to maintain Federal expertise in hydrographic services;

(B) an estimated schedule for decommissioning the 3 existing survey vessels;

(C) a plan to maintain Federal expertise in hydrographic services after the decommissioning of these vessels; and

(D) an estimate of the cost of carrying out this plan.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Administrator the following:

(1) To carry out nautical mapping and charting functions under the Act of 1947 and sections 3 and 4, except for conducting hydrographic surveys, $33,000,000 for fiscal year 1999, $34,000,000 for fiscal year 2000, $35,000,000 for fiscal year 2001, $36,000,000 for fiscal year 2002, and $37,000,000 for fiscal year 2003.

(2) To conduct hydrographic surveys under section 3(a)(1), including leasing of ships, $33,000,000 for fiscal year 1999, $35,000,000 for fiscal year 2000, $37,000,000 for fiscal year 2001, $39,000,000 for fiscal year 2002, and $41,000,000 for fiscal year 2003. Of these amounts, no more than $14,000,000 is authorized for any one fiscal year to operate hydrographic survey vessels owned and operated by the Administration.

(3) To carry out geodetic functions under the Act of 1947, $20,000,000 for fiscal year 1999, and $22,000,000 for each of fiscal years 2000, 2001, 2002, and 2003.

(4) To carry out tide and current measurement functions under the Act of 1947, $22,500,000 for each of fiscal years 1999 through 2003. Of these amounts, $2,500,000 is authorized for each fiscal year to implement and operate a national quality control system for real-time tide and current data, and $7,500,000 is authorized for each fiscal year to design and install real-time tide and current data measurement systems under section 3(b)(4) (subject to section 5).

## PURPOSE OF THE BILL

The purpose of H.R. 3164 is to describe the hydrographic services functions of the Administrator of the National Oceanic and Atmospheric Administration.

## BACKGROUND AND NEED FOR LEGISLATION

When the United States was founded, President Thomas Jefferson recognized that safe navigation was essential to the success of the young nation, and established the Coast Survey in 1807 to make charts of U.S. waters and collect other hydrographic information. In modern times, hydrographic data is vital for marine resources management (including fishery resources), coastal erosion prediction and prevention, offshore geology and safety issues relating to outer continental shelf facility siting. This information also contributes to our understanding of global climate change and oceanography in general.

The National Ocean Service (NOS), one of the five line offices of the National Oceanic and Atmospheric Administration (NOAA), now carries out the responsibility for collecting hydrographic data for these purposes. NOS conducts hydrographic surveys of U.S. state and federal waters; measures tides and currents in coastal areas throughout the U.S.; and issues nearly a thousand regular chart editions as well as tide and current predictions for the entire U.S. coastline. This information is used by the federal government, state and local governments, commercial fishermen, ship pilots, coastal zone managers, fisheries biologists, offshore oil and gas operators, and countless others.

During the post-World War II economic boom in this country, hydrographic surveying and nautical charting received strong financial support. The invention of the acoustic depth sounder in the 1940s greatly increased survey speed and accuracy over the previous technique of casting a weighted line over the side of the vessel at intervals. Much of the data incorporated in present charts was collected between the 1940s and the 1970s. Since then, however, support for the program has eroded significantly. Funding for

hydrographic services (in constant 1994 dollars) dropped from $94.5 million in 1979 to $47.7 million in 1994, a decrease of 50 percent. In 1971, NOAA had 11 hydrographic survey ships, most of them less than ten years old. Today NOAA has only three ships in service, the youngest of which was built in 1968.

This erosion of support has significantly reduced the effectiveness of the program. NOS has identified a backlog of 39,000 square nautical miles of "critical areas"—areas with heavy large vessel traffic, shallow water, and inadequate or obsolete surveys—which must be resurveyed. Many of these critical areas are approaches to major ports, or heavily used inshore areas with unstable bottom topography. The rest are large areas, primarily in Alaska waters, which have never been surveyed with modern equipment but have recently experienced major increases in oil tanker, cargo carrier, and cruise ship traffic. NOAA estimates that it would require more than 30 years at 1997 funding levels to complete these critical surveys. This does not include the additional 200–300 reports of new wrecks and obstructions that NOAA must investigate every year.

