ADDITIONAL VIEWS

Coral Reef Conservation Act of 2000 has been a good model for natural resource conservation with a focus on locally-developed and locally-driven solutions.

There are two primary authorities within the Act—to fund a coral reef program within the National Oceanic and Atmospheric Administration (NOAA), an agency within the Department of Commerce, and to provide grants to those States and territories that have coral reefs within their waters. These grants allowed for the development of Local Action Strategies that were created by the local jurisdictions and identified threats to coral reefs and solutions to those threats. This local input allowed each entity to focus future funding on their specific needs. Through these Local Action Strategies, approximately 760 projects have been identified to address eight categories of threats. Almost 65 percent of the projects are already being implemented and funding has been secured for almost 40 percent of the identified needs. By allowing the plans to be developed at the local level, this Act has focused funds where they are needed and actions are based on identifiable threats specific to that jurisdiction.

Despite this history of success of the Act, some have argued that more regulation of activities that affect coral reefs is necessary. In addition, concern has been raised that the Department of the Interior, while not having any formal role under the Coral Reef Conservation Act of 2000, has funded coral reef conservation efforts through other authorities and should have a formal role under the Act. In addition, the Office of Insular Affairs within the Department of the Interior has a close relationship with the territories and freely associated states where much of the coral reef conservation activity is located. The issue of whether to, and how to, include the Department of the Interior's activities in the Act has been partially responsible for the delay in implementing a reauthorization of the Act for two Congresses.

This authority in the 2000 Act for local entities to address coral reef conservation along with a national program to fund these activities and national coral reef research has worked well. However, some threats have been identified that needed national solutions, such as vessel groundings on sensitive coral reefs and damage from natural sources such as hurricanes. While the current Act allowed NOAA to create a national program, it did not give NOAA, or any other agency, the authority to react quickly to these threats to coral reefs when timely action could minimize or prevent further damage to the reefs.

H.R. 860, the Coral Reef Conservation Act Reauthorization and Enhancement Amendments of 2009 would address this concern by giving NOAA an emergency response authority for vessel groundings or natural disaster, authority to stabilize a vessel or

the coral reef itself in the event of a ship strike, authority for inventory on ship strikes—to identify problem vessels or companies—and to identify particular at-risk coral reefs which might be subject to repeated groundings, and the authority to partner and coordinate with other agencies to maximize the effectiveness of the Federal response. In addition, the legislation codifies the U.S. Coral Reef Task Force which was created by Executive Order in 1998.

More problematic, as introduced, H.R. 860, would create a new role for the Department of the Interior consistent with the new authorities the bill would create for NOAA. The legislation would place coral reefs on a higher protection level than other marine creatures by adding coral reefs to the list of those resources protected by the National Marine Sanctuaries Act. This change in the status for coral reefs also would create a broad, new permitting program at both NOAA and the Department of the Interior. Concern was heard that this broad, new authority would extend the reach of the Act to activities—even inland activities—that were already permitted under other authorities and which only had indirect effects on coral reefs. The new permitting provision would allow NOAA or the Department of the Interior to collect fees based on the cost of the permit and additional costs such as monitoring of the activity's effects of coral reefs and for educating the public about the activity. The authority to charge permittees for a broad rage of things could create a situation where the costs of obtaining the permit would discourage permits.

Moreover, because the legislation would elevate the status of all coral reefs, the liability standards in the National Marine Sanctuaries Act would apply to activities that damage, injure or cause the loss of coral reefs. In addition, a judicial review provision in the bill would subject many existing and new activities, and the decision to permit such activities, to litigation. The legislation also would allow litigants to recover both attorney fees and expert witness fees, both of which would likely encourage litigation and reduce the amount of funding available for coral reef conservation.

The legislation also would give the Department of the Interior broad new authority by amending fish and wildlife statutes and adding "coral reef ecosystems" to the definition of "wildlife." This method of including the Department of the Interior would give the Department authority to manage coral reef ecosystems—that under H.R. 860 would also include mangroves and sea grasses—wherever they occur. This would allow the Department to create a duplicate management, research, and regulatory structure parallel to that which is authorized under H.R. 860 for NOAA.

Finally, the legislation, as introduced, would require the creation of a new International Coral Reef Conservation Program, a new international coral reef ecosystem strategy, and a new international coral reef ecosystem partnership program which would fund coral reef projects outside of U.S. waters. While coordination of coral reef conservation activities is important, Members expressed concern with spending U.S. taxpayer money on projects outside the U.S.

The Amendment in the Nature of a Substitute, successfully offered by the Subcommitteeon Insular Affairs, Oceans and Wildlife Chairwoman Madeleine Bordallo (who is also the author of the

bill), made a number of very positive changes to the bill. The most significant of these is the clarification that activities which are authorized under State or federal law are not unlawful, are not subject to liability for coral reef damage, and do not need permits. The permit authority now applies only to the issuance of bona fide research activities. In addition, the authority for the Department of the Interior was limited to those areas already under the Department's jurisdiction where coral reefs are located such as National Parks, National Wildlife Refuges, and National Marine Monuments. While the concern about adding coral reef ecosystems to the definition of wildlife still remains in the legislation, this narrowing of the Department's authority to those areas already under the Department's jurisdiction makes this provision less objectionable. The amendment also removed the requirements for some of the new international programs and gave priority for the funding of international projects to those in which States or territories are partners. These changes represent positive changes to the legislation.

However, in light of this legislation adding new authorities for both NOAA and the Department of the Interior, there are still some areas that could result in over-reach or unintended consequences by the agencies in implementing these new authorities. The issue of judicial review and the authority for lawyers and expert witnesses to receive payment will certainly lead to funds being taken away from coral reef conservation and used to finance further lawsuits against the federal government. At hearings held over the last few years, agencies have testified on several occasions about how much staff time and funding were being used to respond to lawsuits. Adding additional opportunities for such lawsuits does not help natural resource management activities.

In addition, some terms redefined by H.R. 860 have the potential to expand the reach of federal oversight beyond what might be intended by the authors. For example, the addition of mangroves and seagrasses to the definition of coral reef ecosystem will expand the reach of NOAA and the Department of the Interior into new geographical areas, and where "coral reef" is used in other statutes, these plant species could be subject to regulation. Along those lines, the definitions of coral reef and coral reef component include "skeletal remains" and "living or dead corals" which could be used to expand provisions of the legislation to large areas which may no longer have living corals. Restrictions or refinements of these definitions would limit these concerns. Finally, referencing provisions of the National Marine Sanctuaries Act rather than putting these specific provision in the Act due to potential jurisdictional concerns may cause problems as the National Marine Sanctuaries Act is modified either in this or later Congresses.

While the Amendment in the Nature of a Substitute has addressed many of our concerns and made this legislation appreciably better, we remain concerned about the added scope H.R. 860 will give to the agencies charged with implementing the Coral Reef Conservation Act of 2000.

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