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NEWS & ANALYSIS

The History and Evolution of the National Marine Sanctuaries Act

by William J. Chandler and Hannah Gillelan

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Executive Summary

Coastal and ocean degradation caused by pollution, industrial and commercial development, and ocean dumping became major environmental issues in the 1960s and early

1970s. Public awareness of ocean problems was heightened by oil spills, "dead seas" created by the dumping of dredge spoil and sewage sludge, and numerous scientific reports detailing the environmental decline of coastal areas. In response, the U.S. Congress considered and approved a number of remedial measures to protect coasts and estuaries including federal assistance to states to develop coastal zone management plans, new water pollution and ocean dumping controls, and the creation of programs to establish estuarine and marine sanctuaries.

The Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972¹ authorized a trio of programs to protect and restore ocean ecosystems. The Act regulated the dumping of wastes in ocean waters, launched a study of the long-term impacts of humans on marine ecosystems, and created a Marine Sanctuaries Program for the "purpose of preserving or restoring [marine] areas for their conservation, recreational, ecological, or esthetic values."² Early proponents of marine sanctuaries envisioned a system of protected ocean areas analogous to those established for national parks and wilderness areas.

The concept of a marine wilderness preservation system was raised in 1966 in *Effective Use of the Sea*, a report prepared by President Lyndon Johnson's Science Advisory Committee.³ The Advisory Committee recommended a permanent system of marine preserves similar in purpose and design to that established for terrestrial wilderness areas under the Wilderness Act. Like wilderness areas, marine preserves were to be areas managed for the purpose of maintaining the oceans' natural characteristics and values, and human uses that were deemed compatible with this standard would be allowed.

Unfortunately, the Sanctuaries Program did not follow the model of the National Wilderness Preserve System, and proved to be highly unstable. For much of its history, the MPRSA has been a work in progress. A fundamental reason for the law's plasticity has been the ambiguity surrounding the Act's intent. Is the overriding purpose of the Act the preservation and protection of marine areas, or is it the creation of multiple use management areas in which preservation use has to contend with every other use, even exploitive ones like oil and gas extraction?

Congress failed to clearly and definitively answer this question at the outset, and in fact gave conflicting signals. The original law and accompanying legislative history were incongruous in that the law directed the Secretary of Commerce, acting through the National Oceanographic and Atmospheric Administration (NOAA), to establish sanctuaries for preservation and restoration purposes, but the U.S. House of Representatives' legislative history encouraged both preservation and extractive uses in sanctuaries. This ambiguity produced confusion and led to implementation difficulties, which in turn triggered periodic efforts by NOAA and Congress to clarify the Act's purposes and provisions.

Over time, Congress confirmed multiple use as a significant purpose of the Act and diminished the Act's preserva-

1. Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, Pub. L. No. 92-532, tit. III, 86 Stat. 1052 (1972).

2. *Id.* §302.

3. PANEL ON OCEANOGRAPHY, PRESIDENT'S SCIENCE ADVISORY COMMITTEE, *EFFECTIVE USE OF THE SEA* (1966) [hereinafter PRESIDENT'S SCIENCE ADVISORY COMMITTEE].

tion mission. Although amended numerous times over 30 years, the statute remains incongruous, calling for both preservation and multiple use. Although some key areas of the oceans and Great Lakes have been protected in varying degrees in the 13 sanctuaries established since 1972, the Sanctuaries Program has yet to produce a comprehensive national network of marine conservation areas that restores and protects the full range of the nation's marine biodiversity, nor does it have a credible strategy to do so.

Early Sanctuary Bills

In 1967, several members of Congress, including Reps. Hastings Keith (R-Mass.), Phil Burton (D-Cal.), and George E. Brown Jr. (D-Cal.), introduced bills to direct the Secretary of the Interior to study the feasibility of a national system of marine sanctuaries patterned after the wilderness preservation system.⁴ A principal factor prompting this legislation was the desire to protect special marine places from harmful industrial development, especially oil and gas development. At the time, the hydrocarbon industry was rapidly expanding its operations offshore.

Sanctuary study bills received a hearing in 1968 by the House Merchant Marine and Fisheries Committee (House MMFC), but were opposed by the U.S. Department of the Interior (DOI) on grounds that existing law permitted the DOI to manage the ocean for multiple uses, including environmental protection, and that sanctuaries might restrict offshore energy development. Nevertheless, several members of the House continued to promote study legislation in the next two congresses.

A second strategy for protecting ocean places was concurrently advanced by members of the California delegation who proposed to designate areas on the Outer Continental Shelf (OCS) of California where oil drilling would be prohibited. In 1968, bills were introduced in the House and the U.S. Senate to ban drilling in a section of waters near Santa Barbara. Following the massive oil spill from a ruptured well in the Santa Barbara Channel in 1969, Sen. Alan Cranston (D-Cal.) became the most vocal advocate of prohibiting drilling at a number of places along the California coast. The DOI opposed these bills as well, claiming that new drilling guidelines and procedures implemented after the Santa Barbara accident would be sufficient to prevent future spills. The Senate and House Interior and Insular Affairs Committees, which had authority over the OCS minerals leasing program, were sympathetic to the DOI's concerns and declined to set aside no-drilling areas.

A third approach for protecting ocean areas was spawned by concern about the impacts of waste dumping in the ocean, which at the time was virtually unregulated. Oil-covered beaches, closed shellfish beds, and "dead seas" around ocean dump sites prompted the introduction of bills in 1969 and 1970 to regulate ocean dumping comprehensively. A 1970 report of the Council on Environmental Quality called for comprehensive legislation to regulate ocean dumping,⁵ but was silent on the need for a marine sanctuary system.

4. See, e.g., H.R. 11584, 90th Cong. (1967); S. 2415, 90th Cong. (1967).

5. MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING A REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY ON OCEAN DUMPING, H.R. DOC. NO. 91-399 (1970).

Given the DOI's position on offshore oil development, this was not surprising.

Despite the Nixon Administration's opposition to marine sanctuaries, the House MMFC was determined to act. As it turned out, the ocean dumping crisis gave the committee the opening it needed. As the 91st Congress drew to a close, momentum for an ocean dumping law had become unstoppable.

1972 Act

In June 1972, the House MMFC unanimously reported an ocean dumping bill, the MPRSA, which contained titles on ocean dumping, marine research, and sanctuaries. The sanctuaries title (Title III) was an amalgam of concepts from various bills pending before the committee and new ones forged in executive session. Although the sanctuary title proposed to preserve and restore ocean areas, *it did not mirror the Wilderness Act*, as had been recommended by the President's Science Advisory Committee. Furthermore, *it lacked any prohibitions on industrial development, including energy development, within designated sanctuaries*, one of the principal goals originally sought by Representative Keith and others.

The House MMFC bill provided the Secretary of Commerce with broad discretionary authority to designate marine sanctuaries in coastal, ocean, and Great Lakes waters for the purposes of preserving and restoring an area's conservation, recreational, ecological, or esthetic values. The Secretary was given two years to make the first designations, and was to make others periodically thereafter. The Secretary also was given broad and complete power to regulate uses within sanctuaries and to ensure they were consistent with the sanctuary's purposes; no uses were specifically prohibited. The Sanctuaries Program was authorized for three years and given annual budget authority of up to \$10 million.

The ocean dumping bill passed the House by a vote of 300 to 4 on September 9, 1971, with the sanctuaries title intact, despite continued opposition of the Nixon Administration. The Senate Commerce Committee was not supportive of marine sanctuaries and deleted the program from its version of the ocean dumping bill. Nevertheless, the House-Senate conference committee on the dumping bill ultimately agreed to accept the House sanctuary title, with only minor changes. President Richard Nixon signed the measure on October 23, 1972.

The Rise of Multiple Use

During floor debate on the 1972 law, members of the House MMFC went to great lengths to explain that the Act was not purely a preservation statute and that multiple use of sanctuaries was expected. Even extractive activities like oil and gas development were seen as potentially compatible with the statute's preservation and restoration purposes. Taking the cue, NOAA moved the program in the direction of multiple use in the first regulations issued in 1974. Between 1972 and 1979, little money was spent to develop the program. Two small, noncontroversial national marine sanctuaries (NMS) were designated in 1975, the USS Monitor, off North Carolina, and Key Largo, in Florida. Once implementation began in earnest under the Carter Administration,

controversies erupted over the scope, requirements, and impact of the program as NOAA attempted to designate larger areas such as Flower Garden Banks, Channel Islands, Georges Bank, and Farallon Islands. The Carter Administration was ultimately successful in the designation of four sanctuaries (Channel Islands, Gulf of the Farallones, Gray's Reef, and Looe Key).

Oil and commercial fishing industries in particular developed a growing antipathy toward the Act because of its potential to infringe upon their activities. The oil industry sought to have oil development routinely allowed in sanctuaries as an acceptable multiple use; the fishing industry sought to prevent sanctuaries from restricting their access to fishing grounds. From roughly 1977 to 1986, commercial fishing and oil interests and their congressional allies led a counterattack against the program that challenged the sanctuaries law's very existence. Battles over individual sanctuary proposals fueled the broader attack against the Act. Barring repeal of the Act, the oil and fishing industries wanted to limit its application and water down its preservation purpose. In this they were largely successful. By 1984, NOAA and Congress had made a series of regulatory and legislative decisions that emphasized balancing preservation with other human uses of sanctuaries. In short, multiple use became the preferred management goal for sanctuaries. As applied by NOAA, the multiple use doctrine has made it extremely difficult to establish use-specific zones for such activities as preservation, recreational fishing, diving, etc.

Reemphasizing Preservation

The Sanctuaries Program suffered greatly during President Ronald Reagan's term:

Beset with the active opposition from the administration, the existing programs suffered. Staff positions went unfilled, and critics charged that management programs at existing sanctuaries languished. Funding levels stabilized at the beginning of the Reagan era but then actually declined during his second term. The levels of funding requested by the administration were even lower; Congress repeatedly allocated more money than the administration estimated was necessary. Most discouragingly for program advocates, NOAA designated no new sites other than Fagatele Bay, allowed the designation process for others to stagnate, and even removed Monterey Bay from the list of proposed sites.⁶

Meanwhile, a series of marine pollution events continued to highlight the broad need for marine protection. These included algal blooms, mass dolphin deaths, medical waste that washed up on the Atlantic Coast, and the crash of an ore carrier and a car carrier, which resulted in a spill of copper ore and bunker fuel oil adjacent to the Channel Islands NMS.

Of the 29 candidate sites NOAA had identified in 1983, only the tiny Fagatele Bay off American Samoa had been designated as of 1988. Congressional frustration over the lack of designations led to a new phase of the program, in which Congress played an active role promoting new designations. The first congressional designation, Florida Keys NMS (1990), was followed by three designations in 1992: the Hawaiian Islands Humpback Whale Sanctuary, the

Monterey Bay NMS, and the Stellwagen Bank NMS. Ironically, Congress had to bypass the Act in order to legislatively designate the Florida Keys and Monterey Bay sanctuaries, in which oil extraction was prohibited. Congress also legislatively prohibited oil extraction at NOAA-designated sanctuaries: the Cordell Bank NMS (1989) and the Olympic Coast NMS (1992).

Congress amended the Act in 1988, 1992, 1996, and 2000 with the intent of strengthening the Act's preservation mission. However, because Congress failed to revise other provisions of the law that emphasize multiple use, the impact of these changes has been modest. More recently, with the 2000 Amendments, Congress authorized a temporary moratorium on designation of new sanctuaries until existing ones are better managed and studied. This has thrown a blanket of uncertainty over the system's growth.

Unfilled Mandate

Having precipitated numerous sanctuary designation battles, suffered stop-and-go implementation, and been the subject of repeated regulatory and legislative amendments over three decades, how effective has the Act been in achieving its preservation purpose?

The MPRSA has been used to set aside a number of key places, and to protect them from oil development and certain other harmful activities. Although sanctuaries are managed for multiple use, some preservation zones have been established in a limited number of sanctuaries, e.g., Florida Keys, Fagatele Bay, and Channel Islands. Sanctuaries have also served as focal points for educating the public about marine conservation, and as platforms for further protection initiatives.

Nevertheless, there are still large swaths of the nation's oceans that have no sanctuaries. A look at a map will show blank spaces off many coastal states. No sanctuaries have been designated in the Caribbean or in the North Pacific. There are just three sanctuaries along the entire Atlantic seaboard, one in South Florida, and one in the Gulf of Mexico. On the West Coast, California has four sanctuaries and Washington one, but Oregon and Alaska have none. Even Georges Bank, the area Representative Keith set out to protect when he introduced sanctuary legislation in 1967, is missing from the system.