Since 1994, Congress has increased appropriations for hydrographic services by nearly $18 million. The program is now funded at 62 percent of its 1979 level. NOAA has no plans to purchase new survey vessels. To actually use these new funds to reduce the survey backlog, therefore, NOAA must contract with private-sector survey contractors. NOAA began contracting for survey data in 1995 and was able to complete several contracts successfully. Since then, there has been some disagreement over the cost-effectiveness of in-house surveying using NOAA ships versus outsourcing for data, as well as over the role of the federal government and the private sector in ensuring data accuracy. These controversies have significantly held up the process of reducing the backlog.

In 1996, NOAA proposed to purchase new multibeam sonar systems to install on its existing vessels, which would make them significantly more efficient. Survey contractors objected to this on the grounds that such systems were widely available in the private sector and that, by purchasing them, NOAA would be unlawfully competing with the private sector. Also, a 1996 report by the Commerce Department Inspector General concluded that NOAA could collect hydrographic data much more cheaply through outsourcing than by using existing NOAA ships.

Accordingly, the Department of Commerce appropriation acts in Fiscal Years 1996 and 1997 provided significant new funds to collect hydrographic data by contracting with private companies, and prohibited NOAA from using previously appropriated funds to purchase this equipment. Commerce Department counsel then determined that, without the ability to procure state-of-the-art equipment, the U.S. would be unable to exercise adequate quality control over data collected by contractors, and could not assume liability for such data if it were later incorporated into official charts. Thus, contract solicitations released by NOAA in 1996 included a requirement that each contractor carry $100 million in liability insurance for 15 years after the survey. Since the cost of such insurance would exceed the value of the contract, this made it effectively impossible to contract for data acquisition.

Thus, funds designated for contract data acquisition remained unspent in Fiscal Year 1997. The Fiscal Year 1998 Department of Commerce appropriations act did allow NOAA to use previously appropriated funds to purchase some new sonar systems. NOAA is now installing them, and Commerce Department counsel has allowed NOAA to dispense with the liability insurance requirements. NOAA is now negotiating several new contracts, and it appears that liability requirements will no longer pose a problem.

At the same time, many NOAA product users expressed concern that the accuracy of NOAA charts and other data could suffer if NOAA moved toward acquiring data from contractors too quickly. In response to these disagreements over the NOAA role in hydrographic surveying, NOS Assistant Administrator Nancy Foster hosted a meeting on July 17, 1997, for NOAA product users within the maritime industry, hydrographic survey contractors, and other interested parties, to discuss the needs for improvement in NOAA hydrographic services. Shortly thereafter, Congress enacted the Fiscal Year 1998 Department of Commerce appropriations act, which required NOAA to consult with private-sector product users and survey contractors and prepare a plan to maintain an appropriate federal capacity in hydrographic services while increasing contracting with the private sector.

Dr. Foster held another meeting of interested parties on January 29, 1997, to present NOAA's strategy for addressing the survey backlog and a draft of the plan for submission to Congress. She stated that NOAA intended to modernize and continue to operate its three remaining survey vessels for the remainder of their service lives for three purposes: first, to maintain sufficient competence in survey technology to ensure the quality of contractor data; second, to continue using all available resources to reduce the survey backlog; and third, to respond quickly to emergency surveying requirements in U.S. waters. NOAA would devote the minimum funding required to operate three vessels to this purpose, and would not seek funds to purchase new survey vessels or make major renovations to existing ones. All other funds available for data acquisition would be used for contracts with private-sector surveying companies. Thus, NOAA would be able to assume liability for data collected by contractors; NOAA's capability would be limited to a minimum appropriate level to both maintain federal competence and minimize government competition with the private sector; contractors would not have to carry crippling liability insurance; and the funding increases in Fiscal Years 1997 and 1998 could be used to reduce the backlog.

