

AN ORGANIC ACT FOR NOAA TO FORMALIZE ITS PURPOSE AND AUTHORITIES

Tim Hall and Mary Kicza

Issue Brief

This paper reviews considerations for formal establishment of a single authority for NOAA's policy and purpose through the Organic Act. The driving motivation would be to streamline NOAA's mission, purpose and authorities and enable its political leadership to manage at the agency level, realigning the budget to match the administration's priorities. The case for pursuing an organic act in terms of motivations and challenges is discussed along with a historical summary of efforts by various stakeholders to gain a single-authority statutory charter.

Introduction

The National Oceanic and Atmospheric Administration (NOAA) saves lives, injects billions of dollars into the nation's commerce, and is essential to the national, economic and homeland security of the United States. Through its line office called the National Environmental Satellite, Data, and Information Service (NESDIS), NOAA is one of the nation's primary space-faring agencies. NOAA was established in the Department of Commerce by an executive order called Reorganization Plan No. 4 in 1970 under President Nixon. This order consolidated the ocean and atmospheric activities of various federal agencies under one organization. It did not formally establish an overarching mission for NOAA, and since that time, no comprehensive congressional act outlining the mission and specific functions of the agency has been passed.

NOAA currently operates under nearly 200 separate legislative authorities to conduct its business. In most cases these laws are not coordinated, and NOAA lacks an overarching statutory framework (typically referred to as an organic act) to tie them together. Within the framework of this complex legislative framework, NOAA operates as a federated organization where its senior executive leaders

have minimal ability to establish and implement cross-cutting priorities. Based on interviews conducted for this paper, the driving motivation behind previous efforts to pursue an organic act was to streamline NOAA's mission, purpose and authorities, and enable its political leadership to manage the agency at the portfolio level as a coherent enterprise. A reauthorization of NOAA under a single authority or an organic act would also be an opportunity to define NOAA's national security role with respect to

space-based
environmental
monitoring.

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A successful effort
to establish an

organic act would require a multi-year effort by agency leaders, executive and legislative branch advocates and outside influencers. This group would need to identify a compelling case that would resonate with the Department of Commerce, the White House, and Congress. This paper seeks to provide an objective perspective highlighting some of the potential benefits as well as the primary challenges and risks associated with the pursuit and enactment of an organic act for NOAA. The analysis is based on a review of publicly available information as well as interviews of key participants and stakeholders in

previous efforts to pursue organic act legislation for NOAA.

Background

In United States law, an organizational organic act is a statute enacted by Congress that creates an administrative agency and defines its authorities and responsibilities. Notable federal government agencies that exist under organic statutes include:

- ◆ National Aeronautics and Space Act of 1958, creating the National Aeronautics and Space Administration (NASA)
- ◆ Organic Act of 1879, establishing the U.S. Geological Survey (USGS)
- ◆ Organic Act of 1901, establishing the National Bureau of Standards which was renamed National Institute of Standards and Technology (NIST) by Congress in 1988

Bills to establish an organic act for NOAA (See Table 1) have been introduced in Congress 15 times including once in the Senate and 14 times in the House of Representatives. Four of the bills proposed NOAA also become an independent agency in the process including H.R. 4862, H.R. 3355, H.R. 3381 and H.R. 5070. On only one occasion has a bill (amended) passed the House or the Senate. This was H.R. 5450, which passed the House in September of 2006. However, no further action was taken on that bill by the Senate.

Necessary Conditions to Successfully Pursue a NOAA Organic Act

The National Aeronautics and Space Act of 1958 created the National Aeronautics and Space Administration (NASA). As recounted in historical documents, there were critical pre-conditions that set the stage for this act of Congress that are relevant to the NOAA situation. The stage was set by a decade of post-World War II investments across the Federal Government. The shocking launch of Sputnik on Oct. 4, 1957 provided the proximate impetus. That spark was backed up by compelling rationale developed, refined and communicated relentlessly by a core group of advocates. These advocates came from the executive and legislative branches as well as the science community and were driven by the need to

respond to the threat of Soviet ascendancy in space. Fundamentally, the stage was set for the Space Act by an alignment of purpose between the White House and key members of Congress.

