

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Background

May 3, 1999

MEMORANDUM

TO: Members, Subcommittee on Fisheries Conservation, Wildlife and Oceans

FROM: Subcommittee Majority Staff

RE: H.R. 1243, To Reauthorize the National Marine Sanctuaries Act

Background:

The National Marine Sanctuaries Act of 1972 (NMSA) authorizes the Secretary of Commerce to designate and manage areas of the marine environment with nationally significant aesthetic, ecological, historical, or recreational values as National Marine Sanctuaries. The primary objective of this law is to protect marine resources, such as coral reefs, sunken historical vessels or unique habitats, while facilitating all compatible public and private uses of those resources. The NMSA was amended and reauthorized in 1980, 1984, 1988, 1992, and 1996. The current authorization of appropriations expires on September 30, 1999.

The National Oceanic and Atmospheric Administration (NOAA) administers the National Marine Sanctuary Program (NMSP) through the Sanctuaries and Reserves Division (SRD) of the Office of Ocean and Coastal Resource Management (OCRM). Twelve areas have been designated as National Marine Sanctuaries (NMS). They range in size from less than one square mile (Fagatele Bay) to over 4,000 square miles (Monterey Bay) and include near shore coral reefs, open ocean, and shipwrecks. Six of the 12 sanctuaries have been designated since 1990. One additional area, Thunder Bay, Michigan, is an active candidate for designation. These sanctuaries support valuable commercial activities such as fishing and kelp harvesting while providing recreational and sportfishing opportunities.

Sanctuaries can be established by the Secretary according to standards established in the Act. Sanctuary designations must consider the site's aesthetic, conservation, ecological, recreational, educational, historical, and research values. Congress has the authority to review a sanctuary designation before it becomes final. In the case of a sanctuary which is located partially or wholly within the seaward boundary of any State, the Governor of that State was given the authority to block designation in State waters. Congress has legislatively designated the Florida Keys, Hawaiian Islands and Monterey Bay NMS.

The Act protects areas designated as National Marine Sanctuaries in several ways. The Act provides civil penalties for persons who destroy, cause the loss of, or injure sanctuary resources protected under a Sanctuary's regulations. The Sanctuaries are also covered by strict vessel liability provisions, which apply to oil spills, groundings, or other actions that damage marine sanctuary resources. Further, the Act requires that federal agencies conducting activities likely to affect sanctuary resources consult with the Secretary of Commerce. The Act specifically prohibits offshore oil and gas leasing within the Monterey Bay NMS.

Sanctuaries are managed on a site-by-site basis according to Management Plans, prepared by the National Oceanic and Atmospheric Administration (NOAA) and published in the Federal Register. The Secretary is authorized to establish advisory councils to provide assistance in designating and managing National Marine Sanctuaries. Six sanctuaries currently have actively operating advisory councils.

In 1996, Congress passed and the President signed P.L.104-283 which extended the Act through Fiscal Year 1999; required NOAA to prepare a comprehensive management, recovery and preservation plan for the USS Monitor;

expanded provisions that allow sanctuaries to seek private donations and raise money or in-kind contributions; allowed expedited inclusion of Kahoowe Island in the Hawaiian Islands NMS; modified the boundaries of the Flower Garden Banks NMS; and prohibited a designation of a NMS in the Northwest Straits unless authorized by Congress. NOAA, acting on recommendations from the Northwest Straits Advisory Commission, has since deactivated the Northwest Straits proposal.

H.R. 1243:

Subcommittee Chairman Jim Saxton has introduced a bill, H.R. 1243, that would reauthorize the National Marine Sanctuary Program for 5 years at the Administration's Fiscal Year 2000 funding request levels. This includes \$26 million to operate the sanctuaries and a separate \$3 million authorization for construction. Although the Act has been in existence for 27 years, not all of the existing Sanctuary Management Plans have been fully implemented. NOAA believes that only 31% of NMS sites have reached a "baseline operational level". The increased authorization is needed to improve operations at existing Sanctuaries, which have been chronically underfunded. NOAA believes that this level of funding will allow the agency bring the existing Sanctuaries up to a "baseline performance level", improve outreach and local involvement at the sites, and plan for future needs. The construction funds will be used to develop Sanctuary visitor's centers in cooperation with other federal agencies and existing aquaria, museums and other facilities.

Because of concerns with the operation, administration and maintenance of existing Sanctuaries, H.R. 1243 prohibits NOAA from designating additional sanctuaries or undertaking any new efforts to propose additional sanctuaries until the Secretary can demonstrate that all of the existing sanctuaries are functioning at a baseline operational level, site characterization studies have been completed, and a system-wide performance monitoring system has been developed and implemented. In effect, this bill puts a moratorium on new sanctuary designations until the existing sanctuaries can meet the goals of their management plans or their statutory mandates. Once NOAA has demonstrated efficient operation of existing sanctuaries, the agency can begin the process to designate new sites, if needed.

Issues

- 1) What does "baseline operational level" mean and which Sanctuaries have met this goal?
- 2) How many site characterization studies have been completed? Which sites?
- 3) What is the status of the implementation of the USS Monitor NMS preservation and recovery plan?
- 4) How many new Sanctuaries is the Secretary considering and at what stage in the process are these designations?
- 5) What effect do National Marine Sanctuaries have on private property? Has the designation of a sanctuary ever resulted in the "taking" of private property and is there a need for a compensation provision within H.R. 1243.

APPENDIX I. Existing and Proposed National Marine Sanctuaries

SITE NAME	LOCATION	SIZE (Sq. Nautical Miles)	DESIGNATION DATE
Monitor NMS	NC	1	January 1975
Channel Islands NMS	CA	1252	September 1980
Gray's Reef NMS	GA	17	January 1981
Gulf of the Farallones NMS	CA	948	January 1981
Fagatele Bay NMS	AS	0.28	April 1986
Cordell Bank NMS	CA	397	May 1989
Key Largo NMS (inc. 1990) Looe Key NMS (inc. 1990)	FL	100	December 1975
Florida Keys NMS	FL	5	January 1981
	FL	2600	November 1990*

Flower Garden Banks NMS	TX	42	January 1992*
Monterey Bay NMS	CA	4024	September 1992*
Stellwagen Bank NMS	MA	638	November 1992*
Olympic Coast NMS	WA	2500	July 1994
Thunder Bay NMS	MI	808	October 1999?

* Statutory Designation

#####