H.R. 3164 is intended to enact into law this division of responsibilities between NOAA and the private sector. The bill authorizes NOAA to maintain sufficient equipment, personnel, and expertise to ensure the quality of all data incorporated into United States nautical charts and other hydrographic products. The Committee intends that NOAA should continue to operate the three existing survey ships, the *Rude, Whiting,* and *Rainier,* at their full capacity for the remainder of their service lives to maintain NOAA capability and expertise and to reduce the survey backlog as quickly as possible. NOAA should use all other funds available for data acquisition to contract with qualified private-sector surveying and map-

ping contractors. The Committee notes, however, that NOAA has never presented an acceptable plan explaining how NOAA's in-house capacity will be maintained once the three existing ships are retired. The Committee is concerned that this lack of a plan may result in unacceptable reductions in NOAA's ability to maintain the accuracy of U.S. nautical charts. H.R. 3164 requires NOAA to report to Congress on a plan to maintain its existing level of in-house capacity and expertise after the retirement of the three existing vessels.

H.R. 3164 also resolves uncertainty within the Department of Commerce regarding the method of contractor selection. Title IX of the Federal Property and Administrative Services Act of 1949 (the Brooks Act) requires government agencies to let contracts on a qualifications basis rather than a cost basis for certain technical services. Although the Brooks Act specifically mentions "surveying and mapping" as one of these services, and both NOAA personnel and interested contractors believed that qualifications-based selection was preferable, Commerce Department counsel determined that hydrographic surveying was not subject to the Brooks Act. Thus, in NOAA's initial attempts at contracting in 1995, the agency was required to select contractors on a cost basis. This raised concerns about the agency's ability to ensure data quality. In Fiscal Years 1997 and 1998, language in appropriations bills allowed NOAA to use Brooks Act authority for hydrographic data acquisition contracts. Due to the liability issues described above, NOAA has not yet entered into any contracts under Brooks Act procedures. H.R. 3164 would make clear that NOAA is required to use qualifications-based selection under the Brooks Act for hydrographic data acquisition.

The reduction in funding for NOAA hydrographic services programs over the last 20 years has also crippled tide and current measurement and prediction programs. In the past, pilots entering ports have relied on tide predictions, which are computed months in advance, to tell them how much water they are likely to have under their keel and how strong the current is likely to be. Unfortunately, actual water levels and currents can differ significantly from predicted values. Four U.S. ports—New York/New Jersey, Houston/Galveston, San Francisco and Tampa—have real-time systems that measure water level, current, wind, and other parameters throughout channels and maneuvering areas, and deliver this information continuously to pilots. These systems are called PORTS, for Physical Oceanographic Real Time Systems.

The appropriate division of responsibility between the federal government and individual municipalities or port authorities in operating PORTS has not been clear. The Committee feels that NOAA should be responsible for the accuracy of tide and current data, and ensure that tide and current information collection, analysis, and distribution procedures are standardized throughout U.S. waters. The Committee feels that NOAA must continue to operate the National Water Level Observation Network and any other systems necessary to provide basic tide and current information throughout U.S. waters. However, since individual municipalities or port authorities are the chief beneficiaries of enhanced real-time systems installed in major ports, NOAA need not operate and

maintain the instruments that collect this locally applicable data. Existing NOAA policy and direction in the Fiscal Year 1998 Department of Commerce appropriations act require the beneficiaries of real-time tide and current systems to pay for operation and maintenance of those systems. H.R. 3164 would enact this distinction into law. In addition, the bill authorizes funding increases necessary to implement a national tide and current data standardization and quality-control program, and accelerate the installation of new real-time systems.

