

# NATIONAL MARINE SANCTUARY PROGRAM REAUTHORIZATION, PART II

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## HEARING

BEFORE THE

SUBCOMMITTEE ON OCEANOGRAPHY, GREAT LAKES  
AND THE OUTER CONTINENTAL SHELF

AND THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE  
CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

THE CURRENT STATUS AND FUTURE NEEDS OF THE NA-  
TIONAL OCEANIC AND ATMOSPHERIC ADMINISTRA-  
TION'S NATIONAL MARINE SANCTUARY PROGRAM

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MARCH 31, 1992

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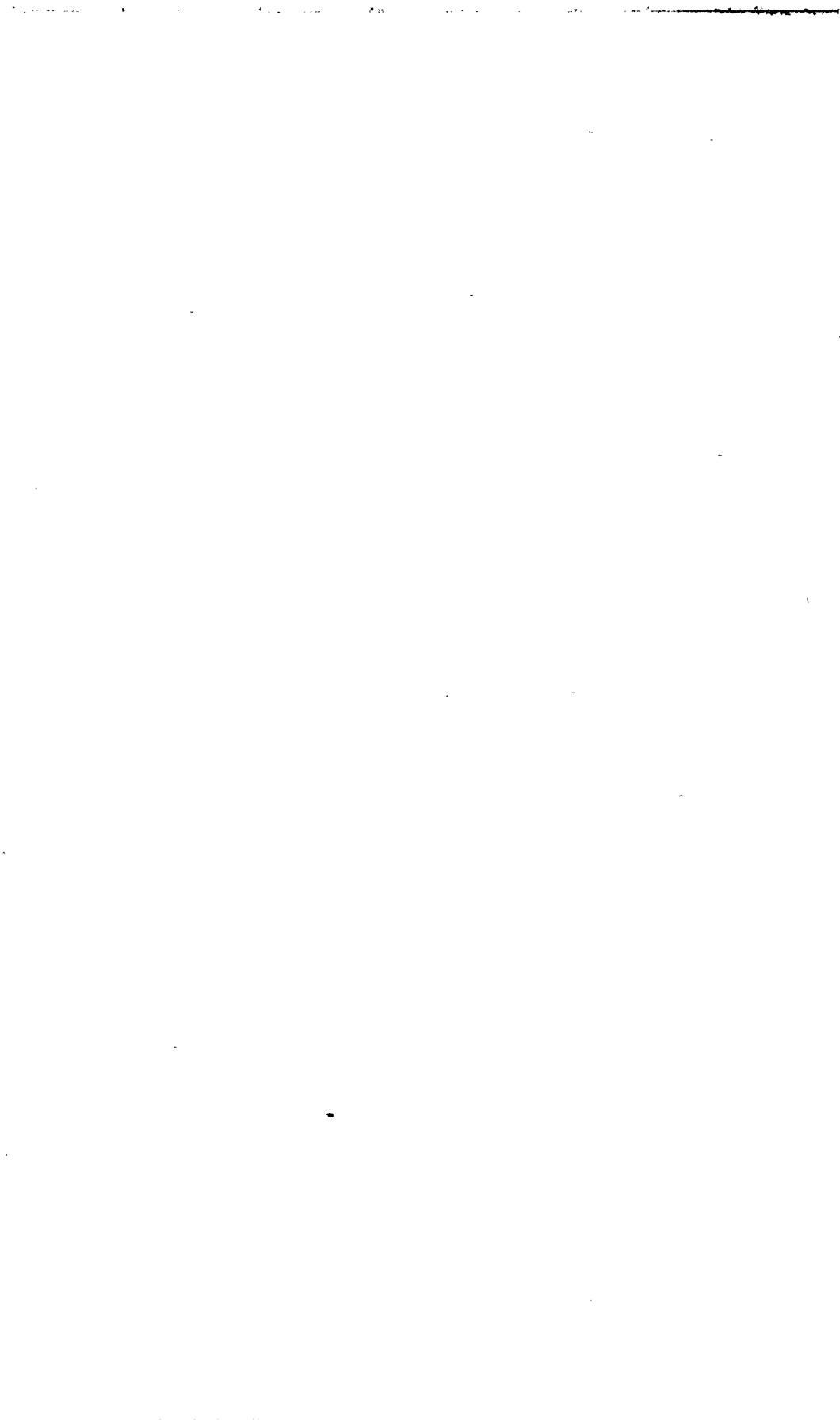
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# NATIONAL MARINE SANCTUARY PROGRAM REAUTHORIZATION, PART II

TUESDAY, MARCH 31, 1992

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON OCEANOGRAPHY, GREAT LAKES AND THE OUTER CONTINENTAL SHELF, AND THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, COMMITTEE ON MERCHANT MARINE AND FISHERIES,

*Washington, DC.*

The subcommittees met, pursuant to call, at 2 p.m., in room 1334, Longworth House Office Building, Hon. Dennis M. Hertel (Chairman of the Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf) presiding.

Members present: Representatives Hertel, Studts, Hughes, Hutto, Hochbrueckner, Pallone, Unsoeld, Taylor, Bateman, Coble, and Ravenel.

Staff Present: Donna Napiewocki, Deborah Dawson, Mike Quigley, Raymond O'Malley, Karen Steuer, Jeff Pike, Jim McCallum, Lee Crockett, Chris Mann, Robert Wharton, Bill Wright, Dan Ashe, Tom Kitsos, Jill Brady, Elizabeth Megginson, Dave Whaley, Kip Robinson, Hoyt Wheeland, Lisa Pittman, Lesli Gray, George Pence, Rod Moore, and Sue Waldron.

## OPENING STATEMENT OF HON. DENNIS M. HERTEL, A U.S. REPRESENTATIVE FROM MICHIGAN, AND CHAIRMAN, SUBCOMMITTEE ON OCEANOGRAPHY, GREAT LAKES AND THE OUTER CONTINENTAL SHELF

Mr. HERTEL. Good afternoon and welcome to our second hearing in the 102d Congress on reauthorization of the National Marine Sanctuary Program. Our first hearing was held on November 7, 1991, and provided the framework for legislative improvements currently under consideration. It is my hope that through a constructive and thoughtful dialogue today, we can refine our legislation in preparation for a mark-up shortly after Easter.

Although the National Marine Sanctuary Program was first enacted in 1972, the program got off to a slow start and is only now about to reach its potential. With the final designation of 10 sanctuaries, the program's focus should be shifting from evaluations and site selection to the management of these discrete marine and freshwater areas. This new management focus retains a multiple resource use approach, yet offers a scheme of conservation and protection.

In the course of our discussions on reauthorization legislation, we find ourselves using words that some would say are too broad in scope and perhaps too progressive or ambitious to be associated with reauthorization of the Marine Sanctuary Program, least we lose anything we have gained. The words I refer to are often called "red flags" because they symbolize the potential clash of goals in a practical world that wants to accomplish two or more results at the same time with each result perceived as diametrically opposite.

This clash resounds when one talks about activities allowing for the immediate use of sanctuary resources in contrast to management plans that might limit or restrict these activities to prevent waste, abuse, and exhaustion of sanctuary resources over the long-term. These activities represent difficult policy choices related to how we treat our natural resources. These activities are the common practices of our daily lives. They include shipping, fishing, oil and gas exploration, dredging, diving, sportfishing, whale-watching, recreational boating, and others.

Should any or all of these activities be measured, controlled, or curtailed either inside sanctuary boundaries or outside a sanctuary when it is determined that sanctuary resources could be harmed? This question raises so much concern that some might prefer it not to be asked publicly. But this is government in the sunshine, and, like it or not, this important advantage of democracy allows for debate and progress based on balanced, fair, and open decision-making. The easy questions don't take much time.

Such is the purpose of this hearing. It is an opportunity to vent our frustrations, offer suggestions, explain away unwarranted fears, awaken to the discoveries and methods of new science, recognize that our perspective may even be too narrow, and fix them all.

In this regard, I very much welcome our witnesses today. I look forward to a hearty discussion of the issues that surround the National Marine Sanctuary Program. I hope the legislation that emerges represents a progressive view of science, a long-term investment in our marine and freshwater resources, and a treasured legacy that we can all be proud to say originated in this committee. And I hope the witnesses today are as frank as I have been in my opening statement.

Now we have Mr. Coble for an opening statement.

**STATEMENT OF HON. HOWARD COBLE, A U.S. REPRESENTATIVE  
FROM NORTH CAROLINA**

Mr. COBLE. Thank you, Mr. Chairman. Very briefly, this proposed legislation has generated obvious interest, and I, like you, look forward to hearing from those on the witness list today which is an impressive list, I might add. Mr. Chairman, without objection, I would like to present the gentleman from Michigan, Mr. Davis' statement to be made a part of the record.

Mr. HERTEL. Without objection, so ordered.

[The statement of Mr. Davis follows:]

**STATEMENT OF HON. ROBERT W. DAVIS, A U.S. REPRESENTATIVE FROM MICHIGAN**

The National Marine Sanctuary Program is attracting a growing number of enthusiasts, including the Administration. I am very pleased to see the increase in the fiscal year 1993 Sanctuaries Program budget. I hope that we will be able to convince

the Members of the Appropriations Committee to provide additional funding, either at the President's level or those represented in the bills authored by Chairmen Hertel and Studds. Creative funding ideas should also be pursued, and I am working on methods to garner additional financial backing for this worthy program.

The extra funds are critical to NOAA's ability to manage its existing sanctuaries and to have others join the system, such as the proposed Thunder Bay National Marine Sanctuary in Lake Huron. The first freshwater sanctuary and the only one in the Great Lakes, Thunder Bay will educate others about the wonders of the Great Lakes. The proposed sanctuary contains over 80 documented shipwrecks of great interest to divers. The 400-square mile area is also host to countless types of Great Lakes fish and wildlife. I see a tremendous opportunity to draw people from around the country to dive and explore Great Lakes waters and our maritime and environmental heritage.

The bills before the subcommittees make several minor but important changes to the existing Sanctuary statute. Wholesale changes are not needed: the program is working fairly well, has growing support, and contributes much to the communities where sanctuaries are located. I believe that increased funding should be a priority effort, along with some fine tuning.

With this in mind, I welcome the comments of our witnesses, and look forward to quick passage of a reauthorization bill.

Mr. HERTEL. Thank you. Now I would like to call upon our committee Chairman of the Fisheries and Wildlife Subcommittee who has worked so very hard in this area of marine sanctuaries for so many years, Mr. Studds.

**STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT**

Mr. STUDDS. Thank you very much, Mr. Chairman. I will be very, very brief. I just feel sufficiently strongly to have a very brief statement.

Ever since its creation 20 years ago, the National Marine Sanctuary Program has been visionary in one very important respect, preserving special areas of the marine environment for a variety of uses.

Balancing human needs against the fragility of our coastal marine ecosystems is not easy, and it is not an ideal way to preserve natural resources or wildlife habitats. Wild species, whether they are the seabirds of the Channel Islands, the whales of Stellwagen Bank, or the coral reef fish of the Florida Keys, often suffer from competition with human needs and desires. The multitude of considerations that must be weighed while managing these areas can be baffling and the tradeoffs occasionally disheartening.

But in spite of these problems, the Marine Sanctuary Program works. It has served to protect marine resources as diverse as the commercial fisheries of the Gulf of the Farrallones and the wreck of the *USS Monitor*. It is a program that deserves our support and enthusiastic encouragement.

That is not to say that the program is perfect. There are those in the Administration who occasionally seem to forget that resource protection is this program's primary goal and have unreasonably delayed the designation of new sanctuaries in order to protect private interests. Also troublesome is a historic lack of support from within the larger NOAA framework resulting in a serious lack of funding for even the most basic of the program's needs. Both H.R.

4310 and H.R. 4409 authorize much-needed funding increases for marine sanctuaries.

In addition, both the program and the law itself seem to suffer from a somewhat myopic view of the marine environment, a belief that we can treat the oceans as static and their wildlife as immobile. Fish and whales move, and water flows, carrying pollution with it. Drawing boundary lines on a map does not change that. In order to best protect these fragile environments and precious resources, the Act, I think, must be amended to account for the constantly changing nature of the sea. The provisions of H.R. 4409 do that.

As we listen to today's testimony, let us bear in mind just how badly human beings have treated the coastal environment and try to proceed with a broader and wiser vision as we reauthorize the program. And I thank you again for your leadership, Mr. Chairman.

Mr. HERTEL. Thank you. Now we are joined by Mr. Ravenel, the gentleman from South Carolina. Would you like to make an opening statement?

Mr. RAVENEL. No, sir.

[The statement of Mr. Panetta follows:]

STATEMENT OF HON. LEON E. PANETTA, A U.S. REPRESENTATIVE FROM CALIFORNIA

Chairman Hertel and Chairman Studds, thank you for the opportunity to appear before you today to discuss the reauthorization of the National Marine Sanctuary Program (NMSP). I consider the National Marine Sanctuary Program to be our Nation's premier marine protection program and commend both of your efforts to provide it with a strong reauthorization.

My interest in and support for this program is well-documented. Last fall I testified before these subcommittees on the reauthorization of the NMSP. At that time I expressed my support for increasing funding for the program and for prohibiting new oil and gas activities in national marine sanctuaries as part of the program's reauthorization. Today I would like to reiterate my support for those provisions as well as discuss legislation I have introduced pertaining to the NMSP, H.R. 3099 and H.R. 4148.

First, I am pleased to report that significant progress has been made in the designation process for the Monterey Bay National Marine Sanctuary. The Final Environmental Impact Statement/Management Plan (Management Plan) for Monterey is complete and undergoing administrative review at the Office of Management and Budget (OMB). Furthermore, on January 24th a spokesperson for the National Oceanic and Atmospheric Administration (NOAA) confirmed that the Administration was endorsing the largest boundary alternative (alternative #5) for the Monterey Sanctuary. It is my belief that this boundary alternative will provide the full range of biological communities in the Monterey Bay region with the comprehensive protection the sanctuary designation is designed to achieve and I was pleased by the Administration's endorsement. I am also encouraged by indications from NOAA officials that the regulations continue to prohibit oil and gas activities throughout the sanctuary.

Despite these gains, I remain frustrated with the failure of the Administration to release the Management Plan for Monterey Bay. I engaged Chairman Hertel in a colloquy regarding the delays associated with the designation of Monterey in November of this past year. During that colloquy I expressed my intention of pursuing legislation to mandate the designation of the Monterey Sanctuary should NOAA fail to release the Management Plan for Monterey by February 3, 1992.

I believe that the February 3 deadline was more than reasonable, particularly considering the law required designation more than two years ago. The deadline was based on November estimates from NOAA that it would need six to eight weeks to release the Management Plan for Monterey. As the deadline was not met, I introduced legislation on February 4 to designate the sanctuary upon enactment with the largest boundary alternative and a permanent oil and gas prohibition (H.R. 4148).

The remainder of the regulations for the sanctuary are permitted to be completed per the normal regulatory process.

I hope and expect that ultimately it will not be necessary for the Congress to enact this legislation and that the Administration will move quickly to release the Final Management Plan for Monterey Bay. However, if the Management Plan has not been released prior to the consideration of the program's reauthorization on the House floor, I will offer an amendment to include H.R. 4148 as part of that legislation. I am extremely grateful for Chairman Hertel's support of this legislation and for all of the committee's efforts on behalf of Monterey. The Monterey Bay National Marine Sanctuary promises to be one of our Nation's most stellar accomplishments in marine protection and will serve as a role model for other near-shore national marine sanctuaries. We are entering the end of a long process and I am confident that our efforts will be richly rewarded.

I would like to make one final statement concerning Monterey. NOAA expects the Secretary of Commerce to issue the designation notice for Monterey in mid to late summer. As such, I am concerned that there may not be enough time for the Congress to complete its 45 day review period of the designation notice prior to the adjournment of the 102d Congress. If this happens to be the case, I may seek legislation to affirm the Congress' support of the designation notice prior to the Congress' adjournment. I understand that similar legislation was passed last year to designate the Flower Garden Banks National Marine Sanctuary and hope that you will favorably consider similar legislation for Monterey if it is necessary.

Second, I want to reiterate my interest in having legislation I introduced to designate the California Central Coast National Marine Sanctuary (H.R. 3099) included as part of the reauthorization of the NMSP. I have appeared before this committee a number of times to testify in support of this legislation. The marine area of the central coast of California protected under H.R. 3099 possesses the ecological, historical, recreational, and educational qualities which make it an area of national significance worthy of a national marine sanctuary designation. The area offers a unique opportunity for important archaeological research—something not adequately represented in the current program. The central coast of California is a significant and sensitive marine resource worthy of the stature of a sanctuary designation and the program would benefit by its addition. I hope that the committee will be supportive of efforts to include this legislation in the program's reauthorization during its consideration by the House.

Third, I would like to express my support for provisions contained in H.R. 4130 and H.R. 4409 to reauthorize the National Marine Sanctuary Program. I believe the bill's additions to the purposes and policies of the program will aid efforts to ensure that its sites are representative of all biographic regions of the marine environment and will promote diversity within the program.

I was also pleased to note that both bills authorize healthy increases for the program's appropriations. Providing significant increases in the program's funding is perhaps the most important change the Congress can enact as part of the program's reauthorization. As Chairman of the House Budget Committee I pledge to support efforts to provide the National Oceanic and Atmospheric Administration (NOAA) with the resources needed to meet the program's mandate. To this end, I included an increase of \$34 million over the President's request and \$70 million over the fiscal year appropriated level for NOAA in "plan A" of the fiscal year 1993 House Budget Resolution. I also am supportive of the proposals being advanced by both Chairman Studds and Chairman Hertel to create non-profit foundations to help generate private funds to support the program.

In closing, I would like to make a statement concerning the regulation of oil and gas in national marine sanctuaries. I strongly encourage the committee to seriously consider including a provision in the reauthorization to prohibit new, non-existing oil and gas activities in national marine sanctuaries. After many years of experience with this program, I am convinced that the delays associated with the Monterey site and other designations are due in large part to the Administration's refusal to appropriately address the regulation of oil and gas activities within national marine sanctuaries. We have seen these problems with Cordell Bank, Flower Garden, Monterey, and now with the western Washington site. While I can understand why it may be appropriate to allow existing oil and gas activities to continue in a new sanctuary, I see no reason why the Administration would ever be justified in permitting never before existing oil and gas activities in national marine sanctuaries. I encourage this committee to end these protracted battles by taking the issue of oil and gas development in sanctuaries off the table once and for all. To do so will serve to protect the integrity and purpose of this program and I urge that the committee include such a measure in the program's reauthorization.

Chairman Hertel and Chairman Studts, thank you again for the opportunity to testify. I look forward to working with you and the Members of the committee on ensuring a strong reauthorization for this important resource protection program.

Mr. HERTEL. Well, since we don't have Mr. Panetta and Mr. Davis here for our first panel, I will call the second panel first. So we are honored to have the Honorable Jennifer Joy Wilson, Assistant Secretary for Oceans and Atmosphere, NOAA, U.S. Department of Commerce, and also Rear Admiral William P. Leahy, Chief, Office of Law Enforcement and Defense Operations, United States Coast Guard.

**STATEMENT OF JENNIFER JOY WILSON, ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE; ACCOMPANIED BY STAN WILSON, ASSISTANT ADMINISTRATOR, NATIONAL OCEAN SERVICE; TRUDY COX, DIRECTOR, OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT; COMMANDER BILL HARRIGAN, ACTING CHIEF, SANCTUARIES AND RESERVES DIVISION**

**STATEMENT OF JENNIFER JOY WILSON**

Ms. WILSON. Thank you, Mr. Chairman. I am grateful for this opportunity to appear before the subcommittees today to discuss NOAA's National Marine Sanctuary Program. With your permission, Mr. Chairman, I ask that my full testimony be made a part of the record.

Mr. HERTEL. Without objection, so ordered.

Ms. WILSON. Thank you. I have with me NOAA's new Assistant Administrator for the National Ocean Service, Dr. Stan Wilson; the Director of the Office of Ocean and Coastal Resource Management, Trudy Cox; and Commander Bill Harrigan, Acting Chief of the Sanctuaries and Reserves Division.

Administrator John Knauss 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. My full statement covers our sanctuary operating philosophies, and I appreciate your making it a part of the record.

Let me take this opportunity 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 discrete 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 (1) 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; (2) the support, promotion, and coordination of scientific research that will lead to improved management of designated sites and increase protection of marine resources; (3) heightening the level of public understanding of the natural variability of the marine environment and of marine envi-

ronmental change and; (4) focused integration of NOAA resources and initiatives and the protection and management of marine and coastal resources.

The maps we have distributed to you 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 three 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 four sanctuaries in California and Florida to nearly 50 people at 12 sites, including NOAA sanctuary field staffs in the designation process at sites such as the one at Thunder Bay in the Great Lakes. Also, earlier this month we announced that Plymouth, Massachusetts, had been selected as the headquarters location for the proposed Stellwagen Bank Sanctuary.

With the final designation of Monterey Bay, Stellwagen Bank, and Olympic Coast sites near completion, 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 at designated areas of national heritage.

Chairman Hertel, you requested an update on Monterey Bay Sanctuary status. Chairman Panetta, I am sure, in his testimony described the reasons for the sanctuary, and we continue to applaud his leadership along with yours, the Governors, the Senators, and others. The status is that we are very close to releasing the final documents in the **Federal Register**.

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 the resources, the 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. 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 a period of comprehensive and integrated stewardship of our Nation's most significant ocean and coastal areas.

Mr. Chairman, we believe that the existing statute is strong. We believe the Marine Protection, Research, and Sanctuaries Act with amendments which we will propose, 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.

With respect to H.R. 4310 and H.R. 4409, we generally support provisions which focus on streamlining the designation process; clarifying and strengthening the program's ability to address resource management and protection issues; clarifying and strengthening the program's research and education missions; and improving the program's ability to cooperate with governments, institutions, and other organizations on a variety of sanctuary issues. We look forward to working with your staffs to address these important issues raised by the bills. Thank you, Mr. Chairman.

[The prepared statement of Ms. Wilson can be found at the end of the hearing.]

Mr. HERTEL. Thank you very much. Admiral.

**STATEMENT OF REAR ADMIRAL WILLIAM P. LEAHY, CHIEF, OFFICE OF LAW ENFORCEMENT AND DEFENSE OPERATIONS, UNITED STATES COAST GUARD; ACCOMPANIED BY COMMANDER VINCE O'SHEA, OPERATIONAL LAW ENFORCEMENT DIVISION**

**STATEMENT OF REAR ADMIRAL LEAHY**

Admiral LEAHY. Good afternoon, Mr. Chairman. I have with me Commander Vince O'Shea from my Operational Law Enforcement Division. I am pleased to be here today to represent the Commandant of the Coast Guard, Admiral Kime, and discuss Coast Guard law enforcement activities related to marine sanctuaries. I have a prepared statement to submit for the record, Mr. Chairman, and with your permission, I would like to read a summary of my statement.

Mr. HERTEL. Without objection, so ordered.

Admiral LEAHY. As you know, Mr. Chairman, the Coast Guard's routine enforcement patrols are typically geared toward boating safety, fisheries enforcement, and drug interdiction. As these patrols take us near or inside marine sanctuaries, we have the ability to enforce the applicable marine sanctuaries regulations. We also respond to individual incidents and assist NOAA and the National Marine Fisheries Service within the sanctuaries upon request.

The Coast Guard has been conducting general surveillance of most sanctuaries. We have responded to several groundings in the Florida Keys, and we routinely cooperate with sanctuary enforcement during periods of high activity in the Keys. Based on public interest in this area, the Coast Guard wants to increase its level of effort in marine sanctuary enforcement. To this end, we are working with the Acting Director of the Marine Sanctuary Program to determine how we can most effectively contribute to the enforcement program.

We are preparing a joint report with NOAA as directed by the Coast Guard Authorization Act of 1991 regarding this issue. Though we have not yet fully identified appropriate levels of Coast Guard enforcement in marine sanctuaries, there are some obvious ways we can assist the marine sanctuaries protection effort. For example, our high visibility as a maritime law enforcement agency in and near marine sanctuaries during routine operations would provide an additional Federal response to marine sanctuary areas.

We can also provide law enforcement expertise to the sanctuary management regime development process. We can advise the Sanctuary Program on what management measures are consistent with the realities of at-sea enforcement. Further, we can improve our sanctuary enforcement effectiveness through enhanced training of our law enforcement units. This will better enable us to detect violations and educate boaters. We will be working with the sanctuary managers to coordinate this training.

Finally, through surveillance efforts we can help the sanctuary managers determine the level of activities in the sanctuaries. In

the short-term, through coordination with NOAA, we can improve enforcement. As more sanctuary plans are developed, additional enforcement and surveillance needs will be identified. This may result in the need for a more dedicated patrol effort. We will continue to work with NOAA and the sanctuary managers to identify those needs and determine what the Coast Guard can do to help meet them. Thank you, Mr. Chairman. I am prepared to answer any questions you may have.

[The prepared statement of Admiral Leahy can be found at the end of the hearing.]

Mr. HERTEL. Thank you very much. Chairman Studds.

Mr. STUDDS. You caught me off guard, Mr. Chairman. Thank you. Ms. Wilson, first of all, I would like to thank you personally for all of your efforts regarding the proposed Stellwager Bank Sanctuary, and I would like to express my personal appreciation for your thoughtful consideration of the concerns of the people of that part of New England. You have been very responsive, and it is very deeply appreciated.

In responding to one of my questions regarding funding for the Stellwager Sanctuary at the last hearing, NOAA stated an intention to establish local outreach offices in fiscal years 1993 and 1994. Those would be in addition to the sanctuary headquarters planned for Plymouth. Can you tell us if the budget request for fiscal year 1993 includes funding for one of these local outreach offices?

Ms. WILSON. I do know that the President's budget request anticipates funding for Stellwager, but I will need to ask, if you don't mind, sir, if anyone with me here today knows at that level of specificity.

Mr. STUDDS. Sure.

Ms. WILSON. Bill Harrigan, sir, the program manager.

Commander HARRIGAN. We are going to establish the main office first and let that management unit start the process of developing educational programs and deciding with the community where those ought to be and where they would be most effective.

Mr. STUDDS. Right. But is there funding for one of those next-step local outreach offices in the 1993 budget?

Commander HARRIGAN. It is premature to say that there is funding there for it because we haven't established the need, the exact requirement, and exact location.

Mr. STUDDS. That sounds like a no.

Commander HARRIGAN. That is correct.

Mr. STUDDS. That is what I was wondering.

Commander HARRIGAN. Yes, sir.

Mr. STUDDS. Ms. Wilson, when designating a sanctuary, NOAA assumes the responsibility of protecting the resources, but threats to those resources are likely, in many cases as I am sure you know, to originate outside of the actual boundaries of the sanctuary. This is a particular issue of concern, as you also know, with respect to Stellwager. Title III of the law is unclear regarding NOAA's authority to regulate activities outside of sanctuary boundaries, activities that have an important impact on the resources of the sanctuary. Do you have any suggestions for enabling NOAA to better protect resources from outside activities?

Ms. WILSON. We believe that we can prohibit the entry into a sanctuary of matter that subsequently injures a sanctuary resource or quality. I think the key to being able to prevent that, in the first place, is the strength of the partnerships that we are establishing right now with other Federal agencies, State agencies, those governments and public and private concerns that have other authorities and other abilities in the blue water. These active partnerships will assure the results that we want for the sanctuary program and that which the program anticipates. So I think that the key, again, Mr. Chairman, is to make sure that the partnerships we have developed are effective and strong, and that we have the sanctuary mandate effective in other statutes and other regulations comporting with our purposes.

Mr. STUDDS. How are you going about doing that? Are you purporting or contemplating or actually beginning the process of a memorandum of understanding with other agencies or—

Ms. WILSON. We are.

Mr. STUDDS. You are.

Ms. WILSON. Yes, sir.

Mr. STUDDS. OK. One of the major concerns all of us have regarding the Stellwagen Bank designation, and I know this is no surprise to you, is the potential threat of sand and gravel mining on the bank itself. I have been told that the Minerals Management Service is holding up the release of the final designation document because they are opposed to a ban on offshore sand and gravel mining in the sanctuary. Needless to say, that would be an unmitigated disaster for that ecosystem. What can you tell us about that? Can you tell us if my source is accurate? And, if so, can you assure me that evil will not prevail in this instance?

Ms. WILSON. Of course evil will not prevail.

Mr. STUDDS. Very good.

