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U.S. DEPARTMENT OF COMMERCE**

**HEARING ON  
REAUTHORIZATION OF THE *NATIONAL MARINE SANCTUARIES ACT***

**BEFORE THE  
COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS  
U.S. HOUSE OF REPRESENTATIVES**

**July 24, 2008**

**INTRODUCTION**

Good morning, Madam Chair and members of the Subcommittee. I am John H. Dunnigan, Assistant Administrator for Ocean Services and Coastal Zone Management for the National Oceanic and Atmospheric Administration (NOAA). Thank you for the opportunity to testify on H.R. 6537, the *Sanctuary Enhancement Act of 2008* and H.R. 6204, the *Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Modification Act*.

Thirty-six years ago, Congress passed the *Marine Protection, Research, and Sanctuaries Act of 1972* (P.L. 92-532). Title III of that law, later named the *National Marine Sanctuaries Act* (the *NMSA*), authorized the Secretary of Commerce to designate areas of the marine environment, including the Great Lakes, as national marine sanctuaries.

The *NMSA* is one of the strongest pieces of federal legislation for protecting both natural and cultural resources in the oceans and Great Lakes. The *NMSA* is unique among the suite of federal laws aimed at protecting or managing marine resources in that its primary objective is to set aside marine areas of special national significance for their permanent protection and to manage them as ecosystems to maintain their natural biodiversity and historical and cultural heritage.

NOAA fully supports reauthorization of the *NMSA* and appreciates the opportunity to once again reiterate our priorities for reauthorization. Although we have not had sufficient time to review H.R. 6537 and cannot provide specific comments on it today, we look forward to working with the Committee in the future once we've conducted a more thorough analysis. My testimony today will therefore focus more generally on NOAA's priorities for reauthorization and on H.R. 6204.

**PRIORITIES FOR *NMSA* REAUTHORIZATION**

The *NMSA* is one of the nation's most successful marine resource conservation laws and its reauthorization should be a top priority of Congress as it considers environmental legislation. There are, however, several issues that the Administration considers ripe for change within the act.

NOAA's top three priorities for *NMSA* reauthorization are to:

- Clarify and strengthen that the *NMSA*'s primary mission is resource protection.
- Streamline and clarify the processes of: (1) identifying and evaluating sites for possible designation as national marine sanctuaries; (2) selecting eligible sites to begin the designation process; and (3) designating sites as national marine sanctuaries.
- Provide those portions of marine national monuments managed by NOAA with legal management tools that are currently available to national marine sanctuaries.

### *The NMSA's Primary Purpose and Mission Focus*

Although the *NMSA*'s primary purpose is resource protection, the *NMSA* has lacked an overarching mission statement since its passage in 1972. In implementing the *NMSA*, NOAA must piece together current priorities and management goals through references found scattered throughout the *NMSA*. This has, on occasion, led to confusion as to the *NMSA*'s primary mission focus. In clarifying its primary purpose, the *NMSA* could be modified to include a stand-alone purpose and policy on resource protection and a clear concise mission statement for NOAA in implementing that policy.

### *Sanctuary Identification and Designation*

There has been considerable confusion about the processes for evaluating sites for eligibility and designating them as national marine sanctuaries. This confusion has been a significant impediment to NOAA making timely decisions about designating sites and in conducting management plan reviews for existing national marine sanctuaries. Reauthorization discussions of the *NMSA* could include consideration of new language to streamline and clarify these processes with the goal of allowing NOAA to make more timely and predictable decisions.

Any changes to the existing processes, however, must be made in a way that first and foremost preserves the *NMSA*'s longstanding commitment to transparent public process. Any changes must also maintain the *NMSA*'s important procedural safeguards, such as interagency and intergovernmental consultation requirements.

### *Marine National Monuments*

The *Antiquities Act of 1906* (16 U.S.C. 431-433) gives the President authority to protect natural and cultural objects through designation of a national monument. Although this authority has been largely used to protect terrestrial resources, it has been used to protect special areas of the marine environment as well, including the Papahānaumokuākea

Marine National Monument (PMNM), which is the first monument NOAA has responsibility to manage. NOAA is a co-manager of the PMNM, along with the U.S. Fish and Wildlife Service and the State of Hawaii. While this statute provides a basis for strong protection, the *NMSA* provides NOAA a number of well-tested and highly valuable administrative management tools to effectively manage and protect national marine sanctuaries that are not available under the *Antiquities Act*. In particular, the *NMSA* provides for the recovery of damages from parties responsible for injuring sanctuary resources (section 312); it allows for a community-based advisory council to provide input in sanctuary management (section 315); and it allows for NOAA to pursue civil penalties for violations of the *NMSA* and regulations or permits issued under the *NMSA* (section 307). These authorities would be useful in marine national monuments, or portions thereof, that are managed by NOAA.