Since NOAA already exists (albeit as a loose federation of Line Offices) and is executing a set of missions under existing statutory authority, the formation of NASA under the Space Act does not represent an exact analogy. However, evolving from the current framework to a full NOAA organic act would still be a heavy lift requiring non-partisan support from the legislative and executive branches. If there is a motivating impetus in the present environment for multiple USG elements to actively pursue or at least support a NOAA Organic Act, it will likely be multi-faceted with an emphasis on lives, livelihoods, and economic as well as national security. Major weather-related disasters costing hundreds of billions of dollars over the past 15 years such as Hurricane Katrina in 2006, Superstorm Sandy in 2012, U.S. Drought in 2012, Hurricane Harvey in 2017 and California Firestorm in 2017, have highlighted the increasing vulnerability of the U.S. economy to extreme environmental conditions. Combined with the realization that the U.S. is falling behind Europe in weather modeling, the 115th Congress passed the historic Weather Research and Forecasting Innovation Act of 2017. The full and effective implementation of this Act is a top NOAA priority for the current Administration. This was reflected as Strategic Objective 3.3, Reduce Extreme Weather Impacts, in the U.S. Department of Commerce Strategic Plan 2018-2022 (Department of Commerce (DOC) Strategic Plan) published in April 2018.

Another priority for the Administration directly related to NOAA was discussed by Secretary of Commerce, Wilbur Ross, in his first address to DOC employees on March 1, 2017. In a list of ten challenges for the DOC, he specifically identified the need to obtain “maximum sustainable yield for our fisheries.” This objective to increase aquaculture production was also reinforced in the DOC Strategic Plan. Maximum sustainable yield (MSY) is defined as the largest yield (or catch) that can be taken

from a species' stock over an indefinite time period.¹ Beyond commercial fishing, our nation's oceans and coastal zones comprise fragile elements of the ecosystem that are vulnerable to changes in the land surface, biosphere, cryosphere and atmosphere. Authority for managing the oceans is currently spread across 17 U.S. federal government agencies. These agencies carry out their responsibilities under approximately 140 federal laws affecting coastal, ocean, and Great Lakes resources. These laws and related programs have been enacted over the course of many decades, resulting in fragmented management of the U.S. ocean regime. A NOAA organic act could be the tool to rationalize the division of responsibilities and authority for the oceans that is currently spread across the federal government.

The rationale for a NOAA Organic Act according to historical documents and validated through the interviews conducted for this paper has been relatively consistent over time. In May 2005, VADM Conrad Lautenbacher, in his role as NOAA Administrator, appeared before the Subcommittee on Fisheries and Ocean as part of a hearing on H.R. 50 (See Table 1). In his written testimony, VADM Lautenbacher indicated that NOAA relied on close to two hundred separate legislative authorities, and although the compilation of authorities was useful in guiding the direction of NOAA's missions, it was not definitive. He noted that there was no NOAA-wide organic act that the agency could rely on to define its overall missions and purpose. He also noted that the authorities governing NOAA were gleaned from program specific authorizations that varied greatly. He said that a smaller set of core authorizations would improve NOAA's operations and performance if they were agency-wide. With the increasing economic and environmental importance of ocean and atmosphere assessment, research and stewardship, Lautenbacher felt it was time to advance from the outdated Reorganization of 1970 to a unified, coherent organization. He believed doing so would greatly strengthen NOAA's ability to manage ocean and coastal resources, to undertake NOAA's research activities and to engage in research and education activities.

In the business of government, the politics surrounding a matter such as this presents major challenges. Pursuing an organic act for NOAA would likely be a two- to three-year process requiring perseverance and investment of political capital. From the start, the Administration would need to view such an initiative as a part of its legacy since the positive effects would not likely be realized in the short-term. Also, positive political will and momentum would need to be generated on multiple fronts including DOC, OMB, OSTP, Congress, the White House, and with key constituents in commercial industry. It is reasonable to postulate that any initiative to establish the NOAA Organic Act would succeed or fail based on an alignment of purpose between the legislative and executive branches of government. The effort would need to be driven by a small, close-knit cadre of committed leaders and influencers compelled by a common purpose and able to develop a mutual understanding and trust among all stakeholders.

