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## NATIONAL MARINE SANCTUARIES

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MAY 16, 1983.—Ordered to be printed

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Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

### REPORT

together with

### DISSENTING VIEWS

[To accompany H.R. 2062]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 2062) to amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended to pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) is amended to read as follows:

#### "TITLE III—NATIONAL MARINE SANCTUARIES

##### "SEC. 301. FINDINGS, PURPOSES, AND POLICIES.

"(a) FINDINGS. The Congress finds that—

"(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but such efforts have been directed almost exclusively to land areas above the high water mark;

"(2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national significance;

"(3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;

"(4) a Federal program which identifies special areas of the marine environment will contribute positively to marine resource conservation and management; and

"(5) such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment.

"(b) **PURPOSES AND POLICIES.** The purposes and policies of this title are—

"(1) to identify areas of the marine environment of special national significance due to their resource or human-use values;

"(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas which will complement existing regulatory authorities;

"(3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas;

"(4) to enhance public awareness, understanding, appreciation and wise use of the marine environment; and

"(5) to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

**"SEC. 302. DEFINITIONS.**

"For the purposes of this Title, the term—

"(1) 'marine environment' refers to those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law;

"(2) 'Secretary' refers to the Secretary of Commerce; and

"(3) 'State' refers to each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

**"SEC. 303. SANCTUARY DESIGNATION STANDARDS.**

"(a) **STANDARDS.** The Secretary may designate and discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that such designation will fulfill the purposes and policies of this Title, and if the Secretary finds that—

"(1) the area is of special national significance due to its resource or human-use values;

"(2) existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including provisions for resource protection, scientific research and public education, and that designation of such area as a national marine sanctuary will facilitate these objectives; and

"(3) the area is of a size and nature which will permit comprehensive and coordinated conservation and management.

"(b) **FACTORS AND CONSULTATIONS REQUIRED IN MAKING FINDINGS.** For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a), the Secretary shall—

"(1) take into consideration—

"(A) the area's natural resource and ecological qualities; including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

"(B) the area's historic, cultural, archaeological, or paleontological significance;

"(C) the present and potential uses of the area that depend on maintenance of the area's resources; including commercial and recreational fishing, other commercial and recreational activities, and research and education;

"(D) present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

"(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this title;

"(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

"(G) the public benefits to be derived from sanctuary status, giving emphasis to the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

"(H) the negative impacts produced by management restrictions on income-generating activities, such as living and non-living resource development; and

"(I) the socioeconomic effects of sanctuary designation; and

"(2) consult with—

"(A) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

"(B) the Secretaries of State, Defense, and Transportation, the Secretary of the department in which the Coast Guard is operating, the Secretary of the Interior, the Administrator and the heads of other interested Federal agencies;

"(C) the appropriate officials of any States that will be affected by the establishment of the area as a national marine sanctuary;

"(D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Act entitled, 'An Act to provide for the conservation and management of the fisheries, and for other purposes', approved April 13, 1976 (90 Stat. 331 et seq., 16 U.S.C. 1801 et seq. (hereinafter in this title referred to as the 'Act of 1976')) that may be affected by the designation; and

"(E) other interested persons.

**"SEC. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.**

**"(a) SANCTUARY PROPOSAL.**

"(1) **NOTICES.** In proposing to designate a national marine sanctuary, the Secretary shall issue in the Federal Register a Notice of the proposal, together with proposed regulations that may be necessary and reasonable to implement it, and shall provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal. After issuing a Notice the Secretary shall conduct at least one public hearing in the area affected by the proposed designation. On the same day of issuing the Notice, the Secretary shall also submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a prospectus on the proposal which shall contain—

"(A) the terms of the proposed designation;

"(B) the basis of the findings made under section 303(a) with respect to the area;

"(C) proposed mechanisms to coordinate existing regulatory and management authorities within the area;

"(D) a management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement and surveillance activities for the area;

"(E) an estimate of annual costs of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education; and

"(F) proposed regulations to implement the measures referred to in subparagraphs (A), (C) and (D).

"(2) **TERMS OF DESIGNATION.** The terms of designation of a sanctuary shall include, among other things, the geographic area included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical research, educational, or aesthetic value, and the types of activities that will be subject to regulation by the Secretary in order to protect those characteristics. The terms of designation may be modified only by the same procedures by which an original designation is made.

"(3) **FISHING REGULATIONS.** The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to draft regulations for fishing within the U.S. Fishery Conservation Zone as may be necessary to implement the proposed designation. Draft regulations prepared pursuant to this section shall fulfill the purposes and policies of this Title and the goals and objectives of the proposed designation. In preparing the draft regulations, the Regional Fishery Management Council shall also use as guidance the national standards of section 301(a) of the Act of 1976 to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. If the Council declines or fails to prepare the draft regulations in a timely manner, the Secretary shall prepare them.

"(4) COMMITTEE ACTION. After receiving the prospectus under subsection (a)(1), the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the prospectus. If, within the 45-day period of continuous session of Congress beginning on the date of submission of the prospectus, either Committee issues a report disagreeing with one or more matters addressed in the prospectus, the Secretary shall consider the report before designating the national marine sanctuary.

"(b) TAKING EFFECT OF DESIGNATIONS.

"(1) In designating a national marine sanctuary the Secretary shall issue a Notice of the designation together with final regulations to implement the designation and any other matters required by law and submit such Notice to the Congress. No designation may occur until the expiration of the period for Committee action under subsection (a)(4). Such designation and regulations shall take effect after the close of a review period of 90 days of continuous session of Congress beginning on the day on which the designation Notice is issued unless—

"(A) the Congress disapproves the designation, or any of its terms, by adopting a resolution of disapproval described in subsection (b)(3); or

"(B) in the case of a national marine sanctuary that is located partially or entirely within the jurisdiction of one or more states, the Governor(s) affected certifies to the Secretary that the designation or any of its terms are unacceptable. In the event of such certification, the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the jurisdiction of the state.

"(2) If the Secretary considers that actions taken under paragraphs (A) or (B) will affect the designation in such a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the designation.

"(3) For the purposes of this subsection, the term 'resolution of disapproval' means a concurrent resolution which states after the resolving clause the following: 'That the Congress does not approve the national marine sanctuary designation entitled ——— that was submitted to Congress by the Secretary of Commerce on ———', the first blank space being filled with the title of the designation and the second blank space filled with the date on which the notice was submitted to Congress. In the event that the disapproval is addressed to one or more terms of the designation, the resolution shall state: 'That the Congress approves the national marine sanctuary designation entitled ——— that was submitted to Congress by the Secretary of Commerce on ———, but disapproves the following terms of such designation: ———', the first blank space being filled with the title of the designation, the second blank space being filled with the date on which the notice was submitted to Congress, and the third blank space referring each term of the designation which is disapproved.

"(4) In computing the 45 and 90 day periods of continuous session of Congress pursuant to section 304(a)(4) and section 304(b)(1) respectively—

"(A) continuity of session is broken only by an adjournment of Congress sine die, and

"(B) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain are excluded.

"(5) All permits, licenses, and other authorizations issued under any other authority of law that pertain to activities carried out in the area designated as a national marine sanctuary shall continue to be valid unless the regulations implementing the designation provide otherwise.

"SEC. 305. INTERNATIONAL APPLICATION OF REGULATIONS AND NEGOTIATIONS.

"(a) REGULATIONS. The regulations issued under section 304 shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign state of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag state of the vessel, no regulation applicable to areas or activities outside the jurisdiction of the United States shall be applied to a person not a citizen of the United States.

"(b) NEGOTIATIONS. After the taking effect under section 304 of a national marine sanctuary that applies to an area or activity beyond the jurisdiction of the United States, the Secretary of State shall take such action as may be appropriate to enter

into negotiations with other Governments for the purpose of arriving at necessary arrangements with those Governments for the protection of the sanctuary and to promote the purposes for which it was established.

**"SEC. 306. RESEARCH AND EDUCATION.**

The Secretary shall conduct such research and educational programs as are necessary and reasonable to carry out the purposes and policies of this Title.

**"SEC. 307. ANNUAL REPORT ON AREAS BEING CONSIDERED FOR DESIGNATION.**

On or before November 1 of each year, the Secretary shall submit a report to the Congress setting forth information on those sites which the Secretary will be actively considering for sanctuary designation during the current fiscal year. Such information for each site shall include, to the extent available at time of submission, the following:

- "(1) a description of the resources and other values which make the site nationally significant;
- "(2) present and potential human uses;
- "(3) impacts of present and potential activities;
- "(4) existing state and Federal regulatory and management authorities;
- "(5) boundary options;
- "(6) regulatory options; and
- "(7) potential research and educational benefits.

**"SEC. 308. ENFORCEMENT.**

"(a) **IN GENERAL.** The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this Title. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or of state departments, agencies, and instrumentalities, on a reimbursable basis in carrying out his responsibilities under this Title.

"(b) **Civil Penalties.**

"(1) Any person subject to the jurisdiction of the United States who violates any regulation issued under this Title shall be liable for a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) No penalty shall be assessed under this subsection until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

"(3) A vessel used in the violation of a regulation issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

"(c) **Jurisdiction.** The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued under this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States. The Attorney General may bring suit either on his own initiative or at the request of the Secretary.

**"SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

To carry out this Title, there are authorized to be appropriated not to exceed the following sums:

- "(1) \$2,264,000 for Fiscal Year 1984.
- "(2) \$2,500,000 for Fiscal Year 1985.
- "(3) \$2,750,000 for Fiscal Year 1986."

