

STATEMENT OF PURPOSE AND NEED

PURPOSE OF THE BILL

The Coral Reef Ecosystem Conservation Amendments Act of 2007 reauthorizes the Coral Reef Conservation Act of 2000 for five years, authorizes levels of funding for those years, and makes changes to improve the ability of the National Oceanic and Atmospheric Administration's (NOAA) Coral Reef Conservation Program (CRCP or Program) to be effective and efficient in protecting coral reef ecosystems. Further, the bill improves the Department of the Interior's (DOI) ability to undertake coral reef ecosystem protection by clarifying their existing authorities.

BACKGROUND

On June 11, 1998, Executive Order (Order) 13089 "Coral Reef Protection" was signed. This order directs that all federal agencies whose actions may affect U.S. coral reef ecosystems: (1) identify actions that might affect such ecosystems; (2) utilize programs and authorities to protect and enhance the conditions of such ecosystems; and (3) ensure that their actions do not degrade the conditions of such ecosystems. Furthermore, the Order stipulates that federal agencies whose actions affect U.S. coral reef ecosystems shall provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems. The Order establishes the U.S. Coral Reef Task Force (Task Force) and directs the Task Force to develop, recommend, and seek or secure implementation of measures to reduce adverse impacts from pollution, sedimentation, detrimental alteration of salinity or temperature, over-fishing, over-use, collection of coral reef species, and direct destruction caused by activities such as recreational and commercial vessel traffic and treasure salvage. The Order also directs the Task Force to review existing legislation to determine whether additional legislation is necessary to complement the policy objectives of the Order and recommend such legislation, if appropriate.

In 2000, Congress enacted the Coral Reef Conservation Act (CRCA), which authorized appropriations to NOAA for coral reef protection and management through 2004. The CRCA provided NOAA with additional authority to undertake a number of activities to understand, manage and protect coral reef ecosystems by authorizing five major activities:

- (1) The CRCA requires NOAA to draft and submit to Congress a National Coral Reef Action Strategy, including a statement of goals and objectives and an implementation plan. A Strategy was submitted to Congress by NOAA in 2002, and a report on U.S. Coral Reef Task Force Activities to implement the Strategy was submitted to Congress by NOAA in July 2005.
- (2) The CRCA authorizes the CRCP to provide matching grants for coral reef conservation projects to states, territories, educational and non-governmental institutions, and fishery management councils. NOAA submitted a report on the Coral Reef Conservation Grants Program to Congress in December 2003.

- (3) The CRCA authorizes establishment of the Coral Reef Conservation Fund. Through the Fund, NOAA works with the non-profit National Fish and Wildlife Foundation to build public-private partnerships to reduce and prevent degradation of coral reefs.
- (4) The CRCA provides additional authority for NOAA to implement a national program to conserve coral reef ecosystems. Through the CRCP, NOAA conducts activities such as mapping, monitoring, assessment, research, and restoration that benefit coral reef ecosystems; enhancing public awareness of such ecosystems; assisting states to remove abandoned vessels and marine debris from reefs; and cooperative management of coral reef ecosystems.
- (5) Lastly, the CRCA provides the NOAA Administrator the authority to provide grants to state and local governments to respond to unforeseen or disaster-related coral reef emergencies. This last authority has not been effectively implemented as grants are not an efficient mechanism for addressing emergency events. Due to the lengthy grants awarding process, funding would not be immediately available to state and local governments to minimize damage to coral reefs during an emergency injury event and to support time-sensitive emergency response and restoration activities.

The CRCP, through efforts across NOAA, supports and implements coral reef conservation projects within the U.S. jurisdictions and waters with shallow-water coral reefs. This includes Florida, Hawaii, Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, Navassa Island in the Caribbean, the remote U.S. island territories in the Pacific, and the surrounding U.S. Exclusive Economic Zone. The CRCP also supports activities with partners to support coral reef conservation projects outside U.S. jurisdictions. The Program relies heavily on a network of governmental and non-governmental partners to assist in accomplishing its statutory mission. Research, monitoring and management activities are coordinated with several NOAA offices, and with other federal, state, and non-governmental partners. Based on NOAA's understanding of the intent of the Coral Reef Conservation Act, the CRCP has not extended its activities using funds authorized by the CRCA to include deep corals (also known as deep-sea or cold-water corals), which have a much broader geographic distribution in U.S. waters.

In the six years since its inception, the CRCP has worked to build capacity locally within the seven U.S. coral jurisdictions and internationally in several key areas to: (1) map, monitor, characterize, restore, research, and assess the condition of coral reef ecosystems; (2) provide support for marine protected areas; (3) understand the threats to healthy coral reef ecosystems; and (4) promote public awareness and education on the value of and threats to coral reef ecosystems. The Program operates under an ecosystem-based management philosophy, keeping in mind the interconnectedness of terrestrial and marine ecosystems and striving to proactively protect these resources.

