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2D SESSION

H. R. 4208

IN THE SENATE OF THE UNITED STATES

AUGUST 2 (legislative day, AUGUST 1), 1988

Received; read twice and referred to the Committee on Commerce, Science, and
Transportation

AN ACT

To authorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Marine Sanctu-
5 aries Program Authorization Act of 1988”.

1 **TITLE I—NATIONAL MARINE**
2 **SANCTUARIES PROGRAM AU-**
3 **THORIZATION AND AMEND-**
4 **MENTS**

5 **SEC. 101. DEFINITION OF ACT.**

6 For purposes of this title, the term “Act” means title
7 III of the Marine Protection, Research, and Sanctuaries Act
8 of 1972 (16 U.S.C. 1431–1439).

9 **SEC. 102. SANCTUARY DESIGNATION PROCEDURE AMEND-**
10 **MENTS.**

11 (a) **NOTICE OF DESIGNATION.**—Section 304(b)(1) of
12 the Act (16 U.S.C. 1434(b)(1)) is amended to read as follows:

13 “(1) **NOTICE OF DESIGNATION.**—(A) Subject to
14 subparagraph (B), not later than 120 days after the
15 last day of the period specified in subsection (a)(6), the
16 Secretary shall—

17 “(i) publish in the Federal Register—

18 “(I) notice of the designation of a na-
19 tional marine sanctuary, with final regula-
20 tions to implement the designation, and any
21 other matters required by law; and

22 “(II) notice of the availability to the
23 public of the final management plan and final
24 environmental impact statement relating to
25 such sanctuary; and

1 “(ii) submit such notice of designation to the
2 Congress;

3 unless the Secretary determines, based upon the Con-
4 gressional report described in subsection (a)(6), com-
5 ments upon the draft environmental impact statement,
6 or other relevant information, not to proceed with the
7 designation.

8 “(B) The Secretary may publish and submit a
9 notice of designation in accordance with subparagraph
10 (A) not later than 150 days after the last day of the
11 period specified in subsection (a)(6) if—

12 “(i) the Secretary determines that additional
13 time is required for analysis of and response to
14 public comments relating to such designation; and

15 “(ii) the Secretary notifies the Committee on
16 Merchant Marine and Fisheries of the House of
17 Representatives and the Committee on Com-
18 merce, Science, and Transportation of the Senate.

19 “(C) A determination of the Secretary not to pro-
20 ceed with the designation of a national marine sanc-
21 tuary—

22 “(i) shall be made in writing, setting forth in
23 detail the basis for the Secretary’s decision; and

24 “(ii) shall be submitted to the Committee on
25 Merchant Marine and Fisheries of the House of

1 Representatives and to the Committee on Com-
2 merce, Science, and Transportation of the Senate.

3 “(D) The Secretary shall issue a notice of desig-
4 nation with respect to a proposed national marine
5 sanctuary site not later than 30 months after the date
6 a notice declaring the site to be an active candidate for
7 sanctuary designation is published in the Federal Reg-
8 ister under regulations issued under this Act, or shall
9 publish not later than such date in the Federal Regis-
10 ter findings regarding why such notice has not been
11 published.”.

12 (b) TAKING EFFECT OF DESIGNATION.—Section
13 304(b) of the Act (16 U.S.C. 1434(b)) is amended by adding
14 at the end the following:

15 “(5) TAKING EFFECT OF DESIGNATION.—The
16 designation of a national marine sanctuary (including
17 terms of the designation which are not disapproved
18 under this subsection) and regulations implementing
19 such designation shall take effect after a period of 45
20 days of continuous session of Congress beginning on
21 the day on which such notice is published pursuant to
22 paragraph (1), unless—

23 “(A) the designation or any of its terms is
24 disapproved by enactment of a joint resolution of
25 disapproval described in paragraph (3); or

1 “(B) in the case of a national marine sanctu-
2 ary that is located partially or entirely within the
3 seaward boundary of any State, the Governor of
4 the State certifies to the Secretary that the desig-
5 nation or any of its terms is unacceptable, in
6 which case the designation or the unacceptable
7 terms, as applicable, shall not take effect in the
8 area of the sanctuary lying within the seaward
9 boundary of the State.”.

10 (c) **CONFORMING AMENDMENT.**—Section 304(b)(2) of
11 the Act is amended—

12 (1) by striking “paragraph (1)(A) or (B)” and in-
13 serting “paragraph (5)(A) or (B)”;

14 (2) by striking “paragraph (1)(A)” the second
15 place it appears and inserting “paragraph 5(A)”;

16 (3) by striking “paragraph (1)(B)” and inserting
17 “paragraph (5)(B)”.

18 **SEC. 103. PROMOTION AND COORDINATION OF RESEARCH;**
19 **SPECIAL USE PERMITS; USE OF DONATIONS.**

20 The Act is amended—

21 (1) by striking section 308;

22 (2) by redesignating section 309 as section 308;

23 and

24 (3) by adding at the end the following:

1 "SEC. 309. PROMOTION AND COORDINATION OF RESEARCH.

