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

June 17, 2002

The Honorable Ernest F. Hollings
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, DC 20510-6125

Dear Mr. Chairman:

This letter provides you with the Department of Commerce's views on several provisions in H.R. 3507, the "Coast Guard Authorization Act for Fiscal Year 2002", which the House passed and the Senate placed on its Legislative Calendar on December 20, 2001. The Department has serious concerns, described below, with sections 204 and 404, and, in addition, recommends changes for section 323. The Department of Commerce defers to the Department of Transportation on other provisions of H.R. 3507.

The Department, along with the Departments of State, Justice, and the Environmental Protection Agency, is extremely concerned with section 204, which addresses the discharge from vessels of agricultural cargo residue material in the form of hold washings. The Department is greatly concerned that section 204 would be construed to restrict our authority under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. § 1431 et seq.), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, to regulate discharges of such material into National Marine Sanctuaries. Such material could contain invasive species, fertilizers, pesticides and a host of other harmful and potentially harmful material. The Department has long-standing protective regulations for National Marine Sanctuaries prohibiting the discharge into them of most matter. Consequently, the Department strongly objects to section 204 of H.R. 3507 and strongly requests that it be deleted from the bill. Additionally, the Department, in general, supports the concerns expressed by the U.S. Department of Justice and the Environmental Protection Agency in regard to section 204 of the bill.

The Department recommends the following suggested language changes for section 323, entitled "Oil Spill Liability Trust Fund; Emergency Fund Advancement Authority." On lines 8 and 9, delete the phrase "for removal of a discharge or the mitigation or prevention of a substantial threat of a discharge". This change would ensure that the new language is consistent with the scope of current law.

The Department also has concerns regarding section 404, entitled "Vessel Escort Operations and Towing Assistance." Section 404 would put into effect a requirement that only U.S. tow or escort ships may assist vessels that enter or leave U.S. waters – that is, vessels engaged in international trade. The U.S. towing statute, 46 App. U.S.C. 316, states that towing services

between two U.S. points (i.e., associated with domestic cabotage transport) may only be carried out by U.S.-flag tow vessels that are eligible for Jones Act cabotage registry. In contrast, the terms of section 404 would require that, except in distress cases, towing/escort assistance that begins or ends at a U.S. port or place must be conducted by a tow or escort vessel that is documented in the United States – including tow or escort vessels that are not cabotage-eligible and so can operate only in international service. Section 404 contains a $10,000 per day civil penalty clause.

Although this requirement has already been enacted as part of Public Law No. 106-554 (the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act of Fiscal Year 2001), the lack of a penalty has made it unenforceable. The re-enactment of this provision as section 404, this time with a penalty clause, would put this tow/escort vessel preference into effect.

Section 404, in effect, would impose a restriction on international maritime services trade, both in vessel towing and escort services and on shipping operations that begin or end in the United States. Its benefits to the U.S. vessel towing and escort sector must be balanced against the probability that it will lead other nations to retaliate with similar, if not more extensive, restrictions on U.S.-flag towing, escort, and shipping services.

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,

Theodore W. Kassinger

Theodore W. Kassinger

cc: The Honorable John McCain
Ranking Minority Member

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

The Honorable James L. Oberstar
Ranking Minority Member, Committee on Transportation and Infrastructure