



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

September 1, 2005

The Honorable Ted Stevens
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, DC 20510-6125

Dear Mr. Chairman:

This letter provides the views of the Department of Commerce on S. 362, the "Marine Debris Research, Prevention, and Reduction Act," as engrossed by the United States Senate (July 1, 2005). The Department supports the purposes of S. 362 to elevate the importance of marine debris as a national concern and strengthen federal efforts addressing this serious problem.

The Department supports improved coordination of marine debris prevention and removal efforts within the National Oceanic and Atmospheric Administration (NOAA). The Administration has recently re-established the Interagency Marine Debris Coordinating Committee, pursuant to the U.S. Ocean Action Plan. The Department agrees that international coordination and support of remediation are areas that need to be better addressed. Partnerships are a critical component to the success of current marine debris activities, including the development of new technologies in gear detection and removal, gear disposal methods, and outreach and education programs. Accordingly, the Department supports a matching-fund grants program for non-federal entities engaged in marine debris mitigation activities.

The Department requests that the legislation be consistent with Executive Order 13366 and the U.S. Ocean Action Plan, which were published in December 2004 in response to the report of the U.S. Commission on Ocean Policy. The Department further requests that the authorization levels be consistent with the President's FY 2006 Budget Request. The Budget request for NOAA marine debris activities is primarily in the Coral Reef Program of the National Ocean Service. Additional, specific recommendations on bill language are enclosed.

The Department appreciates the opportunity to present these views on S. 362. The Office of Management and Budget has advised that there is no objection to the transmittal of these views from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in dark ink, appearing to read "John J. Sullivan".

John J. Sullivan

Enclosure

**Specific Recommendations of the Department of Commerce (Department)
Regarding the “Marine Debris Research, Prevention, and Reduction Act” (S. 362)**

Section 2:

Section 2(a)(4): The Department suggests adding “and can result in economic loss of commercially harvested species” to the end of this section. The section would then read (note additions shown in italics; deletions shown in ~~strikeout~~)

“(4) Marine debris, including plastics, derelict fishing gear, and a wide variety of other objects, has a harmful and persistent effect on marine flora and fauna, ~~and can have adverse impacts on human health,~~ *and can result in economic loss of commercially harvested species.*”

Section 2(a)(7): The Department suggests the following grammatical edit (note additions shown in italics):

“(7) Insufficient knowledge and data on the source, movement, and effects of plastics and other marine debris in marine ecosystems *have* hampered efforts to develop effective approaches for addressing marine debris.”

Section 2(a)(8): The Department suggests the following grammatical edit (note additions shown in italics):

“(8) *Lack of resources, inadequate attention to this issue, and poor coordination at the Federal level have* undermined the development and implementation of a Federal program to address marine debris, both domestically and internationally.”

Section 2(b): In order to avoid potential confusion and duplicative efforts, we suggest that the Committee make clear that the intent of this bill is to enhance and strengthen existing NOAA programs, through a focused program that will work in coordination with other Federal and non-Federal entities, and not to unnecessarily duplicate current efforts.

Section 2(b)(4): In order for this bill to be complete in scope, the Department recommends the following language (note additions shown in italics):

“(4) to take appropriate action in the *domestic and international communities* to prevent marine debris and reduce concentrations of existing debris on *local, regional, and global scales.*”

Section 3:

Section 3(b): The Department recommends amending section 3(b) to read as follows (note additions shown in italics):

“(b) PROGRAM COMPONENTS.—Through the Marine Debris Prevention and Removal Program, the Administrator shall, *subject to the availability of appropriations,* carry out the following activities:”

Section 3(b)(1): The Department recommends this section be modified as follows (note deletions shown in ~~strikeout~~):

“(1) MAPPING, IDENTIFICATION, IMPACT ASSESSMENT, REMOVAL AND PREVENTION.—The Administrator shall, in consultation with relevant Federal agencies, undertake marine debris mapping, identification, impact assessment, prevention, and removal efforts, with a focus on marine debris posing a threat to living marine resources, ~~particularly species identified as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.) and species protected under the Marine Mammal Protection Act of 1972 (16 U.S.C. § 1631 et seq.);~~ and navigation safety, including—”

Section 3(b)(1)(C): The Department recommends adding “and other marine debris,” to the end of this section. This section would then read as (note additions shown in italics):

“(C) development and implementation of strategies, methods, priorities, and a plan for preventing and removing marine debris from United States navigable waters and within the United States Exclusive Economic Zone, including development of local or regional protocols for removal of derelict fishing gear *and other marine debris.*”

Section 3(b)(3): Studies have shown that in many regions, plastics constitute a significant fraction of the marine debris. The need for education and outreach among the plastics industry and the waste management industry should be addressed. The Department recommends the following language (note additions shown in italics):

“(3) OUTREACH—The Administrator shall undertake outreach and education of the public and other stakeholders, such as the fishing industry, fishing gear manufacturers, and other marine-dependent industries, *and the plastics and waste management industries,* on sources of marine debris, threats associated with marine debris and approaches to identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety.”