2 "The Secretary shall take such action as is necessary to
3 promote and coordinate the use of national marine sanctuar-
4 ies for research purposes, including—

5 "(1) requiring that the National Oceanic and At-
6 mospheric Administration, in conducting or supporting
7 marine research, give priority to research involving na-
8 tional marine sanctuaries; and

9 "(2) consulting with other Federal and State
10 agencies to promote use by such agencies of one or
11 more sanctuaries for marine research.

12 "SEC. 310. SPECIAL USE PERMITS.

13 "(a) ISSUANCE OF PERMITS.—The Secretary may
14 issue special use permits which authorize the conduct of spe-
15 cific activities in a national marine sanctuary if the Secretary
16 determines such authorization is necessary—

17 "(1) to establish conditions of access to and use of
18 any sanctuary resource; or

19 "(2) to promote public use and understanding of a
20 sanctuary resource.

21 "(b) PERMIT TERMS.—A permit issued under this sec-
22 tion—

23 "(1) shall authorize the conduct of an activity only
24 if that activity is compatible with the purposes for
25 which the sanctuary is designated and with protection
26 of sanctuary resources;

1 “(2) shall not authorize the conduct of any activi-
2 ty for a period of more than 5 years unless renewed by
3 the Secretary;

4 “(3) shall require that activities carried out under
5 the permit be conducted in a manner that does not de-
6 stroy, cause the loss of, or injure sanctuary resources;
7 and

8 “(4) shall require the permittee to purchase and
9 maintain comprehensive general liability insurance
10 against claims arising out of activities conducted under
11 the permit and to agree to hold the United States
12 harmless against such claims.

13 “(c) FEES.—

14 “(1) ASSESSMENT AND COLLECTION.—The Sec-
15 retary may assess and collect fees for the conduct of
16 any activity under a permit issued under this section.

17 “(2) AMOUNT.—The amount of a fee under this
18 subsection shall be equal to the sum of—

19 “(A) costs incurred by the Secretary in issu-
20 ing the permit;

21 “(B) costs incurred by the Secretary as a
22 direct result of the conduct of the activity for
23 which the permit is issued, including costs of
24 monitoring the conduct of the activity; and

1 “(C) an amount which represents the fair
2 market value of the use of the sanctuary resource
3 and a reasonable return to the United States
4 Government.

5 “(3) USE OF FEES.—Amounts collected by the
6 Secretary in the form of fees under this section may be
7 used by the Secretary—

8 “(A) for issuing and administering permits
9 under this section; and

10 “(B) for expenses of designating and manag-
11 ing national marine sanctuaries.

12 “(d) VIOLATIONS.—Upon violation of a term or condi-
13 tion of a permit issued under this section, the Secretary
14 may—

15 “(1) suspend or revoke the permit without com-
16 pensation to the permittee and without liability to the
17 United States;

18 “(2) assess a civil penalty in accordance with sec-
19 tion 307; or

20 “(3) both.

21 “(e) REPORTS.—Each person issued a permit under this
22 section shall submit an annual report to the Secretary not
23 later than December 31 of each year which describes activi-
24 ties conducted under that permit and revenues derived from
25 such activities during the year.

1 “(f) FISHING.—Nothing in this section shall be consid-
2 ered to require a person to obtain a permit under this section
3 for the conduct of any fishing activities in a national marine
4 sanctuary.

5 “(g) REPORT.—The Secretary of Commerce shall
6 submit an annual report to the Committee on Merchant
7 Marine and Fisheries of the House of Representatives and to
8 the Committee on Commerce, Science, and Transportation of
9 the Senate which describes activities of the Secretary in im-
10 plementing this section. The Secretary shall submit the first
11 report under this subsection not later than 12 months after
12 the date of the enactment of this section.

13 “SEC. 311. COOPERATIVE AGREEMENTS AND DONATIONS.

14 “(a) COOPERATIVE AGREEMENTS.—The Secretary
15 may enter into cooperative agreements with any nonprofit
16 organization—

17 “(1) to aid and promote interpretive, historical,
18 scientific, and educational activities; and

19 “(2) for the solicitation of private donations for
20 the support of such activities.

21 “(b) DONATIONS.—The Secretary may accept dona-
22 tions of funds, property, and services for use in designating
23 and administering national marine sanctuaries under this
24 title.”.

1 SEC. 104. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTU-
2 ARY RESOURCES.

3 (a) LIABILITY FOR DESTRUCTION OR LOSS OF, OR
4 INJURY TO, SANCTUARY RESOURCES.—The Act is amended
5 by adding at the end the following:

6 “SEC. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTU-
7 ARY RESOURCES.

