



AUG 4 1999

The Honorable Jim Saxton  
Chairman, Subcommittee on Fisheries  
Conservation, Wildlife and Oceans  
Committee on Resources  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

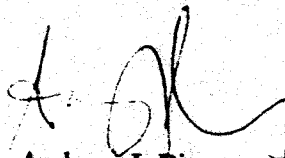
This letter provides you with the Department of Commerce's views on H.R. 2669, entitled the *Coastal Community Conservation Act of 1999*, as introduced on August 2, 1999. We understand your Subcommittee will mark up this bill on August 5, 1999. This letter focuses on two major issues and is consistent with the Department's views on H.R. 1110, also entitled the *Coastal Community Conservation Act of 1999*, as expressed in the enclosed letter dated June 15, 1999. The Department may provide more detailed views on H.R. 2669 following the Subcommittee markup.

Our fundamental concern is the failure by H.R. 2669 to adequately address coastal nonpoint pollution. As described in our enclosed letter, addressing polluted runoff in a reauthorized Coastal Zone Management Act (CZMA) is a primary goal of the Administration. The very narrow scope of H.R. 2669's provisions for addressing polluted runoff will not ensure implementation of states coastal nonpoint programs. As a result the Department must strongly oppose this bill.

In addition, H.R. 2669 does not address reauthorization of the National Estuarine Research Reserve System. While the Department appreciates the Committee's inclusion of these provisions in H.R. 1243, the *National Marine Sanctuaries Enhancement Act of 1999*, we would prefer to see it addressed as part of a broad reauthorization of the CZMA, as proposed by the Administration.

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

Sincerely,



Andrew J. Pincus

Enclosure

**Identical letter sent to:**

**The Honorable Eni F. H. Faleomavaega  
House Resources Committee**



June 15, 1999

The Honorable Jim Saxton  
Chairman, Subcommittee on Fisheries  
Conservation, Wildlife and Oceans  
Committee on Resources  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter provides you with the Department of Commerce's views on H.R. 1110, as described in the Amendment in the Nature of a Substitute, April 20, 1999, entitled the "Coastal Community Conservation Act of 1999." The reauthorization of the Coastal Zone Management Act (CZMA) is of great importance to the Department and provides a unique opportunity to guide coastal and ocean resources management in the next century. The Department respectfully requests that you amend H.R. 1110 to reflect the views and recommendations provided in the enclosure, and looks forward to working with you on the reauthorization of the CZMA.

In general, the Department supports unamended H.R. 1110. There are many similarities between H.R. 1110 and the Administration's proposal to amend the CZMA. These similarities are due in part to our shared support for the CZMA and concern for the Nation's imperiled coastal and ocean resources and the collaboration between the Department and your Subcommittee. The Department fully supports the continued inclusion and dedicated funding in a reauthorized CZMA of the Coastal Nonpoint Pollution Control Program and providing funds to coastal communities to develop plans, strategies, solutions and projects for community revitalization. Important differences between H.R. 1110 and the Administration's proposal are addressed in the enclosure.

The Department would like to highlight a point regarding the funding for state efforts to control polluted runoff under both H.R. 1110 and the Administration's proposal. Neither bill proposes to fund the nonpoint program at the expense of base program funds. In fact, both H.R. 1110 and the Administration's proposal would *increase* the amount of CZMA section 306 funds for coastal states over FY 1999 levels: H.R. 1110 by \$1.8 million; the Administration's proposal by \$0.8 million.

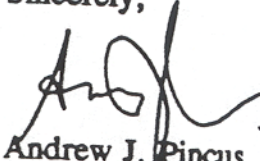
The Department also notes that the total authorization levels in H.R. 1110 are below the President's fiscal year 2000 budget request and recommends that the authorization levels conform to the President's budget request, as noted in the enclosure.

Finally, the Department understands that amendments have been filed (but were not included in the Substitute Amendment) regarding private property rights and the repeal of Title III of H.R. 1110 (controlling polluted runoff). The Department strongly opposes the repeal of Title III. Such a repeal would thwart the progress that has been achieved by the Administration, Members of Congress, coastal states, and the environmental community to address polluted runoff. Addressing polluted runoff in a reauthorized CZMA is a primary goal of the Administration.