Ms. WILSON. Mr. Chairman, the final decisions for the final regulations and environmental impact statement for Stellwagen have not completed the review process. I don't think the final regulations are even at NOAA headquarters yet. It is my understanding that one of the reasons for the proposed designation and why we had a draft environmental impact statement out was because of the ecological value of the sand and gravel bank and its relationship to the humpback whales. In our draft regulations and environmental impact statement we did not recommend any sand or gravel mining take place.

Mr. STUDDS. I am sure you did not. What we would like is an absolute assurance that it will not.

Ms. WILSON. I am not familiar with whether that is a debate that is in existence at this point or if it is preliminary to clearance. I don't think there is anything that has been holding back our working through the sanctuary designation as I understand it right now, Mr. Chairman.

Mr. STUDDS. I assume you would agree with me that the prospect of sand and gravel mining on Stellwagen Bank is or ought to be unthinkable?

Ms. WILSON. I would surely want to know if there were not other places where sand and gravel could be found that would probably

be more economically efficient as well as environmentally desirable. I have a hard time envisioning that the—

Mr. STUDDS. The moon, for example, or Mars. Yes. And I am sure you have as hard a time as I do even imagining the possibility of the Environmental President making such a suggestion.

Ms. WILSON. I really don't have any other comment on that, sir.

Mr. STUDDS. That is all right. Do you have a guesstimate at this point as for the date of the final designation?

Ms. WILSON. I know that we are looking to six-seven months' timeframe for the final designation to be able to be made so we are talking—

Mr. STUDDS. Six-seven months from now?

Ms. WILSON. Yes, sir.

Mr. STUDDS. One quick question if I may. Thank you very much, again, for all your help. To Admiral Leahy, I understand that some of the Coast Guard's drug intelligence and enforcement responsibilities are being transferred to the Navy. Is this going to result, by any chance, in your having more resources available for enforcement actions within marine sanctuaries? And, if so, are you interested in, willing to, able to undertake additional responsibilities for resource protection within marine sanctuaries?

Admiral LEAHY. Mr. Chairman, I am not sure the responsibilities have shifted. Congress has directed us to turn over some assets to DOD. They are, basically, detection and monitoring assets, and DOD still has their requirement to do the detection and the monitoring. Whether they use those assets or different assets, I don't know how that is going to work.

Mr. STUDDS. Will that free-up some people and dollar assets?

Admiral LEAHY. I don't think it will free-up any assets. No, sir.

Mr. STUDDS. Who used to run the things?

Admiral LEAHY. Well, we lost the billets that were associated with them.

Mr. STUDDS. Oh. I am sorry to hear that.

Admiral LEAHY. Yes, sir. We were too.

Mr. STUDDS. We will look at that. Thank you, Mr. Chairman.

Mr. HERTEL. Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Ms. Wilson, a subsequent witness today will go into some detail about the qualifications of sanctuary managers, and I am reading now, "Noting that a resource management background is critical, a long-term commitment to the position is vital." I don't know how you would guarantee long-term commitment, but that could well be done, I guess, in a manner whereby you would be assured of it, that, "The individual with ties to the surrounding community should be nurtured and encouraged and should be given preference." This is a personnel-type question. Generally speaking, is that the sort of pattern that you follow?

Ms. WILSON. I believe that is an accurate reflection of the types of sanctuary managers we do have today, and I think all of those characteristics do maintain their importance in what we are seeking for the future. Obviously, the operational mission of a sanctuary includes research, education, management, and enforcement; therefore we need to have someone who is capable of pulling all of the diverse pieces together and assuring that management plan

can be effectuated. So I think we would still concur that those are generally good characteristics for a manager.

Mr. COBLE. And these managers, it is my belief, are rotated on a regular, periodic basis. Is that not correct?

Ms. WILSON. I am not sure of that, sir. Let me see if my colleagues might have an answer.

Mr. COBLE. OK.

Commander HARRIGAN. No.

Mr. COBLE. That is not correct?

Ms. WILSON. They have not been up to this point.

Mr. COBLE. OK. Let me talk a minute about site evaluation lists. At a staff briefing of the sanctuaries program, I think Mr. Harrigan, known to you, William Harrigan, the Acting Chief of the Sanctuaries and Reserves Division—in any event, he was in charge of this briefing. And he indicated that the updated site evaluation list was being discussed, and at that briefing NOAA indicated that it envisioned an SEL or a site evaluation list of over 100 sites, all presumably ranked in some sort of priority for designation. Now, I don't know what constitutes the priority. If you do, I would like to know that. If you don't, perhaps we can get it subsequently. My question is do you know what the approximate cost that NOAA would have to absorb to complete this task?

Ms. WILSON. First of all, sir, I think that was an inappropriate guesstimate. I understand that one of NOAA's staff people did indicate that there was no precise number that was being envisioned for looking at a revised site evaluation list, but I think 100 is probably considerably out of the ballpark. The amount of money that we are anticipating expending over this year and next fiscal year would be under \$300,000, I believe. The purpose of updating the site evaluation list is to apply the information that we have learned over the past 10 years to the current site evaluation list to make sure that we are utilizing that information for the best purposes of the sanctuary resources.

Mr. COBLE. Now, there are presently 10 sites?

Ms. WILSON. Yes, sir.

Mr. COBLE. OK. Admiral Leahy, let me extend the question put to you by the gentleman from Massachusetts to be sure I understand it. As I interpret your response to his question, the Coast Guard is not abandoning any sort of responsibility in drug interdiction, et cetera. Is that correct?

Admiral LEAHY. That is correct, sir.

Mr. COBLE. Well, what did Mr. Studds—I am sorry he is not here. I would like to know—

Admiral LEAHY. I think I can explain it to you. The Congress—in this year's Appropriations Bill—turned over to DOD the E2C's that were flying out of St. Augustine and the aerostats that were being sailed out of south Florida and put them under DOD control; I think that is what he was talking about.

Mr. COBLE. OK. But no major upheaval as far as duties, assignments, missions, et cetera?

Admiral LEAHY. Well, the people that were assigned there had to be reassigned, but we lost the billets.

Mr. COBLE. OK. Well, maybe I can talk to him in more detail. Thank you, Admiral. Thank you, Ms. Wilson. Thank you, Mr. Chairman.

Mr. HERTEL. We are going to adjourn the hearing to vote, and there might be several votes. We will come back when we are finished. Thank you.

[RECESS]

Mr. HERTEL. We will resume the hearing. First of all, Ms. Wilson, I want to thank you for answering the questions that we requested regarding Monterey Bay, a national marine sanctuary which is awaiting the final designation process. Maybe you could tell the committee the size of that sanctuary.

Ms. WILSON. I believe 4,900 square nautical miles, Mr. Chairman.

Mr. HERTEL. In Thunder Bay, Michigan, what progress has been made toward the designation of that sanctuary on Lake Huron, and when would you estimate final designation would take place?

Ms. WILSON. We have held scoping meetings on Thunder Bay. We also have a staff person located in Lansing to assist in developing the information base for the studies that would lead to designation. May I ask Trudy Cox, the head of OCRM, to comment further?

Mr. HERTEL. Ms. Cox?

Ms. COX. Right now we have, as Ms. Wilson indicated, Michelle Richard, who is working with State officials on the development of a sanctuary designation that we hope, if all goes well with the State over the next year-and-a-half, could be in final form in about a year-and-a-half's time. This is the first sanctuary that NOAA has been involved with that is strictly in State waters, so it presents a whole new series of problems and challenges for us. Our intent is to work very closely with State officials to really make that designation process a meaningful one.

Mr. HERTEL. And how much do you think it will need for funding to make it fully operational?

Ms. COX. I suppose the best way to answer that, Congressman, is to say that a lot will depend upon what comes out of the entire designation survey. And until we have a sense of size and issues that have to be dealt with in the management plan, it is really hard to even make a guess.

Mr. HERTEL. Are there any other areas that you are looking at in the Great Lakes at all for sanctuaries in the future after this series?

Ms. COX. Perhaps the best way to answer that question is to draw your attention to the fact that NOAA is right now beginning the establishment of a site evaluation list which will methodically utilize the skills and talents of scientists from all around the Nation who we hope will advise us in the best possible ways on those sanctuary resources that could be set aside for future designation.

Mr. HERTEL. Ms. Wilson, there have been suggestions that President Bush would veto a bill that included a foundation for sanctuaries and estuaries. Is that true? Why does the Administration have that view?

Ms. WILSON. Well, let me say that I think that we are enthusiastic about working with you, Mr. Chairman, to develop a better way of building private and public partnerships for better education and management of marine sanctuaries. I believe there was a suggestion for a foundation that was in a NOAA authorization proposal last fall, and I believe there were some technical difficulties with the actual wording. I don't think there is a philosophical difficulty. I think there are some technical, legal problems.

Mr. HERTEL. That is good to hear.

Ms. WILSON. Oh, and I am sorry. I am reminded that there was no veto threat on that aspect, sir.

Mr. HERTEL. Thank you.

Ms. WILSON. OK.

Mr. HERTEL. How does the concept of a core zone of temporary and limited use in a sanctuary relate to the research? Can you tell the committee about that? Ms. Cox?

Ms. WILSON. What we are trying to get—

Mr. HERTEL. Oh, I am sorry. Go ahead.

Ms. WILSON. Oh, I am sorry.

Mr. HERTEL. Either.

Ms. WILSON. All right. Trudy, go ahead.

Ms. Cox. I'm a little unclear on what your question is. But let me talk a little bit about the idea that NOAA has in mind for use of a "core" and "zoning" concept in sanctuaries. The larger a sanctuary becomes, in some ways the harder it is to manage. Our thought for the future as sanctuaries grow larger is to certainly consider zoning for different uses.

One of the things that is being heavily debated and discussed, for example, in the Florida Keys—the debate takes place with a number of users there—is to define what the real core natural areas are that we are trying to save. Are they the seagrass beds? Which part of the Florida Keys' seagrass beds that we want to save are most important? The same thing can be said for coral reefs. We need to apply research in those areas to develop a zoning plan that will be defensible in the future.

The thought of zoning has been experimented with heavily in Australia's Great Barrier Reef Marine Park. We are trying to learn from the experiences that are taking place there. We are certainly giving a lot of thought to using zoning concepts in the larger sanctuaries that are in development.

Mr. HERTEL. Admiral, where and to what expense is the Coast Guard currently engaged in enforcement of a marine sanctuary today?

Admiral LEAHY. What expense, sir?

Mr. HERTEL. No, where and how much is it costing today, if you could tell the committee for the record.

Admiral LEAHY. We normally respond to requests for enforcement at the marine sanctuaries. Otherwise, the enforcement we have in there is coincidentally done with our fisheries enforcement program. We really don't keep tabs on how much money we spend in that program. It is included as part of our fisheries enforcement program, sir.

Mr. HERTEL. I am giving you the chance to answer this because we are always giving the Coast Guard more jobs, and I am sure it takes more money.

Admiral LEAHY. I am sure it will, sir. And I can't answer your question. I don't have those figures.

Mr. HERTEL. Yes. Maybe you can give us those figures if you give us estimates for all of the sanctuaries and the work that the Coast Guard will do because, in this Congress we are always asking the Coast Guard to do more, and for 10 years they did more with less. So we would like to be able to tell the committee of your estimates in that area.

[The information follows:]

FUTURE LAW ENFORCEMENT RESOURCE REQUIREMENTS FOR THE LIVING MARINE  
RESOURCE ENFORCEMENT PROGRAM

The Coast Guard is in the process of determining future law enforcement resource requirements for our Living Marine Resource Enforcement Program. Marine sanctuaries requirements will be included as a part of this effort. These resource requirements will be developed by the end of 1992 during preparation of the joint Coast Guard/National Oceanic and Atmospheric Administration (NOAA) marine sanctuary enforcement report required by the Coast Guard Authorization Act of 1991. In preparing our future enforcement requirements, we will work closely with the marine sanctuary program manager at NOAA and, at the regional level, with each of the sanctuaries managers.

Mr. HERTEL. Admiral, a provision in last year's Coast Guard authorization calls for a study on joint enforcement of sanctuary regulations by the Coast Guard and NOAA. Can you tell us about that study?

Admiral LEAHY. Well, the study is ongoing now, sir, as you indicated, between NOAA and us.

Mr. HERTEL. Right.

Admiral LEAHY. We indicate that the study should be completed probably late summer or early fall, at which time it will be submitted to the Congress.

Mr. HERTEL. Thank you much.

Admiral LEAHY. Yes, sir.

Mr. HERTEL. I want to thank the panel. We have a lot more questions, but we have a lot more people to testify today so we will have other questions for you in writing. But we appreciate your information and your patience today.

Ms. WILSON. Thank you, Mr. Chairman.

Admiral LEAHY. Thank you.

Mr. HERTEL. Our next panel is Mr. Robert B. Stewart, President, National Ocean Industries Association; Mr. Jack Sobel, Director, Marine Habitat Conservation Program, Center for Marine Conservation; Mr. David Slade, Executive Director, Coastal States Organization; Mr. Andy Palmer, Political Director, American Oceans Campaign; Mr. John Humke, Vice President, The Nature Conservancy; Mr. Frank Potter, Co-Chair, Marine Sanctuaries Review Team; Mr. Russell DeConti, Conservation Director, Center for Coastal Studies.

**STATEMENT OF ROBERT B. STEWART, PRESIDENT, NATIONAL OCEAN INDUSTRIES ASSOCIATION**

Mr. STEWART. Thank you. My name is Bob Stewart. I am President of the National Ocean Industries Association. NOIA represents, as you know, Mr. Chairman, 300 companies engaged in all aspects of offshore oil and natural gas operations. I also am here today on behalf of the American Petroleum Institute and the International Association of Drilling Contractors. In addition, I have been asked to file and hand-file requisite number of copies of a statement on behalf of the California Coastal Operators Group which is a group of 175 companies that support and conduct operations offshore California.

We testified previously last November before your committee on this issue, and so I will very, very briefly present the salient points of our position on the reauthorization of the Marine Sanctuaries Act. Basically, we support the authorization. We see in the existing statute nothing that we find to be a fatal flaw. We would urge the continuation of the standards contained in the statute by which sanctuary designations are done. We also believe that designations should continue to be scientifically defensible. You used the word "discrete," Mr. Chairman, in your introductory remarks. That is a descriptive word that I would associate myself with. These should be discrete, scientifically defensible areas.

Further, we believe that the designation process should be left with NOAA. That is where the scientific expertise resides, and we believe that that is where this should take place rather than in the Congress. We support the operation of sanctuaries on a multiple-use basis. Here again, we urge that NOAA be allowed to analyze each sanctuary and make its determination as to what uses are compatible and what are not. We suggest that those compatible uses will vary from one sanctuary to another. What may be unthinkable at Stellwagen Bank may not be in Monterey Bay. But those determinations, we believe, should be left to NOAA. Those uses headed by NOAA should be based on sound science.

Finally, the zoned approach that was referred to by Ms. Wilson and Ms. Cox is something that we find intriguing particularly as it relates to larger sanctuaries. Smaller sanctuaries like Flower Garden Banks designated earlier this year encompass two very clearly identified coral reefs, which are protected by a no activity zone. And that is fine. We have no problem whatever with that because you can see the resource as clearly there to be protected.

In some of the larger proposals, Monterey Bay, which is, as I understand it, some 4,000 square miles, the management of that may indeed suggest identifying one or more core areas where you have clearly identified the resources that need the protection, but perhaps outside of those consideration of some other multiple-use activity—so we find that approach interesting enough to be encouraged by it.

Finally, I guess our preference as far as the program is concerned is that Congress' role is to provide NOAA with necessary resources to carry out its obligations under the statute. We urge the Congress to do exactly that and exercise its oversight responsibilities but not try to involve itself in the designation process or de-

ciding what uses are appropriate. That concludes my statement, Mr. Chairman.

[The prepared statement of Mr. Stewart and the California Coastal Operators Group can be found at the end of the hearing.]

Mr. HOCHBRUECKNER [presiding]. The next witness is Jack Sobel, Director of the Marine Habitat Conservation Program, Center for Marine Conservation.

**STATEMENT OF JACK SOBEL, DIRECTOR, MARINE HABITAT CONSERVATION PROGRAM, CENTER FOR MARINE CONSERVATION**

Mr. SOBEL. Good afternoon. I am Jack Sobel, Director of the Center for Marine Conservation's Habitat Program. I also served as a member of the National Marine Sanctuary Program's External Review Panel and have spent much of the last four years working on sanctuary and other marine protected areas' issues in several capacities.

CMC appreciates this opportunity to provide testimony regarding reauthorization and improvement of the sanctuary program. CMC is a national, non-profit organization dedicated to maintaining the health and diversity of marine life. For more than a decade, CMC has been a strong proponent of conserving the Nation's most outstanding marine areas through the National Marine Sanctuary Program.

Congress created a tremendous program 20 years ago in the sanctuary program with nearly unlimited potential for conserving American's outstanding marine resources. In its first 20 years, the sanctuary program has achieved considerable success despite limited financial resources and variable levels of Administration support. But it has not yet fulfilled its mandate and lived up to that potential. CMC remains committed to seeing the program fulfill its potential. Four years ago when Congress last reauthorized the program, it was nearly moribund. The 1988 amendments have caused a tremendous revitalization and reinvigoration of the program. Especially noteworthy is the degree of public interest and involvement for each of the sites that are currently underdeveloped. I have had experience with five of those sites and have been tremendously excited by the level of support.

This public support, together with the 20th Anniversary of the program and this year's reauthorization provide a great opportunity to take the program to a new level. We are encouraged that each of the bills being considered today contains many positive aspects and provides a foundation for doing this.

I would like to highlight a few of the things that we feel are most important. The first of those is that since its inception, the National Marine Sanctuary Program has been severely handicapped by inadequate funding. Insufficient funding levels remain one of the most critical issues affecting this program. The funding levels set out in Chairman Hertel's bill, H.R. 4310, which go from \$28 million to \$32 million are an appropriate level to aim for for this program. They are consistent with the External Sanctuary Review Panel's report and also with what at least some people within the program feel is necessary to carry out their job. Even at

that level, the program's budget would still be less than three percent of the annual budget given to the National Park Service.

With regards to findings, purpose, and policies of the Act, CMC strongly supports the inclusion of language in H.R. 4310 that talks about maintaining and restoring the natural diversity of living resources by providing places of refuge for species that depend on these areas to survive and propagate themselves. We feel that this intention is already implied in the Act, but we believe that it is so fundamental to the program's primary goal of resource conservation that it should be explicitly stated.

We also believe that comprehensive protection, which is what sets this program apart, is extremely important, and that to enable the sanctuary program to fulfill its responsibility, it must be given clear authority to address all threats to sanctuary resources. With regards to that, we are very supportive of language in Congressman Studds' bill, H.R. 4409, regarding interagency cooperation. However, we are concerned that the present language provides no assurance that other agencies will actually consult with NOAA regarding proposed actions, and that even if they do, they may not follow the suggestions of NOAA as to how to address those activities that may threaten resources. We think that language needs to be tightened up.

We are also supportive of the access and valid rights language in Congressman Hertel's bill. This language would also help ensure protection against certain threats. However, we do think it is important to clarify under what circumstances destruction of sanctuary resources could be considered consistent with the policies and purpose of the Act. We think that may be OK, but it doesn't sound good to us, and it needs to be specified what exactly is in mind there.

Finally, one last subject that I would like to comment on is not included in either bill currently, and that is that we feel it is important to periodically review the management plans for sanctuaries to ensure that they are carrying out their job and that they are consistent with the policies and purposes of the Act. The Great Barrier Reef Authority does that regularly, and we think it is important to regularly look at these plans and make sure they are doing what they are supposed to and correct them if they are not.

Finally, I would like to say that this 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. There is an opportunity that exists for raising this program to a new level that is exciting, and we cannot afford to squander it. Thank you for the opportunity to express our views, and I would be pleased to answer any questions.

[The prepared statement of Mr. Sobel can be found at the end of the hearing.]

Mr. HOCHBRUECKNER. Thank you, Mr. Sobel. Our next witness, Mr. David Slade, Executive Director of the Coastal States Organization. Mr. Slade.

**STATEMENT OF DAVID SLADE, EXECUTIVE DIRECTOR, COASTAL STATES ORGANIZATION**

Mr. SLADE. Thank you, Mr. Chairman. On behalf of the Coastal States Organization, I appreciate the opportunity to be here today. In the last four or five weeks, we have had numerous phone calls, conference calls, and meetings on this subject nationwide.

I would like to use my five minutes to very quickly highlight the main points that we would like to bring to the table today. Number 1, obviously, is funding. It is unanimous across-the-board. All of the States recognize that the funding levels have not been high enough to adequately implement this program. We support the increase in authorized funding in both H.R. 4310 and H.R. 4409.

One of the central concerns that the States share is what to do about activities occurring outside of the sanctuaries that affect resources inside. Quite a few of the sanctuaries, as you are well aware, have dredging and dredge disposal dump site designations; even underwater bomb testing down in Florida. Obviously, these have direct impacts on resources and what can be done about it. We endorse the measures in H.R. 4409 where the head of the Federal agency must consult with the Secretary of Commerce on any agency action that could harm or destroy any sanctuary resource.

We also endorse the provisions where the Secretary will provide a written determination and how the agency could go about doing its activities so as not to cause such harms. I think we do share the concern that Mr. Sobel just articulated that we are not convinced that even though the Secretary of Commerce has taken those steps that other Federal agencies will necessarily comply.

What to do with the recovered civil penalties and damages and recovery costs? Unanimous position out there amongst the coastal States that the moneys collected from those sources, from civil penalties and recovery costs and damages, should be applied to the sanctuary wherein the violation took place and not be applied to funding the national program as a whole.

When it comes to the designation of sanctuaries, we recognize that the governor of the coastal State plays a strong role anytime a sanctuary may be within State waters. When a sanctuary straddles the boundary or even if the sanctuary is totally offshore, we believe that the coastal States must be an integral player in the designation process. For that reason, we endorse the provisions in H.R. 4310 that adds the States and local governments to the list of entities with whom the Secretary of Commerce may enter into cooperative agreements.

Cooperative agreements have worked well from the State of Florida's perspective where they have such an agreement with NOAA for the Key Largo and Looe Key National Marine Sanctuaries. They are working now to get a cooperative agreement for the entire Florida Keys National Marine Sanctuary.

And then I would like to add two other points here. Activities that occur inside the sanctuaries, in H.R. 4310, there is a provision that would propose having the Secretary of Commerce certify that activities inside the sanctuaries are done in accordance with the regulations. We would note that several of these activities may already be subject to State CZM consistency review, and to the

extent that that is the case, we believe the situation shouldn't be made more complicated than that. And that to the extent that an activity inside is already subject to State CZM consistency review, that this Secretarial certification process would not be necessary.

And, finally, sanctuaries that are totally within State waters, Michigan has advanced the policy that up in Thunder Bay that the governor of the coastal State should have a significant role in that. They have advanced a policy of a five-year sunset provision which has been under agreement between the State of Michigan and NOAA for quite a few years. And recently NOAA reversed themselves on that position after a lot of discussion between representatives of Michigan and other coastal States that have sanctuaries completely inside State waters. We really believe that that sunset provision is a valuable idea, and we look forward to working with you and the staff on how to address that. That concludes my remarks. I will be glad to take any questions that the committee may have. Thank you, Mr. Chairman.

[The prepared statement of Mr. Slade can be found at the end of the hearing.]

Mr. HOCHBRUECKNER. Thank you very much. On behalf of Chairman Hertel—yes. A slight change in direction. Mr. Andy Palmer, Political Director of the American Oceans Campaign.

#### STATEMENT OF ANDREW PALMER, POLITICAL DIRECTOR, AMERICAN OCEANS CAMPAIGN

Mr. PALMER. Thank you, Mr. Chairman, for including me. My name is Andrew Palmer. I am the Political Director of the American Oceans Campaign, and today I am testifying on behalf of the American Oceans Campaign and several organizations in Washington State and Greenpeace.

Our Pacific Northwest office has been particularly active in the two sanctuary sites out in the Pacific Northwest. Fred Felleman, a conservation biologist who is working for us, had wanted to be here. He contributed a lot to this testimony but was unable to because of a previous commitment. The program has suffered, unfortunately, in the past from a lot of problems; perceptual problems, powerful interests allied against it; inadequate mandate authority from NOAA; inadequate funding support from the Administration.

Yet, even while all of this was going on, there has been a very marked, perceptible, noticeable, anybody's out there can see, interest from the public in seeing areas off our coast now placed under types of protection. Obviously, in Congress you have felt this as well. Members of this committee as well as other Members in Congress have at times had to step forward and either threaten or actually introduce legislation to get certain protections or certain sites in the process of designation. That is not necessarily the best way to conduct a program, but it, unfortunately, has been necessary at times to do this.

We think this is a great opportunity with this reauthorization to try to take a look at why some of these problems came about and seek ways we can strengthen the underlying Act. We would also like to commend both the authors of the bills before us today. I think the suggestions and the efforts that they put into their legis-

lation is excellent. I think it is going to move us along that road toward strengthening the underlying legislation and hopefully will take care of these problems.

I will not detail my written testimony. It goes into detail on a number of points. I will just briefly summarize and focus on a few areas I think that are important to highlight.

Others have mentioned there have been unconscionable delays in the site designation process throughout this program. Some of this has been due to agency resources being limited. Some have also been caused by political and internal delays from other sister Federal agencies and the White House. Both bills do seek to streamline this process, and we definitely do applaud that to the extent they do. And also, as Mr. Sobel mentioned, the effort to try to get the agencies to comply in a timely manner we certainly do applaud. But we suspect that congressional pressure may still be necessary especially when conflicting agency missions are in evidence and unless and until NOAA has a clear authority to bring about that cooperation.

Oil and gas development continues to plague the designation of a number of sanctuaries especially on the west coast. In spite of universal unified opposition to oil and gas leasing within the user communities in some of these areas and especially in the Washington outer coast, NOAA has even declined to consider as an option in the DEIS a no oil and gas option; instead, coming up with sort of an intellectually creative notion that oil and gas activities are incompatible until the year 2000, but after that they may be permitted.

We urge the committee to take a long look at this particular issue: It is a difficult one. It is not an easy solution, but it is hard to imagine any marine sanctuary where there is currently no oil and gas leasing, allowing such activity within the bounds of a marine sanctuary. At a minimum, the activity should be presumed to represent serious and real risks to the sanctuary resources, and the burden of proof should shift to the advocates of that activity.

In addition, commercial shipping activities in many sanctuaries or proposed sanctuaries may be of concern. Solutions to this could be in the method of operation to vessels within a sanctuary or actually moving traffic lanes outside the sanctuary. We think that NOAA needs to have clearer authority, if it doesn't already, to work with the Coast Guard and to try to implement changes at an early-as-possible date to protect sanctuary resources from shipping accidents.

Recent actions or proposals by the Department of Defense to use the Florida Keys as an area for explosive testing and so forth, the use of Sea Lion Rocks in Washington State as a bombing range point to further problems that NOAA has in dealing with agencies within the Federal Government with regard to activities that may be inappropriate.

The other areas we are concerned about especially in Washington State, and I think that the program may encounter this elsewhere, is the inclusion of certain entities such as tribal governments and the recognition of their special role, especially in Washington State where they have the tree rights, in management of re-

sources in their areas. We would like the language that has been adopted by the Hertel bill which would reflect that.

And, finally, I would associate myself with Mr. Sobel's remarks on funding. We feel that the levels that were recommended by the Review Committee on funding are appropriate, that maybe fiscal realities of this climate in this government and the Congress now may not allow for reaching that immediately, but we think that we should set the marks as high as possible as a signal of the type of support that Congress has for this and to reach the level of \$30 million within as short a time as possible. Thank you very much for the opportunity.

[The prepared statement of Mr. Palmer can be found at the end of the hearing.]

Mr. HOCHBRUECKNER. Next is Mr. John Humke, Vice President of The Nature Conservancy.

#### STATEMENT OF JOHN HUMKE, VICE PRESIDENT, THE NATURE CONSERVANCY

Mr. HUMKE. Mr. Chairman, I am the Vice President for Agency Relations of The Nature Conservancy. I also have served on NOAA's National Marine Sanctuary Review Panel. And our office in the Florida Keys program works in direct support of the Florida Keys National Marine Sanctuary.

We believe that Congress should provide a clear mandate to conserve, maintain—

Mr. HOCHBRUECKNER. Excuse me.