### PURPOSE OF THE LEGISLATION

The purpose of H.R. 2062 is to amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.), hereafter called the MPRSA, in order to reauthorize the National Marine Sanctuary Program for three years and to resolve outstanding problems in Title III. Implementation of the program has been controversial due in large part to the few but far-reaching purposes of the original authorizing legislation and subsequent

amendments. A January, 1983 Congressional Research Service report, prepared at the request of the Subcommittee on Oceanography, concluded that much of the controversy was due to confusion over the legislative intent of Title III:

The National Marine Sanctuary Program has undergone a complex evolution of both Congressional intent (evidenced in the original Act and subsequent reauthorization and amendment) and Administrative conduct (evidenced in the variety of statements of goals, purposes, mission, and philosophy of this program). Confusion between Congress and the Administration over the operation of the [National Marine Sanctuary Program] often is spawned by this complexity.<sup>1</sup>

It is the purpose of this legislation to reduce this confusion by providing explicit guidance to the Administration on Congress' intent for the Program. This is done in several ways. H.R. 2062 sets forth explicit purposes and policies for the Program, establishes standards for the Secretary of Commerce to apply when assessing marine areas for sanctuary designation, outlines procedures for the Secretary to follow in designating sanctuaries; and establishes new and revised Congressional review procedures.

#### COMMITTEE ACTION

H.R. 2062 was introduced by Oceanography Subcommittee Chairman Norman E. D'Amours and the Subcommittee Ranking Minority Member Joel Pritchard on March 11, 1983, to reauthorize and substantially amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972. Two other bills pertaining to Title III were also introduced early in the first session of the 98th Congress. On February 2, 1983, Congressman Don Young of Alaska introduced H.R. 1229 which would repeal Title III of the Act. Congressman John Breaux, Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, introduced H.R. 1633 on February 24, 1983, which would also reauthorize the program and make substantial changes to Title III. H.R. 2062 and H.R. 1229 were solely referred to the Committee on Merchant Marine and Fisheries while H.R. 1633 was jointly referred to the Committees on Merchant Marine and Fisheries and Rules.

H.R. 2062 as introduced proposed the following changes to Title III:

1. It more explicitly defined the legislative intent of Title III by codifying the purposes and policies contained in the Program Development Plan (PDP) of the National Marine Sanctuary Program;
2. It outlined the standards and criteria that the Secretary of Commerce must consider in order to designate a marine sanctuary;
3. It broadened the consultations with parties that might be affected by the designation; and

<sup>1</sup> Congressional Research Service, "Study on the National Marine Sanctuary Program: Regional Site Selection," Jan. 27, 1983. (Conducted at the request of the chairman, Subcommittee on Oceanography, House Committee on Merchant Marine and Fisheries), p. 34.

4. It codified the existing Administration of the program as outlined in the PDP.

H.R. 1633 is similar to H.R. 2062 but with one major exception. H.R. 1633 contains a provision requiring legislative designation of each sanctuary, rather than the existing procedure where the Secretary of Commerce designates and Congress reviews the sanctuary and has the option to disapprove.

The Subcommittee on Oceanography and Fisheries and Wildlife Conservation and the Environment held a joint hearing on February 24, 1983. The Subcommittees received testimony from the following witnesses: (1) Mr. Peter Tweedt, Acting Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration; (2) Mr. Arthur Spaulding, Vice President-General Manager, Western Oil and Gas Association (WOGA); (3) Mr. Spencer Apollonio, Commissioner, Maine Department of Marine Resources; (4) Ms. Sherrard Coleman Foster, Marine Issues Project, Defenders of Wildlife; and (5) Mr. Michael Weber, Marine Habitat Director, Center for Environmental Education.

At the time of the joint hearing the only bill that had been introduced was H.R. 1229, which called for the repeal of Title III. The Administration testified in support of the program. When questioned regarding legislative designation of each sanctuary, Administration witnesses did not express a commitment to the proposal. The witnesses representing the oil and gas, fisheries and environmental constituencies expressed concerns about the past implementation of the program and about the issues surrounding the recently completed site evaluation process. The consensus of the witnesses was that there was a need to tighten up the Act with a more definitive policy statement. Subsequent to the hearing, H.R. 1633 and H.R. 2062 were introduced to address some of the concerns raised at the hearing.

During the interim between the hearing and the joint Subcommittee markup, discussions resulted in an agreement to use H.R. 2062 as the primary markup vehicle. H.R. 2062 was reported to the Full Committee by voice vote and without amendment on April 12. However, it was agreed in a colloquy between Mr. Breaux and Mr. D'Amours, that a compromise joint amendment in the nature of a substitute would be offered at the Full Committee markup.

At the Full Committee markup on April 27, Messrs. D'Amours, Pritchard, Breaux, Forsythe, and Jones jointly offered the amendment in the nature of a substitute. The amendment made two major changes to H.R. 2062: first, it set aside a 45-day period for "Committee Action" prior to final designation; and second, it provided the appropriate Regional Fishery Management Councils with the opportunity to draft regulations governing fishing within proposed sanctuaries. Chairman Jones moved the previous question to approve the amendment as a substitute. This passed by voice vote. The motion that H.R. 2062, as amended, be favorably reported to the House passed by voice vote.

## BACKGROUND AND NEED

## A. LEGISLATIVE HISTORY AND CONGRESSIONAL INTENT

The marine sanctuary legislative concept originated in the late 1960's. Several bills were introduced in the 90th and 91st Congresses that would have established marine sanctuaries with the intent to regulate or prohibit OCS mineral activities. However, none of the bills were reported from the House Committee on Merchant Marine and Fisheries. The National Marine Sanctuary Program as is presently authorized was established by the 92nd Congress as Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (P.L. 92-532). Title III of the Act, as amended in 1980, authorizes the Secretary of Commerce to designate areas of ocean waters as national marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological, or aesthetic values. National marine sanctuaries may be designated as far seaward as the outer edge of the Continental Shelf, in coastal waters where the tide ebbs and flows, or in the Great Lakes and their connecting waters. Title III is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Coastal Zone Management, Sanctuary Programs Division.

Title III is a broad-based mandate that allows for comprehensive management of special marine areas. Management of marine sanctuaries is designed for multiple purposes. The key concept is protection of identified areas by controlling the mix of uses to maintain the recognized values of the site. The Committee affirms that it may be both necessary and proper to regulate specific uses in order to conserve or manage the site's unique inherent resource or human-use values.

While the earlier legislative history on the establishment of the National Marine Sanctuary Program is not extensive, it does emphasize the importance of the Program as a means of protecting special marine areas, while also promoting compatible multiple use of such areas. In discussing the importance of protecting certain special marine areas, the House report accompanying H.R. 9727 (of which a modified version became Title III), noted that:

Title III deals with an issue which has been of great concern to the Committee for many years: the need to create a mechanism for protecting certain important areas of the coastal zone from intrusive activities by man. This need may stem from the desire to protect scenic resources, natural resources or living organisms: but is not met by any legislation now on the books \* \* \*. The pressures for development of marine resources are already great and increasing. It is never easy to resist those pressures and yet all recognize that there are times when we may risk sacrificing long-term values for short-term gains. The marine sanctuaries authorized by this bill would provide a means whereby important areas may be set aside for protection and may thus be insulated from the various types of "development" which can destroy them.<sup>2</sup>

<sup>2</sup> H. Rept. 92-3671, 92d Congress, 1st session, 15 (1971).

Coupled with the need to protect special marine areas, the legislative history of title III emphasizes the importance of maximizing human benefit and use as well. During the House floor debate on passage of the original Act, Congressman Hastings Keith (R-Mass.) stated:

I must admit that the word "sanctuaries" carries a misleading connotation. It implies a restriction and permanency not provided in the title itself. Title III simply provides for an orderly review of the activities on our Continental Shelf. Its purpose is to assure the preservation of our coastal areas and fisheries \* \* \* Title III gives more than mere consideration to both of these compelling national problems. It provides for multiple use of the designated areas.<sup>3</sup>

A 1975 article which appeared in the Coastal Zone Management Journal analyzed the debate over marine sanctuaries and traced a change in philosophy which highlights the program's potential for protecting nationally significant marine areas for their resource quality, while permitting multiple uses compatible with the purposes of the sanctuary. The article noted:

The objectives of the legislation were negative, that is to stop the specific action. However, from the introduction of the first sanctuary bill in 1968 until the passage of the Marine Protection, Research and Sanctuaries Act of 1972, a key conceptual transition took place. This was a reversal from the thrust of the early bills oriented to preventing actions such as dredging and oil drilling back to the concept that areas of the ocean and coastal waters had values vital to a balanced use of the resources of the ocean which should be protected and/or restored for their own merits. While this may be a subtle difference, it represents the difference between a negative and positive philosophy.<sup>4</sup>

#### B. PROGRAM DEVELOPMENT

Implementation of the program since 1972 has been slow. The program was given very little attention under the Nixon and Ford Administrations and did not receive any funding until 1977, when it operated under reprogrammed funds. It did not receive its own appropriation until fiscal year 1979. During this period, only two marine sanctuaries were designated.

President Carter established Title III as a priority program in a May 23, 1977, environmental address. The President directed the Secretary of Commerce to begin gathering information on areas of the Outer Continental Shelf where development was imminent, particularly in sensitive areas scheduled for oil and gas leases. Emphasizing the consideration of areas that are imminently threatened is consistent with the overall purposes of Title III. The Committee affirms that existing or probable threats to an area are important factors in determining the priority such areas should re-

<sup>3</sup> 117 Congressional Record 30,858 (1971).

<sup>4</sup> Kifer, "NOAA's Marine Sanctuary Program," 2 Coastal Zone Management J. 177 (1975).

ceive for consideration as a potential marine sanctuary. However, the presence or absence of imminent threats to particular resources is neither necessary nor sufficient to qualify an area as a potential marine sanctuary. The special characteristics of the area, the need for the designation, and the standards and factors listed in section 303 of the bill are among the factors that determine an area's qualification as a marine sanctuary.

In response to President Carter's address and the increased emphasis placed on the program, NOAA received 169 site nominations from federal agencies, states, and members of the public. NOAA placed just over 70 site nominations on the List of Recommended Areas (LRA). The LRA was a list of all sites which met minimal screening criteria. Inclusion on the LRA was a prerequisite for sanctuary designation but did not imply automatic designation. Any individual could nominate a site for placement on the LRA and most nominations with sufficient resource information were included. The LRA resulted in a significant amount of controversy because many nominated sites, although meeting the minimum screening criteria, were, on the balance, inappropriate for future consideration. Some of these areas included thousands of square miles of the Outer Continental Shelf waters, such as the Beaufort Sea, off Alaska, and Georges Bank, in the North Atlantic, encompassing some 80,000 square miles and 20,000 square miles, respectively.