The Department also vigorously opposes the property rights amendment. This amendment would repeal most of the CZMA's provisions and would make most elements in the 32 federally approved state coastal management programs illegal. The CZMA's findings, policy statements and state coastal management program approval requirements all address the need to manage and control the land and water uses and natural resources of the coastal zone. The amendment would require the Department to re-review all 32 Federally approved state coastal management programs and possibly decertify those programs that did not remove provisions that control or manage private uses of the coastal zone. This would, for all practical purposes, render the national and state CZMA programs non-existent and ineffective. Further, the amendment would subject the Department and the states to endless litigation and takings claims, placing an enormous financial burden on the states, local governments and the Federal Government. The CZMA has had strong bipartisan support for over 27 years and was unanimously reauthorized by the 104<sup>th</sup> Congress in 1996. If this amendment is adopted, *there would no longer be a coastal management program in the United States as envisioned in the CZMA.* Should this property rights amendment to H.R. 1110 be adopted and passed by Congress, I would strongly recommend a Presidential veto.

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,



Andrew J. Pincus

Enclosure

**The Department of Commerce's Views and Recommendations of  
H.R. 1110 - The "Coastal Community Conservation Act of 1999"**

(as described in the Amendment in the Nature of a Substitute,  
April 20, 1999)

**H.R. 1110 - Title I - Amendments to Coastal Zone Management Act of 1972**

**Section 102 - Coastal Community Conservation Grants.**

**Section 102(b) - Objectives.** A major purpose of the Administration's proposal is to promote community-based smart growth planning. The changes to section 306A in H.R. 1110, while allowing for such planning, could be more specific regarding the use of section 306A funds for local community capacity building to address community revitalization efforts, while at the same time protecting the environment. The Department recommends that H.R. 1110 section 102(b)(proposing a new CZMA section 306A(b)(5)) be amended to read:

"(5) Adoption of plans, strategies, policies or procedures to support local community-based environmentally protective solutions to the impacts and pressures on coastal uses and resources caused by development and sprawl, that will revitalize previously developed areas, discourage development in undeveloped and environmentally sensitive areas, emphasize water dependent uses, and protect coastal waters and habitats."

**Section 102(d) - Match Requirements.** The Administration's section 310 Coastal Community Initiative provides for unmatched funds. The Coastal Community Conservation grants in H.R. 1110 would require that the state match the projects (for most states a 50% match). The result of a mandatory 50% match is that smaller, fiscally constrained communities may be left out of the process. The Department recommends that grants provided for this purpose not be matched.

**Section 102(d) - Qualified Local Entity.** The Administration's proposal strengthens coordination between states and American Indian tribes. The Administration is improving the coordination between tribes and state coastal management programs. There are also many community-type projects that could be accomplished by tribes. H.R. 1110 section 102(d) (proposing a new CZMA section 306A(g)(1)(qualified local entity)) should be amended by adding a new subsection (F), that reads:

"(F) any Federally recognized American Indian tribe located within the coastal zone of a coastal state."

**Section 104 - Coastal Zone Enhancement Grants.**

**Section 104 - Match Requirements.** Currently, CZMA section 309 enhancement grants are 100% Federal funds. The reason for this is to encourage states to make

improvements to their programs. H.R. 1110 would require a 50% match for these grants. This could result in less improvements to state programs. The Department recommends that these grants remain 100% Federal funds.

**Section 106 - Reserves.** The current statute authorizes 100% grants to conduct educational activities that benefit the national Reserve system. The Department is seeking comparable authority to fund research and monitoring activities that are national in scope and that benefit the entire Reserve system. Current research match requirements make it difficult for the Department to fund research projects of benefit to all reserves. The Administration's proposal would make changes to CZMA section 315 to enable the Department to award 100% Federal funds for all aspects of the program that benefit the entire Reserve system (i.e., no requirement for non-Federal matching funds). The Reserve system should not be constrained by a percentage of overall funding or a range of funding levels. The Department would continue to identify on an annual basis, in coordination with the reserves, the allocation of funds for research projects that benefit the national system. Two examples of system-wide projects proposed for 100% funding are:

1. Data Management Office (currently located in South Carolina) - the Reserve system has funded \$100,000-\$125,000 through the North Inlet-Winyah Bay (South Carolina) reserve for data management of system-wide monitoring. As new reserve sites are added to the Reserve system, and as funding increases allow for implementing additional phases of the monitoring program, additional data management services will be required, thereby increasing costs.
2. Synthesis Reports - the Reserve system is constrained by current CZMA match provisions from funding topical syntheses of the research and monitoring data being collected within the national system. The ability to fund one or two synthesis projects per year would greatly enhance the Reserve system's ability to provide useful information to the national coastal management community. Costs are estimated to be \$50,000-\$100,000 per project.