Finally, the Committee feels that the survey backlog and the failure to take full advantage of new tide and current prediction systems has the potential to significantly increase the risk of major accidents and associated economic and environmental disruption, and also lost opportunities for better marine resource management. Hydrographic services yields a huge payoff in coastal resource management, economic competitiveness and environmental protection. Reducing the survey backlog and bringing NOAA's hydrographic services programs up to date are critical national needs. Thus, H.R. 3164 authorizes increased appropriations for hydrographic services programs. According to NOAA estimates, the amounts authorized in H.R. 3164 should be sufficient to complete the survey backlog in approximately 20 years rather than 35. In light of the huge amount of ground that this program has lost during the past two decades, the Committee feels that it is critically important to make this relatively small investment now to avert possible serious consequences in the future.

## COMMITTEE ACTION

On April 24, 1997, the Subcommittee on Fisheries Conservation, Wildlife, and Oceans held a hearing on the future of the federal hydrography program. H.R. 3164 was introduced on February 5, 1998, by Congressman Jim Saxton (R–NJ), Chairman, Subcommittee on Fisheries Conservation, Wildlife, and Oceans, and Congressman Don Young (R–AK), Chairman, Committee on Resources. The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife, and Oceans. On February 12, 1998, the Subcommittee met to mark up H.R. 3164. Mr. Saxton offered an amendment in the nature of a substitute to make technical and clarifying changes and require a study of whether photogrammetric services currently carried out by NOS could be performed by the private sector. The amendment was adopted by voice vote, and the bill as amended was then ordered favorably reported to the Full Committee by voice vote. On March 11, 1998, the full Resources Committee met to consider H.R. 3164. Mr. Saxton offered an amendment in the nature of a substitute to make further technical and clarifying changes; add report requirements related to tide and current systems and maintaining federal expertise in hydrographic surveying; prohibit NOAA from imposing new fees for hydrographic services; and increase funding authorizations. The amendment was adopted by voice vote, and the bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

The short title of this bill is the "Hydrographic Services Improvement Act of 1998."

*Section 2. Definitions*

The following terms are defined in this section:

"Administration" means the NOAA of the Department of Commerce.

"Administrator" means the NOAA Administrator.

"Hydrographic data" means information acquired through hydrographic or bathymetric surveying, photogrammetry, geodetic measurements, tide and current observations, or other methods, which is used in providing hydrographic services. This includes any source data used in the preparation of nautical charts or related products, tide and current predictions, or other nautical products issued by NOS. It does not include data that is unrelated to the production of such products. Hydrographic data is gathered through direct observations, and does not include interpretation of these observations. For example, if NOAA were to contract with a surveying company to perform a hydrographic survey, the soundings provided by that company, as well as any other information necessary to evaluate the accuracy of those soundings, would be hydrographic data. However, a nautical chart containing those soundings would not be hydrographic data, because the production of the chart involves data processing, compilation, editing, and other steps after the actual collection of data.

"Hydrographic services" means the management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data; the development of nautical information systems; and related activities. This includes all activities, other than the direct acquisition of hydrographic data, which are carried out by NOS to promote safe navigation. For example, hydrographic services includes hydrographic data compilation, nautical chart production, the setting of standards for hydrographic data, and any other related activities.

"Act of 1947" means 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 et seq.).

*Section 3. Functions of the Administrator*

At present, the responsibilities of the Administrator to carry out hydrographic services are authorized under broad provisions of the Act of 1947. This section clarifies some of the responsibilities and authority of the Administrator under that Act. The Committee notes that this section does not limit the authority of the Administrator to carry out any activity which is authorized under the Act of 1947 but not specifically mentioned in this Act.

(a) Responsibilities. This subsection directs the Administrator to carry out certain specific functions under the Act of 1947:

(1) directs the Administrator to acquire hydrographic data. The Committee expects that the Administrator will acquire data by the use of federal equipment and personnel, by contracting with private entities, and by other appropriate means.

(2) directs the Administrator to promulgate standards for data used by the Administration in providing hydrographic services. This is intended to make clear that the Administrator is responsible for ensuring the accuracy of all data used in producing nautical charts, tide and current predictions, and other products issued by NOS.

