

## SECTION-BY-SECTION ANALYSIS

### *Global Changes.*

Throughout the bill:

- All references to “Administrator” have been changed to “Secretary” to reference the Secretary of Commerce.<sup>1</sup>
- With the exception of those sections specifically dealing with response to damages, all references to “coral reefs” have been changed to reference “coral reef ecosystems.” This change clarifies that most activities under the CRCA are conducted with respect to the larger ecosystem.

### *Section 1. Short Title and References.*

This section of the bill cites the short title as the “Coral Reef Ecosystem Conservation Amendments Act of 2007,” and establishes that, unless otherwise noted, references to amendments or repeal of a section or other provision are to be considered to be made to a section or provision of the Coral Reef Conservation Act of 2000 (Public Law 106-562; 16 U.S.C. §§ 6401 *et seq.*).

### *Section 2. Redesignations.*

This section also provides for the redesignation of sections of the original Act, up front, to prevent any confusion.

### *Section 3. Findings and Purposes.*

This section amends section 202 of the CRCA to provide background information and support for the protection of coral reef ecosystems by adding a new subsection (a) listing six specific findings describing the value of such ecosystems. A new purpose is added to subsection (b) to clarify the additional focus of the program on response to damages (changes proposed by section 9 of this bill).

### *Section 4. National Coral Reef Action Strategy.*

This section is amended to require the Secretary of Commerce to consult with the U.S. Coral Reef Task Force, in developing the National Coral Reef Action Strategy.

### *Section 5. Coral Reef Conservation Program.*

This section amends section 204 of the CRCA to clarify the focus of the grants program.

Subsection (f), as redesignated, is amended by clarifying that activities funded by grants will enhance coral reef ecosystems both nationally and internationally and by adding two additional focus areas:

Due to the increasing prevalence of coral disease and bleaching events it is important to focus on these issues with explicit language. Bleaching is added to paragraph (4) to

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<sup>1</sup> Except, as outlined in revised Section 217(14), when “Secretary” refers to the Secretary of the Interior.

- emphasize that it is one of the impacts on corals we wish to better understand. Responding to both coral disease and bleaching events is also added as a new focus in paragraph (10).
- Adding a focus on increasing understanding of the function of coral reef ecosystems as protection for coastal communities in paragraph (6). Coral reefs have been reported to provide coastal protection from natural disasters (for example, following the Indian Ocean tsunami, December 2004). Monitoring would provide more information on this function of coral reef ecosystems.

*Section 6. Coral Reef Conservation Fund.*

This section amends section 205 of the CRCA by broadening the authority to enter into agreements with multiple non-profit organizations. The current language only provides the authority to partner with one non-profit organization for the purpose of maintaining the Coral Reef Conservation Fund. This expanded authority will increase our flexibility in working with external partners, and strengthen those partnerships, for the purposes of promoting coral reef ecosystem conservation.

*Section 7. Agreements.*

This section would allow the Coral Reef Conservation Program to enter into a broad range of partnerships to undertake coral reef conservation efforts.

Subsection (a) permits the Secretary to enter into and perform contracts, leases, grants, and cooperative agreements, to carry out the purposes of the Act.

Subsection (b) permits the use, with consent, of land, services, equipment, personnel, and facilities. Such use could occur on a reimbursable or non-reimbursable basis.

Subsection (c) provides the Secretary the authority to apply for, accept, and use grants or other financial assistance.

*Section 8. Emergency Assistance.*

This section amends section 207 of the CRCA, as redesignated, to allow NOAA to more broadly provide assistance to State, local and territorial governments in emergency situations. This change is important because grants are not an efficient funding mechanism for emergency response, due to the time required for the processing and awarding of grants. Assistance is to be provided in cooperation with the Federal Emergency Management Agency, as appropriate.

*Section 9. National Program.*

This section amends section 208 of the CRCA, as redesignated, to clarify the geographic focus of the national program, to include a focus on socioeconomic research, and to provide a mechanism for funding emergency response, stabilization, and restoration activities.

Subsection (a), as amended, specifies a focus on conducting national program activities with local, regional, or international programs and partners, as appropriate. This cooperation was previously only specified in paragraph (b)(5), as amended, regarding cooperative conservation and management, but should be applicable to all activities.