Lacking the singular preservation focus of the Wilderness Act, the MPRSA has proved to be an unreliable vehicle for inventorying, identifying, and preserving the full array of the nation's marine resources and special places in a comprehensive national system. After 32 years, the 13 sanctuaries comprise not even 0.4% of U.S. oceans. Moreover, some of these areas are inadequately protected from degrading or destructive uses such as overfishing, bottom habitat destruction, and pollution.⁷

Conclusion

While it is technically possible that the MPRSA could be employed to designate sanctuaries that are preservationist in nature, in reality the Act's conflicting goals of preservation and multiple use, its discretionary and open-ended nature, its lack of clear definitions and protection standards, and its

6. Dave Owen, *The Disappointing History of the National Marine Sanctuaries Act*, 11 N.Y.U. ENVTL. L.J. 711, 728 (2003).

7. See Table 1 for more information on the size of each sanctuary and the size of the entire system.

multiple intervention points for stakeholders collectively burdened the program with enormous implementation difficulties and inefficiencies.

At present, the MPRSA is so constrained by its own architecture that it stands little chance of creating the comprehensive system of marine preservation areas envisioned by its earliest proponents, who hoped to create a system of marine wilderness preserves analogous to the National Wilderness Preservation System. Meanwhile, most of the nation's ocean waters have been left open to extractive and commercial uses of all kinds. As a result, progress toward protecting and preserving America's ocean resources and ecosystems has been nowhere near what was needed during the last 30 years to prevent the serious degradation and destruction of marine species and ecosystems.

In order to be effective in facilitating the establishment of a comprehensive national system of marine preservation areas, the MPRSA would have to undergo substantial amendment. Alternatively, Congress could provide separate authority for an exclusive system of marine preservation areas to encompass any area of ocean that meets the new system's preservation and protection criteria. This was precisely the approach taken by the Wilderness Act, which superimposed a wilderness overlay on existing parks, refuges, forests, and public lands to identify qualified wilderness areas. Whichever approach is chosen, a bold, vigorous, and systematic effort will be needed during the next 10 years to identify and preserve America's significant marine ecosystems and features before they are irretrievably degraded or lost.

Introduction

In 1971, in testimony before the Senate Subcommittee on Oceanography, Jacques Cousteau warned Congress that the world faced the destruction of the oceans from pollution, overfishing, extermination of species, and other causes. Cousteau called for immediate action on several fronts to reverse the situation. Cousteau was one of several well-known scientists that helped birth the environmental movement, but as the voice of the ocean, he was without peer. Cousteau's testimony made an indelible impression on many members of Congress and confirmed the need for ocean protection legislation already under consideration; time after time his views would be mentioned in congressional speeches, testimony, reports, and debate.

The following year, the floodgates of environmental legislation opened. Congress passed a number of environmental laws, among them the MPRSA. The Act regulated the dumping of wastes in ocean waters, launched a study of the long-term impacts of humans on marine ecosystems, and created a Marine Sanctuaries Program for the "purpose of preserving or restoring [marine] areas for their conservation, recreational, ecological, or esthetic values."⁸

The original MPRSA and its accompanying legislative history were incongruous in that the law directed the Secretary of Commerce, acting through NOAA, to establish sanctuaries *for preservation and restoration purposes*, but the House's legislative history encouraged both preservation and extractive uses in sanctuaries. Later amendments codified multiple use as a major purpose of the Act, notwithstanding language citing "resource protection" as the Act's

"primary objective." This ambiguity produced confusion and led to enormous implementation difficulties, as ocean users, especially the oil and commercial fishing industries, battled conservationists over candidate sanctuaries, the terms of individual designations, and revisions to management plans.

Not surprisingly under these circumstances, the Sanctuaries Program has failed to achieve a comprehensive national network of marine preservation areas that restores and protects the full range of the nation's marine resources. While 13 valuable sanctuaries have been established in 30 years, they cover less than 0.4% of U.S. waters. It is well known that many significant marine areas and resources are missing from the sanctuary system.⁹

Meanwhile, the degradation of the oceans that Cousteau warned of and that Congress sought to prevent when it passed the MPRSA and other marine conservation laws is rapidly coming to pass. Although progress has been made on some fronts, such as bans on the dumping of toxic wastes in the oceans and better protection for marine mammals, other problems have worsened. Some examples:

Thirty percent of U.S. fish populations that have been assessed are considered overfished or are being fished unsustainably;

New England cod, haddock, and yellowtail flounder populations had reached historic lows by 1989;

More than 175 alien marine species have invaded San Francisco Bay;

Deep sea corals and sponges are being pulverized by bottom trawls;

Many thousands of farmed fish escape from their pens annually, competing with wild fish for food and interbreeding with wild stocks;

Cruise ships are dumping millions of gallons of sewage, ballast water, and other pollution into the oceans annually;

Anoxic dead zones have been created in a number of coastal areas;

Smalltooth sawfish were the first species listed as an endangered marine fish species; and

Various species of seabirds, sea turtles, and marine mammals have severely depleted populations due to their being caught as bycatch in commercial fisheries.¹⁰

Although the MPRSA was passed with the intent of preserving places in the sea from destruction, the Act's multiple use provisions have made it difficult to create inviolate sanctuaries where no extraction of living or nonliving resources is allowed. Scientific thinking about conserving ocean ecosystems was in its infancy at the time the MPRSA was passed, but has evolved substantially since. Today, scientists around the world are calling for the establishment of networks of marine reserves—areas exempt from all extractive or other harmful activities, including commercial and recreational fishing—as a necessary tool for conserving ma-

9. See, e.g., Owen, *supra* note 6, at 745-47.

10. P.K. DAYTON ET AL., PEW OCEANS COMMISSION, *ECOLOGICAL EFFECTS OF FISHING IN MARINE ECOSYSTEMS OF THE UNITED STATES* (2002); PEW OCEANS COMMISSION, *AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE* (2003).

8. MPRSA, §302.

rine biodiversity, restoring, and preserving the integrity of marine ecosystems, and maintaining sustainable fisheries.¹¹ Increasingly, nations are heeding this advice.

Given the law's multiple use mandate, NOAA has moved cautiously to create fully protected marine reserves in sanctuaries. Prior to 1992, only small areas within a few uncontroversial sanctuaries were protected from all extractive uses. When it established the Florida Keys NMS in 1990, Congress directed NOAA to consider zoning of the sanctuary as a method for creating "no-take" reserves.¹² Although NOAA's reserve initiative in the Florida Keys drew vociferous opposition from some commercial and recreational fishing interests, agreement was eventually reached to establish 24 reserves covering less than 1% of the sanctuary. A more recent attempt by NOAA in partnership with the state of California to establish no-take reserves comprising 26% of the Channel Islands NMS is still in progress. Marine reserve initiatives at other sanctuaries have not been launched due to hostile political forces and lack of countervailing conservation advocacy.

Today, the MPRSA is again buffeted by the winds of change. As concern about the state of the world's oceans builds once again, two national commissions, one private and one governmental, have been launched to recommend corrective action. The Pew Oceans Commission, established by the Pew Charitable Trust, issued its report in June 2003.¹³ Among other things, the report called for national legislation to create a system of fully protected marine reserves. The National Commission on Ocean Policy's report is expected to be released in April 2004. In the ensuing debate over the reports' recommendations, questions invariably will be asked about the role of marine reserves as an ocean conservation strategy. Questions also will be raised about the MPRSA. Should the United States establish a system of fully protected marine reserves? What kinds of uses of the reserves should be allowed? How can this be accomplished? Does the MPRSA provide sufficient authority for marine reserves or preventing conflicting uses? How could the MPRSA be changed or supplemented to meet current conservation needs?

Answering these questions requires an understanding of the history and evolution of the MPRSA. This understanding is not easily obtained. In its relatively short life of 32 years, the Act has been substantively amended six times, changing from a 2-page law to one over 30 pages in length. Successive committee staffs have left an ever-growing body of legislative material to digest. Although many articles and reports have been written about the Sanctuaries Program, none have focused in detail on the Act's legislative history and evolution.

The purposes of this Article are to provide a broad overview of the MPRSA's history and preservation provisions, and to hazard an explanation of how and why the MPRSA has fallen short as a preservation measure. We do not attempt an exhaustive explanation of every provision of the Act. Rather, our central focus is on the preservation intent of the law and how it has been advanced or hindered by events and successive amendments.

This Article is based principally on written sources, which reveal the key stepping stones of the Act's evolution. Explanations of why particular regulations or legislative actions were taken are harder to come by. Written explanations were often vague, incomplete, or absent. Deciphering the motivation and intent of every person that ever "touched" the Act was not attempted. In cases where we were able to query some of the principals, faded memories were a problem.

Part I discusses the emergence of marine sanctuaries legislation in the late 1960s as a vehicle for preserving special marine areas and resources by protecting them from degradation and destruction from industrial uses. Part II traces how the early legislative concepts were blended and reshaped by the House MMFC to produce the law enacted in 1972. Parts III and IV trace the law's evolution during the last 32 years, and discusses the significance of these changes to the statute's preservation purpose. Part V draws some conclusions about the value of the MPRSA today, and what it has achieved. Part VI sums up our findings.

I. Early Sanctuary Legislation

A. Background

Throughout the 1960s and 1970s, there was growing public concern in the United States and the world about humanity's impact on the environment. Virtually every human effect came under examination, including extinction of species, air and water pollution, and ocean degradation. Fueled by media coverage of polluted water bodies, toxic threats to humans, and the disruption of the natural ecology, public concern was galvanized in 1970 by Earth Day, the birthday of the modern environmental movement. In the United States, the executive and legislative branches responded by enacting a number of laws that ushered in a new era of environmental protection.

The flowering of environmental legislation in the 1970s was partly an outgrowth of earlier congressional concerns and partly the product of new knowledge and understanding. As early as the mid-1960s, congressional committees had acted on a number of fronts to develop new conservation and environmental protection policies. In the terrestrial domain, laws were enacted to conserve America's diminishing wildlife and outdoor recreation lands and wild areas. These included the Endangered Species Act (ESA), the Land and Water Conservation Fund Act, and the Wilderness Act.¹⁴

In the marine realm, Congress was especially concerned about the degradation of America's estuaries from pollution, dredging, and shoreline development. Oil spills and the ocean dumping of dredge spoil and other wastes captured attention due to a number of well-publicized pollution incidents. Industrial development in coastal and offshore waters also became an issue as the oil industry sought to expand offshore, seabed-mining schemes were discussed, and deepwater ports proposed. In totality, pollution and coastal development were recognized as a significant threat to tradi-

11. See, e.g., *The Science of Marine Reserves*, ECOLOGICAL APPLICATIONS, Feb. 2003.

12. Pub. L. No. 101-605 §7(a)(2) (1990).

13. PEW OCEANS COMMISSION, *supra* note 10.

14. Endangered Species Act of 1973, 16 U.S.C. §§1531-1544, ELR STAT. ESA §§2-18; Land and Water Conservation Fund Act of 1965, 16 U.S.C. §§4601-4 to 4601-11 (1964, as amended); Wilderness Act of 1964, 16 U.S.C. §§1121 (note), 1131-36.

tional uses of the oceans, such as fishing and recreation, as well as to the overall health of the marine environment.

The threat of coastal and ocean degradation helped precipitate several pieces of study legislation. The Clean Water Restoration Act of 1966, whose purpose was to improve the nation's water pollution control program, mandated a study of estuarine pollution and executive branch recommendations for an "effective national estuarine management program."¹⁵ As the estuarine pollution study was being conducted, the House Subcommittee on Fisheries and Wildlife Conservation, chaired by Rep. John Dingell (D-Mich.), considered the need for a national system of estuaries similar to those that protected other national resources like parks and refuges. In 1968, Congress passed the Estuary Protection Act, which required the Secretary of the Interior to study and inventory the nation's estuaries and to submit recommendations "on the feasibility and desirability of establishing a nationwide system of estuarine areas, the terms . . . to govern such system, and the designation and acquisition of any specific estuarine areas of national significance which he believes should be acquired by the United States."¹⁶

A parallel congressional interest of the time was oceanographic research. Commencing in the 1950s, a small group of scientists and policymakers in Congress and the executive branch began working to strengthen the nation's oceanographic research program. Spurred by defense concerns, national pride, and recognition that the ocean was a relatively unexplored and untapped resource of immense potential, the oceanographic community engaged in a decade-long debate about how to improve oceanographic research. The major focus of debate was exploration and exploitation of ocean resources, not environmental conservation. However, as public concern about the environment grew, the oceanographic issue expanded to incorporate coastal conservation as a major theme.

