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MARKUP SESSION

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H. R. 5710

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A BILL TO AUTHORIZE APPROPRIATIONS FOR FISCAL
YEAR 1976 FOR THE PURPOSE OF CARRYING OUT
TITLES I AND III OF THE MARINE PROTECTION
RESEARCH AND SANCTUARIES ACT OF 1972, AS AMENDED

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H. R. 6282

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A BILL TO EXTEND THE MARINE PROTECTION, RESEARCH
AND SANCTUARIES ACT FOR TWO YEARS

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MONDAY, APRIL 28, 1975

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House of Representatives,
Joint Subcommittees on Fisheries and Wildlife
Conservation and the Environment, and the
Subcommittee on Oceanography of the
Committee on Merchant Marine and Fisheries,
Washington, D. C.

The Subcommittees met at 10:10, a.m., in Room 1334

Longworth House Office Building, the Honorable John M. Murphy,
presiding.

Present: Representatives Murphy, Studds, Hubbard, Bonker,
D'Amours, Patterson, Oberstar, Mosher, Forsythe and Emery.

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1 Staff present: Ned P. Everett, Counsel; Wayne Smith,
2 Minority Counsel; George Mannina, Minority Counsel; and Carl
3 Perian, Professional Staff Member.

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5 Mr. Murphy. The Subcommittees will come to order.

6 In the absence of a quorum we are going to proceed on the
7 consideration of H. R. 5710 and H. R. 6282, to extend the
8 appropriations authorization of the Marine Protection, Research
9 and Sanctuaries Act of 1972, and I will ask the counsel to
10 briefly run through the authorization.

11 Mr. Everett. Mr. Chairman, since a number of you were not
12 here for the hearing, there is a summary in each one of your
13 folders dated April 28, 1975, which kind of gives a little
14 background on the legislation and the departmental reports,
15 and the position of the various agencies of the legislation.

16 So if you want to, we will take five minutes, and we can
17 run through it briefly, and give us a refresher, and inform
18 the new members of it.

19 The Marine Protection, Research, and Sanctuaries Act of
20 1972 (P.L. 92-532), better known as the "Ocean Dumping Act,"
21 is a product of joint action by the Subcommittee on Fisheries
22 and Wildlife Conservation and the Environment and the Subcom-
23 mittee on Oceanography during the 92nd Congress.

24 The Act is composed of three Titles, Title I places an
25 outright ban on the dumping of high-level radioactive wastes

1 and all biological, chemical and radiological warfare agents
2 into our ocean waters. Also, it prohibits the dumping into
3 these waters of all waste material, except as may be authorized
4 by permit issued by the Administrator of the Environmental
5 Protection Agency or the Secretary of the Army, as the case may
6 be.

7 The Administrator is charged with the requirement of
8 regulating the dumping of all waste material, except for
9 dredged materials, which is regulated by the Army Corps of
10 Engineers.

11 In general, the Administrator controls all ocean-dumped
12 waste material by the issuance of permits, designating areas
13 where ocean dumping is prohibited, and establishing criteria
14 to be met when considering and reviewing applications for
15 ocean dumping of waste material.

16 The Army Corps of Engineers is charged with the issuance
17 of permits for ocean dumping of dredged materials based on
18 criteria established by the Administrator.

19 The Coast Guard is charged with the responsibility of
20 monitoring and surveillance of the transportation or dumping
21 of all waste materials.

22 Title I authorized to be appropriated to carry its pur- money
23 poses \$3.6 million for fiscal year 1973 and \$5.5 million for
24 each of fiscal years 1974 and 1975.

25 Title II of the Act requires the Secretary of Commerce

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1 to carry out comprehensive and continuing programs of research
 2 on both the short range and long range effects of the dumping
 3 of waste material into our oceans, brackish waters, and the
 4 waters of the Great Lakes.

5 Title II authorized to be appropriated to carry out its *money*
 6 purposes up to \$6 million per year for fiscal years 1974, 1975
 7 and 1976. (It is to be noted that the appropriation authoriza-
 8 tion under this title does not expire until June 30, 1976,
 9 whereas the appropriations on Titles I and III expire June,
 10 1975).