In addition, the Reserve system would greatly benefit from being able to direct 100% Federal funds to entities other than state agencies for education activities that benefit the national Reserve system. This will, in part, reduce certain overhead costs for the Department, and in particular for the states. Current grant recipient requirements constrain the Department from more efficiently providing educational opportunities that benefit all reserves. The Department would like to include any qualified organization or individual. Non-governmental entities, such as universities, could more easily perform these tasks for the Reserve system.

To address these issues, the Department recommends that CZMA sections 315(e)(1) and (3) be amended as follows (new language shown in underline; deletions in strike-out):

"(e) Financial assistance.

"(1) The Secretary may, in accordance with such rules and regulations as the Secretary shall promulgate, make grants--

"(A) to a coastal state--

"(i) for purposes of acquiring such lands and waters, and any property interests therein, as are necessary to ensure the appropriate long-term management of an area as a national estuarine reserve, and

"(ii) for purposes of operating or managing a national estuarine reserve including resource stewardship activities, and constructing appropriate reserve facilities. or

~~"(iii) for purposes of conducting educational or interpretive activities; and~~

~~"(B) to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c):~~ to any coastal state or public or private person for purposes of:

"(i) supporting research and monitoring associated with a national estuarine reserve that are consistent with the research guidelines developed under subsection (c) or,

"(ii) conducting educational, interpretive, or training activities for a national estuarine reserve."

. . .

"(3) (A) The amount of the financial assistance provided under paragraph (1)(A)(i) with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein. ~~or \$ 5,000,000, whichever amount is less~~ Non-Federal costs associated with the purchase of any lands and waters, or interests therein, which are incorporated into the boundaries of a reserve up to five years after the costs are incurred, may be used to match the Federal share.

"(B) The amount of the financial assistance provided under paragraph (1)(A)(ii) and ~~(iii)~~ and paragraph (1)(B) may not exceed 70 percent of the costs incurred to achieve the purposes described in those paragraphs with respect to a reserve; except that the

amount of the financial assistance provided under paragraph (1)(B) ~~(A)(iii)~~ may be up to 100 percent of any costs for activities that benefit the entire System as a whole.

"(C) Notwithstanding subparagraphs (A) and (B), financial assistance under this subsection provided from amounts recovered as a result of damage to natural resources located in the coastal zone may be used to pay 100 percent of the costs of activities carried out with the assistance."

### **Section 108 - Authorization of Appropriations.**

**Sections 306, 306A, 309 and 310 Funding.** The Department notes that the total authorization levels for H.R. 1110 are below the President's fiscal year 2000 budget request by \$14.7 million. The Administration's proposal is \$89.7 million (\$61.7 million for sections 306, 306A and 309; and \$28 million for section 310), and H.R. 1110 is \$75 million (\$55 million for sections 306 and 309, and \$20 million for section 306A). The funding for these sections, while essentially for the same purposes, are set up differently under H.R. 1110 than the Administration's proposal, and exact comparisons are problematic. Thus, if the Subcommittee does not adopt the Administration's proposal, the Department recommends that the authorization levels for H.R. 1110 be increased to conform to the President's budget request in the following way: add \$10 million to the \$20 million under H.R. 1110 section 108(a)(proposed CZMA section 318(a)(3)(A) (for section 306A)) for a total of \$30 million for fiscal year 2000, and \$4.7 million for section 310 (technical assistance) of the CZMA (or CZMA section 310A of the Administration's proposal).

**Program Administration, section 305 and section 315 Funding (H.R. 1110 section 108(a)(proposed CZMA sections 318(a)(1), (4), (5) and (6)).** The authorization levels provided in these sections are consistent with the Administration's proposals and the Department strongly endorses these levels.