The oceanography debate culminated in the enactment of the Marine Resources and Engineering Development Act of 1966.¹⁷ The Act declared a new policy "to develop, encourage, and maintain a coordinated, comprehensive, and long-range national program in marine sciences."¹⁸ The Act established a Commission on Marine Sciences, Engineering, and Resources (also referred to as the Stratton Commission after its chairman, Julius Stratton) to conduct a study and recommend a plan for a "national oceanographic program that will meet the present and future national needs."¹⁹ The Act created a temporary National Council on Marine Resources and Engineering Development to advise and assist the president in day-to-day marine policy and program coordination.²⁰ In its 1969 report, the Stratton Commission recommended establishment of a new oceans agency, which was fulfilled with the creation of NOAA in 1970, and creation of a national coastal zone management program, which was realized with passage of the Coastal Zone Management Act (CZMA) of 1972.²¹

B. The Sanctuary Idea

A variety of studies and reports, one of which played a seminal role in the development of marine sanctuary legislation, punctuated the long-running oceanography debate. Contemporaneous with congressional consideration of the Marine Resources and Engineering Development Act, the President's Science Advisory Committee formed a Panel on Oceanography to prepare an assessment of marine science and technology needs. The panel's report, *Effective Use of the Sea*, was released in June 1966 by President Johnson.²² The report called for establishment of a national ocean program, the objective of which was "effective use of the sea by man for all purposes currently considered for the terrestrial environment: commerce; industry; recreation and settlement; as well as knowledge and understanding."²³

Although much of the Science Advisory Committee's report focused on exploring, developing, and understanding the oceans, the committee presciently recognized the growing threat of what it called "environmental modification," and particularly the need to preserve the near-shore environment:

Continuing population growth combined with increased dependence on the sea for food and recreation means that modification of marine environments will not only continue, but will drastically increase We are far from understanding most short-range and all long-range biological consequences of environmental modification.

These considerations suggest that we now need to preserve the quality of as much of the unmodified or useful marine environment as we can and to restore the quality of as much of the damaged environment as possible. Delay will only increase the cost in money, time, manpower, resources, and missed opportunities.²⁴

The most pervasive inadvertent modification, the panel concluded, is pollution in all its forms. We have learned from our experience with river and lake pollution, said the panel, that we "should not make similar mistakes as we inhabit and exploit the oceans."²⁵

The report identified habitat destruction as a major issue: "Habitat destruction by improper fishing techniques have [sic] affected our biological resources."²⁶ It also recognized the serious problems caused by channel dredging, shoreline modification, and the filling in of marshes. "These modifications are occurring in estuaries which are important natural resources for recreation and food production. These areas are nursery grounds for many marine organisms. How severely these and other environmental alterations affect the biota is unknown."²⁷

In sum, the Panel on Oceanography identified two issues that would grow in importance in following years, and have yet to be adequately resolved: the protection and restoration of estuaries and coastal waters to preserve their natural values, and control of water pollution. The panel

15. Clean Water Restoration Act, 89 Pub. L. No. 753 (1966).

16. Estuary Protection Act, 16 U.S.C. §§1221-1226 (1968).

17. Marine Resources and Engineering Development Act of 1966, 33 U.S.C. §§1101-1108.

18. *Id.* §1101.

19. *Id.* §§1104, 1105.

20. *Id.* §§1102, 1104.

21. COMMISSION ON MARINE SCIENCE, ENGINEERING, AND RESOURCES, *OUR NATION AND THE SEA: A PLAN FOR NATIONAL AC-*

TION (1969); Coastal Zone Management Act of 1972, 16 U.S.C. §§1451-1465, ELR STAT. CZMA §§302-319.

22. PRESIDENT'S SCIENCE ADVISORY COMMITTEE, *supra* note 3.

23. *Id.* at viii.

24. *Id.* at 16.

25. *Id.* at 17.

26. *Id.* at 17.

27. *Id.* at 17-18.

recommended five broad "courses of action" by the federal government, two of which were relevant to subsequent marine sanctuary legislation:

(1) Establish a system of marine wilderness preserves as an extension to marine environments of the basic principle established in the Wilderness Act of 1964 . . . that "it is the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness." In the present context, specific reasons for such preserves include:

- (a) Provision of ecological baselines against which to compare modified areas.
- (b) Preservation of major types of unmodified habitats for research and education in marine sciences.
- (c) Provision of continuing opportunities for marine wilderness recreation.

(2) Undertake large-scale efforts to maintain and restore the quality of marine environments. Goals of these efforts should include increasing food production and recreational opportunities and furthering research and education in marine sciences. A multiple-use concept should be evolved for marine environments analogous to that used for many [f]ederal land areas . . . It should be emphasized that this concept includes the recognition that for some areas, such as wilderness, only one use is possible.²⁸

In referencing the Wilderness Act, the panel explicitly endorsed the preservation of marine areas and resources in their natural condition as a legitimate goal. The Wilderness Act, enacted in 1964, established a National Wilderness Preserve System to be composed of federally owned areas designated by Congress as "wilderness."²⁹ Wilderness areas are "administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness . . ."³⁰ The Act defines a wilderness area as a place

where the earth and its community of life are untrammeled by man, where man is a visitor who does not remain. An area of wilderness is further defined to mean . . . an area of undeveloped [f]ederal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions . . .³¹

The Wilderness Act prohibits commercial uses of wilderness, but some preexisting commercial uses may be allowed to continue in certain areas.³² Recreational uses of wilderness deemed compatible with maintaining its primeval character are allowed, including recreational hunting and fishing.³³

The President's Science Advisory Committee clearly viewed marine wilderness as a distinct type of ocean use within a broader multiple use framework. Although the report was silent on how the recommended marine multiple use management system should work, the concepts of marine wilderness preserve and multiple use management

would play significant roles in shaping the debate on marine sanctuaries legislation.

C. Sanctuaries Legislation in the 90th Congress, 1967-1968

I. Overview

Concurrent with congressional activity on estuaries and marine science issues, several members of the House introduced bills in 1967 to establish marine sanctuaries as a means of protecting their states' coastal and ocean resources from oil and gas development activities on the OCS. In July, Representatives Burton and Brown proposed identical bills to authorize a feasibility study of a Santa Barbara Channel marine sanctuary to be completed within two years. Their legislation established a moratorium on *all* "industrial development" in the channel until the study was completed.³⁴

The citizens of Santa Barbara long had been concerned about the effects on Santa Barbara County's scenic beauty and tourism economy of offshore oil drilling in the channel. The state of California had banned minerals extraction in state waters off Santa Barbara in 1955 by creating a so-called oil sanctuary where drilling is forbidden.³⁵ The federal government began selling mineral leases in federal waters in the channel in 1967. In recognition of the coast's environmental values, the federal government established a no-drilling buffer zone that extended two miles seaward from the Santa Barbara oil sanctuary, but proceeded to offer leases outside the zone. By early 1968, 72 federal leases had been sold for in excess of \$600 million.³⁶ The Burton-Brown bills were clearly an attempt to forestall oil development in federal waters off Santa Barbara.

A few days after the Burton and Brown bills were filed, Representative Keith introduced a bill to authorize a study of the desirability and feasibility of establishing a national system of marine sanctuaries, including a study of Georges Bank as a candidate site.³⁷ The Keith bill provided for a moratorium on new minerals exploration and development on the OCS in all study areas, and called for voluntary agreements between governmental bodies to prevent "industrial development" while studies were being conducted.³⁸ Keith became interested in protecting Georges Bank after a seismic explosion detonated in the course of oil exploration caused a large fish kill in September 1966.³⁹ Keith represented the coastal area of Cape Cod and was particularly concerned about protecting the Georges Bank fishery from energy development. As a member of the House MMFC, he was well positioned to play an active role in shaping sanctuaries legislation.

34. H.R. 11460, 90th Cong. (1967); H.R. 11469, 90th Cong. (1967).

35. Cunningham-Shell Tidelands Act, 1955 Cal. Stat. ch. 1724.

36. *Santa Barbara Oil Spill: Hearings on S. 1219 Before the Subcomm. on Minerals, Materials, and Fuels of the Senate Comm. on Interior and Insular Affairs*, 91st Cong. 47 (statement of Hollis Dole, Assistant Secretary of the Interior for Mineral Resources) (1969) [hereinafter Senate Hearings 1969].

37. H.R. 11584.

38. *Id.* §4(a), (b).

39. *Oceanography Legislation: Hearings on H.R. 11460, 11469, 11584, 11769, 11812, 11868, 11984, 11987, 11988, 12007, and 13150 Before the Subcomm. on Oceanography of the House Comm. on Merchant Marine and Fisheries*, 90th Cong. 43 (1968) [hereinafter House Hearings 1968].

28. *Id.* at 18.

29. 16 U.S.C. §1121.

30. *Id.* §1131(a).

31. *Id.* §1131(c).

32. *Id.* §1133.

33. *Id.* §1131(a).

Eight more sanctuary study bills were introduced in 1967 by House members from the East and West Coasts.⁴⁰ Some of the bills were identical to the Keith and Burton-Brown measures; others differed slightly, specifying different areas for sanctuary study, such as Plum Island, New Hampshire, and Point Lobos and Pfeiffer-Big Sur, Monterey County, California. In the Senate, Sen. Edward Brooke (R-Mass.) introduced a measure identical to Keith's.⁴¹

The 11 House bills were referred to the House MMFC, which became the driving force for marine sanctuaries legislation. The Oceanography Subcommittee, chaired by Rep. Alton Lennon (D-N.C.), held three days of hearings on the study bills in April 1968.⁴² Representatives Keith, Brown, and 10 other members of Congress testified in support of sanctuary legislation, as did nonprofit conservation organizations, the Massachusetts fishing industry, the state of Massachusetts, and several scientific organizations.

Although the DOI and other executive agencies said they favored the objectives of the bills, they opposed enactment on several grounds.⁴³ The DOI's most telling objection to the bill, and one that would continue to dog sanctuary legislation, was opposition to restrictions on offshore energy development. The DOI said the moratorium on offshore minerals extraction in sanctuary study areas would deny the government revenue from oil and gas lease sales and the public an energy supply.⁴⁴ Furthermore, the DOI claimed the bill was not needed because it already had general authority under existing wildlife laws to conduct resource studies like those called for by the sanctuaries bills, and that under the Outer Continental Shelf Lands Act (OCSLA) it had the authority to achieve multiple use management of the OCS.⁴⁵

Because of the administration's opposition to sanctuary legislation, and the desire of the chairman of the Oceanography Subcommittee to get the views of the Stratton Commission and the National Council on Marine Resources, Representative Lennon's subcommittee took no further action in 1968. In the Senate, there was no action on Senator Brooke's bill.

2. Detailed Provisions of Early Bills

a. The Problem

The intent of Representative Keith and other sanctuary bill sponsors was to preserve portions of the tidelands and ocean waters for their natural values and to protect these areas from incompatible commercial and industrial uses, particularly oil development. In the statement accompanying his 1967 legislation, Keith said the purpose of his bill was to "save distinctive offshore areas of the United States," and that as "exploitation of the ocean's riches progresses, it is essential to give some enduring protection to sections of the offshore marine environment in a natural or near-natural

condition."⁴⁶ Over the next several years, Keith would repeatedly refer to the need to protect valuable fisheries from the effects of oil and gas development. For example, at the 1968 House hearings, Keith noted that oil drilling "could have a tremendously disruptive effect on the ecology and the present resource use of a vast stretch of ocean."⁴⁷

Similarly, Representative Brown testified:

We recognize that the quality of our ocean environment can be seriously impaired by unplanned industrial development offshore, and the pollution it creates. It follows that we must dedicate a system of ocean sanctuaries that can preserve a [broad] variety of marine plant and animal communities.⁴⁸

Rep. Burt Talcott (R-Cal.), who had introduced one of the study bills, said: "We must set aside some of our abundant marine areas before they are wasted or exploited."⁴⁹ In short, marine sanctuaries were needed as an antidote to unrestrained coastal development.

b. Policy Response

To secure the protection they sought for local places, sanctuary sponsors envisioned a national system of sanctuaries set aside for uses they considered compatible with preservation of the natural environment. The Burton-Brown bill directed the Secretary to discuss the applicability of the Santa Barbara sanctuary feasibility study "to other areas along the coastal waters of the United States with similar values and the feasible and desirable means of creating a marine wilderness system as an extension to marine environments of the basic principles established in the Wilderness Act," language that directly reflected the recommendation of the President's Science Advisory Committee.⁵⁰

Keith's bill declared that

it is the policy of the Congress, through a system of marine sanctuaries, to preserve, protect, encourage balanced use, and where possible, restore, and make accessible for the benefit of all the people, selected parts of the [n]ation's natural tidelands, [OCS], seaward areas, and land and waters of the Great Lakes, which are valuable for sport and commercial fishing, wildlife conservation, outdoor recreation, and scenic beauty.⁵¹

In his bill introduction statement, Representative Keith referred to the system as a "national system of marine wilderness preserves."⁵² But instead of establishing a national marine wilderness preserve system outright (as the Wilderness Act did for terrestrial areas), and immediately designating certain areas such as Georges Bank, Keith sought the Secretary of the Interior's opinion on the most desirable and feasible means of establishing a national sanctuary system.⁵³ In sum, both the Keith and Burton-Brown study bills represented a preliminary step toward the creation of a marine analog to the wilderness system, and the lineage of their bills

40. H.R. 11769, 90th Cong. (1967); H.R. 11812, 90th Cong. (1967); H.R. 11868, 90th Cong. (1967); H.R. 11984, 90th Cong. (1967); H.R. 11987, 90th Cong. (1967); H.R. 11988, 90th Cong. (1967); H.R. 12007, 90th Cong. (1967); H.R. 13150, 90th Cong. (1967).