8 “(a) LIABILITY.—

9 “(1) IN GENERAL.—Subject to paragraph (3), any
10 person who destroys, causes the loss of, or injures any
11 sanctuary resource is liable to the United States for re-
12 sponse costs and damages resulting from such destruc-
13 tion, loss, or injury.

14 “(2) LIABILITY IN REM.—Any vessel used to de-
15 stroy, cause the loss of, or injure any sanctuary re-
16 source shall be liable in rem to the United States for
17 response costs and damages resulting from such de-
18 struction, loss, or injury.

19 “(3) DEFENSES.—A person is not liable under
20 this subsection if—

21 “(A) that person can establish that the de-
22 struction or loss of, or injury to, the sanctuary re-
23 source was caused solely by an act of God, an act
24 of war, or an act or omission of a third party, and
25 that the person acted with due care;

1 “(B) the destruction, loss, or injury was
2 caused by an activity authorized by Federal or
3 State law; or

4 “(C) the destruction, loss, or injury was of a
5 de minimus nature.

6 “(b) RESPONSE ACTIONS AND DAMAGE ASSESS-
7 MENT.—

8 “(1) RESPONSE ACTIONS.—The Secretary may
9 undertake all necessary actions to prevent or minimize
10 the destruction or loss of, or injury to, sanctuary re-
11 sources, or to minimize the imminent risk of such de-
12 struction, loss, or injury.

13 “(2) DAMAGE ASSESSMENT.—The Secretary
14 shall assess damages to sanctuary resources in accord-
15 ance with section 302(6).

16 “(c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAM-
17 AGES.—The Attorney General, upon request of the Secre-
18 tary, may commence a civil action in the United States dis-
19 trict court for the appropriate district against any person or
20 vessel who may be liable under subsection (a) for response
21 costs and damages. The Secretary, acting as trustee for sanc-
22 tuary resources on behalf of the United States, shall submit a
23 request for such an action to the Attorney General whenever
24 a person may be liable for such costs or damages.

1 “(d) USE OF RECOVERED AMOUNTS.—Response costs
2 and damages recovered by the Secretary under this section
3 and civil penalties under section 307 shall be retained by the
4 Secretary in the manner provided for in section 107(f)(1) of
5 the Comprehensive Environmental Response, Compensation
6 and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:

7 “(1) RESPONSE COSTS AND DAMAGE ASSESS-
8 MENTS.—Twenty percent of amounts recovered under
9 this section, up to a maximum balance of \$750,000,
10 shall be used to finance response actions and damage
11 assessments by the Secretary.

12 “(2) RESTORATION, REPLACEMENT, MANAGE-
13 MENT, AND IMPROVEMENT.—Amounts remaining after
14 the operation of paragraph (1) shall be used, in order of
15 priority—

16 “(A) to restore, replace, or acquire the
17 equivalent of the sanctuary resources which were
18 the subject of the action;

19 “(B) to manage and improve the national
20 marine sanctuary within which are located the
21 sanctuary resources which were the subject of the
22 action; and

23 “(C) to manage and improve any other na-
24 tional marine sanctuary.

1 “(3) USE OF CIVIL PENALTIES.—Amounts recov-
2 ered under section 307 in the form of civil penalties
3 shall be used by the Secretary in accordance with sec-
4 tion 307(e) and paragraphs (2)(B) and (C) of this sub-
5 section.

6 “(4) FEDERAL-STATE COORDINATION.—Amounts
7 recovered under this section with respect to sanctuary
8 resources lying within the jurisdiction of a State shall
9 be used under paragraphs (2)(A) and (B) in accordance
10 with an agreement entered into by the Secretary and
11 the Governor of that State.”.

12 (b) DAMAGES, RESPONSE COSTS, AND SANCTUARY
13 RESOURCE DEFINED.—Section 302 of the Act (16 U.S.C.
14 1432) is amended—

15 (1) by striking “and” at the end of paragraph (4);

16 (2) by striking the period in paragraph (5) and in-
17 serting “; and”; and

18 (3) by adding at the end the following:

19 “(6) ‘damages’ includes—

20 “(A) compensation for—

21 “(i)(I) the cost of replacing, restoring, or
22 acquiring the equivalent of a sanctuary re-
23 source; and

24 “(ii)(I) the value of the lost use of a sanc-
25 tuary resource pending its restoration or re-

1 placement or the acquisition of an equivalent
2 sanctuary resource; or

3 “(ii) the value of a sanctuary resource if
4 the sanctuary resource cannot be restored or
5 replaced or if the equivalent of such resource
6 cannot be acquired; and

7 “(B) the cost of damage assessments under
8 section 312(b)(2);

9 “(7) ‘response costs’ means the costs of actions
10 taken by the Secretary to minimize destruction or loss
11 of, or injury to, sanctuary resources, or to minimize the
12 imminent risks of such destruction, loss, or injury; and

13 “(8) ‘sanctuary resource’ means any living or non-
14 living resource of a national marine sanctuary that con-
15 tributes to the conservation, recreational, ecological,
16 historical, research, educational, or aesthetic value of
17 the sanctuary.”.