(3) directs the Administrator to promulgate standards for hydrographic services provided by the Administration. This makes clear that the Administrator is responsible for determining which nautical charts or other products are adequate to ensure safe navigation in U.S. waters which the Administrator is responsible for charting under the Act of 1947. It is not intended to give the Administrator any authority over the data-gathering procedures or product standards of any other federal agency that surveys other waters, for example the U.S. Army Corps of Engineers, which is responsible for inland waterways of the U.S., or the National Imagery and Mapping Agency, which issues maps and charts of international waters.

(4) directs the Administrator to ensure comprehensive geographic coverage of hydrographic services, in cooperation with other appropriate federal agencies. This does not extend the Administrator's geographic area of responsibility beyond that defined under the Act of 1947.

(5) directs the Administrator to maintain a national database of hydrographic data, in cooperation with other appropriate federal agencies.

(6) directs the Administrator to provide hydrographic services in uniform and easily accessible formats. This includes electronic formats compatible with commercially available navigation and chart display systems.

(7) directs the Administrator to participate in the development of international standards for hydrographic data and services. The Committee feels that it is extremely important that the U.S. participate fully in the development of international hydrographic standards to ensure that hydrographic services in U.S. waters are fully compatible and consistent with international norms. This paragraph also directs the Administrator to implement international hydrographic standards for the United States, in cooperation with other appropriate federal agencies.

(8) directs the Administrator to fulfill the requirements of paragraphs (1) and (6) by utilizing qualified private-sector entities. The Committee feels that the core responsibilities of the Administration include ensuring data accuracy and compatibility, maintaining a high level of expertise in hydrographic data acquisition and hydrographic services, and ensuring that hydrographic products are standardized, comprehensive and publicly accessible. The Committee recognizes that the Administrator must maintain capacity and expertise in hydrographic data acquisition to carry out these responsibilities. After this requirement is satisfied, the Administrator should utilize private-sector capabilities to the greatest extent prac-

ticable to maximize the efficiency of hydrographic data collection and reduce the survey backlog as soon as possible. In addition, the Committee feels that the Administrator must provide basic end-user products such as nautical charts and tide predictions to ensure the public availability of hydrographic services. However, it is appropriate for qualified private-sector entities to produce value-added products based on this information. The Committee feels that the recent Cooperative Research and Development Agreement between NOAA and BSB Electronic Charts to provide electronic charts is an excellent example of such cooperation, and encourages similar agreements in future.

(b) Authorities. This subsection clarifies the authority of the Administrator to carry out certain activities under the Act of 1947:

(1) makes clear that the Administrator is authorized to operate whatever vessels, equipment, and technologies are necessary to maintain expertise in hydrographic services and hydrographic data acquisition. The Committee feels that it is extremely important that NOAA maintain its high level of expertise to ensure the accuracy of nautical charts and other hydrographic services. The Committee feels that NOAA should maintain a data acquisition capacity approximately equivalent to that represented by its current three survey vessels. This could be carried out through ownership of vessels, leasing of privately-owned vessels, or other means.

(2) authorizes the Administrator to enter into contracts with qualified entities for the acquisition of hydrographic data and the provision of hydrographic services. As discussed above, when appropriate, the Administrator should use private sector capabilities to the greatest extent possible.

(3) directs the Administrator to award contracts for hydrographic data acquisition in accordance with the Brooks Act. This makes clear that contracts for hydrographic surveying should be awarded on a qualifications basis. However, this paragraph does not mean that contracts for services associated with the collection of hydrographic data which are not themselves surveying or mapping services should be awarded using Brooks Act procedures. For example, leasing of vessels or contracting for vessel operations are not hydrographic data acquisition for purposes of this section. In addition, the Committee understands that the General Services Administration is developing a standard list of "pre-qualified" surveying and mapping contractors. To the extent that such a program conforms with Brooks Act qualification requirements, the Administrator may use it to award contracts for hydrographic data acquisition.

(4) authorizes the Administrator to design and install PORTS. This authority is discussed in greater detail below.

(5) authorizes the Administrator to enter cost-sharing agreements with state or local governments or other public entities for the purpose of acquiring hydrographic data or providing hydrographic services.