41. S. 2415.

42. House Hearings 1968, *supra* note 39.

43. *See, e.g., id.* at 89, 129.

44. *Id.* at 131.

45. *Id.* at 34 (correspondence from Stanley Cain).

46. 113 CONG. REC. 19481 (daily ed. July 19, 1967) (statement of Rep. Keith).

47. House Hearings 1968, *supra* note 39, at 43.

48. *Id.* at 73.

49. *Id.* at 78.

50. H.R. 11460, §2(d); H.R. 11469, §2(d).

51. H.R. 11584, §2.

52. 113 CONG. REC. 19481 (1967).

53. H.R. 11584.

may be traced directly to the President's Science Advisory Committee's recommendation.

c. Management of Sanctuaries

Given the study approach taken by the sponsors, it is not surprising that none of the bills specified exactly how sanctuary areas were to be established and managed to preserve desired values. These details were to be studied and decided later. However, to preserve future options, the Keith bill mandated a moratorium on new minerals exploration and development activities in sanctuary study areas until the Secretary submitted the report.⁵⁴ A similar development moratorium was specified in the Burton-Brown bill, but it applied only to the Santa Barbara area.⁵⁵

Under the philosophy of the time, it was assumed that the ocean should be managed for multiple uses. Because there was no overarching legal authority or central agency to regulate or zone competing uses within the ocean, it was recognized by sanctuary bill sponsors that industrial and commercial uses would continue to degrade and destroy natural values and resources with impunity and increasing frequency unless action was taken.

None of the sanctuary bills of the 90th Congress explicitly mentioned multiple use as a *purpose* of sanctuaries. The Keith and Burton-Brown bills directly specified or indirectly implied that in identifying sanctuaries for potential designation, the Secretary should consider the values and alternative uses of an area before deciding which sites should be designated.⁵⁶ Keith's bill declared it the policy of Congress to "preserve, protect, encourage balanced use, and where possible, restore and make accessible" sanctuaries that are "valuable for *sport and commercial fishing, wildlife conservation, outdoor recreation, and scenic beauty*."⁵⁷ The Burton-Brown bill sought to protect similar values in the Santa Barbara Channel.⁵⁸ There was no mention in either bill of industrial or commercial uses being allowed in sanctuaries, except for commercial fishing. Furthermore, the idea that commercial fishing might sooner or later pose a threat to sanctuary resources or conflict with uses like wildlife conservation was not considered.

Keith explained he was not interested in blocking industrial development everywhere in the ocean, noting that "industrial and commercial development can go hand in hand with fishing, recreational, conservation, and scientific uses of the seas—if we are wise enough to see that these uses are made compatible with each other."⁵⁹ In other words, Keith was for rational planned use of the ocean that would avoid some of the mistakes of development on land. Given his expressed desire to protect areas of the ocean from "damage or destruction by industrial exploitation," Keith seemed to mean that oil development could occur in some areas of the ocean while others—sanctuaries—would be protected from oil.⁶⁰

54. *Id.* §4(a).

55. H.R. 11460, §1(d); H.R. 11469, §1(d).

56. H.R. 11460, §2; H.R. 11469, §2; H.R. 11584, §5.

57. H.R. 11584, §2 (emphasis added).

58. H.R. 11460, §2; H.R. 11469, §2.

59. 113 CONG. REC. 19481.

60. *Id.*

At the House hearing, Keith characterized his bill as a balanced approach to resource management. The bill

... seeks to encourage balanced, compatible uses of our offshore waters—first by identifying alternative uses, and then by ensuring compatibility among these competing values and resources

The study called for in the bill would determine the likely impact of new industrial activities on the other natural resources and values of certain marine environments. It would determine whether some kind of "ocean zoning" is necessary to make these various uses compatible, and whether certain portions of our offshore environments should be sanctuary areas, closed to new industrial activities⁶¹

However, other statements made by Representative Keith could be interpreted to support multiple use sanctuaries. Noting that his bill did not define the term marine sanctuary, Keith testified:

A marine sanctuary area would be an ocean area which is especially distinctive for its commercial fishing uses, and for its scenic, recreation, and wildlife conservation values. In such an area, the Secretary of the Interior would be authorized to *restrict, prohibit, or prescribe the conditions under which industrials [sic] activities could be carried on, including the mining of gas or oil deposits*.⁶²

The idea that mineral extraction *might occur* in sanctuaries was inconsistent with the overall thrust of Keith's introductory statement, and with his bill, which was silent on the issue. Furthermore, Keith's proposed definition never was included in any of his subsequent bills, and he continued to argue for the protection of the Georges Bank fishery from oil development. Why he offered the definition is not known; it may have been an attempt to dampen DOI opposition by giving agency officials broader discretion to manage a sanctuary, all the while assuming that there was little chance that oil development would be found compatible with valuable fisheries. Alternatively, it may reflect Keith's thinking at that moment. Regardless of Keith's reasons, the idea that sanctuaries *might include industrial activities within their borders* was on the table. Eventually, it would weigh heavily in the shaping of the 1972 law.

d. Relation to Other Laws—Consultation

The argument advanced by the DOI that its existing legal authorities for management of wildlife and the OCS were sufficient to protect the marine environment obviously was not convincing to representatives who already had determined that new preservation authority was needed. The DOI claimed that it could protect marine ecology and develop oil using a multiple use approach to resource management, and that the OCSLA enabled it to do both.⁶³ At the hearing on the sanctuary bills, Keith specifically noted that existing laws had been considered in the development of his legislation, and that his bill filled a gap.⁶⁴ Although sanctuary bill sponsors did not believe the DOI would protect special places from oil development, they did recognize the importance of

61. House Hearings 1968, *supra* note 39, at 43.

62. *Id.* at 43 (emphasis added).

63. *Id.* at 131-32.

64. *Id.* at 135-37.

consulting with the DOI, other agencies, and the public on the design of the Sanctuaries Program, and included consultation and public hearings provisions in their bills.⁶⁵

3. An Alternative Ocean Protection Strategy

While the Oceanography Subcommittee was considering sanctuary proposals, several members of Congress proposed to protect marine areas from oil development on a site-by-site basis. In April 1968, Sen. Thomas Kuchel (R-Cal.) and Rep. Charles Teague (R-Cal.) introduced identical measures to prohibit mineral exploration and development in the federal no-leasing buffer zone that lay adjacent to the state's Santa Barbara oil sanctuary.⁶⁶ In the statement accompanying his bill, Kuchel said his purpose was to make the administratively established federal buffer zone "semi-permanent," to protect the scenic values of the coast from the unsightly oil-drilling structures.⁶⁷ (Curiously, Kuchel made no mention of the potential for oil pollution from oil wells located outside the buffer zone.) The fact that California legislators saw fit to introduce bills to ban oil development in federal waters off Santa Barbara was further evidence of the lack of confidence in the DOI's ability to protect the environment under existing laws.

The Kuchel and Teague bills were referred to the DOI and Insular Affairs committees of the Senate and House which had jurisdiction over the OCS minerals program. No hearings were held on either bill in 1968. Similar oil development prohibition bills would be introduced in subsequent congresses, but ultimately, this line of attack reached a dead end because neither the House nor Senate Interior committees were willing to close portions of the OCS to mineral leasing.

4. Conclusion/Significance

At the close of the 90th Congress, two strategies had been proposed to protect special marine places from development. One was to have the Secretary of the Interior study the feasibility of a national system of sanctuaries and identify for further consideration by Congress places that merited protection. The other was to ban oil development on the OCS on a site-by-site basis. The intent of the Keith and Burton-Brown study bills was to eventually establish a marine analog to the National Wilderness Preserve System, as had been recommended by the President's Science Advisory Committee. Perhaps because they were treading on new and unfamiliar territory, the sponsors moved cautiously, seeking a study of the feasibility and desirability of their idea, rather than establishing a permanent national system outright as Congress did under the Wilderness Act.

By creating sanctuaries, the sponsors sought to prevent industrial development from harming resources and conflicting with uses of the sea they deemed acceptable. The uses the sponsors wished to protect included sport and commercial fishing, wildlife conservation, recreation, maintenance of scenic beauty, and ecological research. For the most part, these uses were the same kinds of uses allowed in

terrestrial wilderness areas, the exception being commercial fishing. Importantly, sanctuary proponents did not view commercial fishing as a threat to the other values they sought to protect.

In contrast, the intent of Kuchel and Teague was more limited in scope. They sought only to protect Santa Barbara from the negative effects of offshore oil development by restricting new oil activity. Both strategies, however, posed a direct challenge to the offshore oil development program, and as such, drew strong opposition from the oil industry, congressional committees with authority over OCS leasing, and the DOI, which managed the offshore minerals program. Until this opposition could be dealt with, there would be no marine sanctuaries bill.

D. Legislation in the 91st Congress, 1969-1970

1. Overview

Interest in ocean protection and marine sanctuaries legislation grew substantially in the 91st Congress as a large oil spill off Santa Barbara and other pollution incidents heightened the need for action. Also, three reports on coastal and marine management were issued during this period, and ocean dumping became a major issue. At least 21 bills dealing with marine sanctuaries to some degree were introduced in the 91st Congress, 18 in the House and 3 in the Senate. As more legislators took up the issue, so too did the number of approaches and combinations of approaches for protecting ocean places. In addition to sanctuary study bills, measures were introduced to ban oil development in *all* federal waters off Santa Barbara and other places along the California coast, and to establish areas in the ocean where ocean dumping would be prohibited for the protection of marine ecology.

2. Impetus for Action—Santa Barbara Oil Spill

On January 28, 1969, an oil well on a federal lease site in the Santa Barbara Channel ruptured, eventually spilling 3.3 million gallons of oil, and polluting miles of California shoreline. It took months to bring the leak under control. The event received heavy media coverage and brought home the vulnerability of the U.S. coastline to massive oil spills such as had occurred in 1967 when the oil tanker *Torrey Canyon* ran aground on England's southern coast. In addition to supervising the Santa Barbara cleanup, the DOI revised its well operation guidelines in an attempt to prevent future spills. On March 3, 1969, Secretary of the Interior Walter Hickel converted the 21,000-acre federal no-lease buffer zone in the channel into a permanent Santa Barbara Ecological Preserve.⁶⁸ Hickel withdrew from leasing another 34,000 acres in the channel as an additional buffer zone between the coast and federal lease sites.⁶⁹

Nevertheless, the Santa Barbara spill's impact continued to reverberate in Congress as an event not to be repeated. Subsequent oil spills in San Francisco Bay, Long Island Sound, the Gulf of Mexico, and elsewhere reinforced the peril of oil. In 1968 alone, the U.S. Coast Guard reported 714 cases of oil pollution, and the Federal Water

65. See, e.g., H.R. 11460; H.R. 11469; H.R. 11584.

66. H.R. 16421, 90th Cong. (1968); S. 3267, 90th Cong. (1968).

67. 114 CONG. REC. 8528 (1968) (statement of Sen. Kuchel on introduction of S. 3267).

