

**REAUTHORIZATION OF TITLE III
OF THE MARINE PROTECTION,
RESEARCH, AND SANCTUARIES
ACT**

HEARING
BEFORE THE
SUBCOMMITTEE ON NATIONAL OCEAN POLICY
STUDY
OF THE
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
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REAUTHORIZATION OF TITLE III OF THE MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT

WEDNESDAY, MARCH 25, 1992

U.S. SENATE,
NATIONAL OCEAN POLICY STUDY OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. John F. Kerry, presiding.

Staff members assigned to this hearing: J. Michael Nussman, senior professional staff member; and John A. Moran, minority staff counsel.

OPENING STATEMENT OF SENATOR KERRY

Senator KERRY. The National Ocean Policy Study hearing will come to order. Good morning, all. And Ms. Wilson, welcome.

Today we will be having testimony from, first, Ms. Jennifer Joy Wilson and then from a panel regarding the reauthorization of Title III of the Marine Protection, Research, and Sanctuaries Act. We all know that this act is an extraordinary and welcome protective effort to try to manage important marine ecosystems. The National Marine Sanctuaries Program is also a growing program with a growing jurisdiction.

The question today is not really whether or not the concept of the marine sanctuaries program is valuable. We all know it is. We know what it does. It has been in effect for 20 years, and has been evolving in terms of our management capacity and understanding of how to make such a program work well.

So, really, the major questions today are normal reauthorization questions. How well is it working? What can we do to make it better? Are there specific changes that ought to be encompassed? And so forth.

There is no real mystery about this particular hearing. There are some questions about inefficiency and cumbersome regulatory process. There are some questions about length of time for designation, and about coordination between Federal agencies in terms of both review as well as management. And those are really things we want to try to talk about today. In addition, I think we want to take a look at the size of some of these sanctuaries, and where the program may be ultimately heading in this respect.

There are also some insufficiencies with respect to funding. We are aware of the problem. We are also aware that this year there

is a significant budget increase for this program—very significant, and much more so than we have seen in recent years. The budget increase for marine sanctuaries is a welcome one, though it may still leave us with questions of whether or not that is adequate for the ultimate goals of the program and for current management demands. We will now hear from the chairman, Senator Hollings.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Our hearing this morning addresses the reauthorization of Title III of the Marine Protection, Research, and Sanctuaries Act—MPRSA. Today, 20 years after the original passage of the statute, it appears that title III has proven to be a successful and important tool for the protection of coastal and marine resources. Title III of the MPRSA is unique in that it provides the sole mechanism to protect entire marine ecosystems in the waters of the United States. Through this act, 10 national marine sanctuaries, ranging in size from 1 to 2,600 square nautical miles, have been established. Individual management plans have been designed by NOAA for each sanctuary to ensure that the “nationally significant” resources of each site are preserved for our future generations.

The success and importance of the marine sanctuaries program is further evidenced by the increased support for and growth in the program. After 20 years of funding requests below authorized levels, this year the administration is asking to more than double the program's budget. Further, three new sanctuaries have been designated in the past 3 years, and at least six additional sanctuaries are under consideration for designation. International groups are looking at the management plan for the Florida Keys National Marine Sanctuary as an example for management of marine sanctuaries worldwide. Clearly, this program has evolved in a positive way.

As we consider reauthorization of the National Marine Sanctuaries Program, we need to look to the future and think about how the growth and success of the program will affect it. We must consider, most importantly, whether NOAA has the tools to implement adequately this growing effort. Several of our witnesses today, for example, will testify that the National Marine Sanctuaries Program is underfunded. There also have been questions about the adequacy of NOAA's authority to manage sanctuary resources. This question of regulatory authority has always been a difficult one, and we will hear several opinions today on exactly how and by whom sanctuary resources should be regulated.

I hope that, with the assistance of our expert panelists, we can design a reauthorization package which builds on the current momentum of the program, and also steers it on a clear and achievable course for the future. I look forward to the testimony presented today on this important program. Thank you, Senator Kerry.

Senator KERRY. So, with that stated, let me welcome you, Ms. Wilson. We are delighted to have you back. And, as I think staff has indicated to you, we would obviously prefer—I think we've got about five people lined up afterward—if you could do a summary of your statement. We have the full text, and believe it or not, peo-

ple here can read. And, so, we welcome your testimony and thank you.

STATEMENT OF JENNIFER JOY WILSON, ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE, DEPARTMENT OF COMMERCE

Ms. WILSON. Thank you very much Mr. Chairman. I am grateful for this opportunity to appear before this committee and NOPS to discuss NOAA's National Marine Sanctuary Program.

Before I say a few words about the sanctuary program, I would like to introduce NOAA's Director of the Office of Ocean Coastal Management, Ms. Trudy Coxe.

The summary of my full statement—I would appreciate that being put in the record, Mr. Chairman—

Senator KERRY. The full statement will be in the record as if read in full.

Ms. WILSON. Dr. John Knauss, our Administrator, as you know, issued NOAA's first comprehensive mission statement this past December. Among the fundamental missions he highlighted were management and stewardship of the Nation's ocean and coastal resources. An important part of this responsibility is the designation and management of special protected areas such as marine sanctuaries.

Our marine sanctuaries program is one of NOAA's most visible and popular programs. My full statement covers our sanctuary operating philosophies. If I may take this opportunity, I would like to share the underlying mission and goals to which operations apply.

Our marine stewardship mission for protected areas is realized through the establishment of a nationwide system of discreet areas through which NOAA will foster improved protection, management, and use of the Nation's ocean and coastal resources.

Our goals to implement this mission include: One, coordinated management, to achieve long-term protection and comprehensive use of these sites in cooperation with Federal, State, and local governments, and public and private interests.

Two, the support, promotion, and coordination of scientific research that will lead to improved management of designated sites and increase protection of marine resources.

Three, heightening the level of public understanding of the natural variability of the marine environment and of marine environmental change.

And four, focused integration of NOAA resources and initiatives in the protection and management of marine and coastal resources.

We have distributed some maps, Mr. Chairman, to you to show the current status of these special areas. The sites already designated are marked by circles, and the sites in the designation process are marked by triangles.

During the past 3 years, the areas protected as sanctuaries have doubled from 2,900 square miles to more than 7,100 square miles of ocean. Our field management staff has increased from a handful of people at 4 sanctuaries in California and Florida to nearly 50 people at 12 sites.

NOAA sanctuary staff are now also working at sites in the designation process, including one at the Great Lakes site of Thunder Bay. Earlier this month, we announced that Plymouth, MA has been selected as the headquarters location for the proposed Stellwagen sanctuary.

With the final designation of three sites near completion—Monte-rey Bay, Stellwagen, and Olympic Coast, the protected area under NOAA management will double again. The increase in appropriations that the President has requested in his fiscal year 1993 budget will be used to strengthen our field management of designated areas of national heritage.

While working with you during the reauthorization process, we want to keep the momentum going so that as we enter the 21st century, we will find ourselves in the period of comprehensive and integrated stewardship of our Nation's most significant ocean and coastal areas.

We are looking forward to working with Congress, the States, and the public to assure that sanctuaries are operated under a philosophy that stresses protection of their resources, the necessary staff, equipment and facilities appropriate to each site, cooperation with the programs of other Government agencies, improved integration of NOAA's cross-cutting scientific capabilities, and improved consensus for criteria resulting in a revised site evaluation list.

We are developing a reauthorization bill that will improve our ability to manage and protect coastal and marine resources in a more efficient and comprehensive manner. We believe NOAA and the Congress are interested in addressing similar concerns.

One, where appropriate, streamlining the sanctuary designation process. Two, clarifying and strengthening the program's ability to address resource management and protection issues. And three, clarifying and strengthening the program's education and research missions, which provide important nonregulatory tools for resource protection.

NOAA is committed to protecting our Nation's coastal and ocean heritage, managing its sanctuaries, building its partnership with the States and Federal agencies, developing long-term cooperative relationships with research and educational institutions, and allowing compatible use of sanctuary resources.

We look forward to joining with you as we, together, lay the foundation for the next 20 years. Thank you, Mr. Chairman. And I am looking forward to your questions.

[The prepared statement of Ms. Wilson follows:]

PREPARED STATEMENT OF JENNIFER JOY WILSON

I am Jennifer Joy Wilson, Assistant Secretary of Commerce for Oceans and Atmosphere and Deputy Administrator of the National Oceanic and Atmospheric Administration (NOAA). Thank you for inviting me to appear before you today.

In December 1991, Commerce Under Secretary John Knauss, Administrator of NOAA, issued NOAA's first mission statement. Among the fundamental missions he highlighted was management and stewardship of the Nation's ocean and coastal resources. An important part of this responsibility is the designation and management of special protected areas. I am here today to present to you our vision for the future of an important part of this stewardship, the National Marine Sanctuary Program.

As you know, 20 years have passed since the sanctuary program was enacted. Since that time, our coastal areas have continued to attract more people, develop-

ment has increased as has investment in eco-tourism, and there has been an increased effect on our coastal and marine resources. According to the 1990 Census data, population density along the coast, already the most densely populated area of the United States, is projected to increase from more than 750 people per square mile today to over 830 people per square mile by the year 2010. Marine transportation around the United States is heavy and likely to increase, as will the use of coastal areas for recreation.

Now, evidence of the need for special protected areas is again before us. Studies have shown our coral reef systems are stressed; species are declining in number; extreme fluctuations are being seen in the abalone and urchin populations off our California coast; people once again are asking for help. There is an opportunity and this is the time for us to act.

Since the 1983 reauthorization the number of sanctuaries has increased from 7 to 10; the protected area has more than doubled from 2,900 square miles (2,200 square nautical miles) to more than 7,100 square miles of ocean (5,400 square nautical miles). Our management in the field has increased from a handful of people at 4 sanctuaries in California and Florida to nearly 50 people at 12 sites, along the Atlantic, Gulf and Pacific coasts and in the Great Lakes. These include 3 sites in the designation process.

This growth trend will continue. Designation of the 7 new sanctuaries in development or under study could again double areas under direct management—as much as an additional 7,000 to 10,000 square miles. The increase in appropriations the President requested in his FY 1993 budget will be used to strengthen our management in the field of these underwater areas. The sanctuaries program is gaining broad support in the community. For example, people, small businesses, and environmental groups have volunteered to protect the reefs of the Florida Keys. In addition, citizens and industry volunteered their time and resources to help us celebrate the designation of the Flower Garden Banks National Marine Sanctuary in Houston last January, and have offered to assist in sanctuary management.

As the program has matured, we have also seen an increase in cooperation among NOAA programs:

- Our first permanent sanctuary headquarters facility is being constructed for the Gray's Reef National Marine Sanctuary at the Skidaway Island complex of the University of Georgia's Marine Advisory Service in Savannah;

- Our staff continues to work closely with NOAA's Undersea Research Program (NURP), helping them locate the best sites in the Florida Keys for the AQUARIUS habitat, providing support, cooperating on projects, and participating on the NURP/Florida research review panel;

- State staff from National Estuarine Research Reserves have come to work in sanctuary positions, bringing with them their site operational experience; NOAA headquarters staff have moved to the field to gain operational experience; and

- Cooperation on a NOAA-wide level was formalized recently when Dr. Knauss issued a "NOAA Policy for the Coordination of National Estuarine Reserve and National Marine Sanctuary Research" to better utilize the sanctuaries and reserves for NOAA research through Sea Grant, the Coastal Ocean Science Program, National Marine Fisheries Service, and indeed, virtually every Lane Office of NOAA.

With these cooperative efforts, important foundations have been laid. With the further cooperative efforts of NOAA's science programs and resource management programs we can start now to implement our vision.

NOAA'S VISION FOR PROTECTED AREAS

I believe by the Year 2000, NOAA will make major strides toward development of a comprehensive and integrated system of stewardship of the Nation's most significant ocean and coastal areas through the National Marine Sanctuary Program and its complementary National Estuarine Research Reserve System. NOAA's stewardship for special protected areas will continue to be based on ecologically and archaeologically sound principles of resource protection and management using the most scientifically sound base of information available. This applies both to our Marine Sanctuaries and Estuarine Research Reserves. The following sanctuary operating philosophies will guide us in this endeavor:

- Sanctuaries will continue to be areas where protection of the resources comes first.

- Sanctuaries will be of a size consistent with the protection of their resources, incorporating only needed levels of regulatory protection:

- Large sanctuaries, such as the Florida Keys, will be developed and managed using a "zoning" approach, with highly protective restrictions in "core"

areas of important resources similar to small sanctuaries, and appropriate less restrictive regulations outside the core.

—Smaller sanctuaries, such as Fagatele Bay and MONITOR, because of their size, generally will have sanctuary-wide restrictions.

—The regulations and management plans for existing sanctuaries will be periodically re-examined and revised, as appropriate, to reflect these policies and provide up-to-date protection measures.

—Economic considerations, compatible with the primary objective of sanctuary resource protection, will be factored into designation and management decisions to ensure cost minimization, regulatory efficiency and minimum economic burden on the private sector.

- NOAA's goal is to ensure that sanctuaries are equipped, staffed, and provided with facilities appropriate to the site.

- NOAA will ensure that its sanctuaries are used to complement and support the programs of other Federal agencies with stewardship missions such as endangered species protection, habitat protection, and coastal zone management.

- NOAA will work with the Congress and executive branch agencies to ensure that other applicable statutes are adequate to assist in meeting specific resource protection objectives of the National Marine Sanctuary Program.

- NOAA will improve integration of its scientific capabilities with field sites in accordance with the principles of the NOAA Policy for the Coordination of National Estuarine Reserve and National Marine Sanctuary Research.

NOAA IS TAKING ACTION

We already have begun looking toward the future and taking steps to realize our vision.

We are increasing monetary support for the Program:

- The Administration's FY 1993 request increases by nearly 50 percent the current appropriation level. Increases will be directed to on-site operations.

We are applying our broad technical capabilities to sanctuary designation and management.

- From fisheries management and marine mammal protection, to data collection and analysis, NOAA is utilizing existing expertise from throughout the agency in formulating sound management plans.

As sanctuary issues become more and more near-shore issues, we are seeking ways to better integrate our coastal resource management programs.

- State coastal zone management programs have been directly involved in the development of Monterey Bay, Northern Puget Sound, Stellwagen Bank and Thunder Bay sanctuaries, and the Kahoolawe study.

- We are exploring the possible use of alternative mechanisms, such as State Special Area Management Plans under the CZMA to address on-shore threats to sanctuary resources.

- This April's meeting of State CZM managers will be run concurrently with meetings of the marine sanctuary and estuarine reserve managers. Joint sessions are planned.

- Finally, the Office of Ocean and Coastal Resources Management (OCRM) is developing a long range plan involving Federal and State staff, to determine how resources at both levels can best be focused to address the significant coastal issues.

NOAA has taken the initiative for new sanctuaries.

- Development of the Nation's first Great Lakes sanctuary, Thunder Bay, Michigan, is proceeding well. Scoping meetings were held in October 1991, and the draft EIS and management plan are anticipated for Fall 1992.

NOAA is reviewing and revising its Site Evaluation List (SEL) of candidate sites. The original list was first prepared in 1983. The first step will be to convene an expert team to review the site selection process and criteria. Scientific and public involvement will be applied to derive the best available information to determine sites of special national significance. Products we expect will be:

- A revised list of candidate sites, including the first historic sites listed for future consideration;

- A ranking of sites in order of priority for designation; and

- New mechanisms for additions to and revisions of the SEL.

CONCLUSION

These goals are attainable. To ensure the success of this long-term vision, during the next few years we will be focusing our efforts in two directions:

- First, completing work on the seven ongoing designations and studies.

• Second, we will be focusing our time and resources to make current or pending sanctuaries operational. We will be placing people and equipment on-site, implementing on-site programs, and developing and implementing the national research, education and management programs necessary to make this collection of sites an integrated program.

Regarding legislation, we believe that the existing statute is strong. Significant changes were made in 1984 and 1988. With amendments which we will propose we believe the MPRSA can serve the program through the 1990's. We are developing a reauthorization bill which will improve our ability to manage and protect coastal and marine resources in a more efficient and comprehensive manner. We believe NOAA and the Congress are interested in addressing similar concerns:

- Where appropriate, we are streamlining the sanctuary designation process;
- Ensuring the Program's ability to address resource management and protection issues; and
- Clarifying and strengthening the Program's education and research missions, which provide important non-regulatory tools for resource protection.

NOAA is committed to protecting our Nation's coastal and ocean heritage, managing its sanctuaries, building its partnership with the States and Federal agencies, developing long-term cooperative relationships with research and educational institutions, and allowing compatible use of sanctuary resources. We hope you will join with us as we lay the foundation for the next 20 years.