Mr. HUMKE. Yes, sir?

Mr. HOCHBRUECKNER. Would you pull the microphone forward please?

Mr. HUMKE. Oh, I am sorry. Certainly. Is that better?

Mr. HOCHBRUECKNER. Yes. Thank you.

Mr. HUMKE. We believe that the Congress should provide a clear mandate to conserve, maintain, and restore nationally significant values for which these sanctuaries are being established. In this regard, we have provided several specific suggestions in our written testimony, and I will just touch on a few of them today.

We recommend that maintaining natural biodiversity be added to the findings and purposes section. It should be clear that a fundamental purpose of marine sanctuaries is to maintain the variety of life in the sea and the natural processes necessary to maintain this life. We recommend that a system of marine sanctuaries should be defined in terms of representation of all the biogeographical regions of the coastal waters and ocean waters and in the Great Lakes. Sanctuaries should also be established to ensure that we do not lose forever unique habitat occurrences; outstanding ecological, biological, oceanographic, cultural, and historic features; rare, threatened or endangered species; harvest refugia; areas of high natural productivity; and significant areas for maintaining biodiversity.

However, we believe that the most important issue to be addressed is funding. The \$30 million figure that the Review Panel recommended is based on conservative calculations to reasonably accomplish the purposes of the Florida Keys and other existing,

and in the pipeline sanctuaries for selecting and designating new sanctuaries and for administering the program. We support the \$30 million figure.

An equally important action is for the Congress to direct that most of these funds go specifically to sanctuary management. Other recommendations that we have made in our written testimony include sanctuary designation standards; procedures for designation and implementation including the identification of threats; the valuable role of cooperation from non-governmental organizations in areas like research, education, and monitoring, and the need to permit cooperative agreements with non-profit organizations like The Nature Conservancy so we can continue to jointly fund and support volunteer and outreach programs such as we are doing in the Florida Keys.

In preparing our written remarks, I omitted a specific recommendation that I would like to add now. Section 304(b)(1) contains a provision that the Secretary issue a notice of designation not later than 30 months after a site was declared to be an active candidate. We recommend that language to this effect be retained.

In conclusion, we endorse the 21 recommendations of the National Marine Sanctuary Review Panel. One of the most important issues that the panel addressed was zoning. If the full values of marine sanctuaries are to be retained, it will be essential to establish protective zones within sanctuaries. In the Florida Keys, for example, it is estimated that 30 percent of the sanctuaries should be devoted primarily to ensuring that the variety of biological communities needed to sustain the richness of marine life remain undisturbed.

I recently received a NOAA technical memorandum that recommends that at least 20 percent of sea areas, not just marine sanctuaries, be set aside as marine fishery reserves for management of reef fisheries serving both conservation and economic purposes.

As a last thought, NOAA does not have a long tradition as a resource management agency charged with balancing the protection of nationally significant natural and cultural treasures and managing the same seascapes for compatible uses. Therefore, the commitment and performance of NOAA to this task should be carefully monitored. Our observation in Florida and elsewhere is that NOAA is doing a commendable job given the resources that they have had. NOAA has been outstanding in working in a partnership mode with State and local agencies.

Their relationship with the Florida Department of Natural Resources should be a model for all Federal agencies, and their educational approach to law enforcement, that we have observed in the Keys, shows true innovation in dealing with the public that is adjusting to new rules. There has also been good staffing balance between NOAA core officers rotating through the program and longer-term resource professionals. As the program grows and achieves higher status in the NOAA hierarchy, it is essential that it not lose its ability to forge directive partnerships, find creative solutions, and to be staffed in a manner that meets our growing expectations. Thank you for the opportunity to testify.

[The prepared statement of Mr. Humke can be found at the end of the hearing.]

Mr. HOCHBRUECKNER. Thank you, Mr. Humke. Next we will hear from Mr. Frank Potter, the Co-Chair of the Marine Sanctuaries Review Team.

**STATEMENT OF FRANK POTTER, CO-CHAIR, MARINE  
SANCTUARIES REVIEW TEAM**

Mr. POTTER. Thank you, Mr. Chairman. In 1990, in an unguarded moment, I agreed to be the Chairman of this Review Panel that produced some several months later the report that has been referred to several times and was, in fact, incorporated in the record of the November 7 hearings. Since then, I have been working with your staff and the staff of Mr. Studds' subcommittee on the draft of the legislation which are now before us. Either bill, if enacted, would significantly improve the position of the program, and I endorse them.

Before I go further, I would like to say I would like to ask that my complete statement be included in the record together with that of Dr. Carleton Ray, who was invited to testify in the earlier hearing but couldn't be here because of a conflict. His testimony is already in the hands of the staff.

Today, I would like to focus just on one single point, at least that is the theory. I will probably go off into a few others before I am finished. And that is funding. If NOAA is given the resources to do the job, I am convinced that they can and will do an outstanding job of maintaining these important resources. The budget for the program up until now has been entirely inadequate and not commensurate with the responsibilities that NOAA has had thrust upon them.

There is an analysis which I have supplied to the staff of the committee and which I would also ask be included in the record in which I went through the rough costs of managing an actual sanctuary on the ground or in the water as the case may be. And what that shows is that to do the job is not cheap, but to do the job is very important. For example, if you take a very large sanctuary like the Florida Keys, which occupies almost 7,000 square statute miles of area, today there are a total of 26 people assigned to that sanctuary in the field. That includes secretaries and mechanics and administrators and biologists and educators and the whole other range of the kinds of people that you need to say nothing of the enforcement required to handle this job.

I would estimate that a sanctuary of this level is going to require around 100 people, and that means a budget of \$3.6 million in personnel, \$400,000 for space, \$2.2 million for equipment, \$800,000 for research, a total operating cost for one year of over \$7 million. That is to do the job right. And that is just one in the system. There are other sanctuaries, and for the convenience of the committee, I have tried to lump these into groups that more or less equate with one another.

What that analysis shows is that just for the field costs of operating a sanctuary system alone, we are talking somewhere around the order of \$24 million. Now, the job can be done with less. The job will be done with less. But at some point, the job can't be done at all, and we are simply deluding ourselves when we believe that

we have an operating sanctuary system. Where that point is, I can't say. But it is somewhere well above the \$3 million that the program has had in the past and I believe is considerably above the \$7.3 million that is designated in the President's budget for 1993.

I support the budget figures in Mr. Hertel's bill. I believe they are reasonable and responsible. I hope that they will be possible, but I have been around long enough to understand that they probably won't. Thank you, Mr. Chairman.

[The prepared statements of Mr. Potter and Mr. Ray, and the report, "The Costs of an Adequate Marine Sanctuary Program" can be found at the end of the hearing.]

Mr. HOCHBRUECKNER. Mr. Potter, thank you.

Mr. POTTER. Thank you.

Mr. HOCHBRUECKNER. Next is Mr. Russell DeConti, Conservation Director, Center for Coastal Studies.

#### STATEMENT OF RUSSELL DECONTI, CONSERVATION DIRECTOR, CENTER FOR COASTAL STUDIES

Mr. DECONTI. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman, Members of the committee. My name is Russell DeConti. I am the Conservation Director for the Center for Coastal Studies in Provincetown on Cape Cod. I also serve on the Stellwagen Bank Coalition Steering Committee, and I am on the Board of Directors for the Association for the Preservation of Cape Cod which is a member of the Stellwagen Bank Coalition.

Today, I am representing the interests of both the Center for Coastal Studies and the Stellwagen Bank Coalition with respect to the National Marine Sanctuaries Program reauthorization. And before I get into my comments, I would like to take this opportunity to thank Congressman Studds for all the assistance that he has given us in the designation process for Stellwagen and for submitting his bill for reauthorization. The Center and the Stellwagen Bank Coalition greatly appreciate that continued assistance. Thank you very much.

I would like to do something a little bit different before I present my specific comments on the reauthorization. I would like to use the Stellwagen Bank proposed sanctuary in Massachusetts Bay to illustrate a point, and that point is to incorporate provisions into the legislation which will give NOAA authority to regulate activities outside of the boundaries of sanctuaries that may have a harmful impact on the resources within the sanctuaries. And we believe this is an extremely important provision to incorporate into the legislation, and I think you will see, as I just go through a brief example here in Massachusetts Bay, how it fits in.

Massachusetts Bay is not an idle body of water. In fact, there are a lot of things going on right now some of which we are not too proud of. The Massachusetts Water Resources Authority has been mandated by Federal court order and the EPA to upgrade Boston's waste water disposal system in order to comply with the Clean Water Act. The facilities' plan calls for a nine-and-a-half mile long outfall tunnel that will begin discharging 500 million gallons of primary treated sewage in 1995 with a wet weather volume estimate of 1.3 billion gallons of sewage. That makes it the largest single

sewage outfall in the country, if not in the world. That outfall will be located, approximately, 12 miles to the west of the proposed Stellwagen Sanctuary boundary.

I am not going to get into all the details of my comments. They are written down here, but, basically, our concern there is with five years of primary treatment and then secondary treatment, the discharge will be emitting huge volumes of nutrients into the Massachusetts Bay ecosystem. Although they have gone through the normal environmental impact statement review process, the impacts of that discharge on the fundamental ecosystem dynamics of Massachusetts Bay are not well understood. And the scenario of increased nutrification and changes in the phytoplankton and zooplankton populations within the Bay are things that we are trying to get a handle on now as the project moves forward.

The research that we do at the Center for Coastal Studies has concentrated primarily on three endangered species of whales, the North Atlantic right whale, the humpback whale, and the fin whale. And the most endangered of the three is the right whale which feeds on phytoplankton. And we are concerned at this point that we don't know whether, in fact, this discharge is going to impact the right whales which do utilize a large portion of the proposed sanctuary area for nursery grounds. That is one point.

The second issue that is coming down in the Bay at this point is the disposal of dredge spoils from the Boston Harbor area. For the last 50 years, the Massachusetts Bay Disposal Site has received dredged materials from the Boston Inner Harbor area, and estimates at this point are that there are, approximately, 28 million cubic yards of sediments that have been discharged out there. We are concerned that many of these sediments are contaminated, and future activities to dispose more sediments out there will lead to bioaccumulation in marine organisms that could be detrimental. I see the orange light so I am going to jump ahead.

My specific comments on the reauthorization, in addition to giving NOAA authority to deal with activities outside of the sanctuary boundaries, have to do with management. I think the sanctuary program is an excellent program to begin to utilize ecosystem-based management approaches. That is an approach, basically, that allows normal ecosystem functions to continue undisturbed by man's intervention. It is an approach that recognizes the natural carrying capacity as the upper limits of the system rather than one that attempts to modify those limits to accommodate more intensive uses.

Secondly, I would like to speak to the need for additional funding. You have heard a lot about funding today. We agree that it is time to have full funding for this program. We have suggested a level after four years of \$25 million which I think is in line with what you have heard from others here today.

My two final points have to do with the need to include advisory committees in the legislation. We think that the incorporation of advisory committees provides a sense of ownership to the sanctuaries which is a very important aspect in terms of management. It keeps people plugged in to what the local issues are in the region, and we support Congressman Studds' proposal of section 315 for the establishment, membership, and staffing and assistance for

sanctuary advisory committees. Thank you for the opportunity to comment.

[The prepared statement of Mr. DeConti can be found at the end of the hearing.]

Mr. HOCHBRUECKNER. Thank you, Mr. DeConti. At this point on behalf of Chairman Hertel, I have a series of questions to ask for Mr. Stewart. You mention in your written testimony that you believe that the designation of all marine sanctuaries should be scientifically defensible based upon thorough examination of the program's criteria. Do you think NOAA and the MMS, the Minerals Management Service, are each conducting enough thorough scientific study of proposed sites to meet your requirements?

Mr. STEWART. I believe so, Mr. Chairman. The point has been made here several times this afternoon that funding levels for NOAA have not been very generous. If there is any shortcoming in the scientific review that is occurring or has occurred, it is probably due to that. And, as I said in my statement, our position is that we ought to give NOAA the resources it needs to do the job and then step aside and let them do it. I am confident they can and will do it if they have the resources.

Mr. HOCHBRUECKNER. You also advocate sound science-based decisionmaking to guide sanctuary designation and management. What if scientific studies indicated that an area within a sanctuary should be best managed as a no-use refuge area where only limited scientific research would be permitted? Would you support such a decision?

Mr. STEWART. Absolutely. There is a good example of that in the recent designation of the Flower Garden Banks Marine Sanctuary in the Gulf of Mexico. There there is a very clearly defined no-activity zone that guards two coral reefs. I believe they are the northernmost living coral reefs we have in this country. Even though that area is absolutely surrounded by oil and gas activities, I don't know of anybody in our organization that would even dream of trying to go in and harm or do anything within that no-activity zone. We don't want to intrude on those reefs. So that is not a concept with which I have a problem.

Mr. HOCHBRUECKNER. Thank you, Mr. Stewart. Mr. Sobel, recently designated and pending marine sanctuaries show a trend toward increasing size. Are there sound scientific reasons for limiting the size of National Marine Sanctuaries?

Mr. SOBEL. If I understand that question, I would answer no. There is no scientific reason for limiting the size in terms of making them smaller. There is, on the other hand, sound scientific reasons for establishing the size of sanctuaries. I would say that science should be used to determine what the resources are that you are trying to protect, what the system that includes those resources is, and what threats exist with respect to those resources. Then, your boundaries should be determined based on the resources and what size you need in order to protect those resources from what the threats are.

Mr. HOCHBRUECKNER. OK. Mr. Studds, I understand you have a question also?

Mr. STUDDS. Thank you very much, Mr. Chairman. Thank you for recognizing the exception to the red light rule. It does not apply to friendly constituents.

Mr. HOCHBRUECKNER. Especially since you are a chairman.

Mr. STUDDS. I appreciate that. I assume you all were here for the first witness from the Administration, Ms. Wilson. Mr. DeConti, I hope you are going back to Cape Cod tonight. You are not by any chance going to absent yourself any longer than necessary, are you?

Mr. DECONTI. I am going back tonight.

Mr. STUDDS. You are a rational person. If I had your job, I doubt that I would be here. I really respect, appreciate, and envy what you do. This is not on my list of questions, but I wanted to ask you. You heard my exchange with Ms. Wilson about the possibility of sand and gravel mining on Stellwagen Bank. Was I overstating the case to say that from any rational perspective that should be unthinkable?

Mr. DECONTI. I have to say I actually wasn't here when that exchange occurred.

Mr. STUDDS. You will be appalled to know that apparently the Minerals Management Service in the Department of the Interior is a sticking point at the moment in the designation process insisting that there be no ban on, and, therefore, that there be the possibility of sand and gravel mining on Stellwagen, notwithstanding the fact that it will be designated as a sanctuary. From your perspective, what would be the consequences for that ecosystem or that environment of such activity?

Mr. DECONTI. Well, I think it falls back to some of the conversation we just heard. It would undermine the scientific basis for establishing the sanctuary on one level at least. The productivity of that system is directly related to the presence of the Bank as a submerged feature in Massachusetts Bay. It has a lot to do with the circulation patterns in the Bay, and it causes a great deal of upwelling of the nutrients and the phytoplankton which creates productivity in that area. So the mining of that feature would change that whole system with uncertain results.

Mr. STUDDS. So if you were a right whale, you would take a very dim view of that proposal?

Mr. DECONTI. I think so.

Mr. STUDDS. You remarked in your testimony that Federal agencies should be more sensitive to and responsible to the sanctuary program; all Federal agencies with related responsibilities. What do you suggest with respect to NOAA's memorandum of agreement approach to interagency cooperation and resource protection? Is that satisfactory, or should something with a little more backbone be in there?

Mr. DECONTI. Well, I think it depends on what the specific issues are in terms of how well that type of system will work. Some of the other suggestions have been to utilize a system similar to the CZM consistency provisions which would fall back on a policy basis comparing the activity against existing policies. I mean, it really depends on what the specific activity is you are talking about in terms of whether it will work.

But we need to have NOAA involved in the review of activities as they occur as a management function of the sanctuary, and there has to be the ability for them to make a determination as to whether or not there will be harm to resources and then acquire some kind of mitigation or reconsideration of proposed action. Therefore, I believe the proposed consultation process is one that is better than what we have now. We support this approach as proposed.

Mr. STUDDS. Let me ask you a question of a personnel nature. As you know, there have been suggestions of a more formal career track for NOAA core officers to serve as sanctuary managers. There is also substantial criticism of that approach. It is a matter of controversy. You have been involved with getting a sanctuary off the ground at a local level very deeply. I am wondering how do you and others from the coalition feel about the use of NOAA core officers in that context?

Mr. DECONTI. Well, it is true. I certainly don't want to slight any of the NOAA core personnel because—

Mr. STUDDS. No. There was no slight implicit in the question.

Mr. DECONTI. I understand that. However, I think, again, as with the advisory committees and the selection of a manager, it is very important to be able to get these programs off the ground quickly and to build the support and trust of the local community that is involved. For example, in the Stellwagen coalition there is a very active group of over 100 individuals and organizations spanning everything from marine business to environmental groups. And the fishing community has been a very integral part there.

Initially, there has been some doubt on behalf of the fishing community in terms of the benefit of a sanctuary to their particular interests. Now as they see these various other things emerging in the Massachusetts Bay system that could have potential negative impacts on their interests, they see the sanctuary as a benefit. The manager of the sanctuary program in this particular instance is going to need to be someone that these people can trust and someone who understands the issues and can get involved with them in supporting their interests from the standpoint of managing the sanctuary. So I think a local input is very important.

Mr. STUDDS. One more for you, and I guess Mr. Sobel as well. Both the Center for Coastal Studies and the Center for Marine Conservation have been involved in strong grassroots efforts to get sanctuaries designated. Having gone through that, what have you found to be the largest single stumbling block to the designation? And is there any way you have from your experience to suggest that we might improve the outreach and participation process at the local level?

Mr. SOBEL. Well, I would say we certainly have been very involved in a number of sites, and I think that the experience has actually been very good. And I know that there has been some consideration of making changes to the designation process. I think one of the things that we have found in all of the sites we have worked is that the designation process does provide very good opportunity for public involvement, and I think that that is the key to having developed support for each of the sanctuaries that is currently under consideration.

I do think that NOAA can do a better job of getting the word out about those opportunities, and I think that they have over the last several years made considerable improvement. I know that they are limited by costs, and I know that it may make sense for them to work with non-profit groups in getting the word out about those meetings. And that has been the case in the Florida Keys. It has been the case, to some extent, in Washington State and in Stellwagen and in Monterey. So I think the designation process should not be changed in terms of allowing those opportunities.

Mr. STUDDS. Thank you. Did you want to respond to that? No need to.

Mr. DECONTI. Yes. I would support that perspective. However, from the standpoint of building grassroots support, I think the duration of the process is somewhat of a problem because it is difficult to keep a lot of people interested and motivated for more than three or four years in some cases. The designation process could be improved by shortening the time it takes to get to final approval.

Mr. STUDDS. But there wasn't a lot for you to do in the eight years of the Reagan Administration in this regard. Did they do one of these things in eight years? I want to thank you all. I apologize for not being able to be here for all of your testimony. We have to do eight things at once here.

Let me just reiterate for the record and for whoever may be listening or reading the record that with respect to the—I have always dismissed the idea of sand and gravel mining on Stellwagen Bank on the lunatic shelf along with whoever that was who was going to put an island out there with a hotel and a gambling casino. The same idea, somebody might suggest that since there are lovely whales out there, perhaps we should build a road out there so people can look at them. Apparently, there are people in the government here in this city that take that idea seriously somewhere in the bowels of the Interior Department. And I just want to reflect without threatening any other kinds of action, that it is amongst the more inane ideas and absolutely and totally inappropriate. It would contradict the entire thrust and purpose of the program, and it would threaten the ecosystem in question. And I hope to God that we don't have to fight that battle. There is no doubt in my mind how it will come out if we do, but it would tempt the Congress, I think, to involve itself in the kinds of decisions that really ought to be made by the folks whose job it is to protect our natural resources in the Administration. I thank all of you for what you have done. Thank you, Mr. Chairman, for your patience.

Mr. HOCHBRUECKNER. You are welcome. I have a couple questions on behalf of Chairman Hertel for Mr. Slade. What role should the coastal States take in the designation and management of National Marine Sanctuaries?

Mr. SLADE. I am sorry, Mr. Chairman, what role?

Mr. HOCHBRUECKNER. Yes. What role should coastal States take in the designation and management of National Marine Sanctuaries?

Mr. SLADE. The role that they have now for sanctuaries that are inside or within State waters either completely or partially I don't think you could really improve upon that. The State governor has the authority to object to any site designation at all. We believe

that the States should be consulted all the way from the very beginning into the final stages of the designation process regardless of where the sanctuary is. Even sanctuaries such as the Flower Banks, 170 miles offshore, are of vital interest to the States.

Mr. HOCHBRUECKNER. Mr. Slade, do you believe that the National Marine Sanctuary Program should follow the designation process established by statute and regulation, or do you believe that the sanctuary should be individually declared by the State?

Mr. SLADE. That a sanctuary should be individually designated by a State?

Mr. HOCHBRUECKNER. Yes, as opposed to following the existing Federal process.

Mr. SLADE. I don't think that any of my organization members would think that the process that is now implementing under the MPRSA under title III is broken to the extent that it would be replaced by any other type of system if I am understanding your question. We don't see title III broken in any way. We see H.R. 4310 and H.R. 4409 doing some nice corrections, but to the best of my knowledge, I haven't heard from any State governor or any program manager saying that the States ought to individually have the—I am certain right now that the States have the authority to designate a sanctuary within their State waters wouldn't get Federal money, and it wouldn't be done under title III. But they can declare a park on land or offshore within their territorial boundaries right now.

Mr. HOCHBRUECKNER. Thank you very much. The Chairman was interested in hearing—Mr. Palmer, what is your position concerning the zoning for limited use in sanctuaries?

Mr. PALMER. Thank you. Well, I think one of the unique characteristics of the Marine Sanctuary Program is the flexibility and the ability to fashion each sanctuary in a manner which best suits its needs. The reason I introduce it that way is I think zoning is a concept which has very usable application, that I think it is probably very appropriate for the reef systems, may be very appropriate for the San Juan Island systems if that makes it into the sanctuary designation process. I wouldn't, however, necessarily agree that zoning is the appropriate way for all sanctuaries. It may be that some sanctuaries would be better served by having uniform use regulations throughout the entire reach of the sanctuary.

Mr. HOCHBRUECKNER. Thank you. And in your opinion, does the current Marine Sanctuary Act provide NOAA with adequate authority to regulate activities conducted under Federal leases or permits within a sanctuary?

Mr. PALMER. Within a sanctuary? Well, it has a grandfather clause in the existing language, and as I read that, although those permits are supposed to be conducted even if they are grandfathered in a manner consistent with the aims and objectives of the sanctuary, I think I would like to see clarified, if it isn't already under law, that should permits expire, transfer, come up for review for any reason, then they lose that grandfather status and be subject to the full force of the sanctuary regulation, if that is what you are getting at.

Mr. HOCHBRUECKNER. So in that sense, the present regs are not?

Mr. PALMER. From my reading, I don't know that they cover that situation. I would like to see that clarified.

Mr. HOCHBRUECKNER. Thank you. Mr. Hughes, do you have any questions at this point?

Mr. HUGHES. Mr. Chairman, no, I have no questions. I just want to thank the panel.

Mr. HOCHBRUECKNER. I guess I am up. Mr. Humke, in your written testimony, you mention the establishment of "harvest refugia" as a means of protecting and preserving the diversity of living sanctuary resources. Has The Nature Conservancy been successful in promoting such strategies on land-based natural communities? If so, how?

Mr. HUMKE. Yes, sir. We have had some success in restoring rare ecosystems in places like Illinois where savannah ecosystems are among the rarest things left. And all we really find out there after diligent search are fragments of these systems. But it is really at those places that we engage in restoration, and what is really happening—

Mr. HOCHBRUECKNER. Excuse me. If you could bring the microphone closer?

Mr. HUMKE. I am sorry. What is really happening in these places where we are bringing back these rare systems is that the soil organisms, other microorganisms are still in these systems as refugia. And we provide the opportunity by bringing some structure and function back to these systems to allow these organisms to repopulate a whole area. Although I should say that I have actually asked some of our scientists if harvest refugia would work in the ocean, and the problem you have terrestrially is that because of habitat fragmentation and the loss of dispersal corridors, it is much more difficult terrestrially, and you would have more limited success. In the ocean and in the Great Lakes where you have water as a medium for dispersal of organisms, harvest refugia as a restocking mechanism has a much greater chance of success.

Mr. SOBEL. If I could comment on that also? There is also experience in marine systems in a few countries, not in our own, but New Zealand, in particular, and also Australia have had very good success with the approach of establishing harvest refugia. New Zealand put their first site together over 10 years ago, and it has been an outstanding success, not only in terms of restoring the populations there but also for learning things about the system that they never would have known had they not closed some area off to fishing. They are now in the process of moving toward an approach that will include 10 percent of their entire marine system in such a system. So I think not just in terms of terrestrial areas in this country, but in terms of marine areas in other countries, there is experience that demonstrates that this type of approach does work.

Mr. HOCHBRUECKNER. Thank you. Mr. Potter, it has been said that NOAA cannot do an effective job at managing our National Marine Sanctuaries. Is this a question of funding, resources, or experience, in your opinion, if you agree with that statement?

Mr. POTTER. I don't think I would touch that question with a stick, Mr. Chairman. NOAA has had problems in the past primarily, as I suggested in my earlier statement, because they have never been given the tools to do the job. The people in the program are

highly motivated, energetic people with whom any one of us would be proud to work. But the program itself has languished in the wings almost since its beginning in 1972. Nobody paid attention. It wasn't really until the last two or three years that any kind of momentum has begun to build to support the program. And what we are seeing now stimulated in part by Congress' direct involvement—Congress saved the program years ago when an earlier Administration, which shall remain nameless, would have preferred to kill it dead. Congress has stayed involved in the program, and NOAA is now much more enthusiastic and from all signs willing to pick up and move forward with it. And in this endeavor they can only be encouraged.

Mr. HOCHBRUECKNER. Thank you. The Chairman had one other question for you, Mr. Potter.

Mr. POTTER. I was afraid of that.

Mr. HOCHBRUECKNER. And, basically, his question for you is in one sentence, would you please explain the frightening notion of each word that elicits a "red flag"? And the words are biodiversity.

Mr. POTTER. Do you want to give them all to me, or are you going to let me dangle out there—

Mr. HOCHBRUECKNER. I will—

Mr. POTTER. Mr. Chairman, the concept of biological diversity is one about which one could and many people have written books. You can talk about biological diversity at a number of levels; genetic diversity, species diversity, functional diversity. The core to the concept, as I understand it, and I am a lawyer, I am not the best person to talk about this—Dr. Ray would have been, but he is not here, and I will speak to him about that—but the basic concept, as I see it, is that a system which has a wide range of diversity is much more resilient and able to respond to various kinds of environmental stress. The strength of the sanctuary concept as it relates to biodiversity—I know you asked me to do this in one sentence but that—

Mr. HOCHBRUECKNER. Just proceed without getting books about it.

Mr. POTTER. Right. The strength of the concept for sanctuaries is that the creation of a sanctuary encourages the conditions which allow a wider range of environmental choices for the organisms that exist in that system. And it is for this reason that the concept of biodiversity is fundamental to the idea of a functioning, working, successful marine sanctuary. Now, why it makes people nervous, I cannot say. Well, I can say, but I would rather not put words into their mouths. People tend to regard it as a smoke screen for creating an environment in which bizarre and unique organisms can exist, and this to them means that for those organisms what you have to do is protect the system entirely and not let anybody touch it at all. That, I think, is what makes them nervous, and I think it is a mistake. How is that for one sentence?

Mr. HOCHBRUECKNER. Slightly long. Do any other panelists wish to comment? Mr. Potter—biogeographic regions—

Mr. POTTER. Oh, this is my day. Here again, the concept of a biogeographic region is one which is much better understood by people that are not me. What it embraces is the concept of a fairly large area which is distinguished from areas to which it is adjacent

or others by reason of its geography, of the oceanographic circumstances in the area of the network of animals and systems that exist there.

In the paper that was provided to the committee in November and included in the November hearings, there were, I believe, 12 different biogeographic regions identified as existing in waters around the United States. At present, I think we have sanctuaries in or proposed to be in most of those. But the only one that effectively encompasses a biogeographic region is probably the Florida Keys.