Potential Motivation and Challenges/Risks

The driving impetus for a NOAA organic act would vary across stakeholders. Potential motivating factors could include opportunities to:

- ◆ Create clear authorities at the agency level above the NOAA line offices to allow greater flexibility for leadership to manage the priorities across the NOAA enterprise including its space program
- ◆ Rationalize the management of the nation's oceans, lakes and waterways by clarifying and streamlining roles and responsibilities that are currently spread across 17 Government agencies
- ◆ Elevate the priority of public outreach and education (analogous to NASA's charge in the Space Act) which would help elevate NOAA's brand and promote the general public's preparedness and response to severe weather warnings and forecasts.
- ◆ Codify NOAA's mission and organizational structure in law to clarify its role within the federal government — particularly with respect to its role supporting other

¹ NOAA's National Marine Fisheries Service (NMFS) 2016 annual report noted that the commercial marine fishing industry contributed \$46.7 billion to the U.S. Gross National Product. A 2014 Brookings Institute found that the fishing industry contributes nearly \$90 billion annually to the U.S. economy and supports over 1.5 million jobs.

civil agencies such as the Federal Aviation Administration (FAA)

- ◆ Delineate the role of NOAA with respect to economic, national and homeland security including the formalization of civilian-military coordination and cooperation

The pursuit of an organic act could introduce challenges or risks including:

- ◆ A significant level of effort and investment of political capital would be required for an initiative with a low probability of success (based on the past 40+ years of history) – potentially diverting attention from other important priorities
- ◆ Advocates for alignment of NOAA (or select elements of NOAA) within the Department of Interior (DOI) could oppose efforts to institute an organic act that maintains NOAA within DOC (as occurred in 2010)
- ◆ If the legislation is too prescriptive, NOAA’s flexibility to pursue new programs and/or new mission areas at the line office level (e.g., National Weather Service, National Ocean Service, etc.) could be reduced
- ◆ Multiple committees in the House and Senate could potentially fear losing oversight authority (depending on critical implementation details in the act) which would impact the ability to garner the necessary support for an organic act to pass
- ◆ Focused attention on the challenges of NOAA’s current structure without a compelling common purpose could lead to unintended consequences related to new legislation further bifurcating NOAA’s structure as opposed to the institution of a unifying organic act
- ◆ If a statute was enacted without fully superseding existing nearly 200 NOAA related statutes, NOAA will continue to suffer the inefficiencies of operating within a complex legislative framework

Conclusion

The driving motivation to pursue an organic act in the past has been to streamline NOAA’s mission, purpose and authorities and enable its political leadership to manage at the agency level, realigning the budget to match the Administration’s priorities. With this strategic objective in

mind, the NOAA Organic Act efforts have been attempted numerous times dating back to the late 1970s. This highlights the risk of the opportunity cost in time and resources that could be applied to other priority activities. If pursued, interviewees emphasized that it would be necessary to engage at a high enough level within the Executive Branch to allow direct interaction with key leaders in Congress (i.e., the Chairmen of the Authorizing and Appropriations Committees) which is consistent with the pre-conditions for passage of the Space Act of 1958. Interviewees also emphasized that that timing is important. A prudent approach would be to have the act prepared in a draft to bring forward, once an initial advocacy is secured in either the White House or Congress. Based on history, such an endeavor would require the perseverance of a small cadre of leaders and influencers rallying to a common purpose and committed to a multi-year campaign.

List of Interviewees

VADM Conrad C. Lautenbacher, Jr. USN (ret.), Under Secretary for Oceans and Atmosphere within the U.S. Department of Commerce and NOAA Administrator (2001–2008). As NOAA Administrator, VADM Lautenbacher actively but unsuccessfully pursued an organic act for NOAA.

Craig McClean, Acting NOAA Chief Scientist and Assistant Administrator for Ocean and Atmospheric Research.

Scott Rayder, Senior Advisor to the President, University Corporation for Atmospheric Research, served as NOAA Chief of Staff from (2001–2008).