The Department of the Interior also has authority to conserve coral reefs, but these authorities are scattered among a variety of statutes. These statutes provide the Secretary of the Interior with general authority to conserve fish and wildlife resources, to assist the States and territories, and to conduct research on fish and wildlife, but none of these authorities mentions coral reefs. Many other conservation efforts at the Department of the Interior have specific statutory authorizations, such as conservation of migratory birds, listed species under the Endangered Species Act, or restoration of wetland habitat.

With the considerable expansion of activities by the U.S. Coral Reef Task Force and the many additional coral reef conservation activities underway by the States and territories for which they seek federal assistance, such as Local Action Strategies, it is necessary to consolidate and clarify these multiple general authorities of the Department of the Interior into specific authorizations for coral reef conservation activities. This will be an important step forward in enhancing the Department of the Interior's ability to provide technical assistance to States and territories, to carry out their research and management objectives, and to permit them to more effectively function as co-chair of the U.S. Coral Reef Task Force.

STATEMENT OF NEED

Although the CRCA provides NOAA with powerful tools to study, manage and protect coral reef ecosystems, there are gaps in authority that limit NOAA's ability to implement a full suite of coral reef conservation activities. The overall goal of this bill is to update the CRCA to most effectively meet its purposes. The bill addresses 9 specific objectives to meet this goal. The specific amendments made to the CRCA help address these objectives. Each of the 9 objectives is listed below followed by a description of the need for each:

1. *Provide additional rationale as to the value of protecting coral reefs and coral reef ecosystems.*

The CRCA provides NOAA with a suite of tools to understand, manage, and protect coral reefs and coral reef ecosystems. The CRCA does not contain, however, any rationale as to the value of coral reefs and, consequently, the importance of their protection. Context about the value of coral reef ecosystems should be provided to underscore the significance of funding and implementing the provisions of the CRCA.

2. *Provide a suite of tools to facilitate response to damages to coral reefs.*

One of the major threats to coral reefs is mechanical damage, often from events such as ship groundings and improper anchoring. While there are numerous incidents every year that injure coral reefs, NOAA does not have the tools or fiscal resources to minimize injury. The CRCA should be amended to allow better response to activities resulting in injury to coral reefs.

Expeditious emergency response actions can save corals. Corals, toppled from groundings and other forms of physical impacts, can be saved if reattached quickly. Likewise, fractured coral framework can be stabilized by technical experts provided that restoration is initiated before waves and storms cause further framework destabilization. However, no fund exists for emergency response or reef stabilization; nor is there a fund to remove grounded, often abandoned, vessels that continue to cause injury to the reef. While the Oil Spill Liability Trust Fund is available when there is a release or threat of release of oil, this fund does not address grounding incidents or other activities that injure corals when an oil spill is not imminent. Even when the Oil Spill Liability Trust Fund is available, the remedy is removal of the oil but not vessel removal. The vessel is left in place where waves and storms pound it, causing further injury to the reef and often resulting in the vessel breaking up and spewing debris along the reef tract. The CRCA should be amended to provide for the establishment of an Emergency Response, Stabilization and Restoration Account within the Damage Assessment Revolving Fund, to provide for emergency actions.

At the same time, restoring injured coral reefs is expensive. The burden of that expense should be borne by those responsible for the injuries. Liability schemes for injuries to natural resources are common in a number of statutes.¹ In fact, NOAA has such authority under the National Marine Sanctuaries Act (NMSA) within most National Marine Sanctuaries, and the Department of the Interior has authority under a similar statute governing activities occurring in National Parks. The CRCA should be amended to include a liability scheme similar to these statutes, which would enable the Department of Commerce (DOC), through NOAA, and the Department of the Interior, within National Wildlife Refuges and National Park System, to recover the costs of response, assessment, and restoration from the responsible party. Unless an oil release is imminent, there are no clear statutory remedies for damages to coral reefs outside of most National Marine Sanctuaries² and National Parks. This is a gap that the U.S. Coral Reef Task Force has identified and concluded needs to be filled. Accordingly, a liability scheme should be added to the CRCA, similar to that found in the Oil Pollution Act, the NMSA, and the Comprehensive Environmental Response, Compensation, and Liability Act, to address injuries to coral reefs.

The CRCA does contain authority for NOAA to provide emergency grants to State, local, and territorial governments to address unforeseen and disaster-related circumstances. However, grants are not an efficient mechanism for addressing emergency events. The CRCA should therefore be amended to allow DOC, through NOAA, to more broadly provide assistance and to work in conjunction with the Federal Emergency Management Agency, as appropriate.

¹ See the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, the Oil Pollution Act, 33 U.S.C. §§ 2701-2720, and the Clean Water Act, 33 U.S.C. §§ 1251-1387.