Mr. HOCHBRUECKNER. Let me give you two more together this time. Sustainable use and multiple use.

Mr. POTTER. OK. Books have been written about those too, so we might just as well deal with them the same way. The concept of sustainable use has emerged in the last several years as central to any kind of idea of environmental rationality. What this contemplates is that the resources with which we are concerned should be maintained in such a way that the resource base does not irrevocably and unidirectionally end. The idea is that once we know enough about the resource that we are dealing with, we should be able to manage it in such a way that it will be as strong and as valuable for the next generation as it was for ours.

Multiple use is another one of those phrases that can bring the clans down out of the hills with their flags waving. It means many things to many people and probably means different things to everyone sitting here. I interpret it as entirely consistent with the concept of sanctuaries so long as one keeps in mind the basic purpose for the creation of the sanctuary which is the protection of the resource.

If you accept that premise, then it is possible to define a set of conditions under which different kinds of activities, recreational boating, fishing, the different kinds of things that people want to use these areas for. It is possible to define a set of circumstances in which some or all of these activities can take place. You may separate them by space. You may separate them by time. But no sanctuary, as I understand the theory of the original legislation, and I was, in fact, working for the committee when the original legislation was drafted, no sanctuary has been created or should be created with one single use in mind.

Probably the closest one to a single use would be the USS *Monitor* which is, frankly, not the kind of activity for which was ever contemplated when the sanctuary bill was drafted. But for all other purposes, my assumption is that assuming that the sanctuary is properly managed, the concept of multiple use is not at all antithetical to the management of the sanctuary. It just requires that the managers of the sanctuary understand what it is they are dealing with and what the risks are of the alternative courses of action that are proposed.

Mr. HOCHBRUECKNER. Thank you very much, and on behalf of Chairman Hertel, I certainly thank all the panelists for your attendance and your comments. I would like to state for the record that Mrs. Unsoeld and Mr. Ortiz are submitting additional questions for our witnesses today. We also regret that Congressman Pannetta was not able to be here. His testimony will be made part of

the record. Thank you very much for your time, and this hearing is adjourned. Thank you.

[Whereupon, at 4:15 p.m., the subcommittees were adjourned and the following was submitted for the record:]

STATEMENT  
OF  
JENNIFER JOY WILSON  
ASSISTANT SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U. S. DEPARTMENT OF COMMERCE

BEFORE THE

MERCHANT MARINE AND FISHERIES COMMITTEE  
SUBCOMMITTEE ON OCEANOGRAPHY, GREAT LAKES AND THE OUTER  
CONTINENTAL SHELF  
SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION  
AND THE ENVIRONMENT

HOUSE OF REPRESENTATIVES  
MARCH 31, 1992

NOAA'S MISSION AND THE NATIONAL MARINE SANCTUARY PROGRAM

Mr. Chairman and Members of the Subcommittee:

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, development 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 1988 reauthorization the number of sanctuaries has increased from 7 to 10; the sanctuary areas have 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 trend will continue. Considerable progress has been made in the designation of new sanctuaries. Cordell Bank and Flower Garden Banks have been designated. The final Environmental Impact Statements (EIS) for Stellwagen Bank and Olympic Coast and Monterey Bay are nearing completion. Regarding Monterey Bay, in January 1992, the Administration endorsed the largest sanctuary boundary alternative. The final EIS, reflecting this boundary should be available in May 1992, with publication of the notice of designation planned for early this summer.

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:

- \* The construction phase has begun for the Gray's Reef National Marine Sanctuary headquarters facility -- the first permanent headquarters facility -- located 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 Line 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 and management 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 NOAA and 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 and that authorities of such statutes are used as intended to manage sanctuary resources.
- \* 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% 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 Resource 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.

#### PROPOSED LEGISLATIVE CHANGES

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 1990s. We are developing a reauthorization bill which will improve our ability to manage and to protect coastal and marine resources in a more efficient and comprehensive manner.

With respect to H.R. 4310 and H.R. 4409, bills to reauthorize the national marine sanctuaries program, we generally support provisions which focus on streamlining the designation process, clarifying and strengthening the Program's ability to address resource management and protection issues, clarifying and strengthening the Program's research and education missions, and improving the Program's ability to cooperate with governments, institutions, and other organizations on a variety of sanctuary issues.

As there are numerous changes proposed in each bill, we will be providing the Subcommittees shortly with detailed written comments on both titles I and II of H.R. 4310 and on H.R. 4409 in its entirety. The following are our general comments on several of the most important issues -- issues which we believe should be addressed in the bill reported by the Committee and reflect the priorities of our reauthorization proposal which we will be providing you shortly. In addition, we look forward to working with your staffs to address the comments contained in our letter on these bills.

#### **DESIGNATION AND IMPLEMENTATION ISSUES**

We support the proposal in both bills which would delete the requirement for preparing a "Prospectus" and instead expand the "executive summary" to the Draft Environmental Impact

Statement and Management Plan in order to ensure that interested parties will have access to the Prospectus information. Eliminating the Prospectus will reduce preparation and distribution time and cost without affecting information available to interested parties.

Both H.R. 4310 and H.R. 4409 contain provisions to limit Federal agency actions which are likely to destroy or injure sanctuary resources. In particular, H.R. 4310 would provide that certain leases, permits or licenses provided by Federal agencies to authorize potentially harmful activities in a marine sanctuary would not be valid unless certified by the Secretary of Commerce as being consistent with the purposes and policies of title III of the Marine Protection, Research, and Sanctuaries Act.

H.R. 4409 would establish a different mechanism -- requiring Federal agency heads to consult with the Secretary on activities likely to harm sanctuary resources. Pursuant to H.R. 4409, the Secretary of Commerce is required to suggest "reasonable and prudent" alternatives that would conserve sanctuary resources if the Department concludes that harm is otherwise likely to result.

We note that the provisions in both H.R. 4310 and H.R. 4409 do not seek to restrict all agency actions concerning marine

sanctuaries -- only those likely to destroy or injure sanctuary resources. They require the creation of formal procedures to foster our joint stewardship responsibilities, which are similar to procedures already available. The Secretary has the authority to, and routinely does, work with other Federal agencies to address activities which the Program believes are potentially harmful to sanctuary resources, whether internal or external to sanctuary boundaries. NOAA is not alone in having responsibility to protect important ecological resources. It is our position that whenever possible, existing authorities of other Federal agencies be utilized as the mechanism to address sanctuary purposes. Thus, to eliminate confusion and promote efficiency in government, we believe the goals of the sanctuary statute should also be addressed by other agencies in the implementation of their statutes and through the requirements of the National Environmental Policy Act. Any new requirements on this point are unnecessary.

#### PROTECTION AND MANAGEMENT ISSUES

There are a number of technical legal issues in these bills which are important to improving the Program's ability to protect sanctuary resources. One of the most important changes is contained in H.R. 4310 and concerns the liability of persons who destroy or injure sanctuary resources. In

particular, the provision would amend the statutory defenses available to such persons when the injury or destruction to the sanctuary was caused by an activity authorized by Federal or State law. The bill would clarify that the defense would only be available if applicable license or permit requirements were also satisfied. This additional requirement is intended to prevent the statute from being abused to provide protection from liability where not intended -- such as where sanctuary resources have been injured by persons who hold a valid permit but have not complied with its terms. We support the intent of this provision.

#### **RESEARCH, EDUCATION AND COOPERATION ISSUES**

We support the provisions in H.R. 4310 and H.R. 4409 which consolidate research and education activities into one section of title III and clarify that monitoring is an important part of the Program's mission. These changes make the statute easier to understand, and reduce questions as to the purpose of two different research provisions.

We note the importance of the provision in H.R. 4310 to clarify the Program's ability to consult on research, monitoring, and education activities with local governments, regional and interstate agencies and private persons or

organizations such as private universities. The Sanctuary Program has learned through operating experience that it must work with a variety of governments and public and private institutions on all aspects of sanctuary management, including resource protection, research and education. The kinds and number of entities with which the Program works vary by sanctuary. H.R. 4310 would facilitate this important element of sanctuary management.

H.R. 4310 would also clarify the Secretary's broad authority to enter into cooperative and other agreements and make grants to implement the marine sanctuaries program. We strongly support this clarification which will facilitate the Program's ability to operate under differing local circumstances.

NOAA is committed to protecting our Nation's coastal and ocean heritage, managing its sanctuaries, building its partnerships 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 working together as we lay the foundation for the next 20 years.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions.

US Department  
of Transportation  
**United States  
Coast Guard**



Commandant  
U.S. Coast Guard

2100 Second Street S.W.  
Washington, DC 20593-0001  
Staff Symbol:  
Phone:

DEPARTMENT OF TRANSPORTATION

U. S. COAST GUARD

STATEMENT OF REAR ADMIRAL WILLIAM P. LEAHY, JR. \*

ON THE REAUTHORIZATION OF THE MARINE PROTECTION,

RESEARCH AND SANCTUARIES ACT OF 1972

BEFORE THE SUBCOMMITTEES ON

FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, AND

OCEANOGRAPHY, GREAT LAKES AND THE OUTER CONTINENTAL SHELF

COMMITTEE ON MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

WASHINGTON, DC

MARCH 31, 1992

STATEMENT OF  
REAR ADMIRAL WILLIAM P. LEAHY, JR., USCG  
BEFORE THE SUBCOMMITTEES ON  
FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, AND  
OCEANOGRAPHY, GREAT LAKES AND THE OUTER CONTINENTAL SHELF  
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES  
WASHINGTON, DC  
MARCH 31, 1992

Good afternoon Mr. Chairman. I am pleased to appear before you today to represent the Commandant, Admiral Kime, and discuss Coast Guard law enforcement activities as they relate to marine sanctuaries.

First, let me provide some background. The Coast Guard enforces marine sanctuary laws and regulations under general law enforcement authority provided in 14 U.S.C. 89. This statute allows the Coast Guard to board, search, and inspect vessels subject to U.S. jurisdiction, and to ensure compliance with all applicable U.S. laws and regulations. Our routine enforcement patrols focus on our missions of boating safety, fisheries enforcement, and drug interdiction. As these patrols take our units near or inside marine sanctuaries, we have the ability to enforce the applicable marine sanctuaries regulations. Coast Guard involvement in marine sanctuaries also includes responding to individual incidents, such as vessel groundings in marine sanctuaries, as well as assisting National Oceanic and Atmospheric Administration (NOAA) and National Marine Fisheries Service personnel upon request.

The Coast Guard documents and processes marine sanctuaries-related violations the same as fisheries violations. We submit an Offense Investigation Report, along with material evidence and witness statements, to NOAA for further prosecution.

The primary Coast Guard participation in marine sanctuary enforcement to date has been general surveillance, enforcement of anchoring and trawling restrictions in the vicinity of the USS Monitor Marine Sanctuary off North Carolina, response to groundings in the Florida Keys, and enforcement of spiny lobster regulations in Florida.

Based on public interest in this area, the Coast Guard is exploring increasing its level of effort in marine sanctuary enforcement. We are working with the Acting Director of the Marine Sanctuaries Program to determine how we can most effectively contribute to the enforcement program. As directed by the Coast Guard Authorization Act of 1991, we are preparing a joint report with NOAA which will identify key enforcement problems in the sanctuaries, proposed coordination efforts between our agencies, and recommended levels of Coast Guard participation.

We are still researching the issue and have not yet fully identified the appropriate level of Coast Guard enforcement in marine sanctuaries. However, we have begun discussions with NOAA concerning our participation in marine sanctuary enforcement and ways that we can expand our assistance.

We are already patrolling the waters off our coasts. The Coast Guard is our Nation's primary maritime law enforcement agency. As such, we are experts in the at-sea enforcement of United States law. Our presence in and around marine sanctuaries provides a deterrent to any illegal actions, including those pertaining specifically to marine sanctuaries.

We can also provide law enforcement expertise to the sanctuary management regime development process. For example, we already provide enforcement advice to the eight Regional Fishery Management Councils. It has been our experience that unenforceable management measures and regulations tend to fail. We can help ensure that proposed management measures are consistent with the realities of at-sea enforcement. To do that, we need to be involved early in the process.

We also plan to improve enforcement effectiveness through enhanced training of our law enforcement units. With marine sanctuaries enforcement activity increasing, there is a need to enhance training of our enforcement personnel in sanctuaries issues. By increasing awareness of marine sanctuary requirements among our units, we will be better able to detect violations and educate boaters during boardings. At the regional level, we will be working with the sanctuary managers to coordinate this training.

Finally, through surveillance efforts, we can help the sanctuary managers determine the level of activity in the sanctuaries. Increased surveillance efforts will be balanced with our requirements to conduct other law enforcement patrols.

In the short term, we can improve enforcement through increased coordination with NOAA. As more marine sanctuary plans are developed, additional enforcement and surveillance needs will be identified. This may result in the need for a more directed patrol effort which could generate additional costs. In the meantime, we will continue to work with NOAA and the sanctuary managers to more specifically define the enforcement needs of each marine sanctuary.

This concludes my prepared statement. I will be happy to answer any questions you might have.

Testimony of  
Robert B. Stewart  
President  
National Ocean Industries Association

Before the  
Subcommittee on Oceanography, Great Lakes  
and the Outer Continental Shelf  
and the  
Subcommittee on Fisheries  
and Wildlife Conservation and Environment

Committee on Merchant Marine and Fisheries  
U.S. House of Representatives

on behalf of the  
National Ocean Industries Association  
the American Petroleum Institute  
and the  
International Association of Drilling Contractors

March 31, 1992

Chairman Studds, Chairman Hertel, members of the Committee good afternoon, my name is Robert B. Stewart. I am 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.

As NOIA recently had the opportunity to testify on the National Marine Sanctuary Program at the November 1991 hearing, today I'll briefly revisit our views on the program. We prefer simple reauthorization of the Act without major amendment.

NOIA supports 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 urge Congress to refrain from intervening in the process through legislative sanctuary designations. Such designations do not take into account the standards established by Congress in the Marine Sanctuaries Act. Further, such designations divert scarce financial and human resources at NOAA from the statutorily established Site Evaluation Process in order to deal with a new sanctuary created outside of that process by Congress.

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 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 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.

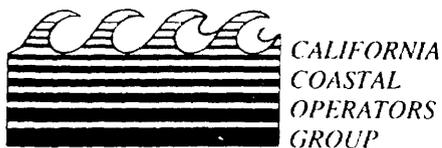
The Flower Garden Banks designation and the approval of a permit for a new oil pipeline in close proximity to the sanctuary demonstrates how multiple use concepts can be successfully applied when all of the parties seek a reasonable solution. In this case, Texaco applied to the Minerals Management Service (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 NOAA 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 NOAA 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.



Comments by  
The California Coastal Operators Group

for the  
Subcommittee on Oceanography, Great Lakes  
and the Outer Continental Shelf  
and the  
Subcommittee on Fisheries  
and Wildlife Conservation and Environment

March 31, 1992

The California Coastal Operators Group (C/COG) is a consortium of oil companies with operations offshore the Central Coast of California. The California Coastal Operators Group Associates represents 175 service and supply companies who provide goods and services for the offshore operators.

C/COG and the C/COG Associates support the basic and original concept of the National Marine Sanctuaries Program which sought to select, evaluate and designate certain discrete areas of the marine environment which possess qualities which give them special national significance. In cases where this basic concept was followed, and recommendations were made based on sound science and a sound management plan, the industry did not oppose such designations. We believe it is essential that these requirements continue to form the foundation for future marine sanctuary designations.

However, it is clear that the overall goals of the Sanctuary Program as managed by NOAA have become victim to unnecessary Congressional intervention over the last several years. The result of this intervention has been to focus on controversial Congressionally-mandated sanctuary sites at the expense of those sites that met the criteria established by Congress when it established the Sanctuaries Act.

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One way for Congress to ensure that the Marine Sanctuary Program succeeds is to eliminate Congressional interference in the program. This will allow staff time and funding for sites that are appropriately selected for evaluation.

There are two other practices which have become not only controversial but counter-productive to the Program. The first is to designate a sanctuary so large in size that it resembles an areawide oil and gas moratorium rather than a marine sanctuary -- the Monterey Bay Sanctuary being a specific example. From a practical standpoint, such large areas are difficult if not impossible to manage as a marine sanctuary even if unlimited funds were available. The second is the outright prohibition of activities which may occur in a Sanctuary by Congress or through the reauthorization of the Act. Clearly, the multiple use concept is an important factor in the Sanctuary Program for just as every sanctuary is unique, areas within the sanctuary may provide justification for certain activities. Our companies recognize that some areas may not be appropriate for oil and gas activities but others may be. We oppose any language that would arbitrarily preclude oil and gas activities outright.

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Further, we are very concerned with the prospect of creating a marine sanctuary which intentionally overlaps existing oil and gas leases, such as the proposed Central Coast Marine Sanctuary offshore San Luis Obispo and Santa Barbara Counties in California. The industry has invested over \$500 million in lease bonuses alone in this area where at least three oil discoveries have been made. This investment as well as large potential oil reserves will be in serious jeopardy should this Congressionally-mandated sanctuary proceed.

In summary, we believe the reauthorization of the Marine Sanctuaries Act can most effectively strengthen the program by allowing the expertise within NOAA to guide the selection, evaluation and designation of appropriate sites while also discouraging Congress from unnecessary interference in the process.

Thank you for allowing us to comment on this important Program.



**Center for Marine Conservation**

**TESTIMONY OF JACK A. SOBEL  
HABITAT CONSERVATION PROGRAM DIRECTOR,  
CENTER FOR MARINE CONSERVATION**

**REGARDING**

**LEGISLATION TO REAUTHORIZE AND IMPROVE THE NATIONAL MARINE  
SANCTUARY PROGRAM; TITLE III OF THE MARINE PROTECTION,  
RESEARCH, AND SANCTUARIES ACT (MPRSA)**

**BEFORE**

**THE SUBCOMMITTEE ON  
OCEANOGRAPHY, GREAT LAKES, AND THE OUTER CONTINENTAL SHELF**

**AND**

**THE SUBCOMMITTEE ON  
FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT**

**OF**

**THE U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON MERCHANT MARINES AND FISHERIES**

**MARCH 31, 1992**

**INTRODUCTION**

Good afternoon, I am Jack Sobel, Director of the Center for Marine Conservation's Habitat Conservation Program. I also served as a member of the National Marine Sanctuary Program's External Review Panel and have spent much of the past four years working on sanctuary and other marine protected areas' issues in several capacities.

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 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 strong proponent of conserving this nation's most outstanding marine areas through the NMSP. The Center has provided leadership to both national and local efforts aimed at strengthening the NMSP and establish new sanctuaries. CMC strongly supports your efforts to reauthorize and improve this vital program.

**NMSP Potential, Accomplishments, and Opportunity**

Twenty years ago when Congress first authorized the NMSP, it created a tremendous program with nearly unlimited potential for conserving America's outstanding marine resources. During its

first twenty years, the NMSP 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 NMSP, 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 NMSP 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 NMSP stands at a threshold. There is a window of opportunity to

transform this program from a good small program to a powerful tool for protecting our nation's most special marine areas.

Enactment of a strong reauthorization bill this year and adequate funding are critical if such a transformation is to take place. A strong reauthorization that reflects the program's potential is essential. We are encouraged that each of the bills being considered today, H.R. 4310 introduced by Chairman Hertel and H.R. 4409 introduced by Chairman Studds, include many positive aspects. Elements contained in the two bills provide the framework for crafting the kind of reauthorization legislation essential to taking this program to new heights. Comments on the provisions we feel are most important follow.

#### 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 authorization was in line 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.

Fortunately, over the past several years, appropriations for the NMSP have increased. The President's recent budget request of \$7.3 million for FY'93 provides hope that after twenty years

appropriations may finally reach the level envisioned for the nascent NMSP back 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. \$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. With ten sites already designated and three more likely within a year, this is a minimal estimate of what is needed.

The funding levels set out in H.R. 4310 of \$28-32 million are an appropriate level to aim for during this four year authorization cycle. They are consistent with the External Sanctuary 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 unrealistic, it is a very reasonable and essential target to aim for by the end of the next four year authorization cycle. Even at this level, the program's budget would still be less than 3% of the annual budget given to the National Park Service. Many individual national parks receive budgets greater than the entire NMSP.

The current four year authorization cycle should be retained as it is in H.R. 4409 since it allows for a reasonable review period, which is extremely important for an evolving program such as the NMSP.

**Findings, Purposes and Policies**

Although we like much of the language included in H.R. 4310, Sec. 102, we are not certain that major changes are necessary here. Problems have been less with the legislative language than with implementation. Nonetheless, some clarity would be helpful on certain issues. We are also concerned that some of the proposed language may intentionally or unintentionally shift the program's focus away from its primary goal of resource conservation.

While we recognize and support research and monitoring as important components of an effective sanctuary program, we believe they are tools that should support the program's principal goal of conservation and wise management. For this reason, we do not believe they should be equated with the program's primary goal of "marine resource conservation and management". Therefore, we do not support language included in Sec. 102(a)(2)(A) of H.R. 4310 which would amend Sec. 301(a)(4) to include research. If changes are made here, we would prefer to see the phrase "and ensure protection of these resources for the appreciation and use of present and future generations" added to Sec. 301(a)(4) and "research" inserted into Sec. 301(a)(5).

CMC does strongly support the inclusion of 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 purpose "to maintain and restore the natural diversity of living resources by providing 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."

CMC also favors the change proposed in Sec. 102(c)(5) from "facilitate" to "allow" and would also change the word "all" to "those". With its limited resources and the stresses already occurring at some sites due to their heavy use, the NMSP need not be in the business of promoting use. Commercial enterprises are certainly capable of and better suited to such promotion anyway.

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." Although this should be unnecessary, it is nonetheless worth including.

Finally, although we support and hope one day to see a sanctuary system that includes sites from all of the nation's biogeographic realms, care must be taken not to draft language that delays worthy sites from being designated in regions that may already have sanctuaries, while we await designation of sites in regions that are not yet represented and where sanctuary development may take considerable time.

### Comprehensive Protection

In creating the NMSP, Congress recognized that other "resource-specific legislation...cannot...provide comprehensive and coordinated approach to the conservation and management of special areas of the marine environment." What sets this program apart is its requirement to provide comprehensive protection of sanctuary resources. To enable the NMSP to fulfill this responsibility, it must be given clear authority to address all threats to sanctuary resources. Although the NMSP was created to provide such protection, a number of issues facing pending sanctuaries have questioned its ability to do so. Such issues include the siting of dredge-spoil disposal sites, oil and gas development, and other threats to sanctuary water quality. The Great Barrier Reef Marine Park Authority in Australia has credited much of its success to such authority, though it has exerted it with great caution. Nonetheless, possession of such authority has enabled it to work constructively with other federal and state agencies to achieve its objectives.

### Interagency Cooperation

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. The ability to protect sanctuary resources from such actions is fundamental to the idea of a sanctuary

providing comprehensive protection. The nature of marine systems makes this particularly critical. However, we are concerned that the present language provides no assurance that other agencies will actually notify the NMSP of proposed actions that may imperil sanctuary resources or comply with NMSP recommendations, even if they do. CMC believes that this language should be strengthened further to address these concerns.

#### Access and Valid Rights

For similar reasons, we are also supportive of the access and valid rights language contained in H.R. 4310. This language would also help ensure that new leases, permits, or licenses do not threaten sanctuary resources. However, we do think it is important to clarify under what circumstances destruction of sanctuary resources could be considered consistent with the policy and purposes of this Act. In addition, we suggest that it be specified that when pre-existing leases, permits, or licenses come up for renewal or alteration that they be treated as new ones. Finally, NOAA's ability to condition pre-existing leases, permits, or licenses should be clarified.

#### Habitat Quality

To further protect habitat quality within sanctuaries, the Committees should also consider language similar to that included in H.R. 4483's Habitat Quality Section (Sec. 7). Although written to protect coral reefs specifically, expanded language

could also provide similar protection to other sensitive sanctuary resources.

Prohibited Activities and Damage to Sanctuary Resources

CMC supports the language contained in H.R. 4310 which prohibits destruction of sanctuary resources and other activities that hinder enforcement of sanctuary regulations. Such activities should clearly be outlawed. We also support the clarification on liability defenses contained in H.R. 4310.

Five-Year Review of Management Plan

Since both the marine environment and activities affecting it are constantly changing, it is important that management plans be reviewed and adapted to changing circumstances when necessary if they are to provide proper management. The Australian Great Barrier Reef Marine Park Authority reviews and revises its plans every five years. My understanding is that the sanctuary program recognizes the value and importance of such an approach. In fact, language exists in NOAA's own administrative regulations to review management plans every five years. However, limited resources have delayed completion of such reviews. CMC believes such a review process is of high enough priority that it should be included in the reauthorization.

The existing administrative language reads "Every five years, or sooner, the Secretary shall evaluate the substantive progress toward implementing the management plan and the goals of

a designated sanctuary, especially the effectiveness of site-specific management techniques." We suggest adding to this "; and revise the management plan and regulations as necessary to fulfill the purposes and policies of this Act." Such language would enable existing sanctuaries to respond and adapt to changing circumstances.

#### Federal Agency Comments

CMC supports language in both H.R. 4310 and H.R. 4409 regarding "Federal Agency Comments". Such language would help prevent the kind of unnecessary and interminable delays certain sanctuary proposals have experienced, while allowing some flexibility where appropriate. Federal agencies should be required to make their concerns known as early as possible in the process. If agencies do not comply, it is reasonable to assume that they concur. Notification of Congress when extensions are granted could help avoid interminable delays.

#### Civil Penalties

CMC supports increasing the cap on cap on civil penalties from \$50,000 to \$250,000 as provided for in H.R. 4310. This cap has remained constant since 1972, while both legal and other costs have increased substantially. If civil penalties are to be effective as a deterrent or for recovering appropriate damages, the cap needs to be increased.

### Cooperative Agreements, Donations and Acquisitions

Although it may be appropriate to extend the ability to enter into cooperative agreements to other entities as H.R. 4310 would do, we question why language specifying the original targets of this section, non-profit organizations, is being drooped. Although the new language may still be applicable to non-profits, we believe that the current language which specifies non-profits should be retained.

### Advisory Councils

CMC supports the creation of Sanctuary Advisory Councils where they further the policy and purposes of the Act and provide stronger management and better community relations. Exempting such councils from the Federal Advisory Council Act (FACA) in order to facilitate their establishment may be advisable. However, if this is done, care should be taken to ensure that council meetings and activities remain open and public. Furthermore, language on membership could be strengthened to ensure that appointees have relevant expertise, experience, and a commitment to resource conservation.

### Sanctuary Managers

The External Sanctuary Review Team identified the importance of first-rate sanctuary managers to the success of the program. In support of this, we discourage any initiatives that might limit the pool of talent available to fill such positions.

Furthermore, the relationship between a sanctuary manager and the local community is critical and develops over time. Therefore, we recommend that individuals be selected who are most likely to stick with the position over time. Although there is no way to guarantee this, the current practice of filling positions with NOAA Corps officers who are on limited rotations prevents such relationships from developing. Concern has been raised over the temporary nature of such assignments at many locations. NOAA Corps officers can and do provide valuable expertise and assistance to the program and their use should be continued and possibly expanded. However, as currently structured, the limited nature of their tenure prohibits the stability desirable for sanctuary managers.

#### Conclusion

This 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 pleased to answer any questions you might have.

Testimony of the  
Coastal States Organization  
Before the Subcommittees on  
Oceanography, Great Lakes & Outer Continental Shelf  
and  
Fisheries and Wildlife  
of the  
Merchant Marine & Fisheries Committee  
U.S. House of Representatives  
  
In Joint Hearing  
On the  
  
Reauthorization of Title III  
of the  
Marine Protection, Research and Sanctuaries Act

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Mr. Chairman, and members of the Subcommittees, my name is David C. Slade. I am the Executive Director of the Coastal States Organization, a representative association of the Governors of the 35 coastal States, Commonwealths and Territories on coastal, Great Lakes and ocean affairs. I am pleased to be here today to present our views on the Reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act in general, and H.R. 4310 and 4409 in specific.

This year marks the twentieth anniversary of the National Marine Sanctuary Program. After 20 years, only seven sanctuaries have been designated, while another seven have been proposed (of which two have been Congressionally designated into the national program. This slow start is due in some good measure

to the lack of funding of the program.