68. Senate Hearings 1969, *supra* note 36, at 47.

69. *Id.*

Pollution Control Administration identified 180 significant oil spills.⁷⁰

In addition to oil pollution, degradation of the ocean from the unregulated dumping of sewage, dredge spoils, and toxic and radioactive wastes gained major attention during the late 1960s and 1970s. At the time, the ocean served as a cost-free dumping zone for government and industry. In story after story, the media catalogued a host of pollution incidents and impacts, such as the “dead sea” off New York and New Jersey created by waste dumping, mercury contamination in fish and related poisoning of humans, the closure of ocean beaches and shellfish beds because of bacterial contamination, diseased estuaries, thermal pollution of Biscayne Bay, and the dumping of nerve gas and oil wastes off Florida. “The oceans are in danger of dying,” Cousteau told *Time* magazine.⁷¹ The following year, Cousteau testified before the Senate that “we are facing the destruction of the ocean by pollution and by other causes.”⁷²

3. Coastal Management Reports

The startling and graphic nature of environmental catastrophes during the period underscored the conclusions of several reports that Congress had commissioned on marine sciences and resources. In January 1969, the Stratton Commission released *Our Nation and the Sea*.⁷³ The report focused on the wise and orderly use of the oceans, but also recognized growing environmental problems. The commission recommended the consolidation of federal ocean activities in a new agency, NOAA, whose mission would be to coordinate and implement a national oceans program.⁷⁴ The report also recommended creation of a new system for protecting and managing the coastal zone with states having lead responsibility.⁷⁵ “The guiding principles” for coastal zone management, said the report, “should include the concept of fostering the widest possible variety of beneficial uses so as to maximize net social return.”⁷⁶

There was no mention of marine sanctuaries in the Stratton Commission’s report, but as part of the new coastal management system, the commission recommended that the DOI, through the two estuary studies then in progress, “identify areas to be set aside as sanctuaries to provide natural laboratories for ecological investigations.”⁷⁷ Spurring this recommendation was recognition of the “diminishing number of relatively unaltered areas where natural processes can be observed.”⁷⁸ Thus, the commission envisioned estuarine sanctuaries as research sites “for conduct of studies necessary to establish a proper base from which the effects of man’s activities can be determined and ultimately predicted.”⁷⁹

70. *Spilled Oil: Growing Hazard to Coasts*, U.S. NEWS & WORLD REP., Mar. 16, 1970, at 11.

71. *The Dying Oceans*, TIME, Sept. 28, 1970, at 64.

72. *Hearings Before the Subcomm. on Oceans and Atmosphere of the Senate Comm. on Commerce*, 92d Cong. 3 (1971).

73. COMMISSION ON MARINE SCIENCE, ENGINEERING, AND RESOURCES, *supra* note 21.

74. *Id.* at 230.

75. *Id.* at 57.

76. *Id.*

77. *Id.* at 65.

78. *Id.* at 10.

79. *Id.*

In November 1969, the DOI submitted the *National Estuarine Pollution Study* to Congress.⁸⁰ The report concluded that the nation’s estuaries were being degraded and destroyed because of institutional failures and society’s inability to recognize the noncommercial values of estuaries such as fish and wildlife habitat, recreation, and esthetics.⁸¹ The DOI recommended new legislation to promulgate a national policy and program to deal with the situation, again with states in the lead.⁸² The DOI recommended

. . . achievement of the best use of the values of the estuarine and coastal zones through a balance between: (a) multi-purpose development; (b) conservation; and (c) preservation over the short and long-range. Priority consideration should be given to those resources and uses which are estuarine-dependent.⁸³

Noting the failure of governments to achieve “a proper balance” between development and preservation and conservation of estuary resources, the DOI concluded that

[t]he principle goal of the national program is the use of the estuarine and coastal zone for as many beneficial purposes as possible, and where some uses are precluded, to achieve that mix of uses which society . . . deems most beneficial.⁸⁴

The report also called for

. . . maximum multiple use of the estuarine resource. The primary objective of technical management is to achieve the best combination of uses to serve the needs of society while protecting, preserving, and enhancing the biophysical environment for the continuing benefit of present and future generations.⁸⁵

Although the report highlighted the need to “reduce to an acceptable minimum the adverse effect of man’s use of the estuaries and coastal areas” and cited the need to “accept preservation” as one means to that end, there was no mention of either estuarine or marine sanctuaries as desirable preservation tools.⁸⁶ Nor did the report identify particular estuaries that should be set aside for research purposes as the Stratton Commission had recommended.

The DOI’s second report, the *National Estuary Study* was released in January 1970.⁸⁷ Prepared by the U.S. Fish and Wildlife Service, the report recommended that the DOI “should initiate a program designed expressly to provide for the protection and restoration of the natural values of estuaries We should proceed now to halt and reverse the grim trend of estuary degradation.”⁸⁸ The “principal thrust of the report” was to “focus attention on the urgent need to preserve and restore” the natural values of estuaries. The report endorsed the DOI’s earlier conclusion that states should be primarily responsible for establishing coastal zone manage-

80. FEDERAL WATER POLLUTION CONTROL ADMINISTRATION, NATIONAL ESTUARINE POLLUTION STUDY: VOLUME I-III (1969).

81. *Id.*

82. *Id.* at III-3.

83. *Id.* at III-6.

84. *Id.* at III-7.

85. *Id.* at II-62.

86. *Id.* at III-7.

87. BUREAU OF SPORT FISHERIES AND WILDLIFE AND BUREAU OF COMMERCIAL FISHERIES, NATIONAL ESTUARY STUDY: VOLUME I (1970).

88. *Id.* at 2.

ment programs, but did not make specific recommendations for federal actions to help states establish protective programs for estuarine resources.⁸⁹

In response to its statutory mandate to provide Congress with recommendations on a national estuary system, possibly to include federally acquired sites, the DOI dodged, saying that it needed more time to develop suggestions.⁹⁰ It also declined to identify "significant" estuaries, arguing instead that all estuaries were important for one or more reasons and deserved better management and protection.⁹¹ The DOI did not identify estuarine sanctuaries for research purposes, nor did it address the concept of marine sanctuaries in its summary volume of the report.

Collectively, the three studies served to justify the need for a new system of coastal management in which states would be the lead actors. All three reports recommended a policy of balanced multiple use of the coastal zone, but recognized that establishment of preservation areas was part of the multiple use approach. Congress responded by passing the Coastal Zone Management Act of 1972, authorizing federal assistance to states for managing their coasts.⁹² However, the House MMFC did not see state coastal zone management plans as sufficient in themselves to preserve ocean places. Thus, despite the Nixon Administration's lack of interest, consideration of marine sanctuaries legislation continued on a parallel track with the CZMA.

4. Sanctuary Bill—Approaches

a. Study Bills and Designation Bills—House

Several days after the Santa Barbara well rupture in 1969, Representative Keith reintroduced his marine sanctuary study bill, noting that had his legislation been enacted in the 90th Congress, the spill might have been prevented.⁹³ Also reintroduced was Representative Brown's bill to study a sanctuary in the Santa Barbara Channel, and a Representative Talcott measure to study other coastal areas in California for possible designation.⁹⁴

The national focus on oil spills prompted a tactical maneuver by Representative Keith. On Feb. 20, 1969, a few days before the House MMFC was to conduct hearings on oil pollution, Keith introduced a bill to control oil pollution from vessels which included his sanctuary study proposal as a separate title.⁹⁵ At the hearings, Keith again noted that the Santa Barbara spill might have been prevented had the Santa Barbara area been studied and set aside "for a higher purpose than oil exploration and the operation of oil wells."⁹⁶ Keith emphasized the need to protect the Georges Bank fishery, already depleted by Russian fishing, from further harm by oil pollution.⁹⁷ He

also made clear that his study bill called for cessation of new oil activities in sanctuary study areas, but left it up to Congress to decide which areas to protect permanently and how to protect them. In response to Secretary Hickel's decision to create a no-drilling ecological reserve off Santa Barbara, Keith suggested to the Secretary that other coastlines of the country comparable to Santa Barbara's in value also might deserve sanctuary status to protect established uses such as fisheries and recreation.⁹⁸

Keith's idea of attaching the sanctuary study to oil pollution control legislation went nowhere. Furthermore, no House hearings were held on any sanctuary study bills during the 91st Congress. A major reason for the lack of action was the continuing opposition by the DOI and the oil industry. The DOI counseled delay on the bills until various reports on marine and estuary issues were received, including a study on ocean dumping that the Nixon Administration had initiated.⁹⁹

Undeterred, Keith came up with yet another proposal. In October 1970, during the waning months of the 91st Congress, Keith introduced a bill to congressionally designate a Cape Cod National Marine Sanctuary in waters adjacent to the Cape Cod National Seashore.¹⁰⁰ Keith's bill came down solidly against oil development. It prohibited mineral extraction and the erection of any structure within the sanctuary.¹⁰¹ It also prohibited "any . . . activity which would seriously alter or endanger the ecology or the appearance of the ocean, or of the land beneath the water."¹⁰² The bill allowed commercial fishing and sport and recreational activities within the sanctuary "as long as they are carried on in accordance with sound conservation practices" as determined by the Secretary of the Interior.¹⁰³ No hearings occurred on the bill.

b. Study Bills and Designation Bills—Senate

Sanctuary study legislation drew little interest in the Senate. Senator Brooke had again introduced the Keith measure early in the session.¹⁰⁴ In June 1969, Sen. Edward Muskie (D-Me.), chairman of the Subcommittee on Air and Water Pollution, after being contacted by Keith, introduced a modified version of the Keith bill.¹⁰⁵ Muskie's bill, The Marine Resources Preservation Act, called for the study of sites as potential "marine preserves."¹⁰⁶ The Muskie bill differed from Keith's in that it did not prohibit oil exploration and development in study areas, but did *prohibit minerals exploration and development in preserves subsequently designated by Congress*.¹⁰⁷

In the spring of 1970, the Senate Subcommittee on Oceanography, chaired by Sen. Ernest Hollings (D-S.C.), held hearings on several coastal zone management bills and

89. *Id.*

90. *Id.* at 2.

91. *Id.* at 4.

92. CZMA, 16 U.S.C. §§1451-1465.

93. 115 CONG. REC. 2441 (daily ed. Feb. 3, 1969) (statement of Rep. Keith).

94. H.R. 5956, 91st Cong. (1969); H.R. 8033, 91st Cong. (1969).

95. H.R. 7325, 91st Cong. §201 (1969).

96. *Hearings Before the House Comm. on Merchant Marine and Fisheries*, 91st Cong. 30 (1970).

97. *Id.* at 30-31.

98. *Id.* at 188.

99. 117 CONG. REC. 31134-35 (1971).

100. H.R. 19636, 91st Cong. (1970).

101. *Id.* §3(1)-(3).

102. *Id.* §3(4).

103. *Id.* §3.

104. S. 1592, 91st Cong. (1969).

105. S. 2393, 91st Cong. (1969).

106. *Id.*

107. *Id.* §4.

the Muskie bill.¹⁰⁸ However, the hearings focused on the creation of a grant program for states to better manage their coastal zones, as recommended by the Stratton Commission, and paid scant attention to the Muskie legislation. Senator Brooke's sanctuary study bill, which had been referred to the Senate Commerce Committee, was not considered at the hearing.

c. Sanctuaries From Oil Drilling

With the need for action heightened by the Santa Barbara oil spill, members of the California delegation continued to refine their strategy of protecting ocean places by prohibiting oil and gas development on the OCS. Senator Cranston, who replaced Kuchel, became the lead champion for stopping federal oil and gas leasing along the California coast. One month after the Santa Barbara spill, Cranston introduced legislation to terminate drilling for oil and gas on all federally leased areas in the Santa Barbara Channel, and to suspend drilling on all other leased areas off California pending completion of a study "to determine methods of drilling for, producing, and transporting oil . . . which will remove the threat of pollution and other damage to the environment and the ecological community."¹⁰⁹ Sen. George Murphy (R-Cal.) and Representative Teague also introduced lease prohibition bills.¹¹⁰

On May 19, 1969, the Senate Subcommittee on Minerals initiated what would turn into a series of hearings on the Cranston bill and similar legislation.¹¹¹ Calling the Santa Barbara blowout an example of a general and growing threat of pollution, Cranston said he sought to preserve the unique beauty of the Santa Barbara coastline and to prevent further repetitions of the Santa Barbara disaster by banning further offshore oil development.¹¹² Besides, he noted, if a national emergency arose in the future, the channel's oil could be tapped, hopefully with greatly improved technology.¹¹³

Like the sanctuary bills, Cranston's measure was opposed by the DOI as "unnecessary."¹¹⁴ Secretary Hickel already had created a permanent ecological preserve and a new buffer zone of some 34,000 acres, and was taking steps to prevent future incidents.¹¹⁵ DOI officials also expressed concerns about compensation costs for terminated leases and the loss of an energy supply at a time of shortage.¹¹⁶ Testifying for the Administration, Assistant Secretary of the Interior Hollis Dole noted that the DOI had an obligation to develop the mineral resources of the nation and to consider "environmental factors The balance of national needs guides all of our decisions," testified Dole.¹¹⁷

In October 1969, Cranston took another tack, introducing the California Marine Sanctuaries Act.¹¹⁸ The measure, co-sponsored by Senators Murphy, Muskie, and Sen. Gaylord Nelson (D-Wis.), declared it the policy of Congress to preserve, protect, and restore portions of the California shoreline and coastal waters.¹¹⁹ The bill directed the Secretary of the Interior to suspend further minerals leasing in federal waters adjacent to any area of state territorial waters where California had by law prohibited exploration and extraction of oil, gas or any other mineral.¹²⁰ Representatives Teague, Talcott, Burton, Rep. Charles Gubser (R-Cal.), and Rep. Paul "Pete" McCloskey (R-Cal.) introduced identical companion measures in the House.¹²¹

In his statement accompanying the bill, Cranston argued that federal law should be at least as stringent as local laws designed to protect the environment, "for without federal conformity, [s]tate laws may be useless"¹²² As California already had set aside seven so-called oil sanctuaries in state waters in which oil drilling was prohibited, he argued, the federal government should respect these actions and not undercut them by leasing the OCS areas contiguous to the state sanctuaries.¹²³ Federal leasing could still occur along other portions of the California coastline.