18 (c) EFFECTIVE DATE.—Amounts in the form of dam-
19 ages received by the United States after November 30, 1986,
20 for destruction or loss of, or injury to, a sanctuary resource
21 (as that term is defined in section 302(8) of the Act (as
22 amended by this Act)) shall be subject to section 312 of the
23 Act (as amended by this Act).

1 SEC. 105. ACTIONS WITH RESPECT TO NEW SANCTUARIES.

2 (a) ISSUANCE OF NOTICE OF DESIGNATION.—The
3 Secretary of Commerce shall issue a notice of designation
4 under section 304(b)(1) of the Act (16 U.S.C. 1434(b)(1))—

5 (1) with respect to the proposed Cordell Banks
6 National Marine Sanctuary as generally described in
7 the Federal Register notice of June 30, 1983, not later
8 than December 31, 1988;

9 (2) with respect to the Flower Garden Banks Na-
10 tional Marine Sanctuary as generally described in the
11 Federal Register notice of August 2, 1984, not later
12 than March 31, 1989;

13 (3) with respect to the Monterey Bay National
14 Marine Sanctuary as generally described in the Federal
15 Register notice of December 31, 1979, not later than
16 December 31, 1989; and

17 (4) with respect to the Western Washington Outer
18 Coast National Marine Sanctuary as generally de-
19 scribed in the Federal Register notice of August 4,
20 1983, not later than June 30, 1990.

21 (b) SUBMISSION OF PROSPECTUSES.—The Secretary of
22 Commerce shall submit a prospectus under section
23 304(a)(1)(C) of the Act (16 U.S.C. 1434(a)(1)(C)) to the Com-
24 mittee on Merchant Marine and Fisheries of the House of
25 Representatives and to the Committee on Commerce, Sci-
26 ence, and Transportation of the Senate with respect to the

1 Northern Puget Sound National Marine Sanctuary, as gener-
2 ally described as the Washington State Nearshore area in the
3 Federal Register notice of August 4, 1983, not later than
4 March 31, 1991.

5 **SEC. 106. STUDY OF AREAS FOR DESIGNATION AS OR INCLU-**
6 **SION IN NATIONAL MARINE SANCTUARIES.**

7 (a) **STUDY.**—

8 (1) **IN GENERAL.**—The Secretary shall conduct a
9 study of the areas described in subsection (c) for pur-
10 poses of making determinations and findings in accord-
11 ance with section 303(a) of the Act (16 U.S.C.
12 1433(a))—

13 (A) regarding whether or not all or any part
14 of such areas are appropriate for designation as
15 national marine sanctuaries in accordance with
16 title III of the Act; and

17 (B) regarding whether or not all or any part
18 of the areas described in subsection (c) (1), (2),
19 and (3) should be added to and administered as
20 part of the Key Largo National Marine Sanctuary
21 or the Looe Key National Marine Sanctuary.

22 (2) **REPORT.**—Not later than 2 years after the
23 date of the enactment of this Act, the Secretary shall
24 submit a report to the Congress which sets forth the

1 determinations and findings referred to in paragraph
2 (1).

3 (b) DESIGNATION OR EXPANSION OF MARINE SANC-
4 TUARIES.—If as a result of a study conducted pursuant to
5 subsection (a) the Secretary makes the determinations and
6 findings set forth in section 303(a) of the Act (16 U.S.C.
7 1433(a)) with respect to all or any part of the areas described
8 in subsection (c), the Secretary, in accordance with the proce-
9 dures for the designation of national marine sanctuaries set
10 forth in section 304 of the Act (16 U.S.C. 1434)—

11 (1) shall designate such areas or parts of such
12 areas as national marine sanctuaries; or

13 (2) shall, with respect to all or any part of the
14 areas described in subsections (c) (1), (2), and (3), add
15 such areas or parts of such areas to the Key Largo
16 National Marine Sanctuary or the Looe Key National
17 Marine Sanctuary;

18 as the Secretary considers appropriate.

19 (c) AREAS DESCRIBED.—The areas referred to in sub-
20 sections (a) and (b) are the following:

21 (1) AMERICAN SHOAL.—The portion of the
22 marine environment in the Florida Keys in the vicinity
23 of American Shoal, including the part of such environ-
24 ment located generally between such shoal and the
25 Marquesas Keys.

1 (2) SOMBRERO KEY.—The portion of the marine
2 environment in the Florida Keys in the vicinity of and
3 surrounding Sombrero Key.

4 (3) ALLIGATOR REEF.—The portion of the
5 marine environment in the Florida Keys in the vicinity
6 of and surrounding Alligator Reef, including the por-
7 tion located generally between such reef and the Key
8 Largo National Marine Sanctuary.