Senator KERRY. Thank you very much, Madam Secretary. Senator Graham has joined us. I wonder if he has any opening comments at this point.

STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM FLORIDA

Senator GRAHAM. Thank you, Mr. Chairman. I have a statement I would like to file for the record. But I would first express my appreciation to you for holding these hearings and commencing the process which we need to go through to reauthorize the Marine Protection, Research, and Sanctuaries Act.

Last Saturday, I had the opportunity to visit one of the newer sanctuaries—the Florida Keys Marine Sanctuary, which stretches from Key Largo to the Dry Tortugas—a world treasure that the sanctuary program will help us to protect and enhance. I have a

couple of comments from the experience in developing that legislation and now seeing it in implementation.

First is, I think the Department of Commerce is doing a superb job and receiving great applause from the people of the Florida Keys. This has been an effort that has brought the community together, recognizing that all interests—economic, environmental, recreational—have a stake in how well these coral reefs and the beautiful waters around them are protected. And so it has been a source of cohesion within that community.

Second is the importance of an adequate funding level. I would hope that in reauthorization, Mr. Chairman, that there would be some serious consideration given as to what will be required in order to provide the kind of implementation that the current 8 or 9, soon to be 10 to 11 sanctuaries will entail.

And finally, particularly in the Florida Keys sanctuary, and I would imagine elsewhere, the close relationship between land-based activities and the impact on the adjacent waters needs to be considered. A key to the protection of the Florida coral reefs will be the quality of the water. And a key to that will be the nature of discharges into those waters.

In this legislation that established the Florida Keys Marine Sanctuary, the Environmental Protection Agency was directed to develop some special regulations for water quality of those discharges. There has been a high level of cooperation between EPA and Commerce in their joint responsibilities.

I would suggest, Mr. Chairman, that in looking at the reauthorization, that building in those types of intergovernmental cooperative relationships would be an important part of the systemic marine sanctuary legislation.

Mr. Chairman, I thank you for the opportunity to make these comments and to participate briefly in this hearing. And, again, commend you for having initiated this reauthorization.

[The prepared statement of Senator Graham follows:]

PREPARED STATEMENT OF SENATOR GRAHAM

I have just returned from a visit to the recently designated Florida Keys Marine Sanctuary and am delighted to have this opportunity to express my strong support for the National Marine Sanctuary program.

When Congressman Dante Fascell of Florida and I first introduced legislation in Congress to establish a Keys-wide marine sanctuary, the general consensus was that it would take at least three years for the bill to become law.

Clearly, we underestimated the drive and momentum behind the legislation and the dedication of the people of Monroe County to see that their natural resources were protected. And I am pleased to report that, having visited this weekend with Monroe County citizens, support continues to grow.

I want to congratulate the Department of Commerce, and especially Program Manager Billy Causey in the Keys, for the fine work they are doing in educating the community about the sanctuary and soliciting community involvement in the development of a management plan.

On March 21, 1992, I had an underwater tour of the reef and was given a lesson on "safe diving techniques." It was good to see that some of the goals of the legislation are already being met.

Unfortunately, the work being done in the Florida Keys and throughout the National Marine Sanctuary program is severely underfunded. The National Marine Sanctuary program has responsibility for thousands of nautical miles of marine ecosystems, but operates on a shoe string budget.

I encourage the Committee in reauthorizing the program to consider the suggestions of an external review panel recruited by NOAA to evaluate the program's

strengths and weaknesses. In addition to administrative suggestions, the panel suggested that the program authorization be raised to \$30 million.

I appreciate the budget constraints placed on the Committee, but I do hope the Committee will look closely at the authorization level. I think you will agree that this program needs more funds if it is to carry out the important mission it is charged with.

During reauthorization, I also suggest that the Committee consider the Florida Keys Marine Sanctuary as a model for interagency cooperation. It is imperative that the local, state and federal agencies—particularly the Environmental Protection Agency—with overlapping jurisdiction and responsibility for protecting natural resources cooperate in their efforts. Further, we should capitalize on the brain power of our academic and research institutions in developing management strategies. We are doing all of these things in the Keys, and it should be emulated program-wide.

I look forward to working with the Chairman on reauthorization of the Marine Protection, Research and Sanctuaries Act and continued oversight of the Florida Keys National Marine Sanctuary Act.

Senator KERRY. Thank you very much. Senator, I should admonish you that there is a standing rule of NOPS that whenever you visit the Florida Keys in March, you are supposed to ask the chairman to go with you. [Laughter.]

Senator GRAHAM. Well I did, but the chairman said that although he was—

Senator KERRY. Fritz Hollings was busy, right? [Laughter.]

Senator GRAHAM. And although the chairman was desirous of coming to the Florida Keys, felt it would be an important part of carrying out his responsibility that his primary responsibility was to his constituents of Massachusetts, and he would not. [Laughter.]

Senator KERRY. Folks, this was not a setup. Anyway, thank you. We appreciate it.

In your statement that you have submitted to the committee, you have laid out a number of philosophical sort of guidelines, and you have summarized some of them here just now. The breadth and scope of the comments that you have articulated with respect to current management, and integrated systems, and so forth, is that a response to the 1991 independent panel report submitted, which was somewhat critical, suggesting that there really were not any long-term goals and so forth?

Ms. WILSON. In large part, it is responsive to the expert panel recommendations, Senator, and in addition to which we had also convened an intra-NOAA working group to similarly come up with ideas and recommendations for solidifying our management approach, and to identify our mission, our goals, and our operating objectives. So, it is a combination, but we definitely took the panel's recommendations to heart. And, I think our statement reflects a lot of their input.

Senator KERRY. Well, I am glad to see that. I think it is a good statement. I want to see if we can just flesh it out a little bit here.

When you say, by the year 2000 we will have made major strides toward development of a comprehensive and integrated system, what does that mean, relative to where we are now as a starting point?

Ms. WILSON. Part of the difference as to then versus now is, Dr. Knauss has just issued a NOAA policy on national estuary and reserves, and marine sanctuary research, which provides for a NOAA-wide participation in these special protected areas of the marine environment. The comprehensive and integrated approach should be reflected all the more in the coming years, whether it is

in fisheries, underwater research, data collection and monitoring, satellite use and photogrammetry. We are attempting to make sure that we are making use of these very special protected areas throughout NOAA.

So, it partly reflects that. I think also it reflects the kind of experience that we are gaining in the Florida Keys National Marine Sanctuary, developing the partnerships with the public, with the State, and with the local governments. These partnerships should assure more comprehensive and integrated management approach.

Senator KERRY. Do you envision any specific changes in the implementation of the management process?

Ms. WILSON. The changes would reflect, I think, Mr. Chairman, more of an emphasis on management in the field. I believe right now we have about 25 percent of our sanctuary resources invested in headquarters and 75 percent in the field. No doubt that trend will continue and perhaps even more percentage of resources will be placed in the field.

I think it is important for our management team to understand their mission and their operational philosophies. And so, I think it must be clear why we have a sanctuary and what it is we need to do with it; and I expect that to only be improved in the coming years.

Senator KERRY. Obviously, throughout the history of the program there has been this tension between various agencies and desired uses within sanctuary areas. That is probably one of the biggest sort of working problems here—between dredge interests or spoil disposal, or oil or gas, or fisheries—whatever. Is there a specific mechanism that you are now implementing or process that will be engaged that is going to minimize that kind of agency diminishment, if you will, of the capacity of the program to really grow and take hold?

Ms. WILSON. I think we are addressing that through the MOA and MOU process we are beginning to utilize—again, using the Florida Keys as a prime example of how we can best have inter-agency cooperation. We also are finding in Monterey Bay and in other sanctuaries that we are able to come to common grounds of understanding and we are able to work these issues through.

It does take a good deal of education. It takes a good deal of frank exchange and understanding.

Senator KERRY. Is there any hierarchical problem now, in the sense that—I mean, is there a lack of capacity for one entity—you, NOAA—to be able to move the process? Is there something that is needed administratively or processwise that would streamline and perhaps even legitimize in a larger way the authority that you have to make decisions and to manage?

Ms. WILSON. I know in our proposed administration legislation, which is undergoing final review right now within the administration, we do have some specific ideas for how we might streamline and improve our protection abilities.

I think our overall concept, Mr. Chairman, is to utilize existing regulatory authorities to do what we know needs to be done to protect the resources and to properly manage the resources within a sanctuary. It may be that there needs to be some adjustment in other statutes to reflect the existence of a marine sanctuary.

For example, I believe in title 1, there is a specific reference to special protected areas and guidance to the Environmental Protection Agency on where they would locate an ocean disposal site to comport with the special protected area.

However, I am not sure that all of the statutes right now which affect Federal Government activities and the oceans necessarily reflect the existence of a marine sanctuary. That might be something that we need to work better within the administration and with Congress on achieving.

Senator KERRY. It says here at page 5 of your testimony that sanctuaries will be of the size consistent with the protection of their resources. Is there any resource restriction that is currently limiting size? In other words, are your decisions on the size of a sanctuary being determined by the available resources for management and protection? Are we shortchanging the program in a way because you do not have sufficient resources to provide protection?

Ms. WILSON. I do not believe that has been a restriction on our recommendations on boundaries. I think it is a somewhat difficult dilemma each time on deciding to recommend which boundary. I think our philosophy is to attempt to ensure that we definitely have the core area or areas within a sanctuary as the most protected areas, and that there is sufficient boundary to ensure not only the core area's protection, but also those that impact the core area are protected similarly under the rubric of the sanctuary.

Senator KERRY. Well, are the goals of the act, I mean substantively and physically, being carried out if we are limiting the size of the sanctuary because we do not allocate adequate resources?

I mean, if the idea is to protect the habitat and the ecosystem, and portions of that system are outside of it or the habitat is not fully included, then are we living up to the act's intent?

Ms. WILSON. I do not believe we have made any recommendations on boundary sizes, Mr. Chairman, that have had anything to do with the amount of NOAA's financial ability to properly manage.

Senator KERRY. That is what I was getting at. You had answered "Yes" and maybe I asked the question wrong.

Ms. WILSON. I think I was talking about the actual environmental resources and perhaps I did not understand you. No, we have not made any decisions based on that.

Senator KERRY. And what about the relationship—I sponsored an amendment last year requiring Coast Guard involvement in the enforcement of sanctuary regulations. What is the status of that now? Is that taking place?

Ms. WILSON. We have been meeting with the Coast Guard and we are exploring ways to implement that statute and statutory guidance and we have found the Coast Guard cooperative to date. May I ask Ms. Cox if she has any additional insight to present on that?

Ms. COX. Only that enforcement is certainly an important part of management of our sanctuaries now and into the future. And so, as part of the cooperative effort that is envisioned in the sanctuary process in general, NOAA intends to work with any agency that we can, to not only do better science but also do better management,

do better education, and all the other things that are embodied in what a sanctuary is all about.

Senator KERRY. Well, has a plan been worked out since last year?

Ms. COX. At this point, we are meeting regularly with the Coast Guard and we hope that we will have a plan for you.

Senator KERRY. Can you give me a sense of when that might be?

Ms. COX. I hate to give you a sense, when I do not know the answer. It is being worked on right now, Senator.

Ms. WILSON. We can try to give you an assessment for the record.

Senator KERRY. Would you please? I mean, what I would hate to see is that the plan for enforcement is being worked on now, and the next year it is being worked on, and it is still being worked on when I leave here, which I hope will be a long time from now.

We have added three new marine sanctuaries since 1988 and we have got six coming on line. The question is, what do you envision, sort of, for a total size of this program? Have you mapped out an ultimate sort of sanctuary posture as to what the total program will be and what the resources might ultimately be needed for that?

Ms. WILSON. Beyond the seven sites that are in the designation process right now, and that is, three completing the process and four in the study phase, we believe there is a very, very good basis for revising the site evaluation list of candidates for future designation to address that very question. It is a question that our Administrator also has asked. Because of that, the program is convening an expert panel that will, through public participation, through dialog with academia, State and local governments, and public and interest groups, develop and refine the existing criterion for the site evaluation list and make recommendations on what a new site evaluation list ought to look like.

At that point, Mr. Chairman, we ought to have a pretty good ability to respond to your question, but right now I do not think we can.

Senator KERRY. When would that be, do you think?

Ms. WILSON. I think the timeframe for the expert panel to convene is within the next couple of months and we would hope that within 2 years, we would be able to recommend a revised site evaluation list.

Senator KERRY. OK. A couple of quick questions before I turn it over to colleagues. What level of funding did you ask or propose for 1993?

Ms. WILSON. \$7.3 million.

Senator KERRY. You proposed \$7.3 million?

Ms. WILSON. Yes, sir.

Senator KERRY. So, you are getting exactly what you proposed. Not what the administration proposed, what you sought for it? Is that what NOAA sought?

Ms. WILSON. Oh, I am sorry.

Senator KERRY. Were you cut back from what you sought?

Ms. WILSON. I am sorry. I do not remember what it is we requested. I understand what your question is. May I provide that for the record. I do not recall.

Senator KERRY. I appreciate it.

Ms. WILSON. OK.

Senator KERRY. And a final well-deserved parochial question. When do you think Stellwagen is going to get the, proceed forward?

Ms. WILSON. Final designation? I know it is moving along. I know the issues are complex.

Senator KERRY. As you know, occasionally national marine sanctuaries are designated simply by congressional mandate.

Ms. WILSON. Yes, sir.

Senator KERRY. Four years ago we thought about designating Stellwagen, but out of respect for the process, and because there were so many different interests in the area, we did not. We kind of went through the normal process. Congress granted what, a 30-month time period for that?

Ms. WILSON. I think a 24-month time period was envisioned in the 1988 amendment and we are indeed late. I do believe we are in the final phases of the final decision making now and I believe we are anticipating to make the final recommendation in the Federal Register within the next 6 months.

Senator KERRY. What I would appreciate also, and I know staff is going to talk with you about this, but I am very concerned about those boundaries. And I want to signal to you that it is my hope obviously that the Stellwagen boundaries are going to be as broad as possible. So, anyway, we will get into that at a later time.

Senator Gorton has joined us. Before I turn to Senator Graham for questions, I am going to ask Senator Gorton if he has an opening statement.

OPENING STATEMENT OF SENATOR GORTON

Senator GORTON. Thank you, Senator Kerry. This is obviously an important issue. I note there are three Senators here, each of whose States has a real interest in this program and in each of whose States there are existing or potential marine sanctuaries.

The goals of the act are obviously highly socially useful—to preserve and protect marine areas of national significance for the foreseeable future.

There are two proposed sanctuaries off the State of Washington, one very large one off the coast just west of the Olympic Mountains, and another potentially large one in Northern Puget Sound. Each of these areas is of great importance from the point of view of the marine assets that are located within them. Each of them obviously is an area of great commercial use because the shipping lanes going through them and the potential impact on the ports where the vessels call.

NOAA considers a wide range of alternatives in these studies as it does in others, both from the point of view of the geographical extent of a sanctuary and the kind of activities which will be permitted within it.

The program is very flexible as it exists at the present time and that is important, but there is also a threat to traditional uses and activities that have taken place within those proposed areas. I am looking forward to hearing the suggestions of our witnesses on ways this program can be improved.

Last, I want to thank you especially, Senator Kerry, for, pretty much at the last minute, allowing me to add to the witness list and have Eric Johnson, who is with the Washington Public Ports Association, as one of the witnesses. His testimony will focus primarily on the two proposed sanctuaries in my own State. He will give some of the input of commercial users, those who use ports in Puget Sound and in other parts of the State of Washington with respect to these sanctuaries.

So, I thank him for coming, but you were most courteous in allowing him to participate in this hearing today.

Senator KERRY. Well, I appreciate your comments. We are delighted to hear from him and I think it is an important part of the hearing process, so we are glad that he is able to testify.

Senator GORTON. And I have no questions for this witness.

Senator KERRY. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman, I would like to amplify your request for some budget information and if I could just pursue a short line of questioning.

As you supplied the information on what was the original request for the sanctuary program, if you could identify what were the specific activities or program areas in which that request was made, so that we could evaluate what your sense was of the program needs as to those program needs that were recommended by the budget that was submitted to the Congress.

I serve on this subcommittee by the sufferance of our benevolent leader because I am not a member of the Commerce Committee. I am a member of the Environment and Public Works Committee, which has jurisdiction, among others, over the Environmental Protection Agency and so I am especially interested in that relationship between EPA and the Department of Commerce as it relates to sanctuaries.