Yet another approach for protecting Santa Barbara was offered by Senator Muskie. In February 1970, Muskie introduced legislation to terminate oil production in the Santa Barbara Channel, establish an ecological reserve for "scientific, recreational, fish and wildlife conservation, and other similar uses," and to withdraw all other OCS lands in the channel from minerals production, holding them in reserve until Congress decided otherwise.¹²⁴

The Senate Subcommittee on Minerals held more hearings on the various Santa Barbara protection bills on March 13 and 14, 1970, in Santa Barbara, and again on July 21 and 22 in Washington, D.C.¹²⁵ Sen. Frank Moss (D-Utah), the subcommittee chairman, playing, he said, the Devil's Advocate, expressed three concerns about stopping oil production off California: (1) the dilemma of balancing demands on natural resources with environmental preservation, and more specifically the nation's need for energy supplies; (2) loss of revenue to the federal Treasury; and (3) the large number of existing laws that control offshore oil and gas exploration and whether additional place-specific authority was really needed.¹²⁶ By and large, witnesses from the state,

118. S. 3093, 91st Cong. (1969).

119. *Id.* §2.

120. *Id.* §3.

121. H.R. 14618; H.R. 14666, 91st Cong. (1969); H.R. 14754, 91st Cong. (1969); H.R. 14787, 91st Cong. (1969); H.R. 15139, 91st Cong. (1969).

122. 115 CONG. REC. 32143 (1969).

123. *Id.*

124. S. 3516, 91st Cong. (1970).

125. *Santa Barbara Oil Pollution: Hearings on S. 1219, 2516, 3351, and 3516 Before the Subcomm. on Minerals, Materials, and Fuels of the Senate Comm. on Interior and Insular Affairs*, 91st Cong. (1970) [hereinafter *Santa Barbara Oil Pollution: Hearings on S. 1219, 2516, 3351, 3516, 4017, and 3093 Before the Subcomm. on Minerals, Materials, and Fuels of the Senate Committee on Interior and Insular Affairs*, 91st Cong. (1970) [hereinafter *Santa Barbara Oil Pollution*]].

126. Senate Hearings March 1970 on Santa Barbara Oil Pollution, *supra* note 125, at 10-11.

108. *Hearings on S. 2802, 2393, 3118, 3183, and 3460 Before the Subcomm. on Oceanography of the Senate Comm. on Commerce*, 91st Cong. (1970).

109. S. 1219, 91st Cong. (1969).

110. H.R. 14618, 91st Cong. (1969); H.R. 7074, 91st Cong. (1969); S. 2516, 91st Cong. (1969).

111. Senate Hearings 1969, *supra* note 36.

112. *Id.* at 8-15.

113. *Id.* at 15.

114. *Id.* at 44.

115. *Id.* at 47.

116. *Id.* at 47-48.

117. *Id.* at 44.

local governments, environmental organizations, and private citizens supported the Cranston measures.

By the July hearing, the Nixon Administration had developed a compromise proposal. Introduced by Senator Murphy, the bill established a national energy reserve of approximately 198,000 acres in the federal portion of the OCS and terminated 20 existing leases. Drilling in the reserve could only be authorized by the president.¹²⁷ The Union Oil Company, one of the leaseholders and operator of the ruptured well, opposed all bills.¹²⁸ Ultimately, no action was taken on Cranston's or Murphy's bills by the Senate. As Senator Moss had hinted, the Senate Interior Committee was simply not willing to prohibit offshore oil development and pay compensation for terminated leases.

In the House, hearings were held in September 1970 on the Administration's bill and on related measures, including a Teague bill.¹²⁹ But the House Interior Committee was no more inclined to act than the Senate committee, and the measures died.

d. Ocean Dumping Bills

A third ocean protection strategy that emerged during the 91st Congress was to designate areas where ocean dumping is prohibited in order to protect ocean wildlife and ecology. Ocean dumping, which was basically unregulated, had become a high priority issue for the Nixon Administration and the Congress, along with other forms of pollution. In his environmental message of April 15, 1970, President Nixon directed the Council on Environmental Quality (CEQ) to prepare a study of the dumping issue.¹³⁰

While the study was being prepared, the House MMFC considered a variety of ocean dumping measures, some of which incorporated the sanctuary concept. In March 1970, Rep. John Murphy (D-N.Y.), a member of the committee, introduced a bill to require the Secretary of the Interior to establish "marine sanctuaries" in areas "which he determines should be preserved and protected as necessary to a balanced marine ecology and in particular those waters and submerged lands areas necessary in connection with the mating and spawning of species of fish, shellfish, and marine animal and plant life."¹³¹ Waste discharges of all kinds would be prohibited in the designated sanctuaries.¹³²

Later that year, Murphy introduced another bill to amend the Fish and Wildlife Coordination Act to require the Secretary of the Interior to conduct a two-year study to identify areas in navigable, coastal, and offshore waters where wastes could be "safely discharged."¹³³ Dumping would be prohibited outside the discharge areas. In determining which areas to designate as safe discharge sites, the Secretary was to "consider all ecological and environmental factors, includ-

ing . . . the effect of such discharging on the marine and wildlife ecology." Other members introduced measures to ban all dumping in the New York Bight and to establish national standards for the dumping of ocean wastes that might be harmful to wildlife or the ecology of coastal waters.¹³⁴

Hearings were held by the House Subcommittee on Fisheries and Wildlife Conservation, chaired by Representative Dingell, on July 27-28 and September 30, 1970, on Murphy's safe discharge bill and other measures to protect ocean wildlife.¹³⁵ Although the subcommittee did not review sanctuary study bills, the hearings highlighted that there are places in the sea worth protecting for their ecological values. Concurrent with the hearings, Rep. Paul Rogers (D-Fla.), another member of the House MMFC, introduced legislation to require the Secretary of the Interior to designate areas of waters and submerged lands where, because of ecological considerations, waste materials "cannot be safely discharged," the mirror opposite of Murphy's approach.¹³⁶

e. CEQ Report

On October 7, 1970, President Nixon forwarded the CEQ's report, *Ocean Dumping, A National Policy*, to Congress.¹³⁷ In his accompanying message, President Nixon wrote: "Pollution is now visible on the high seas—long believed beyond the reach of man's harmful influence. In recent months, worldwide concern has been expressed about the dangers of dumping toxic wastes in the ocean."¹³⁸ President Nixon promised to submit legislation to the 92d Congress "to ban the unregulated dumping of all materials in the oceans and to prevent or rigorously limit the dumping of harmful materials."¹³⁹ This legislation was seen as complementary to other administration legislation submitted in November 1969 "to provide comprehensive management by the states of their coastal zone land and waters."¹⁴⁰

The CEQ's report identified 246 disposal sites in the ocean, of which 50% were in the Atlantic, 28% in the Pacific, and 22% in the Gulf of Mexico.¹⁴¹ The CEQ recommended that the U.S. Environmental Protection Agency (EPA) be given authority to set up a permit process for the transportation and dumping of wastes, ban the dumping of certain materials and designate safe dumping sites, and establish penalties for violators. The report did not discuss marine sanctuaries, but it did recommend that EPA protect biologically valuable areas in the process of regulating dumping: "High priority should be given to protecting those portions of the marine environment which are biologically most active, namely the estuaries and the shallow nearshore areas in which many marine organisms breed or

127. Senate Hearings July 1970 on Santa Barbara Oil Pollution, *supra* note 125, at 370-71.

128. *Id.* at 341-43.

129. *Hearings on H.R. 18159 and Related Bills Before the Subcomm. on Mines and Mining of the House Comm. on Interior and Insular Affairs*, 91st Cong. (1970); H.R. 4047, 91st Cong. (1970).

130. PRESIDENT RICHARD NIXON, DIRECT CEQ TO PREPARE A STUDY OF THE DUMPING ISSUE, ENVIRONMENTAL MESSAGE (1970).

131. H.R. 16427, 91st Cong. (1970).

132. H.R. 16427, §2.

133. H.R. 17603, 91st Cong. (1970); H.R. 17843, 91st Cong. (1970); H.R. 17879, 91st Cong. (1970).

134. H.R. 18454, 91st Cong. (1970); H.R. 18592, 91st Cong. (1970); H.R. 18593, 91st Cong. (1970); H.R. 18621, 91st Cong. (1970); H.R. 18641, 91st Cong. (1970); H.R. 18796, 91st Cong. (1970).

135. *Dumping of Waste Material: Hearings on H.R. 15827, 15828, 15829, 16229, 17603, 17843, 17879, 18043, 18454, 18592, 18593, 18621, 18641, and 18796 Before the Subcomm. on Fisheries and Wildlife Conservation of the House Comm. on Merchant Marine and Fisheries*, 91st Cong. (1970).

136. H.R. 19359, 91st Cong. (1970).

137. H.R. Doc. No. 91-399.

138. *Id.* at i.

139. *Id.*

140. *Id.*

141. *Id.* at 1.

spawn. These biologically critical areas should be delimited and protected."¹⁴²

In discussing research needs, the CEQ recommended that "marine research preserves should be established to protect representative marine ecosystems for research and to serve as ecological reference points—baselines by which man-induced changes may be evaluated."¹⁴³ This echoed the Stratton Commission's call for the establishment of "representative coastal and estuarine sites . . . as natural preserves for conduct of studies necessary to establish a proper base from which the effects of man's activities can be determined and ultimately regulated."¹⁴⁴

f. Combination Bills

With so many ocean protection strategies on the table, it was only a matter of time until they began to be combined and blended. Shortly after the release of the CEQ's report, Rep. Louis Frey (R-Fla.) introduced legislation to regulate ocean dumping, prohibit oil development, and establish a "system of marine sanctuaries."¹⁴⁵ Frey's bill declared that "many estuaries of the [n]ation are being subjected to severe ecological degradation through unregulated dumping," and that portions of the tidelands and ocean waters "should be preserved as marine sanctuaries where *industry development and extraction of the nonliving resources of the seabed and subsoil thereof and dumping of any kind should be prohibited.*"¹⁴⁶ The Frey bill directed the Secretary of Commerce to "designate as marine sanctuaries those areas . . . which the Secretary determines should be preserved or restored for their recreation, conservation, ecologic, or esthetic values," and to make initial designations within two years and periodically thereafter.¹⁴⁷

Frey explained his bill as follows:

Most dredge spoil is dumped relatively inshore, where it may contaminate valuable breeding grounds for shellfish and fish species generally. In view of this, it seems entirely logical to relate the problem of ocean-dumping to the broader problem of preserving certain eco-systems within the coastal zone areas While a number of bills currently being considered . . . provide for the designation of safe areas where dumping may be conducted, it seems to me more reasonable to concentrate on determining which areas of our marine environment are most valuable and setting them aside as sanctuaries. This approach is somewhat analogous to the wilderness system, which attempts to preserve in their natural state the most valuable of our remaining untouched land areas.¹⁴⁸

As if to underscore Frey's point, on December 2, 1970, a large quantity of oil sludge was dumped 50 miles off Florida's Atlantic Coast by the U.S. Navy, occasioning yet another congressional hearing, this one in the Senate.¹⁴⁹

142. *Id.* at vi.

143. *Id.* at vii.

144. COMMISSION ON MARINE SCIENCE, ENGINEERING, AND RESOURCES, *supra* note 21, at 10.

145. H.R. 19763, 91st Cong. (1970).

146. *Id.* §1 (emphasis added).

147. *Id.* §9.

148. 116 CONG. REC. 37137-38 (1970) (statement of Rep. Frey on introduction of H.R. 19763).