² There is no liability coverage for corals within the Hawaiian Islands Humpback Whale National Marine Sanctuary because corals are not explicitly a “Sanctuary resource” within that site.

3. Augment authorities to allow for stronger partnerships.

The CRCA provides NOAA with authority to enter into a partnership with a non-profit organization to develop and manage a Coral Reef Conservation Fund. The CRCA should allow DOC, through NOAA, to enter into such agreements with more than one organization, if advantageous.

In addition, like the National Marine Sanctuaries Act, the CRCA should provide the following additional authorities to allow DOC, through NOAA, to act in partnership with others to carry out the purposes of the CRCA:

- The CRCA should include authority to enter into contracts, leases, grants, and cooperative agreements with other agencies, governments, or organizations.
- The CRCA should include authority to use resources of other agencies, governments and organizations, with or without reimbursement.
- The CRCA should include authority to obtain grants.

4. Highlight specific threats to coral reef ecosystems and responses to those threats.

The CRCA provides authority to conduct a wide variety of activities to understand, manage and protect coral reef ecosystems, both directly and through grants. There are a few specific threats to coral reefs important enough that addressing them should be specifically highlighted:

- Coral diseases and bleaching are increasingly prevalent. Understanding the causes of these events and addressing them in a timely manner are important activities to be conducted under the CRCA.
- Abandoned fishing gear, abandoned vessels, and other marine debris can be a large threat to coral reef ecosystems. The CRCA provides authority to provide assistance to States to remove such debris. The CRCA should also provide the authority to directly remove such debris, as not all such debris is found in State waters.
- Recent evidence from the Indian Ocean tsunami (December 2004) shows that healthy coral reef ecosystems can provide protection to coastal communities. The CRCA should provide authority to study how coral reef ecosystems provide this protection.

5. Data archive, access and availability.

The CRCA does not currently address data archiving, access and availability. The CRCA should be amended to strengthen existing activities within NOAA to promote widespread access and dissemination of data to managers and the academic community. The CRCA should provide for the development of metadata standards according to Federal Geographic Data Committee guidelines to foster the wide exchange of data among

federal, State, and local government partners, tribal organizations and the non-governmental community. The NOAA National Data Centers already have strong partnerships with international organizations and serve as World Data Centers for specific subject areas. By encouraging the archive of data according to national and international standards, NOAA could achieve the goal of having the appropriate standards and protocols in place to support a scientific assessment of the state of U.S. and world coral reef ecosystems using data that has been quality assured and quality controlled. Amendments to the CRCA should also bring the proposed legislation into compliance with 15 U.S.C. § 1537 (entitled "Needs assessment for data management, archival, and distribution").

6. *Update Authorization of Appropriations to reflect the President's budget request and clarify the use of the funds.*

The authorization of appropriations should be updated, consistent with the President's budget request. The use of funds should also be clarified as follows:

- The CRCA specifies the amount of funding that can be used for program administration and overhead. Because the level of appropriations has increased significantly since the CRCA originally passed in 2000, \$1,000,000 is too little funding to cover administrative and overhead costs. The CRCA should be amended to remove the cap of \$1,000,000.
- The split of appropriations between supporting section 204 (Coral Reef Conservation Grants Program) and section 208 (National Program) is confusing, does not reflect current appropriation levels, and does not seem to allow for funding of other sections of the CRCA. Furthermore, the Secretary should be allowed maximum discretion to use the funding in the way that will best meet the purposes of the CRCA. This split of funding should be removed.

7. *Amend definitions.*

The CRCA lists a number of definitions applicable to the CRCA. Several of these definitions should be revised to address other objectives (e.g., new definitions necessary to support the new language to implement Objective 2, responding to damages to coral reefs). In addition, the definitions for "coral," "coral reef," and "coral reef ecosystem" should be amended for accuracy, to reflect the limited use of the term "coral reef" in the rest of the CRCA, and to better reflect the scope of the coral reef ecosystem.

8. *Authorize a Coral Program for the Department of the Interior.*

There is no specific statutory provision for coral reef conservation activities in the numerous general authorities of the Department of the Interior. Changes should be made to these statutes to clarify that they apply to coral reefs, to ensure DOI can continue to function effectively as co-chair of the U.S. Coral Reef Task Force and better implement its management objectives and the U.S. Ocean Action Plan.

9. *Minor technical changes.*

Several minor changes should be made to the CRCA, including:

- Throughout the CRCA, all references to the “Administrator” should be changed to reference the “Secretary.” The Secretary of Commerce is ultimately responsible for all actions under the CRCA (except where explicitly noted to be the Secretary of the Interior). For example, agreements undertaken with other entities must be approved by the Department of Commerce. All relevant activities would be delegated to the Administrator of the National Oceanic and Atmospheric Administration.
- The CRCA should be clarified to show that the conservation and management activities undertaken pursuant to the CRCA will have a wider international and global impact on coral reef ecosystems.