I wonder if you would comment on that relationship as it is being carried out in the new Florida Keys Marine Sanctuary and generically?

Ms. WILSON. First, I would like to commend the Environmental Protection Agency for the cooperation they have been extending to working with us on developing a sound water quality management plan for our sanctuary. I will say that I think I would agree with your statement, Senator, that it takes this kind of cooperation amongst the various agencies to assure the proper management of the sanctuaries.

I will also say that I think it has the potential for being a model of how we should work with our other agencies to properly manage, and evidence our cooperative stewardship responsibilities, rather than NOAA coming up with our own set of regulatory schemes. It is very logical and the most efficient use of tax dollars to have those already with those responsibilities apply their expertise to our need. And that is indeed exactly what we are saying in the Florida Keys.

At this point, I can say that it looks like we have a good, solid working relationship. I know it is difficult. I believe that typically EPA approaches effluent in permitting guidelines as far as best available technologies and so forth, as opposed to cumulative impact in the actual water body as we do. And that is what we are

trying to get at with sanctuaries. So, we are getting into a newer field as far as EPA's general regulatory responsibilities have been implemented in the past. It is an area of expertise that I think NOAA contributes to greatly in all of our sanctuaries, particularly those that have state water components. One of the biggest research questions and scientific questions that we will need to make sure is answered is cumulative impacts.

It is a growing field and it is something that is absolutely necessary to the protection of the resources. So, we intend to collaborate not only with Federal agencies, but also with the States that have the delegated NPDES authorities. That is also an extremely important partnership.

Senator GRAHAM. In your statement, you indicated that you are developing a reauthorization bill that will improve our ability to manage and protect coastal marine resources. You state as one of the goals for this bill, clarification and strengthening of the program's ability to address resource management and protection issues. Would you anticipate that in your recommended reauthorization legislation, you would have some concepts relative to intergovernmental cooperation, particularly between those agencies that had upland responsibilities and the Department of Commerce?

Ms. WILSON. Yes, sir, that is exactly what that section is anticipating. Yes, sir.

Senator GRAHAM. Thank you very much.

Ms. WILSON. Thank you.

Senator KERRY. Thank you very much, Senator Graham. I have no further questions, though I may have some for the record, just some technical pieces that we would like to get something more on. I do not think you probably ever had such an easy morning.

Ms. WILSON. I think you are right.

Senator KERRY. I think the testimony of the panel will help flush out some of what we are looking for here in terms of the current problems. I do not know if you are going to be here or somebody is from your staff.

Ms. WILSON. Yes.

Senator KERRY. We certainly appreciate it and we will look forward to helping to make this a success. Obviously, I think everybody here is deeply committed to this program. It is vital. It is even more vital today than it has ever been before, given the stresses placed on the ecosystems we are seeking to protect. I think all of us want to see the program take hold even more than it has, and we want to expand it to the degree that we can.

It would be very helpful for the committee to get the sense of where this program is going ultimately, so I do not know if 2 years is the must breadth of time on that, but I think it would be helpful to us.

Ms. WILSON. Yes, sir. I applaud your leadership and we join with you in your enthusiasm for the program.

Senator KERRY. Well, thank you very much. I think, increasingly, the Florida Keys particularly, that is almost a near disaster story down there. And we really need to move to save that area which is just under such enormous increased stress.

Ms. WILSON. Yes.

Senator KERRY. Thank you.

Ms. WILSON. Thank you very much.

Senator KERRY. I appreciate it. If I could ask members of the panel of five to come forward, with each of your indulgence, I would like to be a little bit arbitrary about the order.

Senator Gorton has to leave early, so not only are we allowing his witness to testify, but we are going to let me go first. In exchange for which, Senator Gorton is going to support everything the chairman wants.

Senator KERRY. Eric Johnson, who is an environmental specialist with the Washington Public Ports Association, will lead off. And then I would ask—I do not know if any of you have any particular order other than that, that you have worked out, but we will just run down the line here. And so, Mr. Johnson, welcome. We are delighted to have you here and look forward to your testimony.

STATEMENT OF ERIC JOHNSON, ENVIRONMENTAL SPECIALIST, WASHINGTON PUBLIC PORTS ASSOCIATION, OLYMPIA, WA

Mr. JOHNSON. Thank you, Mr. Chairman and committee members. I am very pleased to be here today. I do appreciate the invitation that was extended. I have submitted testimony for the record, and I will summarize it because I know that we have a lot of people to follow me.

My name is Eric Johnson. I am an environmental specialist for the Washington Public Ports Association. Our association represents the public port districts in Washington State. We have a lot of ports in Washington, and I believe we are the most trade-dependent State per capita in the country. We care about the Marine Protection—

Senator KERRY. Let me just say so that each of you know, these lights which operate here—and I will give you a little extra time because I am explaining this, but the yellow light will go on, I think, about a minute before the 5-minute mark. And just if you can summarize in 5 minutes, or as close thereto, that would be great.

Mr. JOHNSON. We care about this act, really, because we have two marine sanctuaries proposed for the waters of Washington State. You have heard that already. There is one off the coast of Washington, which is a very pristine and beautiful and remote area, and then there is another sanctuary proposal in Northern Puget Sound. The Northern Puget Sound proposal covers pretty much the northern one-half of Puget Sound, which is the Pacific Northwest's major trade waterway and is a major cargo load center for the Nation.

We are in agreement with the act's language regarding non-duplication of existing regulations and we appreciate the act's deference toward multiple uses and preexisting activities. We have had some concerns with the broad nature of the study process. It allows room for many different agendas to be brought to the table.

We have no trouble with that discussion, but we believe that we need to be careful in areas such as Northern Puget Sound where we have already established fairly comprehensive coordination mechanisms already, particularly through the National Estuary Program, which is a program under the Federal Clean Water Act.

Puget Sound is an estuary of national significance. It has a comprehensive management plan already in place, which was developed by a broad variety of interest groups from across the spectrum, including NOAA. We have had some concerns with duplicating that existing coordination mechanism.

Really, we are concerned in implementation of the act with three areas: dredging, shipping, and urban shorelines and urban port facilities. Regarding shipping, I will just say briefly that sanctuaries and shipping lanes often overlap, particularly when the sanctuaries become large geographically. And we are sensitive to, and understand concerns that people have over shipping impacts or potential shipping impacts to the environment, particularly oilspills. We are as concerned with preventing oilspills as anyone.

These are extremely complicated areas, however, and we believe that existing entities, particularly the Coast Guard and the International Maritime Organization or other international agreements, should be given deference in the complex area of vessel requirements, crew requirements, vessel speeds, fueling and bunkering, and things like that which the Northern Puget Sound Sanctuary has discussed getting into. And in addition, some States have very strong local oilspill prevention laws. Washington State has a new, recent, very protective oilspill prevention law which we believe covers those bases fairly well.

Regarding dredging, we are concerned about apparent NOAA positions in other regions of the country that they have, or potentially have, broad authority over dredging and dredged material disposal within or near marine sanctuaries. Washington State has a model dredged material management program, nationally. It is a \$4 million, 4-year, Federal/State partnership. It is probably the most sophisticated and protective dredged material program in existence in the country. It is really the Cadillac of programs.

NOAA participated in the development of that program, although the Federal agency leads with the corps and EPA with a State partnership as well. And we welcome NOAA's continued participation in and implementation of that program. But we do believe that the existing framework with Federal lead, again, by the corps and EPA, is the way to go because of their expertise. We are nervous about another broad Federal dredging authority, particularly where things are going so well right now.

Third, regarding urban shorelines and ports. These areas, as you know, are heavily planned right now. They are heavily regulated. It is not clear to us exactly how a sanctuary works in an urban harbor or in an urban shoreline. The study proposal in Northern Puget Sound is broad. It includes urban shorelines in a number of areas, including industrial port facilities in cities as large as 50,000 people. We think this is an area which the administration needs to get into very carefully, only after a careful deliberation. You can imagine some of the conflicts that could exist in an urban shoreline such as Seattle or Everett.

In closing I will just say that we urge this committee to reaffirm its commitments to multiple uses and to non duplication, and perhaps in particular call out some of the abovementioned areas, shipping and dredging for example, for nonduplication. But I want to stress that we do not oppose marine sanctuaries where well defined

needs for coordination exist in valuable marine areas. And I think that that is a pretty good summary, of my testimony, Mr. Chairman, and I will wrap it up there.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF ERIC JOHNSON

Thank you Mr. Chairman and Committee members. My name is Eric Johnson, and I am with the Washington Public Ports Association. This Association represents over sixty public port districts within the State of Washington. Our mandate is to promote trade and economic development throughout our state. Trade is vitally important to the economy of the Northwestern United States—our state depends more per capita on international trade than any other state in the nation. Puget Sound and the Columbia River are both major load centers for national and international trade. We are proud of our trade accomplishments, and we realize that commerce, trade and jobs are critically important to the nation's economy.

Our experience with Title III of the Marine Protection, Research and Sanctuaries Act is the result of two recent proposals to establish national marine sanctuaries in the waters of Washington State. One draft designation involves thousands of square miles of Washington's outer coast; the other involves possible designation of the waters of Northern Puget Sound—the major trade waterway of the Northwest and the second largest cargo load center in the nation.

Our observation of Title III of the MPRSA is that sanctuary proposals appear to be getting much larger and more complex as time passes. This is not necessarily bad, but something clearly happened between designation of the wreck of the Monitor in 1975 and the proposed designation of nearly one half of Puget Sound in 1992. We should pause to examine what happened, and see if there are unintended consequences for the nation's trade and commerce.

The National Marine Protection, Research and Sanctuaries Act purposely allowed marine sanctuaries extensive flexibility in implementation, in order to allow them to accomplish a variety of goals. But flexibility can cut both ways, and some groups such as the maritime commerce community are becoming more concerned about implementation of the Act, especially in light of recent statements by the National Oceanic and Atmospheric Administration regarding its broad powers within national marine sanctuaries.

In addition, the broad nature of sanctuaries, especially during the proposal/study phase, allows many groups an opportunity to push for unwarranted restrictions on maritime commercial activity. As you know, maritime activities are thoroughly regulated now.

Let me state at the outset that the elected public port district commissioners I represent support protection of sensitive marine resources. No one—including public ports—wants to unwisely endanger or misuse our marine resources. We will always support necessary protection of unique, sensitive or exceptionally valuable marine areas.

We are very supportive of the "multiple use" concept of the MPRSA Public port officials, who balance competing values every day, understand this concept well. And we strongly support the Act's policy of not duplicating existing regulations, permits or management structures, as well as the policy of allowing pre-existing uses within sanctuary areas. We call on Congress to strongly reaffirm these policies in the Act.

However, language within Title III of the Act is only as good as its implementation, and we have seen sanctuary studies and proposals in Washington State explore areas that are already very adequately regulated. Commercial shipping is a good example. The sanctuary study process in our state has clearly been seen as a "Christmas tree"—and many agencies and groups have been hanging their agendas on it, despite existing uses or regulations. When this trend is coupled with large geographic study areas in populated waters, it is a good time to step back and closely examine the intent language of the Act.

The public port districts of Washington State have three major areas of concern regarding implementation of Title III of the Act. These areas are:

- 1) navigation and commercial shipping,
- 2) dredging and dredged material disposal and,
- 3) urban shoreline development and maintenance of maritime port facilities.

Regarding navigation and commercial shipping—we believe strongly that regulations and policies affecting commercial vessels, including decisions regarding shipping lanes, loading operations, fueling and bunkering, crew requirements, vessel

speed, etc., must remain the responsibility of the U.S. Coast Guard and the International Maritime Organization.

Sanctuaries often overlap with commercial shipping lanes. As sanctuary proposals become larger geographically (as they have continually done over the past two decades), the potential for conflicts will increase. We understand that many sanctuary proponents have concerns about the possible impacts of shipping activities, especially the threat of oil spills. But these issues must be dealt with through the existing framework of Coast Guard and IMO laws and regulations. We in Washington State recognize the importance of oil spill prevention and have in place a state law that is probably unsurpassed nationally in its scope and degree of protectiveness. We urge this Committee to keep the complex area of federal shipping regulations within the existing framework of the U.S. Coast Guard and the international maritime regulatory community.

Regarding dredging and dredged material disposal—we are very concerned about the possibility of Title III of the Act being used to curtail necessary dredging and open-water dredged material disposal. As you know, dredging is vitally important to keeping our nation's waterways open for commerce. We in Puget Sound are fortunate because we have mostly clean sediments, as well as a system of environmentally protective, cost-effective open-water unconfined disposal sites for dredged material.

Washington State is now home to the most advanced and environmentally protective open-water dredge disposal program in the nation. This program, named the Puget Sound Dredged Disposal Analysis (PSDDA), is the result of a federal/state partnership that took four years and \$4 million to design and implement. We now have eight cost-effective, environmentally protective open-water sites for clean dredged material. (Some of the material from urban bays is contaminated, and cannot be put into these open-water unconfined sites.) This program is vitally important to our dredging needs.

The PSDDA program was jointly designed, and is still implemented by, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the Washington State Department of Ecology, and the Washington State Department of Natural Resources. Many interested parties including port districts, resource agencies, tribes and the general public participated in its development and implementation.

We are very concerned that NOAA has taken the position in other regions of the country that Title III of the MPRSA allows NOAA to impose additional review or permitting on dredged material disposal sites. We have a very successful federal/state partnership in Washington State, and while we welcome NOAA participation through the existing management framework, we do not feel that Title III of the MPRSA should give this agency substantial authority over dredged material management. The current federal framework, which gives the Corps and the EPA primary responsibility in this area, is working very well.

Finally, regarding shoreline development in urban areas and maritime port facility operations—we urge the Committee to look to the original intent of the Act regarding protection of pristine, threatened or biologically critical areas. The study area for the Northern Puget Sound Sanctuary proposal includes dozens of urban shorelines and port industrial areas, in cities as large as 50,000 people. It is not clear to us what a sanctuary designation means to local land use and shoreline planning, maintenance of port facilities, municipal treatment plants, etc. This is clearly a problem area for implementation of Title III of the Act, and it merits close attention by this Committee.

Congress should clearly state its intentions regarding establishment of National Marine sanctuaries in urban shoreline areas. Urban shorelines are already among the most closely managed areas in the country. This year, when the NPDES discharge program encompasses urban stormwater discharges, these areas will become even more closely regulated. The "non-duplication" policy of Title III of this Act seems to indicate that it should only be implemented in urban areas after very careful deliberation, if at all.

We also have lesser concerns with the MPRSA's implementation of this program in the areas of aircraft traffic and recreational boating. While we do not oppose additional regulation of these areas if it is clearly needed, we question whether these areas need additional regulation in order to protect marine resources, or just better implementation of existing regulations.

In summary, we suggest that the Committee reaffirm its commitment to assure this program does not duplicate other regulatory efforts. In particular, we suggest that specific areas for non-duplication be called out, such as shipping, dredging and dredged material disposal, and urban shoreline development. We may also need a clear policy for sanctuary studies that are entirely within the jurisdictional waters of a single state, as the Northern Puget Sound proposal is.

We support sanctuary proposals where well-defined need exists for increased coordination in areas of particularly high biological importance. Research and education needs, for example, may be good areas to target.

We sincerely thank this Committee and the United States Senate for the opportunity to testify.

Senator KERRY. I appreciate that. I think that is a good summary and you hit the focal point of some questions that I think we will have. Mr. DuBose.

STATEMENT OF WILLIAM P. DuBOSE IV, VICE PRESIDENT, NATIONAL OCEAN INDUSTRIES ASSOCIATION, WASHINGTON, DC

Mr. DuBOSE. Thank you, Mr. Chairman. Good morning, Mr. Chairman, Senator Gorton. I am Bill DuBose, Vice President of the National Ocean Industries Association. We are a national trade association representing over 300 companies involved in all aspects of offshore oil and gas development in the United States. Today I am also representing the American Petroleum Institute and the International Association of Drilling Contractors.

We in the ocean industries support the designation of national marine sanctuaries as a means of protecting unique and significant marine resources through the existing NOAA regulatory and administrative process. We feel it is a proven process that provides for an analysis of the impacts of site designation, an identification of the appropriate regulatory protections, and facilitates the multiple use of marine sanctuary resources.

We believe all proposed national marine sanctuary sites should be scientifically defensible, based upon a thorough examination of the program's criteria. That same standard should apply to the regulatory regime developed for a specific sanctuary site. We would oppose any attempts to relax or reduce the requisite standards for marine sanctuary designation.

We are also opposed to the use of the Marine Sanctuary Program and the designation process as a tool for prohibiting compatible and multiple use activities of marine sanctuary resources. The industry strongly supports the multiple use goal of the national Marine Sanctuary Program and believes it should be furthered whenever possible. We believe Congress should refrain from legislating what activities should or should not occur within sanctuary boundaries.