### Funding

Little needs to be repeated on the poor funding history of the National Marine Sanctuary Program. It causes no surprise that a national program has been so slow off the starting blocks when the appropriations have been as little as they have been. However, with the strong probability that the National Marine Sanctuary Program is going to grow in the number of sanctuaries, as well as the size of individual sanctuaries, it is becoming clear that even with full funding of the current authorized amounts, the program would be underfunded. For this reason we support the increase in authorized funding in both H.R., 4310 and H.R. 4409.

### Activities That Affect Marine Sanctuary Resources

It is well recognized that activities occurring within marine sanctuaries can result in harm to sanctuary resources. Our experience with implementing the Coastal Zone Management Act has clearly demonstrated to us, however, that activities that occur outside a sanctuary, such as dredging and dredge spoil disposal, ocean dumping of other materials, upland water management practices, even underwater bomb testing and demolition, can have direct impacts upon sanctuary resources.

Some of the problems arise from NOAA's ability to coordinate with other federal agencies that undertake activities, or permit such activities, outside of a sanctuary

that affect resources inside a sanctuary. Clearly, there are inherent problems with achieving good coordination between large, sometime cumbersome, federal agency bureaucracies. Whenever different agencies have cross-jurisdictional mandates, however, conflicts will most certainly arise. It is equally important to note that State and local coastal management agencies play an integral role in coordinating and meeting the objectives of the Marine Sanctuaries Act.

For example, dredging and dredge spoil disposal conducted or permitted by the Army Corps of Engineers, or site dump designation by the EPA, in accordance with Title I of the MPRSA should, naturally, be coordinated with what NOAA and any involved coastal State are doing under Title III of the MPRSA. We note that both of the proposed sanctuary sites at Stellwagen Bank and Monterey Bay have an EPA-designated dredge disposal site within or adjacent to the designated sanctuary boundaries.

Another example is the coordination that is necessary between two divisions of NOAA: the National Marine Fishery Service (NMFS) and the Office of Ocean and Coastal Resource Management (OCRM). Fishery regulations promulgated in accordance with the Magnuson Fishery Conservation and Management Act, as implemented by the regional fishery management councils through NMFS, should be coordinated with sanctuary regulations promulgated by OCRM.

Congress should pay specific attention, in the reauthorization process of the Marine Sanctuaries Act, to clarifying the coordination powers of sanctuary managers with other federal agencies conducting or permitting activities outside of a sanctuary but affecting resources within. We do note that the regulations currently being promulgated by NOAA make some attempt to address this coordination problem, we don't believe they go far enough.

For this reason we support the language in H.R. 4310, amending the "Purposes and Policies" section, that provides that "activities affecting" marine sanctuaries are to be part of the "comprehensive and coordinated conservation and management" regime. After this, however, H.R. 4310 is silent as to how outside activities are to be coordinated with sanctuary management.

H.R. 4409, on the other hand, would add a new subsection (d) to §304 that would require the "head of a Federal agency" to consult with the Secretary on any agency action that could destroy, harm or injure any sanctuary resource. This consultation process would at least bring federal agencies conducting or permitting activities outside of the sanctuary but having effects inside the sanctuary into the management process. H.R. 4409 would further clarify the coordination process by directing the Secretary to provide a written determination to the head of a federal agency setting forth how the agencies activities would "destroy, cause the loss of, or injure any sanctuary resource." The Secretary is also directed to "suggest reasonable and

prudent alternatives" for the other federal agency to take to avoid the impacts on sanctuary resources.

We endorse this approach in H.R. 4409. We do so, however, while believing that such interagency "cooperation" must be more than mere mechanical "consultation." We believe that all federal agencies with concurrent, inter-jurisdictional responsibilities for managing coastal or marine resources must actively and positively participate in the preparation and implementation of marine sanctuary management programs. We believe that Congress must emphasize the importance of such active, participatory "interagency cooperation."

#### The Use of Recovered Costs, Damages and Penalties

Amounts received pursuant to recovered response costs, damages, or civil penalties should be assessed in accordance with the actual damages or violations. It is our position that these monies should be re-invested in the same marine sanctuary wherein the damage or violation took place. To this end we support the deletion of paragraph (d)(3) of MPRSA §312, as provided by H.R. 4409. We would go further, however, and propose the deletion of subpart (2)(C) of section 312(d). We believe that these moneys should not be used for managing or improving the national marine sanctuary program as a whole; but rather should be directed specifically towards restoring and managing the sanctuary wherein the damages or violations occurred.

### Designation of Sanctuaries and Cooperative Agreements

Title III of the MPRSA currently provides a State a strong role in the sanctuary designation process for proposed sanctuaries that are partially or wholly within the seaward boundary of a State. If a State opposes the designation of a sanctuary completely, or opposes just some aspect of the designation, then the Governor of the State may so certify to the Secretary, and "the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within" the State's waters. 16 U.S.C. §1434(b)(1)(B).

We believe that the States should play a more enhanced role in the designation process of marine sanctuaries -- and not just in a negative sense, that is, certifying what is "unacceptable." The coastal States should be closely involved in designating sites, as well as developing and implementing resource management plans.

Even when a sanctuary lies wholly outside of State waters, the adjacent coastal State has strong interests in the designation, implementation, enforcement and management of the sanctuary resources. Often the adjacent State's citizens are those who would fish, dive, boat or otherwise use the sanctuary resources.

For these reasons we endorse the provisions in H.R. 4310 that adds States and local governments to the list of entities with whom the Secretary may enter into cooperative agreements. This will serve to strengthen the national marine sanctuary

system. Cooperative management agreements have worked very well in Florida, where the State has assumed, through a cooperative agreement, the management authority over the Key Largo and Looe Key National Marine Sanctuaries. The State is working towards such a cooperative relationship with regards to the new, expansive Florida Keys National Marine Sanctuary.

To the extent that the majority of a marine sanctuary lies within State waters, we believe that a cooperative agreement between the Federal Government and the coastal State should be required. To the extent that the majority of the sanctuary lies beyond State waters, a cooperative agreement should remain an option.

#### MARINE SANCTUARIES: MARINE AREAS OF SPECIAL NATIONAL SIGNIFICANCE

One topic of debate is whether a sanctuary should be designated only when a functioning ecosystem (or more accurately, an ecotome) requires protection, or when marine areas or resources are of special national significance for other important reasons. Species such as the Humpback Whale that are protected by other federal laws such as the Marine Mammal Protection Act and the Endangered Species Act, for example, require certain coastal marine areas as refuge for breeding and propagation. The area needed by the Humpbacks for these purposes is fairly immense in size, making it, realistically speaking, next to impossible to bring together all of the disparate interests and users of all the "ecosystem" resources in the area, as well as all of the political jurisdictions, in order to finally achieve sanctuary

designation. Taking such a purist "ecosystem" approach may be self-defeating in the long run.

We believe that the National Marine Sanctuary system must be diverse and flexible in nature. Clearly, each marine area is unique. Given the additional factors that these whales are on the endangered species list, are protected by the Marine Mammal Protection Act, and whose habitat in Hawaii has been an active candidate for national Marine Sanctuary designation since 1982, it may well be in the national interest to designate a Hawaiian Islands Humpback Whale National Marine Sanctuary. Such a designation may not only enhance the recovery of this valuable and endangered species, it would also broaden the marine sanctuary system into one that is truly national in scope, and of diverse biogeographic representation.

#### Abandoned Shipwrecks

We support the amendment of Title III of the MPRSA such that "cultural" qualities and values of these marine areas are brought into protection of the national marine sanctuary program. By this amendment, certain abandoned shipwrecks that would not otherwise fall within the definition of "sanctuary resource" would now be brought within the scope of the Act.

On the other hand, we question language in §113 of H.R. 4310, whereby the

recovery of an abandoned shipwreck located within a marine sanctuary by any "person" would be subject to federal regulations. We note that the term "person" is neither defined in the current MPRSA, nor by either H.R. 4310 or 4409. To the extent that the term "person" does not include anything that falls within the definition of the term "State" as that term is defined in the Act, we would not oppose this amendment. However, we strongly oppose amending or superseding the Abandoned Shipwreck Act by any amendment to the MPRSA.

### Liability

H.R. 4409 would exempt any destruction, loss or injury to sanctuary resources from the limits of liabilities provided by the Act of March 3, 1851. Over the past five years, six major vessel aden have occurred in marine sanctuaries. Significant damage was caused, especially to coral reefs in the Florida marine sanctuaries. The damage was caused by the grounding of the vessels, not by an associated oil spill or other cargo.

We note that for damages caused by oil pollution as a result of a spill would already be exempted from the 1851 Act by the Oil Pollution Act of 1990. With regard to the extensive damages that may occur from shipping accidents that do not result in the release of oil, however, we support this waiver of liability limits contained in the 1851 Act.

Technical Amendment

For the record, we believe that the term "natural" as provided in the Act's codification at 16 U.S.C. §1434(b)(1)(B) should be "national."

Conclusion

We believe that after 20 years, the National Marine Sanctuary Program certainly merits reauthorization. We applaud and support the committees efforts on this behalf. We look forward to working with the committees towards reauthorizing the National Marine Sanctuaries Program.



AMERICAN OCEANS CAMPAIGN

TESTIMONY

Presented by:

Andrew Palmer  
Political Director

AMERICAN OCEANS CAMPAIGN

Before the

THE U.S. HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON OCEANOGRAPHY, GREAT LAKES AND THE  
OUTER CONTINENTAL SHELF  
and  
SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION  
AND THE ENVIRONMENT

On the

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

Prepared by:

Fred Felleman  
Conservation Biologist  
and  
Andrew Palmer  
Political Director

On behalf of

American Oceans Campaign  
Friends of the San Juans  
Greenpeace  
Washington Environmental Council  
Zero Population Growth, Washington Chapter

March 31, 1992

Introduction:

Mr. Chairman, members of the committee, my name is Andrew Palmer. I am the Political Director of American Oceans Campaign (AOC). AOC is a national non-profit organization dedicated to the conservation and rehabilitation of America's oceans. Thank you for this opportunity to present our comments on the National Marine Sanctuary Program.

Fred Felleman, AOC's Conservation Biologist was a major contributor to the preparation of this testimony. Fred has had much experience with marine research and the Sanctuary Program. In 1980 he participated in scientific studies of humpback whales for the yet-to-be designated sanctuary in Hawaii. He has spent the better part of 10 years conducting research on killer whales in Washington State. In 1988 he worked on the nomination of the two sanctuaries in Washington State during the last reauthorization of the Sanctuary Act. Since then he has served on the Governor's Ocean Policy Work Group and was the Ocean Issues Coordinator for Washington's Coastal Counties, providing technical assistance on the Olympic Coast Sanctuary. More recently, he has conducted public information workshops under contract to the Puget Sound Water Quality Authority, and currently represents American Oceans Campaign on various NOAA advisory committees for the Northern Puget Sound Sanctuary.

Status of the Program:

One of the great strengths of the Sanctuary Program is its flexibility to address the range of vulnerability of our marine biological and cultural diversity. This is amply demonstrated by the active management approach implemented in the Florida Keys as compared to the more educational approach of the Channel Islands. However, there are still opportunities in the Northwest and Northeast to demonstrate the Program's ability to more completely address the needs of the nation's oceans. Ideal opportunities exist to integrate the management of protected areas onshore with adjacent marine sanctuaries. For example the Point Reyes National Seashore is adjacent to the Gulf of the Farallones National Marine Sanctuary. The significance of this combined area was elevated in August 1989 through its designation as a Biosphere Reserve. The Olympic Coast of Washington State is another excellent candidate for such comprehensive management. The Olympic Sanctuary is being designated adjacent to Olympic National Park which is already in the Biosphere Program.

The Biosphere Reserve approach of zoned marine management may be appropriately applied to some of the larger, nearshore sanctuaries which are subject to high human uses. This is being initiated with preliminary success in Florida and should be more fully explored in Puget Sound. The ability to accommodate multiple uses while at the same time providing the possibility of establishing more restrictive refugia is a major benefit of zoning. However, it is critical that in considering the establishment of refugia, NOAA consults with affected marine user groups and the public early in the process.

The Sanctuary Program's non-regulatory benefits, such as improved opportunities for research, education and coordination among the various agencies responsible for managing ocean resources are critical to the viability of the Program. However, the implementation of conservation programs has been hampered in most sites due to insufficient funding which has resulted in inadequate research, education and enforcement programs. Without a visible presence of qualified staff, the interested and affected public will not view this as a credible program.

Unfortunately, until recently, NOAA has been unable to make use of the various divisions of its own agency (e.g. Strategic Assessment Branch). This does not inspire confidence in their ability for interagency cooperation. Part of the problem with NOAA's historical interactions with other agencies and public seems to stem from their own lack of vision of their mission. In addition, the Act's mandate to "facilitate" multiple uses leads to some obvious conflicts with its other purpose of resource protection.

#### Reauthorization Legislation:

Both H.R. 4310 and 4409 address some of the problems of the past implementation of the national program. Both bills recognize the need for increasing the program funding to handle the increasing number and complexity of recently added or soon-to-be added sanctuaries. Both bills attempt to streamline and make more timely the designation process by eliminating unnecessary steps and by requiring that other federal agencies make comments in a timely fashion. Both give the option to the Secretary to establish advisory councils to assist in the management of a sanctuary.

We support the language in H.R. 4409 which clarifies that the primary responsibility of the Sanctuary Program is to promote resource conservation through active management, while "providing for", rather than "facilitating" multiple uses. We would also emphasize the importance of widespread public involvement prior to all rule makings. Other changes proposed in one bill or the other include strengthening international consultations, recognizing the special role of tribal governments in the designation and management of new sanctuaries, giving special emphasis to research, monitoring, and education programs, establishing standards for prohibited activities, increasing levels of civil penalties for destruction of sanctuary resources, and adding a finding that sanctuaries can play an important role in sustaining fisheries and maintaining biodiversity.

Collectively, the proposed changes move the Marine Sanctuary Program in the direction of reaching the potential which Congress originally envisioned. While we support most of these changes, there is still room for improvement. The balance of our testimony will present our views of where these changes need strengthening or further development.

Specific Recommendations:

**1) Renaming the Program:** We commend the leadership of Congressmen Hertel and Studds who have introduced legislation to enhance this valuable program. While both bills recognize the need to make significant improvements in the Act, they have chosen to keep the most misleading term "sanctuaries" in its title. If we were discussing the establishment of true sanctuaries, the visceral concerns raised by user interests would at least be justified. Instead of "true sanctuaries", we designate *special management areas* that allow for multiple uses and which specifically recognize the significance of historical and cultural marine resources. Because of the use of this term we continue to alienate the user groups, such as fishers, who have tremendous potential to benefit from designation. The American Oceans Campaign fully endorses the goals of this program, but we feel it would be more aptly named the National Marine Heritage System. Eliminating the hands-off connotation of the term "sanctuary" would raise fewer concerns among fishing, shipping, and oil interests and would not cause as much disappointment among conservationists during the designation of new sites. We recommend the term sanctuary should only be used for the core area of zoned sites which could be established as bonafide sanctuaries.

**2) Oil and Gas Development:** True sanctuaries would not subject nationally significant marine resources to the polluting effects of oil and gas development. Since delays in designation are usually due to interagency disputes over OCS development, the Act should clarify NOAA's authority to regulate these activities rather than relying on Congressional intervention. In addition, the burden of proof to demonstrate why activities must be conducted within a sanctuary and how they will not harm sanctuary resources should be on the Minerals Management Service rather than requiring NOAA prove that these industrial activities are harmful.

The Pacific Northwest provides an excellent example of the pressures affecting the world's oceans. While the urbanized embayments of Puget Sound are being rapidly encroached upon by people and their pollution, the protected land areas off the Olympic Coast have enabled a productive marine ecosystem to flourish. However, the extraordinary productivity of this region has only recently been recognized for its unique biogeographic representation in the National Marine Sanctuary Program. Despite the ecological significance of the region, its importance to the coastal tribal governments, and the fact that it is among the least likely to have recoverable hydrocarbons, MMS continues to assert that they want to lease this region for oil and gas development.

It is the position of the American Oceans Campaign that there is no reason to subject Washington's irreplaceable wealth of marine habitats and biodiversity to the polluting effects of oil and gas development for less than 40 hours of the nation's energy needs, because we can easily conserve more fuel than we could ever find off the entire Washington coast. Unfortunately this administration is opposing the permanent protection of even just the north half of this coastline from oil and gas development

which is estimated to only contain 10 hours of the nations energy needs. This flagrant lack of responsiveness to public comments has resulted in members of the Washington delegation introducing legislation (S. 1041, H.R. 2307) to permanently ban OCS activities if the Sanctuary's Final Management Plan does not.

**3) Timeliness of Designations:** We support the efforts of both bills which try to streamline the designation process by limiting the period that federal agencies have to comment on a proposed designation and to do away with the redundancy of having NOAA write a prospectus. While these measures are directed at preventing delays after the DEIS is published, there also need to be safeguards against delays prior to the publication of the DEIS. Federal, State, and local agencies should be consulted for resource and jurisdictional input pertaining to the designation of a particular sanctuary during the scoping and public review process. However, NOAA should not have to seek the "permission" of these agencies, especially MMS, regarding the promulgation of a regulation to be proposed in the DEIS. These agencies have a defined opportunity to comment on the DEIS once published. Extended review was afforded OMB and MMS prior to the release of the DEIS for Cordell Bank, Monterey Bay, and Olympic Coast Sanctuaries which has resulted in unreasonable delays. For example, Congress directed NOAA to designate the Olympic Coast by June 1990. However, public hearings were first completed on the DEIS in November 1991 after OMB raised much controversy over proposed restrictions on OCS activities (see Seattle Times story and OPED). Though OMB may see its role as superior to other federal agencies, it is no excuse to not fully cooperate with the spirit of the law.

More importantly, NOAA must be able to demonstrate responsiveness to public comments if they are to gain and maintain credibility. Though the Hawaii site was worthy of sanctuary designation over a decade ago, concerns of the commercial fishing industry were not adequately addressed and continue to be unresolved. Similarly, NOAA received extensive public input during the review of the Olympic Coast site, including the best attended scoping meeting of their history, in Seattle. However, the concerns expressed about oil and gas development by just about every participant, including sport, commercial, and tribal fishing interests, did not result in an option in the DEIS for a permanent ban on OCS activities in the Sanctuary. In addition, reasonable concerns raised by commercial fishing interests at the scoping meetings remained unaddressed in the DEIS and had to be restated by the Coalition of Washington Ocean Fishermen in an otherwise supportive letter.

**4) Shipping Regulations:** NOAA's authority to work with the Coast Guard to alter shipping lanes should be clarified and strengthened. The likelihood of an oil spill caused by shipping accidents is the greatest current threat to most marine sanctuaries. For example, the *Nestucca* oil barge and the Japanese freighter *Tenyo Maru* have both caused major oil spills on the Olympic Coast during the review of this sanctuary. The increased liability of spillers brought on by the passage of the Federal Oil Pollution Act has created an opportunity to seek better compliance with existing laws and improved oil spill

prevention measures. However, new Coast Guard regulations often take years to implement because they have to apply to the entire country (e.g. double hulls).

The Coast Guard could serve a very positive role in helping enforce sanctuary regulations. Sanctuaries should also serve as an incentive for the Coast Guard to implement regulations, where appropriate, which provide the protection that nationally significant marine resources deserve. In addition, the Coast Guard should be directed to review the current maritime safety measures in place in each sanctuary with NOAA to see if these areas are adequately protected. Preventative measures, such as moving tanker transits further offshore, will not only afford protection to nearshore marine resources, but will also help to avoid conflicts with the fishing industry. The Coast Guard's active involvement in formulating Sanctuary regulations could provide significant improvements to resource protection even if the regulations initially apply only to U.S. vessels. Ultimately, concurrence with the International Maritime Organization would be sought to require foreign vessel compliance as well. However, some steps might be taken in the interim to provide a higher degree of protection for sanctuaries.

Unfortunately, NOAA often avoids involvement in shipping regulations, perhaps due to their lack of clear authority in this regard. This avoidance has been observed in extreme cases including an attempt to narrow the study area for the proposed Northern Puget Sound Sanctuary so as to avoid involvement in the decision as to whether a super tanker port and underwater pipeline should be sited in the region. Fortunately, this port proposal has received overwhelming public opposition and the study area currently includes the site of the proposed port.

**5) Review of Incompatible Activities:** NOAA's authority to require other federal agencies, especially Department of Defense (DOD), to comply with sanctuary regulations needs to be clarified. The ability of NOAA to address military activities within a sanctuary was reportedly enhanced following the review of the Naval bombing practice at Sea Lion Rocks off the Olympic Coast. This rock was set aside as part of the Copalis Rock Reservation in 1907 by Theodore Roosevelt as a preserve and breeding ground for native birds and animals (Executive order 704). The Navy's activities have been found to be incompatible with the Refuge Act by the U.S. Fish and Wildlife Service and as reported in their 1991 Annual Report to Congress, the Marine Mammal Commission intends to "pursue the issue to a definitive conclusion." Unfortunately, despite the obvious incompatibility of these actions with the purposes of the Sanctuary Program, NOAA has not even included an option in the Olympic Coast DEIS which would require the Navy to stop their bombing practices due to this lack of jurisdictional clarity. In addition, the military is also one of the worst polluters, but NOAA's authority is quite vague in requiring compliance of the military on these issues as well.

Despite NOAA's claims of their ability to negotiate with DOD, the Navy's recent proposal to conduct underwater detonations in the Florida Keys Sanctuary and the recent seismic detonation which killed two Naval personnel off the Olympic Coast (3/11/92)

points to the fact that military activities are still an issue for NOAA. Fortunately the case in the Florida Keys has been taken care of, but it points to the need to keep the language in the existing Act (Sec 310) which states that special use permits may only be granted for activities which comply with the purposes of sanctuary. We are not clear of the intention of language in the H.R. 4310, but it appears to unacceptably allow the Secretary to certify activities within a sanctuary which are known to cause damage to sanctuary resources. In addition, we would like to have existing permits to be reviewed for compatibility with the Sanctuary Program when they are changed, renewed or transferred.

**6) Recognition of Tribal Rights:** The Sanctuary Program had little or no experience with the authorities of Native Americans prior to the review of sanctuaries in Washington State. This is also apparent in the lack of their specific reference to tribal governments in the enabling legislation. AOC has been working very closely with tribal governments in Washington State, especially the Makah on the Coast and Tulalip in Northern Puget Sound. We commend H.R. 4310 for trying to remedy this lack of recognition of the significant contribution Native Americans make to the cultural significance of our marine resources and their role as co-managers of these resources. The four tribal governments off the Olympic Coast (Makah, Quileute, Hoh, Quinault) have been supportive of the Sanctuary Program and have some unique authorities that need to be officially recognized in the Act

In particular, AOC firmly believes that existing treaty rights should not be diminished, but should rather be more explicitly recognized in the Sanctuary Act. NOAA should follow the examples set by EPA and MMS which recognizes the Tribal Governments as States. We do not believe that this will substantively change the level of involvement the tribal governments will have on the Olympic Coast, but it will increase the comfort level with which the tribal governments surrounding Puget Sound and in other areas around the country will be able to participate in the Program. While H.R. 4310 goes further to recognize the importance of tribal input in the sanctuary process, neither bill explicitly seeks their inclusion on appropriate Advisory Committees. In addition, we urge that the record of this hearing be kept open so these parties have the opportunity to have their comments added directly to the record.

**7) International Coordination:** The Act should recognize the importance of international communication for the coordinated and comprehensive management of internationally significant resources such as the Great Lakes, Puget Sound, Bering Sea, Gulf of Mexico and the Georges Bank. We commend the language in H.R. 4310 in this regard. NOAA should be encouraged to enter into preliminary discussions with appropriate foreign governmental officials to protect the waters of sanctuaries contiguous to these countries. However, the level of State Department involvement needed for these early actions should be minimized to avoid delays during initial communications. The State Department needs to be involved once a level of dialogue has been reached that has identified issues for negotiation.

**8) Research/Monitoring and Education/Enforcement:** Research programs which address pressing management questions should be established in each sanctuary. For example we still need basic life history parameters of many invertebrate populations if we are to responsibly manage their harvest. In addition, baseline monitoring of particularly sensitive, indicator species should be established to assess the long term health of the marine ecosystem in context to the ongoing uses of that system. These baseline data would be important when trying to assess damages to sanctuary resources. Sanctuaries should also serve as dedicated long term research and monitoring sites, especially in areas not represented by the National Estuarine Research Reserve Program. Sanctuaries are ideal locations to help carry out recovery programs as required by the Endangered Species Act, since habitat protection is a necessary requirement of any recovery program. This can be accomplished in three ways. Initially, existing sanctuaries which retain endangered species, can be written into recovery programs (e.g. humpback whales - Gulf of the Farallones). In addition, soon to be designated sanctuaries can have the goals of specific recovery programs incorporated in their management plans (e.g. sea otters - Monterey Bay and Olympic Coast; humpback whales - Stellwagen Bank and Hawaii). Furthermore new sites can be added to the Site Evaluation List specifically for their utility in carrying out the purposes of recovery programs (e.g. northern sea lions and humpback whales - Alaska). In this way, the Sanctuary Program can contribute to the preservation of marine biodiversity.

Research findings should be incorporated into education programs. These programs should also include the cultural and historical importance of the marine resources to Native Americans and coastal communities. Interpretive centers should be established at points of close access to sanctuary resources. In addition, efforts should be made to make use of existing marine science centers and museums to distribute sanctuary information. Educational information should stress the sensitivity of the resources and the need to comply with existing regulations whether sanctuary-related or not. In this way education programs can serve as a form of passive enforcement. Unfortunately, due to limited funding, this is all most sanctuary enforcement programs entail. There needs to be greater enforcement presence at each sanctuary, by making better use of the Coast Guard and the deputization of staff from other agencies.

**9) Funding:** We agree with the Sanctuary Review Team's recommendation and H.R. 4310, both of which seek to increase the Act's authorization level to \$30 million to accommodate new sites being added to the program and to enable existing sanctuaries to be more effective. While this amount of an increase may seem ambitious in context to the history of the Program's funding, it is moderate as compared to programs with a similar mandate on land. Even if it is unlikely that this full amount will be initially appropriated, it sends a clear signal that this program at least has the potential to live up to its mandate.

Of particular concern is how money is apportioned within the Program. We are again in agreement with H.R. 4310 which specifies how much money is to be spent for

general administration, management of existing sanctuaries, and for review and analysis of sites for future designation. We would add the need for a Research and Monitoring budget item within the management category. The reason for our particular concern is that, according to our research, despite the clear intent of Congress, (as stated in the Senate Appropriations Report for Commerce, Justice, and State (enclosed)) for additional appropriations to be spent on the review of sites in Florida and Washington State, this money has only gone to Florida. In addition, NOAA has chosen not replace the lead author of the Olympic Coast DEIS who has been transferred to work on Florida leaving only one staff member to address public comments and modify the Management Plan accordingly.

The additional funding should be used to enable NOAA to make significant improvements in the program, not just make more of the same types of programs. The way in which the Program is perceived by the public has a lot to do with the scientific integrity and consistency of the lead staff. Therefore, it is critical NOAA should hire qualified staff to conduct the site reviews and to serve as sanctuary managers. They are sometimes limited by the talent pool of temporary NOAA Corps officers as their managers. The NOAA Corps can make significant improvements in staffing levels at Sanctuaries, but we feel it is inappropriate to have temporary personnel lacking specific training to be the managers.

Additional funding would also allow NOAA to hire a resource economist on staff to identify the positive and negative impacts of sanctuary designation. Since the impacts of a sanctuary designation are rarely black and white, NOAA should at least have the tools to be able to make the case for the economic benefits of protecting the marine environment. Additional money would also enable NOAA to fund research on resource management questions and create an active enforcement program which is lacking at most sanctuaries currently. While increasing the penalties for violations will serve as some degree of a deterrent, if no one is there to issue a citation the fine will not matter.

AOC has mixed feelings about the idea of establishing a Foundation to generate additional funding for the Sanctuary Program. While we support the ability for SRD to accept non-profit donations, until the Administration and Congress makes a firm commitment to funding this program at levels which reflect its importance, we fear that the creation of a foundation may only serve to further justify why additional appropriations are unnecessary. We would rather see the initial commitment come from the federal government and have each sanctuary be able to recover fines from damages to resources.