#### *Technical Enhancements to Key Elements of the NMSA*

Several key elements of the *NMSA* lay the basic foundation for management of the National Marine Sanctuary System and provide essential statutory authority to ensure its overarching goals and objectives are efficiently met. These include the ability to conduct enforcement (section 307), the authority to issue regulations (section 308), the mandate to conduct scientific research and educational programs (section 309), the flexibility to issue special use permits (section 310), the authority to enter into cooperative agreements (section 311), the authority to collect damages from parties responsible for injuring sanctuary resources (section 312), the authority to establish and convene advisory councils (section 315), and the authority to solicit sponsors and accept other forms of support (section 316). Reauthorization discussions could include careful evaluation of these foundational pieces of the *NMSA* and update them as necessary to ensure they continue to meet NOAA's needs. For example, some considerations could include:

- increasing the maximum civil administrative penalty per day per offense, to provide a greater deterrent;
- providing better clarity on the issuance and enforcement of permits (e.g., clarify that NOAA has the authority to revoke permits it issues under the authority of NMS regulations);
- making the management of advisory councils more efficient by eliminating the 15-member limit on advisory councils for sanctuaries designated after November 4, 1992; and
- allowing NOAA to withhold data and information that, if released, could result in injury to sanctuary resources.

#### **THUNDER BAY EXPANSION**

NOAA agrees with the underlying purpose of H.R. 6204, which is to provide federal protection to the shipwrecks, and other maritime heritage resources, located off Michigan's Presque Isle and Alcona Counties by incorporating them into the Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary). This proposal also has widespread support in the local communities. On May 22, 2007, the Thunder Bay

Sanctuary Advisory Council (SAC) recommended expanding the Sanctuary to a 3,662-square-mile area extending from Alcona County to Presque Isle County, east to the international border with Canada. Formal support for sanctuary expansion has been received from the City of Alpena, Alpena County, Alpena Township, Sanborn Township, Presque Isle Township, the City of Rogers City, Alcona County, Michigan Sunrise Side Travel Association, and the Sunrise Side Coastal Highway Management Council. While there is public support for such an expansion, as a general matter NOAA prefers to see that significant actions such as these be vetted through public management plan and regulatory development processes rather than legislatively, as H.R. 6204 would do.

The Sanctuary was designated in October 2000 for the purposes of providing long-term protection and management to the conservation, recreational, research, educational, and historical resources and qualities of a nationally significant collection of shipwrecks and other maritime heritage resources in the area. The bill would increase the size of the Sanctuary by approximately eight times its current size of 448 square miles. The Sanctuary's shoreline would also increase from 95 to 225 miles and subsequently include the cities of Alpena, Harrisville and Rogers City. Under this proposal an additional five state park properties, seven historic lighthouses and one lifesaving station would also be adjacent to the expanded boundaries.

More than 200 shipwrecks rest within the proposed boundaries. Magnificently preserved by the cold freshwater of Lake Huron, these archeological sites are one of the nation's best-preserved and historically-significant collections of shipwrecks. From pioneer steamers to majestic schooners to modern freighters, these sites represent a microcosm of maritime commerce on the Great Lakes. As memorials to the men and women that worked the inland seas, these unique sites have tremendous historical, archaeological, and recreational value. They not only connect us to the past, but they also connect us to the Great Lakes — one of our most precious natural resources.

## **CONCLUSION**

In closing, I'd like to reiterate NOAA's support for *NMSA* reauthorization and our sincere gratitude for the hard work this Subcommittee has done toward that goal. We look forward to working with the Subcommittee once we've conducted a more thorough analysis of the bill. I also would like to reiterate NOAA's support for the underlying purpose of H.R. 6204.

Thank you again for the opportunity to offer my thoughts on these important issues. I will be glad to answer any questions you may have.