These decisions should be based on sound science and made by NOAA where that expertise resides. Permitted uses should be also tailored to fit the characteristics of an individual sanctuary. An acceptable use in the Channel Islands or Stellwagen Bank might be inappropriate for the Flower Garden Banks marine sanctuary off Texas and Louisiana.

There is a proposal now for the legislative creation of a Monterey Bay National Marine Sanctuary that would encompass some 4,000 square miles. This proposal would also prohibit offshore oil and gas exploration and development throughout the area. This type of proposal appears to us to be aimed at keeping oil and gas activities away, rather than scientifically identifying an area of special significance to be subject to comprehensive conservation and management.

It is very doubtful that NOAA has the resources to manage a sanctuary this large. Further we believe NOAA, and not the Con-

gress, should determine what uses should be permitted in a sanctuary. In this case, NOAA might conclude that there is a core area where oil and gas activities should be excluded, but other activities such as oil and gas could be included elsewhere. This zoned approach to sanctuary management is one that we think has some promise, but NOAA has to be left free to use what it deems to be appropriate.

The recent designation of the Flower Garden Banks is an example of how the program can and should work. NOAA was provided an opportunity to explore all management options. Multiple and compatible uses now occur within and around the site. I will not go into detail here, but Texaco tried to build a pipeline through the East and West Flower Garden Banks and NOAA had some concerns. And they worked with Texaco to develop an alternative route, looking at other options for the pipeline as well as radar, transponders, things such as that for improved navigation.

And we believe they were able to come up with a project that everybody could agree with and was truly a win-win situation, and we think a good example of how Government and industry can work together to find creative solutions. And in particular, the various agencies of the Government worked very well together in that process as well.

Finally, with regards to streamlining the designation process, we think it should be done with great care so as not to compromise or reduce the standards of newly designated sanctuaries. But we continue to believe that marine sanctuaries should seek to protect and manage scientifically defensible areas whose unique resources are of national significance. We believe that once it is clearly understood what those resources are and precisely where they are located, the process should move to its conclusion in an expeditious fashion.

Thank you for this opportunity to present our views.

[The prepared statement of Mr. DuBose follows:]

PREPARED STATEMENT OF BILL DUBOSE

Good morning Mr. Chairman and members of the Committee. I am Bill DuBose, Vice President of the National Ocean Industries Association (NOIA). NOIA is a national trade association that represents nearly 300 companies involved in all aspects of domestic offshore oil and natural gas operations. I also am here today on behalf of the American Petroleum Institute (API) and the International Association of Drilling Contractors (IADC).

API is a petroleum industry trade association that represents more than 250 member companies engaged in all sectors of the petroleum industry, including exploration, production, transportation and refining and marketing. IADC represents more than 1000 companies worldwide performing virtually all drilling onshore and offshore.

The ocean industries support the designation of national marine sanctuaries as a means of protecting unique and significant marine resources through the existing NOAA regulatory and administrative process. It is a proven process that provides for an analysis of the impacts of site designation, an identification of appropriate regulatory protections and facilitates the multiple use of marine sanctuary resources.

We believe that all proposed national marine sanctuary sites should be scientifically defensible, based upon a thorough examination of the program's criteria. The same standard should apply to the regulatory regime developed for the sanctuary site. We would oppose any attempts to either relax or reduce the requisite standards for marine sanctuary designation.

We also are opposed to the use of the Marine Sanctuary Program and the designation process as a tool for prohibiting compatible and multiple use activities of ma-

rine sanctuary resources. The industry strongly supports the "multiple use" goal of the national marine sanctuary program and believes it should be furthered whenever possible. We believe Congress should refrain from legislating what activities should or should not occur within sanctuary boundaries. These decisions should be based on sound science and made by NOAA where that expertise resides. Permitted uses should be tailored to fit the characteristics of each sanctuary. An acceptable use in Channel Islands or Stellwagen Bank might be inappropriate for the Flower Garden Banks marine sanctuary.

There is a proposal calling for the legislative creation of a Monterey Bay National Marine Sanctuary that would encompass some 4,000 square nautical miles. This proposal also prohibits oil and natural gas exploration and development throughout the area. This type of proposal appears to be aimed at keeping oil and gas activities away rather than scientifically identifying an area of special significance to be subject to comprehensive conservation and management. It is doubtful that NOAA has the resources to manage a sanctuary this large. Further, we believe NOAA, not the Congress, should determine what uses should be permitted. In this case, NOAA might conclude that there is a core area where oil and gas activities should be excluded but that such activities should be allowed elsewhere within the sanctuary. This "zoned" approach to sanctuary management is one we think has promise, but NOAA must be left free to use it when it deems appropriate.

The program's recent designation of the Flower Garden Banks National Marine Sanctuary is an example of how the program can and should work. Because NOAA was provided an opportunity to explore all possible management options, multiple and compatible uses now can occur within and around the site.

The Flower Garden Banks designation and the approval of a permit for a new oil pipeline in close proximity to the sanctuary demonstrates how multiple use concepts can be successfully applied when all of the parties seek a reasonable solution. In this case, Texaco applied to the Minerals Management Service (MMS) for a permit to build a pipeline connecting its Tick platform located southeast of the East Flower Garden Bank to a pipeline connection located northwest of the East Flower Garden Bank.

Texaco initially proposed a route between the East and West Flower Garden Banks. The safety and engineering standards in this proposal far exceeded the norm for this type of project. Nevertheless, there were concerns at MMS and NOB that a route between the banks was not wise. In the ensuing discussions it was evident that NOAA and MMS were seeking a careful evaluation of all existing, practical options to the proposal. Texaco, for its part, was willing to incur some additional expense and effort to achieve that evaluation.

The result was an agreement on an alternate route to the east of the East Flower Garden Bank and then across to the west to the pipeline connection mentioned earlier. Texaco retained the exacting engineering and safety standards from its initial proposal and agreed to some additional stipulations, such as installing radar and transponders on its platform as navigation aids for shipping in the area. MMS and NOB were able to agree to allow the project to proceed under conditions they believed afforded maximum protection for the coral reefs that are the heart of the sanctuary. This truly is a win-win situation and an example of government and industry working together in search of creative solutions.

Finally, streamlining the sanctuary designation process should be done with care so it will not compromise or reduce the standards for newly designated sanctuaries. We continue to believe that marine sanctuaries should seek to protect and manage scientifically defensible areas whose unique resources are of national significance. We believe that once it is clearly understood what those resources are and precisely where they are located, the process should move to its conclusion in an expeditious fashion.

Thank you for this opportunity to present our views.

Senator KERRY. Thank you very much, Mr. DuBose. Mr. Weddig.

**STATEMENT OF LEE WEDDIG,, EXECUTIVE VICE PRESIDENT,
NATIONAL FISHERIES INSTITUTE, ARLINGTON, VA**

Mr. WEDDIG. Good Morning, Mr. Chairman. I am Lee Weddig with the National Fisheries Institute. Thank you for the opportunity to be here. The Institute, representing commercial seafood interests, supports the reauthorization of this program. We do have many of the same concerns that have been expressed earlier by other members on the panel.

We really think that designation of a marine sanctuary should be something very unique, something really special. We note that there is in place an intricate, interlaced series of laws and regulations that are governing fisheries, offshore development, habitat protection, and virtually everything that can happen in the marine environment. And if they are all working, there apparently should not be much need for something special over the top of these. Nonetheless, we think that in certain areas and certain times on very discrete basis, it is appropriate to designate an area as a marine sanctuary. But we believe it should be something very very special and very discrete.

A second point that is important to our industry is that the fisheries activities in the marine sanctuary should remain under the control of the appropriate regional fisheries management council or the fisheries authority for the State. We think that the selection process really should be continued the way it is right now. While it may seem that it is not very rapid or streamlined, through the painstaking care that has been taken, with the opportunity for give and take and for all aspects to be explored, I think we end up with the objective of having sanctuaries in place only when and where they are absolutely needed, and with all of the reservations and the concerns expressed.

I think of the Stellwagen Bank project as an example. When this first came up the members of our industry in the New England area, particularly in Massachusetts, were generally opposed to the idea. But it was through the hearing process and the opportunity to really understand what was happening, to express their views, that we now note that there is practically no, if any, serious opposition to it from the commercial seafood industry in your State, Mr. Chairman. So, I think the process, though it may seem to be laborious and painstaking, is a good one to maintain.

We also would like to see more emphasis placed on a strong public outreach aspect for sanctuaries. When they are designated, and when it is possible or feasible, to use them as an educational tool to awaken in the general public the need for marine conservation and for habitat protection. We think an onshore educational process that could include visitation areas and so on could be very useful in helping to spread the word that we have to take care of our marine resources and the habitat. So, we encourage greater use of that opportunity when sanctuaries are designated.

Just coincidentally, we are in the process of a policy meeting here in Washington, with a number of representatives from around the country. The various fisheries organizations from New England, from the gulf coast, the west coast, and Alaska have been meeting yesterday and this morning. In the process of yesterday's meeting, in anticipation of this hearing, I asked them what they all felt about the Marine Sanctuary Program. Some of the comments may be of interest.

They all were confident in saying they believed that the program should be continued. No one was objecting to the idea of that. They all feel it is a useful program, but they all have had some reservations that the program should not preclude the normal multiuse activities that take place, especially the normal activities of commercial fishing. They feel it is a compatible situation, that marine

sanctuaries and commercial fishing activities need not be diametrically opposed.

They also point out—some of them particularly have some rather long memories, that they are very apprehensive. They said they recall back in the early days when they supported the idea of Federal funding for National Parks in certain areas, that it was very specific that commercial fishing would be continued. Now they are no longer there because the policies have changed. And so they are a little bit apprehensive about the idea of maintaining the ability to utilize resources in a controlled manner when sanctuaries are designated, even though at the very beginning there are assurances fishing will continue.

So, they do recall some unhappy situations of the past in some other programs much like these. There is also a question about whether the term "sanctuary" is a good one. They felt it implies no use. They do not believe that the connotation, or at least the intent, of marine sanctuaries, is that there would be no use. While they have no new name to suggest, they are really concerned about the term itself because they think it implies no use and that is obviously not what we are talking about here.

I believe that pretty well summarizes what the people from around the country commented yesterday in the brief interchange on this, and that concludes my summary. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Weddig follows:]

PREPARED STATEMENT OF LEE J. WEDDIG

I am Lee Weddig, Executive Vice President of the National Fisheries Institute, a trade association representing the U.S. seafood industry. Our membership consists of more than 1,000 companies engaged in all aspects of the industry, including harvesting, processing, and marketing. These companies have a vital interest in protecting and managing the marine environment as an important source of food for mankind.

NFI supports reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA) and continuation of the current Marine Sanctuaries Program.

Our support of the marine sanctuaries program is predicated on two important understandings. Most important is that the designation of a marine sanctuary is indeed unique, being reserved for very discrete areas, exhibiting very special characteristics.

Secondly, the governance of fishing activities within marine sanctuaries should remain with the appropriate regional fisheries management council.

These caveats should not be taken as lackluster support for the program, but rather a belief that sanctuaries must be exceptions to the norm. We say this because conservation and sustainable use of marine resources along with protection of habitat and water quality must be the objective for the marine environment in its entirety—not just in sanctuaries.

Over the years, numerous laws have been enacted to address proper use and protection of our entire marine environment.

Fisheries management, water quality, wetlands protection, ocean dumping, marine mammals, endangered species, offshore drilling and mining are all governed by specific legislation. Major programs are in place to provide administration and regulation. Environmental impact statements and permit reviews interlock these programs.

With such a comprehensive network of laws and programs in place, the justification for a marine sanctuary should be very unique. The history of the marine sanctuary program shows it has been conducted generally in such fashion and we urge that the restraint be continued. In short, we don't see a need for a proliferation of sanctuaries or for carving out very large sections of the oceans, or for overriding the normal operation of other environmental programs. The selection process must de-

pend on precise determination of specific benefits that can be achieved only through a sanctuary designation.

We believe that there should be a determination that existing sanctuaries are providing the intended results before any more are established.

It goes without saying that effective management of marine resources is of paramount importance to the commercial and recreational fishing industry as well as to our respective customers. Thousands of families depend upon these resources for their livelihood, particularly in rural coastal communities where the fish industries are vital to the future of local and regional economies. Worldwide, people depend on seafood for one-sixth of the animal protein they consume.

Sanctuary programs should enhance basic laws governing the fisheries and protecting the fisheries habitat.

Efforts to preserve habitat through sanctuary designations should be conducted in a manner that balances the needs of various user groups. In this regard we fully support section 301(1)(b)(5) of the MPRSA which states that one of the purposes of Title III is to "facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities." Fishing is in most cases a pre-existing use of sanctuary resources. The protection of these resources and the concurrent existence of productive fisheries need not be diametrical.

The NFI recognizes that general uniform regulations would be inappropriate for all marine sanctuaries. Each sanctuary is part of a different, complex ecosystem and must be considered individually to ensure proper results.

Nevertheless, we believe that regulatory schemes such as proposed for Stellwagen Bank provide a workable approach in that commercial fishing remains subject to plans developed under the Magnuson Fishery Conservation and Management Act (MFCMA).

The responsibility to manage fisheries should remain the jurisdiction of the respective Fishery Management Council. Provision for such management is made in Section 304 of the MPRSA and should be retained.

In recent years NOAA officials have advocated various types of "user fees" to raise revenue from the fishing industry. The NFI supports user fees in those instances where NOAA provides a specific service to an individual company, such as providing bean charts or voluntary inspection services. User fees, however, should not be used as a mechanism for increasing the heavy tax burden already imposed on our industry. In this regard, we would oppose any proposal to tax fishermen for navigating through sanctuaries or fishing within their boundaries.

The site selection process of the national marine sanctuary program, as explained in Title III of the MPRSA, requires sanctuary officials to consult with affected agencies to determine whether a particular marine habitat requires sanctuary restrictions. Despite its lengthy, complicated process, the sanctuary program managers must consult with the appropriate Fishery Management Councils to ensure that concerned industry representatives have the opportunity to participate in the site selection and designation process.

The existing marine sanctuaries have been selected for a variety of special purposes. We would like to suggest that whenever possible a strong public educational program be incorporated into sanctuary designation and operation.

Public recognition of the value of marine resources and the need for effective management and habitat protection is growing slowly. Whenever feasible, marine sanctuaries should include active public outreach in order to utilize the unique character of the sanctuaries as an educational vehicle.

Mr. Chairman, thank you for the opportunity to appear before the Committees and to express our view that the sanctuary program be continued.

Senator KERRY. Thank you very much, Mr. Weddig. Mr. Benoit.

STATEMENT OF JEFF BENOIT, DIRECTOR, MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM, BOSTON, MA

Mr. BENOIT. Good morning, Senator, members of the subcommittee. My name is Jeffrey Benoit and I am director of the Massachusetts Coastal Zone Management Program. I also serve as the Commonwealth's representative to the Coastal States Organization and as one of the Governor's two appointments to the Gulf of Maine Council on the Marine Environment. And I would like to add to that, because it has been mentioned several times, my office also

administers to the National Estuarine Program and I chair two of those management conferences. So, we are trying to reach to these various programs as best we can.

I am pleased to have been able to accept your invitation to be here today on behalf of the Commonwealth in support of the reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act. You do have a prepared statement from me, so I would like to simply just highlight three points in that statement.

Senator KERRY. Without objection, everybody's full statement will be placed in the record.

Mr. BENOIT. The first point I would like to address is one that concerns a partnership between the States and NOAA, working on the sanctuary programs. We have worked very closely with NOAA since Stellwagen Bank was first nominated in 1982. More recently, we felt that we could help the designation process and to benefit ourselves if we formalized that relationship a little bit better. And we initiated a process where NOAA came back to the Commonwealth of Massachusetts and granted us cooperating agency status. And as far as I know, that is the first time a State has been granted such status working with a Federal agency.

Our contribution has included assisting with the authorship of both the draft and the final environmental impact statement and management plan, and we also worked very closely with NOAA in the public outreach and education efforts to try and improve the understanding of what a marine sanctuary is, or in some cases more importantly, what a marine sanctuary is not. And I am very pleased to hear that the Fisheries Institute benefited from some of that outreach and I am very glad to hear that.

The question comes up often, Why do we want to participate so closely with NOAA? I think foremost the reason was that we felt, and still believe very strongly, that Stellwagen Bank is a natural resource that is threatened and is critical. The protection of that resource is critical to both the environmental and economic sustainability of not only New England, but to the entire east coast. We think it plays a major role in living marine resources, and to the benefit of everyone who is on the east coast and in the New England area.