By the late 1970's there was significant controversy surrounding the program. Although only two sites had been designated as National Marine Sanctuaries, there was heightened concern regarding the direction of the program. Much of this centered around the listing of sites as active candidates: Flower Garden Banks offshore Texas and Louisiana; and Channel Islands, offshore California. The perception among certain groups at the time was that these sites were proposed in order to stop hydrocarbon development.

In response to the above controversies, attempts to repeal Title III of the Act were brought before the House of Representatives. In July, 1979, a bill was introduced to repeal Title III (Congressional Record H6979). Arguments favoring repeal were based on the following two assumptions:

(1) The marine sanctuaries program is not needed for the protection of the marine environment because other programs are more than equal to the task; and

(2) The marine sanctuaries program has been very poorly administered; it has lacked a consistent, coherent policy base and has been carried out in a manner than has frustrated the administration of other programs.

In 1980 and 1981, during oversight hearing before the Subcommittee on Oceanography, the need for continuation of the sanctuary program was again challenged on the basis that other regulatory authorities already provide jurisdiction for environmental protection of sanctuary areas (House Committee on Merchant Marine and Fisheries Printed Hearing No.'s 96-40, 97-1). This argument was rejected and the original intent of the Marine Sanctuary Program of preserving or restoring nationally significant marine areas was reaffirmed when, on April 30, 1981, the Committee ordered reported a two-year reauthorization of the program.

In response to the aforementioned concerns, two major independent assessments of the program were undertaken by the Congressional Research Service (CRS)<sup>5</sup> and by the General Accounting Office (GAO).<sup>6</sup> Both assessments concluded that the program plays a legitimate and important role in the overall picture of marine resource development and conservation. The CRS report concluded that although there was some overlap with other federal laws designed to protect the environment, the National Marine Sanctuary Program offers environmental protection benefits "not directly achievable through other federal statutory authorities". The GAO report concluded that the program:

- (1) provides comprehensive regulation, planning, and management (within the limits of international law) to assure long-term preservation of all the resources that require protection;
- (2) provides environmental protection where gaps exist in the coverage provided by other laws; and
- (3) encourages and supports research and assessment of the condition of sanctuary resources and provides an educational and informational service to promote public appreciation of their value and wise use.

#### C. 1980 AMENDMENTS

Congressional concern over the scope of the program, the size and number of sanctuaries, the activities to be regulated, and the goals and management of the program resulted in a series of amendments during the 96th Congress. The 1980 amendments improved consultation and coordination procedures; set forth requirements for the terms of sanctuary designations; affirmed the validity of permits, licenses, and authorizations issued pursuant to other authorities unless specifically prohibited by sanctuary regulations; directed the Secretary of Commerce to conduct research to carry out the purposes of the Title; directed the Coast Guard and the Secretary of Commerce to conduct enforcement activities; authorized the Governor of any State whose waters are included in a sanctuary to disapprove sanctuary regulations in those waters; and established a Congressional disapproval procedure for sanctuary designations.

#### D. RECENT PROGRAM REFINEMENTS

NOAA has instituted a number of changes to the sanctuary program in response to confusion and controversy over its purpose, scope, and operation and based on NOAA's experience in dealing with the complex issues involved in sanctuary nomination, designation, and management. Refinements in operational policy and procedure were designed and included in the National Marine Sanctuary, Program Development Plan (PDP) which was published in January, 1982. The PDP describes: (1) the Program's mission, goals, and operational policy; (2) the site identification criteria and site

<sup>5</sup> Congressional Research Service, "Study on the Marine Sanctuary Program" (1979-1980) (conducted at the request of the chairman, Subcommittee on Fisheries and Wildlife and the Environment, House Committee on Merchant Marine and Fisheries).

<sup>6</sup> General Accounting Office, "Marine Sanctuaries Program Offers Environmental Protection and Benefits Other Laws Do Not" (1981).

evaluation process; (3) the nomination and designation process; and (4) the elements and purposes of site-specific Management Plans. Increased emphasis is given to interagency coordination, research, public awareness, and interpretive programs. The refinements and programmatic policies outlined in the PDP were published in the form of proposed regulations in the Federal Register on September 7, 1982 (47 FR 39191). The final regulations for the program are undergoing Administration review.

#### E. SITE SELECTION PROCESS

Program refinements in the nomination and designation procedures, as set forth in the PDP, included: (1) elimination of the List of Recommended Areas (LRA); (2) institution of a new site evaluation list (SEL) process through which a base pool of suitable sites is developed; (3) development of the site management plan during the environmental impact statement (EIS) phase, as opposed to preparing the plan following designation; and (4) adoption of the mission and goals to guide program activities.

The SEL process is nearing completion by NOAA. Sites for the SEL have been initially identified, evaluated, and recommended by eight regional resource evaluation teams, comprised of marine scientists knowledgeable about coastal resources and processes in their region. Each team was charged with identifying up to five potential sites for inclusion in the SEL. Identification of sites was based on criteria which provide a means for assessing the area's natural resource and human-use values. Site identification and evaluation criteria and methodology, which are contained in the PDP, were designed to enable the teams to focus more clearly on those sites with special resource and human-use values that have a high likelihood of eventual designation. NOAA's criteria for the selection of sites for the final SEL will also be based on the site's natural resource and human-use values, as well as the potential impacts of activities in or near the site, and management concerns, including a preliminary consideration of the economic effects of sanctuary designation.

On March 1, 1983, NOAA published a list of potential SEL site in the Federal Register (48 FR 8527) for public review. This list was based on the recommendations of Regional Resource Evaluation Teams. The teams recommended a total of 33 sites; from those, NOAA has proposed 29 sites. It is expected that the final list will be published in mid-summer of 1983. The final selection will be based on NOAA's SEL criteria as outlined above and on its review of public comments.

NOAA will select listed in the SEL to evaluate as candidates for national marine sanctuaries during the next five to ten years. After NOAA adopts the SEL it will review an additional site only if the site represents an important new discovery of national significance or if substantial new information becomes available on sites previously considered but not placed on the SEL. Placement of sites on the SEL or selection for further consideration as active candidates does not subject such sites to any regulatory controls.

Sites are selected for active candidacy and further consideration as marine only after NOAA has applied active candidate criteria

and has consulted with relevant local, state, and federal agencies, appropriate Regional Fishery Management Councils, and the public. NOAA's selection of sites from the SEL for active candidate status entails an evaluation of factors, including: (1) the site's natural resource and human-use values; (2) the need for sanctuary designation based on the present or potential threats to resources, and the vulnerability of the resources; (3) the benefits to be derived from sanctuary designation; (4) the present feasibility of sanctuary designation in light of the sanctuary's size, the requirements for managing the site, program staffing, and fiscal constraints; and (5) preliminary estimates of the economic impacts of designation. Selection of a site from the SEL to be an active candidate is the second step in evaluating a site for potential designation. After a site is selected as an active candidate, the designation process commences with the preparation of a draft designation document and draft management plan to implement the designation in consultation with appropriate federal, state, and local agencies, Regional Fishery Management Councils, and other interested persons.

While the new SEL process has, in general, been well received, the process encountered problems in two areas of the country—Alaska and Maine. The process was terminated in Alaska at the request of the State and its Congressional delegation. As a result, there are no Alaskan sites on the Site Evaluation List. The January, 1983 Congressional Research Service (CRS) report, prepared at the request of the Subcommittee on Oceanography, identified a number of factors which led to the termination of the regional team site selection exercise in Alaska. According to CRS, these factors included:

a. An unfortunate scheduling of the public comment period during the summer fishing season, when the majority of commercial fishermen were not readily accessible.

b. An inability to involve key representation from the commercial fishing industry early in the process through membership on the regional team or a more active solicitation of opinions.

c. The unfortunate timing of the site recommendation exercise prior to statewide elections where Federal "misunderstanding" of Alaska matters almost always elicits a hostile and highly emotional response. Thus, the site selection process became a political question rather than a scientific matter. The marine sanctuaries issue became newspaper headline and editorial material throughout Alaska in the weeks immediately prior to the election.

d. A questionable assumption that the National Marine Sanctuary Program could be applied to the Alaska marine environment in the same manner as it was approached in other more developed regions.

e. A questionable decision by NOAA/Chelsea International Corporation (the contractor for the regional team process) to conduct this exercise last in Alaska. By the time Alaska was to begin, team and public comment activity in the other seven regions greatly occupied the available time of NOAA/Chelsea managers.<sup>7</sup>

<sup>7</sup> CRS, national marine sanctuary program study, 1983, p. 25.

The CRS findings indicated that the convergence of a number of disparate factors precipitated the breakdown of the SEL process in the State of Alaska. It is the Committee's analysis that much of the controversy generated in Alaska centered around problems of communication and insensitivity on the part of those involved in the SEL process to Alaskan attitudes, needs, and concerns. NOAA, the Chelsea International Corporation, and the regional team were remiss in communicating amongst themselves, to the public, and to special user groups the intent and purpose of the SEL process and its place within the marine sanctuary designation process. As a result, when sites were initially identified or discussed in Alaska, gross misconceptions occurred with regard to the status and future of the proposed sites. The CRS report highlights the perceptions of the National Marine Sanctuary Program and its potential impacts as voiced by the commercial fishing industry in the State of Alaska:

Fishermen perceived the program as a means of closing vast areas of their fishing grounds. These perceptions arose in part because the public comment period was scheduled when the fishing industry was at the height of its season and because too few contacts were made by Chelsea or regional team members with the commercial fishing industry groups; and because publicity emphasized the "park-like" concept of the national Marine Sanctuary Program which enflamed Alaskan emotions not yet cooled from the Alaska lands debate.