9 (4) SANTA MONICA BAY.—The portion of the
10 marine environment off the coast of California com-
11 monly referred to as Santa Monica Bay, consisting of
12 an area described generally as follows: Beginning at
13 the point known as Point Dume near the western
14 extent of Santa Monica Bay, proceed generally south-
15 east along the shoreline to the point known as Point
16 Vincente near the southern extent of Santa Monica
17 Bay; then west to the 900 meter bathymetric contour;
18 then generally northwest along the 900 meter bathy-
19 metric contour to a point due west of Point Dume;
20 then east to Point Dume at the point of beginning.

21 (d) DEFINITIONS.—For the purposes of this section—

22 (1) MARINE ENVIRONMENT.—The term “marine
23 environment” has the meaning such term has in sec-
24 tion 302(3) of the Act (16 U.S.C. 1432(b)).

1 (2) SECRETARY.—The term “Secretary” means
2 the Secretary of Commerce.

3 SEC. 107. ENFORCEMENT AMENDMENTS.

4 Section 307 of the Act (16 U.S.C. 1437) is amended to
5 read as follows:

6 “SEC. 307. ENFORCEMENT.

7 “(a) IN GENERAL.—The Secretary shall conduct such
8 enforcement activities as are necessary and reasonable to
9 carry out this title.

10 “(b) POWERS OF AUTHORIZED OFFICERS.—Any
11 person who is authorized to enforce this title may—

12 “(1) board, search, inspect, and seize any vessel
13 suspected of being used to violate this title or any regu-
14 lation or permit issued under this title and any equip-
15 ment, stores, and cargo of such vessel;

16 “(2) seize wherever found any sanctuary resource
17 taken or retained in violation of this title or any regu-
18 lation or permit issued under this title;

19 “(3) seize any evidence of a violation of this title
20 or of any regulation or permit issued under this title;

21 “(4) execute any warrant or other process issued
22 by any court of competent jurisdiction; and

23 “(5) exercise any other lawful authority.

24 “(c) CIVIL PENALTIES.—

1 “(1) CIVIL PENALTY.—Any person subject to the
2 jurisdiction of the United States who violates this title
3 or any regulation or permit issued under this title shall
4 be liable to the United States for a civil penalty of not
5 more than \$50,000 for each such violation, to be as-
6 sessed by the Secretary. Each day of a continuing vio-
7 lation shall constitute a separate violation.

8 “(2) NOTICE.—No penalty shall be assessed
9 under this subsection until after the person charged has
10 been given notice and an opportunity for a hearing.

11 “(3) IN REM JURISDICTION.—A vessel used in
12 violating this title or any regulation or permit issued
13 under this title shall be liable in rem for any civil pen-
14 alty assessed for such violation and may be proceeded
15 against in any district court of the United States
16 having jurisdiction.

17 “(4) REVIEW OF CIVIL PENALTY.—Any person
18 against whom a civil penalty is assessed under this
19 subsection may obtain review in the United States dis-
20 trict court for the appropriate district by filing a com-
21 plaint in such court not later than 30 days after the
22 date of such order.

23 “(5) COLLECTION OF PENALTIES.—If any person
24 fails to pay an assessment of a civil penalty under this
25 section after it has become a final and unappealable

1 order, or after the appropriate court has entered final
2 judgment in favor of the Secretary, the Secretary shall
3 refer the matter to the Attorney General, who shall re-
4 cover the amount assessed in any appropriate district
5 court of the United States. In such action, the validity
6 and appropriateness of the final order imposing the
7 civil penalty shall not be subject to review.

8 “(6) COMPROMISE OR OTHER ACTION BY SECRE-
9 TARY.—The Secretary may compromise, modify, or
10 remit, with or without conditions, any civil penalty
11 which is or may be imposed under this section.

12 “(d) FORFEITURE.—

13 “(1) IN GENERAL.—Any vessel (including the
14 vessel’s equipment, stores, and cargo) and other item
15 used, and any sanctuary resource taken or retained, in
16 any manner, in connection with or as a result of any
17 violation of this title or of any regulation or permit
18 issued under this title shall be subject to forfeiture to
19 the United States pursuant to a civil proceeding under
20 this subsection.

21 “(2) APPLICATION OF THE CUSTOMS LAWS.—
22 The Secretary may exercise the authority of any
23 United States official granted by any relevant customs
24 law relating to the seizure, forfeiture, condemnation,

1 disposition, remission, and mitigation of property in en-
2 forcing this title.

3 “(3) DISPOSAL OF SANCTUARY RESOURCES.—
4 Any sanctuary resource seized pursuant to this title
5 may be disposed of pursuant to an order of the appro-
6 priate court, or, if perishable, in a manner prescribed
7 by regulations promulgated by the Secretary. Any pro-
8 ceeds from the sale of such sanctuary resource shall for
9 all purposes represent the sanctuary resource so dis-
10 posed of in any subsequent legal proceedings.