It was also abundantly clear that NOAA had very limited resources to be able to work on this designation. And because we felt so strongly that this area had to be protected, and done so in a timely fashion, we stepped up to the table and said we are willing to put our resources here along with NOAA to try and make this process go as quickly as possible. And I am convinced today that even though the sanctuary designation is slightly behind schedule, it would be in a much worse situation had not the Commonwealth of Massachusetts been there at the table with NOAA.

And then finally, we want to make we had a very active role in deciding what was happening with the management plan for the sanctuary. We, as a Commonwealth, wanted to make sure that traditional uses were protected on Stellwagen Bank. It is a very complex area, whether you are looking at fisheries or the shipping industry or whatever, and we felt that if we were going to be able to protect the interests of the Commonwealth, we again had to be there at the table.

And I think those are the three basic reasons why we stepped forward. And the question now comes up, has this partnership worked well. The answer to that is very clear, yes. We are very proud of the work that we have been able to do with NOAA. The staff at NOAA in the marine sanctuaries division has been extremely cooperative.

I think the relationship that we have fostered and the partnership that we had fostered with them, I think could be used as a model in other designation processes. We basically represented NOAA at the local level. Their desire to bring Stellwagen Bank into the community of Massachusetts could only be done through facilitation on the local level, and I think we played a very vital role in that.

Two points I would like to make now concerning some assistance that we may need from Congress in the reauthorization. One is a clarification of mandates. The more we look at a management effort like the Marine Sanctuary Program where there is cross-jurisdictional management attempts, you begin to run head on into conflicting mandates of various Federal agencies.

One that has been alluded to here today is the question of how Title III relates to activities that are included under Title I of the NPRSA. It is an issue of great importance, certainly to Massachusetts, and it is one that is being actively discussed between NOAA, EPA, and the corps. And we think this is an issue that Congress needs to really deal with and not leave it up to negotiations or MOU's. They are too weak, they are too subject to change later, and I think this is an issue that Congress needs to tackle.

And then finally, we think reauthorization also needs to clarify.

Senator KERRY. Excuse me. You are saying the MOU's are too subject to interpretation.

Mr. BENNETT. Typically, we often will see a MOU come forward that says, well we both have our own mandates, we do not agree with what you are proposing, but for purposes of trying to come to some common ground we will move forward with this particular effort. And I think there needs to be a clearer line drawn between what the various roles of the agencies are. An MOU, I think, leaves too much discretion in the process and I think there needs to be very clear direction from Congress on those jurisdictional lines.

And then the final point is a need to clarify the jurisdiction of a sanctuary over activities which may occur outside the sanctuary but influence or have an adverse effect on the sanctuary. And the way the process works now, the burden of proof of adverse effect is on the sanctuary after the incident has occurred. I think that needs to be turned around if these are areas that really are worthy of protection and critical for protection. We need to be able to turn around the burden of proof, get out in front of the curve, so to speak, and make sure that the sanctuary has oversight on activities before they cause harm or injury to those critical resources and to the quality of the sanctuary.

And I think we need to, perhaps, look at the process that the Coastal Zone Management Act used as a model. I am not saying that is the exact wording or process, but as a model, and set a framework of activities that the sanctuary should be able to have

some oversight on. And I thank you, sir, and if you have any questions I would be happy to answer them.

[The prepared statement of Mr. Benoit follows:]

PREPARED STATEMENT OF JEFFREY R. BENOIT

Mr. Chairman, and members of the Committee, my name is Jeffrey R. Benoit, Director of the Massachusetts Coastal Zone Management Program. I serve as the Commonwealth's representative to the Coastal States Organization, and one of the Governor's two appointees to the Gulf of Maine Council on the Marine Environment. I am pleased to have been able to accept your invitation to be here today to share some of our views on the Reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act.

Massachusetts Coastal Zone Management's (MCZM) involvement with the Marine Sanctuaries Program arises as a result of our working closely with the NOAA Sanctuaries and Reserves Division on the designation of Stellwagen Bank as a National Marine Sanctuary. This coordination began a decade ago, in 1982, when Stellwagen was first nominated for sanctuary designation. Since the last reauthorization of Title III, when Senator Kerry took the all-important step of convincing Congress to direct NOAA to actively consider Stellwagen Bank for sanctuary designation, the Massachusetts Coastal Zone Management Office has played a significant role in almost all aspects involved with advancing the nomination through NOAA's administrative review process. Our role was greatly expanded when we were designated, by NOAA as a "cooperating agency", the first time any state agency has been so designated in the history of the Sanctuaries Program. This afforded us the opportunity to become more of a full partner with NOAA in the sanctuary designation process. Our contribution included assisting in the development, as co-author, of the Draft and Final Environmental Impact Statements and Management Plans for the proposed sanctuary, and playing a major role in providing the public the ample opportunity to learn about the proposed Sanctuary and about how to participate in the designation process. Largely in response to the efforts of the Stellwagen Bank Coalition, representing over 100 potential sanctuary user groups including commercial and recreational fishermen, environmental groups and institutions, scientists and other representatives of the research community, and local business leaders, the citizen participation in the review of the Stellwagen Sanctuary nomination has been overwhelming. Our experiences and insights acquired as a result of our close coordination with NOAA on the Stellwagen Bank designation have allowed us to observe, first hand, some of the strengths, and a few weaknesses, of Title III and its implementation by NOAA. I also believe that the partnership developed between NOAA and the MCZM Office could serve as a model for other sanctuary designations.

From the outset, I would like to clearly say that we are more than pleased with our coordination with the Sanctuaries and Reserves Division (SARD) of the NOAA Office of Ocean and Coastal Resource Management. The SARD personnel with which we have worked have been highly trained, dedicated professionals. We have never felt that NOAA viewed our participation as anything but essential, nor have we ever sensed that the views we expressed were given something less than due consideration. I look forward with great anticipation to our continued coordination in the implementation of the Stellwagen Sanctuary.

The Sanctuary program has evolved rather substantially over the period since it was originally approved by Congress in 1972. This accelerated rate of change has been particularly evident the last few reauthorizations of the MPRSA which involved a number of sweeping programmatic changes. Over the years, the focus of the program seems to have shifted from setting aside areas as preserves, allowing existing uses to be permitted to facilitating existing uses "compatible with the primary objective of resource management." The current thrust, as embodied both by the 1991 report to NOAA from the Marine Sanctuaries Review Team and by H.R. 4310, seems to be to maintain "special management area" approach, but to insure that representative areas in all biogeographic regions are included in the program.

We strongly endorse the Marine Sanctuaries Review Team recommendation of having a clear articulation, by either Congress or NOAA, of the vision and mission of the program. In this regard, we would recommend that the existing management-centered approach be maintained in instances where it is appropriate, but see flexibility as a necessary element in order to be able to protect areas by virtue of their relative national or international significance rather than simply on the basis of geography. It would indeed be regrettable if NOAA would have been compelled to reject sanctuary designation for the important live bottom reef communities of Gray's Reef because the MONITOR sanctuary had already filled the regional "quota".

While "comprehensive and coordinated conservation and management" should continue to be one of the principal purposes of the program, we are concerned that the focus of this "management" framework should not simply be another set of federal regulations governing offshore areas. The current process calls for sanctuary regulations which "complement existing authorities". However, making the determination of whether any sanctuary-specific regulation is necessary to protect the resources and qualities of a sanctuary is a very difficult, and sometimes highly contentious, process. The Sanctuary Program must be empowered to regulate when it is necessary to insure the resources and qualities of the Sanctuary are preserved. However, NOAA should be encouraged to employ nonregulatory management strategies whenever possible, in our concept of "comprehensive and coordinated conservation and management"; the principal role of the sanctuary in the overall regulatory framework for these offshore areas should be to only regulate those activities where no other regulation is currently in place, or where existing regulation is not structured to allow the resources and qualities of a sanctuary to be adequately protected. Where existing laws are in place, the sanctuaries should attempt, to the maximum extent possible, to work within the existing regulatory process to achieve its mandated management objective. NOAA must also aggressively pursue agreements with these regulatory agencies to insure that the management policies of the sanctuary are given due consideration in regulatory decisionmaking. While this "networking" approach is by far a more difficult path to follow than simply opting for direct regulation, it is usually more effective in the long run in implementing management policies. As a so-called "networked" coastal program, our Office has been, we believe, highly successful at providing effective coastal management through actively involving ourselves in the existing federal and state regulatory programs, providing comment and encouragement when appropriate * * * management through participation. We would encourage NOB to seriously consider this "networking" model for the Sanctuaries Program, as we believe it would be most appropriate for sanctuary management, and much more in keeping with the spirit of Title III.

One of the central features of a networked management program is its reliance on coordination as an integral and necessary tool for program implementation. Our experience has been very positive in coordinating with the NOAA Sanctuaries and Reserves Division (SARD). The SARD personnel have been most receptive to our recommendations, and appreciative of our contribution to manpower and expertise to the designation process. Having the best inter-agency coordination possible, however, is no replacement for adequate funding. The insufficient funding of the program over the last two decades has clearly been a major, if not the major reason for only seven sanctuaries having been designated since the inception of the program. Although we add our voice to the chorus of those asking Congress to fund this program at levels which will help to insure its ultimate success, it is essential that these additional funds not be simply shifted from other programs administered by NOAA's Office of Ocean and Coastal Resource Management. State coastal zone management programs, already working with very limited resources, cannot afford any further budget cutbacks. Nor should the National Estuarine Research Reserve System, which supports the conduct of vital research on man's impact on the coastal zone, be required to scale back their efforts as a result of this enhanced funding for the Sanctuary Program. While some federal program will almost certainly have to be cut to increase funding to the Sanctuary Program, coastal and ocean management programs are too important, and have too limited resources already, to be required to bear that burden.

NOAA should not hesitate to take full advantage of benefits accrued from close coordination with state agencies, particularly state coastal programs, who offer to lend a hand in the designation process. NOAA directly benefits from the state participation in gaining invaluable local knowledge of the area, links to user groups and interested citizens, and extra manpower to assist in the designation process. The state will benefit enormously from this active participation by insuring that the sanctuary, if ultimately designated, is consistent with the state coastal and ocean management policies, and generally in the interest of its citizens. We have willingly made this investment of our time and effort, and are more than satisfied, thus far, with the return on that investment. We suggest that the Congress, in its deliberations over the reauthorization of Title III, consider formalizing this linkage with the relevant state coastal management programs, clarifying the appropriate level of cooperation between state coastal and ocean management programs and national marine sanctuaries, both in the development sanctuary management plans, and ultimately in the administration of designated sites.

While our coordination with NOAA has been very satisfactory, we have observed some problems with NOAA's attempts to coordinate with other federal agencies, problems that we also frequently experience as an agency with a "coordinating"

mandate. Some of the difficulty can be attributed to inherent problem with achieving effective communication between and among large and complex bureaucracies. However, most of the problem relates to conflicts of agency mandates. Problems are bound to arise when one agency attempts to exercise its mandate to coordinate the activities of another agency, which is involved in what it believes is the successful implementation of its mission and mandate. Such conflicts are expected in the establishment of cross-jurisdictional management programs. However, much of the heat generated through the development of a jurisdictional conflict in the reauthorization, we see a solution through interagency negotiation or litigation taking an unacceptably long period of time. If Congress acts to establish such cross-jurisdictional, "coordinating" programs, it must empower those programs with an appropriate mandate to avoid such conflicts, with the clear expectation that the program will be administered with appropriate restraint and care.

Likewise, specific attention should be paid, in the reauthorization of Title III, to clarifying the jurisdiction of a sanctuary over activities which may occur outside the designated boundaries, but likely to adversely affect sanctuary resources or qualities. While the regulations being promulgated for sanctuaries currently under review make some attempt to address this situation, these provisions are subject to legal challenge. As it stands, sanctuaries are required to clearly show that the discharge has entered the sanctuary and injured sanctuary resources or qualities, too late to avoid the actual environmental degradation. Some provision must be made to allow the Sanctuary to exert some influence over proposed discharges with the potential to adversely affect a sanctuary, where the discharger must bear the burden of proof that the discharge will not enter the sanctuary and harm sanctuary resources or qualities. The Coastal Zone Management Act, as reauthorized in 1990, provides what we feel is a good model of how to effectively address activities outside the boundary of the coastal zone, and should be studied for possible application in Title III. In any case, a clear, definitive statement by Congress on the appropriate sanctuary jurisdiction is needed here.

Clearly, the National Marine Sanctuaries Program has come a long way in two decades. From this state's perspective, we are pleased with how it has evolved thus far, and look forward to strengthening the links between coastal management and management of the sanctuaries. We urge the Congress to reauthorize Title III of the Marine Protection, Research and Sanctuaries Act, and to lend its full support to its effective implementation.

Senator KERRY. Thank you. That is interesting testimony. I particularly appreciate the good work you have done on the designation process for Stellwagen. Thank you for being with us today. And finally, Mr. Sobel.

STATEMENT OF JACK SOBEL, DIRECTOR OF PROTECTED RESOURCES, CENTER FOR MARINE CONSERVATION, WASHINGTON, DC

Mr. SOBEL. Good morning. I am Jack Sobel and I am the director of the Center for Marine Conservation, Habitat Conservation Program. The Center for Marine Conservation appreciates this opportunity to provide testimony regarding the implementation and reauthorization of the sanctuary program. CMC is a 100,000-member nonprofit organization dedicated to maintaining the diversity and integrity of our Nation's oceans.

For more than a decade CMC has been a proponent of conserving the Nation's most outstanding marine areas through the sanctuary program. The center has provided leadership and support to both national and local efforts to strengthen the program and establish new sanctuaries. CMC strongly supports efforts to reauthorize this important piece of legislation.

I am particularly pleased to have the opportunity to testify today on this issue. Four years ago I arrived in Washington as a sea grant fellow and was assigned to this committee as a staff person to work for the National Ocean Policy Study. At that time I had never heard of the National Marine Sanctuary Program. I think

that was probably true of most Americans at the time, although I believe that is changing. Nonetheless, I worked on the reauthorization and during that year I learned much about the sanctuary program. I was amazed and excited at the tremendous potential of this tiny program to protect our special marine areas.

At the conclusion of my fellowship I took my current position, and have spent the last 4 years working on sanctuary issues. I have seen great changes in the program during that time. In particular, I have seen public awareness, interest, and support for the program grow rapidly. I have testified at public hearings and seen large supportive crowds turn out to express their support for the protection of these areas. Thousands of people have taken the time to comment favorably on the designations of Stellwagen Bank, Monterey Bay, the Florida Keys, and the Washington Outer Coast. Hundreds of people have attended conferences to learn more about these areas.

I also served on the external sanctuary review panel, which included not only conservationists but representatives from the oil, fishing, and diving industries, State and foreign governments, scientists, educators, and others. That panel correctly recognized the program's accomplishments, its tremendous potential, and the need to provide the resources essential to fulfilling that potential. One of its recommendations was that funding for this program needed to be increased to a level of around \$30 million.

Most exciting of all, I have had the opportunity to visit 5 of the 10 existing sanctuaries, and all 5 of those slated for designation. For example, I have had the opportunity to go out on Stellwagen Bank and see 60 whales in a single afternoon, representing 5 different species. These places are special and of national significance. No other country can match the diversity of our marine wonders. We have a responsibility to conserve them for present and future generations. The sanctuary program offers a vehicle to do so.

Yet a myriad of destructive activities threaten these special places. For example at Stellwagen, sand and gravel mining, contaminated dredge spoils, and a huge sewage outfall threaten the resources. It is interesting for me to hear from all the panel members that they support the protection of the resources through the sanctuary program. This is encouraging, but it is less encouraging that none of them want to see their activities regulated within a sanctuary.

With regard to the comments on Monterey Bay, it is clear that the public has not been convinced that oil and gas activities do not represent a threat to those resources, nor have local scientists, nor have many people within NOAA and the sanctuary program. Yet such activities are still being considered within that area. We oppose oil and gas activities in that sanctuary.

With regard to fishing activities, we also recognize that they are or can be a compatible activity in sanctuaries. However, we also recognize that such activities can threaten sanctuary resources, at least in some sanctuaries, and need to be considered for possible regulation within sanctuaries.

Four years ago when Congress last reauthorized the National Marine Sanctuary Program, the program was hurting. Despite extraordinary efforts by people both within and outside the program,

it was reeling from inadequate funding and a lack of administration support. It seems as though support within the administration is increasing, but funding is still very short.

