Ocean Management under the Marine Protection, Research and Sanctuaries Act: Sanctuaries, Dumping and Development

Ole Varmer[1]
Amy J. Santin[2]

ABSTRACT

This paper examines the terms of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA),[3] its legislative history, and its implementation by NOAA and EPA, and concludes that intrusive human uses which pollute, degrade or otherwise interfere with sanctuary resources such as ocean dumping and mineral, oil, and gas development are prohibited in sanctuaries. The paper then suggests linking these prohibitions with the multiple use principle and concludes that ocean dumping, as well as the development of oil, gas and minerals, are uses which are incompatible with the objective of sanctuaries to protect special areas from pollution and development activities. Therefore, these activities should be prohibited in sanctuaries designated in the future. Identifying which activities are incompatible with the primary sanctuary objective of resource protection is useful in defining both the vague concept of multiple use management and what other activities should and should not be permitted in a sanctuary. A clearer definition of multiple use management could also be used by NOAA in allocating its

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[1] Attorney-Adviser, U.S. Department of Commerce, National Oceanic Atmospheric Administration, Office of the Assistant General Counsel for Ocean Services. This paper is the personal opinion of the author and in no way reflects the opinion of the Office of the General Counsel.

[2] Second year student at the University of Maryland School of Law.

[3] 16 U.S.C. § 1431, as amended. Under the most recent amendment to Title III of the MPRSA in 1992 by Public Law No. 102-587, the short title to Title III is the National Marine Sanctuary Act. This article will use the terms Title III and the National Marine Sanctuary Act interchangeably. Use of the term MPRSA will be used when referring to the Act as a whole. Title I and the Ocean Dumping Act will also be used interchangeably.

limited personnel and fiscal resources so these areas are managed to protect and preserve them for use by present and future generations.

INTRODUCTION

Out of public concern for how the oceans were being used both for dumping and for the development of the seabed for oil, gas and minerals, Congress enacted the MPRSA. The MPRSA is comprised of Title I in which ocean dumping is generally regulated by the Environmental Protection Agency (EPA) and the dumping of dredged materials is regulated by the Army Corps of Engineers (ACOE). Title II establishes a research and monitoring program by the Secretary of Commerce through the National Oceanic and Atmospheric Administration (NOAA) and EPA. Title III establishes the National Marine Sanctuary Program under the Secretary of Commerce through NOAA.

Under the MPRSA, Congress intended that national marine sanctuaries would be set aside from areas where dumping and development would be permitted in order to preserve special marine areas in their natural state by prohibiting any intrusive human activities which might pollute these significant areas or otherwise alter their natural ecosystem. The National Marine Sanctuary Act also embodies a multiple use management principle in order to facilitate all public and private uses of the sanctuaries which are not prohibited pursuant to other authorities, provided that the uses are compatible with the primary objective of protecting sanctuary resources.[4] By not expressly prohibiting certain uses of sanctuaries or defining what multiple use management is, Congress has, until recently, left the resolution and development of these principles to NOAA.

I. CONGRESS' INTENT FOR AN OCEAN MANAGEMENT PLAN - THE LEGISLATIVE HISTORY OF THE MPRSA

As explained in more detail below, the MPRSA indicates that Congress intended that ocean dumping should be regulated and be conducted in areas away from marine sanctuaries. Section 102(a)(I) of Title I directs EPA to designate ocean dumping sites "beyond the edge of the Continental Shelf" wherever feasible in order to minimize the effects of ocean dumping on human health

[4] 16 U.S.C. § 1431(b)(5)

and the marine environment, particularly the use of areas for fishing, recreation, research and resource exploitation. The National Marine Sanctuary Act directs NOAA to protect and manage special areas of the marine environment for their resource or human use value. Special areas are determined by the presence of a significant natural habitat and related ecosystem which contributes to biological productivity and the presence of other economically or ecologically important natural resources such as fish, marine mammals, and species assemblages.[5] Special areas are also determined by their present and potential use by humans for research, education, recreation, subsistence use and commercial endeavors. A review of the MPRSA legislative history indicates Congress' intent that areas significant enough to become sanctuaries because of their importance for recreation, fishing, research, education and other human uses compatible with resource protection would not also be used for ocean dumping, development of the seabed or other activities which may pollute these special areas.