11 “(4) PRESUMPTION.—For the purposes of this
12 section there is a rebuttable presumption that all sanc-
13 tuary resources found on board a vessel that is used or
14 seized in connection with a violation of this title or of
15 any regulation or permit issued under this title were
16 taken or retained in violation of this title or of a regu-
17 lation or permit issued under this title.

18 “(e) PAYMENT OF STORAGE, CARE, AND OTHER
19 COSTS.—

20 “(1) IN GENERAL.—Notwithstanding any other
21 law, the Secretary may use amounts received under
22 this section in the form of civil penalties, forfeitures of
23 property, and costs imposed under paragraph (2) to
24 pay—

1 “(A) the reasonable and necessary costs in-
2 curred by the Secretary in providing temporary
3 storage, care, and maintenance of any sanctuary
4 resource or other property seized under this sec-
5 tion pending disposition of any civil proceeding re-
6 lating to any alleged violation with respect to
7 which such property or sanctuary resource was
8 seized; and

9 “(B) a reward to any person who furnishes
10 information leading to an assessment of a civil
11 penalty, or to a forfeiture of property, for a viola-
12 tion of this title or of any regulation or permit
13 issued under this title.

14 “(2) LIABILITY FOR COSTS.—Any person as-
15 sessed a civil penalty for a violation of this title or of
16 any regulation or permit issued under this title, and
17 any claimant in a forfeiture action brought for such a
18 violation, shall be liable for the reasonable costs in-
19 curred by the Secretary in storage, care, and mainte-
20 nance of any sanctuary resource or other property
21 seized in connection with the violation.

22 “(f) SUBPOENAS.—In the case of any hearing under
23 this section which is determined on the record in accordance
24 with the procedures provided for under section 554 of title 5,
25 United State Code, the Secretary may issue subpoenas for

1 the attendance and testimony of witnesses and the production
2 of relevant papers, books, and documents, and may adminis-
3 ter oaths.

4 “(g) USE OF RESOURCES OF STATE AND OTHER FED-
5 ERAL AGENCIES.—The Secretary shall, whenever appropri-
6 ate, use by agreement the personnel, services, and facilities
7 of State and other Federal departments, agencies, and instru-
8 mentalities, on a reimbursable or nonreimbursable basis, to
9 carry out the Secretary’s responsibilities under this section.

10 “(h) COAST GUARD AUTHORITY NOT LIMITED.—
11 Nothing in this section shall be considered to limit the au-
12 thority of the Coast Guard to enforce this or any other Fed-
13 eral law under section 89 of title 14, United States Code.

14 “(i) INJUNCTIVE RELIEF.—If the Secretary determines
15 that there is an imminent risk of destruction or loss of or
16 injury to a sanctuary resource, or that there has been actual
17 destruction or loss of, or injury to, a sanctuary resource
18 which may give rise to liability under section 312, the Attor-
19 ney General, upon request of the Secretary, shall seek to
20 obtain such relief as may be necessary to abate such risk or
21 actual destruction, loss, or injury, or to restore or replace the
22 sanctuary resource, or both. The district courts of the United
23 States shall have jurisdiction in such a case to order such
24 relief as the public interest and the equities of the case may
25 require.”.

1 SEC. 108. AUTHORIZATION OF APPROPRIATIONS; U.S.S. MONI-
2 TOR ARTIFACTS AND MATERIALS.

3 The Act is amended by adding at the end the following:

4 "SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

5 "There are authorized to be appropriated to the Secre-
6 tary to carry out this title the following:

7 "(1) GENERAL ADMINISTRATION.—For general
8 administration of this title—

9 "(A) \$1,800,000 for fiscal year 1989;

10 "(B) \$1,900,000 for fiscal year 1990;

11 "(C) \$2,000,000 for fiscal year 1991; and

12 "(D) \$2,100,000 for fiscal year 1992.

13 "(2) MANAGEMENT OF SANCTUARIES.—For
14 management of national marine sanctuaries designated
15 under this title—

16 "(A) \$2,000,000 for fiscal year 1989;

17 "(B) \$2,500,000 for fiscal year 1990;

18 "(C) \$3,000,000 for fiscal year 1991; and

19 "(D) \$3,250,000 for fiscal year 1992.

20 "(3) SITE REVIEW AND ANALYSIS.—For review
21 and analysis of sites for designation under this title as
22 national marine sanctuaries—

23 "(A) \$450,000 for fiscal year 1989;

24 "(B) \$500,000 for fiscal year 1990;

25 "(C) \$550,000 for fiscal year 1991; and

26 "(D) \$600,000 for fiscal year 1992.

1 "SEC. 314. U.S.S. MONITOR ARTIFACTS AND MATERIALS.

2 “(a) CONGRESSIONAL POLICY.—In recognition of the
3 historical significance of the wreck of the United States ship
4 Monitor to coastal North Carolina and to the area off the
5 coast of North Carolina known as the Graveyard of the At-
6 lantic, the Congress directs that a suitable display of artifacts
7 and materials from the United States ship Monitor be main-
8 tained permanently at an appropriate site in coastal North
9 Carolina.