149. *Oil Sludge Dumping Off the Florida Coast: Hearings Before the Subcomm. on Air and Water Pollution of the House Comm. on Public Works*, 91st Cong. (1970).

5. Conclusion

At the close of the 91st Congress, multiple approaches for protecting the oceans lay on the table. The sanctuary study bills proposed by Representatives Brown and Keith to save ocean places from industrial development and manage them for compatible uses had not advanced. The Senate Committee on Commerce had shown little interest in sanctuary legislation. Its efforts were focused on coastal zone management legislation, which included a modest program to create estuarine sanctuaries where research would be conducted in support of coastal management needs.

Following the Santa Barbara oil spill, the drive to ban oil development along parts of California's coast had grown in intensity, but to the frustration of Senator Cranston and others, hearings had not resulted in action by either the Senate or House Interior committees.

Intensifying concern about ocean pollution generated yet another rationale for conserving ocean places: protecting ecologically important areas and their wildlife from waste dumping. It was probably inevitable that the various strategies to protect ocean places would be combined, as they were in Representative Frey's bill.

Regardless of approach, the basic intent of sanctuary proponents was essentially the same: to preserve the natural values (and related compatible uses) of special marine places by protecting them from industrial development and pollution. In particular, the bills sought to protect cherished areas like George's Bank and Santa Barbara for their scenic, wildlife, fishery, ecological, scientific research, and recreational values. Representatives Keith, Brown, Frey, and others envisioned a marine sanctuary system analogous to that established for terrestrial wilderness areas by the Wilderness Act. Without a marine preservation system, proponents feared the destruction of unique ocean resources as had occurred to America's forest and prairies.

However, the analogy between sanctuaries and wilderness areas was not a perfect one. Whereas the Wilderness Act generally prohibits commercial activities in wilderness areas, marine sanctuary study bills treated commercial fishing as a compatible use that should be allowed in sanctuaries. There was little, if any, recognition that overfishing was or might become a threat to sanctuary resources or could conflict with other uses.

The major obstacles to sanctuary legislation continued to be the DOI and the oil industry, both of whom opposed restrictions on offshore oil development. Although the Santa Barbara blowout and other oil spills had drawn attention to the dangers of offshore energy development, there was no consensus on remedies. A strong countervailing concern at the time was the need to develop more domestic energy supplies. Other factors contributing to the lack of action included the referral of sanctuary legislation to two different committees in each congressional body, always a recipe for delay; the sheer volume of marine studies and recommendations that had emerged at roughly the same time and that had to be digested and harmonized; and the flowering of other environmental issues that demanded congressional attention.

Although the Nixon Administration continued to oppose marine sanctuaries, many House members, including some on the House MMFC, were determined to act. As it turned out, the ocean dumping crisis gave them the opportunity

they needed. As the 91st Congress drew to a close, ocean dumping legislation moved to center stage.

II. The MPRSA of 1972

A. Background

With the release of the CEQ report on ocean dumping, momentum for an ocean dumping law became unstoppable. On the first day of the 92d Congress, 17 bills to regulate ocean dumping were introduced in the House.¹⁵⁰ President Nixon's draft ocean dumping bill, an outgrowth of the CEQ's report, was forwarded to Congress on February 8 and introduced in both houses.¹⁵¹

Meanwhile, sanctuary proponents continued to act on several fronts. Early in the session, Representative Keith introduced his sanctuary study bill (unchanged from previous versions) and his Cape Cod sanctuary designation measure.¹⁵² Representatives Murphy and Rogers reintroduced bills to protect marine ecology from waste dumping.¹⁵³ And Representative Frey introduced a new version of his bill to regulate dumping and establish marine sanctuaries.¹⁵⁴

In the Senate, Senator Cranston continued his campaign to ban oil and gas development in the Santa Barbara Channel and other areas along the California coast. On January 27, 1971, he introduced legislation to terminate oil leases in the Santa Barbara Channel and to establish a permanent Federal Ecological Preserve.¹⁵⁵ In April, he introduced a series of bills to establish "marine sanctuaries from leasing" in federal waters at six other areas along the California coast.¹⁵⁶ All of Cranston's bills were referred to the Senate Interior Committee, which dutifully gave him a hearing, but took no action.¹⁵⁷

B. House Action

The House MMFC held hearings on ocean dumping bills in early April 1971.¹⁵⁸ Although the principal focus of the

hearings was the regulation of ocean dumping, the Murphy, Rogers, and Frey bills were formally considered. Representative Keith did not testify, but did ask a few questions about sanctuaries, as did other committee members.

The Administration's witnesses urged passage of the president's ocean dumping bill, which aimed to put EPA in charge of issuing permits for the dumping of certain wastes. Russell Train, chairman of the CEQ, told the panel that the Administration's bill gave the EPA Administrator authority to identify areas where dumping would not be permitted, implying this achieved the same objective as sanctuaries.¹⁵⁹ He also noted that the sanctuary concept involved more than just dumping considerations, and urged that sanctuaries be considered in separate legislation.¹⁶⁰ William Ruckelshaus, the EPA Administrator, testified that EPA was in complete accord that certain critical marine areas should be protected from dumping.¹⁶¹

The DOI did not raise concerns about sanctuaries in its submitted written views, but other agencies did.¹⁶² The U.S. Department of State expressed concern about the designation of sanctuaries in international waters, and the Navy over conflicts sanctuaries might pose for military activities.¹⁶³ In general, however, the Administration raised no concerted defense against sanctuaries, a position that would change as sanctuary legislation progressed.

Shortly after the hearings ended, the House MMFC commenced a series of executive sessions to develop a final ocean dumping bill. It was during the course of these deliberations that a marine sanctuaries provision was added. A preview of the sanctuary title came on June 17, when Representative Lennon, chairman of the Oceanography Subcommittee, introduced a measure to establish a National Coastal and Estuarine Zone Management Program and a Marine Sanctuaries Program; Representative Keith cosponsored the Lennon measure.¹⁶⁴ The sanctuaries provision of Lennon bill's was almost identical to that included in Title III of the committee's ocean dumping bill, H.R. 9727, which was introduced a few days later on July 13 by Rep. Leonard Garmatz (D-Md.), chairman of the House MMFC.¹⁶⁵

The Garmatz bill, entitled the Marine Protection, Research, and Sanctuaries Act, was a three-part measure that established a regulatory scheme for ocean dumping, a comprehensive research program to investigate the short- and long-term effects of pollution on the ocean, and a marine sanctuaries program.¹⁶⁶ The committee viewed the three titles as complementary.¹⁶⁷

The sanctuaries title (Title III) was an amalgam of old and new concepts. Title III provided the Secretary of Commerce with broad discretionary authority to designate in coastal, ocean, and Great Lakes waters those marine sanctuaries he determined were necessary for the purposes of preserving

150. H.R. 285, 92d Cong. (1971); H.R. 336, 92d Cong. (1971); H.R. 337, 92d Cong. (1971); H.R. 548, 92d Cong. (1971); H.R. 549, 92d Cong. (1971); H.R. 805, 92d Cong. (1971); H.R. 807, 92d Cong. (1971); H.R. 808, 92d Cong. (1971); H.R. 983, 92d Cong. (1971); H.R. 1085, 92d Cong. (1971); H.R. 1095, 92d Cong. (1971); H.R. 1329, 92d Cong. (1971); H.R. 1381, 92d Cong. (1971); H.R. 1382, 92d Cong. (1971); H.R. 1383, 92d Cong. (1971); H.R. 1661, 92d Cong. (1971); H.R. 1674, 92d Cong. (1971).
151. H.R. 4247, 92d Cong. (1971); H.R. 4723, 92d Cong. (1971); H.R. 5239, 92d Cong. (1971); H.R. 5268, 92d Cong. (1971); H.R. 5477, 92d Cong. (1971); H.R. 6771, 92d Cong. (1971); S. 1238, 92d Cong. (1971).
152. H.R. 4568, 92d Cong. (1971); H.R. 4567, 92d Cong. (1971).
153. H.R. 285; H.R. 1095.
154. H.R. 4359, 92d Cong. (1971); H.R. 4360, 92d Cong. (1971); H.R. 4361, 92d Cong. (1971).
155. S. 373, 92d Cong. (1971).
156. S. 1446, 92d Cong. (1971); S. 1447, 92d Cong. (1971); S. 1448, 92d Cong. (1971); S. 1449, 92d Cong. (1971); S. 1450, 92d Cong. (1971); S. 1451, 92d Cong. (1971); S. 1452, 92d Cong. (1971).
157. *Bills to Create Marine Sanctuaries From Leasing Pursuant to the Outer Continental Shelf Lands Act in Areas Off the Coast of California Adjacent to State-Owned Submerged Lands in Which Such State Has Suspended Leasing for Mineral Purposes: Hearings Before the Subcomm. on Minerals, Materials, and Fuels of the Senate Comm. on Interior and Insular Affairs*, 92d Cong. (1971).
158. *Hearings Before the Subcomm. on Fisheries and Wildlife and on Oceanography of the House Comm. on Merchant Marine and Fisheries*, 92d Cong. (1971) [hereinafter House Hearings 1971].

159. *Id.* at 164, 167-68.

160. *Id.* at 164, 169-70.

161. *Id.* at 95, 99.

162. *Id.* at 107-09.

163. *Id.* at 111-13.

164. H.R. 9229, 92d Cong. (1971).

165. H.R. 9727, 92d Cong. (1971).

166. *Id.*

167. TO REGULATE THE DUMPING OF MATERIAL IN THE OCEANS, COASTAL, AND OTHER WATERS, AND FOR OTHER PURPOSES, H.R. REP. NO. 92-361, at 15 (1971) (on H.R. 9727).

and restoring an area's conservation, recreational, ecological, or esthetic values. The Secretary was given two years to make the first designations, and was to make others periodically thereafter. In established sanctuaries, the Secretary had broad and complete power to regulate uses and ensure they were consistent with the sanctuary's purposes. The Sanctuaries Program was authorized for three years and given annual budget authority of up to \$10 million.

Title III was a decided shift away from earlier sanctuary concepts. The committee bill *did not mirror the Wilderness Act by establishing a marine wilderness preserve system*, as had been recommended by the President's Science Advisory Committee. Perhaps more striking, *it lacked any prohibitions on industrial development, including oil development, in sanctuaries*, one of the principal goals of Representatives Keith, Frey, and others.

The committee unanimously reported H.R. 9727 on July 17. House floor debate began September 8, and the bill passed the House by a vote of 300 to 4 on September 9. Members unhappy with the way the sanctuaries title treated offshore oil raised two significant challenges to the bill on the floor. One group, led by Rep. Norman Lent (R-N.Y.) and Representative Teague, objected to the absence of prohibitions on oil development, while the other, led by DOI Committee chairman, Rep. Wayne Aspinall (D-Colo.), and supported by the Nixon Administration, feared the bill would restrict offshore energy development, even though it contained no prohibitions on oil drilling.¹⁶⁸ Aspinall also claimed the bill infringed upon his committee's jurisdiction because it affected the OCS leasing program. A Lent-Teague Amendment to expressly prohibit oil drilling in sanctuary study areas and designated sanctuaries was defeated.¹⁶⁹ Aspinall's attempt to delete the entire sanctuaries title also failed.¹⁷⁰

C. Action in Senate

The Senate Commerce Committee, which had shown little interest in marine sanctuaries legislation prior to the 92d Congress, remained unengaged. The committee's top ocean priorities in the 92d Congress were research, control of ocean pollution, and coastal zone management. In March and April 1971, the Senate Subcommittee on Oceans and Atmosphere, chaired by Senator Hollings, held hearings on the Administration's ocean dumping bill and a Hollings measure to foster oceanic research and development programs.¹⁷¹ The Hollings bill included a provision to authorize grants to coastal states for acquisition, development, and operation of estuarine sanctuaries for research purposes as had been recommended by the Stratton Commission.¹⁷² Marine sanctuaries were not considered at the hearing.

The House-passed ocean dumping bill was received in the Senate on September 10 and referred jointly to the Committees on Commerce and Public Works, both of which claimed jurisdiction over water pollution in the oceans.¹⁷³

Commencing September 15, and continuing into October, the Senate Commerce Committee marked up its version of the bill and engaged in discussions with the Public Works Committee to harmonize the bill's content with other pollution laws.