**Section 315 Funding.** H.R. 1110 section 108(a)(proposed CZMA section 318(a)(6)) should be amended as follows to be consistent with section 315:

"(6) for grants to fund construction and land acquisition at reserves . . . ."

**Section 109 - Technical Corrections.** H.R. 1110 section 109 does not include several important technical changes included in the Administration's proposal. First, changes to CZMA section 309 in H.R. 1110 do not reflect broader "habitat" language proposed by the Administration to replace existing "wetlands" language. This change would provide states with the ability to use section 309 funds to address all habitat issues, (e.g., coral reefs, essential fish habitat, etc.) not just wetlands. The Department recommends incorporating the broader habitat language.



Second, the Administration's changes to CZMA section 310 (CZMA section 310A in the Administration's proposal) are needed to clarify the use of CZMA section 310, e.g., technology development currently conducted under the authority of section 310 through the Cooperative Institute for Coastal and Estuarine Environmental Technology (CICEET) (and, for CICEET, corresponding changes to CZMA section 303, see Administration proposal), international activities, nonpoint program, coastal communities, and other technical assistance activities. The Department strongly recommends that these changes be made to CZMA section 310 even if H.R. 1110 does not authorize funds for section 310.

Moreover, CZMA section 310A of the Administration's proposal provides for NOAA technical assistance to build the capacity of states and communities to address coastal issues. Some of the \$28 million in the Administration's proposal for section 310 would be used for such capacity building. H.R. 1110 section 102 (CZMA section 306A) does not authorize funding for this purpose. Further, H.R. 1110 imposes new mandates on the Department regarding coastal communities, personal water craft, and performance measures study, but does not provide additional funds to accomplish these tasks. The Department recommends some of the funds needed to conform H.R. 1110 with the President's fiscal year 2000 budget request be authorized for CZMA section 310 purposes (as section 310 exists under the current CZMA) (see also discussion above under H.R. 1110 section 108).

**Section 110 - Coastal Zone Management Outcome Indicators.** H.R. 1110 section 110(b) imposes a requirement on the Executive Branch that gives rise to constitutional concerns under the Recommendations Clause. The Recommendations Clause provides that the President "shall from time to time . . . recommend to [Congress] such measures as he shall judge necessary and expedient[.]" U.S. Const. Art. II, § 3. The Clause precludes Congress from either requiring or prohibiting the Executive Branch from making legislative recommendations to the Congress. H.R. 1110 section 110(b) would violate this constitutional principle. The Department therefore recommends that section 110(b) be amended by inserting the words: ", if any," after the words "House of Representatives draft legislation."

**Section 112 - Grants for Providing Access to Coastal Areas and Coastal Waters for the Physically Disabled.** The proposed new CZMA section 306A(b)(5), under H.R. 1110 section 112(a), should be renumbered as section 306A(b)(6). There is currently a subsection (5) regarding coastal community revitalization plans in H.R. 1110 section 102(b).

### **Title III - Coastal Nonpoint Pollution.**

**Section 201(b).** The Department strongly supports the inclusion of the Coastal Nonpoint Pollution Control Program into the CZMA, as proposed by both the Administration's proposal and H.R. 1110. The funding formula in H.R. 1110 section 201(b)(2)(CZMA section 306(c)(2)) may provide the Department with the ability to meet its Coastal Nonpoint Program funding objective, but it is unclear as to how the 10-20 percent will be divided between CZMA sections 306 and 306A. The Department recommends that this be left to the

states and NOAA as to whether the 10-20 percent will come from section 306, 306A, or both on an individual state basis. The Department, therefore, strongly recommends that the phrase "in total," be added to this section after "20 percent,".

**Section 202 - Coastal Community Conservation Grant Objective.** The proposed new CZMA section 306A(b)(5), under H.R. 1110 section 202, should be renumbered as section 306A(b)(7). There is currently a subsection (5) regarding coastal community revitalization plans in H.R. 1110 section 102(b), and a proposed subsection "(6)" in H.R. 1110 section 112, see above.