**10) New Sites/Review of Existing Sites:** Emphasis should be placed on the designation of new sanctuaries in biogeographic provinces not currently represented by the program which retain nationally significant biological and/or cultural marine resources. This points directly to the need to see new sites in Alaska, Gulf of Mexico, Great Lakes, and Mid-Atlantic. The fact that Alaska is the only state that does not even have a site on the Site Evaluation List (SEL), despite its wealth of marine resources, is a conspicuous

omission in the program. During NOAA's current review of the SEL several of the numerous deserving sites from Alaska should be included (e.g. Glacier Bay, Prince William Sound-Copper River Delta, Unimak Pass- Izembek Lagoon, Bering Strait, Barrow Eddy, and the waters off the Arctic National Wildlife Refuge). However, no site should proceed into active candidacy without a nomination from within Alaska.

We take exception with the Marine Sanctuaries Review Team's recommendation to prioritize establishing model sanctuaries in California and Florida where well functioning sanctuaries already exist. While these sites are important examples of the program's merit, it is critical that emphasis also be given to efforts in establishing sanctuaries in states which do not have the benefit of having the experience with existing sanctuaries such as Massachusetts and Washington State. If the biogeographic representation of this national program is ever going to include Arctic and Subarctic ecosystems it is imperative that NOAA be able to represent their program in a way which would interest an unexperienced participant. During the review of new sites, especially in areas with a high degree of controversy, NOAA should follow the positive example set in Washington State, and establish an on-site liaison to coordinate activities between DC and the affected region.

In order to keep Congress abreast of the successes and failures of the program NOAA should be required to submit biennial reports to the joint subcommittees of the Merchant Marine and Fisheries Committee. The mid-term report would provide a useful milepost without overburdening NOAA with paperwork and the final report would provide Congress with timely information for the next reauthorization. The reports should include the basic accounting of the number of sites reviewed, designated and the amounts of money spent on the various programs administered. In addition, the reports should provide a summary of a periodic review of the status of the scope of regulations in each sanctuary, specifying if there is a need to implement any new regulations not initially specified in the management plan.

#### Conclusions:

In closing, sustainable utilization of the ocean makes ecological as well as economic sense. Coastal communities in Washington State, like other areas around the country, are currently suffering the impacts from the mismanagement of their timber resources and look to the ocean for their economic future. However, we must change the way in which we think of the ocean and ultimately treat the ocean to be sure that the world's marine biodiversity is adequately protected so that there is enough left to savor, study and sustain our coastal communities well into the future. Ted Danson, President of American Oceans Campaign, articulated these sentiments: "The oceans give us life, it's time we return the favor." Thank you for this opportunity to address how we see the Marine Sanctuary Program can meet this challenge.

located to the University of South Carolina School of Public Health and the Haruch Institute for continuation of the research on effective management of small, high-salinity estuaries, in collaboration with the National Marine Fisheries Service Southeastern Fisheries Laboratory in Charleston, SC.

The Committee recommends \$5,500,000 for the National Marine Sanctuary Program. This funding level is \$2,194,000 above the budget request and \$754,000 above the House allowance. The Committee recommendation recognizes funding requirements generated by the expansion of the National Marine Sanctuary system in such locations as the Florida Keys as well as new sanctuaries off the coast of Washington State.

The Committee has included \$11,643,000 for observation and prediction. This is \$667,000 above the House allowance. The Committee has included \$500,000 to replace monitoring equipment lost as a result of Hurricane Hugo including current meters, tide gauges, and geodetic reference markers.

The Committee is recommending \$250,000 to continue to develop a Gulf of Maine data management and information transfer system. It is intended that these funds be made available to the Gulf of Maine Council on the Marine Environment, which consists of the States of Maine and New Hampshire, the Commonwealth of Massachusetts, and the Canadian provinces of Nova Scotia and New Brunswick. The council was established pursuant to the agreement on the conservation of the marine environment of the Gulf of Maine, signed by the five Governors and premiers from the participating States and provinces in December 1989. The intent of the agreement is to develop a coordinated monitoring program for the gulf, to minimize actions that would result in degradation of environmental quality or depletion of resources, and to develop additional agreements or protocols on specific issues as needed.

Within the funding for resource survey activities, the Committee expects NMFS to continue contracting with the South Carolina Wildlife and Marine Resources Department for Resource Surveys.

#### OCEANIC AND ATMOSPHERIC RESEARCH

The Committee recommends \$204,072,000 for NOAA oceanic and atmospheric research programs. The amount recommended is \$17,082,000 above the budget request and \$7,414,000 above the House allowance.

The Committee has provided \$46,000,000 for the Sea Grant Program, which is \$20,945,000 above the budget request and \$2,171,000 above the House allowance. The recommendation is allocated as follows: \$43,000,000 is included for the nationwide Sea Grant Program; \$2,000,000 for oyster mussel research, and \$1,000,000 for the National Coastal Research and Development Institute.

A total of \$15,959,000 is recommended for the NOAA Undersea Research Program. This amount is the same as the House allowance and \$15,959,000 above the budget request which proposed terminating this program. Of this amount, \$3,200,000 is included for the Hawaiian Undersea Research Laboratory (HURL). These funds will be used to renovate a research vessel and continue research of

submarine volcanic processes; seamount habitats; and the processes, growth, and distribution of ocean minerals in the Pacific basin.

The Committee has included \$13,700,000 to support NOAA's premier laboratory, the Geophysical Fluid Dynamics Laboratory in Princeton, NJ.

The Committee is recommending \$2,000,000 for a grant to the University of New Hampshire to enhance its marine research and education activities. The funds would be used, in part, to construct a marine engineering building and to provide for specialized marine engineering equipment. The Committee anticipates the National Oceanic and Atmospheric Administration will expedite the processing of this grant to allow for the facility to become operational, if possible, prior to the beginning of the 1992-93 academic year.

The Committee has included \$250,000 for the Pacific Island network, which provides technical assistance to Pacific Island nations on marine-related problems in aquaculture, fisheries, coastal resource management, communications, and education. This program is jointly managed by NOAA's Office of International Programs and the University of Hawaii Sea Grant Extension Program.

The Committee recommendation provides \$5,728,000 for the Great Lakes Environmental Research Laboratory and zebra mussel research conducted by it. The recommendation also provides \$2,749,000 to continue the Weather Modification Matching Grant Program that was proposed for termination in the budget request.

The recommendation includes \$2,000,000 for the Prince William Sound Oil Spill Institute which was authorized in title V of the Oil Spill Pollution Act of 1990.

The Committee recommends \$250,000 for a grant to the Lake Champlain, VT, Research Consortium to assist in a comprehensive review of the transport of atmospheric deposition, lake current movement patterns, and fisheries.

#### NATIONAL MARINE FISHERIES SERVICE

The Committee recommends \$243,262,000 for the National Marine Fisheries Service (NMFS). This amount is \$67,702,000 above the budget request and \$40,658,000 above the House allowance. This comparison includes the \$7,500,000 recommended by the Committee to continue Saltonstall-Kennedy fisheries grants which the budget requested to terminate and the House allowance provided no funding for.

The Committee recommendation provides \$3,992,000 for computer systems to modernize the antiquated data management system currently operated by NMFS. The Committee recommends \$9,450,000 for support of regional fisheries management councils. This amount is \$2,284,000 above the budget request and \$1,119,000 above the House allowance.

The Committee recommendation provides \$4,600,000 for NMFS recreational fisheries base programs and initiatives (ReFBI). The Committee is pleased that the National Marine Fisheries Service is dedicating additional resources to research and analysis of recreational fisheries. The Committee directs that \$3,000,000 be used to implement data error reduction for the Atlantic and gulf survey. Because of the intense management of recreational species (like

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On 11 July 1991, plaintiffs filed a motion for a preliminary injunction seeking to close the pollock fishery because of the alleged violations and the potential harm to Steller sea lions. A hearing on the motion was held on 26 July 1991. Two days before the hearing, however, the fishery was closed by the Service until 29 September 1991 because the quarterly pollock quota had been reached. In light of that closure, the Court determined that expedited review was not necessary and directed the parties to file briefs on the merits during August.

Following briefing and a hearing on cross-motions for summary judgment, the Court ruled in favor of the Federal defendants. In its 10 October 1991 order, the Court found that the Service had used the best available information in determining that the 1991 pollock catch level would not jeopardize the continued existence of the Steller sea lion. In this regard, the Court noted that the defendants provided "plausible, factually based arguments" that conservation measures adopted by the Service would "adequately mitigate any potential (and unproven) harm to the Steller sea lion from pollock fishing." The Court also noted that, while plaintiffs may reasonably debate the efficacy of the mitigation measures, "[r]easonable differences of opinion...do not indicate that the Secretary's no-jeopardy determination was irrational or conclusory."

The Court also found the plaintiffs' National Environmental Policy Act claims to be unpersuasive. It ruled that, "[w]hile the Secretary [of Commerce] has acknowledged that past pollock fishing may have adversely impacted Steller sea lions and harbor seals," the action at issue in this case, the 1991 pollock catch level, "avoids those risks because of mitigation measures" (emphasis in original). The Court also ruled that the controversy as to the possible effects of the pollock catch level were insufficient to warrant preparation of an environmental impact statement.

Greenpeace appealed the District Court ruling to the Ninth Circuit Court of Appeals on 11 October 1991. Federal appellees, in their 16 December 1991 reply brief, reiterated the substantive arguments made in the lower court, but also argued that, inasmuch as the challenged fishery closed on 25 October 1991, the case should be dismissed as being moot. Consider-

ation of the matter by the Court of Appeals is expected in 1992.

As a related matter, on 18 November 1991, the National Marine Fisheries Service published in the *Federal Register* a proposed rule to revise several measures designed to reduce the impact of groundfish fisheries on Steller sea lions in Alaska. The Service proposes to adopt: (1) year-round trawl fishery closures in the Gulf of Alaska and Bering Sea/Aleutian Islands area within 10 nautical miles of key Steller sea lion rookeries, and (2) new Gulf of Alaska walleye pollock management districts and a limit on seasonal harvest allocations for each district.

### Sea Lion Rock

Sea Lion Rock is a small exposed reef in the Copalis National Wildlife Refuge on the outer coast of Washington. It is used as a seasonal haulout site by Steller sea lions, California sea lions (*Zalophus californianus*), and harbor seals (*Phoca vitulina*); it is also used by many species of seabirds and waterfowl.

In May 1944, the Secretary of the Interior granted permission to the U.S. Navy to conduct practice bombing activities on Sea Lion Rock as part of the Naval Air Training Program, with the stipulation that the program's use of the island would cease six months after the end of World War II. In July 1949, the Navy again requested permission to use Sea Lion Rock as a practice bombing site. The Secretary of the Interior granted the request and gave the Navy permission to use the island for an indefinite period of time. In 1970, Sea Lion Rock and a number of surrounding islands in the refuge were included in the Washington Islands Wilderness Area under the Wilderness Act of 1964. The Navy has continued to use Sea Lion Rock as a practice bombing site since that time.

In 1984, the Washington Department of Game began a two-year study to determine the effect of Navy activities on wildlife in the Copalis National Wildlife Refuge. In its 1986 report, the Department noted that bombing activities may cause the abandonment of Sea Lion Rock by all wildlife, and, as the Navy sometimes bombs other islands in the Refuge

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accidentally, the bombing may adversely affect wildlife on those islands as well. In a compatibility determination prepared by the Fish and Wildlife Service's Refuge Division, the Service concluded that under no circumstances could practice bombing of Sea Lion Rock by the Navy be made compatible with refuge objectives to protect and enhance wildlife resources.

On 8 February 1991, the Marine Mammal Commission wrote to the Navy regarding its use of Sea Lion Rock. The Commission noted that the Navy's use of the island for practice bombing purposes was incompatible with other wildlife conservation uses of the island. In particular, the Commission noted that: (1) the island is a part of both a wildlife refuge and a wilderness area; (2) it is used by many marine mammal, seabird, and waterfowl species; (3) the designation of the Olympic Coast National Marine Sanctuary, which would incorporate all islands in the Copalis National Wildlife Refuge, was pending; (4) all marine mammal species are protected under the Marine Mammal Protection Act; (5) the Steller sea lion and gray whale (*Eschrichtius robustus*) also are protected under the Endangered Species Act; and (6) certain seabird and waterfowl species are protected under the Migratory Bird Treaty Act. The Commission further noted that the Navy's practice bombing activities on Sea Lion Rock were inconsistent with provisions of the cited statutes and with the island's wildlife refuge and wilderness status. Therefore, the Commission, in consultation with its Committee of Scientific Advisors, recommended that the Navy stop using Sea Lion Rock for practice bombing and the low level flying that it necessitates. The Commission noted that the Navy cannot continue using Sea Lion Rock unless it takes steps to comply with applicable laws, including the Marine Mammal Protection Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the Wilderness Act. The Commission further noted that the Department of the Interior should give serious consideration as to whether to continue authorizing the Navy's use of Sea Lion Rock for practice bombing.

In an effort to further the Navy's understanding of problems associated with the use of Sea Lion Rock, the Commission supported a group comprised of three researchers and one lawyer expert in Steller sea lion

issues to travel to Whidbey Island Naval Base on 14 February 1991 to meet with key Navy personnel. The group, led by a former member of the Commission's Committee of Scientific Advisors, included the National Marine Fisheries Service's Steller sea lion program director and the counsel for the National Oceanic and Atmospheric Administration's Northwest and Alaska Region. The group briefed the commanding officer and his staff on changes in the status of Steller sea lions and the effect of these changes on the Navy's use of Sea Lion Rock. The group also noted that the meeting could help the Navy avoid a major legal conflict.

The group came away from the meeting with six specific findings: (1) the Navy states that Sea Lion Rock is used exclusively as a backup for another, primary practice bombing site; (2) the Navy personnel present at the meeting acknowledged that they need to comply with the Marine Mammal Protection and Endangered Species Acts; (3) the Navy indicated improved compliance with their own protocol (resulting in decreased adverse effects on the islands nearest to Sea Lion Rock); (4) the State will not allow the Navy to place radar reflectors on the islands nearest to Sea Lion Rock, despite the fact that doing so would likely also decrease adverse effects on these islands; (5) no sea lions are hit directly by the inert practice bombs, and therefore the main "take" under the Marine Mammal Protection Act and the Endangered Species Act is harassment of the animals; and (6) as alternative targets, smoke targets were unacceptable to the Navy because of the importance of radar target acquisition to the training activities, and a moored barge was unacceptable due to cost and the inability to use it on short notice.

Following the meeting, the group concluded that the most expeditious way to stop bombing at Sea Lion Rock would be to have the Department of the Interior withdraw the Navy's permission to use the island.

On 20 March 1991, the Navy responded to the Commission's 8 February 1991 letter. In its letter, the Navy advised the Commission that it would review the issue of the taking of marine mammals incidental to its activities at Sea Lion Rock and would

# Spill spurs effort to ban oil drilling

By Rob Taylor  
P-I Reporter

Opponents of oil drilling off the Washington coast hope that the Tenyo Maru oil spill will boost their stalled efforts to ban oil exploration in coastal waters off the northern Olympic Peninsula.

As oil spreads, the opponents are renewing demands that the Bush administration designate a marine sanctuary stretching up to 40 miles out to sea, and from Cape Flattery as far south as Cape Disappointment.

A host of environmental groups has appealed for a ban on offshore oil and gas development within the sanctuary.

They say the Bush administration, which opposes such a ban, has delayed a draft environmental impact statement that must be aired before the sanctuary can be designated.

The current spill may help "pry this loose," said Fred Felleman, conservation biologist for the American Oceans Campaign in Seattle. He said damage to birds, wildlife and scenic coasts has reminded the public "what we have at risk."

Felleman and a host of environmental groups asked President Bush last April to release the draft impact statement and move on toward establishing a sanctuary. In May, six Washington members of Congress co-sponsored legislation that would ban offshore oil development in the sanctuary area. Neither move prodded

action from the administration or Congress.

The administration has announced plans to defer any oil development off the Washington coast until the year 2000. But concerned about declining U.S. oil production, the administration has resisted longer commitments.

The sanctuary is overdue. In 1988, Congress directed the administration to designate the sanctuary's boundaries and management regime by June 1990.

According to environmental groups, the National Oceanic and Atmospheric Administration recommended to the Bush Administration that oil and gas development be banned within the sanctuary, which could cover the entire continental shelf.

But at the Interior Department's request, the groups said, initial drafts of the impact statement would allow oil drilling in a portion of the sanctuary.

Yesterday, Linda Maxson, NOAA's liaison officer for the sanctuary, was due to meet with superiors in Washington, D.C. to discuss the status of the environmental impact statement, Felleman said.

The Senate, meanwhile, reemphasized its support for the sanctuary Wednesday by approving a spending bill including \$5.5 million for the nation's marine sanctuaries, including both sanctuaries authorized in Washington — one on the northern coast of the Olympic Peninsula and one in the San Juan Islands.



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**STATEMENT OF JOHN W. HUMKE,  
VICE PRESIDENT AND DIRECTOR OF AGENCY RELATIONS  
BEFORE THE HOUSE SUBCOMMITTEE ON OCEANOGRAPHY, GREAT LAKES,  
AND THE OUTER CONTINENTAL SHELF AND THE HOUSE SUBCOMMITTEE ON  
FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT  
MARCH 31, 1992**

Mr. Chairman, members of the Subcommittees, my name is John Humke, and I am the Director of Agency Relations for The Nature Conservancy, an international non-profit, conservation organization, dedicated to the preservation of natural biological diversity through the protection of threatened species and ecosystems. I 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 Subcommittees 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 refugia; 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 funding 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 essential 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.

This concludes my statement. I thank the Subcommittees for the opportunity to testify today.

**Testimony of  
Frank M. Potter, Co-chair  
Marine Sanctuaries Review Team**

before  
**The Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf  
and  
The Subcommittee on Fisheries and Wildlife Conservation and the Environment**

March 31, 1992

The subject of today's hearing is the reauthorization of the NOAA Marine Sanctuary Program. Legislation has been introduced in the House, although I have only seen H.R. 4310 in its final form. I have also seen drafts of a bill for introduction by Mr. Studds, which I am told will have been introduced by today.

I have looked at these bills in some detail, and I am happy to see that they move strongly in the direction of the recommendations of our Review Team. You have seen that report and I will not go further than referencing my testimony on November 7, 1991, except to say that it contemplated a significant increase in funding for the program; these bills are consistent with those recommendations.

The Manne Sanctuary program appears to be emerging from a twenty-year period that might best be described as in the doldrums. Those few winds that blew came from different directions and at varying strengths—the program moved very, very slowly. During most of that time, the Congress was practically the only force that kept the program moving at all. In the past year, interest has been reviving; this legislation reflects that interest and the concern that it is time for the program to start moving.

Our report was issued just a year ago. It identified two key areas where the program required major change. One of these lies within the responsibility of the Congress—the other, within the Executive Branch.

That part of the job that is up to the Congress involves giving the agency the tools to do the job. This means principally (although not entirely) the authorization and ultimately the appropriation of adequate funds; because unless the funds are sufficient to carry out the duties that the authorizing

legislation described, the program will accomplish little and should probably be shut down.

The agency's responsibility, on the other hand, is to understand and embrace the program, and to use its abilities to make the program work.

The bills before this Committee accomplish three important objectives:

- (1) to increase the level of funds for the program,
- (2) to restate the mission of the program in the light of our current understanding of its proper objectives, and
- (3) to clarify existing authority, streamline procedures and fill gaps in the basic legislation.

#### Funding

Adequate funding for sanctuaries program is vital, and the authorization levels in H.R. 4310 seem sufficient, in my view, to accomplish its redefined goals. Our report indicated that the Florida Keys Manne Sanctuary alone could require a budget of \$7 million to operate, to say nothing of the costs of facilities and equipment, which could be double that figure. Add to that the costs of providing adequate staffing for those other sanctuaries already in existence, plus those due to come on the line within the next two to three years, and \$28 million for FY1993 seems realistic. In fact, if the agency receives the authority and the funding that it needs, I would not be surprised to see, within the not too distant future, funding levels for future years increase beyond the modest 4% expansion contemplated in this bill.

Will some of these funds be spent in ways that may be less than entirely effective? Probably. No one

is perfect, and we learn from our mistakes. But that is what oversight is all about, and I am confident of this Committee's ability to maintain a careful and vigorous review of the progress of the program as it shifts out of low gear and begins to move ahead.

### Mission and Vision

The second principal objective of this legislation, in my view, is to restate the purposes and mission of the sanctuary program. The language contained in §301(b) of H.R. 4310, identifying the purposes and policies of the title, accomplishes this clearly and succinctly.

Our report noted that the agency lacked a central vision for the program. Some progress has been made within the agency in defining a clearer vision, and that is commendable. But personnel and Administrations can and will change; without a clearly defined statement of the vision and mission of the program, this important momentum could easily be lost sometime in the future.

Our report recommended, among other things, that the mission of the program be redefined in some specific ways. H.R. 4310 embodies these recommendations; the bill refers back to these purposes and policies in several places. The importance of this clear statement of purpose can hardly be overemphasized.

### New Legislative Tools

Much has happened in the twenty years since passage of this Act, and H.R. 4310 reflects these changed circumstances. The legislative changes contemplated are consistent with the Review Team Report. I will be pleased to discuss any of them if you should have questions on these issues.

I want to focus on three particular areas addressed by H.R. 4310, because they are important to the effectiveness of the program. The first of these is research and monitoring. I am pleased to see Dr. Carleton Ray on this panel, this is a subject on which he is far more knowledgeable and eloquent than I— for this reason, I only wish to note its importance in a revitalized sanctuary program.

Second, I believe the creation and support of effective Advisory Committees is crucial to the success of the Sanctuary Program. Graeme Kelleher, Chairman of the Great Barrier Reef Marine Park Authority, identifies public involvement with the

Reef as vital to its existence, giving the public a stake in the protection of this world-renowned resource— creating what amounts to a form of ownership in its continued good health.

While I am partial to the idea that these Committees should not be subject to the strictures of the Federal Advisory Committee Act, as some suggest, I am apprehensive that inclusion of this provision might slow the progress of this legislation. That, in my view, we simply cannot afford. Whether or not this would be the case is your call.

In November, you asked for my comments on the concept of a Sanctuaries Foundation, and I stated at the time that the Panel had endorsed that concept. Title II of H.R. 4310 embodies such a Foundation, and I am pleased to see it incorporated into this bill.

You might, as you deliberate on the next steps to be taken in this legislation, give some consideration to enhancing what I perceive to be its important role as an Ombudsman, or spokesman for the sanctuaries. You may recall that the Marine Mammal Protection Act, which also emerged from this Committee, included some novel (and so far as I know, never-repeated) authority. The Marine Mammal Commission, supported by its Scientific Review Committee, has the authority to make recommendations to the Secretaries of Commerce and the Interior on their discharge of the duties imposed upon them by the Act. The Secretaries, in turn, must consider those recommendations: they do not have to follow them, but if they don't, *they must tell the Commission and the Congress why they chose not to do so.*

Government agencies are often accused, — sometimes accurately, of inertia and arbitrary action. Giving the Sanctuaries Foundation the power to make recommendations to the Executive Branch might be a useful way to ensure that the agency continues to administer the program in a way that is most beneficial to the sanctuaries themselves, if not to the peace of mind of their guardians.

### Additional Points

I would like to stress a few points discussed in our Report but not included in the legislation. The first of these is already widely recognized: that the next real test of the success of this program is likely to be its success in the Florida Keys, and perhaps in

Monterey Bay as well. From everything that I can see, the Florida Keys process is moving in the right direction, with strong support from the State of Florida and the affected communities. By its nature, this legislation cannot and should not address itself to the particular requirements of the Florida Keys National Marine Sanctuary, but the tools that it provides, including but not limited to an increased budget, will be critical.

Our Report urged NOAA to elevate the status of the program, and NOAA's entirely legitimate response has been that to raise it to Office status makes little sense when one considers its relatively trivial budget. Until now, that argument was unassailable. If H.R. 4310, or some variant, is enacted into law, an elevated status for the program, out of the obscurity in which it currently languishes, would seem entirely appropriate. You may or may not wish to incorporate this requirement into the legislation—once again, it is a legislative judgment that you are far more qualified to make than I.

I strongly support this legislation as consistent with the findings of our Review Team, and as necessary to bring about an objective that I believe we all share: the revitalization of the Marine Sanctuary Program.

### The Costs of an Adequate Marine Sanctuary Program

In its 1991 Report on the U.S. National Marine Sanctuaries Program, entitled National Marine Sanctuaries: Challenge and Opportunity, the review team suggested that an adequate budget for the program would be on the order of \$30 million. The Florida Keys National Marine Sanctuary, if properly funded, would require a budget of \$7-8 million alone.

While this figure would represent an enormous increase over the program's budget and aspirations in the past, a more detailed review of the way these funds might be spent suggests that the team's projections seem reasonable, always assuming that NOAA assigns it the resources and priorities that it merits.

A very rough breakdown of the costs of operating those sanctuaries now in place and those that are well underway indicates that those sanctuaries alone, without taking account of the costs of headquarters operations, might warrant an operating budget of almost \$25 million, with an additional \$50 million of initial startup costs. A summary is attached, entitled "Projected Marine Sanctuary Costs."

A major caveat: this document is necessarily general and cursory. Without extended analysis and careful checking of the particular circumstances of each of the sanctuaries in question, it is not possible to be more specific than this. If detail is required, NOAA could no doubt supply far more precise estimates. In general, however, these costs appear to be in the range of what might reasonably be required to operate and maintain the sanctuaries in question. The numbers have been discussed with state and federal officials who are charged with responsibility for maintaining similar kinds of resources and appear to be generally accurate.

For the purposes of this analysis, the sanctuaries have been divided into four different classifications. The first, the Florida Keys National Marine Sanctuary, is unique: it is more than twice the size of any other sanctuary in the system, and is heavily utilized by tourists, fishermen, and others. NOAA and the State of Florida share responsibility for stewardship of this resource, and the manpower requirements of this task are formidable. Most of the personnel required in such an operation would fall into the following categories: Enforcement and interpretation personnel (45), scientists and educators (20), secretaries and mechanics (18) and the rest with various administrative responsibilities. The total personnel costs are estimated at \$3,600,000/year.

Rental of space, including adequate facilities for visitors and moorage fees, might cost \$400,000/year. Physical equipment, such as boats and automobiles, together with the costs of operation and maintenance, might run to \$2,210,000/year.

Research, education and establishing a baseline so that future examination will reveal accurately if these resources are suffering or recovering as a result of sanctuary operations, might reasonably cost \$800,000/year.

The startup costs of this sanctuary, which were not taken into account by the review team, could be considerable. Boats, engines, trailers, trucks and other permanent equipment are not cheap, but they are integral to such an operation.

Costs of operating other sanctuaries in the system have also been estimated, on an equally rough and informal basis. Monterey Bay, the Gulf of the Farallones and Cordell Bank, the California Channel Islands can be lumped roughly into a class of sites: fairly large, experiencing a fairly reasonable amount of use by visitors and others, and requiring a moderate enforcement presence. For such operations, an annual cost of \$3,015,000 appears justifiable, with startup costs perhaps double that figure.

The third class of sanctuaries is still an empty class: all are at varying points in development. Visitation at these sanctuaries is likely to be less intense, at least in their early stages, and they range in size from quite large to quite small. Operating costs of \$2,025,000 seem about right and the startup costs may be a third again as high.

The remaining sanctuaries tend to be small, and visitation much less intense. Operating costs are likely to be high, but nine employees per sanctuary does not seem to be unreasonable. Startup costs will be correspondingly smaller as well, but there will inevitably be an irreducible minimum.

Startup costs will vary from sanctuary to sanctuary. Some now in operation have dealt with many of these costs already, and in those cases, the costs will be correspondingly smaller. But none of the sanctuaries now in place are adequately staffed, and none have anything like the equipment and supplies that they require.

These numbers can easily be picked apart. Some sanctuaries will require more staffing, and some less. Some may not be in full operation by 1994. Ultimately the judgment of the best way to deploy these resources will rest in the hands of the Administrator of NOAA—as it should properly do.

I suggest these soft numbers as simply an approximation of what an adequate sanctuary program might cost. Given the importance of the resource and the potential of the program, these projections indicate the nature of the challenge confronting the Administration and the Congress as they contemplate breathing new life into this significant program.