The sanctuaries title was deleted at the outset of the Commerce Committee's mark-up process. The Commerce Committee's version of the ocean dumping bill was reported with the concurrence of Public Works Committee on November 12.¹⁷⁴

In its report on the bill, the Commerce Committee acknowledged the value of marine sanctuaries for certain purposes:

The [c]ommittee believes that the establishment of marine sanctuaries is appropriate where it is desirable to 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. In this we agree with the [m]embers of the House of Representatives. Particularly with respect to scientific investigation, marine sanctuaries would permit baseline ecological studies that would yield greater knowledge of these preserved areas both in their natural state and in their altered state as natural and manmade phenomena effected change.¹⁷⁵

However, the committee explained it had deleted the sanctuaries title because "the principal purposes for which marine sanctuaries should be established would not be accomplished by the proposed [House] legislation."¹⁷⁶ The committee rejected the bill because: (1) the United States did not have authority under international law to establish sanctuaries beyond its territorial limits; (2) marine sanctuaries in international waters would be ineffective as the United States could not control the actions of foreign nationals on the high seas portion of a sanctuary; (3) new authority was not needed to regulate the exploitation of seabed resources because OCSLA already provided this authority; and (4) assertion of authority over portions of the high seas for sanctuaries undermined the nation's self-interest in maintaining narrow geographical claims over the world's oceans as a tenant of its foreign policy.¹⁷⁷

The Senate's ocean dumping bill passed on November 24 by a vote of 73 to 0, but not without controversy over its lack of a marine sanctuaries title.¹⁷⁸ Senator Nelson offered an amendment to restore the House sanctuary language¹⁷⁹ and to invoke a moratorium on oil and gas leases off the East Coast until the Secretary of the Interior made his first sanctuary designations.¹⁸⁰ Nelson wished to avoid Santa Barbara-like disasters from harming the East Coast.¹⁸¹

Both the Nixon Administration and the Senate Commerce Committee opposed Nelson's Amendment to restore the sanctuaries title, using many of the same arguments the DOI and other agencies had raised against the House bill.¹⁸² Senator Hollings reiterated the committee's concerns about

174. S. REP. NO. 92-451 (1971) (on H.R. 9727).

175. *Id.*

176. *Id.* at 15.

177. *Id.*

178. 117 CONG. REC. 43078 (1971).

179. *Id.* at 43056-57.

180. *Id.* at 43217-19.

181. *Id.* at 43218.

182. *Id.* at 43061-62.

168. 117 CONG. REC. 30853, 31137-38, 31144, 31147 (1971).

169. *Id.*

170. *Id.* at 31144.

171. *Ocean Waste Disposal: Hearings on S. 307, 1082, 1238, and 1286 Before the Subcomm. on Oceans and Atmosphere of the Senate Comm. on Commerce, 92d Cong.* (1971).

172. S. 307, 92d Cong., §410 (1971).

173. H.R. 9727.

marine sanctuaries, particularly the extension of U.S. jurisdiction into international waters.¹⁸³ That, he said, was the Nelson Amendment's "fatal flaw."¹⁸⁴

Hollings bolstered his opposition with another argument: The amendment was not needed because the Commerce Committee already had acted to establish *estuarine sanctuaries* when it approved legislation to create a Coastal Zone Management program.¹⁸⁵ Estuarine sanctuaries complied with international law in that they were only to be established within the three-mile territorial limit of the United States. Estuarine sanctuaries were needed, said Hollings, to provide a "rational basis for intelligent management of coastal and estuarine areas."¹⁸⁶ The Commerce Committee, explained Hollings, envisioned "such sanctuaries as natural areas set aside primarily to provide scientists with the opportunity to make baseline ecological measurements . . . Such sanctuaries should not be chosen at random, but should reflect regional differentiation and a variety of ecosystems so as to cover all significant natural variations."¹⁸⁷ This view echoed the Stratton Commission and the CEQ's recommendations for a system of marine research reserves.

Sen. Gordon Allott (R-Colo.), the ranking minority member of the DOI Committee, supported the Commerce Committee and administration views that ample authority existed under the OCSLA to regulate minerals leasing on the OCS.¹⁸⁸ Furthermore, he argued that giving the Secretary of Commerce the authority to lock up offshore energy resources in sanctuaries before the DOI Committee's pending national energy study was completed, said Allott, was premature.¹⁸⁹

Nelson withdrew his amendment after considering the objections of the Commerce Committee and receiving assurances from the chairmen of the Commerce Committee, the DOI, and Public Works Committees that a joint committee hearing would be held on the subject the following year.¹⁹⁰ Shortly before the Congress adjourned, Nelson introduced his withdrawn amendment as a separate bill, but the promised hearings were never held.¹⁹¹ Nelson also introduced another bill that provided for a two-year study of the probable effects of new or additional mineral leasing and development in the OCS and Great Lakes on the "ecological, esthetics, recreation, resource, and scientific values of and related to such areas."¹⁹² Until the report was submitted, the bill would prevent minerals leases from being issued in the OCS.¹⁹³

1. Conference Committee

The Conference Committee named to resolve differences between the House and Senate ocean dumping bills immediately hit a snag that tied up action for almost a year. The issue

183. *Id.* at 43057-58.

184. *Id.*

185. *Id.*

186. *Id.* at 43057.

187. *Id.*

188. *Id.* at 43058-59.

189. *Id.*

190. *Id.* at 43057-58.

191. S. 2971, 92d Cong. (1971).

192. S. 2973, 92d Cong. (1971).

193. *Id.*

in disagreement concerned which agency would regulate dredge spoil dumping, EPA or the U.S. Army Corps of Engineers (Corps).¹⁹⁴ It took until late 1972 to resolve the issue and issue the conference report.¹⁹⁵ The compromise bill that finally emerged included Title III as passed by the House with a few changes. Among other things, these included an expansion of the waters subject to sanctuary designation and changes in the enforcement provisions. The conference report was approved October 13 by both the Senate and the House.¹⁹⁶ The MPRSA of 1972 was signed by President Nixon on October 23, 1972, despite the Administration's unhappiness with the sanctuaries title.

D. Provisions of the Sanctuary Title

The sanctuaries title that ultimately passed the Congress was a hybrid of various legislative concepts that preceded it and compromises forged in the committee's executive sessions. Title III did not fully implement the recommendation of the President's Science Advisory Committee for a national marine wilderness preserve system modeled after the standards and principles of the Wilderness Act. For example, the Act did not formally establish a national sanctuary system or designate the first set of sanctuaries, as did the Wilderness Act for terrestrial wilderness areas.

Furthermore, the Act did not define what a marine sanctuary is, provide specific guidance on how the system was to be developed or how big it should be, or specify the uses that would be allowed or prohibited. Rather, Title III gave the Secretary of Commerce broad *discretionary authority* to preserve ocean places on a case-by-case basis if the Secretary determined sanctuary designations were "necessary for the purpose of preserving or restoring" marine areas for their "conservation, recreational, ecological, or esthetic values." The Secretary was directed to make the first designations within two years and periodically thereafter, and to manage sanctuaries consistent with their designated purposes.

At least some members considered the program experimental. Representative Dingell, one of the bill's floor managers, said that the program may be extended after its three-year authorization period, "depending upon how effectively it has been carried out."¹⁹⁷ The life of the program was limited to two fiscal years (FYs) after the FY in which it was enacted, meaning the program would require periodic reauthorization.¹⁹⁸ In contrast, the Wilderness Act had permanent authority.

1. Problem Addressed

The problem Title III attempted to address was fundamentally the same as that identified in the earliest sanctuary bills—the need to preserve places in the ocean with special values from industrial development. In its report on the bill, the committee stated:

Title III deals with an issue which has been of great concern to the [c]ommittee for many years: the need to cre-

194. 118 CONG. REC. 13401 (1972).

195. H.R. CONF. REP. NO. 92-1546 (1972).

196. 118 CONG. REC. 35842, 36045 (1972).

197. *Id.*

198. *Id.* at 31132, §304.

ate a mechanism for protecting certain important areas of the coastal zone from intrusive activities by man. This need may stem from the desire to protect scenic resources, natural resources or living organisms; but it is not met by any legislation now on the books The pressures for development of marine resources are already great and increasing. It is never easy to resist these pressures and yet all recognize that there are times when we may risk sacrificing long-term values for short-term gains. The marine sanctuaries authorized by this bill would provide the 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.¹⁹⁹

Representative Dingell referred to Title III as a "badly needed" tool "with which we may begin to repair some of the damage that has been done to the oceans in the past, and can protect important areas from further impairment."²⁰⁰ In short, preservation and restoration was professed to be the Act's primary goal.

2. Purpose and Policy, Goals and Deadlines

Consistent with the committee's preservation intent, Title III authorized the Secretary of Commerce, after consulting with other federal agencies, to "designate as marine sanctuaries those areas . . . which he determines necessary for the purpose of *preserving or restoring such areas for their conservation, recreational, ecological or esthetic values.*"²⁰¹ Sanctuaries could be designated within ocean, coastal, and other waters "as far seaward as the outer edge of the Continental Shelf . . . other coastal waters where the tide ebbs and flows," and the Great Lakes and their connecting waters.²⁰²

No specific marine areas were identified for designation or inventory, as had occurred for wilderness areas under the Wilderness Act, and no size limits were specified. Although the Secretary could designate as many or as few sanctuaries as he or she saw fit, Congress clearly expected the Secretary to execute the program with dispatch because it directed him to make his initial designations within two years and periodically thereafter. According to the committee:

The reasons for designating a marine sanctuary may involve conservation of resources, protection of recreational interests, the preservation or restoration of ecological values, the protection of esthetic values, or a combination of any or all of them. It is particularly important therefore that the designation clearly states the purpose of the sanctuary and that the regulations in implementation be directed to the accomplishment of the stated purpose.²⁰³

The bill's preservation purpose was not as strongly reflected in the Act's policy and provisions as it could have been. For example, unlike earlier sanctuary bills, the Act did not expressly prohibit oil drilling, pollution discharges or other development uses within sanctuary study areas or designated sanctuaries. Neither was there any language specifying the particular uses to be allowed in sanctuaries once established. Instead of precise guidance, the Act gave the Sec-

retary broad discretionary authority to decide exactly what kind of preservation was to be afforded each area (see following discussion on management). To a large degree, the committee intended the Secretary to resolve existing or potential use conflicts through required consultations with federal agencies prior to a sanctuary's designation. "In any case where there is no way to reconcile competing uses, it is expected that the ultimate decision [to designate a sanctuary or not] will be made at a higher level in the [e]xecutive branch."²⁰⁴

More significantly, during House floor debate, committee members described the Act as giving dual or balanced emphasis to preservation and multiple use of sanctuaries, *including exploitative uses*, even though *the Act was silent on multiple use.*²⁰⁵ But if sanctuaries were to be multiple use areas, preservation and restoration could hardly be the Act's singular goal. Thus, from the start, the Act's preservation purpose was muddled by the House's interpretive guidance. Because of its long-term importance to the evolution of the Act, the preservation versus multiple use debate is dealt with extensively here.

3. Preservation Versus Multiple Use Focus

In explaining the bill and opposing the amendments offered by Representatives Lent and Aspinall, the House bill's floor managers and other committee members made extensive remarks about the bill's purpose and management provisions. The debate was confusing. Statements were made that were incomplete, ambiguous, internally contradictory, contradictory of other statements, and at times at odds with the plain meaning of the statute and committee report. The overall thrust of the argument put forth by the bill's managers was that although Title III intended to protect special places in the ocean to preserve long-term values, the Secretary was to pursue this goal with a balanced approach, meaning that both preservation and development uses could occur within the same sanctuary if the Secretary decided they should.

Especially important are the statements made by the bill's floor managers: Representatives Dingell and Lennon on the Democratic side and Representative Pelly and Rep. Charles Mosher (R-Ohio) for the Republicans. Representative Dingell spoke first. Citing the Santa Barbara spill, Dingell noted the human propensity to "sacrifice long-term values for short-term gain."²⁰⁶ Representative Dingell called Title III "an expeditious means of protecting important values In Title III we do no more than provide the tools with which to preserve important assets for generations yet unborn."²⁰⁷ Representative Lennon, the chairman of the Oceanography Subcommittee, which helped shape the bill, said that Title III "provides a scheme whereby areas may be preserved or restored in order to insure their maximum overall potential, and would in effect provide for rational decisions on competing uses in the offshore waters."²⁰⁸

Representative Mosher, the floor manager for the Republicans, addressed the multiple use issue head on. Mosher said

204. *Id.*

205. *See, e.g.*, 117 CONG. REC. 30853, 30855 (statement of Rep. Mosher), 30858 (statement of Rep. Keith).

206. *Id.*

207. *Id.*

208. *Id.* at 30857 (statement of Rep. Lennon).

199. H.R. REP. NO. 92-361, at 15.

200. 117 CONG. REC. 30853.

201. *Id.* at 31132 (emphasis added).

202. *Id.*

203. H.R. REP. NO. 92-361, at 27.