*Section 4. Quality Assurance Program*

This section authorizes the Administrator to conduct a quality assurance program for hydrographic products. "Hydrographic products" means any products that are publicly available, produced by a non-federal entity, and include or display hydrographic data. For

example, books containing NOAA charts that have been reformatted for easier access and storage; CD-ROM discs containing electronic nautical charts; fishing maps of nearshore areas showing bathymetry and bottom type; or commercial tide-prediction software are all hydrographic products under this section. Official nautical charts or other information published by the federal government are not hydrographic products under this section. Source data acquired by NOAA from a private entity for the purpose of making nautical charts are not hydrographic products.

The Committee expects that under this quality assurance program, NOAA would allow an official emblem to be affixed to hydrographic products. This emblem would signify that the hydrographic data portrayed in that product, and the means of displaying that data, adhered to standards established by NOAA.

This section authorizes NOAA to charge a fee to manufacturers of hydrographic products who apply to be certified under this program. Such a fee may not exceed the cost of conducting the studies necessary to determine whether the product satisfies the standards required for certification, including the cost of administering such a program.

This section limits the liability of the federal government under such a program. The Committee feels that it is incumbent on the Administrator only to certify that the data included in a hydrographic product are collected and displayed in a manner that satisfies certain standards. By certifying a hydrographic product, the Administrator should not be expected to individually check all data included in that product, or assume responsibility for negligent actions, or failure to follow appropriate standards, by the entity producing the product. Thus, this section states that the federal government shall not be liable for any negligence by a person that produces hydrographic products certified under this section.

This section also establishes a separate account in the Treasury known as the Hydrographic Services Account. Fees charged for certification under this section, as well as any other amounts provided by law, may be deposited in this account. Amounts in the account shall be available to the Administrator for hydrographic services.

Finally, this section limits the authority of the Administrator to establish fees for hydrographic services. It states that the Administrator may not establish any new fees for hydrographic services unless they are specifically authorized in law. The Administrator is authorized to charge fees for the provision of any nautical or aeronautical products under 44 U.S.C. 1307, and this section authorizes a new fee program. This section does not affect the Administrator's existing authority under 44 U.S.C. 1307 to charge fees for new types or formats of nautical products. Furthermore, the Administration may not increase any existing fees for hydrographic services beyond the amounts authorized in this section and 44 U.S.C. 1307.

*Section 5. Operation and Maintenance of Physical Oceanographic Real Time Systems*

Physical Oceanographic Real Time Systems (PORTS) are systems that provide oceanographic and meteorological information to mariners in congested harbors and ports. PORTS measure tides, currents, wind, salinity, and other parameters, and continuously sup-

ply mariners with this information, as well as other information derived therefrom such as water depths, bridge clearances, and tide and current predictions. At present, PORTS are installed in four major U.S. commercial ports: New York/New Jersey, Houston/Galveston, San Francisco Bay, and Tampa. The Committee intends that the term "Physical Oceanographic Real Time Systems" should apply to any future system designed or installed by NOAA whose nature and purpose are similar to that of existing PORTS and which primarily benefits commercial navigation in a limited geographic area. PORTS do not include tide gauges which are part of the National Water Level Observation Network or are otherwise necessary to support the Administrator's basic responsibility to provide national tide and current predictions.

Since PORTS primarily benefit the individual ports in which they are installed, the Committee feels that NOAA should not fund the local operation and maintenance costs for individual PORTS. Thus, subsection (a) states that the Administrator may not design or install any new PORTS unless an agreement exists under which an entity other than NOAA will assume operation and maintenance costs for the system once it becomes operational. "Design" in this subsection means preparation of detailed specifications, and the subsection does not prohibit NOAA from supplying basic preliminary design information or cost estimates to ports or municipalities who are considering developing a PORTS. Furthermore, subsection (b) states that the Administrator must cease operation of any existing PORTS unless the local sponsor or another Federal agency has agreed to assume the cost of operating and maintaining the system by January 1, 1999.