10 “(b) INTERPRETATION AND DISPLAY OF ARTI-
11 FACTS.—

12 “(1) SUBMISSION OF PLAN.—The Secretary shall,
13 within six months after the date of the enactment of
14 this section, submit to the Committee on Merchant
15 Marine and Fisheries of the House of Representatives
16 a plan for a suitable display in coastal North Carolina
17 of artifacts and materials of the United States ship
18 Monitor.

19 “(2) CONTENTS OF PLAN.—The plan submitted
20 under subsection (a) shall, at a minimum, contain—

21 “(A) an identification of appropriate sites in
22 coastal North Carolina, either existing or pro-
23 posed, for display of artifacts and materials of the
24 United States ship Monitor;

25 “(B) an identification of suitable artifacts and
26 materials, including artifacts recovered or pro-

1 (1) the provisions of international conventions and
2 United States laws and regulations which reduce the
3 risk of a vessel collision or incident resulting in damage
4 to the environment in the Channel Islands National
5 Marine Sanctuary;

6 (2) the provisions of the National Contingency
7 Plan for removal of oil and hazardous substances pre-
8 pared under section 311(c) of the Federal Water Pollu-
9 tion Control Act (33 U.S.C. 1321(c)) which enable the
10 Secretary to effectively respond to an oil pollution inci-
11 dent in or affecting the Channel Islands National
12 Marine Sanctuary;

13 (3) a list of pollution exercises conducted under
14 that National Contingency Plan in the Santa Barbara
15 Channel before the date of the enactment of this Act,
16 and a schedule of pollution exercises scheduled to be
17 conducted under that plan in that channel during the
18 12 months following the date of the enactment of this
19 Act; and

20 (4) a report on the establishment—

21 (A) under the Ports and Waterways Safety
22 Act (33 U.S.C. 1221 et seq.) of safety fairways
23 off the coast of California; and

24 (B) of the Long Beach NAVTEX in Long
25 Beach, California.

1 (b) **STUDY REVIEW AND REPORT.**—The Secretary of
2 Transportation shall review all Federal, State, and local
3 studies conducted on the hazards of shipping operations and
4 the risks those operations pose to the environment and natu-
5 ral resources of the Channel Islands National Marine Sanctu-
6 ary, and report to the Congress not later than 6 months after
7 the date of the enactment of this Act on the status and rec-
8 ommendations of each of those studies. The Secretary shall
9 include in the report a recommendation on whether an alter-
10 nate vessel traffic separation scheme would reduce the risks
11 of shipping operations to the environment and natural re-
12 sources in the Channel Islands National Marine Sanctuary.

13 (c) **PROPOSAL OF DESIGNATION OF AREA TO BE**
14 **AVOIDED.**—The Secretary of Transportation shall prepare
15 and submit a proposal to the International Maritime Organi-
16 zation to designate the portion of the Channel Islands Na-
17 tional Marine Sanctuary which is outside of the Santa Bar-
18 bara Channel Traffic Separation Scheme, as an area to be
19 avoided. The Secretary shall ensure that the proposal would
20 not result in undue interference with international vessel traf-
21 fic in the Santa Barbara Channel, or with enjoyment of the
22 Channel Islands National Marine Sanctuary under title III of
23 the National Marine Protection, Research, and Sanctuaries
24 Act of 1972 (16 U.S.C. 1431 et seq.).

1 **SEC. 110. REGULATIONS.**

2 The Secretary of Commerce shall issue regulations im-
3 plementing the amendments made by this title and the
4 amendments made by the Marine Sanctuaries Amendments
5 of 1984 not later than one year after the date of the enact-
6 ment of this Act.

7 **TITLE II—LIABILITY FOR DE-**
8 **STRUCTION OR LOSS OF, OR**
9 **INJURY TO, NATIONAL PARKS**
10 **SYSTEM RESOURCES**

11 **SEC. 201. PARK SYSTEM RESOURCES.**

12 (a) **DEFINITIONS.**—As used in this title—

13 (1) **DAMAGES.**—The term “damages” includes
14 the following:

15 (A) Compensation for—

16 (i)(I) the cost of replacing, restoring, or
17 acquiring the equivalent of a park system re-
18 source; and

19 (II) the value of the lost use of a park
20 system resource pending its restoration or re-
21 placement or the acquisition of an equivalent
22 resource; or

23 (ii) the value of the park system re-
24 source in the event the resource cannot be
25 replaced or restored; and

1 (B) the cost of assessments under subsection
2 (d).

3 (2) RESPONSE COSTS.—The term “response
4 costs” means the costs of actions taken by the Secre-
5 tary of the Interior to minimize destruction or loss of
6 or injury to park system resources, or to minimize the
7 imminent risk of such destruction, loss, or injury.