11 Title III of the Act authorizes the Secretary of Commerce
 12 to designate certain areas in our ocean waters, brackish waters,
 13 and Great Lakes as marine sanctuaries which are deemed neces-
 14 sary for the preservation or restoration of such areas for their
 15 conservation, recreational, ecological, or esthetic values. *1 month*

16 Title III authorizes to be appropriated \$10 million per *money*
 17 year for fiscal years 1973, 1974, and 1975.

18 Now, H. R. 5710, since we had not received an Executive
 19 Communication from the Administration at the time it was intro-
 20 duced on April 8, 1975, and would extend Titles I and III of
 21 the Act for one additional year; that is until June 30, 1976, at
 22 which time all three titles of the Act would expire at the same
 23 time.

24 The funds authorized to be appropriated under Title I
 25 based on this legislation would be \$1.5 million, and under

hws-5 1 Title III, \$10 million.

2 H. R. 6282 (Which was introduced on April 22, 1975,
3 as a result of an Executive Communication from the Environmental
4 Protection Agency) would extend Title I of the Act for a period
5 of two years, that is until June 30, 1977. The funds author-
6 ized to be appropriated under Title I would be \$1,260,000 for
7 fiscal year 1976, and \$1.4 million for fiscal year 1977. (It
8 is to be noted that the Administration bill would not authorize
9 any funding for Title III, which expires June 30, 1975.

10 However, it should be noted that the Secretary of Commerce,
11 in his report on the legislation, recommended funding Title
12 III for two additional years.) You can see the comment later
13 on.

14 It is the first time I have seen this happen, but the
15 Executive Communication came from EPA, and yet it must not
16 have been cleared through Commerce, because Commerce comes out
17 with a separate report, and comes up with the funding on a two
18 year funding.

19 Departmental reports: Commerce -- in commenting on H. R.
20 5710, it supports an extension of Title I, but defers to recom-
21 mendations of the regulatory agencies administering Title I
22 as to the period for extension and the funding requirements.

23 Also, it recommends that there be authorized to be
24 appropriated to carry out Title III of the Act \$1,250,000
25 for the period June 30, 1975 to October 30, 1976, which,

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1 incidentally, picks up this transition period which we will
2 hear more about later, and \$10 million for fiscal year 1977.

3 Although H. R. 5710 does not address Title II of the Act,
4 since it does not expire until June 30, 1976, Commerce supports
5 an extension of the Act through June 30, 1977, at a level of
6 funding which is still under review at this time in connection
7 with preparation of the fiscal year 1977 budget.

8 Based on subsequent information, based from questions
9 submitted by the staff to NOAA, it revealed the following
10 information:

11 No funds have ever been appropriated under Title III.
12 About \$200,000 from other sources have been expended since
13 inception of the Act. A total of about two man-years per
14 fiscal year has been involved.

15 The President's budget request for fiscal year 1976
16 and the transition period does not contain any request for
17 funds under Title III. NOAA's budget request to the Secretary
18 has not been submitted by the Secretary to OMB.

19 The present support for authorizations for fiscal year
20 1976 and 1977 does not necessarily imply support for actual
21 appropriation of the total amounts that are being supported
22 in the authorization bill.

23 In 1972, NOAA requested \$4 million for Titles II and III.
24 Secretary of Commerce did not approve the request.

25 In 1976, NOAA requested \$6 million under Title II from

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1 the Secretary, which would be the full funding from the author-
2 ization that was in existence. The Secretary approved \$2
3 million. OMB disapproved the entire request.

4 EPA. As a result of an Executive Communication, EPA
5 supports an extension of Title I, pursuant to H. R. 6232,m
6 for a period of two years, as follows: \$1,260,000 for fiscal
7 year 1976, and \$1,400,000 for fiscal year 1977.

8 Subsequent information submitted by EPA in response to
9 questions reveals the following:

10 EPA appropriations have been as follows: \$290,000 for
11 fiscal year 1973, \$1,296,000 for fiscal year 1974; and
12 \$1,320,000 for fiscal year 1975.

13 Based on the order of \$200,000 per cruise and four cruises
14 per year, it would place an average disposal site survey at
15 \$800,000 annually. Larger areas would cost 25 percent more.

16 I might comment at this time that testimony at the hear-
17 ings indicated that there are about 11 sites that are under
18 consideration for survey. No baseline surveys have been
19 completed at this time, and it takes about four cruises for
20 a baseline survey per site, so you are talking about 44 cruises
21 based on those 11 site surveys. They should do all of them in
22 one year or two years.

