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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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May 24, 1979

The Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives

HSE02700

Dear Mr. Chairman:

This letter responds to your March 14, 1979 request for GAO comments on H.R. 2759, 96th Congress, which, if enacted, would be cited as the "Deep Seabed Hard Mineral Resources Act".

The purposes of H.R. 2759 are to (1) establish an interim program to encourage and regulate the development of hard mineral resources of the deep seabed by United States citizens, pending the entering into force with respect to the United States of a superseding international agreement relating to such activities; (2) insure that the development of hard mineral resources of the deep seabed are conducted in a manner which will encourage the orderly and efficient development of such resources, will protect the environment, and will promote the safety of life and property at sea; (3) to encourage the successful negotiation of a comprehensive international Law of the Sea Treaty which will give legal definition to the principle that mineral resources of the deep seabed are the common heritage of mankind; and, pending the entering into force of such a treaty to provide for the establishment of a special fund the proceeds of which shall be used for sharing with the international community pursuant to such treaty; and (4) to allow the continued development of technology necessary to develop the hard mineral resources of the deep seabed as soon as possible.

H.R. 2759 represents, as compared to previous similar bills on which GAO has testified, an improved legislative mechanism for guiding the orderly development of deep seabed mineral resources. It incorporates a number of concepts previously suggested by GAO, though it still reflects deficiencies which cause us serious concern.

Before discussing them, it is worthwhile to reiterate the basic principals which GAO believes should guide U.S. action regarding deep seabed mineral resources. First, we believe

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that organic legislation should be structured to insure its provisions are closely coordinated with and be part of the overall strategy of U.S. initiatives and the policy objectives under the Conference on the Law of the Sea. Similarly, we believe that should be considered in the framework of a coherent deep sea mining development program which establishes the appropriate Federal role and clearly assigns responsibility for carrying it out. This framework has not yet been established, an important point documented on in our June 1978 report "Deep Ocean Mining: Actions Needed to Make It Happen." Though the Executive Branch has devoted considerable study to the issue, it has yet to present Congress with definitive recommendations for management of a deep sea mining program.

GAO also believes that there is a strong public equity interest in deep seabed resources. For this reason, we strongly encourage examination and adoption of an exploration and leasing system which, in a manner similar to the existing system for Outer Continental Shelf (OCS) oil and gas resources would provide for payments to the Federal Government for these public resources.

Such a system should provide that:

--exploration and actual commercial development be explicitly distinguished.

--permits to explore the deep ocean area be issued. These permits should be issued to any potential bona fide bidder who wants to explore. In order to avoid unnecessary duplication of exploration, any bona fide potential bidder should be able to "buy in" on the exploration information by paying a pro-rated share of the cost of exploration.

--information obtained under exploration permits must be shared with the Government. Such information should help the Federal Government estimate the fair market value of the resource to be leased.

--following the exploration phase there should be a call for nominations of areas to be leased. In addition, the Government should have the option of offering tracts that it feels are potentially valuable even if no nominations are received on those tracts.

--leases be issued for commercial development activity in these areas on an open, competitive bid basis in a manner similar to Outer Continental Shelf oil and gas leases.

--payments stemming from lease arrangements be put in an escrow account pending final international agreement as to how financial benefits from deep sea mineral development should be distributed.

--exploration or commercial development must take place within a specified time period or suffer forfeiture of lease rights.

H.R. 2759 is consistent with these foregoing principles in important respects. It explicitly distinguishes between exploration and development activity; it provides for sharing of exploration information with the Government; it provides that an escrow fund be established; it recognizes the propriety of requirements for diligent development and fair market value return; and it recognizes the need to coordinate deep-sea mining activities with overall foreign-policy objectives and encourage the successful negotiation of a comprehensive Law of the Sea Treaty.

H.R. 2759 still shows, however, a lack of definitive agreement on how a deep seabed mining program is to be managed. This is most reflected by the fact that the term "Secretary" is not defined and the bill leaves completely uncertain which department would have central responsibility. GAO recommends that the bill be clarified by defining the term "Secretary" and thus making clear which department is to have central responsibility.

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On another key matter, we note a major discrepancy between payments required from developers of deep seabed mining resources under this legislation and payments from developers of OCS and other U.S. controlled land resources under existing law. As we understand the bill's provisions, developer payments to the trust fund established by the bill would be only 3/4 of 1 percent of the fair market value for commercially recoverable metals and minerals. We perceive no justification for holding these tax payments to such a minimal level. We urge that the Congress strive to achieve a maximum reconciliation between the taxation requirements for deep seabed development and the taxation on the development of U.S. national resource deposits so as to avoid unwarranted skewing of future investment and developmental decisions.

The enclosure contains further, technical comments on the bill. Copies of this letter are being sent to each of the Committees to which the draft legislation has been referred. Thank you for the opportunity to comment on H.R. 2759.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosure

Enclosure 1

TECHNICAL COMMENTS ON H.R. 2759

Section 3 (2). "Continential Shelf" and "Deep Seabed". The bill as presently written does not in any way regulate or tax the operations of seabed mining on either the Continential Shelf or the territorial sea, only the undisputed mining areas that are superjacent to the Continential Shelf or the territorial sea. The separation of the two Acts in this bill (Titles I, II, and III for the first Act and Title IV for the second Act) would seemingly allow for appropriate regulation of mining in all areas with the taxing mechanism solely in the international areas. Clarification needs to be made to show if equal taxation is to be applied in all areas.

Section 102. This section effectively prohibits U.S. citizens from engaging in "exploration" unless authorized. Exceptions are noted in subsection (d) Exceptions include "the taking of any geophysical or geochemical measurements, or random bottom samplings, of the deep seabed...". In reality exploration and taking of measurements are probably indistinguishable, yet the former requires applications, processing, and is a regulated activity while the latter is uncontrolled. Additional clarification is needed.

Section 103 (C) (1) (D). Under this clause, which pertains to diligent development, if an enterprise has relinquished its claim, then it has no recourse to other future development until three years have passed. Consequently, it is essential that the language of Section 106 (b) (3) (B) and (C) (relating to performance requirements) take into consideration market fluctuations that can render a venture uneconomic under those section's descriptions of (B) "maximum time interval after exploration is completed within which commercial recovery must commence", and (C) "all relevant factors". Permit extensions under certain conditions should be provided for.

Section 103 (f). Increased Secretarial accountability under this section would be desirable and could be provided for by establishing a fixed time period for approval or denial of applications by the Secretary.

Section 103 (h). The clause "reasonable administrative costs incurred by the Secretary in processing the application" should be expanded upon in order to make it clear whether the fee is to cover only minimal "administrative" fees (which in the case of OCS lease applications approximate $25) or more extensive Government costs such as those incurred in

placing Federal officers aboard vessels and preparing environmental impact statements (costs which run into hundreds of thousands of dollars.)

Section 105. The sentence "Each environmental impact statement which is so required shall be prepared within the 6-month period following the date on which the application for the license or permit covered is approved by the Secretary." seems to be inconsistent with Section 103 (f) which indicates that an application cannot be approved without an environmental impact statement. Changing "approved by the Secretary" to "reviewed by the Secretary" would be more appropriate.