Frank M. Potter  
Co-chair, National Marine Sanctuaries Review Team  
March 31, 1992

Projected Marine Sanctuary Costs

Sanctuary	Size (statute miles)	Staff 1992	Staff 1994	Personnel 1994 (\$ thousands)	Space 1994 (\$ thousands)	Equipment 1994 (\$ thousands)	Research 1994 (\$ thousands)	Total Operating (\$ thousands)	Startup Costs (\$ thousands)
Florida Keys	6,894.50	4	100	\$3,600	\$400	\$2,210	\$800	\$7,010	\$15,000
Key Largo		14							
Loos Key		8							
Monterey Bay	2,908.40	1	35	\$1,400	\$275	\$815	\$525	\$3,015	\$6,300
Farallones	1,235.30	4	35	\$1,400	\$275	\$815	\$525	\$3,015	\$6,300
Cordell Bank	524.80	0							
Channel Islands	1,655.10	5	35	\$1,400	\$275	\$815	\$525	\$3,015	\$6,300
Northern Puget Sound	?	0	35	\$1,400	\$275	\$815	\$525	\$3,015	\$6,300
Olympic Coast	3,437.00	1	23	\$900	\$110	\$615	\$400	\$2,025	\$3,300
Stellwagen Bank	598.90	1	23	\$900	\$110	\$615	\$400	\$2,025	\$3,300
Thunder Bay	?	1	23	\$900	\$110	\$615	\$400	\$2,025	\$3,300
Kohoolawe	?	1	23	\$900	\$110	\$615	\$400	\$2,025	\$3,300
Gray's Reef	22.50	3	9	\$350	\$65	\$307	\$200	\$922	\$2,400
Norfolk Canyon	?	0	9	\$350	\$65	\$307	\$200	\$922	\$2,400
Neahter	1.30	2	9	\$350	\$65	\$307	\$200	\$922	\$2,400
Fogatale Bay	0.30	1	9	\$350	\$65	\$307	\$200	\$922	\$2,400
Flower Garden Banks	58.20	1	9	\$350	\$65	\$307	\$200	\$922	\$2,400
<b>Totals</b>	<b>17,336.30</b>	<b>47</b>	<b>377</b>	<b>\$10,950</b>	<b>\$1,865</b>	<b>\$7,255</b>	<b>\$4,700</b>	<b>\$24,770</b>	<b>\$50,400</b>

Hearing before the Subcommittees on  
 Oceanography, Great Lakes and the Outer Continental Shelf  
 and  
 Fisheries and Wildlife Conservation and the Environment  
 March 31, 1992

Testimony of  
 G. Carleton Ray  
 Department of Environmental Sciences  
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First, I wish to congratulate the Subcommittees for their efforts on behalf of the Marine Sanctuaries Act. The Subcommittees recognize that marine sanctuaries are essential ingredients for the management, conservation, and sustainable use of our marine environment. The bills now being considered provide significant improvements in the National Marine Sanctuaries Program (NMSP) and make present and future challenges more clear.

Among the significant additions is a major increase in budget. Past levels of financial support for the NMSP have been woefully inadequate, as recent reviews have indicated (Potter et al, 1991; Ray and McCormick-Ray, 1991). However, as necessary as increased financial support is, even more basic and necessary are fundamental adjustments in how the NMSP seeks to accomplish its goals.

A U.S. "sanctuary" -- a somewhat unfortunate term -- is a form of Marine Protected Area (MPA). MPAs have been the subject of increasing national and international concern for the past half century, as depletion of resources, pollution, and increasing human population of coastal areas have become ever more apparent. There are now several hundred MPAs the world over, in the majority of coastal nations and even for Antarctica. This is the good news. However, from a global view, we must be aware that hardly any MPAs are sustainable over the long term. Further, the U.S. lags behind other nations, despite its environmental, intellectual, and financial resources. Leadership probably belongs to Australia with its varied and extensive system, or even to smaller, less-developed nations such as Kenya and the Bahamas which have well designed marine parks of their own.

My involvement with marine protected areas, in both concept and practice nationally and internationally, dates from the mid-1950s. Based on this experience I wish to suggest five areas that I believe are of critical concern for the future of the NMSP:

1. Identify Vision and Goals. The present global vision for protected areas of all sorts, was reinforced by the IV World Congress of National Parks and Protected Areas (Caracas, Venezuela, February 1992). The vision goes far beyond the "protectionism" implied by the term "sanctuary", and far beyond the activities of the NMSP during its two-decade existence. By wide consensus of managers, ecologists, and the public, MPAs should function to:

- Conserve biological diversity at all levels from species and their habitats to ecosystems and land-seascapes;
- Sustain resource use and maintain long-term ecosystem integrity; and
- Serve as sites for understanding the effects of environmental change, from global to local scales.

The first of these goals is most essential. What it means is that *representative samples* of the diversity of ecosystems of the coastal and ocean zones be established as "cores" for protection within large marine ecosystems. MPAs themselves may be of regional scope, as is the newly established Florida Keys National Marine Sanctuary (FKNMS). The second goal recognizes that the large marine ecosystems within which these core areas fall must be planned and zoned for *ecologically sustainable use* – a major theme of the aforementioned IV World Congress. The third goal recognizes that change, whether natural or anthropogenic, is inevitable and that a *strong research and monitoring program, specifically directed towards management questions*, is essential for sanctuary management, for conservation, and for sustained use of resources.

Previous reviews of the NMSP have noted that it has, since its inception, not fully grasped its role or opportunities, nor has it demonstrated understanding of the inter-relatedness of these three goals. Last year, the Congress took matters in its own hands by establishing the Florida Keys National Marine Sanctuary. Since that Congressional action, the NMSP has shown new vitality. Management planning for the FKNMS is now forced to incorporate these three goals, largely due to wide recognition of the intense human use of the area and the severity of the problems facing the South Florida region. It is my understanding that the NMSP is being assisted by NOAA's Office of Ocean Resources Conservation and Assessment (ORCA) and the State of Florida in developing the management plan. If this plan can clearly prescribe methods and implement actions to meet the challenges these three goals represent, the entire NMSP will receive an enormous boost and could rightly take its place in world MPA leadership.

2. Develop an Information Base for Decision-Making. These goals cannot be addressed in the absence of a well-organized information-base for decision-making. The NMSP has itself supported research and research supported by other agencies has been conducted in certain sanctuaries, but to the best of my knowledge, the NMSP possesses no listing of projects or assessment of results. It is difficult – if not impossible – to rationalize this situation. How else can informed decisions be made and how else can a sanctuary manager keep track of success or failure other than on the basis of a systematically developed information base? It is clear that the NMSP must designate research and monitoring among its highest priorities and that its own research and monitoring projects should be specifically directed towards management questions. Further, a specific plan for systematically acquiring information from a number of sources should be developed and supported. I strongly suggest that the present bills be altered to include a specific line item for research and monitoring and that this matter not be included ambiguously under "management", as is currently the case.

There are many needs for better information, among which are: site evaluation and characterization, day-to-day management options, use of sites as "models" for environmental problem-solving, etc. Also, there are cooperative ways to develop this information, including granting permits for research by other agencies. NMSP has, in the past, actually discouraged some researchers due to its cumbersome permitting program, which I understand is in revision.

One important need for research concerns an environmental classification and assessment (ECA) to aid the development of a "representative network" reflective of biological and ecological diversity. This need has been widely recognized at least from the mid-1970s, for example by the International Union for Conservation of Nature and Natural Resources (IUCN), UNESCO, the IV World Congress, and several nations, including Australia and Canada. The NMSP has also recognized this requirement, but nevertheless lags significantly behind others in development of such a system.

Development of the ECA is not trivial. From an ecological and oceanographic point of view, protected areas cannot stand alone as isolates in otherwise degraded environments. Rather, protected areas must be conceived as mosaics of managed and conserved ecosystems, scaled to regional oceanographic processes. In fact, this is exactly the *raison d'être* for establishing large, regional MPAs. Examples are the Great Barrier Reef Marine Park (GBRMP) and the FKNMS, both of which are conceived as regional planning schemes for ecologically sustainable multiple use, including the protection of "core" areas.

There are three caveats for developing a research and monitoring program and its resulting information base. First, a wide gap is apparent between managers and research scientists and their skills and priorities. To bridge this gap, research and monitoring programs should be developed *interactively between scientists and managers*, with neither side dictating to the other. Secondly, research also must include *both the natural and the social sciences* -- that is, that it be equally concerned with ecosystems and resources and with social factors. Third, NOAA is not equipped to do it all in-house, but must take much more advantage of the expertise and experience available elsewhere. Other NPA programs follow this example by devoting more than 50% of their budgets to cooperative research and development, rather than by building their own staffs. Such practices should be examined carefully by the NMSP in the course of its development.

3. Emphasize Intra- and Interagency Cooperation. Lack of cooperation among services within NOAA on the sanctuary issue and lack of collaboration among agencies on marine resource management is obvious. An encouraging exception is the collaboration of the NMSP, ORCA, and the State of Florida on the FKNMS management plan. Lack of cooperation and coordination results in a situation wherein fish may change jurisdictions several times in the normal conduct of their lives, as well as creating a paradigm that would drive any manager or ecologist mad!

The National Park Service, the Fish and Wildlife Service, the Coastal Zone Management Program, other agencies and the private sector all have responsibilities for estuarine and marine protected areas. If all such areas

were to be mapped -- which has never been done -- we would see how extensive is our present MPA system. It would also become much more clear where the opportunities for collaboration and the gaps lie. For example, until very recently, the National Park Service had a larger system of marine "sanctuaries" than the NMSP itself, including control of the fisheries within some of the units. The NMSP has achieved only very limited collaboration with other agencies. This may be in part because NOAA's highest administrative levels have exhibited little encouragement for sanctuary concepts.

Unfortunately, the present bills do little to enhance cooperation either within NOAA or among agencies. Cooperation with the Fisheries Management Councils is mentioned, but there is little evidence to suggest that the Councils will actively promote fishery reserves, despite the fact that present research indicates that such reserves *actually can enhance fisheries*. Furthermore, the National Marine Fisheries Service has shown little commitment to the establishment of protected areas, a situation that may be in the process of change and which should be strongly encouraged.

Much of this state of affairs is a result of history, and some responsibility lies at the feet of the Congress, how its committees are structured, and how allocations are made. Perhaps it would be possible to mandate greatly increased cooperation and hope for good will among the parties. However, this will do little good unless the *NMSP itself develops incentives for cooperation*. The essential points are that much more extensive collaboration is required to help solve our serious marine environmental problems, that MPAs provide a problem-solving focus, but also that it is far from clear what the NMSP perceives the incentives to be. The enhancement of fisheries, mentioned above, is only one example.

4. Seek Increased Council. It is particularly encouraging to note the inclusion of both an Advisory Council and a Coastal and Ocean Sanctuary Foundation in H.R. 4310. The Advisory Council is an excellent way to achieve a public participatory role, as is shown by the experience of Great Barrier Reef Marine Marine Park Authority (GBRMPPA) of Australia, the Bahamas National Trust, and others. However, by its very nature, such a council cannot attend to the specifics of management or of research.

According to H.R. 4310, it is the intent of the Foundation to help fulfill a role analogous to the National Fish and Wildlife Foundation in augmenting the research and other potentials of the NMSP. It is my view that any Government agency can take advantage of such an establishment, but two words of caution are necessary. First, this role is best performed by as independent a group as is possible to devise. Second, the establishment of such a group should not be taken as an excuse for not fully funding the agency itself.

However, it is not clear what the Foundation's authority might be. It may be improved by inclusion of some attributes of the Marine Mammal Commission, established under the Marine Mammal Protection Act of 1972. The Marine Mammal Commission is unique in that it reviews and may suggest actions of the agencies, and that it reports directly to the Congress. I suggest further examination of the best features of both the proposed Foundation and

the Marine Mammal Commission, and that a combination of both might be the best way to help facilitate NMSP development.

5. Upgrade Staff. Both of the reviews of the NMSP, cited above, have suggested that the NMSP should be elevated in status, perhaps to the administrative level of the National Park Service. This suggestion results, in part, from the perception that the NMSP suffers from lack of status within NOAA and from deficiencies in personnel. Surely, the program does not have enough people to carry out its ambitious mission. Also the distribution of these personnel is skewed towards Washington, rather than towards the field where the program is to be carried out.

Nevertheless, the major deficiency in personnel lies in experience and expertise. I do not wish to infer that those already within the NMSP do not fill essential roles. However, the lack of people with the *training and experience required* for a successful sanctuaries program is apparent. One example is that only recently has a qualified research director been hired, and he is without a line-item budget!

All major protected areas programs world-wide, to my knowledge, are fundamentally in the hands of experienced professionals with graduate training in resource management and/or research and monitoring – note our own National Park Service, Fish and Wildlife Service, Forest Service, etc. The rationale is simple. How can resources be conserved or managed without persons trained in resources (biology, ecology, or management) in charge? And, how else can knowledge be translated into action other than *via* persons with *long experience in actual field situations*?

I can only presume that future staffing of the expanded program that the Congress now encourages, will be accomplished by complementing its present staff with the trained, experienced personnel that it needs. No matter what the goals and ambitions of the NMSP, results and achievements will eventually depend on the leadership, experience, and knowledge of the individuals in the position to make innovative decisions.

....

In concluding, I wish to refer to a Report soon to be published by the Australian National Parks and Wildlife Service of (Ray and McCormick-Ray, in press), in which many of the points I have made in this testimony are described in more detail. This Report gives guidelines for meeting the goal stated by Prime Minister Bob Hawke before the General Assembly of the International Union for Conservation of Nature and Natural Resources in Perth in November 1990:

"I am, therefore, pleased to announce that the Australian Government has decided to work towards the expansion of Australia's marine reserve system. In association with State and Territory Governments, we will investigate the establishment of a national, representative system of marine protected areas for Australia that will protect these areas, while permitting appropriate uses and promoting public education." [boldface ours]

This commitment by the highest level of Government, as well as past accomplishments, places Australia in clear MPA world leadership and the nation last year launched a major "Ocean Rescue 2000" program to meet the goals stated by the Prime Minister.

Though Australia has its own set of problems, some features are worth noting. First, there is greater cooperation in terrestrial and marine protected-area planning than in the U.S., making coastal-zone problems easier to address. Second, the fishery agencies of some states have established their own MPAs so that fishery and protected-area interests are more closely aligned. Third, many of Australia's almost 300 MPAs of all agencies are being assessed against a biogeographical classification and the information is being entered into a common data-base, with the view of creating a nationally representative system.

Last, there is a strong and growing professionalism among the various Australian agencies dealing with protected areas. Most personnel have had graduate training in either resource management and planning and/or in fisheries or marine biology and ecology, and many have long experience. Management planning is being augmented by cooperation among Commonwealth and State/Territory management agencies and by close collaboration among university and governmental researchers.

The U.S. has the resources and personnel it needs to create the world's leading marine sanctuary program, with the proviso that considerable innovation and greatly increased resources -- financial and personnel -- will be required. It is my observation that the rejuvenation of the NMSP has begun and my expectation is that these bills, with some modifications, could greatly accelerate that process.

#### Citations

Potter, Frank et al, 1991. *National Marine Sanctuaries: Challenge and Opportunity: A Report to the National Oceanic and Atmospheric Administration*. Marine Sanctuaries Review Team, Washington, D.C. February.

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Testimony of

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Before the

United States House of Representatives  
Committee on Merchant Marine and Fisheries

Subcommittee on Oceanography, Great Lakes, and the Outer Continental  
Shelf

Subcommittee on Fisheries, Wildlife Conservation, and the Environment

on

the Reauthorization of Title III of the Marine Protection, Research,  
and Sanctuaries Act (MPRSA)

Tuesday, 31 March 1992  
2:00 P.M., Room 1334  
Longworth House Office Building  
Washington, DC 20515-6230

### Introduction

Good afternoon, Mr. Chairmen, members of the Committee. My name is Russell DeConti. I am the Director of Conservation for the Center for Coastal Studies in Provincetown, Massachusetts. I serve on the Stellwagen Bank Coalition Steering Committee, which has been guiding the efforts of the Coalition to have the Stellwagen Bank ecosystem designated as a National Marine Sanctuary. I am also on the Board of Directors of the Association for the Preservation of Cape Cod, which is a member of the Stellwagen Bank Coalition.

Today I am representing the interests of both the Center for Coastal Studies and the Stellwagen Bank Coalition with respect to the reauthorization of the National Marine Sanctuaries Program. I would like to take this opportunity to thank Congressman Studds for his help with the Stellwagen Bank sanctuary designation process and for introducing his bill for reauthorization of the MPRSA. The Center and members of the Stellwagen Bank Coalition greatly appreciate the assistance you continue to provide in this effort.

Before I present my specific comments on the proposed changes to the legislation, I would like to provide you with some background information which I believe is critical to understanding our perspective on this issue. First, I'd like to give you a very brief description of the organizations I represent, followed by an overview of key issues affecting the Massachusetts Bays environment which are likely to be high on the management agenda of the proposed Stellwagen Bank sanctuary.

### Background: Center for Coastal Studies / Stellwagen Bank Coalition

The Center for Coastal Studies is a small, non-profit research institution located on the tip of Cape Cod. Over the past fifteen years, we have focused our research mainly on the population biology and behavioral ecology of the great whale species that utilize the waters of Massachusetts and Cape Cod Bays. During this time, the Center has developed extensive databases on the endangered North Atlantic Right Whale, humpback, and fin whales. Our long-term investigations have made significant contributions to the understanding of the population dynamics, reproductive biology, and social structure of all three species. We are committed to understanding how these species interact with their environment in order to assist in the development of protective strategies that are responsive to changing habitat conditions.

The Stellwagen Bank Coalition is a diverse organization of over one hundred groups representing the interests of commercial and recreational fisherman, environmental institutions, marine educators and researchers, the

whalewatching industry, community groups, business leaders and individuals. We all share the goal of establishing the Stellwagen Bank ecosystem as a National Marine Sanctuary in order to protect this extremely diverse and productive environment.

The Coalition has been very active in mobilizing support for the sanctuary and has commented extensively to NOAA on almost every aspect of the sanctuary program. Initially, we stressed the need for a sanctuary boundary which was large enough to encompass all the resources associated with the ecosystem. We recognize the added burden that a large sanctuary involves, yet, we do not want a paper sanctuary. We want one that will provide meaningful protection and management. It now appears that the larger sanctuary will be approved, so we have turned our attention to financial, administrative, and management needs.

The interests of both organizations in today's proceedings involve all aspects of the legislation from resource protection to management and enforcement. However there is one issue about which we are particularly concerned. That is the need to incorporate strong provisions into the legislation which will give NOAA clear authority to protect sanctuary resources (particularly living resources), from activities which may be harmful, regardless of whether the location of the threatening activity is within sanctuary boundaries. The following discussion of conditions within Massachusetts Bay will help illustrate this point.

**Background: Issues of Concern to Massachusetts Bay**

Massachusetts Bay is not an idle body of water. There are many activities in the Bay that could potentially effect sanctuary resources including the disposal of contaminated dredge spoils, sewage effluent, and hazardous materials. In fact, the bay suffers the questionable distinction of soon being home to the largest single sewage outfall discharge in the country, if not the world. Each of these activities has one thing in common. They will all occur outside of the proposed sanctuary boundaries. And yet these are potentially more detrimental to sanctuary resources in the long-run than anything that could take place within the sanctuary itself. I will briefly describe these projects to give you a sense of their importance.

The Massachusetts Water Resources Authority (MWRA) has been mandated by Federal court order and the EPA to upgrade metropolitan Boston's wastewater disposal systems in order to comply with the Clean Water Act. The resulting facilities plan calls for a nine and a half mile long outfall tunnel which will begin discharging 500 million gallons of primary treated sewage a day in mid 1995. (The wet weather volume is estimated at 1.3 billion gallons

per day). The plans also call for secondary treatment of the effluent which will be phased in over a four year period. The discharge is located about 12 miles from the western boundary of the proposed Stellwagen Bank sanctuary.

Although many of us concerned with the health of the Bays (including Cape Cod Bay) are pleased that Boston Harbor will finally be cleaned-up, there are several important questions about the impact of the outfall on offshore resources, particularly those in the Stellwagen Bank area, that remain unanswered. Research and debate continues about some of the most fundamental underpinnings of the environmental impact assessment relating to circulation patterns, sediment transport, and nutrient inputs. It is not known, for example, whether the new outfall will alter the nitrogen budget of the system to the point where nuisance algal blooms will occur. Extensive algal blooms in marine ecosystems may result in dramatic declines in dissolved oxygen, resulting in fish die-off and other problems. In addition, some species of phytoplankton associated with nuisance blooms, called dinoflagellates, carry toxins which concentrate in fish and shellfish, and are harmful to humans if contaminated species are consumed.

Additional anxiety about this project is mounting as charges to ratepayers, who are responsible for most of the six billion dollar cost, increase dramatically. There is justifiable concern that costs will reach a point beyond their ability to pay, resulting in modifications to the project to make it more affordable. This possibility has already been publicly aired, with secondary treatment on the block! I'm sure I don't have to explain our concerns (to the Committee) about having a billion gallons of primary treated sewage effluent discharged into the marine environment on a permanent basis. Needless to say, without significant federal financial assistance, the potential impacts of this project will remain uncertain.

Massachusetts Bay Disposal Site: The Massachusetts Bay Disposal Site (MBDS) is located about 23 miles east of Boston Harbor and is just outside the modified western boundary of the proposed sanctuary. The MBDS has been used for dredge material disposal in the Bay since 1940. Unfortunately, estimates of quantity, quality and locations where this material has been dumped is not well documented. Due to its origin, much of this material may have been contaminated, which makes the need for accurate information regarding its location and toxicity extremely important. An example of the uncertainty surrounding past practices at this site illustrates its potential for impact on the sanctuary.

Between 1940 and 1980, the Army Corps of Engineers estimates that more than 28 million cu. yds. (mcyds) of sediments were disposed of in Mass. Bay

from the Boston Harbor area. Between 1969 and 1973, 6.5 mcyds. of dredged sediments were disposed of at the Boston Lightship Disposal Area. Apparently the lightship was not accurately positioned during this period, therefore accounts of where this material actually ended up vary. Prior to 1977, dredge spoils also went to the Foul Area, about one mile west of the MBDS. Subsequently sediments were disposed of at both the MBDS and the Foul Area. The total accumulation of sediments in the latter area has created a mound which is about 5 feet high.

Future dredging projects in the region include improvements to Boston Harbor's navigation channels (3 million cu. yds.) and the Third Harbor Tunnel/Central Artery project (1.9 million cu. yds.) Much of this material is highly contaminated with heavy metals and petroleum-based compounds. Because of this, final disposal sites are still being sought, and the MBDS or Foul Area are still in the running.

Foul Area: The Foul Site is located about 22 nautical miles east of Boston, in Stellwagen Basin, where water depths reach roughly 300 feet. The site is marked on navigational charts as a two mile circle with its center at 42 25.7' N and 70 34.9' W. The Foul Area (also referred to as the Industrial Waste Site) has received a variety of material since 1940, including organic and inorganic compounds, construction debris, sunken vessels (with who knows what on board), ammunitions and low level radioactive wastes. According to EPA records, the site was last used in 1976 and officially de-designated on February 2, 1990.

The recorded history of what's been dumped here is short, but not sweet. According to the EPA, the Foul Site received 4,008 "containers" of low level waste between 1952 and 1959. Further investigation completed in 1990 indicate that there may be as many as 25,000 barrels scattered around a four mile area near the Foul Site. Still other information suggests that as many as 80,000 barrels may have been dumped in this general location over the years. Furthermore, some fishermen have acknowledged the occasional "catch" of concrete caskets (which contain the radioactive wastes) in their gear. Because these are reportedly dumped away from areas which are regularly fished, their location is not known.

At the urging of Congressman Studds, the EPA is currently conducting an additional investigation of the nature and extent of hazardous and radioactive material disposal in Massachusetts Bays. We must know how much of a threat these areas represent to marine organisms and what action to take if significant problems are discovered. The potential for bioaccumulation and transport of contaminants into the marine food web is

particularly important. Possible pathways for contaminant transport include sand lance, small, eel-like fish which are the preferred prey of the humpback whales in the bay. Sand lance tend to burrow into bottom sediments and have been observed in significant numbers at the disposal areas.

I hope this information helps to demonstrate the reasons why the sanctuary program would benefit by giving NOAA authority to consider the impacts of activities that occur outside sanctuary boundaries. Now I would like to present some of our specific comments with respect to the reauthorization.

#### Comments Specific to the Reauthorization of the MPRSA

The Stellwagen Bank Coalition Steering Committee and the staff at the Center for Coastal Studies have identified several provisions of the legislation which are, in our opinion, of critical importance to the success of the sanctuary program. I will present these in no particular order of priority since it is their combined effect that is important.

- According to the 1988 amendments to the Act, there are only two possible defenses against being held liable for destruction or loss of, or injury to sanctuary resources: one defense is an act of God, and the other is an act of the federal government. I can't speak to the first cause, but I hope I have provided sufficient evidence above to indicate that the federal government is more often likely to be implicated. If federal agencies can't be held liable for actions adversely affecting sanctuary resources, then they ought to be made more responsible to the sanctuary program for mitigating or remediating any such actions.

It is our opinion that the bill submitted by Congressman Gerry Studds goes a long way toward achieving this objective and we would like to express our support for this amendment

- Marine sanctuaries are not unlike national parks in that they encompass natural resources of unusually high quality or importance to the nation. Well defined boundaries encompass their significant features and define the extent within which special regulation and management will occur. By singling out these areas from their surroundings, we are acknowledging that they need to be treated differently. For these reasons, marine sanctuaries provide an excellent forum to establish an ecosystem-based approach to management. But creating the forum is only half the battle, using it to promote an ecosystem-based management concept is the other, more difficult half.

Ecosystem-based management is not a new idea, it is mentioned in EPA's National Estuary Program and the Coastal Zone Management Program. The basic concept is to manage the resources and uses of an area in ways that allow normal ecosystem functions to continue undisturbed by man's intervention. It's an approach that recognizes the natural carrying capacity as the upper limits of the system, rather than one that attempts to modify these limits to accommodate more intensive use. Unfortunately, this approach hasn't worked particularly well in other programs, mainly because of the need to balance many conflicting mandates and uses against the goal of resource protection. Because the sanctuary program is focused on resource protection, it affords the best opportunity to nurture this important approach to resource management.

Therefore, we believe that the Act should be amended to stress the development of management approaches which are based upon an ecosystem's capacity to accommodate uses without adverse consequences. Preservation of the quality of sanctuary resources should be placed above all other program objectives. In order to accomplish this objective, specific language is needed to guide the research, education and monitoring activities.

- A significant difference between marine sanctuaries and national parks is the level of funding. According to the Center for Marine Conservation, the sanctuary program budget is less than 3% of the National Park Service budget. While no one expects a budget comparable to the National Park Service's, the funding needs to be on an appropriate scale for a national program. Since funding has never reached the levels called for in the original authorization, and several new sanctuaries are scheduled for designation, it's time for full funding for this program.

The sanctuaries cannot be effective without adequate funding for personnel, administration, research, education, and monitoring programs, and enforcement. These programs give the sanctuaries the ability to follow through on issues and needs identified during the designation process. Without sufficient funding, the sanctuaries are dead in the water (so to speak). We recommend a budget of \$25 million for fiscal year 1993.

- Advisory Councils lend one extremely important element to the sanctuary program: ownership. A good advisory council can transform a sanctuary from being just another federal jurisdiction to a resource of outstanding natural and cultural significance. Perhaps it's a perception and an attitude more than anything else, but it's needed. For this reason, the make-up of the councils is crucial to the success of the sanctuary program. These individuals will represent the sanctuary to visitors and other users, articulate

management and program needs, and interact with participating government agencies.

We support Congressman Studds' proposed amendment of § 315 for the establishment, membership, and staffing and assistance for sanctuary advisory councils.

- Finally, we believe the selection of a sanctuary manager is also a critical decision in establishing a successful sanctuary. Because local knowledge of the people and the resource is especially important in developing and implementing management measures, we strongly recommend that NOAA give full consideration to manager applicants from within the region in which a sanctuary exists, regardless of previous NOAA experience. This is especially true for the Stellwagen Bank sanctuary since this individual will quickly need to establish the trust and support of the regional fishing community.

Thank you for the opportunity to present this statement and for your consideration of our comments.