Section 3(c): The Department recommends providing additional flexibility in awarding financial assistance for projects authorized under this bill. In addition to authorizing grant awards, this section should also authorize cooperative agreements and contracts. The Department recommends the following additions to Section 3(c) (note additions shown in italics):

“(c) Grants, *Cooperative Agreements, and Contracts*

“(1) IN GENERAL.—The Administrator shall *enter into cooperative agreements and contracts* and provide financial assistance, in the form of grants, through the Marine Debris Prevention and Removal Program for the projects to accomplish the purposes of this Act.”

Section 3(c)(2): Following the above change to Section 3(c), the Department recommends it be clarified that the Subsection 3(c)(2) addresses grants only. The matching requirement relating to grants should not apply to cooperative agreements or contracts. Accordingly, the Department recommends the following modifications to Subsection 3(c)(2) (note additions shown in italics):

“(2) *GRANTS. 50 PERCENT MATCHING REQUIREMENT*

(A) IN GENERAL. ---Except as provided in subparagraph (B), Federal funds for any *grant* under this section may not exceed 50 percent of the total cost of such project.”

Section 3(c)(4): The Department recommends deletion of the word “demonstrated”, as eligibility requirements should not include qualitative factors like “demonstrated expertise”, which would be difficult to define in statute. The Department recommends deletion of the phrases “natural resource management authority” and “directly and indirectly” as these phrases are unclear and unnecessary. The Department also recommends eliminating the Federal Government and including tribal governments and commercial organizations in the list of institutions eligible to submit proposals for grants. Therefore, the Department recommends that Section 3(c)(4) be rewritten to read as follows:

“(4) ELIGIBILITY.— State, local, and tribal governments whose activities affect research or regulation of marine debris, and institutions of higher education, non-profit organizations and commercial organizations with expertise in a field related to marine debris, are eligible to submit to the Administrator a marine debris proposal under the grant program.”

Section 3(c)(5)(A): The Department recommends “the Interagency Marine Debris Committee” be replaced with the “the Interagency Marine Debris Coordinating Committee,” the entity established in the U.S. Ocean Action Plan. This change would be consistent with the text of Section 2(b)(2).

Section 3(c)(6): The Department recommends deletion of this section. The Department currently has procedures in place for review and selection of proposals, and NOAA currently administers these types of awards. Consequently, the Department recommends deletion of this statutory requirement, as it is unnecessary. If this section is not removed, the Department suggests that the term “Administrator” be replaced with “Administration,” in both instances.

Section 4:

Section 4(b): The Department of Homeland Security requests this section be deleted. The language in Section 4(b) is vague and likely to lead to confusion and/or misinterpretation. Additionally, there is no explanatory report language to accompany this section.

Section 5:

While we agree with the goal of Section 5, to promote coordination, we recommend deletion of such a statutory requirement, as it would be unnecessary. The U.S. Ocean Action Plan, released December 17, 2004, announced the establishment of the Interagency Marine Debris Coordinating Committee. We would be happy to discuss with you or your staff the plan for this committee. If this section is not deleted, we request the “interagency marine debris committee” be replaced with the “Interagency Marine Debris Coordinating Committee,” as this entity established in the U.S. Ocean Action Plan would be charged with implementing this section. This change would be consistent with the text of Section 2(b)(2).

Section 5(d):

If Section 5 is not deleted, we recommend that the authority to promulgate a regulatory definition of “marine debris” as described in subsection (d) be vested in the Administrator, in coordination with the Interagency Marine Debris Coordinating Committee. As written, this section charges the Committee with developing and promulgating through rulemaking a definition of “marine debris.” It is unclear whether a statute of this nature may in this manner confer rulemaking authority on an interagency committee.

Section 6:

The Department recommends the term “interagency marine debris committee” be replaced with the “Interagency Marine Debris Coordinating Committee,” the entity established in the U.S. Ocean Action Plan. The Interagency Marine Debris Coordinating Committee should be the committee responsible for developing an international strategy for control of fishing gear in the International Maritime Organization, and other appropriate forums, as outlined in Section 6.

Section 8

Section 3(b)(1)(A) directs the Administrator to undertake certain activities under the Act in connection with marine debris and its impacts “found in the United States navigable waters and the United States Exclusive Economic Zone.” Section 8(3) defines “Exclusive Economic Zone”; we suggest adding as new Sections 8(5) and (6) definitions for “navigable waters” and “the territorial sea” as follows:

“(5) UNITED STATES NAVIGABLE WATERS.— The term ‘United States navigable waters’ means the waters of the United States, including the territorial sea.”

“(6) TERRITORIAL SEA.— The term “territorial sea” means the waters of the United States referred to in Presidential Proclamation No. 5928, dated December 27, 1988.”

Section 8(2): The Department recommends “the Interagency Marine Debris Committee” be replaced with the “the Interagency Marine Debris Coordinating Committee,” the entity established in the U.S. Ocean Action Plan. This change would be consistent with the text of Section 2(b)(2).