Legislation leading to the development of the National Marine Sanctuary Program can be traced to 11 bills introduced in the House of Representatives in 1968. These bills were introduced in response to a public outcry from two major incidents which resulted in the degradation of popular, recreational marine areas; the dumping of nerve gas and oil wastes off the coast of Florida, and an oil spill off the coast of Santa Barbara from an oil platform.[6] As noted by the Virginia Institute of Marine Sciences: "The concept of sanctuaries as areas for studies of natural systems unencumbered by pollution was brought forward as was the concept of preserving marine areas so that scenic beauty, ocean recreation, and fishing activities could be perpetuated."[7] Thus, protecting and managing special areas for use by present and future generations was a driving force at the earliest stages of developing the sanctuary program.

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[5] Although the scope of analysis of this paper is limited to protecting natural sanctuary resources, special areas may also be designated for their historical significance like the USS MONITOR and the concerns of protection and multiple use are analogous.

[6] VIRGINIA INSTITUTE OF MARINE SCIENCES, MARINE AND ESTUARINE SANCTUARIES, Report No. 70, at 9. (1973)

[7] Id. at 9.

The bills also proposed to set aside areas of the marine environment where no pollution activities would be permitted.[8] The bills were never reported out of the House Merchant Marine and Fisheries Committee during the 90th Congress because of opposition by the oil and gas industry to the bills' emphasis on preventing the exploration and development of oil, gas and minerals in sanctuaries.[9]

Public concern about the threat to the marine environment from ocean dumping resulted in a study by the Council of Environmental Quality which was completed in 1970.[10] Briefly, the report stated that marine pollution had seriously degraded the marine environment and endangered human health because of the effects on fisheries and recreational use areas.[11] The CEQ called for the development of strong domestic law and international cooperation. Early in the following year the Nixon Administration submitted to the Senate a draft bill prepared by EPA to regulate ocean dumping.[12]

As a result of the 1970 CEQ Report, the House Committee of the 92nd Congress reported a marine sanctuaries provision and incorporated it into H.R. 9727.[13] It determined that Congress should address "the need to create a mechanism for protecting certain important areas of the coastal zone from intrusive activities by man."[14] It went on to state that "the marine sanctuaries authorized by this bill would provide a means whereby important areas may be set aside for protection and may thus be insulated from the various types of 'development' which can destroy them."[15] Thus, the threat of pollution from the oil, gas and

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[8] Id. See also Michael C. Blumm and Joel G. Blumstein, The Marine Sanctuaries Program: A Framework for Critical Areas Management in the Sea, 8 E.L.R. 50016, 50018 (1978).

[9] A. Bakalian, Regulation and Control of United States Ocean Dumping: A Decade of Progress, An Appraisal for the Future 8 Harv. Envir. L.R. 193-195 (1984).

[10] U.S. Council on Environmental Quality, Ocean Dumping: A National Policy 12-18 (1970) [hereinafter cited as 1970 CEQ Report].

[11] Bakalian, supra note 10 at 207; S.Rep. No. 451, 92d Cong., 1st. Sess 1 (1971), reprinted in 1972 U.S. Code Cong. & Ad. News 4234, 4253).

[12] Blumm and Blumstein, supra note 8, at 50018.

[13] H.R. Rep. No. 361, 92nd Cong., 1st Sess. 15 (1971).

[14] H.R. Rep. No. 361 92nd Cong., 1st Sess. 15 (1971)

[15] Id.

mineral development, as well as dumping, would be minimized by not permitting them to occur in sanctuaries.

Upon consideration of H.R. 9727, there was repeated reference to the position that sanctuaries were to be areas isolated from ocean dumping. Representative Forsythe, in declaring his support for Title III, stated that "the bill provides for establishment of ocean sanctuaries where no defilement by pollution will be permitted whatsoever."[16] Similarly, Representative Frey stated that "the philosophy of establishing marine sanctuaries is that instead of designating areas where dumping may be conducted safely, we should determine which areas of our marine environment are most valuable and set them aside as sanctuaries."[17] Representative Murphy recognized the need to save our water resources from the depredations of human beings, and suggested that the key to the effectiveness of H.R. 9727 is the "'no-dumping' marine sanctuary aspect of [the] legislation."[18]

H.R. 9727 was passed in the House on September 9, 1971 and then considered in the Senate Commerce Committee. On November 24, 1971 the Senate passed a version of the House bill which was amended so as to exclude Title III. Concerns about jurisdiction under Title III over the superjacent water column outside the limits of the territorial sea and the contiguous zone were raised by the Senate Commerce Committee. Additionally, it was argued that Title I and the Outer Continental Shelf Lands Act already provided sufficient authority to protect certain areas of the continental shelf.[19] However, authority to prevent dumping by EPA does not provide authority for comprehensive protection from the threat of pollution from other sources. The authority given to the Secretary of Commerce under Title III to protect these areas is considerably broader than that given to the Secretary of the Interior under OCSLA. While the Secretary of the Interior can withdraw certain lands from proposed OCS mineral lease sales for environmental reasons, this does not protect these areas from other developmental activities. The

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16 Cong. Rec. H8192 (1971).