**Attachment:**

Letter to Congressman Studds on MPRSA Reauthorization

**Testimony  
of  
S. Scott Sewell  
Director, Minerals Management Service  
Department of the Interior  
Before the  
Merchant Marine and Fisheries Committee  
Subcommittee on Oceanography, Great Lakes,  
and Outer Continental Shelf  
and  
Subcommittee on Fisheries and Wildlife Conservation  
and the Environment  
House of Representatives**

**March 31, 1992**

Mr. Chairman, the Minerals Management Service (MMS) is pleased to present testimony for the record on reauthorization of the National Marine Sanctuaries Program (NMSP) and H.R. 4310, the "National Marine Sanctuaries Reauthorization and Improvement Act of 1992."

In general, the MMS supports the NMSP and the legislation authorizing the program as outlined in Title III of the Marine Protection, Research and Sanctuaries Act. While the current Act is strong and strikes the proper balance between resource protection and development interests, the Administration recognizes the advisability and appropriateness to make important technical amendments and will be submitting its own reauthorization legislation. We support the Administration amendments. We believe they will strengthen the Act while maintaining the necessary balance among various other legitimate ocean uses.

We are also pleased to see that H.R. 4310 generally enhances the basic purposes of the NMSP and is a thoughtful attempt to address issues raised with regard to that program. It incorporates many of the approaches contained in the Administration's bill. However, before discussing the specific provisions of H.R. 4310, I would first like to discuss MMS's position with regard to the NMSP in general.

The MMS is 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. Clearly, we are very sensitive to the many areas on the OCS that contain biological, ecological, recreational, historical, or cultural resources of national significance. Over the past decade, we have acted often to delete such areas from consideration in OCS lease sales. We believe that designation of selected areas as national marine sanctuaries is warranted.

The MMS works closely with the National Oceanic and Atmospheric Administration (NOAA) in all phases of the sanctuary designation process. We routinely provide important hydrocarbon and mineral resource information and estimates, technical and scientific information from our extensive environmental studies program, and other technical and scientific information. We promote the use of sound 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 in order that sanctuary designations are supported by clear scientific and environmental criteria.**

In considering reauthorization legislation, we hope that the Subcommittee 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 appears to have moved beyond the original intent of the NMSP. Increasingly over the past several years, Congress has unilaterally 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 processes outlined in Title III which are critical to ensuring that sanctuaries are justified on the basis of sound and unbiased science.

The MMS is also very concerned that Congress has tended to designate extremely large areas as of the ocean as marine sanctuaries. In such instances there appears to be little or 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. This approach is still as valid today as it was when the Act was passed. Marine sanctuaries must be directly related to the areas of special resources to be protected.

What is perhaps of most concern is that Congress also has placed preemptive prohibitions on certain activities within these increasingly large sanctuaries without a sound scientific or technical basis. This approach is unwarranted since the prohibitions do not appear to be based on good science and ignore the balance of the Act.

For example, oil and gas activities have been prohibited by Congress in two designated sanctuaries. 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 activity where the risks to the sanctuary have been scientifically documented. However, we oppose legislation which contains blanket prohibitions on oil and gas activities.

As an alternative that is both workable and equitable, 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 off-limits. 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 Title I of H.R. 4310. As we previously stated, 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 resources 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." Instead, we prefer the approach that will be proposed in the Administration's reauthorization bill. 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 the NMSP and H.R. 4310. We look forward to working closely with the Subcommittee and the Administration in the reauthorization of the marine sanctuaries program.

Testimony of

**Jeffrey R. Benoit, Director  
Massachusetts Coastal Zone Management**

**Before the Subcommittees on  
Oceanography, Great Lakes, and Outer Continental Shelf  
and  
Fisheries and Wildlife  
of the  
Merchant Marine and Fisheries Committee  
United States House of Representatives**

**In Joint Hearing on the  
Reauthorization of Title III  
of the  
Marine Protection, Research and Sanctuaries Act**

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Mr. Chairman, and members of the Subcommittees, 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 wish to share some of our views on the upcoming Reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act in general, and regarding H.R. 4310 in specific.

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 the nomination of Stellwagen Bank was elevated to "active candidacy" status, 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 non-regulatory 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

NOAA 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 of 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 "pecking order" can be dissipated by a clearer articulation of how Congress views the Sanctuary Program in relation to other programs it is intended to "coordinate". As an example, the question of how Title III relates to activities pursuant to Title I of the MPRSA, the Ocean Dumping Act, is an issue of great importance currently being debated by NOAA, EPA, the Army Corps of Engineers, and other affected agencies. A careful reading of Title I, and its implementing regulations, indicates that disposal of dredged material, and other subject discharges, should be avoided near marine sanctuaries, yet does not speak directly to the issue of what to do if a proposed sanctuary happens to include an active disposal site. Both Stellwagen Bank and Monterey Bay Sanctuaries have an EPA-designated disposal site within or adjacent to their designated boundaries. Sections 401 and 404 of the Clean Water Act, and the Magnuson Fishery Conservation and Management Act are two other examples of current points of conflict being addressed by NOAA and affected Federal and state agencies. Unless Congress begins to address this and other similar questions of 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.

Specific attention must also 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 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.

Two proposed sections in H.R. 4310 merit special comment. Proposed Section 315 establishes the requirement for formal advisory councils. We strongly endorse this proposal, as advisory councils can provide the public with necessary and important access to Sanctuary management decisionmaking, as well as make available to the Sanctuary useful expert advice and opinions. However, Congress should clarify the applicability of the Federal Advisory Committee Act (86 Stat. 770) to the establishment of such Advisory Councils.

Title II of H.R. 4310, the proposed Coastal and Ocean Sanctuary Foundation, seems to us to be a creative approach to establishing a vehicle for providing much needed support for the Sanctuary Program, the Estuarine Research Reserve Program, and other related efforts. However, as the management of these areas revolves around and is supported by "coordination" with other interested entities, we suggest that some explicit provision be made to insure that work funded through the Foundation is consistent with Sanctuary or Reserve Research and/or Management Plans. Congress should consider establishing the requirement that all work proposed receive an endorsement from the Sanctuary or Reserve before a project is funded by the Foundation.

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.

Testimony of the  
**GRAYS HARBOR REGIONAL PLANNING COMMISSION**

Before the Subcommittees on  
Oceanography, Great Lakes & Outer Continental Shelf  
and  
Fisheries and Wildlife  
of the  
Merchant Marine & Fisheries Committee  
U.S. House of Representatives

In Joint Hearing  
on the  
Reauthorization of Title III  
of the  
Marine Protection, Research and Sanctuaries Act  
April 1, 1992

The Grays Harbor Regional Planning Commission has been heavily involved in the designation process of the Olympic Coast National Marine Sanctuary. The Planning Commission is the only local planning agency in coastal Washington working with issues on a regional scale. The agency administers the Coastal Counties Coordination Program which provides a unified approach to ocean issues. We offer these observations based on this experience.

The four outer coastal counties of Washington State were enthusiastic and pleased when Congress took the initiative to designate the marine sanctuary off our shores. In a region that has first hand experience of other federal protection measures which according to their mandate, take a piece-meal, species by species approach to protection often without looking to the impacts on an ecosystem as a whole, the marine sanctuary program could offer a breath of fresh air with its more holistic and cooperative approach to resource protection.

Unfortunately, the Draft Environmental Impact Statement issued by NOAA was inaccurate, incomplete and lacking in any apparent input from the scoping sessions held earlier in Washington. In many ways, the document appeared to be a cookie cut of the Monterey Bay DEIS. The outer coast of Washington is perhaps the most diverse and unique marine environment in the continental United States. It has its own character. It deserves to be treated as such.

The Sanctuary program, as we understand it, has four main goals: resource protection through cooperative conservation and management measures; promotion and coordination of scientific research; public education; and the provision of multiple use consistent with resource protection.

We are concerned that if NOAA is unable to cooperate with local governments and the state during the designation process, they will be unable to meet the primary objective of the marine sanctuary program - cooperative resource protection. In addition, since most of the sanctuary program's funds are spent on designation rather than management, the potential for meeting the remaining goals seems slim. The Marine Sanctuary Program must have the necessary staff and funds to meet its goals.

There are a number of problems with the DEIS for the Olympic Coast Sanctuary. Our concerns are duly logged with NOAA; however several issues arose that appear to be problems with the program as a whole.

Perhaps most frightening to coastal communities is the potential for regulatory minefields in the future. Under a "scope of regulations" adopted with the Final Environmental Impact Statement, NOAA may amend sanctuary regulations in the future. There appears to be no set policy by which NOAA can do this. When asked, the reply from representatives of the agency has been, "Well, we've never really done it before, so we don't know." More recently, representatives from NOAA have assured us that a full NEPA process will be followed, providing for a full analysis of impacts - including socioeconomic impacts - and active solicitation of public comments. Included in the Scope of Regulations is vessel traffic. Since one of the alternatives offered in the DEIS for the Olympic Coast was an unrestricted regulation of vessel traffic, including the ability to reroute all vessel traffic outside the sanctuary boundaries, we believe coastal communities are more than justified in their concern. While we understand that flexibility to meet threats to sanctuary resource's is a basic premise of the sanctuary program, we believe more structure in the process is necessary.

We also find it extremely discouraging that NOAA was apparently not allowed to include an alternative that prohibited, with no attached conditions, hydrocarbon development within the sanctuary. An environmental impact statement is designed to be a scientific, objective document, not to be mired in negotiations with other federal agencies or political games. The issue here is not what the regulation will be, but rather, what options will the government present to the public for review and comment. Overwhelming testimony at the initial scoping sessions provided a solid consensus that no hydrocarbon development in the sanctuary should ever be allowed - no conditions. That position was echoed by local and state government, environmental groups, industry, and just about everyone else that provided NOAA over 800 comments on the DEIS for the sanctuary.

Coastal communities embraced the sanctuary idea as a means to protect the marine resources on which we increasingly depend. Many citizens here are beginning to become disillusioned. If the sanctuary cannot or will not completely ban oil or gas, what's the point, they ask. If there isn't enough funding to protect our natural resource assets, provide education or conduct research, what's the point, they ask. If, instead of a cooperative effort, this sanctuary is going to be just another layer of regulation, what is the point, they ask.

In a program such as this, cooperative management and local involvement is a necessity. In order to protect resources of national significance, it is important to directly involve and listen to the people who live and work in the national treasure. Washington State has a heritage of strong local involvement. The state Shoreline Management Act was the predecessor of the federal Coastal Zone Management Act. Washington has taken some of the strongest measures in the nation to protect its coastal assets. Recognition of this is a prerequisite to introduction of new programs from federal agencies.

While there is still strong support for the Olympic Coast National Marine Sanctuary as it was intended to be managed under the law, it is aparent that a number of major issues will need to be resolved with this specific sanctuary and the program as a whole.

**Testimony of the**  
**Office of State Planning, Office of the Governor**  
**State of Hawaii**

**Before the Subcommittees on**

**Oceanography, Great Lakes & Outer Continental Shelf**  
**and**  
**Fisheries and Wildlife**  
**of the**  
**Merchant Marine & Fisheries Committee**  
**U.S. House of Representatives**

**In Joint Hearing**  
**On the**

**Reauthorization of Title III**  
**of the**  
**Marine Protection, Research and Sanctuaries Act**

**Harold S. Masumoto**  
**Director**

**March 31, 1992**

Chairmen Hartel and Studds 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 administrations. 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 in Hawaii received nearly 6500 responses to a 1991 constituent questionnaire in which 81 per cent 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.

**Testimony of the**  
**STATE OF WASHINGTON**  
**Before the Subcommittees on**  
**Oceanography, Great Lakes & Outer Continental Shelf**  
**and**  
**Fisheries and Wildlife**  
**of the**  
**Merchant Marine & Fisheries Committee**  
**U.S. House of Representatives**  
  
**In Joint Hearing**  
**On the**  
  
**Reauthorization of Title III**  
**of the**  
**Marine Protection, Research and Sanctuaries Act**

The State of Washington's testimony does not specifically address either of the two bills calling for reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act. Instead, we have attached Governor Gardner's letter in which he responds to the Draft Environmental Impact Statement (DEIS) for the Olympic Coast National Marine Sanctuary.

That letter clearly outlines the State of Washington's position regarding oil and gas development in the Sanctuary and several other concerns. Additionally, the letter identifies our preferred boundary alternative, which coincides with the preferred alternative addressed in the DEIS.

The State of Washington does have several concerns that are not addressed in Governor Gardner's letter. Those concerns primarily revolve around the need for leadership in NOAA and in the Sanctuaries and Reserves Division. We have worked with NOAA for the past several years on the Marine Sanctuary Program - a period that has been characterized by less than satisfactory communication between this State and the federal office.

Furthermore, we have seen evidence of lack of communication and coordination within NOAA and the Sanctuaries Division which has had adverse impacts on our state efforts. We think it is time for NOAA to decide where it is going with the Sanctuaries Program and demonstrate some leadership and cohesion. Communications have also been hampered by a lack of funding from the federal office to assist the State of Washington in developing a cooperative program for the proposed Puget Sound Sanctuary which lies entirely in state waters.

We trust you will find these comments and the attached letter useful in your deliberations and decision-making. We would like to thank you for the opportunity to present our written testimony to you.



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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

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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.

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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 permit 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 House of Representatives for the opportunity to testify. More information may be obtained from our Association by calling (206) 943-0760.



**STATE OF WASHINGTON**  
OFFICE OF THE GOVERNOR

OLYMPIA  
88004-0413

**BOOTH GARDNER**  
GOVERNOR

December 13, 1991

Robert A. Mosbacher  
Secretary of Commerce  
U.S. Department of Commerce  
Herbert Hoover Building  
1400 Constitution Avenue  
Washington, D.C. 20230

Dear Mr. Secretary:

Thank you for providing the State of Washington this opportunity to offer formal comments on the Draft Environmental Impact Statement (DEIS) for the Olympic Coast National Marine Sanctuary. As you know, the State provided formal comments on the DEIS at several of the field hearings held in November. These written comments are intended to reiterate and supplement those comments.

Since 1988, when Congress mandated creation of this Sanctuary, the State of Washington has supported and been actively involved in the designation process. The State's fundamental position remains the same as that outlined in my letter to you of May 11, 1989. I continue to support Sanctuary designation because I believe that the Marine Sanctuary Program can be a positive step towards ensuring protection of the priceless marine resources off the Olympic Coast.

The following is a discussion of the major policy issues of concern to the State of Washington:

1. Oil, Gas, and Mineral Activities

Let there be no mistake regarding the State's position on oil and gas activities in the Olympic Sanctuary: I reject any proposed sanctuary management plan that leaves open the possibility of oil and gas development off the Olympic Coast. The State of Washington will never tolerate offshore energy exploration or development in this Sanctuary.

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The DEIS fails to provide an alternative prohibiting oil and gas development in the Olympic Sanctuary. The National Oceanic and Atmospheric Administration's (NOAA) labelling its preferred alternative as one that prohibits oil and gas from the Sanctuary is clearly inaccurate. The preferred alternative to "prohibit" oil and gas development in the Sanctuary obviously is linked to the President's current Outer Continental Shelf (OCS) policy. That would only preclude OCS activities until the year 2000. That alternative fails to fulfill the purpose of the Marine Protection, Research, and Sanctuaries Act which is to protect natural resources in sanctuaries, not to carry out any administration's short-term OCS energy policy.

Washington State citizens have clearly and consistently stated their position on oil and gas development in the waters off the Olympic coast. State laws such as the Shoreline Management Act and the Ocean Resources Management Act provide extraordinary levels of protection along the north coast. The entire Northwest Congressional Delegation has consistently endorsed the State's ocean policy which includes a permanent ban on all offshore energy activities of the Olympic Coast.

The American people have spoken through the United States Congress regarding the need to protect the Olympic National Park and waters off the Northern Washington Coast. Several long-standing federal laws are in place which protect the coastal waters, the National Park, Wildlife Refuges, and Wilderness Systems. The international community has spoken regarding the need to protect this unique area with the United Nations' designation of the environs of the Olympic National Park as an International Biosphere Reserve and a World Heritage Site.

The Marine Protection, Research, and Sanctuaries Act was not intended, as the preferred alternative would do, to permit single purpose resource exploitation at the expense of conservation. If NOAA, in its role as trustee of America's marine sanctuaries, believes offshore energy development should be a cornerstone of the National Marine Sanctuary Program, then it should implement that policy nationwide. Established sanctuaries in big states like California and Florida should be reexamined and reopened to offshore exploitation. Why is NOAA focusing its energy exploitation strategy on this small state so far from Washington D.C. and so new to the Sanctuary Program?

## 2. Sanctuary Boundaries

The State of Washington supports NOAA's preferred boundary alternative #4. This boundary is very similar to the State's original boundary position in that it

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reflects sound resource management and has good geological, oceanographic, and ecological bases. Clearly, this boundary makes sense from a scientific and administrative perspective.

The landward boundary of the Olympic Sanctuary adjacent to state-owned lands should be at extreme low tide, not at mean high tide. Since adequate protection measures are already in place, the Sanctuary should not extend onto state beaches.

### 3. Military Bombing of Sealion Rock

Department of Defense bombing of Sealion Rock has been a concern of state and federal resource agencies for many years. Given the collapse of the Soviet Union and the changing world military climate, we fail to understand what possible value the bombing of Sealion Rock has in today's world. Thus, we disagree with NOAA's preferred alternative to maintain the status quo and allow the bombing to continue.

On a related issue, wildlife in the Sanctuary deserves protection from low-flying aircraft. Military and other aircraft flying at low altitudes can disturb and harass the marine mammals and seabirds that use the coast and offshore islands and rocks for nesting and resting sites. Regulations need to address this problem and provide appropriate protection for the animals inhabiting the Olympic Sanctuary.

However, the management plan should balance the need for protection and recognize the legal airstrips that are on the coast. The management plan should not unnecessarily interfere with routine operations such as take-offs and landings, and safety and law enforcement measures.

### 4. Fishing Regulations

No additional federal fisheries management or regulation is needed in the Olympic Sanctuary. Currently, a comprehensive, coordinated system of state, federal, tribal, interstate, and international organizations manages the Northwest fisheries. NOAA is intimately involved in this system as the primary federal administrator of the Magnuson Act and through the National Marine Fisheries Service's participation on the Pacific and North Pacific Fisheries Management Councils. This system has proven effective and responsive to both fisheries and resource needs.

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### 5. Vessel Traffic Control

Our primary concern with vessel traffic in the Sanctuary has always been with the risks posed by petroleum transportation. The tragic spills of several years ago in Prince William Sound and off Washington's Grays Harbor and the recent spill from the *Tonyo Maru* caused extensive and, in some cases, irrevocable damage to the marine and coastal environment. The sanctuary management plan must consider preventive measures to ensure protection from spills of oil or other hazardous substances off the Washington coast.

Consistent with this protection goal, the State of Washington recently passed comprehensive oil spill prevention and cleanup legislation that includes creation of a state Office of Marine Safety. Working with Oregon, California, Alaska, and British Columbia, Washington is also involved in a unique interstate/international oil spill effort through the States/B.C. Oil Spill Task Force.

The sanctuary management plan should examine vessel traffic management alternatives including improved traffic control and communication systems, rerouting, and banning dangerous cargo in certain high-risk areas. However, the Sanctuary regulations should be coordinated with the Coast Guard and the Office of Marine Safety and not impose competitive disadvantages on Northwest ports and shipping interests or interfere with international trade or trading routes.

Beyond the policy issues addressed above, we are concerned with serious flaws in the Draft Environmental Impact Statement. The document is poorly organized and lacks basic information, especially regarding the impacts of the boundary alternatives. It is unclear whether the flaws can be resolved consistent with the standard transition process from Draft Environmental Impact Statement to the final document. NOAA needs to substantially improve the Final Environmental Impact Statement or, if necessary, issue a supplement to the draft.

Additionally, NOAA needs to provide a better explanation of the rule-making and amendment processes. The DEIS discusses future possible changes to the regulations but fails to describe the process used for making those changes. NOAA should subject all such changes to the National Environmental Policy Act requirements.

Washington State agencies have made extensive comments on the Draft Environmental Impact Statement. They have addressed some of the issues discussed above and have provided specific, detailed comments on other parts of the document. I have included copies of the agencies' comments with this letter. The issues raised by those comments

December 16, 1991  
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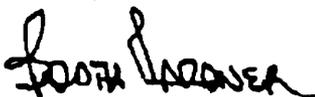
must be addressed and resolved in the Final Environmental Impact Statement or in a supplemental DEIS.

Title III of the Marine Protection, Research, and Sanctuaries Act grants the State the authority to remove state waters from sanctuary designation should the sanctuary management plan contain unacceptable conditions. Should NOAA continue to promote and allow oil and gas development in the Olympic Sanctuary, the State will have no alternative but to pursue its authority under Title III of the Act in order to protect America's Northwest Coast from the effects of offshore energy activities. Such implementation would leave NOAA with the responsibility of administering a sea-locked Sanctuary with no influence over the protection and management of nearshore and coastal waters.

The waters adjacent to Washington's Northwest Coast have been mandated for protection by the Olympic National Park, National Wildlife Refuges and Wilderness Systems, treaty trustee obligations vested with the Secretary of Interior, and state laws including the state park system. These federal, state, and treaty mandates clearly demonstrate the Nation's long-established will to preserve America's Northwest Coast and adjacent marine waters. It is the obligation of the National Marine Sanctuary Program to complement, not compromise, that will.

Despite the fundamental offshore energy flaw contained in your current DEIS, the State of Washington looks forward to establishment of the Sanctuary and an ongoing positive relationship with NOAA. For this relationship to succeed, however, a permanent ban on all offshore energy activities off the Olympic coast must be provided.

Sincerely,



Booth Gardner  
Governor

Enclosure

**NORTHWEST  
MARINE TRADE  
ASSOCIATION**



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(503) 283-1719 (Portland)

March 31, 1992

The Honorable Jolene Unsoeld  
**UNITED STATES REPRESENTATIVE**  
1508 Longworth House Office Building  
Washington, DC 20515

**RE: MARINE SANCTUARY PROPOSALS & STUDIES**

Dear Representative Unsoeld:

On behalf of Northwest Marine Trade Association (NMTA), I want you to know of our deep concern over recent marine sanctuary proposals and studies here in Washington state.

Our concern centers on a current plan to establish a sanctuary in the waters of northern Puget Sound. As you know, that area is a major center for both commerce and recreation. It is not only a primary trade waterway and the second largest cargo load center in the national, but an area much valued by recreational boaters and fishermen, as well.

As a natural and commercial resource, the northern Puget Sound area is currently under the jurisdiction of existing federal and state law administered jointly by the US Coast Guard, the International Maritime Organization, the US Environmental Protection Agency, and the Washington State Departments of Ecology and Natural Resources. That framework works very well in maintaining a balance between the preservation of fragile marine environments and the fostering of commerce.

The National Oceanic & Atmospheric Administration (NOAA), in designating this area as a future marine sanctuary is proposing to overlay its own agenda on this existing regulatory structure. In other words, while no one has come close to establishing that the current system of regulations is broken, NOAA seems determined to fix it anyway.

**THE HONORABLE JOLENE UNSOELD**

March 31, 1992

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As you debate reauthorization of Title III of the Marine Protection, Research & Sanctuaries Act, I hope you will consider posing the following questions to representatives of NOAA.

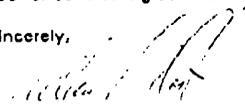
*Why, in a time of dwindling federal agency budgets, is NOAA proposing to expend money duplicating current state and federal regulatory efforts in the northern Puget Sound area?*

*Why are there no clear guidelines regarding Title III implications on navigation and commercial shipping, dredging, and urban shoreline development?*

*Why does the marine sanctuaries program appear to have no clear policy for studies in areas within the jurisdictional waters of a single state?*

I hope you will do what you can within the Committee and on the House floor to see that these and other important questions are answered. Thank you for considering our views on this issue.

Sincerely,



**WILLIAM F. WEST,**  
Executive Director

WFW/mah

**Frank M.  
Potter, Jr.**

2040 Lakeshore Way, Rossin, VA 22091

April 23, 1992

Hon. Dennis M. Hertel, Chairman  
Subcommittee on Oceanography, Great  
Lakes and the Outer Continental Shelf  
Room 1334, Longworth Building  
Washington, DC 20515

Dear Congressman Hertel

Your letter of April 19 posed a number of additional questions none of which can be easily answered:

**Do you support the concept of a national advisory committee for the sanctuaries program: If so, who would sit on this panel? What duties would it have?**

I very much support the concept of a national advisory committee. In fact, the review team on which I served would be an excellent model upon which to build. The problem is that it is difficult to create a statutorily-based committee that would bring about such a result.

Our "team" was formed as an independent effort, proposed and strongly supported by Virginia Tippie, who was then the Assistant Administrator of NOAA for National Ocean Systems. The Administrator was aware of its creation, but essentially played no part in its formation or in its deliberations. The membership of the panel was designed to reach every part of the public community that had a direct contact with sanctuaries, and it was comprised not of people who were the heads of national organizations, but of people (frequently within those organizations) who had personal and direct knowledge of sanctuary operations. For this reason, we were able, in a remarkably short time, to gather and process an enormous amount of information, and then to refine this information and produce a knowledgeable, critical but supportive report on the status and prospects of the marine sanctuaries program.

I have drafted several bills for consideration by the congress but I have no idea how one would go about creating legislation that would produce this kind of committee—but I do believe that it is precisely this kind of committee that would be needed. Unfortunately, as we all know too well, the creation of such a committee would result in strong pressures being brought to bear upon the selection process, with the members being politically balanced, comprised of people who would have little time to commit to such an effort.

It would be difficult, and perhaps impossible, for any Administrator to resist such pressure.

The committee that was named to advise on the Florida Keys National Marine Sanctuary is a case in point. It took a considerable period of time to appoint, involved clearances at the White House and Cabinet levels and will inevitably find itself constrained by a number of factors involving bureaucracy and delay that we never had to confront. I have hopes for this committee and certainly wish it well. But I will confess that I would be very surprised if, with more resources and time, they are as successful and effective as our team proved to have been.

I frankly don't know how one would go about writing a bill that would produce such a group of advisors, but I do believe that this is what is needed. Ideally, such a committee would be in a position to maintain a constant review of the operation of the sanctuary program and, with a perspective that is difficult or impossible to maintain when one is involved in day-to-day operations of such a program, suggest ways in which the program might be improved.

**Why have I heard it said that NOAA cannot do an effective job at managing our National Marine Sanctuaries? Is this a question of funding, resources, or experience?**

NOAA has never had sufficient funding or resources to do the kind of job that our panel suggested needed to be done, nor, so far as I can tell, has it ever requested adequate funding to do that job. Since authorization of the program in 1972, NOAA's priorities have been focused elsewhere, and the sanctuaries program has correspondingly been relegated to a position of obscurity and buried far down the organizational ladder.

The sanctuaries legislation of 1972 served as the model for the Australian effort on the Great Barrier Reef, and they have developed much useful experience and information on the operation of a large, effective and ambitious sanctuary program. This experience is in no way duplicated within the U.S. marine sanctuary program, not because of a lack of motivation but rather because the size of the program has not yet allowed the development of a cadre of well-trained managers for the sanctuaries now in place, to say nothing of those soon to be established.

If NOAA is, finally, given the funding and resources to do the job that the National Marine Sanctuaries Act contemplates, it will then be possible to evaluate its performance of this difficult and challenging task.

**What is the best way to eliminate bottlenecks in the marine sanctuary designation process? Should agencies given an opportunity to comment on proposed sanctuaries be given a strict deadline in which to provide input?**

To answer this question properly requires a certain amount of "on the one hand...but on the other" equivocation. Certainly agencies of government at every relevant level—federal, state and local—should be given an adequate opportunity to explore the implications of a sanctuary designation upon the missions that they have been created to perform. And this takes some time. So I would certainly agree that the designation process should be designed in such a way as to minimize surprises (which have a way of being usually unpleasant) that might affect the operation of the sanctuary, if one is ultimately chosen for that area.

On the other hand, I do not believe that the purposes of the program, or even of good government, are served if agencies are allowed to drag out the process to serve their own objectives, some of which may have little or nothing to do with the proposed sanctuary.

In fact, the existence of a proposed sanctuary is, as far as I can tell, always known well before the formal notice of proposed designation is transmitted to agencies of government, or to agencies or persons in the private sector, for that matter. For this reason, I would favor fairly strict deadlines in the statute—deadlines which might be extended in the event that adequate justification may be found on the merits of the proposal, but which extension should be given full public review and exposure.

I hope that these additional comments prove useful, and will be happy to supplement them if further elaboration proves necessary.

Sincerely,



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