The Committee feels that the Administrator should design and install PORTS to ensure that all such systems are compatible and adhere to consistent standards. Section 3(b)(4) grants this authority. In addition, the Committee expects the Administrator to develop and operate a national quality control program to ensure the accuracy of PORTS data. Section 7 authorizes appropriations for this purpose.

*Section 6. Reports*

First, it has come to the attention of the Committee that NOS performs photogrammetric and remote sensing activities related to hydrographic services which are similar to activities performed by private-sector surveying and mapping companies. This section requires the Administrator to report on whether those activities could be performed adequately by private-sector entities, including an evaluation of the relative cost-effectiveness of the federal government and the private sector in performing those services, and a proposed plan for increasing the use of contracting with private-sector entities in performing those services.

Second, the Committee feels that expansion of the present real-time tide and current data program is important to ensure economic competitiveness and environmental protection in our nation's ports. This section requires the Administrator to report on the status of implementation of real-time tide and current data systems, the needs for expansion of these systems, and a plan for expanding the program to meet these needs.

Third, as discussed above, the Committee is concerned that NOAA has not developed an adequate plan to maintain federal expertise in hydrographic services after the decommissioning of the three existing federal hydrographic survey ships. This section requires the Administrator to report on such a plan, including an evaluation of equipment and personnel necessary to maintain federal expertise, a schedule for decommissioning the existing ships, and an estimate of the cost of the plan.

*Section 7. Authorization of appropriations*

This section authorizes appropriations for NOS hydrographic and geodetic programs. These funds are currently appropriated into accounts entitled "Navigation Services" and "Acquisition of Data" within the NOS budget. NOAA estimates suggest that the funding level authorized for Fiscal Year 2003 would allow the backlog to be completed in less than 20 years, rather than 35 years, and allow NOAA to keep up with new wreck and obstruction surveys.

Paragraph (1) authorizes $33 million for Fiscal Year 1999, $34 million for Fiscal Year 2000, $35 million for Fiscal Year 2001, $36 million for Fiscal Year 2002, and $37 million for Fiscal Year 2003, to be appropriated to the Administrator to carry out nautical mapping and charting functions performed by NOS under the Act of 1947 and sections 3 and 4 of this Act, except for the acquisition of hydrographic data. These functions are funded at present by an appropriation entitled "Mapping and Charting."

Paragraph (2) authorizes $33 million for Fiscal Year 1999, $35 million for Fiscal Year 2000, $37 million for Fiscal Year 2001, $39 million for Fiscal Year 2002, and $41 million for Fiscal Year 2003, to be appropriated to the Administrator to conduct hydrographic surveys. This function is funded at present by an appropriation entitled "Address survey backlog/contracts" and by part of the appropriation entitled "Acquisition of Data." Of this amount, not more than $14 million in any one fiscal year is authorized to be appropriated into the "Acquisition of Data" account to support the operation of hydrographic survey vessels owned and operated by NOAA.

Paragraph (3) authorizes $20 million for Fiscal Year 1999, and $22 million for each of Fiscal Years 2000 through 2003 to be appropriated to the Administrator to carry out geodetic functions under the Act of 1947.

Paragraph (4) authorizes $22.5 million for each of Fiscal Years 1999 through 2003 to be appropriated to the Administrator to carry out tide and current measurement functions under the Act of 1947. Of this amount, $12.5 million should be used to operate the National Water Level Observation Network and other base programs; $2.5 million is authorized to be appropriated in each fiscal year to implement and operate a national quality control system for real-time tide and current data; and $7.5 million is authorized to be appropriated in each fiscal year to help design and install PORTS or other real-time tide and current measurement systems. No funds are authorized for operation or maintenance of operational PORTS.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of

rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 3164.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 3164. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 3164 does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of H.R. 3164 would affect direct spending by authorizing NOAA to collect fees and spend the proceeds without appropriation, but the collection and spending of these fees would have no significant impact on the federal budget in any year.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 3164.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3164 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, March 24, 1998.*