In Maine, general misconceptions about the intent and purpose of the sanctuary program and the SEL process together with opposition to a particular site—Frenchman's Bay—resulted in controversy over the SEL process. In presenting the Frenchman's Bay proposal to the public and special user groups, it was stated that management of the site might require regulating fishing and changing existing fishing patterns. Similar to the situation in Alaska, it was never made clear to the public and special interest groups that the proposals discussed as part of the regional team process are simply candidates for the Site Evaluation List and that under the sanctuary program's new procedures, any future consideration of the site would involve extensive review and close scrutiny by NOAA, as well as an ongoing consultation with the fishing interests. Furthermore, the public and affected user groups would have the opportunity to review and comment on draft management plans.

In spite of the controversy surrounding the SEL process in Alaska and Maine, the regional team exercise as a whole worked well. In general, the problems encountered in Maine and Alaska resulted from a lack of communication with the public and special user groups and misinformation about the status of the sites proposed by the regional teams. It is the Committee's analysis that recent refinements in the mission and operation of the National Marine Sanctuary Program provide a more positive and predictable path for future sanctuary designations. The refinements which provide clearly-defined guidelines and program parameters should result in identification of higher quality sites as well as early and continued public and user group involvement in the nomination,

evaluation, and designation processes. Most importantly, the recent changes should provide optimum compatible public and private use of special marine areas while enhancing resource protection.

#### F. LITIGATION

In 1982, the Western Oil and Gas Association (WOGA) filed suit in U.S. District Court challenging the legitimacy of the designation of the Channel Islands Sanctuary, offshore California. The suit contends that the designation is not "necessary" for the purposes outlined in the Act. It also contends that the regulations banning oil and gas development are not "necessary and reasonable" to implement the terms of the designated sanctuary. WOGA contends that the EIS for the Channel Islands Sanctuary is inadequate and the administrative record for all the relevant factors pertaining to the "no oil" provision is inadequate. The suit also challenges the legitimacy of the program, stating that an EIS has not been done on the entire program. A hearing date on the suit has not been set.

#### G. ESTABLISHED AND PROPOSED SANCTUARIES

##### 1. *Established sanctuaries*

Although the original Act was passed in 1972, the program received no direct appropriation until 1979. During 1977 and 1978, the program operated on a small amount of reprogrammed funds. Only two sanctuaries had been designated by 1975: the site of the sunken, Civil War iron-clad *U.S.S. Monitor* southeast of Cape Hatteras, North Carolina, and Key Largo National Marine Sanctuary, a coral reef structure south of Miami, Florida. By January, 1981, four additional sanctuaries were designated: the waters around the Northern Channel Islands and Santa Barbara Island offshore California; Point Reyes-Farallon Islands off the California coast, north of San Francisco; Gray's Reef, east of Sapelo Island, Georgia; and Looe Key, in the Gulf of Mexico southwest of Big Pine Key, Florida.

The following is a detailed description of the six designated national marine sanctuaries.

*The U.S.S. Monitor National Marine Sanctuary.*—This sanctuary was designated in January, 1975, and is in an area one mile in diameter southeast of Cape Hatteras, North Carolina. It protects the wreck of the Civil War ironclad, the *U.S.S. Monitor*.

The Sanctuary is managed by NOAA in cooperation with the North Carolina Department of Cultural Resources and East Carolina University. A management plan was released in January, 1982 (revised in February, 1983). Sanctuary research has focused on the condition of the wreck and the feasibility of its recovery. Numerous technical reports, including a preliminary recovery feasibility study, have been prepared. NOAA has also developed or assisted in the development of numerous educational materials about the *Monitor*, including a film, a brochure, and a newsletter.

The Sanctuary provides an excellent opportunity to increase public awareness of an important American historical and cultural resource.

Through sanctuary research, new techniques for underwater exploration and the conservation of marine artifacts have been developed.

*The Key Largo National Marine Sanctuary.*—This sanctuary, designated in December, 1975, provides protective management of a 100 square mile coral reef area south of Miami. NOAA is assisted in on-site management by the Florida Department of Natural Resources. A management plan was prepared in September, 1979, a revised plan will be available by June, 1983.

Research conducted within the Key Largo Sanctuary includes an environmental assessment of resources; a water current study; a deepwater resource survey; a water quality monitoring program; and a mooring buoy study. Interpretive programs include a sanctuary brochure and a general brochure describing the value of coral reefs, as well as sanctuary exhibits at the visitor center at John Pennekamp State Park.

*The Channel Island National Marine Sanctuary.*—This sanctuary, designated in September, 1980, consists of an area of 1,252 square nautical miles surrounding the northern Channel Islands and Santa Barbara Island off the coast of California. The area supports one of the largest and most varied assemblages of marine mammals in the world. The waters serve as feeding grounds for six species of seals and sea lions (California sea lion, Steller sea lion, northern fur seal, Guadalupe fur seal, northern elephant seal and harbor seal). Whales and dolphins, including the endangered blue, fin, and humpback whales, are sighted throughout the area. The Sanctuary is also a focal point for one of the richest resource areas for seabirds in the United States, based on both numbers of individuals and species diversity. Seabird concentrations occur not only on the Islands and offshore rocks, but also on the productive waters around the Islands where many species forage for food. The endangered brown pelican breeds on Anacapa Island and forages in Sanctuary waters. The nearshore Island waters in the Sanctuary are major southern California producers of such species as abalone, sea urchin, and rockfish.

The National Park Service and the California Department of Fish and Game assist NOAA in onsite management through inter-agency agreements. A management plan is scheduled for completion in August, 1983.

Research projects focus on management-related issues in the sanctuary. Interpretive programs include a sanctuary exhibit at the Channel Islands National Park Visitor Center; sanctuary interpretive talks within the visitors center, a brochure and poster, and off-site educational programs. Because of the diverse variety of resources and array of ongoing activities, the Sanctuary poses an excellent opportunity to develop cooperative management techniques for rather complicated ocean areas. The data from the research allows NOAA to analyze the effectiveness of current management practices.

*The Looe Key National Marine Sanctuary.*—The Sanctuary designated in January, 1981, consists of a five square nautical mile submerged section of the Florida reef tract southwest of Big Pine Key. The site includes a beautiful "spur and groove" coral formation

supporting a diverse marine community and a wide variety of human uses.

NOAA manages the Sanctuary with the assistance of the Florida Department of Natural Resources. A management plan will be available in June, 1983. Research projects include the effects of predator removal on reef fish community structure and a series of illustrated guidebooks to sanctuary resources. A sanctuary brochure has been prepared.

*The Gray's Reef National Marine Sanctuary.*—The site, designated in January, 1981, is a submerged live bottom area located on the south Atlantic continental shelf due east of Sapelo Island, Georgia. It is one of the largest nearshore hard bottom reefs in the south Atlantic and supports a diverse array of temperate and tropical species, including seaweed, coral, sponges, shellfish, tropical ornamental reef fish and a variety of gamefish. Sea turtles and marine mammals, primarily dolphins, are frequently seen in the area. The Sanctuary encompasses about 17 square nautical miles.

NOAA is assisted in onsite management by the Georgia Department of Natural Resources and the University of Georgia. A management plan was released in January, 1983. Research projects include a hydrographic survey; a visual reef fish assessment; a visitation study; and a field guide to the fishes of the Sanctuary. Sanctuary exhibits are located at the Marine Resource Center on Skidaway Island. Additional interpretive projects include a slide show, a brochure, and educational posters.

*The Point Reyes-Farallon Islands National Marine Sanctuary.*—The Sanctuary was designated in January, 1981, and encompasses a 948 square nautical mile area off the California coast north of San Francisco. The waters off Point Reyes and around the Farallon Islands are characterized by the significant seabird and marine mammal populations that thrive there. The seabird concentration is unique in the lower 48 states. The Farallon Islands support the largest seabird rookeries in the contiguous United States. A large and varied marine mammal population is present in the waters. Whales, including several endangered species, and porpoises pass through the Sanctuary on their annual migrations. California sea lions, harbor seals, and elephant seals use the extensive deep- and shallow-water feeding grounds and the shores of the Farallon Islands and mainland for hauling out and pupping purposes. Finally, the waters provide substantial recreational and commercial fishing opportunities. Commercial fishing activities include: bottom fishing, crab fishing, salmon trolling, albacore trolling, and pelagic fishing for anchovy, herring, and other species.

The National Park Service and the California Department of Fish and Game assists NOAA in onsite management. The management plan is scheduled for completion in January, 1984.

The Sanctuary offers a wide range of representative habitats from coastal to open ocean to waters around the Farallons. Thus, sanctuary research and interpretive programs can focus on broad aspects of the marine environment, particularly the importance of cold water environments. The Sanctuary, in conjunction with Channel Islands, offers a potential to compare research results and management policies.

## 2. Proposed sanctuaries

Three additional sites are being actively considered for sanctuary designation: La Parguera, Puerto Rico; humpback whale wintering grounds off Hawaii; and Fagatele Bay, American Samoa.

*La Parguera, Puerto Rico.*—The proposed sanctuary encompasses 68 square nautical miles. The draft environmental impact statement for this proposed sanctuary has been distributed. The DEIS analyzes the implementation of a management plan, which is included as part of the DEIS, that specifies goals and objectives to insure the protection of the site's resources.

*Humpback whale wintering grounds off Hawaii.*—NOAA declared the site an active candidate on March 17, 1982 (47 FR 11544 (1982)). The proposed sanctuary is 784 square nautical miles in size. A draft management plan is presently being prepared.

*American Samoa.*—The Development Planning Office of the Territorial Government of American Samoa nominated Fagatele Bay on Tutuila Island for marine sanctuary status in March, 1982. The bay contains deep-water coral terrace formations that are unique to Pacific high islands. The site was named an active candidate on April 28, 1982 (47 FR 18164 (1982)) following preliminary consultation. The draft management plan and DEIS are being prepared for release in mid-1983.

