



U.S. Department of Justice

Office of Legislative Affairs

---

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 15 2019

The Honorable Lisa Murkowski  
Chair  
Committee on Energy and Natural Resources  
United States Senate  
Washington, DC 20510

Dear Madam Chairwoman:

This letter presents the views of the Department of Justice (Department) on S. 1821, the Marine Energy Research and Development Act of 2019. Due to constitutional concerns with a provision of this bill, we recommend that the provision be amended as described below.

Section 4 of the proposed bill would amend the Energy Independence and Security Act of 2007 (42 U.S.C. § 17212), to require the Secretary of Energy to “carry out a program” to, among other things, “support in-water technology development with international partners using existing cooperative procedures . . . to encourage international research centers and international companies to participate in the development of marine energy technology in the United States.” S. 1821, sec. 4, § 633(a)(13)(B).

The Constitution commits to the President alone the responsibility to formulate the position of the United States in international fora. *See United States v. Louisiana*, 363 U.S. 1, 35 (1960) (the President is “the constitutional representative of the United States in its dealings with foreign nations”); *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 319 (1936) (“The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.” (internal quotation marks omitted)). *See also, Unconstitutional Restrictions on Activities of the Office of Science and Technology Policy in Section 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011*, 35 Op. O.L.C. \_\_\_, at \*4 (Sept. 19, 2011) (“The President’s exclusive prerogatives in conducting the Nation’s diplomatic relations are grounded in both the Constitution’s system for the formulation of foreign policy, including the presidential powers set forth in Article II of the Constitution, and in the President’s acknowledged preeminent role in the realm of foreign relations throughout the Nation’s history.”). Thus, the President has “exclusive authority to determine the time, scope, and objectives’ of international negotiations or discussions.” *Constitutionality of Section 7054 of the Fiscal Year 2009 Foreign Appropriations Act*, 33 Op. O.L.C. \_\_\_, at \*8 (June 1, 2009) (quoting *Issues Raised by Foreign Relations Authorization Bill*, 14 Op. O.L.C. 37, 41 (1990)).

The Honorable Lisa Murkowski  
Page Two

Accordingly, Congress may not require executive branch officials to take particular positions when participating in international fora. We recommend amending section 4 to add "as appropriate," at the beginning of proposed subsection 633(a)(13).

Thank you for the opportunity to present our views. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink that reads "Mary Blanche Hankey/For". The signature is written in a cursive, somewhat stylized script.

Stephen E. Boyd  
Assistant Attorney General

cc: The Honorable Joe Manchin  
Ranking Member