The unprecedented public support that has developed, combined with the program's twentieth anniversary and this year's reauthorization, provide a tremendous opportunity to take this program to a new level. Twenty years after its inception the stage is set for the program to live up to its potential and safeguard America's most spectacular marine areas. Enactment of a strong reauthorization bill this year, and adequate funding, are critical to this program if it is to reach these new heights.

As laid out in my written testimony, reauthorization should provide increased authorization to the level of \$30 million by no later than fiscal year 1996. I also echo many of Jeff Benoit's remarks regarding ensuring interagency cooperation so that Federal agencies are not working at cross-purposes and that their actions do not destroy sanctuary resources, and a clarification of regulatory authority to address all threats to sanctuary resources.

The 20th anniversary and reauthorization year mark a pivotal time for the program. Public expectations have been raised and the program stands poised to finally reach its potential. The window of opportunity that exists for raising this program to a new level is exciting, and we cannot afford to squander it. We encourage the committee to expeditiously proceed with reauthorization and strengthening of this valuable program. Thank you for the opportunity to comment, and I will be happy to answer any questions.

[The prepared statement of Mr. Sobel follows:]

PREPARED STATEMENT OF JACK A. SOBEL

The Center for Marine Conservation (CMC) appreciates this opportunity to provide testimony regarding reauthorization and improvement of Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA) which authorizes the National Marine Sanctuary Program (NMSP). CMC is a national, 100,000 member, public non-profit organization dedicated to maintaining the health and diversity of marine life through policy-oriented research, public education, citizen involvement, and responsible advocacy. For more than a decade, CMC has been a proponent of conserving this nation's most outstanding marine areas through the NMSP. The Center has provided leadership to both national and local efforts to strengthen the NMSP and establish new sanctuaries. CMC strongly supports efforts to reauthorize and improve this vital program.

CMC takes pride in its involvement in the National Marine Sanctuary Program and has been active on many counts. We have worked on sanctuary issues for over ten years and were involved in efforts to create seven of the ten existing sanctuaries. Currently, we are concentrating our efforts on developing strong sanctuaries for Stellwagen Bank, the Florida Keys, Monterey Bay, and Washington's Outer Coast and Northern Puget Sound. At the same time, we are working to strengthen the program at the national level and secure the funding necessary for the NMSP to fulfill its mandate.

The Center wholeheartedly supports the objectives of the NMSP and the designation, development and implementation of marine sanctuaries with the strongest possible protection. The NMSP now stands at a threshold. The opportunity exists to transform this program from a good small program to a powerful tool for protecting our nation's special marine areas. The NMSP could become a showcase program, providing strong, comprehensive protection of our nation's most beautiful and valuable marine resources and conserving them for future generations.

As it approaches its twentieth anniversary, the NMSP stands poised to make that transition. The increasing public support and awareness of the need to protect this nation's spectacular marine areas, combined with this program's potential for providing such protection, sets the stage for the creation of a strong program capable of protecting our nation's most special ocean areas.

NMSF POTENTIAL, ACCOMPLISHMENTS, AND OPPORTUNITY

Twenty years ago when Congress first authorized the NMSF, it created a tremendous program with nearly unlimited potential for conserving America's outstanding marine resources. During its first twenty years, the NMSF has achieved considerable success despite limited financial resources and variable levels of Administration support; but has not yet fulfilled its mandate and lived up to its enormous potential. CMC remains committed to seeing the program reach that potential and believes that there is now an unprecedented opportunity to make it happen.

Four years ago when Congress last reauthorized the NMSF, the program was nearly moribund. Despite some extraordinary efforts by people both within and outside the program to keep it alive, it was reeling from years of inadequate funding and a lack of Administration support. The strong reauthorization legislation enacted in 1988 to address this situation has been remarkably successful. The 1988 Amendments and Authorization have had the intended impact of reviving and reinvigorating the program. The Florida Keys National Marine Sanctuary and Protection Act has provided a further stimulus. Especially noteworthy is the degree of public interest, involvement, and support that has surfaced for each of the sites currently under development.

This unprecedented public support and interest in the NMSF combined with the program's 20th Anniversary and this year's Reauthorization provide a tremendous opportunity to take the program to a new level. Twenty years after its inception, the stage is set for this program to finally fulfill its mandate and live up to its potential to provide comprehensive protection and safeguard America's most spectacular marine areas. The large, active and supportive public turnout around the country for public hearings on prospective sanctuaries offers ample evidence that the American public, increasingly aware of our marine heritage and the need to protect it, is ready to raise the level of stewardship provided by the sanctuary program.

The NMSF stands at a threshold. There is a window of opportunity to transform this program from a good small program to a strong powerful tool for protecting our nation's most special marine areas. There is a great opportunity to develop a showcase program, one with beautiful and valuable resources and the strong, comprehensive protection that ensures these special parts of our marine heritage will be conserved for future generations. Leadership, commitment, imagination, ingenuity, and adequate funding must be provided by both Congress and the Administration for this transformation to take place.

Enactment of a strong reauthorization bill this year and adequate funding are critical for the program to reach this new level. A strong reauthorization that reflects the program's potential is essential. We are encouraged that bills already introduced in the House by two key subcommittee chairmen include many positive aspects. Elements contained in those bills provide a good start towards crafting the kind of reauthorization legislation necessary to take this program to new heights. We hope to see expeditious enactment of legislation to reauthorize and improve this important program.

IMPACT OF THE 1988 REAUTHORIZATION

The 1988 Amendments and Reauthorization of the MPRSA have had the intended effect of reviving and reinvigorating the NMSF, despite the fact that many of the deadlines set in the 1988 amendments, have not been met. Although progress on site designations mandated in 1988 has been excruciatingly and inexcusably slow at times, the amendments did jump-start the process and substantial, if tardy, progress has been made on each of the sites. Especially noteworthy is the degree of public interest, involvement, and support that has surfaced for each of the sites under development. Never before has the designation of sites as sanctuaries generated this much public interest.

At the same time, the flurry of activity and support generated by the proposed sanctuary designations, (as evidenced by the large turnout at workshops and hearings in Florida, New England, Washington State, Hawaii, and California), has raised expectations and strained sanctuary resources. For Stellwagen Bank alone, sanctuary program staff had to respond to over 2,000 written comments on the Draft Environmental Impact Statement. This strain on the administration of the NMSF has been exacerbated by limited funding and conflict within the Administration over the degree of protection needed for proposed sites. In particular, limited program funding, although substantially increased since FY '90, has led to competition for scarce resources among both existing sites and those under development. With this in mind, CMC supports the trend reinforced by the 1988 reauthorization of annually increasing funding levels for the Program.

CHALLENGES AND OPPORTUNITY: NMSP REVIEW PANEL RECOMMENDATIONS

Last year, to its credit, NOAA assembled a broad-based external review panel representing many interests to assess the status of the NMSP and make recommendations for strengthening it. The title of the report compiled by the panel, *National Marine Sanctuaries: Challenge and Opportunity*, accurately reflects the current status of the program. The report also contains a number of recommendations which if properly implemented could go a long way to strengthening the NMSP. I served on that review panel and CMC strongly supports many of the recommendations contained within it, especially those relating to funding.

FUNDING: AUTHORIZATION AND APPROPRIATIONS

Since its inception, the NMSP has been severely handicapped by inadequate funding. Insufficient funding levels remain one of the most critical issues affecting this program. When originally established in 1972, the program was authorized at \$10,000,000 for each of its first four years. This initial authorized funding level was probably in keeping with the program's important mandate and consistent with the costs of properly implementing a small program with a limited number of sites. However, in its twenty year history appropriations have never even approached this modest level.

In recent years, appropriations for the NMSP have increased. The President's recent budget request of \$7.3 million for FY '93 provides hope that twenty years after its creation appropriations may finally reach the level envisioned for the nascent NMSP in 1972. However, even if the \$10 million level is finally achieved, funding will remain inadequate for the program due to its expanded size and responsibilities. With ten sites already designated and three more likely within a year, \$10 million is the minimum that should be appropriated for FY '93 and \$15 million is closer to what the program actually needs if it is to begin living up to its incredible potential.

The funding levels set out in H.R. 4310 of \$28-32 million are a realistic estimate of what the program needs to operate. They are consistent with the NMSP External Review Panel's \$30 million recommendation and estimates from within the NMSP on its real needs, and may even be conservative figures. While an immediate increase in funding to the \$30 million mark might be difficult, it is a very reasonable and essential target to aim for by the end of the next four year authorization cycle. Therefore, CMC recommends that authorization levels be increased stepwise to reach the \$30 million mark no later than FY '96. Also, the four year cycle should be retained as it provides for a reasonable review period which is extremely important for an evolving program such as the NMSP.

SANCTUARY DESIGNATION PROCESS

Though we have been highly critical of unnecessary delays and the extended length of time required to get some sites designated (over 10 years for Flower Garden Banks), we do not believe these were the result of problems inherent to the sanctuary designation process. Rather, they were the result of a lack of commitment to resource protection by elements within the Administration in the past and limited funding and staff resources. We remain supportive of the administrative designation process, recognizing that it might need some finetuning. Primarily, the sanctuary program needs support from the Administration and a willingness to eliminate unnecessary bureaucratic delays and unreasonable federal agency demands regarding activities within sanctuaries.

Provided that Administration support is forthcoming, the current designation process is the preferred method of designating sanctuaries. One strong advantage to the process is that it provides an opportunity to educate, involve, and receive comments from the general public. Public support is ultimately needed to make the sanctuary successful. Although not always fully utilized, the current process also provides an opportunity to employ NOAA's considerable scientific and technical expertise in site designation.

A final point on the designation process, we agree with the Review Team's recommendation that adequate funds must be made available for the designation of new sites so that the cost of designating them does not compete with funding for existing sites.

FINDINGS, PURPOSES AND POLICIES

CMC strongly supports language like that contained in Sec. 102(c)(8) of H.R. 4310 to the purposes and policy section of the Act. Although we believe that the added purpose "to maintain and restore the natural diversity of living resources by provid-

ing places of refuge for species that depend upon these areas to survive and propagate themselves" is already implied in the Act we believe that it is so fundamental to the program that it should be explicitly stated. Furthermore, we would add to it "and areas maintained in a natural state with minimal human disturbance to act as stable reference points for scientific research and human appreciation."

We would also add to the findings section language included in the Florida Keys Sanctuary and Protection Act that states "The agencies of the United States must cooperate fully to achieve the necessary protection of sanctuary resources" be added to any future Senate NMSA reauthorization bill.

INTERAGENCY COOPERATION

Furthermore, we are very supportive of the language included in H.R. 4409 regarding "Interagency Cooperation". Such language would help ensure that federal agencies are not working at cross purposes and that actions by other agencies don't adversely impact sanctuary resources.

PROHIBITED ACTIVITIES

CMC supports the language contained in both H.R. 4310 and 4409 which prohibits destruction of sanctuary resources and other activities that hinder enforcement of sanctuary regulations. Such activities should clearly be outlawed.

FIVE-YEAR REVIEW OF MANAGEMENT PLANS

Although language exists in NOAA's own administrative regulations to review management plans every five years, this has not been done regularly and it seems worth giving legislative direction to do so. Since both the marine environment and activities affecting it are constantly changing, it is important that the plans be reviewed and adapted to changing circumstances if they are to provide proper management. The Australian Great Barrier Reef Marine Park reviews and revises its plans every five years.

CLARIFICATION OF REGULATORY AUTHORITY

During the reauthorization process, consideration should be given to clarifying or strengthening the program's authority to address extraterritorial threats to sanctuary resources, (including activities affecting water quality), and to regulate existing valid leases and permits as may be necessary to protect sanctuary resources. Discharges of sewage effluent, dredge spoil disposal, and other activities occurring outside sanctuary boundaries that have the potential to damage sanctuary resources should be reviewed by NOAA prior to permitting any such activity. As the agency that has the resource protection mandate, it is imperative that NOAA have subsequent authority to carry out this mandate. This includes authority over other, federally permitted activities.

VISITORS' AND INTERPRETIVE CENTERS

A glaring weakness within the sanctuary program is the lack of adequate visitor, interpretive, and research facilities at most if not all of the designated sanctuaries. Almost all sanctuary offices piggy-back on existing federal or state buildings and visitor centers. For example, Channel Islands, perhaps the most developed sanctuary in the system, relies on the National Park Service Visitor center and a privately run Sea Center to display sanctuary information. The lack of visible NOAA facilities has hampered the MSP's efforts to establish an identity and carry out its mission with respect to public education, interpretation, outreach, and research activities. During deliberations on the reauthorization consideration should be given regarding the establishment of such facilities.

CONCLUSION

This 20th anniversary and reauthorization year mark a pivotal time for the sanctuary program. Public expectations have been raised and the program stands poised to reach its potential. The window of opportunity that exists for raising this program to a new level is exciting and we can not afford to squander it. We encourage the Committee to expeditiously proceed with reauthorizing and improving this valuable program.

Thank you for the opportunity to express our views and I'd be happy to answer any question you might have.

Senator KERRY. Thank you very much, Mr. Sobel. I appreciate it and welcome back. Listening to all of your testimonies, you all support the program. But you have in your own ways each sort of articulated, and this is why you are here today, the tensions that exist in terms of management and enforcement. I would like to see if we can kind of explore that here to understand better what the possibilities are.

Now, Mr. Sobel, at the end you say that we need to clarify and strengthen the authority to address outside threats; correct?

Mr. SOBEL. Yes. And my understanding is that NOAA has in the past considered that they have such authority. But there is some degree of legal question as to whether that is true, and I do not think that that is something that should be left up to a lawsuit to determine.

Senator KERRY. So, your feeling is there needs to be some clarification. Mr. Benoit, in his testimony, says that the sanctuary program has to be empowered to regulate when it is necessary, to ensure that the resources and the quality of the sanctuary are preserved.

Mr. Johnson and Mr. DuBose have both articulated the tension that exists, and we have tension with respect to dredging that you mentioned specifically in Washington, and obvious pipeline oil, gas, whatever, tensions. Now let us sort of see if we can have a moment of dialog here as to how you resolve those.

Mr. Johnson, you say that title III should not be allowed to give NOAA substantial authority over dredged material management; correct?

Mr. JOHNSON. That is correct.

Senator KERRY. Mr. Sobel, you state the direct opposite. It is ironic, you guys are sort of at opposite ends of the table, but now how do we reconcile that? What happens if on its face there is a judgment that dropping dredged material badly in some place, or the wrong kind of material, is not going to have an adverse effect on the sanctuary. I mean who is going to decide that?

Mr. JOHNSON. That is an excellent question, Mr. Chairman. I think that our testimony was primarily saying that where we have adequate, existing, in-place dredged material management regulatory mechanisms, which we do in Washington State, that those are the mechanisms that we need to use.

Senator KERRY. Because all the players are onboard.

Mr. JOHNSON. We are not interested at all in having any type of environmentally damaged dredged material—

Senator KERRY. What if there is a judgment that if all the local players have worked it out, it may not meet the national standard?

Mr. JOHNSON. Well I think what we are getting at is the national standard articulated by whom. Whether it is articulated—I mean right now what we have is a national standard that has been articulated by the corps and by EPA, really, in Washington, with the complete concurrence of the National Marine Fisheries Service and U.S. Fish and Wildlife Service, and I believe NOAA and the other Federal agencies. They all sat at the table and nodded and said "Yes." I mean this is how we are going to do business in Puget Sound for dredged material disposal.

And then we have seen this subsequent sanctuary proposal come in and overlap four or five of those disposal sites. And we have asked the question "Well, does this mean that the existing mechanism for those sites is going to be overrun, or is it going to be the existing management framework?"

Senator KERRY. Who do you think should decide that?

Mr. JOHNSON. Well, we think that things are going very well right now. I know things are going very well with our existing program of corps/EPA lead, with the appropriate resource agencies, State and Federal, such as NMFS and NOAA and Fish and Wildlife Service, in an advisory capacity. The other interested user groups, as with the ports have been sitting at the table, the environmental groups the tribes.

Senator KERRY. What if you do not have a region that has gotten together?

Mr. JOHNSON. If there is a clear need in a regional perspective for dredged material management in a different area, I think that the sanctuary program may be able to bring some of the players together. But I think we need to be careful that we really listen carefully to the EPA and the corps as we go forward with that.

Senator KERRY. Who should be the arbiter? Who is sort of sitting at the table that makes things happen and makes a decision that they are not going smoothly?