### SECTION-BY-SECTION ANALYSIS OF H.R. 2062

H.R. 2062 amends Title III of the current act by substituting a new Title III.

#### SECTION 301. FINDINGS, PURPOSES, AND POLICIES

This section describes Congressional findings and sets forth the purposes and policies of the National Marine Sanctuary Program. The findings in section 301(a) indicate that past national efforts to protect special areas have largely been directed toward land areas and that the marine environment possesses areas of national significance that deserve protection. A national program that identifies these areas will contribute to comprehensive and coordinated conservation and management and will enhance public awareness, understanding, appreciation, and wise use of the marine environment.

Section 301(b) sets forth Congressional intent to authorize a program that: (1) identifies areas of the marine environment which are of special national significance due to their resource or human-use values; (2) conserves and manages these areas in a comprehensive and coordinated manner, complementing existing authorities; (3) supports, promotes, and coordinates scientific study of the resources of these areas; (4) enhances public awareness, understanding, appreciation and wise use of these areas; and (5) facilitates all public and private uses of these areas, to the extent compatible with the primary objective of resource protection.

#### SECTION 302. DEFINITIONS

Section 302 contains three definitions that apply to title III. Subsection (1) defines "marine environment" to make clear the areas

to which title III applies, and to modify the seaward limits of the program to conform with recent developments in domestic and international law.

Section 302 of the current Act describes the areas over which title III presently applies. These areas include coastal waters where the tide ebbs and flows, the Great Lakes and their connecting waters, and ocean waters out to the outer edge of the continental shelf. The term "ocean waters", in turn, is defined by section 3(b) of the MPRSA as the "waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1601; TIAS 5639)".

During the deliberations of the Committee on reauthorizing title III, questions were raised about the relationship of the jurisdictional reach of the marine sanctuaries program to the general jurisdiction of the United States over marine resources. Title III presently extends to the outer limit of the continental shelf and to the waters above the continental shelf. It has been suggested, however, that title III should apply to the water column and seabed lying beyond the outer limit of the continental shelf but within the U.S. fishery conservation zone (FCZ) in those areas where the continental shelf is narrower than 200 miles.

Conversely, it was also questioned whether the program should continue to extend to areas of the water column that are over the continental shelf but beyond the FCZ, as is now the case where the continental shelf extends beyond 200 miles.

In response to these and similar questions, the Committee adopted the term "marine environment" to define the areas to which title III applies. The definition is intended to be consistent with the general marine resource jurisdiction of the United States and with international law. The definition modifies the seaward limit of the area to which title III now applies, and specifies, in short, that it extends to the outer limit of the FCZ for the purposes of the water column, and to 200 miles or to the outer limit of the outer Continental Shelf, whichever is further, for the purposes of the continental margin and seabed.

The first part of the term "marine environment" addresses the water areas to which title III applies, and references those areas of coastal and ocean waters and the Great Lakes and their connecting waters over which the United States exercises jurisdiction, consistent with international law. As used in the definition, "United States" refers to the United States and its several states, and is not used in a federalism context to distinguish between state and federal areas. The term "coastal waters" refers to those areas of coastal waters where the tide ebbs and flows, and is derived from section 302 of the current MPRSA, without change. The term "the Great Lakes and their connecting waters" is also taken from section 302 of the current MPRSA, without change.

The term "ocean waters" is taken from section 302 of the current MPRSA but differs in its seaward extent from the term as it is presently used in the Act. It continues to refer to the waters lying seaward of the baseline from which the territorial sea is measured, but its seaward boundary is the outer limit of the FCZ, as defined by sec. 101 of the Fishery Conservation and Management Act (16

U.S.C. 1811). It therefore encompasses the territorial sea and the fishery conservation zone of the United States.

The second part of the term "marine environment" addresses the submerged land areas to which title III applies. These areas include the land areas underneath the water areas described above, and the areas of the Outer Continental Shelf of the United States that extend beyond 200 miles. It therefore refers to:

1. the areas beneath the Great Lakes and their connecting waters;
2. the lands beneath navigable waters that are described in section 2(a)(2) of the Submerged Lands Act of 1953 (43 U.S.C. 1301); and
3. the Outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

Subsection (2) of section 302 defines Secretary for the purposes of title III as the Secretary of Commerce. The definition is intended to distinguish the term "Secretary" as it is used in title III from the term as it is defined in section 3(h) of the Marine Protection, Research and Sanctuaries Act, where it refers to the Secretary of the Army.

Subsection (3) defines "State" and is intended to incorporate a more contemporary definition of the term than that presently used in section 301 of the MPRSA.

#### SECTION 303. SANCTUARY DESIGNATION STANDARDS

Subsection (a) grants authority to the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries and to promulgate regulations implementing the designations. Before designating any area as a marine sanctuary, the Secretary must determine that the designation will fulfill the purposes and policies of Title III, and must find that the area meets three specific standards.

First, the Secretary must find that the area's resource or human-use values give it special national significance. The term "values" is meant to imply a broad set of values, including but not limited to the following: conservation, ecological, research, recreational, commercial, educational, aesthetic, cultural, historical, archaeological, and paleontological values.

Second, the Secretary must find that state and Federal regulatory and management mechanisms are not adequate to provide for coordinated and comprehensive management of the area. This includes an evaluation of marine resource protection under existing institutional arrangements, as well as an assessment of the potential effectiveness of alternative marine sanctuary management or regulatory mechanisms. Relevant questions can include the following: whether the existing mechanisms have the necessary administrative flexibility to respond to changing conditions; whether the present system is too fragmented to provide comprehensive conservation and management of the resource or human-use values of special national significance; whether existing mechanisms can generate information in a timely fashion in order to adequately protect the resources; and whether existing mechanisms cover all relevant aspects of the area's resources. Depending on the location,

the resources, and the existing mechanisms, a sanctuary could either complement existing mechanisms by filling specific gaps or could form a management umbrella over a fragmented system to help coordinate and strengthen diverse but related efforts.

Third, the Secretary must find that a proposed sanctuary will be of a size and nature that will facilitate comprehensive and coordinated conservation and management. Because past nominations have involved large areas and generated controversy about the optimum or maximum size for a sanctuary, the intent of this provision is to provide guidance to the Secretary when establishing the size of sanctuaries. This determination may be complex and requires the evaluation of many factors. Under H.R. 2062, the Secretary retains the flexibility to tailor the boundaries of a sanctuary in order to protect the resources of the area. However, the Secretary should limit the size of sanctuaries to the geographic area necessary to protect these resources. Thus, when establishing sanctuary boundaries, the Secretary should evaluate among other things the following: the distribution of the area's resources; the type and effect on and of human activities in the area; fiscal and staff constraints; accessibility; the degree to which an area lends itself to adequate enforcement and surveillance; and the capabilities of responsible state or federal agents.

NOAA has stated in the PDP that it anticipates that the upper end of the sanctuary size spectrum is represented by the Channel Islands National Marine Sanctuary which covers 1,252 square miles. Furthermore, NOAA's proposed final sanctuary regulations provide that sanctuaries will be limited to relatively small, geographically discrete marine areas. The Committee concurs with these policy statements.

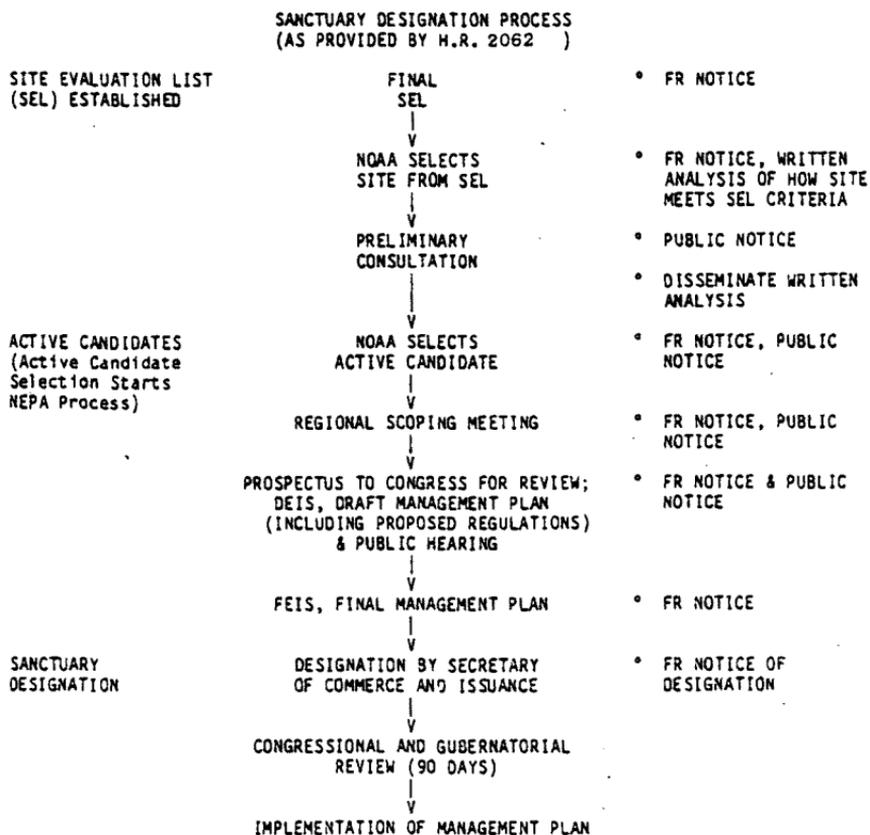
Subsection (b)(1) lists several factors that the Secretary is required to consider in making the findings under subsection (a). These factors cover five areas: (1) resource values; (2) human-use values; (3) activity impacts; (4) management concerns; and (5) public benefits. These factors track the site identification criteria that NOAA uses to identify potential marine sanctuaries and the site evaluation matrix that is used to identify priority sites.

