



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

July 19, 2005

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

Dear Mr. Chairman:

This letter provides the views of the Department of Commerce on S. 360, the "Coastal Zone Enhancement Reauthorization Act of 2005," as introduced in the Senate and referred to the Committee on Commerce, Science, and Transportation.

The Department supports the reauthorization of the Coastal Zone Management Act (CZMA) as stated in the President's U.S. Ocean Action Plan. The Administration strongly values the importance of state and local involvement and these partnerships are essential in managing and protecting our coastal and Great Lakes resources. The Department is pleased to see the Committee encourage partnership approaches in the bill. This legislation reauthorizes the CZMA for five years, and enables states and coastal communities to meet emerging needs to balance coastal development with resource protection.

The legislation strengthens the planning and coordination capabilities of coastal States to address watershed and ocean planning; enhances the education and resource stewardship functions of estuarine research reserves; and increases federal financial, technical and institutional support for sustainable community development. The legislation also expands investment in the conservation and restoration of coastal habitats and addresses polluted runoff. The enclosed document provides additional comments on the bill.

The Department requests that authorization levels be consistent with the President's FY 2006 Budget Request. The Department appreciates the opportunity to present these views on S. 360. 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 cursive script that reads "Jane T. Dana".

Jane T. Dana  
Acting General Counsel

Enclosure

cc: The Honorable Daniel K. Inouye, Co-Chairman

The Honorable Olympia Snowe, Chair,  
Subcommittee on Fisheries and the Coast Guard

The Honorable Maria Cantwell, Ranking Member,  
Subcommittee on Fisheries and the Coast Guard

**Comments of the Department of Commerce on S. 360, the  
“Coastal Zone Enhancement Reauthorization Act of 2005”**

1. The legislation would promote equitable allocation of funding under Section 306(c) (16 U.S.C. §1455(c)) to “minimize the relative increases or decreases among eligible States”, by requiring the Secretary to ensure that each eligible State receives increased funding in any fiscal year for which the total amount appropriated for the specified programs exceeds the amount appropriated in the previous fiscal year. While the Department concurs with the intent of this language, complications may arise, such as changes in the number of States participating in the program or the impact of small increases, making compliance difficult or unduly burdensome. The Department recommends the following language (note additions shown in italics):

“(b) **EQUITABLE ALLOCATION OF FUNDING** -- Section 306(c) (16 U.S.C. §1455(c)) is amended by adding at the end thereof `In promoting equity, the Secretary shall consider the overall change in grant funding under this section from the preceding fiscal year and minimize the relative increases or decreases among all the eligible States. *To the extent practicable*, the Secretary shall ensure that each eligible State receives increased funding under this section in any fiscal year for which the total amount appropriated to carry out this section is greater than the total amount appropriated to carry out this section for the preceding fiscal year.”
2. Section 17(5) of the bill amends 16 U.S.C. §1464 by adding a new subsection (e) that restricts the use of appropriations for administrative or overhead costs. As written, the bill would prohibit the National Oceanic and Atmospheric Administration from issuing contracts for current National Estuarine Research Reserve System (NERRS) programs such as EstuaryLive, web support and graphics design, or support for travel to key NERRS workshops. These are investments that are agreed to by both reserve managers and the Estuarine Reserves Division (ERD). These programs cannot be provided through alternative means (i.e., through a grant to a state/reserve), as several reserves have limited fund matching capabilities and cannot do work on behalf of the whole NERR system. "Grants to states" works for the Coastal Zone Management program, but does not for the NERRS. The NERRS has benefited from the more flexible current language in the statute and budget line. The following language change is requested (note deletions shown in ~~strikeout~~):

“(e) **RESTRICTION ON USE OF AMOUNTS FOR ADMINISTRATIVE OR OVERHEAD COSTS.** -- Except for funds appropriated under subsection (a)(5), amounts appropriated under this section ~~shall be available only for grants to states and~~ shall not be available for other ~~program~~, administrative or overhead costs of the National Oceanic and Atmospheric Administration of the Department of Commerce.”
3. Section 5 of the legislation proposes to amend Section 304 of the Coastal Zone Management Act (16 U.S.C. §1453) to include a definition of “qualified local entity,” which includes nonprofit organizations. This would allow non-profit organizations to be eligible to receive funding from coastal states through the grant provision in a new Section 309A(d) (Coastal Community Programs) as outlined in Section 11 of S. 360. The Department notes that there are no assurances that any land acquisition by non-profit organizations with this funding would ensure the long-term protection and access to that land. For example, if the non-profit organization were to dissolve, the protection of that land could not be guaranteed.