23 This will give you some idea of the magnitude of funding
24 that would be needed to complete the baseline surveys at the
25 sites.

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1 Of 9,000 people employed, EPA has programmed only 26
2 positions for ocean dumping.

3 In fiscal year 1975, EPA reimbursed NOAA for ocean dumping
4 program assistance up to \$186,000; the Navy, \$40,000; NASA,
5 \$5,000 and the Coast Guard has done a considerable amount with
6 EPA, but has not made any charge.

7 The Department of Army and Transportation through the
8 Coast Guard neither reported on the legislation since they
9 receive funding to carry out their functions under the Act from
10 authorizations provided under other Acts.

11 For example, in fiscal year 1976, the Army Corps of
12 Engineers received funds in carrying out Title I of the Act
13 from other acts as follows: operation and maintenance general
14 appropriation, \$500,000; dredged material research program,
15 which is being carried out in Louisiana, or Alabama, it ---

16 Mr. Murphy. Mississippi.

17 Mr. Everett. Mississippi, yes. \$9.4 million; operations
18 and maintenance appropriations for specific channel and harbor
19 projects, \$500,000.

20 So the Corps of Engineers is not requesting any funding
21 whatsoever under the Ocean Dumping Act since it is so closely
22 related to other Acts which it administers and is going forward.
23 So they utilize the money from these other Acts to carry out
24 its function under the Ocean Dumping Act.

25 Then the Coast Guard for fiscal year 1976 receives \$293,000

ws-9 1 for ocean dumping surveillance activity from its "operating
2 expenses."

3 That, Mr. Chairman, gives the general rundown on the
4 situation and where we stand at this time. I think it is a
5 big decision for the Committee to make, or the Subcommittee,
6 whether to go for a one year extension or a two year exten-
7 sion, as proposed by the Administration, and then how much
8 funding you would like to give, should you decide to go for
9 either one or two years.

10 Mr. Murphy. I would like to ask counsel this: I have
11 here a response from the Coast Guard from our request for
12 information dated April 22nd, and they replied on the 23rd of
13 April, and they announce \$293,000 of their operating expenses
14 for ocean dumping surveillance activity, and also an extensive
15 reply on April 23rd from our request from the Department of
16 the Army, Corps of Engineers, concerning the same subject.

17 Now, have we received any response from EPA to our
18 correspondence to them on this subject?

19 Mr. Everett. We sent out some correspondence Friday
20 afternoon about four o'clock, based on testimony that was given
21 and the Corps of Engineers brought their response in this
22 morning. But I have not seen anything from EPA or NOAA.
23 I imagine that they were running short of time here.

24 Mr. Murphy. How many communications did we sent to EPA?

25 Mr. Everett. Well, we sent one earlier, and then I sent

1 one at the direction of Congressman Legget on Friday after-
2 noon, in response to the testimony at the hearing on Friday.

3 Mr. Murphy. How about telephone?

4 Mr. Everett. Telephone calls, there have been a number
5 of calls. I think Wayne Smith made a number of calls, and
6 probably Carl, in regard to getting this information.

7 Mr. Murphy. I would entertain the motion that the Com-
8 mittee consider H. R. 5710, which is the Committee bill, in
9 lieu of H. R. 6282, which was the Administration bill.

10 Mr. Forsythe. I would so move.

11 Mr. Murphy. This is for the purpose of consideration.

12 Mr. Mosher. Second.

13 Mr. Murphy. Those in favor signify by saying aye.

14 (Chorus of "ayes.")

15 Mr. Murphy. Those opposed, no.

16 (No response.)

17 Mr. Murphy. We will consider H. R. 5710.

18 Mr. Forsythe. Mr. Chairman, 5710 does provide for just a
19 one year extension of Title I and III, and I think that is a
20 very good reason for using that as a vehicle. I firmly be-
21 lieve that we should extend for a one year period, most
22 particularly at this time.

23 There is, I guess I will use the word, "confusion," as
24 to just what the feeling is on this ocean dumping as far as
25 EPA is concerned, and there is difficulty in finding out how

1 dedicated they are in relation to ocean dumping needs.