17 Id. at 8193.

18 Id. at 8249.

19 S.Rep.No. 451, 92d Congress, 1st Sess. 15 (1971).1

Secretary of Interior's authority to protect specialareas under the OCSLA is questionable and is not comparable with the protection provided under Title III.[20] While these objections to Title III were raised, the Senate fully agreed with the concept of establishing marine sanctuaries which "set aside areas of the seabed and the superjacent waters for scientific study, to preserve unique, rare, or characteristic features of the oceans, coastal, and other waters, and their total ecosystems." Ultimately, the Senate agreed to the House version of H.R. 9727 with only minor modifications concerning the applicability to foreign citizens. On October 23, 1972 a compromise version of Title III of H.R. 9727 was signed into law as a result of a bill designed by a Conference Committee on October 9, 1972.[21]

II. THE MPRSA OCEAN MANAGEMENT SCHEME AND IMPLEMENTATION

A. DUMPING IN SANCTUARIES PROHIBITED UNDER TITLE I

Though not expressly stated in either Title I or Title III, the terms of the MPRSA implicitly provide that the areas designated for ocean dumping and sanctuaries should be in different areas and should not overlap. Thus, the MPRSA set forth a plan for wise use of the marine environment by regulating dumping in certain areas (Title I) and setting aside significant areas as National Marine Sanctuaries for resource protection and management of uses compatible with resource protection (Title III).

The purpose of Title III is to set aside as sanctuaries areas which are of special national significance for comprehensive management consistent with the primary objective of protecting sanctuary resources for present and future generations.[22] The MPRSA provides that

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[20] See generally OCSLA and Title III; see also Blumm and Blumstein, supra note 8, at 50017 (note 26).

[21] H.R. Conf.Rep.No. 92-1546, 92d Congress, 2d Sess. (1972).

[22] National Marine Sanctuaries Act, as amended by P.L. 102-587, § 301(b) (1992). The purpose of Title III, as stated in the original 1972 version of the MPRSA, was to set aside sanctuaries "necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values." § 302(a). Section 302(f) stated that any human activity permitted in marine sanctuaries must be "consistent with the purposes of this title." In the 1984 amendments, the phrase "or restoring" was deleted in order to avoid the process of designating areas which are already polluted and then having to clean them up. This emphasizes that the purpose of Title III is to protect and preserve areas that are significant and relatively pristine.

in designating a sanctuary, the Secretary shall consider, "the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site."[23] Sanctuary protection should be conducted in a manner to preserve natural ecosystems and maintain a natural assemblage of living resources for future generations.[24] Thus, any type of human intrusive activity which poses a threat of pollution or will alter the natural ecosystem should be identified as a use which is incompatible with the resource protection objective and should be prohibited.[25] The adverse impact of intrusive activities upon other human uses which are compatible with the resource protection objective should also be a factor in determining which activities are prohibited.

An examination of Title I of the MPRSA indicates that it is a use which is inconsistent with the preservation goals of Title III. Section 102(I) of the Ocean Dumping Act states that in designating recommended ocean dumping sites, the Administrator "shall utilize wherever feasible locations beyond the edge of the Continental Shelf."[26] Marine sanctuaries are generally designated closer to shore in coastal waters because that is where the fishing, boating, diving and other human uses occur. All sanctuaries designated to date are on the continental shelf. It is implicit in Congress' ocean management plan under the MPRSA that ocean dumping was to occur in areas of the ocean where the risk of harm to human health or the interference with other human uses would be remote.

Section 102(a) of the MPRSA states that when the Administrator evaluates a permit application for dumping, he must consider such things as: the need for the proposed dumping, the effect it would have on human health and welfare, the effect on marine resources, including fish, plankton, shellfish, wildlife, shore lines and beaches, the effect on marine ecosystems,

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23 National Marine Sanctuary Act, as amended by P.L. 102-587 (1992), § 303(b)(1)(A).