Subsection (b) expands authorized activities under the national program:

- Paragraph (1) is amended to clarify that research conducted includes socioeconomic as well as scientific research.
- Paragraph (3) is amended to clarify that NOAA can directly remove abandoned fishing gear, marine debris, and abandoned vessels as well as assist States.
- Paragraph (4) authorizes the additional activity of responding to incidents and events that threaten and damage coral reef ecosystems, including disease and bleaching.
- Paragraph (6) authorizes archiving, management and distribution of data sets and providing coral reef ecosystem assessments and services to the general public.

Subsection (c) is added to provide guidelines for long-term stewardship of environmental data, products and information.

Subsection (d) is added to establish an account to provide for emergency response, stabilization, and restoration activities. The money contained in this account will allow the Government to immediately respond to unforeseen, emergency events. This emergency funding is necessary to pay for work that needs to begin before we are able to determine liability and recover funds through damage assessment.

#### *Section 10. Prohibited Activities.*

This section is one of six new sections (209-214), which are proposed for inclusion in the CRCA to provide a range of tools to allow for the response to damages to coral reefs.

This section proposes a new Section 209 in the CRCA, which establishes prohibited activities pertaining to coral reefs and provides specific exceptions to those prohibitions. This section allows the Secretary to address and reduce the occurrence of activities that cause damage to coral reefs. The provisions in this section do not affect federal, state or local laws or regulations providing protection to coral reefs.

Subsection (a) prohibits any person from destroying, causing the loss of, or injuring any coral reef or component thereof with appropriate exceptions.

- Paragraph (1) excludes destruction, loss or injury caused by the use of fishing gear in a manner not prohibited under the Magnuson-Stevens Fishery Conservation and Management Act, or other federal or State law.

- Paragraph (2) excludes destruction, loss or injury caused by an activity authorized by federal or State law, including, but not limited to lawful discharges from vessels of graywater, cooling water, engine exhaust, ballast water and sewage from marine sanitation devices; provided such activity does not include vessel groundings, vessel scrapings, anchor damage, excavation not authorized by federal or State permit, or similar activities.
- Paragraph (3) excludes destruction, loss or injury that is the necessary result of *bona fide* marine scientific research, provided that it does not include excessive sampling or collecting, vessel groundings, vessel scrapings, anchor damage, excavation, or similar activities.
- Paragraph (4) excludes destruction, loss or injury caused by a Federal Government agency responding to emergencies that pose a threat to human health or safety, the marine environment, or national security, or an activity necessary for law enforcement or search and rescue. The paragraph requires that any such destruction, loss or injury could not have been reasonably avoided.

Subsection (b) makes it unlawful to interfere with the enforcement of the CRCA such as refusing to permit an authorized officer to conduct a search or inspection, resisting an authorized officer, or submitting false information in connection with the enforcement of the CRCA.

Subsection (c) makes it unlawful to violate any provision of the CRCA or any permit or regulation issued pursuant to the CRCA.

#### *Section 11. Destruction of Coral Reefs.*

This section proposes a new section 210, which establishes liability for damage to coral reefs resulting from the conduct of the prohibited activities listed in section 209. This section provides a mechanism to recover response costs and damages from parties responsible for damages to coral reef ecosystems (e.g., from ship groundings) in order to assess the damages and undertake restoration activities.

Subsection (a) includes the following provisions to establish liability:

- Paragraph (1) makes anyone who destroys, causes the loss of or injures a coral reef, or creates an imminent risk thereof, jointly and severally liable for response costs and damages; costs of vessel seizure, forfeiture, storage, and disposal; and interest.
- Paragraph (2) makes any vessels used to destroy, cause the loss of, or injure coral reefs liable in rem for response costs, damages, seizure, forfeiture, storage, and disposal, and interest.
- Paragraph (3) provides defenses for an act of God, an act of war, or an act or omission of a third party.
- Paragraph (4) states that there are no limits to liability.

Subsection (b) provides authority for response actions and damage assessment, including actions to prevent or minimize the destruction, loss of, or injury to coral reefs or the risk of these impacts. This section also requires consultation with States regarding damage assessment within State waters and stipulates that there will be no double recovery for the same incident.

Subsection (c) allows for civil judicial actions to recover response costs and damages and specifies venue.

Subsection (d) directs that amounts recovered are to be held in accounts in the Damage Assessment Restoration Revolving Fund, or the Natural Resources Damage Assessment Fund, and used for response costs and damages. These amounts are to be used to reimburse the Secretary of Commerce, the Secretary of the Interior, or any State or federal agency that conducted response actions, seizure, forfeiture, storage, or disposal, and secondly for restoration and monitoring of coral reefs or to minimize or prevent threats of equivalent injury. Thus, funds from the Emergency Response, Stabilization and Restoration Account expended pursuant to proposed section 208(d) may be reimbursed with funds recovered pursuant to this section.