Hon. DON YOUNG,
*Chairman, Committee on Resources,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3164, the Hydrographic Services Improvement Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gary Brown (for federal costs), and Marjorie Miller (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 3164—Hydrographic Services Improvement Act of 1998*

Summary: H.R. 3164 would:

authorize appropriations totaling $581 million over the 1999–2003 period for the National Oceanic and Atmospheric Administration (NOAA) for providing hydrographic services;

authorize NOAA to certify hydrographic products that satisfy federal standards. (A NOAA emblem would distinguish certified products. NOAA would be authorized to charge a fee for this service and to spend proceeds from these fees without appropriation action); and

prohibit NOAA from establishing or increasing any fees for hydrographic services except as authorized under current law and this legislation.

Assuming appropriation of the authorized amounts, CBO estimates that enacting H.R. 3164 would result in additional discretionary spending of $503 million over the 1999–2003 period for the navigation services provided by NOAA. The legislation also would affect direct spending by authorizing NOAA to collect fees and spend the proceeds without appropriation; therefore, pay-as-you-go procedures would apply. CBO estimates that neither the collection nor the spending of fees would have a significant impact on the federal budget in any year. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3164 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

| | By fiscal years in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 |
| SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Spending Under Current Law for NOAA's Navigation Services: | | | | | | |
| Budget Authority[1] | 88 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 87 | 37 | 13 | 6 | 0 | 0 |
| Proposed Changes: | | | | | | |
| Authorization Level | 0 | 108 | 114 | 116 | 120 | 123 |
| Estimated Outlays | 0 | 63 | 95 | 107 | 117 | 121 |
| Spending Under H.R. 3164 for NOAA's Navigation Services: | | | | | | |
| Authorization Level[1] | 88 | 108 | 114 | 116 | 120 | 123 |
| Estimated Outlays | 87 | 100 | 108 | 113 | 117 | 121 |

[1] The 1998 level is the amount appropriated for that year.

Basis of estimate: For purposes of this estimate, CBO assumes that H.R. 3164 will be enacted by the end of fiscal year 1998 and that all authorized amounts for NOAA's navigation services would be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for the authorized programs.

Based on information from NOAA, CBO assumes that the agency would begin certifying hydrographic products and collecting fees in fiscal year 1999. Based on information from NOAA, CBO estimates that proceeds from fees would be less than $500,000 per year. The fees would be recorded as offsetting receipts and would be available for spending without further appropriation action. Accordingly, the increase in offsetting receipts would be offset by additional direct spending and the provision would have no significant net impact on the federal budget.

CBO estimates that there would be no budgetary impact from prohibiting new fees or increases in fees for hydrographic products that are not authorized under current law. The only existing fees for hydrographic products are charges for creating, publishing, and distributing nautical maps and charts. These fees yield offsetting receipts totaling about $7 million a year. Such fees can be increased under current law and H.R. 3164 would not affect that authority.

Pay-as-you-go-considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 3164 would affect direct spending but that there would be no significant impact in any year. Enacting the legislation would not affect governmental receipts.

Estimated impact on State, local, and tribal governments: H.R. 3164 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

The bill would prohibit NOAA from installing any Physical Oceanographic Real-Time Systems (PORTS), or operating existing systems after October 1, 1999, unless the local sponsor of a system or another federal agency agrees to assume the operations and maintenance expenses of the system. Based on information provided by agency officials, CBO estimates that the federal government will pay operations and maintenance costs of about $600,000 for two existing PORTS in the current year. The operating costs of the two other PORTS currently in operation are already paid by local authorities. H.R. 3164 would probably require that all these costs be shifted to local authorities, should they choose to keep the systems in place, but such a shift might take place even under current law.

Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Gary Brown; Impact on State, Local, and Tribal Governments: Marjorie Miller.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

## COMPLIANCE WITH PUBLIC LAW 104–4

H.R. 3164 contains no unfunded mandates.

## CHANGES IN EXISTING LAW

If enacted, H.R. 3164 would make no changes in existing law.

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