24 Congressional Findings NMSA § 301(a)(6).

25 Section 306 states that it is unlawful to "destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary."NMSA, § 306(1).

26 33 U.S.C. § 1412(a)(I) (1992).

appropriate locations and methods of disposal, and the effect on alternate uses of oceans, such as scientific study, fishing, and other resource exploitation.[27] In other words, due consideration must be given to the protection of these vital recreational, conservation, and ecological interests. Since Congress already acknowledged that unregulated dumping endangers the marine environment,[28] and since marine sanctuaries are to be designated for the sole purpose of preserving and restoring these very interests, ocean dumping in marine sanctuaries is logically inconsistent with the purposes of Title III.

EPA implemented regulations for ocean disposal site selection pursuant to the criteria set forth in section 102 of the MPRSA. In general sites should be selected to minimize the interference of dumping with other uses of the marine environment, particularly fisheries and areas of heavy recreational or commercial navigational use.[29] In particular, "[l]ocations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.[30] (emphasis added). If EPA requires that temporary perturbations be reduced before reaching a marine sanctuary, it is implicit that dumpsites should not be designated in sanctuaries, and should be designated in areas away from beaches, shorelines and sanctuaries. Moreover, permits should not be issued if it is likely that the material disposed is likely to migrate into marine sanctuaries or other special areas. If the scientific evidence is not clear on the risks of dumped material migrating into sanctuaries, then a cautious management approach would result in denying such permits.

Under 40 C.F.R. § 228.6, the Administrator will specifically consider the following in selecting disposal sites: 1) distance from the coast, the depth of the water, and bottom topography; 2) proximity to

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[27] 33 U.S.C. § 1412(a)(A-H) (1992).

[28] 33 U.S.C. § 1401(a).

[29] 40 C.F.R. §228.5 (General Criteria for Site Selection).

[30] 40 C.F.R. § 228.5(b) (1989).

velocity; 7) existence and effects of current and previous disposal in the area, including breeding, spawning , nursery, feeding or passage areas of living resources; 3) the proximity to beaches; 4) the types of waste; 5) feasibility for monitoring; 6) dispersal characteristics of area such as current, and cumulative impacts; 8) "Interference with shipping, fishing, recreation, mineral extraction, desalinization, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean;" 9) the existing water quality and ecology; 10) potentiality for development or recruitment of nuisance species at disposal site; and 11) "Existence at or in close proximity to the site of any significant natural or cultural features of historical importance."[31] It is clear that EPA should not be permitting dumping close to the shore where fishing, boating and recreational uses of the ocean are popular. When such areas have also been designated as marine sanctuaries, it is clear that the site is not appropriate for disposal.

Additionally, 40 C.F.R. § 228.10 requires the EPA to consider the "[m]ovement of materials into estuaries or marine sanctuaries" in determining the impact that disposal has on each designated site.[32] If the impacts are at an unacceptable level, then EPA has the responsibility to "place such limitations on the use of the site as are necessary to reduce the impacts to acceptable levels."[33]

B. DUMPING IN SANCTUARIES PROHIBITED UNDER TITLE III

Similarly, NOAA's regulations at particular sanctuaries consistently prohibit ocean dumping within marine sanctuaries. In each designated sanctuary, NOAA has prohibited the discharge or deposit of materials in the sanctuary. See generally 15 C.F.R. Parts 924-943.[34] In more recent designations, the sanctuary regulations have also clarified that the prohibitions apply to discharges and deposits of material outside a sanctuary

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31 40 C.F.R. § 228.6(a) (1989).

32 40 C.F.R. § 228.10(b)(1).

33 40 C.F.R. § 228.11(c).

34 Fagatele Bay Sanctuary regulations provides that "[n]o person shall litter, deposit, or discharge any materials or substances of any kind into the waters of the Sanctuary." 15 C.F.R. § 941.8(a)(3). Key Largo §929.7(a)(3), Channel Islands §935.7(a)(1), Gray's Reef §938.6(a)(2), Looe Key §937.6, Gulf of the Farallones §936.6(a)(2), Monitor § 924.3(i).

when the material migrates into sanctuaries.[35] This clarification is consistent with EPA's regulation on preventing migration into sanctuaries.[36]

While there appears to be uniform agreement in legislative and regulatory intent that ocean dumping will not be permitted in sanctuaries and should not even occur in areas in close proximity to marine sanctuaries, in practice, ocean dumping is occurring or is being planned to occur adjacent to marine sanctuaries off the California coast and in Massachusetts Bay adjacent to the Stellwagen Bank NMS. EPA and the Army Corps of Engineers should take a cautious approach to dumping at these sites, particularly at Stellwagen Bank due to the proximity of the dumping to the bank feature, as well as the special ecosystem it creates which results in one of the nations most significant whale feeding grounds. The significant natural resources have resulted in significant human use of the area such as fishing, boating, whalewatching, fishing, and research.