Kathryn D. Sullivan, NOAA Administrator (2014–2017), NOAA’s Deputy Administrator and later as Under Secretary for Oceans and Atmosphere within the United States Department of Commerce.

Glenn Talia, Senior Legal Counsel at NOAA in the Weather, Satellites and Research Section.

Eric Webster, Vice President and General Manager of Environmental Solutions at Harris Corporation, served as NOAA’s Director of Congressional Affairs (2005 - 2008).

Table 1: List of bills representing some form of an organic act for NOAA that have been introduced by either the House or the Senate.

Bill	Congress	Sponsor	Notes and Result
S. 2224	95 th Congress (1977-1978)	Sen. Warren Magnuson (D-WA)	No action taken.
H.R. 9708	95 th Congress (1977-1978)	Rep. John Murphy (D-NY-17)	Lack of agreement on scope, and desire to wait for completion of natural resource reorganization study derailed the initiative. Hearings held, but no legislative action taken.
H.R. 5347	96 th Congress (1979-1980)	Rep. John Breaux (D-LA-7)	No action taken.
H.R. 4864	98 th Congress (1983-1984)	Rep. Wes Watkins (D-OK-3)	No action taken.
H.R. 3355	98 th Congress (1983-1984)	Rep. James Scheuer (D-NY-8)	No action taken.
H.R. 5070	100 th Congress (1987-1988)	Rep. Edwin Forsythe (R-NJ-13)	No action taken.
H.R. 4966	107 th Congress (2001-2002)	Rep. Mike Lowry (D-WA-7)	No action taken.
H.R. 984	108 th Congress (2003-2004)	Rep Wayne Gilchrest (R-MD-1)	No action taken.
H.R. 4546	108 th Congress (2003-2004)	Rep. Wayne Gilchrest (R-MD-1)	Bill was House response to U.S. Commission on Ocean policy recommendation. Hearings held. No action taken.
H.R. 4607	108 th Congress (2003-2004)	Rep. Vernon Ehlers (R-MI-3)	Bill was White House response to U.S. Commission on Ocean policy recommendation. Bill reflected Administration's version of Organic Act. H.R. 4368 to move NOAA to DOI complicated the efforts. Hearings held, but no action taken.
H.R. 50	109 th Congress (2005-2006)	Rep. Vernon Ehlers (R-MI-3)	Hearings were held, NOAA Administrator concerned bill's scope was too narrow. No action taken.
H.R. 5450	109 th Congress (2005-2006)	Rep. Vernon Ehlers (R-MI-3)	Bill passed by House and referred to Senate. No action was taken by Senate.
H.R. 250	110 th Congress (2007-2008)	Rep. Vernon Ehlers (R-MI-3)	No hearings held. No action taken.
H.R. 300	111 th Congress (2009-2010)	Rep. Vernon Ehlers (R-MI-3)	Initiative terminated due to objections by competing stakeholder interests regarding realignment within DOI (as occurred in 2003-04 effort) as opposed to DOC or as an independent agency. No action taken.

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About the Author

Tim Hall is the Principal Director for the Civil Space Programs Operation Division at The Aerospace Corporation. In this role, he supports the National Oceanic and Atmospheric Administration’s Satellite and Information Service. He has a breadth of space domain experience spanning project management, space systems engineering, and constellation architecture. During a 21-year Air Force career he served as a weather officer, acquisition program management specialist, and space

professional. Mr. Hall specializes in environmental analytics focused on applied artificial intelligence as well as weather satellite instrumentation, applied climatology and weather forecasting. He is a Certified Consulting Meteorologist (CCM).

Mary Kicza is a retired Senior Executive who served in NOAA and NASA leadership positions. As the head of NOAA’s Satellite and Information Service, Ms. Kicza led restructure of the Geostationary Operational Environmental Satellite (GOES-R) Series and Joint Polar Satellite System (JPSS), and led successful operations of NOAA environmental satellites and national data centers. As NASA Deputy Associate Administrator (AA), Ms. Kicza led NASA field center integration and as AA for Biological and Physical Research developed U.S. research priorities for the International Space Station. Ms. Kicza holds a BSEE from California State University and an MBA from Florida Institute of Technology.

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