GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

JUN 26 2007

The Honorable Nick J. Rahall, II
Chairman, Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter provides the Bush Administration's views on H.R. 1205, the *Coral Reef Conservation Amendments Act of 2007*, which reauthorizes and amends the *Coral Reef Conservation Act of 2000* (*CRCA*).

The Administration believes that improvements to the CRCA are captured most effectively by our reauthorization proposal, the *Coral Reef Ecosystem Conservation Amendments Act of 2007*. The Administration's bill makes several amendments that we believe are necessary to effectively implement the objectives of the *CRCA*. The Administration's proposed changes would clarify the need for coral reef protection, provide tools for stronger partnerships, and make several technical and clarifying amendments. The most significant change adds authorities to address damage to coral reefs by providing authorization for funds to be set aside into an emergency response fund, making parties responsible for damage to reefs liable for the costs of response and restoration, and providing the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI) with various enforcement authorities.

The Administration's proposed legislation would for the first time establish a damages-recovery process for all coral reefs, including those in national wildlife refuges, and increase the effectiveness of the current authorities for recovering damage to reefs in national parks and national marine sanctuaries.

The Administration supports reauthorization of the *CRCA* and NOAA's Coral Reef Conservation Program. This program implements coral reef conservation activities highlighted in the President's *U.S. Ocean Action Plan* and facilitates broader interagency efforts with our partners. The Administration's language also provides statutory authorization for DOI's coral conservation activities, which are now conducted under general conservation authorities that do not mention coral reefs.

While H.R. 1205 provides needed authority and a funding mechanism for emergency response activities associated with ship groundings and abandoned vessels, the Administration strongly prefers the more comprehensive language of our proposed legislation. To that end, we recommend building on H.R. 1205 by also including specific prohibitions, liability provisions, civil administrative and judicial enforcement authority, permitting authority, and authorization to promulgate implementing regulations. We refer to the Administration's *Coral Reef Ecosystem Conservation Amendments Act of 2007* for specific language recommendations, which are important for us to effectively cover all the needed changes. Including these provisions would allow NOAA and DOI to better respond to emergency situations affecting any coral reefs throughout the Nation's waters. We need the

authority to not only restore impacted coral reefs, but also to hold parties who run boats aground on, or otherwise damage coral reefs, liable for the associated damages. Currently only those coral reefs protected under separate legal authorities, such as corals located within most national parks and national marine sanctuaries, receive such protection. We also request that the authorization levels be consistent with the President's FY 2008 Budget Request, as in the Administration's proposed bill.

The Administration generally supports the concept of community-based planning and management included in this bill, which provides an opportunity and incentive for capacity building at the community level. NOAA has supported a number of such community-led efforts through the existing Coral Reef Conservation Program grants. We would strongly encourage coordination of the new grants program with local action strategies and state and territorial natural resource management agencies. The bill should support balancing community-based coral protection initiatives with the overall state and territorial marine resource management programs. Finally, we would like to ensure that the new grants program does not adversely affect the core activities of NOAA's national program.

We appreciate the opportunity to present the Administration's views on H.R. 1205. As stated, we prefer the Administration's proposed *Coral Reef Ecosystem Conservation Amendments Act of 2007*, but also appreciate the efforts of this Committee to focus on this important issue. Additional, specific comments on H.R. 1205 are enclosed. We look forward to working with you to reauthorize the *Coral Reef Conservation Act of 2000*.

The Office of Management and Budget has advised the Department that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

John J. Sullivan

Enclosure

cc: The Honorable Don Young,
Ranking Member, Committee on Natural Resources

The Honorable Madeleine Z. Bordallo
Chairwoman, Subcommittee on Fisheries, Wildlife and Oceans

The Honorable Henry Brown
Ranking Member, Subcommittee on Fisheries, Wildlife and Oceans

Specific Administration Recommendations on H.R. 1205
the "Coral Reef Conservation Amendments Act of 2007"

1. The Administration objects to section 7 of H.R. 1205, and recommends deletion of this section. The Administration believes that it is more appropriate to support research via grants issued through a competitive, merit-based process.

2. The Administration requests that section 20 of the Administration's bill, which authorizes Department of the Interior coral reef conservation activities, be added to H.R. 1205.

3. We note that section 3 (revising sections 206(a) and (b)) of H.R. 1205 authorizes the Administrator to "undertake or authorize action" for emergency response purposes. We recommend that any "action" taken be consistent with international law (and treaties). Therefore, we recommend section 206(b) be amended to read as follows:

   "(b) Actions Authorized.— Any action authorized by subsection (a) is to be consistent with international law and treaties, and may include vessel removal and emergency re-stabilization of the vessel and any impacted coral reef."

4. The authority to "oversee implementation of the policy and Federal agency responsibilities set forth in Executive Order 13089 and the national coral reef action strategy" and to "implement appropriate strategies and actions to promote conservation and sustainable use of coral reef resources worldwide" is an Executive Branch function that may only be exercised by duly appointed officers of the United States. Individuals who are invested by legal authority with a portion of the sovereign powers of the Federal Government and whose duties are continuing in nature — such as the members of the Task Force — are officers of the United States and must be appointed in conformity with the Appointments Clause of the U.S. Constitution. Although most members of the Task Force are duly appointed officers of the United States who may be assigned the additional duties as Task Force members as long as they are germane to their existing duties, the seven governors are not officers of the United States, and Congress may not constitutionally assign them authority that may only be exercised by such federal officers. We therefore recommend making the functions of the Task Force purely advisory.