C. DEVELOPMENT OF OIL, GAS AND MINERALS IS PROHIBITED IN NATIONAL MARINE SANCTUARIES

In the earlier sanctuaries, the development of oil, gas and minerals was not specifically prohibited, but was precluded as a practical matter by general prohibitions against alteration of the seabed and against discharges, as both activities are necessary in the development of oil, gas and minerals.[37] The management plan and regulations for the Cordell Bank NMS did not initially contain any specific regulations prohibiting oil and gas activities. However, a Congressional Resolution (Section 2 (a) of H.J. Res. 281; Pub. L. No. 101-74, 103 Stat. 554 (1989) signed by the President specifically prohibited the exploration of oil, gas or minerals in any area of the Sanctuary. Since then,

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[35] See Cordell Bank §942.6(a)(1)(B)(ii), Flower Gardens §943.5(a)(7), and Monterey Sanctuaries §944.5(a)(3).

[36] Temporary perturbations caused by ocean dumping should be reduced to normal ambient seawater levels before reaching a marine sanctuary. 40 C.F.R. §228.5(b).

[37] Monitor §924.3, Key Largo §929.7, Gray's Reef §938.6, Looe Key §937.6, Fagatelle Bay §941.8

sanctuary regulations have consistently included specific prohibitions against oil, gas and mineral development.[38]

When the National Marine Sanctuaries Program was first implemented in 1972, there had been much dispute in Congress as to whether oil, gas, and mineral development should be allowed in marine sanctuaries. Consequently, the MPRSA was silent on the matter and left it to NOAA to decide on a case-by-case basis. NOAA subsequently prevented such activity in marine sanctuaries through general and specific prohibitions, thus indicating that these particular uses are not compatible with the resource protection objective.[39] More importantly, through statutory prohibitions in particular sanctuaries, Congress has clearly indicated that it considers these development activities to be in conflict with the purposes of marine sanctuaries.

On November 16, 1990, Congress designated the Florida Keys National Marine Sanctuary and expressly prohibited mineral and hydrocarbon leasing, exploration, development, and production.[40] In the 1992 Amendments and Reauthorization of Title III, Congress expressly prohibited exploration and development of oil, gas and minerals in the Monterey Bay NMS and the Olympic Coast NMS.[41] In Stellwagen NMS it expressly prohibited the exploration and development of sand, gravel and other minerals. Thus, after 20 years, Congress has provided more clear direction that the exploration and development of the seabed should be prohibited in sanctuaries. While the decision will continue case-by-case, it is difficult to imagine how development of the seabed could be found compatible with the purposes of a national marine sanctuary.

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[38] See Channel Islands §935.6(a-c) where hydrocarbon operations pursuant to a lease executed on or after the effective day of the regulation are prohibited, and those executed pursuant to leases effective before the effective date are prohibited unless specific oil spill contingency equipment is used. See also Gulf of the Farallones §936.6(a)(1) and Monterey §944.5(a)(1). Flower Gardens §943.5(a)(1) prohibits exploring for, developing, or producing oil, gas or minerals within a no-activity zone.

[39] Although NOAA allows for oil, gas, and mineral exploration and development in Flower Garden Banks NMS (§943.5), it expressly prohibits it in a "no-activity" zone where such activity has the potential to seriously damage the sanctuary's sensitive biological resources. In the portion where NOAA permits such activity, the Mobil Oil Company had constructed a production platform in 1981, ten years before this area was designated as a National Marine Sanctuary. FEIS for designation of Flower Garden Banks NMS, July 1991 at 34.

[40] The Florida Keys National Marine Sanctuary and Protection Act, Pub.L.No. 101-605, 104 Stat. 3089 (1990).

[41] National Marine Sanctuaries Act, as amended by P.L. 102-587 (1992), §§ 2203, 2207.