Mr. JOHNSON. Well if things turn out not to be going smoothly, I assume that is the role of the Congress, to step in and say in these instances we believe that—

Senator KERRY. But that really does not work. I mean the problem is that if Congress has declared its intent, which you have said you support, to have sanctuaries, the Congress has spoken. They want a sanctuary. The Congress has spoken and said there are specific areas that are threatened because people are not getting together. So, this entity that has been created which some people think needs more enforcement authority not less, because not everybody has worked out the sufficient scheme as you have in Washington, and so you have got to have somebody that is going to have cloture here, do you not agree? And does anybody else want to jump in on this, or comment?

Mr. SOBEL. First, I would say if you do not have a sanctuary in place, then it might be appropriate to have it up to EPA and the Army Corps to protect material resources from dumping. Although some people may even question whether EPA and the Army Corps are looking after the resources, in that situation, that is to some extent their mission.

In a marine sanctuary, though, the whole idea behind it is that you have determined that this area needs a special level of protection. Now that does not always mean that if, in the case of Washington State for example, there is an existing system there that is providing adequate protection for these special resources, there is a need to put additional regulatory burden on top of it.

Senator KERRY. Should we articulate that somehow in the process more clearly?

Mr. SOBEL. I think that that portion is articulated well. It says within the act that you will not need to put additional regulation in place for those activities that are already properly regulated.

However, I think that NOAA has to have the power to make the judgment as to whether the resources that they are responsible for protecting are being adequately protected by existing regulations, in this case regarding dredge spoil dumping. If they do not have that authority, they can try to cooperate with other agencies to get them to do the right thing, but they are not going to be able to make it happen.

And there are two clear examples, one of them in your home State, with the dredge spoil site outside of Stellwagen and an even bigger problem right now in the Monterey Bay area with an even larger dredge spoil disposal site that has been proposed to go inside of the marine sanctuary.

Clearly, locating such a dumpsite inside a sanctuary is inappropriate and it may well be inappropriate, as in the case of Stellwagen, for it to go adjacent to the sanctuary where dumped material is going to enter and damage resources. NOAA needs to have the authority to be able to make the decision on activities within the sanctuary and activities outside of the sanctuary where they are going to impact on those resources.

Senator KERRY. Is there any counter comment? Do you agree with that, Mr. Weddig?

Mr. WEDDIG. Basically, I think I do. The way that the resources are being protected and managed at this point and habitat being protected does involve NOAA. In reviewing many of the permits and many of the other activities, we have been concerned that in the past some of this review process has not been either adequate, through lack of resources or that NOAA has had the necessary horsepower to put its views in place, overtaking some of the decisions of other agencies. This was pretty well spelled out at a habitat conference we had last year.

The point then goes back to what I was trying to say before. Using the sanctuary designation as a way of making sure that the purpose of protecting the resources and the habitat is being fulfilled, really should be exceptional, because the normal process should provide this in most cases. That is why we are saying the sanctuary concept should only be used in very rare occasions and in situations where all else is not working.

And in those cases, I think if it is spelled out in the designation of sanctuary, NOAA should have the authority as has been described here.

Senator KERRY. Now, in your experience, I mean, you represent a lot of fisher folks who have real concerns about the unnecessary restriction or the potential for that. How well would you say the fishing interests and marine interests have coexisted in the existing sanctuaries?

Mr. WEDDIG. At this point, we have not seen any conflict that we are willing to support.

Senator KERRY. Have the fishery management councils developed adequate strategies to protect the resources in the sanctuaries; do you think?

Mr. WEDDIG. I do not know enough details about that, Senator, to say either yes or no. I think that since the fishery management councils have the specific responsibility of managing and conserving the resources in their areas that they should be able to do this

whether or not a sanctuary is present. The designation of a sanctuary should really help them in most cases.

Senator KERRY. Mr. Benoit, in your testimony, you hit hard on this whole issue that we were just talking about, about the question raised in Washington about an existing format versus the NOAA power. And you say that if existing laws are in place, obviously the sanctuary ought to work within the existing regulatory process. Have you found that it does not? Are you saying that you do not think the current law the way it is phrased requires that? Because it is my understanding that it basically does, that that is what is—

Mr. BENOIT. I think I was referring to the latter part of the testimony, referring to the question of how you control activities that are outside the sanctuary that might affect the sanctuary.

Senator KERRY. So, you are referring specifically to what Mr. Sobel was about say, sludge dumping or something in the near vicinity?

Mr. BENOIT. Well, there is a little overlap there. Part of the problem is that the only enforcement powers the sanctuary really has when you look at Title III occurs after the injury has already taken place. And what we are suggesting is—

Senator KERRY. To have something to prevent it from happening in the first place.

Mr. BENOIT. We need something to prevent it from happening. The question about these conflicts over computing uses and problems of one agency having superseding authority over another overlaps that a little bit and that is where we are suggesting that there has to be a real clear or perhaps a clearer delineation of what the mandates are.

And I think the situation we really have here is that—

Senator KERRY. Clear delineation of the mandates between NOAA and each of the groups it impacts?

Mr. BENOIT. I believe you.

Senator KERRY. Or coregulatory agencies. I mean, how do you break that down?

Mr. BENOIT. Perhaps the best way to do that is by example and again, going back to the situation that we have, looking at dredge material at a disposal site, which is already established, historically used, and then the sanctuary designation comes along and there's no way of really addressing that. There is no clear decision of whose authority supersedes whom in this whole process.

And I think what we would like to see perhaps is some indication of the compatibility of these kinds of uses. And perhaps we are suggesting that this should be a clear statement, that either they are compatible or not compatible and then what do you do if you already have a sanctuary that includes one of those areas. And we just seem to be stumbling over that. And I think that is one of the reasons why we are seeing a delay in the actual designation of Stellwagen.

Senator KERRY. Now, let me ask Mr. Johnson, who is counter opposed to that. You are not suggesting, are you, that there should be no review by NOAA?

Mr. JOHNSON. Not at all.

Senator KERRY. So, you are not going the full distance the other way?

Mr. JOHNSON. Not at all.

Senator KERRY. You are suggesting the review ought to be sensitive to the existing regimen?

Mr. JOHNSON. Exactly.

Senator KERRY. And you feel it is not today?

Mr. JOHNSON. Basically we are asking the question that is before us now; that it is not clear in these areas how exactly the institutional arrangements between agencies such as NOAA and EPA are going to work.

And in Puget Sound, I cannot tell you that it has not been sensitive, because we are in the early stages of the study process and we are still sort of discussing these issues. There has not been any statement in our region for example, that no, we are not going to have these sites in the sanctuary. That has not happened. We are still early in the process.

I believe that this issue will probably be dealt with in some of the other sanctuaries before it gets dealt with in the Northwest, I think in Stellwagen Banks and perhaps in Monterey Bay.

Senator KERRY. Then, most of you are focused on the designation process. I mean you are focused on the question of enforcement once designated. That is really what you are focused on. Once you have a designated area, how do you adequately enforce and meet the interest within the region? What about the process by which we reach a designation? Any comments on that?

Mr. DUBOSE. That is more our concern. Once the sanctuary is there in place and the activities that are going to be permitted or not permitted, those decisions made, the questions for most of us, including even dredging, have been answered. With the designation process you have to consider what other agencies are involved, what other laws Congress has passed for regulation of those national resources, have to be part of the mix.

Senator KERRY. Can you be more explicit?

Mr. DUBOSE. Well, from my own parochial perspective, of course, off shore oil and gas, we are talking about federally owned resources just like the fish that the commercial fisherman would harvest in Federal waters, are regulated by other agencies within the executive branch as well as by laws that Congress has passed, such as the OCS Lands Act, for example.

To give NOAA, from what it sounds like I may be hearing from the other end of the table, complete authority over that I do not think will work realistically, no matter what the language is in the statute. The executive branch ultimately will speak with one voice. Now obviously, there are turf battles, there are differences of opinion between agencies, and there are different statutes that they all have to respond to. But I do not see how, realistically, saying that NOAA would have complete jurisdiction over this area is going to work.

Senator Graham brought up the issues of wastewater and runoff, some of the major things that could be hurting the Florida Keys. NOAA is going to have a tough time going 6 or 20 miles inland despite the Coastal Zone Management Act amendments from the last Congress to really address some of these issues in a realistic fash-

ion. While the ideal is a nice one, I think in reality it is a pretty tough road.

Senator KERRY. You mentioned the Flowers Garden Banks example. How can you encourage that kind of cooperation, do you think?

Mr. DUBOSE. That is a tough one. We, as an organization, got right into the middle of it. We set up meetings between NOAA and MMS to get those agencies talking, quite frankly. And the administrative agencies are not unlike any other organization, including this one. Personnel changes are constant. Different philosophies, different administrations come in. It is going to be an ongoing educational process. But I think the structure of the process as well as the interagency coordination is probably as best as is going to be achieved on there.

You are going to have OMB, of course, and the people up at the White House play in these things, so everything here is political at one level or the other. You are just not going to remove that.

Senator KERRY. I made a note here, Mr. Weddig, when you were talking. I want to make sure I understand. You said something about the designation ought to be special and discrete. Is that correct?

Mr. WEDDIG. Correct.

Senator KERRY. Can you describe more what you mean by that?

Mr. WEDDIG. Well, the term "discrete" I am using here to mean relatively small. And I think our—

Senator KERRY. In order to minimize the impact on fishing area.

Mr. WEDDIG. Not necessarily. It goes back to the basic thrust is that the laws and programs that are in place for all of these activities should work to protect the resources. That is the whole concept of it, that we have compatible use.

Senator KERRY. But you said earlier you thought compatible uses existed in marine sanctuaries.

Mr. WEDDIG. I said earlier that the method and the investment of resources by NOAA to fulfill its part of this bargain, which is to review what's happening with the other permitting processes, whether it be dredging or offshore development, all of these things we feel have not been fulfilled to that extent that they should be.

But assuming that—I would frankly give that function greater importance than sanctuary designation—to make sure that that review process and the permits are in fulfillment with their intents are done properly and thoroughly. I think that is more important because it is covering everything rather than a sanctuary program, which I think should be very special in particular areas where you need to have a particular oversight and a particular coordination that is not present throughout the coast.

But our entire coastline is important to us. And the resources all over are important. They should be managed carefully.

Senator KERRY. How do all feel about the funding this year?

Mr. BENOIT. I think I can speak from the Commonwealth's position, that we would support, obviously support the need for additional funds into the program. I do not have a particular dollar amount, but we do know that what they have now is not adequate.

I would have one caution on that and that is that, being a manager of a Coastal Zone Management Program, we certainly would not want to see our own budget be sacrificed for that. Because I

think there is a clear opportunity for the sanctuaries program to be working and helping to utilize some of the resources within the CZM programs. But yes, we do endorse increased funding for the sanctuaries.

Mr. SOBEL. I would say we also strongly support, not only an increase, but a substantial increase to the program.

Senator KERRY. Let me just interrupt you, so you can comment also. Do you believe, Mr. Sobel, that the current funding is limiting this program?

Mr. SOBEL. I think it is unquestionably limiting the program.

Senator KERRY. And I see other heads nodding. Is there a consensus on that?

Mr. WEDDIG. I am not too sure I agree. I think the idea of getting up to, what is it; \$7 million—

Senator KERRY. \$7.3 million.

Mr. WEDDIG. I reflect on what I think is the current funding for all the National Marine Fisheries Service activities at someplace around \$200 million. And I am not too sure that this ratio should be changed.

Senator KERRY. Let me let Mr. Sobel finish up.

Mr. SOBEL. I was not going to comment on how it is relative to other programs, but I will point out that the sites currently do not have adequate funding. For example, the sites in existence do not have adequate visitor or interpretative centers. They are generally piggybacking on top of existing facilities that belong to other agencies.

You now have new sites coming on line. You are increasing the amount of area that is given to this program. Back in 1972, when the program was originally authorized, Congress envisioned a budget, I believe, of \$10 million for each of its first 4 years. That was for each year, prior to any sites having been designated. That was the authorized level.

We have never seen that level reached. It seems that now on the 20th anniversary, with 10 sites on line, as a minimum we should be at the level that was originally envisioned for the program.

Senator KERRY. Let me just say to you that not much that Congress did a few years ago is very relevant to what it has to try to do today. But apart from that reality, is there a compelling showing? And I do not really sense one. I have not had a compelling showing of funding being the restraint at this point in time.

Now, am I missing something here? I mean, I think there is more to work out in the management, the chain of authority, some of the decisionmaking, and in the designation process. Clearly we need to look at these issues in the reauthorization process. And we will do that.

But I do not have a sense, with the increase coming on this year, that the program is being restrained significantly because of lack of funding. Now, am I missing something?

Mr. SOBEL. I think there is something missing there. I think that the program is being significantly restrained at the current time and will be even more restrained as these new sites come on line within the next fiscal year.

Senator KERRY. For lack of personnel and management?

Mr. SOBEL. Yes. There is a lack of personnel to be properly developing the environmental impact statements. It is difficult when you have one person working on a site and you go up against an agency such as the Army Corps or Minerals Management Service, which have substantially bigger budgets and can throw considerably more personnel at those.

And, if you then want to base it on science, which you do, you have a difficult task of convincing other agencies while you are trying to do everything else that you are responsible for doing.

Second, in terms of the actual sites, I think it is very important to have an onsite presence, preferably while you are developing the proposal. But certainly, once the site is designated, it is extremely important to have a real presence. This is an opportunity to put a really good face on NOAA and the Federal Government in terms of getting the word out to the public as to what is going on and educating them and making them aware of these efforts.

You currently do not have it. If you compare the funding of even \$7 million to for instance, the National Park Service Program, the National Park Service has over \$1 billion a year. Now, it is a much better program. There are a lot of differences. But these sanctuaries are heavily used sites, too. Stellwagen Bank gets over 1 million visitors a year. The small sites in the Florida Keys get between 1 and 2 million visitors a year.

I think you need to have much greater funds available if you are going to properly manage these sites.

Mr. BENOIT. One of the greatest obstacles we encountered to the designation process was the fact that there was no full-time presence in Massachusetts from NOAA who was actually working on this designation. And we spent an inordinate amount of time traveling around, almost on a one-to-one basis, sitting down with representatives from the shipping industry and with the fisheries counsel, with local representatives in the community, with charter boat groups, and will anybody who had any concerns.

And there is just a tremendous amount of effort and education that really goes along with the designation process. And right now we, as the Commonwealth, had to pick up that responsibility. I think that really—and we are willing to continue sharing that, and do so an obligation there. But we did that in part because NOAA just did not have the resources to be able to do it.

Senator KERRY. Is there any area of the reauthorization consideration that anybody has not had a chance to comment on, or a response to someone else on the panel that you would like to make before we close this off? Mr. Benoit.

Mr. BENOIT. If I could just make one last comment, and that is, perhaps thinking about some more direct linkage with State coastal zone management programs. This is an opportunity for us to identify some tasks that need to be done—to share some resources to get those tasks done. Almost every State does have a CZM program now, and I think those should really represent a clearinghouse for a lot of these various activities, and should be the central focus of trying to pull them all together, and does give the State a very sound voice in some of the decisions that are being made.

Senator KERRY. Well, that is a good thought. Yes, Mr. Johnson.

Mr. JOHNSON. I would ask that the committee, as they think about this issue, also think about the relationship between the National Estuary Program and the National Marine Sanctuary Program, because in Washington State, and apparently, perhaps, in Massachusetts as well, and perhaps other places, that is a big question that a lot of people are facing. The compelling reasons that led a lot of estuaries to seek nomination into the National Estuary Program tended to be coordination of Federal agencies, getting everybody to the same table—goals such as that, which are often the same types of goals that people say that we need the sanctuary program for. In areas where they overlap, a lot of people say, well, we have the estuary program already or we have the sanctuary program already. Why do we need to then bring the other one in? There has not been, I do not think a great deal of thought given to the interrelationship. And I would just offer that as an issue that the committee maybe should think about.

Senator KERRY. Well, I think the testimony from all of you is thoughtful. There are some sensitivities, obviously, and different interests that are always at tension in any of these kind of regulatory efforts.

But I think you have raised some good thoughts about how we might try to clarify or create a framework that may be a little bit more streamlined or efficient, if it is possible.

It is always hard, as I am learning, to resolve these things in words and a law here. The interests are real. There are always going to be dynamics by which they need to be expressed, and you have to find ways for that to be heard. I think title III basically provides a pretty good process. Obviously, I think it could work a little faster.

I clearly believe that the resource issue is relevant, certainly in the long term. How much difference it will make in the next year, given the amount of increase that is there from where we are is hard to measure, but we are going to take a look at it.

There are two bills filed, as I think you know, over in the House. And we are going to file one here as soon as we can. I think we ought to be able to work this out in a way that makes this nonobjectionable, and a fairly straightforward piece of legislation. And I think your testimony this morning has helped us to frame whatever remedies are necessary to try to do that.

