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

June 9, 2000

The Honorable Olympia Snowe
Chair, Subcommittee on Oceans and Fisheries
Committee on Commerce, Science and
Transportation
United States Senate
Washington, D.C. 20510-6136

Dear Madam Chair:

This letter provides you with the Department of Commerce's views on S. 725, entitled the "Coral Reef Conservation Act of 1999." The Department supports comprehensive legislation that conserves and protects coral reefs and coral reef ecosystems, and endorses supporting local efforts to achieve these purposes.

In general, the Department supports the type of grant program and conservation fund created by S. 725. The provision of funding for eligible coral conservation projects is important to allow for the protection and management of these sensitive and unique resources. The conservation fund would be a valuable vehicle for building public-private partnerships for coral reef conservation. However, the Department does have the following comments and suggestions that we believe will strengthen S. 725 to provide for more comprehensive management of coral reefs and coral reef ecosystems.

The Department suggests adding a "Findings" section to describe the status of coral reefs, need for protection, and efforts made to date to conserve coral reefs and coral reef ecosystems. The Department recommends S. 725 contain a national policy statement on the importance of conserving and protecting coral reef ecosystems in maritime areas and zones subject to the jurisdiction or control of the United States and in areas outside United States jurisdiction where international priorities can be addressed. The Department also suggests S. 725 include a national program under which activities could be taken directly by the Federal government, in partnership and consultation with other authorities or persons, as appropriate, to conserve and protect coral reef ecosystems on a regional, national and international scale.

The Department also suggests the following specific comments on S. 725. First, the definition of "coral reef" in Section 3(3) includes the following statement restricting the definition to U.S. waters : "within all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., Federal, State, territorial, or commonwealth waters), including in the south Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean.". This is not consistent with the Coral Reef Conservation Program described in Section 4 (d) of S. 725 that would allow a portion of funding for grants awarded under this section to address "international priorities and threats" as listed in Section 4(d)(3). The Department supports the grants program described in Section 4 and recommends that the definition of coral reefs be changed to be consistent with Section 4 and the possible support of efforts with international partners. The Department recommends that the definition of "coral reef" in Section 3(3)

be revised by deleting "within all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., Federal, State, territorial, or commonwealth waters), including in the south Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean."

Second, in keeping with the immediate priorities of the Coral Reef Task Force, which has passed a resolution expressing concern and calling for action to address the international trade in coral and coral reef species, the definition of "Conservation" (section 3(5)) should be amended by adding "management of trade in corals, species associated with coral reefs, and coral products," after the term "sustainable use".

Third, the Department recommends amending subsection 4(f), regarding project review and approval, to state that affected Federal agencies would be consulted in the review of grant proposals. Therefore, in paragraph (2)(A), we suggest adding ", affected Federal agencies," after the phrase "request written comments on the proposal from each State or territorial agency of the United States," and before the phrase "or other government jurisdiction".

Fourth, the Department recommends that section 5 be amended as indicated in the enclosure to clarify that the Federal funds are to be transferred to a non-profit organization for mutually agreed upon projects that further the purposes of the Act. In addition, the enclosed amendments would clarify that the organization can invest, reinvest, and earn interest on only the non-Federal Section 5 monies. Further, since, a non-profit organization selected to administer the Fund under Section 5 could also apply for a grant under Section 4, the Department recommends revising subsection 5(d) by adding at the end the following sentence (also indicated in the enclosure) to clarify that Federal funds provided by the National Oceanic and Atmospheric Administration (NOAA) to the Fund may not be used as a match for Section 4 grants:

> Federal funds provided by the Administrator to a non-profit organization under this section may not be used as the non-Federal match for financial assistance pursuant to section 4(b).

Finally, $4 million is not sufficient to support an adequate comprehensive coral conservation program as provided in the bill with the revisions suggested above. Rather, the President's FY 2001 budget request includes $16 million for NOAA to support comprehensive coral conservation similar to that under S. 725.

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

Department of Commerce Recommendations for Amendments to Section 5 of S. 725, the "Coral Reef Conservation Act of 1999"

Sec. 5. Coral Reef Conservation Fund

(a) FUND -- The Administrator may enter into an agreement with ~~an~~ a non-profit organization authorizing such non-profit organization to receive, hold and administer funds received pursuant to this section. The non-profit organization shall invest, reinvest and otherwise administer ~~the~~ any non-Federal funds received under this section and maintain such funds and any interest or revenues earned in a separate interest bearing account, hereafter referred to as the "Fund," established by such non-profit organization solely to support partnerships between the public and private sectors that further the purposes of this ~~title~~ Act.[1]

(b) AUTHORIZATION TO SOLICIT DONATIONS -- Consistent with 16 U.S.C. 3703, and pursuant to the agreement entered into under subsection (a) of this section, ~~an~~ a non-profit organization may accept, receive, solicit, hold, administer and use any gift or donation to further the purposes of this title. Such non-Federal funds shall be deposited and maintained in the Fund established by ~~an~~ a non-profit organization under subsection (a) of this section.

(c) REVIEW OF PERFORMANCE -- The Administrator shall conduct a continuing review of the grant program administered by ~~an~~ a non-profit organization under this section. Each review shall

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[1] We note that there are no separate titles in S. 725; the bill thus inadvertently uses the word "title" rather than the word "Act" in the introductory lines of §§ 2 and 3, §4(e)(8), §5(a) and §7(b).

include a written assessment concerning the extent to which that non-profit organization has implemented the goals and requirements of this section.

(d) ADMINISTRATION -- Under the agreement entered into pursuant to subsection (a) of this section, the Administrator may transfer to the non-profit organization funds appropriated to carry out this Act ~~to an organization~~ for mutually agreed upon projects that further the purposes of this Act. Amounts received by ~~an~~ a non-profit organization under this subsection may be used for matching, in whole or in part, contributions (whether in currency, services, or property) made to the non-profit organization ~~by private persons and State and local government agencies~~ pursuant to paragraph (b). Federal funds provided by the Administrator to a non-profit organization under this section may not be used as the non-Federal match for financial assistance pursuant to section 4(b).