Subsection (e) provides a statute of limitations of 3 years.

Subsection (f) stipulates that if the activities of the United States Government destroy, cause the loss of, or injure coral reefs, the cognizant party shall undertake response and restoration activities, in coordination with the Secretary.

#### *Section 12. Enforcement .*

This section proposes a new section 211, which is added to provide for the enforcement of the CRCA, and includes the following:

Subsection (a) requires the Secretary to conduct enforcement activities to carry out the provisions of the CRCA.

Subsection (b) specifies that any officer authorized to enforce the CRCA may search and seize any vessel suspected of violation of the CRCA; seize any coral reef or component thereof taken or retained in violation of the CRCA; seize any evidence of violation of the CRCA; execute a warrant; and arrest any person if there is reasonable cause to believe they have committed an act prohibited by section 209.

Subsection (c) provides authority to assess civil administrative penalties of not more than \$200,000 for each violation and civil judicial penalties of not more than \$250,000 per violation. Such civil penalties can be assessed in addition to response costs and damages pursuant to section 210. The Secretary always has prosecutorial discretion to use the most appropriate vehicle(s) to penalize a responsible party. This subsection also provides for permit sanctions for violations of the CRCA, or any regulations promulgated or permit issued thereunder, including revocation of the permit.

Subsection (d) provides authority for criminal and civil forfeiture of any vessel, equipment, stores, cargo, or other item used in connection with a violation of the CRCA. It also describes how customs laws will be applied to forfeiture and establishes a presumption that any coral reef component found on board a seized vessel was acquired in violation of the Act.

Subsection (e) provides that persons assessed civil penalties may also be liable for the costs of storage, care and maintenance of seized property.

Subsection (f) specifies how civil penalties and costs imposed under this section shall be used. The funds shall be placed into an account to be available until expended. Amounts received for forfeitures and related costs shall be used to pay costs incurred by the Secretary. Civil penalties shall be used to stabilize, restore or manage the coral reef with respect to which the violation occurred; reimburse funds used from the Emergency Response, Stabilization and Restoration Account or other account; conduct monitoring and enforcement activities; conduct research on techniques to stabilize and restore coral reefs; conduct activities that prevent or reduce the likelihood of future damage to coral reefs; stabilize, restore or manage any other coral reefs; or pay a reward.

Subsection (g) provides authority to assess criminal penalties for violations of new section 209 or interference with enforcement of new section 209. Prosecutorial discretion will be used in implementing this subsection.

Subsection (h) provides the ability to obtain a subpoena requiring the attendance and testimony of witnesses, and the provision of relevant papers, books, electronic files, and documents.

Subsection (i) specifies that the CRCA, as amended, does not limit the Coast Guard's authority.

Subsection (j) provides for injunctive relief where any person is alleged to be in violation of the CRCA, as amended.

Subsection (k) states that the CRCA, as amended, would apply and be enforceable in the internal waters and territorial sea of the United States, the U.S. Exclusive Economic Zone, and on the continental shelf, consistent with international law.

Subsection (l) provides for nationwide service of process.

Subsection (m) establishes the appropriate venue for civil actions.

Sections 209, 210, and 211 are meant to provide the Government the ability to recover for damages to coral reefs and enforce the prohibitions found in section 209 without creating an unduly broad array of covered activities. Examples of covered activities include: (1) vessel groundings, (2) dropped or dragged anchors and anchor chains, and (3) use of explosives that cause damage to coral reefs. In addition to the exceptions

provided in sections 209(a)(1)-(3), examples of activities that would not be covered include: (1) incidental contact by divers, snorkelers and swimmers, and (2) contact between recreational fishing gear and coral reefs that causes damage. In order to prevail in an action brought under section 210 or section 211, the government would be required to show that an activity caused damage to coral reefs.

#### *Section 13. Permits.*

This section proposes a new section 212, which provides for establishment of a permit program to provide additional flexibility in implementation of the CRCA. Given the explicit exemptions to the prohibitions, it is not anticipated that an extensive permit program would be instituted. Instead, individual permits may be required under very specialized circumstances, where a specific, otherwise prohibited activity may be deemed to be advantageous. This section specifically provides the following:

Subsection (a) provides the authority to establish a permit process to allow for activities otherwise prohibited by new section 209.