So, I am grateful to you, and we will leave the record open in the event that any colleagues of mine have questions that they would like to submit. We will leave it open for a week. And my thanks to all of you for your testimony here this morning. And we stand adjourned.

[Whereupon, at 11:05 a.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF JOHN W. HUMKE, VICE PRESIDENT AND DIRECTOR OF AGENCY RELATIONS, THE NATURE CONSERVANCY

John Humke served as a member of the Marine Sanctuaries Review Panel which, in February of last year, produced the report, "National Marine Sanctuaries: Challenge and Opportunity." The Nature Conservancy maintains a staff and program in the Florida Keys which works in direct support of the goals of the Florida Keys National Marine Sanctuary. The recommendations The Nature Conservancy is putting forth today are derived primarily from these two points of reference.

One of the greatest contributions the United States has made to the world has been the creation of the national parks. Some people think that it is the best idea America ever had. We are now faced with a similar opportunity to establish and manage a world class system of national parks in the sea and Great Lakes. The world is looking for successful examples of protecting our cultural and natural heritage, passing it on intact to our children, while at the same time using resources to meet human needs in a compatible and sustainable manner. If properly established in legislation, sufficiently funded, and appropriately administered, the National Marine Sanctuary program can fulfill these goals by both protecting and restoring nationally significant resources and providing for compatible resource utilization. It is to this end that we respectfully recommend the following changes for Title III of the Marine Protection, Research and Sanctuaries Act.

FINDINGS, PURPOSES AND POLICIES

National Marine Sanctuaries are selected under law to be sites of special national significance for their conservation, recreational, ecological, historical, research, educational, and aesthetic qualities. By definition, the primary purpose of the sanctuaries should be to protect, maintain, and where necessary restore these values. Other uses are important but those that would destroy or diminish nationally significant resources need to be carefully managed. To insure that this is accomplished we suggest that the Committee consider the following:

- 1) To the Findings and Purpose Section add maintaining natural biodiversity.
- 2) Define the system in terms of full representation of the biogeographic regions of coastal and ocean waters and the Great Lakes as well as unique habitat occurrences; outstanding ecological, biological, oceanographic, cultural, or historical resources; rare, threatened or endangered species habitat; habitats critical for living marine resources; pristine/undisturbed resources; harvest; areas of high natural productivity; and significant areas for maintaining biodiversity.
- 3) To Section 301(a) add a new finding recognizing that nationally significant marine and Great Lake resources are threatened by reduction in water quality, habitat destruction, non-sustainable harvesting, exotic species, elimination of ecosystem-sustaining natural events, and global warming.
- 4) Change Section 301(a)(4) and (b)(2) to read, conservation, management, and restoration.
- 5) In Section 301 (b)(5), change the word facilitate to allow.
- 6) Include specific reference to non-governmental conservation organizations wherever federal agencies, state and local governments, etc., are listed.

BUDGET

While funding authorization is one of the last sections of this legislation, we believe the finding constraints that the program has operated under to date are of foremost concern. The Marine Sanctuaries Review Panel looked at the requirements for an adequate budget for the Florida Keys and other sanctuaries, for selecting and designating new sanctuaries, and for administering the program. Based on this and our experience in the Florida Keys we suggest the following:

- It is fundamentally important to continue to authorize appropriations specifically for the management of sanctuaries based on their number and the requirements necessary to conserve, protect and restore the nationally significant resources they contain.
- We support the Review Panel's recommendation of \$30,000,000 as the appropriate magnitude for the successful accomplishment of this program.

SANCTUARY DESIGNATION STANDARDS

We support the addition of biodiversity and functional diversity to the factors that determine whether a site meets the designation standards. The Review Panel recognized the need to consider biodiversity in its proposed mission statement. One of the purposes for protecting our marine and Great Lakes environment is to insure that all life forms can continue to exist, evolve, and contribute to the functioning of a biologically healthy world.

PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

For the past several years The Nature Conservancy has been engaged in strategic planning for and implementation of the conservation and compatible use of several large landscape level bioreserves including a few with marine components. We have learned that the most important component of such planning is the identification of, and strategies to address, major threats to the values for which the site was selected. This type of thinking was incorporated in Public Law 101-605, the "Florida Keys National Marine Sanctuary and Protection Act," when it recognized "sources of disturbance" in Section 2, Findings, and specifically addressed water quality in Section 8. We support the following:

- 1) To Section 304, (a), (1), (C), (v) add "threats to" after "goals and objectives,"
- 2) Language should reference specific threats including water quality, habitat destruction, non-sustainable harvesting, exotic species, elimination of natural events, i.e. periodic flooding, global climate changes and others.

RESEARCH, MONITORING AND EDUCATION

The Sanctuaries and Reserves Division of NOAA and The Nature Conservancy entered into a Cooperative Agreement in April, 1991. The program areas in which we have agreed to cooperate include scientific research, monitoring and public awareness and participation in education programs. Section 309 should specifically recognize the critical role of universities and non-governmental conservation organizations.

COOPERATIVE AGREEMENTS AND DONATIONS

The Cooperative Agreement between the Sanctuaries and Reserves Division and the Conservancy provides for interaction in areas ranging from data management to merchandising. Currently, we are jointly funding and managing a \$48,300 volunteer and outreach program in the Florida Keys under this agreement. Additionally, in cooperation with the Florida Department of Natural Resources, The Nature Conservancy is funding a \$55,200 Sanctuary Visitor study. Section 311 should recognize the critical role that non-profit organizations can and do play in the establishment and management of marine sanctuaries. "Nonprofit organizations" should be retained as entities with which the Secretary can enter into cooperative agreements, grants, and other agreements.

ADVISORY COUNCILS

The National Marine Sanctuaries Review Panel suggested that ongoing outside review be a component of the program. Some form of national "advisory council" might be considered along with advisory councils at the sanctuary level.

ADDITIONAL COMMENTS.

We have re-examined the twenty-one recommendations of the Marine Sanctuaries Review Panel and continue to endorse them as sound advice to the Administration and the Congress. There are a few which I will highlight as being particularly important.

- *Zoning.*—To accomplish the dual purpose of protecting nationally significant resources and sustaining compatible uses, some form of zoning within sanctuaries seems essential. There is nothing that prevents NOAA from doing this, but some Congressional direction could be very important. Non-consumptive zones are essen-

tial for fragile resources protection, fisheries recharge, baseline monitoring, educational, research, and high quality recreation purposes.

• *Program Oversight.*—The Review Panel made several recommendations on the management of the program that are fundamental to its success. If Congress requires annual reports, there are additional items worthy of oversight. These include qualifications of personnel, strength of model sanctuaries in Florida and California, cooperation with other programs, and in particular, maintaining and strengthening the type of relationship that exists with the State of Florida and with non-profit organizations.

The Nature Conservancy thanks the Committee for the opportunity to submit testimony on this issue.

PREPARED STATEMENT OF S. SCOTT SEWELL, DIRECTOR, MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR.

Mr. Chairman, the Minerals Management Service (MMS) is pleased to present testimony for the record concerning reauthorization of the National Marine Sanctuary Program (NMSP). In general, the Minerals Management Service supports the NMSP and the legislation authorizing the program as outlined in Title III of the Marine Protection, Research and Sanctuaries Act. We believe that, for the most part, the current Act is strong and has struck the proper balance between resource protection and development interests. However, the Administration has recognized that there is a need to make important technical amendments to the Act. It is our understanding that the Administration will forward its specific recommendations to Congress in this regard.

At your request, our comments will focus on the NMSP in general, since the Senate has not yet introduced reauthorization legislation. Also at your request, we have included our comments on reauthorization bills currently pending before the House Merchant Marine and Fisheries Committee. Our comments will be limited to H.R. 4310 since it is the only bill we have reviewed in detail at this time.

As the principal Federal Agency responsible for managing energy and mineral exploration and development on the Nation's Outer Continental Shelf (OCS), MMS is charged with substantial responsibility for studying and protecting the marine environment. We recognize that there are many areas on the OCS that contain biological, ecological, recreational, historical, or cultural resources of national significance. We have acted frequently to remove such areas from consideration in OCS lease sales. We believe that designation of selected areas as national marine sanctuaries is appropriate.

In the past, the MMS has worked closely with the National Oceanic and Atmospheric Administration (NOAA) in all phases of the sanctuary designation process. We have provided hydrocarbon and mineral resource information and estimates, technical and scientific information from our extensive environmental studies program, and other technical and scientific information in order to promote the use of good marine science as a basis for developing various sanctuary boundary, regulatory and management alternatives. We firmly believe that good science must be the foundation for all sanctuary decisions and that sanctuary designation should be supported by clear scientific and environmental criteria. We look forward to continuing to work with NOAA as it designates other marine sanctuaries.

In considering reauthorization legislation, we hope that you will seek to build upon the basic process outlined in Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA). While technical improvements may be necessary, the process itself is a good one. Title III sets forth a clear framework for designation and allows NOAA to designate areas if they meet the criteria outlined in law.

However, we are concerned that Congress has moved beyond the original intent of the NMSP. Increasingly over the past several years, Congress has legislatively mandated that various areas be designated as marine sanctuaries, specified the boundaries for these areas, and prohibited certain activities. This means of designation has bypassed the analytical and consultative process outlined in Title III which are critical to ensuring that sanctuaries are based on good science.

Of primary concern to the MMS is the trend by Congress to designate extremely large areas as marine sanctuaries. There appears to be no readily identifiable scientific purpose for these large boundaries. It is our understanding that the original intent of Title III of the MPRSA was to select relatively discrete areas for special management based on their special values. We believe this approach is still valid. Boundaries should be directly related to the management of resources to be protected.

We are also concerned that there is a further trend by Congress to impose preemptive prohibitions on activities within these increasingly large sanctuaries. We must object to this approach since, again, the prohibitions do not appear to be based on good science.

For example, oil and gas activities have been prohibited by Congress in several sanctuaries either designated or under consideration. We do not object to placing portions of sanctuaries—those areas that are the focus of the most critical resources—off limits to hydrocarbon or mineral activities where the risks to the sanctuary have been scientifically documented. However, we must oppose any legislation which contains blanket prohibitions on oil and gas activities, particularly where such prohibitions are not applied to other activities.

Instead, we recommend that permitted activities continue to be decided on a case-by-case basis, after a proper assessment of potential impacts to sanctuary resources has been made. If impacts from an activity are determined to occur, then limitations or prohibitions can be considered as mitigating measures.

An excellent example of a recent sanctuary designation which we believe reflects the spirit of the MPRSA is the flower Garden Banks National Marine Sanctuary in the Western Gulf of Mexico. It is less than 42 square nautical miles in size and incorporates existing MMS regulatory provisions for "no activity" and buffer zones to restrict oil and gas activities. The MMS and NOAA, in fact, have cooperated closely for over two decades, before the sanctuary was designated in January 1992, to develop and maintain appropriate protective regulatory measures for the Flower Garden Banks.

As Congress considers reauthorization of the marine sanctuaries program, it faces an important task. Increasingly, there are legitimate requests for utilizing our ocean resources as well as calls for placing large areas offlimits. Our oceans are important national resources which must be protected for future generations. However, our oceans also contain resources which if developed wisely, can benefit the Nation. We firmly believe that, in many instances, multiple uses can coexist in sanctuaries, if coupled with the proper management controls. It is our hope that as you consider amendments to the marine sanctuary program, you will strive to maintain a reasonable balance.

I would like to now discuss H.R. 4310. We believe that H.R. 4310 is a positive step and will generally enhance the purposes of the NMSP. Foremost, we are pleased to note that the proposed legislation reinforces the principle that marine sanctuaries are for protection of marine resource while allowing other compatible, non-renewable, and renewable resource uses to occur within sanctuary boundaries. The MMS also supports the addition of marine cultural and archaeological resources to the purposes and policies of the NMSP in section 102 and 103. The MMS is actively involved in the protection of marine cultural and archaeological resources and has assisted NOAA in developing a site evaluation list for these resources.

We generally agree with amendments to section 104 in the bill. However, with regard to section 105, "Procedures for Designation", we note that this section changes current law by requiring Federal agency comments on proposed marine sanctuary designations, regulations or draft management plans to be submitted within 45 days of notice being issued in the Federal Register. If an agency fails to comply with the timeframe, then concurrence is presumed unless the Secretary extends the deadline for "good cause." We prefer the federal agency commenting process in the current law. It is important that Federal agencies whose activities could be affected by potential sanctuary designations be afforded a reasonable opportunity to participate in the process and not have "concurrence presumed" due to circumstances which may be beyond the control of the agency.

In closing, the MMS appreciates the opportunity to present testimony on H.R. 4310 and looks forward to working closely with the Committee and the Administration in the reauthorization of the marine sanctuaries program.

**PREPARED STATEMENT OF HAROLD S. MASUMOTO, DIRECTOR, OFFICE OF STATE
PLANNING, OFFICE OF THE GOVERNOR, STATE OF HAWAII**

Mr. Chairman and Subcommittee members, my name is Harold S. Masumoto. As the Director of the Office of State Planning, Office of the Governor, State of Hawaii, I am pleased to submit this testimony on behalf of the State of Hawaii regarding the Reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act.

The National Marine Sanctuary program is an important component of this nation's efforts to preserve and protect our marine resources. Unfortunately, it has been faced with a lack of funding and support from the current and former adminis-

trations. As a result, the program has fallen somewhat short in realizing its potential, in that only fourteen sanctuaries have been designated or proposed since its inception 20 years ago. The State of Hawaii, therefore, supports Congressional action to adequately fund and assure program implementation as envisioned by the framers of the original act.

We also believe that Congressional designation of a Hawaiian Islands Humpback Whale National Marine Sanctuary would prove to be a visible, positive, and welcomed step in this direction for the following reasons:

1) The Western Pacific Region's diverse and unique marine resources warrant protection and enhancement under the provisions of the National Marine Sanctuary Act. Of particular concern, is the Hawaiian stock of the endangered humpback whale, the largest of three North Pacific stocks, which breed and calve within the ocean areas of the main Hawaiian Islands.

2) In 1982, an announcement of certain Hawaiian waters frequented by humpback whales as an active candidate for marine sanctuary designation was published in the Federal Register.

3) In response to a Congressional request, the Department of Commerce recently conducted a study to determine the feasibility of establishing a marine sanctuary in the waters adjacent to Kahoolawe Island and what the impact of such a sanctuary would be on the population of humpback whales that inhabit those waters. This report concluded that Kahoolawe Island and additional marine areas within the Hawaiian archipelago merit further consideration for national marine sanctuary status and that the National Marine Sanctuary Program could indeed enhance marine resource protection in Hawaii.

4) The Department of Commerce also recently promulgated a recovery plan for increasing the abundance of humpback whales under the Endangered Species Act.

5) Finally, it should also be noted that Congressman Neil Abercrombie of the First Congressional District of Hawaii received nearly 6500 responses to a 1991 constituent questionnaire in which 81 percent favored the creation of a National Marine Sanctuary for humpback whales.

The State of Hawaii believes that it is in the national interest to designate a Hawaiian Islands Humpback Whale National Marine Sanctuary as part of this legislative reauthorization. In this regard, the National Marine Sanctuary Program provides the kind of comprehensive and coordinated marine resource management, research, and education opportunities needed to enhance the recovery of this valuable and endangered resource. We also believe that such a designation is fully consistent with the provisions and purposes of the National Marine Sanctuaries Act and warrants appropriate congressional funding and approval.

Thank you for the opportunity to offer testimony on this important program of concern to all who wish to preserve and protect our nation's precious ocean resources.

NOAA MISSION STATEMENT

NOAA, the Nation's Oceanic and Atmospheric Agency, through science and service:

- Describes and predicts changes in the Earth's environment
- Manages the Nation's ocean and coastal resources
- Promotes global stewardship of the world's oceans and atmosphere

To fulfill this mission, NOAA:

- Conducts oceanic and atmospheric research to improve environmental products and services
- Develops and maintains environmental data bases and disseminates environmental information products
 - Severe storm and flood warnings and weather forecasts
 - Charts of U.S. waters and airspace
 - River flow and water resource forecasts
 - Solar and space environment forecasts
 - Climate change prediction
 - Ocean and coastal analyses and assessments
- Manages the marine environment
 - Assesses the quality of the marine environment
 - Conserves living and non-living marine resources
 - Administers Federal/State coastal zone management programs
 - Operates marine sanctuaries and estuarine reserves
 - Protects habitat and endangered species
- Operates environmental satellites, ships, aircraft and buoys