D. THE NATIONAL MARINE SANCTUARY ACT: MULTIPLE-USE MANAGEMENT

The original legislative intent behind the implementation of the National Marine Sanctuary Act was to provide for the conservation and preservation of resources.[42] However, there was also discussion on the House floor that Title III was not intended to prevent commercial uses of the sea, including development of the seabed. Representative Keith stated that Title III "provides for multiple use of the designated areas" provided it did no harm to fishing and other uses compatible with resource protection.[43] The original bill did not expressly include this multiple use principle. The expressed purpose in the 1972 version was to preserve and restore certain marine areas for their "conservation, recreational, ecological, or esthetic values."

Although the statute was silent on the subject, NOAA noted the multiple-use management principle in the legislative history and decided to use it in a manner consistent with the resource preservation objective.[44] In the preamble to its first regulations implementing sanctuary management, NOAA stated that "the question of multiple use will need to be exercised on a case by case basis."[45] Increasingly, NOAA began to view multiple-use management as a strong underlying principle of sanctuary management.[46]

In 1984 Congress amended the MPRSA to expand and alter the purposes and policies of the marine sanctuary program in response to confusion as to whether or not the program's purpose and authority encompassed multiple-use management. One of the purposes stated in the new legislation is "to facilitate,to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant

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42 The Marine Protection, Research, and Sanctuaries Act of 1972, Pub.L.No. 92-532, § 302(a), 86 Stat. 1052, 1061.

43 Cong. Rec. H8190 (Sept. 8, 1971). see also Cong. Rec. H8232 (9/9/71)(Cong. Pelly statement).

44 NOAA policy doc cite. See also David A. Tarnas, The U.S. National Marine Sanctuary Program: An Analysis of the Program's Implementation and Current Issues, 16 Coastal Management 275, 277 (1988).

45 15 C.F.R. §922, (1974).

46 Tarnas, supra note 44, at 278.

to other authorities."[47] The multiple-use management was added without any other definitions or guiding principles. Thus, the program was left to determine what activities would be permitted under such a management plan, and what activities would be prohibited on a case-by-case basis.

As shown above, the terms of the MPRSA, its legislative history, and its implementation support the notion that ocean dumping is a use of the ocean which is incompatible with this primary objective. Congress indicated that it wants to maintain core ecosystems in their natural state and protect them from any type of human manipulation which might alter them.[48] Thus, ocean dumping is a use which would not be permitted under a multiple-use management plan since it is a human manipulated activity which poses a threat to the protection and sustainability of the natural resources in a marine sanctuary.

Similarly, a multiple-use management plan would exclude mineral, gas, and oil development in marine sanctuaries. Although Title III of the MPRSA does not expressly prohibit this use in sanctuaries, the legislative history clearly indicates that it is a use which would be incompatible with the resource protection standard set forth in section 302(a) of the original MPRSA.

The House floor debates during the passage of H.R. 9727 indicate that, even though sanctuaries should provide for balanced usage, mineral, gas, and oil development would probably not be permitted. The opposition to Title III derived, in part, from the belief that the designation of a sanctuary would preclude the use of that area for oil and gas development. In opposing Title III, Congressman Aspinall said, "[t]he enactment of Title III could result in locking up unnecessarily offshore [mineral] resources valued at billions of dollars...and curtail the President's program for meeting the growing energy needs of this Nation."

On the Senate side, Senator Nelson offered a provision comparable to Title III of H.R. 9727 to establish marine sanctuaries for the purpose of "protecting these

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47 16 U.S.C. §1431 (1984).

48 See note 14.

49 Cong. Rec. H. 8230 (September 9, 1971).

ocean areas against the extraction of minerals or other activities which might destroy their wealth." The Senate opposed the Nelson amendment largely because of fears of the "locking up of vast areas of the shelf before our energy needs have been examined and the potential sources have been explored..."[50] The House debate and the Senate opposition to Title III seem to indicate that Congress intended the designation of marine sanctuaries to preclude such development.

CONCLUSION

The MPRSA provides a plan for ocean management that set aside marine sanctuaries from the threats of pollution from ocean dumping, and the development of oil, gas and minerals. In fulfilling its stewardship responsibilities, the Sanctuary program should prevent other activities which present similar threats by finding them incompatible with the primary objective or protecting sanctuary resources in their natural state. The limited resources of the sanctuary program should be focused on management of uses which are compatible with resource protection to ensure they are conducted in a non-intrusive manner. Such activities would include, but not be limited to research, education, fishing, diving, and other forms of recreation which can be conducted in a non-harmful manner.

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[50] Senator Allott, Cong. Rec. S. 19636 (Nov.24, 1971).