2 Mr. Murphy. I think the record shows that last Congress
3 the Subcommittee, under its Chairman at that time, had five
4 hearings concerning ocean dumping, and still this year, with
5 our requests for specific information, we still have not been
6 able to ascertain the intention of EPA to fulfill the Ocean
7 Dumping Act, and as a consequence I am inclined to agree with
8 you gentlemen that a one year authorization certainly would
9 serve notice for the intent of the Committee, and we already
10 have programmed here in field hearings to try and determine
11 just the extent and nature of the appropriate needs to fulfill
12 the intent of the Ocean Dumping Act.

13 Mr. Mosher. Do sense there is a very strong inhibition by
14 OMB and EPA?

15 Mr. Murphy. I think the gentleman is correct.

16 Mr. Mosher. Maybe we ought to talk to OMB.

17 Mr. Murphy. Well, in our earlier hearings we found a
18 reluctance of the Department to include an appropriation figure
19 in even its report.

20 Of course, they are in favor of the intent of the Ocean
21 Dumping Act, but in each instance where we look for a dollar
22 figure to implement the program we could find none. We found
23 great language support.

24 We are kind of leaning forwards in foxhole in this situ-
25 ation in lieu of a bona fide attack to carry out the intent of

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1 the Act.

2 I also have a question about the \$1,260,000 that the
3 Administration requested.

4 Mr. Forsythe. Well, Mr. Chairman, I would move that the
5 one million and a half, that that be stricken, and \$2 million
6 replace it for the fiscal year 1976. That would give us a
7 package for \$2 million for 1976, and a one year authorization.

8 I recognize that may not really be as significant as I
9 myself would like to see it, but I think it at least makes
10 the point that we expect more from implementation of this Act,
11 and to this point.

12 Mr. Murphy. I think the gentleman is right.

13 We are, of course, in the first year of the Budget Com-
14 mittee. I think that next year we will see an entirely
15 different approach by the Budget Committee and, therefore, I
16 think that a one year limitation is well founded at this time.

17 I would also like to see in the report, if counsel would
18 prepare such language, that would indicate to the agencies the
19 strong feelings of this Subcommittee and Full Committee on
20 the remarks previously made by both the Chair and the gentle-
21 man from Ohio and New Jersey, that we certainly are not at
22 all pleased with the response, particularly by EPA, in imple-
23 menting the Act.

24 It certainly -- what is it? Four years now?

25 Mr. Perian. Two.

hws-13 1 Mr. Murphy. Two years to formulate their programs that
2 come before us, and as a consequence, the one year legislation
3 is what we are recommending.

4 Mr. Mosher. Mr. Chairman, I would like to associate my-
5 self with the gentleman from New Jersey, and second his amend-
6 ment to raise the \$2 million.

7 I recognize that if our colleague from Ohio, Mr. Ashley,
8 were here, he would raise the question of the Budget Committee.

9 But, nevertheless, I think we have to do something here
10 to indicate the emphasis we need on this in moving ahead.

11 Mr. Murphy. Is there further discussion on the amendment?

12 Mr. Studds. Mr. Chairman.

13 Mr. Murphy. The gentleman from Massachusetts.

14 Mr. Studds. If I may ask one question of counsel.

15 I apologize for not being able to attend the hearings.

16 Would you like me to withhold? I have a question per-
17 taining to Title III.

18 Mr. Murphy. Let us dispose of this amendment, and then
19 we will go to that.

20 Any other discussion on this amendment?

21 (No response.)

22 Mr. Murphy. Those in favor signify by "aye."

23 (Chorus of "ayes.")

24 Mr. Murphy. Opposed?

25 (No response.)

1 Mr. Murphy. The ayes have it. The amendment is agreed
2 to.

3 The gentleman from Massachusetts.

4 Mr. Studds. I gather from skimming the testimony very
5 little has been done under Title III.

6 Mr. Everett. No money has been appropriated whatsoever.
7 What little has been done has been borrowed money from other
8 funds, other programs.

9 The monitor sancurary is the first one designated off the
10 coast of North Carolina, and that would be \$60,000.

11 Mr. Studds. Do you know how broad an area that is?

12 Mr. Everett. No, I do not. But it is not very broad.

13 Mr. Studds. With respect to the designation of the
14 sanctuary under Title III, does that prohibit any dumping of
15 any kind in that area?