8 (3) PARK SYSTEM RESOURCE.—The term “park
9 system resource” means any living or nonliving re-
10 source that is located within or is a living part of a
11 marine regimen or a Great Lakes aquatic regimen (in-
12 cluding an aquatic regimen within Voyageurs National
13 Park) within the boundaries of a unit of the National
14 Park System.

15 (b) LIABILITY.—

16 (1) IN GENERAL.—Subject to paragraph (3), any
17 person who destroys, causes the loss of, or injures any
18 park system resource is liable to the United States for
19 response costs and damages resulting from such de-
20 struction, loss, or injury.

21 (2) LIABILITY IN REM.—Any vessel used to de-
22 stroy, cause the loss of, or injure any park system re-
23 source shall be liable in rem to the United States for
24 response costs and damages resulting from such de-
25 struction, loss, or injury.

1 (3) DEFENSES.—A person is not liable under this
2 subsection if—

3 (A) that person can establish that the de-
4 struction or loss of, or injury to, the park system
5 resource was caused solely by an act of God, an
6 act of war, or an act or omission of a third party,
7 and that the person acted with due care;

8 (B) the destruction, loss, or injury was
9 caused by an activity authorized by Federal or
10 State law; or

11 (C) the destruction, loss, or injury was of a
12 de minimus nature.

13 (c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAM-
14 AGES.—The Attorney General, upon request of the Secre-
15 tary of the Interior, may commence a civil action in the
16 United States district court for the appropriate district
17 against any person who may be liable under subsection (b) for
18 response costs and damages. The Secretary of the Interior,
19 acting as trustee for park system resources on behalf of the
20 United States, shall submit a request for such an action to
21 the Attorney General whenever a person may be liable for
22 such costs or damages.

23 (d) RESPONSE ACTIONS AND ASSESSMENT OF DAM-
24 AGES.—

1 (1) RESPONSE ACTIONS.—The Secretary of the
2 Interior may undertake all necessary actions to prevent
3 or minimize the destruction or loss of, or injury to,
4 park system resources, or to minimize the imminent
5 risk of such destruction, loss, or injury.

6 (2) ASSESSMENT OF DAMAGES.—The Secretary
7 of the Interior shall assess damages to park system
8 resources.

9 (e) USE OF RECOVERED AMOUNTS.—Response costs
10 and damages recovered by the Secretary of the Interior
11 under this section shall be retained by the Secretary in ac-
12 cordance with section 107(f)(1) of the Comprehensive Envi-
13 ronmental Response, Compensation, and Liability Act (42
14 U.S.C. 9607(f)(1)), and used as follows:

15 (1) RESPONSE COSTS AND DAMAGE ASSESS-
16 MENTS.—Twenty percent of amounts recovered under
17 this section, up to a maximum balance of \$1,000,000,
18 shall be used to finance response costs and damage as-
19 sessments by the Secretary of the Interior.

20 (2) RESTORATION, REPLACEMENT, MANAGE-
21 MENT, AND IMPROVEMENT.—Amounts remaining after
22 the operation of paragraph (1) shall be used, in order of
23 priority—

1 (A) to restore, replace, or acquire the equiva-
2 lent of park system resources which were the sub-
3 ject of the action;

4 (B) to manage and improve the national park
5 of which such park system resources are a part;
6 and

7 (C) to manage and improve any other unit of
8 the National Park System.

9 **SEC. 202. INJUNCTIVE RELIEF.**

10 If the Secretary of the Interior determines that there is
11 an imminent risk of destruction or loss of or injury to a park
12 system resource, or that there has been actual destruction or
13 loss of or injury to such resource which may give rise to
14 liability under section 201, the Attorney General, upon re-
15 quest of the Secretary of the Interior, shall seek to obtain
16 such relief as may be necessary to abate such risk or actual
17 destruction, loss, or injury, or to restore or replace the re-
18 source, or both. The district courts of the United States shall
19 have jurisdiction in such a case to order such relief as the
20 public interest and the equities of the case may require.

1 **TITLE III—ABANDONED SHIP-**
2 **WRECKS LOCATED IN NATION-**
3 **AL MARINE SANCTUARIES**

4 **SEC. 301. MANAGEMENT OF ABANDONED SHIPWRECKS LO-**
5 **CATED IN NATIONAL MARINE SANCTUARIES.**

6 Section 6 of the Abandoned Shipwreck Act of 1987 (43
7 U.S.C. 2105) is amended by adding at the end the following
8 new subsection:

9 “(f) NATIONAL MARINE SANCTUARIES.—This Act
10 shall not affect the management of abandoned shipwrecks lo-
11 cated within the boundaries of any national marine sanctuary
12 established under title III of the Marine Protection, Re-
13 search, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et
14 seq.).”.

Amend the title so as to read: “A bill to reauthorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992, and for other purposes.”.

Passed the House of Representatives July 26, 1988.

Attest: DONNALD K. ANDERSON,

Clerk.