Subsection (b)(2) obligates the Secretary to consult with several persons and organizations in determining whether an area meets the sanctuary designation standards. Past administration of the program has shown the pitfalls of inadequate and ill-timed consultation. To alleviate past problems and to ensure that designation of nationally important areas of the marine environment is not imperiled, the Committee expects that the Secretary will consult with all interested persons and groups at all important stages of the site evaluation and designation process. These groups include the Congress, the heads of interested federal agencies, Governors and agency chiefs of states affected by a proposed sanctuary designation, officials of Regional Fishery Management Councils, and any other persons or groups that may be affected by or have an interest in a sanctuary designation.

**SECTION 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION**

This section describes the process by which an area of the marine environment is proposed for designation Congress and state governors review the proposal, and by which a designation takes effect. Figure 1 presents a schematic representation of the designation process as established by title III and NOAA's proposed final regulations.

Figure 1



Section 304(a) describes the procedure to govern the proposal of a national marine sanctuary. It requires the Secretary to publish a Notice of the proposed designation in the *Federal Register* together with proposed regulations to implement the designation. The Secretary is also required to provide notice of the proposed designation in the media in the area which may be affected by designation, and to hold at least one public hearing in the affected area.

At the same time, the Secretary must submit a "prospectus" to both Houses of Congress which shall contain: (1) terms of designation; (2) findings required by section 303; (3) proposed mechanisms to coordinate existing regulatory and management authorities in the area; (4) a proposed sanctuary management plan; (5) cost estimates; and (6) proposed regulations.

Section 304(a)(4) outlines the process for reviewing the prospectus. The House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce, Science and Transportation may hold hearings on the proposed designation and any other matters set forth in the prospectus. During the 45-day period of continuous session of Congress beginning on the date of submission of the prospectus, either Committee may issue a report on the designation or any of its terms. The Secretary shall consider such report before designating the sanctuary.

In regard to the 45-day Congressional review period, the Committee intends that it will come into force upon the date of enactment. Three sites are presently being considered for sanctuary designation. The Committee intends that the 45-day review period will apply to any site where the public comment period on the draft management plan and the draft environmental impact statement has not closed.

Section 304(a)(2) describes the items included in the terms of designation and provides that the terms may only be modified by same procedure through which an original designation is made.

Section 304(a)(3) provides the appropriate Regional Fishery Management Councils with the opportunity to prepare draft regulations for fishing in areas proposed as marine sanctuaries that lie in the fishery conservation zone of the United States. Where a proposed sanctuary lies in whole or in part within waters under the jurisdiction of a state, fishing regulations for that portion within state jurisdiction shall be drafted by the Secretary after consultation with appropriate state officials. The Secretary shall review the draft fishing regulations prepared by the Regional Fishery Management Councils to ensure that they are necessary and reasonable to implement the designation, and to ensure that they meet the goals and objectives of the proposed designation and the purposes of Title III. The term "fishing", as used in this section, means the same as the definition of "fishing" contained in section (3)(10) of the Fishery Conservation and Management Act of 1976 (FCMA).

In preparing draft regulations, the Councils shall be guided by the national standards contained in section 301(a) of the Fishery Conservation and Management Act of 1976/(FCMA) to the extent that the national standards are consistent and compatible with the goals and objectives of the proposed designation. The Committee stresses that the standards which serve as guidelines in the preparation of Fishery Management Plans were included in the FCNA

to ensure that all fishermen would be treated fairly, that sound scientific data would be used to manage fisheries, and that councils would have the needed flexibility to manage complex fisheries.

In the case where the appropriate Council declines or fails to prepare the draft regulations in a timely manner, the Secretary shall prepare them if, in his judgment, fishing regulations are necessary to implement the proposed designation. The "timely manner" phrase was included to provide a guarantee that failure of a Council to act will not delay or prevent a sanctuary proposal from moving forward. The "timely manner" phrase is similar to the "reasonable period of time" phrase contained in section 304(a)(1) of the FCMA. This section gives the Secretary of Commerce the authority to prepare Fishery Management Plans if a Council fails to develop and submit to the Secretary a Plan within a reasonable period of time. When applying the "timely manner" phrase, the Secretary must be sensitive to Council meeting schedules, fishing seasons, the ability of Councils to utilize the best data available, and the time needed to prepare and review draft regulations.

It is the intent of the Committee that proposed fishery regulations are to be part of the total package of regulations for the proposed sanctuary. Thus, when the Secretary issues in the Federal Register a Notice of the proposed sanctuary and when the Secretary submits the prospectus to the Congress, all pertinent information will be available to all interested parties.

Section 304(b) establishes the procedures by which a designation and final regulations will take effect. In designating a sanctuary, the Secretary is required to publish a notice of designation and final sanctuary regulations in the Federal Register and submit the notice to the Congress. However, no designation may occur and no final regulation may be issued until the expiration of the 45-day Congressional review period established by section 304(a)(4). Designation of a sanctuary and its implementing regulations shall not take effect until after the end of a 90-day disapproval period beginning on the day on which the designation notice is issued. During this 90-day review period, either House may adopt a concurrent resolution of disapproval of the designation or any of its terms. Further, during the 90-day period, for those sanctuaries located entirely or partially within state jurisdiction, the Governor or Governors of such state(s) may certify that the designation or any of its terms are unacceptable. In such case, the designation or the unacceptable terms shall not take effect in the area of the sanctuary within state waters. If either the Congress acts to disapprove any terms of designation or a Governor certifies that certain terms are unacceptable, the Secretary may withdraw the designation in its entirety if he determines that such actions will affect the designation in such a way that the goals and objectives of a sanctuary cannot be fulfilled. A sanctuary site will not be subject to any regulatory controls pursuant to Title III until the designation and its regulations take effect.

Finally, section 304(b)(5) provides that activities carried out in a national marine sanctuary that have been authorized pursuant to other laws remain unaffected by Title III unless sanctuary regulations provide otherwise.

### SECTION 305. INTERNATIONAL APPLICATION OF REGULATIONS AND NEGOTIATIONS

Section 305(a) requires that any regulation issued under the authority of the section 304 be applied in accordance with recognized principles of international law, and that no regulation applicable to areas or activities outside the jurisdiction of the United States be applied to non-United States citizens unless authorized by an agreement between the United States and appropriate foreign states.

Section 305(b) authorizes the Secretary of State to enter into negotiations with other countries in order to make the arrangements that might be needed to protect sanctuary resources and promote the purposes of the sanctuary.

### SECTION 306. RESEARCH AND EDUCATION

This section authorizes the Secretary to conduct such research and educational programs as are necessary and reasonable to carry out the purposes and policies of Title III.

### SECTION 307. ANNUAL REPORT ON AREAS BEING CONSIDERED FOR DESIGNATION

This section requires that the Secretary submit to Congress on or before November 1 of each year a report on the active candidates to be considered in the current fiscal year. There are three reasons why the Committee considers this to be appropriate. First, selection as an active candidate begins the designation process. Second, it is the point where a commitment of substantial resources must be made. Third, active candidate selection initiates the NEPA process and thus begins the public and government review and consultation process. The report will provide the Congress with a tool to facilitate its oversight authority. The report is to provide information, to the extent such information is available, on an area's resources and values making it of national significance; present and potential uses of the area and impacts of such uses; existing state and Federal regulatory and management authorities; boundary and regulatory options; and potential research and educational benefits.

### SECTION 308. ENFORCEMENT

This section sets forth the enforcement authority and responsibilities of the Secretary and establishes civil penalties for violation of any sanctuary regulation. Jurisdiction is given to the United States district courts.

### SECTION 309. AUTHORIZATION OF APPROPRIATIONS

This section authorizes appropriations for fiscal years 1984, 1985 and 1986 at sums not exceed \$2,264,000, \$2,500,000, and \$2,750,000 respectively. The annual increases will allow one new sanctuary to be designated and managed per year. This will meet the designation schedule presented in testimony by NOAA.

## INFLATIONARY IMPACT STATEMENT

With respect to the requirements of clause (2)(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2062 would have no significant inflationary impact upon prices and costs in the operation of the national economy.

### COST OF LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 2062, as reported, in Fiscal Year 1983, and each of the following five years. However, under paragraph (d) of clause 7, the provisions of (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

### DEPARTMENTAL OFFICE

As of a filing date of this report, no departmental reports have been received.

### COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirements of clause (2)(1)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of H.R. 2062 have been made by the Committee during the 98th Congress. The Committee received a progress report on the implementation of Title III of the MPRSA at the reauthorization hearing held on February 24, 1983.

2. With respect to the requirements of clause (2)(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2062 does not contain any new budget authority or tax expenditures.

3. With respect to the requirements of clause (2)(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report from the Committee on Government Operations on the subject of H.R. 2062.

4. With respect to the requirements of clause (2)(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following estimate of the cost of H.R. 2062 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., April 29, 1983.*

HON. WALTER B. JONES,  
*Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2062, a bill to amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM  
For Alice Mr. Rivlin, Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 2062.
2. Bill title: A bill to amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, April 27, 1983.
4. Bill purpose: The bill amends Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, and authorizes appropriations for fiscal years 1984, 1985, and 1986 to administer the provisions of that title.

Under Title III, the Secretary of Commerce is authorized to designate portions of the marine environment as national marine sanctuaries.

5. Estimated cost to the Federal Government:

(By fiscal years, in millions of dollars)

	1984	1985	1986	1987	1988
Authorization level.....	2.3	2.5	2.8		
Estimated outlays.....	2.0	2.4	2.8	0.4	

The costs of this bill fall within budget function 300.

*Basis of estimate*

The authorization levels are those stated in the bill, and are assumed to be appropriated in full prior to the beginning of each fiscal year. Outlays are estimated based on historical spending patterns for this program.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Anne E. Hoffman.
10. Estimate approved by: C. G. Nuckols (For James L. Blum, Assistant Director for Budget Analysis).