Agreements

Since the legislation requires extensive interagency and other cooperative efforts, language facilitating such partnerships should be included. For example, a section could be added stating that—

“(a) The Administrator may enter into memoranda of agreement, memoranda of understanding, or other agreements with heads of other Federal agencies, as appropriate, to implement this Act, and the Administrator and the heads of such agencies may issue such regulations as may be necessary to ensure coordination of Federal activities to implement this Act.

“(b) In the performance of the duties of this Act, the Administrator may use, with their consent, and with or without reimbursement, the services, equipment, personnel, and facilities of: Federal agencies, instrumentalities and laboratories; State and local governments; Native American tribes and organizations; international organizations; foreign governments; educational institutions; nonprofit organizations; commercial organizations; and other public and private persons or entities.

“(c) The use of interagency funding and other forms of support is hereby authorized by Congress for purposes of this Act.”

Enforcement

Section 3(b)(2)(B) grants the Administrator authority to develop “mandatory measures” to reduce the loss and discard of fishing gear. In order to ensure enforceability of such measures, the Department would suggest adding the following two sections:

“Prohibited Acts. It is unlawful for any person –

“(a) to falsify any information required to be reported, communicated, or recorded pursuant to this Act or any regulation issued under this Act, or to fail to submit in a timely fashion any required information, or to fail to report to the Administrator immediately any change in circumstances that has the effect of rendering any such information false, incomplete, or misleading;

“(b) to refuse to permit an authorized officer to conduct any lawful search or lawful inspection in connection with the enforcement of this Act or any regulation issued under this Act; or

“(c) violate any provision of this Act or any regulation issued pursuant to this Act.”

“Penalties and Enforcement.

“(a) General – The Administrator shall conduct such enforcement activities as are necessary and reasonable to carry out this chapter.

“(b) Powers of Authorized Officers – Any person who is authorized to enforce this chapter may –

“(1) board, search, inspect, and seize any vessel suspected of being used to violate this chapter or any regulation issued under this chapter and any equipment, stores, and cargo of such vessel;

“(2) seize any evidence of a violation of this chapter or of any regulation issued under this chapter;

“(3) execute any warrant or other process issued by any court of competent jurisdiction; and

“(4) exercise any other lawful jurisdiction.

“(c) Civil Penalties –

“(1) Civil Penalties – Any person subject to the jurisdiction of the United States who violates this chapter or any regulation issued under this chapter shall be liable to the United States for a civil penalty of not more than \$130,000 for each such violation,

to be assessed by the Administrator. Each day of a continuing violation shall constitute a separate violation.

“(2) Permit Sanctions – For any person who has failed to pay or defaulted on a payment agreement of any civil penalty or criminal fine or liability assessed pursuant to this Act, the Administrator may suspend or deny any permit issued under any natural resource law administered by the Administrator.

“(3) Notice – No penalty shall be assessed under this section until after the person charged has been given notice and an opportunity for a hearing.

“(4) In Rem Jurisdiction – A vessel used in violating this chapter or any regulation issued under this chapter shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in the district court of the United States having jurisdiction over the vessel.

“(5) Review of Civil Penalty – Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.

“(6) Collection of Penalties – If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

“(7) Compromise of Other Action by Administrator – The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty that is or may be imposed under this section.

“(d) Use of Fines, Penalties, and Other Recoveries-- Notwithstanding any other provision of law, the Administrator may utilize any fines, penalties and forfeitures of property for violations of this Act as provided in P.L. 101-515, Title I, 104 Stat. 2105 and 16 U.S.C. § 1861(e).

“(e) Forfeiture – Any vessel (including the vessel’s equipment, stores and cargo) and any other item used in any manner, in connection with or as a result of any violation of this chapter or of any regulation issued under this chapter shall be subject to forfeiture to the United States pursuant to a civil proceeding under this section.

“(f) Any action taken under this law shall be taken in accordance with international law.

“(g) Subpoenas – In the case of any investigation and hearing under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, electronic files, and documents, and may administer oaths.”

Identical Letters Sent to:

The Honorable Richard W. Pombo, Chairman
House Resources Committee

w/cc: The Nick Rahall, II, Ranking Member
House Resources Committee

The Honorable Wayne Gilchrest, Chairman
Subcommittee on Fisheries and Oceans

w/ cc to: The Honorable Frank Pallone, Ranking Member
Subcommittee on Fisheries and Oceans

The Honorable Don Young, Chairman
House Committee on Transportation and Infrastructure

w/cc to: The Honorable James L. Oberstar, Ranking Member
House Committee on Transportation and Infrastructure

The Honorable Frank LoBiondo, Chairman
Subcommittee on Coast Guard and Maritime Transportation

w/cc to: The Honorable Bob Filner, Ranking Member
Subcommittee on Coast Guard and Maritime Transportation

The Honorable Ted Stevens, Chairman
Subcommittee on Commerce, Science and Transportation

The Honorable Daniel Inouye, Co-Chairman
Subcommittee on Commerce, Science and Transportation