16 Mr. Everett. Yes.

17 Mr. Studds. Is that all it does?

18 Mr. Everett. I would say I do not have the language
19 before me. It would give it more protection than just dumping.
20 It would have the authority to control all activities in the
21 area.

22 Mr. Studds. For example, would it have implications for
23 the possibility for offshore drilling?

24 Mr. Everett. I am sure once you designate an area as
25 a sanctuary, just about all activities cease, except those

1 compatible with the sanctuary.

2 Mr. Studds. Supposing we had a sanctuary, say, ten miles,
3 extending ten miles from shore, would it prohibit drilling 50
4 miles from shore?

5 Mr. Everett. I do not know. We did not get into that at
6 the hearing.

7 I do have a copy of the monitor designation somewhere in
8 my files.

9 Mr. Studds. Mr. Chairman, I do not want to hold up this
10 procedure here. It seems to me that it is a question of some
11 interest.

12 Mr. Everett. Maybe you can browse through that.

13 Mr. Studds. I do not want to take your time. I believe
14 Title III was part of my predecessor. I am not sure.

15 So little action has occurred. Let me withdraw the
16 question for the moment. I do not want to delay the proceedings
17 here.

18 But I would like to determine if we could, to know what
19 this would mean, and the fact if we do designate a marine
20 sanctuary, assuming that it would prohibit drilling activities
21 within the sanctuary, would it also have an impact of any kind
22 or pipelines running beneath the ocean bed across the sanctu-
23 ary.

24 We do not need that now.

25 Mr. Everett. Okay. Subsection (f) of Title III says:

hws-16 1 "After a marine sanctuary has been designated under this
2 section, the Secretary, after consultation with other inter-
3 ested Federal agencies, shall issue necessary and reasonable
4 regulations to control any activity permitted within the desig-
5 nated marine sanctuary, and no permit, license, or other auth-
6 orization issued pursuant to any other authority shall be
7 valid unless the Secretary shall certify that the permitted
8 activity is consistent with the purposes of this title, and
9 can be carried out within the regulations promulgated under
10 this section."

11 Mr. Studds. Surely the Secretary would have discretion
12 to consider that.

13 Mr. Everett. Right.

14 Mr. Studds. Thank you.

15 Thank you, Mr. Chairman.

16 Mr. Murphy. Is there any further discussion on the
17 legislation?

18 (No response.)

19 Mr. Murphy. The Chair would entertain a motion that the
20 Subcommittee report H. R. 5710 as amended, and to authorize
21 the staff to make technical corrections, and that we report
22 this legislation at a meeting of the two Subcommittees at its
23 next session.

24 Mr. Mosher. So moved.

25 Mr. Everett. Mr. Chairman, I might point out that Section

hws-17 1 2 of the bill authorizes \$10 million to be appropriated for
2 Title III, which is a carry forward of the existing authoriza-
3 tion in which no monies have been appropriated at this time.

4 Also, we have to face up to the transition period in the
5 budget process from June 30, 1976 to October 30, 1976.

6 I called the Legislative Counsel this morning, and he
7 said most of the committees are taking care of this transition
8 period by separate authorization, and so it might be that you
9 want to include this in your motion.

10 I guess roughly we could just figure one-fourth of the
11 actual amount authorized to be also authorized for the transi-
12 tion period, if that is suitable.

13 Mr. Mosher. I will include that in my motion.

14 Mr. Murphy. You have heard the motion.

15 Mr. Everett. One other thing, too. Excuse me.

16 Title II we are not concerned with in this bill, but we
17 might as well take care of the transition period there, since
18 that expires next year. This will make a complete package.

19 Title I, II and III all expire October 30, 1976, and we
20 could utilize that one-fourth of the authorized level of fund-
21 ing there, which is \$6 million, for the transition period.

22 Mr. Murphy. And the staff will make the necessary techni-
23 cal corrections.

24 You have heard the motion.

25 Those in favor signify by saying aye.

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(Chorus of "ayes.")

Mr. Murphy. Opposed, no.

(No response.)

Mr. Murphy. The ayes have it.

Let the record reflect it was unanimously agreed to by the
Subcommittees.

Is there further business?

(No response.)

Mr. Mosher. I move we adjourn.

Mr. Murphy. The Subcommittee will stand adjourned subject
to the call of the Chair.

(Whereupon, at 10:40 a.m., the Subcommittees adjourned,
subject to the call of the Chair.)

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