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted in enclosed in black brackets, new matter is printed in *italic*):

**CHAPTER 32—[Marine Sanctuaries]****[§ 1431. Definitions**

**[The term "Secretary", when used in this chapter, means Secretary of Commerce. The term "State", when used in this chapter, means any of the several States or any territory or possession of the United States which has a popularly elected Governor.**

**[§ 1432. Designation of sanctuaries**

**[(a) The Secretary, after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator, and the heads of other interested Federal agencies, and with the approval of the President, may designate as marine sanctuaries those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values. The consultation shall include an opportunity to review and comment on a specific proposed designation.**

**[Waters lying within territorial limits of State or superjacent to subsoil and seabed within seaward boundary of coastal State**

**[(b)(1) Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any State or superjacent to the subsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 1301 of Title 43, the Secretary shall consult with, and give due consideration to the views of, the responsible officials of the State involved.**

**[(2) A designation under this section shall become effective unless—**

**[(A) the Governor of any State described in paragraph (1) certifies to the Secretary, before the end of the sixty-day period beginning on the date of the publication of the designation, that the designation or any of its terms described in subsection (f)(1) of this section, are unacceptable to his State, in which case those terms certified as unacceptable will not be effective in the waters described in paragraph (1) in such State until the Governor withdraws his certification of unacceptability; or**

**[(B) both Houses of Congress adopt a concurrent resolution in accordance with subsection (h) of this section which disapproves the designation or any of its terms described in subsection (f)(1) of this section.**

**[The Secretary may withdraw the designation after any such certification or resolution of disapproval. If the Secretary does not withdraw the designation, only those portions of the designation not certified as unacceptable under subparagraph (A) or not disapproved under subparagraph (B) shall take effect.**

**[Sanctuaries which include areas of ocean waters outside territorial waters of United States**

[(c) When a marine sanctuary is designated, pursuant to this section, which includes an area of ocean waters outside the territorial jurisdiction of the United States, the Secretary of State shall take such actions as may be appropriate to enter into negotiations with other Governments for the purpose of arriving at necessary agreements with those Governments, in order to protect such sanctuary and to promote the purposes for which it was established.

**[Annual report to Congress**

[(d) The Secretary shall submit a biennial report to the Congress, on or before March 1 of every other year beginning in 1984, setting forth a comprehensive review of his actions during the previous two fiscal years undertaken pursuant to the authority of this section, together with appropriate recommendation for legislation considered necessary for the designation and protection of marine sanctuaries.

**[Hearings in coastal areas most directly affected**

[(e) Before a marine sanctuary is designated under this section, the Secretary shall hold public hearings in the coastal areas which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the views of any interested party. Such hearings shall be held no earlier than thirty days after the publication of a public notice thereof.

**[Terms of designation; rules and regulations; research; enforcement activities**

[(f) (1) The terms of the designation shall include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological or esthetic value; and the types of activities that will be subject to regulation by the Secretary in order to protect those characteristics. The terms of the designation may be modified only by the same procedures through which an original designation is made.

[(2) The Secretary, after consultation with other interested Federal and State agencies, shall issue necessary and reasonable regulations to implement the terms of the designation and control the activities described in it, except that all permits, licenses, and other authorizations issued pursuant to any other authority shall be valid unless such regulations otherwise provide.

[(3) The Secretary shall conduct such research as is necessary and reasonable to carry out the purposes of this chapter.

[(4) The Secretary and the Secretary of the department in which the Coast Guard is operating shall conduct such enforcement activities as are necessary and reasonable to carry out the purposes of this chapter. The Secretary shall, whenever appropriate and in consultation with the Secretary of the department in which the Coast Guard is operating, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on

a reimbursable or a nonreimbursable basis in carrying out his responsibilities under this chapter.

**[Accordance of regulations with treaties, conventions, and other agreements**

[(g) The regulations issued pursuant to subsection (f) of this section shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign State of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag State of the vessel, no regulation applicable to ocean waters outside the territorial jurisdiction of the United States shall be applied to a person not a citizen of the United States.

**[Disapproval of designation; concurrent resolution by both Houses of Congress**

[(h)(1) For purposes of subsection (b)(2)(B) of this section, the Secretary shall transmit to the Congress a designation of a marine sanctuary at the time of its publication. The concurrent resolution described in subsection (b)(2)(B) of this section is a concurrent resolution which is adopted by both Houses of Congress before the end of the first period of sixty calendar days of continuous session of Congress after the date on which the designation is transmitted, the matter after the resolving clause of which is as follows: "That the Congress does not favor the taking of effect of the following terms of the marine sanctuary designation numbered \_\_\_\_\_ transmitted to Congress by the Secretary of Commerce on \_\_\_\_\_; \_\_\_\_\_", the blank space being filled with the number of the designation, the second blank space being filled with the date of the transmittal, and the third blank space being filled with the terms of the designation which are disapproved (or the phrase "the entire designation" if the entire designation is disapproved).

[(2) For the purpose of paragraph (1) of this subsection—

[(A) continuity of session is broken only by an adjournment of Congress sine die; and

[(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

[(3) A designation which becomes effective, or that portion of a designation which takes effect under subsection (b) of this section, shall be printed in the Federal Register.

**[§ 1433. Penalties**

[(a) Any person subject to the jurisdiction of the United States who violates any regulation issued pursuant to this chapter shall be liable to a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

[(b) No penalty shall be assessed under this section until the person charged has been given notice and an opportunity to be

heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

[(c) A vessel used in the violation of a regulation issued pursuant to this chapter shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

[(d) The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued pursuant to this chapter, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the Secretary.

### 【§ 1434. Authorization of appropriations

【There are authorized to be appropriated not to exceed \$10,000,000 for each of the fiscal years 1973, 1974, and 1975, not to exceed \$6,200,000 for fiscal year 1976, not to exceed \$1,550,000 for the transition period (July 1 through September 30, 1976), not to exceed \$500,000 for fiscal year 1977, not to exceed \$500,000 for fiscal year 1978, not to exceed \$2,250,000 for fiscal year 1981, not to exceed \$2,235,000 for fiscal year 1982, and not to exceed \$2,235,000 for fiscal year 1983, to carry out the provisions of this chapter, including the acquisition, development, and operation of marine sanctuaries designated under this chapter.】

## TITLE III—NATIONAL MARINE SANCTUARIES

### SEC. 301. FINDINGS, PURPOSES, AND POLICIES.

#### (a) FINDINGS. *The Congress finds that—*

(1) *this Nation historically has recognized the importance of protecting special areas of its public domain, but such efforts have been directed almost exclusively to land areas above the high water mark;*

(2) *certain areas of the marine environment possess conservation, recreational, ecological, historic, research, educational, or aesthetic qualities which give them special national significance;*

(3) *while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;*

(4) *a Federal program which identifies special areas of the marine environment will contribute positively to marine resource conservation and management; and*

(5) *such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment.*

(b) *PURPOSES AND POLICIES.—The purposes and policies of this title are—*

- (1) to identify areas of the marine environment of special national significance due to their resource or human-use values.
- (2) to provide authority for comprehensive and coordinated conservation and management of these marine areas which will complement existing regulatory authorities;
- (3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas;
- (4) to enhance public awareness, understanding, appreciation and wise use of the marine environment; and
- (5) to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

#### SEC. 302. DEFINITIONS.

For the purposes of this Title, the term—

- (1) "marine environment" refers to those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consisting with international law;
- (2) "Secretary" refers to the Secretary of Commerce; and
- (3) "State" refers to each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory or possession of the United States.

#### SEC. 303. SANCTUARY DESIGNATION STANDARDS.

(a) **STANDARDS.** The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that such designation will fulfill the purposes and policies of this Title, and if the Secretary finds that—

- (1) the area is of special national significance due to its resource or human-use values;
- (2) existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including provisions for resource protection, scientific research, and public education, and that designation of such area as a national marine sanctuary will facilitate these objectives; and
- (3) the area is of a size and nature which will permit comprehensive and coordinated conservation and management.

(b) **FACTORS AND CONSULTATIONS REQUIRED IN MAKING FINDINGS.** For purposes of determining if the area of the marine environment meets the standards set forth in subsection (a), the Secretary shall—

(1) take into consideration—

- (A) the area's natural resource and ecological qualities; including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;
- (B) the area's historic, cultural, archaeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the areas's resources; including commercial and recreational fishing, other commercial and recreational activities, and research and education;

(D) present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this Title;

(F) the manageability of the area; including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(G) the public benefits to be derived from sanctuary status, giving emphasis to the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(H) the negative impacts produced by management restrictions on income-generating activities, such as living and non-living resource development; and

(I) the socioeconomic effects of sanctuary designation; and  
(2) consult with—

(A) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Secretaries of State, Defense, and Transportation, the Secretary of the department in which the Coast Guard is operating, the Secretary of the Interior, the Administrator and the heads of other interested Federal agencies;

(C) the appropriate officials of any State that will be affected by the establishment of the area as a national marine sanctuary;

(D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Act entitled, "An Act to provide for the conservation and management of the fisheries, and for other purposes", approved April 13, 1976 (90 stat. 331 et seq., 16 U.S.C. 1801 et seq. (hereinafter in this title referred to as the "Act of 1976")) that may be affected by the designation; and

(E) other interested persons.

#### SEC. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.

##### (A) SANCTUARY PROPOSAL.

(1) NOTICES. In proposing to designate a national marine sanctuary, the Secretary shall issue in the Federal Register a Notice of the proposal, together with proposed regulations that may be necessary and reasonable to implement it, and shall provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal. After issuing a Notice the Secretary shall conduct at least one public hearing in the area affected by the proposed designation. On the same day of issuing the Notice, the Secre-

tary shall also submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a prospectus on the proposal which shall contain—

- (A) the terms of the proposed designation;
- (B) the basis of the findings made under section 303(a) with respect to the area;
- (C) proposed mechanisms to coordinate existing regulatory and management authorities within the area;
- (D) a management plan detailing the proposed goals and objectives, management responsibilities, resources studies, interpretive and educational programs, and enforcement and surveillance activities for the area;
- (E) an estimate of annual costs of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education; and
- (F) proposed regulations to implement the measures referred to in subparagraphs (A), (C), and (D).