H.R. 1110 does not include the Administration's proposed changes to CZMA section 306(d)(16) which clarifies the roles and responsibilities of state coastal management agencies for implementing coastal nonpoint programs. It is important to distinguish their roles and responsibilities from those of other agencies that have nonpoint source responsibilities (and funding obligations). We recommend that CZMA section 306(d)(16) be redesignated as section 306(d)(16)(A) and adding a new subsection (B) that reads:

"(B) The program developed and approved under subsection (d)(16)(A), shall be implemented as follows:

"(i) the management agency's role shall be focused on the prevention and reduction of impacts from polluted runoff on coastal habitats, coastal waters, coastal economies, and human health in the coastal zone.

"(ii) the responsibilities of the management agency shall be derived from the organizational structure referred to under subsection (d)(2)(F) and shall be those coastal polluted runoff control prevention and reduction responsibilities that the management agency has under state law, including those it is traditionally responsible for under its Federally approved coastal management program."

**Proposed Amendment to Repeal H.R. 1110 Title III.** The Department understands that an amendment was filed (but was not included in the Substitute Amendment) repealing Title III of H.R. 1110 (the coastal nonpoint program). The Department strongly opposes the repeal of Title III. This amendment would thwart the progress that has been achieved by the Administration, Members of Congress, coastal states, and the environmental community to address polluted runoff. Including and funding efforts to control polluted runoff in a reauthorized CZMA is a primary goal of the Administration for reauthorization.

Including Title III in the CZMA would not impose any new or additional requirements on states or citizens. The purpose of Title III is to provide funding for the program and to clarify the role of the state coastal management program agency.

Moreover, Title III is an important mechanism to address polluted runoff, a major contributor to the decline of coastal habitat and resources and affects the economic viability of coastal communities. The increasing numbers of algal blooms and closed shellfish and fishing areas is linked to polluted runoff from our streets, lawns and farms. This polluted runoff is linked to the degradation of coastal habitat and coral reefs, the "dead zone" in the Gulf of Mexico, and the outbreaks of *Pfiesteria piscidia* in the Chesapeake Bay. The CZMA offers an unique opportunity to protect and restore coastal waters and habitat by bringing multiple programs and people together to address polluted runoff problems.

Finally, the efforts of coastal states to control polluted runoff are at a critical juncture. Coastal states have invested substantial effort in developing their programs and need increased financial support to successfully implement their plans for improving management of polluted runoff. Striking Title III would leave state coastal nonpoint programs in limbo, with little guidance as to how coastal management programs should proceed in addressing nonpoint source pollution.

**Proposed Amendment to H.R. 1110 Regarding Private Property Rights.** The Department understands that an amendment was filed (but was not included in the Substitute Amendment) regarding private property rights. The Department vigorously opposes this amendment. This amendment would completely overturn the very basis for land use planning and management by state and local governments in this country for over two hundred years. The CZMA was created because there is a national interest in the effective management, beneficial use, protection, and development of the coastal zone. There are many competing and often conflicting uses of the coastal zone and the important natural resources of the coastal zone are continually imperiled.

Essentially, this amendment would be the end of the CZMA. The first clause of the amendment would repeal most of the CZMA's provisions and would make most elements in the 32 Federally approved state coastal management programs illegal. The CZMA's findings, policy statements and state coastal management program approval requirements all address the need to manage and control the land and water uses and natural resources of the coastal zone. The amendment would require the Department to re-review all 32 Federally approved state coastal management programs and possibly decertify those programs that did not remove provisions that control or manage private uses of the coastal zone. This would, for all practical purposes, render the national and state CZMA programs non-existent and ineffective. The CZMA has had strong bipartisan support for over 27 years and was unanimously reauthorized by the 104<sup>th</sup> Congress in 1996. If this amendment is adopted, *there would no longer be a coastal management program in the United States as envisioned in the CZMA.*

Further, this amendment would subject states and the Department to endless litigation. The multitude of state coastal management actions, decisions and planning actions would be subject to continual litigation. This litigation would also involve the Department. Department of

Commerce decisions regarding state coastal management programs would also be under continual attack.

The Department, the states and local governments would be subject to numerous takings claims, placing an enormous financial burden on states, local governments and the Federal Government.

In addition, the proposed amendment would appear to invite litigation by creating a possible cause of action in the Federal District Courts (in addition to and apart from litigation in the Court of Claims). For Federal actions that may result in the regulatory taking of private property, Congress has already created an avenue of redress in the Court of Claims via the Tucker Act.