Subsection (b) provides findings that must be made by the Secretary in order to issue a permit. This subsection requires that the activity to be conducted is compatible with the purposes in section 202(b) of the bill, the activity conforms to the provisions of all other laws and regulations, and that the injury to corals cannot be avoided. This is intended to provide guidance as to the limited nature of the permits that might be issued.

Subsection (c) allows the Secretary to condition any permits issued. This allows the Government to carefully control those activities it permits.

Subsection (d) provides for the assessment and collection of fees. It also allows for the assessment of fees for the cost of processing applications and, if approved, for administering the permit. Amounts collected may be used for issuing and administering permits and for expenses of the Coral Reef Conservation Program.

Subsection (e) establishes that no permit is needed for fishing activities not prohibited by the new section 209.

Provided no damage to coral reefs is intended, vessel operators and owners would not be required to obtain a permit to operate in close proximity to coral reefs.

#### *Section 14. Coordination with States and Territories.*

This section proposes a new section 213, which clarifies how the Secretary will work in cooperation with States.

Subsection (a) allows for written agreements between the Secretary and the State regarding recovery for destroyed, lost, or injured coral reefs.

Subsection (b) allows for amendments to existing enforcement agreements.

*Section 15. Regulations.*

This section proposes a new section 214, which adds explicit authority to issue regulations to carry out the CRCA. This provides the Secretary the flexibility to further clarify the provisions of the CRCA through regulation, if needed. This section likewise provides that the CRCA and any regulations promulgated thereunder shall be applied and enforced in a manner consistent with international law.

*Section 16. Effectiveness Report.*

This section amends section 215, as redesignated, of the CRCA to modify the current reporting requirement so that the report reflects all U.S. Coral Reef Task Force activities. The requirement for the report on the grant program is also removed, as this report was only required to be submitted one time.

*Section 17. Authorization of Appropriations.*

This section amends section 216, as redesignated, of the CRCA to increase appropriations to the FY 2008 President's Budget Request by authorizing \$25,797,000 in fiscal year 2008, and such sums as may be necessary in each of fiscal years 2009-2012. Not more than 10% is to be used for program administration and overhead. The allocation of spending to carry out the provisions of the CRCA, as amended, are left to the discretion of the Secretary.

*Section 18. Definitions.*

This section amends section 217, as redesignated, of the CRCA to clarify the scope and meaning of several key terms central to the mission and fundamental purposes of the Program. It also adds a number of new definitions. Specific changes include:

- Removing the definition for “Administrator” in paragraph (1), as this term is not used in the revised Act.
- Adding a definition for “biodiversity,” a term that is added in several places in the Act.
- Revising the list of species under the definition of “coral” in paragraph (3), to accurately reflect the appropriate species.
- Revising the definition of “coral reef” in paragraph (4), to encompass the hard, skeletal structure, associated sessile organisms, and adjacent or associated seagrasses. This definition is used only in the context of the damage response sections of the bill, to limit the applicability of the CRCA’s liability and response provisions to this structure and these organisms. The liability and response provisions are not intended to apply to the entire coral reef ecosystem.
- Revising the definition of “coral reef ecosystem” in paragraph (6) to more accurately describe the ecosystem.



- Adding definitions for “damages”, “emergency actions”, “Exclusive Economic Zone”, “Local Action Strategy”, “person”, “response cost”, and “territorial sea.” in paragraphs (8), (9), (10), (11), (12), (13) and (16), respectively. A new definition for “service”, regarding the services coral reef ecosystems provide, is also added in paragraph (15).
- A revised definition of “Secretary” is included in paragraph (14), to delineate responsibilities between the Secretaries of Commerce and the Interior.

*Section 19. Judicial Review.*

This section proposes a new section 218, which provides for judicial review of final agency actions taken by the Secretary under the CRCA. Review of final agency actions involving the assessment of civil administrative penalties, or permit sanctions require a complaint to be filed within thirty days of the date the final agency action was taken. Review of all other final agency actions taken under the CRCA may only be had in the appropriate U.S. Circuit Court of Appeals, and only if the interested person files a petition within 120 days of the date the final agency action is taken.

*Section 20. Department of the Interior Program.*

This section proposes a new section 219, which amends several existing general authorities to specify that they apply to coral reefs, and provides express authority for grants and technical assistance to the territories for management and conservation of coral reef ecosystems. These activities would be coordinated with those of other federal agencies through the U.S. Coral Reef Task Force and directly with individual agencies.