(2) **TERMS OF DESIGNATION.** The terms of designation of a sanctuary shall include, among other things, the geographic area included within the sanctuary, the characteristic of the area that give it conservation, recreational, ecological, historical research, educational, or aesthetic value, and the types of activities that will be subject to regulation by the Secretary in order to protect those characteristics. The terms of designation may be modified only by the same procedures by which an original designation is made.

(3) **FISHING REGULATIONS.** The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to draft regulations for fishing within the U.S. Fishery Conservation Zone as may be necessary to implement the proposed designation. Draft regulations prepared pursuant to this section shall fulfill the purposes and policies of this Title and the goals and objectives of the proposed designation. In preparing the draft regulations, the Regional Fishery Management Council shall also use as guidance the national standards of section 301(a) of the Act of 1976 to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. If the Council declines or fails to prepare the draft regulations in a timely manner, the Secretary shall prepare them.

(4) **COMMITTEE ACTION.** After receiving the prospectus under subsection (a)(1), the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the prospectus. If, within the 45-day period of continuous session of Congress beginning on the date of submission of the prospectus, either Committee issues a report disagreeing with one or more matters addressed in the prospectus, the Secretary shall consider the report before designating the national marine sanctuary.

(b) **TAKING EFFECT OF DESIGNATION.**

(1) In designating a national marine sanctuary the Secretary shall issue a Notice of the designation together with final regulations to implement the designation and any other matters required by law and submit such Notice to the Congress. No designation may occur until the expiration of the period for Committee action under subsection (a)(4). Such designation and regulations shall take effect after the close of a review period of 90 days of continuous session of Congress beginning on the day on which the designation Notice is issued unless—

(A) the Congress disapproves the designation, or any of its terms, by adopting a resolution of disapproval described in subsection (b)(3); or

(B) in the case of a national marine sanctuary that is located partially or entirely within the jurisdiction of one or more states, the Governor(s) affected certifies to the Secretary that the designation or any of its terms are unacceptable. In the event of such certification, the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the jurisdiction of the state.

(2) If the Secretary considers that actions taken under paragraphs (A) or (B) will affect the designation in such a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the designation.

(3) For the purposes of this subsection, the term "resolution of disapproval" means a concurrent resolution which states after the resolving clause the following: "That the Congress does not approve the national marine sanctuary designation entitled ——— that was submitted to Congress by the Secretary of Commerce on ——— .", the first blank space being filled with the title of the designation and the second blank space being filled with the date on which the notice was submitted to Congress. In the event that the disapproval is addressed to one or more terms of the designation, the resolution shall state: "That the Congress approves the national marine sanctuary designation entitled ——— that was submitted to Congress by the Secretary of Commerce on ———, but disapproves the following terms of such designation: ——— .", the first blank space being filled with the title of the designation, the second blank space being filled with the date on which the notice was submitted to Congress, and the third blank space referencing each term of the designation which is disapproved.

(4) In computing the 45 and 90 day periods of continuous session of Congress pursuant to section 304(a)(4) and section 304(b)(1) respectively—

(A) continuity of session is broken only by an adjournment of Congress sine die, and

(B) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain are excluded.

(5) All permits, licenses, and other authorizations issued under any other authority of law that pertain to activities carried out in the area designated as a national marine sanctuary shall continue to be valid unless the regulations implementing the designation provide otherwise.

**SEC. 305. INTERNATIONAL APPLICATION OF REGULATIONS AND NEGOTIATIONS.**

(a) **REGULATIONS.** *The regulations issued under section 304 shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign state of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag state of the vessel, no regulation applicable to areas or activities outside the jurisdiction of the United States shall be applied to a person not a citizen of the United States.*

(b) **NEGOTIATIONS.** *After the taking effect under section 304 of a national marine sanctuary that applies to an area or activity beyond the jurisdiction of the United States, the Secretary of State shall take such action as may be appropriate to enter into negotiations with other Governments for the purpose of arriving at necessary arrangements with those Governments for the protection of the sanctuary and to promote the purposes for which it was established.*

**SEC. 306. RESEARCH AND EDUCATION.**

*The Secretary shall conduct such research and educational programs as are necessary and reasonable to carry out the purposes and policies of this Title.*

**SEC. 307. ANNUAL REPORT ON AREAS BEING CONSIDERED FOR DESIGNATION.**

*On or before November 1 of each year, the Secretary shall submit a report to the Congress setting forth information on those sites which the Secretary will be actively considering for sanctuary designation during the current fiscal year. Such information for each site shall include, to the extent available at time of submission, the following:*

- (1) *a description of the resources and other values which make the site nationally significant;*
- (2) *present and potential human uses;*
- (3) *impacts of present and potential activities;*
- (4) *existing state and Federal regulatory and management authorities;*
- (5) *boundary options;*
- (6) *regulatory options; and*
- (7) *potential research and educational benefits.*

**SEC. 308. ENFORCEMENT.**

(a) **IN GENERAL.** *The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this Title. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or of state departments, agencies, and instrumentalities, on a reimbursable basis in carrying out his responsibilities under this Title.*

(b) **CIVIL PENALTIES.**

- (1) *Any person subject to the jurisdiction of the United States who violates any regulation issued under this Title shall be liable for a civil penalty of not more than \$50,000 for each such*

violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) No penalty shall be assessed under this subsection until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(3) A vessel used in the violation of a regulation issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

"(c) JURISDICTION. The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued under this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States. The Attorney General may bring suit either on his own initiative or at the request of the Secretary.

#### SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

To carry out this Title, there are authorized to be appropriated not to exceed the following sums:

- (1) \$2,264,000 for Fiscal Year 1984.
- (2) \$2,500,000 for Fiscal Year 1985.
- (3) \$2,750,000 for Fiscal Year 1986.

## DISSENTING VIEWS OF HON. DON YOUNG

H.R. 2062, as reported by the Committee on Merchant Marine and Fisheries, is alleged to be a compromise between conflicting views on the marine sanctuary program. Unfortunately, it is not a compromise but merely an extension of an existing law that poses potential dangers for the wise use of marine resources and effectively removes traditional Congressional authority over the designation of special federal areas.

At the beginning of this session of the 98th Congress, three bills affecting the marine sanctuary program were introduced in the House. H.R. 1633, introduced by Congressman Breaux, would have allowed the continued sound management of special offshore areas under the marine sanctuary program and would have required Congressional action before a sanctuary could be designated. H.R. 2062, as introduced by Congressman D'Amours, effectively continued existing law. H.R. 1229, which I introduced, called for termination of the marine sanctuary program. When I introduced the bill, I specifically noted that I was willing to discuss constructive amendments to existing law. Unfortunately, such constructive amendments have not been adopted by the Committee.

The marine sanctuary program is designed to identify discrete ocean areas that deserve special federal protection. In this regard, the program is similar to our national system of wildlife refuges, parks, recreation areas, preserves and wilderness areas that provide varying degrees of protection and systems of management for resources on land. This is a concept which certainly deserves the support of the Congress. Unlike these special land areas, however, sanctuaries can be established by administrative action. The Congress has certain veto authority over regulations; in addition, the amendments adopted in H.R. 2062 will allow for a certain amount of Congressional review of proposed sanctuaries. Nevertheless, the final decision on which areas to designate as sanctuaries and what regulations will apply is left in the hands of the Secretary of Commerce. In other words, an appointed official can do what he pleases, regardless of any suggestions or guidance given to him by the U.S. Congress. If H.R. 2062 is passed, the Congress will have consciously surrendered its traditional authority to make decisions regarding federal land areas and to protect the rights of the people it was elected to represent. Such a wholesale surrender of its obligations should not be accepted by the Congress.

Some contend that the sanctuary program will have little or no effect on human use of the oceans. They point to existing sanctuaries that allow the continuation of such uses. Yet, the Department of Commerce testified during hearings held before the Committee on Merchant Marine and Fisheries on February 24, 1983 that the Secretary of Commerce would have the authority—regardless of other procedures established by law—to halt commercial fishing in

a sanctuary if that sanctuary were established due to the presence of a certain stock of fish and that stock declined. Further, the Department agreed that nothing in the marine sanctuary program guaranteed the continuation of commercial fishing in a marine sanctuary.

Commercial fishing is important not only to my State but to the nation as a whole. Imported fish products currently account for approximately 12 percent of our balance of trade deficit. Nearly 60 percent of the fish consumed in this country come from foreign sources. At the same time, the U.S. exercises management authority over some 15 to 20 percent of the world's marine protein resources in the 200 mile zone off our shores. The U.S. fishing industry has the potential to completely displace foreign harvesting in that area and to serve as the source of the majority of fish products consumed in this country. Designation of significant numbers of marine sanctuaries, as has been proposed in the past, could seriously disrupt the continued development of the U.S. fishing industry.

As a result of the testimony from the Department of Commerce, comments were received from the National Federation of Fishermen, the National Fisheries Institute, the United Fishermen of Alaska, the Pacific Seafood Processors Association, the Texas Shrimp Association, the Oregon Trawl Commission, the North Pacific Fishing Vessel Owners Association, and the North Pacific Fishermen's Federation. Among them, these groups represent nearly every organized commercial fisherman and fish processor in the United States. Their comments ranged from requests that the marine sanctuary program be terminated to requests that the law be modified so that commercial fishing in a sanctuary would be regulated only under existing fisheries laws. These comments were ignored by the Committee when it approved H.R. 2062. In addition, the Committee acted deliberately to undermine existing fisheries law. Under Section 304 of the bill, the Committee stipulated that fishing regulations must be compatible with the marine sanctuary program, rather than with the time-tested and carefully crafted national standards for fishery conservation and management that are found in the Fishery Conservation and Management Act. This is a serious blow to our national policy of fisheries development that was adopted by the Congress and that has been endorsed by the current administration.

In sum, H.R. 2062 is a bill that directly contravenes national policy, that ignores the needs of an important segment of our economy, that ignores comments received from the public, and that surrenders traditional Congressional powers to the executive branch. This bill should never be enacted into law.